



# Summary of the Canada Not-For-Profit Corporations Act

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On June 23, 2009, the *Canada Not-for-Profit Corporations Act* (the “**CNCA**”) received Royal Assent heralding a modern governance era for Canadian non-share capital corporations.<sup>1</sup> Government discretion over incorporation and bureaucratic policy on both material and trivial by-law matters was replaced by a regime more aligned with that which applies to for-profit share capital corporations, a regime that emphasises members’ rights rather than government rights and which enables not-for-profit corporations to operate as efficiently as their for-profit counterparts.

Key provisions of the CNCA have been summarized below. Readers are urged to consult the Act and the regulations for the full context and terms of the provisions.

## 1. TERMINOLOGY

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The CNCA contains a number of unique terms that are relevant to its understanding, including the following:

“**activities**” being any conduct of a corporation to further its purpose and any business carried on by a body corporate, but does not include the affairs of the corporation;

“**affairs**” being the relationship among a corporation, its affiliates and the directors, officers, shareholders or members of the corporation;

“**soliciting corporation**” being a corporation which received in excess of \$10,000, during a three-year period, in the form of donations from third parties, grants or financial assistance from the federal, provincial or municipal government or any of their agencies, or donations from other soliciting corporations; and

“**non-soliciting corporation**” being a corporation which is not a soliciting corporation.

The characterization of a federal not-for-profit corporation as either a “soliciting corporation” or a “non-soliciting corporation” has a number of implications, including those relating to the composition of its board; whether the corporation is able to enter into a unanimous member agreement; and the extent of its financial disclosure and financial review requirements. Soliciting corporations are subject to stricter obligations than non-soliciting corporations.

The definitions of “affiliate”, “holding body” or “subsidiary” of a body-corporate contained in the CNCA mirror those found in the *Canada Business Corporations Act* (the “**CBCA**”) and are generally based on control as exercised through membership or share interests.

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<sup>1</sup> The CNCA applies to corporations considered to be not-for-profit or charitable under the *Income Tax Act* (Canada). Accordingly, the more appropriate nomenclature for the CNCA would have been the “Canada Non-Share Capital Corporations Act”. For consistency purposes, this summary will, unless otherwise specified, refer to all such non-share capital corporations as not-for-profit corporations.



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## 2. INCORPORATION

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Under the CNCA, the incorporation of a corporation is “as of right” -- accomplished through the submission of an application for articles of incorporation to the Director appointed under the CNCA (the “**Director**”). The application will require a minimum of one incorporator, either a person or a “body corporate”. Each individual incorporator will need to be at least 18 years of age, have legal power to contract and not be an undischarged bankrupt. There is no requirement that the incorporator become a member of the corporation.

The articles of incorporation under the CNCA<sup>2</sup> will have to set out the following:

- the name of the corporation;
- the province where the registered office is to be situated;
- the classes, or regional or other groups, of members that the corporation is authorized to establish and, if there are two or more classes or groups, any voting rights attached to each of those classes or groups;
- the number of directors, or the minimum and maximum number of directors;
- any restrictions on the activities that the corporation may carry on;
- a statement of the purpose of the corporation;
- a statement concerning the distribution of property of the corporation; and
- any provision required by any other Act to be set out in the articles.

There is no requirement to set out “objects” although if the corporation is a charity, it continues to be desirable to set out the purpose of the corporation in a manner akin to objects.<sup>3</sup> As well, it is not necessary to list the powers of the corporation, although it will be permissible to include those clauses and any others permitted to be set out in the by-laws of the corporation.<sup>4</sup>

The provisions governing corporate names in the CNCA are similar to the provisions found in the CBCA. The CNCA permits a not-for-profit corporation to exist as a numbered company.

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<sup>2</sup> All Section references are to the CNCA, unless otherwise specified (Sections 7(1) and (2)).

<sup>3</sup> In order to demonstrate compliance with the requirements under the *Income Tax Act* (Canada) that all resources of the charity are expended on its charitable objects.

<sup>4</sup> Section 7(3)



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## 3. CAPACITY OF A CORPORATION

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A corporation incorporated under the CNCA has the capacity, rights, powers and privileges of a natural person,<sup>5</sup> like corporations incorporated under the CBCA. To the extent that the articles of the corporation limit its activities or powers, the corporation will be similarly limited in the activities it can carry on and powers it can exercise.<sup>6</sup>

The CNCA recognizes pre-incorporation contracts—those contracts entered into by a person on behalf of a corporation before it comes into existence. The CNCA provides that once the corporation comes into existence, it may adopt such a contract, at which point the corporation is bound by it and the original party is released.<sup>7</sup>

## 4. REGISTERED OFFICE AND RECORDS

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A corporation is required to maintain a registered office in the province specified in its articles unless the articles are amended to specify another province. The directors may change the address of the registered office within that province at any time.<sup>8</sup>

The corporation must prepare and maintain at its registered office, or at any other place designated by the directors, corporate records including:<sup>9</sup>

- the articles and by-laws and any amendments to them;
- minutes of meetings of members and their committees;
- resolutions of members and their committees;
- a debt obligations register, if any debt obligations have been issued; and
- a register of members, directors and officers.

The corporation is also to prepare and maintain adequate accounting records and records containing minutes of meetings and resolutions of the board of directors and its committees.<sup>10</sup> Subject to certain tax requirements, these records may be kept outside of Canada as long as they are accessible electronically.<sup>11</sup> The CNCA also provides flexibility in the form of records and indicates that the registers and records of the corporation “may be in any form, provided that the records are capable of being reproduced in intelligible written form within a reasonable time”.<sup>12</sup>

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<sup>5</sup> Section 16  
<sup>6</sup> Section 17(2)  
<sup>7</sup> Section 15  
<sup>8</sup> Section 20(3)  
<sup>9</sup> Section 21(1)  
<sup>10</sup> Section 21  
<sup>11</sup> Section 21(9)  
<sup>12</sup> Section 26(1)



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The CNCA sets out the rules respecting access to corporate records depending upon who is attempting to access them.

Type of record	Who has access	Restrictions on access
<b>Articles, by-laws, minutes and resolutions of members and their committees and directors and officer's ledgers<sup>*13</sup></b>	Members of the corporation, their representatives, and creditors of the corporation	None
<b>Debt obligations registers<sup>*14</sup></b>	Members of the corporation, their representatives and creditors of the corporation	Must sign a statutory declaration stating that the information will be used for permitted purposes <sup>15</sup>
<b>Members register<sup>*</sup></b>	Members of the corporation, their representatives and debt obligation holders	Access once a year and prior to a special meeting. Must sign a statutory declaration stating that the information will be used for permitted purposes <sup>16</sup>
<b>Members register<sup>*</sup></b>	The corporation's debt holders if they have received a notice of a meeting of members at which they have a right to vote	None but can only use the information in connection with an effort to influence the voting on any issue on which the holder has a right to vote <sup>17</sup> .
<b>Accounting records and minutes of board and committee minutes and board and committee resolutions</b>	Directors	None <sup>18</sup>

\*The Director and the directors of the corporation may examine and make extracts at any time.<sup>19</sup>

<sup>13</sup> Section 22(1)

<sup>14</sup> Section 22(4)

<sup>15</sup> Permitted purposes: only to influence the voting of debt obligation holders; to make offers to acquire corporate debt obligations; or any other matter relating to the debt obligations and affairs of the corporation – Sections 22(2), (5) and (7).

<sup>16</sup> Permitted purpose: only to influence the voting of members; requisition a meeting of members or any other matter relating to the affairs of the corporation - Section 23(2), (3), (5) and (7).

<sup>17</sup> Sections 23(4) and (8)

<sup>18</sup> Section 21(7)

<sup>19</sup> Sections 24(1) and 21(7)



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## 5. CORPORATE FINANCE

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### (a) General

Subject to any restrictions contained in its articles, by-laws or any unanimous member agreement, the directors will have the power to borrow on the credit of the corporation; issue, reissue, sell, pledge or hypothecate corporate debt obligations; give guarantees to secure performance of obligations; and create security interests in corporate property for the purpose of securing corporate obligations.<sup>20</sup> These powers can also be delegated to a single director, committee of directors or an officer of the corporation.<sup>21</sup>

A corporation may own property of any kind transferred to it, or otherwise vested in it, and would not be deemed to hold any property in trust unless that property was transferred to it expressly in trust for a specific purpose.<sup>22</sup> Significantly for charities, directors are not, in that capacity, trustees of any property of the corporation, including property held in trust by the corporation.<sup>23</sup>

Subject to any limitations contained in any gift or in the articles or by-laws, a corporation may invest its funds as its directors see fit.<sup>24</sup>

### (b) Vis a vis members, directors and officers

Subject to any restrictions contained in the articles, by-laws or any unanimous members agreement, the directors may require members to pay annual fees.<sup>25</sup>

A corporation will not be permitted to distribute any of its profits, proceeds or property, directly or indirectly, to a member, director or officer of the corporation. However an exception is made in respect of payments that are in furtherance of the corporation's activities or as otherwise permitted by the Act<sup>26</sup> (i.e., the payment of a salary to an officer) or where the member is an entity (body corporate, partnership, trust, joint venture or unincorporated association or organization) and is authorized to carry out activities on behalf of the corporation.<sup>27</sup>

Generally, members will not be liable for the corporation's acts or obligations<sup>28</sup> except to the extent assumed under a unanimous member agreement<sup>29</sup> or to the extent that they receive money or property from the corporation upon its dissolution.<sup>30</sup>

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<sup>20</sup> Section 28(1)

<sup>21</sup> Section 28(2)

<sup>22</sup> Section 31

<sup>23</sup> Section 32. Note though that provincial charities laws may deem them otherwise.

<sup>24</sup> Section 33

<sup>25</sup> Section 30

<sup>26</sup> Section 34(1)

<sup>27</sup> Section 34(2)

<sup>28</sup> Section 36(1)

<sup>29</sup> Section 170(5)

<sup>30</sup> Section 239(5)



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The articles of a corporation may provide that the corporation has a lien on a person's membership interest for a debt of that member to the corporation, including an amount unpaid in respect of a membership issued by the corporation on the date it was continued as a corporation under the CNCA.<sup>31</sup> The corporation may enforce this lien in accordance with its by-laws.<sup>32</sup>

A corporation may accept a membership surrendered to it and may thereby<sup>33</sup> extinguish or reduce any debts or liabilities that the member owes in respect of its membership.

## 6. DEBT OBLIGATIONS, CERTIFICATES, REGISTERS AND TRANSFERS

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The CNCA includes an extensive regime regarding debt obligations—similar to that contained in the CBCA. The section contemplates numerous types of obligations including those that are bearer, or are transferable, and those which are not and the restrictions that must be noted on the instrument to ensure that an instrument intended to be non-transferable maintains that status.<sup>34</sup>

A detailed code concerning the responsibilities of holders, brokers, purchasers, transferors and transferees of debt obligations, the methods of ensuring the validity of debt obligations, matters dealing with adverse claims, issuance of debt obligation certificates, deliveries of debt obligations and the role of agents respecting debt obligations, etc. is also set out. It requires the corporation to maintain or cause to be maintained a debt obligations register showing the prescribed information for each class or series of registered debt obligations.<sup>35</sup>

Finally, the CNCA contains an extensive regime dealing with trust indentures and trustees, similar to that contained in the CBCA.

## 7. DIRECTORS

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The CNCA provides many particulars regarding the composition of a corporation's board of directors. Frequently asked questions and their answers are set out below.

<b>What is the minimum number of directors?</b>	<b>For soliciting corporations – three, at least two of whom are not officers or employees of the corporation or its affiliates;<sup>36</sup> for non-soliciting corporations – one</b>
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<sup>31</sup> Section 36(2)

<sup>32</sup> Section 36(3)

<sup>33</sup> Section 35

<sup>34</sup> Section 37(2)

<sup>35</sup> Section 44(1)

<sup>36</sup> Section 125





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<b>Are boards with staggered terms<sup>37</sup> permitted?</b>	Yes. <sup>38</sup> The regulations prescribe a maximum term of four years. <sup>39</sup> Directors are entitled to continue in office until such time as their successors are elected <sup>40</sup>
<b>Are <i>ex-officio</i> directors permitted?</b>	The CNCA does not permit <i>ex officio</i> directors
<b>Can the board fill a vacancy on the board?</b>	Yes, so long as a quorum is in existence but not where the “vacancy” results from an increase in the minimum or maximum number of directors provided for in the articles or a failure to elect the number or the minimum number of directors specified in the articles <sup>41</sup>
<b>Can the board elect directors by increasing the fixed number of directors?</b>	Yes, if the articles so provide, within the minimum and maximum number provided for in the articles. However, the term of office of directors so appointed is not to be longer than one year and the total number of directors appointed in this manner is not to exceed one-third the number of directors elected at the immediately preceding annual meeting of members <sup>42</sup>
<b>Who can remove directors?</b>	Members of the corporation have an express right to remove a director from office before the end of his or her term by means of an ordinary resolution voted at a special meeting, with the exception of a director elected by a particular class of members, who may only be removed by an ordinary resolution at a meeting of the members of that class <sup>43</sup>
<b>How can the number of directors or minimum and maximum number of directors in each case, as set out in the articles, be changed?</b>	By amendment of the corporation’s articles approved by the members; following which if the amendment increases the number of directors, the members may, at that same meeting, elect the additional directors to fill the vacancies created. The number of directors within a minimum and maximum range may be changed by the members at any annual meeting or may be delegated to the directors to change <sup>44</sup>
<b>Are there any residency requirements?</b>	There is no requirement that a majority of the directors be resident Canadians

<sup>37</sup> i.e., where a portion rather than all of the directors’ terms end in any given year.

<sup>38</sup> Section 128(4)

<sup>39</sup> Section 128(3)

<sup>40</sup> Section 128(6)

<sup>41</sup> Section 132(1)

<sup>42</sup> Section 128(8)

<sup>43</sup> Sections 130(1) and (2)

<sup>44</sup> Section 133



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Directors will be allowed to receive reasonable remuneration for their services<sup>45</sup> and indemnification for expenses incurred on behalf of the corporation in their capacity as directors.<sup>46</sup>

## 8. DIRECTORS MEETINGS

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The CNCA includes a number of specifics pertaining to board meetings; permitting in its code a number of voting conveniences. See Schedule A.

The mechanism of a “unanimous member agreement” is available to members under the CNCA. Through this instrument, all members of a non-soliciting corporation can agree, if they so choose, to restrict the powers of the directors to manage or supervise the activities and affairs of the corporation and take on these responsibilities themselves.<sup>47</sup> To the extent that such an agreement restricts the rights of the directors to manage certain matters, the directors will equally be relieved of liability relating to their performance.<sup>48</sup>

## 9. CONFLICTS OF INTEREST

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As under the CBCA, directors and officers are required to disclose the nature and extent of any interest they have in any material contract or material transaction made or proposed to be made with the corporation. The obligation arises not only where the director or officer has an ownership interest in the other party to a transaction or agreement, but also where the director or officer is a director or officer of that other corporation thus expanding the statutory definition of “conflict of interest” to include a conflict in the common law duty of loyalty – an issue increasingly relevant to directors of not-for-profit corporations.

A director required to make a disclosure is prohibited from voting to approve any such contract or transaction, unless the contract or transaction relates primarily to his or her remuneration, is for an indemnity or insurance or is with an affiliate.<sup>49</sup>

As with the CBCA, provisions exist for a contract or transaction which might otherwise be found void or to expose the conflicted director or officer to account to the corporation for profits realized, to avoid such treatment by the ratification of the contract or transaction by a special resolution of the members.<sup>50</sup>

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<sup>45</sup> Section 143. Note though that provincial charities laws may prescribe otherwise.

<sup>46</sup> Section 144

<sup>47</sup> Section 170(1)

<sup>48</sup> Section 170(5)

<sup>49</sup> Section 141

<sup>50</sup> Section 141(9)



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## 10. OFFICERS

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Under the CNCA, directors are able to designate the officers of the corporation, appoint any person as an officer of the corporation and determine the duties and powers of the officers according to what the directors can lawfully delegate, subject to the articles and by-laws of the corporation and any unanimous member agreement.<sup>51</sup> Officers may receive reasonable remuneration for their services<sup>52</sup> and indemnification for expenses incurred on behalf of the corporation in their capacity as officers.<sup>53</sup>

## 11. LIABILITY ISSUES

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The CNCA sets out the common law duty of directors and officers to act honestly and in good faith with a view to the best interests of the corporation in the performance of their duties.<sup>54</sup>

Specific potential liabilities of directors are set out in the CNCA, including those relating to a payment or distribution to a member, director or officer contrary to the CNCA; a payment of an indemnity contrary to the CNCA;<sup>55</sup> and debts not exceeding six months' wages payable to an employee for services performed for the corporation.<sup>56</sup>

The CNCA permits corporations to indemnify directors and officers for losses suffered as a result of third party actions.<sup>57</sup> The CNCA's indemnity provisions explicitly apply to former directors.<sup>58</sup> Previously, that matter could only be inferred. The CNCA extends these provisions as well to those acting at the corporation's request as a director or officer or in a similar capacity of another entity. The indemnification is only applicable when the director acted honestly, in good faith and with a view to the best interests of the corporation (or the other entity for which the individual acted at the request of the corporation) and, in the case of a criminal or administrative action or proceeding that is enforced by monetary penalty, where the individual had reasonable grounds to believe that his or her conduct was lawful. The CNCA specifically permits corporations to purchase insurance to benefit directors and officers.<sup>59</sup>

The common law due diligence defence is also set out in the CNCA.<sup>60</sup> This defence allows a director to avoid personal liability arising out of his or her duties as a director where he or she acted in accordance with his or her fiduciary duties and exercised the care, skill, and diligence that a reasonably prudent person would have exercised in comparable circumstances, including where the director relied on professional advisors.<sup>61</sup>

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<sup>51</sup> Section 142

<sup>52</sup> Section 143(2)

<sup>53</sup> Section 144

<sup>54</sup> Section 148

<sup>55</sup> Section 145(1)

<sup>56</sup> Section 146(1)

<sup>57</sup> Section 151

<sup>58</sup> The provisions of this paragraph as well as the common law due diligence defence also apply to officers

<sup>59</sup> Section 151(6)

<sup>60</sup> Sections 149 and 150

<sup>61</sup> Sections 149 and 150



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The CNCA codifies the director's common law dissent rights, which would allow a director to avoid liability arising from the matters approved by the board but which the director did not vote in favour of, by requesting his or her dissent to be recorded in the minutes. The request for such a recording must be made before the end of the meeting at which the decision is taken or sent by registered mail to the Secretary immediately after the meeting. Absent directors have a similar right, if the notice of dissent is mailed within seven days.<sup>62</sup>

## 12. COMMITTEES

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The CNCA permits directors to delegate their powers to a committee of directors or to a managing director; although there are certain powers that cannot be delegated, including the power to adopt, change or repeal by-laws; to submit a proposal to the members for approval; to appoint an auditor; to approve annual financial statements; to fill a vacancy on the board of directors, or to issue debt obligations (unless in the latter case, doing so has been specifically authorized by the board).<sup>63</sup> The directors, however, remain liable for the acts and omissions of those committees to which they have delegated power, except in the case of a unanimous member agreement that delegates power.<sup>64</sup>

An audit committee is not mandated by the CNCA, but if one is formed, it is required to be comprised of not less than three directors, a majority of whom are not officers or employees of the corporation or any of its affiliates. The corporation's public accountant is entitled to attend every meeting of the audit committee and is entitled to call a meeting of that committee.<sup>65</sup>

## 13. BY-LAWS

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Directors may, unless the articles, by-laws or unanimous member agreement otherwise provide, unilaterally make, amend, and repeal corporate by-laws, except those concerning fundamental changes (see the last section of this summary) for which a special resolution of members will be required before they can become effective. By-laws created or amended unilaterally by the directors will require confirmation, rejection or amendment by the members at the next meeting of members. Provided that the amendments are approved, they will continue to have effect from the date they were first approved by the directors.<sup>66</sup> In addition, a member entitled to vote at an annual meeting of members may make a proposal to amend the by-laws.<sup>67</sup> The corporation must send a copy of its by-laws and any amendments to Corporations Canada within 12 months.

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<sup>62</sup> Section 147

<sup>63</sup> Section 138

<sup>64</sup> Section 170(5)

<sup>65</sup> Section 194

<sup>66</sup> Section 152(3)

<sup>67</sup> Section 152(6)



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The only matters required to be dealt with in the by-laws are those pertaining to membership issues, including membership conditions, withdrawal rights and voting rights.<sup>68</sup> It will then be the decision of the members as to what other governance matters are to be addressed in the corporation's by-laws and in what manner.

## 14. MEMBERS' RIGHTS AND INPUT

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The CNCA expands the rights of members, as well as the corresponding duties that a corporation owes to its members. The CNCA also includes matters previously dealt with only by policy guidelines or by by-law.

### (c) Voting Rights

While the classes of members will be provided for in the articles, the rights, privileges, restrictions and conditions of each class will generally be set out in the corporation's by-laws. At least one class of members must have full voting rights. Unless the articles or by-laws provide otherwise, a membership is transferable only to the corporation.<sup>69</sup> The articles or by-laws of the corporation may provide that directors or members have the power to discipline a member or to terminate the membership interest of a member.<sup>70</sup> If the by-laws or articles provide for such a right, they must set out the circumstances and manner in which it may be exercised.

### (d) Meetings of Members

The CNCA stipulates that the corporation must designate a place in Canada where the meetings of members are to be held, although a meeting of members may be held outside Canada if the place is specified in the articles or is agreed to by all members entitled to vote at the meeting.<sup>71</sup> Other frequently asked questions regarding members' meetings and their answers are set out in Schedule A.

Annual meetings are required to be held not later than 18 months after the corporation comes into existence and, thereafter, within 15 months of the prior annual meeting, but not later than 6 months after the end of the corporation's fiscal year.

Members entitled to vote at an annual meeting of the corporation are accorded the following rights regarding meetings:

- the right to requisition the directors to call a meeting for the purposes stated in the requisition<sup>72</sup> (subject to being supported by 5% of members entitled to vote at such meeting); and

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<sup>68</sup> Section 154(1)

<sup>69</sup> Section 154(8)

<sup>70</sup> Section 158

<sup>71</sup> Section 159

<sup>72</sup> Section 167



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- the right to submit to the corporation notice of a proposal that they wish to raise at a members' meeting and to discuss such matter at the meeting,<sup>73</sup> and subject to some exceptions, the corporation will be required to include the proposal in its notice of meeting.<sup>74</sup> Such proposals can include nominations for election of directors (subject to being supported by 5% of members)<sup>75</sup> and by-law amendments.

Under the CNCA, unless the articles otherwise provide, non-voting members have a right to vote separately from the voting members on special resolutions that have the effect of adversely affecting their membership rights. Regardless of the terms of the articles, non-voting members will also have a right to vote as a separate class on a proposal that would have the effect of permitting memberships of another class being exchanged into memberships of their class.<sup>76</sup> In addition, non-voting members have the right to vote on a resolution authorizing the sale, lease or other disposition of all or substantially all of the corporation's property<sup>77</sup> and on a resolution authorizing the dissolution of the corporation.<sup>78</sup>

## **(e) Disputes and Remedies**

Where members believe the actions of the board are oppressive or are prejudicial to the best interests of the corporation, the CNCA grants members a number of rights that may be exercised. These provisions, which mirror those contained in the CBCA, allow members to apply to the court for an oppression remedy where they believe their rights have been oppressed;<sup>79</sup> for a derivative action remedy to enforce the rights of the corporation;<sup>80</sup> or to consider any controversy respecting the election or appointment of a director or auditor.<sup>81</sup> On the application of a director, a member entitled to vote, or the Director, a court can order that a meeting be called, held and conducted in a manner that the court directs.<sup>82</sup>

The CNCA also introduced a new provision – the faith-based defence – that placed restrictions on the extent to which derivative actions and oppression remedies might be applied to religious corporations where the matter at issue is based on a “reasonable exercise” of a “tenet of faith”.<sup>83</sup> Neither the term “religious corporations” nor “tenet of faith” is defined in the CNCA. In addition, the scope of this protection will depend on what conduct will be considered to be a “reasonable” exercise of the religious corporation's “tenets of faith”.

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<sup>73</sup> Section 163

<sup>74</sup> Section 163(6)

<sup>75</sup> Section 163(5)

<sup>76</sup> Section 199

<sup>77</sup> Section 214

<sup>78</sup> Section 220

<sup>79</sup> Section 253

<sup>80</sup> For both the derivative action and the oppression action, a complaint may be brought to the court by not only a member but also by a creditor, director, officer of an affiliate including in the case of an affiliate, its shareholders, in each case whether current or former, the Director and anyone else the court determines to be appropriate. Section 251.

<sup>81</sup> Section 169

<sup>82</sup> Section 168

<sup>83</sup> Section 251(3)(c)

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## 15. FINANCIAL DISCLOSURE AND PUBLIC ACCOUNTANT

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The form of the financial statements required to be delivered or made available to members depends on whether the corporation is a soliciting corporation or a non-soliciting corporation and the level of its annual revenues.

Category	Reporting Obligations
<b>Non-soliciting with gross annual revenues less than \$1 million<sup>84</sup></b>	Members can choose to appoint a public accountant or not, and can provide its financial statements to be merely reviewed or audited <sup>85</sup>
<b>Soliciting corporation with gross annual revenues less than \$50,000<sup>86</sup></b>	
<b>Soliciting corporations with gross annual revenues between \$50,000 and \$250,000</b>	Members must appoint a public accountant and can provide its financial statements to be merely reviewed or audited <sup>87</sup>
<b>Non-soliciting corporation with gross annual revenue of \$1 million or more</b> <b>Soliciting corporations with gross annual revenues of more than \$250,000</b>	Members must appoint a public accountant <sup>88</sup> who must conduct an audit of the corporation's financial statements <sup>89</sup>

A corporation can avoid the usual obligation to deliver annual financial statements or a summary thereof to its members,<sup>90</sup> in respect of each member who has stated in writing that he or she does not wish to receive them or, subject to the by-laws of the corporation, by notifying its members that the documents are available at the head office of the corporation and can be requested to be sent by mail or by obtaining an exemption to the requirement from the Director. Soliciting corporations are also required to submit their financial statements to the Director.

The graduated approach introduced by the CNCA allows the non-soliciting corporations to focus their limited resources on fulfilling their mandate instead of spending their funds on having their financial books audited.

Pursuant to the CNCA, to be eligible to be appointed, the public accountant must be a member in good standing of a specified provincially regulated professional body, be duly qualified and, unless a court otherwise provides, be independent of the corporation, its affiliates and directors and officers of the corporation and its affiliates.<sup>91</sup> Public accountants who are not independent must resign, or they may be disqualified by a court.

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<sup>84</sup> Section 179(b)  
<sup>85</sup> Sections 182(1) and 188  
<sup>86</sup> Section 179(a)  
<sup>87</sup> Section 189(2)  
<sup>88</sup> Section 181(1)  
<sup>89</sup> Section 189(1)  
<sup>90</sup> Section 175(1)  
<sup>91</sup> Section 180



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The public accountant of the corporation is entitled to receive notice of and to attend meetings of members at the expense of the corporation.<sup>92</sup> The public accountant must attend if asked by a director or member, and must answer questions.<sup>93</sup> The public accountant may also demand that any of the present or former directors, officers, employees or agents furnish information, records, documents, books and accounts of the corporation that, in its opinion, are necessary to examine and report on the financial affairs of the corporation.<sup>94</sup>

## 16. FUNDAMENTAL CHANGES

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The CNCA sets out certain fundamental changes that corporations will be authorized to make and how those changes are to be authorized by the directors and members. Fundamental changes include:<sup>95</sup>

- any change to its articles;
- changing or removing any rights and conditions of any class or group of members; or
- changing the manner of giving notice to members or voting by members not in attendance at a meeting of members.

Any member who is entitled to vote at an annual meeting of members or a director can make a proposal for a fundamental change to the corporation.<sup>96</sup> If a corporation has more than one class of members, then subject to the articles of the corporation, members of each class affected by the change are entitled to vote on a separate special resolution on the matter.

The CNCA expressly permits corporations to amalgamate with one or more other not-for-profit corporations either pursuant to a long-form or short-form amalgamation and either vertically or horizontally<sup>97</sup> and to “continue” under the laws of another jurisdiction,<sup>98</sup> subject in each case to appropriate member consents and satisfying the Director that the corporation’s members and creditors will not be adversely affected.

When it is not practical for a corporation to effect a fundamental change under any other provision of the CNCA, the corporation may apply to a court for an order approving an arrangement proposed by the corporation.<sup>99</sup>

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<sup>92</sup> Section 187(1)

<sup>93</sup> Section 187(2)

<sup>94</sup> Section 193

<sup>95</sup> Section 197

<sup>96</sup> Section 198(1)

<sup>97</sup> Sections 204 -207

<sup>98</sup> Section 213

<sup>99</sup> Section 216





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## 17. LIQUIDATION AND DISSOLUTION

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The dissolution of a corporation may be commenced and approved in a number of ways, depending on whether the corporation has issued memberships or has property or liabilities. In addition, the Director alone may dissolve a corporation where it has not commenced its activities within the three years of its incorporation, has not carried on its activities for three consecutive years, has defaulted for one year in sending to the Director any fee, notice or other document required by the new act or does not have any directors due to the fact that they have resigned or have been removed.<sup>100</sup>

Any interested person, as defined under the CNCA, may apply to the Director for the revival of any corporation dissolved under the CNCA.<sup>101</sup>

The court may also order, on the application of a member, the liquidation and dissolution of a corporation if it is satisfied, among other things, that the actions of the corporation or any of its affiliates are oppressive or unfairly prejudicial to, or unfairly disregard the interests of, any shareholder, creditor, director, officer or member.<sup>102</sup>

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<sup>100</sup> Section 222

<sup>101</sup> Section 219

<sup>102</sup> Section 224



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## SCHEDULE A MEETING PROVISIONS

Query	Directors	Members
<b>Can they act by written resolution signed by all entitled to vote?</b>	Yes. <sup>103</sup>	Yes, except with respect to the resignation or removal of a director or a public accountant, where the director or public accountant has submitted a statement giving reasons for resigning or opposing its removal. <sup>104</sup>
<b>Can they vote by proxy?</b>	No.	Yes, if the by-laws so provide. <sup>105</sup>
<b>What is the required quorum?</b>	Unless the articles or by-laws provide otherwise, a majority of the number or the minimum number of directors. <sup>106</sup>	Unless the by-laws provide otherwise, a majority of the members entitled to vote at the meeting constitutes quorum; <sup>107</sup> and so long as quorum is present at the opening of a meeting, the meeting continues to be valid even if quorum is lost part way through the meeting. <sup>108</sup>
<b>What is the required notice for meetings?</b>	As specified in the by-laws. <sup>109</sup>	21 to 60 days before the date on which the meeting is to be held. <sup>110</sup>
<b>Are teleconference meetings permitted?</b>	Yes, subject to the by-laws, if all of the directors consent, meetings can take place by telephonic, electronic or other communication facility that permits all participants to communicate adequately during the meeting. <sup>111</sup>	Same as for meetings of directors, except that no unanimous approval of the members is required and the corporation is required to make the communication facility available. <sup>112</sup>
<b>Must notice of the meeting specify the matters to be discussed?</b>	Unless the by-laws provide otherwise, notice need not specify the business to be	Notice of a meeting must state the nature of all special business to be transacted in sufficient detail to permit a member to form a

<sup>103</sup> Section 140  
<sup>104</sup> Section 166  
<sup>105</sup> Section 171  
<sup>106</sup> Section 136(2)  
<sup>107</sup> Section 164  
<sup>108</sup> Section 164(3)  
<sup>109</sup> Section 136  
<sup>110</sup> Section 162  
<sup>111</sup> Section 136(7)  
<sup>112</sup> Section 159(4)

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	<p>attended to, except with respect to the following matters:<sup>113</sup></p> <ul style="list-style-type: none"><li>• those to be submitted to the members for approval</li><li>• to fill a vacancy on the board or appoint additional directors or the auditor</li><li>• to issue debt</li><li>• to approve financial statements</li><li>• to adopt, amend or repeal by-laws</li><li>• to set membership fees or contributions</li></ul>	<p>reasoned judgement on it and must state the text of any special resolution to be submitted to the meeting.<sup>114</sup> All business other than the election of directors, appointment of the incumbent public accountant and consideration of the financial statements, is special business.<sup>115</sup></p>
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The CNCA permits by-laws to provide that the directors or members may make a decision by consensus, except a decision taken (a) to dispense with the appointment of a public accountant; (b) to address a matter which requires a special resolution; or (c) by a vote if consensus cannot be reached. The by-laws that provide for consensus decision-making must define the meaning of consensus.<sup>116</sup>

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<sup>113</sup> Section 136(3)  
<sup>114</sup> Section 162(10)  
<sup>115</sup> Section 162(9)  
<sup>116</sup> Section 137





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