

The New Canada Not-for-profit Corporations Act

**Recent Corporate and Tax Changes Affecting Charities
and Non-Profits**

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I. Non-Profit Organizations (“NPOs”), and Profit

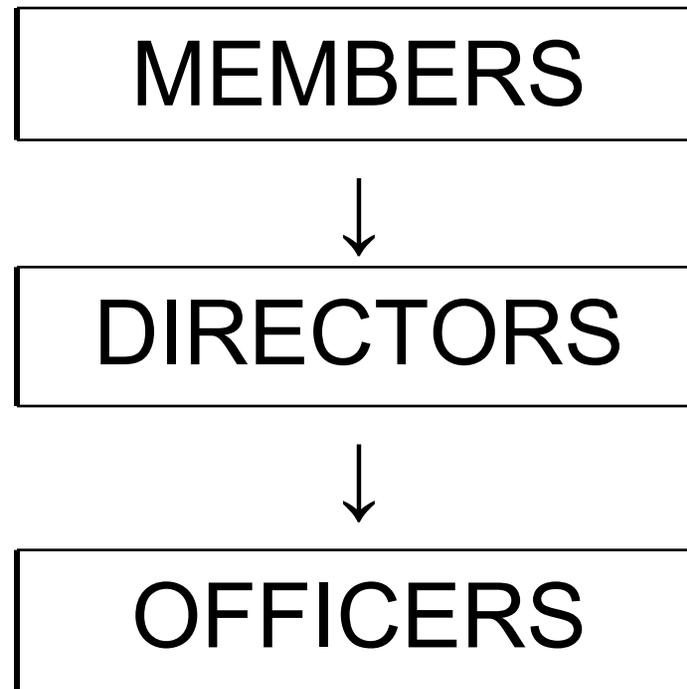
Non-Profit Organizations (“NPOs”), and Profit: Corporate Background

- NPOs: 149 (1)(l) entities;
- Often incorporated under a provincial statute (Part III of *Quebec Companies Act*) (“QCA”), or Federal law (formerly: Part II of the *Canada Corporations Act* (“CCA”), now *Canada Not-for-profit Corporations Act* (“NFP Act”));
- NFP Act in force on October 17, 2011; old CCA companies have until October 17, 2014 to continue under new law;
- Quebec’s QCA (Part III) has not been amended, despite 2008 Quebec Finance discussion paper;
- Ontario will have a new law for non-profits and charities on January 1, 2013



NPOs, and Profit: Corporate Background

Typical corporate organization:



NPOs, and Profit: Corporate Background

Consider “supporters” (“bienfaiteurs”) rather than members (i.e., avoiding “minority shareholders”)

See: Arthur Drache, in *Canadian Not-for-Profit News*, November 2009, p. 81

Daniel Frajman, in *The Canadian Taxpayer*, February/March 2012, p. 27

- NFP Act can have voting or class voting (for fundamental changes, or when affecting a class), and member rights and remedies (oppression remedy, etc), even for non-voting members
- Concerning “supporters”: consider amending CCA (federal) by-laws prior to continuing under NFP Act



NPOs, and Profit: CRA Treatment

The statute (for NPOs, rather than charities):

149 (1) (I) ITA:

- For organizations that are not charities; no donation credits or deductions;
- Organization is exempt from tax if:
 - “organized exclusively for any purpose except profit”;
 - and
 - “it does not distribute or otherwise make available for the personal benefit of a member any of its income.”



NPOs, and Profit: CRA Treatment

Traditional CRA interpretation:

CRA Interpretation Bulletin 496R (August 2, 2001)

- It is a question of fact as to whether the organization is operated exclusively for non-profit purposes
- Among relevant factors: operated on cost-recovery rather than profit basis



NPOs, and Profit: CRA Treatment

Recent events: shifting CRA interpretation

November 5, 2009 CRA Technical Interpretation (2009-0337311E5) seems to have the following result:

- CRA is auditing NPOs (desk audit; field audit) and sending education letters urging compliance;
- Budgeting for operational profits, even in a division/sector of the organization, is raising flags;
- NPO should be operated on a cost-recovery/break-even basis
- Asset accumulations/surpluses should be for reasonable needs;



NPOs, and Profit: CRA Treatment

- Therefore, NPOs may be under siege;
 - What does future hold?
 - Reassessments?
 - Court challenges, given that recent CRA views do not seem to be supported by cases;
 - New more detailed legislation?
- The alternative for NPOs: Charitable status? (more on this below)



NPOs, and Profit: CRA Treatment

Recent events: wind-up clauses

- Recall that income cannot be paid to members for their personal benefit (149 (1)(I));
- Is a future distribution not a present violation?
- Trend in the new corporate statutes: residual assets must stay in the non-profit system
 - ex: NFP Act: “Residual assets distributed to an organization in Canada carrying on similar activities, or to a qualified donee if required by the NFP Act.”



II. Business Activity and Charities

(a) Charity Background (s.149.1 ITA)

Tax status of charities:

- Income is not taxable: 149(1)(f) ITA
- Donors: individuals: Non-refundable tax credit: 118.1 ITA
corporations: tax deduction: 110.1 ITA

Types of charities

- Public charities: charitable organizations (possible examples – a hospital, a private school, a seniors centre, a community/recreational centre, etc.), and public foundations (Example –FGM, JCF)
- Private charities: private foundations



Business Activity and Charities

(b) Business Activity

(see CRA's Policy Statement -019, "What is a Related Business?")

– Public charities:

(i) may engage in a related business that accomplishes or promotes its charitable purposes

Ex: delivering charitable services per se

(Ex. "providing low-cost housing to the poor")

Ex: providing a service that is linked and subordinate to the charity's purpose

(ex: "a hospital parking lot")



Business Activity and Charities

- (ii) a business with any purpose (even if unrelated to the charity), so long as run substantially (90%) by volunteers

- (iii) Generally can own shares in private businesses
“social enterprise” opportunity

- Private foundation: may not engage in any business activity; ownership of shares is limited by “excess shareholding” rules

Business Activity and Charities

(c) Disbursement quota changes

- 2010 Federal budget removed the 80% disbursement quota (“DQ”) (more on this below)
 - Likely easier to carry on a business (a related business) and accumulate a reserve



III. Recent Tax Changes for Charities

- (a) 2009: CRA enforcement turns to fundraising
- CRA Policy Statement-028 of June 2009 (just updated on April 20, 2012 by CRA Charity Guidance-013):
 - ratio of fundraising costs to fundraising revenues over fiscal year:
 - if under 35%, “unlikely to generate questions or concerns by the CRA”;
 - allocating expenses among charitable programs, and fundraising;
 - best practices: ex: third party fundraisers should not be remunerated based on funds raised (seen as creating too much private benefit)



Recent Tax Changes for Charities

(b) 2010 budget: disbursement quota (“DQ”) changes

- 80% DQ abolished (therefore, reserves may be possible, but activities must be charitable);
 - “10-year gifts” therefore abolished;
- 3.5% DQ maintained;
- Therefore, red-tape cut, but CRA has general power to find undue “private benefit”, or that not all activities are charitable



Recent Tax Changes for Charities

(c) 2011 budget:

(i) changes for foreign universities (at Schedule VIII to Income Tax Regulations)

- Now, such universities:
 - are required to keep books and records supporting donation receipts they issue.
 - provide those records to CRA on request
 - must not be involved in the improper issuance of receipts
- “Canadian friends” should sensitize the foreign universities



Recent Tax Changes for Charities

(ii) Ineligible individuals

- Many now suggest that charities ask the following question of all existing and potential directors, officers and senior managers:

“Have you in the past been (a) found guilty of a criminal or regulatory offence involving financial dishonesty or that is otherwise relevant to the organization, or (b) been a director, officer or senior manager of a charity that had its charitable registration revoked, or (c) been a promoter of a tax shelter that was participated in by a charity that had its charitable registration revoked due to that participation?”

Recent Tax Changes for Charities

(d) 2012

- New CRA checklist: verifies whether “continuing” federal charities still have charitable activities (more on this below)
- [-Reporting continuance under annual Charity Information Return]



Recent Tax Changes for Charities

(e) A recent court case

A.Y.S.A (Amateur Youth Soccer Association) v. CRA (2007, SCC)

- Charity defined at common law, and not in any legislation (1891, House of Lords)
- Here, a local soccer association held as not charitable
 - Reason: sports not charitable at common law
- Common law heads of charity:
 - Relief of *Poverty*
 - Advancement of *Education*
 - Advancement of *Religion*
 - *Other purposes beneficial* to the community
- Sports can be charitable if ancillary to another charitable purpose



IV. Creative Opportunities For Charities

– Often educational, or generally beneficial;

Examples:

(a) Research

– Must be made publicly available (including, for example, on an internet posting)



Creative Opportunities For Charities

(b) Agents (or contractors) outside of Canada

- Per case law, charity must carry on its own activities, whether inside or outside of Canada
- One's own activities can be carried out through an intermediary (often an agent or contractor) BUT direction and control must rest with the Canadian charity.
(-See also CRA Charities Guidances -004 and -002)



Creative Opportunities For Charities

Examples:

- Research of a genetic disease
 - Some doctors are agents in Canada or elsewhere
 - Some doctors are at a Canadian university, or foreign Schedule VIII university, so agency agreement not needed (i.e., Donate to university, which funds the doctor)



Creative Opportunities For Charities

- “Canadian Friends” organizations
 - Raising funds in Canada and sending them to an institution abroad
 - Likely using an agency agreement unless foreign institution is on “CRA’s list” of foreign universities

Creative Opportunities For Charities

(c) Others

- “Leadership development programs”
 - Try to fit with expanded view of “education”
 - Watch out for “annual awards”; and for “networking opportunities”

- Operating a building
 - Community seniors’ residence
 - Open to all, or to a particular group?



Creative Opportunities For Charities

(d) Real estate tax exemptions (for some charities and NPOs)

- *Collège Notre-Dame* case (2009, Quebec Administrative Tribunal):
 - shows that real estate tax exemptions often liberally interpreted in Quebec



V. Recent Corporate Changes for NPOs and Charities

REGARDING THE NEW FEDERAL NFP ACT:

Nomenclature:

- Soliciting corporations (charities and non-profits soliciting greater than \$10,000 of donations per year from public) vs. non-soliciting
 - Most charities will be soliciting, unless they are private foundations
 - Most NPOs will be soliciting



Recent Corporate Changes for NPOs and Charities

“Rights of a physical person”:

- Articles of incorporation replacing old “letters patent”
- Like a physical person, assumed capacity to act (vs. the opposite under “ultra vires doctrine” under a letters patent, such as QCA)
- Quick process (incorporate in 24 hours vs. 4-6 weeks for letters patent)



Recent Corporate Changes for NPOs and Charities

Unanimous signed resolutions

(of members or directors) replacing actual meetings

- Federal will have this for the first time.
- QCA already has this, but only for directors' meetings.



Recent Corporate Changes for NPOs and Charities

Clear directors' duties

Directors and officers must:

- (a) “act honestly and in good faith with a view to the best interests of the corporation” [*fiduciary duty*]; and
- (b) “exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances ” [*duty of care*]

(section 148(1) NFP Act)

Recent Corporate Changes for NPOs and Charities

Number of directors

- Federal: minimum of 3 (as in past)
- Exception: federal non-soliciting corporations (ex., Most private foundations) can have a minimum of one (a “one-person” organization)
- For soliciting corporations (i.e., essentially all, other than private foundations): at least two (2) directors must not be officers or employees
- Current QCA corporations require 3 directors



Recent Corporate Changes for NPOs and Charities

Auditor requirements:

- Old Federal law required an audit
- New law: levels of required financial review differ, depending on annual revenue, and whether or not “soliciting”
 - For example, most private foundations will not require an audit
 - See following Federal chart regarding levels of financial review



Levels of Financial Review – Federal NFP Act

Level of Financial Review			
Type of Corporation	Gross Annual Revenues	Appointment of Public Accountant (PA)	Review Engagement or Audit
Soliciting	\$50,000 or less	Members must appoint a PA by ordinary resolution at each annual meeting. Exception – Members may waive appointment by annual unanimous resolution.	PA must conduct review engagement , but members may pass an ordinary resolution to require an audit instead. (If no PA is appointed, then compilation only.)
	More than \$50,000 and up to \$250,000	Members must appoint a PA by ordinary resolution at each annual meeting	PA must conduct an audit, but members can pass a special resolution to require a review engagement instead.
	More than \$250,000	Members must appoint a PA by ordinary resolution at each annual meeting	PA must conduct an audit.
Non-Soliciting	\$1 million or less	Members must appoint a PA by ordinary resolution at each annual meeting. Exception – Members may waive appointment by annual unanimous resolution.	PA must conduct review engagement , but members may pass an ordinary resolution to require an audit instead. (If no PA is appointed, then compilation only.)
	More than \$1 million	Members must appoint a PA by ordinary resolution at each annual meeting.	PA must conduct an audit.

-Industry Canada, 10/2011

Recent Corporate Changes for NPOs and Charities

Unanimous member agreements (“UMAs”)

- Not available in past
- New Federal law has UMAs (for non-soliciting corporations only); QCA does not have them
- Purpose of a UMA: to bind the directors in advance (ex. to set investment and disbursement policy in advance)



Recent Corporate Changes for NPOs and Charities

“Supporters” (“bienfaiteurs”) rather than members (see above)

- If relevant, federal companies should amend prior to continuing under the new law

Import/export

(i.e. continuing into another jurisdiction)

- Not available in the past; available under the new federal and Ontario laws
- Example: if an Ontario-incorporated private foundation wants one director, or a UMA, consider continuing as a Federal corporation
- Not available under the QCA



Recent Corporate Changes for NPOs and Charities

Articles of Continuance and the CRA checklist

- Relevant: Industry Canada's articles of continuance, and CRA's continuance checklist
- Statement of purpose (objects) of the organization: box 6 of the Industry Canada articles



Canada Not-for-profit Corporations Act (NFP Act)

Form 4031

Articles of Continuance (transition)

To be used only for a continuance from the Canada Corporations Act, Part II.

1 Current name of the corporation	
2 If a change of name is requested, indicate proposed corporate name	
3 Corporation number	4 The province or territory in Canada where the registered office is situated
<input type="text"/>	<input type="text"/>
5 Minimum and maximum number of directors (for a fixed number, indicate the same number in both boxes)	
Minimum number <input type="text"/>	Maximum number <input type="text"/>
6 Statement of the purpose of the corporation	
7 Restrictions on the activities that the corporation may carry on, if any	

Form 4031
Articles of Continuance (transition)

8	The classes, or regional or other groups, of members that the corporation is authorized to establish

9	Statement regarding the distribution of property remaining on liquidation

10	Additional provisions, if any

11	Declaration
I hereby certify that I am a director or an authorized officer of the corporation continuing into the NFP Act.	
<p style="text-align: center;"><i>Signature</i> _____</p> <p style="text-align: center;"><i>Print name</i> _____</p> <p style="text-align: center;"><i>Phone number</i> () - _____</p>	
<small>Note: A person who makes, or assists in making, a false or misleading statement is guilty of an offence and liable on summary conviction to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months or to both (subsection 262(2) of the NFP Act).</small>	

Continuance (transition) checklist

Registered charities that have completed the transition to the *Canada Not-for-profit Corporations Act* should use this form to submit documents to the Charities Directorate.

Charity name: _____

Charity registration number: _____

Checklist

Please find attached:

- 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 by-laws, certified by 2 directors with an effective date (if amended)
- A statement of current activities (if required)
- Other: _____

Changes to purposes (objects)

The purposes of the charity in Form 4031, *Articles of Continuance (transition)*:

- are exactly the same as those contained in the previous incorporation document.
- have been changed and the proposed changes have been previously approved by the Charities Directorate.
- have been changed using the CRA's [Model objects](#) (be sure to include a statement of activities in this case).
- have been changed and have **not** been previously approved by the Charities Directorate (be sure to include a statement of activities in this case).

Contact person: _____

Position in the charity: _____

Date: _____

Recent Corporate Changes for NPOs and Charities

- CRA checklist requires a “statement of activities” if purposes have changed
 - Statement of activities can be akin to a new charity registration application

- Question: what if stated purposes have not changed, but are technically deficient under today’s law

Example: a letters patent from the 1960s, for “The Canadian Friends of the General Hospital of the Republic of ■” [name changed]:



Recent Corporate Changes for NPOs and Charities

“The Corporation has the following purposes and objects, namely to create, provide, enlarge and administer a fund to be made up of voluntary contributions, to be used for charitable purposes.”

This is a “charitable organization”, but its purposes are those of a “public foundation”.



Recent Corporate Changes for NPOs and Charities

Some points to consider for box 10 of articles:

- For charities, CRA wants to see:
 - Operating without gain for members
 - No directors' fees, per se
- Other points to consider:
 - Additional directors approved by board;
 - Increasing majority vote of members;
 - Filling a vacancy on the board;
 - Restricting separate vote of non-voting members (in some cases)



Recent Corporate Changes for NPOs and Charities

Updating your by-laws

Filing by-laws with government

- File with Industry Canada within one year of making changes
- CRA is also requesting a copy

How to update by-laws

- Popular but difficult method: update existing by-laws
- Possibly easier: add what is important to the organization, to a precedent by-law
- 2/3 vote of voting members is required (on continuance)



“Mandatory” and “Default” By-law Rules, Including Alternatives

(per Canadian Bar Association, 5/6/11)

A. MANDATORY RULES: There are only two by-law provisions that are mandatory under the NFP Act. A corporation is required to have by-laws addressing the following:

1. Conditions required for membership.

Section 154 of the NFP Act requires the by-laws to set out conditions for being a member including whether a corporation or other entity may be a member. If there is more than one class of members, the by-laws must set out the conditions for membership in each class, the manner of withdrawing or transferring to another class and the conditions on which membership in a class ends.



“Mandatory” and “Default” By-law Rules, Including Alternatives

2. Notice of Meeting of Voting Members.

Subsection 162(1) of the NFP Act requires by-laws to set out the manner of giving notice for members’ meetings which must be in accordance with the NFP Act Regulations.

Note: Subsection 7(3.1) provides that a requirement under the NFP Act to include a provision in the by-laws is deemed to be met by including the provision in the articles.

B. “DEFAULT” RULES AND ALTERNATIVES: Where by-laws are silent, the “default” rules set out in the NFP Act will apply. These default rules and permissible alternatives to these rules are set out below:



PROVISION	DEFAULT RULE	ALTERNATIVE
<p>Right of members to vote (Subsection 154(5))</p>	<p>Each member is entitled to one vote at a meeting of members.</p>	<p>Articles may provide for classes of members with different voting rights, including non-voting members.</p>
<p>Manner of voting by members (Section 165)</p>	<p>Voting is by a show of hands or electronically (unless by-laws restrict electronic voting). A member that is entitled to vote at the meeting can demand a ballot.</p>	<p>By-laws can specify another manner of voting.</p>
<p>Absentee voting by members (Section 171)</p>	<p>Not permitted.</p>	<p>By-laws can specify that absentee voting will be allowed by the following prescribed methods: proxy, mailed-in ballot, or telephonic, electronic or other communication facility. The procedures for collecting, counting and reporting the results of any vote must also be set out.</p>

PROVISION	DEFAULT RULE	ALTERNATIVE
Transfer of membership (Subsection 154(8))	Membership must be transferred back to the corporation.	By-laws may specify different rules regarding transferability (for example, between classes or otherwise).
Place of meeting of members (Section 159)	Meetings of members must be held in Canada.	A meeting of members can be held outside of Canada if the place is specified in the articles or if all of the voting members agree.
Requisition of meeting by members (Section 167)	Members holding 5% of the votes can requisition the directors to call a meeting of the members for the purpose set out in the requisition.	By-laws can set percentage as lower than 5% but not higher.
Electronic participation at members' meetings by a person entitled to attend the meeting (Subsection 159(4))	Electronic participation at meetings is permitted.	By-laws can prohibit or restrict electronic participation at meetings.

PROVISION	DEFAULT RULE	ALTERNATIVE
<p>Meeting held entirely by electronic means (Subsection 159(5))</p>	<p>Not permitted.</p>	<p>By-laws may permit directors or members to hold a meeting entirely by electronic means as long as all participants can communicate adequately with each other and the meeting is held in accordance with the NFP Act Regulations.</p>
<p>Quorum for meetings of members (Section 164)</p>	<p>A quorum is a majority of members entitled to vote. If quorum is present at the opening of a meeting but not throughout the meeting, business may still proceed.</p>	<p>By-laws may provide for a different quorum, but it must be set out as a fixed number of members, or a percentage of members or a number or percentage of members that is determinable by a formula. Can also provide that an opening quorum at a meeting is not sufficient where there is a loss of quorum later in the meeting.</p>

PROVISION	DEFAULT RULE	ALTERNATIVE
<p>Termination of membership (Section 156)</p>	<p>Membership is terminated when the member dies or resigns, when the member is expelled, when the member's term of membership expires, or the corporation is liquidated or dissolved under Part 14 of the NFP Act.</p>	<p>Articles or by-laws can provide otherwise.</p>
<p>Rights on termination of membership (Section 157)</p>	<p>Upon termination of membership, the rights of a member cease to exist.</p>	<p>Articles or by-laws can provide otherwise.</p>
<p>Providing annual financial statements to members (Section 175)</p>	<p>Annual financial statements must be sent to the members 21-60 days before the annual meeting.</p>	<p>By-laws can provide that instead of sending financial statements to members, that notice will be sent to members that financial statements are available at the registered office.</p>

PROVISION	DEFAULT RULE	ALTERNATIVE
<p>Annual Contributions or Dues (Section 30)</p>	<p>Directors can require members to make an annual contribution or pay annual dues and can determine the manner in which the dues or contributions are to be paid.</p>	<p>By-laws, articles or any unanimous member agreement can provide otherwise.</p>
<p>Lien on membership (Subsections 36(2) and (3))</p>	<p>The corporation does not have a lien on memberships for debts owing by members.</p>	<p>Articles can provide that the corporation has a lien on any membership registered in name of member for a debt of that member to the corporation, including unpaid membership fees. By-laws can include provisions for enforcement of the lien.</p>
<p>Management of Affairs of Corporation (Section 124)</p>	<p>The directors shall manage or supervise the management of the affairs of the corporation.</p>	<p>A unanimous member agreement (for non-soliciting corporations/private foundations) can provide otherwise.</p>

PROVISION	DEFAULT RULE	ALTERNATIVE
Qualification of Directors (Subsection 126(2))	Directors are not required to be members.	By-laws can require directors to be members.
Appointment of directors (Subsection 128(8))	All directors must be elected by the members.	Articles (but not the by-laws) may permit the directors to appoint additional directors to hold office until the next annual meeting of members, but no more than a third of the total number of directors can be appointed.
Quorum of directors (Subsection 136(2))	A majority of the number of directors or minimum number of directors required by the articles constitutes a quorum.	By-laws can provide otherwise.
Filling vacancies among directors (Subsection 132(5))	Directors have limited rights to fill vacancies on the board.	By-laws can provide that a vacancy shall only be filled by the members, or by a class of members that has the exclusive right to elect one or more directors.

PROVISION	DEFAULT RULE	ALTERNATIVE
<p>Place of meeting of directors (Subsection 136(1))</p>	<p>Directors may meet at any place.</p>	<p>By-laws or articles can provide otherwise.</p>
<p>Notice of meeting of directors (Subsection 136(3))</p>	<p>The notice is not required to set out the purpose of the meeting or the business to be transacted unless it relates to a matter specified in subsection 138(2).</p>	<p>By-laws can require notice to specify purpose or business of meeting.</p>
<p>Director participation in meetings by electronic means (Subsection 136(7))</p>	<p>Directors can participate in a meeting by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately if all of the directors consent.</p>	<p>By-laws can provide otherwise.</p>
<p>Borrowing powers (Subsection 28(1))</p>	<p>Directors may (without member authorization) borrow money and grant security on property of the corporation.</p>	<p>By-laws, articles or any unanimous member agreement can restrict this power.</p>

PROVISION	DEFAULT RULE	ALTERNATIVE
Delegation of borrowing powers (Subsection 28(2))	The directors can delegate borrowing powers to a director, a committee of directors or an officer.	By-laws, articles or any unanimous member agreement can provide otherwise.
Remuneration of directors etc. (Section 143)	Directors can fix the reasonable remuneration of directors, officers and employees.	By-laws, articles or any unanimous member agreement can provide otherwise.
Indemnification (Section 144)	A director, officer or employee can receive indemnification for expenses incurred on behalf of the corporation.	By-laws can provide otherwise.
Appointment of officers (Section 142)	Directors can designate, appoint and specify the duties of officers.	By-laws, articles or any unanimous member agreement can provide otherwise (i.e. that members may appoint officers).

PROVISION	DEFAULT RULE	ALTERNATIVE
<p>By-laws (Section 152)</p>	<p>Directors can make, amend or repeal by-laws except those for which a two-thirds vote of members is required. The bylaw, amendment or repeal is effective until the next meeting of members when members confirm, amend or reject it.</p>	<p>By-laws, articles or any unanimous members' agreement can restrict the power of directors to make, amend or repeal by-laws.</p>
<p>Investments by corporation (Section 33)</p>	<p>A corporation may invest its funds as its directors think fit.</p>	<p>This rule is subject to limitations accompanying any gift to the organization, or provisions to the contrary in the articles or bylaws.</p>
<p>Electronic documents (Section 267)</p>	<p>A requirement under the NFP Act or the NFP Act Regulations that information, including information in a notice, be created or provided is satisfied by provision of an electronic document as long as the NFP Act Regulations are complied with.</p>	<p>Articles or by-laws can provide otherwise.</p>

PROVISION	DEFAULT RULE	ALTERNATIVE
<p>Statement of director (Subsection 131(1))</p>	<p>A director is entitled to submit a written statement giving reasons for resigning or for opposing the removal or replacement of the director if a meeting is called for that purpose.</p>	<p>By-laws can provide otherwise.</p>
<p>Consensus Decision-making (Section 137)</p>	<p>Decisions under the NFP Act are made by ordinary or special resolution.</p>	<p>By-laws may provide that directors or members shall make decisions by consensus except for decisions that are required to be made under subsection 182(1), by special resolution, or by a vote if consensus cannot be reached.</p>
<p>Special majorities (Subsections 7(4) and (5))</p>	<p>Decisions under the NFP Act are made by ordinary or special resolution.</p>	<p>Articles or unanimous member agreement can require a greater number of votes of directors or members to effect any action except cannot require a greater number of votes to remove a director than required by section 130.</p>

PROVISION	DEFAULT RULE	ALTERNATIVE
<p>Adjournment of meeting of members (Subsection 162(7))</p>	<p>If a meeting is adjourned for less than 31 days, it is not necessary for any member to be notified of an adjourned meeting other than by announcement at the earliest meeting that is adjourned.</p>	<p>By-laws can provide otherwise.</p>
<p>Fundamental Changes (Section 199)</p>	<p>Members of a class or a group of members are entitled to vote separately as a class or group on a proposal to make an amendment referred to in subsection 199(1) whether or not members otherwise have the right to vote.</p>	<p>Articles can provide otherwise in the case of an amendment referred to in paragraphs 199(1)(a) and (e).</p>

This material is of a general nature and is not intended to constitute an opinion or legal advice. The facts and circumstances of your particular situation should be specifically identified and addressed before appropriate legal advice may be given.



BIOGRAPHY – DANIEL FRAJMAN

Daniel Frajman is a partner at the Montreal law firm of Spiegel Sohmer, where he has practiced since 1995 in the areas of trusts, estates and not-for-profit law, and in commercial law relating to mergers and acquisitions, shareholder matters, financing and leases. Daniel is a graduate of the faculties of commerce (concentration in accounting) and of law at McGill University, is a member of the Bars of Quebec and Ontario, and holds the TEP (trust and estate practitioner) designation from STEP. Daniel advises, in addition to profit-making individuals and organizations, numerous non-profits and charities including several relating to research, education, health care or operating cross-border, and he is currently a member of the Federation Combined Jewish Appeal (CJA) governance review committee. Daniel has published several legal articles in national publications that include Tax Topics, The Canadian Taxpayer, Canadian Not-For-Profit News, CALU INFOexchange, Lawyers Weekly and the Canadian Bankruptcy Reports.

