

Not-for-Profit Corporations Act



**Presentation to Sport Canada, SIRC
and Canadian Olympic Committee**

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Sport Law & Strategy Group

Providing strategic insight to the
Canadian sport community through
professional services in these areas:

- ✓ **Legal Solutions**
- ✓ **Planning and Governance Services**
- ✓ **Strategic Communications**

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NFP Act

- ✓ Current CCA part II covers about 19,500 not-for-profit corporations (including NSOs and MSOs)
- ✓ CCA has not substantially changed in many decades (since 1917!)
- ✓ NPCA received Royal Assent in June 2009, Regulations published February 2011
- ✓ Act come into force October 17, 2011
- ✓ Policies and forms now available

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Rationale

- ✓ Modeled after CBCA
- ✓ Strengthen member rights
- ✓ Decrease paperwork
- ✓ Allow new technologies
- ✓ Streamline bylaw requirements
- ✓ Follow Saskatchewan's lead!
- ✓ Other provinces will follow suit

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Structure

- ✓ **Articles** must contain name, location, # of directors, statement of purpose, classes of members, restrictions on activities, distribution of assets after dissolution, and anything else that could also be in bylaws
- ✓ **Bylaws** must contain conditions of membership, notice for meetings

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Other aspects

- ✓ NPCA contains **mandatory** rules, **default** rules and **alternate** rules
- ✓ Directors may change bylaws without approval of members, except for fundamental changes
- ✓ Industry Canada will be a storehouse, not a clearing house, for bylaws
- ✓ Changes to bylaws will take immediate effect

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Notice - example

1. Sent by mail, courier or personal delivery
2. Communicated by telephone or other electronic means (provided members can opt for a different means of notice)
3. Affixed to a notice board
4. Communicated in a newspaper or a publication that you distribute to members

(posting on a web site not sufficient!)

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Member rights

- ✓ Members may pursue a wider array of judicial remedies
- ✓ Members without voting rights may vote on 'fundamental changes' that affect their rights ('SCV', may amount to a 'veto')
- ✓ Members may remove any director by ordinary resolution
- ✓ Directors to pay reasonable expenses of a requisitioned meeting

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Membership complexities

- ✓ Canadian Lacrosse Association has **one** category of members and **ten** members
- ✓ Rowing Canada Aviron has **four** categories of voting members and **eight** categories of non-voting members and many thousands of members...
- ✓ *“A corporation that wishes to maximize its future flexibility will best avoid creating more than one class of members”*

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Board of directors

- ✓ The Act contemplates that members will elect directors ... therefore:
 - Ex-officio directors are prohibited
 - Appointed directors are restricted
- ✓ Need to rethink your board structure
- ✓ “Workaround” possibilities? (do not pass the smell test)

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Study of 58 NSOs

- ✓ Elected Board → **53 %**
- ✓ Board size 9 or less → **26 %**
- ✓ Constituency Board → **36 %**
- ✓ Board size 12 or less → **57 %**
- ✓ Hybrid Board → **10 %**
- ✓ Board size 13 to 18 → **28 %**
- ✓ Board size 19 or more → **16 %**



Thoughts on timing

- ✓ NSOs will have three years (or dissolved!)
- ✓ CRA needs to be consulted if the NSO is changing its purposes (add minimum six months)
- ✓ Some NSOs may take advantage and also change their legal name (NUANS search)
- ✓ Recommend that new member classes be introduced under the CCA first, then seek approval of members for the continuance process
- ✓ Consultation with members **will take time**

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What will bylaws look like?

- ✓ Minimalist approach will be recommended by policies/templates of Industry Canada
- ✓ Two bylaws? (one document that can be changed by directors, another that requires members to change)
- ✓ Comprehensive approach – everything in one big document
- ✓ ... policies now available on Industry Canada web site

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Our web site

www.sportlaw.ca/nfp-act/

**Dedicated page on the new Act –
check it often for updates and new
resources**

