Canada Not-for-Profit Corporations Act: Background Information

The new Canada Not-for-Profit Corporations Act replaces the existing Canada Corporations Act, which has not been substantially updated since 1917. The new legislation introduces rules and provisions for corporate governance that are already features of corporations legislation in comparable jurisdictions.

Note that every existing federally incorporated not-for-profit corporation will have to take action to make the transition to the new Act. This 'continuance' must be completed by October 17, 2014 in order to remain in good standing with the Canadian Revenue Agency.

The new Canada NFP Act and its regulations are on the Department of Justice website.


The Canadian Association for Enterostomal Therapy Board of Directors has worked towards continuance and is ready to present the CAET membership with the:

1) Articles of Continuance (schedule 1 & 2)

2) Revised By-Laws that meet the requirements of the new Canada Not for Profit Act

3) Resolution:

A resolution will be brought forward at the CAET Annual members Meeting on May 9, 2013 when the members will be asked to vote on the Articles of Continuance and Revised By-Laws for CAET.

Why did the Act change? The Old Act was Inadequate.

• Slow and awkward to use by modern corporate standards
• Out-dated restrictions on basic things like corporate borrowing
• No contemplation of modern means of holding members and directors’ meetings (i.e. conference calls, teleconferences, written resolutions)
• Board (and officer) powers, duties and defences were not enumerated
• Did not allow for fundamental, but now commonplace, changes such as amalgamation, continuances in and out of jurisdiction
• No flexibility on audit requirements
• Remedies for members deemed insufficient

Benefits of the New Canada Not for Profit Act
• Clearer, more modern set of rules to govern the internal affairs of not-for-profit corporations
• Similar in many respects to rules governing business corporations
• Simplified processes
• More flexibility, including ability to make fundamental changes such as amalgamations, continuance, etc. (previously not permitted)
• More suited to the current needs of the not-for-profit sector

Here is a summary of important changes to the CAET Articles of Continuance and By Laws:

1) The CAET name has been added in the French language to the Articles of Continuance
2) Articles of Continuance: See Schedule 1

1) **CAET Purpose**

The CAET’s purpose has been updated from the original “Letters Patent”. The CAET is a not for profit association but also a “Registered Charity” and so must remain focused on Enterostomal Therapists and the Public they serve as follows:

**Articles of Continuance Schedule 2**

1) The CAET must ensure that all finances are focused towards furthering the purpose of the association and will not be used for the financial or any other ‘gain’ for its members. This means that any profits over and above expenses from any initiative, e.g., a course offered by the CAET Academy, are used to further the purposes of the association/pay the costs of another project that will benefit the members, e.g., CAET underwrote the costs of development of ET nurse competencies necessary for certification.

2) Under the new ACT, the CAET Board has the power to appoint up to 1/3 of the Directors between Annual Members Meetings, giving the board the opportunity to fill vacant positions without an election if one becomes vacant between Annual Members Meetings. There will also be a stronger focus on “Skill Set” needed for Board positions and this will allow the Board to make sure that they have skill set required.

**Key Changes Under By-Laws**

In some sections, the bylaws will be less specific than CAET’s previous bylaws. These specifics will be described in Operating Policies which will be easier to update as circumstances change, e.g. location of the CAET National Office.

**Section 3 CAET Members**

3.01 Classes and Conditions of Membership
This is essentially a change of title as under the new act, all members are voting members. Previously CAET had Active (voting) members and several additional categories of members who were non-voting.

Membership in the Association shall be available to:

1) individuals who are Registered Nurses or Retired Registered Nurses who have successfully completed an Enterostomal Therapy Nursing Education Program recognized by the Association; or

2) individuals who are not Registered Nurses or Retired Registered Nurses, and who, prior to 1976, successfully completed an Enterostomal Therapy Nursing Education Program recognized by the Association; and who have applied for and been admitted into membership, both in accordance with the Association’s Operating Policies.

The Association may approve categories of Associates as further described in the Association’s Operating Policies. Associates shall not be Members of the Association and shall have no voting privileges in the Association. Upon payment of the appropriate fee, Associates shall have the privileges set out in the Operating Policies.

The Associates will include all previous non-voting member categories:

Allied Health Care Professionals

Any health care professional interested in and supportive of the objectives of the Corporation. This includes students in CAET’s Knowledge to Practice (K2P) programs.

Industry

An individual who is employed by or represents a company whose primary business is related to the field of wound, ostomy, and/or continence care, and who is interested in and supportive of the objectives of the Corporation.

Student Member

- All students enrolled in the Corporation’s Enterostomal Therapy Nursing Education Program, with the exception of Industry members, shall automatically become Student members. Industry members admitted to the Program shall retain Industry member status.
- Students enrolled in other Enterostomal Therapy Nursing Education Programs recognized by the Corporation may become student members by submitting an application and verification of such enrollment.
Students enrolled in basic nursing programs may become student members by submitting an application and verification of such enrollment.

In the CAET Operating Policies the Membership policy will include continuing the Honorary Life Member process. Honorary Life Members may be Members of the CAET and will include: Every President of the Corporation who has completed at least one (1) full term of office. Any active or retired active member recommended to the Board by another member and approved by a two-thirds (2/3) vote at an AMM.

Section 5.06 Appointment of Directors

This was mentioned in the Articles of Continuance. In the CAET By-Laws you will see that there is a provision for the appointment of Directors for a one year term in order to ensure skill set as well as to fill vacant positions between Annual Members Meetings as follows:

Appointment of Directors and Term

Pursuant to the Articles, following the conclusion of the annual general meeting of Members each year, the Board may appoint Directors (the “appointed directors”) to hold office for a term expiring not later than the close of the next annual meeting of Members. The number of appointed Directors shall not exceed one-third (1/3) of the number of directors elected by the Members at the previous annual meeting of Members.

Directors and Officers

Please note that “Director” means Director of the Board. The 5 Regional Directors of the CAET are considered Directors of the Board and they vote as Board Directors. Officers of the CAET include the President, President Elect, Past President, Treasurer, Secretary and Executive Director. All Officers are also “Directors” who have a vote and are a part of the CAET Board except the Past President and the Executive Director who while they fill the role of an “Officer” do not vote as Board Members.

Additional Summary of the New Canada Not for Profit Act

Following are some of the key features of the Act, as described in the Legislative Summary:
• The Act gives not-for-profit corporations the rights to buy and sell property, make investments, borrow money and issue debt obligations.
• Procedures for amalgamation, continuance, liquidation and dissolution are set out in the Act.
• Bylaws and amendments must be submitted to Industry Canada after members have approved them. Industry Canada does not review or approve them, but simply acts as a repository.
• Soliciting corporations require a minimum of three directors, at least two of which are not officers or employees of the corporation or its affiliates.
• The Act specifies financial reporting requirements for not-for-profit corporations, depending on their status as either a soliciting or non-soliciting corporation and on the amount of revenue they earn:
  o soliciting corporations with gross annual revenues higher than $250,000 must be audited; where revenues are between $50,000 and $250,000, an audit is required, unless the members resolve to have a review engagement; where revenues are $50,000 or less, a review engagement is required, unless the members resolve not to have one;
  o All not-for-profit corporations must make their financial statements available to their members, directors and officers, as well as to Industry Canada. Soliciting corporations must make all financial statements publicly available.
• Directors of not-for-profit corporations would be subject to the same duty and standard of care as directors of business corporations incorporated under the Canadian Business Corporations Act. Not-for-profit corporation directors would have an explicit duty to act honestly and in good faith with a view to the best interests of the corporation, and to exercise the care, diligence and skill of a reasonably prudent person. Failure to abide by this duty and standard could result in liability for negligence. The bill also provides directors with a "due diligence" defence against potential liabilities.
• Members would be permitted to examine and take extracts of corporate records (most importantly, the financial statements); access membership lists (subject to certain restrictions); and request a meeting and make proposals for discussion at the annual meeting.