Legal Risk Management for Directors and Officers of Not-for-Profit Corporations in Alberta

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Advising Charities, Not-For-Profits, and Social Enterprises

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INTRODUCTION

This paper was originally prepared as part of a LESA educational program on directors duties and liabilities in December 2012. It has been updated for the 2013 LESA program titled Advising Charities, Not for Profits and Social Enterprises. It will contain some additions and changes but is essentially the same paper as prepared in 2012.

The scope of the paper is limited to a discussion about director's duties and liabilities in the context of not for profit organizations in Alberta. As well the discussion will be limited to not for profit organizations created under the Societies Act, (the "Societies Act"), Part 9 of the Companies Act, RSA 2000, c C-21 (the "Companies Act"), the Canada Corporations Act, RSC 1970, c C-32 (the "CCA") and the new Canada Not for Profit Corporations Act (the "NFP Act"). There are other not for profit organizations such as the universities and hospitals that are created by special act of the legislature in Alberta. Special act corporations, crown corporations, condominium boards and other organizations that can be not for profit corporate entities in Alberta will not be considered in this discussion.

Generally the principals and concepts that are discussed in this paper will apply to special GST corporations, Crown corporation, condominium boards and other not for profit organizations.

Not for profit corporations created under the Societies Act, the Companies Act, the CCA or the NFP Act are all corporate entities that have limited liability. Instead of shareholders they have members. Members of a not for profit corporation created under the Companies Act can hold shares but are called members and not shareholders. The members elect the board of directors who are given responsibility for the business and affairs of the corporation. To the extent to which a not for profit carries on activities or endeavors that create a surplus of revenue or a profit, such surplus or profit must be used to promote the purposes of the corporation. Generally not for profit corporations do not pay income tax. Charitable corporations are special not for profit corporations that must
meet very specific requirements under the Income Tax Act, RSC 1985, c 1 (5" Supp) (the "ITA") in order to maintain a tax exempt status and can issue tax deductible receipts for donations to the charity.