

# **EAC 2012–2014 Governance Task Force Interim Report to Members**

**May 2013**

## **Acknowledgements**

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## **Background**

An important new piece of federal legislation, the Canada Not-for-Profit Corporations Act, came into force on October 17, 2011. This Act establishes a new set of rules for federally incorporated not-for-profit corporations in Canada. EAC is a federally incorporated not-for-profit corporation, so the new Act applies to the association.

Every existing corporation covered by this new Act must replace its letters patent and by-laws with new “articles of continuance” (a two-page form with prescribed categories of information) and new by-laws. The Act sets out specific content requirements for both documents. Documentation must be filed with Corporations Canada by October 2014. Corporations that do not make this transition by the deadline will be assumed to be inactive and will be dissolved. So, EAC must take steps to comply with the Act.

Corporations Canada recommends that organizations take the following steps:

1. Review the organization’s current letters patent and by-laws
2. Prepare articles of continuance
3. Prepare new by-laws
4. Get members’ approval
5. Submit the required documents to Corporations Canada

## **Progress**

EAC’s National Executive Council struck a Governance Task Force in August 2012 to review the requirements of the new legislation and propose revisions to the association’s by-laws and policies.

The task force has completed step 1 and has made significant progress on steps 2 and 3, including consulting a lawyer and soliciting input from the association’s auditor.

## **Changes for EAC**

Because the rules under the Canada Not-for-Profit Corporations Act are different from the old legislation, the provisions EAC needs to set out in the articles and the by-laws are also different. Some new provisions are mandatory; some new provisions are recommended but can be altered; and some provisions in EAC’s current constitution are no longer needed under the new Act. More detailed information about these differences will be provided in fall 2013, when new draft articles and by-laws will be circulated to EAC members.

In the interim, here is an overview of the most significant changes and decisions required by the new legislation.

### ***1. Membership Classes***

Broadly speaking, the new Act is patterned after legislation that governs for-profit businesses. The Act establishes some new rights for association members that are similar to the rights of shareholders in a business. For example, when an association proposes to make changes to its membership structure, the new Act entitles each affected class of member – even those who would not otherwise be entitled to vote on association matters – to vote on that issue as a class, essentially giving them a veto over the amendment.

EAC currently has multiple categories of membership. With these changes on the horizon, EAC’s lawyer has advised that this is a good time to evaluate our reasons for having more than one class of member, and to weigh them against the alternative of having one class of member plus other non-member relationships such as affiliates or supporters. The task force is reviewing this question and will provide further information over the summer.

## 2. *Directors vs. Officers*

The roles of “director” and “officer” have effectively been merged in EAC practice, but legally they are separate functions. Under the new legislation, we are required to implement the distinctions between these roles.

**Directors** are people who are legally responsible for governing the organization. EAC’s National Executive Council (NEC) is a board of directors; and everyone on the NEC is a “director” in this legal sense, regardless of which position title they hold.

**Officers** are people who have signing authority for the organization – essentially, the president, vice-president, secretary, treasurer and executive director. Officers may also be directors, but they don’t have to be.

Under the new legislation, we will need to make several changes once we implement new by-laws:

- There can be no *ex officio* directors. (Currently, the past president and executive director are both *ex officio* members of the NEC, though the executive director does not have a vote.)
- All directors – in other words, all members of the NEC – must be elected by the membership at the AGM. (Currently, EAC’s regional directors are elected regionally instead of at the national AGM; and the past president and executive director are not elected at all.)
- Directors cannot be elected to specific roles; people are simply elected to serve on the board. The board then appoints the officers. (Currently, we elect a president, a vice-president, a treasurer, etc. In future, we will simply elect a slate of directors without specifying which office each director will hold.)

In practice, the national Nominating Committee could still recruit candidates according to their interest in filling specific offices or their endorsement by their regions, and members could be presented with two slates: a slate of directors (a list of names, which is what members would vote on) and a slate of officers to be appointed by those directors afterwards (which would be for information only).

These changes do not affect elections at the 2013 AGM, which is still governed by EAC’s current constitution.

## 3. *Branches and Twigs*

The new Act significantly expands requirements for financial accountability, transparency, record retention and access to records. The requirements are designed to permit public scrutiny of not-for-profit corporations. Under the Act, a national association is entirely accountable for all actions of its branches, just as a national for-profit corporation is accountable for the activities of its local branch offices.

This means that if EAC is to retain its current structure, branches and twigs will need to report more consistently and be accountable to the association’s national leadership. The task force will be reaching out to branch and twig executives for further discussion of this issue.

Some of the required changes to our by-laws and practices will also require us to make corresponding changes to other association policies, procedures, rules and regulations. Work on drafting these changes is underway.

## **Next Steps**

June 8, 2013	Governance Task Force Interim Report to Members presented at AGM; discussion of key changes begins
September 2013	Draft articles of continuance and new draft by-laws circulated to members
September–November 2013	Drafts discussed at branch meetings; feedback sought through AV/VA, Interactive Voice, email forums, committee meetings, etc.
November 2013–March 2014	Final draft Articles of Continuance and by-laws prepared, along with revisions to associated policy and procedural documents
April 2014	Revised governance documents circulated to members
May/June 2014	Members vote at AGM on articles of continuance and revised by-laws
October 17, 2014	Deadline for EAC to submit articles of continuance to Corporations Canada

## **Further Information**

Corporations Canada website, including links to the new legislation and a transition guide:  
[www.corporationscanada.ic.gc.ca](http://www.corporationscanada.ic.gc.ca)

Current EAC constitution, by-laws and policies:  
[www.editors.ca/members/readup/constitution/index.html](http://www.editors.ca/members/readup/constitution/index.html)

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