

## LAC & Associates Consulting

226 Byron Avenue  
Ottawa, Ontario, K1Z 6Y7, Canada  
Phone/Fax: 1-613-725-9147  
Mobile/Text: 1-613-698-6247  
Email: jshane@magma.ca



### **PREPARING YOUR BY-LAWS FOR THE OCTOBER 2024 ONCA DEADLINE: AN UPDATE FOR COMMUNITY ASSOCIATIONS**

Judith Shane, BA, MSW, RSW, LLB  
LAC & Associates Consulting

Many associations are working towards the goal of converting their governing documents to compliance with Ontario's Not-for-Profit Corporations Act, 2010 (known as ONCA) in advance of the October 18, 2024 deadline.

Below is information on recent updates to ONCA and a few tips to assist with the process. This information pertains whether you are just beginning or have almost completed your revisions.

#### **RECENT UPDATES TO ONCA**

The provincial government made some minor amendments to the (ONCA) legislation in June 2023. These changes took effect on October 1, 2023.

If you have been using a copy of the Act predating October 1<sup>st</sup>, it would be wise to go back to the Ontario government e-laws section and review the updated Act now on the website.

Note that these amendments are relatively minor. Some pertain to the government rules allowing not-for-profit (nfp) corporations to hold their directors' and members' meetings online or by telephone during the period of Covid-19 restrictions, regardless of whether the by-laws allowed it. That set of rules ended on September 30, 2023.

Some amendments allow meetings to be held remotely provided an nfp's articles and by-laws permit it. They provide legitimacy and permanency to completely virtual or hybrid directors' and members' meetings.

One of these amendments provides clarity regarding what passes for a meeting versus an email exchange amongst members or directors. Virtual meetings must provide that all persons attending are able to communicate with each other simultaneously and instantaneously (see

s. 34(8). This can be interpreted to mean that email chains and interactions on matters do not constitute meetings.

Other changes more clearly provide opportunities for members to access records remotely as well as in-person. A proxyholder may demand a ballot at a members' meeting. Certain voting verifications for proxies at meetings, that are not in-person, have been repealed.

Check these subjects in ONCA to examine the October 1<sup>st</sup> amendments:

- Holding Virtual Board (Directors') Meetings – ss.32 and 34
- Adjourning A Board Meeting – s.34
  
- Holding Virtual Members' Meetings- ss.53 and 55
- Voting at Members' Meetings – s.58
- Proxies For A Members' Meeting – ss.66 and 67
  
- Access To Corporate Records – ss.94, 95 and 96
- Record Keeping - ss.97, 98 and 100
  
- Audit Committee – s.80

To easily find these topics in ONCA:

1. Go to [www.ontario.ca/laws/statutes](http://www.ontario.ca/laws/statutes).
2. Find ONCA. You will see that the e-Laws currency date is October 1, 2023.
3. Go to the ONCA Contents page and scroll down through these various topics to find the relevant sections and subsections or click on the relevant section number on the Contents page.
4. If you are unsure whether you are looking at an updated section, look for 2023 (instead of 2010) as the year listed after the wording. 2023 indicates an updated section.

An example:

Directors' Meetings (s. 34)

### **When notice need not specify place of meeting**

(3.1) A notice of a meeting of directors need not specify a place of the meeting if the meeting is to be held entirely by one or more telephonic or electronic means. 2023, c. 9, Sched. 22, s. 3 (1).

### **A FEW TIPS:**

**DEADLINES:** Some associations will have already held their annual members' meetings for the current period. They may not have been able to complete the revisions and amendments to

their by-laws in time for that meeting. This may raise concerns that those revised/amended by-laws will then not be ready for the ONCA October 2024 deadline.

This may lead the by-law working group and the board of directors to rush to finalize the revisions/amendments. Consequently, producing a not altogether satisfactory or incomplete version. More amendments may then be required the following year.

To avoid this problem, consider calling a special members' meeting prior to October 2024 for the specific purpose of approving the revised by-laws once they have been given full and timely approval by the board of directors.

**ARTICLES:** Remember to first read over your Letters Patent before beginning the process of revising your by-laws and/or making them ONCA compliant. This document, under ONCA, becomes your Articles of Incorporation.

This fundamental governing document may require amending. For example, an organization's purposes may have changed over the years. The purposes listed in the revised by-laws may no longer be in sync with the purposes listed in the Articles. If the Articles then require amending, it will need a two-thirds majority vote in favour at a members' meeting. The approved amendments will then have to be filed with the provincial government and a fee paid.

**TEMPLATES:** Templates can be immensely helpful as starting points. A well constructed version will provide a fundamental structure on which to build your organization's personalized by-laws. A template can demonstrate the correct wording, phrasing and terminology to use. It will cover various subjects common to all ONCA related by-laws and, includes issues where decision-making has been required.

However, one template does not suit all. Use caution in thinking that someone else's template will exactly and precisely fit your organization's needs.

Remember the following:

1. Different templates for different organizations: Use templates created by organizations similar to your own. Remember that a charity, recreational or religious corporation has different needs, structures and legal requirements than a community association. Also, larger sized organizations differ from smaller ones in their structures. Larger organizations may, for example, have multiple membership classes and varied voting rights. Small organizations may not need to address those issues in their by-laws.

2. Decisions are still required: Your organization will still need to make a series of decisions on numerous issues to properly customize and tailor the template to your own specific governance requirements and operational functions. Examples include decisions on the percentage/number for quorum at directors' and members' meetings, membership fees and, whether the length of directors' terms should be staggered.

3. There are themes to consider: Regardless of how other organizations have designed their by-laws, there are various themes to consider concerning what best suits your own governance approach. These themes include:

- Where is the locus of control? Who is largely responsible for decision-making, the directors or the members?
- Which is preferable? Short and simply worded by-laws silent on the mandatory rules? Or more comprehensive, lengthier by-laws that include the mandatory rules?
- How much participation do you want from your members and directors? For example, a smaller number for quorum (i.e., a simple majority) means meetings may be held more frequently because attendance is higher but fewer people are making the decisions.

### **ADDITIONAL RESOURCES**

If you do not have them already, you may wish to contact us to receive one or all of our three previous ONCA related memos:

Memo #1: How To Prepare For The ONCA – November 2021

Memo #2: Tips For Drafting Or Rewriting By-laws - March 2022

Memo #3: Tips For Interpreting Sections Of ONCA And Drafting Rules – May 2023

For a list of various legal resources, please see the webinar slide deck from our presentation at the FCA ONCA workshop on May 13<sup>th</sup>, 2023. The slide deck is found on the FCA's Community Resources section, under ONCA Resources, at <https://fca-fac.ca>.

**To learn more about our ONCA support, guidance, and legal information services, please contact LAC & Associates Consulting at [lacutler@magma.ca](mailto:lacutler@magma.ca).**

Disclaimer: This guide is for legal information purposes only. It is not intended as legal advice.