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Pre-Meeting Fundamentals for Federal Not-For-Profit Corporations

Not-for-profit corporations (“NFPs”) are required to hold various member and director meetings during the course of a year. This article will review different issues that NFPs must consider in preparation for these meetings.

Federal NFPs are governed by the *Canada Not-for-profit Corporations Act* (the “CNCA”) and the Regulations to the CNCA (the “Regulations”), both of which contain numerous provisions regulating the holding of members’ and directors’ meetings. In addition, the by-laws of an NFP typically address meeting requirements. The articles of an NFP (that is, its articles of incorporation, continuance, etc.) may do so as well, although less commonly.

MEMBERS’ MEETINGS

Are there different types of members’ meetings?

There are two types of members’ meetings under the CNCA, annual and special. An annual meeting is often called an “annual general meeting” or an “AGM”.

What business must be conducted at an annual meeting of members?

At each annual meeting of members, in addition to any other requirements of an NFP’s by-laws:

- the members must elect the directors (unless an election of directors is not required that year because the directors are elected for longer than one year and none of their terms are expiring);
- the members must appoint a public accountant (unless exempt – see discussion in our [February 2016 newsletter](#)); and
- the financial statements with the public accountant’s report (if any) must be presented to the members.

What business must be conducted at a special meeting of members?

Any business which is not annual business is called special business (such as amending the articles or the by-laws) and must be conducted at a special meeting of the members.

Can members pass resolutions other than at a meeting?

Members can pass a resolution (dealing with annual or special

business, subject to a few exceptions) if it is in writing and signed by 100% of the members entitled to vote on that resolution.

When must an annual meeting of members be held?

The first annual meeting of the members must be held within 18 months of an NFP first coming into existence (which is not the date of continuance for NFPs which have continued under the CNCA). Subsequent annual meetings must be held within 15 months of the previous annual meeting but not more than six months after the NFP's financial year end.

When may a special meeting of members be held?

The directors may call a special meeting of the members at any time to consider special business. A special meeting can be held as a standalone meeting or in conjunction with an annual meeting. If a special meeting is held together with an annual meeting, the meeting would be called an "annual special meeting".

Where can members' meetings be held?

Members' meetings must be held in Canada at the place specified in the NFP's by-laws, or if not specified in the by-laws, then at a place determined by the directors. A members' meeting may also be held at a place outside Canada if the specific place is set out in the NFP's articles or all the members entitled to vote at the meeting agree that it can be held at a specific place outside of Canada.

Who must receive notice of a members' meeting?

An NFP must give notice of a members' meeting to all of its members who are entitled to vote at the meeting, to its public accountant, to its directors and to any other persons specified in an NFP's articles or by-laws (such as non-voting members).

How can notice of a members' meeting be given?

Subject to the requirements of the NFP's by-laws, notice of a members' meeting can be given by:

- mail, courier, personal delivery or notice board;
- telephonic, electronic or other communication facility (but an NFP requires a member's consent to send the member an electronic document); or
- publication, if the NFP has more than 250 members.

How much notice must be given for a members' meeting?

The notice period for members' meetings is determined by an NFP's by-laws which must comply with the requirements of the Regulations. The Regulations contain specific notice periods depending upon how the notice is given. For example, if notice is given electronically, the Regulations provide that it must be given to the members 21 to 35 days before the meeting date. If given by mail, courier or personal delivery, the Regulations require that notice of a members' meeting be given to the members 21 to 60 days in advance. The period for giving notice to the

NFP's public accountant and to its directors is also 21 to 60 days before the meeting, regardless of how notice is given.

What must be included in the notice of a members' meeting?

Notice of a members' meeting must specify the time and place of the meeting and any other information required by the NFP's by-laws. If special business will be transacted at the meeting, the notice must also state:

- the nature of the special business in sufficient detail to permit a member to form a reasoned judgment on the special business; and
- if the members will be asked to pass a special resolution at the meeting (that is, a resolution passed by at least two-thirds of the votes cast), then the text of the special resolution must be included with the notice.

DIRECTORS' MEETINGS

Are there different types of directors' meetings?

Under the CNCA and the Regulations, there are no specific types or names for directors' meetings as there are for members' meetings, although the by-laws of some NFPs make a distinction between regular and special meetings. If so, regular meetings are typically directors' meetings scheduled in advance throughout a year, such as 7:00 p.m. on the first Tuesday of every month, whereas special meetings are those called for a specific purpose closer

to the date of the meeting on a day other than the day of a regular meeting.

Can directors pass resolutions other than at a meeting?

Directors can pass a resolution (dealing with any business) if it is in writing and signed by 100% of the directors entitled to vote on that resolution.

When should a directors' meeting be held?

Directors should meet regularly to oversee the management of the activities and affairs of the NFP.

In particular, a directors' meeting should be held annually to approve the NFP's financial statements before they are circulated to the members in advance of the annual members' meeting. If an NFP is a Canadian registered charity, the annual Registered Charity Information Return should also be approved at a directors' meeting, before the Return

is filed with the Canada Revenue Agency.

In addition, if the directors of an NFP appoint its officers, then a directors' meeting must be held to do so, immediately or shortly after an annual members' meeting, subject to an NFP's by-laws.

What must be included in a notice for a directors' meeting?

Generally, notice of a directors' meeting must only specify the date, time and place of the meeting. It does not need to specify the business to be conducted at the meeting, unless the by-laws provide otherwise or any of the following will be considered at the meeting:

- the submission of any issue to the members for their approval;
- filling a vacancy among the directors or the public account or appointing additional directors;
- issuing debt obligations except as

authorized by the directors;

- approving financial statements;
- adopting, amending or repealing by-laws; or
- establishing membership dues or contributions.

Are there any other requirements for the holding of a directors' meeting?

The requirements for a NFP's directors' meeting, such as where and when it can be held, and the notice required, are determined by its by-laws and articles.

When planning a members' or directors' meeting, an NFP should ensure that it is aware of the requirements of the CNCA and the Regulations for the specific type of meeting being held. An NFP should also review its articles and by-laws to determine if they contain any provisions that address the holding of the type of meeting being organized.