

Non-Profit Corporations Fact Sheet: Dispute Resolution

What is the applicable legislation?

The current Act is [The Non-Profit Corporations Act, 1995](#).

The current Regulations are [The Non-Profit Corporations Regulations, 1997](#).

Both Acts and Regulations contain all recent amendments and are available on the Publications Saskatchewan website at <https://publications.saskatchewan.ca/#/freelaw>.

What methods are available for a person to resolve a non-profit corporation dispute?

The following are methods that may be available to a member or director of a corporation to resolve a dispute:

- Discussion;
- Negotiation;
- Mediation;
- Arbitration;
- Investigation; and
- An application in the Court of Queen's Bench.

As you escalate through the methods of dispute resolution, generally, the costs increase. It is always in your best interest to start with the lower cost conflict resolution options, such as having a discussion about the concerns.

ROLE OF THE DIRECTOR OF CORPORATIONS

What involvement does the Director have in non-profit corporation disputes?

The Non-profits Corporation Act, 1995, as with many of the acts that are proclaimed by government, are considered self-governing acts. This means that the Director of Corporations rarely becomes involved in a non-profit corporation dispute and pursuit of a remedy is left to the interested parties. A dispute requires evidence to be produced and legal arguments to be made by the interested parties and because of this, most disputes more properly belong in a court of law and not with the Director.

Will the Director call a meeting?

Although the Director of Corporations has the authority to make an application to the court to call a meeting, this is considered a remedy of last resort and will only be made if there is a strong public purpose to the meeting. The Director and the Office of Public Registry Administration do not become involved in the management or disputes of an individual non-profit corporation.

For the strong majority of situations, if a person believes that a meeting of a non-profit corporation is warranted, they can follow the process to have the members requisition the board to call a meeting or apply to the court for an order directing the board to call a meeting.

Section 134 of the Act

Will the Director access corporate records?

Although the Director of Corporations has the authority to access corporate records, this is only done so when there is a strong public purpose for the access to occur. For instance, this access may occur if the Director was investigating an offence under the Act. Please see the section on Offences for further information.

The Director and the Office of Public Registry Administration do not become involved in the management or dispute of an individual non-profit corporation. As such, we will not access corporate records to provide documents to one side in a dispute.

Section 21 of the Act

Will the Director appoint an auditor?

Although the Director of Corporations has the authority to apply to court for the appointment of an auditor, an application made by the Director is considered a remedy of last resort and will only be made if there is a strong public purpose to the investigation. The Director and the Office of Public Registry Administration do not become involved in the management or disputes of an individual non-profit corporation.

For the strong majority of situations, if a person believes that an auditor is required, they will be required to arrange for the members to appoint an auditor or to apply to the court for an order directing an auditor to be appointed.

Section 155 of the Act

Will the Director apply to the court for a liquidation or dissolution?

Although the Director of Corporations has the authority to apply to court for an order that a liquidation be continued under the supervision of the court or for an order dissolving a corporation, an application made by the Director is considered a remedy of last resort and will only be made if there is a strong public purpose to the liquidation or dissolution. The Director and Office of Public Registry Administration do not become involved in the management or disputes of an individual non-profit corporation.

For the strong majority of situations, if a person believes that a liquidation should be supervised by the court or a corporation needs to be dissolved, they will have to apply to the court for an order that the liquidation be continued under the supervision of the court or follow the process for dissolution contained in the Act.

Sections 194, 197 and 198

Will the Registrar order an investigation of a non-profit corporation?

Although the Director of Corporations has the authority to apply to court for an investigation, an application made by the Director is considered a remedy of last resort and will only be made if there is a strong public purpose to the investigation. The Director and the Office of Public Registry Administration do not become involved in the management or disputes of an individual non-profit corporation.

For the strong majority of situations, if a person believes that an investigation is warranted, they will be required to apply to the court for an order directing an investigation be made.

Section 214 of the Act

COURT REMEDIES

Who can apply to the Court of Queen's Bench?

It depends on the circumstances, but generally, the persons who can apply to the court under the Act are:

- a member, a registered holder or beneficial owner, or a former registered holder or beneficial owner of a security of a corporation or any of its affiliates;
- a director or an officer, or a former director or officer of a corporation or any of its affiliates;
- the Director of Corporations; or
- any other person who the court considers a proper person to make an application.

Section 222 of the Act

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What is a derivative action?

A derivative action is a lawsuit brought by a complainant on behalf of a corporation against a third party. It is one of the court remedies that may be available.

What must be done to commence a derivative action?

A person can apply to the Court of Queen's Bench for leave to bring an action in the name and on behalf of the corporation or any of its subsidiaries or intervene in an action to which that the corporation is a party for the purpose of prosecuting, defending or discontinuing the action on behalf of the corporation.

However, no action may be brought and no intervention in an action may be made unless the following requirements have been met:

- reasonable notice has been given to the directors of the corporation or its subsidiary of his or her intention to apply to the court if the directors do not bring, diligently prosecute, defend or discontinue the action;
- the complainant is acting in good faith; and
- it is in the interests of the corporation or its subsidiary that the action be brought, prosecuted, defended or discontinued.

*Section 223 of the Act***What can the court do when a derivative action is commenced?**

Where a derivative action is brought, the court can make any order that it sees fit, including the following:

- giving the complainant or any other person authorization to control the action;
- giving directions for the conduct of the action;
- directing that any amount payable by a defendant in the action, in whole or in part, be paid to current and former security holders of the corporation or its subsidiary instead of to the corporation or its subsidiary; and
- requiring the corporation or its subsidiary to pay reasonable legal fees of the complainant, as a result of the action.

*Section 224 of the Act***What conduct is oppressive?**

The Act does not have a list of specific conduct that could be oppression. It is for the Court of Queen's Bench to determine, on an application, if the conduct is oppressive or unfairly prejudicial or unfairly disregards any interest of the applicant.

When should a person make an application to court regarding oppression?

A person may apply to the Court of Queen's Bench for an order, and the court may rectify the matters complained of, where the court is satisfied that:

- the result of an act or omission of the corporation or any of its affiliates;
- the manner in which activities or affairs of the corporation or its affiliates have been carried on or conducted; or
- the manner in which the powers of the directors of the corporation or any of its affiliates are or have been exercised;

is oppressive, unfairly prejudicial or unfairly disregards the interests of any:

- member;
- security holder;
- creditor;
- director;
- officer; or
- in the case of a charitable corporation, the public.

Subsection 225(1) of the Act

What orders can the court make when an individual has applied for an oppression remedy?

The court can make any interim or final order it considers appropriate, including:

- restraining the conduct complained of;
- appointing a receiver or receiver-manager;
- amending the articles or bylaws or creating or amending a unanimous member agreement to regulate the corporation's affairs;
- directing an issue or exchange of securities;
- appointing directors in place of or in addition to the directors in office;
- directing a corporation or person to purchase securities of a security holder;
- directing a corporation or persons to pay a member any part of a membership interest;
- directing a corporation or persons to pay to a security holder any part of moneys paid for securities;
- varying or setting aside a transaction or contract to which the corporation is a party and compensating the corporation or any other party to the transaction or contract;
- requiring a corporation to produce financial statements to the court or an interested party by a certain date;
- compensating an aggrieved party;
- ordering rectification of the registers or other records of the corporation;
- liquidating and dissolving the corporation;

- directing an investigation to be made;
- directing the corporation's future investments, disposition and application of its property;
- upholding, modifying or setting aside a decision made with respect to the discipline of a member; and
- requiring the trial of any issue.

Subsection 225(2) of the Act

What do I do if I want an investigation to be done on the corporation?

Any member or security holder of the corporation or the Director of Corporations may apply to the court for an order to have an investigation done on the corporation and any of its affiliates. If a member or security holder makes an application, he or she has to give the Director of Corporations reasonable notice of the application and the Director of Corporations is entitled to appear and be heard in person or by counsel. An application made by the Director of Corporations is considered a remedy of last resort and will only be made if there is a strong public purpose to the investigation.

The court can order an investigation where it appears that any of the following have taken place:

- the activities or affairs of the corporation are or have been carried out with the intent to defraud;
- the activities or affairs of the corporation are or have been carried out in a manner that is oppressive, unfairly prejudicial or unfairly disregards the interests of a member or security holder;
- the corporation or its affiliates were created for a fraudulent or unlawful purpose; or
- persons involved in the formation, activities or affairs of the corporation have acted fraudulently or dishonestly.

Section 214 of the Act

What orders can the court make with respect to investigations?

The court has the ability to make any order it sees fit including:

- to investigate;
- to appoint, replace or fix the remuneration of an inspector;
- determining the notice to be given to or dispense with notice to any person;
- authorizing the inspector to enter any premises the court thinks may have information relevant to an investigation and to examine and make copies of any relevant documents;
- requiring any person to produce any documents to the inspector;
- authorizing the inspector to hold hearings, administer oaths, examine persons under oath and prescribe rules for the hearing;
- giving directions to the inspector or interested person on any matter arising from the investigation;
- requiring the inspector to make an interim or final report to the court;
- deciding if the inspector's report should be published and if so, make an order that the Director of Corporations publish it and send copies to any person the court designates;
- requiring an investigator to discontinue an investigation; and
- requiring the corporation to pay the costs of the investigation.

Section 215 of the Act

What if I want the investigation to remain private?

Any interested person may apply to the court for:

- an order that a hearing conducted by an inspector be heard in private; and
- directions on any matter arising in the investigation.

Subsection 217(1) of the Act

Do I have the right to counsel if I am being investigated?

Yes. A person whose conduct is being investigated or who is being examined at a hearing conducted by an inspector has a right to be represented by counsel.

Subsection 217(2) of the Act

What are the options if the name of a person is entered incorrectly in the registers or other records of the corporation?

You may be able to correct the error yourself if there is no issue with the name being corrected as of the current date. If you wish to make that type of correction, you may submit the appropriate application to the Corporate Registry at [ISC](#) at 1-866-275-4721 or by email at corporateregistry@isc.ca.

If it is an error that requires a specific date or a notation that a name related filing was made in error, the corporation, a member or security holder of the corporation, or any aggrieved person can apply to the court to have the registers or other records rectified if a name is entered, retained, deleted or omitted wrongly from the registers or other records of the corporation.

The applicant shall give the Director of Corporations notice of such a court application and the Director is entitled to appear and be heard in person or by counsel. Notice to the Director can be given at publicregistryadmin@gov.sk.ca or by fax at 306-787-5830.

It should be noted that the court order would then be filed in the Corporate Registry and may be displayed in the Event History when searching the Corporate Profile Report. The order will be searchable. Even after the order is acted upon, any documents the order serves to replace will still be in the system and searchable.

Subsections 227(1) and (2) of the Act

What may the court do if an application is made based on an incorrect name in the register or other records of the corporation?

When an application is brought, the court can make any order it sees fit, including the following:

- requiring the registers or records of the corporation to be rectified;
- restraining the corporation from calling or holding a meeting of members before the rectification takes place;
- determining the right of a party to have his or her name entered, retained, omitted or deleted from the registers or other records of the corporation; or
- compensating a party who has suffered a loss.

Subsection 227(3) of the Act

What if a person or corporation is violating the provisions of the Act?

Where a director, officer, employee, agent, auditor, trustee, receiver, receiver-manager, or liquidator of a corporation does not comply with the Act, regulations, articles, bylaws, or a unanimous member agreement, a person may apply to the court for an order directing that the person comply with, or restraining that person from acting in breach of these rules.

Section 231 of the Act

How does a person apply to the Court of Queen's Bench?

The application to court may be made in a summary manner by petition, originating notice of motion or otherwise as the rules of court provide and subject to any order respecting notice to interested parties or costs or other order that the court considers appropriate.

Section 232 of the Act

Can I appeal a decision of the Director of Corporations?

Maybe. A person may apply to the Court of Queen's Bench for an order in regards to any of the following decisions made by the Director:

- refusal to file in the form submitted to the Director any articles or other document required to be filed by the Director;
- refusal to give, to change or revoke a name, or to refuse to reserve, accept, change or revoke a name;
- refusal to grant an exemption;
- refusal to issue a certificate of discontinuance;
- refusal to designate or change the district in which a board of trade or chamber of commerce is entitled to the exclusive use of its name;
- refusal to revive a corporation; or
- refusal to dissolve a corporation.

On the application, the court may make any order it sees fit.

Section 230 of the Act

Can I appeal a decision of the Court of Queen's Bench?

Yes. An appeal lies to the Court of Appeal.

Section 233 of the Act

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OTHER REMEDIES

Other than court, what other options are available to a person or the corporation to resolve a dispute?

Nothing restricts other remedies available to a person. Other available remedies include discussion, negotiation, arbitration and mediation.

What is negotiation?

Negotiation is a process whereby parties in dispute have a formal discussion in an effort to reach a compromise or agreement.

What is arbitration?

Arbitration is a process whereby parties in dispute refer their disagreement to a mutually acceptable, knowledgeable, independent third party - an arbitrator - agreeing in advance to be bound by the arbitrator's decision. *The Arbitration Act, 1992* sets out guidelines for the conduct of arbitrations in Saskatchewan.

What is mediation?

Parties in dispute choose a mediator - an impartial person - who helps them reach a mutually-acceptable settlement.

Who pays the costs of the negotiation, arbitration or mediation?

The costs are the responsibility of the parties.

OFFENCES

When can a corporation or a person be guilty of an offence relating to reporting?

There are a variety of reporting requirements set out in the Act. A report related offence is committed when a person or corporation:

- makes or assists in making a report, return, notice or other document required by this Act or the regulations to be sent to the Director or to any other person; and
- that report, return, notice of other document contains an untrue statement of a material fact or omits to state a material fact required or necessary to make a statement in the document not misleading in the light of the circumstances in which it was made.

No person is guilty of an offence if the untrue statement or omission was unknown to him or her and in the exercise of reasonable diligence could not have been known to him or her.

Subsections 280(1) of the Act

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What if a person is found guilty of a report offence?

When a person is guilty of an offence, he or she is liable on summary conviction to a fine of not more than \$5,000, to imprisonment for a term of not more than six months or to both.

In addition, the court may order that the person comply with the provisions of the Act or regulations for the contravention of which he or she has been convicted.

Subsections 280(2) and 282(1) of the Act

What if a body corporate is found guilty of a report offence?

If a body corporate is guilty of an offence, whether or not the body corporate has been prosecuted or convicted, a director or officer of the body corporate who knowingly authorizes, permits or acquiesces in that failure is also guilty of an offence and liable on summary conviction of a fine or not more than \$5,000, to imprisonment for a term of not more than six months or to both.

In addition, the court may order that the body corporate comply with the provisions of the Act or regulations for the contravention of which it has been convicted.

Subsections 280(3) and 282(1) of the Act

What happens if a person or body corporate contravenes a provision of the Act or Regulation and there is no specific offence outlined?

The person or body corporate who, without reasonable cause, contravenes a provision of the Act or regulations for which no punishment is provided is guilty of an offence and liable on summary conviction to a fine of not more than \$500.

In addition, the court may order that the person comply with the provisions of the Act or regulations for the contravention of which he or she has been convicted.

Section 281 and subsection 282(1) of the Act

When can a prosecution under this Act occur?

A prosecution for an offence pursuant to the Act may be commenced at any time within two years from the time when the subject-matter of the complaint arose.

Subsection 282(2) of the Act

When is prosecution under this Act likely to occur?

Prosecution is viewed as a remedy of last resort. The decision to move ahead with a prosecution under Provincial statutes is made pursuant to the [Prosecutions Policy on Provincial Statutes Offences](#).

Can a person commence a civil action at the same time that a prosecution on the same matter is occurring?

Yes. A civil remedy for an act or omission is not suspended or affected by reason that the act or omission is an offence pursuant to the Act.

Subsection 282(3) of the Act

ASSISTANCE

Who may be able to offer me assistance with my dispute?

Some places to seek assistance from are:

- Court of Queen's Bench: www.sasklawcourts.ca;
- Hire a lawyer;
- Hire a mediator or alternate dispute practitioner:
- [ADR Institute of Saskatchewan](#);
- [Conflict Resolution Saskatchewan](#); and
- [Dispute Resolution Office, Ministry of Justice](#); and
- Collaborative Lawyers of Saskatchewan;
- Explore whether you qualify for legal services from Pro Bono Law Saskatchewan based on their income testing requirements: www.pblsask.ca; and
- Public Legal Education Association of Saskatchewan (PLEA) information on Non-Profit Organizations: www.plea.org.

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