



Community Organizational Health Santé des organismes communautaires

GUIDE TO THE ONTARIO CORPORATIONS ACT 2003

The following quick reference tool does not outline all of the provisions of the Corporations Act, only common situations that pertain to not-for-profit organizations which are incorporated under the Ontario Corporations Act. Some not-for-profit organizations are incorporated under the Federal Corporations Act, which has different requirements.

This guide is current as of October 7, 2003. Organizations are encouraged to consult their lawyer or a representative of the Ontario Companies Branch for any and all changes since such date.

Please note, although reviewed by a lawyer, this document does not replace consultation with a lawyer. Organizations are encouraged to get their own legal advice as appropriate.

The following Parts, Sections and clauses of the Corporations Act (Ontario) (the “OCA”), apply to not-for-profit organizations:

- Part I: Corporations, Incorporation
- Part II: Companies

Applicable Sections:

- Section 22
- Section 23(1) - clauses (a) to (p) and (s) to (v)
- Section 23(2)
- Sections 59 to 61
- Section 67
- Sections 69 to 71
- Sections 80 to 82
- Sections 84, 93 and 94
- Section 95(1)
- Section 96 and 96(1)
- Section 97(1) - clauses (a), (c) and (d)
- Section 97(3)
- Section 113

The words "company", "private company" and "shareholder" as used in Part II OCA mean "corporation" and "member" respectively for not-for-profit organizations' purposes.

- Part III: Corporations Without Share Capital
- Part VI: Winding Up (though not likely to apply to organizations being reviewed via BHO)
- Part VII: Corporations, General

Topic (Alphabetical Order)	General Provisions	Relevant Section of OCA
Auditor – Appointment	<p><u>At a first general meeting</u>, the members must appoint one or more auditors to hold office until the first annual meeting. However, the directors are required to do so if the members fail to do so.</p> <p><u>At each annual meeting</u>, the members must appoint one or more auditors to hold office until the next annual meeting. If the members fail to do so, the auditor who is then in office must continue in office until a successor is appointed.</p> <p>The directors may fill any casual vacancy in the office of auditor, but, while such vacancy continues, the surviving or continuing auditor, if any, may act.</p>	94(1), (2) and (3)
Auditor – Remuneration	The remuneration of an auditor appointed by the members must be fixed by the members or by the directors if they are authorized to do so by the shareholders; provided that the remuneration of an auditor appointed by the directors shall be fixed by the directors.	94(5)
Auditor – Qualification (conflict of interest)	No person can be appointed an auditor of a corporation who is a director, officer or employee of that corporation or an affiliated corporation or who is a partner, employer and employee of such director, officer or employee. See below for the definition of an "officer".	95(1)
Board of Directors	A board must consist of a fixed number of directors not fewer than three.	283(2)
Board of Directors – Quorum	Unless specified otherwise in the corporation's constating documents, quorum must be a majority of the board of directors, but in no case less than two-fifths of the fixed number of directors.	288(1)

By-laws – Content	By-laws must be consistent with the OCA and the letters patent or supplementary letters patent. By-laws can be used to regulate the following: (a) the admission of members (b) the fees and dues of members (c) the issue of membership cards and certificates (d) the suspension and termination of memberships by the corporation and by the member (e) the transfer of memberships (f) the qualification of and the remuneration of the directors and the directors by virtue of their office, if any (g) the time for and the manner of election of directors (h) the appointment, remuneration, functions, duties and removal of agents, officers and employees of the corporation and the security, if any, to be given by them to it (i) the time and place and the notice to be given for the holding of meetings of the members and of the board of directors, the quorum at meetings of members, the requirement as to proxies, and the procedure in all things at members' meetings and at meetings of the board of directors (j) the conduct in all other particulars of the affairs of the corporation.	129(1)
Corporate Seal	Corporation may, <u>but need not</u> , have a corporate seal.	279
Definitions – Officer	"Officer" means president, chair of the board of directors, vice-president, secretary, assistant secretary, treasurer, assistant treasurer, manager or any other person identified as an officer in the by-laws.	1
Definitions – Special Resolution	A resolution passed by the directors and confirmed by at least two-thirds of the votes cast at a meeting of members duly called for such purpose or in lieu of such confirmation by the consent in writing of all members entitled to vote at such meetings.	
Directors – Election	Unless provided otherwise by the by-laws, a corporation's directors are to be elected yearly by the members at a general meeting.	287(1) and (2)
Directors – Election by Rotation	If the by-laws provide for the election and retirement of directors in rotation, no directors can be elected for a term of more than five years and at least three directors must retire from office in each year.	287(5)

Directors – Insurance	Directors and officers (including their heirs, executors and administrators, etc.) may be indemnified out of the funds of the corporation from and against matters related to his/her role as a director or officer. This does not apply where matters are the result of a director's own willful neglect or default. The indemnification of directors must be approved at a meeting of the members.	80
Directors – Qualifications	Directors must be 18 years of age or older, not an undischarged bankrupt and a member of the corporation (or become one within 10 days).	286(1), (2), (4) and (5)
Directors / Officers – Remuneration	No by-law dealing with remuneration for the president or any director is effective until confirmed by members.	69
Directors – Remuneration for other roles	Organization's which are registered charities cannot pay a director for his/her services to the corporation as a director (despite Sec. 126) but directors can be reimbursed for actual expenses. Extreme caution is required on the subject of paying a director or member reasonable remuneration and expenses for his/her services to the corporation in any other capacity and reference should be made to the letters patent, supplementary letters patent and by-laws and the rules governing charities.	126
Directors – Term	The term for any director is normally one year unless the by-laws otherwise provide. The by-laws may provide for election and retirement of directors in rotation but the term cannot be more than five years. (see above – "Rotation of Directors")	287(1) and (5)
Disclosure of Interest Conflict of Interest – Notice	A director may give notice to the board that he/she is a shareholder or otherwise interested in another body corporate and is to be regarded as interested in any contract made with such other body corporate. Notice must be given at a meeting of the directors or the director giving notice must take reasonable steps to ensure that it is brought up and read at the next meeting of the directors after it is given.	71(3)

<p>Disclosure of Interest Conflict of Interest – Specific Contracts</p>	<p>Every director of a corporation who is in any way <u>directly or indirectly</u> interested in a proposed contract or a contract with the corporation shall declare his/her interest at a meeting of the directors of the corporation.</p> <p>In the case of a proposed contract, the declaration must be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration.</p> <p>In a case where the director becomes interested in a contract after it is made, the declaration must be made at the first meeting of the directors held after he/she becomes interested.</p>	<p>71(1) and (2)</p>
<p>Executive Committee</p>	<p>Where the number of directors on the board is more than six, the directors may pass a by-law authorizing them to elect an executive committee.</p> <p>An executive committee can consist of no fewer than three directors.</p> <p>The by-law may delegate to the executive committee any powers of the board, subject to any restrictions specified in the by-laws or imposed by the board itself at any time.</p> <p>Any such by-law is not effective until confirmed by two-thirds of the votes of members.</p>	<p>70(1) and (2)</p>
<p>Executive Committee – Quorum</p>	<p>An executive committee may fix its quorum at not less than a majority of its members.</p>	<p>70(3)</p>
<p>Insurance for Directors and Officers</p>	<p>The corporation may purchase directors and officers insurance but, if it is a charity, it must comply with legislated requirements.</p>	<p>283(5) and (6)</p>
<p>Meetings – Information for Annual Meeting</p>	<p>The information provided to the members at each <u>annual</u> meeting must include at a minimum:</p> <ul style="list-style-type: none"> • detailed financial statements for period ended not more than six months before such meeting • the report of the auditor • any further information regarding the financial position of the organization as the letters patent, supplementary letters patent or by-laws of the corporation require. • the report of the auditor must be read and must be open to inspection by any shareholder. 	<p>97(1) and (3)</p>

Meetings – Notice	By-laws of corporation shall not provide for fewer than 10 days notice of meetings of members. CHCs which are charitable corporations may give notice of the AGM by publication at least once a week, for two consecutive weeks, next preceding the meeting in a newspaper or newspapers circulated in the municipality or municipalities in which the majority of the members of the corporation reside as shown by their addresses on the books of the corporation.	93(2) 133(2)
Meetings – Proxies	Every member of the corporation who is entitled to vote at a meeting of members may appoint (using a proxy) a person as the member's nominee to attend and act at the meeting in the manner, to the extent and with the power conferred by the proxy. The person appointed by proxy does not need to be a member. See Sec. 84(2) through (5) for form, contents, notice that proxy will be used, and revocation, etc.	84(1)
Meetings – Telephone	Directors may participate by telephone in board meetings in certain situations (subject to any restrictions in the by-laws).	283(3.1)
Meetings – Timing of Annual Meetings	The first meeting of members must be held not later than 18 months after incorporation. All subsequent annual meetings must be held not more than 15 months after the last annual meeting.	293
Meetings – Timing of General Meetings	A general meeting of members may be held any time provided proper notice is given and such notice specifies the nature of such meeting.	294
Meetings – Voting	Subject to by-laws: (a) all questions proposed for the consideration of the members must be determined by the majority of the votes cast; (b) the chair presiding at the meeting has a second or casting vote in case of a tie; and (c) unless a poll is demanded, a declaration by the chair to the effect that motion is carried (and recorded in the minutes) is evidence as proof of the fact.	93(1)(c) and (f)

Membership – Classes	The letters patent, supplementary letters patent or by-laws may provide for more than one class of membership. The by-laws may provide for the division of its members into groups, either territorially or on the basis of common interest, and the election of directors in relation to these divisions. The by-laws may detail the election of delegates and alternative delegates to represent each group. A delegate has only one vote and shall not vote by proxy. Any application re above must be authorized by a special resolution.	120 and 130(1), (2) and (3)
Membership – Limits on Numbers	There is no limit on the number of members unless the letters patent, supplementary letters patent or by-laws otherwise provide.	123
Membership – Voting	Each member has one vote unless the letters patent, supplementary letters patent or by-laws otherwise provide. Members' resolutions can also be signed by all of the members (instead of being passed at a meeting)	125 298(2)
Minutes	Minutes must be kept of all meetings of members and directors and any executive committee.	299(1)
Minutes and Other Records –Open for Inspection by Director	Minutes of all meetings (Sec. 299), membership register, copy of the letters patent, any supplementary letters patent, by-laws, special resolutions and registers (Sec. 300), and proper books of account and accounting records (Sec. 302), are to be kept at head office of corporation and available for inspection by <u>any director only</u> during normal business hours.	304(1)
Minutes and Other Records –Open for Inspection by Members and Creditors	Minutes of meetings of members only (Sec. 299) and the documents and registers mentioned in Secs. 41 and 300 (see above) must be open to inspection by the <u>members and creditors</u> only of the corporation or their agents or legal representatives during normal business hours . [NB: Ensure that such members / creditors only have access to those documents to which they are entitled and that the rules of the Act are followed.]	305(1)
Officers	The President must be elected from among the directors. Although usually elected by the board, the by-laws can provide for the election of the officers by the members.	289

