

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

### Table of Contents

- **Introduction**
- **Definitions**
- **Incorporation**
- **Directors & Officers**
- **Members**

### 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](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\\_hYL2ltLYKbEwMUqBEWzMHtmcG5fdC3fo7wuuaaSbzZglv-dKwF9eXcHroW-rIaPZIG4fQsK1NKNk8DldVvn5Yo0oSZ0M-JF5oqiuPmsyuKL88\\_ijs!/>](http://www.appmybizaccount.gov.on.ca/wps/portal/mba_pub/!ut/p/c4/JYyxDoJAEES_hYL2ltLYKbEwMUqBEWzMHtmcG5fdC3fo7wuuaaSbzZglv-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-qvng/chrts/pplnyng/mdl/menu-eng.html>](http://www.cra-arc.gc.ca/chrts-qvng/chrts/pplnyng/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-qvng/chrts/pplnyng/menu-eng.html>](http://www.cra-arc.gc.ca/chrts-qvng/chrts/pplnyng/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](http://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.



[Français](#)

## Not-for-Profit Corporations Act, 2010

S.O. 2010, CHAPTER 15

**Consolidation Period:** From October 25, 2010 to the [e-Laws currency date](#).

**Note: THIS ACT IS NOT YET IN FORCE. It comes into force on a day to be named by proclamation of the Lieutenant Governor. See: 2010. c. 15, s. 249.**

No amendments.

### [SKIP TABLE OF CONTENTS](#)

#### CONTENTS

| <a href="#">PART I</a>                         |   |
|--|---|
| INTERPRETATION, APPLICATION AND ADMINISTRATION |   |
| <a href="#">1.</a>                             | Definitions                               |
| <a href="#">2.</a>                             | Interpretation re period of days          |
| <a href="#">3.</a>                             | Interpretation re corporate relationships |
| <a href="#">4.</a>                             | Application                               |
| <a href="#">5.</a>                             | Conflict with other statutes and law      |
| <a href="#">6.</a>                             | Appointment of Director                   |
| <a href="#">PART II</a>                        |   |
| INCORPORATION                                  |   |
| <a href="#">7.</a>                             | Articles of incorporation                 |
| <a href="#">8.</a>                             | Form and contents of articles             |

|                                 |  |
|---------------------------------|--|
| <a href="#">9.</a>              | Certificate of incorporation                                   |
| <a href="#">10.</a>             | Assignment of corporation number                               |
| <a href="#">11.</a>             | Rules re name of corporation                                   |
| <a href="#">12.</a>             | Change of name if objectionable                                |
| <a href="#">13.</a>             | Corporate seal   |
| <a href="#">14.</a>             | Registered office  |
| <b><a href="#">PART III</a></b> |  |
| <b>CAPACITY AND POWERS</b>      |  |
| <a href="#">15.</a>             | Capacity, etc., of a natural person                            |
| <a href="#">16.</a>             | By-law not required to confer power                            |
| <a href="#">17.</a>             | By-laws  |
| <a href="#">18.</a>             | Default organizational by-laws                                 |
| <a href="#">19.</a>             | Indoor management rule   |
| <a href="#">20.</a>             | Contract prior to corporate existence                          |
| <b><a href="#">PART IV</a></b>  |  |
| <b>DIRECTORS AND OFFICERS</b>   |  |
| <a href="#">21.</a>             | Directors to manage or supervise management of corporation     |
| <a href="#">22.</a>             | Number of directors  |
| <a href="#">23.</a>             | Qualifications of directors                                    |
| <a href="#">24.</a>             | Election and appointment of directors                          |
| <a href="#">25.</a>             | Ceasing to hold office   |
| <a href="#">26.</a>             | Removal of directors   |
| <a href="#">27.</a>             | Statement of director  |
| <a href="#">28.</a>             | Filling vacancy  |
| <a href="#">29.</a>             | Deemed director, if all directors resign or are removed        |
| <a href="#">30.</a>             | Change in number of directors                                  |
| <a href="#">31.</a>             | Court review of election or appointment of director            |
| <a href="#">32.</a>             | Organizational meeting   |
| <a href="#">33.</a>             | Directors entitled to attend members' meetings                 |
| <a href="#">34.</a>             | Directors' meetings  |
| <a href="#">35.</a>             | Resolutions  |
| <a href="#">36.</a>             | Delegation by directors  |
| <a href="#">37.</a>             | Validity of acts despite irregularities, etc.                  |
| <a href="#">38.</a>             | Evidence of resolution   |
| <a href="#">39.</a>             | Directors' liability for money or property distributed or paid |
| <a href="#">40.</a>             | Directors' liability to employees for wages, etc.              |
| <a href="#">41.</a>             | Disclosure: conflict of interest                               |
| <a href="#">42.</a>             | Officers   |
| <a href="#">43.</a>             | Duties of directors and officers                               |
| <a href="#">44.</a>             | Reasonable diligence defence                                   |
| <a href="#">45.</a>             | Consent of director at meeting                                 |
| <a href="#">46.</a>             | Indemnification of directors and officers                      |
| <a href="#">47.</a>             | Remuneration of directors, officers and employees              |
| <b><a href="#">PART V</a></b>   |  |
| <b>MEMBERS</b>                  |  |
| <a href="#">48.</a>             | Membership   |



|                     |   |
|---------------------|---|
| <a href="#">49.</a> | Issuance of memberships   |
| <a href="#">50.</a> | Termination of membership   |
| <a href="#">51.</a> | Power to discipline or terminate a member                         |
| <a href="#">52.</a> | Calling meetings of members                                       |
| <a href="#">53.</a> | Place of members' meetings  |
| <a href="#">54.</a> | Record date   |
| <a href="#">55.</a> | Notice of members' meetings                                       |
| <a href="#">56.</a> | Member's right to submit and discuss proposals                    |
| <a href="#">57.</a> | Quorum for a members' meeting                                     |
| <a href="#">58.</a> | Voting  |
| <a href="#">59.</a> | Resolution in lieu of meeting                                     |
| <a href="#">60.</a> | Members may requisition meeting of members                        |
| <a href="#">61.</a> | Members' meeting called by court                                  |
| <a href="#">62.</a> | No waiver of members' rights                                      |
|                     | <b><a href="#">PART VI</a></b>                                    |
|                     | <b>PROXIES</b>  |
| <a href="#">63.</a> | Definition  |
| <a href="#">64.</a> | Proxies   |
| <a href="#">65.</a> | Mandatory solicitation of proxy                                   |
| <a href="#">66.</a> | Proxyholder   |
| <a href="#">67.</a> | Voting by mail or by telephonic or electronic means               |
|                     | <b><a href="#">PART VII</a></b>                                   |
|                     | <b>AUDITORS</b>   |
| <a href="#">68.</a> | Appointment of auditor  |
| <a href="#">69.</a> | Qualifications  |
| <a href="#">70.</a> | Auditor, person conducting review ceasing to hold position        |
| <a href="#">71.</a> | Removal of auditor, person appointed to conduct review engagement |
| <a href="#">72.</a> | Filling vacancy   |
| <a href="#">73.</a> | Court-appointed auditor   |
| <a href="#">74.</a> | Court review of appointment of auditor                            |
| <a href="#">75.</a> | Auditor's right to attend meetings                                |
| <a href="#">76.</a> | Dispensing with audits, etc.                                      |
| <a href="#">77.</a> | Annual financial review   |
| <a href="#">78.</a> | Report on financial statements                                    |
| <a href="#">79.</a> | Obligation of directors, etc., to give information                |
| <a href="#">80.</a> | Audit committee   |
| <a href="#">81.</a> | Notice of errors in financial statements                          |
| <a href="#">82.</a> | Qualified privilege — defamation                                  |
|                     | <b><a href="#">PART VIII</a></b>                                  |
|                     | <b>FINANCIAL DISCLOSURE</b>                                       |
| <a href="#">83.</a> | Approval of annual financial statements                           |
| <a href="#">84.</a> | Presentation of annual financial statements to members            |
|                     | <b><a href="#">PART IX</a></b>                                    |
|                     | <b>CORPORATE FINANCE</b>  |
| <a href="#">85.</a> | Borrowing powers  |
| <a href="#">86.</a> | Members' annual contribution or dues                              |

- [87.](#) Ownership of property
- [88.](#) Investments by corporation
- [89.](#) Distribution of property, etc.
- [90.](#) Surrendered memberships
- [91.](#) Non-liability of members

**PART X  
RECORDS**

- [92.](#) Corporate records to be kept
- [93.](#) Location of corporate records
- [94.](#) Directors' access to records
- [95.](#) Members', creditors' access to records
- [96.](#) Members' access to register of members
- [97.](#) Consents of directors to be kept
- [98.](#) Financial statements to be kept
- [99.](#) Access to records refused — court authorization
- [100.](#) Form of records
- [101.](#) Validity of unsealed documents
- [102.](#) No deemed notice of contents

**PART XI  
FUNDAMENTAL CHANGES**

- [103.](#) Amendment of articles
- [104.](#) Proposal to amend
- [105.](#) Class vote on resolution to amend
- [106.](#) Articles of amendment to be sent to Director
- [107.](#) Certificate of amendment
- [108.](#) Effect of certificate
- [109.](#) Restated articles
- [110.](#) Amalgamation
- [111.](#) Member approval of amalgamation agreement
- [112.](#) Articles of amalgamation
- [113.](#) Effect of amalgamation
- [114.](#) Continuance from other jurisdictions
- [115.](#) Continuance of other Ontario bodies corporate
- [116.](#) Continuance to other jurisdictions
- [117.](#) Continuance as co-operative corporation
- [118.](#) Extraordinary sale, lease or exchange
- [119.](#) Reorganization
- [120.](#) Arrangement

**PART XII  
LIQUIDATION AND DISSOLUTION**

- [121.](#) Definition
- [122.](#) Application of ss. 123 to 134 to voluntary windings up
- [123.](#) Voluntary winding up
- [124.](#) Inspectors
- [125.](#) Vacancy in office of liquidator
- [126.](#) Removal of liquidator

|                      |  |
|----------------------|--|
| <a href="#">127.</a> | Commencement of winding up                                 |
| <a href="#">128.</a> | Corporation to cease activities                            |
| <a href="#">129.</a> | Proceedings against corporation after voluntary winding up |
| <a href="#">130.</a> | List of contributories and calls                           |
| <a href="#">131.</a> | Meetings of members during winding up                      |
| <a href="#">132.</a> | Arrangements with creditors                                |
| <a href="#">133.</a> | Power to compromise with debtors and contributories        |
| <a href="#">134.</a> | Account of voluntary winding up to be made by liquidator   |
| <a href="#">135.</a> | Application of ss. 136 to 147 to court-ordered windings up |
| <a href="#">136.</a> | Winding up by court  |
| <a href="#">137.</a> | Who may apply  |
| <a href="#">138.</a> | Powers of court  |
| <a href="#">139.</a> | Appointment of liquidator                                  |
| <a href="#">140.</a> | Removal of liquidator                                      |
| <a href="#">141.</a> | Assessment of costs, etc.                                  |
| <a href="#">142.</a> | Commencement of winding up                                 |
| <a href="#">143.</a> | Proceedings in winding up after order                      |
| <a href="#">144.</a> | Orders following winding-up order                          |
| <a href="#">145.</a> | Proceedings against corporation after court winding up     |
| <a href="#">146.</a> | Provision for discharge and distribution by the court      |
| <a href="#">147.</a> | Order for dissolution                                      |
| <a href="#">148.</a> | Application of ss. 149 to 165 to all windings up           |
| <a href="#">149.</a> | No liquidator  |
| <a href="#">150.</a> | Consequences of winding up                                 |
| <a href="#">151.</a> | Costs, etc., of winding up                                 |
| <a href="#">152.</a> | Powers of liquidators                                      |
| <a href="#">153.</a> | Acts by more than one liquidator                           |
| <a href="#">154.</a> | Nature of liability of contributory                        |
| <a href="#">155.</a> | Liability in case of contributory's death                  |
| <a href="#">156.</a> | Deposit of money   |
| <a href="#">157.</a> | Proving claim  |
| <a href="#">158.</a> | Application for direction                                  |
| <a href="#">159.</a> | Examination of persons as to estate                        |
| <a href="#">160.</a> | Proceedings by members                                     |
| <a href="#">161.</a> | Rights conferred under Act are in addition to other powers |
| <a href="#">162.</a> | Stay of winding-up proceedings                             |
| <a href="#">163.</a> | Creditor unknown   |
| <a href="#">164.</a> | Member's whereabouts unknown                               |
| <a href="#">165.</a> | Disposal of records, etc., after winding up                |
| <a href="#">166.</a> | Voluntary dissolution                                      |
| <a href="#">167.</a> | Articles of dissolution                                    |
| <a href="#">168.</a> | Certificate of dissolution                                 |
| <a href="#">169.</a> | Cancellation of certificate, etc., by Director             |
| <a href="#">170.</a> | Notice of dissolution, non-filing                          |
| <a href="#">171.</a> | Actions after dissolution                                  |
| <a href="#">172.</a> | Liability of members to creditors                          |

[173.](#) Forfeiture of undisposed property

**[PART XIII](#)**  
**INVESTIGATION**

[174.](#) Investigation

[175.](#) Order to enter a dwelling

[176.](#) Powers of inspector

[177.](#) Court directions on investigation

[178.](#) Right to counsel

[179.](#) Exchange of information

[180.](#) Privilege

**[PART XIV](#)**  
**REMEDIES, OFFENCES AND PENALTIES**

[181.](#) Definition

[182.](#) Complainant

[183.](#) Derivative actions

[184.](#) Powers of court in derivative actions

[185.](#) Stay, dismissal, etc., of derivative action

[186.](#) Application to court to rectify records

[187.](#) Rights of dissenting members

[188.](#) Directions by court to Director

[189.](#) Notice of refusal by Director

[190.](#) Appeal from Director's decision

[191.](#) Compliance or restraining order

[192.](#) Appeals

[193.](#) Offence

[194.](#) Order to comply

**[PART XV](#)**  
**GENERAL**

[195.](#) Definitions

[196.](#) Notice, etc., given to members and directors

[197.](#) Notice, etc., given to corporation

[198.](#) Waiver of notice and abridgement of times

[199.](#) Corporate certificate

[200.](#) Examination, etc., of documents kept by Director

[201.](#) Date of certificates

[202.](#) Errors in certificates, etc.

[203.](#) Form of Director's records

[204.](#) Copy of document acceptable

[205.](#) Affidavits, etc., required by Director

[206.](#) Delegation of Director's powers and duties

[207.](#) Transition

[208.](#) Regulations

[209.](#) Fees

[210.](#) Forms

**PART I**

## INTERPRETATION, APPLICATION AND ADMINISTRATION

### Definitions

#### 1. (1) In this Act,

“affairs” means the relationships among a corporation, its affiliates and the members, directors and officers of a corporation and its affiliates, but does not include the activities carried on by a corporation and its affiliates; (“affaires internes”)

“affiliate” means an affiliated body corporate within the meaning of subsection 3 (3); (“membre du même groupe”)

“articles” means any document or instrument that incorporates a corporation or modifies its incorporating document or instrument, including articles of incorporation, restated articles of incorporation, articles of amendment, articles of amalgamation, articles of arrangement, articles of continuance, articles of dissolution, articles of reorganization, articles of revival, letters patent, supplementary letters patent or a special Act; (“statuts”)

“associate”, where used to indicate a relationship with any person, means,

(a) any body corporate of which the person beneficially owns, directly or indirectly, voting securities carrying more than 10 per cent of the voting rights attached to all voting securities of the body corporate for the time being outstanding,

(b) any partner of that person,

(c) any trust or estate in which the person has a substantial beneficial interest or as to which the person serves as trustee or in a similar capacity,

(d) any relative of the person, including the person’s spouse, where the relative has the same home as the person, or

(e) any relative of the spouse of the person where the relative has the same home as the person; (“personne qui a un lien”)

“auditor” includes a partnership of auditors or an auditor that is incorporated; (“vérificateur”)

“body corporate” means any body corporate, with or without share capital and whether or not this Act applies to it; (“personne morale”)

“certified copy” means,

(a) in relation to a document of a corporation, a copy of the document certified to be a true copy by an officer of the corporation,

(b) in relation to a document issued by the court, a copy of the document certified to be a true copy under the seal of the court and signed by the registrar of the court,

(c) in relation to a document in the custody of the Director, a copy of the document certified to be a true copy by the Director and signed by the Director or by a public servant employed under Part III of the *Public Service of Ontario Act, 2006* and designated by the regulations; (“copie certifiée conforme”)

“charitable corporation” means a corporation incorporated for the relief of poverty, the advancement of education, the advancement of religion or other charitable purpose, and “non-charitable corporation” means a corporation that is not a charitable corporation; (“organisation caritative”, “organisation non caritative”)

“corporation” means a body corporate without share capital to which this Act applies; (“organisation”)

“court” means the Superior Court of Justice except where the context requires otherwise; (“tribunal”)

“day” means a clear day; (“jour”)

“debt obligation” means a bond, debenture, note or other similar obligation or guarantee of such an obligation of a body corporate, whether secured or unsecured; (“titre de créance”)

“Director” means the Director appointed under section 6; (“directeur”)

“director” means an individual occupying the position of director of a corporation by whatever name he or she is called; (“administrateur”)

“financial year”, in respect of a corporation, means the annual period that the corporation establishes for accounting purposes; (“exercice”)

“incorporator” means a person who signs articles of incorporation of a corporation or whose name is set out in the articles of incorporation as an incorporator if the articles are in an electronic format; (“fondateur”)

“individual” means a natural person, other than a natural person in his or her capacity as trustee, executor, administrator or other legal representative; (“particulier”)

“liability” includes a debt of a corporation arising under subsection 187 (25); (“passif”)

“Minister” means the Minister of Consumer Services or such other member of the Executive Council to whom responsibility for the administration of this Act may be assigned or transferred under the *Executive Council Act*; (“ministre”)

“officer”, in respect of a corporation, means an officer of the corporation appointed under clause 42 (1) (a), including,

(a) the chair of the board of directors of the corporation and a vice-chair of the board of directors of the corporation,

(b) the president, a vice-president, the secretary, an assistant secretary, the treasurer, an assistant treasurer and the general manager of the corporation, and

(c) any other individual who performs functions for the corporation similar to those normally performed by an

individual listed in clause (a) or (b); (“dirigeant”)

“ordinary resolution” means a resolution that,

(a) is submitted to a meeting of the members of a corporation and passed at the meeting, with or without amendment, by at least a majority of the votes cast, or

(b) is consented to by each member of the corporation entitled to vote at a meeting of the members of the corporation or the member’s attorney; (“résolution ordinaire”)

“person” includes an individual, sole proprietorship, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate and a natural person in his or her capacity as trustee, executor, administrator, or other legal representative; (“personne”)

“prescribed” means prescribed by the regulations made under this Act; (“prescrit”)

“public benefit corporation” means,

(a) a charitable corporation, or

(b) a non-charitable corporation that receives more than \$10,000 in a financial year,

(i) in the form of donations or gifts from persons who are not members, directors, officers or employees of the corporation, or

(ii) in the form of grants or similar financial assistance from the federal government or a provincial or municipal government or an agency of any such government; (“organisation d’intérêt public”)

“registered office” means the registered office of a corporation at the address set out in its articles or as specified in the notice or return most recently filed by the corporation under the *Corporations Information Act*, whichever is more current; (“siège”)

“regulations” means the regulations made under this Act; (“règlements”)

“related person”, where used to indicate a relationship with any person, means,

(a) any spouse, son or daughter of that person,

(b) any relative of the person or of the person’s spouse, other than an individual referred to in clause (a), who has the same home as the person, or

(c) any body corporate of which the person and any of the persons referred to in clause (a) or (b) or the partner or employer of the person, or any combination, beneficially own, directly or indirectly, voting securities carrying more than 50 per cent of the voting rights attached to all voting securities of the body corporate for the time being outstanding;

(“personne liée”)

“special resolution” means a resolution that,

(a) is submitted to a special meeting of the members of a corporation duly called for the purpose of considering the resolution and passed at the meeting, with or without amendment, by at least two-thirds of the votes cast, or

(b) consented to by each member of the corporation entitled to vote at a meeting of the members of the corporation or the member’s attorney; (“résolution extraordinaire”)

“spouse” means a person to whom the person is married or with whom the person is living in a conjugal relationship outside marriage; (“conjoint”)

“telephonic or electronic means” means any means, other than direct speech or writing, by which information or data is transmitted, including telephone, fax, e-mail, automated touch-tone telephone system and computer. (“moyen de communication téléphonique ou électronique”) 2010, c. 15, s. 1 (1).

### **Deeming re public benefit corporation**

2) Despite the definition of “public benefit corporation” in subsection (1), if a non-charitable corporation that is not a public benefit corporation at the beginning of a financial year receives donations, gifts, grants or similar financial assistance as described in that definition in that financial year,

(a) the non-charitable corporation is deemed to not be a public benefit corporation in that financial year; and

(b) the non-charitable corporation is deemed to be a public benefit corporation in the next financial year, as of the date of the first annual meeting of members in that next financial year. 2010, c. 15, s. 1 (2).

### **Interpretation re period of days**

2. In this Act, a period of days is deemed to commence on the day following the event that began the period and is deemed to terminate at midnight of the last day of the period, except that if the last day of the period falls on a holiday, the period terminates at midnight of the next day that is not a holiday. 2010, c. 15, s. 2.

### **Interpretation re corporate relationships**

#### **Subsidiary body corporate**

3. (1) For the purposes of this Act, a body corporate is deemed to be a subsidiary of another body corporate if, but only if,

(a) it is controlled by,

(i) that other body corporate,



(ii) that other body corporate and one or more bodies corporate each of which is controlled by that other body corporate, or

(iii) two or more bodies corporate each of which is controlled by that other body corporate; or

(b) it is a subsidiary of a body corporate that is that other body corporate's subsidiary. 2010, c. 15, s. 3 (1).

### **Holding body corporate**

(2) For the purposes of this Act, a body corporate is deemed to be another body corporate's holding body corporate if, but only if, that other body corporate is its subsidiary. 2010, c. 15, s. 3 (2).

### **Affiliated body corporate**

(3) For the purposes of this Act, one body corporate is deemed to be affiliated with another body corporate if, but only if, one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person. 2010, c. 15, s. 3 (3).

### **Control**

(4) For the purposes of this Act, a body corporate is deemed to be controlled by another person or by two or more bodies corporate if, but only if,

(a) shares or memberships of the first-mentioned body corporate to which are attached more than 50 per cent of the votes that may be cast to elect directors of that body corporate are held, other than by way of security only, by or for the benefit of such other person or by or for the benefit of such other bodies corporate; and

(b) the votes attached to those shares or memberships are sufficient, if exercised, to elect a majority of the board of directors of the first-mentioned body corporate. 2010, c. 15, s. 3 (4).

### **Application**

4. (1) This Act applies, except where it is otherwise expressly provided, to,

(a) every body corporate without share capital incorporated by or under a general or special Act of the Parliament of the late Province of Upper Canada;

(b) every body corporate without share capital incorporated by or under a general or special Act of the Parliament of the late Province of Canada that has its registered office and carries on its activities in Ontario and that was incorporated with purposes that are within the legislative authority of the Province of Ontario; and

(c) every body corporate without share capital incorporated by or under a general or special Act of the Legislature. 2010, c. 15, s. 4 (1).

## Same

[\(2\)](#) This Act does not apply to a body corporate without share capital to which the *Co-operative Corporations Act* or Part V of the *Corporations Act* applies. 2010, c. 15, s. 4 (2).

## Conflict with other statutes and law

### Other statutes prevail

[5. \(1\)](#) If there is a conflict between this Act or a regulation made under it and a provision in any other Act or in a regulation made under any other Act that applies to a body corporate without share capital, the provision in the other Act or its regulation prevails. 2010, c. 15, s. 5 (1).

### Charities law prevails

[\(2\)](#) If there is a conflict between this Act or a regulation made under it and any other Act, regulation or law applicable to charitable corporations, the other Act, regulation or law applicable to charitable corporations prevails. 2010, c. 15, s. 5 (2).

## Appointment of Director

[6.](#) The Minister may appoint a Director to carry out the duties and exercise the powers of the Director under this Act. 2010, c. 15, s. 6.

## PART II INCORPORATION

## Articles of incorporation

[7. \(1\)](#) One or more individuals or bodies corporate, or any combination of them, may incorporate a corporation by filing articles of incorporation and any other prescribed documents or information with the Director in accordance with the regulations. 2010, c. 15, s. 7 (1).

## Limitation

[\(2\)](#) An individual cannot incorporate a corporation if he or she,

(a) is under 18 years old;

(b) has been found under the *Substitute Decisions Act, 1992* or the *Mental Health Act* to be incapable of managing property;

(c) has been found to be incapable by any court in Canada or elsewhere; or

(d) has the status of bankrupt. 2010, c. 15, s. 7 (2).

## **Form and contents of articles**

**8. (1)** Articles of incorporation must set out the name of the corporation, its purposes and any other information required by this Act or the regulations or by the Director. 2010, c. 15, s. 8 (1).

## **Purposes of a corporation**

**(2)** Subject to any restrictions in the regulations, the purposes of a corporation may be any purposes within the legislative authority of the Province of Ontario. 2010, c. 15, s. 8 (2).

## **Same**

**(3)** If any of the purposes of a corporation are of a commercial nature, the articles must state that the commercial purpose is intended only to advance or support one or more of the non-profit purposes of the corporation. 2010, c. 15, s. 8 (3).

## **Provisions in articles**

**(4)** The articles may set out any provisions permitted by this Act or other law to be set out in the by-laws of the corporation. 2010, c. 15, s. 8 (4).

## **Articles inconsistent with Act**

**(5)** Subject to subsection (6), if a provision in a corporation's articles is inconsistent with a provision in this Act or the regulations, the provision in this Act or the regulations prevails and the articles are deemed to be amended accordingly. 2010, c. 15, s. 8 (5).

## **Where articles prevail over Act**

**(6)** If a corporation's articles require a greater number of votes of directors or members of the corporation to effect any action than are required by this Act, the provisions of the articles prevail, but this subsection does not apply to a provision in the articles that requires a greater number of votes to remove a director than the number required by section 26. 2010, c. 15, s. 8 (6).

## **Certificate of incorporation**

**9. (1)** Upon receipt of the articles of incorporation together with any prescribed or required documents and information and the required fee, the Director shall issue a certificate of incorporation by endorsing the articles in accordance with the regulations. The endorsed articles constitute the certificate of incorporation. 2010, c. 15, s. 9 (1).

## **Same**

**(2)** A certificate of incorporation is conclusive proof that the corporation has been incorporated under this Act on the date set out in the certificate, unless the certificate of incorporation is cancelled under section 169 as of the same date. 2010, c. 15, s. 9 (2).

## Assignment of corporation number

**10. (1)** The Director shall assign a number to each corporation upon its incorporation and that number shall be specified as the corporation number on the certificate of incorporation and on any other certificate relating to the corporation endorsed or issued by the Director. 2010, c. 15, s. 10 (1).

### Same

**(2)** If the Director has assigned to a corporation a corporation number that is the same as the corporation number previously assigned to another corporation, the Director may, without holding a hearing, issue a certificate of amendment to the articles of the corporation changing the number assigned to the corporation and, upon the issuance of the certificate of amendment, the articles are amended accordingly. 2010, c. 15, s. 10 (2).

### Same

**(3)** If the Director issues a certificate that sets out the corporation number incorrectly, the Director may issue a corrected certificate that bears the date of the certificate it replaces. 2010, c. 15, s. 10 (3).

## Rules re name of corporation

### Prohibitions

**11. (1)** A corporation may not have a name,

(a) that contains a word or expression prohibited by the regulations;

(b) that is the same as or similar to,

(i) the name of a known body corporate, trust, association, partnership, sole proprietorship or individual, whether in existence or not, or

(ii) the known name under which any body corporate, trust, association, partnership, sole proprietorship or individual carries on business or activities or identifies themselves,

if the use of that name would be likely to deceive; or

(c) that does not meet the prescribed requirements. 2010, c. 15, s. 11 (1).

### Language

**(2)** Subject to the regulations, a corporation may have a name that is,

(a) English only;

(b) French only;

(c) one name that is a combination of English and French; or

(d) one name in English and one name in French that are equivalent but are used separately. 2010, c. 15, s. 11 (2).

### **Same**

[\(3\)](#) A corporation that has a name that is described in clause (2) (d) may be legally designated by its English name or its French name. 2010, c. 15, s. 11 (3).

### **Other restrictions**

[\(4\)](#) Only letters from the Roman alphabet or Arabic numerals, or a combination of them, together with punctuation marks and other marks that are permitted by regulation, may form part of the name of a corporation. 2010, c. 15, s. 11 (4).

### **Exception**

[\(5\)](#) A corporation may have a name described in clause (1) (b) upon complying with the prescribed requirements. 2010, c. 15, s. 11 (5).

### **Use of name**

[\(6\)](#) Subject to this Act and the regulations, a corporation may use its name in the form and language permitted by its articles. 2010, c. 15, s. 11 (6).

### **Change of name if objectionable**

[12. \(1\)](#) If a corporation, through inadvertence or otherwise, has acquired a name that contravenes section 11, the Director, after giving the corporation an opportunity to be heard, may issue a certificate of amendment to the articles changing the name of the corporation to the name specified in the certificate and, upon the issuance of the certificate of amendment, the articles are amended accordingly. 2010, c. 15, s. 12 (1).

### **Written hearing**

[\(2\)](#) A hearing referred to in subsection (1) shall be a written hearing in accordance with the rules made by the Director under the *Statutory Powers Procedure Act*. 2010, c. 15, s. 12 (2).

### **Corporate seal**

[13.](#) A corporation may have a corporate seal, but is not required to have one. 2010, c. 15, s. 13.

### **Registered office**

[14. \(1\)](#) A corporation shall at all times have a registered office in Ontario at the location specified in its articles, in a resolution

made under subsection (3) or in a special resolution made under subsection (4). 2010, c. 15, s. 14 (1).

### **Same**

(2) The head office of every corporation incorporated before the day this section comes into force is deemed to be the registered office of the corporation. 2010, c. 15, s. 14 (2).

### **Change of location**

(3) A corporation may change the location of its registered office within a municipality or geographic township by resolution of its directors. 2010, c. 15, s. 14 (3).

### **Change of municipality, etc.**

(4) A corporation may change the municipality or geographic township in which its registered office is located to another place in Ontario by special resolution. 2010, c. 15, s. 14 (4).

## **PART III CAPACITY AND POWERS**

### **Capacity, etc., of a natural person**

15. (1) A corporation has the capacity and, subject to this Act, the rights, powers and privileges of a natural person. 2010, c. 15, s. 15 (1).

### **Capacity to act outside Ontario**

(2) A corporation has the capacity to carry on its activities, conduct its affairs and exercise its powers in a jurisdiction outside Ontario to the extent that the laws of that jurisdiction permit. 2010, c. 15, s. 15 (2).

### **By-law not required to confer power**

16. (1) It is not necessary for a by-law to be passed in order to confer any particular power on a corporation or its directors. 2010, c. 15, s. 16 (1).

### **Restricted activities and powers**

(2) A corporation shall not carry on any activities or exercise any power contrary to its articles. 2010, c. 15, s. 16 (2).

### **Act not invalid if contrary to articles, etc.**

(3) No act of a corporation, including any transfer of property to or by a corporation, is invalid by reason only that the act or transfer is contrary to its articles, by-laws or this Act. 2010, c. 15, s. 16 (3).

## **By-laws**

[17. \(1\)](#) Unless the articles or the by-laws otherwise provide, the directors may by resolution make, amend or repeal any by-law that regulates the activities or affairs of the corporation, except in respect of a matter referred to in clause 103 (1) (g), (j) or (l). 2010, c. 15, s. 17 (1).

## **Member approval**

[\(2\)](#) The directors shall submit the by-law, amendment or repeal to the members at the next meeting of the members, and the members may confirm, reject or amend the by-law, amendment or repeal by ordinary resolution. 2010, c. 15, s. 17 (2).

## **Effective date**

[\(3\)](#) Subject to subsection (5), the by-law, amendment or repeal is effective from the date of the resolution of the directors. If the by-law, amendment or repeal is confirmed or confirmed as amended by the members, it remains effective in the form in which it was confirmed. 2010, c. 15, s. 17 (3).

## **Ceasing to have effect**

[\(4\)](#) The by-law, amendment or repeal ceases to have effect if it is not submitted by the directors to the members as required under subsection (2) or if it is rejected by the members. 2010, c. 15, s. 17 (4).

## **Subsequent resolution**

[\(5\)](#) If a by-law, amendment or repeal ceases to have effect, a subsequent resolution of the directors that has substantially the same purpose or effect is not effective until it is confirmed or confirmed as amended by the members. 2010, c. 15, s. 17 (5).

## **Member proposal**

[\(6\)](#) A member entitled to vote at an annual meeting of the members may make a proposal to make, amend or repeal a by-law in accordance with section 56. 2010, c. 15, s. 17 (6).

## **Default organizational by-laws**

[18. \(1\)](#) If the directors do not pass an organizational by-law within 60 days after the date of incorporation, the corporation is deemed to have passed the standard organizational by-laws approved by the Director. 2010, c. 15, s. 18 (1).

## **Where available**

[\(2\)](#) The Director shall approve standard organizational by-laws and shall publish them in *The Ontario Gazette* and make them publicly available as prescribed. 2010, c. 15, s. 18 (2).

## **Corporation may amend or replace default organizational by-laws**

(3) If a corporation is deemed to have passed standard organizational by-laws under subsection (1), it may amend or repeal and replace them at any time. 2010, c. 15, s. 18 (3).

### **Indoor management rule**

19. (1) A corporation or a guarantor of an obligation of a corporation may not assert against a person dealing with the corporation or with any person who has acquired rights from the corporation that,

(a) the articles or by-laws have not been complied with;

(b) the persons named as directors in the articles or in the most recent notice or return filed under the *Corporations Information Act*, whichever is more current, are not the directors of the corporation;

(c) the location named as the registered office in the articles or in the most recent notice or return filed under the *Corporations Information Act*, whichever is more current, is not the registered office of the corporation;

(d) a person held out by the corporation as a director, officer or agent of the corporation has not been duly appointed or does not have authority to exercise the powers and perform the duties that are customary in the activities of the corporation or usual for such director, officer or agent;

(e) a document issued by any director, officer or agent of the corporation with actual or usual authority to issue the document is not valid or not genuine; or

(f) a sale, lease or exchange of property referred to in section 118 was not authorized. 2010, c. 15, s. 19 (1).

### **Exception**

(2) Subsection (1) does not apply in respect of a person who has or ought to have knowledge that an assertion described in that subsection is true by virtue of the person's position with or relationship to the corporation. 2010, c. 15, s. 19 (2).

### **Contract prior to corporate existence**

#### **Person who enters contract is bound**

20. (1) Except as provided in this section, a person who enters into a contract in the name of or on behalf of a corporation before it comes into existence is personally bound by the contract and is entitled to the benefits under the contract. 2010, c. 15, s. 20 (1).

#### **Adoption of contract by corporation**

(2) A corporation may, by any action or conduct signifying its intention to be bound and within a reasonable time after it comes into existence, adopt a contract made in its name or on its behalf before it came into existence and upon such adoption,

(a) the corporation is bound by the contract and is entitled to the benefits under the contract as if the corporation had



been in existence at the date of the contract and had been a party to it; and

(b) a person who purported to act in the name of or on behalf of the corporation ceases, except as provided in subsection (3), to be bound by or entitled to the benefits under the contract. 2010, c. 15, s. 20 (2).

### **Determination of respective liabilities by court**

(3) Except as provided in subsection (4), whether or not a corporation adopts a contract made before the corporation came into existence, a party to the contract may apply to the court for an order fixing obligations under the contract as joint or joint and several or apportioning liability between the corporation and the person who purported to act in the name of or on behalf of the corporation, and, upon such application, the court may make any order it thinks fit. 2010, c. 15, s. 20 (3).

### **Exception**

(4) If expressly so provided in the contract, a person who purported to act in the name of or on behalf of the corporation before it came into existence is not in any event bound by the contract or entitled to the benefits under it. 2010, c. 15, s. 20 (4).

### **Right to amend, assign or terminate contract**

(5) Until a corporation adopts a contract made before it came into existence, a person who entered into the contract in the name of or on behalf of the corporation may assign, amend or terminate the contract subject to the terms of the contract. 2010, c. 15, s. 20 (5).

### **Definition**

(6) In this section,

“contract” includes an oral contract. 2010, c. 15, s. 20 (6).

## **PART IV DIRECTORS AND OFFICERS**

### **Directors to manage or supervise management of corporation**

21. Subject to this Act, the directors of a corporation shall manage or supervise the management of the activities and affairs of the corporation. 2010, c. 15, s. 21.

### **Number of directors**

22. (1) A corporation must have at least three directors. 2010, c. 15, s. 22 (1).

### **Minimum and maximum number of directors**

(2) If a corporation’s articles provide for a minimum and maximum number of directors, the number of directors of the

corporation and the number of directors to be elected at the annual meeting of the members must be the number determined from time to time by special resolution or, if a special resolution empowers the directors to determine the number, by resolution of the directors. A decrease in the number of directors does not shorten the term of an incumbent director. 2010, c. 15, s. 22 (2).

## **Same**

[\(3\)](#) If a corporation's articles provide for a minimum and maximum number of directors and a special resolution as described in subsection (2) has not been passed, the number of directors of the corporation must be the number of directors named in its articles. 2010, c. 15, s. 22 (3).

## **Qualifications of directors**

[23. \(1\)](#) The following persons are disqualified from being a director of a corporation:

1. A person who is not an individual.
2. A person who is under 18 years old.
3. A person who has been found under the *Substitute Decisions Act, 1992* or under the *Mental Health Act* to be incapable of managing property.
4. A person who has been found to be incapable by any court in Canada or elsewhere.
5. A person who has the status of bankrupt. 2010, c. 15, s. 23 (1).

## **Non-member directors**

[\(2\)](#) A director of a corporation is not required to be a member of the corporation unless the by-laws provide otherwise. 2010, c. 15, s. 23 (2).

## **Restriction re public benefit corporation**

[\(3\)](#) 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. 2010, c. 15, s. 23 (3).

## **Directors by virtue of office**

[\(4\)](#) The by-laws of a corporation may provide for persons to be directors by virtue of their office. 2010, c. 15, s. 23 (4).

## **No alternate directors**

[\(5\)](#) No person shall act for an absent director at a meeting of directors. 2010, c. 15, s. 23 (5).

## **Election and appointment of directors**

## **Election and term**

[24. \(1\)](#) At the first meeting of the members and at each succeeding annual meeting at which an election of directors is required, the members shall, by ordinary resolution, elect directors to hold office for a term expiring not later than the close of the fourth annual meeting of the members after the election, as provided in the by-laws. 2010, c. 15, s. 24 (1).

## **Term, first directors**

[\(2\)](#) Each first director holds office from the issue of the certificate of incorporation until the close of the first meeting of the members. 2010, c. 15, s. 24 (2).

## **Different terms of office**

[\(3\)](#) It is not necessary that all directors elected at a meeting of the members hold office for the same term. 2010, c. 15, s. 24 (3).

## **No stated term of office**

[\(4\)](#) A director not elected for an expressly stated term ceases to hold office at the close of the next annual meeting of the members. 2010, c. 15, s. 24 (4).

## **Incumbents remain in office until successors elected**

[\(5\)](#) If directors are not elected at a meeting of the members, the incumbent directors continue in office until their successors are elected. 2010, c. 15, s. 24 (5).

## **Vacancy, quorum**

[\(6\)](#) If a meeting of the members fails to elect the number or the minimum number of directors required by the articles, the directors elected at that meeting may exercise all the powers of the directors if the number of directors so elected constitutes a quorum. 2010, c. 15, s. 24 (6).

## **Appointment of additional directors**

[\(7\)](#) The directors may appoint one or more additional directors who shall hold office for a term expiring not later than the close of the next annual meeting of the members, but the total number of directors so appointed may not exceed one-third of the number of directors elected at the previous annual meeting of the members. 2010, c. 15, s. 24 (7).

## **Director's consent to act**

[\(8\)](#) An individual who is elected or appointed to hold office as a director is not a director, and is deemed not to have been elected or appointed to hold office as a director, unless the individual consented to hold office as a director before or within 10 days after the election or appointment. 2010, c. 15, s. 24 (8).

## **Later consent**

[\(9\)](#) Despite subsection (8), if an individual elected or appointed consents in writing after the period mentioned in that subsection, the election or appointment is valid. 2010, c. 15, s. 24 (9).

## **Exception**

[\(10\)](#) Subsection (8) does not apply to a director who is re-elected or reappointed where there is no break in his or her term of office. 2010, c. 15, s. 24 (10).

## **Ceasing to hold office**

[25. \(1\)](#) A director ceases to hold office when the director dies, resigns, is removed in accordance with section 26 or becomes disqualified under section 23. 2010, c. 15, s. 25 (1).

## **Effective date of resignation**

[\(2\)](#) A resignation of a director becomes effective at the time the resignation is received by the corporation or at the time specified in the resignation, whichever is later. 2010, c. 15, s. 25 (2).

## **Removal of directors**

[26. \(1\)](#) The members of a corporation may, by ordinary resolution at a special meeting, remove from office any director or directors, except persons who are directors by virtue of their office. 2010, c. 15, s. 26 (1).

## **Director elected by class or group of members**

[\(2\)](#) A director elected by a class or group of members that has an exclusive right to elect the director may only be removed by an ordinary resolution of members of that class or group. 2010, c. 15, s. 26 (2).

## **Filling vacancy**

[\(3\)](#) A vacancy created by the removal of a director may be filled at the meeting of the members at which the director is removed or under section 28. 2010, c. 15, s. 26 (3).

## **Statement of director**

[27. \(1\)](#) Subject to the by-laws, a director is entitled to give the corporation a statement giving reasons,

(a) for resigning; or

(b) for opposing his or her removal as a director if a meeting is called for the purpose of removing him or her. 2010, c. 15, s. 27 (1).

### **Circulating director's statement**

(2) A corporation shall immediately give the members a copy of the statement. 2010, c. 15, s. 27 (2).

### **Immunity from liability**

(3) No corporation or person acting on its behalf incurs any liability by reason only of complying with this section. 2010, c. 15, s. 27 (3).

### **Filling vacancy**

28. (1) Except as provided in this section, a quorum of directors may fill a vacancy among the directors. 2010, c. 15, s. 28 (1).

### **Calling members' meeting**

(2) If there is not a quorum of directors or if there has been a failure to elect the number or minimum number of directors provided for in the articles, the directors then in office shall without delay call a special meeting of the members to fill the vacancy and, if they fail to call a meeting or if there are no directors then in office, the meeting may be called by any member. 2010, c. 15, s. 28 (2).

### **Application to court**

(3) If a corporation has neither directors nor members, the court may, on the application of an interested party, make an order appointing the required number or minimum number of directors provided for in the articles. 2010, c. 15, s. 28 (3).

### **Director elected by class or group**

(4) If any class or group of members has an exclusive right to elect one or more directors and a vacancy occurs among those directors,

(a) subject to subsection (5), the remaining directors elected by the class or group may fill the vacancy; or

(b) if there are no remaining directors elected by the class or group, any member of the class or group may call a meeting of the class or group to fill the vacancy. 2010, c. 15, s. 28 (4).

### **Members filling vacancy**

(5) The by-laws may provide that a vacancy among the directors may be filled only by a vote of the members, or by a vote of the members of any class or group having an exclusive right to elect one or more directors if the vacancy occurs among the directors elected by that class or group. 2010, c. 15, s. 28 (5).

### **Exception**

(6) A vacancy among the directors is not required to be filled if the vacancy results from an increase in the number or the minimum number of directors provided for in the articles or from a failure to elect that increased number or minimum number of

directors. 2010, c. 15, s. 28 (6).

### **Term of replacing director**

(7) A director appointed or elected to fill a vacancy holds office for the unexpired term of the director's predecessor. 2010, c. 15, s. 28 (7).

### **Deemed director, if all directors resign or are removed**

29. (1) If all of the directors have resigned or have been removed without replacement, a person who manages or supervises the management of the activities or affairs of the corporation is deemed to be a director for the purposes of this Act. 2010, c. 15, s. 29 (1).

### **Exception**

(2) Subsection (1) does not apply to,

- (a) an officer who manages the activities or affairs of the corporation under the direction or control of a member or other person;
- (b) a lawyer, accountant or other professional who participates in the management of the corporation solely by providing professional services;
- (c) a trustee in bankruptcy, receiver, receiver-manager or secured creditor who participates in the management of the corporation or exercises control over its property solely for the purpose of the realization of security or, in the case of bankruptcy, the administration of a bankrupt's estate; or
- (d) the Public Guardian and Trustee managing the activities or property of a charitable corporation. 2010, c. 15, s. 29 (2).

### **Change in number of directors**

30. (1) The members of a corporation may amend its articles to increase or decrease the number of directors, or the minimum or maximum number of directors, but a decrease shall not shorten the term of an incumbent director. 2010, c. 15, s. 30 (1).

### **Same**

(2) If the members at a meeting adopt an amendment to the articles to increase or decrease the number or the minimum or maximum number of directors, the members may, at the meeting, elect the number of directors authorized by the amendment, and, despite subsection 108 (1), on the issue of a certificate of amendment, the articles are amended accordingly as of the date the members adopt the amendment. 2010, c. 15, s. 30 (2).

### **Court review of election or appointment of director**

**31. (1)** A corporation or a director or member of the corporation may apply to the court to determine any controversy with respect to an election or appointment of a director of the corporation. 2010, c. 15, s. 31 (1).

### **Powers of court**

- (2)** On an application under this section, the court may make any order that it thinks fit, including an order,
- (a) restraining a director whose election or appointment is disputed from acting pending determination of the dispute;
  - (b) declaring the result of the disputed election or appointment;
  - (c) requiring a new election or appointment, and including in the order directions for the management of the activities and affairs of the corporation until a new election is held or appointment made; and
  - (d) determining the voting rights of members and of persons claiming to hold memberships. 2010, c. 15, s. 31 (2).

### **Organizational meeting**

- 32. (1)** After incorporation, a first meeting of the directors of the corporation must be held at which the directors may,
- (a) make by-laws;
  - (b) adopt forms of corporate records;
  - (c) authorize the issue of debt obligations;
  - (d) appoint officers;
  - (e) appoint one or more auditors to hold office until the first annual or special meeting of members;
  - (f) make banking arrangements;
  - (g) issue memberships; and
  - (h) transact any other business. 2010, c. 15, s. 32 (1).

### **Calling first meeting**

**(2)** 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. 2010, c. 15, s. 32 (2).

### **Exception**

**(3)** Any matter referred to in subsection (1) may be dealt with by the directors by a resolution in accordance with subsection 35 (1) instead of at a meeting. 2010, c. 15, s. 32 (3).

## **Same**

[\(4\)](#) Subsection (1) does not apply to a body corporate that is an amalgamated corporation under section 110 or that is continued under section 114. 2010, c. 15, s. 32 (4).

## **Directors entitled to attend members' meetings**

[33.](#) A director is entitled to attend and be heard at every meeting of the members. 2010, c. 15, s. 33.

## **Directors' meetings**

[34. \(1\)](#) Unless the articles or by-laws provide otherwise, the directors may meet at any place and on any notice that the by-laws require. 2010, c. 15, s. 34 (1).

## **Quorum**

[\(2\)](#) Subject to the articles or by-laws, a majority of the number of directors or of the minimum number of directors required by the articles constitutes a quorum at any meeting of the directors, and, despite any vacancy among the directors, a quorum of directors may exercise all the powers of the directors. 2010, c. 15, s. 34 (2).

## **Notice**

[\(3\)](#) A notice of a meeting of directors need not specify the purpose of or the business to be transacted at the meeting, unless the meeting is intended to deal with a matter referred to in subsection 36 (2), in which case the notice must specify that matter. 2010, c. 15, s. 34 (3).

## **Waiver of notice**

[\(4\)](#) A director may waive notice of a meeting of the directors, and attendance of a director at a meeting of directors is a waiver of notice of the meeting, except if the director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting was not lawfully called. 2010, c. 15, s. 34 (4).

## **Adjournment**

[\(5\)](#) Notice of a meeting that continues an adjourned meeting of directors is not required to be given if the time and place of the continued meeting is announced at the meeting that is adjourned. 2010, c. 15, s. 34 (5).

## **Participation by electronic, etc., means**

[\(6\)](#) Unless the by-laws provide otherwise, a director may, if all the directors of the corporation consent, participate in a meeting of the directors 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 so participating in a meeting is deemed for the purposes of this Act to be



present at the meeting. 2010, c. 15, s. 34 (6).

## **Resolutions**

**35. (1)** A resolution, signed by all the directors entitled to vote on that resolution at a meeting of directors or of a committee of directors is as valid as if it had been passed at a meeting of directors or of a committee of directors. 2010, c. 15, s. 35 (1).

## **Copy to be kept**

**(2)** The corporation shall keep a copy of every resolution referred to in subsection (1) with the minutes of the meetings of the directors or of a committee of directors. 2010, c. 15, s. 35 (2).

## **Delegation by directors**

**36. (1)** Directors 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. 2010, c. 15, s. 36 (1).

## **Limitation**

**(2)** Despite subsection (1), directors may not delegate the following powers to a managing director or committee of directors:

1. To submit to the members any question or matter requiring the approval of the members.
2. To fill a vacancy among the directors or in the position of auditor or of a person appointed to conduct a review engagement of the corporation.
3. To appoint additional directors.
4. To issue debt obligations except as authorized by the directors.
5. To approve any financial statements under section 83.
6. To adopt, amend or repeal by-laws.
7. To establish contributions to be made, or dues to be paid, by members under section 86. 2010, c. 15, s. 36 (2).

## **Validity of acts despite irregularities, etc.**

**37.** An act of a director or an officer is valid despite an irregularity in his or her election or appointment or a defect in his or her qualification. 2010, c. 15, s. 37.

## **Evidence of resolution**

**38.** Unless a ballot is demanded, an entry in the minutes of a meeting of the directors to the effect that the chair of the meeting declared a resolution to be carried or defeated is, in the absence of evidence to the contrary, proof of the fact without proof of the

number or proportion of the votes recorded in favour of or against the resolution. 2010, c. 15, s. 38.

### **Directors' liability for money or property distributed or paid**

**39. (1)** Directors who vote for or consent to a resolution authorizing either of the following are jointly and severally liable to restore to the corporation any money or property so paid or distributed and not otherwise recovered by the corporation:

1. A payment or distribution to a member, a director or an officer contrary to this Act.
2. A payment of an indemnity contrary to this Act. 2010, c. 15, s. 39 (1).

### **Joint liability**

**(2)** A director who has satisfied a judgment is entitled to contribution from the other directors who voted for or consented to the unlawful act upon which the judgment was founded. 2010, c. 15, s. 39 (2).

### **Application to court**

**(3)** A director liable under subsection (1) is entitled to apply to the court for an order compelling a member, director or other recipient to pay or deliver to the director any money or property that was paid or distributed to the member, director or other recipient contrary to section 46 or 89. 2010, c. 15, s. 39 (3).

### **Powers of court**

**(4)** In connection with an application under subsection (3), the court may, if it is satisfied that it is equitable to do so,

- (a) order a member, director or other recipient to pay or deliver to a director any money or property that was paid or distributed to the member, director or other recipient contrary to section 46 or 89; and
- (b) make any further order it thinks fit. 2010, c. 15, s. 39 (4).

### **Limitation**

**(5)** An action to enforce a liability imposed by this section may not be commenced after two years from the date of the resolution authorizing the action complained of. 2010, c. 15, s. 39 (5).

### **Directors' liability to employees for wages, etc.**

**40. (1)** The directors are jointly and severally liable to the employees of the corporation for all debts not exceeding,

- (a) six months' wages for services performed for the corporation that become payable while they are directors; and
- (b) the vacation pay for not more than 12 months under the *Employment Standards Act, 2000* or under any collective agreement entered into by the corporation accrued while they are directors. 2010, c. 15, s. 40 (1).

## **Limitation**

(2) A director is liable under subsection (1) only if,

- (a) the corporation is sued in the action against the director and execution against the corporation is returned unsatisfied in whole or in part; or
- (b) before or after the action is commenced, the corporation goes into liquidation, is ordered to be wound up or makes an authorized assignment under the *Bankruptcy and Insolvency Act* (Canada), or a receiving order under that Act is made against it, and, in any such case, the claim for the debt has been proved. 2010, c. 15, s. 40 (2).

## **Same**

(3) If execution referred to in clause (2) (a) has issued, the amount recoverable from a director is the amount remaining unsatisfied after execution. 2010, c. 15, s. 40 (3).

## **Rights of director who pays debt**

(4) If a director pays a debt under subsection (1) that is proved in liquidation and dissolution or bankruptcy proceedings, the director is entitled to any preference that the employee would have been entitled to, and if a judgment has been obtained, the director is entitled to an assignment of the judgment. 2010, c. 15, s. 40 (4).

## **Same**

(5) A director who has satisfied a claim under this section is entitled to contribution from the other directors who were liable for the claim. 2010, c. 15, s. 40 (5).

## **Disclosure: conflict of interest**

41. (1) A director or officer of a corporation who,

- (a) is a party to a material contract or transaction or proposed material contract or transaction with the corporation; or
- (b) is a director or an officer of, or has a material interest in, any person who is a party to a material contract or transaction or proposed material contract or transaction with the corporation,

shall disclose to the corporation or request to have entered in the minutes of meetings of the directors the nature and extent of his or her interest. 2010, c. 15, s. 41 (1).

## **By director**

(2) The disclosure required by subsection (1) must be made, in the case of a director,

- (a) at the meeting at which a proposed contract or transaction is first considered;

(b) if the director was not then interested in a proposed contract or transaction, at the first meeting after he or she becomes so interested;

(c) if the director becomes interested after a contract is made or a transaction is entered into, at the first meeting after he or she becomes so interested; or

(d) if a person who is interested in a contract or transaction later becomes a director, at the first meeting after he or she becomes a director. 2010, c. 15, s. 41 (2).

### **By officer**

(3) The disclosure required by subsection (1) must be made, in the case of an officer who is not a director,

(a) forthwith after the officer becomes aware that the contract or transaction or proposed contract or transaction is to be considered or has been considered at a meeting of directors;

(b) if the officer becomes interested after a contract is made or a transaction is entered into, forthwith after he or she becomes so interested; or

(c) if a person who is interested in a contract or transaction later becomes an officer, forthwith after he or she becomes an officer. 2010, c. 15, s. 41 (3).

### **Contract or transaction does not require approval**

(4) Despite subsections (2) and (3), if subsection (1) applies to a director or officer in respect of a material contract or transaction or proposed material contract or transaction that, in the ordinary course of the corporation's business, would not require approval by the directors or members, the director or officer shall disclose to the corporation or request to have entered in the minutes of meetings of the directors, the nature and extent of his or her interest forthwith after the director or officer becomes aware of the contract or transaction or proposed contract or transaction. 2010, c. 15, s. 41 (4).

### **Director not to attend meeting and not to vote**

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

(a) one relating primarily to his or her remuneration as a director of the corporation or an affiliate;

(b) one for indemnity or insurance under section 46; or

(c) one with an affiliate. 2010, c. 15, s. 41 (5).

### **Remaining directors deemed quorum**

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

### **Members' approval**

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

### **Continuing disclosure**

(8) A general notice to the directors by a director or officer disclosing that he or she is a director or officer of or has a material interest in a person, or that there has been a material change in the director's or officer's interest in the person, and is to be regarded as interested in any contract made or any transaction entered into with that person is sufficient disclosure of interest in relation to any such contract or transaction for the purposes of this section. 2010, c. 15, s. 41 (8).

### **Effect of disclosure**

(9) A contract or transaction for which disclosure is required under subsection (1) is not void or voidable, and the director or officer is not accountable to the corporation or its members for any profit or gain realized from the contract or transaction, because of the director's or officer's interest in the contract or transaction or because the director was present or was counted to determine whether a quorum existed at the meeting of directors or of the committee of directors that considered the contract or transaction, if,

(a) disclosure of the interest was made in accordance with this section;

(b) the directors approved the contract or transaction; and

(c) the contract or transaction was reasonable and fair to the corporation when it was approved. 2010, c. 15, s. 41 (9).

### **Confirmation by members**

(10) Despite anything in this section, a director or officer, acting honestly and in good faith, is not accountable to the corporation or to its members for any profit or gain realized from any contract or transaction by reason only of his or her holding the office of director or officer, and the contract or transaction, if it was reasonable and fair to the corporation at the time it was approved, is not by reason only of the director's or officer's interest in it void or voidable if,

(a) the contract or transaction is confirmed or approved by special resolution at a meeting of the members duly called for that purpose; and

(b) the nature and extent of the director's or officer's interest in the contract or transaction are disclosed in reasonable detail in the notice calling the meeting. 2010, c. 15, s. 41 (10).

## **Court may set aside contract**

[\(11\)](#) Subject to subsections (9) and (10), if a director or officer of a corporation fails to disclose his or her interest in a material contract or transaction in accordance with this section or otherwise fails to comply with this section, the corporation or a member of the corporation may apply to the court for an order setting aside the contract or transaction and directing that the director or officer account to the corporation for any profit or gain realized and, upon such application, the court may so order or make such other order as it thinks fit. 2010, c. 15, s. 41 (11).

## **Officers**

[42. \(1\)](#) Subject to the articles or the by-laws,

- (a) the directors may designate the offices of the corporation, appoint officers, specify their duties and delegate to them powers to manage the activities and affairs of the corporation, except powers to do anything referred to in subsection 36 (2);
- (b) a director may be appointed to any office of the corporation; and
- (c) two or more offices of the corporation may be held by the same person. 2010, c. 15, s. 42 (1).

## **Chair**

[\(2\)](#) A director shall be appointed chair of the board of directors and shall carry out the duties of the chair in accordance with the by-laws. 2010, c. 15, s. 42 (2).

## **Duties of directors and officers**

### **Standard of care**

[43. \(1\)](#) Every director and officer in exercising his or her powers and discharging his or her duties to the corporation shall,

- (a) act honestly and in good faith with a view to the best interests of the corporation; and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. 2010, c. 15, s. 43 (1).

### **Duty to comply with Act, etc.**

[\(2\)](#) Every director and officer shall comply with,

- (a) this Act and the regulations; and
- (b) the corporation's articles and by-laws. 2010, c. 15, s. 43 (2).

## **Cannot contract out of statutory duty**

[\(3\)](#) No provision in a contract, the articles, the by-laws or a resolution relieves a director or officer from the duty to act in accordance with this Act and the regulations or relieves him or her from liability for a breach of this Act or the regulations. 2010, c. 15, s. 43 (3).

### **Reasonable diligence defence**

[44.](#) A director is not liable under section 39 and has complied with his or her duties under subsection 43 (2) if the director exercised the care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances, including reliance in good faith on,

(a) financial statements of the corporation represented to him or her by an officer of the corporation or in a report of the auditor of the corporation or of a person who conducted a review engagement of the corporation to present fairly the financial position of the corporation in accordance with generally accepted accounting principles;

(b) an interim or other financial report of the corporation represented to him or her by an officer of the corporation to present fairly the financial position of the corporation in accordance with generally accepted accounting principles;

(c) a report or advice of an officer or employee of the corporation, if it is reasonable in the circumstances to rely on the report or advice; or

(d) a report of a lawyer, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by them. 2010, c. 15, s. 44.

### **Consent of director at meeting**

[45. \(1\)](#) A director who is present at a meeting of the directors or of a committee of directors is deemed to have consented to any resolution passed or action taken at the meeting, unless,

(a) the director's dissent is entered in the minutes of the meeting;

(b) the director requests that his or her dissent be entered in the minutes of the meeting;

(c) the director gives his or her dissent to the secretary of the meeting before the meeting is terminated; or

(d) the director submits his or her dissent immediately after the meeting is terminated to the corporation. 2010, c. 15, s. 45 (1).

### **Same**

[\(2\)](#) A director who votes for or consents to a resolution is not entitled to dissent under subsection (1). 2010, c. 15, s. 45 (2).

### **Same**

(3) A director who was not present at a meeting at which a resolution was passed or action taken is deemed to have consented to the resolution or action unless within seven days after becoming aware of the resolution, the director,

(a) causes his or her dissent to be placed with the minutes of the meeting; or

(b) submits his or her dissent to the corporation. 2010, c. 15, s. 45 (3).

### **Indemnification of directors and officers**

46. (1) A corporation may indemnify a director or officer of the corporation, a former director or officer of the corporation or an individual who acts or acted at the corporation's request as a director or officer, or in a similar capacity, of another entity, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the individual in respect of any civil, criminal, administrative, investigative or other action or proceeding in which the individual is involved because of that association with the corporation or other entity. 2010, c. 15, s. 46 (1).

### **Advance of costs**

(2) A corporation may advance money to a director, officer or other individual referred to in subsection (1) for the costs, charges and expenses of an action or proceeding referred to in that subsection, but the individual shall repay the money if the individual does not fulfil the conditions set out in subsection (3). 2010, c. 15, s. 46 (2).

### **Limitation**

(3) A corporation shall not indemnify an individual under subsection (1) unless,

(a) the individual acted honestly and in good faith with a view to the best interests of the corporation or other entity, as the case may be; and

(b) if the matter is a criminal or administrative proceeding that is enforced by a monetary penalty, the individual had reasonable grounds for believing that his or her conduct was lawful. 2010, c. 15, s. 46 (3).

### **Derivative actions**

(4) A corporation may, with the approval of the court, indemnify an individual referred to in subsection (1), or advance money under subsection (2), in respect of an action by or on behalf of the corporation or other entity to obtain a judgment in its favour to which the individual is made a party because of the individual's association with the corporation or other entity as described in subsection (1), against all costs, charges and expenses reasonably incurred by the individual in connection with such action, if the individual fulfils the conditions set out in subsection (3). 2010, c. 15, s. 46 (4).

### **Right to indemnity**

(5) Despite subsection (1), an individual referred to in that subsection is entitled to indemnity from the corporation in respect of all



costs, charges and expenses reasonably incurred by the individual in connection with the defence of any civil, criminal, administrative, investigative or other action or proceeding to which the individual is subject because of the individual's association with the corporation or other entity as described in subsection (1), if the individual,

(a) was not judged by any court or other competent authority to have committed any fault or omitted to do anything that the individual ought to have done; and

(b) fulfils the conditions set out in subsection (3). 2010, c. 15, s. 46 (5).

## **Insurance**

(6) A corporation may purchase and maintain insurance for the benefit of an individual referred to in subsection (1) against any liability incurred by the individual,

(a) in the individual's capacity as a director or officer of the corporation; or

(b) in the individual's capacity as a director or officer, or a similar capacity, of another entity, if the individual acts or acted in that capacity at the corporation's request. 2010, c. 15, s. 46 (6).

## **Exception — charitable corporation**

(7) A charitable corporation may not purchase insurance described in subsection (6) unless,

(a) the corporation complies with the *Charities Accounting Act* or a regulation made under that Act that permits the purchase; or

(b) the corporation or a director or officer of the corporation obtains an order of the court authorizing the purchase. 2010, c. 15, s. 46 (7).

## **Application to court**

(8) A corporation or an individual referred to in subsection (1) may apply to the court for an order approving an indemnity under this section and the court may so order and make any further order it thinks fit. 2010, c. 15, s. 46 (8).

## **Same**

(9) Upon an application under subsection (8), the court may order notice to be given to any interested person and that person is entitled to appear and be heard in person or by counsel. 2010, c. 15, s. 46 (9).

## **Remuneration of directors, officers and employees**

47. (1) Subject to the articles or the by-laws, the directors may fix the remuneration of the directors, officers and employees of the corporation. 2010, c. 15, s. 47 (1).

## **Services performed in other capacity**

[\(2\)](#) Subject to the by-laws, a director, an officer or a member of a corporation may receive reasonable remuneration and expenses for any services to the corporation that he or she performs in any other capacity. 2010, c. 15, s. 47 (2).

## **PART V MEMBERS**

### **Membership**

#### **Conditions in by-laws**

[48. \(1\)](#) The by-laws of a corporation must set out the conditions required for being a member of the corporation, including whether a corporation or other entity may be a member. 2010, c. 15, s. 48 (1).

#### **Members by virtue of office**

[\(2\)](#) The by-laws may provide for persons to be members by virtue of their office. 2010, c. 15, s. 48 (2).

#### **Classes or groups of members**

[\(3\)](#) If the articles provide for two or more classes or groups of members, the by-laws must provide,

(a) the conditions for membership in each class or group;

(b) the manner of withdrawing from a class or group or transferring membership to another class or group and any conditions of transfer; and

(c) the conditions on which membership in a class or group ends. 2010, c. 15, s. 48 (3).

#### **Voting rights — one class or group**

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

#### **Same — two or more classes or groups**

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

#### **One vote per member**

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

#### **Representative of non-human member**

[\(7\)](#) The corporation shall recognize any individual authorized by a member corporation or other entity to represent the member at meetings and the individual may exercise all the powers of that corporation or entity on its behalf. 2010, c. 15, s. 48 (7).

### **Transfer of membership**

[\(8\)](#) Unless the articles or by-laws provide otherwise, a membership may be transferred only to the corporation. 2010, c. 15, s. 48 (8).

### **Issuance of memberships**

[49.](#) The directors may issue memberships in accordance with the articles and any conditions set out in the by-laws. 2010, c. 15, s. 49.

### **Termination of membership**

[50. \(1\)](#) Unless the articles or by-laws of a corporation provide otherwise, a membership is terminated when,

(a) the member dies or resigns;

(b) the member is expelled or the person's membership is otherwise terminated in accordance with the articles or by-laws;

(c) the member's term of membership expires; or

(d) the corporation is liquidated or dissolved under Part XII. 2010, c. 15, s. 50 (1).

### **Termination of member's rights**

[\(2\)](#) Unless this Act, the articles or by-laws provide otherwise, the rights of a member, including any rights in the property of the corporation, cease to exist on termination of the membership. 2010, c. 15, s. 50 (2).

### **Power to discipline or terminate a member**

[51. \(1\)](#) The articles or by-laws may provide that the directors, the members or any committee of directors or members have power to discipline a member or to terminate their membership. If the articles or by-laws provide for such a power, they must set out the circumstances and the manner in which that power may be exercised. 2010, c. 15, s. 51 (1).

### **Good faith requirement**

[\(2\)](#) Any disciplinary action or termination of membership must be done in good faith and in a fair and reasonable manner. 2010, c. 15, s. 51 (2).

### **Fair and reasonable procedure**

**(3)** For the purposes of subsection (2), a procedure is fair and reasonable if,

(a) a member is given at least 15 days notice of a disciplinary action or termination with reasons; and

(b) the member is given an opportunity to be heard, orally, in writing or in another format permitted by the corporation's articles or by-laws, not less than five days before the disciplinary action or termination of membership becomes effective, by the person with authority to impose or revoke the disciplinary action or termination. 2010, c. 15, s. 51 (3).

### **Notice**

**(4)** A notice required under this section may be given by any method reasonably intended to give actual notice. 2010, c. 15, s. 51 (4).

### **Application to court**

**(5)** A member of a corporation who claims to be aggrieved because they were disciplined or because their membership was terminated may apply to the court under section 191. 2010, c. 15, s. 51 (5).

### **Calling meetings of members**

#### **Annual meeting**

**52. (1)** The directors of a corporation shall call an annual meeting of the members of the corporation,

(a) within 18 months after the corporation comes into existence; and

(b) subsequently, not later than 15 months after holding the preceding annual meeting. 2010, c. 15, s. 52 (1).

#### **Special meeting**

**(2)** The directors of a corporation may at any time call a special meeting of the members. 2010, c. 15, s. 52 (2).

#### **Place of members' meetings**

**53. (1)** Meetings of the members of a corporation must be held within Ontario at the place provided in the by-laws or, in the absence of such a provision, at the place within Ontario that the directors determine. 2010, c. 15, s. 53 (1).

#### **Meeting outside Ontario**

**(2)** Despite subsection (1), a meeting of the members of a corporation may be held at a place outside Ontario if the place is specified in the articles or all the members entitled to vote at the meeting agree that the meeting is to be held at that place. 2010, c. 15, s. 53 (2).

#### **Attending member deemed to agree to location**

(3) A member who attends a meeting of the members held outside Ontario is deemed to have agreed to it being held outside Ontario except when the member attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully held. 2010, c. 15, s. 53 (3).

### **Participation in meeting by electronic, etc., means**

(4) Unless the by-laws provide otherwise, any person entitled to attend a meeting of the members may participate in the meeting by telephonic or electronic means that permits all participants to communicate adequately with each other during the meeting if the corporation makes such means available. A person so participating in a meeting is deemed for the purposes of this Act to be present at the meeting. 2010, c. 15, s. 53 (4).

### **Meeting held by electronic, etc., means**

(5) If the directors or members of a corporation call a meeting of the members and if the by-laws so provide, the directors or members, as the case may be, may determine that the meeting be held entirely by telephonic or electronic means that permits all participants to communicate adequately with each other during the meeting. 2010, c. 15, s. 53 (5).

### **Record date**

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

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

### **Limitation**

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

### **No fixed record date**

(3) If no record date is fixed,

- (a) the record date for the determination of members entitled to receive notice of a meeting of members or to vote shall be,
  - (i) at the close of business on the day immediately before the day on which the notice is given, or
  - (ii) if no notice is given, the day on which the meeting is held; and
- (b) the record date for the members for any purpose other than to establish a member's right to receive notice of a

meeting or to vote shall be at the close of business on the day on which the directors pass the relevant resolution. 2010, c. 15, s. 54 (3).

### **Notice of members' meetings**

**55. (1)** The corporation shall give notice of the time and place of a meeting of the members in accordance with the by-laws, but in any event not less than 10 days and not more than 50 days before the meeting, to,

(a) each member entitled to receive notice of the meeting;

(b) each director; and

(c) the auditor of the corporation or the person appointed to conduct a review engagement of the corporation. 2010, c. 15, s. 55 (1).

### **Exception — members not registered**

**(2)** The corporation is not required to give notice to members who were not registered on the records of the corporation on the record date determined under clause 54 (1) (a) or subsection 54 (3), but failure to receive a notice does not deprive a member of the right to vote at the meeting. 2010, c. 15, s. 55 (2).

### **Waiver of notice**

**(3)** Any person who is entitled to notice of a meeting of the members may waive notice, and attendance of the person at the meeting is a waiver of notice of the meeting, unless the person attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting was not lawfully called. 2010, c. 15, s. 55 (3).

### **Court-ordered notice**

**(4)** On application of the corporation, the court may authorize the corporation, on any terms that the court thinks fit, to give notice of the meeting to members in any manner if the court determines that members will not be prejudiced. 2010, c. 15, s. 55 (4).

### **Adjournment**

**(5)** If a meeting of the members is adjourned for less than 30 days, it is not necessary, unless the by-laws provide otherwise, that any person be notified of the meeting that continues the adjourned meeting, other than by announcement at the meeting that is adjourned. 2010, c. 15, s. 55 (5).

### **Notice of continuation of adjourned meeting**

**(6)** If a meeting of the members is adjourned by one or more adjournments for an aggregate of 30 days or more, the corporation shall give notice of the meeting that continues the adjourned meeting in accordance with subsection (1). 2010, c. 15, s. 55 (6).

## **Special business**

(7) All business transacted at a special meeting of the members and all business transacted at an annual meeting of the members is special business except for the following:

1. Consideration of the financial statements.
2. Consideration of the audit or review engagement report, if any.
3. An extraordinary resolution to have a review engagement instead of an audit or to not have an audit or a review engagement.
4. Election of directors.
5. Reappointment of the incumbent auditor or person appointed to conduct a review engagement. 2010, c. 15, s. 55 (7).

## **Notice of meeting, special business**

(8) Notice of a meeting of the members at which special business is to be transacted must,

- (a) state the nature of that business in sufficient detail to permit a member to form a reasoned judgment on the business; and
- (b) state the text of any special resolution to be submitted to the meeting. 2010, c. 15, s. 55 (8).

## **Member's right to submit and discuss proposals**

56. (1) A member entitled to vote at an annual meeting of the members may,

- (a) give the corporation notice of any matter that the member proposes to raise at the meeting, referred to as a “proposal”; and
- (b) discuss at the meeting any matter with respect to which the member would have been entitled to submit a proposal. 2010, c. 15, s. 56 (1).

## **Proposal set out in notice**

(2) A corporation shall include the proposal in the notice of meeting required under section 55. 2010, c. 15, s. 56 (2).

## **Supporting statement included in notice**

(3) Upon the request of the member who submits a proposal, the corporation shall include in the notice of meeting a statement in support of the proposal by the member and the name and address of the member. The statement and the proposal must together not exceed the prescribed maximum number of words or characters. 2010, c. 15, s. 56 (3).

## **Member to pay cost of including proposal, etc., in notice**

(4) The member who submitted the proposal shall pay any cost of including the proposal and any statement in the notice of the meeting at which the proposal is to be presented, unless the by-laws or an ordinary resolution of the members present at the meeting provide otherwise. 2010, c. 15, s. 56 (4).

## **Proposal nominating directors**

(5) A proposal may include nominations for the election of directors if the proposal is signed by not less than 5 per cent of the members of a class or group of members of the corporation entitled to vote at the meeting at which the proposal is to be presented or a lower percentage that is set out in the by-laws, but this subsection does not preclude nominations being made at a meeting of the members. 2010, c. 15, s. 56 (5).

## **Exception**

(6) A corporation is not required to comply with subsections (2) and (3) if,

(a) the proposal is not submitted to the corporation at least 60 days before the date of the meeting;

(b) it clearly appears that the primary purpose of the proposal is to enforce a personal claim or redress a personal grievance against the corporation or its directors, officers, members or debt obligation holders;

(c) it clearly appears that the proposal does not relate in a significant way to the activities or affairs of the corporation;

(d) not more than two years before the receipt of the proposal, the member failed to present in person or by proxy, if authorized by the by-laws, at a meeting of the members, a proposal that had been included in a notice of meeting at the member's request;

(e) substantially the same proposal was submitted to members in a notice of a meeting of the members held not more than two years before the receipt of the proposal and the proposal was defeated; or

(f) the rights conferred by this section are being abused to secure publicity. 2010, c. 15, s. 56 (6).

## **Immunity**

(7) No corporation or person acting on its behalf incurs any liability by reason only of complying with this section. 2010, c. 15, s. 56 (7).

## **Notice of refusal**

(8) If a corporation refuses to include a proposal in a notice of meeting, it shall, within 10 days after the day on which it receives the proposal, notify the member submitting the proposal of its intention to omit it from the notice of meeting and of the reasons for the refusal. 2010, c. 15, s. 56 (8).



### **Application to court, by member**

(9) On the application of a member submitting a proposal who is aggrieved by the refusal, the court may restrain the holding of the meeting at which the proposal is sought to be presented and may make any further order that it thinks fit. 2010, c. 15, s. 56 (9).

### **Same, by corporation**

(10) On the application of the corporation or any other person aggrieved by a proposal, the court may, if it is satisfied that subsection (6) applies, make an order permitting the corporation to omit the proposal from the notice of meeting and may make any further order that it thinks fit. 2010, c. 15, s. 56 (10).

### **Quorum for a members' meeting**

57. (1) Unless the by-laws provide otherwise, the quorum for a meeting of the members is a majority of the members entitled to vote at the meeting, whether present in person or by proxy. 2010, c. 15, s. 57 (1).

### **Opening quorum sufficient**

(2) 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, unless the by-laws provide otherwise. 2010, c. 15, s. 57 (2).

### **If no opening quorum**

(3) If a quorum is not present at the opening of a meeting of the members, the members present may adjourn the meeting to a fixed time and place, but may not transact any other business. 2010, c. 15, s. 57 (3).

### **One member meeting**

(4) If a corporation has only one member in any class or group of members, the member present in person constitutes a meeting. 2010, c. 15, s. 57 (4).

### **Voting**

58. (1) Subject to the by-laws, voting at a meeting of the members shall be by show of hands unless a ballot is demanded by a member entitled to vote at the meeting. 2010, c. 15, s. 58 (1).

### **Ballot**

(2) A member may demand a ballot either before or after any vote. 2010, c. 15, s. 58 (2).

### **Resolution in lieu of meeting**

59. (1) A resolution signed by all the members entitled to vote on that resolution at a meeting of the members is as valid as if it

had been passed at a meeting of the members. 2010, c. 15, s. 59 (1).

## **Same**

(2) A resolution dealing with a matter required by this Act to be dealt with at a meeting of the members, and signed by all the members entitled to vote at that meeting, satisfies all the requirements of this Act relating to meetings of the members. 2010, c. 15, s. 59 (2).

## **Resolutions kept with minutes**

(3) The corporation shall keep a copy of every resolution described in subsection (1) or (2) with the minutes of the meetings of members. 2010, c. 15, s. 59 (3).

## **Evidence**

(4) Unless a ballot is demanded, an entry in the minutes of a meeting to the effect that the chair of the meeting declared a resolution to be carried or defeated is, in the absence of evidence to the contrary, proof of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. 2010, c. 15, s. 59 (4).

## **Exception**

(5) Subsections (1) and (2) do not apply in respect of a meeting at which a statement is given by a director under subsection 27 (1) or by an auditor under subsection 75 (4). 2010, c. 15, s. 59 (5).

## **Members may requisition meeting of members**

**60.** (1) The members of a corporation who hold at least 10 per cent of votes that may be cast at a meeting of the members sought to be held, or a lower percentage that is set out in the by-laws, may requisition the directors to call the meeting for the purposes stated in the requisition. 2010, c. 15, s. 60 (1).

## **Form**

(2) The requisition, which may consist of several documents of similar form each signed by one or more members, must state the business to be transacted at the meeting and must be sent to each director and to the registered office of the corporation. 2010, c. 15, s. 60 (2).

## **Directors to call requisitioned meeting**

(3) On receiving a requisition, the directors shall call a meeting of the members to transact the business stated in the requisition unless,

(a) a record date has been fixed under clause 54 (1) (a);

(b) the directors have called a meeting of the members and have given notice of the meeting under section 55; or

(c) the business of the meeting as stated in the requisition includes a matter described in clause 56 (6) (b), (c), (d), (e) or

(f). 2010, c. 15, s. 60 (3).

### **Member may call meeting**

(4) If the directors do not call a meeting within 21 days after receiving the requisition, any member who signed the requisition may call the meeting. 2010, c. 15, s. 60 (4).

### **Procedure**

(5) A meeting called under this section shall be called as nearly as possible in the manner in which meetings are to be called under the by-laws and this Part. 2010, c. 15, s. 60 (5).

### **Reimbursement**

(6) Unless the members resolve otherwise at a meeting called under subsection (4), the corporation shall reimburse the members for the expenses reasonably incurred by them in requisitioning, calling and holding the meeting. 2010, c. 15, s. 60 (6).

### **Members' meeting called by court**

61. (1) The court, on the application of a director or a member who is entitled to vote at a meeting of the members, may order a meeting of the members of a corporation to be called, held and conducted in the manner that the court directs, if,

(a) it is not practical to call the meeting within the time or in the manner in which it is otherwise to be called;

(b) it is not practical to conduct the meeting in the manner required by this Act or the by-laws; or

(c) the court thinks that the meeting should be called, held and conducted within the time or in the manner that it directs for any other reason. 2010, c. 15, s. 61 (1).

### **Varying quorum**

(2) Without restricting the generality of subsection (1), the court may order that the quorum required by the by-laws or this Act be varied or dispensed with at a meeting called, held and conducted under this section. 2010, c. 15, s. 61 (2).

### **Valid meeting**

(3) A meeting called, held and conducted under this section is for all purposes a meeting of members of the corporation duly called, held and conducted. 2010, c. 15, s. 61 (3).

### **No waiver of members' rights**

**62.** No waiver of the rights of a member is valid unless otherwise provided for in this Act. 2010, c. 15, s. 62.

## **PART VI PROXIES**

### **Definition**

**63.** In this Part,

“proxy” means an authorization by means of which a member has appointed a proxyholder to attend and act on the member’s behalf at a meeting of the members. 2010, c. 15, s. 63.

### **Proxies**

**64. (1)** Every member entitled to vote at a meeting of the members may by means of a proxy appoint a proxyholder or one or more alternate proxyholders, who need not be members, as the member’s nominee to attend and act at the meeting in the manner, to the extent and with the authority conferred by the proxy. 2010, c. 15, s. 64 (1).

### **Signature**

**(2)** A proxy must be signed,

(a) by the member or the member’s attorney; or

(b) if the member is a body corporate, by an officer or attorney of the body corporate duly authorized. 2010, c. 15, s. 64 (2).

### **Form of proxy**

**(3)** Every proxy must be in a form that complies with the regulations. 2010, c. 15, s. 64 (3).

### **Time limit for deposit**

**(4)** The directors may by resolution fix a time not exceeding 48 hours, excluding Saturdays and holidays, before any meeting or continuance of an adjourned meeting of the members before which time proxies to be used at that meeting must be deposited with the corporation or an agent of the corporation, and any period of time so fixed must be specified in the notice calling the meeting. 2010, c. 15, s. 64 (4).

### **Validity**

**(5)** A proxy is valid only at the meeting for which it is given or, if that meeting is adjourned, at the meeting that continues the adjourned meeting. 2010, c. 15, s. 64 (5).

### **Revocation**

(6) A member may revoke a proxy,

(a) by depositing in accordance with subsection (7) a revocation that is signed by the member or by the member's attorney; or

(b) in any other manner permitted by law. 2010, c. 15, s. 64 (6).

### **Time of revocation**

(7) The revocation must be received,

(a) at the registered office of the corporation at any time up to and including the last business day before the day of the meeting or, if the meeting is adjourned, of the continued meeting, at which the proxy is to be used; or

(b) by the chair of the meeting on the day of the meeting or, if it is adjourned, of the continued meeting. 2010, c. 15, s. 64 (7).

### **Mandatory solicitation of proxy**

65. A corporation shall send, or otherwise make available, a form of proxy to each member who is entitled to receive notice of the meeting concurrently with or before giving notice of the meeting. 2010, c. 15, s. 65.

### **Proxyholder**

66. (1) A person who is appointed a proxyholder shall attend in person, or cause an alternate proxyholder to attend, the meeting in respect of which the proxy is given and shall comply with the directions of the member who appointed the person. 2010, c. 15, s. 66 (1).

### **Rights of proxyholder**

(2) A proxyholder or an alternate proxyholder has the same rights as the member who appointed him or her to speak at a meeting of the members in respect of any matter, to vote by way of ballot at the meeting and, except where a proxyholder or an alternate proxyholder has conflicting instructions from more than one member, to vote at the meeting in respect of any matter by way of a show of hands. 2010, c. 15, s. 66 (2).

### **Vote by show of hands**

(3) Despite subsections (1) and (2), if the chair of a meeting of the members declares to the meeting that, to the best of his or her belief, if a ballot is conducted, the total number of votes of members represented at the meeting by proxy required to be voted against a matter or group of matters to be decided at the meeting is less than 5 per cent of all the votes that might be cast at the meeting on such ballot, and if a member, proxyholder or alternate proxyholder does not demand a ballot,

(a) the chair may conduct the vote in respect of that matter or group of matters by a show of hands; and

(b) a proxyholder or alternate proxyholder may vote in respect of that matter or group of matters by a show of hands.  
2010, c. 15, s. 66 (3).

### **Voting by mail or by telephonic or electronic means**

**67. (1)** A corporation may provide in its by-laws for voting by mail or by telephonic or electronic means, in addition to or instead of voting by proxy. 2010, c. 15, s. 67 (1).

### **Same**

**(2)** Voting by mail or by telephonic or electronic means may be used only if,

(a) the votes may be verified as having been made by members entitled to vote; and

(b) the corporation is not able to identify how each member voted. 2010, c. 15, s. 67 (2).

## **PART VII AUDITORS**

### **Appointment of auditor**

**68. (1)** Subject to section 76, at each annual meeting, members of a corporation shall by ordinary resolution appoint,

(a) an auditor to hold office until the close of the next annual meeting; or

(b) a person to conduct a review engagement of the corporation. 2010, c. 15, s. 68 (1).

### **Eligibility of director-appointed auditor**

**(2)** An auditor appointed at the first meeting of the directors held under subsection 32 (1) is eligible for appointment under subsection (1). 2010, c. 15, s. 68 (2).

### **Incumbent auditor**

**(3)** If an auditor is not appointed at a meeting of the members and if no resolution is passed under section 76, the incumbent auditor continues in office until a successor is appointed. 2010, c. 15, s. 68 (3).

### **Remuneration**

**(4)** The remuneration of an auditor or person appointed to conduct a review engagement may be fixed by ordinary resolution of the members or, if not so fixed, shall be fixed by the directors. 2010, c. 15, s. 68 (4).

### **Qualifications**

**69. (1)** In order to be an auditor of a corporation or to conduct a review engagement of a corporation, a person must be permitted to conduct an audit or review engagement of the corporation under the *Public Accounting Act, 2004* and be independent of the corporation, any of its affiliates, and the directors and officers of the corporation and its affiliates. 2010, c. 15, s. 69 (1).

### **Independence**

**(2)** For the purpose of this section,

(a) independence is a question of fact; and

(b) a person is deemed not to be independent if that person or their business partner,

(i) is a business partner, a director, an officer or an employee of the corporation or any of its affiliates, or is a business partner of any director, officer or employee of the corporation or any of its affiliates,

(ii) beneficially owns or controls, directly or indirectly, a material interest in the debt obligations of the corporation or any of its affiliates, or

(iii) has been a receiver, receiver-manager, liquidator or trustee in bankruptcy of the corporation or any of its affiliates within two years before the person is proposed to be appointed as auditor of the corporation or to conduct a review engagement of the corporation. 2010, c. 15, s. 69 (2).

### **Business partners**

**(3)** For the purpose of subclause (2) (b) (i), a body corporate's business partner includes a shareholder or member of the body corporate. 2010, c. 15, s. 69 (3).

### **Duty to resign**

**(4)** An auditor or person appointed to conduct a review engagement who is disqualified under this section shall resign immediately after becoming aware of the disqualification. 2010, c. 15, s. 69 (4).

### **Disqualification order**

**(5)** On the application of an interested person, the court may make an order declaring a person to be disqualified under this section and the position of auditor or of a person appointed to conduct a review engagement to be vacant. 2010, c. 15, s. 69 (5).

### **Auditor, person conducting review engagement ceasing to hold position**

**70. (1)** An auditor of a corporation or a person appointed to conduct a review engagement of a corporation ceases to hold that position when the auditor or person,

(a) dies or resigns;

(b) is declared disqualified under subsection 69 (5); or

(c) is removed under section 71. 2010, c. 15, s. 70 (1).

### **Effective date of resignation**

(2) A resignation of an auditor or person appointed to conduct a review engagement becomes effective at the time the resignation is given to the corporation or at the time specified in the resignation, whichever is later. 2010, c. 15, s. 70 (2).

### **Removal of auditor, person appointed to conduct review engagement**

71. (1) The members of a corporation may remove an auditor, other than an auditor appointed by a court under section 73, or a person appointed to conduct a review engagement from their position by ordinary resolution at a special meeting. 2010, c. 15, s. 71 (1).

### **Vacancy**

(2) A vacancy created by the removal of an auditor or person appointed to conduct a review engagement may be filled at the meeting at which the auditor or person is removed or, if not so filled, may be filled under section 72. 2010, c. 15, s. 71 (2).

### **Filling vacancy**

#### **By directors**

72. (1) Subject to subsection (3), the directors shall immediately fill a vacancy in the position of auditor or of a person appointed to conduct a review engagement. 2010, c. 15, s. 72 (1).

#### **By members**

(2) If there is not a quorum of directors, the directors then in office shall, within 30 days after the vacancy occurs, call a special meeting of the members to fill the vacancy and, if they fail to call a meeting or if there are no directors, any member may call the meeting. 2010, c. 15, s. 72 (2).

#### **Same**

(3) The articles of a corporation may provide that a vacancy in the position of auditor or of a person appointed to conduct a review engagement shall only be filled by vote of the members. 2010, c. 15, s. 72 (3).

#### **Unexpired term**

(4) An auditor or other person appointed to fill a vacancy may act for the unexpired term of the auditor's or other person's predecessor. 2010, c. 15, s. 72 (4).

#### **Court-appointed auditor**



**73. (1)** If a corporation does not have an auditor, the court may, on the application of a member of the corporation or the Director, appoint and fix the remuneration of an auditor. 2010, c. 15, s. 73 (1).

### **Term**

**(2)** An auditor appointed under subsection (1) holds office until an auditor is appointed by the members of the corporation. 2010, c. 15, s. 73 (2).

### **Exception**

**(3)** Subsection (1) does not apply if the members have resolved under section 76 to not appoint an auditor. 2010, c. 15, s. 73 (3).

### **Court review of appointment of auditor**

**74. (1)** A corporation or a director or member of the corporation may apply to the court to determine any controversy with respect to an appointment of an auditor of the corporation. 2010, c. 15, s. 74 (1).

### **Powers of court**

**(2)** On an application under this section, the court may make any order that it thinks fit, including an order,

- (a) restraining an auditor whose appointment is disputed from acting pending determination of the dispute; and
- (b) declaring the result of the disputed appointment. 2010, c. 15, s. 74 (2).

### **Auditor's right to attend meetings**

**75. (1)** An auditor is entitled to attend every meeting of the members at the expense of the corporation and to be heard on matters relating to the auditor's duties. 2010, c. 15, s. 75 (1).

### **Duty to attend and answer questions**

**(2)** If a director or member, whether or not the member is entitled to vote at the meeting, gives notice not less than 21 days before a meeting of the members to the auditor or a former auditor of the corporation, the auditor or former auditor shall attend the meeting at the expense of the corporation and answer questions relating to their duties. 2010, c. 15, s. 75 (2).

### **Notice to corporation**

**(3)** A director or member who gives the notice under subsection (2) shall give a copy of the notice to the corporation at the same time. 2010, c. 15, s. 75 (3).

### **Statement of auditor**

**(4)** Subject to the by-laws, an auditor is entitled to give the corporation a statement giving reasons,

(a) for resigning; or

(b) for opposing the auditor's removal if a meeting of the members is called for the purpose of removing the auditor. 2010, c. 15, s. 75 (4).

### **Other statements**

(5) If a meeting is called to replace the auditor, the corporation shall make a statement respecting the reasons for the replacement and the proposed replacement auditor may make a statement respecting the corporation's reasons. 2010, c. 15, s. 75 (5).

### **Circulating statement**

(6) The corporation shall immediately give the members a copy of the statements referred to in subsections (4) and (5). 2010, c. 15, s. 75 (6).

### **Statement from previous auditor**

(7) No person shall accept an appointment or consent to be appointed as an auditor of a corporation to replace an auditor who has resigned, been removed or whose term of office has expired or is about to expire or whose office has been declared vacant until the person has requested and received from that auditor a statement of the circumstances and the reasons, in that auditor's opinion, for the auditor's replacement. 2010, c. 15, s. 75 (7).

### **Exception**

(8) A person otherwise qualified may accept an appointment or consent to be appointed as an auditor if, within 10 days after making a request under subsection (7), the person does not receive a reply from the previous auditor. 2010, c. 15, s. 75 (8).

### **Effect of non-compliance**

(9) The appointment of a person who does not make a request under subsection (7) is void. 2010, c. 15, s. 75 (9).

### **Dispensing with audits, etc.**

### **Public benefit corporations**

76. (1) Members of a public benefit corporation may pass an extraordinary resolution,

(a) to have a review engagement instead of an audit in respect of the corporation's financial year if the corporation had annual revenue in that financial year of more than \$100,000 or such other prescribed amount and less than \$500,000 or such other prescribed amount; or

(b) to not appoint an auditor and to not have an audit or a review engagement in respect of the corporation's financial year if the corporation had annual revenue in that financial year of \$100,000 or less or such other prescribed amount.

2010, c. 15, s. 76 (1).

## **Other corporations**

(2) Members of a corporation other than a public benefit corporation may pass an extraordinary resolution,

(a) to have a review engagement instead of an audit in respect of the corporation's financial year if the corporation had annual revenue in that financial year of more than \$500,000 or such other prescribed amount; or

(b) to not appoint an auditor and to not have an audit or a review engagement in respect of the corporation's financial year if the corporation had annual revenue in that financial year of \$500,000 or less or such other prescribed amount.

2010, c. 15, s. 76 (2).

## **Validity of resolution**

(3) An extraordinary resolution passed under this section is valid until the next annual meeting of the members. 2010, c. 15, s. 76 (3).

## **Definition**

(4) In this section,

“extraordinary resolution” means a resolution that is,

(a) submitted to a special meeting of the members of a corporation duly called for the purpose of considering the resolution and passed at the meeting, with or without amendment, by at least 80 per cent of the votes cast, or

(b) consented to by each member of the corporation entitled to vote at a meeting of the members or the member's attorney. 2010, c. 15, s. 76 (4).

## **Annual financial review**

77. (1) An auditor of a corporation or a person appointed to conduct a review engagement of a corporation shall examine the financial statements that are required by section 84 to be placed before the members as is necessary to enable the auditor or other person to report on the financial statements. 2010, c. 15, s. 77 (1).

## **Same**

(2) The auditor or other person shall report on the financial statements in accordance with the regulations and with generally accepted auditing or review engagement standards, as the case may be. 2010, c. 15, s. 77 (2).

## **Report on financial statements**

78. (1) After conducting an audit or a review engagement, the auditor or other person shall report on the financial statements

required by section 84 to be placed before the members. 2010, c. 15, s. 78 (1).

### **Holding corporation auditor may rely on other auditor**

(2) Despite section 79, an auditor of a holding corporation or person appointed to conduct a review engagement of a holding corporation may reasonably rely on the audit or review engagement report of a body corporate or an unincorporated business the accounts of which are included in whole or in part in the financial statements of the holding corporation. 2010, c. 15, s. 78 (2).

### **Reasonableness**

(3) For the purpose of subsection (2), reasonableness is a question of fact. 2010, c. 15, s. 78 (3).

### **Application**

(4) Subsection (2) applies whether or not the financial statements of the holding corporation reported on by the auditor or person who conducted a review engagement are in consolidated form. 2010, c. 15, s. 78 (4).

### **Obligation of directors, etc., to give information**

79. (1) The auditor of a corporation or other person who is conducting a review engagement may, if they are of the opinion that it is necessary in order to conduct the audit or review engagement of the corporation and to make the report required under section 78,

(a) demand that the present or former directors, officers, employees or agents of the corporation give the auditor or other person any information and explanations and access to records, documents, books, accounts and vouchers of the corporation or of any of its subsidiaries; and

(b) demand that the directors of the corporation obtain from the former directors, officers, employees or agents of any subsidiary of the corporation information and explanations that they are reasonably able to give. 2010, c. 15, s. 79 (1).

### **Same**

(2) A person to whom a demand is made under subsection (1) shall give the auditor or other person the requested information, explanations and access if they are reasonably able to do so. 2010, c. 15, s. 79 (2).

### **No civil liability**

(3) A person who in good faith makes an oral, written or other form of communication under subsection (1) or (2) is not liable in any civil proceeding arising from having made the communication. 2010, c. 15, s. 79 (3).

### **Audit committee**

80. (1) A corporation may have an audit committee and, if it does, the majority of the committee must not be officers or

employees of the corporation or of any of its affiliates. 2010, c. 15, s. 80 (1).

### **Auditor's attendance**

(2) The corporation shall give the auditor or person appointed to conduct a review engagement notice of the time and place of any meeting of the audit committee. The auditor or person appointed to conduct a review engagement is entitled to attend the meeting at the expense of the corporation and be heard, and shall attend every meeting of the committee if requested to do so by one of its members. 2010, c. 15, s. 80 (2).

### **Calling meeting**

(3) The auditor, the person appointed to conduct a review engagement or a member of the audit committee may call a meeting of the committee. 2010, c. 15, s. 80 (3).

### **Notice of errors in financial statements**

81. (1) A director or an officer shall immediately notify the audit committee, if the corporation has one, and the auditor or person who conducted a review engagement of the corporation of any error or misstatement of which the director or officer becomes aware in a financial statement prepared as part of an audit or review engagement. 2010, c. 15, s. 81 (1).

### **Directors to be informed**

(2) An auditor or former auditor of a corporation or another person who conducted a review engagement of a corporation who is notified or becomes aware of an error or misstatement in a financial statement prepared as part of an audit or review engagement shall, if in the opinion of the auditor, former auditor or other person, the error or misstatement is material, inform each director accordingly. 2010, c. 15, s. 81 (2).

### **Duty of directors**

(3) When the auditor, former auditor or other person informs the directors of an error or misstatement in a financial statement, the directors shall prepare and issue revised financial statements or otherwise inform the members. 2010, c. 15, s. 81 (3).

### **Qualified privilege — defamation**

82. Any statement or report made under this Act orally, in writing or in another format by the auditor or former auditor of a corporation has qualified privilege. 2010, c. 15, s. 82.

## **PART VIII FINANCIAL DISCLOSURE**

### **Approval of annual financial statements**

**83. (1)** The directors shall approve annual financial statements of the corporation that relate to the period that began immediately after the end of the last completed financial year and ended not more than six months before the annual meeting or, if the corporation has not completed a financial year, that began on the date the corporation came into existence and ended not more than six months before the annual meeting. 2010, c. 15, s. 83 (1).

**Same**

**(2)** The approval of the directors must be evidenced by the signature of one or more directors. 2010, c. 15, s. 83 (2).

**Duty of committee**

**(3)** If the corporation has an audit committee, the audit committee shall review the financial statements of the corporation before they are approved by the directors. 2010, c. 15, s. 83 (3).

**Same**

**(4)** A corporation shall not issue, publish or circulate copies of the annual financial statements unless they are,

(a) approved and signed in accordance with subsections (1) and (2); and

(b) accompanied by the audit or review engagement report, if any. 2010, c. 15, s. 83 (4).

**Presentation of annual financial statements to members**

**84. (1)** The directors of a corporation shall place before the members at every annual meeting,

(a) the financial statements approved by the directors under subsection 83 (1);

(b) the report of the auditor or of the person who conducted a review engagement, as the case may be; and

(c) any further information respecting the financial position of the corporation and the results of its operations required by the articles or the by-laws. 2010, c. 15, s. 84 (1).

**Copy to members**

**(2)** Not less than 21 days before each annual meeting of the members or before the signing of a resolution under section 59 in lieu of the annual meeting, a corporation shall give a copy of the documents referred to in subsection (1) to all members who have informed the corporation that they wish to receive a copy of those documents. 2010, c. 15, s. 84 (2).

**PART IX  
CORPORATE FINANCE**

**Borrowing powers**

**85. (1)** Unless the articles or the by-laws provide otherwise, the directors of a corporation may, without authorization of the members,

(a) borrow money on the credit of the corporation;

(b) issue, reissue, sell or pledge debt obligations of the corporation;

(c) give a guarantee on behalf of the corporation to secure performance of an obligation of any person; and

(d) mortgage, pledge or otherwise create a security interest in all or any property of the corporation, owned or subsequently acquired, to secure any obligation of the corporation. 2010, c. 15, s. 85 (1).

### **Delegation of borrowing powers**

**(2)** Despite subsection 36 (2) and clause 42 (1) (a), unless the articles or the by-laws provide otherwise, the directors may by resolution delegate the powers referred to in subsection (1) to a director, a committee of directors or an officer. 2010, c. 15, s. 85 (2).

### **Members' annual contribution or dues**

**86.** Subject to the articles and the by-laws, the directors may require members to make an annual contribution or pay annual dues and may determine the manner in which the contribution is to be made or the dues are to be paid. 2010, c. 15, s. 86.

### **Ownership of property**

**87.** A corporation owns any property of any kind that is transferred to or otherwise vested in the corporation and does not hold any property in trust unless that property was transferred to the corporation expressly in trust for a specific purpose or purposes. 2010, c. 15, s. 87.

### **Investments by corporation**

**88.** A corporation may invest its funds as its directors think fit, subject to its articles or by-laws or any limitations accompanying a gift. 2010, c. 15, s. 88.

### **Distribution of property, etc.**

**89. (1)** No part of a corporation's profits or of its property or accretions to the value of the property may be distributed, directly or indirectly, to a member, a director or an officer of the corporation except in furtherance of its activities or as otherwise permitted by this Act. 2010, c. 15, s. 89 (1).

### **Distribution to a member upon termination of membership**

**(2)** Despite subsection (1) and subject to the articles and the by-laws, a corporation that is not a public benefit corporation may

distribute the fair value of a membership to a member upon termination of that member's membership. 2010, c. 15, s. 89 (2).

### **Surrendered memberships**

**90.** A corporation may accept a membership in the corporation surrendered to it as a gift and may extinguish or reduce a liability respecting an amount unpaid on that membership. 2010, c. 15, s. 90.

### **Non-liability of members**

**91. (1)** The members of a corporation are not, in that capacity, liable for any liability of the corporation, or any act or default of the corporation, except as otherwise provided by this Act. 2010, c. 15, s. 91 (1).

### **Lien on membership**

**(2)** The articles may provide that the corporation has a lien on a membership registered in the name of a member or the member's legal representative for a debt of that member to the corporation, including an amount unpaid in respect of a membership issued by a body corporate. 2010, c. 15, s. 91 (2).

### **Enforcement of lien**

**(3)** A corporation may enforce a lien referred to in subsection (2) in accordance with its by-laws. 2010, c. 15, s. 91 (3).

## **PART X RECORDS**

### **Corporate records to be kept**

**92. (1)** A corporation shall prepare and maintain records containing,

- (a) the corporation's articles and by-laws, and amendments to them;
- (b) the minutes of meetings of the members and of any committee of members;
- (c) the resolutions of the members and of any committee of members;
- (d) the minutes of meetings of the directors and of any committee of directors;
- (e) the resolutions of the directors and of any committee of directors;
- (f) a register of directors;
- (g) a register of officers;
- (h) a register of members; and
- (i) accounting records adequate to enable the directors to ascertain the financial position of the corporation with



reasonable accuracy on a quarterly basis. 2010, c. 15, s. 92 (1).

### **Content of registers of officers and members**

(2) The registers referred to in clauses (1) (f), (g) and (h) must contain prescribed information. 2010, c. 15, s. 92 (2).

### **Retention of accounting records**

(3) Subject to any other Act or rule of a taxing authority that requires a longer retention period, a corporation shall retain the accounting records referred to in clause (1) (i) for six years. 2010, c. 15, s. 92 (3).

### **Location of corporate records**

93. (1) A corporation shall keep the records described in clauses 92 (1) (a), (b), (c), (f), (g) and (h) at the corporation's registered office or another place in Ontario designated by the directors. 2010, c. 15, s. 93 (1).

#### **Same**

(2) A corporation shall keep the records described in clauses 92 (1) (d), (e) and (i) at the corporation's registered office or another place designated by the directors. 2010, c. 15, s. 93 (2).

### **When records or registers are kept outside Ontario**

(3) Despite subsections (1) and (2), but subject to federal and Ontario tax statutes or any other Act, a corporation may keep all or any of its records described in subsection 92 (1) at a place outside Ontario if,

(a) the records are available for inspection, by means of any technology, during regular office hours at the registered office; and

(b) the corporation provides the technical assistance to facilitate an inspection of the records. 2010, c. 15, s. 93 (3).

### **Directors' access to records**

94. (1) The records described in subsection 92 (1) must be open to inspection by the directors during the corporation's regular office hours. 2010, c. 15, s. 94 (1).

#### **Same**

(2) The corporation shall, at the request of any director, provide the director with any extract of the records free of charge. 2010, c. 15, s. 94 (2).

### **Members', creditors' access to records**

95. (1) A member, a member's attorney or legal representative and a creditor of a corporation may examine and, on payment of a

reasonable fee, take extracts from the records referred to in clauses 92 (1) (a), (b), (c), (f), (g) and (h) during the corporation's regular office hours. 2010, c. 15, s. 95 (1).

### **Members entitled to free copy of articles and by-laws**

(2) A member of a corporation is entitled on request and free of charge to one copy of the articles and by-laws, including any amendments to them. 2010, c. 15, s. 95 (2).

### **Members' access to register of members**

96. (1) A member or a member's attorney or legal representative who wishes to examine the register of members of a corporation shall first make a request to the corporation or its agent accompanied by a statutory declaration described in subsection (3). As soon as is practical, the corporation or its agent shall allow the applicant access to the register during the corporation's regular office hours and, on payment of a reasonable fee, provide the applicant with an extract from the register. 2010, c. 15, s. 96 (1).

### **Corporation to provide list of members**

(2) Any person described in subsection (1), on payment of a reasonable fee and on giving a corporation or its agent the statutory declaration described in subsection (3), may on application require the corporation or its agent to give the person a current list of members setting out the names and addresses of each member and such additional information as is required by the by-laws as soon as is practical. 2010, c. 15, s. 96 (2).

### **Contents of statutory declaration**

(3) The statutory declaration required under subsection (1) or (2) must,

(a) state the name and address of the applicant and, if the applicant is a body corporate, its address for service; and

(b) state that the list of members or the information contained in the register of members obtained under subsection (1) will not be used except as permitted under subsection (5). 2010, c. 15, s. 96 (3).

### **Same**

(4) If the applicant is a body corporate, the statutory declaration must be made by a director or officer of the body corporate. 2010, c. 15, s. 96 (4).

### **Use of information or list**

(5) A member or a member's attorney or legal representative who obtains a list of members or information from a register of members under this section shall not use the list or information except in connection with,

(a) an effort to influence the voting of members;

(b) requisitioning a meeting of the members; or

(c) another matter relating to the affairs of the corporation. 2010, c. 15, s. 96 (5).

### **Consents of directors to be kept**

**97. (1)** A corporation shall keep at its registered office the consents to act as a director,

(a) of each individual who is named in the articles as a first director and who is not an incorporator;

(b) of each individual who is named in the articles as a first director and who is an incorporator, if the articles are in a format under which the regulations do not require the first directors' signatures; and

(c) of each individual who is elected or appointed a director of the corporation. 2010, c. 15, s. 97 (1).

### **Inspection of consent**

**(2)** Upon request and without charge, the corporation shall permit a director, member or creditor to inspect a consent kept under subsection (1) during the corporation's regular office hours and to make a copy of it. 2010, c. 15, s. 97 (2).

### **Financial statements to be kept**

**98. (1)** A corporation shall keep at its registered office a copy of the financial statements of each of its subsidiaries and of each body corporate the accounts of which are consolidated in the financial statements of the corporation. 2010, c. 15, s. 98 (1).

### **Members' right to examine**

**(2)** Members of a corporation and their attorneys or legal representatives may on request and free of charge examine the financial statements referred to in subsection (1) during the corporation's regular office hours and make copies or take extracts of them. 2010, c. 15, s. 98 (2).

### **Court order barring examination**

**(3)** On the application of a corporation made within 15 days after receiving a request to examine the financial statements, the court may bar the right to examine the statements and may make any further order that it thinks fit if it is satisfied that the examination would be detrimental to the corporation or a subsidiary. 2010, c. 15, s. 98 (3).

### **Notice of court application**

**(4)** A corporation shall give the person asking to examine the financial statements notice of an application under subsection (3), and the person may appear and be heard in person or by counsel. 2010, c. 15, s. 98 (4).

### **Subsidiary corporation exception**

[\(5\)](#) A subsidiary corporation is not required to comply with this section if the financial statements of its holding corporation are in consolidated or combined form and include the accounts of the subsidiary. 2010, c. 15, s. 98 (5).

### **Access to records refused — court authorization**

[99. \(1\)](#) On the application of a corporation, the court may authorize the corporation to refuse to allow access to any records the corporation is required to keep under this Part or to give any information that the corporation is obligated to allow access to or to give under this Part, in whole or in part and on any terms that the court thinks fit, if the court decides that allowing the access or giving the information would be detrimental to any member or the corporation. 2010, c. 15, s. 99 (1).

### **Same**

[\(2\)](#) On the application of any member of a corporation, the court may direct the corporation not to allow access to any records the corporation is required to keep under this Part or not to give information that the corporation is obligated to allow access to or to give under this Part, in whole or in part and on any terms that the court thinks fit, if the court decides that allowing the access or giving the information would be detrimental to any member or the corporation. 2010, c. 15, s. 99 (2).

### **Form of records**

[100. \(1\)](#) All registers and other records required by or under this Act to be prepared and maintained by a corporation may be in any form, provided that the records are capable of being reproduced in intelligible written form within a reasonable time. 2010, c. 15, s. 100 (1).

### **Protection of records**

[\(2\)](#) A corporation and its agents shall take reasonable precautions to prevent the loss or destruction of the registers and other records required by or under this Act, to prevent the falsification of entries in those registers and records and to facilitate the detection and correction of inaccuracies in them. 2010, c. 15, s. 100 (2).

### **Validity of unsealed documents**

[101.](#) A document executed on behalf of a corporation is not invalid merely because a corporate seal is not affixed to it. 2010, c. 15, s. 101.

### **No deemed notice of contents**

[102.](#) No person is affected by or is deemed to have notice or knowledge of the contents of a document concerning a corporation by reason only that the document has been filed with the Director or is available for inspection at an office of the corporation. 2010, c. 15, s. 102.

## **PART XI**

## FUNDAMENTAL CHANGES

### Amendment of articles

**103. (1)** A special resolution of the members or, if section 105 applies, of each applicable class or group of members, is required to make any amendment to the articles of a corporation to,

- (a) change the corporation's name;
- (b) add, change or remove any restriction on the activities that the corporation may carry on;
- (c) create a new class or group of members;
- (d) change a condition required for being a member;
- (e) change the designation of any class or group of members or add, change or remove any rights or conditions of any such class or group;
- (f) divide any class or group of members into two or more classes or groups and fix the rights and conditions of each class or group;
- (g) add, change or remove a provision respecting the transfer of a membership;
- (h) subject to section 30, increase or decrease the number of, or the minimum or maximum number of, directors fixed by the articles;
- (i) change the purposes of the corporation;
- (j) change to whom the property remaining on liquidation after the discharge of any liabilities of the corporation is to be distributed;
- (k) change the manner of giving notice to members entitled to vote at a meeting of members;
- (l) change the method of voting by members not in attendance at a meeting of the members; or
- (m) add, change or remove any other provision that is permitted by this Act to be set out in the articles. 2010, c. 15, s. 103 (1).

### Directors may revoke amending resolution

**(2)** The directors may revoke the resolution before it is acted on without further approval of the members, if authorized to do so by the members in the resolution effecting an amendment under this section. 2010, c. 15, s. 103 (2).

### Limitation — corporations incorporated under other Acts

(3) This section does not apply to a corporation incorporated by or under an Act other than this Act or a predecessor of this Act, except that such a corporation may amend its articles to change its name. 2010, c. 15, s. 103 (3).

### **Change of name prohibited**

(4) A corporation may not change its name by articles of amendment if,

(a) the corporation is unable to pay its liabilities as they become due; or

(b) the realizable value of the corporation's assets is less than the aggregate of its liabilities. 2010, c. 15, s. 103 (4).

### **Proposal to amend**

**104. (1)** A director, or a member who is entitled to vote at an annual meeting of the members, may, in accordance with section 56, propose to make an amendment referred to in subsection 103 (1). 2010, c. 15, s. 104 (1).

### **Notice of amendment**

(2) Notice of a meeting of the members at which a proposal to make an amendment referred to in subsection 103 (1) is to be considered must set out the proposed amendment. 2010, c. 15, s. 104 (2).

### **Class vote on resolution to amend**

**105. (1)** The members of a class or group of members are, unless the articles provide otherwise in the case of an amendment referred to in clause (a) or (e), entitled to vote separately as a class or group on a proposal to make an amendment referred to in subsection 103 (1) to,

(a) effect an exchange, reclassification or cancellation of all or part of the memberships of the class or group;

(b) add, change or remove the rights or conditions attached to the memberships of the class or group, including,

(i) to reduce or remove a liquidation preference, or

(ii) to add, remove or change prejudicially voting or transfer rights of the class or group;

(c) increase the rights of any other class or group of members having rights equal or superior to those of the class or group;

(d) increase the rights of a class or group of members having rights inferior to those of the class or group to make them equal or superior to those of the class or group;

(e) create a new class or group of members having rights equal or superior to those of the class or group; or

(f) effect an exchange or create a right of exchange of all or part of the memberships of another class or group into the memberships of the class or group. 2010, c. 15, s. 105 (1).

## **Right to vote**

[\(2\)](#) Subsection (1) applies whether or not memberships of a class or group otherwise carry the right to vote. 2010, c. 15, s. 105 (2).

## **Separate resolutions**

[\(3\)](#) A proposal to make an amendment referred to in subsection (1) is adopted when the members of each class or group entitled to vote separately on the amendment as a class or group have approved the amendment by a special resolution. 2010, c. 15, s. 105 (3).

## **Articles of amendment to be sent to Director**

[106.](#) Subject to a revocation under subsection 103 (2), after an amendment to the articles has been adopted under section 103, the corporation shall file articles of amendment and any prescribed documents or information with the Director in accordance with the regulations. 2010, c. 15, s. 106.

## **Certificate of amendment**

[107.](#) Upon receipt of the articles of amendment, together with any prescribed documents and information and the required fee, the Director shall issue a certificate of amendment by endorsing the articles in accordance with the regulations. The endorsed articles constitute the certificate of amendment. 2010, c. 15, s. 107.

## **Effect of certificate**

[108. \(1\)](#) An amendment to the articles becomes effective on the date shown in the certificate of amendment and the articles are amended accordingly. 2010, c. 15, s. 108 (1).

## **Rights preserved**

[\(2\)](#) No amendment to the articles affects an existing cause of action or claim or liability to prosecution in favour of or against the corporation or its directors or officers, or any civil, criminal, administrative, investigative or other action or proceeding to which a corporation or its directors or officers is a party. 2010, c. 15, s. 108 (2).

## **Restated articles**

[109. \(1\)](#) The directors may at any time, and shall when so directed by the Director, restate the articles of incorporation. 2010, c. 15, s. 109 (1).

## **Filed with Director**

[\(2\)](#) The corporation shall file its restated articles of incorporation and any prescribed documents and information with the Director in accordance with the regulations. 2010, c. 15, s. 109 (2).

## **Restated certificate**

[\(3\)](#) Upon receipt of the restated articles of incorporation, together with any prescribed documents and information and the required fee, the Director shall issue a restated certificate of incorporation by endorsing the articles in accordance with the regulations. The endorsed articles constitute the restated certificate of incorporation. 2010, c. 15, s. 109 (3).

### **Effect of certificate**

[\(4\)](#) The endorsed restated articles of incorporation supersede the original articles of incorporation and all amendments to those articles. 2010, c. 15, s. 109 (4).

### **Amalgamation**

[110. \(1\)](#) Two or more corporations may amalgamate and continue as one corporation. 2010, c. 15, s. 110 (1).

### **Amalgamation agreement**

[\(2\)](#) Each corporation proposing to amalgamate shall enter into an agreement setting out the terms and means of effecting the amalgamation and, in particular, setting out,

- (a) the provisions that are required to be included in the articles of incorporation under section 8 or, if applicable, in the by-laws under section 48;
- (b) the name and address for service of each proposed director of the amalgamated corporation;
- (c) the manner in which the memberships of each amalgamating corporation are to be converted into memberships of the amalgamated corporation;
- (d) whether the by-laws of the amalgamated corporation are to be those of one of the amalgamating corporations and, if not, the address where a copy of the proposed by-laws may be examined; and
- (e) details of any arrangements necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated corporation. 2010, c. 15, s. 110 (2).

### **Cancellation of memberships**

[\(3\)](#) If a membership in an amalgamating corporation is held by another amalgamating corporation, the amalgamation agreement must provide for the cancellation, without any repayment of capital, of the membership when the amalgamation becomes effective. No provision shall be made in the agreement for the conversion of the membership into membership of the amalgamated corporation. 2010, c. 15, s. 110 (3).

### **Member approval of amalgamation agreement**

[111. \(1\)](#) The directors of each amalgamating corporation shall submit the amalgamation agreement for approval to a meeting of



the members of the amalgamating corporation of which they are directors and, subject to subsection (4), to the members of each class or group of members. 2010, c. 15, s. 111 (1).

### **Notice of meeting**

(2) Each amalgamating corporation shall give notice to its members of a meeting of the members in accordance with section 55 and shall include in the notice a copy or summary of the amalgamation agreement. 2010, c. 15, s. 111 (2).

### **Right to vote**

(3) Each membership in an amalgamating corporation carries the right to vote in respect of an amalgamation agreement whether or not it otherwise carries the right to vote. 2010, c. 15, s. 111 (3).

### **Class vote**

(4) The members of a class or group of members of each amalgamating corporation are entitled to vote separately as a class or group in respect of an amalgamation agreement if the amalgamation agreement contains a provision that, if contained in a proposed amendment to the articles, would entitle the members to vote as a class or group under section 105. 2010, c. 15, s. 111 (4).

### **Adoption of agreement**

(5) Subject to subsection (4), an amalgamation agreement is adopted when the members of each amalgamating corporation have approved the amalgamation by special resolution. 2010, c. 15, s. 111 (5).

### **Termination of agreement**

(6) An amalgamation agreement may provide that the agreement may be terminated by the directors of an amalgamating corporation at any time before the issue of a certificate of amalgamation, despite approval of the agreement by the members of all or any of the amalgamating corporations. 2010, c. 15, s. 111 (6).

### **Articles of amalgamation**

112. (1) Subject to subsection 111 (6), after an amalgamation agreement has been adopted under section 111, the amalgamating corporations shall file articles of amalgamation and any prescribed documents and information with the Director in accordance with the regulations. 2010, c. 15, s. 112 (1).

### **Attached declarations**

(2) The articles of amalgamation must have attached to them a statutory declaration of a director or an officer of each amalgamating corporation that establishes to the satisfaction of the Director that,

(a) there are reasonable grounds for believing that,

(i) each amalgamating corporation is, and the amalgamated corporation will be, able to pay its liabilities as they become due, and

(ii) the realizable value of the amalgamated corporation's assets will not be less than the aggregate of its liabilities; and

(b) there are reasonable grounds for believing that,

(i) no creditor will be prejudiced by the amalgamation, or

(ii) adequate notice has been given to all known creditors of the amalgamating corporations and no creditor objects to the amalgamation otherwise than on grounds that are frivolous or vexatious. 2010, c. 15, s. 112 (2).

### **Interpretation — adequate notice**

(3) For the purpose of subclause (2) (b) (ii), adequate notice is given if,

(a) a notice is given to each known creditor having a claim against the corporation that exceeds \$2,500;

(b) a notice is published once in a newspaper published or distributed in the place where the corporation has its registered office and reasonable notice is given in each province where the corporation carries on activities; and

(c) each notice states that the corporation intends to amalgamate with one or more specified corporations in accordance with this Act and that a creditor of the corporation may object to the amalgamation within 30 days after the date of the notice. 2010, c. 15, s. 112 (3).

### **Certificate of amalgamation**

(4) Upon receipt of articles of amalgamation, together with the statutory declarations required by subsection (2), any prescribed documents and information and the required fee, the Director shall issue a certificate of amalgamation by endorsing the articles in accordance with the regulations. The endorsed articles constitute the certificate of amalgamation. 2010, c. 15, s. 112 (4).

### **Effect of amalgamation**

113. On the date shown in the certificate of amalgamation, the amalgamation of the amalgamating corporations and their continuance as one corporation under the terms and conditions set out in the amalgamation agreement become effective and from that date,

(a) the amalgamating corporations are amalgamated and continue as one corporation under the terms and conditions set out in the amalgamation agreement;

(b) the amalgamating corporations cease to exist as entities separate from the amalgamated corporation;

(c) the amalgamated corporation possesses all the property, rights, privileges and franchises and is subject to all

liabilities, including civil, criminal and quasi-criminal, and all contracts, disabilities and debts of each of the amalgamating corporations;

(d) a conviction against, or ruling, order or judgment in favour or against an amalgamating corporation may be enforced by or against the amalgamated corporation;

(e) the articles of amalgamation are deemed to be the articles of incorporation of the amalgamated corporation and, except for the purposes of subsection 32 (1), the certificate of amalgamation is deemed to be the certificate of incorporation of the amalgamated corporation; and

(f) the amalgamated corporation is deemed to be the party plaintiff or the party defendant, as the case may be, in any civil action commenced by or against an amalgamating corporation before the amalgamation becomes effective. 2010, c. 15, s. 113.

### **Continuance from other jurisdictions**

**114. (1)** A body corporate incorporated or continued under the laws of any jurisdiction other than Ontario may apply to the Director for a certificate of continuance if,

(a) so authorized by the statute that governs its corporate status; and

(b) the body corporate satisfies, or by its articles of continuance would satisfy, the requirements for incorporation under this Act. 2010, c. 15, s. 114 (1).

### **Amendments in articles of continuance**

**(2)** A body corporate that applies for a certificate under subsection (1) may effect by its articles of continuance any amendment to its Act of incorporation, articles, letters patent or memorandum or articles of association that a corporation incorporated under this Act may make to its articles. 2010, c. 15, s. 114 (2).

### **Conversion from share capital to non-share capital**

**(3)** If the body corporate is a body corporate with share capital, it shall establish the terms and conditions on which it is converted to a corporation. 2010, c. 15, s. 114 (3).

### **Articles of continuance**

**(4)** If a body corporate wishes to apply for a certificate under subsection (1), the body corporate shall file articles of continuance and any prescribed documents and information with the Director in accordance with the regulations. 2010, c. 15, s. 114 (4).

### **Certificate of continuance**

**(5)** Upon receipt of articles of continuance, together with any prescribed documents and information and the required fee, the

Director may, on the terms and subject to the limitations and conditions that the Director considers fit, issue a certificate of continuance by endorsing the articles in accordance with the regulations. The endorsed articles constitute the certificate of continuance. 2010, c. 15, s. 114 (5).

### **Effect of certificate of continuance**

(6) From the date shown in the certificate of continuance,

- (a) the body corporate becomes a corporation to which this Act applies as if it had been incorporated under this Act;
- (b) the articles of continuance are deemed to be the articles of incorporation of the continued corporation;
- (c) the certificate of continuance is deemed to be the certificate of incorporation of the continued corporation, except for the purposes of subsection 32 (1); and
- (d) any shareholders or members of the body corporate cease to be shareholders or members of the body corporate and become members of the continued corporation. 2010, c. 15, s. 114 (6).

### **Copy of certificate to original jurisdiction**

(7) The Director shall give a copy of the certificate of continuance to the appropriate official or public body in the jurisdiction in which continuance under this Act is authorized. 2010, c. 15, s. 114 (7).

### **Rights preserved**

(8) From the date of continuance of a body corporate as a corporation under this Act,

- (a) the property of the body corporate continues to be the property of the corporation;
- (b) the corporation continues to be liable for the obligations of the body corporate;
- (c) an existing cause of action, claim or liability to prosecution is unaffected;
- (d) any civil, criminal, administrative, investigative or other action or proceeding pending by or against the body corporate may be continued by or against the corporation; and
- (e) any conviction against, or ruling, order or judgment in favour of or against the body corporate may be enforced by or against the corporation. 2010, c. 15, s. 114 (8).

### **Deemed compliance**

(9) A membership in a body corporate issued before the body corporate was continued under this Act is deemed to have been issued in compliance with this Act and the articles of continuance. 2010, c. 15, s. 114 (9).

### **Continuance of other Ontario bodies corporate**

## **Definition of “charter”**

**115. (1)** In this section,

“charter” includes,

- (a) the text of an Act of incorporation and of any amendments to that Act, and
- (b) any letters patent, supplementary letters patent, certificate of incorporation and certificate of amendment issued under an Act other than this Act or a predecessor of this Act. 2010, c. 15, s. 115 (1).

## **Continuance and amendment of charter**

**(2)** The shareholders or members of a body corporate incorporated or continued by or under an Act other than this Act or a predecessor of this Act who are entitled to vote at annual meetings of shareholders or members may, if authorized by the charter of the body corporate,

- (a) by special resolution, authorize the directors of the body corporate to apply to the Director for a certificate of continuance under this Act; and
- (b) by the same resolution, make any amendment to the charter of the body corporate that a corporation incorporated under this Act may make to its articles. 2010, c. 15, s. 115 (2).

## **Same**

**(3)** Despite subsection (2), the shareholders or members of a body corporate incorporated or continued by or under a private Act who are entitled to vote at annual meetings of shareholders or members may, unless otherwise stated in the charter of the body corporate,

- (a) by special resolution, authorize the directors of the body corporate to apply to the Director for a certificate of continuance under this Act; and
- (b) by the same resolution, make any amendment to the charter of the body corporate that a corporation incorporated under this Act may make to its articles. 2010, c. 15, s. 115 (3).

## **Change of class or group rights**

**(4)** Despite subsections (2) and (3), the members of a body corporate may not, by a special resolution under either of those subsections, make any amendment of the nature referred to in subsection 105 (1) that affects a class or group of members, unless,

- (a) the charter of the body corporate provides otherwise in respect of an amendment of the nature referred to in clause 105 (1) (a) or (e); or

(b) the members of the class or group approve the amendment in accordance with section 105. 2010, c. 15, s. 115 (4).

### **Certificate of continuance**

(5) Upon receipt of articles of continuance, together with any prescribed documents and information and the required fee, the Director may, on the terms and subject to the limitations and conditions that the Director considers fit, issue a certificate of continuance by endorsing the articles of continuance in accordance with the regulations. The endorsed articles constitute the certificate of continuance. 2010, c. 15, s. 115 (5).

### **Special Act no longer applicable**

(6) On the continuance of a body corporate without share capital incorporated or continued under an Act other than this Act as a corporation under this Act, the other Act ceases to apply to the corporation. 2010, c. 15, s. 115 (6).

### **Continuance to other jurisdictions**

116. (1) Subject to subsection (10), a corporation may apply to the appropriate official or public body of another jurisdiction requesting that the corporation be continued as if it had been incorporated under the laws of that other jurisdiction if the corporation is authorized by the members and the Director in accordance with subsections (2) to (4) to make the application. 2010, c. 15, s. 116 (1).

### **Notice of meeting**

(2) The corporation shall give members notice of a meeting of members in accordance with section 55. 2010, c. 15, s. 116 (2).

### **Right to vote**

(3) Each membership in the corporation carries the right to vote in respect of a continuance whether or not it otherwise carries the right to vote. 2010, c. 15, s. 116 (3).

### **Filing application with Director**

(4) If the members approve of the continuance by special resolution, the corporation may file with the Director its application for authorization of the continuance and any prescribed documents and information in accordance with the regulations. 2010, c. 15, s. 116 (4).

### **Director's authorization**

(5) Upon receipt of the application, together with any prescribed documents and information and the required fee, the Director may endorse an authorization on the application in accordance with the regulations if he or she is satisfied that the application is not prohibited by subsection (10). The endorsed application constitutes the Director's authorization of the application for continuance. 2010, c. 15, s. 116 (5).

### **Time limit to Director's authorization**

[\(6\)](#) The Director's authorization of an application for continuance expires six months after the date of endorsement of the application unless, within the six-month period, the corporation is continued under the laws of the other jurisdiction. 2010, c. 15, s. 116 (6).

### **Filing instrument of continuance**

[\(7\)](#) The corporation shall file with the Director a copy of the instrument of continuance issued to it by the other jurisdiction within 60 days after its issuance. 2010, c. 15, s. 116 (7).

### **Effective date**

[\(8\)](#) This Act, except subsection (7) of this section, ceases to apply to the corporation on the date on which the corporation is continued under the laws of the other jurisdiction. 2010, c. 15, s. 116 (8).

### **Termination of application**

[\(9\)](#) The directors of a corporation may, if authorized by the members at the time of approving an application for continuance, abandon the application without further approval of the members. 2010, c. 15, s. 116 (9).

### **Limitation — rights preserved**

[\(10\)](#) A corporation shall not apply under subsection (1) to be continued as a body corporate under the laws of another jurisdiction unless those laws provide in effect that,

(a) the property of the corporation continues to be the property of the body corporate;

(b) the body corporate continues to be liable for the obligations of the corporation;

(c) an existing cause of action, claim or liability to prosecution is unaffected;

(d) any civil, criminal or administrative, investigative or other action or proceeding pending by or against the corporation may be continued by or against the body corporate; and

(e) any conviction against, or ruling, order or judgment in favour of or against the corporation may be enforced by or against the body corporate. 2010, c. 15, s. 116 (10).

### **Continuance as co-operative corporation**

[117. \(1\)](#) A corporation incorporated under this Act may, if authorized by a special resolution and by the Director, apply under the *Co-operative Corporations Act* to be continued as a co-operative corporation. 2010, c. 15, s. 117 (1).

### **Certificate to be filed with Director**

[\(2\)](#) The corporation shall file with the Director a copy of the certificate of continuance issued under the *Co-operative Corporations Act* within 60 days after the date of issuance. 2010, c. 15, s. 117 (2).

### **Director's authorization**

[\(3\)](#) Upon receipt of the application, together with any prescribed documents and information and the required fee, the Director may endorse an authorization on the application in accordance with the regulations. The endorsed application constitutes the Director's authorization of the application for continuance. 2010, c. 15, s. 117 (3).

### **Time limit to Director's authorization**

[\(4\)](#) The Director's authorization of an application for continuance expires six months after the date of endorsement of the application unless, within the six-month period, the corporation is continued under the *Co-operative Corporations Act*. 2010, c. 15, s. 117 (4).

### **Act ceases to apply**

[\(5\)](#) This Act, except subsection (2) of this section, ceases to apply to the corporation on the date on which the corporation is continued under the *Co-operative Corporations Act*. 2010, c. 15, s. 117 (5).

### **Termination of application**

[\(6\)](#) The directors of the corporation may, if authorized by the members at the time of approving an application for continuance, abandon the application without further approval of the members. 2010, c. 15, s. 117 (6).

### **Extraordinary sale, lease or exchange**

[118. \(1\)](#) A sale, lease or exchange of all or substantially all of the property of a corporation other than in the ordinary course of its activities requires the authorization of the members in accordance with subsections (2) to (6). 2010, c. 15, s. 118 (1).

### **Notice of meeting**

[\(2\)](#) The corporation shall give members notice of a meeting of the members in accordance with section 55 and shall include a copy or summary of the proposed agreement of sale, lease or exchange. 2010, c. 15, s. 118 (2).

### **Member approval**

[\(3\)](#) At the meeting of the members, the members may authorize the sale, lease or exchange and may fix, or authorize the directors to fix, any of the terms and conditions of the sale, lease or exchange. 2010, c. 15, s. 118 (3).

### **Right to vote**

[\(4\)](#) Each membership in the corporation carries the right to vote in respect of the sale, lease or exchange whether or not it



otherwise carries the right to vote. 2010, c. 15, s. 118 (4).

### **Class vote**

[\(5\)](#) The members of a class or group of members are entitled to vote separately as a class or group in respect of the sale, lease or exchange only if the class or group is affected by the sale, lease or exchange in a manner different from the members of another class or group. 2010, c. 15, s. 118 (5).

### **Same**

[\(6\)](#) The sale, lease or exchange is authorized when the members of each class or group entitled to vote on it have approved it by a special resolution. 2010, c. 15, s. 118 (6).

### **Abandonment**

[\(7\)](#) The directors of a corporation may, if authorized by the members approving a proposed sale, lease or exchange, and subject to the rights of third parties, abandon the sale, lease or exchange without further approval of the members. 2010, c. 15, s. 118 (7).

### **Reorganization**

#### **Definition**

[119. \(1\)](#) In this section,

“reorganization” means a reorganization pursuant to a court order made under the *Bankruptcy and Insolvency Act* (Canada) or the *Companies’ Creditors Arrangement Act* (Canada) approving a proposal. 2010, c. 15, s. 119 (1).

#### **Powers of court**

[\(2\)](#) If a corporation is subject to an order referred to in subsection (1), the order may also require an amendment of the articles or by-laws to effect any change that might be made under section 103. 2010, c. 15, s. 119 (2).

#### **Further powers**

[\(3\)](#) If a court makes an order referred to in subsection (1), the court may also,

(a) authorize the issue of debt obligations of the corporation and fix their terms; and

(b) appoint directors in place of or in addition to all or any of the directors then in office. 2010, c. 15, s. 119 (3).

#### **Articles of reorganization**

[\(4\)](#) After an order referred to in subsection (1) has been made, the corporation shall file articles of reorganization and any prescribed documents and information with the Director in accordance with the regulations. 2010, c. 15, s. 119 (4).

## **Certificate of amendment**

[\(5\)](#) Upon receipt of articles of reorganization, together with any prescribed documents and information and the required fee, the Director shall issue a certificate of amendment by endorsing the articles of reorganization in accordance with the regulations and the articles of incorporation are amended accordingly. The endorsed articles constitute the certificate of amendment. 2010, c. 15, s. 119 (5).

## **No dissent**

[\(6\)](#) A member is not entitled to dissent under section 187 if an amendment to the articles is effected under this section. 2010, c. 15, s. 119 (6).

## **Arrangement**

### **Definition**

[120. \(1\)](#) In this section,

“arrangement” includes,

- (a) an amendment to the articles of a corporation,
- (b) an amalgamation of two or more corporations,
- (c) an amalgamation of a body corporate with a corporation that results in an amalgamated corporation to which this Act applies,
- (d) a transfer of all or substantially all of the property of a corporation to another body corporate in exchange for money or other property, shares, memberships or debt obligations of the body corporate,
- (e) an exchange of debt obligations or memberships of a corporation for money or other property or other memberships or debt obligations of the corporation or money or other property, shares, memberships or debt obligations of another body corporate,
- (f) a liquidation and dissolution of a corporation,
- (g) any other reorganization or scheme involving the affairs of the corporation that is, at law, an arrangement, and
- (h) any combination of operations referred to in clauses (a) to (g). 2010, c. 15, s. 120 (1).

## **Scheme of arrangement**

[\(2\)](#) A corporation proposing an arrangement shall prepare a statement for the approval of the members setting out in detail what is proposed to be done and the manner in which it is proposed to be done. 2010, c. 15, s. 120 (2).

## **Adoption of arrangement**

(3) Subject to any order of the court made under subsection (5), where an arrangement is approved by members of a corporation and by each applicable class or group of members entitled to vote separately on the arrangement, in each case by special resolution, the arrangement is considered to be adopted by the members of the corporation and the corporation may apply to the court for an order approving the arrangement. 2010, c. 15, s. 120 (3).

## **Application to court for approval of arrangement**

(4) A corporation, if authorized by special resolution of the members, or of each applicable class or group of members, may apply to the court for an order approving an arrangement proposed by the corporation. 2010, c. 15, s. 120 (4).

## **Powers of court**

(5) On an application by a corporation under this section, the court may make any interim or final order that it thinks fit, including an order,

(a) determining the notice to be given to any interested person or dispensing with notice to any person;

(b) appointing counsel, at the expense of the corporation, to represent the interests of the members;

(c) requiring the corporation to call, hold and conduct a meeting of the members or holders of debt obligations issued by the corporation in any manner that the court directs; and

(d) approving an arrangement as proposed by the corporation or as amended in any manner that the court directs. 2010, c. 15, s. 120 (5).

## **Articles of arrangement**

(6) After an order referred to in clause (5) (d) has been made, the corporation shall file articles of arrangement and any prescribed documents and information with the Director in accordance with the regulations. 2010, c. 15, s. 120 (6).

## **Certificate of arrangement**

(7) On receipt of articles of arrangement, together with any prescribed documents and information and the required fee, the Director shall issue a certificate of arrangement by endorsing the articles of arrangement in accordance with the regulations. The endorsed articles constitute the certificate of arrangement. 2010, c. 15, s. 120 (7).

## **Effect of certificate**

(8) An arrangement becomes effective on the date shown in the certificate of arrangement. 2010, c. 15, s. 120 (8).

## **PART XII**

## LIQUIDATION AND DISSOLUTION

### Definition

**121.** In this Part,

“contributory” means a person who is liable to contribute to the property of a corporation in the event of the corporation being wound up under this Act. 2010, c. 15, s. 121.

### Application of ss. 123 to 134 to voluntary windings up

**122.** Sections 123 to 134 apply to corporations being wound up voluntarily. 2010, c. 15, s. 122.

### Voluntary winding up

**123. (1)** The members of a corporation may, by special resolution at a meeting of the members, require the corporation to be wound up voluntarily. 2010, c. 15, s. 123 (1).

### Appointment of liquidator

**(2)** At the meeting of the members, the members shall appoint one or more persons, who may be directors, officers or employees of the corporation, as liquidator of the estate and effects of the corporation for the purpose of winding up its activities and affairs and distributing its property, and may at that or any subsequent meeting fix the liquidator’s remuneration and the costs, charges and expenses of the winding up. 2010, c. 15, s. 123 (2).

### Review of remuneration by court

**(3)** On the application of any member or creditor of the corporation or of the liquidator, the court may review the remuneration of the liquidator and, whether or not the remuneration has been fixed in accordance with subsection (2), the court may fix and determine the remuneration at the amount that it thinks proper. 2010, c. 15, s. 123 (3).

### Publication of notice

**(4)** A corporation shall file notice of a resolution requiring the voluntary winding up of the corporation with the Director within 10 days after the resolution has been passed and shall publish the notice in *The Ontario Gazette* within 20 days after the resolution has been passed. 2010, c. 15, s. 123 (4).

### Inspectors

**124. (1)** The members of a corporation being wound up voluntarily may delegate to any committee of members, contributories or creditors the power to appoint the liquidator and fill any vacancy in the office of liquidator, or may enter into any arrangement with creditors of the corporation with respect to the powers to be exercised by the liquidator and the manner in which they are to be

exercised. 2010, c. 15, s. 124 (1).

## **Same**

[\(2\)](#) A committee of members, contributories or creditors to whom power is delegated under subsection (1) may be referred to as inspectors. 2010, c. 15, s. 124 (2).

## **Vacancy in office of liquidator**

[125.](#) If a vacancy occurs in the office of liquidator by death, resignation or otherwise, the members may, subject to any arrangement the corporation may have entered into with its creditors upon the appointment of inspectors, fill the vacancy, and a meeting for that purpose may be called by the continuing liquidator, if any, or by any member or contributory, and is deemed to have been duly held if called in the manner required by the articles or by-laws of the corporation, or, if it is not called in that manner, in the manner required by this Act for calling meetings of the members of the corporation. 2010, c. 15, s. 125.

## **Removal of liquidator**

[126.](#) The members of a corporation may by ordinary resolution passed at a meeting called for that purpose remove a liquidator appointed under section 123, 124 or 125, and in such case shall appoint a replacement. 2010, c. 15, s. 126.

## **Commencement of winding up**

[127.](#) A voluntary winding up commences at the time of the passing of the resolution requiring the winding up or at such later time as may be specified in the resolution. 2010, c. 15, s. 127.

## **Corporation to cease activities**

[128.](#) A corporation being wound up voluntarily shall, from the commencement of its winding up, cease to carry on its activities, except in so far as may be required as beneficial for the winding up, but its corporate existence and all its corporate powers, even if it is otherwise provided by its articles or by-laws, continue until the corporation is wound up. 2010, c. 15, s. 128.

## **Proceedings against corporation after voluntary winding up**

[129.](#) After the commencement of a voluntary winding up,

(a) no action or other proceeding shall be commenced against the corporation; and

(b) no attachment, sequestration, distress or execution shall be put in force against the estate or effects of the corporation,

except by leave of the court and subject to such terms as the court imposes. 2010, c. 15, s. 129.

## **List of contributories and calls**

[130. \(1\)](#) Upon a voluntary winding up, the liquidator,

(a) shall settle the list of contributories; and

(b) may, before the liquidator has ascertained the sufficiency of the property of the corporation, call on all or any of the contributories for the time being settled on the list of contributories to the extent of their liability to pay any sum that the liquidator considers necessary for satisfying the liabilities of the corporation and the costs, charges and expenses of winding up and for adjusting the rights of the contributories among themselves. 2010, c. 15, s. 130 (1).

### **List is proof**

[\(2\)](#) A list settled by the liquidator under clause (1) (a) is, in the absence of evidence to the contrary, proof of the liability of the persons named on the list as contributories. 2010, c. 15, s. 130 (2).

### **Default on calls**

[\(3\)](#) In making a call under clause (1) (b), the liquidator may take into consideration the probability that some of the contributories upon whom the call is made may partly or wholly fail to pay their respective portions of the call. 2010, c. 15, s. 130 (3).

### **Meetings of members during winding up**

[131. \(1\)](#) The liquidator may, during the continuance of the voluntary winding up, call meetings of the members for any purpose the liquidator thinks fit. 2010, c. 15, s. 131 (1).

### **Winding up continues more than one year**

[\(2\)](#) If a voluntary winding up continues for more than one year, the liquidator shall call a meeting of the members at the end of the first year after the commencement of the winding up and of each succeeding year, and the liquidator shall lay before the meeting an account showing the liquidator's acts and dealings and the manner in which the winding up has been conducted during the preceding year. 2010, c. 15, s. 131 (2).

### **Arrangements with creditors**

[132.](#) The liquidator, with the approval of the members or the inspectors, may make any compromise or other arrangement that the liquidator thinks expedient with any creditor or person claiming to be a creditor or having or alleging that they have a claim, present or future, certain or contingent, liquidated or unliquidated, against the corporation or by which the corporation may be rendered liable. 2010, c. 15, s. 132.

### **Power to compromise with debtors and contributories**

[133.](#) The liquidator may, with the approval referred to in section 132, compromise all debts and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the corporation and any contributory, alleged contributory or other debtor or person who may be liable to the corporation

and all questions in any way relating to or affecting the property of the corporation, or the winding up of the corporation, upon the receipt of such sums payable at such times and generally upon such terms as are agreed, and the liquidator may take any security for the discharge of such debts or liabilities and give a complete discharge in respect of them. 2010, c. 15, s. 133.

### **Account of voluntary winding up to be made by liquidator**

**134. (1)** The liquidator shall make up an account showing the manner in which the winding up was conducted and the property of the corporation disposed of, and then shall call a meeting of the members for the purpose of having the account laid before them and hearing any explanation that may be given by the liquidator, and the meeting shall be called in the manner required by the articles or by-laws or, in default of being called in that manner, in the manner required by this Act for the calling of meetings of the members. 2010, c. 15, s. 134 (1).

### **Notice of holding of meeting**

**(2)** The liquidator shall, within 10 days after the meeting is held, file with the Director a notice stating that the meeting was held and the date of the meeting and shall forthwith publish the notice in *The Ontario Gazette*. 2010, c. 15, s. 134 (2).

### **Dissolution**

**(3)** Subject to subsection (4), on the expiration of three months after the date of the filing of the notice, the corporation is dissolved. 2010, c. 15, s. 134 (3).

### **Extension**

**(4)** At any time during the three-month period mentioned in subsection (3), the court may, on the application of the liquidator or any other interested person, make an order deferring the date on which the dissolution of the corporation is to take effect to a date fixed in the order, and in such event the corporation is dissolved on the fixed date. 2010, c. 15, s. 134 (4).

### **Dissolution by court order**

**(5)** Despite anything in this Act, the court may, at any time after the corporation has been fully wound up and upon the application of the liquidator or any other interested person, make an order dissolving the corporation, and the corporation is dissolved on the date fixed in the order. 2010, c. 15, s. 134 (5).

### **Copy of extension order to be filed**

**(6)** The person on whose application an order was made under subsection (4) or (5) shall within 10 days after it was made file with the Director a certified copy of the order and forthwith publish notice of the order in *The Ontario Gazette*. 2010, c. 15, s. 134 (6).

### **Application of ss. 136 to 147 to court-ordered windings up**

**135.** Sections 136 to 147 apply to corporations being wound up by order of the court. 2010, c. 15, s. 135.

## Winding up by court

**136.** A corporation may be wound up by order of the court if,

(a) the court is satisfied that,

(i) any act or omission of the corporation or any of its affiliates effects a result,

(ii) the activities or affairs of the corporation or of any of its affiliates are or have been carried on or conducted in a manner, or

(iii) the powers of the directors of the corporation or of any of its affiliates are or have been exercised in a manner,

that is unfairly prejudicial to or that unfairly disregards the interests of any member, creditor, director or officer; or

(b) the court is satisfied that,

(i) proceedings to wind up voluntarily have begun and it is in the interest of contributories and creditors that the proceedings should be continued under the supervision of the court,

(ii) the corporation, though it may not be insolvent, cannot by reason of its liabilities continue its activities and it is advisable to wind it up, or

(iii) it is just and equitable for some reason, other than the bankruptcy or insolvency of the corporation, that it should be wound up; or

(c) the members by special resolution authorize an application to be made to the court to wind up the corporation. 2010, c. 15, s. 136.

## Who may apply

**137. (1)** A winding-up order may be made under section 136 upon the application of the corporation or of a member or, if the corporation is being wound up voluntarily, of the liquidator or of a contributory or of a creditor having a claim of \$2,500 or more. 2010, c. 15, s. 137 (1).

## Notice

**(2)** Except where the application is made by the corporation, the applicant shall give four days' notice of the application to the corporation before making the application. 2010, c. 15, s. 137 (2).

## Powers of court

**138.** The court may make the order applied for, may dismiss the application with or without costs, may adjourn the hearing conditionally or unconditionally or may make any interim or other order as it considers just, and upon the making of the order may,



according to its practice and procedure, refer the proceedings for the winding up to an officer of the court for inquiry and report and may authorize the officer to exercise any powers of the court that are necessary for the reference. 2010, c. 15, s. 138.

### **Appointment of liquidator**

**139. (1)** The court in making the winding-up order may appoint one or more persons as liquidator of the estate and effects of the corporation for the purpose of winding up its activities and affairs and distributing its property. 2010, c. 15, s. 139 (1).

### **Remuneration**

**(2)** The court may at any time fix the remuneration of the liquidator. 2010, c. 15, s. 139 (2).

### **Vacancy**

**(3)** If a liquidator appointed by the court dies or resigns or the office becomes vacant for any reason, the court may by order fill the vacancy. 2010, c. 15, s. 139 (3).

### **Notice of appointment**

**(4)** A liquidator appointed by the court under this section shall forthwith give to the Director notice of the liquidator's appointment and shall publish the notice in *The Ontario Gazette* within 20 days after being appointed. 2010, c. 15, s. 139 (4).

### **Removal of liquidator**

**140.** The court may by order remove for cause a liquidator appointed by it, and in such case shall appoint a replacement. 2010, c. 15, s. 140.

### **Assessment of costs, etc.**

**141.** The costs, charges and expenses of a winding up by order of the court shall be assessed by an assessment officer of the court. 2010, c. 15, s. 141.

### **Commencement of winding up**

**142.** If a winding-up order is made by the court without prior voluntary winding-up proceedings, the winding up is deemed, unless the court orders otherwise, to commence at the time of the service of notice of the application or, if the application is made by the corporation, at the time the application is made. 2010, c. 15, s. 142.

### **Proceedings in winding up after order**

**143.** If a winding-up order has been made by the court, proceedings for the winding up of the corporation shall be taken in the same manner and with the like consequences as provided for a voluntary winding up, except that,

(a) the list of contributories shall be settled by the court if it has not already been settled by the liquidator before the

winding-up order;

(b) the list of contributories shall be subject to review by the court if it has already been settled by the liquidator before the winding-up order; and

(c) all proceedings in the winding up are subject to the order and direction of the court. 2010, c. 15, s. 143.

### **Orders following winding-up order**

**144.** If a winding-up order has been made by the court, the court may make the following orders:

1. Directing meetings of the members of the corporation to be called, held and conducted in the manner that the court thinks fit for the purpose of ascertaining their wishes, and appointing a person to act as chair of any such meeting and to report the result of it to the court.
2. Requiring any contributory for the time being settled on the list of contributories, or any director, officer, employee, trustee, banker or agent of the corporation to pay, deliver, convey, surrender or transfer to the liquidator forthwith, or within the time that the court directs, any sum or balance, documents, records, estate or effects that are in their hands and to which the corporation is apparently entitled.
3. For the inspection of the documents and records of the corporation by its creditors and contributories, and any documents and records in the possession of the corporation may be inspected in accordance with the order. 2010, c. 15, s. 144.

### **Proceedings against corporation after court winding up**

**145.** After the commencement of a winding up by order of the court,

(a) no action or other proceeding shall be proceeded with or commenced against the corporation; and

(b) no attachment, sequestration, distress or execution shall be put in force against the estate or effects of the corporation,

except by leave of the court and subject to any terms that the court imposes. 2010, c. 15, s. 145.

### **Provision for discharge and distribution by the court**

**146. (1)** If the realization and distribution of the property of a corporation being wound up under an order of the court has proceeded so far that in the opinion of the court it is expedient that the liquidator should be discharged and that the property of the corporation remaining in the liquidator's hands can be better realized and distributed by the court, the court may make an order discharging the liquidator and for payment, delivery and transfer into court, or to the person that the court directs, of that property, and it shall be realized and distributed by or under the direction of the court among the persons entitled to it in the same way as nearly as may be as if the distribution were being made by the liquidator. 2010, c. 15, s. 146 (1).

## **Disposal of documents and records**

[\(2\)](#) If the court makes an order under subsection (1), the court may make an order directing how the documents and records of the corporation and of the liquidator are to be disposed of, and may order that they be deposited in court or otherwise dealt with as the court thinks fit. 2010, c. 15, s. 146 (2).

## **Order for dissolution**

[147. \(1\)](#) At any time after the activities and affairs of the corporation have been fully wound up, the court may, upon the application of the liquidator or any other interested person, make an order dissolving the corporation, and the corporation is dissolved on the date fixed in the order. 2010, c. 15, s. 147 (1).

## **Copy of dissolution order to be filed**

[\(2\)](#) The person on whose application the order was made shall file with the Director a certified copy of the order within 10 days after it was made and shall forthwith publish notice of the order in *The Ontario Gazette*. 2010, c. 15, s. 147 (2).

## **Application of ss. 149 to 165 to all windings up**

[148.](#) Sections 149 to 165 apply to corporations being wound up either voluntarily or by order of the court. 2010, c. 15, s. 148.

## **No liquidator**

[149.](#) If there is no liquidator,

(a) the court may, on the application of a member, by order appoint one or more persons as liquidator; and

(b) the estate and effects of the corporation shall be under the control of the court until the appointment of a liquidator.  
2010, c. 15, s. 149.

## **Consequences of winding up**

[150. \(1\)](#) Upon a winding up,

(a) the liquidator shall apply the property of the corporation in satisfaction of all its debts, obligations and liabilities;

(b) after satisfying the interests of the corporation's creditors in all its debts, obligations and liabilities, if any, the liquidator shall distribute the remaining property,

(i) if the corporation is a public benefit corporation,

(A) if it is a charitable corporation, to a charitable corporation with similar purposes to its own or to a government or government agency,

(B) if it is a non-charitable corporation, to another public benefit corporation with similar purposes to its own

or to a government or government agency, or

(ii) if the corporation is not a public benefit corporation,

(A) in accordance with its articles, or

(B) if there is no provision in its articles for distribution of property, rateably to its members according to their rights and interests in the corporation;

(c) in distributing the property of the corporation, debts to employees of the corporation for services performed for it due at the commencement of the winding up or within one month before, not exceeding three months' wages and vacation pay accrued for not more than 12 months, shall be paid in priority to the claims of the ordinary creditors, and the employees of the corporation are entitled to rank as ordinary creditors for the residue of their claims; and

(d) all the powers of the directors cease upon the appointment of a liquidator, except in so far as the liquidator may authorize the continuance of such powers. 2010, c. 15, s. 150 (1).

### **Distribution of property**

[\(2\)](#) Section 53 of the *Trustee Act* applies with necessary modifications to liquidators. 2010, c. 15, s. 150 (2).

### **Costs, etc., of winding up**

[151.](#) The costs, charges and expenses of a winding up, including the remuneration of the liquidator, are payable out of the property of the corporation in priority to all other claims. 2010, c. 15, s. 151.

### **Powers of liquidators**

[152.](#) (1) A liquidator may,

(a) bring or defend any action, prosecution or other civil, criminal, administrative, investigative or other proceedings in the name and on behalf of the corporation;

(b) carry on the activities of the corporation so far as may be required as beneficial for the winding up of the corporation;

(c) sell the property of the corporation by public auction or private sale and receive payment of the purchase price either in cash or otherwise;

(d) do all acts and execute all documents, in the name and on behalf of the corporation, and for that purpose use the seal of the corporation, if it has one;

(e) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the corporation;

(f) raise any requisite money upon the security of the property of the corporation;

(g) take out in the liquidator's name as liquidator of the corporation letters of administration of the estate of any deceased contributory and in the liquidator's name as liquidator of the corporation do any other act that is necessary for obtaining payment of any money due from a contributory or from a contributory's estate and which act cannot be done conveniently in the name of the corporation; and

(h) do and execute all other things that are necessary for winding up the activities and affairs of the corporation and distributing its property. 2010, c. 15, s. 152 (1).

### **Bills of exchange, etc., drawn, etc., by liquidator**

(2) The drawing, accepting, making or endorsing of a bill of exchange or promissory note by the liquidator on behalf of a corporation has the same effect with respect to the liability of the corporation as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the corporation in the course of carrying on its activities. 2010, c. 15, s. 152 (2).

### **Money deemed to be due to liquidator**

(3) If the liquidator takes out letters of administration or otherwise uses the liquidator's name as liquidator of the corporation for obtaining payment of any money due from a contributory, that money is deemed, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, to be due to the liquidator rather than to the corporation. 2010, c. 15, s. 152 (3).

### **Reliance on financial statements, etc.**

(4) A liquidator who acts in good faith is entitled to rely upon,

(a) financial statements of the corporation represented to the liquidator by an officer of the corporation or in an audit or review engagement report to present fairly the financial position of the corporation in accordance with generally accepted accounting principles; or

(b) an opinion, report or statement of a lawyer, an accountant, an engineer, an appraiser or other professional adviser retained by the liquidator. 2010, c. 15, s. 152 (4).

### **Acts by more than one liquidator**

153. If more than one person is appointed as liquidator, any power conferred by sections 123 to 165 on a liquidator may be exercised by any one or more of the liquidators as may be determined by the resolution or order appointing them or, in default of such determination, by any two or more of them. 2010, c. 15, s. 153.

### **Nature of liability of contributory**

154. The liability of a contributory creates a debt accruing due from the contributory at the time the contributory's liability commenced, but payable at the time or respective times when calls are made for enforcing that liability. 2010, c. 15, s. 154.

## **Liability in case of contributory's death**

**155.** If a contributory dies before or after having been placed on the list of contributories, the contributory's trustee, executor, administrator or other legal representative is liable in due course of administration to contribute to the property of the corporation in discharge of the liability of the deceased contributory and shall be a contributory accordingly. 2010, c. 15, s. 155.

## **Deposit of money**

**156. (1)** The liquidator shall deposit all money that the liquidator has belonging to the corporation and amounting to \$100 or more in,

- (a) a bank or authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada);
- (b) a corporation registered under the *Loan and Trust Corporations Act*;
- (c) a credit union within the meaning of the *Credit Unions and Caisses Populaires Act, 1994*; or
- (d) a retail association as defined under the *Cooperative Credit Associations Act* (Canada). 2010, c. 15, s. 156 (1).

## **Separate deposit account**

**(2)** The deposit must not be made in the name of the liquidator individually, but a separate deposit account must be kept of the money belonging to the corporation in the liquidator's name as liquidator of the corporation and in the name of the inspectors, if any, and the money may be withdrawn only by order for payment signed by the liquidator and one of the inspectors, if any. 2010, c. 15, s. 156 (2).

## **Liquidator to produce bank statements**

**(3)** At every meeting of the members, the liquidator shall produce a statement of account showing the amount of the deposits, the dates at which they were made, the amounts withdrawn and the dates of withdrawal. 2010, c. 15, s. 156 (3).

## **Same**

**(4)** Mention of the production of the statement of account must be made in the minutes of the meeting and, if it is not mentioned, that fact is admissible in evidence as proof, in the absence of evidence to the contrary, that the statement of account was not produced at the meeting. 2010, c. 15, s. 156 (4).

## **Same**

**(5)** The liquidator shall also produce the statement of account whenever ordered to do so by the court upon the application of the inspectors, if any, or of a member. 2010, c. 15, s. 156 (5).

## **Proving claim**

**157.** For the purpose of proving claims, sections 23, 24 and 25 of the *Assignments and Preferences Act* apply with necessary modifications, including by changing references to “judge” in those sections to “court”. 2010, c. 15, s. 157.

### **Application for direction**

**158.** Upon the application of the liquidator or of the inspectors, if any, or of any creditors, the court, after hearing the parties that it directs to be notified or after any steps that the court directs have been taken, may by order give its direction in any matter arising in the winding up. 2010, c. 15, s. 158.

### **Examination of persons as to estate**

**159. (1)** The court may at any time after the commencement of the winding up summon to appear before the court or liquidator any director, officer or employee of the corporation or any other person known or suspected of having possession of any of the property of the corporation, or alleged to be indebted to it, or any person whom the court thinks capable of giving information concerning its property or activities. 2010, c. 15, s. 159 (1).

### **Damages against delinquent directors, etc.**

**(2)** If in the course of the winding up it appears that a person who has taken part in the formation or promotion of the corporation or that a present or former director, officer, employee, liquidator or receiver of the corporation has misapplied or retained in that person’s own hands, or become liable or accountable for, property of the corporation, or has committed any misfeasance or breach of trust in relation to it, the court may, on the application of the liquidator or of any creditor, member or contributory, examine the conduct of that person and order that person to restore the property so misapplied or retained, or for which that person has become liable or accountable, or to contribute a sum to the property of the corporation by way of compensation in respect of the misapplication, retention, misfeasance or breach of trust, or both, as the court thinks just. 2010, c. 15, s. 159 (2).

### **Proceedings by members**

**160. (1)** If a member of the corporation desires to cause any proceeding to be taken that, in the member’s opinion, would be for the benefit of the corporation, and the liquidator, under the authority of the members or of the inspectors, if any, refuses or neglects to take the proceeding after being required to do so, the member may obtain an order of the court authorizing the member to take the proceeding in the name of the liquidator or corporation, but at the member’s own expense and risk, upon the terms and conditions as to indemnity to the liquidator or corporation as may be specified by the court. 2010, c. 15, s. 160 (1).

### **Benefits: when for members**

**(2)** Any benefit derived from a proceeding under subsection (1) belongs exclusively to the member causing the institution of the proceeding for the member’s benefit and that of any other member who has joined together in causing the institution of the proceeding. 2010, c. 15, s. 160 (2).

## **Benefits: when for corporation**

[\(3\)](#) If, before the order is granted, the liquidator notifies the court of the liquidator's readiness to institute the proceeding for the benefit of the corporation, the court shall make an order specifying the time within which the liquidator is to institute the proceeding, and in that case the advantage derived from the proceeding, if instituted within that time, belongs to the corporation. 2010, c. 15, s. 160 (3).

## **Rights conferred under Act are in addition to other powers**

[161.](#) The rights conferred by this Act are in addition to any other right to institute a proceeding against any contributory, or against any debtor of the corporation, for the recovery of any sum due from the contributory or debtor or their estate. 2010, c. 15, s. 161.

## **Stay of winding-up proceedings**

[162.](#) At any time during a winding up, the court, upon the application of a member, creditor or contributory and upon proof to its satisfaction that all proceedings in relation to the winding up ought to be stayed, may make an order staying the proceedings altogether or for a limited time on the terms and subject to the conditions that the court thinks fit. 2010, c. 15, s. 162.

## **Creditor unknown**

[163. \(1\)](#) If the liquidator is unable to pay all the debts of the corporation because a creditor is unknown or a creditor's whereabouts is unknown, the liquidator may, by agreement with the Public Guardian and Trustee, pay to the Public Guardian and Trustee an amount equal to the amount of the debt due to the creditor to be held in trust for the creditor, and subsections 167 (4) and (5) apply to the payment to the Public Guardian and Trustee. 2010, c. 15, s. 163 (1).

## **Same**

[\(2\)](#) A payment under subsection (1) is deemed to be in satisfaction of the debt for the purposes of winding up. 2010, c. 15, s. 163 (2).

## **Member's whereabouts unknown**

[164. \(1\)](#) If the liquidator is unable to distribute rateably the property of the corporation among the members of a corporation that is not a public benefit corporation because a member's whereabouts is unknown, the share of the property of the corporation of that member may, by agreement with the Public Guardian and Trustee, be delivered or conveyed by the liquidator to the Public Guardian and Trustee to be held in trust for the member. 2010, c. 15, s. 164 (1).

## **Same**

[\(2\)](#) Subsections 167 (4) and (5) apply to the property delivered or conveyed to the Public Guardian and Trustee under subsection (1). 2010, c. 15, s. 164 (2).



## Same

[\(3\)](#) A delivery or conveyance under subsection (1) is deemed to be a distribution to that member of their rateable share for the purposes of the winding up. 2010, c. 15, s. 164 (3).

## Disposal of records, etc., after winding up

[165. \(1\)](#) If a corporation has been wound up under sections 123 to 164 and is about to be dissolved, its documents and records and those of the liquidator may be disposed of,

- (a) as it by resolution directs in the case of a voluntary winding up; or
- (b) as the court directs in the case of a winding up under an order. 2010, c. 15, s. 165 (1).

## Same

[\(2\)](#) After the expiration of five years after the date of the dissolution of the corporation, no responsibility rests on it or the liquidator, or anyone to whom the custody of the documents and records has been committed, by reason that the documents or records or any of them are not forthcoming to any person claiming to be interested in them. 2010, c. 15, s. 165 (2).

## Voluntary dissolution

[166.](#) A corporation may be dissolved if it is authorized to do so by,

- (a) a special resolution passed at a meeting of the members duly called for the purpose; or
- (b) the consent of all the members entitled to vote at a meeting of the members. 2010, c. 15, s. 166.

## Articles of dissolution

[167. \(1\)](#) For the purpose of bringing the dissolution authorized under clause 166 (a) or (b) into effect, articles of dissolution must set out,

- (a) the name of the corporation;
- (b) that its dissolution has been duly authorized under clause 166 (a) or (b);
- (c) that it has no debts, obligations or liabilities or its debts, obligations or liabilities have been duly provided for in accordance with subsection (2) or its creditors or other persons having interests in its debts, obligations or liabilities consent to its dissolution;
- (d) that after satisfying the interests of its creditors in all its debts, obligations and liabilities, if any,
  - (i) if it is a public benefit corporation, it has no property to distribute or it has distributed its remaining property in accordance with its articles,

(A) if it is a charitable corporation, to a charitable corporation with similar purposes to its own or to a government or government agency,

(B) if it is a non-charitable corporation, to another public benefit corporation with similar purposes to its own or to a government or government agency, or

(ii) if it is not a public benefit corporation, it has no property to distribute among its members or it has distributed its remaining property,

(A) in accordance with its articles, or

(B) if there is no provision in its articles for distribution of property, rateably to its members according to their rights and interests in the corporation; and

(e) that there are no proceedings pending in any court against it. 2010, c. 15, s. 167 (1).

### **Creditor unknown**

(2) If a corporation authorizes its dissolution and a creditor is unknown or a creditor's whereabouts is unknown, the corporation may, by agreement with the Public Guardian and Trustee, pay to the Public Guardian and Trustee an amount equal to the amount of the debt due to the creditor to be held in trust for the creditor, and that payment is deemed to be due provision for the debt for the purposes of clause (1) (c). 2010, c. 15, s. 167 (2).

### **Member unknown**

(3) If a corporation authorizes its dissolution and a member is unknown or a member's whereabouts is unknown, it may, by agreement with the Public Guardian and Trustee, deliver or convey the member's share of the property to the Public Guardian and Trustee to be held in trust for the member, and that delivery or conveyance is deemed to be a distribution to that member of their rateable share for the purposes of subclause (1) (d) (ii). 2010, c. 15, s. 167 (3).

### **Power to convert**

(4) If the share of the property delivered or conveyed to the Public Guardian and Trustee under subsection (3) is in a form other than cash, the Public Guardian and Trustee may at any time, and within 10 years after the delivery or conveyance shall, convert it into cash. 2010, c. 15, s. 167 (4).

### **Payment to person entitled**

(5) If the amount paid under subsection (2) or the share of the property delivered or conveyed under subsection (3) or its equivalent in cash, as the case may be, is claimed by the person beneficially entitled to it within 10 years after it was so paid, delivered or conveyed, it shall be paid, delivered or conveyed to the person, but, if not so claimed, it vests in the Public Guardian

and Trustee for the use of Ontario and, if the person beneficially entitled to it at any time after the 10 years establishes a right to it to the satisfaction of the Lieutenant Governor in Council, an amount equal to the amount so vested in the Public Guardian and Trustee shall be paid to the person. 2010, c. 15, s. 167 (5).

### **Definition of “public benefit corporation”**

(6) For the purposes of subsection (1), a corporation that does not come within the definition of a public benefit corporation during the financial year in which it files articles of dissolution is deemed to be a public benefit corporation if it came within the definition during any of its three financial years preceding the financial year in which it files its articles of dissolution. 2010, c. 15, s. 167 (6).

### **Certificate of dissolution**

168. Upon receipt of the articles of dissolution, together with any prescribed documents and information and the required fee, the Director shall issue a certificate of dissolution by endorsing the articles in accordance with the regulations. The endorsed articles constitute the certificate of dissolution. 2010, c. 15, s. 168.

### **Cancellation of certificate, etc., by Director**

169. If sufficient cause is shown to the Director, despite the imposition of any other penalty for the same cause and in addition to any rights the Director may have under this or any other Act, the Director may, after having given the corporation an opportunity to be heard, make an order, upon such terms and conditions as the Director thinks fit, cancelling its certificate of incorporation or any other certificate issued to the corporation under this Act or a predecessor of this Act, and,

(a) in the case of the cancellation of a certificate of incorporation, the corporation is dissolved on the date fixed in the order; and

(b) in the case of the cancellation of any other certificate, the matter that became effective upon the issuance of the certificate ceases to be in effect from the date fixed in the order. 2010, c. 15, s. 169.

### **Notice of dissolution, non-filing**

170. (1) If a corporation fails to comply with a filing requirement under the *Corporations Information Act* or fails to pay a fee required under this Act, the Director may give notice to the corporation or by publication once in *The Ontario Gazette* that an order dissolving the corporation will be issued unless the corporation, within 90 days after the notice is given, complies with the requirement or pays the fee. 2010, c. 15, s. 170 (1).

### **Order for dissolution**

(2) Upon default in compliance with the notice given under subsection (1), the Director may by order cancel the certificate of incorporation and, subject to subsection (3), the corporation is dissolved on the date fixed in the order. 2010, c. 15, s. 170 (2).

### **Revival**

[\(3\)](#) If a corporation is dissolved under subsection (2) or any predecessor of it, the Director on the application of any interested person, may, in his or her discretion and on the terms and conditions that the Director sees fit to impose, revive the corporation; upon revival, the corporation is deemed for all purposes to have never been dissolved, subject to the terms and conditions imposed by the Director and to the rights, if any, acquired by any person during the period of dissolution. 2010, c. 15, s. 170 (3).

### **Time limit for application**

[\(4\)](#) Subsection (3) does not apply to an application made more than 20 years after the date of the corporation's dissolution. 2010, c. 15, s. 170 (4).

### **Certificate of revival**

[\(5\)](#) Upon receipt of articles of revival, together with any other prescribed documents and information and the required fee, the Director, shall, subject to subsection (3), issue a certificate of revival by endorsing the articles in accordance with the regulations. The endorsed articles constitute the certificate of revival. 2010, c. 15, s. 170 (5).

### **Definition — “interested person”**

[\(6\)](#) In this section,

“interested person” includes a director, officer, member and creditor of the corporation. 2010, c. 15, s. 170 (6).

### **Actions after dissolution**

[171. \(1\)](#) Despite the dissolution of a corporation under this Act,

- (a) a civil, criminal, administrative, investigative or other action or proceeding commenced by or against the corporation before its dissolution may be continued as if the corporation had not been dissolved;
- (b) a civil, criminal, administrative, investigative or other action or proceeding may be brought against the corporation as if the corporation had not been dissolved;
- (c) any property that would have been available to satisfy any judgment or order if the corporation had not been dissolved remains available for that purpose; and
- (d) title to land belonging to the corporation immediately before the dissolution remains available to be sold in power of sale proceedings. 2010, c. 15, s. 171 (1).

### **Service after dissolution**

[\(2\)](#) For the purposes of this section, the service of any process on a corporation after its dissolution is deemed to be sufficiently made if it is made upon any person last shown on the most recent notice or return filed under the *Corporations Information Act* as

being a director or officer of the corporation before the dissolution. 2010, c. 15, s. 171 (2).

### **Notice of action**

[\(3\)](#) A person who commences an action or other proceeding against a corporation after its dissolution shall serve the writ or other document by which the action or other proceeding was commenced on the Public Guardian and Trustee in accordance with the rules that apply generally to service on a party to an action or other proceeding. 2010, c. 15, s. 171 (3).

### **Same, power of sale proceeding**

[\(4\)](#) A person who commences a power of sale proceeding relating to land against a corporation after its dissolution shall serve a notice of the proceeding on the Public Guardian and Trustee in accordance with the notice requirements in the *Mortgages Act* that apply with respect to a person with an interest in the land recorded in the records of the appropriate land registry office. 2010, c. 15, s. 171 (4).

### **Definition**

[\(5\)](#) In this section and section 173,

“proceeding” includes a power of sale proceeding relating to land commenced pursuant to a mortgage. 2010, c. 15, s. 171 (5).

### **Liability of members to creditors**

[172. \(1\)](#) Despite the dissolution of a corporation, each member to whom any of its property has been distributed is liable to any person claiming under section 171 to the extent of the amount received by that member upon the distribution, and an action to enforce such liability may be brought. 2010, c. 15, s. 172 (1).

### **Parties to action and amount of contribution**

[\(2\)](#) The court may order an action referred to in subsection (1) to be brought against the persons who were members as a class, subject to the conditions that the court thinks fit and, if the plaintiff establishes their claim, the court may refer the proceedings to a referee or other officer of the court who may,

(a) add as a party to the proceedings before him or her each person who was a member found by the plaintiff;

(b) determine, subject to subsection (1), the amount that each person who was a member shall contribute towards satisfaction of the plaintiff’s claim; and

(c) direct payment of the amounts so determined. 2010, c. 15, s. 172 (2).

### **Definition**

(3) In this section,

“member” includes the heirs and the trustees, executors, administrators or other legal representatives of a member. 2010, c. 15, s. 172 (3).

### **Forfeiture of undisposed property**

173. (1) Any property of a corporation that has not been disposed of at the date of its dissolution is immediately upon its dissolution forfeit to and vests in the Crown. 2010, c. 15, s. 173 (1).

### **Exception**

(2) Despite subsection (1), if a judgment is given or an order or decision is made or land is sold in an action or proceeding commenced in accordance with section 171 and the judgment, order, decision or sale affects property belonging to the corporation before the dissolution, unless the plaintiff, applicant or mortgagee has not complied with subsection 171 (3) or (4),

(a) the property shall be available to satisfy the judgment, order or other decision; and

(b) in the case of a power of sale proceeding, title to the land shall be transferred to a purchaser free of the Crown’s interest. 2010, c. 15, s. 173 (2).

### **Further exception**

(3) A forfeiture of land under subsection (1) or a predecessor of subsection (1) is not effective against a purchaser for value of the land if the forfeiture occurred more than 20 years before the deed or transfer of the purchaser is registered in the proper land registry office. 2010, c. 15, s. 173 (3).

### **No notice**

(4) Despite subsection (2), if a person commences a power of sale proceeding relating to land before the dissolution of a corporation but the sale of the land is not completed until after the dissolution, the person is not required to serve the notice mentioned in subsection 171 (4) and title to the land may be transferred to a purchaser free of the Crown’s interest. 2010, c. 15, s. 173 (4).

## **PART XIII INVESTIGATION**

### **Investigation**

174. (1) On the application of a member or debt obligation holder of a corporation, without notice or on any notice that the court requires, the court may direct an investigation to be made of the corporation and any of its affiliated corporations and may,

- (a) appoint an inspector to conduct the investigation or replace an inspector and fix the remuneration of the inspector or the inspector's replacement;
- (b) determine the notice to be given to any interested person or dispense with notice to any person;
- (c) authorize an inspector to enter any place if the court is satisfied that there are reasonable grounds to suspect that there is relevant information in that place and to examine any thing and make copies of any document or record found there;
- (d) require any person to produce documents or records to an inspector;
- (e) authorize an inspector to conduct a hearing, administer oaths and affirmations and examine any person under oath or affirmation, and make rules for the conduct of the hearing;
- (f) require any person to attend a hearing conducted by an inspector and to give evidence under oath or affirmation;
- (g) give directions to an inspector or any interested person on any matter arising in the investigation;
- (h) require an inspector to make an interim or final report to the court;
- (i) determine whether a report of an inspector should or should not be made available for public inspection and, if it should be made public, order that copies be given to any person designated by the court;
- (j) require an inspector to discontinue an investigation;
- (k) require the corporation to pay the costs of the investigation; and
- (l) make any other order that it thinks fit. 2010, c. 15, s. 174 (1).

## **Grounds**

(2) The court may make an order on an application under subsection (1) only if it appears to the court that,

- (a) the activities of the corporation or of any of its affiliates are or have been carried on with intent to defraud any person;
- (b) the activities or affairs of the corporation or of any of its affiliates are or have been carried on or conducted, or the powers of the directors are or have been exercised, in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of a member or debt obligation holder;
- (c) the corporation or any of its affiliates was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose; or
- (d) persons concerned with the formation, activities or affairs of the corporation or of any of its affiliates have acted fraudulently or dishonestly. 2010, c. 15, s. 174 (2).

## **No security for costs**

[\(3\)](#) An applicant under this section is not required to give security for costs. 2010, c. 15, s. 174 (3).

### **Hearings without notice**

[\(4\)](#) The hearing of an application under this section without notice shall be closed to the public. 2010, c. 15, s. 174 (4).

### **Consent to publish proceedings required**

[\(5\)](#) No person shall publish anything relating to proceedings held without notice under this section except with the authorization of the court or the consent of the corporation being investigated. 2010, c. 15, s. 174 (5).

### **Inspector's report**

[\(6\)](#) An inspector shall give the Director a copy of every report made by the inspector under this Part which, subject to an order made under clause (1) (i) that the report not be made available for public inspection, shall be placed on the corporation file for public inspection. 2010, c. 15, s. 174 (6).

### **Order to enter a dwelling**

[175. \(1\)](#) If the place referred to in clause 174 (1) (c) is a dwelling, the court shall not make an order under that clause unless it is satisfied that,

(a) entry to the dwelling is necessary to practically obtain the information; and

(b) entry to the dwelling has been refused or there are reasonable grounds for believing that entry will be refused. 2010, c. 15, s. 175 (1).

### **Use of force**

[\(2\)](#) In acting under the authority of an order that authorizes entry to a dwelling, the inspector named in it shall not use force unless the inspector is accompanied by a peace officer and the use of force has been specifically authorized in the order. 2010, c. 15, s. 175 (2).

### **Powers of inspector**

[176. \(1\)](#) An inspector under this Part has the powers set out in the order appointing the inspector. 2010, c. 15, s. 176 (1).

### **Production of court order**

[\(2\)](#) On the request of any interested person, an inspector shall produce a copy of an order made under subsection 174 (1). 2010, c. 15, s. 176 (2).

### **Court directions on investigation**



**177.** On the application of an interested person, the court may make an order,

- (a) directing that a hearing conducted by an inspector under this Part shall be closed to the public; or
- (b) giving directions on any matter arising in the investigation. 2010, c. 15, s. 177.

### **Right to counsel**

**178.** A person whose conduct is being investigated or who is being examined at a hearing conducted by an inspector under this Part has a right to be represented by counsel. 2010, c. 15, s. 178.

### **Exchange of information**

**179. (1)** In addition to the powers set out in the order appointing the inspector, an inspector appointed to investigate a corporation may give information to, or exchange information and otherwise co-operate with, any public official in Canada or elsewhere who is authorized to exercise investigatory powers and who is investigating, in respect of the corporation, any allegation of improper conduct that is the same as or similar to the conduct described in subsection 174 (2). 2010, c. 15, s. 179 (1).

### **Restriction**

**(2)** An inspector shall not give information that was obtained from any person in the course of an investigation under this Part to a public official outside Canada unless the inspector is satisfied that the information will not be used against that person in any proceeding instituted against that person for an offence. 2010, c. 15, s. 179 (2).

### **Privilege**

#### **Absolute privilege — defamation**

**180. (1)** Any statement or report made orally, in writing or in another format by an inspector or any other person in an investigation under this Part has absolute privilege. 2010, c. 15, s. 180 (1).

#### **Solicitor-client privilege**

**(2)** Nothing in this Part shall be construed as affecting solicitor-client privilege. 2010, c. 15, s. 180 (2).

## **PART XIV REMEDIES, OFFENCES AND PENALTIES**

### **Definition**

**181.** In this Part,

“action” means an action under this Act. 2010, c. 15, s. 181.

## **Complainant**

**182.** The following persons may bring an action under section 183 or make an application under section 191 in respect of a corporation and if they do so, are referred to in this Part as a “complainant”:

1. A member, officer or director of the corporation or of any of its affiliates.
2. A person who not more than two years previous ceased to be a member, director or officer of the corporation or of any of its affiliates.
3. Any other person who, in the discretion of the court, is a proper person to make an application under this Part. 2010, c. 15, s. 182.

## **Derivative actions**

**183. (1)** On the application of a complainant, the court may make an order granting the complainant leave to bring an action in the name of and on behalf of a corporation or any of its subsidiaries, or intervene in an action to which any such body corporate is a party, for the purpose of prosecuting, defending or discontinuing the action on its behalf. 2010, c. 15, s. 183 (1).

## **Grounds**

**(2)** The court may not make an order under subsection (1) unless the court is satisfied that,

- (a) the complainant has given notice to the directors of the corporation or its subsidiary, as the case may be, of the complainant’s intention to apply to the court under subsection (1) within 14 days before bringing the application, or as otherwise ordered by the court, if the directors of the corporation or its subsidiary do not bring the action, prosecute or defend it diligently or discontinue it;
- (b) the complainant is acting in good faith; and
- (c) it appears to be in the interests of the corporation or its subsidiary, as the case may be, that the action be brought, prosecuted, defended or discontinued. 2010, c. 15, s. 183 (2).

## **Exception for a religious corporation**

**(3)** The court shall not make an order under subsection (1) if the court is satisfied that the corporation is a religious corporation. 2010, c. 15, s. 183 (3).

## **Powers of court in derivative actions**

**184.** In connection with an action brought or intervened in as a result of an application under subsection 183 (1), the court may at any time make any order that it thinks fit, including an order,

(a) authorizing the complainant or any other person to control the conduct of the action;

(b) giving directions for the conduct of the action;

(c) directing that any amount adjudged payable by a defendant in the action shall be paid, in whole or in part, directly to former or present members and debt obligation holders of the corporation or its subsidiary instead of to the corporation or its subsidiary; and

(d) requiring the corporation or its subsidiary to pay reasonable legal costs incurred by the complainant in connection with the action. 2010, c. 15, s. 184.

### **Stay, dismissal, etc., of derivative action**

#### **Members' approval of breach not determinative**

[185.](#) (1) An application made or an action brought or intervened in under this Part shall not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to the corporation or its subsidiary has been or might be approved by the members of that body corporate, but evidence of approval by the members may be taken into account by the court in making an order under section 184. 2010, c. 15, s. 185 (1).

#### **Court approval required**

[\(2\)](#) An application made or an action brought or intervened in under this Part shall not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the court given on any terms that the court thinks fit and, if the court determines that the interests of any complainant may be substantially affected by the stay, discontinuance, settlement or dismissal, the court may order any party to the application or action to give notice to the complainant. 2010, c. 15, s. 185 (2).

#### **No security for costs**

[\(3\)](#) A complainant is not required to give security for costs in any application made or action brought or intervened in under this Part. 2010, c. 15, s. 185 (3).

#### **Interim costs**

[\(4\)](#) In an application made or an action brought or intervened in under this Part, the court may at any time order the corporation or its subsidiary to pay to the complainant interim costs, including legal costs and disbursements, but the complainant may be held accountable for those interim costs on final disposition of the application or action. 2010, c. 15, s. 185 (4).

#### **Application to court to rectify records**

[186.](#) (1) If the name of a person is alleged to be or to have been wrongly entered or retained in, or wrongly deleted or omitted from, the registers or other records of a corporation, the corporation, a debt obligation holder, director, officer or member of the

corporation or any aggrieved person may apply to the court for an order that the registers or records be rectified. 2010, c. 15, s. 186 (1).

### **Powers of court**

(2) On an application under this section, the court may make any order that it thinks fit, including an order,

- (a) requiring the registers or other records of the corporation to be rectified;
- (b) restraining the corporation from calling or holding a meeting of the members before that rectification;
- (c) determining the right of a party to the proceedings to have their name entered or retained in, or deleted or omitted from, the registers or records of the corporation; and
- (d) compensating a party who has incurred a loss. 2010, c. 15, s. 186 (2).

### **Rights of dissenting members**

187. (1) Subject to subsection (8) and to section 119, if a corporation that is not a public benefit corporation resolves to,

- (a) amend its articles to add, remove or change any restriction upon the activity or activities that the corporation may carry on or upon the powers that the corporation may exercise;
- (b) amalgamate with another corporation;
- (c) be continued under the laws of another jurisdiction;
- (d) be continued under the *Co-operative Corporations Act*; or
- (e) sell, lease or exchange all or substantially all its property,

a member entitled to vote on the resolution may dissent. 2010, c. 15, s. 187 (1).

### **Exception**

(2) A member of a corporation incorporated before the day this section comes into force is not entitled to dissent under this section in respect of an amendment of a provision in the articles of the corporation to bring the provision into conformity with this Act. 2010, c. 15, s. 187 (2).

### **Objection**

(3) A dissenting member shall give the corporation, at or before any meeting at which a resolution referred to in subsection (1) is to be voted on, an objection to the resolution, unless the corporation did not give notice to the member of the purpose of the meeting or of the member's right to dissent. 2010, c. 15, s. 187 (3).

## **Same**

[\(4\)](#) The execution or exercise of a proxy does not constitute an objection for purposes of subsection (3). 2010, c. 15, s. 187 (4).

## **Notice of adoption of resolution**

[\(5\)](#) Within 10 days after the members adopt the resolution, the corporation shall give notice that the resolution has been adopted to each member who has filed an objection, but such notice is not required to be given to any member who voted for the resolution or who has withdrawn the objection. 2010, c. 15, s. 187 (5).

## **Same**

[\(6\)](#) The notice must set out the rights of the dissenting member and the procedures to be followed to exercise those rights. 2010, c. 15, s. 187 (6).

## **Demand for payment of fair value**

[\(7\)](#) A dissenting member entitled to receive notice under subsection (5) shall, within 20 days after receiving the notice, or, if the member does not receive notice, within 20 days after learning that the resolution has been adopted, give the corporation a notice containing,

(a) the member's name and address; and

(b) a demand for payment of the fair value of the member's membership interest. 2010, c. 15, s. 187 (7).

## **Member's right to be paid fair value**

[\(8\)](#) In addition to any other right the member may have, but subject to subsection (26), a member who complies with this section is entitled, when the action approved by the resolution from which the member dissents becomes effective, to be paid by the corporation the fair value of the membership interest, including any capital contribution, held by the member in respect of which the member dissents, determined as of the close of business on the day before the resolution was adopted. 2010, c. 15, s. 187 (8).

## **Limitation**

[\(9\)](#) A dissenting member who fails to comply with subsections (3) and (7) has no right to make a claim under this section. 2010, c. 15, s. 187 (9).

## **Termination of rights of dissenting member as member**

[\(10\)](#) On giving a notice under subsection (7), a dissenting member ceases to have any rights as a member other than the right to be paid the fair value of the member's membership interest as determined under this section except where,

(a) the dissenting member withdraws notice before the corporation makes an offer under subsection (11);

(b) the corporation fails to make an offer in accordance with subsection (11) and the dissenting member withdraws notice; or

(c) the directors revoke the resolution dissented to or take action to undo any action taken under the resolution,

in which case the dissenting member's rights are reinstated as of the date the dissenting member gave the notice referred to in subsection (7). 2010, c. 15, s. 187 (10).

### **Offer to pay**

[\(11\)](#) A corporation shall, not later than seven days after the later of the day on which the action approved by the resolution is effective and the day the corporation received the notice referred to in subsection (7), give each dissenting member who has given notice under subsection (7),

(a) an offer to pay for the dissenting member's membership interest in an amount considered by the directors of the corporation to be its fair value, accompanied by a statement showing how the fair value was determined; or

(b) if subsection (26) applies, a notification that it is unable lawfully to pay dissenting members for their membership interest. 2010, c. 15, s. 187 (11).

### **Same**

[\(12\)](#) Every offer made under subsection (11) for the membership interests of members of the same class must be on the same terms. 2010, c. 15, s. 187 (12).

### **Same**

[\(13\)](#) Subject to subsection (26), a corporation shall pay for the membership interest of a dissenting member within 10 days after an offer made under subsection (11) has been accepted, but any such offer lapses if the corporation does not receive an acceptance of it within 30 days after the offer has been made. 2010, c. 15, s. 187 (13).

### **Application to court to fix fair value**

[\(14\)](#) If a corporation fails to make an offer under subsection (11) or if a dissenting member fails to accept such an offer, the corporation may, within 50 days after the action approved by the resolution is effective or within such further period as the court may allow, apply to the court to fix a fair value for the membership interest of any dissenting member. 2010, c. 15, s. 187 (14).

### **Same**

[\(15\)](#) If a corporation fails to apply to the court under subsection (14), a dissenting member may apply to the court for the same purpose within a further period of 20 days or such other period as the court may allow. 2010, c. 15, s. 187 (15).

### **Costs**

[\(16\)](#) If a corporation fails to comply with subsection (11), then the costs of a member's application under subsection (15) are to be borne by the corporation unless the court orders otherwise. 2010, c. 15, s. 187 (16).

### **Same**

[\(17\)](#) A dissenting member is not required to give security for costs in an application made under subsection (14) or (15). 2010, c. 15, s. 187 (17).

### **Notice of hearing to members**

[\(18\)](#) Before making application to the court under subsection (14) or not later than seven days after receiving notice of an application to the court under subsection (15), as the case may be, a corporation shall give notice to each dissenting member who, at the date on which the notice is given,

(a) has given the corporation the notice referred to in subsection (7); and

(b) has not accepted an offer made by the corporation under subsection (11), if such an offer was made,

of the date, place and consequences of the application and of the dissenting member's right to appear and be heard in person or by counsel, and the corporation shall give a similar notice to each dissenting member who, after the date of the first mentioned notice and before termination of the proceedings commenced by the application, satisfies the conditions set out in clauses (a) and (b) within three days after the dissenting member satisfies those conditions. 2010, c. 15, s. 187 (18).

### **Parties joined**

[\(19\)](#) All dissenting members who satisfy the conditions set out in subsection (18) are deemed to be joined as parties to an application under subsection (14) or (15) on the later of the date on which the application is brought and the date on which they satisfy the conditions, and are bound by the decision made by the court in the proceedings commenced by the application. 2010, c. 15, s. 187 (19).

### **Same**

[\(20\)](#) Upon an application to the court under subsection (14) or (15), the court may determine whether any other person is a dissenting member who should be joined as a party, and the court shall fix a fair value for the membership interests of all dissenting members. 2010, c. 15, s. 187 (20).

### **Appraisers**

[\(21\)](#) The court may in its discretion appoint one or more appraisers to assist the court in fixing a fair value for the membership interests of the dissenting members. 2010, c. 15, s. 187 (21).

### **Final order**

(22) The final order of the court in the proceedings commenced by an application under subsection (14) or (15) must be rendered against the corporation and in favour of each dissenting member who, whether before or after the date of the order, complies with the conditions set out in clauses (18) (a) and (b). 2010, c. 15, s. 187 (22).

### **Interest**

(23) The court may in its discretion allow a reasonable rate of interest on the amount payable to each dissenting member from the date the action approved by the resolution is effective until the date of payment. 2010, c. 15, s. 187 (23).

### **Corporation unable to pay**

(24) If subsection (26) applies, the corporation shall, within 10 days after an order is made under subsection (22), notify each dissenting member that it is unable lawfully to pay dissenting members for their membership interests. 2010, c. 15, s. 187 (24).

### **Same**

(25) If subsection (26) applies, a dissenting member, by notice sent to the corporation within 30 days after receiving a notice under subsection (24), may,

- (a) withdraw a notice of dissent, in which case the corporation is deemed to consent to the withdrawal and the member's full rights are reinstated; or
- (b) retain a status as a claimant against the corporation, to be paid as soon as the corporation is lawfully able to do so or, in a liquidation, to be ranked subordinate to the rights of creditors of the corporation but in priority to its members. 2010, c. 15, s. 187 (25).

### **Same**

(26) A corporation shall not make a payment to a dissenting member under this section if there are reasonable grounds for believing that,

- (a) the corporation is or, after the payment would be, unable to pay its liabilities as they become due; or
- (b) the realizable value of the corporation's assets would be less than the aggregate of its liabilities as a result of the payment to the dissenting member. 2010, c. 15, s. 187 (26).

### **Members not entitled**

(27) Upon application by a corporation that proposes to take any of the actions referred to in subsection (1), the court may, if satisfied that the proposed action is not in all the circumstances one that should give rise to the rights arising under subsection (8), by order declare that those rights will not arise upon the taking of the proposed action, and the order may be subject to compliance upon the terms and conditions that the court thinks fit. 2010, c. 15, s. 187 (27).



## **Directions by court to Director**

[188.](#) The Director may apply to the court for directions in respect of any matter concerning the Director's duties under this Act and on such application, the court may give any directions and make any further order that it thinks fit. 2010, c. 15, s. 188.

## **Notice of refusal by Director**

[189. \(1\)](#) If the Director refuses to accept any document that takes effect under this Act on its acceptance or on the issuance of a certificate or other document, the Director shall give notice of the refusal to the person who sent the document, giving reasons. 2010, c. 15, s. 189 (1).

## **Deemed refusal**

[\(2\)](#) If the Director does not, within six months after receiving a document, accept the document, issue a certificate or other document or give a notice of refusal, the Director is deemed for the purposes of section 190 to have refused to accept the document. 2010, c. 15, s. 189 (2).

## **Appeal from Director's decision**

[190. \(1\)](#) A person aggrieved by any of the following decisions of the Director may appeal the decision to the Divisional Court by notice of appeal:

1. To refuse to issue a certificate by endorsing any articles or other document required by this Act to be filed with the Director.
2. To issue, or to refuse to issue, a certificate of amendment under section 12.
3. To refuse to endorse an authorization under section 116 or 117.
4. To issue an order under section 169. 2010, c. 15, s. 190 (1).

## **Notice to Director**

[\(2\)](#) The aggrieved person shall also give the notice of appeal to the Director within 30 days after the date of the Director's decision. 2010, c. 15, s. 190 (2).

## **Certificate of Director**

[\(3\)](#) The Director shall certify to the Divisional Court,

- (a) the decision of the Director together with a statement of the reasons for the decision;
- (b) the record of any hearing; and

(c) all written submissions to the Director or other material that is relevant to the appeal. 2010, c. 15, s. 190 (3).

## **Representation**

[\(4\)](#) The Director is entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section. 2010, c. 15, s. 190 (4).

## **Court order**

[\(5\)](#) Where an appeal is taken under this section, the Divisional Court may by its order direct the Director to make such decision or to do such other act as the Director is authorized and empowered to do under this Act and as the court thinks proper, having regard to the material and submissions before it and to this Act, and the Director shall make such decision or do such act accordingly. 2010, c. 15, s. 190 (5).

## **Director may make further decision**

[\(6\)](#) Despite an order of the Divisional Court under subsection (5), the Director has power to make any further decision upon new material or where there is a material change in the circumstances, and every such decision is subject to this section. 2010, c. 15, s. 190 (6).

## **Compliance or restraining order**

[191.](#) On the application of a complainant or a creditor of a corporation, the court may make an order directing the corporation or any director, officer, employee, agent, auditor, trustee, receiver, receiver-manager or liquidator of the corporation to comply with this Act, the regulations or the articles or by-laws of the corporation or restraining any such person from acting in breach of them and may make any further order that it thinks fit. 2010, c. 15, s. 191.

## **Appeals**

[192.](#) An appeal lies to the Divisional Court from any order made by the court under this Act. 2010, c. 15, s. 192.

## **Offence**

[193. \(1\)](#) Every person who contravenes a provision of this Act, other than clause 43 (2) (b), or the regulations is guilty of an offence and is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months, or to both. 2010, c. 15, s. 193 (1).

## **Offences — false or misleading statements**

[\(2\)](#) A person who makes, or assists in making, a false or misleading statement in a document required under this Act to be filed with the Director or given to any other person is guilty of an offence and liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months, or to both. 2010, c. 15, s. 193 (2).

## **Offence — use of information**

[\(3\)](#) A person who uses information obtained from a register of members or a list of members required under this Act for a purpose other than those specified in subsection 96 (5) without the permission of the member about whom information is being used is guilty of an offence and liable to a fine of not more than \$25,000 or to imprisonment for a term of not more than six months, or to both. 2010, c. 15, s. 193 (3).

## **Directors and officers**

[\(4\)](#) If a body corporate commits an offence under this section, any director or officer of the body corporate who authorized, permitted or acquiesced in the commission of the offence is a party to and guilty of the offence and is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months, or to both, whether or not the body corporate has been prosecuted or convicted. 2010, c. 15, s. 193 (4).

## **Due diligence**

[\(5\)](#) No person shall be convicted of an offence under this section if the person establishes that they exercised due diligence to prevent the commission of the offence. 2010, c. 15, s. 193 (5).

## **Order to comply**

[194. \(1\)](#) If a person is guilty of an offence under this Act, any court in which proceedings in respect of the offence are taken may, in addition to any punishment it may impose, order that person to comply with the provisions of this Act or the regulations for the contravention of which the person has been convicted. 2010, c. 15, s. 194 (1).

## **Limitation period**

[\(2\)](#) A prosecution for an offence under this Act may be instituted at any time within but not later than two years after the time when the offence was committed. 2010, c. 15, s. 194 (2).

## **Civil remedy not affected**

[\(3\)](#) No civil remedy for an act or omission is suspended or affected by reason that the act or omission is an offence under this Act. 2010, c. 15, s. 194 (3).

## **PART XV GENERAL**

## **Definitions**

[195.](#) In this Part,

“document” includes any communication required or permitted by this Act, including consents and permissions, reasons, notices and notifications, disclosures, statements by directors under subsection 27 (1) or by auditors under subsection 75 (1), dissents, objections, resolutions, an offer under section 187 and a delegation under section 206; (“document”)

“electronic”, in respect of a document, includes a document created, recorded, transmitted or stored in digital form or in other intangible form by electronic, magnetic or optical means or by any other means that has capabilities for creation, recording, transmission or storage similar to those means. (“électronique”) 2010, c. 15, s. 195.

### **Notice, etc., given to members and directors**

**196. (1)** A notice or other document required or permitted by this Act, the regulations, the articles or the by-laws to be given to a member or director of a corporation may be given to,

(a) a member at the member’s latest address as shown in the records of the corporation;

(b) a director at his or her latest address as shown in the records of the corporation or in the most recent notice or return filed under the *Corporations Information Act*, whichever is the more current. 2010, c. 15, s. 196 (1).

### **Named director presumed to be director**

**(2)** A director named in the articles or the most recent return or notice filed under the *Corporations Information Act* is presumed for the purposes of this Act to be a director of the corporation. 2010, c. 15, s. 196 (2).

### **Notice to member is returned**

**(3)** If a corporation gives a notice or other document to a member in accordance with subsection (1) and the notice or document is returned on three consecutive occasions because the member cannot be found, the corporation is not required to give any further notices or other documents to the member until the member provides the corporation with a document setting out the member’s address. 2010, c. 15, s. 196 (3).

### **Application to court**

**(4)** If it is impractical or impossible to comply with subsection (1), a person may apply to the court for such order as the court thinks fit. 2010, c. 15, s. 196 (4).

### **Notice, etc., given to corporation**

**197.** Except where otherwise provided in this Act or the regulations, a notice or other document required or permitted by this Act or the regulations to be given to a corporation may be given to the corporation at its registered office as shown on the records of the Director. 2010, c. 15, s. 197.

### **Waiver of notice and abridgement of times**

**198.** If a notice or other document is required by this Act or the regulations to be given, the person entitled to the notice or other document may waive that entitlement or may consent to abridge the time for the giving of the notice or other document at any time in the manner set out in the regulations. 2010, c. 15, s. 198.

## **Corporate certificate**

### **Who may sign**

**199. (1)** A certificate issued on behalf of a corporation stating any fact that is set out in the articles, the by-laws, the minutes of the meetings of the directors, of a committee of directors, of the members or of a committee of members, or a contract to which the corporation is a party may be signed by a director or an officer. 2010, c. 15, s. 199 (1).

### **Evidence**

**(2)** When introduced as evidence in any civil, criminal, administrative, investigative or other action or proceeding,

(a) a certificate referred to in subsection (1);

(b) a certified extract from a register of a corporation required to be maintained by this Act; or

(c) a certified copy of minutes or extract from minutes of a meeting of the members or a committee of members or directors or a committee of directors,

is, in the absence of evidence to the contrary, proof of the facts so certified without proof of the signature or official position of the person appearing to have signed the certificate. 2010, c. 15, s. 199 (2).

### **Register as evidence**

**(3)** An entry in a register of members is, in the absence of evidence to the contrary, proof that the person is a member of the corporation. 2010, c. 15, s. 199 (3).

### **Examination, etc., of documents kept by Director**

**200. (1)** A person who has paid the required fee is entitled during regular office hours to examine and to make copies of or take extracts from any document required by this Act or the regulations to be filed with or given to the Director, except an inspector's report given to the Director under subsection 174 (6) that the court has ordered not to be made available to the public. 2010, c. 15, s. 200 (1).

### **Copies**

**(2)** Subject to an order made under clause 174 (1) (i) that an inspector's report made under subsection 174 (6) not be made available to the public, the Director shall, upon receipt of the required fee, give any person a copy or a certified copy of a document required by this Act or the regulations to be given to the Director. 2010, c. 15, s. 200 (2).

## **Date of certificates**

**201. (1)** A certificate issued under this Act, other than a certificate of arrangement, must be dated as of the day the Director receives the articles, together with all other documents and information required by this Act or the regulations and the required fee, or as of any later date acceptable to the Director and specified by the person who submitted the articles or by the court. 2010, c. 15, s. 201 (1).

## **Effective date**

**(2)** A certificate issued under this Act is effective on the date shown in the certificate even if any action required to be taken by the Director under this Act with respect to the issuance of the certificate is taken at a later date. 2010, c. 15, s. 201 (2).

## **Errors in certificates, etc.**

**202. (1)** If a certificate or other document issued or endorsed under this Act or letters patent, supplementary letters patent or any other document issued or endorsed under a predecessor of this Act contains an error, the corporation or a director or member of the corporation may apply to the Director for a corrected certificate or other document and shall surrender the certificate or other document and the related articles or documents to the Director. 2010, c. 15, s. 202 (1).

## **Same**

**(2)** If the Director is aware that a certificate or other document issued or endorsed under this Act or letters patent, supplementary letters patent or any other document issued or endorsed under a predecessor of this Act contains an error, he or she may request that the corporation surrender the certificate or other document and the related articles or documents and, upon the request being made, the corporation shall surrender the requested certificate or other document and the related articles or documents to the Director. 2010, c. 15, s. 202 (2).

## **Director to endorse corrected certificate, etc.**

**(3)** After giving the corporation an opportunity to be heard in respect of an error described in subsection (1) or (2) and if the Director is of the opinion that it is appropriate to do so and is satisfied that any steps required by the Director have been taken by the corporation, the Director shall endorse a corrected certificate or other document. 2010, c. 15, s. 202 (3).

## **Date on certificate**

**(4)** A corrected certificate or other document endorsed under subsection (3) may bear the date of the certificate it replaces. 2010, c. 15, s. 202 (4).

## **Appeal**

**(5)** A decision of the Director under subsection (3) may be appealed to the Divisional Court, which may order the Director to

change his or her decision and may make any further order that it thinks fit. 2010, c. 15, s. 202 (5).

### **Form of Director's records**

**203. (1)** Records required by this Act to be prepared and maintained by the Director may be in paper form, in electronic form or in photographic film form, or may be entered or recorded by any system of mechanical or electronic data processing or information storage that is capable of reproducing required information in an accurate and intelligible form within a reasonable time. 2010, c. 15, s. 203 (1).

### **Admission as evidence**

**(2)** If records maintained by the Director are prepared and maintained other than in written form,

(a) the Director shall give any copy required to be given under subsection 200 (2) in intelligible written or other form; and

(b) a report reproduced from those records, if it is certified by the Director is, without proof of the office or signature of the Director, admissible in evidence. 2010, c. 15, s. 203 (2).

### **Copy in lieu of document**

**(3)** The Director is not required to produce any document if a copy of the document is given in compliance with clause (2) (a). 2010, c. 15, s. 203 (3).

### **Copy of document acceptable**

**204. (1)** If a notice or other document is required to be filed with or given to the Director under this Act, the Director may accept a copy of it. 2010, c. 15, s. 204 (1).

### **Exception**

**(2)** Unless otherwise provided in the regulations, subsection (1) does not apply to articles, to applications or to documents relating to the name of the corporation that are required by the regulations to be filed under subsection 9 (1). 2010, c. 15, s. 204 (2).

### **Affidavits, etc., required by Director**

**205.** The Director may require any fact relevant to the performance of the Director's duties under this Act or the regulations to be verified by affidavit or otherwise. 2010, c. 15, s. 205.

### **Delegation of Director's powers and duties**

**206. (1)** The Director may delegate any of the Director's duties or powers under this Act to any public servant employed under Part III of the *Public Service of Ontario Act, 2006*. 2010, c. 15, s. 206 (1).

## **Execution of certificate of Director**

(2) If this Act requires or authorizes the Director to endorse or issue a certificate or to certify any fact, the certificate may be signed by the Director or any public servant employed under Part III of the *Public Service of Ontario Act, 2006* designated by the regulations. 2010, c. 15, s. 206 (2).

## **Director's certificate as evidence**

(3) A certificate referred to in subsection (2) or a certified copy of it, when introduced as evidence in any civil, criminal, or administrative, investigative or other action or proceeding, is, in the absence of evidence to the contrary, proof of the facts so certified without personal appearance to prove the signature or official position of the person appearing to have signed the certificate. 2010, c. 15, s. 206 (3).

## **Mechanical reproduction of signature**

(4) For the purposes of subsections (2) and (3), any signature of the Director or of a public servant may be printed or otherwise mechanically or electronically reproduced. 2010, c. 15, s. 206 (4).

## **Non-application**

(5) Subsections (2), (3) and (4) do not apply to certificates that are in electronic form. 2010, c. 15, s. 206 (5).

## **Transition**

### **Amendment of letters patent, etc., to conform to Act**

207. (1) A corporation may, by articles of amendment, amend any provision in its letters patent, supplementary letters patent, by-laws or special resolution to bring the provision into conformity with this Act. 2010, c. 15, s. 207 (1).

### **Deemed amendment**

(2) Any provision in letters patent, supplementary letters patent, by-laws or any special resolution of a corporation that was valid immediately before the day this section comes into force and that has not been amended to bring it into conformity with this Act is deemed, on the third anniversary of the day this section comes into force, to be amended to the extent necessary to bring the provision into conformity with this Act. 2010, c. 15, s. 207 (2).

### **Restated articles**

(3) A corporation shall not restate its articles under section 109 unless the articles of the corporation are in conformity with this Act and, if the articles have been deemed to be amended under subsection (2), the corporation has amended the provisions in its articles in accordance with subsection (1). 2010, c. 15, s. 207 (3).

## **Regulations**



**208.** The Minister may make regulations,

1. respecting and governing the content, form and filing of articles, applications and other documents and information, including prescribing documents and information required to be filed with the Director together with articles and applications;
2. respecting and governing the endorsement of articles and applications and the issue of certificates by the Director, including rules respecting endorsement and the issue of certificates by electronic means;
3. prescribing restrictions in respect of corporations' purposes;
4. governing corporations' names, including prescribing rules and requirements respecting their form and language, prescribing permitted words, expressions, punctuation and other marks and prescribing prohibited words, expressions, punctuation and other marks;
5. governing the form and manner in which any notice or other document required or permitted to be made or given under this Act is to be made or given;
6. governing the form of documents required or permitted to be made, given, filed, kept or retrieved under this Act, including prescribing rules respecting the making, giving, filing, keeping and retrieval of electronic documents, and rules in respect of electronic signatures;
7. designating articles and other documents to be filed,
  - i. in paper or electronic format,
  - ii. in electronic format alone, or
  - iii. in paper format alone;
8. prescribing technology standards and requirements for filing electronic documents with and giving electronic documents to the Director, a corporation, the members, directors and officers of a corporation or any other person;
9. prescribing and governing the methods of giving notice and giving or filing other documents to or with the Director, a corporation, the members, directors and officers of a corporation or any other person, including prescribing rules respecting deemed receipt;
10. governing the publication of the Director's standard organizational by-laws under subsection 18 (2);
11. governing the report to be made by auditors and other persons under section 78, including prescribing the standards, as they exist from time to time, of a prescribed accounting body that must be used for the purposes of Part VII;
12. prescribing information to be contained in the registers of directors, officers and members kept by a corporation

under subsection 92 (1);

13. governing waivers and abridgments of time under section 198, including prescribing the manner in which waivers and abridgments of time may be made;

14. providing for the waiver of any signature requirements and for requirements for the execution of articles, applications or statements to be filed with the Director that require the signature of one or more persons;

15. designating public servants employed under Part III of the *Public Service of Ontario Act, 2006*, or classes of them, who may sign documents for the Director for the purpose of the definition of “certified copy” in subsection 1 (1) and for the purpose of section 206;

16. authorizing the Director to enter into an agreement with any person respecting the use, disclosure, sale or licensing of records required under this Act and prescribing terms and conditions for any such agreement;

17. prescribing any matter referred to in this Act as prescribed or that is required or permitted to be done in accordance with or as provided in the regulations for which a specific power is not otherwise provided;

18. prescribing any matter that the Minister considers necessary or advisable for the purposes of this Act. 2010, c. 15, s. 208.

## Fees

[209.](#) (1) The Minister may, by order,

(a) require the payment of fees for search reports, copies of documents or information, filing of documents or other services under this Act and may set the amount of those fees;

(b) specify the circumstances in which any fees previously paid may be refunded in whole or in part. 2010, c. 15, s. 209 (1).

## Same

[\(2\)](#) Part III (Regulations) of the *Legislation Act, 2006* does not apply to an order made under subsection (1). 2010, c. 15, s. 209 (2).

## Forms

[210.](#) The Director may require that forms approved by the Director be used for any purpose under this Act. 2010, c. 15, s. 210.

## PART XVI (OMITTED)

[211.](#) Omitted (amends, repeals or revokes other legislation). 2010, c. 15, ss. 211.

## PART XVII (OMITTED)

[212.-248.](#) Omitted (amends, repeals or revokes other legislation). 2010, c. 15, ss. 212-248.

### **PART XVIII (OMITTED)**

[249.](#) Omitted (provides for coming into force of provisions of this Act). 2010, c. 15, s. 249.

[250.](#) Omitted (enacts short title of this Act). 2010, c. 15, s. 250.

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[Français](#)

[Back to top](#)