Legislative Summary **LS-624E**

BILL C-4: CANADA NOT-FOR-PROFIT CORPORATIONS ACT

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LEGISLATIVE HISTORY OF BILL C-4

HOUSE OF COMMONS		SENATE	
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Statutes of Canada **2009, c. 23**

N.B. Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print.**

Legislative history by Michel Bédard

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CONTENTS

Page

Page

Page

Page

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BILL C-4: CANADA NOT-FOR-PROFIT CORPORATIONS ACT*

BACKGROUND

On 28 January 2009, the Honourable Diane Ablonczy, Minister of State (Small Business and Tourism), tabled Bill C-4, An Act respecting not-for-profit corporations and certain other corporations, in the House of Commons. This bill may be cited as the *Canada Not-for-profit Corporations Act* (NPCA).

The NPCA provides for the phased repeal of the *Canada Corporations Act* (CCA),(1) while in particular replacing Part II of the statute that governs federally incorporated non-profit corporations (NPCs or corporations). Certain provisions are designed to apply to entities currently subject to Part III of the CCA, which governs corporations without share capital incorporated by a special Act of Parliament. The NPCA also provides for the continuance of certain corporations with share capital that are currently subject to part IV of the CCA under the *Canada Business Corporations Act* (CBCA).

The NPCA is essentially a re-introduction of three previous bills that died on the *Order Paper*. The first, Bill C-21, An Act respecting not-for-profit corporations and other corporations without share capital, was introduced by the Honourable David L. Emerson, then Minister of Industry, on 15 November 2004 and died on the *Order Paper* upon the dissolution of the 38th Parliament in 2005. On 13 June 2008, the Honourable Diane Ablonczy, Secretary of State (Small Business and Tourism), tabled Bill C-62, An Act respecting not-for-profit corporations and certain other corporations, in the House of Commons. It died upon the

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* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

(1) *Canada Corporations Act* [CCA], R.S.C. 1970, c. C-32.

dissolution of the 39th Parliament in 2008. Bill C-4 was introduced on 3 December 2008 but it died on the *Order Paper* when the 1st Session of the 40th Parliament was prorogued on 4 December 2008. It was reintroduced in the next session as Bill C-4 on 28 January 2009. Bill C-62 and both bills C-4 (the 2008 and 2009 versions) contain most of the original text of Bill C-21, though a few significant changes and additions were made to update and improve the provisions of the bill.

Industry Canada news releases concerning the NPCA have stated that the proposed legislation is intended to make it easier for non-profit corporations to take advantage of the protections afforded by incorporation and the predictability and accountability offered by a modern corporate governance framework. They also state that the bill's primary purposes are to modernize and improve corporate governance in NPCs, eliminate unnecessary regulation, and offer flexibility to meet the needs of the non-profit sector.(2) The new corporate governance provisions found in the NPCA, as well as many other provisions contained in the bill, are modelled on the corporate governance provisions contained in the CBCA,(3) the statute that regulates federally incorporated for-profit corporations (business corporations).

If and when the bill and its proposed regulations come into force, every not-for-profit corporation currently governed by Part II of the CCA will have three years to formally make the transition to the NPCA before the Director (as defined by the Act) will take steps to dissolve the corporation. Share capital corporations created by a Special Act of Parliament and subject to Part IV of the CCA will have six months from Royal Assent to apply for continuance under the CBCA. The bill proposes that any such corporation that does not ensure its continuance under the CBCA within that time period will be automatically dissolved.

A. Chronology

The *Canada Corporations Act*, which currently regulates federally incorporated NPCs, has been largely unchanged since 1917, and lacks the rules and the provisions for the corporate governance systems that have been introduced into many other corporate laws in comparable jurisdictions.

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(2) Industry Canada, "Government of Canada Takes Action to Further Reduce Paperwork Burden with *Canada Not-for-Profit Corporations Act*," News release, Ottawa, 13 June 2008, http://www.ic.gc.ca/eic/site/ic1.nsf/eng/04201.html; Industry Canada, "Government of Canada Tables New Regime for Not-for-Profit Corporations," News release, Ottawa, 3 December 2008, http://www.ic.gc.ca/eic/site/ic1.nsf/eng/04134.html.

(3) *Canada Business Corporations Act* [CBCA], R.S.C. 1985, c. C-44.

The NPCA was developed in accordance with the government's commitment to the Voluntary Sector Task Force, which was initiated in 1999 to modernize corporate governance in the non-profit sector. In July 2000, Industry Canada issued a consultation paper entitled *Reform of the* Canada Corporations Act: *The Federal Nonprofit Framework Law*. Subsequently, the government held a series of roundtable discussions in cities across Canada to discuss and consider options for reform. In March 2002, after analyzing the input received during consultations, Industry Canada released two additional papers: *Reform of the* Canada Corporations Act: *Draft Framework for a New* Not-for-Profit Corporations Act,(4) which provided a more substantial outline of the proposed new Act; and a supplementary paper, *Reform of the* Canada Corporation Act: *Discussion Issues for a New* Not-for-Profit Corporations Act,(5) which contains some specific options regarding certain sections of the proposed legislation. A second round of cross-country consultations followed the release of these papers. In the spring of 2002, following the second round of consultations, Industry Canada released a paper entitled *Reform of the* Canada Corporations Act: *The Federal Not-for-Profit Framework Law*,(6) which summarized the results of the consultations. In general, participants in the consultations supported reform, and agreed that the obsolete CCA should be replaced.

On 15 November 2004, the Honourable David Emerson, Minister of Industry, introduced Bill C-21 in the House of Commons. Bill C-21 was referred to the Standing Committee on Industry, Natural Resources, Science and Technology on 23 November 2004, though, as mentioned above, it died on the order paper upon the dissolution of Parliament.

Since that time, Industry Canada has continued to consult the public and develop the draft bill; the result is that the version of Bill C-62 tabled by the Honourable Diane Ablonczy on 13 June 2008 is an updated and slightly modified version of Bill C-21. Both versions of Bill C-4 have also incorporated modifications, though most are minor and many changes are intended to make the language used in the bill more accurate in its application to non-profit corporations in Quebec.

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(4) Industry Canada, Corporate and Insolvency Law Policy Directorate, *Reform of the* Canada Corporations Act: *Draft Framework for a New* Not-for-Profit Corporations Act, March 2002, http://www.ic.gc.ca/epic/site/cilp-pdci.nsf/en/h_cl00030e.html.

(5) Industry Canada, Corporate and Insolvency Law Policy Directorate, *Reform of the* Canada Corporations Act: *Discussion Issues for a New* Not-for-Profit Corporations Act, March 2002, http://www.ic.gc.ca/epic/site/cilp-pdci.nsf/en/h_cl00031e.html.

(6) Industry Canada, Corporate and Insolvency Law Policy Directorate, *Reform of the* Canada Corporations Act: *The Federal Not-for-Profit Framework Law*, Summer 2002, http://www.ic.gc.ca/epic/site/cilp-pdci.nsf/en/h_cl00664e.html.

Bills C-21, C-62 and C-4 (both the 2008 and 2009 versions) have not attracted a significant amount of media attention or published discussion among industry experts. Commentators seem to agree that new legislation is long overdue. The limited number of published commentaries and criticisms is perhaps an indication that the two rounds of stakeholder consultations that Industry Canada held before tabling bills C-62 and C-4 (the 2008 version) were largely successful.

Bill C-4 was referred to the House of Commons Standing Committee on Industry, Science and Technology on 12 February 2009 and reported to Parliament on 23 April 2009. Only 11 amendments were made, and they all related to either streamlining processes or clarifying technical provisions in the bill.

Bill C-4 was referred to the Standing Senate Committee on Banking, Trade and Commerce on 10 June 2009 and reported on 22 June 2009 without amendment, but with two observations (as set out below with regards to parts 9 and 12 of the NPCA).

B. Highlights

The NPCA is intended to be a comprehensive law, designed to cover all aspects of corporations without share capital incorporated at the federal level. Following are some key features of the NPCA:

- The NPCA creates a strong role for a Director appointed under the Act. The Director will function as a public registrar for not-for-profit corporations and will exercise certain administrative, regulatory and investigatory powers, including oversight of compliance and enforcement activities. Under certain prescribed circumstances, the Director may cancel a corporation's articles and certificate of incorporation. As it is presumed that Industry Canada will continue in its role as the government department responsible for corporate regulation, and also to avoid confusion with a "director of a corporation," the Director will be referred to as "Industry Canada" for the remainder of this paper.

- The NPCA streamlines the incorporation process for NPCs by allowing for incorporation by way of right. Currently, under Part II of the CCA, incorporation is achieved by letters patent, and the Minister must approve the issuance of letters patent to the NPC. Under the NPCA there is no need for the Minister to approve incorporation. Filing may be made electronically, and approval of incorporation is automatic, as long as the statutory requirements respecting incorporation are followed.

- The NPCA sets out the capacity and powers of an NPC as a natural person, including the rights to buy and sell property, to make investments and borrow money and to issue debt obligations.

- The NPCA requires that the articles of incorporation include "a statement of the purpose of the corporation."

- It is not necessary to pass a by-law in order to confer any particular power on a corporation or on its directors; the NPCA allows an NPC to assume the broader powers of a corporate legal entity, unless such powers, and the exercise thereof, would be contrary to its articles of incorporation.

- Procedures for amalgamation, continuance, liquidation and dissolution are set out in the NPCA.

- By-laws need no longer be submitted as part of the incorporation process; however, by-laws and any amendments to them must be submitted to Industry Canada within the prescribed period after members have confirmed or amended the by-laws.(7) Industry Canada will not be responsible for reviewing or approving the by-laws, but rather will act as a repository for them. The NPCA contains several default provisions that apply when a corporation has not drafted its own by-laws to replace these provisions.

- A non-soliciting corporation (corporations that do not solicit donations from the public, as discussed further under Part 1 below) would be entitled to have only one director under the Act; soliciting corporations would require a minimum of three directors.

- The NPCA imposes different financial reporting requirements on NPCs, depending on their status as either a soliciting or non-soliciting corporation and on the amount of revenue they earn.
  - High-revenue, soliciting corporations, and non-soliciting corporations with gross annual revenues higher than $1 million, must be audited.
  - Medium-revenue, soliciting corporations may resolve not to be audited, if two thirds of their members approve, and to undertake a review engagement instead (which has a less comprehensive scope of review).
  - Low-revenue, soliciting corporations also will require at least a review engagement unless all members resolve not to undertake this process.

- All not-for-profit corporations would be required to make their financial statements available to their members, directors and officers, as well as to the Director appointed under the Act. Soliciting corporations would be required to make all financial statements publicly available.

- Directors of NPCs would be subject to the same duty and standard of care as directors of business corporations incorporated under the CBCA. In other words, NPC 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.

- The NPCA sets out the rights of members of the corporation concerning voting, attending and calling meetings. It allows for absentee voting by proxy, mailed-in ballots and telephone or electronic means.

(7) According to regulation 61 of the proposed NPCA regulations, the prescribed period is 12 months.

- Members would be permitted to access 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.

- Members would have the right to use the derivative action remedy (bringing an action against the directors and/or officers of the NPC in the name of the NPC) and the oppression remedy (bringing an action to enforce the rights of minority members of the corporation), if they feel that a wrong has been done to the NPC or to themselves as members.

- NPCs will no longer be required to have a corporate seal.

DESCRIPTION AND ANALYSIS

This summary describes Bill C-4's key provisions and how they differ from those currently found in the CCA.

A. Part 1 – Interpretation and Application (Clauses 2–5)

Part 1 of the NPCA defines certain key terms used throughout the bill, sets out the types of corporations to which the bill applies, outlines the bill's purpose, and explains how the Minister responsible for the bill will be appointed.

1. Interpretation (Clause 2)

The definitions contained in clause 2(1) of the NPCA generally mirror those contained in section 2(1) of the *Canada Business Corporation Act*, except as required to reflect the obvious differences between the purposes of the two pieces of legislation.

The CBCA contains no specific definition of "activities," whereas in the NPCA, this term is defined as any conduct of a corporation to further its "purpose"[(8)] and any business carried on by a body corporate, but does not include the affairs of a corporation. Accordingly, in the NPCA, "activities" and "affairs" are distinct from one another. "Affairs" is defined as "the relationships among a corporation, its affiliates and the directors, officers, shareholders or members of those bodies corporate." Presumably, a specific definition of "activities" was added to the NPCA in order to emphasize the fact that NPCs are empowered to do only things that serve to further their purpose.

(8) Where the term "purpose" is used in bills C-4 and C-62, the term "mission" was used in Bill C-21.

Unlike business corporations, which are not required to indicate in their articles of incorporation their corporate purpose, NPCs are required to include a statement of the purpose of the corporation in their articles of incorporation. A corporation's failure to comply with its own articles, including carrying out activities within a prescribed period,[9] provides grounds for Industry Canada to dissolve the corporation (see clauses 223(1)(*a*)(i) and (ii)).

Other differences between the definitions found in the NPCA and those in the CBCA reflect the fact that members of NPCs are not entitled to share in corporate profits. NPCs, unlike business corporations, are not designed to make money for their members. As a result, NPCs do not have shares in the conventional sense (portions of a corporation, owned in common with others, the ownership of which may entitle the shareholder to a "dividend" or a share in corporate profits). Accordingly, "series" is defined in the NPCA as a "division of a class of debt obligations" rather than as "a division of a class of shares," the definition found in the CBCA (this is discussed further under Part 6).

Perhaps the most important of the concepts that are unique to the NPCA is that of a "soliciting corporation." This term is defined under section 2(**5.**1) as an NPC that has received, in the prescribed period,[10] income in excess of the prescribed amount in the form of:

- donations or gifts (or in Quebec, gifts or legacies of money or other property) requested from any person who is not a member, director, officer or employee of the corporation at the time of the request (or the spouse or family member of such a person);
- grants or similar financial assistance received from the federal government or a provincial or municipal government, or an agency of such a government; or
- donations or gifts of money or other property from another corporation or entity that has received income in the manner described above.[11]

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(9) According to regulation 32 of the proposed NPCA regulations, the prescribed period is three years.

(10) According to regulation 16 of the proposed NPCA regulations, the prescribed period is three years. **Bill C-4 was amended during its passage through the House of Commons to allow Industry Canada to set out a prescribed start date and duration for "soliciting corporation" status in the regulations as well. This change is intended to ensure that not-for-profit corporations subject to a change in status because of their activities during a given period are fully and clearly aware of when that change takes effect.**

(11) A corporation can apply to Industry Canada to change its status from a soliciting corporation to a non-soliciting corporation. Industry Canada is empowered to approve this change if it is satisfied that a change in status would not prejudice the public interest. See clause 2(6) of the NPCA.

Soliciting corporations are subject under the NPCA to more onerous corporate governance and financial accountability requirements than non-soliciting corporations. For example, soliciting corporations are required to have no fewer than three directors and are required to send copies of corporate financial statements to Industry Canada for review (as set out in Part 11).

The interpretation section of the NPCA also defines what constitutes an "affiliate," a "holding body" or a "subsidiary" of a body corporate (clauses 2(2) to 2(4)). The definitions of these terms mirror the ones found in sections 2(2) to (5) of the CBCA. A for-profit business corporation can be an affiliate, holding body or subsidiary of an NPC.(12)

2. Application (Clause 3)

The NPCA applies to every body corporate that is incorporated or continued under the Act. Initially, the Act will apply only to those NPCs that have been incorporated under the NPCA and NPCs incorporated under Part II of the CCA that have obtained certificates of continuance under the new Act from Industry Canada. It is mandatory for NPCs incorporated under Part II of the CCA to apply for a certificate of continuance under the NPCA within three years of the Act's coming into force, or they face dissolution (clause 298). Further incorporation of NPCs under Part II of the CCA is disallowed upon the coming into force of the transitional provisions (clause 299). Accordingly, the NPCA will eventually apply to all federal NPCs that have not been incorporated under a special Act of Parliament.

The NPCA also applies to corporations without share capital incorporated under a special Act of Parliament (Part III CCA corporations). The application of the NPCA to these special Act corporations will be further discussed in this summary's analysis of Part 19 of Bill C-4.

The CBCA, the CCA and the *Winding-up and Restructuring Act* (WRA)(13) will not apply to corporations created or continued under the NPCA.

The NPCA limits the type of businesses in which the corporations incorporated or continued under it can be involved. For example, NPCs cannot be banks or insurance, trust or loan companies. In addition, incorporation or continuation under the NPCA does not allow corporations to act as degree-granting institutions or to regulate trades or professions.

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(12) Under clause 2(1), "body corporate" is defined to include any entity with the status of a corporation or a company (i.e., an organization with legal personality wherever or however incorporated), while "corporation" is defined to mean only those bodies corporate that are incorporated under the NPCA.

(13) *Winding-up and Restructuring Act*, R.S.C. 1985, c. W-11.

3. Purpose (Clause 4)

The NPCA's purpose is to allow for the incorporation or continuance of "corporations without share capital … for the purposes of carrying on legal activities" and also "to impose certain obligations on bodies corporate without share capital incorporated by a special Act of Parliament."

4. Responsible Minister/Ministry (Clause 5)

Clause 5 of the NPCA gives the Governor in Council authority to designate a member of cabinet to be the minister responsible for this Act. Presumably, this will be the minister of Industry, as Industry Canada currently is responsible for the regulation of corporations incorporated under the CCA and for the creation and promotion of the NPCA.

B. Part 2 – Incorporation (Clauses 6–15)

Part 2 of the NPCA explains how one goes about incorporating an NPCA corporation and specifies:

- what the articles of incorporation must contain;
- how to file them;
- when a corporation comes into existence under the NPCA;
- how to obtain and change a corporate name; and
- the effect of pre-incorporation contracts on a corporation.

Most of the clauses respecting incorporation under the NPCA mirror the sections governing business corporations under the CBCA, except that they omit mention of shares and shareholders.

1. Who Can Incorporate? (Clause 6)

As previously stated, NPCs incorporated under Part II of the CCA are not allowed to incorporate as of right, but must file an application for letters patent with the Minister of Industry, who has discretion to decide whether or not to grant them.

Under the NPCA, Industry Canada would have no authority to refuse to grant a certificate of incorporation to an NPC, provided that the person incorporating the NPC has the legal capacity to incorporate, and the articles of incorporation and supporting documents are filed with Industry Canada. In addition, the NPCA allows an application for incorporation to be filed by one "incorporator," as opposed to the three required under the CCA. In contrast to the CCA,[(14)] there is no requirement under the NPCA that the incorporator become a member of the corporation.

2. Articles and Other Notices to Be Filed (Clauses 7–10)

In order to incorporate an NPC under the NPCA, incorporators must send the articles of incorporation to Industry Canada. Clause 7(1) of the NPCA states that the articles must contain:

- the corporate name;
- the province where the registered office is to be located;
- information on classes or groups of members and their voting rights;
- the number of directors or the minimum and maximum number of directors allowed;
- a statement of the purpose of the corporation and any activity restrictions with respect to corporate activities; and
- a statement explaining how property will be distributed on liquidation after the discharge of any liabilities of the corporation.

The articles must also contain any provisions that are required by other Acts of Parliament (clause 7(2)). The NPCA allows for the articles to include any provisions that may be included in the corporation's by-laws (clause 7(3)).**[(15)]**

(14) CCA, s. 155(1)(*e*).

(15) Bill C-4 was amended during its passage through the House of Commons to add clause 7(3.1), which essentially allows equivalency for items in the articles with those in the by-laws. This means that if a not-for-profit corporation should include a matter in its by-laws, but places it in the articles instead, the by-law requirement will be deemed to have been met.

When the incorporator sends the articles of incorporation to Industry Canada, he/she must also send Industry Canada a notice of registered office and a notice (list) of directors (clauses 8, 20(2) and 129(1)).

Once Industry Canada receives all the necessary documents, it must issue a certificate of incorporation (clause 9). An NPC comes into existence on the date shown on the incorporation certificate (clause 10).

3. Corporate Name (Clauses 11–14)

The provisions governing corporate names in the NPCA are similar to the provisions found in the CCA and CBCA.

Clause 11 states that an NPC may choose a name in either of Canada's official languages or a name that combines both English and French forms of the name. If the NPC operates outside of Canada, a foreign name may be chosen. The name must be set forth in all the NPC's contracts, invoices and negotiable instruments, but an NPC may also carry on activities and identify itself by a name other than its corporate name.

Clause 12 states that an NPC may ask Industry Canada to assign a number, followed by the word "Canada" and a prescribed term,[16] as the corporate name. Industry Canada may also, upon request, reserve a name for an intended corporation, or a corporation about to change its name.

Corporations cannot take on a name that is prohibited by the regulations or that does not meet the prescribed requirements.[17] As is the case under the CCA and CBCA, prohibited, reserved or deceptive names cannot be chosen. If such a name is chosen through inadvertence or otherwise, then Industry Canada can revoke the corporate name and assign a different one (clause 13).

Once a new name has been assigned to the NPC, Industry Canada must issue a certificate of name change. It addition, it must publish a notice of name change to make the public aware that the corporation has changed its name (clause 14).

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(16) According to regulation 59(2) of the proposed NPCA regulations, the prescribed term may be any one of the following terms: Association, Center, Centre, Fondation, Foundation, Institut, Institute or Society.

(17) See the proposed NPCA regulations, ss. 44–58.

4. Pre-incorporation Contracts (Clause 15)

Part 2 of the NPCA contains fairly standard provisions respecting pre-incorporation contracts. Clause 15 specifies that unless a contract expressly provides otherwise, a person who enters into a contract in the name of or on behalf of a corporation before it comes into existence is expressly bound by the contract. Once the corporation comes into existence, it may adopt the contract, at which point the corporation is bound and the person who entered into the contract on the corporation's behalf is released. If there is a dispute regarding whether or not the contract binds the corporation, a party to the contract can apply to the courts to determine or apportion liability.

C. Part 3 – Capacity and Powers (Clauses 16–19)

Part 3 establishes the capacity and powers of NPCA corporations. Clause 16 specifies that (like business corporations incorporated under the CBCA)[18] NPCs incorporated or continued under the NPCA have the capacity and powers of a natural person. These powers include the capacity to carry out activities throughout Canada, and to exercise its powers outside Canada, to the extent that the laws of foreign jurisdictions permit. It is not necessary for the corporation to pass a by-law to confer a particular power on a corporation or its directors (clause 17(1)).

These provisions represent a substantial change from the CCA, where the powers of an NPC are outlined in an exhaustive list. Under the CCA, corporations are required to pass by-laws, obtain ministerial approval of the by-laws, file supplementary letters patent with the Minister, and obtain ministerial approval of the supplementary letters patent (at which point they are published in the *Canada Gazette*) if they wish to add to or reduce corporate powers.[19]

The NPCA does impose some restrictions on corporate powers. Clause 17(2) of the NPCA specifies that corporations are not permitted to carry on any activity or exercise any power in a manner contrary to its articles;[20] this would therefore include any restrictions in the articles respecting the written "purpose" of the corporation.

(18) See CBCA, s. 15(1).

(19) See CCA, ss. 16(1)–(4), 20(1)–(5) and 157(1)(*b*).

(20) This provision is very similar to CBCA, s. 16(2).

Other provisions found in Part 3 are designed to protect third parties who are not generally expected to have knowledge of an NPC's articles or corporate governance structure. Persons are not assumed to have knowledge of the articles or the restrictions contained in them merely because the articles are available for public viewing (clause 18), and contracting parties are entitled to reasonably rely on representations made by the corporation and its directors unless parties knew or ought to have known that the representation was false or contrary to corporate powers (clause 19).

D. Part 4 – Registered Office and Records (Clauses 20–27)

Part 4 of the NPCA concerns the location of registered offices of NPCs, and the corporate records that NPCs are required to prepare and maintain. Part 4 also contains provisions governing access to corporate records. The provisions respecting registered offices and records found in the NPCA largely mirror the CBCA provisions.[21]

1. Registered Office (Clause 20)

Clause 20 of the NPCA states that an NPC's articles of incorporation must specify the province in which its registered office is located. An NPC is required to maintain a registered office in that province at all times. It must also send a notice of registered office to Industry Canada, providing its specific office address. If the directors of the NPC want to change the location of the registered office, either to a location in another province or to a different address within the province, they must send a new notice to Industry Canada.

2. Corporate Records (Clause 21)

Clause 21(1) of the NPCA specifies that corporations are required to maintain the following records:

- articles;
- by-laws;
- minutes of members' meetings and members' committee meetings;
- members' resolutions and members' committee resolutions;
- a debt obligations register, if any debt obligations have been issued;

(21) See CBCA, ss. 19–23.

- a register of directors;
- a register of officers; and
- a register of members.

With respect to the directors', officers' and members' registers, the content of these registers will be prescribed by regulation (clause 21(2)).[22]

Clause 21 also requires NPCs to prepare and retain adequate accounting records, minutes of directors' meetings, and directors' resolutions.[23] These records must be kept at the registered office of the corporation, or at any other place in Canada the directors think fit.

Clause 21(9) allows for the above records to be kept outside of Canada as long as they are accessible electronically.

3. Access to Corporate Records (Clauses 21–25)

The NPCA contains different provisions respecting access to corporate records, depending upon who is attempting to access them. Clause 21(7) states that the corporate records must be open to the directors for inspection "at all reasonable times" and that the corporation is required to provide a director, upon request, with any extract from the records free of charge. In the event that the accounting records are kept outside Canada, the corporation must ensure that records sufficient to enable the directors to determine the financial position of the corporation are made available on a quarterly basis at a Canadian location, whether at the registered office of the corporation or otherwise (clause 21(8)).

Clause 22 of the bill states that the records maintained by corporations must be accessible to members and their personal representatives, although additional conditions are attached to access for some records. Creditors must be able to access most of the records listed above on the same conditions as members and their personal representatives.

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(22) According to regulation 2 of the proposed NPCA regulations, the register of members must contain the names of members, current residential or business address of each member, email addresses of members (if members have consented to receive information electronically), dates on which the members became and ceased to be members and the class or group of membership of each member, if any. With respect to the directors' and officers' registers, the same information will be required, except that there are no classes or groups of directors or officers. Accordingly, no information on classes or groups of directors or officers must be provided.

(23) According to regulation 4 of the proposed NPCA regulations, the prescribed period for retention of accounting records, minutes of directors' meetings and directors' committee meetings, and directors' resolutions or directors' committee resolutions is six years, subject to any other Act of Parliament or a legislature that provides for a longer retention period (see also NPCA, clause 21(4)).

Members, personal representatives and creditors may be required to pay a fee if they want to access corporate records (clause 22(4), 23(1) and 23(2)). However, members do not have to pay a fee to obtain one copy of the articles, by-laws and unanimous members' agreements (clause 22(3)).

With respect to the debt obligation register, in order for members, personal representatives of members or creditors to access this register, they must sign a statutory declaration, stating that the information obtained from this register will be used only in connection with an effort to:

- influence the voting of debt obligation holders;
- offer to acquire corporate debt obligations; or
- any other matter relating to the debt obligations and affairs of the corporation.[24]

Using the list or information obtained from this register in any way other than those stated above is prohibited (clause 22(7)) and constitutes an offence under the Act.

Members and personal representatives and debt obligation holders are able to access the members' register. Creditors, however, are not (clauses 23(1) and 23(2)).

Members and their personal representatives are entitled to obtain a list of members only before each special meeting of members, or, if there are no special meetings of members, once a year (clause 23(3)). Members and their personal representatives can view the register of members at any time during the corporation's usual business hours (clause 23(1)).

As noted above, debt obligation holders are able to access the members' register. However, they can do so only by asking the corporation or its agent to furnish them with list of members. They are not permitted to go to the corporate office and inspect the members' register (clause 23(2)). In addition, debt obligation holders may make an application to obtain a list only after receiving a notice of a members' meeting at which they, as holders, are entitled to vote (clause 23(4)). Corporations may charge debt obligation holders fees for access (clause 23(2)).

To access the members' register, members or their personal representatives must sign a statutory declaration stating that they shall not use the list of members or members' information except in connection with:

- an effort to influence members' voting;

(24) See NPCA, clauses 22(2) and 22(4)–(6).

- requisitioning a meeting of members; or
- any other matter relating to the affairs of the members.[25]

To access the members' register, debt obligation holders must file statutory declarations with the corporation stating that the information will be used only to influence member voting on an issue that the debt obligation holders are entitled to vote on (clause 23(5)).

Members, their personal representatives, and debt obligation holders are prohibited from using the members' list or information obtained from the members' register in a manner that is inconsistent with their statutory declarations (clauses 23(7) and 23(8)). Doing so constitutes an offence under the Act.

Industry Canada may examine all records of a corporation, except directors' minutes, directors' resolutions or accounting records, at the registered office of the corporation, and may make any copies of the records free of charge (clause 24). Industry Canada may also ask the corporation to send it a copy of a list of corporation's debt obligation holders and/or members.

Upon application of a corporation or any of its members, Industry Canada may refuse to allow someone to access corporate records that he/she would otherwise be entitled to access on the grounds that furnishing the information would be detrimental to any member or the corporation (clauses 25(1) and (2)).

4. Form of Records (Clauses 26–27)

The NPCA provides flexibility in the form of records. Clause 26(1) states that the registers and records of the corporation "may be in any form, provided that the records are capable of being reproduced in intelligible written form within a reasonable time." NPCs are required to take reasonable precautions to prevent the loss, destruction or falsification of entries, and to facilitate the detection and correction of errors or inaccuracies in the records (clause 26(2)).

E. Part 5 – Corporate Finance (Clauses 28–3**6**)

Part 5 of the NPCA outlines the powers of the corporation and its directors to borrow, invest, act as guarantors, create security interests in corporate property, and acquire and issue debt obligations on behalf of the corporation. It also contains provisions governing corporate property ownership, the surrender of memberships to corporations by members, and

(25) See NPCA, clauses 23(1), (2), (5) and (6).

membership immunity for corporate debts. The provisions governing corporate finance contained in the NPCA are somewhat different from those found in the CBCA. The differences are primarily due to the fact that NPCs, unlike business corporations, do not raise capital by issuing shares.

1. Borrowing and Finance (Clauses 28–3**0**)

Clauses 28(1) and 3**0** of the NPCA give directors of NPCs the power to:

- borrow on the credit of the corporation;
- issue, reissue, sell, pledge or hypothecate corporate debt obligations;
- give guarantees to secure performance of obligations;
- create security interests in corporate property for the purpose of securing corporate obligations; and
- require members to pay fees or dues.

The directors' powers are subject to any restrictions contained in the articles, by-laws, or unanimous member agreements of the corporation (clauses 28(1) and 3**0**). Directors can delegate any of the powers listed above, except the power to require members to pay fees or dues, to a single director, committee of directors or an officer of the corporation, as long as this is not inconsistent with the corporation's articles, by-laws and unanimous member agreements (clause 28(2)).

In addition to the above powers, directors can also issue "debt obligations" for the corporation. Debt obligations provide evidence that the holder of a debt obligation has given something of value (money, property or past service) to the NPC and that the NPC owes something in return to that holder. The holder of the debt obligation may also be entitled to certain rights in his/her dealings with the corporation, such as voting rights. However, the fact that someone is a debt obligation holder of a corporation does not entitle him/her to a share of any profits the corporation makes.

As defined in the Act, "debt obligation" means "a bond, debenture, note or other evidence of indebtedness or guarantee of a corporation, whether secured or unsecured." Debt obligations certificates may be used by an NPC to raise capital where more traditional fundraising may not be sufficient to meet its financial needs. An example may be a larger NPC, such as a medical institution or hospital, wishing to build a new building, or other similar capital

project. The NPC could choose to raise the money it needs by issuing debt obligation certificates in accordance with the provisions of the Act. Though the legislation contains some very detailed requirements for these certificates, the approach is intended to be flexible enough to meet the different needs of NPCs.

Mere repayment of a debt obligation does not, in and of itself, mean that the debt obligation has been redeemed or bought back and therefore is capable of being reissued again to a new holder (clause **29**(1)). However, when the debt obligation is actually purchased or redeemed by the corporation, it may be cancelled, or, subject to a trust indenture or any other agreement between the corporation and another person, be reissued, pledged or hypothecated again to secure existing or future corporate obligations (clause **29**(2)).

2. Property Ownership (Clauses 3**1**–3**2**)

Clause 3**1** of the NPCA provides that a corporation owns any property transferred to and vested in it. It does not hold the property in trust unless the property was transferred to the corporation expressly for that purpose. Clause 3**2** of the NPCA provides that directors are not trustees for any corporate property, including property that is actually held in trust by the corporation.

3. Investment (Clause 3**3**)

Clause 3**3** states that in general, directors are empowered to invest corporate funds as they see fit. The directors' power in this regard is subject to any restrictions on investment contained in the corporate articles, by-laws, and limitations accompanying any gift or donation to the corporation.

4. Distribution of Profits, Property and Accretions to Property Value (Clause 3**4**)

NPCs incorporated or continued under the NPCA are generally prohibited from distributing corporate profits, property or accretions to property value to members, directors, or officers of NPCs, "except in furtherance of its activities or as otherwise permitted by this Act" (clause 3**4**(1)). However, if a member of a corporation is an entity (body corporate, partnership, trust, joint venture or unincorporated association or organization) authorized to carry on activities on the NPC's behalf, the corporation may distribute money or property to the entity to allow it to carry on authorized activities on the corporation's behalf (clause 3**4**(2)).

5. Surrender of Membership and Liability of Members (Clauses 3**5**–3**6**)

Members of corporations may surrender their memberships as gifts (or in Quebec as legacies) to the corporation, and corporations may extinguish or reduce liability with respect to an unpaid member amount in exchange for such gifts (clause 3**5**).

Members, in their capacity as members, are not liable for any debts of the corporation except as otherwise provided in the Act (clause 3**6**(1)). The corporation may, however, have a lien on a membership for debts that remain owing from the acquisition of membership (clause 3**6**(2)). If so, the corporation may enforce this lien in accordance with the corporation's by-laws (clause 3**6**(3)).

F. Part 6 – Debt Obligations, Certificates, Registers and Transfers (Clauses 3**7**–10**3**)

Part 6 of the NPCA is complex. It addresses the technical aspects concerning a corporation issuing debt obligations (see Clause 28 above), including the rights and responsibilities of holders, brokers, purchasers, transferors and transferees of debt obligations, corporate responsibilities related to debt obligations, methods of ensuring the validity of debt obligations (including guarantees and endorsements), matters dealing with adverse claims, issuance of debt obligation certificates, debt obligation registers, deliveries of debt obligations, the role of agents and mandataries respecting debt obligations, and the presumptions that will apply if lawsuits are launched over debt obligations.

Part 6 of the NPCA largely mirrors Part VII, sections 48 to 81, of the CBCA, which covers securities and security certificates, registers and transfers.

1. Definitions and Interpretation (Clause 3**7**)

Clause 3**7**(1) contains several defined terms which are applicable to Part 6 of the NPCA. Most of these terms are, at least to a certain extent, self-explanatory. Some require further explanation.

"Adverse claim" is defined in clause 3**7**(1) to include "a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest or right in the debt obligation."

The distinctions between "holders" and "bearers" of debt obligations are important. According to clause 3**7**(1), one is considered a "bearer" of a debt obligation if the obligation must be "payable to the bearer or endorsed in blank." By contrast, one is considered a "holder" of a debt obligation if the debt obligation is "issued or endorsed to the person, to bearer,

or in blank." The definition of "bearer" is less restrictive than the definition of "holder." A debt obligation certificate in bearer form entitles whoever is in possession of the certificate to payment of the debt obligation. A debt obligation certificate which is not in bearer form, but rather issued in the name of someone, entitles only the holder mentioned on the certificate to payment of the debt obligation.

Clause 3**7**(2) of the NPCA explains that unless restrictions are noted on the evidence of debt obligation (normally, a debt obligation certificate would be the evidence), the debt obligation is a negotiable instrument. It is valid in the hands of a "good faith purchaser," which is defined in clause 3**7**(1) as a "purchaser for value in good faith and without notice of any adverse claim who takes delivery of a debt obligation."(26)

Clauses 3**7**(3) to (5) describe the various forms of debt obligations. A debt obligation certificate or document is in registered form if it specifies who is entitled to the debt obligation, if it is capable of being recorded in a debt obligations register, or if it bears a statement that it is in "registered form" (clause 3**7**(3)). A debt obligation is in "order form" if it is payable to the order of a person, and the person is specified with reasonable certainty in it, or if it is payable to a person to whom it is assigned (clause 3**7**(4)). A debt obligation is in bearer form if it is payable to the bearer, not because it has been endorsed (clause 3**7**(5)).

2. Debt Obligation Certificates (Clauses 3**8**–4**3**)

Clause 3**8** states that an "issuer" must provide holders of debt obligations with either debt obligation certificates or non-transferable written acknowledgements of their right to obtain debt obligation certificates. "Issuer" is not a defined term in the NPCA.(27) Issuers are entitled to charge a "reasonable fee" for issuing debt obligation certificates (clause **39**). If the debt obligation is jointly held, the issuer is not required to issue a certificate to more than one of the holders, and delivery of a certificate to one holder is considered delivery to all (clause 4**0**).

Debt obligation certificates must be signed by a director, officer, transfer agent, branch transfer agent, person acting on behalf of a transfer agent or branch transfer agent, or a trustee, appointed under the terms of a trust indenture, of the issuer (clause 4**1**(1)). If a director or officer signed the certificate and is no longer a director or officer of the corporation, this does not affect the validity of the certificate (clause 4**1**(2)).

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(26) It is unclear whether "value" in this context means "fair market value" or the value recorded on the debt obligation certificate in accordance with clause 42(1)(*d*) of the NPCA.

(27) Presumably, "issuer" means an NPC, but this is not specified.

Debt obligation certificates are required to show, on their face, the name of the issuer or NPC, and the words "Incorporated under the *Canada Not-for-profit Corporations Act*," "Subject to the *Canada Not-for-profit Corporations Act*," or the French equivalent of one of these two expressions (clause 4**2**(1)). If the debt obligation certificate is not in bearer form, the certificate must contain the name of the person to whom it was issued (clause 4**2**(1)). The certificate must also show its value (clause 4**2**(1)).

The rights, privileges, restrictions and conditions attached to any class or series of debt obligations must be stated on the certificate, or alternatively, the certificate must state that the class or series of debt obligations has certain rights, privileges, restrictions or conditions associated with it. In the second case, the certificate must further state that the issuer will provide the holder with a copy of the text of the rights, privileges, restrictions and conditions attached to his/her debt obligation on demand (clause 4**3**(1)). Upon receipt of such a demand, the issuer is required to provide the holder with a copy of this text (clause 4**3**(2)).

If the debt obligation was issued by a corporation before the corporation was continued under the NPCA, and if there were restrictions on transfer or charge of the debt obligation before continuation, these restrictions will not be effective against a transferee who has no actual knowledge of such restrictions, unless the restrictions are noted conspicuously on the debt obligation certificate (clause 4**2**(2)). If previously issued debt obligations are held by more than one person and remain outstanding, the corporation shall not impose restrictions on transfer or ownership of any class or series of debt obligations (clause 4**2**(3)).

3. Debt Obligation Registers (Clauses 4**4**–5**3**)

If a corporation issues debt obligations, it is obligated to maintain a register in which it records all of the debt obligations it has issued in registered (as opposed to order or bearer) form. The register must show the prescribed information for each class or series of registered debt obligations (clause 4**4**(1)).[28] If the corporation does not want to maintain the register itself, it can appoint an agent or mandatary to maintain the register on its behalf (clause 4**5**).

(28) According to regulation 3 of the proposed NPCA regulations, the "prescribed information" that an NPC's debt obligation register must contain is: the name and residential or business address of each debt obligation holder, the email address of the holder (if he or she has consented to receive information electronically), the dates that the holders became and ceased to be holders, and the principal amount of each holder's outstanding debt obligations.

An issuer (corporation) or a trustee under the terms of a trust indenture is entitled to treat the person whose name appears in the debt obligation register as an owner of that obligation for all purposes (clause 4**7**). Despite clause 4**7**, however, if the corporation restricts the transfer of debt obligations, the corporation may treat the holder's heir or legatee, fiduciary of the holder's estate, a liquidator of the holder, or a trustee of the holder in bankruptcy as the registered holder of the debt obligation (clause 4**8**).

Heirs or fiduciaries of deceased persons' estates are entitled to become registered holders of the debt obligations originally belonging to deceased persons, or to designate others as registered holders in place of the deceased. Clause 5**3**(1) of the NPCA states that, in order to become the registered holder, or to designate someone else as the registered holder, the heir or fiduciary must deposit the following information with the issuer or its transfer agent:

- the debt obligation certificate or, alternatively, proof that the deceased person was the debt obligation holder;
- proof of death; and
- proof of the right under law to deal with the debt obligation.

Normally, the debt obligation certificate must also be endorsed by the heir or fiduciary (clause 5**3**(2)). Deposit of all of these documents with the issuer/transfer agent permits the issuer or agent to record the transfer in the debt obligation register, and for the issuer/agent to treat the transferee as the registered holder (clause 5**3**(3)).

It is not always necessary to deposit all of the documents listed above with the issuer after the death of the debt obligation holder. Clause 5**0** of the NPCA states that if the registered debt obligation is jointly held and the joint holder is entitled to survivorship rights under the common law, the corporation is empowered to treat the surviving joint owner as the new sole owner, as long as satisfactory proof of death of the other joint holder has been provided to the issuer.

Where there has not been a death, liquidation or bankruptcy, a person claiming to be the registered debt obligation holder whose name is not recorded in the debt obligation register cannot be treated by the issuer as the new holder, unless the person provides proof to the issuer that he/she has acquired the debt obligation by operation of law or has the legal authority to exercise the rights and privileges attached to the debt obligation (clause **49**).

In addition to requiring NPCs to establish debt obligation registers and explaining how various parties go about becoming registered holders, Part 6 of the NPCA contains provisions governing the effect of registration on those who have rights and duties associated with registration.

4. Overissue (Clause 5**4**)

If an issuer wrongfully registers a transfer of a debt obligation to someone not entitled to it, the issuer is generally required to deliver a replacement debt obligation to a person in whose name the transfer should have been registered (clause 100(2)). However, one of the situations in which an issuer is not obligated to do this is when doing so would result in "overissue."

Clause 3**7**(1) of the NPCA defines overissue as "the issue of debt obligations in excess of any maximum number of debt obligations that the issuer is authorized by a trust indenture to issue." Trust indentures will be covered more thoroughly in the discussion of Part 7 of Bill C-4, below.

Clause 5**4**(1) of the NPCA specifically states that any of the provisions contained in Part 6 "that validate a debt obligation or compel its issue or reissue" do not apply if they would result in overissue.

In the event of an overissue, the person who now holds the overissued debt obligation may compel the issuer to purchase and deliver a similar debt obligation to him/her, against the surrender of the overissued debt obligation that the person currently holds (clause 5**4**(2)). If no similar debt obligation is reasonably available, the person may recover a sum of money from the issuer. The amount the person is entitled to receive is equal to the price the last purchaser paid for the invalid debt obligation (clause 5**4**(3)).

Overissued debt obligations remain valid only if the issuer increases its authorized debt obligations to a number large enough to accommodate existing, valid debt obligations and those it has overissued (clause 5**4**(4)).

5. Proceedings (Clause 5**5**)

In the event of a lawsuit involving a debt obligation, clause 5**5** provides that the following presumptions will apply:

- Signatures on the debt obligation and/or endorsements will be considered admitted unless expressly denied.

- It will be presumed that signatures on the debt obligation are genuine and authorized. In the event of a dispute over whether a signature is genuine and authorized, and hence effective, the burden of proof will be on the person claiming under the signature.

- In the event that the signature is admitted or established as genuine and authorized, production of the debt obligation certificate will generally entitle the holder to recover on the debt obligation. However, if the other party is able to establish a defence or defect that calls into question the validity of the debt obligation, the holder may be barred from recovery.

- Upon establishment of a defence or defect by the other party, the burden will shift to the plaintiff to show that the defence or defect is ineffective against the plaintiff or another person against whom the claim is made.

6. Delivery (Clause 5**6**)

Clause 5**6** states that in order for a transfer of a debt obligation to a purchaser to be effective, evidence of the debt obligation, in the form of a debt obligation certificate or other document, must be delivered to the purchaser. The debt obligation which is delivered may be in bearer form, registered form (endorsed to the transferee), endorsed to the person or in blank.

7. General Provisions Respecting Debt Obligations (Clauses 5**7**–10**3**)

Part 6 of the NPCA also contains numerous general provisions concerning debt obligations, including:

- terms included in a debt obligation;

- rights acquired by a purchaser of a debt obligation;

- defences that issuers, transferors and purchasers are entitled to assert in the event that there is a defect in the debt obligation, the debt obligation certificate, or delivery of the debt obligation to the purchaser;

- what constitutes an adverse claim;

- the effects of adverse claims on purchasers, issuers and brokers;

- guarantees that can be given in relation to debt obligations;

- the effect of guarantees on the rights of purchasers, issuers and transferors;

- endorsement of debt obligations;

- effects of endorsement on the rights of purchasers, issuers and transferors;
- deliveries of debt obligations and obligations to deliver them; and
- the rights and obligations of agents and mandataries who act for issuers.

Clauses 5**7**–10**3** are intricate. They explain in detail how someone who obtains a debt obligation from an issuer or transferor, or from someone acting for an issuer or transferor (i.e., a broker or an agent), can ensure that his/her interest in or title to the debt obligation is good, secured and indisputable.

Clauses 5**7**–10**3** also outline the responsibilities and liabilities of all who deal with debt obligations in the event that there is a dispute over title, or someone claims that a mistake has been made in the purchase, transfer, issue, redemption or surrender of a debt obligation. In addition, clauses 5**7**–10**3** provide a number of defences that can be raised by parties to avoid or limit liability in the event of losses associated with a defect in, or wrongful issuance or transfer of, a debt obligation.

A person wishing to ensure that he/she is taking good title to a debt obligation from an issuer or transferor should:

- read the debt obligation certificate or other document providing evidence of the debt obligation to ensure that he/she understands the terms of the debt obligation, including those incorporated by reference (clause 5**7**);
- in the event that the person is taking the debt obligation directly from the issuer, ensure the debt obligation is signed by someone entrusted by the issuer with the duty to sign the debt obligation (clause 6**6**);
- in the event that the person is taking the debt obligation from a transferor, make certain that it is endorsed/signed by an appropriate person. The appropriate person will generally be the current debt obligation holder, but may also be someone authorized to act for him/her (clauses 7**7**–8**6** and 9**1**);
- ensure that the debt obligation, as well as any endorsements of the debt obligation, are delivered to him or her (clauses 7**4**, 8**3** and 8**7**–**89**); and
- ensure, to the extent that he/she can, that the debt obligation does not contain a defect. For example, a person will not obtain good title to a debt obligation if he/she takes it notwithstanding prior knowledge of an adverse claim, or if the debt obligation is stale (clauses 6**1**, 6**7**(3), and **69**–7**2**).

Similarly, issuers who receive debt obligations from purchasers for registration following transfer should take the following steps in order to limit their liability:

- ensure that the debt obligation certificate contains all the necessary endorsements or signatures (clauses 8**5**(2), 9**4** and 10**0**);
- obtain guarantees of endorsements (clause 9**5**); and
- investigate adverse claims, when they have the duty to do so (clauses 9**6**–9**8**).

With respect to the duties of agents, mandataries and others acting for principals involved in transferring debt obligations, these actors are not generally liable for losses suffered in the event of a problem with transfer, as long as they act in good faith (clause 9**3**). When acting for issuers in respect of the issue, registration, transfer and cancellation of an issuer's debt obligation, agents and mandataries have a duty to the issuer to exercise good faith and reasonable diligence, and have the same obligations to the holder or owner of the debt obligation that the issuer does (clause 10**2**).

G. Part 7 – Trust Indentures (Clauses 10**4**–11**5**)

Part 7 of the NPCA concerns the subject of trust indentures. Trust indenture means "any deed, indenture or other instrument or act … under which the corporation issues debt obligations and in which a person is appointed as trustee for the holders of the debt obligations issued under the deed, indenture or other instrument" (clause 10**4**(1)). Debt obligations issued under trust indentures are controlled and managed by a trustee for the benefit of holders.

The provisions contained in Part 7 of the NPCA largely mirror the provisions governing trust indentures found in Part VIII, sections 82 to 93, of the CBCA.

1. Application (Clause 10**4**)

Clause 10**4** states that Part 7 of the NPCA applies to trust indentures if the debt obligations issued or to be issued under it are part of a public distribution.

Industry Canada may exempt a trust indenture from the application of Part 7 if the trust indenture, debt obligations issued under it, and the security interest effected by it (the corporate property secured by way of debt obligation) are subject to provincial or foreign laws substantially equivalent to the laws contained in Part 7.

2. Qualifications of Trustee (Clauses 10**5**–10**6**)

At least one trustee appointed under a trust indenture must be a body corporate incorporated under the laws of Canada or a province and authorized to act as a trust company (clause 10**6**). In other words, at least one trustee must be a corporation with the capacity under the law to receive deposits from the public and lend or invest those deposits. If there is only one trustee, that trustee must be a corporation authorized to act as a trust company.

In addition to the above qualifications, clause 10**5** states that trustees of trust indentures must not accept appointments as trustees if there is a material conflict between their trustee role and their role in any other capacity. Upon becoming aware of the material conflict, a trustee is given a certain period of time to either eliminate the conflict or resign.(29)

Trust indentures, debt obligations issued under them, and security interests effected by the trust indenture remain valid despite the trustee's material conflict of interest.

3. List of Debt Obligation Holders (Clause 10**7**)

According to clause 10**7**, debt obligation holders under trust indentures wanting to obtain a list of other debt obligation holders containing certain prescribed information may ask the trustee for such a list.(30) Upon receipt of this request, the trustee will furnish this demand to the issuer. The issuer is required to send the requested information to the trustee for distribution to the holder. In order to obtain this list, the debt obligation holder must forward a statutory declaration to the trustee, stating that the list will be used only for one of the following purposes:

- to influence the voting of debt obligation holders;
- to offer to acquire debt obligations; or
- any other matter relating to the debt obligations or to the affairs of the issuer, guarantor, or, in Quebec, the surety of the debt obligations.

(29) According to regulation 23 of the proposed NPCA regulations, the prescribed period within which the trustee must either eliminate the material conflict or resign is 90 days after becoming aware that a material conflict exists.

(30) According to regulation 5 of the proposed NPCA regulations, the prescribed information consists of: the names (in alphabetical order) and addresses of registered holders of outstanding debt obligations, the principal amounts of each holder's outstanding debt obligations, and the aggregate principal amount of all outstanding debt obligations.

Debt obligation holders are prohibited from using the list for any purposes other than those listed above. The trustee must furnish this list within a prescribed period, in accordance with the regulations.(31)

4. Trustee Rights and Obligations (Clauses 10**8**–11**5**)

Trustees are entitled to demand evidence of compliance with the trust indenture with respect to any act to be done by the trustee at the request of the issuer or guarantor, as well as with respect to various actions to be taken by the issuer or guarantor (clauses 10**8**(1) and (2) and clauses 11**1**(1) and 11**1**(2)(*a*)). Upon receipt of such a demand, issuers and guarantors are required to provide evidence of compliance by way of statutory declaration or certificate made by a director or officer of the issuer, guarantor, or, in Quebec, the surety (clauses 1**09** and 11**1**(2)(*a*)). Depending on the content, a legal opinion or accountant's report may also be required to show that certain conditions have been complied with (clauses 1**09** and 11**0**).

Issuers, guarantors, and sureties are also obligated to provide certificates of compliance to trustees at certain prescribed times(32) to demonstrate that all conditions which would give rise to default under the trust if unmet have been complied with. If these conditions have not been met or complied with, issuers and guarantors must provide a certificate containing particulars of the failure to comply (clause 11**1**(2)).

Trustees are required to give debt obligation holders notice under a trust indenture of every event of default arising under the trust indenture, unless the trustee reasonably believes that it is in the best interests of the debt obligation holders to withhold such notice (clause 11**2**). Notice of default must be provided within the prescribed period.(33)

Trustees must act honestly and in good faith with a view to the best interests of those who hold debt obligations issued under the trust indenture, and must exercise the care, skill and diligence of a reasonably prudent trustee (clause 11**3**). No term of a trust indenture or agreement will serve to relieve a trustee of these duties (clause 11**5**). Having said this, however, trustees will not be liable if they rely in good faith on statements made in statutory declarations, certificates, legal opinions or accountant's reports made in accordance with the terms of the trust indenture and the NPCA (clause 11**4**).

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(31) According to regulation 8 of the proposed NPCA regulations, the prescribed period is within 10 days of receipt of the debt obligation holder's statutory declaration, and the prescribed day is a date not more than 10 days before the receipt of the statutory declaration.

(32) According to clause 11**1**(2) of the NPCA and regulation 24 of the proposed NPCA regulations, the prescribed time is at least once a year, beginning on the date of the trust indenture.

(33) According to regulation 25 of the proposed NPCA regulations, the prescribed period is 30 days after the trustee becomes aware of an event of default.

H. Part 8 – Receivers, Receiver-managers and Sequestrators (Clauses 11**6**–12**3**)

Part 8 of the NPCA describes the authority and role of receivers, receiver-managers and sequestrators in relation to NPCs. These are persons appointed by the court, or another instrument, to take possession of property belonging to an NPC.

Receivers and sequestrators may not carry on the activities of an NPC except as permitted by a court. By contrast, receiver-managers may carry on the activities of the corporation in order to protect the security interests of those on whose behalf the receiver is appointed. During the time that a receiver-manager or sequestrator is authorized to act on behalf of those who hold security interests in the corporation, the directors of the corporation may not exercise their directors' powers (clauses 11**6**–11**8**).

Receivers, receiver-managers and sequestrators have a duty to act in accordance with the court order, instrument or act under which they were appointed, and must also act in good faith (clauses 12**0** and 12**1**(*a*)). In addition, they must deal with the property of the corporation in a commercially reasonable manner (clause 12**1**(*b*)). Courts are empowered to make orders upon application of a receiver, receiver-manager or sequestrator to assist these persons in dealing with the corporation's property in accordance with their mandate (clause 12**2**).

Receivers and receiver-managers are responsible for notifying Industry Canada of their appointment and discharge, taking custody and control of corporate property, opening and maintaining a bank account for corporate money coming under their control, keeping detailed accounts of transactions carried out under their administration, preparing financial statements and rendering a final account of their administration upon completion of their duties (clause 12**3**).

I. Part 9 – Directors and Officers (Clauses 12**4**–15**1**)

The provisions in Part 9 of the NPCA concern the management of an NPC. The election and removal of directors, board meetings, and the duties, responsibilities, and liabilities of management are regulated by this part of the bill. The provisions generally mirror those found in the CBCA, with members given rights roughly equivalent to those of shareholders.

1. Duty to Manage and Qualifications of Directors (Clauses 12**4**–12**6**)

The NPCA stipulates that directors must manage, or supervise the management of, the corporation, subject to corporate articles or unanimous member agreements that limit their powers (clause 12**4**). NPCs may operate with a minimum of one director, but soliciting corporations are required to have at least three directors on the board. The NPCA prohibits bankrupts, individuals under 18 years old, and those found incapable of managing their own financial affairs from becoming directors. Unless the by-laws provide otherwise, directors are not required to be members of an NPC (clause 12**6**).

2. Organizational Meetings (Clauses 12**7** and 12**8**)

When the articles of incorporation are sent to Industry Canada, the applicants include a list of initial directors (clause 12**8**). After receiving the certificate of incorporation, the initial directors hold a first meeting in which they can create by-laws, appoint officers and auditors, admit members, authorize debt, make banking arrangements, and transact any other business.

At the first annual members' meeting, members have the opportunity to elect directors. The bill has various provisions allowing for the appointment of directors should the meeting fail to elect sufficient numbers. Under clause 13**5**, directors are entitled to attend and be heard at all member meetings.

3. Resignation and Removal of Directors (Clauses 1**29**–13**2**)

Directors cease to hold office at the end of their term, when they die or resign, or if they are removed or become disqualified (clause 1**29**).

Members of an NPC have a right to remove a director from office before the end of his or her term through an ordinary resolution voted at a special meeting. If any class of members has an exclusive right to elect directors, that director can be removed only by a resolution of that class.

The members at the special meeting can elect a replacement for the director they have removed. If they fail to do so, a quorum of directors can fill a vacancy on their board.[34] If there is no quorum, or the members fail to elect the minimum number of directors, the directors

(34) A quorum of directors cannot fill a vacancy on their board if the vacancy is the result of a change in the by-laws that increases the minimum or maximum number of directors or the members fail to elect the minimum number of directors.

must call a special meeting of members to elect additional directors. If, after this meeting, the NPC has neither directors nor members, any interested party may ask a court to appoint directors to the corporation.

If all of the NPC's directors have resigned or been removed, a person who manages or supervises the management of a corporation is deemed to be a director, unless that person is an officer under the direction and control of another person, a professional providing professional services, or a trustee in bankruptcy.

Under clause 13**1**(1), a director who resigns or is in danger of being removed is permitted to submit a written statement giving reasons for his or her resignation or for opposing his or her removal, and to have notice of this statement circulated to the members.

4. Changes to the Number of Directors (Clauses 13**3**–13**4**)

Members can amend the corporation's articles to change the number of directors or the required maximum or minimum number of directors. A decrease in the number of directors cannot be used to shorten the term of an incumbent director (clause 13**3**(1)). Members at a meeting that increases the number of directors through amendment to the articles can elect additional directors at the same meeting. Members may also delegate the power to set the number of directors to the board.

Clause 13**4** states that an NPC must give notice to Industry Canada of changes to its board.

5. Meetings of Directors (Clauses 13**6**–13**7**)

NPCs are able to pass by-laws governing the meetings of its board of directors. The NPCA provides default rules on directors' meetings, including provisions governing notice, quorum, teleconferencing, and meetings for NPCs that have only one director.[35]

6. Delegation (Clause 13**8**)

Directors can generally delegate their power to a management committee or to the managing director; however, certain fundamental powers cannot be delegated. Under clause 13**8**(2), neither a committee nor a managing director can submit a question to members requiring the approval of members, fill a vacancy on the board or appoint additional directors, appoint

(35) The NPCA contains a curious provision on consensus. Clause 13**7**(1) states that the by-laws may provide that the directors or members must make a decision by consensus, "including a decision required to be made by a vote," except for a decision taken "by a vote, if consensus cannot be reached."

accountants, issue debt obligations, approve financial statements, amend by-laws, or establish membership dues. Directors remain liable for the acts and omissions of those to whom power has been delegated, except in the case of a unanimous member agreement that delegates power (clauses 14**8**(4) and 17**0**(5)).

7. Disclosure of a Director's Interest in a Contract (Clause 14**1**)

Under clause 14**1**, directors and officers are required to disclose to the NPC the nature and extent of any interest in any material contract with the corporation. This disclosure is required either immediately, or at the first meeting after which the conflict of interest becomes apparent. Once a conflict of interest is declared, the director may not vote on the transaction unless it relates to the director's compensation, indemnification or insurance, or is with an affiliate.

There is a continuous disclosure section that allows a director or officer to declare an ongoing interest in relation to contracts or transactions that an NPC may make with a particular party with which he or she is associated.

The contract or transaction related to the disclosure cannot be invalidated if adequate disclosure was made, if it was reasonable and fair to the corporation, and the directors approved the contract (clause 14**1**(8)). Contracts may also be approved if reasonable and fair, disclosure of the interest was made to members, and the members approve the contract by special resolution.

If a director or officer fails to comply with the conflict of interest rules, the corporation or any of its members may apply to have the contract or transaction set aside or annulled, and for an order that the director or officer account for any profits earned as a result of the contract or transaction.

8. Officers (Clause 14**2**)

Directors are able to designate the offices of the corporation and appoint any person as an officer of the corporation. The directors may also determine the duties and powers of the officers, subject to the articles and by-laws of the corporation and any unanimous member agreement. The directors may not delegate the powers referred to in section 13**8**(2).

9. Remuneration of Directors, Officers and Members (Clause 14**3**)

Subject to the articles, the by-laws or a unanimous member agreement, the directors would set reasonable remuneration for themselves and officers and employees of the corporation.

10. Duty of Care of Directors and Officers (Clause 14**8**)

Clause 14**8**(1) of the NPCA imposes a duty of care on directors and officers identical to that found in for-profit corporate statutes. Under the legislation, directors and officers performing their duties must:

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

Clause 14**8** states that directors cannot absolve themselves of their liability through a provision in the articles, by-laws, or a members' resolution, except in accordance with the provisions regarding unanimous member agreements. If a unanimous member agreement restricts the directors' powers to manage the affairs of a corporation and delegates such powers to other parties, the duty of care and due diligence defences are transferred to these other parties along with the delegated powers (clause 17**0**(5)).

The Standing Senate Committee on Banking, Trade and Commerce made an observation in its report to the Senate regarding Part 9. The Committee noted that the NPCA sets out that directors would have an explicit duty to act honestly and in good faith in the performance of their duties and that the Act provides directors with a due diligence defence where they have exercised the care, diligence and skill that a reasonably prudent person would have exercised in similar circumstances. While the Committee saw Bill C-4 as a general improvement to existing legislation with regard to the issue of the liability of directors and officers of NPCs, it was concerned that the proposed standards of diligence that directors and officers would be obliged to meet under Bill C-4 might be set so high as to discourage some volunteers from offering their services to NPCs. The Committee added that the Government of Canada might need to provide further guidance on this issue to ensure that the standards of diligence demanded of directors and officers of NPCs are commensurate with their roles as volunteers, and that any barriers or disincentives affecting the participation of volunteer directors and officers of NPCs would be minimized.

11. Other Directors' Liabilities – Employees' Wages (Clause 14**6**)

Directors are liable for debts not exceeding six months' wages, payable to an employee for services performed for the corporation during the period that they are directors. Directors would be liable under this section if:

- the corporation is sued within six months of the debt becoming due;
- the corporation has started the process of liquidating or dissolving or has been dissolved, and the claim has been proven within six months of the commencement of liquidation or dissolution or the date of dissolution; or
- the corporation has made an assignment or gone into receivership under the *Bankruptcy and Insolvency Act*,(36) and a claim for debt has been proven within six months after the date of the assignment or receiving order.

A director is liable for employees' wages only while he or she is a director, or within two years after ceasing to be a director. This section also entitles directors who have personally paid debts to subrogate the claims of employees after bankruptcy or dissolution, or, if outside of Quebec, to be assigned any legal rights obtained by an employee in a court judgment. Directors who pay employees' wage claims are entitled to compensation from other directors.

12. Liability for Other Obligations (Clause 14**5**)

Directors are liable to the corporation for the repayment of:

- a payment to a member, director or officer contrary to the Act; or
- a payment of an indemnity contrary to the Act.

These liabilities can only be enforced for up to two years after the director ceases being a director. Directors are entitled to contribution from other directors, and can seek a court order compelling a member to give back improper payments.

(36) *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.

13. Due Diligence Defences (Clauses 14**9**–15**0**)

Clause 1**49**(1) states that directors can avoid personal liability in the event of a claim that they have breached their duty of care, if they establish that they exercised the care, skill, and diligence of a reasonably prudent person in comparable circumstances. Officers have a similar defence under clause 15**0**. Due diligence can include relying in good faith on the reports of professionals and, in the case of directors, reliance on financial statements.(37)

14. Right to Dissent (Clause 14**7**)

Under clause 14**7**, a director has a right to dissent. The dissent allows a director to avoid liability for improper actions or resolutions taken during a board meeting. A director who did not attend the meeting at which a decision was taken may also avoid potential liability by disclosing dissent within seven days of becoming aware of the resolution.

15. Indemnification (Clause 15**1**)

Bill C-4's indemnification clause allows NPCs to compensate directors for losses suffered by third parties. The Act's indemnity provisions:

- apply to former as well as acting directors and officers of the NPC, and individuals acting in a similar capacity in another entity at the NPC's request;
- apply to civil, criminal and administrative actions and investigative and other proceedings; and
- include indemnity for costs, charges and expenses.

Indemnification of directors and officers is at the discretion of the NPC. However, the NPC may not indemnify if the director did not act honestly, in good faith and in the best interests of the corporation, or, in the case of a criminal or administrative action or proceeding that is enforced by monetary penalty, if the director did not have reasonable grounds to believe that his or her conduct was lawful.

Corporations are allowed to purchase liability insurance to cover directors and officers (clause 15**1**(6)).

(37) Officers can rely on financial statements if they are prepared by a professional, but they probably could not reasonably rely on statements prepared by a fellow officer.

J. Part 10 – By-laws and Members (Clauses 15**2**–17**1**)

1. Making and Amending By-laws (Clauses 15**2**–15**3**)

Unless the articles or by-laws provide otherwise, the directors are allowed to make, amend, or repeal any corporate by-laws, except those concerning matters that fundamentally change the corporation.(38) Changes to by-laws must be submitted to the members at the next members' meeting, where the members may, by ordinary resolution, confirm, reject or amend the by-law. A member of the NPC has the right to make a proposal to make, amend or repeal a by-law at an annual meeting.

The corporation must send a copy of its by-laws and any amendments to be registered with Industry Canada within the prescribed period.(39) Industry Canada will no longer review and approve the by-laws and any amendments, but will keep these on file.

2. Conditions, Issuance and Termination of Memberships (Clauses 15**4**–15**8**)

The directors may issue memberships in accordance with the NPC's articles or by-laws (clause 15**5**). Under clause 15**4**, the by-laws must set out the conditions of membership. If the corporation has more than one class of membership, its by-laws must set out the conditions of membership in each class, as well as conditions for the transfer and termination of memberships for that class. The by-laws must also designate at least one class of members entitled to vote at meetings of members. Unless otherwise specified by the by-laws, every member has the right to vote. Members have the right to designate a proxy to vote for them.

Unless the articles or by-laws provide otherwise, a membership is transferable only to the corporation (clause 15**4**(8)). Under Clause 15**6**, memberships terminate when:

- the member dies or resigns;
- the member is expelled in accordance with the by-laws;
- the member's term of membership expires; or
- the NPC is liquidated or dissolves.

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(38) Fundamental changes require a special resolution under section 19**7**(1) of the NPCA and will be discussed in this summary's analysis of Part 13 of Bill C-4.

(39) According to regulation 61 of the proposed NPCA regulations, the prescribed period is 12 months.

The NPCA provides that all rights of membership, including rights to property, terminate when the membership is terminated. Under clause 15**8**, an NPC's articles or by-laws may provide that directors or members have the power to discipline a member or to terminate the membership interest of a member.

3. Meetings of Members (Clauses 15**9**–16**2**)

The NPCA stipulates that an NPC's by-laws must designate a place in Canada where the meetings of members are to be held. The by-laws or the members may authorize a meeting of members to be held outside Canada. Members' meetings may be conducted by telephone or an electronic medium (clause 15**9**).

The directors are required to call an annual meeting of members not later than 18 months after the NPC comes into existence. Thereafter, the directors must hold annual meetings within 15 months of subsequent annual meetings, but not later than six months after the end of the corporation's fiscal year.(40) The directors can call a special meeting of members at any time. The directors may fix a record date determining members that are eligible to participate in meetings.

Notice of the time and place of the meeting must be sent to each member entitled to vote at the meeting, to each director, and to the auditor of the corporation, if any. Individual members are allowed to waive their right to receive notice of meetings. Under clause 16**2**, Industry Canada can approve alternative notice if it deems that this would not prejudice members.

4. Membership Proposals (Clause 16**3**)

Members entitled to vote at a meeting are allowed to submit notice to the corporation of a matter that they propose to raise at the meeting. The corporation must include the proposal and a supporting statement in its notice of the meeting; however, the sponsor of the proposal must pay all costs of distribution, unless the by-laws provide otherwise.(41) If the proposal is a nomination of directors, the nomination must be supported by the prescribed percentage of members entitled to vote at the meeting.(42) The proposal would be limited to 500 words in length.(43)

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(40) According to regulation 62 of the proposed NPCA regulations.

(41) It is unclear whether sponsors are obligated to pay only the cost of printing or all costs – i.e., the costs of sending the proposal and statement.

(42) According to regulation 66 of the proposed NPCA regulations, the prescribed portion of members is 5%.

(43) See regulation 65 of the proposed NPCA regulations.

A corporation can refuse to include a proposal in a notice of a meeting if:

- the proposal is not submitted within the prescribed period of time;(44)
- the proposal is intended to enforce a personal claim or grievance;
- the proposal promotes a cause which does not relate in a significant way to the activities of the corporation;
- the member fails to present the proposal at a meeting;
- substantially the same proposal was submitted to members in a notice of a meeting held within the prescribed period(45) and the proposal did not meet the minimum prescribed level of support; or
- the rights conferred are being abused to secure publicity.

If the NPC refuses to distribute a member's proposal, it must send notice in writing to the person submitting the proposal setting out the reasons for the refusal.

5. Voting, Quorum and Requisitioning a Meeting (Clauses 16**4**–16**9** and 17**1**)

The by-laws may set a quorum for a meeting of members. If the by-laws are silent, a quorum is a majority of members entitled to vote (clause 16**4**).

Unless the articles or by-laws provide otherwise, voting can be conducted by a show of hands, but any member may demand a ballot either before or after the show of hands. The vote can be conducted electronically, if the NPC makes such communication facilities available.

A resolution in writing signed by all the members entitled to vote on the resolution is as valid as if it were passed at a meeting of members. A copy of every written resolution must be kept with the minutes of the meetings of members (clause 16**6**).

(44) According to regulation 67 of the proposed NPCA regulations, the proposal must be submitted from 90 to 150 days before the anniversary of the previous meeting.

(45) According to regulation 68 of the proposed NPCA regulations, the prescribed period is two years.

No fewer than the prescribed number of members would be allowed to requisition the directors to call a meeting of members for the purposes stated in the requisition (clause 16**7**).[46] The requisition must state the business to be transacted at the meeting, and it must be sent to each director and to the registered office of the corporation. The corporation must send notice of the meeting to all members entitled to attend the meeting. However, directors do not have to call a meeting in certain specified circumstances.[47]

If the directors fail to call a meeting, any member may call a meeting, and the NPC must reasonably reimburse him/her for expenses incurred in calling the meeting.

On the application of a director, of a member entitled to vote, or Industry Canada, a court can order that a meeting be called, held and conducted in a manner that the court directs (clause 16**8**).

An NPC, a member, or a director may apply to a court to consider any controversy respecting the election or appointment of a director or auditor of the corporation. The court is allowed to make any order it sees fit, including an order restraining a director or auditor from acting, pending a determination of the dispute, an order declaring the result of the disputed election or appointment, or an order determining the voting rights of members (clause 1**69**).

If the by-laws allow, members of corporations may vote by absentee ballot or, upon application to Industry Canada, by any other method Industry Canada sees fit (clause 17**1**).

6. Unanimous Member Agreements (Clause 17**0**)

A unanimous member agreement (UMA) is an agreement among all members (or among all members and a third party) that restricts the powers of the directors to manage the activities and affairs of the corporation. Members become bound by a pre-existing UMA when they become members, but may rescind their memberships if unaware that they were bound. Under a UMA, parties can be given all the rights, powers and duties of a director of the corporation, to the extent that the agreement restricts the powers of the directors to manage the

(46) According to regulation 73 of the proposed NPCA regulations, the required proportion of members is 5%.

(47) See NPCA, clauses 16**7**(3), 16**1**(1)(*a*), 16**2** and 16**3**(6)(*b*)–(*f*).

activities and affairs of the corporation. If this is done, the directors are relieved of their duties and liabilities to the same extent.

The members may terminate a UMA by special resolution.

K. Part 11 – Financial Disclosure (Clauses 17**2**–17**8**)

Directors must approve and sign all financial statements. Subject to the corporation's by-laws, they must also send financial statements to members within the prescribed period prior to the annual meeting, to allow members to review the contents (clause 17**5**).[48] Notice of the meeting must include:

- the prescribed financial statements for the most recently completed financial period;
- the report of the auditor, if any; and
- any further documents respecting the financial position of the company.

At the annual meeting, directors must present these documents to the members (clause 17**2**).

An NPC can apply to Industry Canada for an exemption from its obligation to disclose its financial statements, if it believes that the disclosure could be detrimental to its operations, and the possible detriment outweighs the benefits of disclosure to the members, or, in the case of a soliciting corporation, to the public. An NPC can give notice to members (in the manner set out in clause 16**2**) that the financial statements are available at the NPC's registered office, where any member can obtain a free copy.

A corporation must keep a copy of the financial statements of each of its subsidiaries or other corporations whose accounts are consolidated with those of the NPC.

If the NPC is a soliciting corporation, it must also send copies of its financial statements to Industry Canada, and any NPC must provide copies at the request of Industry Canada (clauses 17**6** and 17**7**).

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(48) The prescribed period is 21 to 60 days before the day on which an annual meeting of members is held or before the day on which a resolution is signed under section 16**6** of the Act. See regulation 68 of the proposed NPCA regulations.

L. Part 12 – Public Accountant (Clauses 1**79**–19**6**)

1. Audit Requirements for Corporations (Clauses 1**79** and 18**2**)

NPCs with gross annual revenues of less than the amount prescribed by regulation ($50,000 or less for a soliciting corporation, $1,000,000 for a non-soliciting corporation) are not required to undergo an annual audit. An NPC that is exempt from audits nonetheless have the right to appoint a public accountant and require, in its articles or by-laws, an audit annually or otherwise.

2. Qualifications and Appointment of an Auditor (Clauses 18**0**–18**1**)

According to clause 18**0**, to be eligible to be appointed as an auditor, the person or accountancy firm must be a member in good standing of a provincially regulated professional body, **and must meet any additional provincial requirements for qualifying to perform public accountant duties**. The auditor must be independent of the NPC, its affiliates, or the directors of the corporation. The auditor is not independent if he/she is:

- a business partner, a director, an officer or an employee of the corporation or any of its affiliates;
- a business partner of any director, officer or employee of the corporation or any of its affiliates;
- an owner of, or a person in control of, a material interest in any debt obligation of the corporation or any of its affiliates; or
- a person who has been a receiver, a receiver-manager, a liquidator or a trustee in bankruptcy of the NPC or any of its affiliates within two years of the auditor's proposed appointment.

Auditors who are not independent must resign, or they may be disqualified by a court. A court can also make an order that allows an auditor deemed not to be independent to continue to act as auditor for a corporation, if this would not unfairly prejudice members of the corporation.

The Standing Senate Committee on Banking, Trade and Commerce made an observation in its report to the Senate with regards to subsection 180(1)(*b*), which adds that to be appointed as an auditor, the person or firm must also meet any qualifications stipulated by provincial law with respect to the performance of any duty required by

sections 188 to 191 of the NPCA. The Committee noted the concerns expressed by the Certified General Accountants Association – that these additional qualifications would impose, in its view, unnecessary restrictions on the abilities of its members to perform financial reviews of NPCs both within and across certain provinces. The Committee stressed its belief in the importance of competition in the Canadian marketplace, including among individual accountants who offer services to NPCs. The Committee urged that the relevant stakeholders engage in consultations on this issue without delay.

Clause 18**1** states that at the first annual meeting and at each subsequent annual meeting, members of the corporation can appoint an auditor by an ordinary resolution. If an auditor is not appointed at an annual meeting, the qualified incumbent remains until a successor is appointed. Members may fix the auditor's remuneration through an ordinary resolution. If they do not, the directors are free to fix remuneration (clause 18**1**(4)).

All oral and written reports prepared by an auditor have qualified privilege (clause 19**6**).

If members of a designated corporation choose not to appoint a public accountant, a valid resolution must be passed by all the members entitled to vote at an annual meeting (clause 18**2**).

3. Review Engagements for Mid-level Soliciting Corporations (Clause 1**89**(2))

A soliciting corporation with revenues that are equal to or less than the prescribed amount ($250,000 as per draft regulation 85), or that is deemed to have such revenues by Industry Canada, may decide not to undergo an audit, but instead opt for a less onerous review engagement, if the NPC's members pass a special resolution to that effect.

Generally, the scope of a review engagement is less than that of a full audit. Review engagements provide analysis as to whether financial statements supplied by management are plausible. The report following the audit engagement must be prepared in accordance with the generally accepted auditing standards set out in the *Handbook of the Canadian Institute of Chartered Accountants* (as per draft regulation 84).

4. Ceasing to Hold Office and Filling a Vacancy (Clauses 18**3**–18**7**)

An auditor ceases to hold office if he or she dies, resigns, or is removed by the members of the corporation (clause 18**3**). Members of the corporation may vote by ordinary resolution at a special meeting to remove an auditor from office and fill the vacancy.

The by-laws of the corporation may indicate that a vacancy in the office of auditor must be filled by a vote of members. If no such by-law exists, the directors must fill the vacancy by appointing an auditor (clause 18**5**). An auditor who fills a vacancy holds office for the unexpired term of his or her predecessor.

An auditor who resigns or is removed is entitled to send to the corporation a written statement providing the reasons for the resignation, or for opposing his or her removal. In the latter case, the NPC must also supply a statement giving reasons for the removal. Both of these statements must be circulated to members of the corporation. Any new auditor must request a written statement from the old auditor giving details of the circumstances and reasons for replacement (clause 18**7**(7)).

Any written statement from the auditor must be sent, at the corporation's expense, to every member in advance of the meeting.

5. Right to Information and to Attend Meetings (Clauses 18**7** and 19**3**)

The auditor of the corporation is entitled to receive notice of and attend every meeting of members. Auditors must attend if asked by directors or members, and must answer questions.

The auditor may demand that the present or former directors, officers, employees and agents furnish information, records, documents, books and accounts of the corporation or any of its subsidiaries. Directors are also required to obtain and furnish information.

6. Audit Committees (Clauses 19**4** and 19**5**)

An NPC can set up an audit committee, composed of at least three directors, a majority of whom are independent of the corporation. This committee reviews the NPC's financial statements before they are approved by the full board. The NPC's auditor has the right to attend audit committee meetings. Directors and officers are obliged to notify the audit

committee and the NPC's auditor of any error or misstatement they become aware of, after which the directors must prepare and send a revised financial statement to the members and Industry Canada.

M. Part 13 – Fundamental Changes (Clauses 19**7**–21**6**)

1. Amendment of Articles and By-laws (Clauses 19**7**–20**3**)

A corporation is allowed to make fundamental changes to its articles or by-laws with a special resolution of two-thirds of the members voting at a meeting called for that purpose. Fundamental changes include:

- changing the corporation's name or the province in which the corporation's registered office is situated;
- adding, changing or removing any restriction on the activities that the corporation may carry on;
- creating a new class or group of members, changing the designation of any class or group of members, or changing or removing any rights and conditions of any such class or group;
- changing a condition required for being a member;
- dividing any class or group of members into two or more classes or groups and fixing the rights and conditions of each class or group;
- adding, changing or removing a provision respecting the transfer of a membership;
- increasing or decreasing the number of – or the minimum or maximum number of – directors fixed by the articles;
- changing the mission statement of the corporation;
- changing the statement concerning the distribution of property remaining on liquidation after the discharge of any liabilities of the corporation;
- changing the manner of giving notice to members entitled to vote at a meeting of members;
- changing the method of voting by members not in attendance at a meeting of members; or
- adding, changing or removing any other provision that is permitted by this Act to be set out in the articles.

Any member or director can make a proposal for a fundamental change to the NPC.

If a corporation has more than one class of members, subject to the articles or by-laws of the corporation, members of that class are entitled to vote on a separate special resolution regarding issues that affect their rights and privileges.

All fundamental changes must be sent to Industry Canada, which then issues a certificate of amendment to the NPC. Industry Canada can also require an NPC to restate its articles of incorporation.

2. Amalgamation (Clauses 20**4**–2**09**)

Corporations seeking to amalgamate must enter into an agreement setting out the terms, conditions and process of amalgamation. The agreement needs to address, among other things, articles of incorporation for the new entity, the proposed directors, how memberships are to be converted, the by-laws of the new NPC, and management and operational details of the new NPC.

Amalgamation agreements must be approved by two-thirds of the membership of each corporation in a special resolution. Each class of members of each amalgamating corporation is entitled to vote separately. A notice of the meeting to decide on the amalgamation must include a copy or a summary of the amalgamation agreement, and must be sent to every member of the amalgamating corporations.

After the adoption of the special resolution, a director or officer must send a statutory declaration to Industry Canada stating that the amalgamating companies have discharged their liabilities, have not depleted their assets, and have notified any creditors (clause **20****8**). Debts owed to each amalgamating NPC continue after amalgamation (clause **209**). The amalgamation takes effect on the date shown on the certificate sent by Industry Canada; however, clause 20**6**(6) allows directors of the amalgamating corporations, if authorized by the amalgamation agreement, to terminate the agreement at any time before Industry Canada issues the certificate.

3. Vertical and Horizontal Short-form Amalgamations (Clause 20**7**)

Two or more corporations are allowed to amalgamate vertically, meaning that the corporation can amalgamate with one or more subsidiary corporations controlled by the members of the first entity, without having to follow the standard amalgamation process. Vertical short-form

amalgamation must be approved by a resolution of the directors of each amalgamating corporation. The resolution must provide for the cancellation of the membership interests of each amalgamating subsidiary corporation without any repayment of capital. Articles of the amalgamated corporation are the same articles as those of the amalgamating holding corporation.

Two or more wholly owned subsidiary corporations of the same NPC may amalgamate and continue as one corporation, without having to follow the standard amalgamation process. This horizontal short-form amalgamation must be approved by a resolution of the directors of each amalgamating subsidiary corporation. The resolution must cancel the membership interests of all but one amalgamating subsidiary corporation, without any repayment of capital. The articles of the new amalgamated corporation are the same as the articles of the amalgamating corporation whose membership interests were not cancelled.

4. Continuance Under the NPCA –
Becoming an NPCA Corporation (Clause 21**2**)

The continuance provisions of Bill C-4 allow corporations or societies incorporated federally, provincially, territorially, or internationally to move into the federal jurisdiction and continue their operations under the NPCA. Any “body corporate” is entitled to apply for continuance, provided it satisfies the requirements for incorporation and is authorized to do so by the laws of the jurisdiction where it is incorporated. The NPCA contains rules on applying for continuance, issuing the certificate of continuance and the effect of continuance. The NPCA also allows for-profit corporations to convert themselves into NPCs.

5. Continuance Under Another Act –
Leaving the Federal Jurisdiction (Clause 21**3**)

Clause 21**3** allows NPCs to leave the federal jurisdiction and continue under an Act of another jurisdiction. NPCs could, for example, continue as provincial corporations if the NPCA were not to their liking. An application for continuance under another Act requires a special resolution of the members. The NPC must establish, to the satisfaction of Industry Canada, that its continuance under another jurisdiction would not adversely affect members or creditors of the corporation.

To proceed with the continuance, the laws of the jurisdiction under which the continuance is sought must provide that:

- the property of the corporation remains the property of the new corporation;

- the new corporation continues to be liable for the obligations of the corporation; and
- legal proceedings or judgments against the NPC can be enforced or otherwise remain valid.

Notice of the meeting to authorize continuance must be sent to each member of the corporation, and each class of membership carries the right to vote, whether or not it carries this right in other situations. The directors, if sanctioned by members, could withdraw the application after authorization by members but before Industry Canada issues a certificate.

6. Extraordinary Sale or Lease (Clause 21**4**)

Clause 21**4** concerns the sale or lease of all, or substantially all, of an NPC's assets. Notice must be given to members along with a summary of the proposed sale or lease, and the members (and different classes of members) must authorize the sale with a special resolution of at least two thirds of the membership.

7. Reorganization Arising Out of Insolvency (Clause 21**5**)

This section applies to a court order made under either the *Bankruptcy and Insolvency Act* or any other Act of Parliament that affects the rights among a corporation, its members and its creditors.

The court has the power to order changes to the corporation's articles or by-laws, authorize debt obligations and replace directors. If such an order is made by the court, the corporation must send Industry Canada the revised articles and by-laws of reorganization. On receipt of the revised articles, Industry Canada issues a certificate of amendment. The reorganization becomes effective on the date shown in the certificate of amendment.

8. Arrangements (Clause 21**6**)

Arrangements are proposals to make changes to an NPC's articles or by-laws that cannot practicably be achieved under the proposed Act. A court is given the power to approve an arrangement upon application by the corporation. If an application is made by a corporation to the court, Industry Canada must be notified and is entitled to appear before the court.

The court has the power to require meetings to be held, require notice to be given, or appoint counsel to represent the interests of the members at the expense of the corporation. If the court makes an order, the articles of arrangement must be sent to Industry Canada. An arrangement becomes effective on the date shown in the certificate of arrangement issued by Industry Canada.

N. Part 14 – Liquidation and Dissolution (Clauses 21**7**–24**1**)

Part 14 allows for the dissolution and liquidation of an NPC. Part 14 does not apply when the NPC is insolvent and an application has been made under the *Bankruptcy and Insolvency Act*. The NPC can be dissolved by the directors if there are no members, or by a special resolution of members. If the corporation has assets, they are distributed according to the corporation's articles. If the NPC is a soliciting corporation or a registered charity, excess assets are distributed to "qualified donees" as determined under the *Income Tax Act*.(49)

Bill C-4 outlines procedures for appointing a liquidator and the duties of a liquidator. Industry Canada must ultimately issue a certificate of dissolution, if the required procedures have been taken. A court may also order the dissolution and liquidation of a corporation on application from a member.

1. Revival (Clause 2**19**)

Corporations are revived when there is some advantage to having a dissolved entity restored to existence. For example, a corporation might be revived by a plaintiff in order to sue it. Any person is allowed to apply to Industry Canada to have a corporate entity revived under the NPCA, including corporations that were dissolved under Part II of the CCA.

The articles of revival are sent by the interested person to Industry Canada, and become effective on the date shown on the certificate of revival. Industry Canada has the power to impose any reasonable conditions on the revived corporation. The revived corporation has all the rights, privileges and liabilities it would have had if it had not been dissolved. Any legal action taken against the revived corporation between the time it is dissolved and its revival would be valid and effective.

2. Dissolution (Clause 22**0**)

If a corporation has no members, a resolution of all the directors is required to dissolve it. If the corporation has members but no property or liabilities, it can be dissolved by a special resolution of each class or group of members.

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(49) *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

A corporation that has property or liabilities can be dissolved by a special resolution of the members authorizing the directors to distribute any property or discharge any debts. After the remaining property is distributed and the liabilities are discharged, the articles of dissolution are sent to Industry Canada. The corporation ceases to exist on the date shown in the certificate of dissolution that Industry Canada issues on receipt of the articles of dissolution.

3. Proposing Liquidation and Dissolution (Clause 22**1**)

A director or a member entitled to vote at an annual meeting may, in accordance with the rules regarding submitting a proposal, make a proposal for the voluntary liquidation and dissolution of a corporation. The notice of the meeting must include the terms of the proposal. A special resolution of members is required to proceed with the proposal to liquidate or dissolve the corporation. If there are classes of voting members, a special resolution by members of each class is required.

A statement of intent to dissolve the corporation must then be sent to Industry Canada. Industry Canada will issue a certificate of intent to dissolve. Once the certificate is issued, the corporation is required to cease carrying on its activities, except to the extent necessary for the liquidation. It must also take the following steps:

- notify each known creditor of the corporation of its intent to dissolve;
- take reasonable steps, without delay, to provide notice of intent to dissolve in each province of Canada where the corporation carries on its activities;
- do all acts needed to liquidate the corporation’s property and discharge all of its obligations; and
- if the corporation is a soliciting corporation or registered charity, distribute any remaining property according the rules contained in the *Income Tax Act*.

If the certificate of intent to dissolve has not been revoked and the corporation has followed the proper procedures, the corporation prepares articles of dissolution. The articles of dissolution must be sent to Industry Canada, and the corporation ceases to exist on the date shown in the certificate of dissolution issued by Industry Canada.

4. Dissolution by the Director (Clause 22**2**)

Clause 22**2** allows Industry Canada to dissolve a corporation by issuing a certificate of dissolution where the corporation:

- has not commenced its activities within three years after the date shown on the certificate of incorporation;
- has not carried on its activities for three consecutive years;
- is in default for a period of one year in sending Industry Canada any fee, notice or document required under the Act; or
- does not have any directors or is in the situation where all of the elected directors have resigned without being replaced.

Before dissolving a corporation, Industry Canada is required to give notice of its intent to dissolve and publish such notice in a publication generally available to the public. Unless cause to the contrary has been shown, or a court order has been issued concerning the corporation that will be dissolved, Industry Canada can issue a certificate of dissolution, after which the corporation ceases to exist.

Industry Canada can also issue a certificate of dissolution if the required fee for issuance of a certificate of incorporation has not been paid.

5. Court Supervision (Clauses 22**1**(8) and 22**5**)

During the liquidation, Industry Canada or any interested person can apply for a court order that would put the liquidation under the supervision of the court. The court would be allowed to make any further order it considers appropriate in the situation.

A person making an application to the court would be required to notify Industry Canada, which would have the right to appear before the court and be heard.

Under clause 22**5**, any application to request court supervision must state the reasons why court supervision of the liquidation and dissolution is necessary, and be accompanied by an affidavit from the applicant.

6. Dissolution by a Court (Clauses 22**3**–22**4** and 22**6**)

Industry Canada, or any other interested person, can apply to the court for an order to dissolve a corporation where the corporation has:

- failed to hold or call an annual meeting of members for the prescribed period (two consecutive years);
- exercised its powers contrary to its articles;
- denied members access to corporate records;
- failed to keep a registry of members;
- failed to keep up-to-date financial statements; or
- procured a certificate under the NPCA by misrepresentation.

The court can order dissolution or liquidation under its supervision, or make any other order it thinks fit. The court may also issue a dissolution order if the corporation had acted in an oppressive manner to its members, creditors, directors or officers, or if the court is satisfied that a unanimous members' agreement that requires dissolution applies. The oppression remedy is subject to the same faith-based defence found in Part 16 of the Act.

Under clause 22**6**, any application to a court for liquidation and dissolution must state the reasons why the order is needed, and be accompanied by an affidavit from the applicant.

Upon receiving the application, the court may require the corporation or any interested person to show cause why the corporation should not be liquidated and dissolved. The court may also order the directors and the officers of the corporation to furnish material information, including:

- the financial statements of the corporation;
- the name and address of each member of the corporation; and
- the name and address of each known creditor or claimant and any person with whom the corporation has a contract.

A copy of the court's show cause order must be published as directed in a newspaper that is published or distributed where the corporation has its registered office. The order must be served on Industry Canada and any other person named in the order.

7. Powers of a Court (Clauses 22**7**–2**29**)

In connection with the liquidation and dissolution of a corporation, a court may do the following:

- order the corporation to liquidate;
- appoint or replace the liquidator and fix his or her remuneration;
- appoint or replace inspectors or referees and specify their powers;
- determine, or dispense with, any notices required to be given to any interested person;
- determine the validity of any claims made against the corporation;
- restrain the director and officers from exercising any of their powers, collecting or receiving any debt or property of the corporation, or paying out or transferring any property of the corporation;
- determine and enforce the duty of any present or former director, officer or member to the corporation, or their liability for an obligation of the corporation;
- determine the use of documents and records of the corporation;
- give directions on the disposal of any property belonging to creditors or members; and
- after the final account of the liquidator, dissolve the corporation.

The process of liquidating a corporation under the preceding section begins with a court order for liquidation, after which the powers of the directors and members cease and are transferred to the liquidator (who can then delegate to members, directors and officers).

8. Appointment, Powers and Liabilities of the Liquidator (Clauses 23**0**–23**2**)

The court may appoint any person as liquidator of the corporation, including a director, an officer or a member of the corporation. Where the office of liquidator becomes vacant, the property of the corporation remains under the control of the court until the office of liquidator is filled.

Upon his or her appointment, the liquidator is required to give notice of the appointment to any claimant and creditor known to the liquidator. If the corporation operates in more than one province, the liquidator must take reasonable measures to give notice in every province where the corporation operates. The notice will require any person:

- indebted to the corporation to render an account and pay the liquidator any amount owing;
- possessing property of the corporation to deliver it to the liquidator; or
- claiming against the corporation to present particulars of the claim to the liquidator no later than two months after first publication of the notice.

The liquidator is also required to:

- take custody and control of the property of the corporation;
- open and maintain a trust account;
- keep accounts of all money paid or received by the corporation;
- maintain lists of the members, creditors and other persons having claims against the corporation; and
- provide financial statements of the corporation to the court and to Industry Canada.

For the execution of his or her duties, the liquidator is given a number of powers under clause 23**2** of the bill, including the right to retain professional advisers, take part in any legal or administrative proceedings, sell property, execute documents, borrow money, and settle claims on the corporation.

A due diligence defence, similar to that provided for directors and officers, is provided for liquidators. If the liquidator exercises the care, diligence and skill of a reasonably prudent person in comparable circumstances, he or she will not be liable. This defence includes reliance in good faith on the corporation's financial statements. The liquidator is allowed to apply to a court for an order to restore corporate property that has been concealed, withheld or misappropriated.

A liquidator is not personally liable for any environmental damage occurring before or after the liquidator's appointment, unless the environmental damage occurred as a result of the liquidator's gross negligence or wilful misconduct.

9. Distribution of Remaining Property by a Liquidator (Clauses 23**3**–24**1**)

When the liquidator has paid all claims, he or she is required to transfer any remaining property of the corporation. The distribution of the remaining assets of the corporation, upon dissolution, would be subject to its articles. Any undistributed property of the dissolved corporation belonging to a creditor or a member who cannot be found would be converted into money and transferred to the Receiver General, and any property of a corporation that has not been disposed of at the date of its dissolution would vest in the Crown.

The liquidator must apply to the court for approval of the final accounts and for an order permitting the liquidator to distribute the remaining property and money of the corporation. The liquidator must give notice of the intention to make this application to any persons who provided a security or fidelity bond, and must also publish this notice in a newspaper or as otherwise directed by a court.

O. Part 15 – Investigation (Clauses 24**2**–24**9**)

A member, a creditor, or Industry Canada may make a court application for an investigation of the corporation. The court may direct an investigation and appoint an inspector if it appears the corporation is engaging in fraud or in conduct that is oppressive to members. The courts are empowered to give considerable powers to inspectors, including the right to examine documents, require attendance at hearings, and enter the premises of the NPC. There are some procedural safeguards for *ex parte* applications and solicitor-client privilege.

P. Part 16 – Remedies, Offences and Punishment (Clauses 25**0**–26**3**)

Part 16 authorizes civil legal actions taken by or against the corporation, and permits criminal prosecutions for violations of the Act. A complainant is defined as a former or present member or holder of a debt obligation, a former or present director or officer, Industry Canada, or any other interested person, at the discretion of the court.

The bill allows for derivative actions, in which complainants can get a court order requiring the corporation to take legal action against other parties. Procedures for the granting of a derivative action are established under the Act. Complainants can also apply for a court order

where the corporation has acted in an oppressive or unfairly prejudicial manner. If the court finds oppression, it has broad discretion to remedy the situation, including restraining the conduct complained of, setting aside a transaction, and appointing new directors.

Both the derivative action and the oppression remedy have a defence for faith-based actions in which a religious corporation acted reasonably based on a tenet of faith.

A complainant can also apply to a court for a rectification of the records of the corporation. Industry Canada may apply to a court for direction, meaning that the court can condone future actions taken by Industry Canada.

The Act reinforces the concept of incorporation by way of right by requiring Industry Canada to give reasons for refusing to allow incorporation. The NPCA also allows complainants to appeal certain Industry Canada decisions, notably:

- refusal to accept articles or refusal to correct or cancel a document;
- refusal to file a document;
- any decision related to the attribution, abbreviation, revocation or change of the corporation's name;
- refusal to accept a notice of registered office;
- refusal to issue a certificate of discontinuance;
- refusal to revive a corporation; and
- refusal to dissolve a corporation.

A court is empowered to issue a compliance or restraining order to force a corporation or any of its directors, officers, employees or auditors to comply with its own articles, by-laws or unanimous member agreements, as well as with the Act and regulations. In such circumstances, courts are allowed to make any orders they consider appropriate.

The criminal provisions of Bill C-4 make it an offence to contravene a provision of the Act or the regulations, though an exception is made for Section 14**8**(2)(*b*) regarding the obligation of directors and officers to comply with the articles, by-laws and any unanimous member agreements of the corporation. Offences are punishable on summary conviction by a fine of up to $5,000, or up to six months in prison, or both. Making misleading statements in

required documents and using information improperly attract similar sanctions. A person who uses information obtained from a register of members or debt obligation holders for a purpose other than those prescribed by the Act is guilty of an offence that is punishable with fines of up to $25,000, or six months in prison, or both (clause 26**2**(3)). All criminal offences are subject to a defence that prevents criminal liability where the accused exercised due diligence to prevent the commission of the offence. There is a limitation period for prosecutions of two years from the time when the subject matter of a complaint arose, as well as a clause that allows concurrent criminal prosecutions and civil actions against an offender.

Q. Part 17 – Documents in Electronic or Other Form (Clauses 26**4**–27**1**)

Part 17 allows for the use of electronic documents in communications between the corporation and its members. Corporations are not obliged to use electronic communications, and may do so only if members consent to such communications. Electronic documents must be capable of being retained, so that they are usable for subsequent reference. The bill allows for secure electronic signatures.

R. Part 18 – General (Clauses 27**2**–29**3**)

This Part contains disparate clauses associated with the administration of the Act. What constitutes adequate service of documents, acceptable notice, acceptance of notice, and waiver of notice is set out in this portion of the bill. All correspondence sent on behalf of the corporation must be signed by a director or officer, and can be used as evidence. Persons who have paid the prescribed fees are allowed to inspect most documents held by Industry Canada.

Part 18 also allows the Minister of Industry to appoint a Director (Industry Canada) and may appoint Deputy Directors.[50] Industry Canada is empowered to establish the form and content of notices and documents, the keeping of records, and the ability to cancel articles and make inquiries.

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(50) As stated in the Background section, this summary uses “Industry Canada” instead of “Director,” since “Director” is easily confused with corporate directors.

The Governor in Council is empowered to establish regulations pursuant to the Act, for the specific purposes set out in Clause 29**3** and generally for carrying out the purposes and provisions of the Act.

S. Part 19 – Special Act Bodies Corporate Without Share Capital (Clauses 29**4**–29**6**)

Corporations without share capital that were incorporated by a special Act of Parliament were only sometimes subject to the CCA, depending on the specific statute that created the corporation. Part 19 makes special Act corporations subject to portions of the NPCA, specifically, to all of Part 3 and to clauses 16**0**(1), 16**8**(1), 21**2**, 22**1** to 22**3** and 27**8** of the NPCA, and to requirements for annual meetings, continuances, and dissolution and liquidation. There is also a provision that allows special Act corporations without share capital to change their names.

T. Part 20 – Transitional, Consequential and Commencement Provisions (Clauses 29**7**–37**2**)

Further to the phased repeal of the CCA, this part states that a corporation incorporated under Part II of the CCA will have three years to apply for continuance under the NPCA or face dissolution.

Corporations currently subject to Part IV of the CCA, unless subject to a winding-up order, are required to apply for a continuance under the CBCA.

The NPCA must be reviewed within 10 years of coming into force. The Minister must report to Parliament with recommendations, after which the report is automatically referred to Committee.

The NPCA makes a number of consequential amendments to other legislation, including the CCA and the CBCA. Bill C-4 contains provision for a number of amendments not found in bills C-21 or C-62.

The provisions of the NPCA come into force on days to be fixed by order of the Governor in Council, other than sections 29**7**(2) to (4), (6) and (7) and sections 34**1** to 36**0**, which come into force on the date of assent to the Act (as per section 5(4) of the *Interpretation Act*[51]).

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(51) *Interpretation Act*, R.S.C. 1985, c. I-21.