



Bringing your governing documents in line with Ontario's Not-for-Profit Corporations Act:

A workbook for Agricultural Associations, Agricultural Societies, and Horticultural Societies

Ontario Nonprofit Network
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This workbook aims to help nonprofits incorporated under Ontario's Agricultural and Horticultural Organizations Act identify what they need to change in their bylaws and articles to not just comply with ONCA. To learn more visit: nonprofitlaw.cleo.on.ca. Unless otherwise indicated, all legislative references in this workbook are to ONCA.

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Introduction

Ontario's Not-for-Profit Corporations Act (ONCA) took effect on October 19, 2021.

Provincially-incorporated nonprofits, not including co-ops, have until October 18, 2024, to ensure their governing documents, including their letters patent¹ and bylaws, comply with ONCA. If a nonprofit has not updated its governing documents by then, on October 19, 2024, its bylaws will automatically be considered changed to make them comply with ONCA.

This workbook will help nonprofits incorporated under Ontario's Agricultural and Horticultural Organizations Act (AHOA) identify what they may need to change in their bylaws and articles to comply with ONCA or to take full advantage of it. In situations where the AHOA and ONCA conflict, nonprofits must follow the AHOA as they have in the past. Consequently, this Workbook only explores the rules where ONCA has made a change to Ontario's Corporations Act and there is no conflict with the AHOA.

If you are looking for more information to help you create brand-new bylaws visit nonprofit.cleo.on.ca.

How to use this workbook

1. **Find your current bylaws.** You are looking for the document that contains the rules for your governance, for example, who is on the board of directors and when annual general meetings happen. You may also have a constitution. Some but not all agricultural or horticultural organizations use the word "constitution" for the document that contains the rules the AHOA says should be in your articles. To check if your organization is using the word "constitution" in this way, see if it contains rules that deal with the issues listed in [section 6](#) of the AHOA. If a nonprofit wishes to keep its articles in its constitution, then the nonprofit would pass changes to the articles described in this workbook as changes to the constitution.
2. **Answer the questions in the first column.** Each section of this workbook contains a table. In the first column, there is a question asking what your bylaws say about certain topics. In the second column, you put in your answer. You can do this either by copying and pasting the relevant section of your bylaws or by writing a summary. If your bylaws say nothing, write that.

¹ Under Ontario's Corporation Act The main governing document was called Letters Patent and it was changed by filing a Supplementary Letters Patent. Under ONCA, that main governing document is called Articles of Incorporation and it is now changed by filing Articles of Amendment. Throughout this workbook, we use the term 'articles' when discussing the changes that nonprofits will need to make to this governing document.

3. **Compare what your bylaws say to what ONCA says in the third column.** To learn more about the rules described in the third column, go to the section of ONCA cited. You can add notes as you learn more in this column to help your analysis. There are 2 types of rules in the ONCA:
 - a. **“Mandatory rules”** are rules that apply no matter what you say in your governing documents.
 - b. **“Default rules”** are rules that apply if you say nothing in your governing documents. You can change a default rule by including a different rule in your governing document.
4. **Decide what needs to change or what you might want to change.** By comparing your bylaws’ current rule to what ONCA allows, you learn which rules need to change and which rules offer new opportunities that your nonprofit may want to consider.

If your bylaws say nothing about a topic, then the default ONCA rule may apply or the default AHOA rule in a case where there is a conflict between the ONCA and the AHOA. Consider if the default rule is suitable for your nonprofit. If it is, you do not have to include it in your bylaws. If it is not suitable, you may want to include a different rule.

You do not have to include AHOA’s or ONCA’s default or mandatory rules in your bylaws. But it may be helpful to include them as you then have all your rules in one place.

This guide contains examples of what you may need or want to change in the form of questions to take back to your nonprofit. You can add to these examples or remove the ones that do not apply to you.

5. **Discuss your findings within your nonprofit.** You can share the completed workbook with others responsible for reviewing the bylaws in your nonprofit, for example, your board’s governance committee. You may wish to ask them 3 things:
 - a. Have you understood the nonprofit’s current bylaws correctly?
 - b. Do they agree with you on what needs to change?
 - c. What are their views on the bylaws or articles that you think your nonprofit may want to change?
6. **Draft bylaws that incorporate the changes that your nonprofit agreed to.** You may use text from the sample bylaws which the Ontario Association of Agricultural Societies has prepared.²
7. **Consider getting a lawyer to review your articles and bylaws.** It is not legally necessary, but it can be helpful to have a lawyer experienced in nonprofit law review your new bylaws. The lawyer can help ensure that the bylaws comply with both AHOA and ONCA

² Disclaimer: We have not drafted or legally reviewed these bylaws. Please seek legal counsel as appropriate to ensure that these sample bylaws are right for your situation.



and that the language you used means what you want it to say. Remember, while lawyers are experts in the law, you are the expert in what rules are realistic for your nonprofit and its culture.

8. **Follow the process outlined in your bylaws to change your bylaws.** If your articles or bylaws do not say how to change your bylaws, then you have to follow ONCA's approval process. This process is explained below, but it does not apply in every case, so think about getting legal advice on how to approve your new bylaws.

ONCA's process to approve new bylaws:

- a. **The board votes on the changes.** If the vote passes, the changes take effect right away and remain in effect until the next members' meeting. This means that you can start following the rules in the revised bylaw as soon as the board has approved the changes.

The board has 2 ways to vote on the changes:

- i. **At a board meeting.** You can call for a board meeting to discuss and vote on the changed bylaws. At a board meeting, a majority of the directors present have to vote in favour of the bylaw amendment for it to pass.

- ii. **By written resolution.** A written resolution is putting the decision of the board in writing and having all those who vote in favour of it sign the decision. For a written resolution to be valid, all directors who have the right to vote at a board meeting must sign the resolution. This means that **every** director must approve the changes to the bylaw by written resolution. Unless you have only a few directors, it is not easy to get every director to sign a written resolution.

- b. **The members vote to confirm the changes to the bylaw.** After the directors approve the changes to the bylaw, the nonprofit's members must approve and confirm it. Unless your articles or bylaws say something else, a bylaw approved by the board is effective as of the date it is approved. But it is only valid until the next members' meeting. If the revised bylaw is not confirmed by the members at that meeting, then revised bylaw is no longer in effect. Changes to articles are not effective until they have been approved by the members and filed with the Government.

Members can confirm the revised bylaw in the same 2 ways as the board:

- i. **At a members' meeting.** To call a valid members' meeting, the board must first send out notice of the meeting. Follow your bylaws if they say how much of notice your members need to get of the meeting. If your bylaws say nothing, then you must follow the rules in AHOA and ONCA which say notice for annual members' meetings must be sent 14 to 50 days in advance of the meeting and notice for special members' meetings must be sent 10 to 50 days in advance. The notice must include enough information about the matter to be discussed so that the members can

make an informed decision. The easiest way to do this is to include a copy of the revised bylaw that the board approved, with the notice of the meeting. The notice must be sent to every member, director, and auditor if there is one. If your bylaws do not say how the notice has to be sent, then ONCA says it may be sent in person, by mail, and electronically, among other methods. Only posting the notice to social media is not enough. The members vote on the bylaw changes at the meeting. Unless your letters patent or bylaws say otherwise, most changes to the bylaws require a simple majority. This means 50% +1 of the votes cast at the members' meeting must be in favour of the changes for it to pass.

- ii. **By written resolution.** For a written resolution to be valid, all members with the right to vote on the revised bylaw at a meeting of members must sign the resolution to approve the change. Unless your nonprofit has only a few members, it is usually not practical to get every member to sign a resolution. It is easier to call a members' meeting of members for them to vote and confirm the revised bylaw.

- 9. **Determine whether you need to file your bylaws with the government.** Under ONCA, nonprofits do **not** have to file their bylaws with the Government of Ontario. However, if your nonprofit is a registered charity, you have to [file any changes to governing documents](#) with the Canada Revenue Agency (CRA).

DISCLAIMER: The following workbook contains general legal information, not specific legal advice for your situation.

Definitions

Question	What it says in our bylaws	The rule under ONCA	What might need to change. What we might want to change.
Do you have definitions in your bylaws? If yes, are those definitions based on how those terms are defined in Ontario's Corporations Act?		<p>Various sections of ONCA define terms, including some new terms. These terms now apply to articles and bylaws unless they say otherwise (see <i>Interpretation Act</i> s.6)</p> <p>In bylaws, terms are often defined and often (but not always) reference to a particular Act is made. Bylaws which define terms according to another Act may create inconsistencies and confusion. (s.1; s. 63; s. 119; s. 120; s. 121; s. 170(6); s. 171(6) and (7); s. 195)</p>	<p>Need: Nonprofits may need to remove reference to definitions of terms that come from outdated laws, such as Ontario's Corporations Act, and make sure their definitions are consistent with the defined terms in ONCA.</p> <p>Want: Do we want to update our definitions section to explicitly reference ONCA or define terms we want to have a different meaning from the ONCA?</p>

Membership

Qualifications and conditions of membership

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change.
Do you allow corporations or other entities to be members of your nonprofit?		ONCA allows corporations and other entities besides individuals to be members of a nonprofit, but only if the nonprofit's bylaws say so. (ONCA s.48(1)) Horticultural Societies can have corporations whose purpose is the promotion of horticulture as voting members unless the bylaws say otherwise (AHOA s.38(2)).	Need: Want: Do we want to allow corporations or other entities to be members?
Do you allow ex officio members? These are individuals who are members based on the office or position they hold. For example, a nonprofit may say that all their directors are automatically members of the organization.		ONCA allows ex officio members, but only if the bylaws clearly say this. (s.48(2))	Need: Want: Do we want to allow ex officio members?
What are the conditions to become a member of		ONCA says that the conditions to become a member must be	Need: If the conditions to become a member are not

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change.
your nonprofit?		included in the bylaws. (s.49) The AHOA says that the Minister may create minimum requirements for membership in an Agricultural Association (AHOA s.24), but has not. Agricultural and horticultural society membership must be open to all persons upon paying a fee (s.32, 38). Under the AHOA, There are also minimum member requirements to be eligible for grants (Reg. General).	already in their bylaws, nonprofits need to add them. Want:
Are members required to pay a fee?		Your articles or bylaws may have a rule about membership fees. If neither your articles nor bylaws say anything about membership fees, then ONCA says your directors can set annual fees and decide how they should be paid. (ONCA s.86) Agricultural and horticultural societies are required to have membership open to anyone upon paying a fee and the bylaws must say something about what this fee is (s.32, 38).	Need: Want: Do we want to restrict the board's powers to set membership fees, or include a process to set them? For example, by saying the board must notify all members of any change to membership fees.

Ending membership

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change.
How does membership end?		<p>Your bylaws may say how a membership ends.</p> <p>If you do not give any details in your bylaws, ONCA's default rule says that a membership ends when the:</p> <ul style="list-style-type: none"> • member dies, • member resigns, • member is expelled, • term of membership ends, or • corporation closes down. <p>(s.50(1))</p>	<p>Need:</p> <p>Want: Do we want to include the default rule in our bylaws? Do we want to add other situations in which membership ends?</p>
What happens to the rights of a member if their membership is terminated?		<p>Your articles or bylaws may say what happens to the rights of a member if their membership is terminated. If nothing is said, the default rule is that they no longer have rights. (s.50(2))</p>	<p>Need:</p> <p>Want: Do we want to include the default rule in our bylaws? Do we want to add details about what happens to a member's rights if their membership is terminated? For example, they no longer have to access a building or must give back a key.</p>

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change.
Can a membership be transferred?		ONCA's default rule says that a membership may only be transferred back to your organization. Your articles or bylaws can say something else. (s.48(8))	Need: Want: Do we want to include the default rule in our bylaws? Do we want to make membership transferable to others?

Disciplining and terminating members

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change.
Does anyone have the power to discipline or terminate members?		Your bylaws or articles may give the board, the members, or a committee of the board, or a committee of the members, or a committee of both directors and members the right to terminate or discipline a member. Otherwise, nobody has this right to discipline or remove members. (s.51(1))	Need: Want: Do we want to be able to discipline or expel members?
In what situations, if any, may a member be disciplined or terminated?		If either your bylaws or articles give the board, members, or a committee of board and/or members this power, then you	Need: Want: In what situations do we want to be able to discipline or expel members? For example,

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change.
		must say when this power can be used. (s.51(1))	violating a code of conduct.
How much notice must a member be given before disciplinary action may be taken against them?		A member must be given at least 15 days' notice before a disciplinary action or termination is taken. (s.51(3)(a))	Need: Want: Do we want to include the mandatory minimum notice period in the bylaws? Do we want to have a longer notice period?
Does the member have a right to know the reasons for the proposed discipline or termination? This means the member has a right to receive an explanation in writing.		Members have a right to receive the reasons for their proposed discipline or termination. (s.51(3)(a))	Need: Want: Do we want to include this mandatory rule? Do we want to provide more detail about how a member receives the reasons? For example, in writing by mail or email.
Does the member facing discipline or termination get a chance to defend themselves?		Members facing discipline or termination have a right to explain themselves at least 5 days before the proposed discipline or termination orally, in writing, or in another format allowed by the articles or bylaws. (s.51(3)(b))	Need: Want: Do we want to include this mandatory minimum rule in our bylaws? Do we want to specify additional ways that a member facing discipline or termination may explain themselves?

Members' meetings

Members rights before the meeting

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change.
What percentage of voting members is needed to force the board to call a members' meeting?		Members have the right to demand a meeting if at least 10% of members vote to send a request with reasons to each director and to the nonprofit's registered office. Your bylaws may have a percentage lower than 10%, but they cannot have a higher percentage. (s.60)	Need: Want: Do we want to include the default rule in our bylaws? Do we want to give less than 10% of voting members the right to demand that a members' meeting be called? If yes, what percentage should it be?
How much in advance of a members' meeting are nonprofits required to send a notice of the meeting to members?		Nonprofits must give notice of an annual members' meeting no later than 14 days and no earlier than 50 days before each meeting. (ONCA s.55, AHOA s.10(3)). For special members' meetings, nonprofits must give notice no later than 10 days and no earlier than 50 days before each meeting (ONCA s.55).	Need: Want: Do we want to include this mandatory range in our bylaws? Do we want to set a number or range of days for notice between 10 and 50 days?
What details must be included in the notice?		If the meeting is held entirely electronically or by phone, the	Need: If we allow electronic, telephonic, or remote



Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change.
		notice does not need to specify a place. (s.55(1.1)) If the meeting is telephonic, electronic, or hybrid, the notice must explain how the member may attend and participate in the meeting. For example, the notice may include a Zoom link. (s.55(1.2))	meetings, do we specify a format for meeting notices that does not include all required details? Want: Do we want to include a template meeting notice in our bylaws that includes required details for electronic, telephonic, or hybrid meetings?
What are the rules about members submitting proposals to be discussed at meetings?		<p>Voting members have the right to submit a proposal to be discussed at a members' meetings, and the board must include it in the notice of meeting unless:</p> <ul style="list-style-type: none">• it is sent to them less than 60 days before the meeting,• it does not significantly relate to the business of the nonprofit,• it appears the member is abusing their right to submit a proposal for publicity, or• for any other exceptional situation listed in the ONCA.	Need: Want: Do we want to include these mandatory rules in our bylaws? Do we want to loosen the rules to make it easier for members to make proposals?

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change.
		If the board has to include the proposal in the notice, the member also has a right to include a statement up to 500 words at their own expense unless the members vote to cover the cost. (s.56))	

Voting

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change.
How many votes does each type of member get?		Each member has the right to one vote on each resolution put before them. (ONCA s.48(6)) No person under 18 may vote at an agricultural or horticultural society's membership meeting (AHOA s.32, 38).	Need: Nonprofits may need to move the voting rights of different membership classes from the bylaws to the articles. Want: Do we want to consider the voting rights of different membership classes again?
How must members vote at meetings?		Unless your bylaws say something else, members can vote by a show of hands unless a member demands a ballot. A member may demand	Need: Want: Do we want to include the default voting rule in the bylaws? Do we want to specify

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change.
		a ballot either before or after any vote. If your articles or bylaws allow for proxy voting, proxyholders may also demand a ballot before or after any vote. (s.58)	in greater detail the voting process?

Proxy and remote voting

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change
Do your members have the right to appoint someone to attend members' meetings to vote on their behalf? This is called proxy voting.		By default, members do not have this right. If you want members to have this right ONCA says that you must clearly say so in the articles or bylaws. (s.64(1.1))	Need: Want: Do we want to provide members with proxy voting rights?
Who can a member ask to vote on their behalf? This is called a proxyholder.		By default, a proxyholder does not need to be a member, but your bylaws could require it.	Need: Want: Do we require that proxyholders be members of the nonprofit?
Do your bylaws say whether you must give members a proxy form?		If your articles or bylaws allow members to vote by proxy, you must make and send a proxy	Need:

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change
		form to all members who receive notice. The form can be sent either when or before you give notice.	Want: If we allow proxy voting, do we want to include the default rule that a proxy form must be sent out in our bylaws? Do we want to specify the time by which it must be sent out?
What information must we ask for on the proxy form?		The proxy form must comply with ONCA regulations. (s. 3 of O. Reg. 395/21)	Need: Nonprofits will need to develop a proxy form if members have the right to proxy voting. Want: Do we want the bylaws to specify what information the proxy form has to collect?
Do your members have a right to vote remotely?		Members can vote by mail, electronically, by phone, or in person, unless your articles or bylaws say otherwise. (ss.58(3), 66(4), 67(1))	Need: Want: Do we want to limit members' right to vote by mail, telephone, or electronically? Do we want to include details on how they can do so?
Do you include the rules that apply to proxy voting?		Part VI of ONCA describes all of the rules about proxies. Your bylaws do not need to include those rules, but if you do, your rules cannot contradict what ONCA says.	Need: Want: Do we want to include the mandatory rules of proxy voting in the bylaws?

Place of members' meetings

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change.
Where must you hold your members' meetings?		<p>If your meetings are held in person, they must be held in Ontario and at the place specified in the bylaws. But they can be somewhere else if your articles say so, or if all your voting members agree on another place.</p> <p>If your bylaws do not give a specific location for members' meetings, then your directors may decide on the location. (s.53)</p>	<p>Need:</p> <p>Want: Do we want to specify where members' meetings must be held, or specify that the board decides on the location of members' meetings?</p>
Can members' meetings be held partly or completely by telephone or electronically?		<p>Unless your bylaws say something else, anyone who has the right to attend a members' meeting can take part in it over the telephone or by electronic means. Your bylaws may say that members' meetings may be held entirely by telephonic or electronic means. (s.53(4)-(5)) An electronic or telephone meeting is considered to be at your nonprofit's official address. (s.55(8))</p>	<p>Need:</p> <p>Want: Do we want to say that members cannot take part in members meetings by telephone or electronic means? Do we want to say that meetings held exclusively by telephone or electronic means are allowed?</p>

Quorum

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change
What is the minimum number of voting members required to be present for official votes to be taken at a members' meeting? This is called a quorum.		Unless your bylaws say something else, the quorum for a members' meeting is a majority of the voting members, whether present in person or by proxy. Members participating by telephone, or electronic means are considered to be in person. (s.55(7)) Your bylaws may set a higher or lower percentage as the quorum. (s.57(1))	Need: Want: Do we want to lower the quorum to make it easier to pass resolutions or increase it to increase accountability?
If you lose quorum part way through the meeting, can official votes still be taken?		Unless your bylaws say something else, a members' meeting may continue if you have quorum at the start of a meeting, even you don't have quorum throughout the meeting. If there is no quorum at the start of a members' meeting, then the present members may adjourn the meeting to a fixed time and place, but they cannot decide on any other business. (s.57(2))	Need: Want: Do we want to say that a quorum be present through a members' meeting when voting on a resolution?

Adjournment

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change.
What are the rules about adjourning a members' meeting?		<p>Unless your bylaws say something else, if a meeting was adjourned, you do not need to give your members notice of the meeting if it continues within 30 days and you informed attendees of the time, date, and location of the follow up meeting. If your follow up meeting will be partly or entirely electronic or by phone, then you must provide instructions about how to attend and participate. (s.55(5)) But if the follow up meeting continues after 30 days, then you must give notice. You must also give notice for a continuing meeting if a members' meeting is adjourned several times for a total of 30 days or more. (s.55(5)-(6))</p>	<p>Need:</p> <p>Want: Do we want to include rules on how and when members meetings can be adjourned?</p>

Board of directors

Qualifications of directors

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change
Do directors need to be members?		Unless your bylaws say something else, directors do not have to be members of your nonprofit. (s.23)	Need: Want: Do we want to say directors have to be members?
Do directors need to sign a written consent?		ONCA says that directors must sign a form agreeing to be a director on or before the date they become directors. You can see a sample here .	Need: Nonprofits will need to have a consent form for their first set of directors to sign. Want:
Can employees be directors?		ONCA and AHOA both allow employees to be directors (AHOA s.13(2)). However, if a nonprofit is a public benefit corporation , then no more than one-third of its directors may be employees. The situations in which a director of a charity can be paid for their work in other capacities with the charity is limited. Visit the Public Guardian and Trustee Payments to Directors & Connected Persons to learn	Need: Want: Do we want to say employees cannot be directors? Do we want to say that no more than one-third of directors be employees?

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change
		more about when directors of charities can be paid.	

Director term limits

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change
How long can directors serve for?		<p>The maximum term length is 4 years. Your bylaws must state the term 4 years or less. And it must state whether each director has a term of different lengths. If a director is not elected for a stated term, then their term will end at the following annual meeting. This means they get a one-year term). (s.24)</p> <p>Unless the bylaws say otherwise, there is no limit on the number of times a director can be re-elected.</p>	<p>Need: Some nonprofits will need to reduce their directors' term lengths from 5 years to 4 years or less.</p> <p>Want: Do we want to change our directors' term length?</p>

Removing and replacing directors

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change
What percentage of voting members at a members' meeting is required to remove a director?		<p>Members may remove directors by a majority vote at a special meeting called for that purpose, except directors who are directors by virtue of their office, such as ex-officio directors.</p> <p>A director elected by a class of members that has an exclusive right to elect the director may be removed only by a majority vote of that class. (s.27)</p>	<p>Need: Ontario's Corporations Act had different rules to remove directors. Nonprofits will need to make sure that their current bylaws comply with ONCA's rules by removing any inconsistent sections.</p> <p>Want: Do we want to include this mandatory rule in our bylaws?</p>
Do directors facing removal have a right to make a statement opposing their removal?		<p>Unless your bylaws say something else, directors have the right to give reasons for why they should not be removed. (s.27)</p>	<p>Need:</p> <p>Want: Do we want to say directors cannot give reasons for why they should not be removed?</p>
When a director has left, does the board have the power to replace them?		<p>By default, the board has the power to replace a director who has left. This is called filling a vacancy. But the board can only do that as long as it has quorum despite the vacancy. ONCA also allows</p>	<p>Need:</p> <p>Want: Do we want to restrict the board's power to fill empty board seats?</p>

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change
		your bylaws to say that only members can fill vacancies. (s.28)	

Paying directors

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change.
Can directors be paid for their services as directors?		<p>AHOA does not allow directors or members to be paid for work they do as directors, officers, or members. However, it does allow the treasurer, secretary, or secretary-treasurer to be paid for work they do as an officer (s.13(1)).</p> <p>If you are a registered charity, then your directors should not be paid, directly or indirectly, because they are a director. But they can be reimbursed for reasonable expenses.</p>	<p>Need:</p> <p>Want: Do we want to ban directors from being paid for their work as directors?</p>
Can directors be paid for the work they do for the nonprofit		ONCA and AHOA allows your directors to decide whether	Need:

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change.
in capacities other than as directors?		<p>directors should be paid for their services in other capacities (AHOA s.13(2)). But your bylaws can set limits to this. For example, members have to approve the plan (ONCA s.47). You also have to consider ONCA's conflict of interest rules. (ONCA s. 41)</p> <p>The situations in which a director of a charity can be paid for their work in other capacities is limited. Visit the Public Guardian and Trustee Payments to Directors & Connected Persons to learn more about when directors of charities can be paid.</p>	<p>Want: Do we want to allow directors to be paid for their services or products in a capacity other than as director?</p>

Board committees

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change.
Who can be a member of a board committee?		Under ONCA, the board can delegate its powers to a committee made up of directors only. Any committee that has one or more members that are not directors can either exercise powers that could be delegated to non-board members (e.g. the types of powers that might be given to an employee or volunteer) act only in an advisory capacity to the board. (s.36(1))	Need: Want: Do we want to allow non-directors to sit on any board committees?
Are there any powers the board cannot delegate to a committee?		There are 7 powers that the board cannot delegate. The most common ones are the power to: (s.36(2)) <ul style="list-style-type: none"> 1. submit questions to members for their approval 2. appoint a director 3. appoint auditor, or financial reviewer 4. issue bonds and other debt obligations 	Need: Want: Do we want to include this mandatory rule in our bylaws? Do we want to restrict other powers the board can give a committee?

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change.
		5. approve financial statements 6. change bylaws 7. create or change member dues	
If we have an audit committee, who can be a member?		If you have an audit committee, then the majority of the committee must not be officers or employees of your nonprofit or any of your nonprofit's affiliates. The committee must have at least one director. (s.80)	Need: Want: Do we want to have an audit committee? If so, do we want to include this mandatory rule in our bylaws?

Board meetings

Time and place of meetings

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change.
Where do board meetings have to happen?		Unless your articles or bylaws say something else, the directors may meet at any place said in the bylaws or	Need: Want: Do we want to allow board meetings outside of

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change.
		may take place partly or entirely by phone or electronically. Your bylaws or articles can say things like “the meeting can take place anywhere within Ontario that the board determines.” or “board meetings may only happen electronically if...”. If you want to allow board meeting to take place outside of Ontario, you must include this in your articles. (s.34(1))	Ontario? Do we want to specify where meetings will take place, or do we want to leave it up to the board? Do we need to say that board meetings can take place outside of Ontario?

Officers

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change.
What officers are you required to appoint?		Your board must appoint a director to be the board chair. You do not have to appoint a president or secretary anymore, unless your articles or bylaws say you must. (ONCA s.42)	Need: Some nonprofits will need to create a chair position and appoint a director to that position. Want: Do we want to remove the positions of president or

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change.
		You must appoint a treasurer or secretary-treasurer (AHOA s.11(3)).	secretary now that they are not required?
Do officers need to be directors?		Besides the chair, officers do not need to be directors unless your articles or bylaws say they must be. (s.42)	Need: Want: Do we want our officers to be directors?
Can an individual hold more than one position?		An individual may hold 2 or more offices. (s42)	Need: Want: Do we want to allow an individual to hold more than one office?

Directors and officers

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change
If the directors or officers of your nonprofit are held legally liable for their work on behalf of your nonprofit, will it pay the debt on behalf of the directors or officers? This is called indemnification. It is different from having		ONCA allows nonprofits to indemnify directors and officers if they act honestly and in good faith in the best interests of the nonprofit and believe that their actions are lawful. (s.46)	Need: Charities may wish to check that their indemnification rules comply with the Charities Accounting Act. Want: Do we want to indemnify directors?

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change
insurance. Indemnification is when the nonprofit agrees to pay in the event of liability. Insurance is when the nonprofit pays premiums to a company which agrees to pay in the event of liability.		<p>ONCA also allows non-charitable organizations to buy insurance for this purpose.</p> <p>Charities can buy insurance for this purpose only if they comply with the Charities Accounting Act or if they get a court order that allows them to do so. (s. 46(6)-(7)).</p> <p>Your bylaws may say what your nonprofit's rules on indemnification and insurance are, but they do not have to.</p>	
Do your bylaws define what a conflict of interest is?		<p>ONCA has similar rules on how to deal with a conflict of interest as Ontario's Corporations Act. But there are slight differences in how a conflict is defined. Bylaws do not have to include these rules, but they cannot contradict them. To learn more see section 41 of ONCA.</p>	<p>Need: If your bylaws include rules on conflicts of interest, make sure they are not more lenient than what ONCA says.</p> <p>Want: Are our conflict of interest rules broader than they need to be? If so, do we want to keep them anyway? If we have no conflict of interest rules, do we want to include the mandatory rule in our bylaws?</p>

Finances

Audits

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change
Do your bylaws require you to get an audit?		Changes were recently passed to the AHOA which no longer require organizations to get an audit, however these changes have not yet taken effect (s.11(5)). Organizations are now required to present a financial report to members whose details will be specified by regulations.	Need: Want: Do we want to make our audit rules more flexible to reflect AHOA's new rule?
If the auditor resigns or is removed, do they have a right to make a statement?		Unless your bylaws say something else, auditors are allowed to give your nonprofit their reasons for resigning or why they should not be removed. (s.75(4))	Need: Want: Do we want to allow auditors to give reasons if they resign? Do we want to include the default rule in our bylaws?

Borrowing money

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change
Does your board have the power to borrow money on behalf of the nonprofit?		Unless your bylaws say something else, your directors may borrow money, issue or sell bonds, give a guarantee, and mortgage property on behalf of your nonprofit without getting approval from your members. (s.85)	<p>Need: Ontario's Corporations Act allowed directors to borrow on behalf of the nonprofit only if its bylaws included such borrowing powers. Many nonprofits have what is called a borrowing bylaw, which is a separate, standalone bylaw. Check if your nonprofit has borrowing powers in your current bylaws or if it has a separate borrowing bylaw. If you do, make sure that they comply with the new rules in ONCA.</p> <p>Want: Do you want to give the board the power to borrow? Do we want to include this rule in our bylaws?</p>
Does your board have the power to give a director, committee of directors, or an officer the power to borrow?		Unless your articles or bylaws say they cannot, your directors may allow a director, a committee of directors, or an officer to borrow money. (s.85)	<p>Need:</p> <p>Want: Do we want to allow the board to give others the power to borrow money? Do we want to state the default rule in our bylaws?</p>

Books and records

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change
What records must nonprofits keep?		<p>Nonprofits must keep the following records at their office for any member to review:</p> <ul style="list-style-type: none"> a. Articles, bylaws, and amendments b. Minutes from board meetings, board committee meetings, member meetings, and member committee meetings c. A list of directors, officers, and members going back 6 years including their names, start date, end date, addresses, and email addresses if they agree to receive documents electronically. The bylaws can ask the nonprofit to keep other information. d. Suitable accounting records e. A list of land interest ownership in Ontario. <p>(s.92)</p>	<p>Need:</p> <p>Want: Do we want to include the mandatory rule in our bylaws?</p>

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change
Where must nonprofits keep their records?		<p>ONCA says the records listed in the row above, must be kept at the nonprofit's official address. But the board can agree on another location in Ontario, or even outside of Ontario in the case of the board, board committee minutes, and accounting records.</p> <p>ONCA allows nonprofits to keep their records in digital format and on the cloud. For example, in documents or spreadsheets on Google Drive or Dropbox as long as they are accessible at the address included in the bylaws.</p>	<p>Need:</p> <p>Want: Do we want to include another address besides our headquarters for our records?</p>
Who can look at these records?		<p>Members, their representatives, and creditors have a right to look at all the records a nonprofit must keep, except for board and board committee meeting minutes and accounting records. (s.95(1))</p> <p>Only the following individuals have a right to look at all records:</p>	<p>Need:</p> <p>Want: Do we want to expand the list of people who have a right to look at some or all of these records? Do we want to include the default rule in our bylaws?</p>

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change
		<ul style="list-style-type: none"> • directors • auditors or financial reviewers, and • court-appointed investigators. <p>OMAFRA may also appoint an inspector to review books and records to verify the use of grants (AHOA s.17(3)). Nonprofits may choose to give individuals access to records they have a right to see by giving them access at the nonprofit's official address or giving digital access to the records. (s.94-95)</p>	
Do members have a right to get a list of all members?		<p>Members or their representative may ask for the list of members. But they must sign a declaration that says they will use the information only to:</p> <ul style="list-style-type: none"> • influence how members vote, • request a meeting of the members, or • use it in another matter relating to the business of the nonprofit. 	<p>Need: Nonprofits will need a declaration form in case a member asks for a membership list.</p> <p>Want: Do we want to include the process members must go through to get a list of members?</p>

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change
		<p>They cannot use the list for anything else. If the nonprofit has safety or other concerns, then they can ask the court to deny a member's request to get a membership list.</p> <p>Nonprofits may choose to give individuals access to records they have a right to see by giving them access at the nonprofit's official address or giving digital access to the records. (s.96)</p>	

General

Dissolution

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change
What will happen to your property after you pay your creditors and dissolve your nonprofit? "Property" has a wide meaning. It includes money, equipment, real estate,		If you are a public benefit organization (PBO), then ONCA's rules decide how your nonprofit's property is handled if you dissolve. Your bylaws do not need to include those	<p>Need: Nonprofits that are not PBOs: Do we need to move the rule about dissolving our nonprofit from our bylaws to our articles?</p> <p>Nonprofits that are PBOs: do</p>

intellectual property, and more.		rules, and they cannot say something else. If you are not a public benefit organization, then your bylaws may say how your nonprofit's property is handled when you dissolve. (s.167)	our rules about dissolving comply with the rules for public benefit corporations? Want: Do we want to say how our property will be dealt with in case we dissolve after creditors have been paid?
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Changing your bylaws

Question	What it says in our bylaws	The new rule under ONCA	What might need to change. What we might want to change
Do your directors have the power to change your bylaws?		<p>Unless your bylaws say something else, your directors can add, change, or remove most bylaws. The only bylaws they cannot change are bylaws about:</p> <ul style="list-style-type: none"> • membership transfers, • the transfer of property if you dissolve, and • methods of voting remotely by members. <p>The changes directors make to bylaws will be effective immediately, but they must be confirmed by your members at the next members' meeting. (s.17)</p>	<p>Need:</p> <p>Want: Do we want to restrict the ability of the board to make changes to the bylaws? Do we want to state the default and required rules in our bylaws?</p>

Nonprofit Law Ontario is a project of the Ontario Nonprofit Network (ONN) to meet the legal needs of small and medium-sized nonprofits and charities in Ontario as they transition to ONCA.
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