

Transition to Not-for-Profit Legislation

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Canadian Sport Governance: “The Perfect Storm”

- ✓ Sport Canada’s
Governance Principles
- ✓ Canadian Sport Policy
2012-2022
- ✓ Private & Public Sector
NFP Accounting
Standards

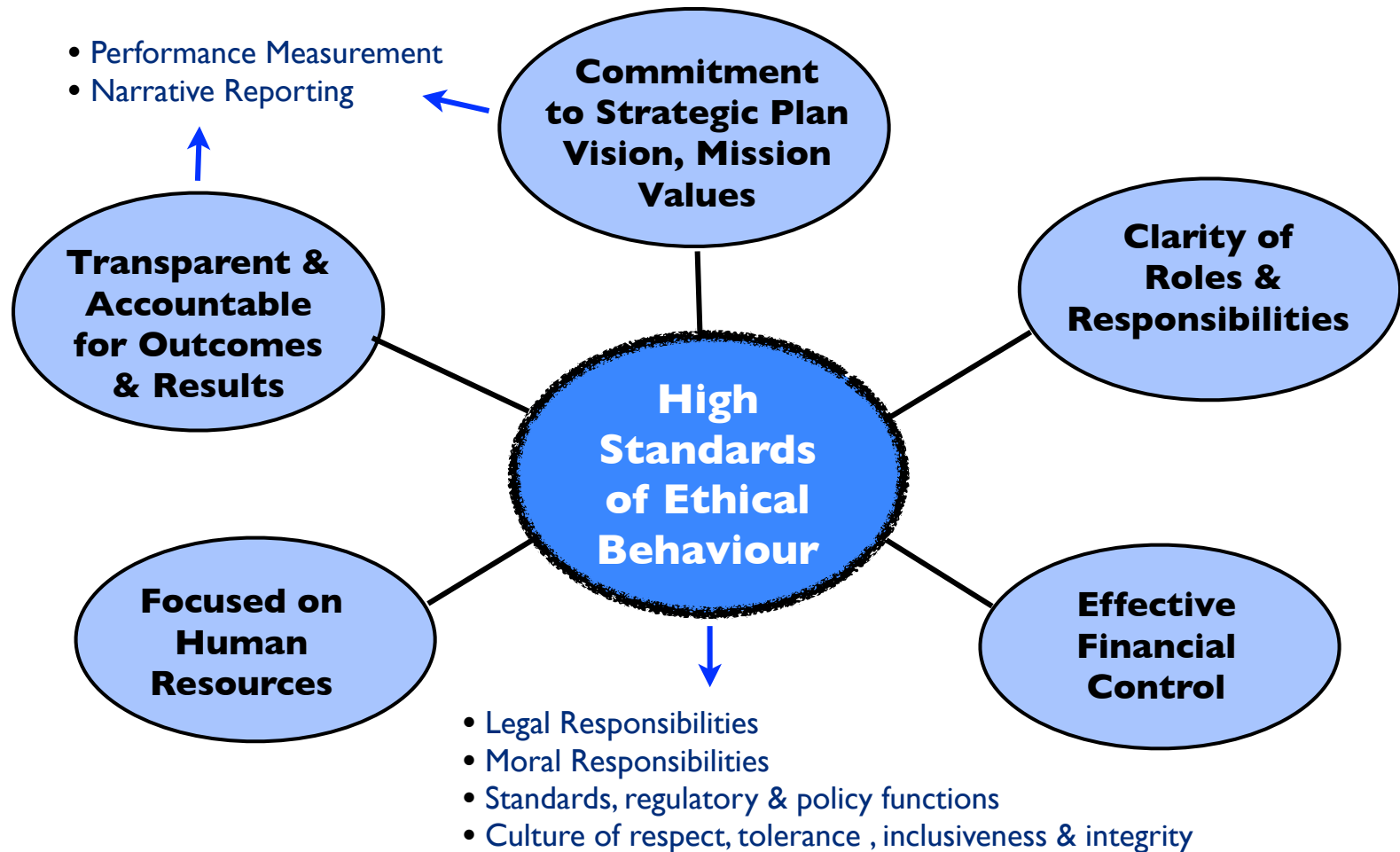


Canadian Sport Governance: “The Perfect Storm”

- ✓ *Canada Not-for-Profit Corporations Act (NPCA)* - affects all NSOs and MSOs
- ✓ Amendments to the *Income Tax Act* - affects all RCAAAs
- ✓ *Ontario Not-for-Profit Corporations Act (ONCA)* - affects all PSOs and clubs in Ontario



Sport Canada's Governance Principles



November 2011

<http://www.sirc.ca/governance/principles.cfm>

Why is transition important?

- ✓ NPCA & ONCA complete overhaul and modernization of Canada's NFP regime
- ✓ Opportunity to update governance model
- ✓ Ontario Sailing affected by changes in Sail Canada's governance structures, but does not need to make exactly the same governance or bylaws changes
- ✓ Addressing governance issues helps move mission forward toward vision
- ✓ Ensure default by-laws don't conflict with the way your organization operates

ONCA Policy Objectives

- ✓ Greater alignment with business corporations law
- ✓ National consistency
- ✓ Improved transparency
- ✓ Improved efficiency and effectiveness
- ✓ Clarification on permitted commercial activity
- ✓ Improved governance and accountability

ONCA Features

1. More efficient incorporation process
2. Clearer rules for governing that increase accountability
3. Allows for commercial activities that support NFP purposes
4. Clarifies NFPs review engagement in place of an audit
5. Enhance member's rights and specifies recourse if directors and officers not acting in the best interests of the NFP
6. Provide members with greater access to financial records

[Ontario Ministry of Consumer Services website.](#)

Transition to ONCA: Considerations

1. Three-Year Work Plan
2. Articles of Incorporation (replaces Letters Patent)
3. Membership Rights
4. Directors
5. Public Benefit Corporation (PBC) or Non-PBC
6. Financial Disclosure and Review
7. Minimalist or Comprehensive By-laws

I. Three-year Work Plan

- ✓ ONCA approved in October 2010
- ✓ Regulations & technical amendments underway
- ✓ Expected to come into force early 2014
 - ➔ OCA Part III automatically repealed
 - ➔ Existing NFPs automatically continued
- ✓ Three-year transition period to conform to new rules
 - ➔ Review Letters Patent & by-laws
 - ➔ Determine relevance of Default rules
 - ➔ Obtain members' approval of by-law changes
- ✓ After transition period
 - ➔ Governing documents deemed amended to conform with Default rules

2. Articles of Incorporation

- ✓ More specific information than Letters Patent:
 - ➔ NFP's name (and number)
 - ➔ NFP's purpose/objectives
 - ➔ Address of NFP's registered office
 - ➔ Classes or groups of members and the voting rights of each class or group.
- ✓ May also include
 - ➔ Minimum/maximum number of directors
 - ➔ Restrictions on purpose (e.g. commercial activities)
 - ➔ Disposition of assets on dissolution
- ✓ If conflict, ONCA or its regulations, ONCA takes priority (i.e. Default rules)

3. Membership Rights

- ✓ Enhanced voting rights re “fundamental changes” & changes to members rights (even if non-voting members)
- ✓ Submit by-law amendment proposals & call members meeting if at least 10% of members request it as per by-laws
- ✓ Receive a proxy form and appoint proxy-holder to attend and act on the member’s behalf at a members’ meeting.
- ✓ Use other means of voting (e.g., mailed-in ballot, telephone, or electronic means), in addition to or in place of proxies
- ✓ Receive financial report not less than 21 days before annual meeting

4. Directors

- ✓ “Ex-officio” directors i.e. Past Presidents allowed if in by-laws
- ✓ Can appoint up to 1/3 of total directors elected
- ✓ Must “exercise care, diligence and skill of a reasonable prudent person in comparable circumstances” including financial oversight, accountability & risk management
- ✓ Minimum of 3 directors; Maximum term of 4 years
- ✓ Not required to be members
- ✓ May adopt unanimous written resolutions in lieu of meeting
- ✓ Can borrow money without members’ approval
- ✓ Members may remove directors by ordinary resolution

5. Public Benefit Corporation (PBC) or Non-PBC

- ✓ PBCs revenue more than \$10,000 in FY
 - ➔ Donations or gifts from persons who are *not* members, directors, officers, employees *nor* relative of members, directors, etc.
 - ➔ Government grants or contributions
- ✓ Non-PBCs revenue
 - ➔ More than \$10,000 from a person who is a member, director, officer, employee *or* relative of a member, director, etc.
 - ➔ \$10,000 or less
- ✓ Non-PBCs can distribute assets to members on dissolution
 - ➔ PBC must give them to another similar PBC or government



6. Financial Disclosure and Review

✓ Audit or review engagement according to type of NFP & level of gross revenue in prior FY

NFP	Revenue	Type of Financial Report
PBC	\$100,000 or less	Waive audit &/or Review Engagement
	\$100,000 > \$500,000	Review engagement / Waive audit
	\$500,000 or more	Audit mandatory
Non-PBC	More than \$500,000	Review engagement / Waive audit
	\$500,000 or less	Waive audit &/or Review Engagement

- ✓ Approval to waive at least 80% votes cast at a Special Meeting
- ✓ Financial report must be sent to members at least 21 days before Annual Members Meeting
- ✓ AMM must take place within 6 months after FYE and no later than 15 months after previous AMM

7. Minimalist or Lengthy By-laws

- ✓ Currently lengthy by-laws compensate for lack of detail in Act
- ✓ NPCA & ONCA provide more comprehensive set of rules
- ✓ NFPs can choose type
 - ➔ Long, comprehensive by-laws that includes provisions in Articles
 - ➔ Minimalist by-laws that include only requirements and any alternatives to default rules
 - ➔ Hybrid to highlight governance changes or special requirements
- ✓ Adopt new by-laws within 60 days or deemed default by-laws
- ✓ Model (Default) By-laws available on Ministry website
- ✓ Non-PBCs do not have to file by-laws with Ministry

Resources

Sport Law & Strategy Group

<http://www.sportlaw.ca/nfp-act/>

Ontario Ministry of Consumer Services

http://www.sse.gov.on.ca/mcs/en/Pages/Not_For_Profit.aspx

CICA Not-for-Profit Directors Series

<http://www.cica.ca/focus-on-practice-areas/governance-strategy-and-risk/not-for-profit-director-series/index.aspx>

The Ontario Non-Profit Network

<http://www.theonn.ca/what-we-do/constellations/onca/>

Transition to NFP Governance: Working together for the sport of sailing

