

Overview of Requirements for Ag Society Constitution/Articles and By-laws

DISCLAIMER – the following material is for information purposes only and should not be considered legal advice.

This is an overview of some of the important details contained in the AHOA and ONCA legislation documents. It may help to explain some of the different by-laws that have been included in the template. We suggest you review it before reviewing the template.

Articles or By-laws or Policies – what is the difference

Your articles must contain but is not limited to - your organization's name, its purpose, and the location of its head office, and any special rules. Special rules about the number of directors, membership classes and voting rights, and how to dissolve the nonprofit. Before ONCA, some of these rules were included in your bylaws.

Bylaws are a set of internal documents that describe how you will run your nonprofit. You might think of it as an internal operating manual. In essence, bylaws are a set of rules that govern how, why, and when your board does things.

Policies explain how your organization handles certain operational issues, such as hiring procedures, privacy, and dress codes. Operating procedures are less formal

Resources

AHOA regulations - <https://www.ontario.ca/laws/statute/90a09>

ONCA regulations – <https://www.ontario.ca/laws/statute/10n15%20-%20BK37#BK61>

Ontario government guide to ONCA - <https://www.ontario.ca/page/guide-not-profit-corporations-act-2010> - it explains the changes and features of the new act

Nonprofit Law Ontario guide to ONCA <https://nonprofitlaw.cleo.on.ca/transition-to-onca/> - this is an excellent resource for not-for-profit corporations to assist them to make their governance documents compliant with ONCA.

IMPORTANT: The following is **not** to be considered a complete list of all the required or suggested information regarding updating your Articles and By-laws to be AHOA or ONCA compliant.

A) What information must be in your Articles?

Your Society articles should include the following AHOA **and** ONCA requirements. Some of the following information may have been previously included in the Society By-laws and are now required in the Articles.

a) AHOA Requirements

As per the AHOA Section 6 the following items shall be included in the Articles:

- 1) the name of the organization to be incorporated;**
- 2) the type of organization; AHOA Section 25(2)**
- 3) the objects for which the organization is to be incorporated; AHOA Section 28**
- 4) the place in Ontario where the registered office of the organization is to be located;**
- 5) the names and addresses of one or more proposed first directors;**
- 6) the names and addresses of the members of the organization; and**
- 7) any other matter required by this Act or the regulations to be set out in the articles. AHOA section 6.**

NOTE: The **5) names and addresses of one or more proposed first directors** and **6) the names and addresses of the members of the organization** were required in first incorporation document and may or may not be present in your current articles of incorporation document.

b) ONCA Requirements

Your nonprofit's purposes – **OR** objects. This is the same requirement as point 3) above - **AHOA 6 (c)**
the objects for which the organizations is to be incorporated

You may have been incorporated a long time ago with purposes that no longer reflect what your nonprofit does. It is a good idea to take this opportunity to update your purposes to make sure they reflect your nonprofit's current mission and activities.

❖ Registered charities - **IMPORTANT**

If you are a registered charity, it is important to ensure that any changes you make to your purposes/objects are consistent with charity law. You are going to have to submit the changes to the Canada Revenue Agency for approval. You need to obtain the approval of Canada Revenue Agency before you file your articles of amendment. If you do not get approval of your changed purposes from Canada Revenue Agency before filing your articles of amendment, Canada Revenue Agency may reject your changes which will force your organization to amend your purposes again. Any issues with the purposes may affect your charitable status.

8) Number of directors

ONCA, like Ontario's Corporations Act (OCA) before it, requires that you have at least three (3) directors. But, instead of having a fixed number of directors, the ONCA allows you to set a minimum and maximum number of directors. When preparing your articles of amendment, you must include either the fixed number of directors, or if you prefer, the minimum and maximum number of directors in the articles of amendment.

9) Membership classes

If your society has only one class of members, that information may be included in your by-laws. If there is more than one class, you must list your classes of members in the articles (not in the bylaws). If you want to have more than one class of members, then you must set the names of these classes out in your articles. You must then set out the conditions for joining, leaving, and transferring between classes in your bylaws or articles. You may also choose to include other details.

10) Member voting rights

If you only have one class of members, then each member is allowed one vote at every meeting of members. If you have more than one class of members, at least one class must have the right to vote. You must set out the voting rights of each class of members in your articles. If you don't specify what voting rights different classes have, each member of every class of members will be allowed one vote at every meeting of members. If you want some classes of members to have more than one vote or have no votes, then you must write this in your articles.

11) Location of members meetings – **OPTIONAL if all member meetings are held in Ontario**

If you want your members' meetings to take place outside of Ontario, then you must specify the location in your articles. If you do not specify the location, then all your members will have to agree to have it outside of Ontario.

12) Restricting your nonprofit's powers - **OPTIONAL**

Under ONCA, nonprofits have all the legal powers of a person. Decisions are made primarily by the directors. Therefore, if you want to restrict the power of your nonprofit in some way, which means restricting the powers of the directors to act on behalf of the nonprofit, you can do so by including a restriction in the special provisions section of the articles or bylaws. By including the restriction in your articles, you make it more difficult to change, since filing with the OMAFRA is needed. If the society has charitable status, they must also submit changes to the Articles to CRA.

For example, some nonprofits restrict the power of the directors to borrow or to sell certain assets without approval of the members. If you want to restrict the right of the directors to borrow on behalf of the nonprofit without authorization of the members, you can include this restriction in the special provisions section of the articles, if you do not want to include this restriction in the bylaws. There are some restrictions that you can only put into the articles.

13) **Dissolution clause**

It's common for nonprofits to include a line in the special rules section of their articles saying what will happen to the nonprofit's property if it dissolves. For example, it is common to say that the property must be distributed to another nonprofit with similar purposes. Registered charities have to follow charity law. There are limits on what a registered charity can do with its property if it dissolves. Rules about dissolving a nonprofit are valid only if they are included in the nonprofit's articles.

12) **Special Provisions - OPTIONAL**

If the society is a registered charity, they may already have special provisions in their articles.

If the society has any commercial purpose, the articles must say that the commercial activity is meant only to support the nonprofit purpose of the organization (ONCA Section 8(3)).

Your society may wish to include other specific items in your articles that the society feels should require a 2/3 majority vote to modify.

B) By-laws – what you may need or want to change

These are examples but **are not a complete list** of by-laws you might need or want to change to be compliant under the AHOA and ONCA:

1) **MANDATORY INFORMATION - This information must be included in your by-laws**

- AHOA - time and place of the annual meeting **shall be set out in a by-law of the organization**. R.S.O. 1990, c. A.9, s. 10 (2).
- AHOA -The number of directors, their representation of certain districts or classes of members, and their method of selection **shall be set out in the by-laws of the organization**. R.S.O. 1990, c. A.9, s. 11 (2)
- AHOA - Subject to subsection 11 (3), the officers of the organization shall be appointed in the manner **set out in the by-laws of the organization**. R.S.O. 1990, c. A.9, s. 11 (4)
- AHOA- the by-laws must set out or refer to the society policy that defines the annual membership fee. **"by paying the annual fee set out in a by-law of the society"** R.S.O. 1990, c. A.9, s. 32.
- ONCA – **The by-laws of a corporation must set** out the conditions required for being a member of the corporation, including whether a corporation or other entity may be a member. *2010, c. 15, s. 48 (1)*.
- ONCA - the by-laws must clearly state:
 - how to join the class and/or conditions for membership or instructions for each class if society has multiple membership classes
 - how membership ends
 - how to withdraw or transfer classes (ONCA default – membership is transferred back to organization) *2010, c. 15, s. 48 (1) (3)*.

2) **MANDATORY REQUIREMENTS**– The following are a mandatory requirement of either AHOA or ONCA. **These requirements will apply whether or not you include them in your by-laws. It is suggested to include them so directors and members are aware of them.**

- AHOA indicates *that society must appoint a treasurer or a secretary-treasurer* R.S.O. 1990, c. A.9, s. 11 (3).
- AHOA – indicates that *a meeting of the board shall be called by the secretary upon the direction of the president or of any three members of the board by sending notice thereof to all the members of the board at least seven days before the time fixed for the meeting*. R.S.O. 1990, c. A.9, s. 14. This appears to indicate that the AHOA requires a society to have a president. The previous legislation (OCA) required the society to elect/appoint a president and a secretary; ONCA does not have the same requirement., however the society may wish to include in their by-laws that they will elect/appoint a president and/or secretary.
- AHOA – The society must hold annual meetings not more than fifteen months after the holding of the last preceding annual meeting or such other time as Director may approve. R.S.O. 1990, c. A.9, s. 10 (1)

- AHOA - A meeting of the board shall be called by the secretary upon the direction of the president or of any three members of the board by sending notice thereof to all the members of the board at least seven days before the time fixed for the meeting. R.S.O. 1990, c. A.9, s. 14.
- AHOA - Any person may join an agricultural society by paying the annual fee set out in a by-law of the society but no person under the age of eighteen years is eligible to vote at meetings of the society. R.S.O. 1990, c. A.9, s. 32.
- When notice of members' meetings must be given. AHOA – At least two weeks notice of the annual meeting shall be given to each member of the organization. 2019, c. 14, Sched. 3, s. 1. ONCA – must have minimum of 10 days prior to annual or special members' meeting and maximum of 50 days. 2010, c. 15, s. 55 (1).
- ONCA – Members can remove directors (except for ex officio directors) by a simple majority vote (50% + 1) at a special meeting called for that purpose. Your by-laws cannot change this percentage. Previous OCA legislation was 2/3 majority vote. 2010, c. 15, s. 26 (1).
- ONCA – 10% of the voting members of a society may requisition the directors to call a meeting for the purposes stated in the requisition. 2010, c. 15, s. 60 (1). Society by-laws can set a lower percentage but not a higher percentage.
- ONCA requires the board appoint a chair. The chair must be a director. President and chair can be the same person if your by-laws do not prohibit it. FYI– the term is chair – not chairperson. 2010, c. 15, s. 42 (2).
- ONCA – director term - maximum term length is 4 years. 2010, c. 15, s. 24 (1) NOTE: If your by-laws do not stipulate length of terms, the default is one year. 2010, c. 15, s. 24 (4) If your by-laws do not stipulate a maximum number of terms, a director can serve until they decide not to serve any longer.
- ONCA – proxies are not allowed for directors. 2010, c. 15, s. 23 (5).
- ONCA – A director who is present at a meeting of the directors or of a committee of directors is deemed to have consented to any resolution passed or action taken at the meeting, unless their dissent has been registered in the minutes or the secretary/corporation has been properly notified. 2010, c. 15, s. 45 (1). If the director was not present at the meeting, they will have been considered to agree with the decision is deemed to have consented to the resolution or action unless within seven days after becoming aware of the resolution, the director, causes his or her dissent to be placed with the minutes of the meeting; or submits his or her dissent to the corporation. 2010, c. 15, s. 45 (3)
- ONCA – A Society must have a minimum of 3 directors. 2010, c. 15, s. 22 (1).
- ONCA - Articles must be approved by 2/3 majority of members at an annual or special members' meeting.
- ONCA - An individual who is elected or appointed to hold office as a director is not a director, and is deemed not to have been elected or appointed to hold office as a director, unless the individual consents in writing to hold office as a director before or within 10 days after the election or appointment. 2010, c. 15, s. 24 (8); 2017, c. 20, Sched. 8, s. 13. Note: does not apply to a director who is re-elected or reappointed where there is no break in his or her term of office:

3) DEFAULT REQUIREMENTS: The following are default requirements – they apply automatically. If you wish to modify these requirements, you must include the modification in your by-laws or the default applies.

- ONCA default – chair must be a director, but unless your by-laws state otherwise, officers other than the chair, do not have to be directors. 2010, c. 15, s. 42 (1) (2).
- ONCA default is that directors and officers do not have to be members of your Society. If the Society requires the directors and officers to be members, the by-laws must state that. 2010, c. 15, s. 23 (2)
- ONCA default is that a person may hold more than one officer position (i.e. secretary and treasurer or chair and president). If the society does not want to allow a person to hold more than one office, the by-laws must state that. 2010, c. 15, s. 42 (1) (2).
- ONCA default is that 10% of voting members can call a special members' meetings. The society can stipulate in their by-laws that less than 10% is required but cannot stipulate that more than 10% is required.
- Quorum – ONCA default for members' meetings is majority (50% +1) of eligible voting members. If the society wishes to set a different quorum, it must be indicated in the by-laws. 2010, c. 15, s. 57 (1)

- Quorum – ONCA default is that quorum must be present at start of a members’ meeting but does not have to be present for entire meeting. If your society wants quorum to be present for the entire meeting, it must be stated in the by-laws. 2010, c. 15, s. 57 (2).
- ONCA default is that members have the right to attend members’ meetings by electronic or telephonic means. If the society wants to have the option to refuse that request and/or determine if a meeting will be in-person only, or held electronically or telephonically or hybrid, those details must be included in the by-laws. 2023, c. 9, Sched. 22, s. 4.
- ONCA default – members can vote by mail, electronically, by phone or in person unless the by-laws say otherwise. 2023, c. 9, Sched. 22, s. 6.
- ONCA default – the board (as long as it still has quorum) has the power to replace a director that has resigned/left the board or fill a vacancy on the board because not enough directors were elected. If the society does not want the board to have that power, the by-law must state that only members can fill vacancies. 2010, c. 15, s. 28 (5).
- ONCA default – quorum for directors/board meeting is majority (50% + 1) of directors. If the society wants quorum to be different, it must be included in the by-laws. 2010, c. 15, s. 34 (2); 2017, c. 20, Sched. 8, s. 15.
- ONCA default – subject to the articles or by-laws, the directors may meet in-person, or meeting may take place partly or entirely electronically or telephonically. 2023, c. 9, Sched. 22, s. 3 (2).
- Unless the society articles or bylaws state otherwise, ONCA default allows directors to borrow money, issue or sell bonds, mortgage property on behalf of the society without getting approval from the members.
- Unless your articles or by-laws state otherwise, ONCA default allows directors to add, change or remove most by-laws. If the directors do have this right, those changes must be approved at the next members’ meeting. 2010, c. 15, s. 17 (1); 2017, c. 20, Sched. 8, s. 11.
- ONCA default – how membership may be terminated. 2010, c. 15, s. 50 (1).
- ONCA default – Record date. If you do not set a record date, then section 54(3) comes into effect as to determining members that are entitled to vote and the other purposes listed under section 54(1).
Note: Record date cannot be set more than 50 days before the day of the event or action (54(2))

Record date

54 (1) *The directors may fix a date as the record date for,*

- (a) *determining members entitled to receive notice of a meeting of the members;*
- (b) *determining members entitled to vote at a meeting of the members;*
- (c) *determining members entitled to participate in a liquidation distribution; or*
- (d) *determining members for any other purpose. 2010, c. 15, s. 54 (1).*

Limitation

(2) *A record date must not be more than 50 days before the day of the event or action to which it relates. 2010, c. 15, s. 54 (2).*

No fixed record date

(3) *If no record date is fixed,*

- (a) *the record date for the determination of members entitled to receive notice of a meeting of members or to vote shall be,*
 - (i) *at the close of business on the day immediately before the day on which the notice is given, or*
 - (ii) *if no notice is given, the day on which the meeting is held; and*
- (b) *the record date for the members for any purpose other than to establish a member’s right to receive notice of a meeting or to vote shall be at the close of business on the day on which the directors pass the relevant resolution. 2010, c. 15, s. 54 (3).*

4) Must have by-laws – if the Society wants to have the right to do any of the following actions, that action must be included in your by-laws.

- If the society wants to be able to discipline or remove a member, they must include information on the reasons and process in their by-laws, otherwise the society does not have the ability to discipline or remove a member. 2010, c. 15, s. 51 (1).

- Do you want corporations or other entities to be eligible for membership? If you wish them to be eligible for membership, you must indicate it in your bylaws *2010, c. 15, s. 48 (1)*.
- AHOA now allows societies to reimburse directors, officers and members for services in other capacities Section 13(2). If you wish to do that, it must be included in your by-laws. Societies that have charitable status will need to follow CRA requirements re reimbursing directors and officers.
- ONCA allows ex-officio directors (i.e. Past President, Homecraft President), but the by-laws must clearly state it. *2010, c. 15, s. 23 (4)*
- ONCA default is that members do not have the right to proxy voting. If you want members to have a right to proxy voting, you must stipulate it in your by-laws. FYI - ONCA has a number of rules that must be followed regarding proxy voting if your by-laws allow it. *2017, c. 20, Sched. 8, s. 16*

5) Other Requirements

- Conflict of interest – if your by-laws include rules on conflict of interest – they cannot be more lenient than what ONCA indicates.
- The members of a corporation that has only one class or group of members have the right to vote at any meeting of the members. *2010, c. 15, s. 48 (4)*.
- **ONCA** - A director appointed or elected to fill a vacancy holds office for the unexpired term of the director's predecessor. *2010, c. 15, s. 28 (7)*.
- ONCA – a director appointed because not enough directors were elected only serves until the next annual meeting. *2010, c. 15, s. 24 (7)*.
- **ONCA** - If a meeting of the members fails to elect the number or the minimum number of directors required by the articles, the directors elected at that meeting may exercise all the powers of the directors if the number of directors so elected constitutes a quorum. *2010, c. 15, s. 24 (6)*.

C) Other interesting information from the ONCA Legislation

Disclosure: conflict of interest

41 (1) A director or officer of a corporation who,
 (a) is a party to a material contract or transaction or proposed material contract or transaction with the corporation; or
 (b) is a director or an officer of, or has a material interest in, any person who is a party to a material contract or transaction or proposed material contract or transaction with the corporation,
 shall disclose to the corporation or request to have entered in the minutes of meetings of the directors the nature and extent of his or her interest. *2010, c. 15, s. 41 (1)*.

(5) A director referred to in subsection (1) shall not attend any part of a meeting of the directors during which the contract or transaction is discussed and shall not vote on any resolution to approve the contract or transaction unless the contract or transaction is,

- (a) one relating primarily to his or her remuneration as a director of the corporation or an affiliate;
- (b) one for indemnity or insurance under section 46

(6) If no quorum exists for the purpose of voting on a resolution to approve a contract or transaction only because a director is not permitted to be present at the meeting by reason of subsection (5), the remaining directors are deemed to constitute a quorum for the purposes of voting on the resolution. *2010, c. 15, s. 41 (6)*.

Members' approval

(7) If all of the directors are required to make disclosure under subsection (1), the contract or transaction may be approved only by the members unless the contract or transaction is one described in clause (5) (a), (b) or (c). *2010, c. 15, s. 41 (7)*.

Voting Rights

Voting rights — one class or group

(4) The members of a corporation that has only one class or group of members have the right to vote at any meeting of the members. 2010, c. 15, s. 48 (4).

Same — two or more classes or groups

(5) If the articles provide for two or more classes or groups of members, the articles must provide the members of at least one class or group with the right to vote at meetings of the members. 2010, c. 15, s. 48 (5).

One vote per member

(6) Unless the articles provide otherwise, each member is entitled to one vote at a meeting of the members. 2010, c. 15, s. 48 (6).

Termination of membership

50 (1) Unless the articles or by-laws of a corporation provide otherwise, a membership is terminated when,
(a) the member dies or resigns;
(b) the member is expelled or the person's membership is otherwise terminated in accordance with the articles or by-laws;
(c) the member's term of membership expires; or
(d) the corporation is liquidated or dissolved under Part XII. 2010, c. 15, s. 50 (1).

Instructions re attending meeting by telephonic, etc. means

(1.2) 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. 2023, c. 9, Sched. 22, s. 5 (1).

Follow AHOA in Case of Conflict - When you cannot follow both laws

AHOA takes precedence over ONCA when there is a conflict. CRA takes precedence over AHOA and ONCA.

Examples of conflict between AHOA and ONCA:

- Corporations Information Act does not apply (AHOA s.3(2))
- Notice of annual meetings of members must be two weeks in advance (AHOA s.10(3))
- Audited financial statements (AHOA s.11(5))
- Board meetings require seven days notice (AHOA s.14)
- Membership shall be open subject to a fee (AHOA s.32,38)
- Subject to the approval of the Director, all money and assets remaining after the payment of debts shall be disposed of by the trustees in such manner as they may determine. (AHOA s. 20 (3)).