



**MEDIA ARTS NETWORK  
OF ONTARIO  
RÉSEAU DES ARTS  
MÉDIATIQUES DE L'ONTARIO**

## **DEVELOPING GOVERNANCE CAPACITY:**

A Strategic Approach to the Governance Responsibilities for  
Media Arts Organizations in Ontario

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**[mano-ramo.ca](http://mano-ramo.ca)**

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## **DEVELOPING GOVERNANCE CAPACITY: One Size Does Not Fit All**

The Media Arts Network of Ontario/Réseau des arts médiatiques de l'Ontario (MANO/RAMO) is a provincial arts service organization (PASO) with a mandate to develop and foster a unified and responsive provincial network for Ontario media arts organizations and the independent artists they represent. MANO/RAMO currently represents over 50 organizations in Ontario.

Structurally, the membership of MANO/RAMO is diverse: most are small/mid-size enterprises (SMEs), a few are larger, and on occasion they are huge (e.g. TIFF); some are galleries, some production/rental centres, and some are festivals/presenters; some are artist-run centres or collectives who may also have artist-members as staff, board or as committee members; some are run by volunteers, some by staff; some are project-based and not incorporated.

What they have in common is that they operate as entities/organizations - the vast majority incorporated as not-for-profits, and many are also registered as charities: as such, they are assumed to share certain common features in their structure, governance and operations.

With support from Canada Council's *Leadership for Change* program, MANO/RAMO identified a need for resource materials to support the evolving governance needs of its members; at the forefront of this was a recognition that the Province of Ontario was intending to proclaim the Ontario Not-for-Profit Corporations Act (ONCA 2010) to replace the outdated Ontario Corporations Act (OCA, circa 1907).

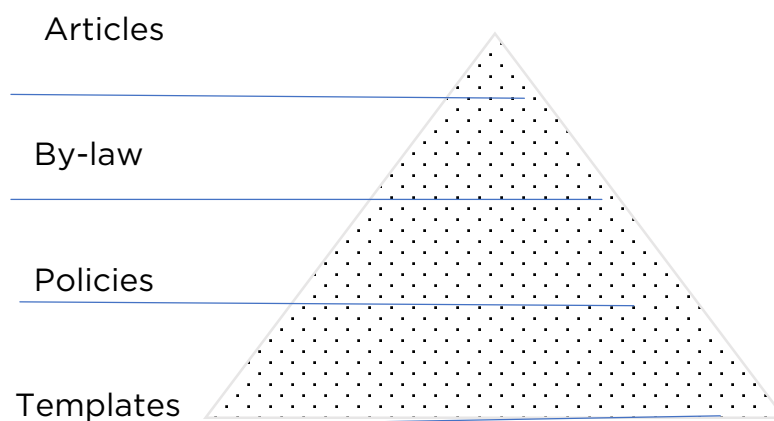
For a series of workshops and consultations across the province (Toronto, Kitchener/Waterloo, Ottawa, North Bay), MANO/RAMO contracted consultant Jerry Smith (GM, First Stage) to lead a discussion for arts managers and board members about updating by-laws to comply with anticipated changes in the forth-coming Ontario Not-for-profit Corporations Act (ONCA). In addition to exploring advice on compliance and challenges faced in traditional artist-run organizations, the workshops also served as a consultation for how media arts organization envision governance models that fit their needs.

In addition to providing tools to support their ongoing work on their by-laws and governance, the consultation also provided opportunities to share templates and guidelines encompassing how the diverse organizing models in the media arts can reach compliance relatively painlessly.

## STRATEGY FOLLOWS STRUCTURE

If a group operates as an organization or is incorporated, it has already had the conversation about the benefits and costs of becoming incorporated (a *not-for-profit, non-share-capital, corporate* entity), and so the vast majority of MANO/RAMO members share a certain hierarchical structure with articles/objects and vision/mandate at the top, managed by a board of directors as outlined in a constitution that is supported by a range of governance policies, best practices and templates.

In not-for-profit corporation jargon, **Articles**<sup>1</sup> are at the pinnacle; they inform all other decisions, including the number and rights of membership categories. Serving the Articles is the **By-Law** (aka constitution), the “rules of engagement,”<sup>2</sup> the how-to manual of membership, governance, board and committees, meetings, voting . . . and how to amend the by-law in the future if desired. Changes to a by-law require the support and approval of the membership and will take a general membership meeting. The next layer of structural integrity is found in the **Policies** that flesh out and detail the by-law as well as many elements that may not be in the by-law. A policy is established - and may be changed - by the Board of Directors. At the base of this relationship, healthy organizations will also have, or have access to best practice **Templates** (examples at MANO website <https://mano-ramo.ca/resources/studies/>) that walk an organization step-by-step through a variety of templates and policies).



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<sup>1</sup> Articles under the new Ontario Not-for-Profit Corporations Act (ONCA) replace your original objects, letters patent, supplementary letters patent, special resolutions and by-laws.

<sup>2</sup> One of those odd things about a robust, clear by-law is that you rarely need it until you need it, and then if you don't already have it, there will be problems.

Organizational members of MANO/RAMO are likely to treat their incorporation documents, by-law/constitution and policies as a *one . . . and done* deal – “did it right in the first place, we do not need to go back and keep on doing it all over again, there are other more important aspects of our existence we should be addressing.”

While that thought has some validity, there are trigger circumstances inside (e.g. strategic organizational shift from a production centre to a programming or festival) and outside the organization (e.g. the legal and regulatory framework is changing and failure to update could mean having to operate under a new default by-law.) you ignore at your own peril. Best practices recommend that a Board review these governance issues every 3 – 4 years, if only to reaffirm nothing is wrong.

## The ONTARIO NOT-FOR-PROFIT CORPORATIONS ACT (ONCA 2010)

While it has been long-recognized that the corporate and regulatory structure of the not-for-profit sector in Ontario needed change (the current act dates back unrevised or updated in excess of five decades), it has been a long road – replete with stops and starts, twists and turns – to build the momentum necessary to bring about concrete changes. (See attached: ONCA Timeline)

The challenges are complex, and the steps required may feel complicated, but the not-for-profit sector found a collective voice<sup>3</sup> both in support of the need for change and as a champion of bringing about productive, proactive change that would address failures in the earliest drafts of the legislation.

The impact of ONCA and its enabling legislation (Bill 154) are significant, and highlights include:

- As of January 13, 2018, incorporated not-for-profits have the same rights as an individual under the law, rather than the rights claimed as part of its letters patent;
- Articulation of simplified incorporation process and a clear and permanent definition of a **public benefit corporation** based on purpose and not on revenue source;
- More clarity and direction about the definition of membership classes and their rights (however, the sections giving some non-voting classes limited rights to vote, or a collective veto have been delayed for at least 3 years after ONCA fully takes effect);
- Not-for-profits are no longer required to give members proxy voting rights unless their by-law says so;
- Increased ease and access for meetings and notice to be delivered electronically;
- the definition of “telephonic or electronic means” is expanded to allow filing, storage, transmission and searching of documents in electronic format;
- Notice that not-for-profits can earn a profit (commercial activities where there is an excess of revenue over expenses, such as memberships, tickets, food & beverages, sponsorship) *if the surpluses are reinvested to support the organization’s NFP purposes*;

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<sup>3</sup> The Ontario Nonprofit Network (ONN) - an independent network focused on policy, advocacy, and services to create positive change for Ontario’s nonprofits and charities.

- Easier to waive an **audit** and use a **review engagement** when annual revenues totals fall below specified thresholds (\$100,000);
- Increased likelihood that future directors can be recruited without having to become a member of the organization, as long as the by-law allows it;
- Members should not be allowed to pass binding resolutions on Boards of Directors;
- Greater flexibility to remove troublesome Directors;
- Other legislation (e.g. Income Tax Act) and CRA trumps ONCA.

### **Bill 154; Cutting Unnecessary Red Tape Act, 2017**

As of November 2017, the provincial government finally passed enabling legislation (Bill 154, a replacement for Bill 85 that had died when an election was called); although Bill 154, Cutting Unnecessary Red Tape Act<sup>4</sup> was not about ONCA, it contained several provisions that were prerequisites of ONCA being proclaimed, including such options as:

- holding membership meetings electronically, if your by-law supports it;
- sending meeting notices electronically (as long as a minimum of 10 days notice);
- electing directors who are not members;
- removing directors if a majority of members vote in favour and your by-law supports it;
- waiving an audit in any year revenue fall below \$100,000 if 80% of members agree.

When ONCA does come fully into play, it will impact close to 50,000 non-share capital corporations in Ontario. At the moment (January 2018), MANO/RAMO members have three options:

1. Do nothing now and wait until ONCA comes in (targeted, but not guaranteed, for January 2020, and complete the task by the end of 2022 . . . along with everyone else);

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<sup>4</sup> Bill 154 received the bulk of awareness largely because it raised the minimum wage for Ontario; but it also addressed several key issues concerning employment law in Ontario.



2. Initiate changes to their governance structure and upgrade their documents now based on the information available,<sup>5</sup> and making additional changes if they become necessary;
3. Move from being incorporated in Ontario to the Federal corporate jurisdiction through a continuance.<sup>6</sup>

*Is Incorporation in the federal sector an alternative while the Ontario law (ONCA) is still working its way through all the steps required?*

The simple answer is yes, an Ontario-based NFP could become incorporated federally; if it is a new incorporation, the Canada not-for-Profit Corporation Act (CNCA) is workable. For a NFP that is already incorporated in Ontario seeking to switch to federal incorporation, the process is called a continuance. However, a continuance is neither cheap nor simple, particularly if the organization also has charitable status, and would require navigation through the Ontario Public Guardian and Trustee, the Ontario Ministry of Government and Consumer Affairs, Corporations Canada (part of Innovation, Science and Economic Development) as well as the Charities Directorate of the Canada Revenue Agency.

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<sup>5</sup> The Centre for Legal Education in Ontario/CLEO ( <http://nonprofitlaw.cleo.on.ca/>) and the Not-For-Profit Incorporator's Handbook (<https://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/nfpinc/>) from Ontario's Ministry of the Attorney General are excellent resources.

<sup>6</sup> Information on the requirements for continuance of a corporation under the Canada Not-for-profit Corporations Act/CNCA can be found at: <https://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs05200.html>

## WHAT'S THE DIFFERENCE BETWEEN *MEMBERSHIP* & . . . *membership*?

The term membership is often confusing or misapplied in the not-for-profit sector, as it has more than one meaning. In **Governance** terms, membership is the equivalent of ownership of the organization; according to ONCA, membership is to be specified in the Articles as to type and number of membership categories, and which or how many of these are voting or non-voting classes of membership.

As part of the governance structure of an organization, the definition of a member (membership in the aggregate) is specified in the Articles, articulated in the by-Law, fleshed out by the policies of the organization and supported by the templates and best practices (membership forms, for example). As part of the governance structure, it also requires the agreement of the membership at a general meeting (e.g. AGM,) having received sufficient notice, to change direction.

There is real power, leverage in membership as part of your governance: membership is defined – rights, responsibilities, requirements. According to ONCA, it is possible to have a single class of membership, and that class has the right to vote; alternatively, if there is more than a single class of membership, at least one class must have the right to vote, although multiple classes may in fact have the right. This is specified in your Articles. Articles and the by-law prescribes whether a Director must be a member (or become a member upon election), has a right to vote, a right of proxy vote, notice of meeting, access to the membership lists.

ONCA allows for multiple governance membership classes, including:

1. OPEN Membership enables all those who support the organization's vision, mission and values to become a voting member. This allows for an increased transparency and accountability, offers opportunities for increased stakeholder participation and opens opportunities for increased donations and support. In contrast, open memberships also raise concerns about risk for vulnerable members (a member could track an individual through membership information access), raises the potential of increased admin costs for large memberships and individual members are not legally bound to support the "best interests" of the entity, leading perhaps to conflicts between open members versus *elected Directors who are governed by that legal, fiduciary duty to serve the best interests of the entity.*

2. SEMI-OPEN memberships allow for a by-law to specify conditions to be met by members, such as criteria for membership (e.g. as an individual, organization, corporation), or an application process to be followed whereby members must agree to support a code of conduct and failure to do so could lead to discipline or exclusion.
3. SELF-PERPETUATING membership under ONCA allows the option to limit membership to the elected Directors whereby the Directors, as the membership, elect any new directors. This allows for centralized and streamlined decision making, contributing to a minimization of administrative costs and ensuring that the members will not disagree with the Directors – as they are one-and-the-same. In the eyes of some funders and supporters, this could lead to a loss of transparency and accountability, a narrow base and viewpoint of stakeholders, and the perception that the organization is a private club. Thus, the perception - if not the reality - of a conflict of interest becomes an issue, often seen in those that operate as an artist-run-centre.
4. SINGLE membership makes sense in the circumstances where membership can be limited to a sole supporting organization, where your organization is an offshoot or project of a founding organization – ONCA allows members to be organizations and entities as well as individuals, and this can be articulated in the by-law. As a subset or a start-up, this provides for board accountability and a low administration burden but does not provide much in the way of transparency and access.
5. Under a REPRESENTATIVE membership structure, directors are one class (voting) of membership, and additional voting classes consist of members who are elected by, and represent, different classes of stakeholders (such as different art forms, regional distribution, youth or diverse cultural representatives.)
6. HYBRID membership offers some flexibility; for example, the board members could be the only voting class while all others would be seen more as supporters who support the mission and the work, but do not want the burden of responsibility to fall upon their shoulders. For example, a festival organization can be governed by its board, but festival goers still have access, offer input and support. This would strengthen the sense of belonging for audiences, a sense of

privilege with notice for example, but no expectation of needing to attend an AGM, vote or be accountable.

(Not yet fully resolved by ONCA, non-voting classes of a hybrid membership may be allowed to vote on “fundamental issues,” such as changes in mission, mergers or dissolution.)

On the other hand, in **Marketing** terms, membership is also an important source of operating support for MANO/RAMO and its members – recognized as earned revenue, such as membership fees. This is marketing talk, not governance. Organizations have recognized that they can deliver on the differing needs of different individuals and groups through their programming mix (programs, services, benefits). For example, a paid membership could give a member access to equipment rentals or editing suites, discount prices on publications and workshops, and access to studio and showcase opportunities. An organization may choose to differentiate membership categories based on various requirements: status – lower prices for seniors, students and youth, as well as discounts for couples and families; rights – levels of access through full, basic and associate categories; some may include individuals as a membership category, and others offer group, organizational or corporate categories; some use metaphorical categories to distinguish (e.g. *professional, connoisseur, friend, supporter, champion and patron.*)

As marketing, this flexibility is valued as a strategic management tool. It gives operational authority to remain flexible, to differentiate in response to the marketing adage: *different strokes for different folks*. With planning from staff, and support from board and committees, the pricing of these categories and the level and variety of benefits associated with them can contribute significantly to sustainability; to change the price point or introduce a new category as a response to needs in the marketplace is something that can happen within an operational (annual) cycle, a decision made by the Board as long as the by-law is silent on the issue..

If, however, MANO/RAMO organizations want those membership categories established for marketing and/or pricing purposes, and they refer to them as membership classes, they need to be prepared to identify them in their Articles, prescribe them in their by-law and expand and clarify through their policies as classes of membership, and – probably – non-voting classes. Under ONCA, even non-voting member classes may have rights as a class to veto changes to that class and that would include how members qualify for that class (such as the price that they pay), as well as such fundamental issues as mergers or the sale of key assets.

ONCA requires organizations to provide a free copy of the articles and by-law to any member who asks; members are also entitled to view

and purchase copies of financial statements, and membership lists, including names and addresses. To do so, a member must sign a formal undertaking that they will not use the information for personal benefit, but only to communicate with the membership, to try to influence the membership through advocacy.

Under ONCA, individual members have more power. It is easier under ONCA for a smaller quota of members to put forward ideas, bind and nominate directors – 10% of members can request and get a special meeting; 5% of members can nominate a director; a small minority of members can stack a meeting, plan a hostile takeover, or cause a shift in direction.

The best line of preventive defense is clarity in your governance structure – Articles, By-law, Policy, best practices - you could add qualifications for membership, or a drop-dead date for members to be eligible to vote, or a member's code of conduct.

## DIRECTORS <sup>7</sup>

A board of directors (aka trustees) is an essential element of the governance structure, composed of individuals (Directors) who have been elected by the membership to represent the interests of the membership, and *serve the best interests of the organization over their own personal interests*. Directors must act honestly and in good faith to serve the best interests of the corporation, and must exercise the care, diligence and skill that a reasonably careful person would exercise in similar circumstances. To be a Director in Ontario, an individual must be at least 18 years of age, a person who has not been found incapable of managing property under either the Substitute Decisions Act (1992) or the Mental Health Act, who has not been found incapable by any court in Canada or elsewhere and is not a bankrupt.

### Terms

According to ONCA, Directors can be elected for a one-year term, or up to a (new) maximum of four-year term; Directors can also have renewable terms. Experience and research indicates that the rigmarole of a one-year term is more trouble than it is worth, offering no sense of strategic planning or continuity based on a revolving one-year cycle, that 2-year or 3-year terms can be more effective – as could be the option under ONCA for a 4-year term.

The key is to find the right balance between the length of a term (2 or 3 years), and a maximum number of successive terms to provide the organization with a sense of stability, continuity and sustainability. There is, however, value to ensuring that your by-law does specify a maximum length of time for an individual on a board to avoid the real risk of deadwood. (e.g. the number of successive terms before they are required to step off the Board for some period, such as a year.)

### Number

Although there is no single, right number, ONCA requires that all public benefit corporations must have a minimum of three directors (and the number needs to be stated in the Articles – thus making it less flexible to change than previously), and no more than one third of directors may be employees. (Not for Profit corporations have some flexibility of having paid

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<sup>7</sup> Many of these topics were introduced in “A Better Practices Guide to Board Governance for Media Arts Organizations in Ontario, 2016;” ([https://mano-ramo.ca/wp-content/uploads/2016/03/Guide-3-Board-Governance\\_0229.pdf](https://mano-ramo.ca/wp-content/uploads/2016/03/Guide-3-Board-Governance_0229.pdf)) on the MANO/RAMO website.

staff who are members; registered charities have virtually no opportunity of ‘paying’ a board, committee or staff member because of conflict of interest requirements.

ONCA now also specifically allows organizations to establish a range for board size (a minimum of 3, a maximum to be established.) Recent research indicates boards are becoming smaller (less than 10 members, optimal around 7 members) not larger, for several reasons – it’s easier to schedule a smaller number of individuals, conversations are generally shorter and more focused with smaller groups. If the workload increases to a point that more volunteer labour is required, a committee can provide an effective solution.

Establishing an odd number as a board maximum has been seen as a method for ensuring there is never a tied vote that could require<sup>8</sup> that the chair either abstains from all votes or gets an extra vote to break a tie; and setting a range (a minimum and a maximum number for the board rather than a single, fixed digit).

Establishing a staggered pattern of on-boarding new members each year lies behind the insight that it could be destabilizing if a majority (or all) of a board had to be replaced at the same anniversary date/time, thus leading to a board that lacks corporate memory, continuity, experience and stability. Often, the reality is that individual directors come and go as their lives and careers demand.

When continuity and corporate muscle memory of what has worked, or what hasn’t, is seen as bringing some strength and sustainability to a board, one solution that a by-law can offer is to maintain a structural role for the outgoing President at the end of their term by including a Past-President as an ex-officio (non-voting) members of the board as well as the Executive Committee.

The best advice is to determine the work to be done, the skills sets required to carry out the work effectively and efficiently, and then ensure you have what you need through strategic, annual board performance evaluation, recruitment, orientation, training and ongoing support.

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<sup>8</sup> By-laws often provide a Chair with the ability to cast a tie-breaking second vote; best practices would require that an important issue or topic that led to a stalemate is a vote that should be lost, perhaps brought back at a later date when the issue is better understood and supported by a majority.

## Officers

One of the first acts of a newly elected Board is the appointment of its officers, those individuals on the Board who are designated specific roles beyond the fiduciary responsibilities, in effect, the Board's management team. The traditional officer positions include those of President, Secretary and Treasurer.<sup>9</sup>

One person may hold more than one officer position (e.g. chair + president, secretary + treasurer), where the **role** of Chair is the senior officer of the Board, and the President is the lead of the Executive Committee. A key to succession planning for a board and its officers is the post of Vice-Chair/Vice-President, where this is a strategic commitment for the VP to step up into the top leadership position. As well, continuity - bench strength - for the Board can be enhanced by establishing the Past President as a non-voting (ex officio) role. An officer's term often matches that of the board membership so that officers are part of the cycle of renewal in leadership.

## Removal & Vacancies

Members can remove a director by ordinary resolution at a special meeting, unless they are a director appointed because they hold a specific office, or they are a director of a class and then only the members of that class can decide.

A director's position may also become vacant - the incumbent resigns, dies, no longer meets the requirements, or is removed. The vacancy can be filled by the Board for the balance of the term or left vacant if the term is running out - as long as the by-law does not say otherwise.

## Quorum

A quorum is the minimum number of votes (Directors, Members) required for a decision; ONCA sets that a quorum for director's meetings is a majority (50% + 1) of the directors you have, or the minimum number of directors you are required to have; quorum for membership meeting should be set in the by-law and set at a level that is going to be effective -

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<sup>9</sup> The fact that ONCA requires a minimum of three members on a board is tied to regulatory requirements that there be a chair/president, a secretary and a treasurer as they have prescribed regulatory responsibilities around reporting and governance.



setting a high rate quorum for a province-wide organization would likely have trouble meeting that standard.

### **Director Compensation or Reimbursement**

ONCA allows a director to be reimbursed for reasonable, legitimate and approved expenses for duties carried out as a director on behalf of the organization, such as travel, *per diems*, accommodation.

ONCA also allows not-for-profits to pay directors for work carried out, *but registered charities are not. Directors in Ontario charities cannot receive salaries, stipends, grants, honorariums or consulting fees from charities without a court order.* In appropriate circumstances, payment for services other than as a director may be allowed by Court Order under Section 13 of the Charities Accounting Act, when it is in the charity's best interest.

## COMMITTEES

A Committee is a sub-set of a Board of Directors, a way of bringing additional resources to address a task without inflating the Board. All too often, new recruits are parachuted onto the Board after a vigorous (perhaps rushed?) search and recruitment to the Board – and half of them leave before the end of their term. Why? Research has indicated that the new recruits were overwhelmed; they say the recruiters did not lie, but they were unable to communicate the complexity, the sophistication, the passion you find on a media arts organization’s Board. The new recruits never really felt—were made to feel—comfortable.

However, if we recruited new skills to the committee structure – a bite size, task-oriented work group – the capacity to learn is enhanced immediately, everyone at a committee (both the unpaid and the underpaid) is an equal, and made more comfortable by the work done. Like a “farm team” to a professional sports franchise (Go, \*\*\*\*\*, Go), the committee system should become the recruiting and training source for future Directors to the Board.

An enabling clause in the by-law<sup>10</sup> establishes that there are committees, and then a governance policy fleshes out the details (as a Board policy, committees can be changed by the Board and does not require permission of the membership.)

Not all committees are alike.

- standing committees are those most likely to be in all organizations, and could include the Executive Committee and the Finance (aka Audit) Committee;
- operating committees are those most commonly associated with standard operational functions, such as some form of Marketing/Outreach/Communications/Social Media/Membership Committee as well as those committed to resource development, including Fundraising/Development/Sponsorship, etc.
- finally, there are those operations that are more short term, or task oriented so that an ad hoc committee or task force makes more sense (for example, event management for a one-off event, gala or exhibition, or the nominations function that could very well be carried out by the Executive Committee.)

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<sup>10</sup> Sample: The Directors shall establish committees to meet strategic objectives, as established in the annual planning process. Committees may be led by Chairs or Co-Chairs who have been appointed by the Board and are responsible to the Board for the efficiency and effectiveness of the committee. All committees shall have at least one (1) elected Director on the committee.

## Governance versus Working Boards: Distinction

For all practical purposes, boards function as both *governance* and *working*; collectively, the Board is ultimately responsible for the governance of the organization, while the individual Board members – most often in collaboration with staff and other volunteers at a committee level – plan and execute the tasks required to get the work done to achieve the strategic goal established by the Board.

Thus, the distinction between a Policy Board and a Working Board is often one of perspective. When an individual member sits as part of the leadership collective (the Board), their governance role requires them to deliver on the vision through their leadership, policy development and financial oversight. As a committee member, however, that same board member sits as an equal, a peer on the committee, to develop consensus with both volunteers and staff around the optimal action plans (steps) to deliver that vision.

Every committee will have at least one board member on it (often, but not necessarily as the committee's chair) to bring committee reports, proposals or motions to the Board, having ensured that the committee in its planning and analysis endeavours was informed about the policy/strategic directions set by the Board.

## By-Law

By early 2020 (estimated), the requirements of the new Ontario Not-for-Profit Corporations Act will come into play and some 50,000+ Ontario NFPs will have up to three years to amend their by-law to become compliant with ONCA. Failure to accomplish this by the deadline means that such a corporation will automatically fall under the default by-law that ONCA has prepared.

One of the side benefits of having taken so long to get to a resolution is that resources have been developed, including a version of a draft by-law laid out as a decision-tree; all the issues need to be addressed, but different organizations will require different approaches.<sup>11</sup>

Prepared by the Centre for Legal Education in Ontario (CLEO), with investment from the Provincial government and based on the default by-law the province has drafted, this tool examines each section of the Ministry of Consumer Services (MCS) sample organizational by-law, it identifies what is mandatory and what is optional, and offers sample language to meet the differing needs of a wide range of NFPs.

## Legal Advice

CLEO has also compiled a directory of not-for-profit or charity lawyers in Ontario who are knowledgeable about Ontario's *Not-for-Profit Corporations Act, 2010* (ONCA) to help make the transition. (<http://nonprofitlaw.cleo.on.ca/onca-legal-help/lawyer-directory/> ).

CLEO has not vetted these lawyers, nor can they recommend any lawyers. They can, however, provide tips for choosing a lawyer (<http://nonprofitlaw.cleo.on.ca/onca-legal-help/choosing-a-lawyer/> ).

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<sup>11</sup> [http://nonprofitlaw.cleo.on.ca/wp-content/uploads/2014/05/ONCA\\_SampleBylaw\\_FINALrev.pdf](http://nonprofitlaw.cleo.on.ca/wp-content/uploads/2014/05/ONCA_SampleBylaw_FINALrev.pdf)

## **POLICIES:**

As identified earlier (Strategy Follows Structure), a solid base of policies and procedures makes not-for-profits healthier; a good policy ensures compliance with law and regulations (internal as well as external); policies provide a level of control within a setting that benefits from delegation from boards to staff, staff to volunteers; effective policies lead to increased transparency and accountability, reducing the element of risk.

Policies are simple, clear statements of how your organization intends to deal with how it delivers its programs, services, operations; effective policies act more as a set of guidelines and principles, rather than a list of regulations; procedures (and their accompanying templates) outline how each policy will be delivered and supported, a more specific outline of who does what, when and how.

While the development of policies and procedures do take some time and thought, they pay off with future benefits that obviate the time-wasting exercise of trying to address the same issue again and again.

### **Conflict of Interest Policy**

Although the wish list for possible policies is long, one of the most common is the requirement for a Conflict of Interest Policy,<sup>12</sup> and the varying implications from funders depending on categorization (e.g. individual artists, versus collectives; Artist-Run-Centres versus festivals; organizations with staff on boards).

For example, the Ontario Arts Council requires all grant applicants to address this issue:

#### **Does your organization have a conflict of interest policy?**

If yes, attach a document detailing your organization's conflict of interest policy for the board/governing body/advisory committee. This policy should address, as relevant: programming work by board and staff members or close relatives of board or staff members; relatives of staff serving as board members; and staff members serving as board members (please note that for charities, this requires either a court order or an order-in-council under Ontario's Charities Accounting Act.

If no, explain how your organization manages conflict of interest for its board/governing body/advisory committee, addressing as relevant: programming work by board or staff members or close relatives of board or staff members; relatives of staff serving as board members; and staff members serving as board members (please note that for charities, this requires either a court order or an order-in-council under Ontario's Charities Accounting Act.)

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<sup>12</sup> <http://www.arts.on.ca/oac/media/oac/About%20Us/Accountability%20and%20Governance/OAC-Conflict-of-Interest-Policy-1.pdf>

## Disclosure Policy

### Objective:

To permit [organization] to manage potential conflicts of interest, to enforce disclosure, conduct operations, and maintain a code of ethics that everyone in the organization abides by. This policy aims to protect the integrity of the organization's decision-making process, to enable our constituencies to have confidence in our integrity, and to protect the integrity and reputations of volunteers, staff and board members.

### Definitions:

A conflict of interest is a situation in which an individual has separate and potentially competing interests or a duality of interests that could have negative consequences on the interests of the not-for-profit.

**Actual:** A conflict arising from a financial transaction, competition, business transaction, exchanging of privileges/confidential information; between the individual board members and the organization where the individual expects to gain.

**Perceived:** A conflict that is not actual in nature but may appear a conflict of interest by external constituents.

**Individual:** Individual interests may also include those interests of your business or other not-for-profit affiliations, family and/or significant other, employer, or close associates who may receive a benefit or gain.

### Conflict of Interest exists if Board of Director members:

- exchanged privileged/confidential information which provides the individual and other parties with a financial gain;
- participates as a Board of Directors member in organizations with similar mandates;
- works for municipal, provincial or federal funding agencies;
- no Board members will be paid, other than reimbursements of eligible expenses;
- no board or staff artwork will be programmed.

Note: a member is asked to provide a written acknowledgement from their employer/supervisor stating that they are not in conflict with their respective organization, where the member's spouse/partner/family participates as a board member or works as staff, where input or judgement, for any other reason, provides an inability to assess pertaining matters objectively.

## Procedures

- Conflicts need not prevent a board member from joining, but they should be transparent from the start;
- Upon joining the board, all board members must sign a declaration (see below) that will disclose any conflicts of interest and guarantees to keep the best interests of the organization in mind as long as they serve on the board;
- During meetings, a Board member is to declare a conflict of interest before there is any discussion on the item in the agenda; such disclosure is to be reflected in the minutes; voting rights shall be revoked; a decision to absent the member during the discussion may be required;
- Should issues arise from a disclosure, the conflict disclosed is up for review. A proposal for review is to be presented to the Board President at the meeting. If, after hearing the proposal and making such further investigation as may be warranted in the circumstances, the Board of Directors determines the member's conflict of interest in question is not in the best interest of the organization, the Board member will be asked to resign.

### **CONFLICT OF INTEREST DECLARATION<sup>13</sup>**

The standard of behaviour is that all staff, volunteers and board members avoid conflicts of interest between the interests of the organization on the one hand, and personal, professional and business interests on the other. This includes disclosing potential and actual conflicts, as well as perceptions of conflicts of interest. I understand that the purposes of this policy are to protect the integrity of the gallery's decision-making process, to enable our constituencies to have confidence in our integrity, and to protect the integrity and reputations of volunteers, staff and board members. Upon or before election, hiring or appointment, I will make a full written disclosure of interests, relationships and holdings that could potentially result in a conflict of interest. In the course of meetings or activities, I will disclose any interests in a transaction or decision where I (including my business or other not-for-profit affiliations), my family and/or significant other, employer, close associates all receive a benefit or gain. I understand that this policy is meant to supplement good judgement, and I will respect its spirit as well as its wording.

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

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<sup>13</sup> Samples of this template, and others (Director Consent to Act, Code of Conduct for Directors, Director's Confidentiality Agreement) are available at: [https://mano-ramo.ca/wp-content/uploads/2016/03/Guide-3-Board-Governance\\_0229.pdf](https://mano-ramo.ca/wp-content/uploads/2016/03/Guide-3-Board-Governance_0229.pdf)  
MANO-RAMO, 1137 Dupont Street West, Toronto, ON, M6H2A3  
Last updated: May 29, 2018

## Step-by-Step ONCA Transition<sup>14</sup>

As soon as early January 2020, some 50,000+ not-for-profit organizations in Ontario will need to take the steps necessary to become compliant with the requirements of the Ontario Not for Profit Corporations Act (ONCA 2010), and they need to have finished the tasks by January 2023.

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<sup>14</sup> A detailed version of this can be found on the Ministry's website at:  
<https://www.ontario.ca/page/not-profit-corporations-act-transition-considerations#section-7>



## APPENDICES

### Ontario Not-For-Profit Corporations Act (ONCA, 2010) Timeline

2023, Jan. 1	(Projected) 3-year deadline for all Ontario NFPs to convert to use of ONCA by design, or by default
2020, Jan. 1	Earliest (projected) deadline date for NFPs required to act upon ONCA changes with 3 years to complete
2018, Jan. 1	Audit requirements change for not-for-profits with revenue under \$100,000
2017, December	Government announces ONCA expected to take effect early 2020
2017, Nov. 14	Bill 154 received Royal Assent, comes into effect
2017, Sept. 14	Bill 154; <i>Cutting Unnecessary Red Tape Act, 2017</i> introduced
2014, June	Ontario election called, Bill 85 off the agenda
2014	Hard deadline for national corporations to have transitioned over to CNCA or lose status
2013, June	Bill 85 introduced to make technical changes required
2011	<i>Canada NFP Corporation Act (CNCA)</i> passed
2010, October	Bill 65; <i>Ontario Not-for-Profit Corporations Act 2010 (ONCA)</i> passed, but not proclaimed
2007	Consultation began with sector (shifted ministries 3 times)
1950s	Last revisions to OCA for not-for-profits
1917	Not-for-profit legislation providing social clubs for veterans
1907	<i>Ontario Corporations Act (OCA)</i>

## Glossary<sup>15</sup>

**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, purpose, address of the corporation's registered office and classes or groups of members and the voting rights of each class or group (if applicable). If a corporation's articles conflict with ONCA or its regulations, the provision in ONCA or its regulations take priority.

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** 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.

**Indemnification** is compensation a corporation gives to its directors and officers for costs or expenses caused by lawsuits because 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”)** - a meeting of the members which the directors must call annually.

**Special meeting** - directors may call a special meeting of the members at any time. (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.

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.

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<sup>15</sup> These terms are defined on the Ministry website (<https://www.ontario.ca/page/guide-not-profit-corporations-act-2010> )

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. **A charitable corporation** is automatically a public benefit corporation by definition. For more information, refer to [section 1](#) 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.

**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](#) 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](#) of ONCA.

**Remuneration** is payment – such as a salary that a director, officer or employee of a corporation receives – for fulfilling their work, duties or responsibilities.

A **review engagement** can be done in place of an audit in certain circumstances and is a review of a corporation’s finances performed by a person permitted to do so under the *Public Accounting Act* 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.

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.

## Workshop Handout: Governance Wishlist <sup>16</sup>

### A. ARTICLES

- Objects, letters patent
- Certificate of continuation
- Mission, Vision, Mandate, Values

### B. BY-LAW ONTARIO'S NOT-FOR-PROFIT CORPORATIONS ACT (2010)

#### SECTION 1 GENERAL

1. Definitions
2. Interpretation
3. Severability & Precedence
4. Seal
5. Execution of Contracts

#### SECTION 2 DIRECTORS

1. Election and Term(s)
2. Vacancies
3. Filling Vacancies
4. Committees
5. Remuneration (NFP vs. Charity)

#### SECTION 3 BOARD MEETINGS

1. Calling of meetings
2. Regular Meetings
3. Notice
4. Chair
5. Voting (Quorum, Deciding Vote)
6. Participation by Telephone or Other Communications facility

#### SECTION 4 FINANCIAL

1. Banking
2. Financial Year

#### SECTION 5 OFFICERS

1. Officers
2. Office Held at Board's Discretion
3. Duties
4. Duties of the Chair
5. Duties of the President
6. Duties of the Treasurer
7. Duties of the Secretary

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<sup>16</sup> The following was provided to workshop participants NOT as an agenda, but a wish-list of topics and issues that ONCA might stimulate a governance discussion about.

## **SECTION 6 PROTECTION OF DIRECTORS AND OTHERS**

1. Protection of Directors and Officers (Indemnification; D&O liability insurance)

## **SECTION 7 CONFLICT OF INTEREST**

1. Conflict of Interest
2. Charitable Corporations

## **SECTION 8 MEMBERS<sup>17</sup> (Not same as supporters)**

1. Members
2. Membership
3. Disciplinary Act or Termination of Membership for Cause

## **SECTION 9 MEMBERS' MEETINGS**

1. Annual Meeting
2. Special Meeting
3. Notice
4. Quorum
5. Chair of Meeting
6. Voting of Members
7. Adjournments
8. Persons Entitled to be Present

## **SECTION 10 NOTICES**

1. Services
2. Computation of Time
3. Error or Omission in Giving Notice

## **SECTION 11 ADOPTION AND AMENDMENTS OF BY-LAWS**

1. Amendments to By-law

### **C (a) POLICY DOCUMENTS (Risk Management)**

Board Handbook  
HR Handbook  
Operations Handbook

### **C (b) POLICIES (Alphabetical)**

	(Source/Theme)
Access	AODA
Advocacy/Political Activity	CRA
Accountability	
Anti-Racism	Funder
Appeals	Governance
Assessment/Measurement	Funder
Attendance (Board, committees)	
Audit	Charities Acting Act

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<sup>17</sup> Qualifications, classes, voting/non-voting, individual/corporate, terms, renewal, selection, confirmation

Code of Conduct (Board, Staff, Volunteers)	
Committees	
Confidentiality	Governance
Conflict of Interest	ONCA
Deficit/Surplus Management	Funder
Discrimination & Harassment	Ont. Human Rights Comm
Dissolution	
Diversity	Funder
Dues/Fees	
Duties (fiduciary, loyalty, care, good faith)	
Employment Standards	Employment Standards Act
Expenses	
Equity	
Human Resources/Personnel Policies	
Human Rights	Ont. Human Rights Code
Job Descriptions (Staff, volunteer leadership)	
Mediation/Conflict Resolution	
Nominations	
Officers	ONCA
Privacy	PIPEDA
Quorum	
Remuneration (other than expenses)	CRA
Sponsorship & Fundraising	
Transparency	
Travel Expenses	
Values/Principles	
Vulnerable Sector Policy	

**C (c) SCHEDULES/TEMPLATES**

- Code of Conduct for Directors
- Confidentiality Agreement
- Conflict of Interest Declaration
- Directors Consent to Act

## Resources (Select)

Ontario's Not-for-Profit Corporations Act (ONCA) by Mark Blumberg September 4, 2013

[http://www.globalphilanthropy.ca/blog/ontario\\_not-for-profit\\_corporations\\_act\\_onca\\_suitcase\\_from\\_blumberg\\_segal\\_I/](http://www.globalphilanthropy.ca/blog/ontario_not-for-profit_corporations_act_onca_suitcase_from_blumberg_segal_I/)

Not-for-Profit Corporations Act: Default organizational by-law. This is a draft version of the default organizational by-law under section 18 of the *Not-for-Profit Corporations Act* (ONCA). It sets out rules to govern your corporation's internal business, such as election of directors, officer duties, member rights and how to call meetings. <https://www.ontario.ca/page/not-profit-corporations-act-default-organizational-law>

Guide to the Not-for-Profit Corporations Act, 2010. Information about Ontario's *Not-for-Profit Corporations Act, 2010 (ONCA)* for not-for-profit organizations that are thinking of incorporating.

<https://www.ontario.ca/page/guide-not-profit-corporations-act-2010>

The Ontario government is modernizing the law that governs how non-profit organizations operate. The new law is Ontario's *Not-for-Profit Corporations Act, 2010*, or the ONCA. If your non-profit organization is incorporated in Ontario, this site can help you prepare for the ONCA: <http://nonprofitlaw.cleo.on.ca/>

The page CLEO's ONCA resources at a glance lists *only* resources produced by CLEO. You can browse a list of resources from many sources or filter your results by authoring organization, format, or topic by using the resource directory.

<http://nonprofitlaw.cleo.on.ca/publications-and-resources/cleos-resources-glance/>

A Better Practice Guide To Board Governance For Media Arts Organizations In Ontario 2016; [https://mano-ramo.ca/wp-content/uploads/2016/03/Guide-3-Board-Governance\\_0229.pdf](https://mano-ramo.ca/wp-content/uploads/2016/03/Guide-3-Board-Governance_0229.pdf)

### [Not-for-Profit Corporations Act – Transition Considerations](#)

Your not-for-profit corporation under the Corporations Act should review and update these documents by the end of the three-year transition period after Ontario's Not-For-Profit Corporations Act comes into force.

<http://www.charitycentral.ca/docs/legalreq-en.pdf>

Legal Requirements for Non-Profit Organizations and Registered Charities

<http://theonnc.ca/onca/onca-digging-bill-154-2/>

Bill 154 in more detail: With the introduction of [Bill 154, Cutting Unnecessary Red Tape Act, 2017](#), we have included more details on the relevant sections of the Bill that pertain to legislation affecting the Ontario Corporations Act and the Charities Accounting Act. Read on for the sections we have highlighted from the Bill.

<http://nonprofitlaw.cleo.on.ca/>