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# EXECUTIVE DIRECTOR'S MESSAGE

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## Strategic Plan Implementation: Focus on Governance Transitioning to the New Canada Not-for-Profit Corporations Act



The new Canada Not-for-Profit Corporations Act (CNCA) was assented to June 23, 2009 and came into force on October 17, 2011. The Canada Not-for-profit Corporations Regulations were, in addition, adopted on October 6, 2011 and also came into force on October 17, 2011.

The new Act and Regulations introduce a new legislative framework for the federal incorporation of not-for-profit corporations and provides for continuance within these corporations. It acts as a “comprehensive rule book” replacing much of the detail that was previously required in By-laws and gives associations latitude to accept the default requirements in the legislation or to set rules to fit its own circumstances and practice. Part II of the previous Canada Corporations Act, under which ORNAC was incorporated, dates back to 1917. Corporations Canada has been working on modernizing the Canadian legislation on not-for-profit corporations for the last 20 years. For ORNAC it was important to analyze the new Act due to its technical nature. The continuance process was identified in the ORNAC Strategic Plan as an ideal time for re-examining the letters patent (including objects) and By-laws to ensure that the existing provisions conform to the CNCA and to take advantage of many of the modern provisions contained in the CNCA.

Not-for-Profit Corporations, such as the Operating Room Nurses Association of Canada (ORNAC), currently existing under Part II of the Canada Corporations Act (CCA) were given a three year period from October 17, 2011 to apply for a continuance under the CNCA (the requirement for continuing as a non-profit corporation). If an existing Part II CCA corporation is not continued under the CNCA before October 18, 2014, Corporations Canada will, upon first giving notice in writing to the corporation and to each of its directors, dissolve that corporation. ORNAC developed a critical path to have the Articles of Continuance and the By-laws revised to conform to the CNCA and ready for approval by the Board of Directors and the ORNAC membership by April 20, 2013 (18 months in advance of the deadline). Initially it seemed like three years was a long period of time but, of course, it takes a great deal of time to draft the documents and go through lengthy review and legal consultation process for governance changes and the review of the CNCA in the context of existing objects, by-laws and governance structure. The ORNAC Board of Directors has made this matter a high priority.

As part of the continuance process ORNAC will, under the new Act, no longer have letters patent (the written

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## EXECUTIVE DIRECTORS MESSAGE (cont. from page #10)

order issued by a monarch that generally grants a right or status to a corporation) or objects (the purposes or intention of the association). The Articles of Continuance will now, instead, include a statement of ORNAC's purposes and any restrictions on ORNAC's activities.

The CNCA requires that ORNAC apply for a certificate of continuance under section 211 of the CNCA. The following information must be included in the Articles of Continuance:

1. the name of the corporation;
2. the province or territory of the corporation's registered office;
3. classes or groups of members the corporation is authorized to establish and, if there are two or more classes or groups, any voting rights attaching to each of those classes or groups;
4. the minimum and maximum number of directors or a fixed number of directors;
5. any restrictions on the activities that the corporation may carry on;
6. a statement of purpose of the corporation;
7. any statement regarding distribution of property remaining on liquidation after the discharge of any liabilities of the corporation; and
8. any additional provisions that the corporation may want included.

At the same time that ORNAC has been preparing the Articles of Continuance it has also been preparing new By-laws that conform to the CNCA. The CNCA contains some mandatory provisions that will be included in the By-laws. The CNCA also contains certain default provisions that will apply if a CNCA corporation does not address these provisions in its articles or By-laws. In summary, ORNAC's existing By-laws will have to be amended to, first, comply with the CNCA and, secondly, to take full advantage of the

beneficial provisions contained in the CNCA.

Good governance is the cornerstone of a strong and sustainable national organization. ORNAC members need to know that ORNAC has put in place the right rules to help chart a safe path and develop sustainable business patterns for the future. There will be more information available after the April 20, 2013 ORNAC Board of Directors meeting in Ottawa. If you have any questions on this new Act please don't hesitate to contact me. 🍁

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