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## Not-for-Profit Corporations Act: Draft Organizational By-law

Not-for-profit corporations can adopt this draft default by-law, or use it as a guide to make sure their by-laws comply with ONCA. It will automatically apply to a new corporation incorporating under ONCA unless it passes an organizational by-law within 60 days after the incorporation date.

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### Introduction

This is a default by-law under section 18 of the Ontario not-for-profit corporations act, 2010 and regulations made under it (the "act") and applies automatically only if the corporation does not pass a general by-law within 60 days after the date of its incorporation. This by-law may be replaced at any time by following the appropriate procedures under the act. This by-law does not apply to existing corporations which have passed a general by-law already and may not be appropriate for your particular corporation, but may be a tool that existing corporations can use as a reference.

This by-law provides rules and procedures to be followed by the corporation in its day-to-day governance and is intended to apply to the most common corporate events. Relevant provisions of the act have been incorporated where applicable. However, this by-law is not in itself a complete codification of the provisions of the act and other laws applicable to the corporation. Many applicable provisions of the act and the law have not been duplicated in this by-law and reference to both should be made to ensure that all relevant legal requirements have been complied with.

In all cases you should obtain advice from a qualified person on both the appropriate matters to be contained in a by-law and its interpretation.

## **Section 1 - General**

### **1.01 Definitions**

In this by-law, unless the context otherwise requires:

1. "Act" means the Not-for-Profit Corporations Act, 2010 (Ontario) and, where the context requires, includes the regulations made under it, as amended or re-enacted from time to time;
2. "Board" means the board of directors of the Corporation;
3. "By-laws" means this by-law (including the schedules to this by-law) and all other by-laws of the Corporation as amended and which are, from time to time, in force;
4. "Chair" means the chair of the Board;
5. "Corporation" means the corporation that has passed these by-laws under the Act or that is deemed to have passed these by-laws under the Act;

6. "Director" means an individual occupying the position of director of the Corporation by whatever name he or she is called;
7. "Member" means a member of the Corporation;
8. "Members" means the collective membership of the Corporation; and
9. "Officer" means an officer of the Corporation.

### **1.02 Interpretation**

Other than as specified in Section 1.01, all terms contained in this by-law that are defined in the Act shall have the meanings given to such terms in the Act. Words importing the singular include the plural and vice versa, and words importing one gender include all genders.

### **1.03 Severability and Precedence**

The invalidity or unenforceability of any provision of this By-law shall not affect the validity or enforceability of the remaining provisions of this By-law. If any of the provisions contained in the By-laws are inconsistent with those contained in the Articles or the Act, the provisions contained in the Articles or the Act, as the case may be, shall prevail.

### **1.04 Seal**

The seal of the Corporation, if any, shall be in the form determined by the Board.

### **1.05 Execution of Contracts**

Deeds, transfers, assignments, contracts, obligations and other instruments in writing requiring execution by the Corporation may be signed by any two of its Officers or Directors. In addition, the Board may from time to time direct the manner in which and the person by whom a particular document or type of document shall be executed. Any person authorized to sign any document may affix the corporate seal, if any, to the document. Any Director or Officer may certify a copy of any instrument, resolution, by-law or other document of the Corporation to be a true copy thereof.

## **Section 2 - Directors**

### **2.01 Election and Term**

The Directors shall be elected by the Members. The term of office of the Directors (subject to the provisions, if any, of the articles) shall be from the date of the meeting at which they are elected or appointed until the next annual meeting or until their successors are elected or appointed.

## **2.02 Vacancies**

The office of a Director shall be vacated immediately:

1. if the Director resigns office by written notice to the secretary, which resignation shall be effective at the time it is received by the secretary or at the time specified in the notice, whichever is later;
2. if the Director dies or becomes bankrupt;
3. if the Director is found to be incapable of managing property by a court or under Ontario law; or
4. if, at a meeting of the Members, a resolution is passed by at least a majority of the votes cast by the Members removing the Director before the expiration of the Director's term of office.

## **2.03 Filling Vacancies**

A vacancy on the Board shall be filled as follows:

1. a quorum of Directors may fill a vacancy among the Directors;
2. if there is not a quorum of Directors or there has been a failure to elect the minimum number of Directors set out in the articles, the Directors in office shall, without delay, call a special meeting of Members to fill the vacancy and, if they fail to call such a meeting, the meeting may be called by any Member;
3. if the vacancy occurs as a result of the Members removing a Director, the Members may fill the vacancy by a majority vote and any Director elected to fill the vacancy shall hold office for the remainder of the removed Director's term; and

4. the Board may fill any other vacancy by a majority vote, and the appointee shall hold office for the remainder of the unexpired portion of the term of the vacating Director. After that, the appointee shall be eligible to be elected as a Director.

#### **2.04 Committees**

Committees may be established by the Board as follows:

1. The Board may appoint from their number a managing Director or a committee of Directors and may delegate to the managing Director or committee any of the powers of the Directors excepting those powers set out in the Act that are not permitted to be delegated; and
2. Subject to the limitations on delegation set out in the Act, the Board may establish any committee it determines necessary for the execution of the Board's responsibilities. The Board shall determine the composition and terms of reference for any such committee. The Board may dissolve any committee by resolution at any time.

#### **2.05 Remuneration of Directors**

The Directors shall serve as such without remuneration and no Director shall directly or indirectly receive any profit from occupying the position of Director; provided that:

1. Directors may be reimbursed for reasonable expenses they incur in the performance of their Directors' duties;
2. Directors may be paid remuneration and reimbursed for expenses incurred in connection with services they provide to the Corporation in their capacity other than as Directors, provided that the amount of any such remuneration or reimbursement is: (i) considered reasonable by the Board; (ii) approved by the Board for payment by resolution passed before such payment is made; and (iii) in compliance with the conflict of interest provisions of the Act; and
3. Notwithstanding the foregoing, no Director shall be entitled to any remuneration for services as a Director or in other capacity if the Corporation

is a charitable corporation, unless the provisions of the Act and the law applicable to charitable corporations are complied with.

### **Section 3 - Board Meetings**

#### **3.01 Calling of Meetings**

Meetings of the Directors may be called by the Chair, president or any two Directors at any time and any place on notice as required by this by-law, provided that, for the first organizational meeting following incorporation, an incorporator or a Director may call the first meeting of the Directors by giving not less than five days notice to each Director, stating the time and place of the meeting.

#### **3.02 Regular Meetings**

The Board may fix the place and time of regular Board meetings and send a copy of the resolution fixing the place and time of such meetings to each Director, and no other notice shall be required for any such meetings.

#### **3.03 Notice**

Notice of the time and place for the holding of a meeting of the Board shall be given in the manner provided in Section 10 of this by-law to every Director of the Corporation not less than seven days before the date that the meeting is to be held. Notice of a meeting is not necessary if all of the Directors are present, and none objects to the holding of the meeting, or if those absent have waived notice or have otherwise signified their consent to the holding of such meeting. If a quorum of Directors is present, each newly elected or appointed Board may, without notice, hold its first meeting immediately following the annual meeting of the Corporation.

#### **3.04 Chair**

The Chair shall preside at Board meetings. In the absence of the Chair, the Directors present shall choose one of their number to act as the Chair.

#### **3.05 Voting**

Each Director has one vote. Questions arising at any Board meeting shall be decided by a majority of votes. In case of an equality of votes, the Chair shall not have a second or casting vote.

#### **3.06 Participation by Telephone or Other Communications Facilities**

If all of the Directors of the Corporation consent, a Director may participate in a meeting of the Board or of a committee of Directors by telephonic or electronic means that permits all participants to communicate adequately with each other during the meeting. A Director participating by such means is deemed to be present at that meeting.

## **Section 4 - Financial**

### **4.01 Banking**

The Board shall by resolution from time to time designate the bank in which the money, bonds or other securities of the Corporation shall be placed for safekeeping.

### **4.02 Financial Year**

The financial year of the Corporation ends on December 31 in each year or on such other date as the Board may from time to time by resolution determine.

## **Section 5 - Officers**

### **5.01 Officers**

The Board shall appoint from among the Directors a Chair and may appoint any other person to be president, treasurer and secretary at its first meeting following the annual meeting of the Corporation. The office of treasurer and secretary may be held by the same person and may be known as the secretary-treasurer. The office of Chair and president may also be held by the same person. The Board may appoint such other Officers and agents as it deems necessary, and who shall have such authority and shall perform such duties as the Board may prescribe from time to time.

### **5.02 Office Held at Board's Discretion**

Any Officer shall cease to hold office upon resolution of the Board.

### **5.03 Duties**

Officers shall be responsible for the duties assigned to them and they may delegate to others the performance of any or all of such duties.

### **5.04 Duties of the Chair**

The Chair shall perform the duties described in sections 3.04 and 9.05 and such other duties as may be required by law or as the Board may determine from time to time.

#### **5.05 Duties of the President**

The president shall perform the duties described in Schedule A and such other duties as may be required by law or as the Board may determine from time to time.

#### **5.06 Duties of the Treasurer**

The treasurer shall perform the duties described in Schedule B and such other duties as may be required by law or as the Board may determine from time to time.

#### **5.07 Duties of the Secretary**

The secretary shall perform the duties described in Schedule C and such other duties as may be required by law or as the Board may determine from time to time.

### **Section 6 - Protection of Directors and Others**

#### **6.01 Protection of Directors and Officers**

No Director, Officer or committee member of the Corporation is be liable for the acts, neglects or defaults of any other Director, Officer, committee member or employee of the Corporation or for joining in any receipt or for any loss, damage or expense happening to the Corporation through the insufficiency or deficiency of title to any property acquired by resolution of the Board or for or on behalf of the Corporation or for the insufficiency or deficiency of any security in or upon which any of the money of or belonging to the Corporation shall be placed out or invested or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person, firm or Corporation with whom or which any moneys, securities or effects shall be lodged or deposited or for any other loss, damage or misfortune whatever which may happen in the execution of the duties of his or her respective office or trust provided that they have:

1. complied with the Act and the Corporation's articles and By-laws; and
2. exercised their powers and discharged their duties in accordance with the Act.

### **Section 7 - Conflict of Interest**

#### **7.01 Conflict of Interest**



A Director who is in any way directly or indirectly interested in a contract or transaction, or proposed contract or transaction, with the Corporation shall make the disclosure required by the Act. Except as provided by the Act, no such Director shall attend any part of a meeting of Directors or vote on any resolution to approve any such contract or transaction.

## **7.02 Charitable Corporations.**

No Director shall, directly or through an associate, receive a financial benefit, through a contract or otherwise, from the Corporation if it is a charitable corporation unless the provisions of the Act and the law applicable to charitable corporations are complied with.

## **Section 8 - Members**

### **8.01 Members**

Membership in the Corporation shall consist of the incorporators named in the articles and such other persons interested in furthering the Corporation's purposes and who have been accepted into membership in the Corporation by resolution of the Board.

### **8.02 Membership**

A membership in the Corporation is not transferable and automatically terminates if the Member resigns or such membership is otherwise terminated in accordance with the Act.

### **8.03 Disciplinary Act or Termination of Membership for Cause**

1. Upon 15 days' written notice to a Member, the Board may pass a resolution authorizing disciplinary action or the termination of membership for violating any provision of the articles or By-laws.
2. The notice shall set out the reasons for the disciplinary action or termination of membership. The Member receiving the notice shall be entitled to give the Board a written submission opposing the disciplinary action or termination not less than 5 days before the end of the 15-day period. The Board shall consider the written submission of the Member before making a final decision regarding disciplinary action or termination of membership.

## **Section 9 - Members' Meetings**

### **9.01 Annual Meeting**

The annual meeting shall be held on a day and at a place within Ontario fixed by the Board. Any Member, upon request, shall be provided, not less than 21 days before the annual meeting, with a copy of the approved financial statements, auditor's report or review engagement report and other financial information required by the By-laws or articles.

The business transacted at the annual meeting shall include:

1. receipt of the agenda;
2. receipt of the minutes of the previous annual and subsequent special meetings;
3. consideration of the financial statements;
4. report of the auditor or person who has been appointed to conduct a review engagement;
5. reappointment or new appointment of the auditor or a person to conduct a review engagement for the coming year;
6. election of Directors; and
7. such other or special business as may be set out in the notice of meeting.

No other item of business shall be included on the agenda for annual meeting unless a Member's proposal has been given to the secretary prior to the giving of notice of the annual meeting in accordance with the Act, so that such item of new business can be included in the notice of annual meeting.

### **9.02 Special Meetings**

The Directors may call a special meeting of the Members. The Board shall convene a special meeting on written requisition of not less than one-tenth of the Members for any purpose connected with the affairs of the Corporation that does not fall within the exceptions listed in the Act or is otherwise inconsistent with the Act, within 21 days from the date of the deposit of the requisition.

### **9.03 Notice**

Subject to the Act, not less than 10 and not more than 50 days written notice of any annual or special Members' meeting shall be given in the manner specified in the Act to each Member and to the auditor or person appointed to conduct a review engagement. Notice of any meeting where special business will be transacted must contain sufficient information to permit the Members to form a reasoned judgment on the decision to be taken. Notice of each meeting must remind the Member of the right to vote by proxy.

#### **9.04 Quorum**

A quorum for the transaction of business at a Members' meeting is a majority of the Members entitled to vote at the meeting, whether present in person or by proxy. If a quorum is present at the opening of a meeting of the Members, the Members present may proceed with the business of the meeting, even if a quorum is not present throughout the meeting.

#### **9.05 Chair of the Meeting**

The Chair shall be the chair of the Members' meeting; in the Chair's absence, the Members present at any Members' meeting shall choose another Director as chair and if no Director is present or if all of the Directors present decline to act as chair, the Members present shall choose one of their number to chair the meeting.

#### **9.06 Voting of Members**

Business arising at any Members' meeting shall be decided by a majority of votes unless otherwise required by the Act or the By-law provided that:

1. each Member shall be entitled to one vote at any meeting;
2. votes shall be taken by a show of hands among all Members present and the chair of the meeting, if a Member, shall have a vote;
3. an abstention shall not be considered a vote cast;
4. before or after a show of hands has been taken on any question, the chair of the meeting may require, or any Member may demand, a written ballot. A written ballot so required or demanded shall be taken in such manner as the chair of the meeting shall direct;

5. if there is a tie vote, the chair of the meeting shall require a written ballot, and shall not have a second or casting vote. If there is a tie vote upon written ballot, the motion is lost; and
6. whenever a vote by show of hands is taken on a question, unless a written ballot is required or demanded, a declaration by the chair of the meeting that a resolution has been carried or lost and an entry to that effect in the minutes shall be conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against the motion.

### **9.07 Adjournments**

The Chair may, with the majority consent of any Members' meeting, adjourn the same from time to time and no notice of such adjournment need be given to the Members, unless the meeting is adjourned by one or more adjournments for an aggregate of 30 days or more. Any business may be brought before or dealt with at any adjourned meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same.

### **9.08 Persons Entitled to be Present**

The only persons entitled to attend a Members' meeting are the Members, the Directors, the auditors of the Corporation (or the person who has been appointed to conduct a review engagement, if any) and others who are entitled or required under any provision of the Act or the articles to be present at the meeting. Any other person may be admitted only if invited by the Chair of the meeting or with the majority consent of the Members present at the meeting.

## **Section 10 - Notices**

### **10.01 Service**

Any notice required to be sent to any Member or Director or to the auditor or person who has been appointed to conduct a review engagement shall be provided by telephone, delivered personally, or sent by prepaid mail, facsimile, email or other electronic means to any such Member or Director at their latest address as shown in the records of the Corporation and to the auditor or the person who has been appointed to conduct a review engagement at its business address, or if no address be given then to the last address of such Member or Director known to the secretary; provided always that notice may be waived or the time for the notice may be waived or abridged at any time with the consent in writing of the person entitled thereto.

### **10.02 Computation of Time**

Where a given number of days' notice or notice extending over any period is required to be given, the day of service or posting of the notice shall not, unless it is otherwise provided, be counted in such number of days or other period.

### **10.03 Error or Omission in Giving Notice**

No error or accidental omission in giving notice of any Board meeting or any Members' meeting shall invalidate the meeting or make void any proceedings taken at the meeting.

## **Section 11 - Adoption and Amendment of By-laws**

### **11.01 Amendments to By-laws**

The Members may from time to time amend this by-law by a majority of the votes cast. The Board may from time to time in accordance with the Act pass or amend this by-law other than a provision respecting the transfer of a membership or to change the method of voting by members not in attendance at a meeting of members.

**Enacted [*insert date, except where Corporation is deemed to have passed this by-law under Section 18(1) of the Act.*].**

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**President**

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**Secretary**

### **Schedule A**

#### **Position Description of the President**

##### **Role Statement**

The president provides leadership to the Board, ensures the integrity of the Board's process and represents the Board to outside parties. The president co-ordinates Board activities in fulfilling its governance responsibilities and facilitates co-operative relationships among Directors and between the Board and senior management, if any, of the Corporation. The president ensures the Board discusses all matters relating to the Board's mandate.

##### **Responsibilities**

**Agendas.** Establish agendas aligned with annual Board goals and preside over Board meetings if also holding the office of Chair. Ensure meetings are effective and efficient for the performance of governance work. Ensure that a schedule of Board meetings is prepared annually.

**Direction.** Serve as the Board's central point of communication with the senior management, if any, of the Corporation; provide guidance to senior management, if any, regarding the Board's expectations and concerns. In collaboration with

senior management, develop standards for Board decision-support packages that include formats for reporting to the Board and level of detail to be provided to ensure that management strategies and planning and performance information are appropriately presented to the Board.

**Performance Appraisal.** Lead the Board in monitoring and evaluating the performance of senior management, if any, through an annual process.

**Work Plan.** Ensure that a Board work plan is developed and implemented that includes annual goals for the Board and embraces continuous improvement.

**Representation.** Serve as the Board's primary contact with the public.

**Reporting.** Report regularly to the Board on issues relevant to its governance responsibilities.

**Board Conduct.** Set a high standard for Board conduct and enforce policies and By-laws concerning Directors' conduct.

**Mentorship.** Serve as a mentor to other Directors. Ensure that all Directors contribute fully. Address issues associated with underperformance of individual Directors.

**Succession Planning.** Ensure succession planning occurs for senior management, if any, and Board.

**Committee Membership.** Serve as member on all Board committees.

## **Schedule B**

### **Position Description of the Treasurer**

#### **Role Statement**

The treasurer works collaboratively with the president and senior management, if any, to support the Board in achieving its fiduciary responsibilities.

#### **Responsibilities**

**Custody of Funds.** The treasurer shall have the custody of the funds and securities of the Corporation and shall keep full and accurate accounts of all assets, liabilities, receipts and disbursements of the Corporation in the books belonging to the Corporation and shall deposit all monies, securities and other valuable effects in the name and to the credit of the Corporation in such chartered bank or trust company, or, in the case of securities, in such registered dealer in securities as may be designated by the Board from time to time. The treasurer shall disburse the funds of the Corporation as may be directed by proper authority taking proper vouchers for such disbursements, and shall render to the Chair and directors at the regular meeting of the Board, or whenever they may require it, an accounting of all the transactions and a statement of the financial position, of the Corporation. The treasurer shall also perform such other duties as may from time to time be directed by the Board.

**Board Conduct.** Maintain a high standard for Board conduct and uphold policies and By-laws regarding Directors' conduct, with particular emphasis on fiduciary responsibilities.

**Mentorship.** Serve as a mentor to other Directors.

**Financial Statement.** Present to the Members at the annual meeting as part of the annual report, the financial statement of the Corporation approved by the Board together with the report of the auditor or of the person who has conducted the review engagement, as the case may be.

## Schedule C

### Position Description of the Secretary

#### Role Statement

The secretary works collaboratively with the president to support the Board in fulfilling its fiduciary responsibilities.

#### Responsibilities

**Board Conduct.** Support the president in maintaining a high standard for Board conduct and uphold policies and the By-laws regarding Directors' conduct, with particular emphasis on fiduciary responsibilities.

**Document Management.** Keep a roll of the names and addresses of the Members. Ensure the proper recording and maintenance of minutes of all meetings of the Corporation, the Board and Board committees. Attend to correspondence on behalf of the Board. Have custody of all minute books, documents, registers and the seal of the Corporation and ensure that they are maintained as required by law. Ensure that all reports are prepared and filed as required by law or requested by the Board.

**Meetings.** Give such notice as required by the By-Laws of all meetings of the Corporation, the Board and Board committees. Attend all meetings of the Corporation, the Board and Board committees.

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