

How to adjust existing bylaws

Get Ready for the

* Ontario's Not-for-Profit Corporations Act

ONCA



Summary

This tool shows topics that are commonly included in bylaws that comply with Ontario's *Corporations Act (CA)* and compares them to the new bylaw requirements under Ontario's *Not-for-Profit Corporations Act, 2010 (ONCA)*.

How to use this tool

1. Before you start, read other resources from this project to learn what has changed under the ONCA and areas to watch.
2. Keep your current bylaws handy while you read through this tool.
3. Determine what, if anything, your bylaws say about each topic in the left hand column.
4. Compare what your bylaws say to what the ONCA will allow. This is described in the right hand column.
5. To learn more, go to the section of the **ONCA legislation** or **Corporations Act** that is indicated in each section.
6. Decide which areas of your bylaw need to be changed to comply with the ONCA. The resource **Sample bylaw with options** may help.
7. Write new bylaws that comply with the requirements of the ONCA.
8. Follow the process outlined in your bylaws to change (amend) your bylaws.

Note: If your current bylaws don't contain a section that explains how to change (amend) the bylaws, you may need legal advice.

In all cases, you may need to get legal advice or have your final bylaws reviewed by a lawyer to ensure they comply with the ONCA.

1. Objects or purpose

Your organization's purpose(s) must be stated in your letters patent but do not need to be stated in your bylaws.

See Section 18(1).

To restrict your organization's powers, you must set out the restriction in your letters patent.

See Section 126.

Your organization's purpose must be stated in your articles but does not need to be stated in your bylaws.

If you want to restrict your organization's activities and/or powers, you must set out the restrictions in your articles.

In the ONCA, letters patent are called "articles".

2. Membership

a) Admission

Your letters patent or bylaws may allow for the admission of members by virtue of their office (that is, ex-officio members). If this language is not set out in your letters patent or bylaws, ex-officio members are not permitted.

Your letters patent or bylaws may also limit the number of members. If there is no language limiting the number, then there is no limit.

The OCA states that a person or unincorporated association may be admitted to membership by resolution of the board. Your bylaws can set out further details. For example, a potential member must submit a form and processing fee to the membership committee. The letters patent or bylaws can also state that the board's resolution is not effective until it has been confirmed by the members. If this provision is not in your letters patent or bylaws, then only the Board resolution is needed to admit a member.

See Section 124.

Your bylaws must state whether – in addition to individuals – corporations or other legal entities may become members.

If you wish to have ex-officio members, your bylaws must state that such types of members are permitted.

Your bylaws must also state the conditions required for membership (for example, board approval or adherence to the organization's mission, vision, and values).

See Sections 48(1) and (2) and 49.

b) Membership types/classes

If your letters patent or bylaws list different types/classes of members (for example, individual, associate, organizational, staff), then they must set out the names of the classes and the terms and conditions for each class (for example, qualifications, voting rights).

See Section 120.

If you have different types/classes of members, then the names of the classes and the voting rights of each class must be described in your articles.

In addition, your bylaws must state:

1. the conditions for membership in each class
2. how to withdraw from a class or transfer to another class
3. how membership in a class ends

See Section 48(3).

c) Expiry, resignation, and termination of membership

Your bylaws may state how memberships expire and how members resign.

They may also state that the board can terminate memberships and might specify how the board would do that.

See Section 129.

Your bylaws may state how a membership ends. If you don't give any details in your bylaws, the default rule under the ONCA is that a membership is terminated when the members dies or resigns, is expelled, the term of membership expired, or the corporation is liquidated or dissolved.

See Section 50(1).

Your articles or bylaws may state what happens to the rights of a member if their membership is terminated. If nothing is stated, the default rule is that they no longer have rights.

Your bylaws or articles may give the board the right to terminate and/or discipline a member. Otherwise, the board does not have this right. If either your bylaws or articles give the board this power, then you must state when and how the board can use that power. Any method for terminating or disciplining a member must comply with Section 51 of the ONCA.

d) Transfer of membership

The default rule under the CA is that a membership is not transferable and the rights of the member cease to exist when the member ceases to be a member. Your letters patent could state that a membership is transferable. If the letters patent provide for this, the bylaws cannot contradict the letters patent.

See Section 128.

The default rule under the ONCA is that a membership may be transferred only back to your organization. Your articles or bylaws can state otherwise.

See Section 48(8).

e) Membership fees

Your bylaws may state that there is a membership fee, how the amount is to be set, and how it is to be paid. Your bylaws may also specify different fees for each type or class of membership.

See Section 129.

Your articles or bylaws may have a rule about membership fees. If neither your articles nor bylaws say anything about membership fees, then under the ONCA, directors can set annual fees and decide how they should be paid.

See Section 86.

3. Members' meetings**a) Calling meetings**

Under the CA, an annual meeting of members must be held within 18 months after its incorporation and not later than 15 months after the last annual meeting.

The CA allows your directors to call a general meeting at any time.

Your bylaws may restate these rules, but they do not need to.

See Sections 293 and 294.

Under the ONCA, an annual meeting of members must be held within 18 months after your organization's incorporation and not later than 15 months after the last annual meeting.

The ONCA allows your directors to call a special meeting at any time.

Your bylaws may restate these rules, but they do not need to.

See Section 52.

b) Requesting or requisitioning meetings

For members to demand a meeting, the CA requires at least 10% of the voting members to send a request to the board and give a reason for the meeting that is connected to your organization's affairs and not inconsistent with the CA.

See Section 295.

For members to demand a meeting, the ONCA requires that members holding at least 10% of the votes send a request with reasons to each director and to the organization's registered office.

Your bylaws may state a lower percentage than 10%, but they cannot set a higher percentage.

See Section 60.

c) Notice of meetings

The CA states that your members are entitled to notice of meetings by prepaid mail to their last known address at least 10 days before the meeting.

See Section 93(1)–(2).

However, an organization whose objects are exclusively for charitable purposes must give notice of any meeting of the members by publication at least once a week for two consecutive weeks immediately before the meeting. The publication must be in a newspaper circulated in the municipality where the majority of the members live.

See Section 133(2).

The bylaws can set out these rules but don't need to.

You must give notice of each meeting of the members to each member who is entitled to notice, each director, and your auditor or the person appointed to conduct a review engagement.

You must give notice no earlier than 10 days and no later than 50 days before each meeting.

If your bylaws require it, you must send or make a form of proxy available to everyone who receives notice, either when or before you give notice.

You must include any proposal made by a member in the notice of meeting. The default rule in the ONCA is that the member who submitted a proposal must pay any cost of including the proposal in the notice of the meeting. The bylaws or a resolution can state otherwise.

Your bylaws may state any additional notice requirements, for example, content, form, method of notice.

See Sections 55, 56, and 65.

d) Place of meeting

The default rule in the CA is that members' meetings must be held at the head office. Your bylaws can state that the meetings of members can be held anywhere in Ontario. The letters patent can state that members' meetings may be held outside of Ontario.

See Section 82.

Your members' meetings must be held in Ontario at the place stated in the bylaws unless your articles state otherwise or all of your voting members agree otherwise.

If your bylaws do not give a specific location for members' meetings, then your directors may decide on the location.

Unless your bylaws state otherwise, anyone entitled to attend a members' meeting may participate through telephonic or electronic means if your organization makes such means available.

Your bylaws may state that members' meetings may be held entirely by telephonic or electronic means.

See Section 53.

e) Quorum

Your bylaws may state any rules about quorum at members' meetings, for example, number, percentage, when, and how to adjourn a meeting if a quorum is not present.

See Section 129(1).

Unless your bylaws state otherwise, the quorum for a members' meeting is a majority of the voting members, whether present in person, by proxy, or by telephonic or electronic means.

Your bylaws may set a higher or lower percentage as the quorum, but they cannot require members to be present in person.

Unless your bylaws state otherwise, a members' meeting may proceed if a quorum is present at the opening of a meeting, even if a quorum is not present throughout the meeting.

If a quorum is not present at the opening of a members' meeting, then the present members may adjourn the meeting to a fixed time and place but may not decide on any other business.

See Section 57.

f) Proxies

Each member is entitled to vote by means of a proxy, who does not need to be a member. The CA gives details regarding the use of proxies.

See Section 84.

Your bylaws may give voting member the right to appoint a proxyholder to attend a meeting and vote on his or her behalf. A proxyholder does not need to be a member; however, your bylaws may require it.

Your bylaws may require that your organization make a form of proxy available to each member who is entitled to notice of meetings, either with or before giving notice of the meeting.

In addition to or instead of voting by proxy, you can offer members a way to vote by mail, telephonic, or electronic means.

Part VI of the ONCA describes all of the rules about proxies. Your bylaws do not need to restate those rules, and they cannot contradict them.

g) Voting

The default rule in the CA is that each member has one vote. Your bylaws can state instead that each member, or class of members, has one, several, or no votes. Your bylaws can also give details on how voting takes place, for example, by show of hands or ballots.

See Section 125.

Unless your articles state otherwise, each member is entitled to one vote.

See Section 48(6).

Unless your bylaws state otherwise, voting must be by a show of hands unless a member demands a ballot. A member may demand a ballot either before or after any vote.

See Section 58.

Your bylaws may allow voting, before a meeting, by mail or telephonic/electronic means, but only if your organization can verify that those votes were made by voting members and cannot see how each member voted.

See Section 67.

h) Adjournments

Your bylaws might have requirements about meeting adjournments. If they do not, the default rule is that the chair of a members' meeting may, with consent from members, adjourn the meeting from time to time and place to place.

See Section 93(1)(d).

Unless your bylaws state otherwise, you do not need to give notice of the continuation of an adjourned meeting, unless the continuation is more than 30 days after the adjournment.

However, if a members' meeting is adjourned several times for a total of 30 days or more, then you must give notice of the continuation of the meeting.

See Sections 55(5) and 55(6).

4. Board of directors**a) Qualification of directors**

Section 286 of the CA describes the qualifications of directors. Your bylaws may repeat those requirements but don't need to. One of the qualifications is that directors must be members of your organization. The number of directors must be at least three and needs to be a fixed number.

See Section 283.

Ex-officio directors are permitted.

See Section 127.

Section 23 of the ONCA describes the qualifications of directors. Your bylaws do not need to restate those requirements and they cannot contradict them.

Unless your bylaws state otherwise, directors do not have to be members of your organization.

Ex-officio directors are permitted.

b) Election and re-election of directors

Your bylaws likely describe how and when members elect directors.

There is no limit on the number of times a director can be re-elected.

Members must elect directors as needed by ordinary resolution at an annual meeting of members. Your bylaws do not need to restate that rule and they cannot contradict it.

There is no limit on the number of times a director can be re-elected.

See Section 24(1).

c) Term of directors

Unless your bylaws state otherwise, your directors' terms are one year.

See Section 287(2).

Your bylaws might state that directors are elected on rotating terms, in which case the CA requires that the term lengths be five years or less and that at least three directors retire each year.

See Section 287(5).

The maximum term length is four years. Your bylaws must state the term (four years or less) and/or state different or rotating terms for each director. If a director is not elected for a stated term, then his or her term will end at the following annual meeting.

See Section 24.

d) Removal of directors

Members may remove a director by a two-thirds vote at a general meeting if the notice for that meeting mentioned their intention to remove that director.

See Section 67.

Your bylaws may state additional rules for the process of removing directors.

Members may remove directors by a majority vote at a special meeting, except directors who are directors by virtue of their office, such as ex-officio directors.

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.

Unless your bylaws state otherwise, directors are entitled to give reasons for opposing their removal.

See Sections 26 and 27.

e) Vacancies

The CA states that as long as there is still a quorum, the board can fill any vacancies. If there is no quorum, then the directors must call a general meeting of the members to fill the vacancies. Your bylaws may repeat these rules but don't need to.

See Section 288.

The ONCA has the same rules about filling vacancies as the CA. However, the ONCA also allows your bylaws to state that only members can fill vacancies.

See Section 28.

f) Quorum

The CA requires that quorum be more than two-fifths of the total number of directors. Unless the letters patent or a special resolution states otherwise, the default rule under the CA is that quorum is a majority of the board of directors.

See Section 288(1).

Unless your articles or bylaws state otherwise, a quorum of directors is a majority of the fixed number of directors or of the minimum number of directors required by your articles. However, your articles or bylaws can set a quorum that is more or less than a majority of directors.

See Section 34(2).

g) Time and place of meetings

The default rule in the CA is that meetings of the board shall be held at the head office. Your bylaws can state that meetings of the board may be held anywhere in or outside of Ontario.

See Section 82.

Unless your articles or bylaws state otherwise, the directors may meet at any place set out in the bylaws.

See Section 34(1).

h) Notice of meetings

The CA allows your bylaws to give details about notice for holding meetings of the board.

See Section 129(1).

Your bylaws may specify any notice requirements for board meetings.

See Section 34.

i) Electronic meetings

Unless your bylaws state otherwise, directors can meet by telephonic or electronic means if all directors attending or participating in the meeting consent.

See Section 283(3.1).

Unless your bylaws state otherwise, directors can participate in meetings by electronic means if all directors consent.

See Section 34(6).

j) Manner of voting

The CA allows your bylaws to set out any procedure for voting at board meetings.

See Section 129(1).

Your bylaws may state any procedure about voting at board meetings.

k) Resolutions

The CA states that a resolution signed by all the directors is as valid and effective as if it were passed at a board meeting that was properly called and held for that purpose. Your bylaws do not need to restate this rule, and they cannot contradict it.

See Section 298(1).

The members can also pass a written resolution instead of holding a meeting.

See Section 298(2).

The ONCA states that a resolution, signed by all the directors or a committee of directors, is as valid as if it were passed at a meeting of directors or of a committee of directors. Your bylaws do not need to restate that rule, and they cannot contradict it.

See Section 35(1).

The members can also pass a written resolution instead of holding a meeting.

See Section 59(1).

l) Powers and responsibilities

Your bylaws may give powers and/or responsibilities to your directors.

Your articles may withhold or limit some of your organization's powers.

The ONCA gives your organization and its directors all of the rights, powers, and privileges of a natural person. The ONCA specifically states that your bylaws don't have to give your directors or organization these powers. However, you may still want your bylaws to impose some specific responsibilities on your directors. For example, you could specify that directors must meet once every two months.

See Sections 15 and 16.

Note: If you want to restrict your organization's activities and/or powers, you must specify the restrictions in your articles.

m) Remuneration

If you are a registered charity, your bylaws should state that your directors cannot be remunerated, directly or indirectly, as a result of being a director. They might also state that your directors may be reimbursed for reasonable expenses.

If you are not a registered charity, your letters patent or bylaws may state that your directors may or may not be paid for their services as a director, or in any other capacity, and that they may or may not be reimbursed for reasonable expenses.

See Section 126(2).

The ONCA allows your directors to decide on payment of directors for their services, as directors and in any other capacity. This is subject to any limitations or requirements in your bylaws or articles, for example, member approval.

See Section 47.

If you are a registered charity, then your directors should not be remunerated, directly or indirectly, as a result of being a director, but they can be reimbursed for reasonable expenses.

5. Officers**a) Meaning**

Section 1 of the CA defines “officer”. If you would like to change that definition for the purposes of your bylaws, you must state your definition in your bylaws.

Section 1 of the ONCA defines “officer”. If you would like to change that definition for the purposes of your bylaws, you must state your definition in your bylaws.

b) Election

Your bylaws may state how, when, and by whom officers are elected.

At minimum, the board is required to elect a president (who must be a director) and a secretary, unless the letters patent or the bylaws state that the members must elect all or any of the officers.

The president and the chair of the board (if any) must be a director.

See Sections 289 and 291.

Your board must appoint a director to be the board chair.

Unless your articles or bylaws state otherwise, the directors may appoint other officers, who need not be directors. An individual may hold two or more offices.

See Section 42.

c) Removal and resignation of officers

Your bylaw may state any rules or requirements about the removal and/or resignation of officers.

See Section 129.

Your bylaw may state any rules or requirements about the removal and/or resignation of officers.

d) Duties of each officer

Your bylaws may describe the duties of each officer, or they may state that the directors can set officers' duties through resolutions.

See Section 129.

Section 43 of the ONCA describes some general officers' duties, but your bylaws could include a more specific description of each officer's role and responsibilities.

e) Indemnification of directors and officers

The CA allows organizations to indemnify directors and officers, except for losses caused by willful neglect or default. The CA also allows organizations to purchase insurance for this purpose.

Your bylaws may restate these rules and indicate that it is subject to charity laws.

The ONCA allows your organization to indemnify directors and officers as long as they act honestly and in good faith for the best interests of the corporation and believe that their actions are lawful.

See Section 46.

The ONCA also allows non-charitable organizations to purchase insurance for this purpose.

Charities may purchase insurance for this purpose only if they comply with the Charities Accounting Act or obtain a court order allowing them to do so.

See Section 46(6)-(7).

Your bylaws may state your organization's position on indemnification and insurance, but they do not need to.

f) Conflicts of interest

Section 71 of the CA gives detailed rules about how directors must deal with conflicts of interest. Your bylaws do not need to restate those rules, and they cannot contradict them.

Section 41 of the ONCA states detailed rules about how directors and officers must deal with conflicts of interest. Your bylaws do not need to restate those rules, and they cannot contradict them.

6. Committees

Your bylaws may describe several standing committees and/or state that the board may establish committees as needed.

Your bylaws may also state any rules for committee meetings and proceedings.

Your bylaws may authorize your board (if it has more than six members) to elect an executive committee consisting of not fewer than three directors. The board can delegate its powers only to the executive committee.

See Section 70.

The ONCA allows your directors to create committees. Your bylaws do not have to restate this rule and cannot contradict it. However, you may want your bylaws to establish some standing committees, such as a finance or audit committee.

Under the ONCA, the board can delegate its powers only to a committee composed solely of directors. Therefore, any committee that has one or more members that are not directors can act only in an advisory capacity to the board.

There are seven powers that cannot be delegated by the board.

See Section 36(1)-(2).

If you establish an audit committee, then the majority of the committee must not be officers or employees of your organization or any of your organization's affiliates.

See Section 80.

7. Fiscal year

Your bylaws may state when your organization's fiscal year ends.

Your bylaws may state when your organization's fiscal year ends.

See definition of "financial year" in Section 1.

8. Auditors

Sections 94 and 97 of the CA give details about the appointment and role of the auditors. Your bylaws may give further details on how, when, and what your auditor must report to your board and members.

Part VII of the ONCA describes all of the rules about auditors and their duties. Your bylaws do not need to restate those rules, and they cannot contradict them.

Unless your bylaws state otherwise, auditors are allowed to give your organization reasons for resigning or opposing their removal.

See Section 75(4).

9. General

a) Notice

Your bylaws may specify how your organization may give notice to a member, for example, in person, by fax, by email, and/or by prepaid mail.

Note: Notice regarding members' meetings is addressed separately in Section 3 c) of this resource.
Notice regarding board meetings is addressed separately in Section 4 h) of this resource.

The ONCA states that members and directors may be notified by sending a notice to their last known address. Your bylaws could allow additional methods of service.

See Section 196.

Note: Notice regarding member meetings is addressed separately in Section 3 c) of this resource. Notice regarding board meetings is addressed separately in Section 4 h) of this resource.

b) Head office

Your articles must state the location of your head office. Your bylaws may repeat that information but don't need to.

See Section 277(1).

Your articles must state the location of your registered office. Your head office will be considered your registered office when the ONCA comes into effect.

Your bylaws do not have to state the location of your registered office.

See Section 14.

c) Signing authority

Your bylaws may state which directors or officers are authorized to sign contracts on behalf of your organization and the proper procedure for entering into contracts.

Your bylaws may state which directors or officers are authorized to sign contracts on behalf of your organization and the proper procedure for entering into contracts.

d) Corporate seal

Your bylaws may state that your organization has a seal and what it consists of, but you are not required to have one.

See Section 279.

Your bylaws may state that your organization has a seal and what it consists of, but you are not required to have one.

See Section 13.

e) Deposit of securities for safekeeping/banking

Your bylaws may set out details about banking. Your board has the authority under the CA to make banking arrangements.

See Sections 129 and 283.

Your bylaws may give your board banking authority, but they do not need to because the ONCA already gives your directors authority to make banking arrangements.

See Sections 21 and 32(1)(f).

f) Borrowing authority and delegation of borrowing authority

Your bylaws may allow your directors to borrow money, issue, sell, or pledge securities, and/or mortgage property on behalf of your organization. They may also allow your directors to delegate some of that authority to the executive committee.

See Section 59.

Unless your articles or bylaws state otherwise, your directors may borrow money, pledge debt obligations, give a guarantee, and mortgage property on behalf of your organization without authorization of your members.

Similarly, unless your articles or bylaws state otherwise, your directors may delegate those authorities to a director, a committee of directors, or an officer.

See Section 85.

g) Books and records

The CA lists all books and records that your organization must keep and who may inspect them. Your bylaws may restate those rules and/or state additional requirements about their contents and inspection, and they cannot contradict them.

Part X of the ONCA gives detailed rules about keeping and inspecting books and records. Your bylaws do not need to restate those rules, and they cannot contradict them.

h) Dissolution

The CA states that an organization's bylaws can dictate how property shall be distributed and disposed of. If the bylaws do not set out this information, the property shall be distributed equally among the members, or if set out in the letters patent or bylaws, among the members of a class or classes of members.

See Section 132.

If you are a public benefit organization, then the ONCA determines how your organization's property will be handled upon dissolution. Your bylaws do not need to restate those rules, and they cannot contradict them.

If you are not a public benefit organization, then your articles may state how your organization's property will be handled upon dissolution.

See Section 167.

i) Bylaw amendments

The CA allows directors to change your bylaws and states that your members must approve any changes. Your bylaws may restate this rule but do not need to.

See Section 129.

Unless your articles or bylaws state otherwise, your directors can make, amend, or repeal bylaws, except bylaws about membership transfers, the transfer of property upon dissolution, and methods of voting remotely by members. The bylaw, amendment, or repeal will be effective immediately, but it must be confirmed by your members at the next members' meeting.

A voting member may also bring a proposal to change your bylaws.

See Sections 17 and 56.

j) Interpretation

Your bylaws may explain that within the bylaws, singular numbers include the plural numbers, and vice versa, and/or that reference to persons include firms and corporations.

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