

ONCA Changes

In October 2023, additional amendments to the Ontario Not-for-Profit Corporations Act (“ONCA”) came into force. These amendments mainly relate to the rules and procedures around virtual meetings.

A table of the key changes is provided below.

Items marked with an asterisk (*) reflect a more significant change.

New ONCA By-law

Summary of Change	Current Wording	Amended Wording
<p><u>Update to definition of telephonic and electronic means:</u> There has been a very minor change to the definition of telephonic and electronic means in the ONCA.</p> <p>By-law Section: 1.1</p>	<p>(t) “telephonic or electronic means” means any means that uses the telephone or any other electronic or other technological means to transmit information or data, including telephone calls, voice mail, fax, e-mail, automated touch-tone telephone system, computer or computer networks;</p>	<p>(t) “telephonic or electronic means” means any means that uses the telephone or any other electronic or other technological means to transmit information or data, including telephone calls, voice mail, fax, email, an automated touch-tone telephone system, computer or computer networks;</p>
<p><u>Member Meeting Notice:</u> The ONCA has been amended to provide that the notice of a member meeting does not need to include the place of the meeting if the meeting will be held virtually.</p> <p>By-law Section: New subsection in Section 3.5 re Notice and Proxies</p>	N/A	<p>Notice of a Members’ meeting is not required to specify a place of the meeting if the meeting is to be held entirely by one or more telephonic or electronic means. If a person may attend a meeting of the Members by telephonic or electronic means, the notice of the meeting must include instructions for attending and participating in the meeting by the telephonic or electronic means that will be made available for the meeting, including, if applicable, instructions for voting by such means at the meeting.</p>
<p><u>Demanding a Ballot at Member Meetings:</u> This is a minor change clarifying that a proxyholder can also demand a ballot at a member meeting.</p> <p>By-law Section: 3.6(d)</p>	<p>(d) A Member may demand a ballot either before or after any vote. A Member may withdraw a demand for a ballot.</p>	<p>(d) A Member or proxyholder may demand a ballot either before or after any vote. A demand for a ballot may be withdrawn.</p>
<p><u>Member Meeting Adjournment:</u> The ONCA has been amended to provide that if a member meeting is adjourned for less than 30 days, notice of</p>	<p>If a Members’ meeting is adjourned for less than thirty (30) days, no meeting notice that continues the adjourned meeting is required other than by</p>	<p>If a Members’ meeting is adjourned for less than thirty (30) days, no meeting notice that continues the adjourned meeting is required if all of the following are</p>

<p>the continued meeting is not required as long as specific instructions are announced at the meeting.</p> <p>By-law Section: New language replacing first sentence in Section 3.9 Notice of Adjourned (Member) Meetings</p>	<p>announcement at the adjourned meeting.</p>	<p>announced at the time of the adjournment:</p> <p>(i) the time of the continued meeting;</p> <p>(ii) if applicable, the place of the continued meeting; and</p> <p>(iii) if applicable, instructions for attending and participating in the continued meeting by the telephonic or electronic means that will be made available for the meeting, including, if applicable, instructions for voting by such means at the meeting.</p>
<p>* <u>Virtual Member Meetings:</u> The ONCA now provides that member meetings and voting at member meetings can be virtual or a combination of virtual and in person and the electronic means must allow people to reasonably participate.</p> <p>By-law Section: New wording for 3.11 Telephonic or Electronic Members' Meetings</p>	<p>Any person entitled to attend a Members' meeting may participate in the meeting by telephonic or electronic means that permits all participants to communicate adequately with each other during the meeting if the Corporation makes such means available, and a person participating in the meeting by those means is deemed to be present at the meeting. Members' meetings may be held entirely by telephonic or electronic means that permits all participants to communicate adequately with each other during the meeting.</p>	<p>A meeting of the Members may be held entirely by one or more telephonic or electronic means or by any combination of in-person attendance and by one or more telephonic or electronic means, provided that those means must enable all persons entitled to attend the meeting to reasonably participate and a person participating in the meeting by those means is deemed to be present at the meeting. A vote at a meeting of the Members may be conducted entirely by one or more telephonic or electronic means or by a combination of one or more telephonic or electronic means and voting in person.</p>
<p>* <u>Virtual Director Meetings:</u> The ONCA no longer requires that all directors consent to holding a virtual meeting and explicitly allows the meeting to be virtual or a combination of virtual and in person. Directors must be able to simultaneously and instantaneously communicate.</p> <p>By-law Section: New wording for 5.3 Telephonic of Electronic Meetings</p>	<p>If all the Directors have consented, a Board meeting or a meeting of a committee of Directors may be held by such telephonic or electronic means that permit all persons participating in the meeting to communicate adequately with each other during the meeting, and a Director participating in the meeting by those means is deemed to be present at the meeting.</p>	<p>A meeting of Directors may be held entirely by one or more telephonic or electronic means or by any combination of in-person attendance and by one or more telephonic or electronic means, provided that all persons attending the meeting are able to communicate with each other simultaneously and instantaneously. A Director participating in the meeting by those means is deemed to be present at the meeting.</p>

<p><u>Director Meeting Notice:</u> The ONCA now provides that notice of a director meeting does not need to include the place of the meeting if the meeting will be held virtually.</p> <p>By-law Section: New subsection in Section 5.4 re Notices (of Director Meetings)</p>	N/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. If the Directors may attend a meeting by telephonic or electronic means, the notice of the meeting must include instructions for attending and participating in the meeting by the telephonic or electronic means that will be made available for the meeting, including, if applicable, instructions for voting by such means at the meeting.
<p><u>Director Meeting Adjournment:</u> The ONCA has been amended to provide that if a director meeting is adjourned, notice of the continued meeting is not required as long as specific instructions are announced at the meeting.</p> <p>By-law Section: 5.13</p>	Notice of a meeting that continues an adjourned meeting of Directors is not required to be given if the time and place of the continued meeting is announced at the meeting that is adjourned.	<p>Notice of a meeting that continues an adjourned meeting of Directors is not required to be given if all of the following are announced at the time of the adjournment:</p> <p>(a) the time of the continued meeting;</p> <p>(b) if applicable, the place of the continued meeting; and</p> <p>(c) if applicable, instructions for attending and participating in the continued meeting by the telephonic or electronic means that will be made available for the meeting, including, if applicable, instructions for voting by such means at the meeting.</p>
<p><u>Audit Committee of Directors:</u> The ONCA now provides that a corporation may have an audit committee “comprising one or more directors and the majority of the committee must not be officers or employees”. Due to the ambiguity, we prefer the more restrictive interpretation for now, because having a committee of all directors is compliant regardless of how the provision ends up being interpreted.</p> <p>By-law Section: 8.6(a)</p>	(a) A majority of the audit committee members must not be officers or employees of the Corporation or of any of its affiliates;	(a) The audit committee shall be comprised of one or more Directors and a majority of the audit committee members must not be officers or employees of the Corporation or of any of its affiliates;

Non-ONCA Changes

<p><u>Deletion of last line in sentence:</u> This amendment has no material impact and reflects current election practice.</p> <p>By-law Section: 4.7 Election and Term</p>	<p>The Directors shall be elected for a term of up to three (3) years provided that each such Director shall hold office until the earlier of the date on which their office is vacated pursuant to section 4.6 or until the end of the meeting at which their successor is elected or appointed. It is not necessary that all Directors elected at a meeting be elected to hold office for the same term. An election of Directors is not required to take place at each annual Members' meeting. At least one-third (1/3rd) of the Directors shall be elected at each annual Members' meeting.</p>	<p>The Directors shall be elected for a term of up to three (3) years provided that each such Director shall hold office until the earlier of the date on which their office is vacated pursuant to section 4.6 or until the end of the meeting at which their successor is elected or appointed. It is not necessary that all Directors elected at a meeting be elected to hold office for the same term. An election of Directors is not required to take place at each annual Members' meeting.</p>
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