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# Not-For-Profit Law

Issues in Law You Need To Know

## Changes to Not-For-Profit Legislation Are You Ready to Transition

*The new Canada Not-for-Profit Corporations Act ("New Act") is expected to be proclaimed in force in 2011. Once proclaimed in force, it will replace Part II of the Canada Corporations Act ("CCA").*

For charities and not-for-profit organizations incorporated under the CCA ("CCA Corporations"), it is important to note that the New Act will not automatically apply to CCA Corporations. Instead, CCA Corporations will be required to transition to the New Act.

There will be a three-year transition period for CCA Corporations to apply for continuance under the New Act. Failure to transition to the New Act will cause a CCA Corporation to be eventually dissolved.

CCA Corporations wishing to transition will need to undergo the following steps in order to transition to the New Act:

1. *Resolution by the Members:*  
The members of a CCA Corporation will be required to pass a resolution authorizing



the Board of Directors to make an application to transition to the New Act.

2. *Filing Articles of Continuance:*  
In order to successfully transition to the New Act, a CCA Corporation must apply for a certificate of continuance. As part of this application, the corporation must file Articles of Continuance, which will replace the corporation's letters patent. The Articles of Continuance will need to set out the following information:
  - a) the name of the corporation;
  - b) the province where the registered office is to be

situated;

- c) the classes, or regional or other groups, of members that the corporation is authorized to establish and, if there are two or more classes or groups, any voting rights attaching to each of those classes or groups;
- d) the number of directors or the minimum and maximum number of directors;
- e) any restrictions on the activities that the corporation may carry on;
- f) a statement of the purpose of the corporation; and
- g) a statement concerning the

distribution of property remaining on liquidation after the discharge of any liabilities of the corporation.

3. *Notice of Registered Office:*

In addition to the Articles of Continuance, a CCA Corporation will be required to file a notice of registered office, as well as a notice of directors, with Industry Canada in the forms to be prescribed by Industry Canada and within the periods to be stipulated in the New Act's regulations.

4. *Officer's certificate:*

A CCA Corporation, as part of its application package, must also include an officer's certificate certifying that the corporation's members have adopted by-laws that conform to the New Act's requirements.

Under the New Act, Industry Canada will no longer be required to approve a corporation's bylaws; however, reference copies of the bylaws must still be filed on record with Industry Canada. While a CCA Corporation can maintain its current bylaws (as long as they meet the minimum requirements set by the New Act), it is advisable that an organization, at the time of transition, review its bylaws to

assess whether changes may be appropriate (for example, provisions may need to be added to ensure the bylaws are in conformity with the New Act, or provisions may be deleted where such provisions are not required by the New Act or are not favourable or helpful to the organization).

Industry Canada will not charge a fee for the filing of an application to continue under the New Act.

Similarly to the New Federal Act, discussed above, Ontario has also enacted new not-for-profit corporation legislation. Currently, in Ontario, provincial non-profit corporations are regulated by Part III of the Corporations Act ("OCA").

On October 25, 2010, the Ontario Not-for-Profit Corporations Act ("ONPCA") received Royal Assent. Once proclaimed in force, the ONPCA will apply to non-share corporations on the day the statute is named into force, including corporations without share capital currently under Part III of the OCA (please note that there are exceptions to this. For example, the ONPCA does not apply to corporations without share capital that are under the Co-operative Corporations Act or insurance corporations under Part V of OCA).

It is anticipated that the ONPCA will be proclaimed in force in 2012.

While the ONPCA will immediately apply to non-share capital corporations, it will not immediately change the governing documents of those companies to comply with the new legislation.

Under the ONPCA, previously valid governing provisions that are invalid under the new legislation are only deemed into compliance with the ONPCA three years after the legislation comes into force.

During this transitioning period, it is advisable to review your organization's governing documents and to assess whether any changes to them are necessary in order to bring them into compliance with the new legislation, or whether any changes are simply desired in order to do away with provisions in your governing documents that are no longer necessary or helpful to your organization.

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