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Corporations Canada

# TRANSITION GUIDE

## FOR FEDERAL NOT-FOR-PROFIT CORPORATIONS

step-by-step



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# The Canada Not-for-profit Corporations Act

The new *Canada Not-for-profit Corporations Act* (NFP Act) establishes a new set of rules for federally incorporated not-for-profit corporations in Canada. These new rules will replace Part II of the *Canada Corporations Act* (old Act), the law that has governed federal corporations for nearly a century. The rules under the NFP Act are modern, flexible and more suited to the needs of the not-for-profit sector.

## What are the benefits of the NFP Act?

Federal not-for-profit corporations benefit from:

- A clear set of rules that govern the internal affairs of federal not-for-profit corporations
- Less red tape with simplified processes
- More flexibility to make fundamental changes, such as amalgamations, that were not permitted under the old Act
- A more objective standard for directors in carrying out their duties and responsibilities that will reassure individuals who decide to be on a board of directors

## Do these new rules apply immediately?

No. The NFP Act does not automatically apply to existing corporations. Instead, every existing federally incorporated not-for-profit corporation will have to take action to make the transition to the NFP Act. Until that transition is made, the rules under the old Act still apply.

## What is the transition process?

The corporation must replace its letters patent, supplementary letters patent (if any) and by-laws with new charter documents by submitting articles of continuance to obtain a Certificate of Continuance and creating and filing new by-laws. The articles and by-laws must comply with the NFP Act. These charter documents set out the primary rules governing the corporation.

**This guide will assist you in making the transition.**

## Will the transition affect the registered charity status of my corporation?

Possibly. If your corporation is or intends to become a “registered charity” as defined in the *Income Tax Act*, it is strongly recommended that you consult the Charities Directorate of the Canada Revenue Agency during the transition process (go to **[www.cra-arc.gc.ca/charities](http://www.cra-arc.gc.ca/charities)** or call toll free at **1-800-267-2384**). The Charities Directorate will provide you with valuable information about the transition that is specific to registered charities, particularly with respect to the statement of purpose, requirements for the number of directors, non-profit clauses and clauses related to the remuneration of directors, and the requirement to file documents with CRA after the transition process is complete. Consulting with the Charities Directorate in advance will help ensure that your corporation maintains its registered charity status.

## Are there fees?

Corporations Canada does not charge a fee to apply for a Certificate of Continuance and to file by-laws.

## Is there a deadline for making the transition?

A not-for-profit corporation make the transition by October 17, 2014.

## What happens if a corporation does not make the transition?

Corporations that do not make the transition by the deadline will be assumed to be inactive and will be dissolved. For charities registered under the *Income Tax Act*, dissolution could lead to the revocation of their registration, which would result in the corporation having to pay revocation tax equal to 100% of the value of their remaining assets.

## Where can I obtain more information about the rules under the Canada Not-for-profit Corporations Act?

Visit Corporations Canada’s website at [www.corporationscanada.ic.gc.ca](http://www.corporationscanada.ic.gc.ca) for more information.

**Note:** Any information provided by Corporations Canada, including this guide, is not intended to be a substitute for legal advice. Not-for-profit corporations are encouraged to seek professional advice if they have any concerns.

# The Transition Process

**Corporations can take advantage of the benefits of the NFP Act once the transition is complete. The transition process involves obtaining a Certificate of Continuance and making by-laws that comply with the NFP Act.**

To make the transition to the NFP Act, a federally incorporated not-for-profit corporation will need to replace its letters patent, supplementary letters patent (if any) and by-laws with a Certificate of Continuance (attached to which are the corporation's articles) and new by-laws that comply with the NFP Act.

The Certificate of Continuance is the same as a Certificate of Incorporation. Both set out the articles that apply to a corporation. Because the corporation is already incorporated, however, it cannot incorporate again under the NFP Act. Instead, it "continues" into the new Act and is issued a Certificate of Continuance instead of a Certificate of Incorporation.

The continuance process involves setting out articles of continuance, having them approved by members and submitting them to Corporations Canada, which in turn will issue a Certificate of Continuance. The articles of continuance are essentially the constitution of the corporation.

Because the rules under the NFP Act are different, what needs to be set out in the articles and by-laws is also different. For that reason, the transition process is not simply a matter of transposing the provisions of the letters patent and supplementary letters patent into the articles and using the same by-laws.

***The following steps will guide you through the transition process.***





## Step One *Review Your Letters Patent and By-laws*

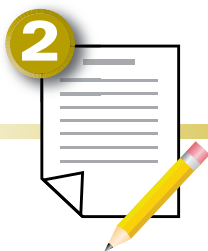
Review the corporation's letters patent, supplementary letters patent (if any) and the by-laws. Copies are available from Corporations Canada if you are not able to locate them.

Under the old Act, not-for-profit corporations were required to include a lot of detail in their by-laws, such as procedures for members meetings, the manner of electing or appointing directors, procedures for directors' meetings, and the procedures for making, amending, or repealing by-laws.

The NFP Act doesn't require this level of detail in the articles or by-laws since many of the rules are contained in the Act. A number of these rules are default rules. The corporation can override these default rules in its articles or by-laws if they don't suit its needs. However, there are a few rules that cannot be overridden by the articles or the by-laws. They apply to all corporations.

Refer to Annex A when reviewing your corporation's letters patent and by-laws. It highlights the main rules that those documents likely include which would be superseded by the rules in the NFP Act. What is currently set out in the letters patent or by-laws may even be inconsistent with the rules under the NFP Act.

During your review, you may wish to note any provisions, other than those set out in Annex A, which are important to your corporation and you wish to retain. You can choose to include them as articles or by-laws under the NFP Act, the focus of the next two steps.



## Step Two *Prepare Articles*

The next step is to draft the articles of the corporation. The articles will be attached to the Certificate of Continuance that is issued to the corporation by Corporations Canada. The Certificate of Continuance and the articles together become the corporation's constitution and replace the letters patent.

The articles of a corporation are to be set out in a form that is provided by Corporations Canada. The form is called *Form 4031 – Articles of Continuance (transition)*. It is available as a fillable PDF form on Corporations Canada's website.

The form sets out the following articles:

- Corporate Name
- Province or territory where the registered office is situated
- Minimum and maximum number of directors or the fixed number of directors

- Statement of the purpose of the corporation
- Restrictions on the activities that the corporation may carry on, if any
- The classes, or regional or other groups, of members that the corporation is authorized to establish
- Statement regarding the distribution of property remaining on liquidation
- Any additional provisions that the corporation may want in its articles

Refer to Annex B for detailed instructions on how to complete the form.

You may also refer to the *Model Articles*, located at the end of this guide, which provide examples of a completed *Form 4031 – Articles of Continuance (transition)*.



## Step Three *Create By-laws*

A lengthy and comprehensive set of by-laws was required under the old Act to govern the corporation's internal affairs. This is not the case with the NFP Act since the Act already contains many rules. It specifies which by-law provisions are mandatory and provides default rules that apply if the corporation's by-laws do not address certain matters.

There are only two by-law provisions that are mandatory under the NFP Act.<sup>1</sup> 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 that would override them.

There may be rules that a corporation may wish to have that are not addressed by the default rules. An example of this is consensus decision-making by members. This rule should be included in the by-laws if the corporation operates in this fashion. Other types of rules that fall under this category are those dealing with discipline of members and dispute resolution mechanisms.

Annex C provides more information on the mandatory by-law provisions and default rules.

To assist you in creating by-laws under the NFP Act, refer to the *Model By-laws*, located at the end of this guide, which would apply to a typical not-for-profit corporation.

Corporations Canada has also developed an online interactive tool called a *By-law Builder* that can generate the by-laws you want. It allows you to choose provisions that meet the specific needs of your corporation from a number of available options.

<sup>1</sup> Mandatory by-law provisions must be approved by a two-thirds majority vote of members. Other by-law provisions requiring a two-thirds majority vote are those that set out the rules on transferability of membership and absentee voting. The other by-law provisions may be approved by a simple majority vote.

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## Step Four *Get Members' Approval*

A meeting of members will generally need to be held as part of the transition process. This meeting must be held in accordance with the existing by-laws since those are the rules governing the affairs of the corporation until a Certificate of Continuance is obtained.

Despite the voting rules in the existing by-laws, the NFP Act requires that the articles of continuance be approved by two-thirds of the votes cast by members of the corporation who are entitled to vote.

You may also wish to use the same approval level for the by-laws. Refer to the *Model Special Resolution for Members*, located at the end of this guide, for the suggested wording of a resolution of the members.

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## Step Five *Submit the Required Documents*

Once the articles have been approved, the next step is to obtain a Certificate of Continuance. To do so, you are required to file the following with Corporations Canada:

- Form 4031 – Articles of Continuance (transition);
- Form 4002 – Initial Registered Office Address and First Board of Directors. This form sets out the registered office address and the board of directors at the time of continuance. It is available in a fillable PDF format on Corporations Canada's website; and
- NUANS Name Search Report, if the name of the corporation is changing on continuance.

When Corporations Canada receives your documents, we will make sure that they have been properly completed and, if applicable, that the new name is acceptable. If so, we will send you a Certificate of Continuance with the articles of continuance attached.

The by-laws do not have to be filed to obtain a Certificate of Continuance. The NFP Act requires that they be filed within 12 months after members have approved them as set out in Step 4. You can, however, file them with the above documents.

**Note:** Unlike the old Act, the NFP Act does not require Corporations Canada to review and provide Ministerial approval of the by-laws. The benefit to the corporation is that the by-laws come into effect immediately when they are made. The only requirement is that by-laws be filed with Corporations Canada within 12 months of their being confirmed by members.<sup>2</sup> There is no fee to file by-laws.

<sup>2</sup> With a few exceptions, by-laws can be made, amended or repealed by a resolution of the board of directors. The resolution takes effect immediately but it is to be submitted at the next meeting of members. The members can vote to confirm, amend or reject the change to the bylaws. If it is important to a corporation that by-laws only take effect when approved by the members, this would need to be stated in the articles or by-laws. Note that directors cannot make by-laws which require two-thirds vote of members (see footnote in Annex C).

## Where to File

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

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

## Fee

Existing federally incorporated not-for-profit corporations do not have to pay a filing fee to obtain a Certificate of Continuance.

## Additional Resources

- Your Reporting Obligations under the *Canada Not-for-profit Corporations Act*
- Frequently Asked Questions (available online only)

## Additional Information and How to Reach Corporations Canada

To obtain documents referred to in this guide or for additional information, please visit Corporations Canada's website at **[www.corporationscanada.ic.gc.ca](http://www.corporationscanada.ic.gc.ca)** or call **1-866-333-5556**.

You can also contact Corporations Canada at:

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

General Inquiries:  
Toll-free (within Canada): 1-866-333-5556  
Telephone (National Capital Region and Outside Canada): 613-941-9042  
FAX: 613-941-4803  
Email: [corporationscanada@ic.gc.ca](mailto:corporationscanada@ic.gc.ca)

# ANNEX A

## Provisions in Letters Patent and By-laws Superseded by NFP Act

**Because the old Act contained few rules, the letters patent and by-laws of your corporation likely include provisions relating to the following matters. In contrast, the NFP Act provides rules to deal with these matters that apply to all not-for-profit corporations. Consequently, the articles and new by-laws of your corporation do not need to set out these provisions.**

**Do not include provisions dealing with the following matters:**

- **Statement that the operations of the corporation may be carried on throughout Canada:**  
The NFP Act makes it clear that the corporation may carry on activities throughout Canada.
- **Statement that the corporation is to carry on its operations without pecuniary gain to its members:**  
Under the NFP Act, no profit can be distributed to members unless it is in furtherance of the corporation's activities or is otherwise permitted by the Act.
- **Removal of directors:** The NFP Act provides that members may remove a director by majority vote at a special meeting. This reinforces the NFP Act rule that only members elect directors.
- **Appointment of ex-officio directors:** The NFP Act does not permit *ex-officio* directors (i.e., individuals who are directors by virtue of the office they occupy). Individuals, not offices, are elected by members to be directors.
- **Powers of the board of directors to manage the corporation:** The NFP Act gives directors the responsibility for managing or supervising the management of a corporation. This responsibility can be restricted in the articles.
- **Annual meetings of members:** The NFP Act requires that annual meetings of members be held. Written resolutions in lieu of a meeting are allowed.
- **Enactment, amendment or repeal of by-laws:** Ministerial approval will not be required to make a by-law effective.
- **Appointment of auditor:** The NFP Act requires members of a corporation to appoint a public accountant at the annual meeting. Members of a soliciting corporation<sup>1</sup> with gross annual revenues equal to or less than \$50,000 and members of a non-soliciting corporation with gross annual revenues less than or equal to \$1 million can, by unanimous vote, decide not to appoint a public accountant.

<sup>1</sup> A soliciting corporation is one that receives public donations and/or government grants in excess of \$10,000 in a single financial year.

- **Report by auditor:** The NFP Act specifies the types of financial review (audit or review engagement) that an auditor can conduct (see table).

Type of Corporation	Gross Annual Revenues	Members May Dispense with Public Accountant	Review Engagement	Audit
<b>soliciting</b>	less than \$50K	YES	default	optional
<b>soliciting</b>	between \$50K and \$250K	NO	optional	default
<b>soliciting</b>	more than \$250K	NO	N/A	mandatory
<b>non-soliciting</b>	less than \$1M	YES	default	optional
<b>non-soliciting</b>	more than \$1M	NO	N/A	mandatory

For more information on the new rules, visit the Corporations Canada website at [www.corporationscanada.ic.gc.ca](http://www.corporationscanada.ic.gc.ca).

# ANNEX B

## Instructions for Completing Form 4031 – Articles of Continuance (transition)

If the corporation is or intends to become a “registered charity” as defined in the *Income Tax Act*, it is strongly recommended that the Charities Directorate of the Canada Revenue Agency (CRA) be consulted at [www.cra-arc.gc.ca/charities](http://www.cra-arc.gc.ca/charities) or by contacting CRA toll free at 1-800-267-2384, prior to making a request to Corporations Canada for transition.

### Articles of Continuance (transition)

#### 1 Current name of the corporation

Indicate the legal name of the not-for-profit corporation. The name can be found on the first page of the existing letters patent or on any supplementary letters patent.

#### 2 If a change of name is requested, indicate proposed corporate name

There are three options:

##### 1 No change

If the corporation does not wish to change its name, leave this item blank.

##### 2 Proposed name

If the corporation decides to change its name, indicate the new proposed name. The proposed name must be distinctive and be distinguishable from corporate names used by other organizations or businesses. You must include a NUANS Name Search Report. Corporations Canada will use the NUANS Report to determine whether the name is distinctive and otherwise meets the requirements of the NFP Act. More information about choosing a name is available on the Corporations Canada website at [www.corporationscanada.ic.gc.ca](http://www.corporationscanada.ic.gc.ca).

##### 3 Numbered name

Under the NFP Act, a not-for-profit corporation can choose to have a numbered name as its legal name (e.g. 1234567 Canada Foundation). To obtain a numbered name, leave a blank space (in which Corporations Canada will insert an assigned number), followed by the word Canada and one of the following prescribed terms: Association, Center, Centre, Fondation, Foundation, Institut, Institute or Society.

### 3 Corporation number

Indicate the number assigned to the corporation by Corporations Canada when it was initially incorporated under the old Act. This number can be found on most correspondence received from Corporations Canada or on the Corporations Canada website under “Search for a federal corporation.” This number will remain the same after the transition.

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### 4 The province or territory in Canada where the registered office is situated

Indicate the province or territory in Canada where the registered office (which may have been referred to as ‘head office’ in the existing letters patent) is situated.

**Note:** Do not include the street address here. The street address will be indicated on *Form 4002 – Initial Registered Office Address and First Board of Directors*.

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### 5 Minimum and maximum number of directors

Every corporation must have at least one director, except a soliciting corporation (i.e., one that receives public donations and/or government grants in excess of \$10,000 in a single financial year). A soliciting corporation **must** have no fewer than three directors, at least two of whom are not officers or employees of the corporation or its affiliates.

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### 6 Statement of the purpose of the corporation

Include a statement that describes the purpose(s) of the corporation. This provision may have been included in the existing letters patent.

**Note:** If the corporation is or intends to become a registered charity, it is strongly recommended that the Charities Directorate of the CRA be consulted on this statement.

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### 7 Restrictions on the activities that the corporation may carry on, if any

Set out any restrictions on activities that the corporation may carry on. If there are no restrictions required, indicate “none.”

**Note:** If the corporation is or intends to become a registered charity, it is strongly recommended that the Charities Directorate of the CRA be consulted on this item.

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

Set out the class(es), or regional or other group(s), of members that the corporation is authorized to establish. If a corporation has more than one class or group, it must set out the voting rights attached to each of those classes or groups.

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### 9 Statement regarding the distribution of property remaining on liquidation

All corporations must clearly indicate how they will distribute any property remaining on liquidation. Registered charities and corporations that receive public donations and/or government grants in excess of \$10,000 in a single financial year must provide that any property remaining on liquidation (i.e., property that remains after paying the corporation’s liabilities (e.g., debts) and after returning any property given to the corporation on the condition that it be returned when the corporation is dissolved) will be distributed to one or more qualified donees, within the meaning of the *Income Tax Act*.

## 10 Additional provisions, if any

Include any other provisions the corporation would like to have in its articles (e.g. any provisions required to satisfy the requirements of other legislation). If there are no other provisions, indicate “none”. If the corporation is or intends to become a registered charity, it is strongly recommended that the Charities Directorate of the CRA be consulted on this item.

While there is no limit to the provisions that could be part of this section of the articles, the following illustrates suggested wording for some possible topics. The suggested provisions are merely examples; the list is not definitive and the wording is not mandatory. If you want to use other provisions, you may wish to consult a lawyer or other business professional to be sure that they are permitted under the NFP Act.

### **Non-profit clause for registered charities**

CRA requires charities to operate on a non-profit basis and recommends that a corporation which will be operated on a non-profit basis include a statement that the corporation will be operated on a non-profit basis, although such a statement will not be mandatory. The CRA's suggested wording is:

The corporation shall be carried on without the purpose of gain for its members, and any profits or other accretions to the corporation shall be used in furtherance of its purposes.

### **Remuneration of directors clause for registered charities**

CRA does not permit the remuneration of directors merely for acting as directors and recommends that a corporation which will be operated on a non-profit basis include a statement that directors may not be remunerated merely for acting as directors, although such a statement will not be mandatory. The CRA's suggested wording is:

Directors shall serve without remuneration, and no director shall directly or indirectly receive any profit from his or her position as such, provided that a director may be reimbursed for reasonable expenses incurred in the performance of his or her duties. A director shall not be prohibited from receiving compensation for services provided to the corporation in another capacity.

### **Borrowing powers**

The NFP Act allows directors to borrow and grant security on property without the authorization of members. However, a corporation can restrict this power by including a provision in the articles or by-laws or in any unanimous members' agreement. A provision regarding directors' borrowing powers and the delegation of those powers is sometimes used to limit the authority of directors and/or to satisfy lending institutions. The following wording could be used in the articles:

“If authorized by a by-law which is duly adopted by the directors and confirmed by ordinary resolution of the members, the directors of the corporation may from time to time:

- (i) borrow money on the credit of the corporation;
- (ii) issue, reissue, sell, pledge or hypothecate debt obligations of the corporation;
- and
- (iii) mortgage, hypothecate, pledge or otherwise create a security interest in all or any property of the corporation, owned or subsequently acquired, to secure any debt obligation of the corporation.

Any such by-law may provide for the delegation of such powers by the directors to such officers or directors of the corporation to such extent and in such manner as may be set out in the by-law.

Nothing herein limits or restricts the borrowing of money by the corporation on bills of exchange or promissory notes made, drawn, accepted or endorsed by or on behalf of the corporation.”

### **Increase the majority vote by members**

The NFP Act specifies that an ordinary resolution is a simple majority and a special resolution is a two-thirds majority. A corporation can set out a different majority in the articles, which must be greater than the statutory majorities. The requirements for passage of a resolution to remove a director cannot be increased.

“In order to effect any (ordinary and/or special) resolution passed at a meeting of members, a majority of not less than \_\_\_\_\_ per cent of the votes cast by the members who voted in respect of that resolution shall be required.”

### **Foreign corporate name**

A corporation may want to specify the foreign form of its corporate name. This form may only be used **outside** Canada. The following wording could be used:

“It is hereby provided that the corporation may use and may be equally designated by the following form outside Canada: ...”

**Note:** Item 10 of Form 4031 is not to be used to state the English or French form of the corporate name for use inside Canada. The English and/or French forms of the corporate name are set out in item 1 or item 2 of Form 4031.

### **Fill a vacancy on the board of directors**

The NFP Act allows a quorum of directors to fill a vacancy on the board of directors, but not a vacancy created by an increase in the number of directors or a failure to elect the minimum number of directors specified in the articles. Alternatively, the articles could specify that only the members can fill a vacancy on the board of directors. The following wording could be used in the articles to prohibit directors filling a vacancy:

“Any vacancy on the board of directors shall be filled by a vote of the members.”

### **Additional Directors**

The NFP Act permits the articles to provide the board of directors with the authority to appoint one or more additional directors, between annual meetings, for a term expiring not later than the close of the next annual meeting of members. This authority does not apply to filling a vacancy on the board. The appointed directors cannot exceed one-third of all directors elected at the last annual meeting of members. The following wording could be used in the articles to allow directors to appoint additional directors:

“The directors may appoint one or more directors, who shall hold office for a term expiring not later than the close of the next annual general meeting of members, but the total number of directors so appointed may not exceed one-third of the number of directors elected at the previous annual general meeting of members.”

### **Class or group voting by members on amendments to articles**

When there is an amendment to the articles, the NFP Act requires members to vote separately as a class or group in cases where the consequences of the amendment would affect the class or group differently from other classes or groups of members. Consult the Handbook for Federal Not-for-profit Corporations for more information. The Act does provide for an exception to this rule in two specific situations: an exchange, reclassification or cancellation of all or part of the memberships of the class or group; or the creation of a new class or group with rights equal to or superior to the class or group. A corporation that wishes to employ this exception must include it in its articles. The following wording could be used:

“The non-voting members shall not be entitled to vote separately as a class or group on an amendment, or proposal to make an amendment, to:

(a) effect an exchange, reclassification or cancellation of all or part of the memberships of such class;

or

(b) create a new class or group of members having rights equal or superior to those of the non-voting members.”

## 11 Declaration

These articles must be signed by a director or officer of the corporation that is making the transition into the NFP Act.

**Note: Making a change to any provision contained in a corporation’s articles, once a Certificate of Continuance has been issued, requires a two-thirds majority vote of the members and an application to Corporations Canada for a Certificate of Amendment. There is a \$200 fee for an application for a Certificate of Amendment.**

# ANNEX C

## Mandatory and Default Rules

### Mandatory Rules

At minimum, a corporation must have the following two by-law provisions.

REQUIRED BY-LAW PROVISIONS	DESCRIPTION
<b>Conditions of membership<sup>1</sup></b>	The by-laws must set out the conditions required for being a member, including whether a corporation or other organization can be a member. If there is more than one class or group of members, the by-laws must set out the conditions of membership for each class or group, the manner of withdrawing from or transferring to another group or class of members, and the conditions on which membership in a group or class ends. <i>See Model By-laws (section 2.01).</i>
<b>Notice of meeting to members entitled to vote at the meeting<sup>1</sup></b>	The by-laws must set out the manner in which notice can be given to members entitled to vote and can include any of the following options <sup>2</sup> : <ul style="list-style-type: none"><li>• notice is sent by mail, courier or personal delivery, between 21 and 60 days before the meeting;</li><li>• notice is communicated by telephone or other electronic communication means, between 21 and 35 days before the meeting<sup>3</sup>;</li><li>• notice is communicated via a publication:<ul style="list-style-type: none"><li>◦ at least once a week for three weeks prior to the meeting if using a newspaper; or</li><li>◦ between 21 and 60 days if using a publication of the corporation that is distributed to members;</li></ul></li><li>• notice is affixed to a notice board not less than 30 days before the meeting.</li></ul> <i>See Model By-laws (section 2.02).</i>

<sup>1</sup> Two-thirds vote of members is needed to make, amend or repeal by-law provisions dealing with conditions of membership, notice of meetings to members, transferability of membership, or absentee voting. Majority vote applies to other by-law provisions.

<sup>2</sup> If the by-laws do not comply with one of the options, the corporation will be required to send the notice to each member between 21 and 60 days before the meeting.

<sup>3</sup> An alternative non-electronic option is also to be selected for members requesting a non-electronic copy of the notice of meeting.

## Default Rules

The *Canada Not-for-profit Corporations Act* provides for default rules where the corporation's by-laws are silent. The corporation has the option of overriding many of these rules by setting out its own rules in the by-laws or, if it so chooses, in the articles. In some cases, the *Model By-laws*, located at the end of this guide, provide alternate rules to the default ones.

### 1. FINANCIAL MATTERS

PROVISION	DEFAULT RULE	ALTERNATE RULE PERMITTED IN BY-LAWS
<b>Borrowing powers</b>	Directors can borrow and grant security without authorization of members.	Can restrict borrowing powers. <i>Refer to item 10 in Annex B.</i>
<b>Providing annual financial statements to members</b>	Annual financial statements must be sent to members 21-60 days before the annual meeting.	Can send notice to members that financial statements are available at the registered office. <i>See Model By-laws (section 1.07).</i>

### 2. MEMBERSHIP

PROVISION	DEFAULT RULE	ALTERNATE RULE PERMITTED IN BY-LAWS
<b>Transferability of membership<sup>1</sup></b>	Membership can only be transferred back to the not-for-profit corporation.	Can specify different rules for transferability.
<b>Place of meeting of members</b>	The meeting of members is to be held at a place in Canada that the directors determine or a place outside Canada if all the members entitled to vote at the meeting agree.	Can provide otherwise.
<b>Members calling a meeting</b>	Members who hold 5% of the votes can request a meeting of members.	Can set a percentage lower than 5% but not higher.
<b>Electronic participation at meetings</b>	Participation by electronic means is permitted.	Electronic participation can be prohibited or restricted.
<b>Meeting held entirely by electronic means</b>	Not permitted.	Can be permitted as long as all participants can communicate adequately with each other.

## MEMBERSHIP (CONTINUED)

PROVISION	DEFAULT RULE	ALTERNATE RULE PERMITTED IN BY-LAWS
<b>Quorum for meetings</b>	Quorum is a majority of members, and if quorum is present at the opening of a meeting, business may proceed even if quorum is not present throughout the meeting.	By-laws with a different quorum must set it out as a fixed number of members, a percentage of members or a number or percentage of members that is determinable by a formula. Can provide that an opening quorum at a meeting is not sufficient where there is a loss of quorum later in the meeting. <i>See Model By-laws (section 4.03).</i>
<b>Manner of voting by members</b>	Voting is by show of hands or by electronic participation. A member entitled to vote at the meeting can demand a ballot.	Can specify manner of voting. <i>See Model By-laws (section 4.04).</i>
<b>Absentee voting by members<sup>1</sup></b>	Not permitted except for electronic participation.	Can specify that absentee voting will be allowed by proxy, mailed-in ballot, or telephonic, electronic or other communication facility. Must also set out procedures for collecting, counting and reporting the results of any vote. <i>See Model By-laws (section 2.03)</i>
<b>Rights on termination of membership</b>	Rights of a member cease to exist on termination of membership.	Can provide otherwise. <i>See Model By-laws (section 3.02).</i>

### 3. DIRECTORS

PROVISION	DEFAULT RULE	ALTERNATE RULE PERMITTED IN BY-LAWS
Remuneration of directors	Directors can fix the reasonable remuneration of directors, officers and employees.	Can provide otherwise.
Place of meeting of directors	Directors may meet at any place.	Can provide otherwise.
Appointment of directors	No appointments allowed.	Cannot be overridden by the by-laws. The articles may permit the directors to appoint additional directors to hold office until the next annual meeting of members. No more than one-third of the total number of directors can be appointed. <i>See item 10, Additional Directors, in Annex B.</i>
Quorum of directors	A majority of the number of directors or minimum number of directors required by the articles constitutes a quorum.	Can provide otherwise.
Borrowing powers (also included in Financial Matters)	Directors may borrow money and grant security on property of the corporation without member authorization.	Can restrict this power in the by-laws or articles. <i>Refer to item 10 in Annex B.</i>
Appointment of officers	Directors designate the offices, appoint officers and specify their duties.	Can provide otherwise. <i>See Model By-laws (section 7.01).</i>
By-laws <sup>4</sup>	Directors make, amend or repeal by-laws except those requiring two-third vote of members. The by-law, amendment or repeal is effective until the next meeting of members when members confirm, amend or reject it.	Can provide otherwise.

<sup>4</sup> Directors cannot make, amend or repeal by-law provisions for which two-thirds vote of members is required. These are the mandatory by-law provisions and the by-law provisions addressing transferability of membership and absentee voting by members. See footnote 1 on page 17.

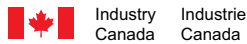
### 4. OTHER

PROVISION	DEFAULT RULE	ALTERNATE RULE PERMITTED IN BY-LAWS
Electronic documents	Electronic documents are permitted.	Can provide otherwise.

<b>Model Articles of Continuance (transition) .....</b>	<b>22</b>
• With one class of member and change of name .....	22
• With two classes of members .....	24
<b>Model By-laws .....</b>	<b>27</b>
<b>Model Special Resolution for Members .....</b>	<b>39</b>

# Model Articles of Continuance (transition)

(one class of members and change of name)



**Canada Not-for-profit Corporations Act (NFP Act)**  
**Loi canadienne sur les organisations à but non lucratif (Loi BNL)**

**Form 4031 / Formulaire 4031**

**Articles of Continuance (transition)**  
**Statuts de prorogation (transition)**

To be used only for a continuance from the *Canada Corporations Act*, Part II.  
Ce formulaire doit être utilisé que si la prorogation se fait à partir de la *Loi sur les corporations canadiennes*, partie II.

<b>1</b>	<b>Current name of the corporation</b> <b>Dénomination actuelle de l'organisation</b>
XYZ FOUNDATION LA FONDATION XYZ	
<b>2</b>	<b>If a change of name is requested, indicate proposed corporate name</b> <b>Si un changement de dénomination est demandé, indiquer la dénomination proposée</b>
ABC INSTITUTE L'INSTITUT ABC	
<b>3</b>	<b>Corporation number</b> <b>Numéro de l'organisation</b>
123456-7	
<b>4</b>	<b>The province or territory in Canada where the registered office is situated</b> <b>La province ou le territoire au Canada où est maintenu le siège</b>
ONTARIO	
<b>5</b>	<b>Minimum and maximum number of directors</b> (for a fixed number, indicate the same number in both boxes) <b>Nombre minimal et maximal d'administrateurs</b> (pour un nombre fixe, indiquer le même nombre dans les 2 cases)
Minimum number / Nombre minimal <input type="text" value="3"/> Maximum number / Nombre maximal <input type="text" value="10"/>	
<b>6</b>	<b>Statement of the purpose of the corporation</b> <b>Déclaration d'intention de l'organisation</b>
The purpose(s) of the corporation is/are:  La déclaration d'intention est la suivante :	
<b>7</b>	<b>Restrictions on the activities that the corporation may carry on, if any</b> <b>Limites imposées aux activités de l'organisation, le cas échéant</b>
None  Aucune	

**Form 4031 / Formulaire 4031**  
**Articles of Continuance (transition)**  
**Statuts de prorogation (transition)**

<b>8</b>	<b>The classes, or regional or other groups, of members that the corporation is authorized to establish</b> <b>Les catégories, groupes régionaux ou autres groupes de membres que l'organisation est autorisée à établir</b>	<p>The Corporation is authorized to establish one class of members. Each member shall be entitled to receive notice of, attend and vote at all meetings of the members of the Corporation.</p> <p>L'organisation est autorisée d'établir une catégorie de membres. Pour toutes assemblées de membres, chaque membre a le droit de recevoir un avis de l'assemblée, d'y assister et d'y exercer son droit de vote.</p>								
<b>9</b>	<b>Statement regarding the distribution of property remaining on liquidation</b> <b>Déclaration relative à la répartition du reliquat des biens lors de la liquidation</b>	<p>Any property remaining on liquidation of the Corporation, after discharge of liabilities, shall be distributed to one or more qualified donees within the meaning of subsection 248(1) of the <i>Income Tax Act</i>.</p> <p>Le reliquat des biens de l'organisation après le règlement de ses dettes sera transféré, en cas de liquidation, à un ou plusieurs donataires reconnus au sens du paragraphe 248(1) de la <i>Loi de l'impôt sur le revenu</i>.</p>								
<b>10</b>	<b>Additional provisions, if any</b> <b>Dispositions supplémentaires, le cas échéant</b>	<p>The directors may appoint one or more additional directors who shall hold office for a term expiring not later than the close of the next annual general meeting of members, but the total number of directors so appointed may not exceed one-third (1/3) of the number of directors elected at the previous annual general meeting of members.</p> <p>Les administrateurs peuvent nommer un ou plusieurs administrateurs supplémentaires à condition que le nombre total des administrateurs ainsi nommés n'excède pas le tiers du nombre des administrateurs élus à la dernière assemblée annuelle. Le mandat des administrateurs ainsi nommés expirera au plus tard à la clôture de la prochaine assemblée annuelle.</p>								
<b>11</b>	<b>Declaration</b> <b>Déclaration</b>	<table border="1" style="width: 100%; border-collapse: collapse;"><tr><td style="width: 50%; padding: 2px;">I hereby certify that I am a director or an authorized officer of the corporation continuing into the NFP Act.</td><td style="width: 50%; padding: 2px;">J'atteste que je suis un administrateur ou un dirigeant autorisé de la corporation se prorogeant en vertu de la Loi BNL.</td></tr><tr><td colspan="2" style="padding: 5px;"><div style="display: flex; justify-content: space-between;"><div>Signature <u>(Signature)</u></div><div></div></div><div style="display: flex; justify-content: space-between;"><div>Print name / Nom en lettres moulées <u>Jane Doe</u></div><div></div></div><div style="display: flex; justify-content: space-between;"><div>Phone number / Numéro de téléphone <u>(555) 555 - 5555 X 123</u></div><div></div></div></td></tr><tr><td colspan="2" style="padding: 2px;"><small><b>Note:</b> 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></td></tr><tr><td colspan="2" style="padding: 2px;"><small><b>Nota :</b> La personne qui fait une déclaration fausse ou trompeuse, ou qui aide une personne à faire une telle déclaration, commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire, une amende maximale de 5 000 \$ et un emprisonnement maximal de six mois ou l'une de ces peines (paragraphe 262(2) de la Loi BNL).</small></td></tr></table>	I hereby certify that I am a director or an authorized officer of the corporation continuing into the NFP Act.	J'atteste que je suis un administrateur ou un dirigeant autorisé de la corporation se prorogeant en vertu de la Loi BNL.	<div style="display: flex; justify-content: space-between;"><div>Signature <u>(Signature)</u></div><div></div></div> <div style="display: flex; justify-content: space-between;"><div>Print name / Nom en lettres moulées <u>Jane Doe</u></div><div></div></div> <div style="display: flex; justify-content: space-between;"><div>Phone number / Numéro de téléphone <u>(555) 555 - 5555 X 123</u></div><div></div></div>		<small><b>Note:</b> 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>		<small><b>Nota :</b> La personne qui fait une déclaration fausse ou trompeuse, ou qui aide une personne à faire une telle déclaration, commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire, une amende maximale de 5 000 \$ et un emprisonnement maximal de six mois ou l'une de ces peines (paragraphe 262(2) de la Loi BNL).</small>	
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# Model Articles of Continuance (transition)

## (two classes of members)



Industry Industrie  
Canada Canada

### Canada Not-for-profit Corporations Act (NFP Act) Loi canadienne sur les organisations à but non lucratif (Loi BNL)

Form 4031 / Formulaire 4031

#### Articles of Continuance (transition) Statuts de prorogation (transition)

To be used only for a continuance from the *Canada Corporations Act*, Part II.  
Ce formulaire doit être utilisé que si la prorogation se fait à partir de la *Loi sur les corporations canadiennes*, partie II.

<b>1</b>	<b>Current name of the corporation</b> Dénomination actuelle de l'organisation	
	XYZ FOUNDATION	
<b>2</b>	<b>If a change of name is requested, indicate proposed corporate name</b> Si un changement de dénomination est demandé, indiquer la dénomination proposée	
<b>3</b>	<b>Corporation number</b> Numéro de l'organisation	<b>4</b> <b>The province or territory in Canada where the registered office is situated</b> La province ou le territoire au Canada où est maintenu le siège
	123456-7	ONTARIO
<b>5</b>	<b>Minimum and maximum number of directors</b> (for a fixed number, indicate the same number in both boxes) Nombre minimal et maximal d'administrateurs (pour un nombre fixe, indiquer le même nombre dans les 2 cases)	
	Minimum number / Nombre minimal <input type="text" value="3"/>	Maximum number / Nombre maximal <input type="text" value="10"/>
<b>6</b>	<b>Statement of the purpose of the corporation</b> Déclaration d'intention de l'organisation	
	The purpose(s) of the corporation is/are:	
<b>7</b>	<b>Restrictions on the activities that the corporation may carry on, if any</b> Limites imposées aux activités de l'organisation, le cas échéant	
	None	

**Form 4031 / Formulaire 4031**  
**Articles of Continuance (transition)**  
**Statuts de prorogation (transition)**

<b>8</b>	<b>The classes, or regional or other groups, of members that the corporation is authorized to establish</b> <b>Les catégories, groupes régionaux ou autres groupes de membres que l'organisation est autorisée à établir</b>
	<p>The corporation is authorized to establish Class A members and Class B members as follows :</p> <p>(1) The Class A members shall be entitled to receive notice of and to attend all meetings of the members of the Corporation and each Class A member shall have one (1) vote at each such meeting, except for meetings at which only members of another class are entitled to vote separately as a class.</p> <p>(2) Except as otherwise provided by the <i>Canada Not-for-profit Corporations Act</i>, S.C. 2009, c.23 the Class B members shall not be entitled to receive notice of, attend or vote at meetings of the members of the Corporation.</p>
<b>9</b>	<b>Statement regarding the distribution of property remaining on liquidation</b> <b>Déclaration relative à la répartition du reliquat des biens lors de la liquidation</b>
	<p>Any property remaining on liquidation of the Corporation, after discharge of liabilities, shall be distributed to one or more qualified donees within the meaning of subsection 248(1) of the <i>Income Tax Act</i>.</p>
<b>10</b>	<b>Additional provisions, if any</b> <b>Dispositions supplémentaires, le cas échéant</b>
	<p>See Schedule 1</p>

<b>11</b>	<b>Declaration</b> <b>Déclaration</b>	
	I hereby certify that I am a director or an authorized officer of the corporation continuing into the NFP Act.	J'atteste que je suis un administrateur ou un dirigeant autorisé de la corporation se prorogeant en vertu de la Loi BNL.
	<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p style="text-align: center;">Signature <i>(Signature)</i></p> <p style="text-align: center;">_____            Print name / Nom en lettres moulées Jane Doe</p> <p style="text-align: center;">Phone number / Numéro de téléphone (555) 555 - 5555 X 123</p> </div> <div style="width: 45%; border-left: 1px solid black; padding-left: 10px;"> <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></p> </div> </div>	
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**SCHEDULE 1**  
**Additional provisions**

1. The non-voting members of the Corporation are not entitled to vote separately as a class upon a proposal to amend the articles to:
  - (a) effect an exchange, reclassification or cancellation of all or part of the memberships of the class; or
  - (b) create a new class of members having rights equal or superior to those of the class.
2. The directors may appoint one or more additional directors who shall hold office for a term expiring not later than the close of the next annual meeting of members, but the total number of directors so appointed shall not exceed one-third (1/3) of the number of directors elected at the previous annual meeting of members.

EXAMPLE

# Model By-laws

## BY-LAW NO. 1

A by-law relating generally to the conduct of the affairs of

**[NAME OF CORPORATION]**

(the “Corporation”)

### TABLE OF CONTENTS

Section 1	—	General
Section 2	—	Membership – Matters Requiring Special Resolution
Section 3	—	Membership Dues, Termination and Discipline
Section 4	—	Meetings of Members
Section 5	—	Directors
Section 6	—	Meetings of Directors
Section 7	—	Officers
Section 8	—	Notices
Section 9	—	Dispute Resolution
Section 10	—	Effective Date

**BE IT ENACTED** as a by-law of the Corporation as follows:

## SECTION 1 — General

### 1.01 Definitions<sup>1</sup>

In this by-law and all other by-laws of the Corporation, unless the context otherwise requires:

- a) “Act” means the *Canada Not-for-profit Corporations Act* S.C. 2009, c.23 including the Regulations made pursuant to the Act, and any statute or regulations that may be substituted, as amended from time to time;
- b) “articles” means the original or restated articles of incorporation or articles of amendment, amalgamation, continuance, reorganization, arrangement or revival of the Corporation;
- c) “board” means the board of directors of the Corporation and “director” means a member of the board;
- d) “by-law” means this by-law and any other by-law of the Corporation as amended and which are, from time to time, in force and effect;

- e) “meeting of members” includes an annual meeting of members or a special meeting of members; “special meeting of members” includes a meeting of any class or classes of members and a special meeting of all members entitled to vote at an annual meeting of members;
- f) “ordinary resolution” means a resolution passed by a majority of not less than 50% plus 1 of the votes cast on that resolution;
- g) “proposal” means a proposal submitted by a member of the Corporation that meets the requirements of section 163 (Shareholder Proposals) of the Act;
- h) “Regulations” means the regulations made under the Act, as amended, restated or in effect from time to time; and
- i) “special resolution” means a resolution passed by a majority of not less than two-thirds (2/3) of the votes cast on that resolution.

## **1.02 Interpretation**

In the interpretation of this by-law, words in the singular include the plural and vice-versa, words in one gender include all genders, and “person” includes an individual, body corporate, partnership, trust and unincorporated organization.

Other than as specified in 1.01 above, words and expressions defined in the Act have the same meanings when used in these by-laws.

## **1.03 Corporate Seal**

The Corporation may have a corporate seal in the form approved from time to time by the board. If a corporate seal is approved by the board, the secretary of the Corporation shall be the custodian of the corporate seal.

## **1.04 Execution of Documents**

Deeds, transfers, assignments, contracts, obligations and other instruments in writing requiring execution by the Corporation may be signed by any two (2) of its officers or directors. In addition, the board may from time to time direct the manner in which, and the person or persons by whom, a particular document or type of document shall be executed. Any person authorized to sign any document may affix the corporate seal (if any) to the document. Any signing officer may certify a copy of any instrument, resolution, by-law or other document of the Corporation to be a true copy thereof.

## **1.05 Financial Year End**

The financial year end of the Corporation shall be determined by the board of directors.

## **1.06 Banking Arrangements**

The banking business of the Corporation shall be transacted at such bank, trust company or other firm or corporation carrying on a banking business in Canada or elsewhere as the board of directors may designate, appoint or authorize from time to time by resolution. The banking business or any part of it shall be transacted by an officer or officers of the Corporation and/or other persons as the board of directors may by resolution from time to time designate, direct or authorize.

## 1.07 Annual Financial Statements<sup>2</sup>

The Corporation may, instead of sending copies of the annual financial statements and other documents referred to in subsection 172(1) (Annual Financial Statements) of the Act to the members, publish a notice to its members stating that the annual financial statements and documents provided in subsection 172(1) are available at the registered office of the Corporation and any member may, on request, obtain a copy free of charge at the registered office or by prepaid mail.

# SECTION 2 — Membership – Matters Requiring Special Resolution

## 2.01 Membership Conditions<sup>3</sup>

***[Choose this provision if you want a single class of individual members]***

Subject to the articles, there shall be one class of members in the Corporation. Membership in the Corporation shall be available only to individuals interested in furthering the Corporation's purposes and who have applied for and been accepted into membership in the Corporation by ordinary resolution of the board or in such other manner as may be determined by the board. Each member shall be entitled to receive notice of, attend and vote at all meetings of the members of the Corporation.

***[Choose this provision if you want two classes of members]***

Subject to the articles, there shall be two classes of members in the Corporation, namely, Class A members and Class B members. The board of directors of the Corporation may, by resolution, approve the admission of the members of the Corporation. Members may also be admitted in such other manner as may be prescribed by the board by ordinary resolution. The following conditions of membership shall apply:

### **Class A Members**

- (i) Class A voting membership shall be available only to *[describe category of persons (consider whether individuals or other entities) who should have a right to vote in the Corporation]* and who have applied and have been accepted for Class A voting membership in the Corporation.
- (ii) The term of membership of a Class A voting member shall be annual, subject to renewal in accordance with the policies of the Corporation.
- (iii) As set out in the articles, each Class A voting member is entitled to receive notice of, attend and vote at all meetings of members and each such Class A voting member shall be entitled to one (1) vote at such meetings.

### **Class B Members**

- (i) Class B non-voting membership shall be available only to *[describe category of persons (consider whether individuals or other entities) who should not have a right to vote in the Corporation]* and who have applied and have been accepted for Class B non-voting membership in the Corporation.

- (ii) The term of membership of a Class B non-voting member shall be annual, subject to renewal in accordance with the policies of the Corporation.
- (iii) Subject to the Act and the articles, a Class B non-voting member shall not be entitled to receive notice of, attend or vote at meetings of the members of the Corporation.

Pursuant to subsection 197(1) (Fundamental Changes) of the Act, a special resolution of the members is required to make any amendments to this section of the by-laws if those amendments affect membership rights and/or conditions described in paragraphs 197(1)(e), (h), (l) or (m).

## **2.02 Notice of Meeting of Members<sup>4</sup>**

Notice of the time and place of a meeting of members shall be given to each member entitled to vote at the meeting by the following means:

- a) by mail, courier or personal delivery to each member entitled to vote at the meeting, during a period of 21 to 60 days before the day on which the meeting is to be held; or
- b) by telephonic, electronic or other communication facility to each member entitled to vote at the meeting, during a period of 21 to 35 days before the day on which the meeting is to be held.<sup>5</sup>

Pursuant to subsection 197(1) (Fundamental Changes) of the Act, a special resolution of the members is required to make any amendment to the by-laws of the Corporation to change the manner of giving notice to members entitled to vote at a meeting of members.

## **2.03 Absentee Voting by Mail Ballot<sup>6</sup>**

Pursuant to subsection 171(1) (Absentee Voting) of the Act, a member entitled to vote at a meeting of members may vote by mailed-in ballot if the Corporation has a system that:

- a) enables the votes to be gathered in a manner that permits their subsequent verification, and
- b) permits the tallied votes to be presented to the Corporation without it being possible for the Corporation to identify how each member voted.

Pursuant to subsection 197(1) (Fundamental Changes) of the Act, a special resolution of the members is required to make any amendment to the by-laws of the Corporation to change this method of voting by members not in attendance at a meeting of members.

# **SECTION 3 — MEMBERSHIP DUES, TERMINATION AND DISCIPLINE**

## **3.01 Membership Dues**

Members shall be notified in writing of the membership dues at any time payable by them and, if any are not paid within one (1) calendar month of the membership renewal date, the members in default shall automatically cease to be members of the Corporation.

### **3.02 Termination of Membership<sup>7</sup>**

A membership in the Corporation is terminated when:

- a) the member dies, or, in the case of a member that is a corporation, the corporation is dissolved;
- b) a member fails to maintain any qualifications for membership described in Section 2.01 of these by-laws;
- c) the member resigns by delivering a written resignation to the chair of the board of the Corporation in which case such resignation shall be effective on the date specified in the resignation;
- d) the member is expelled in accordance with Section 3.03 below or is otherwise terminated in accordance with the articles or by-laws;
- e) the member's term of membership expires; or
- f) the Corporation is liquidated or dissolved under the Act.

Subject to the articles, upon any termination of membership, the rights of the member, including any rights in the property of the Corporation, automatically cease to exist.

### **3.03 Discipline of Members<sup>8</sup>**

The board shall have authority to suspend or expel any member from the Corporation for any one or more of the following grounds:

- a) violating any provision of the articles, by-laws, or written policies of the Corporation;
- b) carrying out any conduct which may be detrimental to the Corporation as determined by the board in its sole discretion;
- c) for any other reason that the board in its sole and absolute discretion considers to be reasonable, having regard to the purpose of the Corporation.

In the event that the board determines that a member should be expelled or suspended from membership in the Corporation, the president, or such other officer as may be designated by the board, shall provide twenty (20) days notice of suspension or expulsion to the member and shall provide reasons for the proposed suspension or expulsion. The member may make written submissions to the president, or such other officer as may be designated by the board, in response to the notice received within such twenty (20) day period. In the event that no written submissions are received by the president, the president, or such other officer as may be designated by the board, may proceed to notify the member that the member is suspended or expelled from membership in the Corporation. If written submissions are received in accordance with this section, the board will consider such submissions in arriving at a final decision and shall notify the member concerning such final decision within a further twenty (20) days from the date of receipt of the submissions. The board's decision shall be final and binding on the member, without any further right of appeal.

## SECTION 4 — MEETINGS OF MEMBERS

### 4.01 Persons Entitled to be Present

The only persons entitled to be present at a meeting of members shall be those entitled to vote at the meeting, the directors and the public accountant of the Corporation and such other persons who are entitled or required under any provision of the Act, articles or by-laws of the Corporation to be present at the meeting. Any other person may be admitted only on the invitation of the chair of the meeting or by resolution of the members.

### 4.02 Chair of the Meeting

In the event that the chair of the board and the vice-chair of the board are absent, the members who are present and entitled to vote at the meeting shall choose one of their number to chair the meeting.

### 4.03 Quorum<sup>9</sup>

A quorum at any meeting of the members (unless a greater number of members are required to be present by the Act) shall be 10% of the members entitled to vote at the meeting. If a quorum is present at the opening of a meeting of members, the members present may proceed with the business of the meeting even if a quorum is not present throughout the meeting.

### 4.04 Votes to Govern<sup>10</sup>

At any meeting of members every question shall, unless otherwise provided by the articles or by-laws or by the Act, be determined by a majority of the votes cast on the questions. In case of an equality of votes either on a show of hands or on a ballot or on the results of electronic voting, the chair of the meeting in addition to an original vote shall have a second or casting vote.<sup>11</sup>

## SECTION 5 — DIRECTORS

### 5.01 Election and Term<sup>12</sup>

Subject to the articles<sup>13</sup>, the members will elect the directors at the first meeting of members and at each succeeding annual meeting at which an election of directors is required, and the directors shall be elected to hold office for a term expiring not later than the close of the third annual meeting of members following the election.

## SECTION 6 — MEETINGS OF DIRECTORS

### 6.01 Calling of Meetings

Meetings of the board may be called by the chair of the board, the vice-chair of the board or any two (2) directors at any time. If the Corporation has only one director, that director may call and constitute a meeting.

## 6.02 Notice of Meeting<sup>13</sup>

Notice of the time and place for the holding of a meeting of the board shall be given in the manner provided in Section 8.01 of this by-law to every director of the Corporation not less than 7 days before the time when the meeting is to be held. Notice of a meeting shall not be necessary if all of the directors are present, and none objects to the holding of the meeting, or if those absent have waived notice of or have otherwise signified their consent to the holding of such meeting. Notice of an adjourned meeting is not required if the time and place of the adjourned meeting is announced at the original meeting. Unless the by-law otherwise provides, no notice of meeting need specify the purpose or the business to be transacted at the meeting except that a notice of meeting of directors shall specify any matter referred to in subsection 138(2) (Limits on Authority) of the Act that is to be dealt with at the meeting.

## 6.03 Regular Meetings

The board may appoint a day or days in any month or months for regular meetings of the board at a place and hour to be named. A copy of any resolution of the board fixing the place and time of such regular meetings of the board shall be sent to each director forthwith after being passed, but no other notice shall be required for any such regular meeting except if subsection 136(3) (Notice of Meeting) of the Act requires the purpose thereof or the business to be transacted to be specified in the notice.

## 6.04 Votes to Govern<sup>14</sup>

At all meetings of the board, every question shall be decided by a majority of the votes cast on the question. In case of an equality of votes, the chair of the meeting in addition to an original vote shall have a second or casting vote.<sup>15</sup>

## 6.05 Committees

The board may from time to time appoint any committee or other advisory body, as it deems necessary or appropriate for such purposes and, subject to the Act, with such powers as the board shall see fit. Any such committee may formulate its own rules of procedure, subject to such regulations or directions as the board may from time to time make. Any committee member may be removed by resolution of the board of directors.

# SECTION 7 — OFFICERS

## 7.01 Description of Offices<sup>16</sup>

Unless otherwise specified by the board which may, subject to the Act modify, restrict or supplement such duties and powers, the offices of the Corporation, if designated and if officers are appointed, shall have the following duties and powers associated with their positions:

- a) **Chair of the Board** - The chair of the board, if one is to be appointed, shall be a director. The chair of the board, if any, shall, when present, preside at all meetings of the board of directors and of the members. The chair shall have such other duties and powers as the board may specify.
- b) **Vice-Chair of the Board** - The vice-chair of the board, if one is to be appointed, shall be a director. If the chair of the board is absent or is unable or refuses to act, the vice-chair of the board, if any, shall, when present, preside at all meetings of the board of directors and of the members. The vice-chair shall have such other duties and powers as the board may specify.

- c) **President** – If appointed, the president shall be the chief executive officer of the Corporation and shall be responsible for implementing the strategic plans and policies of the Corporation. The president shall, subject to the authority of the board, have general supervision of the affairs of the Corporation.
- d) **Secretary** – If appointed, the secretary shall attend and be the secretary of all meetings of the board, members and committees of the board. The secretary shall enter or cause to be entered in the Corporation's minute book, minutes of all proceedings at such meetings; the secretary shall give, or cause to be given, as and when instructed, notices to members, directors, the public accountant and members of committees; the secretary shall be the custodian of all books, papers, records, documents and other instruments belonging to the Corporation.
- e) **Treasurer** - If appointed, the treasurer shall have such powers and duties as the board may specify.

The powers and duties of all other officers of the Corporation shall be such as the terms of their engagement call for or the board or president requires of them. The board may from time to time and subject to the Act, vary, add to or limit the powers and duties of any officer.

## 7.02 Vacancy in Office

In the absence of a written agreement to the contrary, the board may remove, whether for cause or without cause, any officer of the Corporation. Unless so removed, an officer shall hold office until the earlier of:

- a) the officer's successor being appointed,
- b) the officer's resignation,
- c) such officer ceasing to be a director (if a necessary qualification of appointment) or
- d) such officer's death.

If the office of any officer of the Corporation shall be or become vacant, the directors may, by resolution, appoint a person to fill such vacancy.

# SECTION 8 — NOTICES

## 8.01 Method of Giving Notices

Any notice (which term includes any communication or document) to be given (which term includes sent, delivered or served), other than notice of a meeting of members or a meeting of the board of directors, pursuant to the Act, the articles, the by-laws or otherwise to a member, director, officer or member of a committee of the board or to the public accountant shall be sufficiently given:

- a) if delivered personally to the person to whom it is to be given or if delivered to such person's address as shown in the records of the Corporation or in the case of notice to a director to the latest address as shown in the last notice that was sent by the Corporation in accordance with section 128 (Notice of directors) or 134 (Notice of change of directors); or
- b) if mailed to such person at such person's recorded address by prepaid ordinary or air mail; or

- c) if sent to such person by telephonic, electronic or other communication facility at such person's recorded address for that purpose; or
- d) if provided in the form of an electronic document in accordance with Part 17 of the Act.

A notice so delivered shall be deemed to have been given when it is delivered personally or to the recorded address as aforesaid; a notice so mailed shall be deemed to have been given when deposited in a post office or public letter box; and a notice so sent by any means of transmitted or recorded communication shall be deemed to have been given when dispatched or delivered to the appropriate communication company or agency or its representative for dispatch. The secretary may change or cause to be changed the recorded address of any member, director, officer, public accountant or member of a committee of the board in accordance with any information believed by the secretary to be reliable. The declaration by the secretary that notice has been given pursuant to this by-law shall be sufficient and conclusive evidence of the giving of such notice. The signature of any director or officer of the Corporation to any notice or other document to be given by the Corporation may be written, stamped, type-written or printed or partly written, stamped, type-written or printed.

## **8.02 Invalidity of any provisions of this by-law**

The invalidity or unenforceability of any provision of this by-law shall not affect the validity or enforceability of the remaining provisions of this by-law.

## **8.03 Omissions and Errors**

The accidental omission to give any notice to any member, director, officer, member of a committee of the board or public accountant, or the non-receipt of any notice by any such person where the Corporation has provided notice in accordance with the by-laws or any error in any notice not affecting its substance shall not invalidate any action taken at any meeting to which the notice pertained or otherwise founded on such notice.

# **SECTION 9 — DISPUTE RESOLUTION**

## **9.01 Mediation and Arbitration**

Disputes or controversies among members, directors, officers, committee members, or volunteers of the Corporation are as much as possible to be resolved in accordance with mediation and/or arbitration as provided in Section 9.02 of this by-law.

## **9.02 Dispute Resolution Mechanism**

In the event that a dispute or controversy among members, directors, officers, committee members or volunteers of the Corporation arising out of or related to the articles or by-laws, or out of any aspect of the operations of the Corporation is not resolved in private meetings between the parties, then without prejudice to or in any other way derogating from the rights of the members, directors, officers, committee members, employees or volunteers of the Corporation as set out in the articles, by-laws or the Act, and as an alternative to such person instituting a law suit or legal action, such dispute or controversy shall be settled by a process of dispute resolution as follows:

- a) The dispute or controversy shall first be submitted to a panel of mediators whereby the one party appoints one mediator, the other party (or if applicable the board of the Corporation) appoints one mediator, and the two mediators so appointed jointly appoint a third mediator. The three mediators will then meet with the parties in question in an attempt to mediate a resolution between the parties.
- b) The number of mediators may be reduced from three to one or two upon agreement of the parties.
- c) If the parties are not successful in resolving the dispute through mediation, then the parties agree that the dispute shall be settled by arbitration before a single arbitrator, who shall not be any one of the mediators referred to above, in accordance with the provincial or territorial legislation governing domestic arbitrations in force in the province or territory where the registered office of the Corporation is situated or as otherwise agreed upon by the parties to the dispute. The parties agree that all proceedings relating to arbitration shall be kept confidential and there shall be no disclosure of any kind. The decision of the arbitrator shall be final and binding and shall not be subject to appeal on a question of fact, law or mixed fact and law.
- d) All costs of the mediators appointed in accordance with this section shall be borne equally by the parties to the dispute or the controversy. All costs of the arbitrators appointed in accordance with this section shall be borne by such parties as may be determined by the arbitrators.

## SECTION 10 — EFFECTIVE DATE

### 10.01 Effective Date

Subject to matters requiring a special resolution of the members, this by-law shall be effective when made by the board.

CERTIFIED to be By-Law No. 1 of the Corporation, as enacted by the directors of the Corporation by resolution on the \_\_\_\_\_ day of \_\_\_\_\_, 20XX and confirmed by the members of the Corporation by special resolution on the \_\_\_\_\_ day of \_\_\_\_\_, 20XX.

Dated as of the [day] day of [Month], [Year].

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[Indicate name of director/officer]

# ENDNOTES

<sup>1</sup> **Other Definitions** – Depending on the particular structure of the corporation, other definitions may be included.

<sup>2</sup> **Annual Financial Statements** – Subsection 175(2) of the Act allows the by-laws to include this provision, which is optional.

<sup>3</sup> **Membership Conditions** – Paragraph 7(1)(c) requires the articles to set out 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 attaching to each of those classes or groups. Subsection 154(1) requires the by-laws to set out the conditions required for being a member, including whether a corporation or other entity may be a member. The examples in the precedent are for (1) a single class of members and (2) two classes of membership.

<sup>4</sup> **Notice of Meeting and Record Date** – The notice periods referred to in this section are prescribed notice periods under Paragraph 63(1)(a) and (b) of the Regulations. Paragraph 63(1)(c) of the Regulations also permits the corporation to affix the notice of meeting, no later than 30 days before the day on which the meeting is to be held to a notice board where information respecting the corporation's activities is regularly posted and that is located in a place frequented by the members. Paragraph 63(1)(d) permits a corporation with over 250 members to publish the notice of meeting (i) at least once in each of the 3 weeks immediately before the date of the meeting in one or more newspapers where the majority of the members of the corporation resides or (ii) at least once in a publication of the corporation that is sent to all members, during the period of 21 to 60 days before the meeting. The corporation may want to include either of these options in the by-laws, if desired. It should also be noted that under subsection 161(1) of the Act, the corporation may fix a record date in accordance with the Regulations for determining the members entitled to receive notice of a meeting of members and to vote at such meeting.

<sup>5</sup> **Electronic means of giving notice** – Under subsection 63(2) of the Regulations, if the by-laws provide for an electronic means of giving notice, the by-laws must also provide for a non-electronic means of giving notice

<sup>6</sup> **Absentee Voting** – Subsection 171(1) of the Act provides that the by-laws may set out any prescribed methods of voting by members not in attendance at a meeting of members. The methods of voting prescribed by section 74 of the Regulations are: (a) voting by proxy, (b) voting by mailed-in ballot, and (c) voting by means of telephonic, electronic or other communication facility in accordance with the Regulations. If the by-laws prescribe any method of absentee voting they are also required to set out procedures for collecting, counting and reporting the results of any vote.

<sup>7</sup> **Retention of rights on Termination** – Section 157 of the Act provides that the articles or by-laws may specify retention of rights by members, for example, for a particular period of time.

<sup>8</sup> **Discipline** – Section 158 allows the articles or by-laws to provide that the directors, members or a committee of directors or members has the power to discipline a member or to terminate their membership. If they do, they must also set out the circumstances and the manner in which the power may be exercised.

<sup>9</sup> **Quorum** – Subsection 164(1) of the Act allows the by-laws to establish the quorum for members' meetings as long as it complies with the Regulations which require the quorum to be a fixed number, a percentage or a determinable formula. If not set out in the by-laws, subsection 164(2) of the Act provides that the default is a majority of the members entitled to vote. Note that subsection 164(3) specifically allows the by-laws not to allow an opening quorum to be sufficient if there is a loss of quorum later in the meeting.

<sup>10</sup> **Voting** – Subsection 137(1) of the Act permits the by-laws to specify that the members may make decisions by consensus, with certain exceptions. However, consensus decision-making is generally only an appropriate means of making decisions at members meetings when the size of membership is small. If consensus decision making is desired for members, the following may be used:

*"Unless otherwise required by the Act or the articles of the Corporation, questions arising at any meeting of the members shall be decided by a consensus of the members present at the meeting. A consensus will be considered to have been reached when no member objects to the question on the floor before the meeting. Should the chair of the meeting determine, after a reasonable effort to achieve consensus has been made, that a consensus will not be reached regarding a particular question then the chair shall refer the question to be decided by a majority vote of the members."*

<sup>11</sup> **Tie-Vote** – The example provided in the model gives the chair a second or casting vote to break a tie-vote. There are other variations possible, such as stating that the chair shall not exercise a vote except to break a tie.

<sup>12</sup> **Election of Directors** – Subsection 128(3) provides that directors are to be elected by the members by ordinary resolution at an annual meeting for a term expiring within the prescribed period set out in the Regulations (4 years). Subsection 128(4) of the Act allows directors to be elected for staggered terms. The by-laws may specifically provide for staggered terms or the by-laws may be left silent so that the staggered terms are provided by resolution.

<sup>13</sup> **Notice of Board of Directors' Meeting** – Subsection 136(1) allows the by-laws to provide for any notice of a meeting of directors. The example provided by the model gives the board flexibility to establish a greater number of days notice for regular board meetings while being able to call a board meeting on short notice where pressing matters require an urgent meeting.

<sup>14</sup> **Voting** – Subsection 137(1) of the Act permits the by-laws to specify that the directors will make decisions by consensus, with certain exceptions. If consensus decision making is desired, the following may be used:

*"Unless otherwise required by the Act or the articles of the Corporation, questions arising at any meeting of the board shall be decided by a consensus of the directors present at the meeting. A consensus will be considered to have been reached when no director objects to the question on the floor before the meeting. Should the chair of the meeting determine, after a reasonable effort to achieve consensus has been made, that a consensus will not be reached regarding a particular question then the chair shall refer the question to be decided by a majority vote of the directors. In that event, each director is authorized to exercise one vote."*

<sup>15</sup> **Tie-Vote** – Where there is a tie vote, the example provided in the model gives the chair a second or casting vote to break a tie. There are other variations possible, such as stating that the chair shall not exercise a vote except to break a tie.

<sup>16</sup> **Officers** – Section 142 of the Act allows the board to appoint the officers of the corporation. Offices may be specified in the by-laws. If appointment by members or in some other manner is preferred, it must be set out in the articles, by-laws or, if applicable, a unanimous member agreement.

# MODEL SPECIAL RESOLUTION

## SPECIAL RESOLUTION OF MEMBERS

continuing the Corporation under the provisions of the *Canada Not-for-profit Corporations Act* and authorizing the directors to apply for a Certificate of Continuance.

WHEREAS the Corporation was incorporated under Part II of the *Canada Corporations Act* by Letters Patent dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_; and

[WHEREAS those Letters Patent were amended by Supplementary Letters Patent dated \_\_\_\_\_; and]

WHEREAS it is considered to be in the best interests of the Corporation that it be continued under the *Canada Not-for-profit Corporations Act* (NFP Act) pursuant to section 297 of the NFP Act;

## BE IT RESOLVED AS A SPECIAL RESOLUTION THAT:

1. The directors of the Corporation are authorized and directed to make an application under section 297 of the NFP Act to the Director appointed under the NFP Act for a Certificate of Continuance of the Corporation;
2. The Articles of Continuance (transition) of the Corporation, which have been submitted to this meeting and are annexed to these minutes as Schedule A, are approved;
3. The general operating by-law of the Corporation (as amended) is repealed effective on the date that the corporation continues under the NFP Act and the new general operating by-law No.1 which has been submitted to this meeting and is annexed to these minutes as Schedule B is approved and will be effective on the same date.
4. Any one of the officers and directors of the Corporation is authorized to take all such actions and execute and deliver all such documentation, including the annexed Articles of Continuance (transition), the notice of registered office and of directors in the forms fixed by the Director, which are necessary or desirable for the implementation of this resolution.

The undersigned, being the duly appointed (Secretary) of the Corporation, certifies that the above is a true and correct copy of a special resolution of \_\_\_\_\_, passed at a meeting of members held on the \_\_\_\_\_ day of \_\_\_\_\_, by a majority of not less than two-thirds of the votes cast by the members of the Corporation who voted in respect of the resolution, and the resolution is in full force and effect, unamended as of the date below.

Dated \_\_\_\_\_

\_\_\_\_\_  
Secretary

