

OVERVIEW OF AHOA AND ONCA REQUIREMENTS THAT INFLUENCE THE OAAS CONSTITUTION, ARTICLES AND BY-LAWS DOCUMENT

This overview provides some important details in the AHOA and ONCA legislation documents. It may help explain some of the different by-laws and their wording in the draft “OAAS Constitution, Articles and By-laws” document.

IMPORTANT: If you have any questions about the content of the “OAAS Constitution, Articles and By-laws” document, e.g. why something was included, excluded, or wording, please email: Vince Brennan, Executive Director, at vince@oaasfairs.com so that he can respond to your questions prior to the September 25th Special Meeting.

NOTE: the draft “OAAS Constitution, Articles and By-laws” document contains a number of footnotes that link to the specific sections of the AHOA and/or ONCA regulations that the By-law relates to.

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

As per the AHOA Section 6, Articles must contain organization’s name, its purpose, and the location of its head office, and type of organization.

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

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

Resources

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

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

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

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

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

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

A)What information must be in the Articles?

We have been informed by OMAFRA that the items ONCA required in Articles should not be included in the Articles but should continue to be included in By-laws as per AHOA regulations.

AHOA Requirements

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

- a) *the name of the organization to be incorporated;*
- b) *the type of organization; AHOA Section 25(2)*
- c) *the objects for which the organization is to be incorporated; AHOA Section 28*
- d) *the place in Ontario where the registered office of the organization is to be located;*
- e) *the names and addresses of one or more proposed first directors;*

- f) *the names and addresses of the members of the organization; and*
- g) *any other matter required by this Act or the regulations to be set out in the articles.* AHOA section 6.

As s. 6(e) and (f) relate to the date of incorporation they do not change for an organization. Nothing has been prescribed under s. 6(g). The objects required by s. 6(c) are set out in the AHOA Section 28

The articles do not need to be updated as part of this process unless the organization changes its name, its organization type under the AHOA, its office location or if organization objects are modified or added.

Bylaw changes that are unrelated to the Articles of Incorporation do not require provincial government approval. OMAFRA's approval is required only for changes to the Articles of Incorporation.

B) By-laws – what is required

These are examples but **are not a complete list** of by-laws are required to be compliant under the AHOA and ONCA:

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

- AHOA - time and place of the annual meeting shall be set out in a by-law of the organization. R.S.O. 1990, c. A.9, s. 10 (2).
- AHOA -The number of directors, their representation of certain districts or classes of members, and their method of selection shall be set out in the by-laws of the organization. R.S.O. 1990, c. A.9, s. 11 (2)
- AHOA - Subject to subsection 11 (3), the officers of the organization shall be appointed in the manner set out in the by-laws of the organization. R.S.O. 1990, c. A.9, s. 11 (4)
- AHOA- the by-laws must set out or refer to the society policy that defines the annual membership fee. "by paying the annual fee set out in a by-law of the society" R.S.O. 1990, c. A.9, s. 32. **NOTE: this section does not apply to Agricultural Association such as the OAAS.**
- ONCA – The by-laws of a corporation must set out the conditions required for being a member of the corporation, including whether a corporation or other entity may be a member. 2010, c. 15, s. 48 (1).
 - how membership ends
 - how to withdraw or transfer classes (ONCA default – membership is transferred back to organization) 2010, c. 15, s. 48 (1) (3).

2) MANDATORY REQUIREMENTS– The following are a mandatory requirement of either AHOA or ONCA. These requirements will apply whether or not they are included in the by-laws. We have included a number of them so directors and members are aware of them.

- AHOA indicates *that an organization must appoint a treasurer or a secretary-treasurer* R.S.O. 1990, c. A.9, s. 11 (3).
- AHOA – indicates that *a meeting of the board shall be called by the secretary upon the direction of the president or of any three members of the board by sending notice thereof to all the members of the board at least seven days before the time fixed for the meeting.* R.S.O. 1990, c. A.9, s. 14. This appears to indicate that the AHOA requires an organization to have a president. The previous legislation (OCA) required the organization to elect/appoint a president and a secretary; ONCA does not have the same requirement., however the organization may wish to include in their by-laws that they will elect/appoint a president and secretary.
- AHOA – The organization must hold annual meetings not more than fifteen months after the holding of the last preceding annual meeting or such other time as Director may approve. R.S.O. 1990, c. A.9, s. 10 (1)
- AHOA - A meeting of the board shall be called by the secretary upon the direction of the president or of any three members of the board by sending notice thereof to all the members of the board at least seven days before the time fixed for the meeting. R.S.O. 1990, c. A.9, s. 14.
- AHOA - Any person may join an agricultural society by paying the annual fee set out in a by-law of the society but no person under the age of eighteen years is eligible to vote at meetings of the society. R.S.O. 1990, c. A.9, s. 32. . **NOTE: this section does not apply to Agricultural Associations such as the OAAS.**

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

3) **DEFAULT REQUIREMENTS: The following are default requirements – they apply automatically. If an organization wants to modify these requirements, the modification must be included in the organization's by-laws or the default applies.**

- ONCA default – chair must be a director, but unless the by-laws state otherwise, officers other than the chair, do not have to be directors. 2010, c. 15, s. 42 (1) (2).
- **ONCA default is that directors and officers do not have to be members of a non-profit corporation/association.** If the **non-profit corporation/association** requires the directors and officers to be members, the by-laws must state that. 2010, c. 15, s. 23 (2)
- **ONCA default is that a person may hold more than one officer position** (i.e. secretary and treasurer or chair and president). If the **non-profit corporation/association** does not want to allow a person to hold more than one office, the by-laws must state that. 2010, c. 15, s. 42 (1) (2).
- **ONCA default is that 10% of voting members can call a special members' meeting. The non-profit corporation/association can stipulate in their by-laws that less than 10% is required but cannot stipulate that more than 10% is required.**
- **Quorum – ONCA default for members' meetings is majority (50% +1) of eligible voting members. If the non-profit corporation/association wishes to set a different quorum, it must be indicated in the by-laws.** 2010, c. 15, s. 57 (1)
OAAS has maintained the 100 voting members as a quorum

- **Quorum – ONCA default is that quorum must be present at start of a members’ meeting but does not have to be present for entire meeting.** If the non-profit corporation/association wants a quorum to be present for the entire meeting, it must be stated in the by-laws. 2010, c. 15, s. 57 (2).
OAAS has gone with the default and has included that information in the by-laws
- **ONCA default is that members have the right to attend members’ meetings by electronic or telephonic means. If the non-profit corporation/association wants to have the option to refuse that request and/or determine if a meeting will be in-person only, or held electronically or telephonically or hybrid, those details must be included in the by-laws.** 2023, c. 9, Sched. 22, s. 4.
OAAS has included the option that if the meeting can be attended electronically/telephonically, the information will be contained in the “Notice of Meeting” that is sent to the members. If it’s not included, there is no option to attend that specific meeting electronically/telephonically
- **ONCA default – members can vote by mail, electronically, by phone or in person unless the by-laws say otherwise.** 2023, c. 9, Sched. 22, s. 6.
- **ONCA default – quorum for directors/board meeting is majority (50% + 1) of directors.** If the non-profit corporation/association wants the quorum to be different, it must be included in the by-laws. 2010, c. 15, s. 34 (2); 2017, c. 20, Sched. 8, s. 15.
- **ONCA default – subject to the articles or by-laws, the directors may meet in-person, or meeting may take place partly or entirely electronically or telephonically.** 2023, c. 9, Sched. 22, s. 3 (2).
- **Unless the non-profit corporation/association articles or bylaws state otherwise, ONCA default allows directors to borrow money, issue or sell bonds, mortgage property on behalf of the organization without getting approval from the members.**
- **Unless the articles or by-laws state otherwise, ONCA default allows directors to add, change or remove most by-laws.** If the directors do have this right, those changes must be approved at the next members’ meeting. 2010, c. 15, s. 17 (1); 2017, c. 20, Sched. 8, s. 11.
- ONCA default – how membership may be terminated. 2010, c. 15, s. 50 (1).
- **ONCA default – Record date. If the organization does not set a record date, then section 54(3) comes into effect as to determining members that are entitled to vote and the other purposes listed under section 54(1).**

Note: Record date cannot be set more than 50 days before the day of the event or action (54(2))

Record date

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

- determining members entitled to receive notice of a meeting of the members;
- determining members entitled to vote at a meeting of the members;
- determining members entitled to participate in a liquidation distribution; or
- 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,

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

4) MUST HAVE BY-LAWS – if the non-profit corporation/association wants to have the right to do any of the following actions, that action must be included in the by-laws.

- **If the non-profit corporation/association wants to be able to discipline or remove a member, they must include information on the reasons and process in their by-laws, otherwise the non-profit corporation/association does not have the ability to discipline or remove a member.** 2010, c. 15, s. 51 (1).
- **Are corporations or other entities to be eligible for membership?** To be eligible for membership, it must indicate it in the bylaws 2010, c. 15, s. 48 (1).
- **AHOA now allows societies/associations to reimburse directors, officers and members for services in other capacities Section 13(2). To do that, it must be included in the by-laws.** Societies that have charitable status will need to follow CRA requirements re reimbursing directors and officers.
- **ONCA allows ex-officio directors (i.e. Past President, Homecraft President), but the by-laws must clearly state it.** 2010, c. 15, s. 23 (4)
- ONCA default is that members do not have the right to proxy voting. If an organization wants members to have a right to proxy voting, it must stipulate it in the by-laws. FYI - ONCA has a number of rules that must be followed regarding proxy voting if the by-laws allow it. 2017, c. 20, Sched. 8, s. 16

5) OTHER REQUIREMENTS

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

C) Other Information re the revised Constitution, Articles and By-laws

1. Removal of Service Members

Previous OAAS Constitution and by-laws included a class of members called Service Members. They did not have voting rights. There had been previous discussions about renaming them as Service Providers as it was felt the term better described the role of these business and groups. It was felt that the annual fee was paid was for the opportunity for our Service Members/Providers to advertise and promote their businesses to our member agricultural societies and that providing a list of Service Providers was a service we provided to our members.

The first ONCA legislation had a provision that would have allowed non-voting members the right to vote on certain resolutions of an organization. The Board decided that that was a legitimate reason to move ahead with recategorizing our current Service Members (non-voting) as Service Providers and removing them as members of the Association in the revised Constitution, Articles and By-laws.

2. Retention of Associate Members

It was felt that we should continue to include the Associate Members class as per definition of an 'Associate Member', these members support the work of our Association and our member Agricultural Societies in Ontario.

3. Chair versus President

The AHOA requires that an organization select a President, while the ONCA stipulates that the Board shall elect a Chair. Unless the by-laws state otherwise, the President and Chair can be the same person.

We were advised that the proper definitions/terms are “Chair of the Board” and “President of the Association” (or “President of the Society”).

D) Other interesting information from the ONCA Legislation

Disclosure: conflict of interest

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

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

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

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

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

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

Members' approval

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

Voting Rights

Voting rights — one class or group

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

Same — two or more classes or groups

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

One vote per member

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

Termination of membership

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

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

Instructions re attending meeting by telephonic, etc. means

(1.2) If a person may attend a meeting of the members by telephonic or electronic means, the notice of the meeting must include instructions for attending and participating in the meeting by the telephonic or electronic means that will be made available for the meeting, including, if applicable, instructions for voting by such means at the meeting. 2023, c. 9, Sched. 22, s. 5 (1).

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

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

Examples of conflict between AHOA and ONCA:

- Items in Articles – Only include the items listed under AHOA Section 6 and not those specified under ONCA.
- Corporations Information Act does not apply (AHOA s.3(2))
- Notice of annual meetings of members must be two weeks in advance (AHOA s.10(3))
- Audited financial statements (AHOA s.11(5))
- Board meetings require seven days notice (AHOA s.14)
- Society membership shall be open subject to a fee (AHOA s.32,38)
- Subject to the approval of the Director, all money and assets remaining after the payment of debts shall be disposed of by the trustees in such manner as they may determine. (AHOA s. 20 (3)).