



## **Highlights of the New Proposed Canadian Not-For-Profit Corporations Act (NFPC)**

By Mark Blumberg (June 21, 2008)

Industry Canada on June 13, 2008 introduced Bill C-62 - a new Canada *Not-for-profit Corporations Act* (NFPC) to replace the *Canada Corporations Act* (CCA). This bill will be of particular interest to Canadian charities that are incorporated federally under the CCA.

Here are some of the highlights:

- 1) The NFPC will replace the CCA which has not substantially changed since 1917 and which governs federal non-share capital/non-profit corporations;
- 2) The NFPC will affect 19,000 federal non-profits and any new federal non-profits after the NFPC comes into force;
- 3) It allows for electronic documents and electronic voting for federal non-profits;
- 4) It allows for absentee voting by proxy, mailed-in ballots and telephone or electronic means;
- 5) It has exemptions from audit requirements depending on whether the non-profit is soliciting (ie. solicits public donations or receives government funding) or non-soliciting and the amount of its annual revenue. For example, a "soliciting corporation" with revenue under \$50,000 can have no audit, while a "soliciting corporation" with between \$50,000 and \$250,000 in annual revenue can have either a review engagement or audit engagement as the members decide is necessary. These exemptions will be very

beneficial for smaller non-profits who find the cost of an audit prohibitive in light of their very limited revenue.

- 6) The NFPC requires greater disclosure of financial information. As the New Government notes:

Disclosure of financial statements is an important tool for ensuring that corporations are properly managed. The new act will also require that all not-for-profit corporations make their financial statements available to their members, directors and officers. They would also have to be available to the Director appointed under the Act, who is the government official responsible for the administration of the act. Financial statements from soliciting corporations will be publicly available.

- 7) The NFPC will set out the rights and responsibilities of Directors and Officers. The standard of care for directors will be that they must act honestly, in good faith and in the best interests of the corporation.
- 8) Members will have more rights to access information, subject to certain restrictions.
- 9) Corporations currently incorporated under the CCA will have three years to apply for corporate status under the NFPC. There will be no fees for this process.
- 10) There will be quicker incorporation as the "letters patent" system will not be used in that there will not be ministerial approval of incorporation documents and by-laws. The NFPC provides: "on receipt of articles of incorporation, the Director shall issue a certificate of incorporation..."
- 11) Under section 7.1(f), "a statement of the purpose of the corporation" is required.
- 12) The NFPC restricts activities outside of Canada. Section 16 (2) provides: "A corporation may carry on activities throughout Canada." In the following section, section 16(3), it provides that "A corporation has the capacity to carry on its activities, conduct its affairs and exercise its powers in a jurisdiction outside Canada to the extent that the laws of that jurisdiction permit." This last sentence is very problematic. I will be writing an article on this issue. In summary, I think that Canadian corporations, whether non-profit or for-profit, operating abroad should operate at a very high standard and generally should

comply with the laws of a foreign country. However, to say that a Canadian non-share capital corporation only has the capacity to carry on its activities, etc. to the "extent that the laws of that jurisdiction permits" essentially means that Industry Canada will be become the watchdog of brutal dictatorships such as in Zimbabwe or Burma. Section 16(2) should be revised to say that "A corporation may carry on activities throughout Canada and elsewhere." and section 16(3) should be deleted.

Consultations will take place while the bill is before Parliament. With a minority Parliament, there is no certainty that this bill will be passed.

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