



New Federal Not-for-Profit Corporate Legislation

The new *Canada Not-for-Profit Corporations Act* (NFPCA) introduces a modernized governance model for federally incorporated non-profit entities. It harmonizes the governance regime in many respects with the governance rules applicable to for-profit corporations found in the *Canada Business Corporations Act*.

The NFPCA received Royal Assent in June, 2009. It will be brought into force by Order in Council at some future date. Prior to that date, supporting regulations would need to be finalized and arrangements made for appropriate corporate transitions.

Existing federally – incorporated non-profits which are currently governed by Part II of the *Canada Corporations Act* will be required to migrate to the new NFPCA during a three year phase-in period, by filing Articles of Continuance.

The modernized governance rules include the following changes:

- a) incorporation will be a right exercisable upon application, rather than a discretionary issuance of old style letters patent;
- b) corporations will have the full capacity of natural persons; however, there may be limits on corporate activity outside of Canada;
- c) communication and meeting requirements are modernized and electronic communication is permitted;
- d) members rights are enhanced, and

provision is made for both multiple classes of members and multiple voting rights;

e) directors rules and protections are modernized, including a “due diligence” defence;

f) restructurings such as amalgamations are now permitted.

The NFPCA will distinguish between soliciting corporations (entities which receive funding from the public and government which is over a prescribed amount) and non-soliciting corporations. Soliciting corporations will be subject to more stringent requirements in the financial, audit and governance areas. The supporting regulations will provide further detail on these distinctions.

Federally incorporated non-profits which are also registered charities under the *Income Tax Act* (Canada) will still need to comply with all ongoing relevant requirements of that Act, and of the Canada Revenue Agency.

A copy of the NFPCA can be found online at:

http://www2.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Parl=40&Ses=2&Mode=1&Pub=Bill&Doc=C-4_4

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