



Nonprofit Law Ontario

Rules and tools for organizations

Governance 101: Rights and Responsibilities of Directors, Officers, and Members

Members
Directors
Officers
Employees

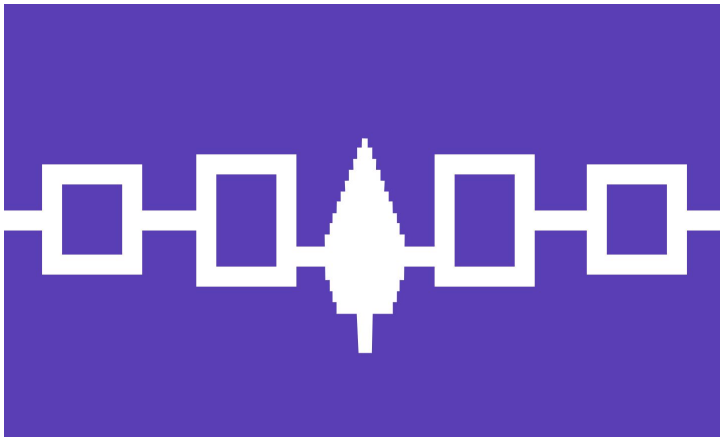
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Co-created with: **449 participants + you!**
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Who we are

Meeting your legal needs through education!

1. Out-of-the-box and custom workshops, e.g.
 - a. Charity law
 - b. Employment law
 - c. Privacy law
 - d. Negotiations
 - e. Board-ED relations
2. Custom research and educational materials, e.g.
 - a. [Charity law for land trusts](#)
 - b. [Granting to non-qualified donees](#)

The Haudenosaunee Confederacy's Great Law of Peace



Seneca, Cayuga, Oneida,
Onondaga and Mohawk.

“The chiefs of the League of Five Nations shall be mentors of the people for all time. The thickness of their skins shall be seven spans, which is to say that they shall be proof against anger, offensive action and criticism. Their hearts shall be full of peace and good will and their minds filled with a yearning for the welfare of the people of the league. With endless patience, they shall carry out their duty. Their firmness shall be tempered with a tenderness for their people.”

Source:

https://web.pdx.edu/~caskeym/iroquois_web/html/greatlaw.html#:~:text=Your%20heart%20shall%20be%20filled,with%20tenderness%20for%20your%20people.

Housekeeping

There will be a period for questions at the end of each section, but feel free to ask questions throughout.

Disclaimer

This presentation is:

- general legal information – it isn't legal advice tailored for your specific situation.
- a high-level overview of ONCA – it isn't comprehensive and it doesn't address other areas of law, such as charity law.
- about law not psychology, management, or the many other things that go into governance.

Big Picture

Formal Roles in Corporate Governance

Members

- Control the organization
- elect the board
- Approve major decisions and changes to gov. docs

Directors

- Oversee the management of the organization
- Appoint officers and agents
- Have legal duties to act in the best interest of the organization

Officers

- Have powers delegated by the Board for a specific job
- Have legal duties to act in the best interests of the organization

Big Picture: Informal Roles in Corporate Governance

- Employees
- Volunteers
- Beneficiaries
- local community
- Donors
- Funders
- Mentors
- Government

Law's Role in Governance

Governance is fundamentally about relationships, so why care about law?

- **Before relationships sour**
 - Creates clarity
 - Opportunity to think through how things may go wrong
- **After relationships sour**
 - Neutral arbiter
 - Coercive remedies
- **All the time**
 - Collective experience and wisdom

Members

Member Rights

Member Obligations

Membership Models

Member Rights

All members have the following rights:

- a free copy of your articles and bylaws
- view and get copies of your financial statements
- view and get member lists,

You must have **at least one class of voting members**.

Voting members have the following rights:

- Submit proposals
- Discuss any matter at a meeting
- Nominate a director (members controlling 5% vote)
- Demand a meeting be called (members controlling 10% vote)
- Elect or remove a director (50%+1 vote at a meeting)
- Notice of members meetings
- Approve changes to bylaws and other major decisions

Member Obligations

Members are not subject to conflict of interest rules.

Members that start acting like they are directors may unintentionally take on the duties of directors.

You can create membership obligations through:

- Bylaws
- Policies referenced in bylaws
- Membership agreements

Model 1: Open Membership

Anyone who supports your nonprofit's vision, mission, and values can become a voting member.

Pros	Cons
• more accountability • more volunteers • more revenue	• more privacy concerns • More chance for conflict • More work to keep track of

Model 2: Semi-Open Membership

Not everyone can become a member because your bylaws can have conditions on membership.

Examples of conditions:

- Who can be a member and how
- Requirements to stay a member
- Code of Conduct
- Maximum number of members

Similar pros and cons to open membership.

Model 3: Self-Perpetuating Boards

Directors don't have to be members, under ONCA. However, your bylaws can say that directors will be the only members.

Pros	Cons
• Less chance of conflict • No legal way to get around directors' duties • Less work to inform and keep track of members	• No external accountability • Risks less stakeholder participation • Reputation for being "closed" • Risks confusion

Model 4: Single Member

The founding person or organization is your only member.

Pros	Cons
• Easy to manage • Member retains total control	• Less transparent • Risk of less stakeholder participation • Reputation for closed

Model 5: Hybrid Membership

Your directors are your only voting members, and a non-voting class is open to anyone who supports your nonprofit's work.

Pros	Cons
• More stakeholder participation	• Less accountability outside Board • More work to keep track of

Model 6: Representative Membership

Your directors make up one class of voting members. You also have one or more other voting classes made up of members who are elected by and represent different types of stakeholders for example, regional or youth stakeholders.

Pros	Cons
• More flexibility • More transparency • Less chance of mission drift	• Complicated to understand • More work to keep track of

Directors

Directors Duties

Directors Rights

Board Models

Directors Duties (1/2)

Nonprofit corporate legislation states that directors are required to:

What is the goal: (a) act honestly and in good faith with a view to the best interests of the corporation; and

How to achieve it: (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

The Common Law adds:

- **Duty of loyalty:** Avoid and declare conflicts
- **Duty of obedience:** Once Board has voted must follow
- **Duty of continuation:** Must keep org going
- **Duty of confidentiality:** Cannot publicize board talk

Directors Duties (2/2)

Practical duties include:

- Complying with all legislative and contractual obligations
- Taking reasonable risks to achieve purposes
 - Behaving in a financially prudent way
 - Creating policies to mitigate unnecessary risks

Governance calendar includes:

- Call and hold annual members' meetings
- **Before:** Approve financial statements
- **After:** Appoint a chair (and other officers)

Source: [ONN. Board Essentials](#)

Directors Rights

Directors rights flow from what they need to be able to fulfill their duty.

- **Notice and attend meetings** of board and members
- **Access to all documents**
- **Voting** (if voting directors)
- **Raise issues and discuss matters**

Conflict of interest may limit rights.

Board Models

Term Length: Default 1 year, max. 4 years, can rotate

Number of terms: Default unlimited

Number of directors: Min. 3 and can be a range

Director qualifications:

- **Member?** Default no, but can be required
- **Other:** Wide flexibility to specify

Election: Default all members elect all directors.

- A group or class can elect specific seats.
- Directors can be appointed by office (ex-officio)

Voting: Can have non-voting directors, but same duties.

Can be paid: Default yes, except for charities.

Officers

Rights, Duties, and Structures

Rights, Duties, and Structures

Rights: Generally have the powers necessary to do their job

Duties: Similar duties to directors

Officer Structures

Roles: Required “Chair” who must be a director too, otherwise very flexible

Terms: Serves until replaced, but can set terms

Employees

Within the Board's Bounds

Outside the Board's Bounds

Within the Board's Bounds

- Employees, including the ED, ultimately answer to the board (not vice versa).
- The ED may support and advise strategic decision-making, but the decision ultimately rests with the board.

Outside the Board's Bounds

Powers of board are collective

- Rights of individual directors are those necessary to participate in this collective process, e.g.
 - Speak at meetings
 - Access documents
 - Enter premises

Powers of officers are defined by their mandate

- Could be in bylaw, policy, or resolution
- Defining it somewhere helps to avoid confusion

Constructive dismissal can happen where a person is forced out of a job if the employer fundamentally breached the employment contract by changing job description (e.g. by micromanaging), harassing, etc.

Questions?

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theonnn.ca/topics/onn-projects/non-profit-law-ontario/