

The New *Canada Not-for-Profit Corporations Act*

Prepared For: Legal Education Society of Alberta

Advising Charities and Not-for-Profit Organizations

Presented by:

Ruth M. Spetz

Borden Ladner Gervais LLP

Calgary, Alberta

With the assistance of:

Raj Deol

For Presentation In:

Edmonton – February 1, 2012

Calgary – February 8, 2012

THE NEW CANADA NOT-FOR-PROFIT CORPORATIONS ACT

INTRODUCTION

The *Canada Not-for-Profit Corporations Act* (the “**CNCA**” or “**new Act**”)¹ received Royal Assent on June 23, 2009 and came into force on October 17, 2011. The CNCA will supersede and ultimately replace Part II of the *Canada Corporations Act* (the “**CCA**”)² as the federal legislation governing not-for-profit corporations (“**NFPCs**”).

The need for new federal legislation for NFPCs stems from the outdated nature of the CCA which has been virtually unchanged since 1917. The CNCA modernizes the framework for the corporate governance of NFPCs by aligning the legislation more closely with the *Canada Business Corporations Act* (the “**CBCA**”) as a model.³ The new legislation has been a long time coming as the federal government has been working to replace the CCA since the early 1970’s. Apparently, seven bills were introduced in Parliament and died on the order paper until the 8th attempt, Bill C-4 made its way through the Parliamentary Process.⁴

Purpose of New Act

The purpose of the CNCA is to create a modernized and comprehensive framework for the corporate governance of NFPCs that are incorporated or continued at the federal level. The intent of the Act was aptly stated by The Honourable Diane Ablonczy, Minister of State (Small Business and Tourism) at the introduction of Bill C-4 (predecessor to CNCA) before the House of Commons, when she said:

“This new Act would promote accountability, transparency and good corporate governance for the not-for-profit sector and is the first significant modernization of Canada’s not-for-profit legislation since 1917.”⁵

The CNCA aims to accomplish this purpose by having the Act mirror the CBCA in several respects in an effort to bring the advantages of a modern corporate statute to the not-for-profit sector. This effort is evident in the provisions dealing with financial disclosure, by-laws,

¹ *Canada Not-for-profit Corporations Act*, S.C. 2009, c. 23.

² *Canada Corporations Act*, R.S.C., 1970, c. C-32.

³ *Canada Business Corporations Act*, RSC 1985, c C-44.

⁴ Background Paper for Bill C-4: *An Act respecting not-for-profit corporations and certain other corporations*, S.C. 2009, ch. 23 (Royal Assent: June 23, 2009), at p.5. See Industry Canada website <http://ic.gc.ca/eic/site/cd-dgc.nst/enc/cs04239.html>

⁵ News release titled “Government of Canada Tables New Regime for Not-for-Profit Corporations”, dated December 3, 2008.

directors and officers, and members. Any NFPCs that are currently incorporated under the CCA will have a period of three years within which to apply for a continuance under the CNCA.

Who is Affected?

All NFPCs that are currently incorporated under the CCA will eventually be governed by the CNCA. Currently, this will affect about 19,000 entities. These corporations will have a period of three years (i.e. on or before October 17, 2014) within which to apply for a continuance under the CNCA. Until a Certificate of Continuance is issued, the NFPCs will remain governed under the old CCA as the CNCA does not automatically apply to existing entities. The NFPCs will have to take action to transition to the new CNCA.

As of October 17, 2011, any new NFPCs that wish to incorporate federally will now have to do so under the CNCA. For practitioners that are accustomed to operating under the CCA, they must become familiar with CNCA so they can not only advise their current clients in the not-for-profit sector about the transition process, but also new clients who may be interested in incorporating an NFPC. It will be advantageous to be able to have a full discussion of the options, benefits and limitations of incorporating either federally or provincially.

The CNCA may also have an affect on any NFPCs that are currently incorporated under provincial/territorial legislation (other than Alberta) but may be interested in continuing federally under the more modern framework of the CNCA. Under the CCA, there were no provisions that would allow corporations from other jurisdictions to import under the CCA unless the corporation was incorporated by Special Act of Parliament. In contrast, section 211 of the CNCA allows such corporations to apply to the Director for a certificate of continuance if they are permitted to do so by their home jurisdiction.

ADVANTAGES AND DISADVANTAGES OF THE CNCA

Advantages

The modern framework of the CNCA offers several advantages for NFPCs, particularly in comparison to the CCA. One of the most significant advantages introduced by the CNCA is a streamlined system of incorporation “as of right”, which replaces the current system of letters patent under the CCA. Under the old system, the Minister had ultimate discretion with respect to approving the letters patent issued by the NFPC. In contrast, the Director appointed under the new Act will not have the discretion to determine which NFPCs can be