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**Life After Bill C-21:
“How Will It Affect Your Organization?”**

(Power Point Presentation)

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Overview of Topics

- CCA and Status of Bill C-21
- What It Means to be a “Soliciting Corporation”
- What Happened to Corporate Objects?
- Continuing Under the New Statute

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1. CCA and Status of Bill C-21
(a) Canada Corporations Act

- Has remained largely unchanged since 1917
- Its provisions are skeletal and ill defined in terms of any governance regime
- Limited number of corporate actions available
- Cumbersome process – SLP & by-law changes
- File annual summaries to avoid dissolution

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(b) Status of Bill C-21

- Received first reading - November 15, 2004
- In process of public consultation & review by the Standing Committee on Industry, Natural Resources, Science and Technology
- Earliest could become law: mid-late 2006

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(c) Highlights of Bill C-21

- Modelled on the CBCA
- All CCA corporations must continue under Act within 3 years of it coming into force
- Streamlined incorporation “as of right”
- No filing of by-laws
- Many more corporate actions possible
- Rights of members better enhanced and protected

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- Objective standard of care and due diligence defence for directors and officers and clarifies directors and officer duties
- Graduated levels of financial review depending on a corporation’s category and gross annual revenue
- Requirement to provide financial statements to members, directors and officers as well as to the Director under the Act

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2. What It Means to be a “Soliciting Corporation”

“...a corporation that has in the current year or in any preceding period that has been prescribed:

- (a) requested donations or gifts of money or other property from the public;
- (b) received a grant or similar financial assistances from the federal government or a provincial or municipal government or an agency of such government; or
- (c) accepted money or other property from a corporation or other entity that has made a request referred to in paragraph (a) or has received assistance referred to in (b).”

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(a) The Definition

- Definition is broad and will “catch” a variety of corporations
- Will result in increased accountability for many organizations
- Corporations may change their status from year to year

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(b) The Implications

- Number of Directors
- Under Section 126 a soliciting corporation must have a minimum of 3 directors, at least 2 of whom are not officers or employees of the corporation or its affiliates.
- A non-soliciting corporation may have a minimum of 1 director

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(ii) Filing of Financial Statements

- Subsection 172(1) requires soliciting corporations to provide annual financial statements to the Director

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(iii) Public Accountant & Financial Review

(a) What is a “Designated Corporation”?

- Different Rules for Soliciting Corporations - depending on if a corporation is a “Designated Corporation”
- Designated corporations include both soliciting and non-soliciting corporations with annual revenues equal to or less than the prescribed amount:
 - Soliciting corporations - \$50,000.
 - Non-soliciting corporations - \$1 million.

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(b) Public Accountant: Qualifications

Section 179: A public accountant must:

- (1) Be a member in good standing of an institute or association of accountants incorporated by or under an Act of the legislature of a province;
- (2) Meet the requirements under provincial law for performing any duty required under the statute;
- (3) Be independent of the corporation, its affiliates or the directors or officers of the corporation or its affiliates.

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(c) Rules for Appointment

- **Designated Corporations:** The members of a designated corporation may unanimously resolve not to appoint a public accountant
- **Non-Designated Corporations:** Must appoint a public accountant

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(d) Financial Review: Designated Corps.
Review Engagement:

- **If the members of a designated corporation do not resolve to dispense with the appointment of a public accountant, then the public accountant will conduct a review engagement in the prescribed manner**

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Financial Review: Designated Corps.
Audit Engagement:

- **The public accountant of a designated corporation will conduct an audit engagement in the prescribed manner if the corporation's members pass an ordinary resolution requiring an audit engagement.**

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(e) Financial Review: Non-Designated
Audit Engagement – Soliciting and Non-Soliciting

- **The public accountant of a corporation that is not a designated corporation must conduct an audit engagement in the prescribed manner unless the corporation falls within the exception (next slide) for soliciting corporations that are not designated corporations.**

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Financial Review: Non-Designated

Review engagement – Soliciting Corporation that is not a Designated Corporation:

- The public accountant of a soliciting corporation that is not a designated corporation will conduct a review engagement in the prescribed manner if the corporation has annual revenues that are equal to or less than \$250,000, and its members pass a special resolution requiring a review engagement.

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The Implications:

(iv) **Liquidation and Dissolution**

- S. 233: A soliciting corporation is required to include a dissolution clause in the articles
- On dissolution, the remaining property of the corporation is required to be distributed to one or more “qualified donees” within the meaning of subsection 248(1) of the *Income Tax Act* (Canada)

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Liquidation and Dissolution

Corporations caught by this requirement:

- Registered charities
- Soliciting corporations; and
- A corporation that has within the last 5 years requested donations from the public or received grants from government, or accepted money from a corporation that has made such requests or received such grants

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The Implications:
(v) Unanimous Member Agreement
Under Section 170(1), a soliciting corporation may not have a unanimous member agreement

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3. What Happened to Corporate Objects?
(a) Capacity of a “Natural Person”

- Corporations have full capacity unless there is a restriction in the articles on either activities or corporate powers
- **Subsection 16(1):** “A corporation has the capacity and subject to this Act, the rights, powers and privileges of a natural person.”

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(b) Restrictions on Activities

- **Subsection 17(2):** “A corporation shall not carry on any activities or exercise any power in a manner contrary to its articles.”
- **Where are restrictions on activities placed in the articles?**

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Restrictions on Activities

- Subsection 7(1) of the Bill provides a list of information to be included in the articles
- Includes:
 - (e) any restrictions on the activities that the corporation may carry on
- Restrictions on activities = Former objects clauses

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(c) The Mission

- Articles also to include: (f) “a statement of the mission of the corporation”.
- What is the “mission” of the Corporation?
- No definition in statute
- Potentially creates more flexibility in structuring non-profits and charities

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The Mission

- Inclusion of mission statement is mandatory
- The more specific or constraining the corporate purposes (as restrictions in the articles), the more general the mission statement should be
- The mission should always be consistent with and complement any corporate purposes included in the articles

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(d) Options: Corporate Purposes
Continuance – Non-Profits

- 1) **Include no corporate purposes (i.e. no restrictions). Mission will constitute evidence of non-profit intention for purposes of ITA.**
- 2) **Retain existing objects as restrictions (broad mission).**
- 3) **Prepare new corporate purposes (broad mission).**

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Options: Corporate Purposes
Continuance - Charities

- 1) **Retain existing CRA approved objects as restrictions (broad mission – must be consistent).**
- 2) **Prepare new corporate purposes as restrictions with CRA approval (broad mission – must be consistent).**

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Corporate Purposes: Example
Restrictions on Activities (Charity):

The activities of the Corporation shall be restricted to the following:

Carrying out research in the field of pediatric oncology and making the results of such research available to the interested public.

Mission:

The mission of the Corporation is the elimination or reduction in incidents of cancer among children.

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4. Continuing Under the New Statute

- **Section 295:** All existing CCA corporations will be required to continue under the new Act within 3 years of it coming into force (or face possibility of dissolution)
- **Content of articles of continuance similar to that of articles of incorporation under Section 7**
- **Section 209:** Can make amendments at same time as apply for continuance

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(a) Effect of Continuance

- **S. 209(6):** Articles and certificate of continuance deemed to be the articles and certificate of incorporation
- **Members cease to be members of the “old corporation” and become members of the continued corporation.**

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(b) Rights Preserved

- **S. 209(8) - Property of the body corporate continues to be property of continued corporation**
- **Existing causes of action, claims or liability to prosecution unaffected**
- **Any action or proceeding pending by or against the body corporate may be continued against the corporation**
- **Any conviction or order in favour of or against the body corporate may be enforced**

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(c) Timing of Continuance

- Corporations may wish to continue early or delay until the last possible moment depending on circumstances

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Timing of Continuance

Factors to consider:

- (i) Increased director protection
- (ii) Enhanced rights/protections to members
- (iii) By-laws or letters patent require amendment

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Timing of Continuance

- (iv) Different levels of financial review and appointment of public accountant
- (v) Contemplation of Fundamental Changes
- (vi) Availability of unanimous member agreement

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