

Walking Through the Transition to the Canadian Not-for-profit Corporation Act

A COCo INFO-SHEET on federally registered nonprofits and the CNCA.



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Walking Through the Transition to the Canadian Not-for-profit Corporation Act

This document covers some of the changes in the Canadian Not-for-profit Corporation Act, as well as a transition process largely informed by Industry Canada's transition guide with added details, concerns, context and references, and finally, a complete list of additional references and resources on the topic.

Context

On October 17 2011, a new Canadian legislation came into force to update the laws concerning the federal incorporation of nonprofits, therefore replacing Part II of the Canada Corporations Act (CCA Part 2). The new legislation is the Canadian Not-for-profit Corporation Act (shortened as CNCA or NFP Act). (1)

The CNCA came into force with a three-year transition period for federally registered nonprofits to comply with the new standards. This period is coming to a close with a hard deadline on October 17 2014. Federally registered organizations that have not obtained a Compliance Certificate from Industry Canada (IC) by that date will be dissolved, and their assets seized as tax revenue by the Federal government. The CSAE states that most "federally incorporated NFP's have not yet filed for continuance under the new Act."(2)

Who does this apply to?

The CNCA applies to Federally registered nonprofits only. Nonprofits in Canada can be registered at the provincial or federal levels. If you are registered with the R.E.Q. (Régistre des Entreprises du Québec), you are a provincially registered nonprofit. If you are registered with Industry Canada, you are a federally registered nonprofit. Double-checking this might include looking at your foundational documents, talking to a founder, and searching for your organization in the R.E.Q. online database: <http://www.registreentreprises.gouv.qc.ca/en/> If you are a federally registered nonprofit, you also most likely obtained a communication on this topic from Industry Canada.

If you are registered as a Charity with the CRA, that does not necessarily mean you were registered as a nonprofit with Industry Canada. You may be a provincially registered nonprofit and still have a charitable status with the CRA. However, if your organization is both a federally

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registered nonprofit and a registered charity, special provision will apply to your transition process.

Changes to expect

You should be prepared to effect changes to your bylaws, the makeup of your board, and the manner in which you do your yearly financial exercises and accounting. For a detailed list of your new reporting obligations under the CNCA, follow this link:

<http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs04956.html> Further, you will have to submit several forms and documents in order to obtain your Compliance Certificates.

Most organizations concerned will have to change their bylaws, since many provisions that are currently in your bylaws are covered by the new CNCA legislation. Your bylaws will most likely be simplified, but drafting them in a way to ensure maximal continuity with your current bylaws may require a lot of work.

Further, depending on the composition of your board, you may have to change board members, or the amount of board members.

Finally, there is a new distinction between “Soliciting” and “Non-Soliciting” organizations. Soliciting corporations are those that receive 10 000\$ or more in the past 3 financial years in gross revenue from public sources (grants, donations, gifts). As many nonprofits will either already be in this category, or wish to be so in the future, it is recommended that you plan changes in your bylaws and your practices to comply with the requirements for Soliciting organizations, including: a minimum of 3 directors on the board, at least two of whom cannot be officers or employees of the nonprofit or its affiliates. It will also be expected that your default financial review be a yearly audit if your organization has gross annual revenues of 50 000\$ or more. This can be a good thing for transparency, and is sometimes required by funders, but it can be demanding on smaller organizations, so there are ways for you to opt out of the default financial review in certain cases. You can read the requirements of Soliciting corporations online here : <http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs05011.html>

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FINANCIAL REVIEW REQUIREMENTS

Type of Corporation	Gross Annual Revenues	Default Financial Review	Options Members Can Choose
Soliciting	Less than \$50,000	Review engagement	Audit or no review
	Between \$50,000 and \$250,000	Audit	Review engagement
	More than \$250,000	Audit	N/A
Non-soliciting	Less than \$1 million	Review engagement	Audit or no review
	More than \$1 million	Audit	N/A

Table from the IC Transition guide, p.10.

Governance, transparency and membership changes to keep in mind

First, concerning the make-up of the board, the CNCA is putting into law several elements that were previously held mostly as a best practice, such as having a minimum of 3 directors on the board of directors, at least two of which cannot be employees or officers, and though this applies for Soliciting organizations only, we hope to see most organizations complying. You may wish to avoid appointing employees or officers on the Board as a best practice to diminish risks of conflict of interest, and could do so by specifying this restriction in your bylaws.

The Board no longer has the power to remove a Director, only the members of the organization have that power. This means that if a Director must be replaced because of severe reasons such as incompetency or no longer having the best interest of the organization at heart, then that situation must be made transparent to the membership. It does diminish the capacity of the board, and increases the rights of members, but it also guarantees a greater degree of transparency. Of course, said Director could resign, and the Board could elect a new Director without holding a general meeting, though no more than one third of Directors can have been elected by the Board in this way rather than by the members.

Under the CNCA, it is allowed for the nonprofit to compensate Directors with a salary for their role, but the possibility of conflict of interest always looms in such cases. Further, charities may be prohibited from this practice in certain provinces. Therefore, you may wish to specify in your bylaws some guidelines, perhaps that directors can be compensated for tasks they do for the organization, such as being contracted or employed by the organization, but not for being on the Board.

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Voting members also now have the possibility of submitting agenda items and proposals to the AGM (at least 90 days prior to the anniversary of the latest AGM). These proposals can include removing Board Members, changing bylaws, etc. Members can also collect a petition of 5% of voting members to requisition an SGM (Special General Meeting). Once all Board Directors and officers are made aware of this requisition, they have 21 days to call a meeting, otherwise, a member can call the meeting, and the organization has the obligation to reimburse expenses incurred in doing so.

These are several important rights that members now have. This obviously increases transparency and accountability, but should make you think carefully about how you define membership in your organization.

Finally, certain provisions can be vague in your articles, and detailed in your bylaws, such as the number of directors on the board, or who can qualify to become a member. This has a certain advantage, as the fee for filing new article amendments is 200\$, whereas there is no fee for filing updated bylaws. However, this advantage is also a risk: bylaws being easier to change, provisions included in your articles of corporation (or of continuation) will be better grounded to guide your organizational structure on the long term.

Steps to go through

The goal of this whole process is for your organization to obtain a Certificate of Continuance issued by Corporations Canada (Industry Canada) before October 17 2014. One of the bottlenecks for this process will be obtaining membership approval for your new Articles of Incorporation and your bylaw changes (step 7 below). If you're not ready to obtain this approval at your AGM (Annual General Meeting), keep in mind that you could always convene an SGM (Special General Meeting) to obtain this approval.

The following information is based in large part on IC's Transition guide. For further resources, go to the bottom of this document to find recommended readings and videos.

1- Initial contact with relevant authorities.

Contact Corporations Canada (Industry Canada). They will be able to help you understand some of the implications for your organization, and answer some of your initial orientation questions. Call Toll-free: 1-866-333-5556

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If you're a charitable organization, you should also contact the CRA (Canada Revenue Agency) here: www.cra-arc.gc.ca/charities or call 613-954-0410 or toll free at 1-800-267-2384. Make sure you get a clear understanding from them of what you need to comply both to the new CNCA and to maintain your charity status. Specifically, talk about the statement of purpose, requirements for the number of directors, nonprofit clauses and clauses related to the remuneration of directors, and the requirement to file documents with CRA after the transition process is complete.

The same reasoning applies to any nonprofit that plans on applying to obtain a charitable status from the CRA in the near future.

2- Review your patent letters

Make sure you have handy a copy of your Letters Patent, as this will be required for you to prepare the articles of your corporation, which will then be submitted to obtain the Certificate of Continuance. *The Certificate of Continuance and the articles together will become your corporation's constitution and replace the letters patent in that role.*

If you don't have your letters patent handy, ask for a copy from Corporations Canada.

3- Review your bylaws

Reviewing your bylaws will most likely be the most detail-demanding step of this process.

Your previous bylaws most likely had procedures for member meetings, the manner of electing or appointing directors, procedures for directors' meetings, and the procedures for making, amending or repealing bylaws. Most of these are now covered in the CNCA, and are no longer required in your bylaws, unless you wish to override default but optional CNCA regulations. In this case, be wary of which new rules are mandatory, and which ones can be changed by the organization's bylaws.

Example of a mandatory regulation: Directors can be removed by members (not by the board) through a majority vote, and the organization cannot make this process harder (asking for a qualified majority vote for example).

For further examples, consult Annex A. (p.11 and onwards) of the Transition Guide issued by IC. <http://www.ic.gc.ca/eic/site/cd->

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[dgc.nsf/vwapj/Transition_Guide_2ndeditionI_EN.pdf/\\$file/Transition_Guide_2ndeditionI_EN.pdf](#) (3)

The Transition Guide (pp.32-43 of the pdf document) also has some model bylaws that mainly stick to the default regulations under the CNCA. If you're fine with these model bylaws, then that's a good place to start working from for your new bylaws. It could be a good idea to compare these to your current bylaws, and to take note of some important differences, particularly elements important to your organization that you may wish to keep.

4- Think carefully about your membership structure

One area of particular interest for most organizations should be the question of membership. All nonprofits are member-based corporations under the CNCA. Further, you must have at least one class of voting members. If you have only one class of members, they must be voting members; if you have more than one class of members, one of them must be a voting class; if your articles are silent on voting rights, all members have the right to vote.

Though you may not need to change your membership structure, if you have a lot of classes of membership (honorary member, donor member, organizational member, non-voting members, etc.) with different rights and privileges, you may want to review this structure. Notably, even non-voting members have certain voting rights under the CNCA, notably to veto changes made to the rights and privileges of their membership class. This means that if you

Member rights also now include the ability to force motions for a vote. To avoid the possibility of people antagonistic to the organization's purpose filling the membership pool, organizations should think about membership conditions. This risk has always existed, and it was already a good practice to have a good membership structure.

You can find detailed information about Member rights and responsibilities under the CNCA on the IC website: <http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs05006.html>

Thinking about these new realities, make sure your revised membership structure is clearly laid out with any bylaw changes in mind, and corresponds to your organization's mission, vision and governance model.

5- Prepare your articles of corporation

The articles of corporation are to be set out in a form that is provided by Corporations Canada.

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The form is called Form 4031 - Articles of Continuance (transition). It is available as an editable PDF on the Corporations Canada website: www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs05260.html

This step should be mainly straightforward. Their website has instructions for filling out the form (<http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs04966.html>) , a checklist for documentation required to fill out the form (<http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs05494.html>) as well as a checklist of common mistakes to look for in filling out the form (<http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs05430.html>)

6- Draft your new bylaws

Depending on the review of your bylaws made in step 3, you may have minor or major customization of your bylaws to carry out.

To start the first draft for your new bylaws, you can go online and use IC's Bylaw Builder : http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/h_cs04734.html . The tool is fairly complete, goes through 17 steps with several sections each, and for each section, several by-law options, including writing your custom bylaw article for the section. Anytime you choose one of the options proposed by the Bylaw Builder, your bylaws should be in compliance with the CNCA. However, should you write some custom options, you should take note of which ones they were, and verify that they are in compliance with the CNCA using the Transition Guide, or by calling IC.

Some options in the Bylaw Builder will have the following notice : **“This is the default rule in the NFP Act. This is the rule that will apply to the corporation unless you override it by selecting one of the other options.”** Though technically, you could have no provisions in your Bylaws to indicate the default rules in the NFP Act, you should reproduce them within your bylaws for the document to hold a complete set of information, and for transparency to your membership, who may not want to have to read the CNCA to know the default regulations (4).

Once you've gone through all the steps, the Bylaw Builder will put together all the bylaw decisions you made and display your bylaws on a webpage. Copy and paste into a word processing document in order to make any final amendments and edits to your first draft.

Go through your organization's internal process for reviewing these new bylaws, probably consulting with staff and board, to make sure they allow your organization to maintain the governance structure, transparency and accountability it wants for itself.

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7- Get Membership approval

To be able to submit your Articles of continuance and your bylaws to Corporations Canada, your Articles of Continuance must be approved by your membership at a special vote requiring two thirds majority. You are not required to have two thirds majority to adopt your new bylaws, but your current bylaws may have provisions to that effect.

The most convenient occasion to obtain this approval is at your AGM (Annual General Meeting). However, you may have to call an SGM (Special General Meeting) to be able to have one item or the other approved if it is not ready for the AGM.

Significant changes to your organization at this stage, such as the composition of the board or number of board members, change in the name of the organization or its purpose, or major bylaw changes may require a detailed explanation to your membership. You may want to share some of the information with them in advance, and/or plan a popular education segment at your General Meeting to explain these points to those present, in order to give them a chance to make an informed decision when voting on these changes.

8- Submit the required documents.

Before you submit the documents and make the transition, you should make sure your organization is up to date in its corporate filings.

The only documents you must submit before October 17 2014 are your Articles of Continuance (Form 4031) and the Initial Registered Office Address and First Board of Directors form (Form 4002), as well as a NUANS Name Search Report if your organization is also changing its name. You do not have to submit your new bylaws at this stage, but since they must be approved by your membership, it can be a good idea to submit them at the same time. Otherwise, you have 12 months to file them, starting from the moment the bylaws were approved by your membership.

You can find Form 4002 here: [http://www.ic.gc.ca/eic/site/cd-dgc.nsf/vwapj/FRM-4002-e.pdf/\\$file/FRM-4002-e.pdf](http://www.ic.gc.ca/eic/site/cd-dgc.nsf/vwapj/FRM-4002-e.pdf/$file/FRM-4002-e.pdf)

Instructions on how to fill Form 4002 are here: <http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs04978.html>

and a NUANS Name Search Report here: <http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs04210.html>

You have 3 options to file your documents: Email, Fax, or Mail. There is no fee.

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- By email at corporationscanada@ic.gc.ca
- By fax at 613-941-4803
- By mail at the following address:

Corporations Canada
Jean Edmonds Building
South Tower, 9th floor
365 Laurier Avenue West
Ottawa, Ontario K1A 0C8

9- (Charities only) : Inform the Charities Directorate

If your organization has a charitable status registered with the CRA, you will need to inform the Charities Directorate and furnish the following documents:

- a copy of the [Continuance \(transition\) checklist](#)
- a copy of the Certificate of Continuance
- a copy of [Form 4031, Articles of Continuance \(transition\)](#)
- a list of current directors (if amended)
- a copy of the current bylaws (if amended)
- a statement of current activities **(if the purposes have changed and have not been previously reviewed by the Charities Directorate)**

<http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtnng/nfpc/flng-dcs-eng.html>

Need help or alternatives?

If your transition process is ahead of you, you'll have reading to do, forms to fill, and approvals to obtain from your organization. You should identify the steps and schedule to make best use of your limited time until October 17 2014, being mindful of bottlenecks that may slow down your process.

If at any stage through this process you feel you're not sufficiently equipped or supported to continue working on this, don't hesitate to reach out to COCo for information, or you could seek to obtain legal counsel from a lawyer specializing in nonprofits (we could provide some suggestions). If you don't think you can go through with the transition, or choose not to, be aware of the option of actively dissolving your organization before Industry Canada does it for

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you. That way, you'll be sure to have control in deciding who your assets are donated to, rather than having them seized. This decision is an extreme measure however, and should not be taken lightly.

Endnotes:

(1) If you so desire, you may read the new legislation (CNCA) online:

http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/h_cs04953.html

As a reference, here is the old legislation (CCA Part 2): http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/h_cs04952.html

(2) CSAE's (Canadian Society of Association Executives) Newsletter online:

<http://www.industrymailout.com/Industry/View.aspx?id=508138&q=657693324&qz=942e0d>

(3) Industry Canada's Transition Guide, online version: http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/h_cs04954.html and PDF version: [http://www.ic.gc.ca/eic/site/cd-dgc.nsf/vwapj/Transition_Guide_2ndeditionI_EN.pdf/\\$file/Transition_Guide_2ndeditionI_EN.pdf](http://www.ic.gc.ca/eic/site/cd-dgc.nsf/vwapj/Transition_Guide_2ndeditionI_EN.pdf/$file/Transition_Guide_2ndeditionI_EN.pdf)

(4) The CNCA has a lot of default regulations that apply to your organization unless your bylaws override them. However, there are exactly two elements that your bylaws must contain that are not covered in the CNCA default regulations (see below). It is however recommended that as a transparency practice, you make your bylaws as self-explanatory and self-sufficient as possible by repeating in them default provisions, rather than referring members to consult legislation to know how your organization operates.

“ At minimum, a corporation's by-laws need to address the following:

- Conditions required for membership
- Notice of meetings to members who are entitled to vote at the meeting

If there are no other provisions in the by-laws, the default rules will apply. If these default rules do not meet the needs of your corporation, you may want to create by-laws to override them.”

Government resources:

Industry Canada Website

<http://www.ic.gc.ca/Intro.html>

Not for Profits Corporation Act (The new legislation)

http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/h_cs04953.html

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Step by Step Self-check to fill form 4031

<http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs05430.html>

Checklist for documents to provide:

<http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs05494.html>

CRA Menu of resources for transition

<http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/nfpc/menu-eng.html>

Industry Canada Transition Guide

http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/h_cs04954.html

PDF version:

[http://www.ic.gc.ca/eic/site/cd-dgc.nsf/vwapj/Transition_Guide_2ndeditionl_EN.pdf/\\$file/Transition_Guide_2ndeditionl_EN.pdf](http://www.ic.gc.ca/eic/site/cd-dgc.nsf/vwapj/Transition_Guide_2ndeditionl_EN.pdf/$file/Transition_Guide_2ndeditionl_EN.pdf)

CRA documentation for registered charities <http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/nfpc/menu-eng.html>

The Old ACC legislation (reference only) http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/h_cs04952.html

Additional resources:

Imagine Canada detailed video (webinar) on the CNCA transition:

https://docs.google.com/file/d/0B_Y0ygc_-l1RXBsdWU4NWJMUGM/edit

Charity Village article:

<https://charityvillage.com/Content.aspx?topic=Re Act How Will the CNCA Affect You &last=546>

Mark Blumberg's CNCA Suitcase, gathering 70 documents and over 200 pages of information from Industry Canada in a single PDF Document:

[http://www.globalphilanthropy.ca/images/uploads/Canada_Not-for-profit_Corporations_Act_\(CNCA\)_Suitcase.pdf](http://www.globalphilanthropy.ca/images/uploads/Canada_Not-for-profit_Corporations_Act_(CNCA)_Suitcase.pdf)

Very complete list of resources on Carters website:

<http://www.carters.ca/nfp/index.htm>