

Vol. 145, No. 9 — February 26, 2011

## **Canada Not-for-profit Corporations Regulations**

*Statutory authority*

*Canada Not-for-profit Corporations Act*

*Sponsoring department*

Department of Industry

### **REGULATORY IMPACT ANALYSIS STATEMENT**

*(This statement is not part of the Regulations.)*

#### ***Executive summary***

**Issue:** Currently, Part II of the *Canada Corporations Act* (CCA) regulates federal not-for-profit corporations, but it has not changed substantially since 1917. As a result, it is antiquated and lacks modern corporate governance rules. Bill C-4, *An Act respecting not-for-profit corporations and certain other corporations*, which received Royal Assent on June 23, 2009, creates the *Canada Not-for-profit Corporations Act* (NFP Act) to replace the CCA. The new NFP Act provides the not-for-profit sector with rules to support sound governance, and clarify the roles and responsibilities of directors, members, officers and other interested parties. However, the new Act cannot come into force until certain details required by the Act are set out in regulations.

**Description:** The proposed Regulations set out the detailed rules required by the NFP Act to come into force. The NFP Act requires the Regulations to specify certain details, including those related to time periods, options for providing notice of members' meetings and absentee voting, and user fees. Final approval of these proposed Regulations would be accompanied by the documents for the Order in Council to bring the NFP Act into force. The *Canada Not-for-profit Corporations Regulations* (NFP Regulations) and the Order in Council would take effect on the same day.

The proposed Regulations entail more than 90 requirements for NFP corporations, some of which are similar to existing requirements of Part II of the CCA, while others are new or differ significantly from the CCA. The significant changes from the CCA relate to the definition of "soliciting corporation," electronic documents, notice of meetings of members, absentee voting, the public accountant and financial review, and user fees.

**Cost-benefit statement:** The cost-benefit analysis of the Regulations determined that the overall net present value of the regulatory proposal is estimated to be about \$105

million, meaning that the Regulations are expected to generate \$105 million more in benefits than costs over the 10-year period from 2011 to 2020.

**Business and consumer impacts:** The new NFP Act and its Regulations will help eliminate unnecessary regulations and provide flexibility to the not-for-profit sector. They will reduce the regulatory burden and administration requirements on both the sector and the Government. They aim to be flexible enough to meet the needs of large and small corporations while providing accountability and transparency.

### ***Issue***

Corporations Canada administers federal legislation governing non-financial corporations, both for-profit and not-for-profit, cooperatives and boards of trade. Currently, a not-for-profit organization wishing to be a federal legal entity can incorporate under Part II of the *Canada Corporations Act* (CCA). In total, there are approximately 19 000 active corporations incorporated under Part II of the CCA.

Part II of the CCA has not changed substantially since 1917. As a result, it is antiquated and lacks modern corporate governance rules. Its financial disclosure provisions are weak, the duties and responsibilities of directors are ill-defined, it does not provide a proper defence against liability, and the ability of members to scrutinize the activities of the corporation is limited. In addition, several issues, including remedies and internal governance, are not addressed directly in the Act, but through administrative policies issued by Corporations Canada.

To replace the CCA, Bill C-4, *An Act respecting not-for-profit corporations and certain other corporations*, which was introduced in Parliament, received Royal Assent on June 23, 2009, creating the *Canada Not-for-profit Corporations Act* (NFP Act). The new NFP Act provides the not-for-profit sector with rules to support sound governance and clarify the roles and responsibilities of directors, members, officers and other interested parties. However, the new Act cannot come into force until certain details required by the Act are set out in regulations. These proposed Regulations would set out those details.

### ***Objectives***

The objectives of the proposed Regulations are to set out the rules required by the NFP Act to implement a modern corporate governance regime for not-for-profit corporations (NFP corporations). The NFP Act requires the Regulations to specify certain details, including those related to time periods, options for providing notice of members' meetings and absentee voting, and user fees. Final approval of these proposed Regulations would be accompanied by the documents for the Order in Council to bring the NFP Act into force. The *Canada Not-for-profit Corporations Regulations* (NFP Regulations) and the Order in Council would take effect on the same day.

### ***Description***

Currently, there are approximately 19 000 active corporations that are subject to the provisions of Part II of the CCA and that will be required to transition to the new NFP Act. Of the 19 000, about 8 000 are registered charities, and the remainder includes 18 of the 21 largest airport authorities in Canada; at least 550 small craft harbour commissions; and many national and local community and sporting associations. For these corporations, the following are the significant changes from the CCA that are contained in the proposed Regulations, in the order that they appear in the Regulations:

- Corporate records and registers;
- Electronic documents;
- Definition of “soliciting corporation”;
- Corporate names;
- Notice of meetings of members;
- Absentee voting;
- Public accountant and financial review; and
- User fees.

#### *Corporate records and registers*

The proposed Regulations set out the information required to be kept in the register of members, directors, officers and debt obligation holders. The requirements are similar to the information in the corporate books kept under the CCA, other than the email address. The information includes

- the name;
- the address;
- the email address, where consent is given to receive information electronically;
- the date the person became associated with the corporation; and
- the date the person ceased to be associated with the corporation.

For members and debt obligation holders, the address would be a business or a residential address. For directors and officers, a residential address would be required so that the person can be served with legal papers, if required. It also provides a contact point for the corporation other than the registered office address.

The proposed Regulations also set out the information required to be recorded in a list of members or debt obligation holders (i.e. the name, address, class or group of membership and, for debt obligation holders, the aggregate principal amount of the debt obligation outstanding).

This section establishes two time periods: one for retaining corporate records and one for permitting access to information on members or debt obligation holders. The time periods are similar to those in the CCA.

#### *Electronic documents*

The proposed Regulations would address the manner in which consent to receiving electronic communication may be given (and revoked). They would also permit documents to be posted on Web sites provided the addressee receives notice about the location of the document. However, documents required by the NFP Act to be sent to a specific place, such as a registered office, cannot be posted on a Web site.

When documents must be sent to several addressees, the proposed Regulations state that the documents must be sent to the addressees at the same time. Documents may also be sent electronically to a specific information system instead of a specific mailing address. Finally, the proposed Regulations clarify that an electronic document is considered to have been received when it enters an information system, such as a server, or when notice is received by the addressee, if made available through a Web site or other electronic source.

This part of the proposed Regulations does not apply to documents or information sent to or issued by the Director, the government official who would be appointed to administer the NFP Act, in accordance with section 281 of the Act. The Director would specify how information is to be communicated with Corporations Canada.

#### *Definition of “soliciting corporation”*

The definition of “soliciting corporation” determines which corporations would be considered as “soliciting” under the Act and, in essence, is aimed at NFP corporations that receive funding, directly or indirectly, through public donations or government grants (e.g. public money). There are five issues that are different for soliciting corporations than those for non-soliciting corporations, namely

1. the minimum number of directors (i.e. a minimum of three directors, two of whom are not officers or employees);
2. the prohibition on the use of a unanimous members agreement;
3. the sending of financial statements and public accountant reports, if any, to Corporations Canada;
4. where the assets go on dissolution of the corporation (i.e. to a qualified donee as defined by the *Income Tax Act*); and
5. the requirements for review of financial statements.

According to the definition, a corporation becomes a soliciting corporation if, in a single financial year, the corporation receives more than \$10,000 in gross annual revenues from

- (a) requests for donations or gifts from non-members;

(b) grants or other similar financial assistance received from a government body; or

(c) donations or gifts received from a corporation that in turn would meet the definition of “soliciting corporation.”

The determination of whether a corporation is soliciting or not is based on the date of the financial year-end. If the corporation has income over \$10,000 in a single financial year from a public source, it would become a soliciting corporation, but the commencement date for soliciting corporation status only takes effect at its next annual meeting of members. It would only cease to be a soliciting corporation if it does not receive more than \$10,000 in public money in any of the following three years. The soliciting status would end as of the third annual meeting of members following the annual meeting at which it became a soliciting corporation. If the corporation receives public money in a future financial year, the three-year time period for being a soliciting corporation would start again.

### *Corporate names*

While the proposed Regulations are worded differently than the corporate name regulations in the CCA regulations, the effect would be the same. The objective of the wording changes is to make the Regulations clearer and easier to read while resolving any difficulties with the drafting language used in older versions.

### *Notice of meetings of members*

The proposed Regulations set out four options for providing notice of a meeting of members, with the option or options chosen by members being set out in the by-laws. If the by-laws do not include a valid option, there is a statutory default of sending (i.e. mailing by Canada Post or personal delivery) a notice to each member, between 21 and 60 days before the meeting. Each option also includes the time period for providing notice. The four options for providing notice are

1. sent by mail, courier or personal delivery, between 21 and 60 days before the meeting;
2. communicated by telephone or other electronic communication means, between 21 and 35 days before the meeting;
3. affixed to a notice board not less than 30 days before the meeting; and
4. if a corporation has more than 250 members, communicated via a publication
  - a. at least once a week for three weeks prior to the meeting if using a newspaper, or
  - b. between 21 and 60 days if using a publication of the corporation that is distributed to members.

This section would also require that a notice of the meeting be sent (i.e. mailing by Canada Post or personal delivery) to the public accountant and directors of the corporation between 21 and 60 days before the meeting.

### *Absentee voting*

The proposed Regulations set out three options for absentee voting for corporations wishing to permit it. The members choose the option or options, which are then set out in the by-laws of the corporation. Each option also sets out the criteria for using that option. The options for absentee voting are

1. voting by proxy with requirements for the form of proxy set out in the Regulations;
2. voting by mailed-in ballots, provided the corporation has a system to allow votes to be verified that does not identify the member voting in the tally presented to the corporation; and
3. voting by telephone or other electronic means, provided the corporation has a system to allow votes to be verified that does not identify the member voting in the tally presented to the corporation.

### *Public accountant and financial review*

This section describes the levels of financial review (i.e. audit engagement, review engagement or none) that are permitted for each type of corporation. For some corporations, the members choose the level that would apply.

- For non-soliciting corporations with gross annual revenues of less than \$1 million, the members may choose not to appoint a public accountant, leave the level of review at the default of a review engagement, or raise the level of review to an audit engagement.
- For a non-soliciting corporation with gross annual revenues of \$1 million or more, the members have no choice other than an audit engagement.
- For soliciting corporations with gross annual revenues of less than \$50,000, members can choose not to appoint a public accountant, leave the level of review at the default of a review engagement, or raise the level of review to an audit engagement.
- For soliciting corporations with gross annual revenues between \$50,000 and \$250,000, the members can leave the level of review at the default of an audit engagement or lower the level of review to a review engagement.
- For soliciting corporations with gross annual revenues of more than \$250,000, the members have no choice other than an audit engagement.

---

<b>Type of Corporation</b>	<b>Gross Annual Revenues</b>	<b>May Dispense with Public Accountant</b>	<b>Review Engagement</b>	<b>Audit</b>
soliciting	less than	yes	default	optional

	\$50K			
soliciting	between \$50K and \$250K	no	optional	default
soliciting	more than \$250K	no	N/A	mandatory
non-soliciting	less than \$1M	yes	default	optional
non-soliciting	more than \$1M	no	N/A	mandatory

### *User fees*

The fees set out in the Regulations were established in accordance with the *User Fees Act* process. As required, the fee proposal was tabled in Parliament. Following its examination of the proposal, the Banking, Trade and Commerce Committee recommended to the Senate approval of the proposed fees. The Industry, Science and Technology Committee (INDU) recommended to the House of Commons approval of the fees after the expiration of 20 sitting days following the tabling in the House of Commons in accordance with the *User Fees Act*.

The proposed fees under the new Act would be the same as the fees charged under the *Canada Business Corporations Act* (CBCA). The services to be provided under the Act are similar to those under the CBCA, which fees are already at a level that, overall, complies with Treasury Board guidelines on establishing user fees.

It should be noted that the total revenue from the proposed fees would not recover fully the costs of administering the NFP Act. This is because several CBCA fees are not at a level to provide full cost recovery of those services, since to do so would have a detrimental impact on the accessibility of the service. This same rationale applies to NFP Act services. Since the fee level suggested by the cost estimates would be prohibitively high for the not-for-profit community, it was determined to charge the lower fee that is set out in the fee schedule under the CBCA. An example is the fee for exemptions, where cost estimates suggested a fee level almost 20 times higher than the CBCA fee for exemptions. This fee level would significantly limit requests for exemptions, effectively denying the benefits to many not-for-profit corporations. Similarly, the annual return fee is proposed at the same level as the CBCA annual return fee even though cost estimates suggest charging a higher fee.

The proposed fees should not have a significant impact for not-for-profit corporations since the proposed fees for the high volume services — incorporation and filing of annual returns — are only slightly higher than the fees for letters patent and filing of annual summaries under the CCA. As soon as an online filing option is offered for these two services, the proposed fees will be the same or lower when submitted electronically.

The proposed service standards associated with the user fees under the NFP Act would greatly benefit federal not-for-profit corporations. Applications will be processed within 5 business days instead of 20 business days under the CCA.

### ***Regulatory and non-regulatory options considered***

Non-regulatory options were not considered because the NFP Act requires details to be set out in regulations.

Since the NFP Act is modeled on the CBCA, many of the regulations are modeled on the *Canada Business Corporations Regulations, 2001* (e.g. time periods, content of corporate records, electronic documents regulations, exemption provisions). Other provisions, such as the corporate name granting provisions, are based on the CCA rules, which have received no major complaints.

In the case of provisions that are unique to the NFP Act, consideration was given to comments made during three rounds of cross country consultations undertaken as part of the development of Bill C-4, the equivalent provisions in the not-for-profit laws of other jurisdictions (e.g. Saskatchewan *The Non-profit Corporations Act, 1995*), and the current practices of corporations subject to Part II of the CCA. For example, options for absentee voting were developed based on the methods that are currently in the by-laws of NFP corporations.

### ***Benefits and costs***

From a cost-benefit analysis perspective, three areas of the proposed NFP Regulations were determined to have the greatest impacts on stakeholders and were thus the focus of the analysis: (1) public accountant and financial review; (2) definition of soliciting corporation; and (3) user fees.

#### ***Public accountant and financial review***

Certain provisions in the NFP Regulations will require some corporations to hire an auditor and/or conduct a more thorough financial review than may currently be the case. For some NFP corporations that do not now use a qualified auditor and/or are doing either a minor or no financial review, an increase in costs can be anticipated per NFP corporation (in 2010 dollars), as follows:

- Soliciting NFP corporations with revenues greater than \$250K that did not conduct audits in the past (10%) are expected to incur additional annual audit costs of about \$5,400;
- For those with revenues less than \$50K (35%), the costs could be about \$875;
- For those with revenues from \$50K to \$250K (15%), the costs could be \$2,327;
- Non-soliciting NFP corporations with revenues greater than \$1M that did not conduct audits in the past (3%) are expected to incur additional annual audit costs of about \$11,850; and

- For those with revenues less than \$1M (20%), the costs could be about \$3,754.

Total incremental costs for public accountants and financial reviews over the 10-year period from 2011 to 2020 are estimated to be about \$70 million.

Other potential costs include higher costs for Corporations Canada resulting from the additional work required to address requests for exemptions from the definition of “soliciting corporation” and possible increases in complaints, the latter the result of more information on NFP corporations being made available to the public. Potential donors to NFP corporations may face the prospect that an increased portion of their donations would be required to fund higher administration costs for NFP corporations. Also, if NFP corporations have to pay higher administrative costs, they may have fewer resources to provide their services. Finally, individuals who are members of an NFP corporation may face higher membership fees to cover increased administration costs.

There are, however, benefits flowing from the public accountant and financial review provisions in terms of reduced costs for some NFP corporations. These were estimated as follows:

- Soliciting NFP corporations with revenues less than \$50K that conducted audits only (40%) could reduce their annual costs per corporation by \$875;
- For those with revenues from \$50K to \$250K (15%) that conducted audits only (65%) could similarly reduce their annual costs per corporation by about \$2,300; and
- Non-soliciting NFP corporations with revenues less than \$1M that conducted audits only (60%) could similarly reduce their annual costs per corporation by about \$3,750.

Total benefits from these lower costs for public accounting and financial reviews (2011–2020) are estimated at about \$170 million.

For its part, Corporations Canada is expected to receive fewer complaints regarding access to information about NFP corporations because of improved and clearer access rules.

Members of the public, especially donors, will benefit from more information about NFP corporations, which should increase the credibility of, and confidence in, the not-for-profit sector. The value of this benefit would be captured in potentially increased donations to NFP corporations. Members of NFP corporations will also benefit from access to more and better information about the finances of NFP organizations. Greater financial accountability under the NFP Act and NFP Regulations could lower risks of fraud and money laundering. If the anticipated increased confidence in the system leads to higher donations and more services, individuals who are beneficiaries of activities should benefit.

With the anticipated increased number of audits and/or review engagements and the regulatory requirement for an auditor with a provincial license, the accounting industry

should benefit from more business. However, increased business to the accounting industry could be offset by a possible reduction in business for tax preparers and bookkeepers. There may also be additional business for lawyers/notaries/consultants to assist NFP corporations in interpreting the new regulatory requirements.

### *Definition of “soliciting corporation”*

Soliciting corporations are those corporations that receive public money, directly or indirectly, from public donations or grants from a government. A soliciting corporation will be defined as one receiving income over \$10,000 in a financial year from a public source. Not-for-profit corporations that are soliciting prior to the coming-into-force of the Regulations will incur some costs, mainly related to sending financial statements to Corporations Canada. Costs for soliciting NFP corporations to collate and send financial statements to Corporations Canada were estimated to be \$48 annually for each soliciting corporation — about \$3.9 million in total for the 10-year period from 2011 to 2020.

Other costs could include potential “switching” costs — a function of the number of NFP organizations that switch from non-soliciting to soliciting (increased costs to Government as indicated above), and vice versa (decreased costs to Government) — but these may offset each other. Other costs could accrue to the Canada Revenue Agency, Charities Directorate (costs to communicate information on the impact of the new Act). These costs have not been quantified in the analysis.

Not-for-profit organizations that are soliciting funds prior to the Regulations being implemented will benefit from more accountability and from a potentially improved level of confidence in the sector. Not-for-profit organizations that are non-soliciting prior to the Regulations being implemented could potentially see reduced administration costs, as the new Act requires one director instead of the current three. There may also be savings for non-soliciting organizations in terms of financial review costs, as discussed under the “Public accountant and financial review” section above.

While not quantifiable, there are expected to be benefits in terms of additional safeguards and more accountability for NFP corporations that could thwart financial improprieties (i.e. access to financial statements, list of directors, etc.).

### *User fees*

User fees are expected to increase costs to NFP corporations as compared to the existing fees charged to NFP corporations under the CCA. The increase is primarily due to new services that are not available under the CCA. The total incremental cost will be about \$380,000 a year for the 10-year period from 2011 to 2020.

According to estimates for 2010–2011, the cost to the Government of administering the new NFP Act and NFP Regulations will be an estimated \$1.3 million less than the cost of administering the existing CCA requirements, so the net impact on Government will

be a benefit of about \$380,000 per year from additional fee revenues, as well as reduced costs of about \$1.3 million per year.

Under the more exacting requirements that the new Regulations impose on Corporations Canada, it is expected that user fees will help to ensure timely service — applications will be processed within 5 business days instead of 20 business days under the CCA.

### Summary CBA Table

Overall net present value of the regulatory proposal is estimated to be about \$105 million, meaning that the Regulations are expected to generate \$105 million more in benefits than costs over the 10-year period from 2011 to 2020.

Description	Base Year (2010)	First Year (2011)	Final Year (2020)	Total (PV)	Average Annual	
<b>A. Quantified impacts in 2010 millions of dollars (discount rate of 8%)</b>						
Benefits	Soliciting NFPs	6.3	5.9	5.9	39.5	5.9
	Non-soliciting NFPs	19.6	19.5	18.9	129.2	19.2
	Federal government	1.7	1.7	1.7	11.4	1.7
	Total	27.6	27.2	26.5	180.3	26.8
Costs	Soliciting NFPs	4.2	4.3	4.3	28.8	4.3
	Non-soliciting	7.0	7.0	6.9	46.7	7.0
	Total	11.2	11.3	11.2	75.5	11.3
Net benefits (for the period 2011 to 2020)				<b>104.8</b>	15.6	

### **B. Quantified impacts in non-\$**

None estimated.

### **C. Qualitative impacts**

- Overall increase in public confidence in not-for-profit sector which may lead to more donations/funding, and more services to the public from the not-for-profit sector.
- Potential reduction in financial fraud.

A sensitivity analysis was undertaken to evaluate the effect on the overall results of various assumptions made in the analysis. Overall, varying the underlying assumptions in the CBA model had no effect on the conclusions of the analysis, indicating that the CBA model results are robust.

### **Rationale**

The proposed Regulations would allow the NFP Act to come into force by providing the details required by the regime. The cost-benefit analysis concludes that the benefits of the proposed Regulations outweigh the costs by approximately \$1 million. The proposed Regulations with the NFP Act would provide the federal not-for-profit sector with a modern corporate governance regime that offers flexibility to meet the needs of large and small organizations while providing accountability and transparency.

### **Consultation**

The proposed Regulations were posted on Corporations Canada's Web site and were given to Members of Parliament during their committee deliberations. Comments received either directly by Corporations Canada or recorded during hearings on the Bill were considered during the drafting of the proposed Regulations.

In accordance with the *User Fees Act* process, consultation on the proposed fees was held from January 4 to February 5, 2010, and resulted in two comments being received. The first response stated that the proposed fees, costing methodology and service standards were fair and reasonable. The second response also supported the fee proposal and service standards.

From June 25 to October 1, 2010, consultations were held on the proposed Regulations. A notice inviting interested persons to provide comments was published on the Corporations Canada Web site and sent electronically to Corporations Canada clients who registered to receive email notifications. Comments were received from four individuals or organizations.

Generally, commentators were supportive of the NFP Act and its Regulations. They recognized the many positive features in the Act and the efforts to reduce administrative burden on both corporations and Industry Canada. Only two of the commentators made suggestions for specific changes to the Regulations. The following are the main substantive comments along with the responses:

- Comment: Audits should not be required because they are unusually onerous and expensive and the harms addressed in the for-profit rules of audit do not correspond to the deliverables under a not-for-profit audit report.

Response: The requirement to conduct a financial review of a corporation's financial statements (audit or review engagement) is set in the statute. The Regulations cannot remove this requirement.

- Comment: Support was given to Corporations Canada's efforts on outreach and education. Suggested topics that should be addressed in those materials include a clear explanation of the definition of "soliciting corporation," the election of directors, proxy rules and the transition process.

Response: Clear communication is important and Corporations Canada is cognizant of

developing information products that are user-friendly and would work with the commentators and others, where appropriate, on outreach related to the transition.

- Comment: Suggestions with respect to wording of specific provisions. Specifically, it was suggested to replace “receiving information or documents by electronic means” in paragraph 2(1)(c) with “the use of this information in accordance with the provisions of the Act.” Another suggestion was for words to be added to change the provisions related to proxies.

Response: In both cases, neither suggestion was adopted. The current wording in paragraph 2(1)(c) is more specific and less ambiguous than the suggested wording. As for the proxy provisions, the current wording reflects the current standard corporate law provision and making changes could lead to confusion.

- Comment: Move the effective date for the definition of “soliciting corporation” from the date of the annual meeting of members to six months after the financial year end in order to allow the corporation time to make any required adjustments to its corporate structure.

Response: The required changes to the corporate structure (i.e. a minimum of three directors at least two of whom are not officers or employees and the statement concerning the distribution of property remaining on liquidation) require the vote of the members, which generally occurs at the annual meeting of members. Corporations could be in default of the Act if the effective date was other than the date of the annual meeting of members. No changes have been made to the Regulations.

- Comment: The \$10,000 limit in the definition of “soliciting corporation” should be raised to \$50,000. While no evidence of potential harm was provided with the \$10,000 limit, one commentator stated that the limit was too low and raising it “would reduce the possibility of modest-size corporations becoming soliciting corporations, and being subject to the resulting compliance obligations and their attendant costs.” The other stated that triggering more onerous accounting and financial reporting obligations at this level of contributions will be a problem for smaller organizations because of the higher administrative costs with which they will be saddled.

Response: The principle behind the requirements for soliciting corporations is that all corporations that receive public money, whether through public donations or government grants, should be subject to more stringent corporate governance and financial disclosure requirements as part of the need for greater transparency and accountability. Previous bills had definitions of “soliciting corporation” that captured any corporation receiving public money. Following comments received on those bills, a minimum threshold of \$10,000 was introduced to relieve corporations that receive little public money from the soliciting corporation requirements. The cost-benefit analysis indicates that the benefits for small soliciting corporations would outweigh the costs. No change has been made to the Regulations.

- Comment: The \$50,000 and \$250,000 thresholds for financial reviews should be raised to \$250,000 and \$500,000, respectively. Neither commentator provided evidence of harm justifying the need for an increase in the current threshold levels.

Response: The issue of the thresholds was raised before the House of Commons Industry Committee during their consideration of the NFP Act and Regulations. The Committee did not suggest any changes to the threshold levels. The cost-benefit analysis indicates that there would be a net benefit for NFP corporations in the financial review provisions with the current threshold levels. No changes have been made to the Regulations.

### ***Implementation, enforcement and service standards***

The NFP Act and Regulations would be implemented simultaneously through a comprehensive outreach strategy that includes training and educating key representatives of the legal and not-for-profit communities as well as other government officials. It would be supported by a full complement of policies, pamphlets and other documents, available by paper and on the Corporations Canada Web site, that will inform and assist those who are affected by the new legislation.

The NFP Act, like other modern corporate statutes, is designed to be primarily self-enforcing in nature. It provides members and other stakeholders with direct access to many previously unavailable remedies, such as the oppression remedy, derivative action and compliance orders. Members and stakeholders of not-for-profit corporations are generally considered to be in the best position to initiate and pursue these remedies because they have first-hand knowledge of the issues. Affected parties, therefore, will be encouraged to resolve internal disputes through means available to them and not through the use of public funds, which is consistent with the federal government's responsibility to ensure that public funds are used appropriately. It should be noted, however, that the Director appointed under the NFP Act has the discretion to act in extraordinary cases that impact the greater public interest. This discretion would be exercised based on the consideration of such factors as seriousness of conduct, deterrence, and clarification of case law and availability of other remedies.

With regard to the new filing requirements under the NFP Act and Regulations, Corporations Canada will encourage voluntary compliance, which is the most efficient and effective way to administer a corporate law regime. This would be done through education, user-friendly filing services and assistance. Voluntary compliance will be supplemented by initiatives that seek to identify and correct non-compliance, including examination and audits of corporate files. No additional resources would be required.

### ***Contact***

Coleen Kirby  
Corporations Canada  
Industry Canada

Jean Edmonds Tower South, 10th Floor  
365 Laurier Avenue W  
Ottawa, Ontario  
K1A 0C8  
Telephone : 613-941-5720  
Fax: 613-941-5781  
Email: coleen.kirby@ic.gc.ca

## **PROPOSED REGULATORY TEXT**

Notice is hereby given that the Governor in Council, pursuant to section 293 of the *Canada Not-for-profit Corporations Act* ([see footnote a](#)), proposes to make the annexed *Canada Not-for-profit Corporations Regulations*.

Interested persons may make representations with respect to the proposed Regulations within 30 days after the date of publication of this notice. All such representations must cite the *Canada Gazette*, Part I, and the date of publication of this notice and be addressed to Coleen Kirby, Department of Industry, Corporations Canada, Jean Edmonds Tower South, 10th Floor, 365 Laurier Avenue West, Ottawa, Ontario K1A 0C8 (tel.: 866-333-5556 or 613-941-5720; fax: 613-941-5781; email: coleen.kirby@ic.gc.ca).

Ottawa, February 17, 2011

JURICA ČAPKUN  
*Assistant Clerk of the Privy Council*

## **CANADA NOT-FOR-PROFIT CORPORATIONS REGULATIONS**

### **INTERPRETATION**

1. In these Regulations, “Act” means the *Canada Not-for-profit Corporations Act*.

### **PART 1**

#### **GENERAL**

#### **CORPORATE RECORDS AND REGISTERS**

2. (1) For the purpose of subsection 21(2) of the Act, the prescribed information for the register of directors is

(a) the name of each director;

(b) the current residential address of each director;

(c) an email address if the director has consented to receiving information or documents by electronic means; and

(d) for each person named in the register, the date on which that person became a director and, if applicable, the date on which that person ceased to be a director.

(2) For the purpose of subsection 21(2) of the Act, the prescribed information for the register of officers is

(a) the name of each officer;

(b) the current residential address of each officer;

(c) an email address if the officer has consented to receiving information or documents by electronic means; and

(d) for each person named in the register, the date on which that person became an officer and, if applicable, the date on which that person ceased to be an officer.

(3) For the purpose of subsection 21(2) of the Act, the prescribed information for the register of members is

(a) the name of each member;

(b) the current residential or business address of each member;

(c) an email address if the member has consented to receiving information or documents by electronic means;

(d) for each person named in the register, the date on which that person became a member and, if applicable, the date on which that person ceased to be a member; and

(e) the class or group of membership of each member, if any.

**3.** For the purpose of subsection 44(1) of the Act, the prescribed information is

(a) the name of each debt obligation holder;

(b) the residential or business address of each debt obligation holder;

(c) an email address if the debt obligation holder has consented to receiving information or documents by electronic means;

(d) for each person named in the register, the date on which that person became a debt obligation holder and, if applicable, the date on which that person ceased to be a debt obligation holder; and

(e) the principal amount of each of the outstanding debt obligations of each debt obligation holder.

**4.** For the purpose of subsection 21(4) of the Act, the prescribed period is six years after the end of the financial year to which the accounting records relate.

**5.** For the purposes of subsections 22(4), 24(2) and 107(1) of the Act, the prescribed information that has to be set out in the list of debt obligation holders is the following information drawn from the debt obligations register:

(a) the names, in alphabetical order, and addresses of the registered debt obligation holders;

(b) the principal amount of outstanding debt obligations for each debt obligation holder; and

(c) the aggregate principal amount of the outstanding debt obligations.

**6.** For the purposes of subsections 23(2) and 24(2) of the Act, the prescribed information that has to be set out in the list of members is the following information drawn from the register of members:

(a) the names, in alphabetical order, and addresses of the members; and

(b) each member's class or group, if any.

**7.** For the purposes of subsections 22(2) and 23(1) of the Act, the prescribed period is within 10 days after receipt of the statutory declaration, not including a period beginning on the day on which an application is made to the Director under section 25 of the Act and ending on the day on which the Director renders a decision with respect to the application.

**8. (1)** For the purposes of subsections 22(4), 23(2), 24(2) and 107(1) of the Act, the prescribed period for furnishing the list of debt obligation holders or the list of members is within 10 days after receipt of the statutory declaration or receipt of the Director's request, as the case may be, not including a period beginning on the day on which an application is made to the Director under section 25 of the Act and ending on the day on which the Director renders a decision with respect to the application.

(2) For the purposes of subsections 22(4), 23(2), 24(2) and 107(1) of the Act, the day for the lists to be up to date is not more than 10 days before the receipt of the statutory declaration or request.

**ELECTRONIC DOCUMENTS**

**9.** For the purposes of section 265 of the Act, prescribed information is the information referred to in subsection 162(1) of the Act.

**10.** (1) For the purpose of paragraph 266(2)(a) of the Act, the consent shall be in writing.

(2) For the purpose of paragraph 266(2)(b) of the Act, information, other than information that is required under the Act to be sent to a specific place, may be sent as an electronic document to a place other than to an information system designated by the addressee under paragraph 266(2)(a) of the Act by posting it on or making it available through a generally accessible electronic source, such as a website, and by providing the addressee with notice in writing of the availability and location of that electronic document.

**11.** For the purpose of subsection 266(3) of the Act, an addressee may revoke the consent in writing.

**12.** For the purposes of paragraphs 267(b) and 268(2)(b) of the Act, when several addressees are provided with information, that information shall be provided concurrently, regardless of the manner of provision.

**13.** An electronic document is considered to have been provided when it leaves an information system within the control of the originator or another person who provided the document on the originator's behalf.

**14.** An electronic document is considered to have been received

(a) if the document is provided to the information system designated by the addressee, when it enters that information system; or

(b) if the document is posted on or made available through a generally accessible electronic source, when the notice referred to in subsection 10(2) is received by the addressee or, if sent electronically, when the notice enters the information system designated by the addressee.

## DISPENSATION REQUIREMENT

**15.** For the purpose of paragraph 285(b) of the Act, the prescribed requirement is that the dispensation does not prejudice any of the members or the public interest.

## PART 2

### TIME PERIODS AND PRESCRIBED AMOUNTS

### DEFINITION OF "SOLICITING CORPORATION"

**16.** For the purpose of subsection 2(5.1) of the Act,

(a) the prescribed duration is from the date prescribed in paragraph (b) to the third annual meeting of members following that date;

(b) the prescribed date is the date of the first annual meeting of members following the last financial year end;

(c) the prescribed period is the duration of the last financial year; and

(d) the prescribed amount is \$10,000.

#### DEBT OBLIGATION CERTIFICATES AND TRANSFERS

**17.** For the purpose of subsection 44(5) of the Act, the prescribed period is six years after the day on which the certificate was cancelled.

**18.** (1) For the purpose of paragraph 61(2)(a) of the Act, the prescribed period is two years.

(2) For the purpose of paragraph 61(2)(b) of the Act, the prescribed period is one year.

**19.** (1) For the purpose of paragraph 72(2)(a) of the Act, the prescribed period is one year.

(2) For the purpose of paragraph 72(2)(b) of the Act, the prescribed period is six months.

**20.** For the purpose of paragraph 95(4)(a) of the Act, the prescribed period is one year.

**21.** For the purpose of subsection 97(2) of the Act, the prescribed period is 30 days.

**22.** For the purpose of section 99 of the Act, the prescribed period is one year after the day on which the notice was received.

#### TRUST INDENTURES

**23.** For the purpose of subsection 105(2) of the Act, the prescribed period is 90 days.

**24.** For the purpose of subsection 111(2) of the Act, the prescribed period is one year.

**25.** For the purpose of section 112 of the Act, the prescribed period is 30 days after the day on which the trustee becomes aware of the event of default.

#### RECEIVERS, RECEIVER-MANAGERS AND SEQUESTRATORS

**26.** For the purpose of paragraph 123(f) of the Act, the prescribed period is six months.

#### DIRECTORS AND OFFICERS

**27.** For the purpose of subsection 127(3) of the Act, the prescribed period is five or more days before the day on which the meeting is to be held.

**28.** (1) For the purpose of subsection 128(3) of the Act, the prescribed period is four years.

(2) For the purpose of subparagraph 128(9)(b)(i) of the Act, the prescribed period is 10 days after the day on which the election or appointment took place.

**29.** (1) For the purpose of subsection 134(1) of the Act, in the case of a change in directors, the prescribed period is 15 days after the day on which a change is made and, in the case of a change of address, 15 days after the corporation receives a notice from a director under subsection 134(2) of the Act.

(2) For the purpose of subsection 134(2) of the Act, the prescribed period is 15 days after the day on which the change is made.

**30.** For the purpose of subsection 147(3) of the Act, the prescribed period is seven days.

#### LIQUIDATION AND DISSOLUTION

**31.** For the purposes of subsections 218(1) and (2) of the Act, the prescribed period is three years.

**32.** (1) For the purpose of subparagraph 222(1)(a)(i) of the Act, the prescribed period is three years.

(2) For the purpose of subparagraph 222(1)(a)(ii) of the Act, the prescribed period is three consecutive years.

(3) For the purpose of subparagraph 222(1)(a)(iii) of the Act, the prescribed period is one year.

(4) For the purpose of subsection 222(3) of the Act, the prescribed period is 120 days after the day on which notice is given by the Director under paragraph 222(2)(a) of the Act.

**33.** For the purpose of paragraph 223(1)(a) of the Act, the prescribed period is two or more consecutive years.

**34.** (1) For the purpose of subsection 226(2) of the Act, the prescribed period is 30 days.

(2) For the purpose of paragraph 226(4)(a) of the Act, the prescribed minimum frequency is once a week.

**35.** (1) For the purpose of paragraph 231(b) of the Act, the notice of the appointment shall be published in a newspaper once a week for two consecutive weeks.

(2) For the purpose of subparagraph 231(b)(iii) of the Act, the prescribed period is 60 days after the day on which the notice of the appointment was first provided by the liquidator.

(3) For the purpose of paragraph 231(h) of the Act, the prescribed period is one year.

**36.** For the purpose of subsection 233(2) of the Act, the prescribed period is one year.

**37.** For the purpose of paragraph 235(1)(c) of the Act, the prescribed period is 60 months before the distribution of property remaining on liquidation after the discharge of any liabilities of the corporation and the prescribed amount is \$10,000 in any financial year ending in that prescribed period.

**38.** For the purpose of section 238 of the Act, the prescribed period is six years.

## REMEDIES, OFFENCES AND PUNISHMENT

**39.** For the purpose of paragraph 251(2)(a) of the Act, the prescribed period is 14 or more days.

**40.** For the purpose of subsection 257(1) of the Act, the prescribed period is the later of 30 days after the day on which the articles or other document is received and 20 days after the day on which any related approval required under any other Act is received.

## GENERAL

**41.** For the purpose of subsection 283(3) of the Act, the prescribed period is six years after the day on which the Director receives the document.

## PART 3

### CORPORATE NAMES

### INTERPRETATION

**42.** (1) The following definitions apply in this Part.

“corporate name” means the name of a corporation. (*Version anglaise seulement*)

“distinctive”, in relation to a trade-name, considered as a whole and by its separate elements, means a trade-name that distinguishes the activities in association with which it is used or intended to be used by its owner from any other activities or that is adapted to so distinguish them. (*distinctive*)

“official mark” means an official mark referred to in subparagraph 9(1)(n)(iii) of the *Trade-marks Act*. (*marque officielle*)

“trade-mark” means a trade-mark as defined in section 2 of the *Trade-marks Act*. (*marque de commerce*)

“trade-name” means a name that has been reserved by the Director under subsection 12(1) of the Act, or the name under which activities are carried on, or intended to be carried on, whether it is a corporate name or the name of a body corporate, trust, partnership, sole proprietorship or individual. (*dénomination commerciale*)

“use” means the actual use by a person that carries on activities in Canada or elsewhere. (*emploi*)

(2) For greater certainty, this Part applies to the corporate name of an amalgamated corporation.

## CONFUSING NAMES

### **43.** A corporate name is confusing with

(a) a trade-mark or an official mark if it is the same as that trade-mark or official mark or if the use of both the corporate name and either the trade-mark or the official mark, as the case may be, is likely to lead to the inference that the activities carried on or intended to be carried on under the corporate name and the activities connected with the trade-mark or the official mark, as the case may be, are the activities of one organization, whether or not the nature of those activities is generally the same; or

(b) a trade-name if it is the same as that trade-name or if the use of both names is likely to lead to the inference that the activities carried on or intended to be carried on under the corporate name and the activities carried on under the trade-name are the activities of one organization, whether or not the nature of those activities is generally the same.

**44.** For the purpose of subsection 13(1) of the Act, a corporate name is prohibited if its use causes confusion with a trade-mark, official mark or trade-name, having regard to the circumstances, including

(a) the inherent distinctiveness of the whole or any element of the trade-mark, official mark or trade-name and the extent to which it has become known;

- (b) the length of time the trade-mark, official mark or trade-name has been in use;
- (c) the nature of the goods, services or activities with which the trade-mark, official mark or trade-name is associated;
- (d) the nature of the trade with which the trade-mark, official mark or trade-name is associated;
- (e) the degree of resemblance between the proposed corporate name and the trade-mark, official mark or trade-name in appearance or sound or in the ideas suggested by them; and
- (f) the geographical area in Canada in which the trade-name or proposed corporate name is likely to be used.

**45.** Despite section 44, a corporate name that is confusing with the name of a body corporate that has not carried on activities in the two years immediately before the day on which the Director receives the documents referred to in section 9 or 201 or subsection 208(4), 211(5), 215(5), 216(6) or 219(3) of the Act or a request to reserve a name under subsection 12(1) of the Act is not prohibited for that reason alone if

- (a) the body corporate has been dissolved; or
- (b) in the case of a body corporate that has not been dissolved, it consents in writing to the use of the name and undertakes in writing to dissolve immediately or to change its name before the corporation that proposes to use the name begins using it.

**46.** Despite section 44, if a word in a corporate name is confusing with the distinctive element of a trade-mark, official mark or trade-name, the corporate name is not prohibited for that reason alone if the person who owns the trade-mark, official mark or trade-name consents in writing to the use of the corporate name.

**47. (1)** Despite section 44, a corporate name that is confusing with the name of a body corporate is not prohibited for that reason alone if

- (a) the corporate name is the name of an existing or a proposed corporation that is the successor to the activities of the body corporate and the body corporate has ceased or will, in the immediate future, cease to carry on activities under that corporate name and undertakes in writing to dissolve or to change its corporate name before the successor corporation begins carrying on activities under that corporate name; and
- (b) the corporate name of the existing or proposed corporation sets out in numerals the year of incorporation, or the year of the most recent amendment to the corporate name, in parentheses.

(2) If a corporate name is changed so that the reference to the year of incorporation or the year of the most recent amendment to the corporate name is deleted at least two years after it is introduced, it is not prohibited for that reason alone.

**48.** Despite section 44, if the corporate name of an amalgamated corporation is the same as the name of one of the amalgamating corporations, it is not prohibited for that reason alone.

**49.** (1) Despite section 44, the corporate name of an existing corporation that is the same as the name of an affiliated body corporate from which the existing corporation has acquired or will, in the immediate future, acquire all or substantially all of the property of the body corporate is not prohibited for that reason alone if the body corporate undertakes in writing to dissolve, or to change its name, before the corporation begins using the corporate name.

(2) Despite section 44, if the corporate name of a proposed corporation is the same as the name of a body corporate that is to be an affiliate of the proposed corporation from which the proposed corporation will, in the immediate future, acquire all or substantially all of the property of the body corporate, the corporate name is not prohibited for that reason alone if the body corporate undertakes in writing to dissolve, or to change its name, before the proposed corporation begins using the corporate name.

**50.** For the purpose of subsection 13(1) of the Act, a corporate name is prohibited if it is confusing with a corporate name that is reserved by the Director for another person, unless written consent has been obtained from the person for whom the corporate name was reserved.

## GENERAL PROHIBITIONS

**51.** For the purpose of subsection 13(1) of the Act, a corporate name is prohibited if the name contains any of the following elements:

(a) “cooperative”, “coopérative”, “co-op” or “pool” when it connotes a cooperative venture;

(b) “Parliament Hill” or “Colline du Parlement”;

(c) “Royal Canadian Mounted Police”, “Gendarmerie royale du Canada”, “RCMP” or “GRC”; and

(d) “United Nations”, “Nations Unies”, “UN” or “ONU” when it connotes a relationship to the United Nations.

**52.** For the purpose of subsection 13(1) of the Act, a corporate name is prohibited when it connotes that the corporation

(a) carries on its activities under royal, vice-regal or governmental patronage, approval or authority, unless Her Majesty or a person, society, authority or organization referred to in paragraph 9(2)(a) of the *Trade-marks Act* consents in writing to the use of the name;

(b) is sponsored or controlled by or is connected with the Government of Canada, the government of a province, the government of a country other than Canada or a political subdivision or agency of any such government, unless the appropriate government, political subdivision or agency consents in writing to the use of the name;

(c) is sponsored or controlled by or is connected with a university or an association of accountants, architects, engineers, lawyers, physicians or surgeons or another professional association recognized by the laws of Canada or a province, unless the appropriate university or professional association consents in writing to the use of the name;

(d) carries on the business of a bank, loan company, insurance company, trust company or another financial intermediary that is regulated by the laws of Canada, unless the Superintendent of Financial Institutions consents in writing to the use of the name; or

(e) carries on the business of a stock exchange that is regulated by the laws of a province, unless the relevant provincial securities regulator consents in writing to the use of the name.

**53.** For the purpose of subsection 13(1) of the Act, a corporate name is prohibited if it contains a word or phrase, or connotes an activity, that is obscene.

**54.** For the purpose of subsection 13(1) of the Act, a corporate name is prohibited if an element of the name is the family name of an individual, whether or not preceded by their given name or initials, unless the individual or their heir or personal representative consents in writing to the use of their name and the individual has or had a personal or other connection to the corporation.

**55.** For greater certainty, a corporate name is not prohibited only because it contains alphabetic or numeric characters, initials, punctuation marks or any combination of those elements.

#### NON-DISTINCTIVE NAMES

**56.** (1) For the purpose of subsection 13(1) of the Act, a corporate name is prohibited if it

(a) is only descriptive, in any language, of the activities of the corporation, of the goods and services in which the corporation deals or intends to deal, or of the quality, function or other characteristic of those goods and services;

(b) is primarily or only the name or family name, used alone, of an individual who is living or has died within 30 years before the day on which the Director receives any of the documents referred to in section 9 or 201 or subsection 208(4), 211(5), 215(5), 216(6) or 219(3) of the Act or a request to reserve a name under subsection 12(1) of the Act; or

(c) is primarily or only a geographic name that is used alone.

(2) Subsection (1) does not apply if a person proposing to use the corporate name establishes that it has been used in Canada or elsewhere by them or by their predecessors so as to have become distinctive in Canada on the day referred to in paragraph (1)(b).

## DECEPTIVELY MISDESCRIPTIVE NAMES

**57.** For the purpose of subsection 13(1) of the Act, a corporate name is prohibited if it is likely to mislead the public, in any language, with respect to any of the following:

(a) the activities, goods or services in association with which it is proposed to be used;

(b) the conditions under which the goods or services will be produced or supplied or the persons to be employed in the production or supply of the goods or services; and

(c) the place of origin of the goods or services.

## GENERAL

**58.** (1) For the purpose of subsection 12(1) of the Act, the prescribed period for a reserved name is 90 days.

(2) For the purpose of subsection 12(2) of the Act, the prescribed term is one of the following: "Association", "Center", "Centre", "Fondation", "Foundation", "Institut", "Institute" or "Society".

**59.** For the purposes of subsections 13(5) and 296(8) of the Act, the prescribed period is 60 days.

## PART 4

### BY-LAWS AND MEETINGS OF MEMBERS

#### BY-LAWS

**60.** For the purpose of section 153 of the Act, the prescribed period is 12 months after the day on which the members confirm or amend the by-law, amendment or repeal.

## TIME PERIOD FOR ANNUAL MEETING OF MEMBERS

**61.** (1) For the purpose of paragraph 160(1)(a) of the Act, the prescribed period is 18 months.

(2) For the purpose of paragraph 160(1)(b) of the Act, the prescribed period is not later than 15 months after the last preceding annual meeting but not later than six months after the end of the corporation's preceding financial year.

## RECORD DATE

**62.** (1) For the purposes of paragraphs 161(1)(a) and (b) of the Act, the prescribed period is 21 to 60 days before the day on which the meeting is to be held.

(2) For the purposes of paragraphs 161(1)(c) and (d) of the Act, the prescribed period is 60 days before the day on which the determination is made.

## NOTICE OF MEETING OF MEMBERS

**63.** (1) For the purpose of subsection 162(1) of the Act, one or more of the following manners is a prescribed manner of giving notice:

(a) by mail, courier or personal delivery to each member entitled to vote at the meeting, during a period of 21 to 60 days before the day on which the meeting is to be held;

(b) by telephonic, electronic or other communication facility to each member entitled to vote at the meeting, during a period of 21 to 35 days before the day on which the meeting is to be held;

(c) by affixing the notice, no later than 30 days before the day on which the meeting is to be held, to a notice board on which information respecting the corporation's activities is regularly posted and that is located in a place frequented by members; and

(d) in the case of a corporation that has more than 250 members, by publication

(i) at least once in each of the three weeks immediately before the day on which the meeting is to be held in one or more newspapers circulated in the municipalities in which the majority of the members of the corporation reside as shown by their addresses in the register of members, or

(ii) at least once in a publication of the corporation that is sent to all its members, during a period of 21 to 60 days before the day on which the meeting is to be held.

(2) For the purpose of subsection 162(1) of the Act, if the by-laws provide for an electronic means of giving notice, the by-laws shall also set out one or more of the methods set out in paragraphs (1)(a), (c) or (d) as a non-electronic alternative manner

of doing so to be used if a member requests that the notice be given by non-electronic means and, despite subsection 162(2) of the Act, if no alternative manner is set out in the by-laws, the corporation shall only send a copy of the notice to members that request a copy.

(3) For the purposes of subsections 162(2) and (3) of the Act, the prescribed period is 21 to 60 days before the day on which the meeting is to be held.

(4) For the purpose of subsection 162(7) of the Act, the prescribed period is 31 days.

(5) For the purpose of subsection 162(8) of the Act, the prescribed period is 30 days.

## MEMBER PROPOSALS

**64.** For the purpose of subsection 163(3) of the Act, the prescribed maximum number of words is 500.

**65.** For the purpose of subsection 163(5) of the Act, the prescribed percentage is five per cent.

**66.** For the purpose of paragraph 163(6)(a) of the Act, the prescribed period is 90 to 150 days before the anniversary of the previous annual meeting of members.

**67.** For the purpose of paragraph 163(6)(d) of the Act, the prescribed period is two years.

**68.** (1) For the purpose of paragraph 163(6)(e) of the Act, the prescribed minimum amount of support is

(a) three per cent of the total number of memberships voted, if the proposal was introduced at one annual meeting of members;

(b) six per cent of the total number of memberships voted at its last submission to members, if the proposal was introduced at two annual meetings of members; and

(c) 10 per cent of the total number of memberships voted at its last submission to members, if the proposal was introduced at three or more annual meetings of members.

(2) For the purpose of paragraph 163(6)(e) of the Act, the prescribed period is five years.

**69.** For the purpose of subsection 163(8) of the Act, the prescribed period is 21 days.

## QUORUM FOR MEETING OF MEMBERS

**70.** For the purpose of subsection 164(1) of the Act, the quorum for a meeting of members set out in the by-laws shall be a fixed number of members, a percentage of members or a number or percentage of members that is determined or determinable by a formula.

#### COMMUNICATION FACILITIES FOR MEETING OF MEMBERS

**71. (1)** For the purpose of subsection 165(3) of the Act, when a vote is to be taken at a meeting of members, the voting may be carried out by means of a telephonic, electronic or other communication facility, if the facility

(a) enables the votes to be gathered in a manner that permits their subsequent verification; and

(b) permits the tallied votes to be presented to the corporation without it being possible for the corporation to identify how each member or group of members voted.

**(2)** For the purpose of subsection 165(4) of the Act, a person who is entitled to vote at a meeting of members may vote by means of a telephonic, electronic or other communication facility, if the facility

(a) enables the vote to be gathered in a manner that permits its subsequent verification; and

(b) permits the tallied vote to be presented to the corporation without it being possible for the corporation to identify how the person voted.

#### REQUISITION OF MEETING OF MEMBERS

**72. (1)** For the purpose of subsection 167(1) of the Act, the prescribed percentage is five per cent.

**(2)** For the purpose of subsection 167(4) of the Act, the prescribed period is 21 days.

#### UNANIMOUS MEMBER AGREEMENTS

**73.** For the purpose of subsection 170(4) of the Act, the prescribed period is 30 days.

#### ABSENTEE VOTING

**74. (1)** For the purpose of subsection 171(1) of the Act, the prescribed methods of voting are

(a) voting by proxy in accordance with subsection (2);

(b) voting by mailed-in ballot if the corporation has a system that

(i) enables the votes to be gathered in a manner that permits their subsequent verification, and

(ii) permits the tallied votes to be presented to the corporation without it being possible for the corporation to identify how each member voted; and

(c) voting by means of a telephonic, electronic or other communication facility that

(i) enables the votes to be gathered in a manner that permits their subsequent verification, and

(ii) permits the tallied votes to be presented to the corporation without it being possible for the corporation to identify how each member voted.

(2) Members not in attendance at a meeting of members may vote by appointing in writing a proxyholder, and one or more alternate proxyholders, who are not required to be members, to attend and act at the meeting in the manner and to the extent authorized by the proxy and with the authority conferred by it subject to the following requirements:

(a) a proxy is valid only at the meeting in respect of which it is given or at a continuation of that meeting after an adjournment;

(b) a member may revoke a proxy by depositing an instrument or act in writing executed or, in Quebec, signed by the member or by their agent or mandatary

(i) at the registered office of the corporation no later than the last business day preceding the day of the meeting, or the day of the continuation of that meeting after an adjournment of that meeting, at which the proxy is to be used, or

(ii) with the chairperson of the meeting on the day of the meeting or the day of the continuation of that meeting after an adjournment of that meeting;

(c) a proxyholder or an alternate proxyholder has the same rights as the member by whom they were appointed, including the right to speak at a meeting of members in respect of any matter, to vote by way of ballot at the meeting, to demand a ballot at the meeting and, except where a proxyholder or an alternate proxyholder has conflicting instructions from more than one member, to vote at the meeting by way of a show of hands;

(d) if a form of proxy is created by a person other than the member, the form of proxy shall

(i) indicate, in bold-face type,

(A) the meeting at which it is to be used,

(B) that the member may appoint a proxyholder, other than a person designated in the form of proxy, to attend and act on their behalf at the meeting, and

(C) instructions on the manner in which the member may appoint the proxyholder,

(ii) contain a designated blank space for the date of the signature,

(iii) provide a means for the member to designate some other person as proxyholder, if the form of proxy designates a person as proxyholder,

(iv) provide a means for the member to specify that the membership registered in their name is to be voted for or against each matter, or group of related matters, identified in the notice of meeting, other than the appointment of a public accountant and the election of directors,

(v) provide a means for the member to specify that the membership registered in their name is to be voted or withheld from voting in respect of the appointment of a public accountant or the election of directors, and

(vi) state that the membership represented by the proxy is to be voted or withheld from voting, in accordance with the instructions of the member, on any ballot that may be called for and that, if the member specifies a choice under subparagraph (iv) or (v) with respect to any matter to be acted on, the membership is to be voted accordingly;

(e) a form of proxy may include a statement that, when the proxy is signed, the member confers authority with respect to matters for which a choice is not provided in accordance with subparagraph (d)(iv) only if the form of proxy states, in bold-face type, how the proxyholder is to vote the membership in respect of each matter or group of related matters;

(f) if a form of proxy is sent in electronic form, the requirements that certain information be set out in bold-face type are satisfied if the information in question is set out in some other manner so as to draw the addressee's attention to the information; and

(g) a form of proxy that, if signed, has the effect of conferring a discretionary authority in respect of amendments to matters identified in the notice of meeting or other matters that may properly come before the meeting shall contain a specific statement to that effect.

## PART 5

### FINANCIAL DISCLOSURE

### GENERAL

**75.** For the purpose of paragraph 172(1)(a) of the Act, the comparative financial statements, shall, except as otherwise provided by this Part, be prepared in accordance with the generally accepted accounting principles set out in the *Canadian Institute of Chartered Accountants Handbook — Accounting* or the *Canadian Institute of Chartered Accountants Public Sector Accounting Handbook*, as amended from time to time.

**76.** For the purpose of subsection 174(3) of the Act, the prescribed period is 15 days.

**77.** For the purpose of subsection 175(1) of the Act, the prescribed period is 21 to 60 days before the day on which an annual meeting of members is held or before the day on which a resolution is signed under section 166 of the Act, as the case may be.

**78. (1)** For the purpose of paragraph 176(1)(a) of the Act, the prescribed period is 21 days.

(2) For the purpose of paragraph 176(1)(b) of the Act, the prescribed period after the day on which the preceding annual meeting should have been held or a resolution in lieu of the meeting should have been signed is 15 months and the prescribed period after the end of the corporation's preceding financial year is six months.

## CONTENTS OF FINANCIAL STATEMENTS

**79. (1)** For the purpose of paragraph 172(1)(a) of the Act, the prescribed comparative financial statements are the following:

(a) a statement of financial position or a balance sheet;

(b) a statement of comprehensive income or a statement of retained earnings;

(c) a statement of changes in equity or an income statement; and

(d) a statement of cash flows or a statement of changes in financial position.

(2) The comparative financial statements need not be designated by the names set out in subsection (1).

## PART 6

### PUBLIC ACCOUNTANT

**80. (1)** For the purpose of paragraph 179(a) of the Act, the prescribed amount is \$50,000.

(2) For the purpose of paragraph 179(b) of the Act, the prescribed amount is \$1,000,000.

**81.** For the purpose of subsection 185(2) of the Act, the prescribed period is 21 days.

**82.** (1) For the purpose of subsection 187(2) of the Act, the prescribed period is 10 days.

(2) For the purpose of subsection 187(8) of the Act, the prescribed period is 15 days.

**83.** (1) For the purposes of subsections 188(1) and 189(2) of the Act, except as otherwise provided by Part 5, a review engagement shall be conducted, and for the purposes of section 191 of the Act, the report following the review engagement shall be prepared, in accordance with the generally accepted auditing standards set out in the *Canadian Institute of Chartered Accountants Handbook — Assurance*, as amended from time to time.

(2) For the purposes of subsections 188(2) and 189(1) of the Act, except as otherwise provided by Part 5, an audit engagement shall be conducted, and for the purposes of section 191 of the Act, the report following the audit engagement shall be prepared in accordance with the generally accepted auditing standards set out in the *Canadian Institute of Chartered Accountants Handbook — Assurance*, as amended from time to time.

**84.** For the purpose of paragraph 189(2)(a) of the Act, the prescribed amount is \$250,000.

## PART 7

### FUNDAMENTAL CHANGES

**85.** (1) Despite subparagraph 207(1)(c)(ii) of the Act, the resolutions approving the amalgamation of a holding corporation with one or more of its subsidiary corporations may provide that the corporate name set out in the articles of amalgamation is not the same as that set out in the articles of the amalgamating holding company.

(2) Despite subparagraph 207(2)(b)(ii) of the Act, the resolutions approving the amalgamation of two or more wholly-owned subsidiary corporations of the same holding body corporate may provide that the corporate name set out in the articles of amalgamation is not the same as that set out in the articles of the amalgamating subsidiary corporation whose memberships are not cancelled.

**86.** (1) For the purpose of paragraph 208(3)(a) of the Act, the prescribed amount is \$1,000.

(2) For the purpose of paragraph 208(3)(c) of the Act, the prescribed period is 30 days from the day on which the creditor receives the notice.

**87.** For the purpose of subsection 212(9) of the Act, the prescribed period is 15 months.

## PART 8

### RULES OF PROCEDURE FOR APPLICATIONS FOR EXEMPTIONS

#### APPLICATION

**88.** This Part applies to applications made under subsections 2(6), 25(1) and (2), 104(3), 160(2), 162(5) and 171(2) and sections 173, 190 and 271 of the Act.

#### TIME FOR MAKING APPLICATIONS

**89.** (1) An application under subsection 2(6) or 25(1) or (2) or section 271 of the Act may be made at any time.

(2) An application under

(a) subsection 104(3) of the Act shall be made at least 30 days before the day on which the corporation is required to comply with Part 7 of the Act;

(b) subsection 160(2), 162(5) or 171(2) of the Act shall be made at least 30 days before the day on which the notice referred to in subsection 162(1) of the Act is to be given to the members; and

(c) section 173 or 190 of the Act be made at least 60 days before the documents in respect of which the exemption is requested are to be placed before the members in accordance with subsection 172(1) of the Act.

(3) Despite paragraph (2)(c), the Director shall extend the time for making an application for an exemption if the applicant establishes that no prejudice will result from the extension.

(4) For the purpose of paragraph (2)(b), when a notice referred to in subsection 162(1) of the Act is given to the members by a method set out in paragraph 63(1)(d), the date on which the notice was published for the first time is the date on which the notice is to be given.

#### GENERAL

**90.** The Director may request that an applicant for an exemption provide the Director with further information or that any other person provide the Director with information in writing that is relevant to the application.

**91.** The Director shall give an applicant for an exemption a copy of any information received from any other person under section 90 and shall allow the applicant a reasonable opportunity to respond in writing.

**92.** If an applicant for an exemption or a person from whom the Director has requested information under section 90 does not provide the information within the time specified by the Director, the Director may examine the application without regard to the information.

## PART 9

### CANCELLATION OF ARTICLES AND CERTIFICATES

**93.** (1) For the purpose of subsection 289(1) of the Act, the prescribed circumstances are that

- (a) there is an obvious error in the articles or in the related certificate;
- (b) there is an error in the articles or in the related certificate that was made by the Director;
- (c) the cancellation of the articles and related certificate is ordered by a court; or
- (d) the Director lacked the authority to issue the articles and related certificate.

(2) For the purpose of subsection 289(3) of the Act, the prescribed circumstances are that there is no dispute among the directors or members as to the circumstances of the request for cancellation and

- (a) the corporation has not used the articles and related certificate; or
- (b) if it has used them, anyone dealing with the corporation on the basis of the articles and related certificate has consented to the cancellation.

## PART 10

### PRESCRIBED FEES

**94.** (1) The fee in respect of the receipt, acceptance, examination, issuance or copying of any document or in respect of any action that the Director is required or authorized to take under the Act set out in column 1 of the schedule is the applicable fee set out in column 2.

(2) No fee is payable for the receipt by the Director of an application for the issuance by the Director of

- (a) a certificate of amendment issued under section 201 of the Act, if the only purpose of the amendment is to add an English or a French version to a corporation's name, or to change its name as directed by the Director under subsection 13(2) or (3) or 296(6) of the Act; or

(b) a corrected certificate issued under subsection 288(6) of the Act when the correction is required solely as the result of an error made by the Director.

## COMING INTO FORCE

**95.** These Regulations come into force on the day on which subsection 293(1) of the *Canada Not-for-profit Corporations Act*, chapter 23 of the Statutes of Canada, 2009, comes into force.

## SCHEDULE

(Subsection 94(1))

## FEES

Item	Column 1 Receipt, Acceptance, Examination, Issuance or Copying of any Document or Action taken by the Director under the <i>Canada Not-for-profit Corporations Act</i>	Column 2 Fee \$
1.	Receipt of an application by the Director for the issuance of the following documents:	
	(a) a certificate of incorporation under section 9 of the Act	
	(i) if the application is made using Industry Canada's online incorporation feature	200
	(ii) if the application is made using any other means	250
	(b) a certificate of amendment under section 201 or subsection 215(5) of the Act	200
	(c) a restated certificate of incorporation under subsection 203(3) of the Act (unless issued with a certificate of amendment)	50
	(d) a certificate of amalgamation under subsection 208(4) of the Act	200
	(e) a certificate of continuance under subsection 211(5) of the Act (unless subsection 212(6) of the Act applies)	200
	(f) a document evidencing satisfaction of the Director, as required under subsection 213(1) of the Act	200
	(g) a certificate of arrangement under subsection 216(6) of the Act	200
	(h) a certificate of revival under subsection 219(3) of the Act	200
	(i) a certificate of revocation of intent to dissolve under	50

	subsection 221(11) of the Act	
	(j) a corrected certificate under subsection 288(6) of the Act	200
2.	Receipt by the Director of an application for issuance of a certificate of compliance or a certificate of existence under section 290 of the Act	10
3.	Receipt by the Director of an annual return sent under section 278 of the Act	
	(a) if the annual return is filed using Industry Canada's online incorporation feature	20
	(b) if the annual return is filed using any other means	40
4.	Receipt by the Director of an application for exemption under subsection 2(6), 25(1) or (2), 104(3) or 171(2) or section 173 or 271 of the Act	250
5.	Provision by the Director of copies or extracts of documents under subsection 279(2) of the Act	1 per page
6.	Provision by the Director of certified copies of documents under subsection 279(2) of the Act, per document	35

---

[9-1-o]

**Footnote a**

S.C. 2009, c. 23

**NOTICE:**

The format of the electronic version of this issue of the *Canada Gazette* was modified in order to be compatible with extensible hypertext markup language (XHTML 1.0 Strict).