

11 Key Takeaways from Ontario's Not-for-Profit Corporations Act for Provincial Associations

On October 19, 2021, Ontario's Not-for-Profit Corporations Act (ONCA) replaced Ontario's Corporations Act (OCA) as the law that governs most nonprofits incorporated under Ontario law. Nonprofits have three years to comply with ONCA during which time their letters patent and bylaws will be valid as long as they complied with OCA. However, the full potential of this new Act will not be realized until nonprofits are aware of and able to take advantage of its new flexibilities and opportunities.

Disclaimer: *This information sheet only discusses compliance under ONCA. Nonprofits may face requirements from other areas of law, such as charity, tax, privacy, and health law that still apply.*

The key takeaways below have been written specifically for provincial associations and are not intended for individual nonprofit organizations. We have included ONCA related resources at the end of this document.

Public Benefit Corporations

1. Registered charities and nonprofits receiving more than \$10,000 from public sources now require a 3-year asset lock.

- **The change:** All nonprofits faced the same rules under OCA. Under ONCA, some nonprofits will have a status called "public benefit corporations". These nonprofits face higher financial review standards and must include a clause in governing documents that if they close, all assets will go to the government or, a registered charity with similar purposes; or in the case of public benefit corporations that are not registered charities, other public benefit corporations with a similar mission.
- **Why it matters:** If you are likely to receive more than \$10,000 in gifts/annum on a fairly frequent basis and/or want to be seen as a public corporation you should consider adding a permanent asset lock and meeting the higher financial review

standards. This may also promote trust and encourage the retention of public assets in community hands.

Board of Directors

2. It is now possible to state a range of directors.

- **The change:** Before ONCA, you could only specify a fixed number of directors on your board in your by-laws. Now your articles of incorporation can state a range for the number of directors. e.g., 7-12.
- **Why it matters:** This gives nonprofits flexibility to only fill the seats on the Board they need every year (or in between annual meetings if a director resigns), but could expand the number of seats on the Board by a Board resolution if they need more in future.

3. Maximum director term limits have dropped from 5 to 4 years.

- **The change:** Directors can still serve as many terms as they like unless the articles or bylaws set a limit, but now there must be an election at least once every 4 years.
- **Why it matters:** This provides the opportunity for more frequent Board renewal.

4. Boards now require Chairs and no longer require Presidents or Secretaries.

- **The change:** Previously nonprofits were required to appoint a President and a Secretary. This is no longer required, but nonprofits must appoint a Chair. Unlike other officers, the Chair must be a Director.
- **Why it matters:** While this change could simply mean changing the title of an officer position, this could also be an opportunity for nonprofits to take a closer look at their officer positions and whether they are still serving the governance needs they were set up to meet.

Stakeholder Rights

5. Members can now remove directors with a 51 per cent vote.

- **The change:** Previously, bylaws or articles could require that members required a two-thirds majority to remove a sitting director. Such provisions are no longer

valid and a simple majority (51 per cent) at a members' meeting is enough to remove a director.

- **Why it matters:** The directors are ultimately accountable to members. Nonprofits that have not updated their governing documents may have outdated provisions that mistakenly prevent members from exercising their rights to decide who is on the Board.

6. Members and other key stakeholders can now sue the Board on behalf of the nonprofit.

- **The change:** ONCA allows for “derivative actions” and “oppression remedies”. Derivative actions allow a member or director to sue the Board on behalf of the nonprofit if a Court of law thinks it's in the nonprofit's best interest to do so. Oppression remedies allow members or directors who have been treated seriously unfairly to sue the nonprofit.
- **Why it matters:** These worst-case scenario legal rights rarely succeed in court but they're a powerful reminder for Boards to respect the rights of stakeholders.

7. Members holding 10 per cent (or fewer) of the votes can demand a members' meeting.

- **The change:** Previously, members holding 10 per cent of the votes could demand a members' meeting be called. Now, nonprofits can change their bylaws to an even lower threshold.
- **Why it matters:** Nonprofits may want to lower this threshold if they want to encourage proactive members and have a very large membership.

8. Members no longer have an automatic right to vote by proxy.

- **The change:** Members now only have the right to vote by proxy if bylaws provide it. Bylaws can also allow for mail-in, phone, and electronic voting.
- **Why it matters:** Nonprofits will need to be intentional about setting up voting rights and systems that suit their situation.

Finances

9. Nonprofits with annual revenue under \$500,000 are no longer required to get an audit.

- **The change:** Previously, all nonprofits with annual revenue above \$100,000 were required to get an audit. Now, public benefit corporations can get a review engagement until they have revenue above \$500,000, and non-public benefit corporations always have the option of passing an extraordinary resolution to waive an audit.
- **Why it matters:** If your funders and donors are still demanding audits that ONCA doesn't require, talk to them about the administrative costs and proportionate reporting.

10. Nonprofits can borrow money by default.

- **The change:** Previously, nonprofits had to specify certain borrowing powers in their letters patent or bylaws. Now, nonprofits have the power to borrow and issue debt by default unless their articles or bylaws say otherwise.
- **Why it matters:** This will make it easier to secure repayable capital on a timely basis.

Record Keeping

11. Nonprofits can now clearly store corporate records on the cloud.

- **The change:** Previously, nonprofits were required to keep certain corporate records at their office and it was unclear if this allowed for digital or cloud storage. ONCA allows for records to be kept electronically even on a server outside of Ontario, as long as the files are accessible from the registered address or another Board-chosen location in Ontario.
- **Why it matters:** Nonprofits have been given a clear green light to modernize their record keeping practices.

If you have more questions visit [Nonprofit Law Ontario](#) or email Benjamin Miller, Policy Advisor, benjamin@theonnc.ca.

Related Resources:

- For individual nonprofit organizations: [Steps to transition](#)
- Read about [ONCA](#)
- Introduction to ONCA - [Recording](#)