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Community Legal Education Ontario  
Éducation juridique communautaire Ontario



**Nonprofit Law Ontario**  
Rules and tools for organizations

# ONCA is Finally Here!

What's new in the ONCA?

What steps do nonprofits need to take?

How can CLEO help?

Presented by:

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# 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.
- 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 best practices. Just because something is legal doesn't mean it's a good idea.
- about law not funder expectations.



# Land Acknowledgement

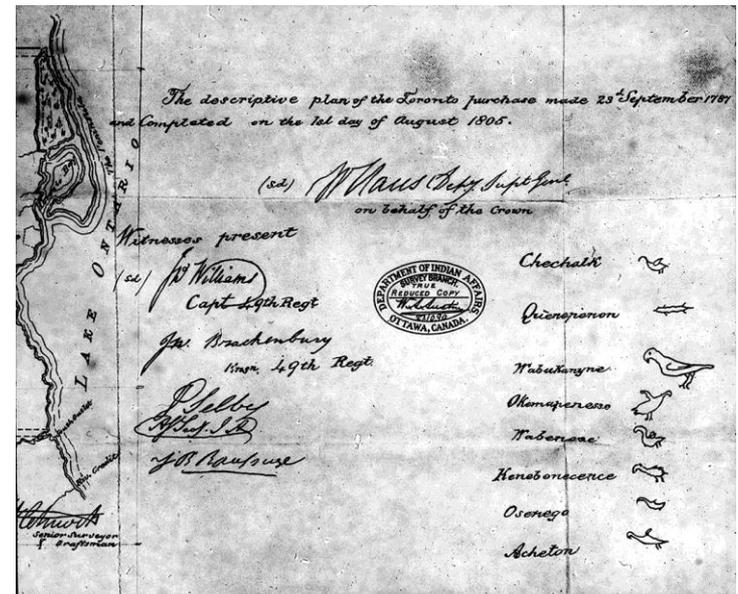
We acknowledge that since time immemorial the land on which we live and work has been the home and traditional territory of Indigenous Peoples, including the Mississaugas of the Credit, Haudenosaunee and Wyandot, and is now home to many diverse First Nations, Inuit, and Métis relatives. CLEO's work is 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. Purpose is to modernize.

**Letters Patent:** Now called “articles”. The document the government gave you when you incorporated. It includes your purposes, address, and other special rules.

**Members:** The people who are called members in your bylaws or who have governance powers like electing the directors or appointing the auditor.



# 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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# What's new in the ONCA?

Public Benefit Corporations

Financial Review Standards

Ontario Business Registry



# 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:

- face a higher standard of financial review
- can distribute their property only to the government or a similar PBC if they dissolve (applies for three years)
- can't have more than a third of its directors be employees (including ex-officio directors)

# Financial Review Standards

Annual revenue	Public benefit corporation	Not a public benefit corporation
\$0-\$99,999.99	You can pass an extraordinary resolution that says you don't need to do an audit and a review engagement	You can pass an extraordinary resolution that says you don't need to do an audit and a review engagement
\$100,000-\$499,999.99	You can pass an extraordinary resolution to have a review engagement	You can pass an extraordinary resolution that says you don't need to do an audit and a review engagement
\$500,000+	You must have an audit	You can pass an extraordinary resolution to have a review engagement

## Default

All nonprofits get an audit each year

## Extraordinary Resolution

You can pass an extraordinary resolution with:

- 80% of votes at members' meeting
- Unanimous written resolution of all voting members



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# 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 steps do nonprofits need to take?

Step 1: Figure out whether ONCA applies to you

Step 2: Figure out when you need to act

Step 3: Get your books in order

Step 4: Update your bylaws

Step 5: Update and file articles



# Step 1: Figure out whether ONCA applies to you

ONCA applies to nonprofits incorporated under:

- Ontario's Corporations Act
- Most special Acts - in case of conflict, special Act applies

**Disclaimer:** Tax status and corporate status are different (e.g. does not affect tax receipts or participation on 3<sup>rd</sup> party fundraising site).

ONCA does **not** apply to nonprofits incorporated under:

- Canada Not-for-Profit Corporations Act
- Co-operative Corporations Acts
- Business Corporation Acts



## Step 2: Figure out when you need to act

**October 19, 2021:** ONCA took effect

**Until October 18, 2024:** Old (valid) letters patent 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.

## Step 3: 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

**Make sure the government has your right address (NOT a PO box) even if your filings are up to date because there have been glitches.**



# Steps 4-5: The Updating Process

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

## Lawyers?

### Typical process:

- 1. Board approval:** Helpful to have more than one director involved. Changes are valid until next members' meeting.
- 2. Members meeting:**
  1. Notice must provide sufficient detail for members to make up their mind
  2. Members approve, reject, or change
- 3. File with government:** Registered charities file bylaws with CRA. All nonprofits file articles of amendment through ServiceOntario or PGT.



## Step 4: Update your bylaws

Here are 6 examples of things that might need to change:

- You must appoint a **chair**
- **Term limits for directors** reduced to max. 4 years
- Do you want **corporations** to be eligible for membership?
- If you have **multiple member classes**
  - 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?



## Step 5: Update and file 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
- **Restrictions on nonprofit's powers:** borrowing, selling key assets

To file articles online you need a:

- **CompanyKey:** Ask and they will mail it to you
- **ONe-Key:** Sign up online
- **ServicesOntario Account:** Sign up online

To file by mail you go to the Forms Repository.

You can still file through an intermediary.



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# How can CLEO help?

Nonprofit Law Ontario

CLEO's Bylaw Builder

Sample bylaws with options

CLEO's Guide to Adjusting Existing Bylaws

Email us your questions



# Questions?

Do the standard bylaws omit any rules nonprofits will need to follow?

**Who to reach out to?**

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**How to learn more?**

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



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