

ONCA and the Agricultural and Horticultural Organizations Act

How do ONCA and AHOA relate?

What does ONCA mean for your bylaws and articles?

What does ONCA require A&HS to do?

Presented by:

Benjamin Miller

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Your guide to law in Ontario



Justice pas-à-pas

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Nonprofit Law Ontario

Rules and tools for organizations



Housekeeping

There will be a period for questions at the end of each section, but feel free to ask questions throughout by unmuting or typing in the chat.



Disclaimer

This presentation is:

- **general legal information** – it isn't legal advice tailored for your specific situation.
- **For agricultural and horticultural societies** – if your society also has a corporation under Ontario's Corporations Act see one of our other presentations.
- **about law not best practices** – Just because something is legal doesn't mean it's a good idea.
- **about law not funder expectations.**



Land Acknowledgement

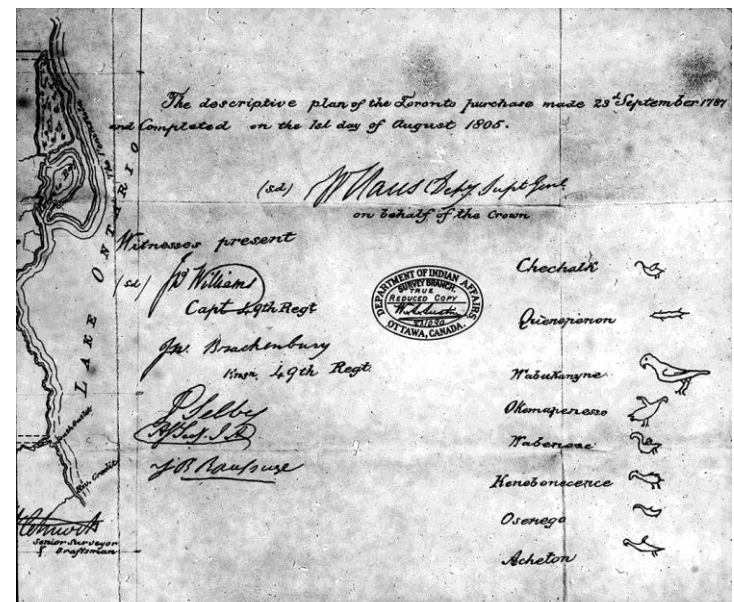
We acknowledge that since time immemorial the land on which we live and work has been the home and traditional territory of Indigenous Peoples, including the Mississaugas of the Credit, Haudenosaunee and Wyandot, and is now home to many diverse First Nations, Inuit, and Métis relatives. CLEO's work is also carried out across the many traditional territories of this land that is also known as Ontario. We acknowledge our privilege as well as our role in the systems of colonization.

CLEO staff are learning to be better allies by participating in training about the systemic nature of anti-Indigenous racism in Canada. We are strengthening ties to Indigenous-serving organizations in order to produce information and resources that reflect the experience of Indigenous Peoples, and develop training that is more relevant for and accessible to Indigenous Peoples.

Dish With One Spoon v Treaty 13



Vs.





Key Terms

ONCA: The legislation that most nonprofits incorporated under provincial law will need to follow. It replaces Ontario's Corporations Act.

Governing Documents:

- **Articles of Incorporation:** The document in whatever form that first officially recognized you as being a corporation. You may call it the letter of incorporation.
- **Bylaws:** Also known as constitution. Document explaining your governance rules. May also be called a constitution.

Key people:

- **Members:** The people who are called members in your bylaws or who have governance powers like electing the directors or appointing the auditor.
- **Directors:** Elected by the members or appointed because of office. Directors oversee management of nonprofit.
- **Officers:** Appointed for specific job like President, Secretary, or Treasurer.



Why Care About the ONCA?

- 1) Opportunity to revisit your governance**
- 2) Some new things are possible**
- 3) Funders may ask**
- 4) Avoid confusion later on**

There are no ONCA police, so don't worry!



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How do ONCA and AHOA relate?

Follow AHOA in case of conflict

Public Benefit Corporations

Ontario Business Registry



Follow AHOA in Case of Conflict

Other laws or regulations, or charity law take precedence over ONCA when there is a conflict.

- **Conflict:** When you cannot follow both laws.

Examples of conflict between AHOA and ONCA:

- Corporations Information Act does not apply (AHOA s.3(2))
- Notice of annual meetings of members must be two weeks in advance (AHOA s.10(3))
- Audited financial statements (AHOA s.11(5))
- Board meetings require seven days notice (AHOA s.14)
- Membership shall be open subject to a fee (AHOA s.32, 38)



Public Benefit Corporations (PBCs)

A nonprofit is a PBC if it:

- is a registered charity, or
- receives more than \$10,000 in:
 - **grants or financial assistance** from the government
 - **gifts or donations** from sources other than members, directors, officers, or employees

Every year a nonprofit qualifies, the next year it is a PBC.

PBCs:

- **Financial review:** PBCs have their own financial review standards, but since AHOA, AHOA must be followed.
- **Dissolution:** If they dissolve, PBCs can only give their property to government or a similar PBC (applies for three years). This is in addition to what AHOA requires.
- **Paying directors:** ONCA says nonprofits can't have more than a third of its directors be employees (including ex-officio directors). This is in addition to the restriction in AHOA that A&HS can only pay the treasurer, secretary-treasurer, or secretary.



Ontario Business Registry

Benefits of the new online registry:

- look up Ontario corporations online
- make your annual filings and change your articles online
- shorten the response to real time
- automatically share information with the Public Guardian and Trustee, but not Canada Revenue Agency

There are glitches so watch out!



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What does ONCA mean for your bylaws and articles?

Possible Changes to Bylaws

Possible Changes to Articles



Possible Changes to Bylaws

Here are 5 examples of things that might need to change:

- You must appoint a **chair**.
- Do you want **corporations** to be eligible for membership?
- If you have **multiple member classes** you must say
 - how to join the class
 - how membership ends
 - how to withdraw or transfer classes
- Do you want members holding less than **10%** of votes to be able to call a members' meeting?
- Do you want members to have a **right to proxy** voting?



Possible Changes to Articles

Examples of things that might need to change:

- **Purposes:** Do they reflect your organization's goals?
- **Number of Directors:** Minimum 3. Can be a range.
- **Membership classes and voting rights:** If you have more than one class this must be listed in the articles.
- **Restrictions on nonprofit's powers:** borrowing, selling key assets.



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What steps do nonprofits need to take to comply with ONCA?

ONCA Compliance Timeline

Get your Books in Order

Reviewing Bylaws and Articles

Amending Bylaws

Amending Articles for AHOA corporations

Amending Articles for pre-AHOA corporations



ONCA Compliance Timeline

October 19, 2021: ONCA took effect

Until October 18, 2024: Old (valid) articles and bylaws continue to be valid whether they comply with ONCA or not.

October 19, 2024 and beyond: Letters patent and bylaws automatically changed to comply with ONCA, except key provisions such as:

- number of directors
- member classes and voting rights
- dissolution clauses

Take-away: To avoid confusion, transition in next 3 years.



Get Your Books in Order

Collect the following documents:

- Letters patent and supplementary letters patent
- Bylaws
- Minute books (can be virtual)
- Special resolutions
- Directors and officers register
- Director consent forms
- Members register
- Annual revenue



Reviewing Bylaws

Involve the people who will have to live with the rules not just the keepers.

Method 1: Drafts ONCA compliant bylaws from scratch

- OAAS may be updating their templates
- CLEO bylaw builder and guide provide useful guidance (not specific to A&HS)

Method 2: Make changes to existing bylaws

- CLEO “How to Adjust Existing Bylaws” (remember that AHOA wins in case of conflict)



Amending Bylaws

Disclaimer: If your bylaws say a different process, follow that, but your members always have the final say.

Typical process:

1. **Board approval:** Changes are valid until next members' meeting.
2. **Members meeting:**
 1. **Notice:**
 1. 2 weeks for AGMs at least 10 days for special members meetings
 2. must provide sufficient detail for members to make up their mind
 2. **Quorum:** 51% of members or other % set in your bylaws
 3. **Vote:** Members approve, reject, or change by 51% or other % set in bylaws
3. **File with government:** Registered charities file bylaws with CRA.



Amending Articles (orgs incorporated under AHOA)

- 1) **Follow same internal approval process as bylaws**, but you need 2/3 voting member support.
- 2) AHOA requires you to **get the approval of OMAFRA Minister**.
- 3) ONCA requires you to **file articles of amendment with Ministry of Government and Consumer Services**. There are 3 ways to file:
 - **Ontario Business Registry:**
 - **CompanyKey:** Ask and they will mail it to you
 - **ONe-Key:** Sign up online
 - **ServicesOntario Account:** Sign up online
 - **Mail:** you go to the Forms Repository (still need a Company Key).
 - **Intermediary:** Dye & Durham or ESC Corporate Services



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Amending Articles (orgs incorporated under AHOA)

The exact method is not clear. More research is needed.

Some options to think about:

- Transitioning without changing articles
- Continuing under ONCA

Stay tuned for resources or seek legal advice.



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Questions?

Benjamin.miller@cleo.on.ca

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