

# Sample bylaw with options



Nonprofit Law Ontario  
Rules and tools for organizations

## Summary

You can use this tool to adapt the Ministry of Government and Consumer Services' sample by-law to meet your corporation's needs.

The Ministry of Government and Consumer Services (MGCS) has created a sample organizational by-law that you can use as a starting point when developing your Corporation's By-laws. MGCS calls this by-law a "standard organizational by-law" on its site. For the purposes of this tool, we call it the **Default By-law**.

This tool examines each section of the Default By-law. It describes what language is mandatory and what is optional. We have not changed the language in the Default By-law, but we include some ways you might change or add to this language whenever possible.

There are additional rules in Ontario's *Not-for-Profit Corporations Act, 2010* (ONCA) that neither the Default By-law nor this tool mention, so you may want to refer to the ONCA while drafting your corporation's by-law.

## Style notes

- The ONCA applies only to incorporated organizations. Most nonprofit organizations do not call themselves "corporations", even when they are incorporated. In this tool, we refer to nonprofit organizations as "corporations", to match the term used in the ONCA legislation and in the Default By-law.
- We use "by-law" in this tool, instead of bylaw (our general style for the *Nonprofit Law Ontario* project) to match the style in the ONCA legislation and in the Default By-law.
- We capitalize words in this tool where they refer to the defined terms in the ONCA legislation or in the Default By-law.



## How to use this tool

This tool provides options for each section of the Default By-law.

- Option 1 always contains the language used in the Default By-law.
- **Bolded text in this tool indicates mandatory rules in the ONCA. You may not override or change these rules. These rules will apply to your corporation regardless of whether or not they are set out in your Corporation's By-laws. You may change the wording of the sections that set out these rules only if the meaning of the rules remains the same.**
- The comments in the margin give you information and questions to consider when deciding which option to choose.

To create your own by-laws:

1. Copy and paste the language from options you want to adopt into a new document and save it.
2. Add language for sections and options where you want to write your own version.
3. Consider getting legal advice or have your final by-laws reviewed by a lawyer to ensure they comply with the ONCA.

# Section 1 – General

## 1.01 Definitions

### OPTION 1

Use the language from the Default By-law:

In this by-law, unless the context otherwise requires:

- a. “Act” means the Not-for-Profit Corporations Act, 2010 (Ontario) and, where the context requires, includes the regulations made under it, as amended or re-enacted from time to time;
- b. “Board” means the board of directors of the Corporation;
- c. “By-laws” means this by-law (including the schedules to this by-law) and all other by-laws of the Corporation as amended and which are, from time to time, in force;
- d. “Chair” means the chair of the Board;
- e. “Corporation” means the corporation that has passed these by-laws under the Act or that is deemed to have passed these by-laws under the Act;
- f. “Director” means an individual occupying the position of director of the Corporation by whatever name he or she is called;
- g. “Member” means a member of the Corporation;
- h. “Members” means the collective membership of the Corporation; and
- i. “Officer” means an Officer of the Corporation.

### OPTION 2

Add to or delete the language in Option 1. Other common definitions are “Articles” and “Special Resolution”.

### OPTION 3

Do not include language in your Corporation’s By-laws dealing with definitions. If this is the case, you should choose Option 1 under Section 1.02 (page 4).

## 1.02 Interpretation

### OPTION 1

Use the language from the Default By-law:

Other than as specified in Section 1.01, all terms contained in this By-law that are defined in the Act shall have the meanings given to such terms in the Act. Words importing the singular include the plural and vice versa, and words importing one gender include all genders.

### OPTION 2

Write your own section about interpretation, which may or may not include portions of Option 1.

### OPTION 3

Do not include language in your Corporation's By-laws about interpretation.

## 1.03 Severability and Precedence

### OPTION 1

Use the language from the Default By-law:

The invalidity or unenforceability of any provision of this By-law shall not affect the validity or enforceability of the remaining provisions of this By-law. If any of the provisions contained in the by-laws are inconsistent with those contained in the Articles or the Act, the provisions contained in the Articles or the Act, as the case may be, shall prevail.

### OPTION 2

Write your own section about severability and/or precedence, which may or may not include portions of Option 1.

### OPTION 3

Do not include language in your Corporation's By-laws dealing with severability and/or precedence.

## 1.04 Seal

### Things to consider

A Corporation is not required to have a corporate seal.

#### OPTION 1

Use the language from the Default By-law:

The seal of the Corporation, if any, shall be in the form determined by the Board.

#### OPTION 2

Use this wording:

The seal, an impression of which is stamped in the margin of this document, shall be the seal of the Corporation. The secretary of the Corporation shall oversee the corporate seal and its use.

#### OPTION 3

Write your own section about your Corporation's corporate seal.

#### OPTION 4

Do not include language in your Corporation's By-laws about a corporate seal, whether or not your Corporation has a corporate seal.

## 1.05 Execution of Contracts

### Things to consider

- Should only Directors, or only Officers, or a combination of both be required to sign documents? How many people need to execute a document?
- Would it be convenient for all of your Directors and Officers to have signing authority? Or should you centralize signing authority to ensure accountability?
- Are there employees that should have signing authority?
- Who has been given signing authority on bank documents?
- Should you designate a single person or process for entering into some types of contracts? For example, the signature of only one person may be necessary for contracts under a certain dollar value, but two or more people will need to sign contracts over that certain dollar value.
- Should signing authority requirements distinguish between cheques and contracts?
- Do your funders require certain individuals (e.g. Directors, President) to execute the contracts with the funders?

#### OPTION 1

Use the language from the Default By-law:

Deeds, transfers, assignments, contracts, obligations and other instruments in writing requiring execution by the Corporation may be signed by any two of its Officers or Directors. In addition, the Board may from time to time direct the manner in which and the person by whom a particular document or type of document shall be executed. Any person authorized to sign any document may affix the corporate seal, if any, to the document. **Any Director or Officer may certify a copy of any instrument, resolution, by-law or other document of the Corporation to be a true copy thereof.**

### OPTION 2

Write your own section about the execution of documents, which may include portions of Option 1. Make sure that your language does not contradict the right of Directors and Officers to certify a copy of any instrument, resolution, By-law, or other document of your Corporation as a true copy.

### OPTION 3

Do not include language in your Corporation's By-laws about the execution of documents. If this you choose this option, the Board will have to specify, by resolution, the individuals with signing authority. In addition, the Corporation's bank will require a document to be signed that describes who has signing authority on behalf of the Corporation.

## Section 2 – Directors

### 2.01 Election and Term ←

#### OPTION 1

Use the language from the Default By-law:

**The Directors shall be elected by the Members at the first meeting of Members and at each succeeding annual meeting.** The term of office of the Directors (subject to the provisions, if any, of the articles) shall be from the date of the meeting at which they are elected or appointed until the next annual meeting or until their successors are elected or appointed.

#### OPTION 2 (FIXED TERM)

Use this wording:

The Members shall elect the Directors to hold office for a term ending no later than the end of the [second – third – fourth] annual meeting of Members following the election.

#### OPTION 3 (ROLLING TERM)

Use this wording:

The Members shall elect one-third (1/3) of the Directors for a three-year term, one-third (1/3) of the Directors for a two-year term, and one-third (1/3) of the Directors for a one-year term. After this time, newly elected Directors shall be elected for three (3) year terms.

#### Things to consider

- The ONCA generally requires the Members to elect the Directors (Section 24(1)).
- However, Section 24(7) allows a Board to appoint additional directors for a limited term provided that the number of additional Directors appointed does not exceed 1/3rd of the number of Directors elected by the Members at the previous annual Members' meeting. This ability of the Board to appoint directors is separate from the ability of the Board to fill vacancies on the Board.
- The ONCA restricts the length of a Director's term to 4 years (Section 24(1)). There is no restriction on the number of terms that a Director can serve.
- What length of commitment is reasonable to ask of a Director?
- How long does it take Directors to learn their role(s) and become fully capable of contributing to Board activities?
- Do Directors "burn out" or lose interest after a certain length of time?

*continued >*

#### **OPTION 4**

Write your own section about the term of office for Directors. Make sure that the Directors are elected by the Members and that the terms of the Directors are no longer than 4 years.

#### **OPTION 5**

Do not include language in your Corporation's By-laws about the term of office for Directors. The Members will determine each Director's term when he or she is appointed. If the Members do not set a term limit for a Director, the default rule under the ONCA is that the term will be only 1 year.

- Is it useful to have new Directors overlap with outgoing Directors who can provide mentorship? If so, consider using the "rolling term" option.
- If your Corporation is newly incorporated, add to the beginning of your Section 2.01 (regardless of which option you choose): "At the first meeting of the Members and at each succeeding annual meeting at which an election of Directors is required,..."

## **2.02 Vacancies** ←

#### **OPTION 1**

Use the language from the ONCA:

**The office of a Director shall be vacated immediately:**

- a. if the Director resigns office by written notice to the Corporation, which resignation shall be effective at the time it is received by the Corporation or at the time specified in the notice, whichever is later;**
- b. if the Director dies or becomes bankrupt;**
- c. if the Director is found to be incapable by a court or incapable of managing property under Ontario law; or**
- d. if, at a meeting of the Members, the Members by ordinary resolution removes the Director before the expiration of the Director's term of office.**

#### **Things to consider**

Section 25(1) of the ONCA describes the ways that a Director ceases to hold office. These ways cannot be deleted or varied, and no additional ways can be added.

#### **OPTION 2**

Do not include language in your Corporation's By-laws about vacancies. If you choose this option, the rules from Option 1 will automatically apply.

## 2.03 Filling Vacancies

### OPTION 1

Use the language from the Default By-law:

A vacancy on the Board shall be filled as follows, and the Director appointed or elected to fill the vacancy holds office for the remainder of the unexpired term of the Director's predecessor:

- a. if the vacancy occurs as a result of the Members removing a Director, the Members may fill the vacancy by an ordinary resolution;
- b. if there is not a quorum of Directors or there has been a failure to elect the number or minimum number of Directors set out in the articles, the Directors in office shall, without delay, call a special meeting of Members to fill the vacancy and, if they fail to call such a meeting or if there are no Directors in office, the meeting may be called by any Member; and
- c. a quorum of Directors may fill a vacancy among the Directors.

#### Things to consider

Quorum will be the majority of the Directors unless your Corporation's By-laws specify otherwise (see Section 34(2) of the ONCA).

### OPTION 2

Use this wording:

A vacancy on the Board shall be filled only by a vote of the Members.

#### Things to consider

Section 28(5) of the ONCA states that By-laws can prohibit the Board from being able to fill a vacancy on the Board. Ask the following questions:

- Would you prefer that only Members be able to fill a vacancy among the Directors?
- Would it be practical to call a special Members' meeting every time a vacancy occurs?
- Would it be practical to wait until the next annual meeting to have the Members fill a vacancy?

### OPTION 3

Write your own section about filling vacancies on the Board.

## 2.04 Committees ←

### OPTION 1

Use the language from the Default By-law:

**Committees may be established by the Board as follows:**

- a. **The Board may appoint from their number a managing Director or a committee of Directors and may delegate to the managing Director or committee any of the powers of the Directors excepting those powers set out in the Act that are not permitted to be delegated;** and
- b. Subject to the limitations on delegation set out in the Act, the Board may establish any committee it determines necessary for the execution of the Board's responsibilities. The Board shall determine the composition and terms of reference for any such committee. The Board may dissolve any committee by resolution at any time.

### OPTION 2

Replace subsection (b) in Option 1 with the following:

Any such committee may formulate its own rules of procedure, subject to such regulations or directions as the Board may from time to time make. Any committee member may be removed by resolution of the Board.

### OPTION 3

Do not include language about committees of the Board in your Corporation's By-laws.

#### Things to consider

The Board cannot delegate the following responsibilities to a managing Director or a committee of Directors:

- seeking Member approval on a decision
- filling a vacancy among the Directors, the auditor, or a person appointed to conduct a review engagement
- appointing additional Directors
- issuing debt obligations except as authorized by the Directors
- approving financial statements
- changing the By-laws
- establishing Membership dues or contributions

The Board cannot delegate any of its responsibilities to an individual who is not a Director or an Officer, or to a committee that consists of one or more individuals who are not Directors.

See Section 36(2) and Section 42(1)(a) of the ONCA for more information.

## 2.05 Remuneration of Directors

### Things to consider

The common law and charities law prohibits charitable organizations from paying their Directors for director or non-director services. Therefore, if your Corporation is a charitable organization, you should use Option 1 without sections (b) and (c), or Option 2.

If your Corporation is not a charitable organization and you choose Option 1, you should delete (c). When choosing an option, consider the following:

- Is it likely that Directors will incur expenses in the performance of their director duties?
- Is it likely that Directors will provide services to the organization other than their director duties?
- Is your organization in a financial position to guarantee reimbursement and/or remuneration?

### OPTION 1

Use the language from the Default By-law:

The Directors shall serve as such without remuneration and no Director shall directly or indirectly receive any profit from occupying the position of Director; provided that:

- a. Directors may be reimbursed for reasonable expenses they incur in the performance of their Directors' duties;
- b. Directors may be paid remuneration and reimbursed for expenses incurred in connection with services they provide to the Corporation in their capacity other than as Directors, provided that the amount of any such remuneration or reimbursement is: (i) considered reasonable by the Board; (ii) approved by the Board for payment by resolution passed before such payment is made; and (iii) in compliance with the conflict of interest provisions of the Act; and
- c. Notwithstanding the foregoing, no Director shall be entitled to any remuneration for services as a Director or in other capacity if the Corporation is a charitable corporation, unless the provisions of the Act and the law applicable to charitable corporations are complied with, including Ontario Regulation 4/01 made under the Charities Accounting Act.

### OPTION 2

Use this wording:

No Director shall directly or indirectly receive any profit from occupying the position of Director or from providing services to the Corporation in another capacity. However, Directors may be reimbursed for reasonable expenses that they incur in either of those capacities.

### OPTION 3

Write your own section about the remuneration of Directors.

### OPTION 4

Do not include language in your Corporation's By-laws about the remuneration of Directors. If you choose this option, the ONCA will allow Directors to receive remuneration for their services both as a Director and in other capacities.

## Section 3 – Board Meetings

### 3.01 Calling of Meetings

#### OPTION 1

Use the language from the Default By-law:

Meetings of the Directors may be called by the Chair, president or any two Directors at any time and any place on notice as required by this by-law, **provided that, for the first organizational meeting following incorporation, an incorporator or a Director may call the first meeting of the Directors by giving not less than five days’ notice to each Director, stating the time and place of the meeting (s. 32(2)).**

#### OPTION 2

Use this wording:

Meetings of the Directors may be called by [insert who can call a meeting] at any time and any place on notice as required by this by-law.

#### Things to consider

If your organization often deals with unexpected and urgent issues that require Board involvement, then you may want a flexible process for calling and holding Board meetings.

#### Things to consider

If your organization is newly incorporated, include the bolded text in your By-laws. If your organization is not newly incorporated, do not include the bolded text in your By-laws.

The ONCA does not state who has the authority to call a meeting of the Board, so you can change this section to meet your Corporation’s needs.

### 3.02 Regular Meetings

#### OPTION 1

Use the language from the Default By-law:

The Board may fix the place and time of regular Board meetings and send a copy of the resolution fixing the place and time of such meetings to each Director, and no other notice shall be required for any such meetings.

#### OPTION 2

Write your own section about Board meetings. You could specify a meeting place and/or the frequency of meetings.

### 3.03 Notice

#### Things to consider

The ONCA does not specify how many days' notice has to be provided for a Board meeting. The Default By-law suggests 7 days (see Option 1). The length of time should be reasonable and provide enough time for the Directors to adequately prepare for the meeting.

#### OPTION 1

Use the language from the Default By-law:

Notice of the time and place for the holding of a meeting of the Board shall be given in the manner provided in Section 10 of this by-law to every Director of the Corporation not less than seven days before the date that the meeting is to be held. Notice of a meeting is not necessary if all of the Directors are present, and none objects to the holding of the meeting, or if those absent have waived notice or have otherwise signified their consent to the holding of such meeting. If a quorum of Directors is present, each newly elected or appointed Board may, without notice, hold its first meeting immediately following the annual meeting of the Corporation.

### 3.04 Chair

#### Things to consider

Having your By-laws specify an alternate Chair, or method for choosing an alternate Chair, could avoid confusion or delay at Board meetings.

#### OPTION 1

Use the language from the Default By-law:

The Chair shall preside at Board meetings. In the absence of the Chair, the Directors present shall choose one of their number to act as the Chair.

#### OPTION 2

Use this wording:

The Chair shall preside at Board meetings. In the absence of the Chair, [x] shall choose a Director to act as the Chair of the meeting.

#### OPTION 3

Use this wording:

The Chair shall preside at Board meetings. In the absence of the Chair, [x] shall preside at Board meetings.

#### OPTION 4

Write your own section about who presides at Board meetings.

## 3.05 Voting

### OPTION 1

Use the language from the Default By-law:

Each Director has one vote. Questions arising at any Board meeting shall be decided by a majority of votes. In case of an equality of votes, the Chair shall not have a second or casting vote.

### OPTION 2

Use this wording:

Each Director has one vote. Questions arising at any Board meeting shall be decided by a majority of votes. In case of an equality of votes, the Chair shall have a second vote or casting vote.

## 3.06 Participation by Telephone or Other Communications Facilities

### OPTION 1

Use the language from the Default By-law:

If all of the Directors of the Corporation consent, a Director may participate in a meeting of the Board or of a committee of Directors by telephonic or electronic means that permit all participants to communicate adequately with each other during the meeting. A Director participating by such means is deemed to be present at that meeting.

### OPTION 2

Use this wording:

A Director may not participate at Board meetings by telephonic or electronic means.

### OPTION 3

Use this wording:

Only in the following situations may Directors participate in Board meetings by telephonic or electronic means: [x].

#### Things to consider

Allowing electronic participation in Board meetings could:

- help attract and retain Directors from all parts of your service area
- reduce the risk of not achieving quorum
- make it easier to arrange and hold meetings quickly

#### **OPTION 4**

Write your own section about telephonic and/or electronic participation at Board meetings.

#### **OPTION 5**

Do not include language in your Corporation's By-laws about electronic participation at Board meetings. If you choose this option, your Corporation's Directors will be allowed by default under the ONCA to participate in a Board meeting, or a meeting of a committee of Directors, by telephonic or electronic means if all of the Directors of your Corporation agree (Section 34(6)).

## Section 4 – Financial

### 4.01 Banking

#### **OPTION 1**

Use the language from the Default By-law:

The Board shall by resolution from time to time designate the bank in which the money, bonds or other securities of the Corporation shall be placed for safekeeping.

#### **OPTION 2**

Do not include language in your Corporation's By-laws about banking. If you choose this option, the Directors will continue to have the authority to make banking arrangements under Section 32(1)(f) of the ONCA.

### 4.02 Financial Year

#### Things to consider

You may set any financial year end (e.g. ending on March 31).

#### **OPTION 1**

Use the language from the Default By-law:

The financial year of the Corporation ends on December 31 in each year or on such other date as the Board may from time to time by resolution determine.

#### **OPTION 2**

Use this wording:

The financial year of the Corporation ends on [insert date] in each year or on such other date as the Board may from time to time by resolution determine.

## Section 5 – Officers

### 5.01 Officers

#### OPTION 1

Use the language from the Default By-law:

**The Board shall appoint from among the Directors a Chair** and may appoint any other person to be president, treasurer and secretary at its first meeting following the annual meeting of the Corporation. The office of treasurer and secretary may be held by the same person and may be known as the secretary-treasurer. The office of Chair and president may also be held by the same person. The Board may appoint such other Officers and agents as it deems necessary, and who shall have such authority and shall perform such duties as the Board may prescribe from time to time.

#### OPTION 2

Use this wording:

The Board shall appoint a Chair from among the Directors and may appoint any other person to be president, treasurer, and secretary at the Board's first meeting following the annual meeting of the Corporation. The same person may hold two or more offices of the Corporation. The Board may appoint other Officers and agents as it deems necessary, and who shall have such authority and shall perform such duties as the board may prescribe from time to time.

#### OPTION 3

Write your own section about Officers. This section must recognize that the Chair must also be a Director.

#### Things to consider

- A Chair must be appointed and must be a Director (Section 42(2)). No other Officer position is required, and no Officer other than the Chair is required to be a Director under the ONCA. Your Corporation's By-laws could require certain Officers to be Directors.
- Read the sample Officer position descriptions at the bottom of these By-laws.
- The ONCA holds Directors and Officers to a standard of care of diligence and prudence (see Section 43 of the ONCA).
- The ONCA defines "officers" as general managers.
- Allowing the Board to formally appoint Officers may avoid confusion about people's roles and responsibilities.
- Officers have obligations under the ONCA, similar to those of Directors.

## **OPTION 4**

Do not include language in your Corporation's By-laws about Officers. If you choose this option, Section 42(1) of the ONCA will apply to your Corporation. It states:

- i. The Directors may designate the offices of the corporation, appoint Officers, specify their duties, and delegate to them powers to manage the activities and affairs of the Corporation;
- ii. A Director may be appointed to any office of the corporation; and
- iii. Two or more offices of the corporation may be held by the same person.

## **5.02 Office Held at Board's Discretion**

### Things to consider

The ONCA does not address how to remove Officers. Therefore, you should consider specifying a method for removing Officers in your By-laws to avoid confusion and disputes.

### **OPTION 1**

Use the language from the Default By-law:

Any Officer shall cease to hold office upon resolution of the Board. Unless so removed, an Officer shall hold office until the earlier of:

- the Officer's successor being appointed,
- the Officer's resignation, or
- such Officer's death.

### **OPTION 2**

Write your own section about the removal of Officers. Include details such as who can remove an Officer (e.g. the Board or the Chair) and when an Officer can be removed (e.g. acting in contravention of policies).

## 5.03 Duties

### OPTION 1

Use the language from the Default By-law:

Officers shall be responsible for the duties assigned to them and they may delegate to others the performance of any or all of such duties.

### OPTION 2

Use this wording:

Officers shall be responsible for the duties assigned to them and may not delegate to others the performance of any or all of such duties.

## 5.04 Duties of the Chair

### OPTION 1

Use the language from the Default By-law:

The Chair shall perform the duties described in sections 3.04 and 9.05 and such other duties as may be required by law or as the Board may determine from time to time.

#### Things to consider

These sections say that the Chair shall preside at Board and Members' meetings.

## 5.05 Duties of the President

### OPTION 1

Use the language from the Default By-law:

The president shall perform the duties described in Schedule A and such other duties as may be required by law or as the Board may determine from time to time.

#### Things to consider

Refer to Schedule A at the bottom of these By-laws. You may change the duties described in the schedule to meet your needs.

## 5.06 Duties of the Treasurer

### OPTION 1

Use the language from the Default By-law:

The treasurer shall perform the duties described in Schedule B and such other duties as may be required by law or as the Board may determine from time to time.

#### Things to consider

Refer to Schedule B at the bottom of these By-laws. You may change the duties described in the schedule to meet your needs.

## 5.07 Duties of the Secretary

### OPTION 1

Use the language from the Default By-law:

The secretary shall perform the duties described in Schedule C and such other duties as may be required by law or as the Board may determine from time to time.

#### Things to consider

Refer to Schedule C at the bottom of these By-laws. You may change the duties described in the schedule to meet your needs.

## Section 6 – Protection of Directors and Others

### 6.01 Protection of Directors and Officers

#### OPTION 1

Use the language from the Default By-law:

No Director, Officer or committee member of the Corporation is be liable for the acts, neglects or defaults of any other Director, Officer, committee member or employee of the Corporation or for joining in any receipt or for any loss, damage or expense happening to the Corporation through the insufficiency or deficiency of title to any property acquired by resolution of the Board or for or on behalf of the Corporation or for the insufficiency or deficiency of any security in or upon which any of the money of or belonging to the Corporation shall be placed out or invested or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person, firm or Corporation with whom or which any moneys, securities or effects shall be lodged or deposited or for any other loss, damage or misfortune whatever which may happen in the execution of the duties of his or her respective office or trust provided that they have:

- a. complied with the Act and the Corporation's articles and By-laws; and
- b. exercised their powers and discharged their duties in accordance with the Act.

#### Things to consider

In more general terms, Section 46 of ONCA allows Corporations to indemnify Directors and Officers and to advance them money spent as a result of an action or a proceeding taken against them. That section uses very broad language regarding situations that may trigger indemnification. Section 46(3) limits when a Corporation can indemnify an individual.

A Corporation may also purchase and maintain insurance for its Directors and Officers.

A charitable Corporation must comply with the *Charities Accounting Act* or obtain a court order before purchasing such insurance.

These sections do not impose mandatory obligations. Therefore, unless your Corporation's By-laws state otherwise, your Corporation will not be obligated to indemnify, advance funds, or purchase insurance for its Directors and Officers.

## Section 7 – Conflict of Interest

### 7.01 Conflict of Interest

#### Things to consider

See Section 41 of the ONCA for more information. It describes a conflict of interest obligation for both Directors and Officers.

#### OPTION 1

Use the language from the Default By-law:

**A Director who is a party to a material contract or transaction or proposed material contract or transaction with the Corporation or is a director or officer of, or has a material interest in, any person who is a party to a material contract or transaction or proposed material contract or transaction with the Corporation shall make the disclosure required by the Act. Except as provided by the Act, no such Director shall attend any part of a meeting of Directors during which the contract or transaction is discussed or vote on any resolution to approve any such contract or transactiony.**

### 7.02 Charitable Corporations

#### OPTION 1

Use the language from the Default By-law:

**No Director shall, directly or through an associate, receive a financial benefit, through a contract or otherwise, from the Corporation if it is a charitable corporation unless the provisions of the Act and the law applicable to charitable corporations are complied with.**

#### OPTION 2

Delete this section if your Corporation is not a charitable Corporation.

## Section 8 – Members

### 8.01 Members ←

#### **OPTION 1**

Use the language from the Default By-law:

Membership in the Corporation shall consist of the incorporators named in the articles and such other persons interested in furthering the Corporation’s purposes and who have been accepted into Membership in the Corporation by resolution of the Board.

#### **OPTION 2 (For one Membership class composed only of individuals)**

Use this wording:

Membership in the Corporation shall consist of the incorporators named in the articles and such other individuals interested in furthering the Corporation’s purposes and who have been accepted into Membership in the Corporation by resolution of the Board.

#### **OPTION 3 (For two Membership classes composed only of individuals)**

Use this wording:

Membership in the Corporation shall consist of two classes of Members, namely, Class A Members and Class B Members. The Board may, by resolution, approve the admission of the Members of the Corporation. Members may also be admitted in such other manner as may be prescribed by the Board by resolution. The following conditions of Membership shall apply:

#### Things to consider

The ONCA requires language in your by-laws that details the conditions for being a Member of your corporation, including whether a corporation can be a Member (Section 48(1)).

See “Choosing a membership structure” at [nonprofitlaw.cleo.on.ca](http://nonprofitlaw.cleo.on.ca) for more information.

#### Things to consider

If your organization is not newly-incorporated, and wants to use Option 1 or Option 2, delete the words “the incorporators named in the articles and such other”.

#### Things to consider

The ONCA’s reference to “persons” includes individuals, Corporations, and other entities.

### Class A Members

Class A Members shall be individuals who have applied and been accepted for Class A Membership in the Corporation.

The term of Membership of a Class A Member shall be one year, subject to renewal in accordance with the policies of the Corporation.

As set out in the articles, each Class A Member is entitled to receive notice of, attend, and vote at all meetings of Members, and each Class A Member shall be entitled to one (1) vote at such meetings.

### Class B Members

Class B Members shall be individuals who have applied and been accepted for Class B Membership in the Corporation.

The term of Membership of a Class B Member shall be one year, subject to renewal in accordance with the policies of the Corporation.

Subject to the Act and the articles, a Class B Member shall not be entitled to receive notice of, attend, or vote at meetings of the Members of the Corporation.

### **OPTION 4 (For two Membership classes composed of individuals, corporations, and other entities which are all considered “persons”)**

Use this wording:

Membership in the Corporation shall consist of two classes of Members, namely, Class A Members and Class B Members. The Board may, by resolution, approve the admission of the Members of the Corporation. Members may also be admitted in such other manner as may be prescribed by the Board by resolution. The following conditions of Membership shall apply:

### Class A Members

Class A Members shall be persons who have applied and been accepted for Class A Membership in the Corporation.

- i. The term of Membership of a Class A Member shall be one year, subject to renewal in accordance with the policies of the Corporation.
- ii. As set out in the articles, each Class A Member shall be entitled to receive notice of, attend, and vote at all meetings of Members and each such Class A Member shall be entitled to one (1) vote at such meetings.

## Class B Members

- i. Class B Members shall be persons who have applied and been accepted for Class B Membership in the Corporation.
- ii. The term of Membership of a Class B Member shall be one year, subject to renewal in accordance with the policies of the Corporation.
- iii. Subject to the Act and the articles, a Class B Member shall not be entitled to receive notice of, attend, or vote at meetings of the Members of the Corporation.

### **OPTION 5**

Write your own section about your Corporation's conditions of Membership.

## **8.02 Membership** ←

### **OPTION 1**

Use the language from the Default By-law:

A Membership in the Corporation is not transferable and automatically terminates if the Member resigns or such Membership is otherwise terminated in accordance with the Act.

### **OPTION 2**

Write your own section about the transferability of Membership in your Corporation.

### **OPTION 3**

Do not include language in your Corporation's By-laws about transferability of a Membership. If you choose this option, the default rule under the ONCA is that a Membership may be transferred only to the Corporation.

### Things to consider

If your articles provide for two or more classes of Members, then your By-laws must include all of the following:

- the conditions for Membership in each class
- how to withdraw from a class
- how to transfer to another class
- how Membership in a class ends (see Section 48(3) of the ONCA)

## 8.03 Disciplinary Act or Termination of Membership for Cause

### Things to consider

Giving your Board these powers will ensure that a Member cannot undermine your Board's obligation to act in your Corporation's best interests.

If your Board has this power, your By-laws must include when and how the Board can exercise the power so that Members are treated fairly.

The ONCA does not give any details on how or when members may be disciplined, other than that the Directors, the Members, or any committee of Directors or Members may have the power to discipline a Member or terminate a Membership in good faith and in a fair and reasonable manner. Section 51(3) describes ways to ensure that a procedure is fair and reasonable.

### OPTION 1

Use the language from the Default By-law:

- a. Upon 15 days' written notice to a Member, the Board may pass a resolution authorizing disciplinary action or the termination of Membership for violating any provision of the articles or By-laws.
- b. The notice shall set out the reasons for the disciplinary action or termination of Membership. The Member receiving the notice shall be entitled to give the Board a written submission opposing the disciplinary action or termination not less than 5 days before the end of the 15-day period. The Board shall consider the written submission of the Member before making a final decision regarding disciplinary action or termination of Membership.

### OPTION 2

Write your own By-law about the discipline of Members, which could:

- specify different or additional causes for discipline and termination;
- specify a longer notice requirement;
- give the Member the right to be heard orally; and/or
- give the Member the right to be heard more than 5 days before the disciplinary action or termination.

### OPTION 3

Do not include a By-law about the discipline or termination of Members. If you choose this option, the Board will not have the power to discipline or terminate Members. A membership will terminate only if Section 50(1) of the ONCA applies.

## Section 9 – Members’ Meetings

### 9.01 Annual Meeting ←

#### OPTION 1

Use the language from the Default By-law:

The annual meeting shall be held on a day and at a place within Ontario fixed by the Board. **Any Member, upon request, shall be provided, not less than five business days or other number of days that may be further prescribed in regulations before the annual meeting, with a copy of the approved financial statements, auditor’s report or review engagement report and other financial information required by the By-laws or articles.**

The business transacted at the annual meeting shall include:

- a. receipt of the agenda;
- b. receipt of the minutes of the previous annual and subsequent special meetings;
- c. consideration of the financial statements;
- d. report of the auditor or person who has been appointed to conduct a review engagement;
- e. reappointment or new appointment of the auditor or a person to conduct a review engagement for the coming year;
- f. election of Directors; and
- g. such other or special business as may be set out in the notice of meeting.

No other item of business shall be included on the agenda for annual meeting unless a Member’s proposal has been given to the secretary prior to the giving of notice of the annual meeting in accordance with the Act, so that such item of new business can be included in the notice of annual meeting.

#### OPTION 2

Write your own section about annual Members’ meetings. You could specify the time and place of the meeting. Remember that the place may be outside of Ontario only if your articles say so or if all the Members entitled to vote at the meeting agree to that place.

#### Things to consider

A Members’ meeting can be held outside Ontario if the place is specified in the articles or all the Members entitled to vote at the meeting agree that the meeting is to be held at that place. See Section 53(2) of the ONCA.

See Section 84(2) for the requirement to provide information to Members prior to a meeting.

See Section 56 for information on “proposals” put forward by Members.

## 9.02 Special Meetings

### Things to consider

#### OPTION 1

Use the language from the Default By-law:

**The Directors may call a special meeting of the Members. The Board shall call a special meeting on written requisition of the Members who hold at least 10 per cent of votes that may be cast at the meeting sought to be held within 21 days after receiving the requisition unless the Act provides otherwise.**

#### OPTION 2

Use Option 1 but state that less than one-tenth of the voting Members may requisition a special meeting.

Consider how easy you want it to be for Members to demand a special meeting, and then adjust the required proportion of demanding Members accordingly. For example, if you have several hundred voting Members, it might be hard to get 10% of them to coordinate a demand for a special meeting.

See Sections 52 and 60 for information on special meetings of Members.

Section 60(1) states that Members who hold at least 10% of votes that may be cast at a meeting of the Members may demand a meeting. Therefore, it is 10% of the voting Members that is required. Your by-laws could set a lower percentage.

## 9.03 Notice

#### OPTION 1

Use the language from the Default By-law:

**Subject to the Act, not less than 10 and not more than 50 days written notice of any annual or special Members' meeting shall be given in the manner specified in the Act to each Member, each Director and to the auditor or person appointed to conduct a review engagement. Notice of any meeting where special business will be transacted must contain sufficient information to permit the Members to form a reasoned judgment on the decision to be taken, and state the text of any special resolution to be submitted to the meeting.**

## 9.04 Quorum

### Things to consider

Consider the balance you want to have between a quorum that is easy to achieve and having enough members present to make credible decisions.

### OPTION 1

Use the language from the Default By-law:

A quorum for the transaction of business at a Members' meeting is a majority of the Members entitled to vote at the meeting, whether present in person or by proxy (Section 64(1)). If a quorum is present at the opening of a meeting of the Members, the Members present may proceed with the business of the meeting, even if a quorum is not present throughout the meeting.

### OPTION 2

Use this wording:

A quorum for the transaction of business at a Members' meeting is [x] percent of the Members entitled to vote at the meeting, whether present in person or by proxy. A quorum must be present throughout the meeting in order for the Members to proceed with the business of the meeting.

### OPTION 3

Write your own section about quorum at meetings of Members, but it must respect Members' right to attend meetings by proxy. The By-laws can state that quorum must be present, or does not need to be present, throughout the meeting in order for business to occur (Section 57(3)).

## 9.05 Chair of the Meeting

### Things to consider

This By-law may help avoid confusion or delays at members' meetings.

### OPTION 1

Use the language from the Default By-law:

The Chair shall be the chair of the Members' meeting; in the Chair's absence, the Members present at any Members' meeting shall choose another Director as chair and if no Director is present or if all of the Directors present decline to act as chair, the Members present shall choose one of their number to chair the meeting.

## 9.06 Voting of Members

### OPTION 1

Use the language from the Default By-law:

Business arising at any Members' meeting shall be decided by a majority of votes unless otherwise required by the Act or the By-law provided that:

- a. each Member shall be entitled to one vote at any meeting;
- b. votes shall be taken by a show of hands among all Members present and the chair of the meeting, if a Member, shall have a vote;
- c. an abstention shall not be considered a vote cast;
- d. before or after a show of hands has been taken on any question, the chair of the meeting may require, or any Member may demand, a written ballot. A written ballot so required or demanded shall be taken in such manner as the chair of the meeting shall direct;
- e. if there is a tie vote, the chair of the meeting shall require a written ballot, and shall not have a second or casting vote. If there is a tie vote upon written ballot, the motion is lost; and
- f. whenever a vote by show of hands is taken on a question, unless a written ballot is required or demanded, a declaration by the chair of the meeting that a resolution has been carried or lost and an entry to that effect in the minutes shall be conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against the motion.

#### Things to consider

To give any of your Members more than one vote, you must state that rule in your articles.

### OPTION 2

Write your own section using some or none of the language in Option 1.

## 9.07 Adjournments

### Things to consider

If your Members' meetings regularly run overtime, this By-law may help avoid confusion or delays.

#### **OPTION 1**

Use the language from the Default By-law:

The Chair may, with the majority consent of any Members' meeting, adjourn the same from time to time and no notice of such adjournment need be given to the Members, unless the meeting is adjourned by one or more adjournments for an aggregate of 30 days or more. Any business may be brought before or dealt with at any adjourned meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same.

#### **OPTION 2**

Use this wording:

The Chair may, with the majority consent of any Members' meeting, adjourn the same from time to time. The Members must be provided with notice of the adjourned meeting. Any business may be brought before or dealt with at any adjourned meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same.

#### **OPTION 3**

Write your own section about adjourning Members' meetings.

#### **OPTION 4**

Do not include language in your By-laws about adjournments of Members' meetings. If you choose this option, notice of an adjourned meeting will not be required unless the meeting is adjourned for more than 30 days (Section 55(5)).

## 9.08 Persons Entitled to be Present

### OPTION 1

Use the language from the Default By-law:

The only persons entitled to attend a Members' meeting are **the Members, the Directors, the auditors of the Corporation** (or the person who has been appointed to conduct a review engagement, if any) and others who are entitled or required under any provision of the Act or the articles to be present at the meeting. Any other person may be admitted only if invited by the Chair of the meeting or with the majority consent of the Members present at the meeting.

### OPTION 2

Write your own section that allows other individuals to attend Members' meetings in addition to Members, Directors, auditors, and individuals conducting review engagements.

### OPTION 3

Do not include language in your By-laws about who is entitled to attend Members' meetings. If you choose this option, only Members, Directors, and the auditor/person conducting a review engagement will be entitled to attend (Sections 33 & 75).

## Section 10 – Notices

### 10.01 Services

### OPTION 1

Use the language from the Default By-law:

Any notice required to be sent to any Member or Director or to the auditor or person who has been appointed to conduct a review engagement of the Corporation shall be delivered personally, or sent by prepaid mail, facsimile, email or other electronic means to any such Member at the Member's latest address as shown in the records of the Corporation; and to such Director at his or her latest address as shown in the records of the Corporation or in the most recent notice or return filed under the Corporations Information Act, whichever is the more current; and to the auditor or the person who has been appointed to conduct a review engagement at its business address; provided always that notice may be waived or the time for giving the notice may be abridged at any time with the consent in writing of the person entitled thereto.

### Things to consider

Allowing several forms of notice will provide flexibility. However, it might lead to confusion if recipients expect a consistent form of notice.

## **OPTION 2**

Use this wording:

Any notice required to be sent to any Member or Director or to the auditor or person who has been appointed to conduct a review engagement shall be delivered personally to any such Member or Director at their latest address as shown in the records of the Corporation and to the auditor or the person who has been appointed to conduct a review engagement at its business address, or if no address be given then to the last address of such Member or Director known to the secretary; provided always that notice may be waived or the time for the notice may be waived or abridged at any time with the consent in writing of the person entitled thereto.

## **OPTION 3**

Write your own language about service that permits personal delivery and some of the other methods listed in the Default By-law.

## **10.02 Error or Omission in Giving Notice**

### **OPTION 1**

Use the language from the Default By-law:

The accidental omission to give any notice to any Member, Director, Officer, member of a committee of the Board or auditor or person conducting a review engagement, if any, or the non-receipt of any notice by any such person where the Corporation has provided notice in accordance with the By-laws or any error in any notice not affecting its substance shall not invalidate any action taken at any meeting to which the notice pertained or otherwise founded on such notice.

## Section 11 – Adoption and Amendment of By-laws

### 11.01 Amendments to By-laws

#### Things to consider

Consider how much control and oversight you want your Members to have over changes to these By-laws.

#### OPTION 1

Use the language from the Default By-law:

The Board may from time to time in accordance with the Act amend or repeal and replace this By-law.

#### OPTION 2

Use this wording:

The Members may from time to time amend this By-law if at least [x]% of the Members approve the amendment. The Board may not amend these By-laws.

#### OPTION 3

Use this wording:

This By-law may be amended by a majority vote of the Board and the Members.

#### OPTION 4

Do not include language in your Corporation's By-laws about amending your By-laws. If you choose this option, the default rule under the ONCA is that your Board will be able to amend your Corporation's By-laws subject to certain exceptions and to the subsequent approval of your Members (Section 17).

Enacted [insert date, except where Corporation is deemed to have passed this by-law under subsection 18(1) of the Act.].

\_\_\_\_\_  
[If appointed, insert President Name]

\_\_\_\_\_  
[If appointed, insert Secretary Name]

## SCHEDULE A Position Description of the President

### Role Statement

The president provides leadership to the Board, ensures the integrity of the Board's process and represents the Board to outside parties. The president co-ordinates Board activities in fulfilling its governance responsibilities and facilitates co-operative relationships among Directors and between the Board and senior management, if any, of the Corporation. The president ensures the Board discusses all matters relating to the Board's mandate.

### Responsibilities

**Agendas.** Establish agendas aligned with annual Board goals and preside over Board meetings if also holding the office of Chair. Ensure meetings are effective and efficient for the performance of governance work. Ensure that a schedule of Board meetings is prepared annually.

**Direction.** Serve as the Board's central point of communication with the senior management, if any, of the Corporation; provide guidance to senior management, if any, regarding the Board's expectations and concerns. In collaboration with senior management, develop standards for Board decision-support packages that include formats for reporting to the Board and level of detail to be provided to ensure that management strategies and planning and performance information are appropriately presented to the Board.

**Performance Appraisal.** Lead the Board in monitoring and evaluating the performance of senior management, if any, through an annual process.

**Work Plan.** Ensure that a Board work plan is developed and implemented that includes annual goals for the Board and embraces continuous improvement.

**Representation.** Serve as the Board's primary contact with the public.

**Reporting.** Report regularly to the Board on issues relevant to its governance responsibilities.

**Board Conduct.** Set a high standard for Board conduct and enforce policies and By-laws concerning Directors' conduct.

**Mentorship.** Serve as a mentor to other Directors. Ensure that all Directors contribute fully. Address issues associated with underperformance of individual Directors.

**Succession Planning.** Ensure succession planning occurs for senior management, if any, and Board.

**Committee Membership.** Serve as Member on all Board committees.

## SCHEDULE B Position Description of the Treasurer

### Role Statement

The treasurer works collaboratively with the president and senior management, if any, to support the Board in achieving its fiduciary responsibilities.

### Responsibilities

**Custody of Funds.** The treasurer shall have the custody of the funds and securities of the Corporation and shall keep full and accurate accounts of all assets, liabilities, receipts and disbursements of the Corporation in the books belonging to the Corporation and shall deposit all monies, securities and other valuable effects in the name and to the credit of the Corporation in such chartered bank or trust company, or, in the case of securities, in such registered dealer in securities as may be designated by the Board from time to time. The treasurer shall disburse the funds of the Corporation as may be directed by proper authority taking proper vouchers for such disbursements, and shall render to the Chair and Directors at the regular meeting of the Board, or whenever they may require it, an accounting of all the transactions and a statement of the financial position, of the Corporation. The treasurer shall also perform such other duties as may from time to time be directed by the Board.

**Board Conduct.** Maintain a high standard for Board conduct and uphold policies and By-laws regarding Directors' conduct, with particular emphasis on fiduciary responsibilities.

**Mentorship.** Serve as a mentor to other Directors.

**Financial Statement.** Present to the Members at the annual meeting as part of the annual report, the financial statement of the Corporation approved by the Board together with the report of the auditor or of the person who has conducted the review engagement, as the case may be.

## SCHEDULE C Position Description of the Secretary

### Role Statement

The secretary works collaboratively with the president to support the Board in fulfilling its fiduciary responsibilities.

### Responsibilities

**Board Conduct.** Support the president in maintaining a high standard for Board conduct and uphold policies and the By-laws regarding Directors' conduct, with particular emphasis on fiduciary responsibilities.

**Document Management.** Keep a roll of the names and addresses of the Members. Ensure the proper recording and maintenance of minutes of all meetings of the Corporation, the Board and Board committees. Attend to correspondence on behalf of the Board. Have custody of all minute books, documents, registers and the seal of the Corporation and ensure that they are maintained as required by law. Ensure that all reports are prepared and filed as required by law or requested by the Board.

**Meetings.** Give such notice as required by the By-laws of all meetings of the Corporation, the Board and Board committees. Attend all meetings of the Corporation, the Board and Board committees.