

**ONN feedback on Ontario-Not-for-Profit Corporations Act (ONCA)
and associated legislative regulations
June 22, 2020**

About Ontario Nonprofit Network

The Ontario Nonprofit Network (ONN) is the independent network for the 58,000 nonprofits in Ontario, focused on policy, advocacy and services to strengthen Ontario's nonprofit sector as a key pillar of our society and economy.

ONN works to create a public policy environment that allows nonprofits to thrive. We engage our network of diverse nonprofit organizations across Ontario to work together on issues affecting the sector and channel the voices of our network to governments, funders, and other stakeholders.

ONN has reviewed the consultation draft regulatory documents:

- Not-for-Profit Corporations Act, 2010, General
- Not-for-Profit Corporations Act, 2010, Corporations Names and Filings

It is important to understand that 50% of nonprofit corporations are volunteer led, with no or minimal staff. Leadership can turn over regularly so record keeping should, where possible, be part of the ongoing corporate practises. This includes minutes of Boards of Directors and annual meetings that can and do document appointment and resignation of directors, declaration of conflict of interest, appointment of auditors. It is therefore important that regulations reflect and support what would be routine and regular practice to enable maximum compliance.

The ONCA contains many new procedures, responsibilities and rights for all involved in the corporation. These will be new to most organizations in the nonprofit sector and may be confusing in the transition to the new act. Community Legal Education Ontario (CLEO) has developed a helpful by-law builder; however organizations will also need easy other supporting tools, such as checklists and sample documents for things such as member proposals and proxies. In particular, organizations will need guidance documents for many of the new processes, especially those that are not frequently used, such as dissenting members, court processes, and auditor disputes. It must be assumed that the corporation will have never dealt with the process before and most will not have access to legal assistance. Both members and Directors will need assistance in understanding how to proceed.

ONN's general recommendation is to make the requirements for compliance be as simple and straightforward as possible and provide supporting resources to assist the sector with compliance.

Specific Comments

1. Authorization of representative

2. For the purposes of subsection 48 (7) of the Act, a corporation shall recognize an individual to represent a member corporation or other entity only if the individual has been authorized by a resolution of the directors or governing body of the member corporation or entity.

This is complicated and unnecessary. ONN recommends that in the case of dispute, for example, if two people from the same corporation claim they are the voting member, the corporation can ask for proof of authorisation to represent the corporate member. Nonprofit corporations have members, and these are typically individual memberships and occasionally organizational memberships. The sector operates on one vote per member. This requirement appears better suited to the corporate setting where shareholders can own many shares and who they represent takes on more significance. To require all organizational memberships to have a board resolution authorizing them to vote at an annual meeting is unworkable and not realistic.

Suggested Amendment

Recommended change: Add

2. In the case of dispute as to who is the voting member of a corporate member...

2. Corporate Registers

And (2) - ONN appreciates that only six years of records need to be kept for Directors and Officers. Small volunteer-led organizations can likely manage this directive, and if records have not been maintained, as sometimes happens with volunteer leadership turnover, it will be easier to restart appropriate recording processes.

Member Registry

(3) The following information must be contained in the register of members referred to in clause 92 (1) (h) of the Act:

1. The name of every current member and the date on which the person became a member.
2. The name of every former member who ceased to be a member within the preceding six years, and the dates on which the person became a member and ceased to be a member.
3. The residential address, business address or address for service of every current member, including the municipality, street and number, if any, and postal code.
4. An email address for every current member who has consented to accepting information or documents by electronic means.
5. The class or group of membership of each member, if there is more than one class or group.

While maintaining a register of Directors and Officers has long been an accepted practice, maintaining a register of members has been less so. Membership lists are maintained from year to year with contact information, but membership often changes and is typically renewed annually. Keeping track of the date of first membership and date they ceased to be a member is not practical and or relevant. For example: some people become members for a few years, but stop, and then rejoin in a subsequent year. Maintaining records of this is unduly onerous. What is necessary to know is who is “a member in good standing” for each annual meeting or special meeting. The regulation should therefore require an annual list of members in good standing with contact information (needed for proposals and mailing). These annual lists could be kept for six years and be deemed to be a register.

Recommendation

Require corporations to maintain an annual list of members in good standing and maintain those lists for six years.

3. Information in Writing

Notice of appointment to auditor, person conducting review engagement

10. A corporation shall give notice in writing of the appointment of an auditor or a person to conduct a review engagement under subsection 68 (1), section 72 or subsection 73 (1) of the Act, as applicable, to the auditor or the person immediately after the appointment is made.

This requirement makes sense for auditors appointed under Section 72 or 73(1), but for a routine auditor appointment under subsection 68(1) it is not urgent to notify the auditor. Firstly, the auditor is often present when the appointment is made, and additionally many auditors work for the corporation year after year. This requirement appears to be redundant.

ONN recommends this be amended so only a change of auditors requires immediate notification. The minutes of Annual Meetings record the appointment, so a letter is superfluous. It is in everyone’s best interest to minimize inadvertent noncompliance.

Recommended change: Add to

Notice of appointment to auditor, person conducting review engagement

10. A corporation shall give notice in writing of the appointment of a new or change of auditor or a person to conduct a review engagement under subsection 68 (1), and an appointment under section 72 or subsection 73 (1) of the Act, as applicable, to the auditor or the person immediately after the appointment is made.

4. Dissenting members, court applications and hearings, disputes over and with auditors etc.

It has been over 60 years since the nonprofit sector’s legislation was significantly updated and nonprofit corporations are now being quickly taken into new processes with the legislation. The

ONCA contains many provisions regarding the rights of members to dissent and take action and this requires documentation of the steps and process along the way. The magnitude of the changes must be recognized. Few organizations will be aware of or familiar with many of these processes. The section on "Information in writing" is logical and good practice, but the nonprofit sector will need support to incorporate some of these processes. This is especially true of practices that are not usual or frequent.

Recommendation

The nonprofit sector will need simple and easy to access tools and guides to some of these processes, especially those that are not usual or frequent such as dissenting members, court hearings, and disputes over or with auditors.