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Client Breakfast Seminar Toronto

Thursday, April 7th, 2011

“A CLOSER LOOK AT CONTINUING UNDER THE CANADA NOT-FOR-PROFIT CORPORATIONS ACT (CNCA)”

WELCOME

Welcome to the Client Breakfast Seminar – Toronto, which is designed to provide a closer look, as well as practical information on the New *Canada Not-for-Profit Corporations Act* (“CNCA”), which is expected to come into force sometime in early fall 2011.

CHECK-IN

If you have REGISTERED AND PAID the registration fee, please obtain your name tag and handout package at the registration table in the Kingston Room at the Four Points by Sheraton Toronto. Proceed to the breakfast buffet provided, and take a seat at one of the tables.

If you NEED TO PAY the registration fee or have NOT YET REGISTERED, please proceed to the registration table in the Kingston Room and speak with our registrar. The registration fee can be paid by cash or cheque payable to *Carters Professional Corporation*. Please obtain a handout package from one of our greeters for more information.

BREAKFAST

Please help yourself to the buffet breakfast and then take a seat at one of the tables. If at all possible, please move to the tables near the front of the Kingston Room to allow room for late-comers at the back of the room.

RESOURCE MATERIALS

Included in this handout package are copies of today's presentation materials, as well as a number of related *Charity Law Bulletins* and our most recent *Charity Law Update*. Further articles, seminar materials, and newsletters of interest to charities and not-for-profits, including back issues of *Charity Law Bulletins*, *Church Law Bulletins*, and *Charity Law Updates* are available free of charge at our websites of www.charitylaw.ca, www.churchlaw.ca, www.antiterrorism.ca and www.carters.ca. A few select *Charity Law Bulletins* and *Church Law Bulletins* are on display at the Carters booth.

CHARITY LAW UPDATE

If you did not include your email address with your registration form and would like to be added to our free e-mail distribution list of the monthly newsletter “Charity Law Update”, please complete an e-mail subscription form available at the Carters booth.

QUESTION PERIOD

Questions are encouraged and will be answered during the presentation, as well as at the end of the session for those who would like to remain.

RECEIPTS

For your records, a receipt will be tucked inside your name tag.

AGENDA

7:45 a.m.	Registration and Breakfast	
8:25 a.m.	Opening Remarks	Terrance S. Carter
8:30 a.m.	A Closer Look At Continuing Under The <i>Canada Not-For-Profit Corporations Act</i> (CNCA) including questions	Jacqueline M. Demczur, Esther S. Oh, and Theresa L.M. Man
10:00 a.m.	Program Ends	Terrance S. Carter

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BIOGRAPHIES



Terrance S. Carter – Managing Partner of Carters, Mr. Carter practices in the area of charity and not-for-profit law, is counsel to Fasken Martineau DuMoulin LLP on charitable matters, is a member of the Technical Issues Group of Canada Revenue Agency's (CRA) Charities Directorate representing the Canadian Bar Association (CBA), a past member of CRA's Charity Advisory Committee, Chair of the National Charities and Not-for-Profit Section of the CBA, and has been recognized as a leading expert by Lexpert and The Best Lawyers in Canada. Mr. Carter is also editor of www.charitylaw.ca, www.churchlaw.ca and www.antiterrorismlaw.ca, and a consulting editor of *Charities Legislation and Commentary*, 2010 Edition (LexisNexis Butterworths, 2010).



Jacqueline M. Demczur – A partner with the firm, Ms. Demczur practices in charity and not-for-profit law, including incorporation, corporate restructuring, and legal risk management reviews, as well as wills, estate planning and estate administration. She is a contributing author to Industry Canada's *Primer for Directors of Not-For-Profit Corporations*, and has written numerous articles on charity and not-for-profit issues for the *Lawyers Weekly*, *The Philanthropist* and *Charity Law Bulletin*, among others. Ms. Demczur is also a regular speaker at the annual *Church & Charity Law™ Seminar*.



Theresa L.M. Man – A partner with Carters, Ms. Man practices in the area of charity and not-for-profit law, with particular emphasis on tax issues. She is an Executive Member of both the Charity and Not-for-Profit Sections of the Ontario Bar Association (OBA) and the Canadian Bar Association (CBA). In addition to being a regular speaker at the annual *Church & Charity Law™ Seminar*, as well as various seminars and conferences including those held by the CBA and OBA, the Canadian Association of Gift Planners, Imagine Canada (Charity Tax Tools) and the Ontario Tax Foundation, Ms. Man has also written articles for *The Lawyers Weekly*, *Briefly Speaking* (of the Ontario Bar Association), *The Philanthropist*, *The Bottom Line*, *Canadian Fundraiser eNews*, and *Charity Law Bulletin*.



Esther S.J. Oh – A partner with the firm, Ms. Oh practices in charity and not-for-profit at Carters' Mississauga office. Ms. Oh is a frequent contributor to www.charitylaw.ca and the *Charity Law Bulletin*, and has spoken at the annual *Church & Charity Law™ Seminar* as well as at the Canadian Bar Association/Ontario Bar Association's 2nd National Symposium on Charity Law. Ms. Oh's volunteer experience includes formerly serving as board member and corporate secretary of a national umbrella organization, and a director at a local community organization.

GENERAL DISCLAIMER

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RESOURCES


The following is a list of CNCA Practice Tips available for you to download free of charge from our website at www.charitylaw.ca and www.carters.ca:

- Countdown to the Canada Not-For-Profit Corporations Act - Practice Tip #1: To be or not to be a Soliciting Corporation by Jane Burke-Robertson, Charity Law Bulletin No. 191, dated 01/27/2010
- Countdown to the Canada Not-For-Profit Corporations Act - Practice Tip #2: Continuance of CCA Part II Corporations by Jane Burke-Robertson, Charity Law Bulletin No. 193, dated 02/24/2010
- Countdown to the Canada Not-For-Profit Corporations Act - Practice Tip #3: Election and Appointment of Directors by Jane Burke-Robertson and Jennifer M. Leddy, Charity Law Bulletin No. 199, dated 03/29/2010
- Countdown to the Canada Not-For-Profit Corporations Act - Practice Tip #4: Discipline of Members and New Remedies Under CNCA by Jane Burke-Robertson, Charity Law Bulletin No. 213, dated 05/27/2010
- Countdown to the Canada Not-For-Profit Corporations Act - Practice Tip #5: Drafting By-Laws for Continuance Under the CNCA by Jane Burke-Robertson, Charity Law Bulletin No. 215, dated 06/24/2010
- Countdown to the Canada Not-For-Profit Corporations Act - Practice Tip #6: Drafting By-Laws on Absentee Voting By Members by Jane Burke-Robertson and Theresa L.M. Man, Charity Law Bulletin No. 220, dated 07/29/2010
- Countdown to the Canada Not-For-Profit Corporations Act - Practice Tip #7: Importing, Exporting, and Amalgamation by Jane Burke-Robertson and Theresa L.M. Man, Charity Law Bulletin No.231, dated 10/27/2010
- Countdown to the Canada Not-For-Profit Corporations Act - Practice Tip #8: Corporate Records by Jane Burke-Robertson and Theresa L.M. Man, Charity Law Bulletin No.239, dated 01/27/2011
- Countdown To The Canada Not-For-Profit Corporations Act Practice Tip #9: Special Act Corporations By Jane Burke-Robertson and Theresa L.M. Man, Charity Law Bulletin No. 247, dated 03/30/11

SEMINAR HOSTS

Carters Professional Corporation is a law firm experienced in serving charities and not-for-profit organizations, and is able to provide specialized legal services in the following areas of charity and not-for-profit law:

- Anti-terrorism Policy Statements
- Charity Audits
- Charitable Foundations (Public and Private)
- Charitable Organizations
- Charitable Registrations
- Charitable Trusts
- Church Discipline Procedures
- Church Incorporation
- Corporate Record Maintenance
- Corporate Restructuring for Charities
- Director and Officer Liability
- Dispute Resolution
- Dissolution and Wind-Up of Charities
- Domain Name Portfolio Management
- Ecological Gifts
- Employment Issues for Charities
- Endowment Agreements
- Foreign Charities Commencing Operations in Canada
- Fundraising and Gift Planning
- Gift Acceptance Policies
- Human Rights Litigation
- Incorporation and Organization of Charities and Not-for-Profits
- Insurance Issues for Charities and Not-for Profit Organizations
- Interim Sanctions
- International Strategic Planning and Operations
- International Trade-Mark Licensing
- Investment Policies for Charities
- Legal Risk Management Assessments
- Litigation Counsel for Charities
- Marriage Office Clergy Registration
- Multiple Corporate Structures
- National and International Structures
- Privacy Policies and Audits
- Religious Denominational Structures
- Sexual Abuse Policies
- Special Incorporating Legislation for Charities
- Tax Compliance for Charities
- Tax Opinions and Appeals
- Trade-mark and Copyright Protection and Registration



**CLIENT BREAKFAST
SEMINARS
Toronto – April 7, 2011**

**A Closer Look at Continuing Under the
Canada Not-for-Profit Corporations Act
(CNCA)**

**By Jacqueline M. Demczur, Esther S.J. Oh
and Theresa L.M. Man**

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2

TOPICS FOR REVIEW

- The *Canada Not-For-Profit Corporations Act* ("CNCA")
 - Background
 - Existing corporations – Continuance Basics
 - Essentials to know about the CNCA
 - Considerations when preparing Articles of Continuance
 - Considerations when preparing new by-laws
 - Practical steps

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3

1. STATUS OF THE CNCA

- On June 23, 2009 CNCA received Royal Assent, but not yet proclaimed in force
- Draft regulations were published by Industry Canada on June 25, 2010, published in Canada Gazette on February 26, 2011
- Originally estimated that CNCA to come into force in mid-2011
- With the federal election, the effective date is anticipated to be postponed to the fall
- Check Industry Canada's website for update:
<http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/home>

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4

2. OVERVIEW OF CONTINUANCE PROCESS

- The new rules do not apply automatically to CCA corporations
- Existing CCA corporations will be required to continue under the CNCA within 3 years of proclamation
- Failure to continue will result in dissolution of the corporation
- Can make amendments to existing articles, letters patent or memorandum or articles of association at the time of applying for continuance

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5

- This means you will need to
 - Review your letters patent and by-laws
 - Contact CRA (if a registered charity) where there are proposed changes to the purpose(s)
 - Prepare
 - Articles of Continuance
 - Notice of Directors
 - Notice of Registered Office
 - Create new by-laws
 - Get membership approval - Articles must be approved by 2/3 vote

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- File required documents with Industry Canada
 - Articles of Continuance
 - Notice of Directors
 - Notice of Registered Office
- No filing fee, no need to file by-laws for continuance
- Industry Canada will issue a Certificate of Continuance
- File approved new by-laws within 12 months of adoption
- Charities – send Certificate of Continuance, Articles of Continuance and new by-law to CRA

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7

- Timing of Continuance
 - Some corporations will want to continue right away, others will wait
 - Revising governance structure to be reflected in new by-law may need some time for directors and members to consider
 - Some considerations
 - Increased director protection
 - Existing by-laws already require amendment
 - Contemplation of fundamental changes
 - Different levels of financial review

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- Transition Process
 - Make sure you have a copy of your current letters patent, supplementary letters patent and by-laws (ask Industry Canada if not sure)
 - Prepare early by carrying out a review of existing by-laws so can anticipate changes that will be needed
 - Industry Canada will have a number of useful transition resources
 - CRA expected to provide guidance for registered charities - amendment of charitable objects on continuance expected to trigger CRA review

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9

- Presentation will review
 - Essentials to know about the CNCA
 - Considerations when preparing Articles of Continuance
 - Considerations when preparing new by-laws

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10

3. ESSENTIALS TO KNOW ABOUT THE CNCA

1. Soliciting and non-soliciting corporations
 - Where a corporation receives more than the prescribed amount [\$10,000] in its last financial period from public sources [(a) public donations, (b) federal, provincial and municipal governments or (c) conduit entities], it will become a soliciting corporation
 - Status acquired on the prescribed date [AGM] for a prescribed duration [3 years]
 - Low threshold means most corporations will become soliciting corporations

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11

- Implications of being 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
 - Required to file annual financial statements with The Director under s. 176(1)
 - Audit and public accountant rules more stringent
 - On liquidation, the articles must provide for the distribution of any remaining property on dissolution to qualified donees

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12

2. Directors – Number and Change

- Minimum of 1 director (3 for a soliciting corporation, at least 2 of whom are not officers or employees of the corporation or its affiliates)
- Must file notice of change within 15 days of any change or of a change in a director's address

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13

3. Directors Taking Office

- Elected by members by ordinary resolution at an annual meeting for a term expiring within prescribed period of 4 years
- May have staggered terms
- Articles can provide for appointment of directors by board (up to 1/3 of those elected at previous AGM)

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14

4. Ex-Officio Directors

- Ex-officio directors not permitted but there may be possible "work arounds"
- For instance, having special membership class of one member, which class would have the right to elect a director
- Or possible for the articles to provide for the appointment of directors by the board and have a board policy that certain office holders will be appointed as directors

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15

5. Members

- A corporation must have members
- Can have one class of members in which case all are voting; or
- Two or more classes as long as articles give right to vote to at least one class
- Where more than one class, the members of each class have certain built in protections
- All classes of members, even non-voting classes of members, are entitled to vote separately as a class on certain amendments to articles and by-laws dealing with rights and classes of membership

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16

- Thus a class of members could reject a change - effectively resulting in a class veto (limited opt-out available)
- Corporations wanting maximum flexibility will have one class of members

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17

6. Members' Meetings

- Regulations provides a variety of prescribed means of giving notice of members' meetings
- By-law can set out any prescribed method of absentee voting (mail in ballot, electronic voting or proxy)
- May participate in members' meetings by electronic means
- By-laws can provide for consensus decision making
- Right to requisition a meeting of members

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18

7. Members' Rights

- Right to submit proposals to amend by-laws or nominate directors or require any matter to be discussed at annual meetings
- Right to access corporate records
- May sign resolutions in writing
- Availability of unanimous members agreement (except for soliciting corporations)

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8. Members' Remedies

- Right to seek an oppression remedy against the corporation
- Right to seek a court order to commence a derivative action
- Compliance and restraining orders
- Court ordered wind-up and liquidation on application of a member

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20

9. Special Exemption for Religious Corporations

- CNCA precludes the members' remedies, referred to above, where the court determines that:
 - The corporation is a religious corporation
 - The act or omission, conduct or exercise of powers is based on a tenet of faith held by the members of the corporation; and
 - It was reasonable to base the decision on a tenet of faith, having regard to the activities of the corporation (ss. 251(3), 253(2) and 224(2))

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21

10. Due Diligence Defence – Directors and Officers

- Not liable if the director exercised the care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances – objective standard of care, replaced common law subjective standard of care
- Good faith reliance on financial statements and reports of professionals

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22

11. Two types of by-laws: different levels of approval

- Type 1: "General By-laws"
 - Effective upon passage by the board by ordinary resolution, must be confirmed by members at next meeting to remain in force
- Type 2: "Special By-laws"
 - For matters affecting member's rights, e.g. notice of members' meetings, membership transferability, amendments to membership conditions, absentee voting by members
 - Effective when confirmed by members by special resolution (no need for board approval)
- See section on by-laws below

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23

12. Public Accountant and Financial Review

- CNCA divides corporations into two categories for purpose of determining obligation to appoint a public accountant and the corresponding level of financial review required
- Designated corporations:
 - A soliciting corporation with gross annual revenues for its last completed financial year that is equal to or less than \$50,000 or that is deemed to have such revenues under the Act;
 - A non-soliciting corporation with gross annual revenues for its last completed financial year that is equal to or less than \$1 million

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24

- Non-designated corporations are soliciting and non-soliciting corporations with annual revenues in excess of these amounts

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25

Type of Corporation (Gross Annual Revenues)			Appointment of Public Accountant (PA)	Review Engagement or Audit
Soliciting	Designated	\$50,000 or less	Members must appoint a PA by ordinary resolution at each annual meeting. Exception – Members may waive appointment by annual unanimous resolution	PA must conduct review engagement, but members may pass an ordinary resolution to require an audit instead. (If no PA is appointed, then compilation only)
	Non-Designated	More than \$50,000 and up to \$250,000	Members must appoint a PA by ordinary resolution at each annual meeting	PA must conduct an audit, but members can pass a special resolution to require a review engagement instead
	Non-Designated	more than \$250,000	Members must appoint a PA by ordinary resolution at each annual meeting	PA must conduct an audit.

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26

Type of Corporation (Gross Annual Revenues)			Appointment of Public Accountant (PA)	Review Engagement or Audit
Non-Soliciting	Designated	\$1 million or less	Members must appoint a PA by ordinary resolution at each annual meeting. Exception – Members may waive appointment by annual unanimous resolution	PA must conduct review engagement, but members may pass an ordinary resolution to require an audit instead. (If no PA is appointed, then compilation only)
	Non-Designated	more than \$1 million	Members must appoint a PA by ordinary resolution at each annual meeting	PA must conduct an audit.

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- 27
14. Amalgamations
- Federal corporations, once continued under the CNCA, will be able to amalgamate with one another
 - Amalgamations between CNCA and ONCA corporations (as well as other jurisdictions) will also be possible
15. Change of Jurisdiction
- Possible for a corporation from another jurisdiction to be imported and continue as a CNCA corporation
 - Possible for a CNCA corporation to be exported and continued as a corporation under another jurisdiction
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28

- 16. New Corporations
 - Simplified Process of Incorporation
 - Incorporation “as of right”
 - One incorporator (individual or corporation)
 - No legal element like “corp.” needed and same name clearance rules as CCA
 - Results in certificate of incorporation instead of letters patent

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29

4. CONSIDERATIONS WHEN PREPARING ARTICLES OF CONTINUANCE

- What Information must be included in the Articles of Continuance?
 - Corporation’s name
 - Province or territory where the registered office is situated
 - Minimum and maximum number of directors or fixed number
 - Statement of purpose
 - Restrictions on activities, if any

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30

- The classes, or regional or other groups of members that the corporation is authorized to establish
- Statement regarding distribution of property on dissolution
- Any additional provisions that the corporation may want included in the articles

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31

1. Current name of corporation
 - First page of letters patent
 - Refer to supplementary letters patent if name was changed
 - May include English and French forms of name
2. Change of name
 - May change corporate name
 - Insert proposed new corporate name, needs NUANS report
 - May use numbered name, number will be assigned by Industry Canada, e.g., 1947393 Canada Association

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32

3. Corporation Number
 - Number assigned when corporation was incorporated
 - Can be found from letters patent, supplementary letters patent, correspondence from Industry Canada, Industry Canada website database
4. Province or territory in Canada where registered office is located
 - Insert the province or territory
 - No municipality and no street address – to be indicated in Notice of Registered Office

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33

5. Number of directors
 - Either
 - A fixed number or
 - A maximum and a minimum range
 - Soliciting corporations – minimum 3 directors, at least 2 of whom are not officers or employees
 - Non-soliciting – at least 1 director

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34

6. Statement of purpose

- State the purpose of corporation
- See current corporate objects in letters patent, or as amended by supplementary letters patent
- If to be revised, needs CRA approval

7. Restrictions on activities of the corporation

- May state restrictions, if any, on the activities that the corporation may carry on
- May state "none"

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35

8. The classes, or regional or other groups of members that the corporation is authorized to establish

- If there is only 1 class of members, state so and list the rights the members are entitled to, e.g. to receive notice of, attend and vote at members meetings
- If there are more than 1 class of members, list the classes and the rights for each class

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36

9. Statement regarding distribution of property on dissolution

- State how net assets of corporation on dissolution would be distributed
- CNCA requires soliciting corporations to distribute assets to one or more other qualified donee, even if the corporation is not a registered charity

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37

10. Any additional provisions that Corporation may want in its articles

- Insert optional provisions
 - Override certain default rules in the CNCA; or
 - Provisions that may be included in the by-laws
- For example:
 - Insert provision to require a different membership approval majority greater than the statutory required majority (e.g., 75% approval where the CNCA requires 2/3 or majority approval where the CNCA requires simple majority), but not for removal of directors (ordinary resolution)

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38

- Foreign form of corporate name
- Allow the board to appoint additional directors to hold office until the close of the next annual meeting of members, but the total number of directors so appointed may not exceed 1/3 of the number of directors elected at the previous annual meeting of members
- Specify a place outside of Canada where members' meetings may be held
- Require vacancies on the board be filled by members, rather than by a quorum of the board

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39

- Charities - Require directors not receive remuneration
- Charities - Require corporation operated without purpose of gain for its members and profits be used to further corporation's purposes

11. Declaration

- Must be signed by a director or officer of the corporation

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40

5. CONSIDERATIONS WHEN PREPARING BY-LAWS

- By-laws will need to be replaced or substantially revised
- CCA contained very few rules so lengthy and detailed by-laws were necessary
- Under CNCA, no Ministerial approval of by-laws needed
- By-law must be filed with Industry Canada within 12 months of membership approval (but failure to file does not affect validity)

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41

- Understanding the CNCA framework
 - Rules in the Act
 - Details in the Regulations
 - “prescribed”
 - “regulations”
 - Need to refer back and forth between the Act and the Regulations

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42

- Approaches to by-law drafting
 - Minimalist approach
 - CNCA contains detailed rules, so by-laws do not require same level of details
 - By-laws to set out provisions to
 - Deal with issues that the CNCA is silent
 - Override the default rules in the CNCA
 - Utilize optional rules in the Regulations
 - Advantage – no risk of amending by-laws to remove CNCA mandatory requirements or violate CNCA requirements
 - Disadvantage – work with different documents back and forth: articles, by-laws, CNCA, Regulations and know which provisions would take precedence if conflict

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43

- Detailed approach
 - Detailed by-laws
 - Advantage – no need to work with different documents, only need to work with by-laws
 - Disadvantage – by-laws will need to clearly identify
 - Which provisions reflect mandatory CNCA provisions and cannot be amended
 - Which provisions reflect optional rules of the CNCA and cannot use other alternatives

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44

- Two types of by-laws: different levels of approval
 - Type 1: "General By-laws"
 - Effective upon passage by the board by ordinary resolution
 - Must be confirmed by members at next meeting to remain in force
 - Type 2: "Special By-laws"
 - For matters affecting member's rights, e.g. notice of members' meetings, membership transferability, amendments to membership conditions, absentee voting by members
 - Effective when confirmed by members by special resolution (no need for board approval)

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45

- By-laws drafted under the CNCA must be very clear about which amending formula applies to various provisions (or risk certain by-law provisions not being legally in force). Some options:
 - Have two by-laws with all by-law provisions requiring special resolution in one separate by-law
 - Have one by-law but place all provisions requiring special resolution in one clearly marked section
 - Have one by-law and place all provisions requiring special resolution in the articles
 - Have one by-law and provide in articles that all by-law amendments require a special resolution

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46

- CNCA provides both a general framework and sets of rules for corporations to operate
- Three types of rules in CNCA:
 - Default rules - By-laws or articles can override
 - Mandatory rules – Cannot be overridden by the articles or by-laws
 - Alternate Rules – Articles/ by-laws can include certain optional rules provided by CNCA

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47

- “Default rules” in CNCA – apply automatically where by-law is silent. Examples:
 - Directors can borrow and grant security without members’ authorization
 - Membership can only be transferred back to corporation
 - Participation in meetings by electronic means
 - A majority of members constitutes a quorum
 - Directors may meet anywhere
 - Directors not required to be members
 - A majority of the directors constitutes a quorum
 - Directors can make, amend or repeal by-laws, except those requiring a special resolution of members

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48

- “Mandatory Rules” - rules that cannot be overridden by the articles or by-laws. Examples:
 - Directors are elected by members
 - Directors can be removed by majority vote of members (or by class vote)
 - By-laws must contain conditions for membership in the corporation
 - Notice of meetings of members - must comply with the regulations

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49

- “Alternate Rules” - optional rules that are provided by the CNCA. Examples:
 - Consensus decision-making
 - Appointment of directors – (must be in articles)
 - Can send notice to members that financial statements available at registered office (instead of default rule which states that statements be sent to members 21-60 days before the annual meeting)
 - Requisition of meeting – default rule is 5% of members (CNCA permits by-laws to specify a lower but not higher amount)

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50

- Can specify that absentee voting will be allowed by proxy, mailed in ballot or telephone/electronic means (not permitted unless in by-laws)
- The articles may require a greater number of votes of directors or members to effect any action (except removal of directors)

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51

6. PRACTICAL STEPS

- Collect governing documents
 - Letters patent, supplementary letters patent
 - All current by-laws, including amendments
 - Amending by-laws
 - Members resolutions?
 - Board resolutions?
 - Are by-laws valid? Were they previously filed with Industry Canada and approved by Industry Canada?
 - Contact Industry Canada to obtain copies

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52

- Collect other governance related documents
 - Organizational charts
 - Policies
 - Manuals

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53

- Review governing documents and consider
 - Do they reflect current governance structure? If not, what is current governance structure?
 - Do they reflect current governance process? If not, what is current governance process?
 - Are changes desired? What are they?
 - Are there new provisions to be inserted? What are they?
 - Write them down
 - Come up with a wish list

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54

- Study the key features of the CNCA and consider
 - Are your current by-laws or desired governance structure and process inconsistent with CNCA requirements?
 - If inconsistent with CNCA mandatory requirement, must comply with CNCA
 - If inconsistent with CNCA default requirement, is the preferred option permitted under the CNCA? Should the option be set out in the articles or by-laws?
 - If CNCA optional requirements provided, may choose one of the permissible options. Should the option be set out in the articles or by-laws?

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55


- Some changes may only be administrative
- Some changes may require detailed considerations and consultation with members
- Industry Canada will have continuance tools available, e.g.
 - Model by-law (minimalist approach)
 - Continuance handbook
 - Sample Articles of Continuance

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56

- Have someone or a committee be responsible for the process
- Have the board engaged early on
- Seek legal help, conduct legal review, prepare draft by-laws

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Canada Not-for-Profit Corporations Act (“CNCA”) **Mandatory and Default Rules Including Alternatives**

A. MANDATORY RULES: There are only 2 by-law provisions that are mandatory. A corporation is required to have by-laws addressing the following:

(1) **Conditions required for membership.** Section 154 of the CNCA requires the by-laws to set out conditions for being a member including whether a corporation or other entity may be a member. If there is more than one class of members, the by-laws must set out the conditions for membership in each class, the manner of withdrawing or transferring to another class and the conditions on which membership in a class ends.

(2) **Notice of Meeting of Voting Members.** Section 162(1) of the CNCA requires by-laws to set out the manner of giving notice which must be in accordance with the Regulations under the CNCA.

Note: Section 7(3.1) provides that a requirement under the CNCA to include a provision in the by-laws is deemed to be met by including the provision in the articles.

B. DEFAULT RULES AND ALTERNATIVES: Where by-laws are silent, the Default Rules will apply. Permissible Alternatives to Default Rules are set out below.

PROVISION	DEFAULT RULE	ALTERNATIVE
Right of members to vote (Section 154(5))	Each member is entitled to one vote at a meeting of members.	Articles may provide for classes of members with different voting rights, including non-voting members.
Manner of voting by members (Section 165)	Voting is by a show of hands or electronically (unless by-laws restrict electronic voting). A member that is entitled to vote at the meeting can demand a ballot.	By-laws can specify another manner of voting.

PROVISION	DEFAULT RULE	ALTERNATIVE
Absentee voting by members (Section 171)	Not permitted.	By-laws can specify that absentee voting will be allowed by the following prescribed methods: proxy, mailed-in ballot, or telephonic, electronic or other communication facility. The procedures for collecting, counting and reporting the results of any vote must also be set out.
Transfer of membership (Section 154(8))	Membership must be transferred back to the not-for-profit corporation.	By-laws may specify different rules regarding transferability (i.e. between classes or otherwise).
Place of meeting of members (Section 159)	Meetings of members must be held in Canada.	A meeting of members can be held outside of Canada if the place is specified in the articles or if all of the voting members agree.
Requisition of meeting by members (Section 167)	Members holding 5% of the votes can requisition the directors to call a meeting of the members for the purpose set out in the requisition.	By-laws can set percentage as lower than 5% but not higher.
Electronic participation at members' meetings by a person entitled to attend the meeting (Section 159(4))	Electronic participation at meetings is permitted.	By-laws can prohibit or restrict electronic participation at meetings.
Meeting held entirely by electronic means (Section 159(5))	Not permitted.	By-laws may permit directors or members to hold a meeting entirely by electronic means as long as all participants can communicate adequately with each other and the meeting is held in accordance with the Regulations.

PROVISION	DEFAULT RULE	ALTERNATIVE
Quorum for meetings of members (Section 164)	A quorum is a majority of members. If quorum is present at the opening of a meeting but not throughout the meeting, business may still proceed.	By-laws may provide for a different quorum, but it must be set out as a fixed number of members, or a percentage or number of members that is determinable by a formula. Can also provide that an opening quorum at a meeting is not sufficient where there is a loss of quorum later in the meeting.
Termination of membership (Section 156)	Membership is terminated when the member dies or resigns, when the member is expelled, when the member's term of membership expires, or the corporation is liquidated or dissolved under Part 14.	Articles or by-laws can provide otherwise.
Rights on termination of membership (Section 157)	Upon termination of membership, the rights of a member cease to exist.	Articles or by-laws can provide otherwise.
Providing annual financial statements to members (Section 175)	Annual financial statements must be sent to the members 21-60 days before the annual meeting.	By-laws can provide that instead of sending financial statements to members, that notice will be sent to members that financial statements are available at the registered office.
Annual Contributions or Dues (Section 30)	Directors can require members to make an annual contribution or pay annual dues and can determine the manner in which the dues or contributions are to be paid	By-laws, articles or any unanimous members' agreement can provide otherwise.
Lien on membership (Section 36(2)(3))	The corporation does not have a lien on memberships for debts owing by members.	Articles can provide that the corporation has a lien on any membership registered in name of member for a debt of that member to the corporation, including unpaid membership fees. By-laws can include provisions for enforcement of the lien.

PROVISION	DEFAULT RULE	ALTERNATIVE
Management of Affairs of Corporation (Section 124)	The directors shall manage or supervise the management of the affairs of the corporation.	Articles or any unanimous members' agreement can provide otherwise.
Qualification of Directors (Section 126(2))	Directors are not required to be members.	By-laws can require directors to be members.
Appointment of directors (Section 128(8))	All directors must be elected by the members.	Articles (but not the by-laws) may permit the directors to appoint additional directors to hold office until the next annual meeting of members, but no more than a third of the total number of directors can be appointed.
Quorum of directors (Section 136(2))	A majority of the number of directors or minimum number of directors required by the articles constitutes a quorum.	By-laws can provide otherwise.
Filling vacancies among directors (Section 132(5))	Directors have limited rights to fill vacancies on the board.	By-laws can provide that a vacancy shall only be filled by the members, or by a class of members that had the exclusive right to elect one or more directors.
Place of meeting of directors (Section 136(1))	Directors may meet at any place.	By-laws or articles can provide otherwise.
Notice of meeting of directors (Section 136(3))	The notice is not required to set out the purpose of the meeting or the business to be transacted unless it relates to a matter specified in Section 138(2).	By-laws can provide otherwise.
Director participation in meetings by electronic means (Section 136(7))	Directors can participate in a meeting by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately if all of the directors consent.	By-laws can provide otherwise.
Borrowing powers (Section 28(1))	Directors may (without member authorization) borrow money and grant security on property of the corporation.	By-laws, articles or any unanimous members' agreement can restrict this power.

PROVISION	DEFAULT RULE	ALTERNATIVE
Delegation of borrowing powers (Section 28(2))	The directors can delegate borrowing powers to a director, a committee of directors or an officer.	By-laws, articles or any unanimous members' agreement can provide otherwise.
Remuneration of directors etc. (Section 143)	Directors can fix the reasonable remuneration of directors, officers and employees.	By-laws, articles or any unanimous members' agreement can provide otherwise.
Indemnification (Section 144)	A director, officer or employee can receive indemnification for their expenses incurred on behalf of the corporation.	By-laws can provide otherwise.
Appointment of officers (Section 142)	Directors can designate, appoint and specify the duties of officers.	By-laws, articles or any unanimous members' agreement can provide otherwise (i.e. that members may appoint officers).
By-laws (Section 152)	Directors can make, amend or repeal by-laws except those for which a two-thirds vote of members is required. The by-law, amendment or repeal is effective until the next meeting of members when members confirm, amend or reject it.	By-laws, articles or any unanimous members' agreement can restrict the power of directors to make, amend or repeal by-laws.
Investments by corporation (Section 33)	A corporation may invest its funds as its directors think fit.	This rule is subject to limitations accompanying any gift or provisions to the contrary in the articles or by-laws.
Electronic documents (Section 267)	A requirement under the CNCA that information, including information in a notice, be created or provided is satisfied by provision of an electronic document as long as regulations are complied with.	Articles or by-laws can provide otherwise.
Statement of director (Section 131(1))	A director is entitled to submit a written statement giving reasons for resigning or for opposing the removal or replacement of the director if a meeting is called for that purpose.	By-laws can provide otherwise.

PROVISION	DEFAULT RULE	ALTERNATIVE
Consensus Decision-making (Section 137)	Decisions under the CNCA are made by ordinary or special resolution.	By-laws may provide that directors or members shall make decisions by consensus except for decisions that are required to be made under section 182(1), by special resolution, or by a vote if consensus cannot be reached.
Special majorities (Section 7(4))	Decisions under the CNCA are made by ordinary or special resolution.	Articles can require a greater number of votes of directors or members to effect any action except that the articles cannot require a greater number of votes to remove a director than required by Section 130.
Adjournment of meeting of members (Section 162(7))	If a meeting is adjourned for less than 31 days, it is not necessary for any member to be notified of an adjourned meeting other than by announcement at the earliest meeting that is adjourned.	By-laws can provide otherwise.
Fundamental Changes (Section 199)	Members of a class or a group of members are entitled to vote separately as a class or group on a proposal to make an amendment referred to in section 199(1).	Articles can provide otherwise in the case of an amendment referred to in paragraphs 199(a) and (2).