

From:

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To:

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**Request for Children's Aid Society of Ottawa Membership List
in accordance with *Corporations Act*, R.S.O. 1990, c. C.38, ss. 307 (1)**

To: Barbara MacKinnon, Executive Director, Children's Aid Society of Ottawa

CC: Brian McKee, President, Board of Directors, Children's Aid Society of Ottawa

CC: Tracy Engleking, Senior Counsel, Legal Services

REQUEST:

I am requesting a list, setting out the names alphabetically arranged of all persons who are members of the Children's Aid Society of Ottawa (the Society) regardless of their classification or categorization, and the address of each such person as shown on the books of the corporation not more than ten days prior to the date this request, its accompanying fee and sworn affidavit were received by the Society, so that I may communicate with the members solely for purposes connected with the Society in accordance with the *Corporations Act*, R.S.O. 1990, c. C.38, ss. 307 (1) As amended. (the Act)

REQUESTING PARTY OBLIGATIONS UNDER ss. 307 (1) OF THE ACT

1. Payment of Reasonable Fee

One obligation the requesting party must fulfill while making a request under ss. 307 (1) of the Act is to pay a "reasonable fee" to the Children's Aid Society of Ottawa in order to enable the Society to comply with the request. To satisfy this obligation, you will find a cheque from John Dunn made payable to The Children's Aid Society of Ottawa for \$20.00.

2. Sworn Affidavit

Another obligation the requesting party must fulfill while making a request under ss. 307 (1) of the Act is to file with the Society a sworn affidavit, as laid out in ss. 307 (2) of the Act which requires the requesting party to swear to use the list of members only for purposes connected with the Society. To satisfy this obligation, enclosed you will find a sworn affidavit signed by a commissioner for taking affidavits as defined in the *Commissioners for Taking Affidavits Act*, R.S.O. 1990, c. C.17, ss. 2.1 (3)ⁱⁱ

RESPONDING PARTY OBLIGATIONS UNDER ss. 307 (1)

1. Provide List of Society's Members and Addresses

Upon receiving a request and payment of a “reasonable fee” under ss. 307 (1) of the Act accompanied by a sworn affidavit as laid out in ss. 307 (2) of the Act, a Society must furnish within ten days of the day the request, sworn affidavit and “reasonable fee” were filed with the Society, a list setting out the names alphabetically arranged of all persons who are members of the corporation -- regardless of their classification or categorization -- and the address of each such person as shown on the books of the corporation made up to a date not more than ten days prior to the date the Society received the request under ss. 307 (1) of the Act.

2. Provincial Offence

According to ss. 307 (5) of the Act, a corporation (the Society) is guilty of an offence if it fails to furnish a list in accordance with ss. 307 (1) of the Act when so required, and upon conviction is liable to a fine of not more than \$1,000.00 and every director or officer of such corporation or transfer agent who authorized, permitted or acquiesced in such offence is also guilty of an offence and on conviction liable to a like fine.

A reasonable person, upon reading and understanding ss. 307 (5) of the Act would be aware of the fact that it is an offence not to comply with a proper request under ss. 307 (1) of the Act and that not only is the corporation guilty of an offence if convicted under ss 307 (5) of the Act, but the individual Directors, Officers and / or Transfer Agents who authorized, permitted or acquiesced in such offence are also subject to conviction.

I recommend that Barbara MacKinnon, as Executive Director of the Society and Brian McKee as President of the Board of Directors of the Society meet with and obtain legal advice from a lawyer concerning this matter and their obligations under all of the subsections of ss. 307 of the Act, specifically ss. 307 (5). If the Society does commit an offence under ss. 307 (5) of the Act, a person could take action under Part III of the *Provincial Offences Act, R.S.O. 1990, c. P.33*

Relevant Case Law

In order to assist Barbara MacKinnon, Brian McKee, and any other persons at or in association with the Society decide how to proceed with this fully compliant request under ss. 307 (1) of the Act, I have provided a link to the case law of the successfully appealed *Lawrence v. Toronto Humane Society*, 2006 CanLII 20224 (ON C.A.), online: "<http://canlii.org>". Date: 2006-06-16, Docket: C43983

Province of Ontario
City of Ottawa

In the matter of
THE CHILDREN'S AID SOCIETY OF OTTAWA

AFFIDAVIT OF JOHN DUNN

I, JOHN FRANCIS DUNN of the City of Ottawa, in the Province of Ontario make oath and affirm:

1. I hereby apply for a list of the members of the above-named corporation.

2. I require the list of members only for purposes connected with the above-named corporation.

3. The list of members and the information contained therein will be used only for purposes connected with the above-named corporation.

Affirmed before me at the City of Ottawa,
of the Province of Ontario, in the Regional
Municipality of Ottawa-Carleton on this
_____th day of the _____st month in the
_____th year of our Lord.

.....
Commissioner for Taking Affidavits

.....
(Signature of deponent)

End Notes

i Section 307 of the Corporations Act

307. (1) Any person, upon payment of a reasonable charge therefor and upon filing with the corporation or its agent the affidavit referred to in subsection (2), may require a corporation, other than a private company, or its transfer agent to furnish within ten days from the filing of such affidavit a list setting out the names alphabetically arranged of all persons who are shareholders or members of the corporation, the number of shares owned by each such person and the address of each such person as shown on the books of the corporation made up to a date not more than ten days prior to the date of filing the affidavit.

Affidavit

(2) The affidavit referred to in subsection (1) shall be made by the applicant and shall be in the following form in English or French:

Form of Affidavit

Province of Ontario

In the matter of

County of

(Insert name of corporation)

I, of the of in the of
make oath and say (or affirm):

(Where the applicant is a corporation, indicate office and authority of deponent.)

1. I hereby apply for a list of the shareholders (or members) of the above-named corporation.
2. I require the list of shareholders (or members) only for purposes connected with the above-named corporation.
3. The list of shareholders (or members) and the information contained therein will be used only for purposes connected with the above-named corporation.

Sworn, etc.

Idem, where applicant a corporation

(3) Where the applicant is a corporation, the affidavit shall be made by the president or other officer authorized by resolution of the board of directors of such corporation.

Offence

(4) Every person who uses a list of shareholders or members of a corporation obtained under this section,

- (a) for the purpose of delivering or sending to all or any of such shareholders or members advertising or other printed matter relating to shares or securities other than the shares or securities of the corporation; or
- (b) for any purpose not connected with the corporation,

is guilty of an offence and on conviction is liable to a fine of not more than \$1,000.

Offence

- (5) Every corporation or transfer agent that fails to furnish a list in accordance with subsection (1) when so required is guilty of an offence and on conviction is liable to a fine of not more than \$1,000, and every director or officer of such corporation or transfer agent who authorized, permitted or acquiesced in such offence is also guilty of an offence and on conviction is liable to a like fine.

Interpretation

(6) Purposes connected with the corporation include any effort to influence the voting of shareholders or members at any meeting of the corporation, any offer to acquire shares in the corporation or any effort to effect an amalgamation or reorganization and any other purpose approved by the Minister. R.S.O. 1990, c. C.38, s. 307.

ii (2.1) The following are, by virtue of office, commissioners for taking affidavits in the single-tier municipalities of the City of Toronto, City of Hamilton, City of Ottawa, City of Greater Sudbury, The Corporation of Haldimand County, The Corporation of Norfolk County, The Corporation of the County of Brant, The Corporation of the Municipality of Chatham Kent, The Corporation of the County of Prince Edward, The Corporation of the City of Kawartha Lakes and in such other single-tier municipalities as may be prescribed:

1. The clerk, deputy clerk and treasurer of the single-tier municipality.
2. The administrative heads and deputy administrative heads of the single-tier municipality departments responsible for building standards, welfare, assessment or planning, and the single-tier municipality's medical officer of health, but only for the purposes of the affairs of the single-tier municipality.
3. The head of council and the other members of council. 2002, c. 17, Sched. F, Table.