

The New Canada Not-for-profit Corporations Act – Next Steps

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Main Goals for the Morning

- To build on the earlier sessions and materials.
- To provide you with more detailed knowledge and tools to prepare the documents needed to continue under the new Act, including Articles of Continuance and By-laws.
- To share lessons from organizations that have already begun the process.

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Agenda

- A brief review of the Act
- 12 key questions
- Michael Anderson – Lessons from CSAE
- Questions & Answers
- Your experiences

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A Brief Review of the Act

- Came into force on October 17, 2011.
- Act available here:
<http://www.canlii.org/en/ca/laws/stat/sc-2009-c-23/latest/sc-2009-c-23.html>
- Regulations available at: <http://gazette.gc.ca/rp-pr/p1/2011/2011-02-26/html/reg7-eng.html>
- New forms and guidance from Corporations Canada:
http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/h_cs04954.html

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A Brief Review of the Act

Expanded members' rights:

- a greater role in governance ^{DCB3}
- greater access to records
- organizational democracy a key principle ^{DCB4}
- non-voting members have some voting rights ^{DCB5}
- Technology available for meetings & decisions
- Access to courts for remedies ^{DCB6}

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A Brief Review of the Act

Directors – clarity regarding:

- duties & powers
- potential liability
- standard of care & due diligence
- conflicts of interest
- indemnification
- procedural matters

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DCB3 Mr. Bridge agrees with many: the Volunteer Sector Initiative (VSI) which was started in the early 1990s and which eventually led to this new legislation essentially acknowledges the sector's demise as a consequence of compromised members' rights and diminishing role in governance. In response, member associations must get their act together, and provide their members more of a role - a stronger role - in deciding on issues of relevance to their association.

director, 3/31/2012

DCB4 While we might like to think of ourselves as a democratic organization, and we might like to point to our own constitution that declares us as such, the truth is that we are not. Some Group presidents have assumed an autocratic position, even though they have never been provided any individual authority constitutionally. Some Group presidents have tended to side with their constituents, even when outvoted by their (NEC) peers, despite the exigencies of organizational democracy which obligate such presidents to convey a message of unity with their peers on the NEC. These realities are a fact of life, and reflect the general inability of poor leaders, but these cannot ever serve as excuses

director, 3/31/2012

DCB5 This is the crux of our entire effort to expunge the Associate member category from our constitution

director, 3/31/2012

DCB6 If directors fail to do the right thing, individual members have enhanced rights to take the board to court

director, 3/31/2012

A Brief Review of the Act

Soliciting and non-soliciting corporations ^{DCB7}

A “soliciting corporation” is one that has received, in a single fiscal year, income in excess of \$10,000 in the form of:

- donations requested from any person who is not a member, director or employee of the corporation at the time of the request;
- grants received from a government or an agency of government; or
- donations from another “soliciting corporation.”

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A Brief Review of the Act

Soliciting and non-soliciting corporations

- Soliciting corporations are subject to higher corporate governance and financial accountability standards.

5 Special requirements:

1. They must have at least 3 directors, 2 of whom are not officers or employees.

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DCB7 We do not qualify as a soliciting corporation currently. However, if we continue to seek grants and financial considerations from the public purse, on behalf of our Wings, we risk being attributed the mantle of a soliciting corporation. It is in our financial interest to be a non-soliciting corporation

director, 3/31/2012

A Brief Review of the Act

Soliciting Corporations:

2. Must send copies of financial statements and accountants' reports to Corporations Canada.
3. On dissolution, assets must go to a "qualified donee" under the *Income Tax Act*.
4. May not utilize Unanimous Member Agreements.
5. Have different financial review options.

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A Brief Review of the Act

Financial Review Requirements:

- With the CCA annual audits are mandatory.
- This is a big issue for small organizations.
- With the new Act there is some flexibility, depending on size and nature of the corporation:
 - Full Audit;
 - Review Engagement; or
 - No review.

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Type of Corporation	Gross Annual Revenues	May Dispense with Public Accountant	Review Engagement	Audit
soliciting	less than \$50K	yes	default	optional
soliciting	between \$50K and \$250K	no	optional	default
soliciting	more than \$250K	no	no	mandatory
non-soliciting	less than \$1M	yes	default DCB8	optional
non-soliciting	more than \$1M	no	no	mandatory

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12 Key Questions

1. What guidance has Corporations Canada provided?
2. What are the transition steps?
3. What forms need to be completed for the continuance process?
4. What needs to be included in our Articles of Continuance?

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DCBS In both cases a Review Engagement is the default. I believe we should change our auditing requirement to Review Engagement, to save money.
director, 3/31/2012

12 Key Questions

5. What choices do we have with the Articles of Continuance?
6. Where do we describe our unique structure?
7. Are the requirements different for registered charities?
8. How should we prepare new by-laws?

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12 Key Questions

9. What do the model by-laws provide?
10. How does the by-law builder tool work?
11. What are the reporting requirements after continuance is complete?
12. What lessons can be shared so far?

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1. What guidance has Corporations Canada provided?

Transition Guide for Federal Not-for-profit Corporations

- Hard copy in the package
- Electronic copy
http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/h_cs04954.html
- Comprehensive guidance and samples.
- We will examine it in detail.

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2. What are the transition steps?

See the Transition Guide pages 6-8:

Step 1: Review your Letters Patent (original and supplementary) and By-laws

Step 2: Prepare Articles of Continuance

Step 3: Create By-laws

Step 4: Get Members' Approval

Step 5: Submit the Required Documents

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3. What forms need to be completed for the Continuance process?

1. Form 4031 – Articles of Continuance (transition) see samples – pages 22 to 26. (We will examine this form in detail)
2. Form 4002 – Initial Registered Office Address and First Board of Directors.

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4. What needs to be included in our Articles of Continuance?

Annex A – pages 10 & 11

Annex B – pages 12 -16

Form 4031 has 11 required fields – some are basic, some are potentially complex

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5. What choices do we have with the Articles of Continuance?

Annex B – pages 12 -16

Section 5. Number of directors

s. 6. Statement of purposes

s. 7. Restrictions on activities

s. 8. The classes, or regional or other groups of members the corporation can establish

s. 9. Distribution on liquidation

s. 10 Additional provisions, if any

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6. Where do we describe our unique structure?

Membership structure:

s. 8. of the Articles of Continuance, (the classes, or regional or other groups of members the corporation is authorized to establish) and the by-laws.

Committee Structure:

By-laws

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7. Are the requirements different for registered charities?

See Transition Guide pages 13 &14

- Purposes or objects wording
- Distribution on liquidation to a “qualified donee”
- A non-profit clause (recommended by CRA)
- No remuneration for directors.

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8. How should we prepare new by-laws?

- See “Making Sense of the New *Canada Not-for-profit Corporations Act*” booklet or slides
- See Annex C pages 17 - 20
- Consider default positions.
- Consider what can be kept from your existing by-law provisions.
- Do you want to preserve the status quo as much as possible?
- Do you want to make changes?

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9. What do the model by-laws provide?

- See Transition Guide pages 27 - 38.
- A helpful resource
- Sample wording
- Lots of choices
- Will be used by many new corporations, less likely to be adopted by existing organizations that have refined their by-laws over time.

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10. How does the by-law builder tool work?

- See the text in materials package
- A very useful tool
- 41 decision points
- Helpful sample wording

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11. What are the reporting requirements after continuance?

See Corporations Canada Guide in package

- Annual Return
- Any change to registered address
- Changes regarding directors
- Financial Statement and Accountant's Report (soliciting corporations)
- Changes to articles
- By-laws

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12. What lessons can be shared so far?

- Michael Anderson and CSAE's experience so far.

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