

Guide to the Not-for-Profit Corporations Act, 2010

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Introduction

This guide provides basic information about Ontario's Not-for-Profit Corporations Act, 2010 (ONCA). It is intended to be used by members, directors, officers, administrators, and others supporting organizations that are thinking of incorporating as a not-for-profit corporation, but may not have not-for-profit experience. Members, directors, officers, administrators and others supporting existing not-for-profit corporations will also find this guide useful in identifying what has changed from the current Corporations Act (CA).

ONCA provides Ontario not-for-profit corporations, including charitable corporations, with a modern legal framework to meet the needs of today's not-for-profit sector. It sets out how not-for-profit corporations are created, governed and dissolved.

Once it is in effect, ONCA will generally apply automatically to all Ontario not-for-profit corporations.

It is important to note that existing Ontario not-for-profit corporations will have a three-year transition period once ONCA comes into effect to make any necessary changes to their incorporating and other documents to bring them into conformity with ONCA.

Existing corporations are encouraged to review their documents before the end of the transition period.

Unless otherwise noted, the information in this guide corresponds to sections of ONCA. Most of the guide is in a question and answer format.

Organizations are encouraged to check the [Ministry of Consumer Services' website](http://www.ontario.ca/mcs/en/Pages/Not_For_Profit.aspx) <http://www.ontario.ca/mcs/en/Pages/Not_For_Profit.aspx> for updates on ONCA's effective date and to make sure the organization has all of the latest tools it needs for a smooth transition.

Disclaimer

This guide is provided for information only. It is not intended as legal advice, or to be a complete statement of the law governing not-for-profit corporations, which may change from time to time. The guide covers only some aspects of ONCA. Consult a lawyer and/or other appropriate advisor for specific advice on ONCA, rules related to charitable corporations and/or any related financial or taxation issues.

Please note that not-for-profit corporations may be eligible for favourable tax treatment.

Important: It is recommended that not-for-profit corporations get professional advice regarding tax requirements.

Features of the New Act

When ONCA comes into effect, it will:

Make the incorporation process for new not-for-profit corporations more efficient

Make a new distinction between public benefit corporations and other not-for-profit corporations

Make it mandatory for corporations to make proxies available to members. However, a not-for-profit corporation may provide in its by-laws other means of voting (by mail, telephone or electronic means) in addition to or in place of voting by proxies

- Clarify that not-for-profit corporations can engage in commercial activities if the activities support the corporation's not-for-profit purposes. A not-for-profit corporation may be subject to restrictions on its activities imposed by other legislation such as the Income Tax Act, and is encouraged to seek the advice of a tax professional
- Allow for a simpler process for reviewing the corporation's financial records. Called a review engagement, the process can take the place of an audit in specified circumstances. In some situations, neither an audit nor review engagement will be required
- Require a corporation that has two or more classes or groups of members to set this out in the articles (instead of in the by-laws). The by-law must set out the conditions of membership
- Provide clearer rules for governing the corporation and increasing accountability. For example, ONCA will provide a statutory duty of care for directors, which will require them to act honestly and in good faith with a view to the best interests of the corporation, and to exercise reasonable care, diligence and skill
- Set out a due diligence and good faith reliance defence for directors. A director will not be legally liable in certain circumstances if they acted with the care, diligence and skill a reasonably careful person would have acted in similar circumstances
- List specific requirements for directors and officers to report a conflict of interest in certain circumstances
- State that corporations do not always have to include a member's proposal in meeting notices in certain circumstances
- Provide members with actions they can take if they believe directors are not acting in the best interests of the corporation provide members with greater access to financial records
- Streamline incorporation as a charitable corporation, which no longer requires Office of the Public Guardian and Trustee (OPGT) approval. All applications for articles of incorporation will be submitted directly to ServiceOntario
- Join other jurisdictions in Canada that have modernized their not-for-profit corporations' laws.

The Canada *Not-for-profit Corporations Act*, for instance, came into effect on October 17, 2011 at the federal level.

Definitions

This section explains some of the terms relevant to ONCA.

Articles of Incorporation – Articles of incorporation are the documents that create the not-for-profit corporation. ONCA requires that specific information about the not-for-profit corporation be included in the articles of incorporation, including: the corporation's name, its purpose, the address of the corporation's registered office, and, if applicable, classes or groups of members and the voting rights of each class or group. Generally speaking, if a corporation's articles conflict with ONCA or its regulations, the provision in ONCA or its regulations take priority.

Important for existing not-for-profit corporations: Letters patent under the *Corporations Act* (CA) become articles of incorporation under ONCA.

Audit – An audit involves the analysis of a corporation's financial records by a person permitted to do so under the *Public Accounting Act, 2004*, who must also be independent. Each financial statement item is tested to make reasonably sure that a corporation's financial statements accurately reflect its financial position.

By-laws – By-laws are rules that help govern the corporation's internal business and do not need to be filed with the government. By-laws regulate the activities or affairs of the corporation. They set out the rights and responsibilities of the members, directors and officers. They also set out the procedures for decision-making, and provide further details about the corporation's structure.

Dissolution – The end of a corporation's existence. For more information, refer to question **6** or question **19** in the **Incorporation** section of this guide.

Indemnification – Compensation a corporation gives to its directors and officers for costs or expenses caused by lawsuits as a result of the directors and officers carrying out their work, duties or responsibilities on behalf of the corporation.

Meetings – The following are some of the common types of meetings referred to in ONCA:

- **Annual meeting** (formerly known as "annual general meeting") – This is a meeting of the members which the directors must call annually. For more information, refer to [section 52 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK56>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK56) of ONCA.
- **Special meeting** – The directors may call a special meeting of the members at any time. For more information, refer to [section 52 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK56>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK56) of ONCA.
- A meeting can be both an annual and a special meeting.
- **Directors' meeting** – Unless the articles or by-laws state otherwise, the directors may meet at any place and after any notice period that is set out in the by-laws. For more information, refer to [section 34 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK37>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK37) of ONCA.

Ordinary Resolution – An ordinary resolution is a decision about the corporation that is made by the members. It is approved by the majority of the votes cast at a members' meeting, or signed by all members who can vote on the resolution. For more information, refer to [section 1 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK1>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK1) and [section 59 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK63>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK63) of ONCA.

Public Benefit Corporation – Not-for-profit corporations can also be "public benefit corporations" if they meet the definition in ONCA. There are two types of public benefit corporations – charitable or non-charitable corporations.

Charitable corporations are automatically public benefit corporations by definition. For more information, refer to [section 1 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK1>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK1) of ONCA.

A non-charitable public benefit corporation is defined in ONCA as a corporation that receives more than \$10,000 in a financial year either in the form of:

- Donations or gifts from persons who are not members, directors, officers or employees of the corporation; or
- Grants or similar financial assistance from the federal government or a provincial or municipal government or an agency of any such government. For more information, refer to [section 1 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK1>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK1) of ONCA.

A non-charitable corporation is considered to be a public benefit corporation in the next financial year after it receives the sum. For more information, refer to the definition of "public benefit corporation" in [section 1 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK1>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK1) of ONCA.

When a not-for-profit corporation dissolves, it is considered to be a public benefit corporation if it met the definition of "public benefit corporation" in the financial year in which it files its articles of dissolution or in one of the three preceding financial years. For more information, refer to [section 167 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK178>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK178) of ONCA.

Remuneration – Payment such as a salary that a director, officer or employee of a corporation receives for fulfilling their work, duties or responsibilities. For more information, refer to [section 47 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK50>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK50) of ONCA.

Review Engagement – ONCA provides for a "review engagement" that can be done in place of an audit in certain circumstances. A review engagement is a review of a corporation's finances performed by a person permitted to do so under the *Public Accounting Act, 2004*, who must also

be independent. It involves enquiry, discussion and analysis to make reasonably sure that a corporation's financial statements are in order. It is less extensive than an audit, and as a result, generally less expensive.

Special Resolution - A special resolution is a decision about the corporation that generally involves an important change, such as a change to the corporation's articles or authorization for a corporation to continue into another jurisdiction. A special resolution is approved by at least two-thirds of the votes cast at a members' meeting, or if all voting members agree. For more information, refer to [section 1 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK1>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK1) and [section 59 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK63>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK63) of ONCA.

Incorporation

This section provides basic information on the advantages and disadvantages of incorporating a corporation under ONCA.

The section provides an overview of not-for-profit incorporation.

The following diagram shows the different types of not-for-profit corporations:



All corporations incorporated under ONCA are not-for-profit corporations. A subset are also public benefit corporations. Public benefit corporations are either charitable or non-charitable.

1. What is a not-for-profit corporation?

A not-for-profit corporation:

- Is dedicated to purposes other than pursuing a profit
- Is a corporation without share capital, which means that the corporation does not issue ownership shares
- May not distribute any profits to its members, directors or officers. (For more information, refer to [section 89 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK97>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK97) of ONCA)
- Must use any profit exclusively for its not-for-profit purposes
- Includes both charitable and non-charitable organizations

2. What are some examples of not-for-profit organizations?

Some examples of not-for-profit organizations include: sporting and athletic organizations, social clubs, day cares, service clubs such as Rotary and Lions, and charitable corporations. Not all not-for-profit organizations are incorporated. ONCA only governs not-for-profit organizations incorporated in Ontario.

3. What is the difference between a not-for-profit corporation, a for-profit business corporation and a co-operative corporation?

A not-for-profit corporation's activities are for purposes that do not include the financial gain of its members, or the benefit of for-profit organizations such as business corporations. It can earn a "profit", but any profit must be used to further the purposes of the corporation rather than be paid to the members. If any of the purposes are of a commercial nature, the corporation's articles must state that the commercial purpose is intended to advance or support one or more of the not-for-profit purposes. For more information, refer to [section 8 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK9>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK9) and [section 89 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK97>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK97) of ONCA.

A **business corporation** is formed to make a profit and may distribute that profit to its shareholders.

A **co-operative corporation** is a business organization owned by members who use its services, and is controlled equally by the members. A co-op must carry on business on a co-operative basis.

It is recommended that not-for-profit organizations get professional advice about the appropriate structure for the organization's purposes.

4. What is a charitable corporation?

A charitable corporation is a type of not-for-profit corporation. Not all not-for-profit corporations are charitable corporations. To be a charitable corporation, a corporation must meet the requirements for not-for-profit corporations and some additional requirements that are explained further in the **Charitable Corporations** section of this guide.

5. Does "not-for-profit" mean the organization is not permitted to make a profit?

A not-for-profit corporation can make a "profit" as long as it is reinvested to support the not-for-profit purposes of the corporation. For more information, refer to question [1](#) above and [section 8 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK97>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK97) of ONCA.

[laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK9](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK9) of ONCA.

It is recommended that not-for-profit corporations get professional advice regarding any possible restrictions on their commercial activities.

6. Can the corporation's profits or property be distributed to its members, directors or officers?

Generally, a corporation's profits or its property may not be distributed to a member, a director or an officer of the corporation. For more information, refer to [section 89 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK97>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK97) of ONCA. However, if the corporation is not a public benefit corporation, ONCA provides for distribution to members when the corporation winds up or dissolves, unless the articles state otherwise. For more information, refer to [section 150 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK161>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK161) and [section 167 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK178>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK178) of ONCA or the question about **winding up/dissolving a corporation** below.

7. Can not-for-profit organizations incorporate and are they required to do so?

Not-for-profit organizations may incorporate if they wish, but there is no requirement to do so. An organization can be formal (incorporated) or informal (unincorporated). By incorporating under ONCA, an organization must comply with the rules set out under it. This includes keeping records, having annual meetings, and filing annual returns. After considering the benefits and obligations of incorporation, an organization may decide against it. If an organization chooses not to incorporate, it is not called a corporation.

It is recommended that organizations get professional advice about the appropriate structure for the organization's purposes.

8. What are the benefits of incorporating?

Some of the reasons to incorporate include:

- To have a formal operating structure
 - A corporation is a distinct legal entity with the powers of a natural person -- it can sue and be sued in its own name (an unincorporated organization can only sue through its members personally). Unlike an unincorporated organization, a corporation can also enter into contracts.
- To be permanent
 - A corporation may go on forever, even if membership changes, until the corporation is dissolved.
- To allow members to have limited legal responsibility (liability)
 - Generally, members of a corporation are not personally responsible for its debts and obligations, unlike members of an unincorporated organization. Directors and officers, however, may be personally responsible in certain circumstances. Refer to the **Directors and Officers** section of this guide for more information.
- To hold title to land in the corporation's name
 - A corporation can own property in its own name. Legal title to the property stays with the corporation even if membership changes.

An organization should consult its lawyer to decide whether or not to incorporate.

9. What must a corporation do?

An organization that incorporates under ONCA must:

- **Keep records (e.g. a register of members which lists all the members of the corporation)**
- **Hold an annual meeting of members**

There may be additional requirements under other statutes such as the *Corporations Information Act*.

Incorporation also means spending time and resources on activities such as:

- The initial cost of incorporating
- Filing annual corporate tax returns
- Holding annual meetings

10. Are there alternative ways for organizations to organize?

Yes. An organization may function as a business corporation, a trust, a partnership, a co-operative, or an unincorporated association. It is recommended that not-for-profit corporations discuss options with a lawyer and/or other appropriate advisor.

11. Should my organization incorporate provincially under ONCA or federally?

A not-for-profit corporation may choose to incorporate federally or provincially, depending on the scope of the corporation's activity. Some not-for-profit corporations that are national in scope tend to incorporate federally. Federal not-for-profit corporations can operate in Ontario. It is recommended that not-for-profit corporations get professional legal and financial advice about the benefits of each.

12. What is a public benefit corporation?

Public benefit corporations are defined under ONCA. Public benefit corporations include all charitable corporations and some non-charitable corporations that receive outside funding. Refer to the diagram at the beginning of the **Incorporation** section and to the **Definitions and Charitable Corporations** sections of this guide for more information.

13. Are the obligations of a public benefit corporation

different from those of other not-for-profit corporations?

Yes. Special rules apply to public benefit corporations under ONCA that do not apply to other not-for-profit corporations. Examples include:

- Different audit and review engagement requirements. Refer to [section 76 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK82>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK82) of ONCA for more information.
- Board composition (i.e. not more than one-third of the directors of a public benefit corporation may be employees of the corporation or of any of its affiliates). Refer to [section 23 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK26>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK26) of ONCA for more information.
- The consequences of winding up. Refer to [section 150 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK161>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK161) of ONCA or the question about **winding up / dissolving a corporation** below.
- Restrictions on distribution to members. Refer to [section 167 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK178>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK178) of ONCA or the question about **winding up / dissolving a corporation** below.

A few rules also apply specifically to charitable corporations in areas such as indemnification, insurance, remuneration and conflict of interest for directors and officers. Refer to the **Directors and Officers** section of this guide.

14. Who is responsible for the operation of a not-for-profit corporation?

The board of directors manages or supervises the management of the activities and affairs of the corporation. Refer to [section 21 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK24>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK24) of ONCA and the **Directors and Officers** section of this guide for more information.

15. Can a not-for-profit corporation have commercial activities?

Yes. Not-for-profit corporations can have commercial activities but if any of the purposes are of a commercial nature, the corporation's articles must state that the purpose is intended to advance or support one or more of the not-for-profit purposes. Any "profits" must be used to further the goals of the corporation. For more information, refer to [section 8 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK9>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK9) and [section 89 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK97>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK97) of ONCA.

For example, a not-for-profit corporation incorporated for a recreational purpose that wants to bring in a stable base of funding may decide to sell T-shirts. ONCA allows this activity as long as the profit from selling the T-shirts is used to support the group's not-for-profit recreational purpose.

It is recommended that a not-for-profit corporation get professional advice regarding its commercial activities, and, in particular, it is strongly recommended that it get the advice of a tax professional regarding its tax status and requirements.

16. Are there any other restrictions on a not-for-profit corporation?

Restrictions on not-for-profit corporations may be set out in a minister's regulation under ONCA. There may be other restrictions based on other laws or the decisions of the courts that may also govern the corporation. It is recommended that not-for-profit corporations get professional advice regarding any possible restrictions.

17. How does an organization incorporate?

ServiceOntario is responsible for processing applications for articles of incorporation under ONCA. For more information on how to incorporate, visit [ServiceOntario <https://www.appmybizaccount.gov.on.ca/wps/portal/mba_pub!/ut/p/c4/JYyxDoJAEES_hYL2ltLYKbEwMUqBEWzMHtmcG5fdC3fo7wuuaaSbzZqlv-dKwf9eXcHroW-rIaPZIG4fQsK1NKNk8DldVvn5Yo0oSZ0M-JF5oqiuPmsyuKL88_ijs!/>](http://www.appmybizaccount.gov.on.ca/wps/portal/mba_pub!/ut/p/c4/JYyxDoJAEES_hYL2ltLYKbEwMUqBEWzMHtmcG5fdC3fo7wuuaaSbzZqlv-dKwf9eXcHroW-rIaPZIG4fQsK1NKNk8DldVvn5Yo0oSZ0M-JF5oqiuPmsyuKL88_ijs!/).

18. How can a new corporation go about setting up its by-laws -- does a default by-law exist?

A default by-law approved by the statutory Director under ONCA will automatically apply to a new corporation that incorporates under ONCA if it does not pass an organizational by-law within 60 days after the date of incorporation. The by-law deals with organizational matters, such as who can sit on the board, the duties of officers and members, and how to call meetings. Refer to [section 18 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK20>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK20) of ONCA.

The corporation may change or repeal and replace the default by-law at any time by following the procedures in ONCA.

A draft of the [default by-law <http://www.ontario.ca/mcs/en/Pages/onca6.aspx>](http://www.ontario.ca/mcs/en/Pages/onca6.aspx) is posted on the Ministry of Consumer Services' website.

Existing not-for-profit corporations may wish to refer to the draft default by-law as a guide or model, and should ensure that any changes made to their by-laws comply with ONCA. Existing not-for-profit corporations should refer to the [Transition Checklist <http://www.ontario.ca/mcs/en/Pages/onca4.aspx>](http://www.ontario.ca/mcs/en/Pages/onca4.aspx) for more information.

19. What happens to the assets (e.g., buildings, office equipment and bank accounts) belonging to a not-for-profit corporation when it winds up or dissolves?

The handling of assets depends on whether or not the not-for-profit corporation is a public benefit corporation. Refer to [section 150 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK161>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK161) and [section 167 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK178>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK178) of ONCA.

When a not-for-profit corporation that is not a public benefit corporation winds up or dissolves, its debts are repaid first and then any remaining assets must be distributed in keeping with its articles. If the articles do not say anything about how the assets are to be distributed, the assets must be distributed to the members in a way that reflects their rights and interests in the

corporation. Refer to [section 150 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK161>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK161) and [section 167 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK178>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK178) of ONCA.

Important: It is recommended that not-for-profit corporations get professional advice before making any distributions.

Refer to the **Charitable Corporations** section of this guide for the requirements when a charitable corporation winds up or dissolves.

When a non-charitable public benefit corporation winds up or dissolves, its debts are paid first, and then any remaining assets must be distributed to another public benefit corporation with similar purposes to its own or to a government or government agency. Refer to [section 150 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK161>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK161) and [section 167 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK178>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK178) of ONCA.

Charitable Corporations

This section provides information about charitable corporations.

Important: It is strongly recommended that charitable corporations get professional advice regarding taxation and other requirements.

20. What is the difference between a charitable public benefit corporation and a non-charitable public benefit corporation?

Refer to the diagram at the beginning of the **Incorporation** section of this guide.

Public benefit corporations include all charitable corporations and certain non-charitable corporations.

Special rules apply to public benefit corporations in terms of the type of financial review that is required, the proportion of employees of the corporation or of any of its affiliates who may be on the board of directors and how distributions are made when the corporation winds up or dissolves.

Charitable corporations have only charitable purposes and provide an important benefit to the public-at-large or an important section of the community. Examples of charitable corporations may include schools, hospitals and religious organizations.

Certain non-charitable corporations qualify as public benefit corporations. Their purposes are not exclusively charitable but they have received donations in a financial year of more than \$10,000 from people not connected to the corporation or more than \$10,000 in a financial year in the form of government financial assistance. Examples of non-charitable public benefit corporations include a service club that has received more than \$10,000 from the public in a financial year, or a recreational club that has received more than \$10,000 in government funding in a financial year.

21. How does an organization qualify as a charitable corporation?

To qualify as a charitable corporation, a corporation must devote all of its assets to one or more of the following areas:

- Relief of poverty
- Advancement of education
- Advancement of religion
- Other purposes beneficial to the community, as determined by the courts, but not falling under any of the above (e.g., preserving the environment, promoting health care or establishing a community centre).

For more information on the requirements to incorporate a charitable corporation in Ontario, refer to the [Office of the Public Guardian and Trustee's \(OPGT\) website <http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/charbullet/bullet2.asp>](http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/charbullet/bullet2.asp). On the web site is a list of pre-approved purpose clauses, which organizations wanting to qualify as a charitable corporation can use to incorporate.

22. How does an organization apply to become a registered charitable corporation?

To become registered, a charitable corporation must make a separate application to the Charities Directorate at the Canada Revenue Agency (CRA). For more information about the **registration process**, please contact the Charities Directorate at the following address and phone number:

Charities Directorate
Canada Revenue Agency
Ottawa, Ontario
K1A 0L5
Telephone: 1-800-267-2384

More information is available on the [Charities Directorate website <http://www.cra-arc.gc.ca/charities/>](http://www.cra-arc.gc.ca/charities/).

23. Can all not-for-profit corporations issue official income tax donation receipts?

A not-for-profit corporation may not issue official income tax donation receipts unless it is registered as a charitable corporation with CRA.

24. If there is a conflict between charities law and ONCA, which takes priority?

Where ONCA or its regulations conflict with charities law, charities law takes priority. Refer to [section 5 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK5>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK5) of ONCA.

ONCA is a corporate statute, and deals with corporate matters such as directors' duties and members' rights. Charities law is made up of court decisions (i.e. common law) and statutes that apply to charitable corporations. Charities law includes, among other things, the fiduciary or financial obligations of directors of charitable corporations, the *Charities Accounting Act* and the investment provisions of the *Trustee Act*.

For example, [section 47 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK50>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK50) of ONCA

allows directors to receive remuneration (payment such as a salary or reimbursement for expenses) for their services as a director or for any other services to the corporation. Charities common law, however, prohibits directors of charitable corporations from receiving remuneration for their services as a director or for any other services unless an order is obtained from the court or under section 13 of the *Charities Accounting Act*. As there is a conflict between section 47 of ONCA and the rules relating to charitable corporations, charitable corporations cannot rely on section 47 of ONCA as authority to be paid. The laws prohibiting directors of charitable corporations from being paid override section 47.

It is strongly recommended that a charitable corporation seek professional advice in order to find out what specific charities laws may affect it.

25. Can a charitable corporation change to a non-charitable not-for-profit corporation at a later date?

No. An incorporated charitable corporation cannot change to a non-charitable, not-for-profit corporation. Funds intended for charitable purposes cannot later be used for non-charitable purposes.

26. What happens to the assets (e.g., buildings, office equipment and bank accounts) belonging to a charitable corporation when it winds up or dissolves?

When a charitable corporation winds up or dissolves, after paying any debts and obligations, it must distribute any remaining assets to a charitable corporation with similar purposes to its own, or to a government or government agency. Refer to [section 150 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK161>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK161) and [section 167 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK178>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK178) of ONCA.

A charitable corporation has other restrictions (e.g., restricted purpose trust funds) that it must be careful about. It is strongly recommended that any charitable corporation deciding to wind up or dissolve get professional advice.

27. Is the approval of the Office of the Public Guardian and Trustee (OPGT), part of the Ministry of the Attorney General, required before incorporating as a charitable corporation?

The OPGT's approval is no longer needed to incorporate as a charitable corporation. All applications for articles of incorporation will be submitted directly to ServiceOntario, including applications where applicants have drafted their own purpose clauses.

Also, it will no longer be necessary to add the special provisions to the articles of incorporation of charitable corporations. The special provisions had set out some of the duties and obligations of the charity and its directors. It is important to understand that the principles of the special provisions will continue to apply as they largely reflect aspects of charities law.

The OPGT will still need to pre-approve applications for articles of amendment, amalgamation and continuation. Applications for articles of amendment to change only the name of the charity also will now require the approval of the OPGT.

As it can be difficult to draft purpose clauses which legally qualify as charitable, the OPGT suggests that applicants continue to use the pre-approved purpose clauses if they accurately describe the purposes the corporation intends to carry out. The pre-approved purpose clauses have been accepted by both the OPGT and the Charities Directorate of the Canada Revenue Agency (CRA). The list of pre-approved purpose clauses is available on the [Attorney General's website <http://www.attorneygeneral.ius.gov.on.ca/english/family/pgt/charbullet/bullet2.asp>](http://www.attorneygeneral.ius.gov.on.ca/english/family/pgt/charbullet/bullet2.asp).

If the pre-approved purpose clauses do not accurately describe the intended purposes of the corporation, CRA has a list of what it calls model "object" clauses available on its [website <http://www.cra-arc.gc.ca/chrts-gvng/chrts/pplyng/mdl/menu-eng.html>](http://www.cra-arc.gc.ca/chrts-gvng/chrts/pplyng/mdl/menu-eng.html).

If the intended purposes of the corporation do not appear on either of these lists, applicants can ask the Charities Directorate for pre-clearance of tailor-made purpose clauses before submitting their application to ServiceOntario.

Important: To issue tax receipts to donors, an organization must make a separate application to the Charities Directorate to get a charitable registration number. Use of a purpose clause (whether it is from the list of pre-approved purposes, model objects or purposes pre-cleared by CRA) is only one of several requirements, and does not guarantee the organization will qualify for registered charitable status or that the organization's purposes will not have to be amended.

For more information on the requirements to incorporate a charitable corporation including drafting charitable purposes, please refer to the [OPGT's website <http://www.attorneygeneral.ius.gov.on.ca/english/family/pgt/charbullet/bullet2.asp>](http://www.attorneygeneral.ius.gov.on.ca/english/family/pgt/charbullet/bullet2.asp).

28. Is the approval of the Charities Directorate of the Canada Revenue Agency (CRA) needed before the incorporation of a charitable corporation?

Approval of the Charities Directorate at CRA is not needed to incorporate a charitable corporation. However, if applicants are unable to use the OPGT's pre-approved purpose clauses or the Charities Directorate's model "object" clauses to describe their organization's purposes, applicants should get pre-clearance from the Charities Directorate for tailor-made purpose clauses.

If applicants incorporate using purposes that are not acceptable to the Charities Directorate, then the corporation may need to amend its purposes by applying for articles of amendment. Please consult [CRA's website <http://www.cra-arc.gc.ca/chrts-gvng/chrts/pplyng/menu-eng.html>](http://www.cra-arc.gc.ca/chrts-gvng/chrts/pplyng/menu-eng.html) for more information.

Directors and Officers

This section provides basic information on some of the key duties and obligations of directors and officers under ONCA.

1. What is a director?

A director is an elected or appointed member of a board of directors.

2. What are the roles and responsibilities of a director?

Directors manage or supervise the management of the corporation. Refer to [section 21 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK24>](#) of ONCA. In general terms, this involves:

- Ensuring the purposes of the corporation are properly carried out
- Setting the corporation's long-range objectives and strategic plans
- Being responsible for all aspects of the corporation's operations
- Ensuring the corporation's financial stability
- Supervising the corporation's management and staff

3. What is an officer?

An officer is generally a member of a corporation's management team who reports to the board of directors. Officers must include a chair appointed from the board of directors and may include a president, vice president, treasurer and secretary. One person may hold two or more officer positions. For example, the same person may hold the offices of chair and president. Refer to [section 42 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK45>](#) of ONCA. If you are a director or officer of a charitable corporation, there are special rules regarding remuneration. See question 32 in the **Directors and Officers** section of this guide,

4. What are the roles and responsibilities of an officer?

Officers have the powers and authority set out in the articles or by-laws or given to them by the board of directors. They run the day-to-day operations of the corporation. Refer to [section 42 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK45>](#) of ONCA.

5. Do directors and officers have any specific duties under ONCA?

Directors and officers must comply with ONCA and its regulations, the corporation's articles and by-laws. Refer to [section 43 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK46>](#) of ONCA.

ONCA requires that, in exercising their duties, directors and officers must:

- Act honestly and in good faith to serve the best interests of the corporation; and
- Exercise the care, diligence and skill that a reasonably careful person would exercise in similar circumstances

Refer to [section 43 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK46>](#) of ONCA.

6. How does a person become a director?

A person becomes a director if:

- They are elected by the members. Refer to [section 24 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK27>](#) of ONCA.
- The corporation's by-laws specify a person is a director because they have a specific office, such as past president of the corporation, or they hold a position at another organization. Refer to [section 23 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK26>](#) of ONCA.
- They are appointed by other directors or by a court. Refer to [sections 24 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK27>](#) or [section 28 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK31>](#) of ONCA.

A person who is elected or appointed to become a director must consent before or within 10 days after their election or appointment. Refer to [section 24 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK27>](#) of ONCA.

In some circumstances a person may be deemed to be a director if all directors resign or are removed without replacement. Refer to [section 29 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK32>](#) of ONCA.

7. How does a person become an officer?

Subject to the articles or the by-laws, officers are appointed by the board of directors. Refer to [section 42 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK45>](#) of ONCA.

8. What are the required legal qualifications of a director?

A director must be:

- An individual
- Eighteen years of age or older
- A person who has not been found incapable of managing property under the *Substitute Decisions Act, 1992* or the *Mental Health Act*
- A person who has not been found incapable by any court in Canada or elsewhere
- Not bankrupt

The by-laws may have additional qualifications. Refer to [section 23 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK26>](#) of ONCA.

9. What should a person do once they become a director or officer?

The following are some key areas of consideration for a director or officer:

- Review articles of incorporation, by-laws, financial statements and the corporation's website
- Consider whether they have any potential conflicts of interest in relation to the corporation's

activities

- Become familiar with the corporation's reporting requirements
- Check whether the corporation provides liability insurance or indemnification for directors and officers. Refer to the **Definition** section of this guide.

10. How many directors need to be on the board of directors?

A not-for-profit corporation must have at least three directors. The articles may provide for a minimum and maximum number of directors. Refer to [section 22 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK25>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK25) of ONCA.

11. What are committees?

Some corporations may choose to establish committees. A board of directors can set up committees to focus expertise where it can best be used, and to manage the flow of information. Examples of committees include an audit committee, a fundraising committee and an executive committee. The responsibilities of a specific committee may vary from corporation to corporation.

A committee, or a managing director, can have the authority to make some decisions that bind the corporation, if the board of directors give them that authority. Refer to [section 36 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK39>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK39) of ONCA.

Members of an executive committee must also be members of the appointing board of directors. An audit committee must not be formed with a majority of officers or employees of the corporation. Refer to [section 80 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK86>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK86) of ONCA.

Members of an executive committee must also be members of the appointing board of directors. An audit committee must not be formed with a majority of officers or employees of the corporation. Refer to [section 80 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK86>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK86) of ONCA.

12. Can non-members be directors?

Non-members can be directors of a not-for-profit corporation unless the by-laws state otherwise. Refer to [section 23 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK26>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK26) of ONCA.

There are special rules for directors of public benefit corporations. Only one-third of the directors of a public benefit corporation may be employees of the corporation or its affiliates. Special rules apply to directors of charitable public benefit corporations as discussed in questions relating to charitable corporations below. Otherwise, there is no limit to the number of employees who may be directors. Refer to [section 23 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK26>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK26) of ONCA.

13. How long can a director hold their office?

A director's term of office is set out in ONCA to a maximum of four years. If the by-laws do not say otherwise, a director's term is one year. A director may be re-elected or re-appointed. Refer to [section 24 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK27>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK27) of ONCA.

14. How long can an officer hold their office?

An officer's term of office is more flexible than that of a director, and is typically set out in the by-laws of a not-for-profit corporation. If no limit is imposed in the by-laws, the term of office continues indefinitely.

15. Can the number of directors be changed?

Yes. The members of a corporation may change or amend its articles to have more or fewer directors, or to set the minimum or maximum number of directors. Refer to [section 103 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK113>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK113) and [section 30 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK33>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK33) of ONCA. If a corporation has a range of directors, the number of directors within the range must be fixed by a special resolution of the members. The members can also give the board of directors the authority to fix the number of directors. Refer to [section 22 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK25>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK25) of ONCA.

16. How can a director be removed?

Members can remove a director by ordinary resolution at a special meeting. This does not apply to a director who is appointed because they hold a particular office. If a director is elected by a particular class of members, only the members of the class can remove the director in this way. Refer to [section 26 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK29>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK29) of ONCA.

17. Can directors attend members' meetings?

Yes. Directors have the right to attend and be heard at members' meetings. Refer to [section 33 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK36>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK36) of ONCA. However, members do not have the right to attend directors' meetings.

18. Can a director also be an officer?

Yes. A director may be appointed to any office of the corporation. Refer to [section 42 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK45>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK45) of ONCA.

19. Do officers need to be directors?

Only the chair of the board, and any managing director, need to be directors. Refer to [section 42 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK45>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK45) and [section 36 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK39>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK39) of ONCA.

20. When does a director stop holding office?

A director stops holding office when the director (refer to [section 25 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK28>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK28) of ONCA):

- **Dies**
- **Resigns**
- **Is removed by the members by ordinary resolution at a special meeting.** Refer to **section 26** <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK29> of ONCA.
- **No longer meets the qualifications of a director.** Refer to **section 23** <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK26> of ONCA.

A director whose term is not stated in the by-laws stops holding office at the close of the next annual meeting. A director elected for a stated term will stay in office until their successor is elected or appointed. Refer to **section 24** <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK27> of ONCA.

21. How does a director resign?

A director resigns by giving their resignation. The resignation takes effect when it is received by the corporation or at the time given in the resignation, whichever is later. Refer to **section 25** <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK28> of ONCA.

22. Who fills a vacancy in the board of directors?

The board of directors may fill a vacant director position, unless the by-laws state that members must vote to fill it. Refer to **section 28** <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK31> of ONCA.

23. How soon should a director be replaced when there is a vacancy?

The board of directors (or the members, if they have voted to remove a director) generally can decide when the vacancy is filled. Refer to **section 26** <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK29> and **section 28** <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK31> of ONCA.

24. What are the key potential legal liabilities of directors?

Directors generally are not personally liable for debts of the corporation other than for money or property distributed or paid under section 39 and for employees' wages and vacation pay under section 40.

Directors could be personally liable if they mismanage corporate property. Refer to the reasonable diligence defence in **section 44** <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK47> of ONCA.

Directors may also be liable under other federal and provincial statutes that apply to the corporation.

25. How does ONCA protect directors from legal liability?

ONCA sets out a due diligence and good faith reliance defence (refer to **section 44** <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK47>), which says that a director is not legally liable under section 39 if they acted with the care, diligence and skill with which a reasonably careful person would have acted in similar circumstances.

The defence includes relying in good faith on the advice of advisors. This defence will allow directors to rely in good faith on professional advisors, and advice by management and other employees of the corporation (e.g., reliance on audit reports prepared by an independent auditor).

26. How can the corporation help protect a director or officer from legal liability?

ONCA states that a corporation may indemnify or provide money to a director or officer for the costs, charges and expenses of a legal proceeding if the individual acted honestly and in good faith with a view to the best interests of the corporation. Refer to **section 46** <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK49> of ONCA.

A corporation may also buy and keep liability insurance for the benefit of directors or officers. Refer to **section 46** <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK49> of ONCA.

While certain conditions apply, a regulation under the *Charities Accounting Act* allows charitable corporations to indemnify or buy liability insurance for their directors, officers or trustees providing they are managing the charitable corporation honestly and in good faith. Refer to **section 46** <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK49> of ONCA.

27. What is a conflict of interest?

A conflict of interest is generally a situation where a director or officer has a personal interest in or can benefit from a business deal arising from their work with the not-for-profit corporation. For example, if a not-for-profit corporation is entering into a contract with another company, a director who would personally gain something from that contract has a potential conflict of interest. Refer to **section 41** <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK44> of ONCA for more information.

28. What happens if a director or officer is in a conflict of interest?

ONCA lists specific requirements for both directors and officers to report conflicts of interest in various circumstances. Generally, if a director or officer is in a potential conflict of interest, they must promptly report the conflict to the corporation. ONCA also states when a director or officer must report their interest, depending on the circumstances (e.g. reporting may be required at the meeting when a proposed contract is first considered). Please note that there are exceptions for certain types of conflicts. Refer to **section 41** <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK44> of ONCA and question 30 below.

Important: It is recommended that directors and officers get professional advice regarding potential conflicts of interest.

29. Is a director able to vote if the director is in a conflict of interest?

When a director declares a conflict, normally they cannot attend any part of a meeting in which the matter is discussed or voted upon. Refer to [section 41 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK44>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK44) of ONCA.

30. In the case of a public benefit corporation that is also a charitable corporation, what are the duties of a director or officer who is in a conflict of interest?

The common law prohibits directors of charitable corporations from acting in a conflict of interest. It is not enough for such directors to declare a conflict, leave the room and not vote on the matter. As a result, directors of charitable corporations cannot act in a conflict unless an order is obtained from the court or under section 13 of the *Charities Accounting Act*. Please contact the Office of the Public Guardian and Trustee (OPGT) for more information or visit [its website <http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/>](http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/).

31. Can directors be paid?

Directors can be paid or receive remuneration if:

- The organization is not a charitable corporation
- The articles or by-laws of the corporation do not prohibit it

Refer to [section 47 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK50>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK50) of ONCA.

32. In the case of charitable corporation, can a director or officer be paid?

Directors of charitable corporations are generally prohibited by common law from receiving compensation as a director or for services provided in any other capacity, such as an employee of the charitable corporation. Directors of charitable corporations can only receive compensation with court approval or as the result of an order made under section 13 of the *Charities Accounting Act*.

This rule does not apply to officers who are not directors, nor does it prohibit directors from being reimbursed for their out-of-pocket expenses. For more information, refer to the **Incorporation section** of this guide which contains useful information about charitable corporations. Contact the Office of the Public Guardian and Trustee (OPGT) for additional information about charitable corporations, or visit [its website <http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/charbullet/bullet3.asp>](http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/charbullet/bullet3.asp).

33. Can directors, officers or members receive remuneration and expenses for services that they perform for the corporation in another capacity?

As long as the by-laws and the conflict of interest provisions of ONCA allow it, a director of a non-charitable corporation or an officer or member of a charitable or non-charitable corporation can receive reasonable remuneration for any services to the corporation that they perform in any other capacity (e.g., if a director also provides consulting services).

34. What special rules apply to directors of a charitable corporation?

Special rules apply to directors of charitable corporations in these areas:

- Conflicts of interest
- Compensation
- Indemnification
- Liability insurance
- Investments
- Amending purpose clauses
- Resigning as a director

Please contact the OPGT for additional information or visit [their website <http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/charbullet/bullet3.asp>](http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/charbullet/bullet3.asp).

If there is a conflict between ONCA or its regulations, and any other Act, regulation or law that applies to charitable corporations, the other Act, regulation or law applying to charitable corporations takes priority. Refer to [section 5 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK5>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK5) of ONCA.

Members

This section provides basic information on some of the key rights and duties of members under ONCA.

1. What is a member?

A member of a not-for-profit corporation is a person (including a corporation) who supports or benefits from the goals and objectives of the corporation.

The by-laws of a not-for-profit corporation set out the membership conditions that determine which persons are eligible to become members. Refer to [section 48 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK52>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK52) of ONCA.

2. Are members legally responsible (personally liable) for the debts of a not-for-profit corporation?

Generally, members are not personally responsible for the debts of a not-for-profit corporation. Refer to [section 91 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK99>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK99) of ONCA.

3. Are members required to pay annual dues?

Members may need to pay annual dues if the corporation's directors make this a membership requirement. Refer to [section 86 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK86>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK86) of ONCA.

laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK94 of ONCA.

4. What rights do members have?

Members of not-for-profit corporations have a number of rights. Some of these rights can be found in ONCA, while other rights may be specifically set out in a not-for-profit corporation's articles and by-laws. These include the right to:

- Attend annual meetings of the members of the corporation (formerly known as annual general meetings), if the member has the right to receive notice of the meeting. Refer to [section 55 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK59>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK59) of ONCA.
- Vote at any members' meeting if the member has voting rights.
- Make or discuss suggestions (proposals) for consideration at members' meetings, which may be put into effect if passed. Refer to [section 56 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK60>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK60) of ONCA.
- Call a meeting of the members if at least 10 per cent or a lower percentage of the members (as provided in the by-laws) request it. Refer to [section 60 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK64>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK64) of ONCA.
- Receive a proxy form from the corporation, and appoint another person (proxyholder) to attend and act on the member's behalf at a members' meeting. Refer to [section 64 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK69>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK69) and [section 65 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK70>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK70) of ONCA.
- Use other means of voting (e.g., mailed-in ballot, telephone, or electronic means), in addition to or in place of allowing for the use of proxies (other people acting on the member's behalf), if allowed in the by-laws. Refer to [section 53 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK57>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK57) and [section 67 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK72>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK72) of ONCA.
- Receive a copy of financial records not less than 21 days before the corporation's annual meeting at the member's request. Refer to [section 84 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK91>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK91) of ONCA.

5. Do members have the right to attend directors' meeting?

No. Members do not have the right to attend directors' meetings. However, directors have the right to attend and be heard at members' meetings. Refer to [section 33 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK36>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK36) of ONCA.

6. What can members do to make sure directors and officers are acting in the corporation's best interests?

Members can take a number of actions under ONCA to make sure directors and officers are properly supervising the management of the corporation and complying with their duties. For example, members have the right to:

- Apply to the court for a compliance order to make officers and directors comply with ONCA, the articles and by-laws of the not-for-profit corporation. Refer to [section 191 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK204>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK204) of ONCA.

Remove a director from office by ordinary resolution at a special meeting. Refer to [section 26 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK29>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK29) of ONCA.

- Have greater access to financial statements to make sure their corporation's financial position is effectively supervised (e.g., upon request, a member can receive financial statements not less than 21 days before an annual meeting). Refer to [section 84 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK91>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK91) of ONCA.
- In the case of a not-for-profit corporation that is not a public benefit corporation, disagree on certain fundamental changes and have any financial interest they may have re-purchased by the corporation. Refer to [section 187 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK200>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK200) of ONCA.
- Apply to the court for an order winding up the corporation. Refer to [sections 136 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK147>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK147) to [138 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK149>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK149) of ONCA.
- Apply to the court to require an investigation of the corporation. Refer to [section 174 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK186>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK186) of ONCA.
- Apply to the court for permission to act in the name of the corporation or to intervene in an action in which the corporation is a party (a derivative action). This is not available for a religious corporation. Refer to [section 183 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK196>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK196) of ONCA.

7. Does the corporation always have to include a member's proposal in the meeting notice?

No. The corporation does not have to include a member's proposal in the meeting notice if:

- The proposal is not submitted at least 60 days before the meeting
- The primary purpose of the proposal appears to deal with a personal claim or to resolve a personal complaint against the corporation or its directors, officers, members or debt obligation holders
- The proposal does not relate in a significant way to the activities or affairs of the corporation
- The right to make a proposal is being abused for publicity
- A very similar proposal was suggested and voted down within the last two years

- The member failed to present a proposal that the member requested within the last two years. Refer to [section 56 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK60>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK60) of ONCA.

8. How does a membership end?

Unless the articles or by-laws state otherwise, a membership ends when:

- The member dies or resigns
- The member is expelled or the person's membership is otherwise ended in keeping with the articles or by-laws
- The membership expires

The corporation is liquidated or dissolved. Refer to [section 50 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK54>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK54) of ONCA. For a corporation that is not a public benefit corporation, the membership interest may be re-purchased by the corporation in certain circumstances. Refer to [section 187 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK200>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK200) of ONCA.

9. Can a member be disciplined or can their membership be terminated or ended?

The articles or by-laws may give the directors or members the power to discipline a member for cause (e.g. suspension, fine, expulsion or refusal to re-admit as a member), or their membership can be terminated. The articles or by-laws must set out the circumstances and the steps to be followed. Any discipline or termination must be done in good faith and in a fair and reasonable way. Refer to [section 51 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK55>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK55) of ONCA.

10. What rights does a member have if disciplinary action or termination is being considered against them?

A member must be given at least 15 days' notice of a disciplinary action or termination. The notice must give reasons and must explain that the member has the right to be heard orally, in writing or in another format allowed by the articles or by-laws. Refer to [section 51 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK55>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK55) of ONCA.

11. Can a membership be transferred?

Unless the articles or by-laws state otherwise, a membership may be transferred, but only to the corporation. Refer to [section 48 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK52>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK52) of ONCA.

12. Can a non-member become a director ?

A director of a corporation does not have to be a member of the corporation unless the by-laws state otherwise. A director may be a member of the corporation. For public benefit corporations, only one-third of the directors of a public benefit corporation may be employees of the corporation or of any of its affiliates. Refer to [section 23 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK26>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK26) of ONCA.

13. Can members receive remuneration and expenses for services that they perform for the corporation?

As long as the by-laws allow it, a member of a corporation can be remunerated and reimbursed for reasonable expenses for any services to the corporation that they perform in any other capacity (e.g. if a member also provides consulting services). Refer to [section 47 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK50>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK50) of ONCA.

14. What information does a member have the right to? How does a member get information about the corporation?

A member can have one copy of the articles and by-laws provided to them upon request and free of charge. Refer to [section 95 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK104>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK104) of ONCA.

Members may examine articles, by-laws, minutes of members' meetings, members' resolutions, and lists of directors, officers and members during the corporation's regular office hours, and may take copies on payment of a reasonable fee. Refer to [section 95 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK104>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK104) of ONCA.

If a member wants to examine the list of members, the request must include a statutory declaration (i.e. a legal document used to allow a person to confirm something is true in order to satisfy a legal requirement. It is similar to an affidavit which is a formal sworn statement of fact (i.e. made under oath)). ONCA outlines the contents of the statutory declaration and limits how the information may be used. Refer to [section 96 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK105>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK105) of ONCA.

Members have the right to receive the annual financial statements at every annual meeting. Upon request, members can receive these financial statements no less than 21 days before an annual meeting. Refer to [section 84 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK91>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK91). Members also have the right to examine and make copies of financial statements at any other time. Refer to [section 98 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK107>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK107) of ONCA.

15. What are the requirements for financial reporting?

Members must appoint an auditor or a person to conduct a review engagement (which is less extensive but less expensive than an audit) of the corporation at every annual meeting. Some corporations meeting certain requirements do not need an audit or review engagement. Refer to [section 68 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK74>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK74) and [section 76 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK82>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK82) of ONCA.

The auditor or person conducting a review engagement must prepare a report on the corporation's finances. The directors must provide it to the members at every annual meeting. Refer to [section](#)

[78 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK84>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK84) and [section 84 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK91>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK91) of ONCA.

16. Who can audit or conduct a review engagement of a corporation?

In order to do an audit or conduct a review engagement of a corporation, a person must be permitted to do so under the *Public Accounting Act, 2004* and be independent. Refer to [section 69 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK75>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK75) of ONCA.

17. When can an audit requirement be set aside (waived) in favour of a more flexible review engagement? Can both an audit and review engagement be waived?

Waiving of an audit and/or review engagement depends on whether the not-for-profit corporation is also a public benefit corporation and its annual revenue. Refer to [section 76 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK82>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK82) of ONCA.

Public Benefit Corporations

Members of a public benefit corporation with annual revenue of more than \$100,000 but less than \$500,000 can waive the audit requirement, but the corporation still needs to conduct a review engagement. If a public benefit corporation has annual revenue of \$500,000 or more, an audit is mandatory. Refer to [section 76 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK82>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK82) of ONCA.

Similarly, members of a public benefit corporation with annual revenue of \$100,000 or less can waive both the audit and the review engagement. Refer to [section 76 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK82>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK82) of ONCA.

The amounts indicated above could be amended by regulation at a future date.

An extraordinary resolution (approval by at least 80 per cent of the members present at a special members' meeting where there are enough members to take a vote or if all voting members agree in writing) is needed to waive an audit or review engagement requirement. This resolution applies until the next annual meeting of the members. Refer to [section 76 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK82>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK82) of ONCA.

Other Not-for-Profit Corporations

If a corporation is not a public benefit corporation and has annual revenue of more than \$500,000, its members can waive the requirement to have an audit but must conduct a review engagement.

Similarly, if this type of corporation has annual revenue of \$500,000 or less, its members can waive both an audit and a review engagement. Refer to [section 76 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK82>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK82) of ONCA.

In each case, an extraordinary resolution (approval by at least 80 per cent of the members present at a special members' meeting where there are enough members to take a vote or if all voting members agree in writing) is required to waive an audit or review engagement requirement. This resolution is valid until the next annual meeting of the members. Refer to [section 76 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK82>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK82) of ONCA.

18. What do directors need to present to members about a corporation's finances?

The directors must present the following documents to the members at every annual meeting:

- The financial statements approved by the directors
- The report of the auditor or the report of the person who conducted a review engagement
- Any further information regarding the corporation's financial position and its operations that the articles or by-laws require. Refer to [section 84 <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK91>](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK91) of ONCA.

Upon request, members can receive these financial documents not less than 21 days before an annual meeting.