

## CORPORATE BULLETIN

December 2004

### FEDERAL NOT-FOR-PROFIT CORPORATIONS FACE RADICAL CHANGE

On November 15, 2004, the Minister of Industry introduced legislation to radically overhaul the regulation of and governance rules affecting federally incorporated not-for-profit corporations. When passed into law, Bill C-21, the proposed new *Canada Not-for-profit Corporations Act*, will replace Parts II and III of the *Canada Corporations Act*, the current governance statute. The *Canada Corporations Act* has remained largely unchanged since 1917 and lacks modern corporate governance rules. In the Ministry's own words:

*"It is antiquated ... Its financial disclosure provisions are weak, the duties and responsibilities of directors are ill defined, it does not provide a proper defence against liability, and the ability of members to scrutinize the activities of the corporation is limited. Several issues, including remedies and internal governance, are not addressed directly in the Act, but through administrative policies established by the director appointed under the Canada Business Corporations Act..."*

Bill C-21 comes as welcome relief to directors, officers and members of federal not-for-profit corporations. But corporations will need to act to take advantage of the new rules and avoid being dissolved.

### BILL C-21

Bill C-21 builds on the well-developed standards of corporate governance that are found in the *Canada Business Corporations Act*, the statute that governs the federal for-profit sector. Bill C-21 contemplates:

- a streamlined, as-of-right incorporation process that will reduce the regulatory burden on the not-for-profit sector and government (incorporations and amendments to letters patent will be accomplished much more quickly),
- new rules on financial reporting that are based on an organization's annual revenue and sources of funding,
- a new explicit standard of care for directors and new rules (and defences) for director liability,
- new governance rules that permit written resolutions in place of meetings and allow corporations to avail themselves of certain technological advances, such as teleconference meetings, improving the efficiency of meetings, and
- new rules permitting members access to certain information to monitor director activities and new, expanded remedies for members to enforce their rights (*e.g.* oppression).

The new law is intended to be flexible enough to meet the needs of large and small organizations while providing the accountability and transparency necessary to maintain public trust and confidence in the not-for-profit sector, currently comprised of some 18,000 federal not-for-profit corporations and corporations without share capital.

### STATUS OF BILL C-21

Bill C-21 received first reading on November 15, 2004. The Bill and its associated regulations are now subject to public consultation and review by the Standing Committee on Industry, Natural Resources, Science and Technology. All comments on Bill C-21 will be posted on Corporations Canada's website, unless the commentator requests otherwise.

It is possible that the Bill will be revised significantly before it is passed into law, although earlier drafts of the Bill have gone through two rounds of public consultation. Industry Canada expects it will be a year or longer before the Bill and its associated regulations will become law. Information on the progress of the Bill will be posted on Corporations Canada's website.

## **WHAT WILL YOU NEED TO DO?**

After Bill C-21 becomes law, a federal not-for-profit corporation will have three years to:

- file articles of incorporation with Industry Canada to obtain corporate status under the new Act, and
- overhaul its by-laws to conform to the new Act and to avail itself of the more modern provisions that will foster greater efficiency and facilitate governance best practices.

Industry Canada will issue a certificate of continuance to replace the current letters patent to all corporations making the required transition under the new Act. The Ministry has stated that it will not charge filing fees for the required continuance process.

**If a corporation does not file articles of incorporation within the three-year period, it could be dissolved.**

## **TAX MATTERS**

Bill C-21 will not affect the tax-exempt status of federal not-for-profit corporations that have charitable status, and does not by itself play a determining role on whether a corporation qualifies as a charity or as a not-for-profit corporation under the *Income Tax Act*. (The Federal Government has a separate initiative underway to significantly revise the *Income Tax Act* (including new disbursement quota rules) as it relates to charities.)

## **HOW CAN WE HELP?**

McMillan Binch has assisted a number of clients to develop submissions to government Standing Committees and to develop new corporate governance processes. Our advice and assistance is always tailored to the client's needs.

If you would like to better understand the implications of Bill C-21, make any submissions to the Standing Committee on Industry, Natural Resources, Science and Technology on Bill C-21 or develop new corporate by-laws and governance processes, we would be pleased to assist.

## **MCMILLAN BINCH LLP**

McMillan Binch is one of Canada's leading business law firms, comprising approximately 160 lawyers, all based in Toronto. For more information, please contact your McMillan Binch Lawyer or one of the lawyers listed below:

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*The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.*

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