

**WELCOME TO THE
Canada Not-for-profit Corporations Act
Presentation**

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Canada Not-for-profit Corporations Act – An overview

- Part II of the Canada Corporations Act (CCA) which was last substantially revised in 1919, has long been recognized as outdated, cumbersome and filled with gaps
- On June 23, 2009, Bill C-4, the Canada Not-for-Profit Corporations Act (the “New Act”) received Royal Assent
- Came into effect October 17, 2011
- Approx 17,000 federal NFP that will need to file Articles of Continuance. (plus any Provincial NFP corporations that will have the option of moving the New Act under its voluntary continuance provisions.

Key Features

(modern governance procedures)

- A corporation has the capacity, rights and powers of a natural person and may carry on activities throughout Canada;
- Fundamental changes such as amalgamation (including vertical and horizontal), continuance and discontinuance, reorganization, arrangements, liquidation, dissolution and revival are permitted, based on CBCA provisions.
- Directors' duty of care, disclosure of interest and indemnification provisions are codified, based on Canada Business Corporations Act provisions;
- Directors may act by resolutions in writing;
- Directors may make, amend or repeal by-laws, subject to confirmation by the members (without Minister's approval);

Key Features

(modern governance procedures)

- Modern provisions for directors' and officers' duties and liability:
 - Act honestly and in good faith with a view to the best interests of the corporation;
 - Exercise the care, diligence and skill of a reasonably prudent person;
 - Comply with the Act, articles, bylaws and unanimous members' agreement
 - Due diligence defence will be available; and
 - Advancement of defence costs and director and officer liability insurance for directors will be possible

Key Features (reporting obligations)

- Reporting Obligations:
 - File an annual return every year;
 - File any change of registered office address;
 - Report changes of directors;
 - Soliciting corporations to file financial statements and public accountant's report;
 - Keep articles up to date; and
 - Send copies of bylaws and amendments

Key Features (annual obligations)

- Annual Obligations:
 - Produce financial statements and have them reviewed by the public accountant;
 - Hold an annual meeting of members to elect directors, appoint a public accountant and present financial statements; and
 - Fulfill reporting obligations.

Key Features (member meetings)

Act requires annual meetings of members and permits special meetings of members. To provide flexibility in holding meetings, the bylaws will set out the methods of providing notice and the manner of absentee voting

Options for manner of absentee voting by members, if any, are:

- proxies;
- Mail in ballots; and
- Telephone or electronic means.

Options for method of providing notice of members' meetings are:

- mail, courier or personal delivery;
- Telephone or other electronic communication;
- Notice affixed to a notice board; and
- Publication in a newspaper if more than 250 members

Key Features

(communication with members)

- Flexible provisions for communications to facilitate participation among members, in particular:
 - Electronic communication will be fully permitted, but not mandatory;
 - Entirely electronic meeting of members will be possible;
 - There will various methods of giving notice to members of meetings (eg. Notice board; publication on website)
 - Electronic communications (eg. Sending of documents) from the corporation to its members will be possible.

Key Features (members' rights)

- Access to corporate records to facilitate active monitoring of the board's performance
- Access to membership lists to promote members' participation with special protections to prevent abuse of the information:
 - Statutory declaration to access; director's exemption to prevent access to all or part of a list; and explicit offence for misuse of information
- Provisions of standard corporate information:
 - Eg. Financial statements, public accountant's reports, notice of meetings of members

Key Features (members' rights)

- Court-ordered investigations will be possible to look into alleged corporate wrongdoing
- A court will also be able to issue an order to require compliance with the Act, regulations, bylaws, articles of UMA
- The standard derivative action and oppression remedies will be available to members and other complainants who feel aggrieved by the corporation, its directors, etc.
- There will be a new faith-based defence to these remedies available for religious corporations with three criteria:
 - Religious corporation;
 - Decision or action based on tenet of faith; and
 - Reasonable to base the decision on a tenet of faith

Key Features (bylaws)

- Bylaws will no longer be reviewed and approved by the Minister of Industry
- Corporations will be required to file bylaws and amendments with Corporations Canada (within 12 months of approval by members)
- Broad discretion for organization to adopt bylaws to fit their individual needs:
 - Streamline bylaws to focus on specific day to day needs;
 - Flexibility through bylaws selected to provide the best solution for specific organization (eg. Notice of meeting of members; absentee voting; quorum at meetings; electronic communications) within the options and requirements in the Act and regulations; and
 - Possible override certain default rules in the Act through provisions in the bylaws.

Types of Federal NFP Corporations

- A key to understanding, and eventually working with the New Act is to recognize that it differentiates among certain NFP corporations and accords modest differential treatment depending on the defining characteristics.
- The New Act recognizes 3 types of federal NFP corporations:
 - Non-soliciting corporations;
 - Soliciting corporations; and
 - Religious corporations



Types of Federal NFP Corporations

- **Non-Soliciting Corporations**

- Non-Soliciting corporations are the residual category (not defined by used in the New Act)
- Any corporation that is not a soliciting corporation fits into the non-soliciting category

Types of Federal NFP Corporations

- **Soliciting Corporations**

- The New Act recognizes a fundamental distinction between soliciting and non-soliciting corporations
 - The basic premises is that corporations that receive public funds should, in the public interest, be subject to tighter regulation than those corporations that do not rely on public funding.
 - The Act does not attempt to distinguish between the two types on the basis of their underlying objects, the nature of their underlying activities or their charitable status.
 - Rather the distinction is based on whether aggregate receipts from a short-list of public sources during a period consisting of the 3 most recent fiscal years are in excess of \$10,000
 - In effect, this low financial threshold comprises a *de minimus* exemption.

Types of Federal NFP Corporations

- **Soliciting Corporations**

- The funding sources that determine whether a corporation is “soliciting” are:
 - Public donors (those who are not members, directors, employees, etc)
 - Government or government agencies; and
 - Other soliciting corporations for other entities that have received in excess of \$10,000 in the previous 3 years.
- Paying a membership fee by an existing member will not count towards the calculation;
- Unsolicited donations (such as gifts left under a Will) do not count towards calculation.

Types of Federal NFP Corporations

- The test for determining whether a corporation is a “soliciting corporation” will be applied on the last day of the fiscal year-end. For example, assume the fiscal year for Corp C is Dec 31:
 - On December 15, 2011 it receives \$6,000.00 in public funds and a further \$6,000.00 of public funds on January 15, 2014, C will not be a soliciting corporation;
 - If C receives \$6,000.00 on January 15, 2011 and a further \$6,000.00 on December 15, 2013 it would be a soliciting corporation for the ensuing 2014 fiscal year.
- The New Act does allow/empower the Director to determine that a specific corporation is not a soliciting corporation if it is prejudicial to the public interest.

Types of Federal NFP Corporations

- Soliciting corporations have 5 special requirements that non-soliciting corporations do not have:
 - Must have a minimum of 3 directors, 2 of whom are not officers or employees of the corporation;
 - Must send a copy of the corporation’s financial statement and public accountant’s report, if any, to Corporations Canada;
 - On dissolution, must ensure that the assets of the corporation go to a “qualified donee” as defined in the Income Tax Act;
 - May not have a unanimous member agreement; and
 - Must have specific rules for conducting its financial review.

Types of Federal NFP Corporations

- **Religious Corporations**

- The New Act provides that religious corporations enjoy an exemption from court-ordered liquidations, derivative actions and oppression remedies (but not a compliance or restraining order issued under s. 259) if:
 - (a) The impugned act, omission, conduct is based on a tenet of faith held by the members; and,
 - (b) It was reasonable to base the act, omission or conduct on the tenet of faith, having regard to the corporation's activities.
- The New Act does not define a “religious corporation” or “tenet of faith” but leaves that up to the courts.
- In most, if not all cases, a religious corporation will be a soliciting corporation

Key Feature: Financial Review

- Every corporation is required to have a qualified public accountant (ie. An independent CA/CGA/CMA with a provincial license, where required)
- Financial review provisions designed to balance oversight of a corporation with the cost of conducting a review
- Members of small corporations can unanimously vote to not appoint a public accountant:
 - A soliciting corporation with less than \$50,000 in gross annual revenues; or
 - Non-soliciting corp with less than \$1m in gross annual revenues.

The Director appointed under the Act can exempt a corporation from the financial review requirements if satisfied that doing so would not be prejudicial to the public interest

Key Feature Financial Review

Type of Corporation	Gross Annual Revenues	No Review	Review Engagement	Audit
Soliciting	Less than \$50K	Optional review	Default review	Optional review
Soliciting	Between \$50K and \$250K	Not possible	Optional review	Default review
Soliciting	More than \$250K	Not possible	Not possible	Mandatory review
Non-Soliciting	Less than \$1M	Optional review	Default review	Optional review
Non-Soliciting	More than \$1M	Not possible	Not possible	Mandatory review

Planning for Continuance

- Starting October, 2011, Part II CCA corporations will have three years to apply for continuance
- If corporation fails to continue, Corporations Canada can dissolve corporation upon notice to the corporation and each director
- Corporation must file articles of continuance – content is the same as content of articles
- Corporation must replace its Letters Patent, supplementary Letters Patent (if any) and bylaws with a new charter document by submitting articles of continuance to obtain a Certificate of Continuance and creating and filing new bylaws.

Thank you
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