

CONTINUING UNDER THE CANADA NOT-FOR-PROFIT CORPORATIONS ACT AND HOW WE CAN HELP



PERLEY-ROBERTSON,
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Perley-Robertson, Hill & McDougall LLP/s.r.l. has a long history of supporting institutions and charities. With our deep roots in the National Capital Region, we have provided our expertise to a broad range of not-for-profit groups, including charitable organizations, governmental and non-governmental agencies, community associations, trade organizations, recreational groups, and other special interest groups involved in ventures between businesses and other not-for-profit entities. Not-for-profit groups face unique issues, often with limited resources; we understand the importance of managing our clients' affairs efficiently, and providing the direction they need.

With the Canada Not-for-Profit Corporations Act coming into effect, our team of legal experts are on-hand to assist you each step of the way. We encourage you to review the information in this package and contact us for further assistance.

P The Canada Not-for-Profit Corporations Act has come into force, now what do we have to do?

All not-for-profit corporations that were incorporated under the Canada Corporations Act are required to apply for a certificate of continuance to transition to the Canada Not-for-Profit Corporations Act before October 17th, 2014. This means that before October 17th, 2014 corporations must: create, approve and file Articles of Continuance and create, approve and file by-laws that are compliant with the provisions of the new Act.

P What happens if we don't continue under the Canada Not-For-Profit Corporations Act?

If a corporation does not continue by October 17th, 2014, Corporations Canada will presume that it is inactive and the corporation will be dissolved.

P What are Articles of Continuance?

Articles of Continuance are the document that transitions or continues the corporation to the new Act. They will replace the existing Letters Patent and Amended Letters Patent of the Corporation. In drafting Articles of Continuance corporations need to review their existing Letters Patent to decide whether the provisions still reflect the corporation and whether they are compliant with the Canada Not-for-Profit Corporations Act.

For example, do the objects and purposes of the corporation identified in that document reflect the corporation's current goals and range of activities? Once the Articles of Continuance have been drafted, they must be approved by the membership of the corporation before they can be filed with Corporations Canada.

P Why do we have to change our by-laws?

There are a number of reasons why your by-laws should be reviewed at this time. Firstly, the Canada Not-for-Profit Corporations Act provides for certain default rules for the governance of not-for-profit corporations that will apply to a corporation unless the by-laws specify otherwise.

Further, there may be certain structural or governance considerations in your current by-laws that are not compliant with the Canada Not-for-Profit Corporations Act.

Once the by-laws have been revised, they must be approved by the membership of your organization before they are filed with Corporations Canada.

P What about our members?

Many not-for-profit corporations incorporated under predecessor legislation have numerous classes of members with many different rights and responsibilities attached to each class.

Some of these classes of members: honorary or retired members, for example, were never intended to have an active role in the corporation or to vote at meetings. When continuing to the Canada Not-for-Profit Corporations Act corporations need to carefully review their membership structure.

The reason for this is that the Canada Not-for-Profit Corporations Act expands the role and rights of the members of a corporation. Following continuance each class of members of a corporation will have the right to vote as a class on certain fundamental changes, which means if any of the classes of members do not approve a change the corporation will not be able to proceed.

P Is this as complicated as it sounds?

Although continuing under the Canada Not-for-Profit Corporations Act will require your organization to roll up their sleeves and have a real conversation on how best to proceed, it can be a relatively simple and painless process. We recommend that you start sooner rather than later so that you can take the opportunity to carefully review your current processes, structure and governance. You should aim to submit the Articles of Continuance and new by-laws to your members at your next Annual General Meeting or the Annual General Meeting thereafter so as to have completed the process before October 17th, 2014.

Our Not-for-Profit Team is committed to making this process as seamless as possible for you and your organization. Please contact one of our dedicated team members to start the process.



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