

The Canadian Bar Association
Canadian Legal Conference and Expo: Niagara 2010
Niagara – August 16, 2010

**A COMPARISON OF CORPORATE JURISDICTIONS
FOR CHARITABLE ORGANIZATIONS**

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A. INTRODUCTION

The various federal, provincial and territorial non-share corporate statutes employ different methods for incorporation and contain different limitations on corporations. When considering the appropriate jurisdiction or corporate legislation to incorporate under, lawyers advising charitable and not-for profit organizations will have to take into consideration many different and some types equally important though conflicting factors, including the method of incorporation, restrictions on purposes or objects of the corporation, the content and process for amending by-laws, membership restrictions and remedies, potential future corporate changes, issues related to directors' liability and indemnification, residency requirements, in addition to the usual client requirement of speed and simplicity.

Some jurisdictions use articles of incorporation, following the modern corporate law model, while other less modern legislation provides for incorporation by letters patent. Whether a not-for-profit corporation will be incorporated by letters patent or by articles of incorporation is a relevant consideration. The issuance of letters patent is a discretionary function, which can make the process of incorporation for companies who choose this method a more onerous process. Not-for-profit corporations are incorporated by letters patent in the federal jurisdiction, and also in the provinces of Ontario, Quebec, Prince Edward Island, and New Brunswick. In Newfoundland, Manitoba and Saskatchewan, non-share capital corporations are incorporated by articles of incorporation. In British Columbia, Alberta, Nova Scotia, Northwest Territories and the Yukon, societies are incorporated by a certificate of incorporation. An additional submission required as part of the application for Nova Scotia, Quebec, Prince Edward Island and Alberta's *Companies Act* is a memorandum of association.

Some statutes set out the purposes for which a non-profit corporation may incorporate under the relevant legislation. Where the grant of letters patent is discretionary, the applicable Ministry may decline to register a corporation with objects that, in its opinion, do not fall within the purpose of the Act. For example, in Quebec, a non-profit corporation may only be incorporated for "national, patriotic, religious, philanthropic, charitable, scientific, artistic, social, professional, athletic or like purposes not for pecuniary gain."¹ The Application for Constitution as a Non-profit Legal Person must set out the purposes for which incorporation is sought.² In jurisdictions with articles of incorporation, the corporate activities or purposes must fall within those set forth in the governing legislation, but incorporation is generally not discretionary provided all of the requirements are met. For example, in Newfoundland a corporation without share capital may be incorporated "for undertakings restricted to those of a patriotic, religious, philanthropic, charitable, educational, scientific, literary, historical, artistic, social, professional,

fraternal, sporting or athletic nature or the like.”³ However, the articles of incorporation do not need to set out the corporate purposes. Instead, the articles must set out any restrictions on the undertaking that the corporation may carry on.⁴

The various non-profit statutes also contain different requirements regarding the content of by-laws. For example, the Saskatchewan legislation does not provide a list of matters that must be included in the by-laws. Unless a corporation’s articles, by-laws or a unanimous member agreement provide otherwise, the directors may make, amend or repeal any by-laws that regulate the activities and affairs of the corporation. Several other provincial statutes specify the matters that must be included in a corporation’s by-laws. Non-profit corporations incorporated in British Columbia, Nova Scotia, Prince Edward Island, the Yukon, the Northwest Territories, Nunavut, and under Alberta’s *Societies Act* must have by-laws relating to certain matters enumerated in the relevant provincial legislation.

Another important consideration is the process of enacting and amending by-laws, as by-law amendments are a relatively frequent occurrence. Unless the articles, by-laws or a unanimous member agreement otherwise provide, the directors of a Saskatchewan corporation may, by resolution, make, amend, or repeal any by-laws that regulate the business or affairs of the corporation.⁵ The amendment must then be submitted to the members for approval by ordinary resolution at the next meeting of members. The members may, by ordinary resolution, confirm, reject or amend the change.⁶ By-law amendments are effective from the date of the resolution of the directors. If the approval of the members is not subsequently obtained, the by-law ceases to be effective and no subsequent resolution of the directors having the same purpose or effect is effective until confirmed by the members.⁷ Similarly, in Manitoba, New Brunswick, Newfoundland, Ontario and Quebec, by-laws are valid from the time they are enacted by the directors. For instance, the directors of an Ontario corporation may repeal, amend, or re-enact the corporation’s by-laws. The amendments passed by the directors become effective immediately, but must be confirmed by the members at the next annual general meeting or at a special meeting called to deal with the by-law amendments.

Several jurisdictions require membership and government approval before a by-law becomes effective, including Alberta, Nova Scotia, the Northwest Territories and the federal jurisdiction. For example, under Alberta’s *Societies Act*, a special resolution is required in order to rescind, alter, or add to the by-laws of the society. A by-law change does not have effect until it has been registered by the Registrar. The Registrar shall refuse to register the change if it is of the opinion that the bylaw is not in accordance with the application for incorporation or that it contains anything contrary to law.⁸ Likewise, a Nova Scotia society may by special resolution make, amend, or repeal by-laws, not inconsistent with the *Societies Act* or with its memorandum of association, for the conduct and management of its activities and affairs.⁹ A by-law amendment does not take effect until it is approved by the Registrar.¹⁰

Statutory provisions regarding director liability is yet another consideration when choosing a jurisdiction for incorporation. Legislation in some jurisdictions provides for an objective standard of care for directors, while directors in other jurisdictions remain subject to the common-law subjective standard. For example, subsection 109(1) of Saskatchewan’s *Non-profit Corporations Act* provides as follows:

Every director and officer of a corporation, in exercising his or her powers and discharging his or her duties, shall:

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

The *Canada Not-for-profit Corporations Act*, Manitoba's *Corporations Act*, Newfoundland's *Corporations Act* and the proposed Ontario *Not-for-profit Corporations Act* provide for a substantially similar objective standard.

Modern corporate legislation also contains detailed provisions regarding fundamental changes to the corporation, such as amalgamation and continuance. While many non-profit corporations may never plan to undertake such actions, the inclusion of these provisions provides corporations with more flexibility. For example, Saskatchewan's *Non-profit Corporations Act, 1995* allows for a variety of corporate actions, including vertical and horizontal short-form amalgamation. In contrast, P.E.I. corporations without share capital cannot amalgamate or continue into another jurisdiction.

The purpose of the balance of this paper is to set out the basic elements of incorporation under the legislation applicable in many of the jurisdictions in Canada in order to assist lawyers to obtain a basic understanding of the implications for their clients of incorporation under one of these jurisdictions. A detailed analysis and comparison of these jurisdictions is beyond the scope of this paper and lawyers are encouraged to consult the various government sources and other material to obtain the specifics related to each jurisdiction.

B. OVERVIEW OF FEDERAL AND PROVINCIAL NOT-FOR-PROFIT LEGISLATION

1. Federal

Federal not-for-profit corporations are currently incorporated under the *Canada Corporations Act*, R.S.C. 1970, c. C-32. However, on June 23, 2009, the new *Canada Not-for-Profit Corporations Act* S.C. 2009, c.23 received Royal Assent ("CNCA"). The CNCA is a modern corporate statute modeled on the *Canada Business Corporations Act*, providing a much needed reform of the law respecting federal not-for-profit corporations. The CNCA has not yet been proclaimed in force, but is expected to come into force in early 2011.

(a) Canada Corporations Act

Federal corporations without share capital are incorporated under Part II of the *Canada Corporations Act* (CCA) by Letters Patent. The Act is outdated, as it has remained largely unchanged with respect to not-for-profit corporations since 1917.

The application for Letters Patent must set out the following:

- (a) the proposed name of the corporation;
- (b) the purposes for which its incorporation is sought;
- (c) the place within Canada where the head office of the corporation is to be situated;
- (d) the names in full and the address and calling of each of the applicants; and
- (e) the names of the applicants, not less than three, who are to be the first directors of the corporation.¹¹

The application must be accompanied by the by-laws, which are reviewed by Industry Canada. The bylaws must contain provisions dealing with the following:

- (a) conditions of membership, including societies or companies becoming members of the corporation;
- (b) mode of holding meetings, provision for quorum, rights of voting and of enacting by-laws;
- (c) mode of repealing or amending by-laws with special provision that the repeal or amendment of by-laws not embodied in the letters patent shall not be enforced or acted upon until the approval of the Minister has been obtained;
- (d) appointment and removal of directors, trustees, committees and officers, and their respective powers and remuneration;
- (e) audit of accounts and appointment of auditors;
- (f) whether or how members may withdraw from the corporation; and
- (g) custody of the corporate seal and certifying of documents issued by the corporation.¹²

There is a \$200 filing fee requirement when submitting the application for letters patent. Once the application for letters patent and the proposed by-laws are found in compliance with the CCA, Industry Canada issues letters patent with the application for letters patent attached and will also grant Ministerial approval of the general by-laws.¹³ The corporation comes into existence on the date that Industry Canada receives the application for letters patent.

All corporations under the CCA must include in their by-laws that members will appoint an auditor at each annual meeting. The auditor cannot be a director, officer or employee of the corporation or any of its affiliates, unless the members agree otherwise.¹⁴ The CCA does not contain a provision regarding the standard of care for directors and officers and as a result, the common law subjective standard applies.

Currently, federal not-for-profit corporations face a cumbersome process for by-law amendments. The by-laws of a CCA corporation may be amended or repealed in accordance with the existing by-laws of the corporation. Generally, the directors of the corporation will enact an amending by-law, which must be sanctioned by a two-thirds vote of the members and then approved by the Minister of Industry. No repeal or amendment to a corporation's by-laws may be acted upon until ministerial approval has been obtained. Corporations Canada has published a Policy Statement relating to the amendment of general by-laws.¹⁵ If the amendments

are in compliance with the CCA and other requirements, Corporations Canada will issue a letter giving Ministerial approval. Generally, the date the request for approval was received by the Minister will be the effective date of the amendments.

There are also a limited number of corporate actions available under the CCA. The amalgamation provisions contained in the CCA are not applicable to non-share corporations incorporated under Part II of the Act.¹⁶ As a result, it is not possible to amalgamate CCA corporations. As a matter of practice, where federal non-share corporations desire a merger, it is necessary to surrender the charter of one of the corporations and transfer its remaining assets (and sometimes liabilities) to the surviving corporation. The CCA also does not provide for the import or export of corporations. Consequently, it is not possible to continue a provincial non-share corporation into the federal jurisdiction and vice versa, subject to one exception. Sections 156 and 159 allow a corporation that is incorporated by a Special Act of Parliament to apply for letters patent, which continue the corporation under Part II of the CCA as if it had been incorporated under that Act.

The provisions of the *Canada Corporations Act* lack detail and are not well defined, leaving not-for-profit corporations without guidance on many issues. The Act does not contain many of the provisions found in modern corporate statutes. For example, the statute does not deal with the conduct of members' meetings and contains no express reference to director's meetings. Therefore, Industry Canada has created policies which aim to fill in these legislative gaps and which must be consulted when considering incorporating federally.

(b) *Canada Not-for-Profit Corporations Act*

After several attempts at legislative reform, the *Canada Not-for-Profit Corporations Act* received Royal Assent on June 23, 2009. When proclaimed in force, the new Act will replace Parts II and III of the CCA. The CNCA represents a much needed modernization of the legislation governing federally incorporated not-for-profit corporations. The CNCA has been modeled on the *Canada Business Corporations Act* in order to keep the new legislative scheme familiar and user-friendly.

The CNCA provides a simplified process of incorporation. Under the new Act, incorporation will be as of right, rather than the discretionary letters patent system currently in place under the CCA. The incorporation process under the CNCA will be faster and more efficient. One or more individuals or corporations may incorporate a not-for-profit corporation by filing articles of incorporation. The articles must set out:

- (a) the name of the corporation;
- (b) the province where the registered office is to be situated;
- (c) 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;
- (d) the number of directors or the minimum and maximum number of directors;
- (e) any restrictions on the activities that the corporation may carry on;

- (f) a statement of the purpose of the corporation; and
- (g) a statement concerning the distribution of property remaining on liquidation after the discharge of any liabilities of the corporation.¹⁷

A corporation's by-laws will not be required to accompany the articles of incorporation and by-laws will no longer be subject to Ministerial approval. However, a copy of any by-law, amendments, nor repealed by-laws must be filed with Industry Canada within the prescribed period.¹⁸ Unless the articles, the by-laws, or a unanimous member agreement otherwise provide, the board of directors may make, amend or repeal any by-law that regulates the affairs of a corporation, except where the amendment provides for a fundamental change. By-laws are effective upon being enacted by the directors, but must be subsequently approved by the members.¹⁹ New by-laws as well as amendments or proposals to repeal by-laws can also be initiated by the members in a member proposal. In that case, only member approval is required for the action to be effective and no action from the directors is needed.²⁰

The CNCA provides a more comprehensive statutory framework than the CCA. Therefore, many corporate governance rules which are detailed in the CNCA will not need to form part of a corporation's by-laws. However, corporations should consider incorporating these rules into their new by-laws for ease of reference. The CNCA contains enhanced membership rights, including the right to access corporate records and obtain membership lists²¹; the right to submit proposals to amend by-laws, nominate directors or require any matter to be discussed at an annual meeting;²² the right to requisition a meeting of members²³; and the ability to sign resolutions in writing.²⁴ In addition, members of a non-soliciting corporation may form unanimous member agreements.²⁵ Further, the CNCA provides many remedies which were previously unavailable under the CCA, including the right to seek an oppression remedy against the corporation²⁶, and the right to seek a court order to commence a derivative action.²⁷

The CNCA also contains detailed provisions with respect to directors and directors' meetings. Notably, a non-soliciting corporation is only required to have one or more directors. 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. The CNCA requires that directors be elected at an annual meeting of members. Ex officio directors are not permitted under the CNCA.

The CNCA provides an objective standard of care for directors and officers.²⁸ The CNCA also provides directors with a due diligence defence, and contains provisions allowing for the indemnification of directors and the purchase of directors' and officers' liability insurance.

The CNCA contains extensive provisions regarding the appointment of public accountants and audits. The level of financial review required depends on the classification of the corporation as soliciting or non-soliciting. For the purposes of the provisions in the Act relating to public accountants, corporations are further classified into designated and non-designated corporations.

By default, all corporations must appoint a public accountant by ordinary resolution at each annual meeting to hold office until the close of the next annual meeting. However, there are exemptions available under the Act for certain corporations. The standard of financial review required under the act varies depending on the classification of the corporation.

Finally, more corporate actions are possible under the CNCA than the CCA. The CCA contains little authority for fundamental changes, other than supplementary letters patent. The CNCA contains detailed amalgamation provisions, including short-form amalgamations²⁹, and details surrounding import and export continuance.³⁰ As mentioned above, amalgamation and continuance are not possible under the CCA.

2. Alberta

A non-share capital corporation may be incorporated in Alberta under either the *Companies Act*³¹ or the *Societies Act*.³²

(a) *Societies Act*

A society may be formed in Alberta under the *Societies Act* by five or more individuals who share a common recreational, cultural, scientific or charitable interest, but not for the purpose of carrying on a trade or business.³³

Those choosing to incorporate under the *Societies Act* are required to prepare an application for incorporation. The application must set out the intended name of the society and the purpose for which incorporation is desired. It must also be accompanied by any information respecting the subscribers to the application that may be required under the *Agricultural and Recreational Land Ownership Act* and section 35 of the *Citizenship Act (Canada)* in the form and manner required by the regulations.

The by-laws to accompany the application must contain the following provisions:³⁴

- (a) terms of admission of members and their rights and obligations;
- (b) the conditions of withdrawal of members and the manner, if any, in which a member may be expelled;
- (c) the mode and time of calling general and special meetings of the society and the quorum;
- (d) the appointment and removal of directors and officers, and their duties, powers, and remuneration;
- (e) the exercise of borrowing powers;
- (f) the audit of accounts;
- (g) the custody and use of the self of the society;
- (h) the manner of making, altering and rescinding by-laws;
- (i) the preparation and custody of corporate records;
- (j) the time and place, if any, at which books and records can be inspected by the members.

The Registrar may direct that any of the purposes mentioned in the application or any provisions of the by-laws be struck out or modified.³⁵ The Registrar may also refuse incorporation for any reason that the Registrar considers sufficient.³⁶

The objects of a society may be altered by special resolution to:

- (a) include some object or objects that may conveniently or advantageously be combined with the existing objects of the society; or
- (b) restrict or abandon an object specified in its application.³⁷

No change becomes effective until approved and registered by the Registrar.

The by-laws of a society can only be rescinded, altered, or added to by special resolution of the society. No change to the by-laws has effect until it has been registered by the Registrar. The Registrar may refuse to register the change if of the opinion that the bylaw is not in accordance with the application for incorporation or that it contains anything contrary to law.³⁸

With regard to membership in a society, the Act expressly permits a person under the age of 18 years to be elected or admitted as a member of a society.³⁹

The *Societies Act* does not contain a provision explicitly requiring that a society appoint an auditor. However, the by-laws of an Alberta society must contain provisions for the audit of accounts.⁴⁰ The *Societies Act* requires that audited financial statements be presented at a society's annual general meeting and signed by the society's auditor, setting out the society's income, disbursements, assets and liabilities.⁴¹ The audited financial statement must also be submitted as part of a society's annual return.⁴² The *Societies Act* does not contain a provision allowing a society to waive these requirements.

Of note, the *Societies Act* contains a provision permitting the by-laws to provide that a dispute arising out of the affairs of the society and between any members or between a member or a person who is aggrieved, and who has for not more than six months ceased to be a member or a person claiming through the member or aggrieved person or claiming under the by-laws may be resolved by arbitration.⁴³ In fact, the Act goes further and provides:

A decision made pursuant to an arbitration is binding on all parties and may be enforced on application to the Court of Queen's Bench, and unless the by-laws otherwise provide, there is no appeal from it.⁴⁴

The *Societies Act* contains an unusual provision under which a society may, through its by-laws, impose a penalty of not more than \$5 on a member who contravenes a by-law of the society.⁴⁵

(b) *Companies Act*

Although incorporation under the *Societies Act* is easier and less costly, many non-profit organizations in Alberta choose to incorporate under the *Companies Act*. The *Societies Act*

restricts societies from carrying on a trade or business, while organizations incorporated under Part 9 of the *Companies Act* can engage in business activities.⁴⁶

A non-profit company may be incorporated under the *Companies Act* for the purpose of promoting art, science, religion, charity or any other useful object.⁴⁷ A non-profit company may also be incorporated solely for the purpose of promoting recreation among its members.⁴⁸

There are two types of non-profit companies; public and private. A public company is any company that is not a private company.⁴⁹ In the case of a company not having share capital, a private company is one that:

- (a) limits the number of its members to fifty or less;
- (b) prohibits any invitation to the public to become members or to subscribe for debentures of the company; and
- (c) restricts or prohibits any transfer of the interest of a member in the company.⁵⁰

Any three or more persons may subscribe their names to a memorandum of association to form a public non-profit company. Only two applicants are required to form a private non-profit company. The contents of the memorandum of agreement depend on whether the company will be limited by guarantee or limited by shares.⁵¹

The memorandum of agreement of a company limited by guarantee shall, in the prescribed form, state:

- (a) the name of the company;
- (b) the objects of the company;
- (c) that the liability of the members is limited; and
- (d) that each member undertakes to contribute to the assets of the company in the event of its being wound up while he or she is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he or she ceases to be a member, and of the costs, charges and expenses of winding-up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding an amount specified in the memorandum.⁵²

Under the *Companies Act*, a non-profit company may also be limited by shares. The memorandum of agreement of a company limited by shares shall, in the prescribed form, state:

- (a) the name of the company;
- (b) the objects of the company;
- (c) that the liability of the members is limited; and
- (d) particulars of the share capital with which the company proposes to be incorporated.⁵³

The memorandum of association of any non-profit company, whether limited by guarantee or by shares, must contain a clause stating that no dividends or income will be paid to members and that all profits or any income, if any, must be used to promote the company's objects.⁵⁴

It should be noted that unlike other jurisdictions, the *Companies Act* uses the term “articles of association” to refer to the operating rules of the company. The Act does not use the term “by-laws”. The *Companies Act* contains a set of default operating rules in Table A, a schedule to the Act. Non-profit companies may adopt Table A rather than drafting their own articles of association. Where a company limited by guarantee adopts Table A as its articles, the provisions relating to share capital should be removed. A company may draft its own articles of association; however, the default operating rules will apply so far as the articles do not exclude or modify the regulations in Table A.⁵⁵

At each annual meeting, the members of an Alberta non-profit company must appoint one or more auditors to hold office until the next annual meeting.⁵⁶ The auditor may not be a director, officer or employee of the company or an affiliated company, or a partner, employer or employee of any such director, officer or employee. However, a private company can waive this requirement through a unanimous vote of the members.⁵⁷ The auditor must make a report to the members on the financial statement presented at the annual meeting.⁵⁸ Public non-profit companies must submit with their annual return the last audited balance sheet reviewed by the company's auditor, and the auditor's report.

The amalgamation process provided by Alberta's *Companies Act* is much different than the process in other jurisdictions. Two or more Alberta non-profit companies incorporated under Part 9 of the *Companies Act* may amalgamate and continue as one company.⁵⁹ However, the amalgamating companies must apply to the court for an order approving the amalgamation.⁶⁰

The process for amending the objects of a corporation is similarly onerous. A non-profit company may amend its objects by special resolution confirmed by an order of the court to enable it:

- (a) to carry on its business more economically or more efficiently,
- (b) to attain its main purpose by new or improved means,
- (c) to carry on some business that, under existing circumstances, may conveniently or advantageously be combined with the business of the company, or
- (d) to restrict or abandon any of the objects specified in the memorandum.⁶¹

Once a court order is obtained, the company has fifteen days to file with the Registrar a copy of the order, together with a copy of the memorandum as altered. The change does not take effect until both of the copies are filed.⁶²

3. British Columbia

Not-for-profit corporations in British Columbia are incorporated under the *Society Act*.⁶³ The current *Society Act* was enacted in 1977 and has not been substantially amended since. The *Society Act* was modelled on British Columbia's *Companies Act*⁶⁴, which has now been replaced by the *Business Corporations Act*.⁶⁵ Therefore, many of the provisions in the *Society Act* are now considered obsolete. The *Society Act* is a relatively short statute. However, it incorporates many provisions of the *Business Corporations Act* and the *Company Act* by reference. The B.C.

Ministry of Finance is currently undertaking a review of the *Society Act*, which will bring significant changes and modernization to the *Act*⁶⁶ The British Columbia Law Institute developed a consultation paper of recommendations, which has led to a collaborative response by sector experts that is still in the process of being completed. To find out more information on Provincial Government consultation, visit http://www.fin.gov.bc.ca/society_act_review.htm.

In British Columbia, a society may be formed under the *Society Act* “for any lawful purposes such as national, patriotic, religious, philanthropic, charitable, provident, scientific, fraternal, benevolent, artistic, educational, social, professional, agricultural, sporting or other useful purpose.”⁶⁷ The *Society Act* specifically lists certain purposes for which a society may not be formed. A B.C. society may not be formed for the following:

- (a) the operation of a boarding home, orphanage or other institution for minors or the supply of any other care for minors without the written consent of the director designated under the Child, Family and Community Service Act;
- (b) the ownership, management or operation of a hospital without the written consent of the Minister of Health;
- (c) the purpose of paying benefits or rendering services as described in section 14 (making life insurance contracts, contracts for payment of funeral benefits, paying benefits or rendering services in the event of accident, sickness or disability”);
- (d) any purpose without the consent of an existing society should the registrar require it;
- (e) for the purpose of carrying on a business, trade, industry or profession for gain or profit.⁶⁸

A B.C. society’s constitution must set out the purposes of the society. If the purposes of the proposed society do not appear to the registrar to be authorized by the Act or sufficiently set out, the registrar may require, as a prerequisite to incorporation, that the purposes be altered accordingly.⁶⁹

To form a British Columbia society, five or more persons must file the constitution and by-laws of the proposed society with the registrar. The constitution must state the name and purposes of the society.⁷⁰ The registrar must issue a certificate of incorporation if:

- (a) no consent is required by law as a condition precedent to incorporation or the use of a name, or the consent has been obtained,
- (b) the constitution of the proposed society appears to the registrar to comply with the Act,
- (c) the name of the proposed society has been reserved, and
- (d) any prerequisite required by the registrar has been fulfilled.⁷¹

The *Society Act* provides a default form of by-laws which may be used by societies in Schedule “B” to the Act. A society can adopt these by-laws, a modified version of these by-laws, or an alternate form of by-laws altogether.⁷² If a society adopts by-laws other than those set out in Schedule B, the by-laws must be filed with the Registrar.

Under the *Society Act*, By-laws must contain provisions concerning the following⁷³:

- (a) the admission of members, their rights and obligations, and when they cease to be in good standing;
- (b) the conditions under which membership ceases and the manner, if any, in which a member may be expelled;
- (c) the procedure for calling general meetings;
- (d) the rights of voting at general meetings, whether proxy voting is allowed and if so, provisions relating to it;
- (e) the appointment and removal of directors and officers and their duties, powers and remuneration;
- (f) the exercise of borrowing powers;
- (g) the preparation and custody of minutes of meetings of the society and directors.

It is important when drafting by-laws for a society in British Columbia to note that the funds and property of a society must be used and dealt with in accordance with the provisions contained in the by-laws. If broader investment is not authorized, a society may only invest in securities in which trustees are otherwise authorized by law to invest.⁷⁴

Like under the CCA and Alberta's *Societies Act*, the by-law amendment process is burdensome. A British Columbia society may amend its by-laws by special resolution, which must be filed with the registrar. The resolution becomes effective on the later of the date on which it was filed with the registrar and the date specified in the resolution.⁷⁵ A society must ensure that its by-laws comply with the requirements of the *Society Act* before submitting any changes to the registrar.⁷⁶

The *Society Act* contains several provisions which may be of concern to some organizations considering incorporation in British Columbia. Section 7(2) provides that a society may have non-voting members, but their number must not exceed the number of voting members. However, the registrar may issue an exemption to this requirement on terms the registrar considers appropriate.⁷⁷

The *Society Act* provides that a member of a society is not, in his or her individual capacity, liable for any debt or liability of the society.⁷⁸ However, where a society has fewer than three members for more than six months, each *director* is personally liable for payment of every debt of the society incurred after the expiration of the six-month period, and for so long as the number of members continues to be less than three.⁷⁹ In addition, a B.C. society must obtain court approval before indemnifying a director or former director for costs and expenses incurred by him or her, in a civil, criminal, or administrative action or proceeding to which he or she is made a party because of being or having been a director.⁸⁰

The *Society Act* classifies societies into reporting societies and non-reporting societies. A reporting society is defined as a society that:

- (a) is, by its bylaws or by an ordinary resolution filed with the registrar, declared to be a reporting society,
- (b) is carrying on insurance business as defined in the *Financial Institutions Act*,

- (c) requires a consent under section 2 (1) (a), (b) or (d) or section 20 as a condition precedent to incorporation or changing its constitution,
- (d) is ordered to be a reporting society under section 38,
- (e) is a holding corporation for the purposes of the *Business Corporations Act*, or
- (f) became an amalgamated society after January 4, 1978 if one of the amalgamating societies was, at the time of the amalgamation, a reporting society, unless the registrar under the regulations orders that it is not a reporting society;⁸¹

Reporting societies are subject to more stringent audit and financial disclosure requirements. A reporting society must appoint an auditor, while a society that is not a reporting society may appoint an auditor.⁸² A reporting society must also provide each member with a copy of its financial statement and the auditor's report at least ten days before the date of its annual general meeting.⁸³ A non-reporting society must, on member demand, provide the member or the holder with a copy of its latest financial statement.⁸⁴

Under British Columbia's *Society Act*, "[two] or more societies may apply to amalgamate and form a new society..."⁸⁵ However, unlike other Canadian provinces, in British Columbia, each amalgamating society is dissolved and a completely new society must be incorporated. An amalgamation agreement is not required by the *Societies Act*, but many societies amalgamating in British Columbia adopt an amalgamation agreement as part of the process. The provisions of the *Society Act* that apply to the incorporation of a society apply to an amalgamation as if the amalgamation were the incorporation of the amalgamated society.⁸⁶ Although the *Society Act* uses the term "amalgamation", charities should note that the Charities Directorate of the Canada Revenue Agency considers the process described in British Columbia's *Society Act* as a "consolidation". In a consolidation, all of the original bodies dissolve and transfer their assets to a new entity.⁸⁷ When two or more charities consolidate, the resulting entity needs to make a new application for charitable registration. The *Society Act* does not provide for import or export continuance. Although British Columbia's *Company Act* has been repealed, Part 9 of that Act concerning dissolution and restoration continues to apply to societies and extra provincial societies as though it had not been repealed.⁸⁸ Under Part 9, a court order is necessary to restore a dissolved society to the register.⁸⁹

4. Manitoba

A corporation without share capital may be incorporated under Part XXII of the *Manitoba Corporations Act* for patriotic, religious, philanthropic, charitable, educational, agricultural, scientific, literary, historical, artistic, social, professional, fraternal, sporting or athletic purposes.⁹⁰ The *Corporations Act* applies to both not-for-profit corporations and business corporations. Subsection 2(2) of the Act provides that, where a provision of Part XXII is inconsistent with, or repugnant to, any other provision of the Act, the provision of Part XXII applies insofar as it affects a corporation without share capital. Consequently, when reading the *Manitoba Corporations Act*, it is necessary to determine whether a particular provision of the Act is repugnant to, or inconsistent with, Part XXII in order to ascertain whether the provision is applicable to non-share capital corporations.

Three or more persons over eighteen who are not bankrupt may create a non-share capital corporation. Within ninety days of reserving the corporate name, the applicants must complete and file articles of incorporation. The articles of incorporation of a Manitoba corporation without share capital must be in the form the Director fixes. In addition, the articles of a corporation without share capital shall set out:

- (a) the restrictions on the undertaking that the corporation may carry on;
- (b) that the corporation has no authorized share capital and shall be carried on without pecuniary gain to its members, and that any profits or other accretions to the corporation shall be used in furthering its undertaking;
- (c) where the undertaking of the corporation is of a social nature, the address in full of the clubhouse or similar premises that the corporation is maintaining; and
- (d) that each first director becomes a member of the corporation upon its incorporation.⁹¹

In Manitoba, no articles of a corporation without share capital shall be accepted for filing without the approval of the Minister.⁹² If the articles of incorporation are approved, the Director will issue a certificate of incorporation. A corporation comes into existence on the date shown in the certificate of incorporation.⁹³

Manitoba's *Corporations Act* does not require by-laws to be filed with the articles of incorporation. However, Section 275 of Manitoba's Act itemizes the matters that may be included in the by-laws:

- (a) the admission of persons and unincorporated associations as members and as ex officio members, and the qualifications of and the conditions of membership;
- (b) the fees and dues of members;
- (c) the issue of membership cards and certificates;
- (d) the suspension and termination of membership by the corporation and by a member;
- (e) where the articles provide that the interest of a member is transferable, the method of transfer of membership;
- (f) the qualifications of, and the remuneration of, the directors and the ex officio directors, if any;
- (g) the time for and the manner of election of directors;
- (h) the appointment, remuneration, functions, duties, and removal of agents, officers and employees of the corporation, and the security, if any, to be given by them to the corporation;
- (i) the time and place, and the notice to be given, for the holding of meetings of the members and of the board of directors, the quorum at meetings of members, the requirement as to proxies, and the procedure in all things at meetings of the members and at meetings of the board of directors;
- (j) the conduct in all other particulars of the affairs of the corporation.⁹⁴

Unless the articles, by-laws, or a unanimous member agreement otherwise provide, the directors of a corporation may, by resolution, make, amend, or repeal any by-laws that regulate the business or affairs of the corporation. By-law amendments are effective from the date of the resolution of the directors, but must be subsequently approved by the members by ordinary

resolution.⁹⁵ In addition, a member entitled to vote at an annual meeting of members may make a proposal to make, amend, or repeal a by-law.⁹⁶ By-law amendments are not filed with the Manitoba Companies Office.

Unless the articles or by-laws otherwise provide, there is no limit on the number of members of a corporation. The articles or bylaws may also provide for more than one class of members.⁹⁷ It is important to note that membership interests are not transferrable unless the articles otherwise provide.⁹⁸

The *Corporations Act* contains extensive provisions related to directors. A Manitoba corporation without share capital must have at least three directors. In addition, the articles or by-laws of a corporation without share capital may provide for persons becoming directors *ex officio*.⁹⁹ The Manitoba Act also provides that a director is not required to be a member of the corporation, unless the articles otherwise provide.¹⁰⁰ At least twenty-five percent of a corporation's directors must be residents of Canada, or at least one director if the board is comprised of only three directors.¹⁰¹ The Act contains detailed conflict of interest provisions¹⁰² and provides an objective duty of care for directors.¹⁰³ The *Corporations Act* also provides statutory defences of reasonable diligence and good faith, provides for indemnification of directors for legal defence costs, and allows corporations to purchase directors' and officers' liability insurance.¹⁰⁴

The *Corporations Act* provides for participation by a director in a meeting of directors by electronic means.¹⁰⁵ Similarly, the Act provides that meetings and the participation in meetings by members can be held electronically.¹⁰⁶ The Act also allows resolutions in writing in lieu of a meeting.¹⁰⁷

Although long, The *Corporations Act* contains extensive provisions related to fundamental changes, which provide corporations incorporated in Manitoba with greater flexibility than those incorporated in many other jurisdictions, such as British Columbia or the federal jurisdiction (CCA). For instance, The *Corporations Act* provides detailed amalgamation provisions.¹⁰⁸ The Act also provides for import and export continuance.¹⁰⁹

The Act also contains detailed liquidation and dissolution provisions. Regarding the disposition of property on dissolution, the Manitoba Act provides that the articles of a corporation without share capital may provide that the remaining property be distributed to the members of the corporation or to a designated organization. If the articles do not contain such a provision, the corporation may distribute its remaining property to any organization in Canada, the undertaking of which is charitable or beneficial to the community. However, if the articles do not initially contain a provision for the distribution of property to the members, the Act prohibits any amendment to the articles to provide for this.¹¹⁰

In contrast to British Columbia, where a court order is necessary to restore a dissolved society to the register, any interested person can apply to have a dissolved Manitoba corporation revived by filing articles of revival.¹¹¹

5. New Brunswick

New Brunswick non-profit corporations are incorporated by letters patent under the *Companies Act*¹¹² for charitable, philanthropic, temperance, religious, social, political, literary, educational, athletic or other like purposes, or for the purpose of promoting economic development. Section 18(2) of the Act provides that a corporation without capital stock may be created by letters patent, in which case the provisions listed under Section 18(2) shall apply to the corporation. These provisions are:

- (a) the incorporators and such other persons as they become registered members in accordance with the provisions of the letters patent or by-laws of the company constitute the company;
- (b) the company shall not have any capital stock or issue any share certificates;
- (c) the company shall cause a list of its members to be kept in a book to be provided for that purpose, which shall be known as the company registry, and shall at all times during business hours be open to the inspection of all members of the company and the Director or his representative;
- (d) the company may, in the absence of other express provisions therefore in the letters patent, make by-laws to determine the qualification for membership and for the removal of the names of those members who may cease to be qualified;
- (e) any person whose name is duly entered on the company registry is and continues to be a member until his name is duly removed therefrom pursuant to the provisions of the letters patent or by-laws of the company;
- (f) a member whose name is removed from the registry pursuant to the provisions of the letters patent or the by-laws ceases to be a member from the date of such removal;
- (g) the company may acquire real and personal property of an unlimited cost value and may hold, manage and turn the same to account for the purposes or objects for which the company is incorporated and may lease, let, mortgage, pledge or sell the same or any part thereof;
- (h) the company shall not carry on any business or trade for the profit of its members;
- (i) the members of the company shall not as such be liable for any debts or obligations of the company;
- (j) no by-law of the company for the removal of the name of a member from the company registry has any force or effect whatever until approved of by at least two-thirds of the votes cast at a special general meeting of the members of the company duly called for considering the same.

Under the *Companies Act*, a not-for-profit corporation may apply for supplementary letters patent extending the powers of the company to such further or other purposes or objects for which a company may be incorporated under this Act; reducing, limiting, amending or varying such powers or any other provision of the letters patent or the supplementary letters patent issued to the company as are defined in such by-law; and granting permission to hold members' or directors' meetings outside the Province.¹¹³ A corporation may also apply for supplementary letters patent to change the company name.¹¹⁴

To apply for supplementary letters patent a corporation must pass a by-law setting out the amendments to the letters patent. The by-law must be approved by at least two-thirds of the votes cast at a special general meeting of members called for that purpose.¹¹⁵ A bylaw authorizing a change in the corporation's name only needs to be approved by a majority of members. Following the approval of the by-law by the members, the directors have 6 months to make the application for supplementary letters patent.¹¹⁶

The directors of a New Brunswick corporation may repeal, amend, or re-enact any by-law of the corporation. The amendments will be effective immediately and must be subsequently approved by the members. By-laws made by the directors respecting agents, officers, and servants of the company do not require the approval of the members.¹¹⁷

Other notable provisions of the New Brunswick Act include subsection 87(2), which requires a by-law to be passed in order to increase or decrease the number of directors, and section 94, which provides that, unless otherwise mentioned in the by-laws or letters patent, the election of directors shall take place yearly, and directors have the power to fill any vacancy occurring in the board until such annual elections are held. In addition, section 94.2 allows directors to participate in meetings via electronic means.¹¹⁸ Of particular interest, the provisions of the *Companies Act* respecting financial statements do not apply to corporations without share capital.¹¹⁹

6. Newfoundland

A non-share capital corporation can be incorporated under Part XXI of Newfoundland's *Corporations Act* for undertakings restricted to those of a patriotic, religious, philanthropic, charitable, educational, scientific, literary, historical, artistic, social, professional, fraternal, sporting or athletic nature or the like.¹²⁰ The Act is lengthy, and Part XXI of the Act applies specifically to corporations without share capital. The remainder of the Act also applies to non-share capital corporations, unless any particular provision is inconsistent or repugnant to Part XXI, in which case, Part XXI prevails.

Three or more applicants who are not under the age of nineteen, not mentally incompetent, and not bankrupt can incorporate under the *Corporations Act* by preparing articles of incorporation in the prescribed form. In addition, the articles of incorporation of a corporation without share capital shall set out:

- (a) the restrictions on the undertakings that the corporation may carry on;
- (b) that the corporation has no authorized share capital and is to be carried on without monetary gain to its members, and that profits or other accretions to the corporation are to be used in furthering its undertaking;
- (c) where the undertaking of the corporation is of a social nature, the address in full of the clubhouse or similar building that the corporation is maintaining; and
- (d) that each first director becomes a member of the corporation upon its incorporation.¹²¹

Incorporation of a non-share capital corporation in Newfoundland under the *Corporations Act* does not require by-laws to be submitted as part of the application for incorporation. However,

the *Corporations Act* itemizes the matters that may be the subject of any by-laws passed under that Act. The directors of a non-share capital corporation may make bylaws respecting:

- (a) the admission of persons and unincorporated associations as members and as members by virtue of their office, and the qualifications of and the conditions of membership;
- (b) the fees and dues of members;
- (c) the issue of membership cards and certificates;
- (d) the suspension and termination of membership by the corporation and by a member;
- (e) where the articles provide that the interest of a member is transferable, the method of transfer of membership;
- (f) the qualifications of, and the remuneration of, the directors including the directors who are directors by virtue of their office;
- (g) the time for and the manner of election of directors;
- (h) the appointment, remuneration, functions, duties and removal of agents, officers and employees of the corporation, and the security to be given by them to the corporation;
- (i) the time and place, and the notice to be given for the holding of meetings of the members and of the board of directors, the quorum at meetings of members, the requirement as to proxies, and the procedure in all things at meetings of the members and at meetings of the board of directors; and
- (j) the conduct in all other particulars of the affairs of the corporation.¹²²

By-laws are easily amended under Newfoundland's *Corporations Act*. Unless the articles, by-laws or a unanimous member agreement otherwise provide, the directors of a Newfoundland corporation may, by resolution, make, amend, or repeal any by-laws that regulate the business or affairs of the corporation.¹²³ The amendment must then be submitted to the members for approval at the next meeting of members.¹²⁴ By-law amendments are effective from the date of the resolution of the directors. In addition, a member entitled to vote at an annual meeting of members may make a proposal to make, amend or repeal a by-law.¹²⁵ By-law amendments are not filed with the Newfoundland Registry of Companies.

Newfoundland's *Corporation's Act* is very similar to Manitoba's *Corporations Act* and the two statutes contain many of the same features. Notably, however, the Newfoundland Act does not provide that a member may participate in a meeting by electronic means nor does it provide that meetings of members may be held by electronic means. The absence of such provisions is in contrast to other modern non-profit legislation, such as the CNCA.¹²⁶

In addition, the articles of incorporation of a Newfoundland corporation without share capital shall provide that, upon dissolution, after payment of all its debts and liabilities, the remaining property shall be distributed to an organization *in the province* the undertaking of which is charitable or beneficial to the community.¹²⁷ The requirement that remaining property be distributed to an organization in the province can be problematic for some non-profit organizations; for example, where a local organization would like to distribute its remaining assets to a national umbrella group.

7. Nova Scotia

A society may be incorporated in Nova Scotia to promote any benevolent, philanthropic, patriotic, religious, charitable, artistic, literary, educational, social, professional, recreational or sporting or any other useful object, but not to carry on any trade, industry or business.¹²⁸

Under Nova Scotia's *Societies Act*, any five persons may form a society by subscribing to a memorandum of association in the form provided under the Act, submitting by-laws to the Registrar together with a list of first directors, the address of the society, and the place where its activities will be chiefly carried on.¹²⁹ Every society incorporated under the *Societies Act* must also appoint and have a recognized agent resident within the province to accept service of any notice, summons or other document.¹³⁰

Incorporation under the *Societies Act* is not as of right. If the Registrar is satisfied that the memorandum of association and by-laws comply with the Act and that the objects are within the scope of the Act, the Registrar will issue a certificate that the society is incorporated.¹³¹ However, where the Registrar is not satisfied, the Registrar may require that the memorandum and by-laws be altered to conform to the Act and may refuse registration until they are so altered.¹³²

The Act specifically provides that the by-laws of a society must contain provisions referred to in Schedule B to the Act.¹³³ These provisions are:

- (a) Terms of admission of members, their rights and obligations;
- (b) Conditions under which membership ceases and the manner, if any, in which a member may be expelled;
- (c) Mode and time calling general and special meetings, the quorum and voting rights;
- (d) Appointment and removal of directors and officers and their duties, powers and remuneration;
- (e) Exercise of borrowing powers;
- (f) Audit of accounts;
- (g) Custody and use of seal of the society;
- (h) Manner of making, altering and rescinding by-laws;
- (i) Preparation and custody of minutes and the books and records of the society;
- (j) Time and place at which the books and records of the society may be inspected by members;
- (k) Execution of contracts and other instruments in writing on behalf of the society.

A society may by special resolution make, amend or repeal by-laws, not inconsistent with the *Societies Act* or with its memorandum of association, for the conduct and management of its activities and affairs.¹³⁴ It is important to note that in Nova Scotia, no by-law or any amendment to a by-law takes effect until approved by the Registrar.¹³⁵

Unless otherwise provided in the by-laws, the Nova Scotia Act permits the admission of persons under the age of nineteen years as members of a society, and every member of a society is

entitled to have a vote.¹³⁶ It may therefore be important when preparing by-laws for some organizations to restrict voting privileges.

The *Societies Act* also specifically sets out the powers of a society. Section 10 of the Act contains a list of powers. For example, a society may contract and be contracted with and sue or be sued in its corporate name;¹³⁷ and borrow, raise and secure the payment of money in such manner as it thinks fit and, with the sanction of a special resolution, issue debentures or mortgage its real property to secure the payment of money borrowed by it.¹³⁸ In contrast, non-profit legislation in several other jurisdictions, such as Saskatchewan, provides that a corporation has the rights, powers and privileges of a natural person.¹³⁹

Nova Scotia's *Societies Act* is relatively short, consisting of only thirty-one provisions. However, many corporate actions are not addressed in the Act. For example, there are no provisions in the *Societies Act* permitting the amalgamation of societies incorporated under that Act.¹⁴⁰ As a result it is not possible to amalgamate Nova Scotia societies. When two societies desire to merge it is necessary to surrender the certificate of incorporation of one society and transfer its remaining assets (and sometimes liabilities) to the surviving corporation. Similarly, there are no continuance provisions under Nova Scotia's *Societies Act*.¹⁴¹ Likewise, the *Societies Act* does not contain much detail about the directors or members of a society, the conduct of meetings, or audit requirements.

Nova Scotia societies must file a balance sheet, a statement of income and expenditures and a list of directors with the Registrar within fourteen days of their annual general meeting.¹⁴² Also, a copy of every special resolution must be filed with the Registrar within fourteen days after the resolution is passed.¹⁴³

8. Ontario

(a) *Corporations Act*

An Ontario non-profit corporation may be incorporated under Part III of the *Corporations Act*¹⁴⁴ with objects that are within the "jurisdiction" of the Province of Ontario.¹⁴⁵

The applicants for incorporation are required to file an application for incorporation in the prescribed form containing the following information:

- (a) the name and address of each of the applicants;
- (b) the name of the corporation;
- (c) the objects for which the corporation is to be incorporated;
- (d) the place in Ontario where the head office is to be situated;
- (e) the names of the applicants who are to be the first directors; and
- (f) any other matter that the applicants desire to have embodied in the letters patent.

Section 129 of the *Corporations Act* contains an extensive list of matters that *may* be the subject of by-laws. These are:

- (a) the admission of persons and unincorporated associations as members and as ex officio members and the qualification of and the conditions of membership;
- (b) the fees and dues of members;
- (c) the issue of membership cards and certificates;
- (d) the suspension and termination of memberships by the corporation and by the member;
- (e) the transfer of memberships;
- (f) the qualification of and the remuneration of the directors and the ex officio directors, if any;
- (g) the time for and the manner of election of directors;
- (h) the appointment, remuneration, functions, duties and removal of agents, officers and employees of the corporation and the security, if any, to be given by them to it;
- (i) the time and place and the notice to be given for the holding of meetings of the members and the board of directors, the quorum at meetings of members, the requirements as to proxies, and the procedure in all things at members' meetings and at meetings of the board of directors; and
- (j) the conduct in all other particulars of the affairs of the corporation.

Despite the permissive nature of section 129, there are other matters that must only be dealt with through by-laws under the Act. For example, provisions dealing with the election and term of directors for more than one year must be contained in the by-laws.¹⁴⁶

Section 130 provides for the enactment of certain by-laws by the directors dealing with categories of members and the election of delegates and directors. In addition, section 132 deals with designating the recipients of the proceeds of dissolution on winding-up or dissolution of the corporation. Under these sections, a by-law or a repeal or amendment of a by-law is not effective unless, and until, it is confirmed by at least two-thirds of the votes cast by the members.

There are some particular provisions under Ontario's *Corporations Act* that are important to be aware of. These are:

- Directors are required to be members of the corporation.¹⁴⁷
- The number of directors may only be increased or decreased by special resolution.¹⁴⁸
- Election of directors must take place yearly unless provided by the by-laws;¹⁴⁹
- The by-laws may provide for the election of directors in rotation but in that case no director shall be elected for more than five years and at least three directors must retire from office each year;¹⁵⁰
- The appointment of an executive committee requires two-thirds approval of the member under Section 70(2). The general operating by-law may also deal with any of these matters, in which case presumably those sections of the by-law would require two-thirds approval by the members.
- Where the transfer of membership is transferable under the letters patent, the by-laws cannot restrict the transfer of that interest.¹⁵¹
- The directors shall elect a president from among themselves. In other words, the president must be a director.¹⁵²

- A corporation may provide by special resolution that the directors may elect a chairperson of the board from among themselves and may assign the chair any of the duties of the president in which case the special resolution shall fix and prescribe the duties of the president.¹⁵³

It is also important to be aware that the Office of the Public Guardian and Trustee in Ontario (“PGT”) supervises the administration of charities in the province and derives authority to do so from the *Charities Accounting Act*. By virtue of the division of powers provided for under the *Constitution Act*,¹⁵⁴ the establishment and management of charities is a matter of provincial concern, hence the supervisory jurisdiction of the PGT over provincial charities and, to a limited extent, federal charities operating in Ontario. It is interesting to note that the other provinces do not appear to have a body that exercises the same degree of supervisory jurisdiction over charities as does Ontario.

The Ministry of Government Services requires that the application for incorporation of a charity obtain the pre-approval of the PGT. As a result, incorporating a charity in Ontario can take even longer than in other jurisdictions due to the requirement to obtain approval from both the PGT and CRA (Charities Directorate). However, in this regard, it should be noted that the PGT and CRA have collaborated on a list of objects for charities that are acceptable to both agencies. These objects should only be used if they permit all of the proposed activities and programs of the organization. If only pre-approved objects are used, the application for incorporation can be sent directly to the Companies and Personal Property Security Branch of the Ministry of Government Services.

The PGT requires that certain standard provisions be included in the application for incorporation (special powers and provisions) before the application will be approved. These standard provisions and the model objects are found in the *Not-For-Profit Incorporator's Handbook* published by the Ministry of the Attorney General.¹⁵⁵

Charities incorporated in Ontario are also required to obtain the approval of the PGT in other circumstances throughout the life of the corporation, such as when applying for supplementary letters patent, amalgamating with another corporation, and surrendering the corporation’s charter.

(b) Ontario *Not-for-profit Corporations Act*

On May 17, 2010, Bill 65, An Act to revise the law in respect of not-for-profit corporations received second reading in the Ontario Legislature. The Bill proposes a modern corporate law statute for Ontario not-for-profit corporations, known as the *Not-for-profit Corporations Act, 2010*.¹⁵⁶

Bill 65 allows one or more individuals and/or corporations to incorporate a not-for-profit corporation by filing articles of incorporation.¹⁵⁷ This is similar to the Saskatchewan *Non-profit Corporations Act, 1995*, which allows one or more persons to incorporate a corporation¹⁵⁸ and the CNCA. In contrast, other jurisdictions require three or five applicants for incorporation. Bill 65 requires that the articles of incorporation set out the name of the corporation, its purposes and

any other information required by the Act or the regulations or by the Director.¹⁵⁹ As incorporation under the proposed legislation will be as of right rather than the current Letters Patent system, it is anticipated that the incorporation process under the Ontario *Not-for-profit Corporations Act* will be much faster, taking only a few days rather than the current timing of six to eight weeks.

Under Bill 65, the purposes of a corporation may be any purpose within the legislative authority of the Province of Ontario. Notably, a corporation's purposes may include those of a commercial nature, but the articles must state that the commercial purpose is intended only to advance or support one or more of the non-profit purposes of the corporation.¹⁶⁰

Bill 65 classifies certain not-for profit corporations as public benefit corporations. A public benefit corporation is defined as:

- (a) a charitable corporation;
- (b) a non-charitable corporation that receives more than \$10,000, in a financial year,
 - i) in the form of donations or gifts from persons who are not members, directors, officers or employees of the corporation, or
 - ii) in the form of grants or similar financial assistance from the federal government or a provincial or municipal government or agency of any such government.¹⁶¹

The definition of “public benefit corporation” is broader than the definition of soliciting corporation under the CNCA. Under Bill 65, all charitable corporations qualify as public benefit corporations, regardless of the amount of funds it has received from public sources. A “charitable corporation” is defined as a corporation incorporated for a religious, educational, charitable or public purpose.”¹⁶²

Public benefit corporations are subject to certain additional requirements. For instance, not more than one-third of the directors of a public benefit corporation may be officers or employees of the corporation or any of its affiliates.¹⁶³ Different financial review requirements apply to public benefit corporations. Bill 65 requires all corporations to appoint an auditor or a person to conduct a review engagement of the corporation.¹⁶⁴ Pursuant to section 75, the members of a public benefit corporation may pass an extraordinary resolution¹⁶⁵ to have a review engagement instead of an audit, if the corporation had annual revenue in that financial year of more than \$100,000 and less than \$500,000. The members of a public benefit corporation may also resolve to not appoint an auditor and to not have an audit or a review engagement if the corporation had annual revenue in that financial year of \$100,000 or less. Where a corporation is not a public benefit corporation, the members may pass an extraordinary resolution to have a review engagement instead of an audit if the corporation had annual revenue in that financial year of more than \$500,000. In a public corporation, the members may also pass an extraordinary resolution to dispense with the appointment of an auditor and to not have an audit or a review engagement if the corporations' annual revenue in its financial year is \$500,000 or less. An extraordinary resolution passed under this section only has effect for one year until the next annual meeting of members.

Like Ontario's current legislation, Bill 65 mandates that a corporation must have three directors.¹⁶⁶ This is a departure from Saskatchewan's *Non-profit Corporations Act* and the CNCA, which allow membership corporations and non-soliciting corporations to have only one director. However, other jurisdictions, including Manitoba and Newfoundland, also require corporations without share capital to have three directors. Bill 65 requires that at least two-thirds of the directors be members of the corporation.¹⁶⁷ Currently, Ontario's *Corporations Act* requires that all directors be members. The directors must be elected at a meeting of members, for a maximum term of three years.¹⁶⁸ However, if the articles permit, the board may appoint one or more additional directors as long as the total number appointed does not exceed one-third of the number of directors elected at the previous annual meeting of members.¹⁶⁹ The Bill specifically permits *ex officio* directors,¹⁷⁰ and allows the members to remove a director by ordinary resolution.¹⁷¹ Bill 65 also provides for an objective standard of care for directors, establishes a due diligence defence, and gives directors the right to dissent.

Unless the articles or by-laws otherwise provide, the directors may by resolution make, amend or repeal any by-law that regulates the activities and affairs of the corporation, except in respect of the fundamental changes referred to in subsection 102(1).¹⁷² Notably, if the directors do not pass an organizational by-law within sixty days after the date of incorporation, default standard organizational by-laws approved by the Director will apply. A corporation may amend, repeal, and replace the default by-laws at any time.¹⁷³ The Bill provides that the by-laws of a corporation must set out the conditions required for being a member of the corporation, including whether a corporation or other entity may be a member. The by-laws may provide for persons to be members by virtue of their office. If the articles provide for two or more classes or groups of members, the by-laws must provide the conditions for membership in each class or group, the manner of withdrawing from a class or group or transferring membership to another class or group and any conditions of transfer, and the conditions on which membership in a class or group ends. Unless the articles or by-laws provide otherwise, a membership may be transferred only to the corporation.¹⁷⁴

Bill 65 contains detailed provisions relating to membership proposals, members' meetings, and voting. However, the Bill does not provide for unanimous member agreements, unlike other jurisdictions with modern non-profit legislation.

9. Prince Edward Island

Part II of Prince Edward Island's *Companies Act* deals specifically with non-share capital corporations, but other provisions of the Act are specifically incorporated by reference under subsection 91(1) thereof. Under Part II, the minister may, by letters patent, grant a charter for a corporation without share capital to any three or more persons, of the full age of eighteen years, who are subscribers to a memorandum of agreement.¹⁷⁵ The application for letters patent must set out the following:

- (a) the proposed name of the corporation;
- (b) the purpose for which its incorporation is sought;
- (c) the place within the province where the head office of the corporation is to be situated;
- (d) the names in full and the address and calling of each of the applicants;

- (e) the names of the applicants, not less than three, who are to be the first or provisional directors of the corporation.¹⁷⁶

The petition filed by the applicants must be accompanied by a signed and sealed memorandum of agreement setting forth by-laws that deal with the following matters:

- (a) conditions of membership, including societies or companies becoming members of the corporation;
- (b) mode of holding meetings, provision for quorum, rights of voting and of enacting bylaws;
- (c) mode of repealing or amending bylaws;
- (d) appointment and removal of directors and officers, and their respective powers and remuneration;
- (e) audit of accounts and appointment of auditors;
- (f) whether or how members may withdraw from the corporation;
- (g) custody of the corporate seal and certifying of documents issued by the corporation.¹⁷⁷

Many provisions in the *Companies Act* do not apply to non-profits. For example, the amalgamation provisions are not applicable to corporations incorporated under Part II. As a result it is not possible to amalgamate P.E.I. non-profit corporations. Likewise, the continuance provisions do not apply to corporations without share capital.

Prince Edward Island's *Companies Act* does not contain much guidance with respect to audit requirements, directors meetings and members meetings. The Act does not contain an explicit provision mandating that a corporation hold an annual general meeting of members. However, the requirement to hold an annual general meeting can be inferred from other provisions in the Act. The by-laws of a P.E.I. non-profit corporation must deal with the audit of accounts and the appointment of auditors.¹⁷⁸ However, there are no other provisions in the *Companies Act* dealing with audit requirements. Similarly, the by-laws of a non-profit corporation must contain provisions regarding the mode of repealing or amending by-laws, as the provision of the Act which deals with enacting, amending, and repealing by-laws does not apply to corporations without share capital.

The *Companies Act* sets out a long list of powers which may be exercised by a company incorporated under the Act.¹⁷⁹ The Act also provides that "no company shall use any of its funds in the purchase of the stock of any other corporations unless expressly authorized by by-law confirmed at a general meeting."¹⁸⁰ Notably, the *Companies Act* contains a provision allowing for the indemnification of directors.¹⁸¹

10. Quebec

A non-profit corporation may be created under Part III of Quebec's *Companies Act*, for national, patriotic, religious, philanthropic, charitable, scientific, artistic, social, professional, athletic or like purposes not for pecuniary gain.¹⁸² Non-profit corporations are incorporated by Letters Patent. A minimum of three applicants who are at least eighteen may apply to the enterprise

registrar for letters patent. An “Application for Constitution as a Non-profit Legal Person” must be filed setting out:

- (a) the proposed name of the corporation;
- (b) the purpose for which incorporation is sought;
- (c) the place within Quebec where its head office is to be situated;
- (d) the limit of real property holdings which can be acquired and owned by the corporation;
- (e) the name in full and the address and calling of each of the applicants;
- (f) the names of no less than three of the applicants who will act as first directors.¹⁸³

Although the *Companies Act* does not require by-laws to be filed with the application for incorporation, subsection 91(2) of the Act sets out the matters that may be dealt with in a corporation’s by-laws. Non-share capital corporations may make by-laws respecting the following:

- (a) the number of directors, their term of service, the amount of their stock qualifications, and their remuneration, if any;
- (b) the appointment, functions, duties and removal of all officers, agents and employees of the company, the security to be given by them to the company, and their remuneration;
- (c) the time and the place for the holding of the annual meetings of the company, the calling of meetings, regular and special, of the board of directors and of the company, the quorum, the requirements as to proxies not otherwise prescribed by this Part, and the procedure in all things at such meetings;
- (d) the imposition and recovery of all penalties and forfeitures which admit of regulation by by-law; and
- (e) the conduct in all other particulars of the affairs of the company.¹⁸⁴

Part III applies specifically to non-profit corporations. However, the provisions of Part I of the *Companies Act* also apply with necessary modifications, with the exception of the provisions enumerated in section 224. As a result, non-profit corporations must carefully check which provisions of the Act are applicable.

The *Act respecting the legal publicity of sole proprietorships, partnerships and legal persons* requires Quebec corporations to file an initial declaration within sixty days of the corporation’s registration date.¹⁸⁵ In addition, corporations must file an annual declaration during the specified period each year.¹⁸⁶ The specified period for corporations is between May 15 and November 15.¹⁸⁷ In addition to these obligations, a corporation must file an amending declaration to update the information on file with the enterprise registrar, such as the corporation’s address or the names of its directors, within fifteen days after any change.¹⁸⁸

In addition, the Province of Quebec requires charities that receive donations which originate in the province to file a separate application for charitable status, pursuant to the *Taxation Act*¹⁸⁹.

11. Saskatchewan

In Saskatchewan, non-profit corporations are incorporated by articles of incorporation under the *Non-profit Corporations Act, 1995*.¹⁹⁰ The Saskatchewan Act is the most modern and comprehensive non-profit legislation currently in force in Canada. The Act provides a simplified and efficient procedure for incorporation. Only one applicant is needed to incorporate a non-profit corporation under the Act.¹⁹¹ The articles of incorporation are required to set out certain matters that often form part of the by-laws in other provinces. Specifically, the following matters must be set-out in the articles of incorporation¹⁹²:

- (a) the name of the corporation;
- (b) the classes of membership interest and:
 - i. if there are two or more classes of membership interest, the rights, privileges, restrictions and conditions that constitute the membership interests of each class; and
 - ii. if a class of membership interest may be issued in subdivisions, the authority given to the directors to determine the designation of and the rights, privileges, restrictions and conditions attaching to the membership interest of each subdivision;
- (c) if a right to transfer a membership interest of a corporation is to be permitted, a statement that the right to transfer a membership interest is permitted and the conditions relating to that transfer;
- (d) the number of directors or, subject to clause 94(a), the minimum and maximum number of directors of the corporation;
- (e) whether the corporation is a membership corporation or a charitable corporation;
- (f) any restriction on the activities that the corporation may carry on or on the powers that the corporation may exercise; and
- (g) subject to subsections 209(1) and (2), the persons to whom any remaining property of the corporation is to be distributed in the course of liquidation and dissolution of the corporation.¹⁹³

The Saskatchewan *Non-Profit Corporations Act, 1995*¹⁹⁴ does not set out the purposes for which one may incorporate. The articles must include any restrictions on the activities or powers that the corporation may exercise.¹⁹⁵

The Saskatchewan Act also does not provide a list of matters that must be included in the by-laws. Unless a corporation's articles, by-laws or a unanimous member agreement provide otherwise, the directors may make, amend or repeal any by-laws that regulate the activities and affairs of the corporation. The Act appears to contemplate that most provisions will either be contained in the by-laws or the articles, with few provisions being *required* as part of the by-laws. The Act does contain provisions respecting certain matters which may be included in the articles or by-laws. For instance, section 119 provides that

“the articles or by-laws may provide that the directors, members or any committee of directors or members of a corporation have power to discipline a member or to terminate the membership interest of a member and, where the articles or by-laws

do, the circumstances in which that power may be exercised and the manner of its exercise is to be set out in the articles or by-laws of the corporation.”

Although the *Non-Profit Corporations Act, 1995* provides many favourable features, there are a number of provisions that it is important to be aware of, particularly respecting charitable corporations. The Act classifies non-profit corporations into membership corporations and charitable corporations. A membership corporation is defined in the Act as “a corporation incorporated or continued pursuant to this Act to carry on activities that are primarily for the benefit of its members.”¹⁹⁶ A charitable corporation is defined as “a corporation incorporated or continued pursuant to this Act to carry on activities that are primarily for the benefit of the public, and includes a membership corporation that is deemed to be a charitable corporation.”¹⁹⁷ A membership corporation is deemed to be a charitable corporation where the corporation:

- (a) carries on activities that are not primarily for the benefit of its members;
- (b) solicits or has solicited donations or gifts of money or property from the public;
- (c) receives or has received any grant of money or property from a government or government agency in any fiscal year of the corporation that is in excess of 10%, or any greater amount that may be prescribed, of its total income for that fiscal year;
- (d) is a registered charity within the meaning of the *Income Tax Act* (Canada).¹⁹⁸

Classification as a charitable corporation has many consequences. For instance, the Act contains different financial review and disclosure requirements for charitable corporations than membership corporations. All Saskatchewan non-profit corporations must appoint an auditor by ordinary resolution at the annual meeting of members to hold office until the close of the next annual meeting.¹⁹⁹ However, the audit requirement can be waived in certain circumstances. The members of a membership corporation may resolve not to appoint an auditor. Such a resolution is only valid until the next annual meeting of members. If a membership corporation resolves not to appoint an auditor, the corporation must appoint a person who meets the qualifications prescribed in the regulations to conduct a review of the corporation’s financial statements, unless the members of the corporation also resolve to waive this requirement. Neither resolution is valid unless consented to by a majority of not less than two-thirds of the members, including those not otherwise entitled to vote, who vote on the resolution.²⁰⁰

The members of a charitable corporation with revenues of less than \$250,000 in the previous fiscal year may resolve not to appoint an auditor. The resolution must be passed by not less than 80% of the members, including those not otherwise entitled to vote, who vote on the resolution. If the audit requirement is waived, the members must appoint a person to conduct a review of the corporation’s financial statements. The members of a charitable corporation with revenues of less than \$25,000 in the previous fiscal year may resolve not to appoint an auditor or a person to conduct a review of the corporation’s financial statements.²⁰¹

Charitable corporations are required to have a minimum of three directors, at least two of whom are not officers or employees of the corporation or its affiliates. Notably, membership corporations may have only one director.²⁰² The directors of a Saskatchewan non-profit corporation are not required to be members of the corporation.²⁰³ The Act contains a residency requirement for directors which may be problematic for some organizations considering

Saskatchewan as a jurisdiction for incorporation; at least one director must reside in Saskatchewan and at least 25% of directors must be resident Canadians.²⁰⁴ The articles or by-laws of a corporation may provide for *ex officio* directors; however, the total number of *ex officio* directors is not to exceed one-third of the total number of directors of the corporation.²⁰⁵ The Act provides that the members of a non-profit corporation may remove a director from office by ordinary resolution at a special meeting of members.²⁰⁶

Under subsection 101(3) of the Saskatchewan Act, directors of a charitable corporation cannot transact business at a meeting of directors unless the majority of directors present are resident Canadians. However, subsection 101(4) provides that directors of a charitable corporation may transact business at a meeting of directors where a majority of resident Canadian directors are not present, as long as a resident Canadian director who did not attend approves the business transacted, either in writing or by telephone or other communication facilities, and as long as a majority of resident Canadian directors would have been present had that director been present at the meeting. Also, unless the by-laws provide otherwise, meetings of directors may be held by means of telephone or other communications facilities²⁰⁷ if all of the directors of the corporation consent. The Act also specifically provides that it is not necessary for a by-law to be passed in order to confer any particular power on the corporation or its directors.²⁰⁸

The *Non-profit Corporations Act, 1995* contains detailed conflict of interest provisions²⁰⁹ and provides an objective duty of care for directors.²¹⁰ The Act also provides for indemnification of directors for legal defence costs and allows corporations to purchase directors' and officers' liability insurance.²¹¹ Notably, Section 112.1 limits the personal liability of directors and officers for any loss respecting any act or omission of the corporation or any director, officer, employee or agent of the corporation in the exercise of his or her powers, or in the carrying out of his or her duties. This provision is significant because it may help Saskatchewan non-profit corporations recruit directors. In contrast, the proposed Ontario *Not-for-profit Corporations Act* does not significantly limit the personal liability of directors.

The Act also contains detailed provisions regarding members and members meetings. The articles of a corporation may provide for more than one class or membership, and if they do, they are to include the rights, privileges, restrictions and conditions that constitute the membership interest of a member of each class.²¹² Unless the articles or bylaws otherwise provide, membership interests are not transferrable.²¹³ Like other modern corporate legislation, the Act contains provisions regarding member proposals, requisition of meetings, and unanimous member agreements.²¹⁴

There are a number of remedies available under the *Non-profit Corporations Act, 1995*. For example, the Act allows a complainant²¹⁵ to apply to the court to commence a derivative action or to seek an oppression remedy.²¹⁶ Further, a complainant or a creditor of the corporation may apply to court for a compliance or restraining order where the corporation is not in compliance with the Act, the regulations, the articles, the by-laws, or a unanimous member agreement.²¹⁷ In addition, the Act gives a member of a membership corporation the right to dissent if the corporation resolves to make a fundamental change. A dissenting member is entitled to payment of the fair value of their membership interest, upon which their membership in the corporation will be terminated.²¹⁸

The *Non-Profit Corporations Act, 1995* also contains extensive provisions for fundamental changes. For example, the Act provides for amalgamations, including both vertical and horizontal short-form amalgamations, and import and export continuance. Notably, each membership interest of the corporation carries the right to vote with respect to certain fundamental changes, such as an amalgamation or a continuance, whether or not it otherwise carries the right to vote.

Charitable corporations should note that they may only amend their articles in a way that is consistent with continuing as a charitable corporation.²¹⁹ A charitable corporation that solicits money or property from the public must obtain the prior approval of the court to amend its articles in order to add, change or remove any restrictions on the activities that the corporation may carry on.²²⁰ In connection with such an application, the court may make any order it considers appropriate, including ordering the corporation to use any of its money or other property to carry on specific activities.²²¹

12. Northwest Territories and Nunavut

A society may be incorporated in the Northwest Territories and Nunavut under the Northwest Territories' *Societies Act*. Under the Act, five or more applicants may incorporate a society for benevolent, philanthropic, charitable, religious, provident, scientific, artistic, literary, social, educational, sporting or other useful purposes other than the carrying on of a trade or business.²²²

To incorporate, the applicants must file the Application for Incorporation and the society's by-laws with the Registrar, together with the prescribed fee.²²³ The prescribed application form sets out the name of the society, the objects of the society, and the chief locality of operations. The objects must fall within the purposes for which a society may be incorporated under the Act and must not suggest that the society is carrying on a trade or business.²²⁴ The Registrar may give directions to modify the name or purposes of a society as set out in an application.²²⁵

Under the Northwest Territories' *Societies Act*, a society's proposed by-laws must be submitted with the application for incorporation. The following provisions must be included in a society's by-laws:

- (a) the terms of admission of members and their rights and obligations;
- (b) the conditions of withdrawal of members and the manner, if any, in which a member may be expelled;
- (c) the mode and time of calling general and special meetings of the society, the number of members constituting a quorum and the rights of voting at such meetings;
- (d) the appointment and removal of directors and other officers and their duties, powers and remuneration;
- (e) the exercise of borrowing powers;
- (f) the audit of accounts;
- (g) the preparation and custody of minutes of proceedings of meetings of the society and of the directors and other books and records of the society;

- (h) the time and place, if any, at which the books and records of the society may be inspected by its members; and
- (i) the date on which the fiscal year of the society ends, which date must be at least thirty days before the calling of the annual general meeting.²²⁶

The *Societies Act* also contains a provision that permits the by-laws to provide that “any dispute arising out of the affairs of the society between any members of the society or between a member or any person aggrieved who has for not more than six months ceased to be a member or any person claiming through that member or person aggrieved or claiming under the bylaws and the society or a director or officer of the society shall be decided by arbitration under the *Arbitration Act* or in any other manner that the bylaws establish.” A decision made under such a provision is binding on all parties and may be enforced by application to the Court. There is no right to appeal unless the by-laws provide otherwise.²²⁷

The by-laws of a society may only be rescinded, altered or added to by ordinary resolution at the annual general meeting of members or by extraordinary resolution²²⁸ of the society. If the amendments occur by ordinary resolution at an annual general meeting, that annual general meeting must be held at the time provided for in the existing by-laws.²²⁹ No by-law amendment has any effect until it is registered by the Registrar. The Registrar shall refuse to register an amendment to the by-laws of a society where the Registrar is of the opinion that the amendment is contrary to the objects of the society or contains anything contrary to the law.²³⁰

Like the Nova Scotia Act, the Northwest Territories’ *Societies Act* sets out the powers of a society in sections 9-12. For example, the Act provides that a society may “acquire and take real and personal property by purchase, gift, devise or otherwise;”²³¹ and “[f]or the purpose of carrying out its objects, a society may, subject to its by-laws, draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, and other negotiable instruments.”²³²

A Society incorporated in the Northwest Territories or Nunavut is required to file a financial statement with the Registrar within fourteen days after its annual meeting.²³³ The *Societies Act* does not contain any audit requirements. However, the by-laws of a N.W.T. or Nunavut society must make provision for the audit of accounts.²³⁴

The Northwest Territories’ *Societies Act* does specifically provide that members may participate in meetings of members by telephone or other communications facilities.²³⁵ The Act also provides for unanimous resolutions signed in writing in lieu of a meeting of members.²³⁶

The *Societies Act* provides for the amalgamation of two or more societies.²³⁷ However, the Act does not contain any continuance provisions.

13. Yukon

Five or more persons may incorporate a society under the Yukon *Societies Act* for any lawful purpose other than carrying on a trade or business.²³⁸ Persons wishing to incorporate a society shall provide the Registrar with the following as prescribed by the Regulations:

- (a) the incorporation fee as set out in Schedule B, and
- (b) an application in Form 1 containing the following information:
 - i. the constitution of the society;
 - ii. the location of the registered office of the society, including the postal address;
 - iii. the names and addresses of the first directors of the society.²³⁹

The constitution of the society, which is required to be filed as part of the application for incorporation, shall contain the following information:

- (a) the name of the society;
- (b) the purposes of the society;
- (c) the place and address in the Yukon where the operations of the society will be chiefly carried on.²⁴⁰

Schedule A to the Regulations contains a default set of by-laws, which shall be the by-laws of a society except to the extent that by-laws providing otherwise have been included with the application for incorporation.²⁴¹ Form 1, the prescribed form for the application for incorporation, requires applicants to select whether the default by-laws will apply, or whether the society's by-laws will be as set out in the application. If a society chooses to write its own by-laws, the by-laws must contain the following provisions:

- (a) the terms of admission of members and their rights and obligations;
- (b) the conditions of withdrawal of members and the manner of expulsion, if any, of members;
- (c) the manner and time of calling general and special meetings, the number constituting a quorum at a meeting, and rights of voting;
- (d) the appointment and removal of directors;
- (e) directors' duties, powers, and remuneration;
- (f) the exercise of borrowing powers;
- (g) the appointment of accountants;
- (h) the custody and use of the society's seal, if any;
- (i) the preparation and custody of minutes of meetings and records;
- (j) the time and place where records may be examined by members;
- (k) the manner of making, altering, or rescinding by-laws;
- (l) the arbitration or mediation of disputes;
- (m) the winding up and distribution of assets.²⁴²

A society incorporated under Yukon's *Societies Act*²⁴³ may change its purposes by special resolution²⁴⁴ but the change is not effective until filed with and approved by the registrar.²⁴⁵ Apart from changes in by-laws which are similarly done by way of special resolution and with the approval of the registrar,²⁴⁶ there are no other provisions in the Act permitting change to the certificate of incorporation issued under the Act.

The Yukon's *Societies Act* is very short, consisting of only twenty-four provisions. The Act does not contain much detail about directors, members and record keeping. For instance, the

Act contains no express reference to directors meetings. The Regulations to the *Societies Act* contain provisions respecting financial review and disclosure, including a classification system for the purposes of financial accountability. Yukon societies are classified as follows:

- (a) Category A societies are those societies that during their fiscal year:
 - (i) had revenues of \$150,000 or more;
 - (ii) had assets of \$300,000 or more, or
 - (iii) received grants or donations totaling \$50,000 or more;

- (b) Category B societies are those societies that during their fiscal year:
 - (i) had revenues of \$20,000 or more but less than \$150,000;
 - (ii) had assets of \$100,000 or more but less than \$300,000; or
 - (iii) received grants and donations totaling \$5,000 or more but less than \$50,000.

- (c) Category C societies are all societies that are not Category A or B societies.²⁴⁷

Category A societies are required to have their financial statements reviewed and signed by a professional accountant, but may obtain an exemption from this requirement from the registrar. Category B societies must have their financial statements reviewed and signed by a professional accountant unless the requirement for a review has been waived by special resolution before the annual general meeting.²⁴⁸

Category A and category B societies must file a copy of their financial statements with the registrar within thirty days after the annual general meeting, and Category C societies may be required by the registrar to file their financial statements on reasonable grounds.²⁴⁹ If the registrar believes on reasonable grounds that a society's financial statements do not properly represent the financial transactions or standing of the society, the registrar may order the society to have its financial statements audited by a professional accountant and filed with the registrar.²⁵⁰

There are no provisions in the Yukon's *Societies Act* permitting the amalgamation of societies incorporated under that Act.²⁵¹ As a result it is not possible to amalgamate Yukon societies. When two societies desire to merge, it is necessary to surrender the certificate of incorporation of one society and transfer its remaining assets (and sometimes liabilities) to the surviving society. There are also no continuance provisions in the *Societies Act*.

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- ¹ *Companies Act*, R.S.Q., c. C-38, section 218.
- ² *Ibid.*, section 219.
- ³ *Corporations Act*, R.S.N.L. 1990, c. C-36, section 420.
- ⁴ *Ibid.*, subsection 421(a).
- ⁵ *Ibid.*, subsection 90(1).
- ⁶ *Ibid.*, subsection 90(2).
- ⁷ *Ibid.*, subsection 90(3)-(4).
- ⁸ *Ibid.*, section 15.
- ⁹ *Ibid.*, s. 13(1).
- ¹⁰ *Ibid.*, s. 13(3).
- ¹¹ *Canada Corporations Act*, R.S.C. 1970, c. C-32, subsection 155(2).
- ¹² *Ibid.*, subsection 155(2).
- ¹³ Policy Statement 13.7, May 1, 2007, available online at <<http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs03445.html>>
- ¹⁴ *Ibid.*
- ¹⁵ *Ibid.*
- ¹⁶ *Canada Corporations Act*, R.S.C. 1970, c. C-32, section 157.
- ¹⁷ *Canada Not-for-profit Corporations Act*, S.C. 2009, c. 23.
- ¹⁸ *Ibid.*, section 153.
- ¹⁹ *Ibid.*, section 152.
- ²⁰ *Ibid.*, subsection 152(6).
- ²¹ *Ibid.*, sections 22 and 23.
- ²² *Ibid.*, subsection 152(6).
- ²³ *Ibid.*, section 167.
- ²⁴ *Ibid.*, section 166.
- ²⁵ *Ibid.*, section 170.
- ²⁶ *Ibid.*, section 253.
- ²⁷ *Ibid.*, section 251.
- ²⁸ *Canada Not-for-profit Corporations Act*, S.C. 2009, c. 23, section 148.
- ²⁹ *Ibid.*, section 204.
- ³⁰ *Ibid.*, sections 211 and 212.
- ³¹ R.S.A. 2000, c. C-21.
- ³² R.S.A. 2000, c. S-14.
- ³³ *Societies Act*, R.S.A. 2000, c. S-14, s. 3(1).
- ³⁴ *Ibid.*, subsection 9(4).
- ³⁵ *Ibid.*, subsection 10(2).
- ³⁶ *Ibid.*, s 11
- ³⁷ *Ibid.*, subsection 16(1).
- ³⁸ *Ibid.*, section 15.
- ³⁹ *Ibid.*, s. 20
- ⁴⁰ *Societies Act*, R.S.A. 2000, c. S-14, subsection 9(4)(f).
- ⁴¹ *Ibid.*, section 25.
- ⁴² *Ibid.*, subsection 26(2).
- ⁴³ *Ibid.*, section 22.
- ⁴⁴ *Ibid.*, subsection 22(2).
- ⁴⁵ *Ibid.*, s. 23
- ⁴⁶ Dree Thomson-Diamond, “How to incorporate as a non-profit organization”, online: http://www.rcvo.org/questions/docs_useful_info_/howto_IncorporateNonprofit.pdf.
- ⁴⁷ *Companies Act*, R.S.A. 2000, c. C-21, subsection 200(1).
- ⁴⁸ *Ibid.*, subsection 202(1).
- ⁴⁹ *Ibid.*, subsection 1(t).
- ⁵⁰ *Ibid.*, subsection 1(r)(ii).
- ⁵¹ *Ibid.*, subsection 15(1).
- ⁵² *Ibid.*, subsection 17(1).
- ⁵³ *Ibid.*, subsection 16(1).

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- ⁵⁴ *Ibid.*, and subsection 200(1).
⁵⁵ *Companies Act*, section 21.
⁵⁶ *Companies Act*, R.S.A 2000, c. C-21, subsection 131(1).
⁵⁷ *Ibid.*, section 132.
⁵⁸ *Ibid.*, subsection 133(2).
⁵⁹ *Companies Act*, R.S.A. 2000, c. C-21, subsection 172(1).
⁶⁰ *Ibid.*, subsection 172(5).
⁶¹ *Ibid.*, subsection 34(1).
⁶² *Ibid.*, subsection 34(6).
⁶³ *Society Act*, R.S.B.C. 1996, c. 433.
⁶⁴ *Company Act*, R.S.B.C. 1996, c. 62.
⁶⁵ *Business Corporations Act*, S.B.C. 2002, c. 57.
⁶⁶ http://www.fin.gov.bc.ca/society_act_review.htm.
⁶⁷ R.S.B.C. 1996, c. 433, subsection 2(1).
⁶⁸ *Ibid*
⁶⁹ *Ibid.*, subsection 3(2).
⁷⁰ B.C., s. 3(1)
⁷¹ *Ibid.*, s. 3(3).
⁷² *Ibid.*, subsection 6(2).
⁷³ *Ibid.*, s. 6(1)
⁷⁴ *Ibid.*, section 32.
⁷⁵ *Ibid.*, subsection 23(1).
⁷⁶ BC Ministry of Finance, “Maintaining your B.C. Society”, available online at: <http://www.fin.gov.bc.ca/registries/corppg/forms/reg6.pdf>
⁷⁷ *Ibid.*, section 7.
⁷⁸ *Ibid.*, section 5.
⁷⁹ *Ibid.*, subsection 24(8).
⁸⁰ *Ibid.*, subsection 30(2).
⁸¹ *Ibid.*, section 1.
⁸² *Ibid.*, subsection 41(1).
⁸³ *Ibid.*, subsection 39(1).
⁸⁴ *Ibid.*, subsection 39(3).
⁸⁵ *Society Act*, S.B.C. 2002, c. 57, subsection 17(1).
⁸⁶ *Ibid.*, subsection 17(2).
⁸⁷ Canada Revenue Agency, Summary Policy CSP-A21.
⁸⁸ *Society Act*, subsection 71(1).
⁸⁹ *Company Act*, subsection 262(1).
⁹⁰ *The Corporations Act*, C.C.S.M. c. C225, section 267(1).
⁹¹ *Ibid.*, section 268.
⁹² *Ibid.*, subsection 267(1).
⁹³ *Ibid.*, sections 8-9.
⁹⁴ *Ibid.*, section 275.
⁹⁵ *Ibid.*, section 98.
⁹⁶ *Ibid.*, subsection 98(5).
⁹⁷ C.C.S.M. c. C225, subsection 271(2).
⁹⁸ *Ibid.*, subsection 274(1).
⁹⁹ *Ibid.*, section 269.
¹⁰⁰ *Ibid.*, subsection 100(2).
¹⁰¹ *Ibid.*, subsections 100(3)-(3.1).
¹⁰² *Ibid.*, section 115.
¹⁰³ *Ibid.*, subsection 117(1).
¹⁰⁴ *Ibid.*, sections 118-119.
¹⁰⁵ *Ibid.*, subsection 109(9).
¹⁰⁶ *Ibid.*, subsections 126(4) and 126.1.
¹⁰⁷ *Ibid.*, subsections 112(1) (directors) and 136(1) (members).

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- ¹⁰⁸ *Ibid.*, section 178.
- ¹⁰⁹ *Ibid.*, sections 181 and 182.
- ¹¹⁰ *Ibid.*, section 277.
- ¹¹¹ *Ibid.*, section 200.
- ¹¹² *Companies Act*, R.S.N.B. 1973, c. C-13.
- ¹¹³ *Companies Act*, R.S.N.B. 1973, c. C-13, section 43.
- ¹¹⁴ *Ibid.*, subsection 33(1).
- ¹¹⁵ *Ibid.*, section 43.
- ¹¹⁶ *Ibid.*, section 44.
- ¹¹⁷ *Companies Act*, section 97.
- ¹¹⁸ *Companies Act*, R.S.N.B. 1973, c. C-13, subsection 94.2.
- ¹¹⁹ *Ibid.*, subsection 124(2).
- ¹²⁰ *Corporations Act*, R.S.N.L. 1990, c. C-36, section 420.
- ¹²¹ *Ibid.*, section 421.
- ¹²² *Ibid.*, section 428.
- ¹²³ *Ibid.*, subsection 170(1).
- ¹²⁴ *Ibid.*, subsection 170(2).
- ¹²⁵ *Ibid.*, subsection 170(5).
- ¹²⁶ C.C.S.M. c. C225, subsections 126(4) and 126.1 and S.C. 2009, c. 23, subsections 159(4)-(5).
- ¹²⁷ *Ibid.*, subsection 430(1).
- ¹²⁸ *Societies Act*, R.S.N.S. 1989, c. 435, section 3(1)
- ¹²⁹ *Ibid.*, section 5.
- ¹³⁰ *Ibid.*, section 7.
- ¹³¹ *Ibid.*, subsection 6(1).
- ¹³² *Ibid.*, subsection 6(2).
- ¹³³ *Ibid.*, subsection 13(2).
- ¹³⁴ *Ibid.*, s. 13(1).
- ¹³⁵ *Ibid.*, subsection 13(3).
- ¹³⁶ *Ibid.*, subsection 15(2).
- ¹³⁷ *Ibid.*, subsection 10(b).
- ¹³⁸ *Ibid.*, subsection 10(d).
- ¹³⁹ S.S. 1995, c. N-4.2, subsection 15(1).
- ¹⁴⁰ *Societies Act*, R.S.N.S. 1989, c. 435.
- ¹⁴¹ *Societies Act* R.S., c.435
- ¹⁴² *Societies Act*, R.S.N.S. 1989, c. 435, sections 19 and 20.
- ¹⁴³ *Ibid.*, section 21.
- ¹⁴⁴ R.S.O. 1990, c. C.38.
- ¹⁴⁵ *Ibid.*, section 118.
- ¹⁴⁶ *Ibid.*, subsection 287(2)
- ¹⁴⁷ *Ibid.*, s. 286(1)
- ¹⁴⁸ *Ibid.*, s. 285(1)
- ¹⁴⁹ *Ibid.*, s. 287(2)
- ¹⁵⁰ *Ibid.*, 287(5)
- ¹⁵¹ *Ibid.*, s.128(2)
- ¹⁵² *Ibid.*, s.289(1)
- ¹⁵³ *Ibid.*, s. 290
- ¹⁵⁴ *Constitution Acts, 1867 to 1982*, as enacted by *Canada Act, 1982* (U.K.), c. 11, subsection 92(7).
- ¹⁵⁵ *Not-for-Profit Incorporators Handbook*.
- ¹⁵⁶ Bill 65, *Not-for-profit Corporations Act, 2010*, second reading May 17, 2010.
- ¹⁵⁷ *Ibid.*, subsection 7(1).
- ¹⁵⁸ *Non-profit Corporations Act, 1995*, S.S. 1995, c. N-4.2, subsection 5(1).
- ¹⁵⁹ Bill 65, *Not-for-profit Corporations Act, 2010*, second reading May 17, 2010, subsection 8(1).
- ¹⁶⁰ *Ibid.*, subsections 8(2)-(3).
- ¹⁶¹ *Ibid.*, section 1.
- ¹⁶² *Ibid.*

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- ¹⁶³ *Ibid.*, subsection 23(4).
- ¹⁶⁴ *Ibid.*, subsection 67(1).
- ¹⁶⁵ “Extraordinary resolution” under this sections is one that is approved by at least 80% of the votes cast at a special meeting of members or consented to by each member of the corporation entitled to vote at a meeting of members.
- ¹⁶⁶ Bill 65, *Not-for-profit Corporations Act, 2010*, second reading May 17, 2010, section 22.
- ¹⁶⁷ *Ibid.*, subsection 23(4).
- ¹⁶⁸ *Ibid.*, subsection 24(1).
- ¹⁶⁹ *Ibid.*, subsection 24(7).
- ¹⁷⁰ *Ibid.*, subsection 23(5).
- ¹⁷¹ *Ibid.*, subsection 26(1).
- ¹⁷² *Ibid.*, subsection 17(1).
- ¹⁷³ *Ibid.*, section 18.
- ¹⁷⁴ *Ibid.*, section 48.
- ¹⁷⁵ *Companies Act*, R.S.P.E.I. 1988, c. C-14, section 89.
- ¹⁷⁶ *Ibid.*, subsection 90(1).
- ¹⁷⁷ *Ibid.*, subsection 90(2).
- ¹⁷⁸ *Companies Act*, R.S.P.E.I. 1988, c. C-14, subsection 90(2)(e).
- ¹⁷⁹ *Ibid.*, sections 14-16.
- ¹⁸⁰ *Ibid.*, section 61.
- ¹⁸¹ *Ibid.*, section 64.
- ¹⁸² *Companies Act*, R.S.Q., c. C-38, section 218.
- ¹⁸³ *Ibid.*, section 219; see also Enterprise Registrar Quebec, “Creating a Non-Profit Legal Person”, translation of the guide “Comment constituer une personne morale sans but lucrative”
- ¹⁸⁴ R.S.Q. c. C-38, subsection 91(2) (paragraphs (a) and (b) of subsection 91(2) do not apply to non-share capital corporations, see section 224).
- ¹⁸⁵ *Act respecting the legal publicity of sole proprietorships, partnerships and legal persons*, R.S.Q. c. P-45, sections 2 and 23.1.
- ¹⁸⁶ *Ibid.*, section 26.
- ¹⁸⁷ Quebec Enterprise Registrar, Annual Declaration online:
http://www.registreentreprises.gouv.qc.ca/en/modifier/mettre_a_jour/declaration_annuelle.aspx.
- ¹⁸⁸ *Act respecting the legal publicity of sole proprietorships, partnerships and legal persons*, R.S.Q. c. P-45, sections 34 and 41.
- ¹⁸⁹ *Taxation act*, R.S.Q. c. I-3.
- ¹⁹⁰ S.S. 1995, c. N-4.2.
- ¹⁹¹ *Ibid.*, section 5.
- ¹⁹² *Ibid.*, subsection 6(1).
- ¹⁹³ *Ibid.*, subsection 6(1).
- ¹⁹⁴ *The Non-Profit Corporations Act, 1995*, S.S. 1995, c. N-4.2.
- ¹⁹⁵ *Ibid.*, subsection 6(1)(f).
- ¹⁹⁶ *Ibid.*, subsection 2(1).
- ¹⁹⁷ *Ibid.*, subsection 2(1).
- ¹⁹⁸ *Ibid.*, subsection 2(9).
- ¹⁹⁹ *Non-Profit Corporations Act*, S.S. 1995, c. N-4.2, subsection 149(1).
- ²⁰⁰ *Ibid.*, section 150.
- ²⁰¹ *Ibid.*, section 151.
- ²⁰² *Ibid.*, section 89.
- ²⁰³ *Ibid.*, subsection 92(2).
- ²⁰⁴ *Ibid.*, subsections 92(3)-(4).
- ²⁰⁵ *Ibid.*, subsection 108(3).
- ²⁰⁶ *Ibid.*, subsection 96(1).
- ²⁰⁷ *Ibid.*, subsection 101(9).
- ²⁰⁸ *Ibid.*, subsection 16(1).
- ²⁰⁹ *Ibid.*, section 107.
- ²¹⁰ *Ibid.*, section 109.
- ²¹¹ *Ibid.*, section 111.

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- ²¹² *Ibid.*, subsection 113(1).
- ²¹³ *Ibid.*, section 116.
- ²¹⁴ *Ibid.*, sections 127, 133 and 136.
- ²¹⁵ “complainant” is defined in section 222 as: (a) a member or a registered holder or beneficial owner, and a former registered holder or beneficial owner, of a security of a corporation or any of its affiliates; (b) a director or an officer or a former director or officer of a corporation or of any of its affiliates; (c) the Director; or (d) any other person who, in the discretion of the court, is a proper person to make an application.
- ²¹⁶ *Ibid.*, sections 223 and 225.
- ²¹⁷ *Ibid.*, section 231.
- ²¹⁸ *Ibid.*, sections 177-179.
- ²¹⁹ *Ibid.*, subsection 161(2).
- ²²⁰ *Ibid.*, subsection 161(4).
- ²²¹ *Ibid.*, subsection 161(6).
- ²²² *Societies Act*, R.S.N.W.T. 1988, c. S-11.
- ²²³ *Ibid.*, section 2.
- ²²⁴ See *Societies Act* Application for Incorporation.
- ²²⁵ R.S.N.W.T. 1996, c. 19, section 3.
- ²²⁶ *Ibid.*, section 5.
- ²²⁷ *Ibid.*, section 7.
- ²²⁸ *Society Act*, S.N.W.T., 1988, c. S-II, s. 1 provides that an “ extraordinary resolution” means: “a resolution in writing referred to in section 16.2 or a resolution passed by a majority of not less than $\frac{3}{4}$ of those members of a society who are entitled to vote as are present in person, or where proxies are allowed by proxy, at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been given in the manner provided by the by-laws”.
- ²²⁹ *Societies Act*, By-law Amendment Package, available online at:
<http://www.justice.gov.nt.ca/CorporateRegistry/documents/societybylawamendmentinstructions.pdf>
- ²³⁰ *Societies Act*, section 6.
- ²³¹ *Ibid.*, subsection 9(1)(a).
- ²³² *Ibid.*, section 10.
- ²³³ *Societies Act*, R.S.N.W.T. 1988, c. S-11, section 18.
- ²³⁴ *Societies Act*, S.N.W.T. 1996, c. 19, subsection 5(f).
- ²³⁵ *Ibid.*, section 16.1.
- ²³⁶ *Ibid.*, section 16.2.
- ²³⁷ *Ibid.*, section 25.
- ²³⁸ *Societies Act*, R.S.Y. 2002, c. 206, section 3.
- ²³⁹ *Societies Regulations*, O.I.C. 1988/124, subsection 2(1).
- ²⁴⁰ *Ibid.*, subsection 3(1).
- ²⁴¹ *Societies Act*, subsection 7(1).
- ²⁴² *Ibid.*, section 7(2).
- ²⁴³ *Societies Act*, R.S.Y. 2002, c. 206
- ²⁴⁴ Under section 1, a special resolution means (a) a resolution passed by the vote of not less than 75 per cent of the members voting at a general meeting of which not less than 21 days notice of the resolution has been given or, (b) a resolution agreed to in writing by all of the members who would have been entitled to vote at a general meeting.
- ²⁴⁵ *Ibid.*, s. 9
- ²⁴⁶ *Ibid.*, s. 8
- ²⁴⁷ *Ibid.*, section 7.
- ²⁴⁸ *Societies Act Regulations*, O.I.C. 1988/124, section 9.
- ²⁴⁹ *Ibid.*, subsections 10 and 11(a).
- ²⁵⁰ *Ibid.*, subsection 11(2).
- ²⁵¹ *Societies Act*, R.S.Y. 2002, c. 206.