2015

**ONCA By-Laws Review**

**No expertise required!**

**Benjamin Miller**

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# Message from the Author

My name is Benjamin Miller. I am not a lawyer, or even a law student. I say this right off the bat because I don’t want anyone to get the false impression that I’m an expert in any kind of law, because I am not. I am a non-expert looking to help other non-experts bring their not for profit organizations (NPOs) through a possibly intimidating, but ultimately very important, process. I say very important, not only because it’s legally required, but because the Ontario Not for Profit Corporations Act (ONCA) gives us all an opportunity to get re-acquainted with our organizations’ most fundamental rules, ask questions we don’t normally think to ask, have conversations we don’t normally care to have, and update ourselves in ways that will help us serve our communities better. (I promise, I’m not paid to say any of this!)

If I’m not a legal expert and I wasn’t paid to say any of this, you’re probably wondering where this method is coming from. I sit on the Board of Directors of the Fulcrum Publishing Society, the NPO that publishes the University of Ottawa’s English-language student newspaper. On the Board, I’m the Chair of the Policy Committee and so responsible for ensuring that our By-Laws and Policy Manual are kept up to date and relevant. In the winter of 2015, I learnt about the ONCA and the changes it could mean for the Fulcrum. Soon after, I set out to review our By-Laws, line by line, to identify the places where changes might be required.

While the ONCA may not be finalized, over the course of my tentative work, a consistent approach formed by trial and error. This approach solidified in some simple tools that in turn helped speed up and clarify the process. The results so far have been fantastic. Dedicating a little under five hours a week for two months, I managed to completely review our 43 page By-Laws, identifying 70 necessary, possible, and suggested changes, additions, removals, amendments, discussions, and more. At the committee level, over 80% of all these proposals were settled in just a few hours; a testament, I think, to the clarity and precision of this method. We are now left with a small number of specific, but nonetheless open, discussion points that we can bring to the organization as a whole (pending the completion of the ONCA) and allow for adequate time and input without the inefficiency and stress of having to handle countless vague and overlapping “big questions”.

While all the precise wording and recommendations have not yet been confirmed by a lawyer, from the organization’s perspective, the outcome has been clear: a concise and well-structured opportunity to collaboratively reflect on ourselves and our practices as an organization and make informed decisions about how we plan to do our ONCA update. This is no replacement for a lawyer’s expertise, but I think it’s a good start, and that’s exactly what I hope to offer you.

Sincerely,

Benjamin Miller

# Summary of Method

**Outcomes**: A list of necessary and suggested changes and discussion points needed to bring your By-Laws into compliance with the Ontario Not for Profit Corporations Act and a well-structured consultation process.

**Advantages**: This method will organize and direct your upfront review efforts in such a way as to identify all By-Law issues for which a legal professional is not required. This method is also expressly designed for clarity, precision, and brevity so as to improve the efficiency of consultations and discussions across your organization.

**Limitations**: This method is not a replacement for certified legal advice and verification, or for genuinely collaborative discussion and consultation across your organization. It is meant to lay the groundwork for both.

**Requirements**: Minimum one dedicated volunteer capable of careful reading (no prior legal knowledge required); step 2 requires approximately 40 volunteer hours (depending on how robust By-Laws are) step 4 is highly variable; access to copy of latest Ontario not for Profit Corporations Act (ONCA); Microsoft Word an asset.

**Step 1-Work Plan**: Divide By-Laws chapters thematically; by cursory examination of ONCA table of contents identify articles corresponding to each chapter; assign tasks to one or more volunteers; set due date for each chapter; set date for consultation with elder members of organization, Board, and general membership; share Work Plan with Board and update in publically accessible place (e.g. Drive, Dropbox, etc.). See below and appendix for sample work plan.

**Step 2-Analysis**: Side-by-side line-by-line comparison of By-Laws to relevant ONCA provisions utilizing the table and categories provided in sample below and in appendix.

**Step 3-Presentation**: Report outcomes by chapter and categories from step 2. Highlight most drastic changes and discussion points and offer timeline for consultations across organization. See below and appendix for sample.

**Step 4-Consultations**: First, meet with the most senior (in years not necessarily in rank) members of the organization to review proposed changes and discussions in light of what the original rationale for By-Laws may have been. Second, present the changes and discussions agreed upon with senior members to the Board for debate and approval. Third, conduct organization wide consultations presenting the changes that have been agreed to in an informative manner and discussion topics as open to feedback.

**Step 5-Completion**: Incorporate feedback into proposals to settle discussion points. Debate and approve at Board level. Apply all changes to By-Laws and present for review to legal professional.

# Introduction

## What this Method is…

This method is really more of a collection of tools and framing devices to accomplish two goals:

* Do as much work as possible to review your By-Laws without a lawyer so that when it comes time to consult a lawyer as much time and money as possible can be saved;
* Break down and refine big questions upfront in order to allow for and facilitate a genuinely collaborative process across the organization without the stress and inefficiencies of confused, long, and drawn-out debates over many complex and interrelated questions.

## What this Method is not…

This method, ultimately, is just one piece of what must be a larger process; consequently, it cannot be a replacement for:

* Consulting and working with a legal professional to ensure that the changes you propose are definitely compliant with the ONCA and won’t have unintended consequences;
* A collaborative process in which your stakeholders get a genuine say in the decisions you ultimately make.

## Who this Method is for…

Any not for profit organization (NPO) could potentially make use of this method as part of their process to update their By-Laws; however, I believe this method will be especially useful to smaller NPOs who have limited time and money and little to no legal expertise readily available.

## What this Method requires…

While no two organizations are alike, this method has been used to review a fairly well-kept 43 page set of By-Laws by a single volunteer dedicating slightly less than five hours a week (on average) in two months.

The only technical requirements are access to a copy of the ONCA (available [here](http://www.ontario.ca/laws/statute/10n15)) and Microsoft Word or Open Office.

# Step 1-Work Plan

The work plan will naturally be the first document you develop. Its development offers you the opportunity to get initially acquainted with your By-Laws and the ONCA, divide up the tasks into manageable sessions, keep your Board informed, and much more. It is therefore very important to take time and care in crafting the work plan. Below is an annotated version of an excerpt of the work plan that was used for the Fulcrum Publishing Society By-Laws, along with the rationale for each section.

## The Template

**ONCA Review Work Plan**

1

Each row requires the comparison of the current By-law to the sections deemed relevant in the “Section of Act” column. Once read, a document will be developed for each (or where applicable By-laws will be grouped by section) that contains a list of what must be changed, and what questions must be asked. Once the review is complete, a new draft By-laws will be drawn up that will reflect both these required changes and the gaps that must be resolved.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| By-Laws | Section of Act | Lead | Timeframe | Senior Discussion | Board Approval | Member Discussion |
| Prior Reading  2 | [Part III](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK16)-Capacity and Powers  3  [Checklist](http://www.sse.gov.on.ca/mcs/en/Pages/onca4.aspx)  [FAQ](http://www.sse.gov.on.ca/mcs/en/Pages/onca3.aspx) | All  4 | Week 1  5 | N/A  6 | N/A  7 | N/A  8 |
| Interpretation | | | | | | |
| 1.1-Interpretation  9 | [Part 1](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK0)-Interpretation, Application, and Administration | Benjamin | Week 1 | May 5th, 2015 |  |  |
| Business of the Corporation | | | | | | |
| Title | [Part 2 Sec.11](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm#BK12)- Rules re. name of Corporation | Benjamin | Week 1 | May 5th, 2015 |  |  |
| Editorial | | | | | | |
| 2.6-Editor-in-Chief | ? | Benjamin | N/A |  |  |  |
| 2.7-Ratification of the EIC | ? | Benjamin  10 |  |  |  |
| 2.8-Editorial Content | ? | Benjamin |  |  |  |

1. **Introduction**: The two short paragraphs at the top describing the process were not inserted for the benefit of this guide, but included in the original proposal. This was done to make the work plan easy to read and understand for any Board member interested in the process. For the length of the review process, this document was kept up to date on a Google Drive open to all Board members, so that they could check its progress at any time. Generally, this work plan was not constructed only as an organizational tool for the reviewers, but as a record for institutional posterity.
2. **Work is divided by By-Laws chapter**: The first column of the table entitled “By-Laws” speaks to the fact that this review method is organized around the NPO’s By-Laws and not the ONCA. That is, each row is a chapter of the By-Laws (or in the case of the very first step just preparation activity). In practice, this is because the work involves reading through the By-Laws and looking from relevant passages in the ONCA, rather than reading through the ONCA and looking for relevant measures in the By-Laws. This way of organizing the work is likely more appropriate for NPO’s with well-developed By-Laws where the main changes will be modifications and not additions. For less well-developed By-Laws, the work should be structured around the ONCA.
3. **Each chapter has corresponding ONCA articles**: While developing the work plan, it will be necessary to do a cursory read through at least the table of contents of the ONCA. This will give you an idea upfront of which parts of the ONCA will be necessary to read alongside the By-Laws chapter on which you’re working. Taking the time in the development of the work plan to really develop this column will help keep the brunt of the analytic work to a side-by-side textual comparison (as opposed to research). Nonetheless, you will also likely find additional portions of the ONCA that are relevant to chapters of your By-Laws in ways you did not initially realize, and you will need to update this part of your work plan as you go along. It was found helpful to hyperlink the various articles at the beginning to minimize start time during review sessions.
4. **Who is responsible**: Depending on whether one or more individuals are working on this review, it may be necessary to assign different chapters to different team members. Including names in the work plan helps to maintain accountability and clarity of expectations. Even where only one individual is reviewing initially, this column may still be added later if others choose to join.
5. **Pacing of the work**: As mentioned above, this work was completed within two months, with a commitment of less than five hours a week on average. You will notice that the timeframe is not divided into single week periods. That was done in order to give flexibility while keeping concrete targets. Generally speaking, without a fairly well developed prior knowledge of both your By-Laws and the ONCA (which this method does not expect you to have), it is difficult to predict how much time each chapter will take. It is therefore recommended that these flexible (e.g. sometimes one week sometimes three) but definite timelines be kept.
6. **Who to consult first**: Once the review is complete, there will be a question of who to consult first. As this process was conducted at the end of a Board’s term, and many very experienced Board members and employees with much institutional knowledge were leaving, it made sense to consult with the senior members first. How this was conducted will be explained later on in “Discussing Findings”. For now, it is sufficient to say that this column is to set out the timeline of this next most important step.
7. **Getting Board approval:** Once senior members have been consulted, the approved changes and discussion points for wider consultation should be brought to the Board. This need not be done all at once, although that is advised. It is not necessary to plan this prior to the completion of the review process.
8. **Wider Consultations**: The final step before the vote at your AGM or special By-Laws meeting will be your consultation process. It is not necessary to plan this prior to the completion of the review process.
9. **Dividing work thematically**: The By-Laws chapters should not necessarily be reviewed in the order in which they appear in your By-Laws, unless your By-Laws happen to be very well organized. Rather, chapters should be grouped in your work plan thematically. This will be helpful so as to draw out the implications of particular sections of the ONCA for all the relevant chapters of your By-Laws in one sitting. This grouping balances the advantages of structuring your work around your By-Laws with the advantages of structuring it around the ONCA.
10. **Colour Coding Results**: The green highlighting denotes chapters that have been completed where changes were identified. The red highlighting denotes chapters that have been completed where no work could be done. The red will hopefully only be applied to those chapters in your By-Laws that are idiosyncratic to your organization and so not covered in the ONCA. Nonetheless, it is important to include such chapters in your work plan as a reminder to verify and as a record that they have also been examined.

# Step 2-The Analysis

Once the work plan is completed, the real analytic work involves opening up a copy of your By-Laws to the relevant chapter and a copy of the ONCA to the previously identified relevant article and comparing line by line.

## The Template

Each By-Laws chapter should have its own section containing a list of the table identified below divided into categories that will be discussed later (see Appendix for clarity).

Every change you identify will be input into the following table:

1

2

|  |  |  |
| --- | --- | --- |
| **By-Law Article**:  3 | | **ONCA Article**: |
| 4 | |  |
| **Issue**: |  | |
| **Suggestion**: | 5 | |

1. The By-Law article number should be identified for easy reference later on.
2. The applicable portions of the ONCA should be identified for easy reference later on.
3. The actual text of the By-Laws and the ONCA should be copy and paste into the table, with the aspect or passage under question in bold. This is done so that when it comes time for discussion it is not immediately necessary to go back to the By-Laws and the ONCA to understand every proposed change. That is, at the end of the review process, one should have one (or more) documents containing as many of these tables as are necessary that can be read and understood on its own. It is very important that, even if one By-Law article requires three or more changes, every issue has its own table. One of the most important functions of this analysis is to separate issues into their “atoms” so that each one can be handled as simply and as quickly as possible.
4. What the reviewer sees as the “issue” should be identified separately from what course of action the reviewer thinks should be taken. This is done so that the discussion can separate out the reviewer’s reasoning from their ultimate recommendation, that way the core of the discussion might be clarified, accepted, or rejected, independent of what the reviewer thinks should be done. Separating the issue from the suggestion section balances the need for a solution oriented final product (it is much quicker and easier to discuss and amend a proposal than it is to build a solution and select wording from scratch) with the fact that ultimately the reviewer’s job is to call attention to areas for action not unilaterally determine what will be done.

The tables will be divided into four categories:

1. Required Changes
2. Required Discussions
3. Suggested Changes
4. Suggested Discussions

These changes are first and foremost analytic distinctions. That is, 1 and 2 look primarily at strict compliance with the ONCA, whereas 3 and 4 will contain opportunities that the ONCA presents By-Laws to offer its own guidance. These categories play the second role of being a practical division to inform the agenda of future consultations. 1 and 2 will have to be fully settled before any update for the ONCA can take place, whereas 3 and 4 are optional. If time runs out then, it will be very clear which proposals must be handled and which can be postponed or dropped. Below we will review what sort of changes fit into each category.

## Required Changes

As the name would suggest, a required change is a change that must be made to your By-Laws to bring them into compliance with the ONCA. Some examples of this include: an article of your By-Laws that directly contradicts the ONCA either by making prohibited demands or by partially different requirements (removal or amendment) or a requirement of the ONCA that requires By-Law input that is nowhere found in your By-Laws (addition). We will now examine examples of each, as well as the types of suggestions that can be made.

1. Prohibited Measure

In cases where the By-Laws give a power to the Board that it simply is not allowed to have (e.g. a power that belongs to the members), then one possible course of action available to the NPO is simply to strike the power. Another course of action is to add qualifications that sufficiently limit the power as to make it acceptable. When faced with these alternatives, ultimately it comes down to the NPO’s unique context, but it is generally advisable to strike the power as this will make your By-Laws simpler and more straight-forward and avoid risky procedures that, if not followed exactly, may violate the ONCA.

**Example**:

|  |  |  |
| --- | --- | --- |
| **By-Law Article**:12.05 | | **Act Text**: 103(1)(m) |
| “The Board may at any time vote to provisionally change the Bylaws at any duly constituted meeting of the Board of Directors. However, all changes must adhere to the following stipulations…” | | “A special resolution of the members or, if section 105 applies, of each applicable class or group of members, is required to make any amendment to the articles of a corporation to…add, change or remove any other provision that is permitted by this Act to be set out in the articles.” |
| **Issue**: | Such changes can only be authorized by a special resolution of the members, which requires procedures well beyond simply “any duly constituted meeting” of the Board. | |
| **Suggestion**: | Remove. | |

1. Partial Difference

Sometimes minor differences can be very significant, and while identifying these issues are often the trickiest, they are usually the simplest to solve. Sometimes all that is necessary to ensure compliance with the ONCA is add a single qualification, requirement, etc. that was not previously there.

**Example**:

|  |  |  |
| --- | --- | --- |
| **By-Law Article**:5.09a | | **Act Text**: 64(2) |
| (a) Voting members of the Corporation shall be allowed to proxy their vote to other voting members by filling out a form and presenting it to the chair of the meeting of members. | | A proxy must be signed,  (a) by the member or the member’s attorney; or  (b) if the member is a body corporate, by an officer or attorney of the body corporate duly authorized. 2010, c. 15, s. 64 (2). |
| **Issue**: | There is no requirement that the form be signed. | |
| **Suggestion**: | Insert the phrase “…signed by the member or their attorney…” after “form” | |

1. Omission

Here it is a simple case of failing to stipulate procedures that must be stipulated. The reader should take note how in cases like these, where the absence of a provision is the problem, it will not be necessary to fill out the By-Laws category. Additionally, note how the suggestion includes not only possible wording, but also where it will be placed in the By-Laws. This helps to give context to future discussions.

**Example**:

|  |  |  |
| --- | --- | --- |
| **By-Law Article**: N/A | | **Act Text**: 48(3) |
| N/A | | If the articles provide for two or more classes or groups of members, the by-laws must provide,  (a) the conditions for membership in each class or group;  (b) the manner of withdrawing from a class or group or transferring membership to another class or group and any conditions of transfer; and  (c) the conditions on which membership in a class or group ends. 2010, c. 15, s. 48 (3). |
| **Issue**: | (b) and (c) have not yet been specified. | |
| **Suggestion**: | Add the following text “3.01(a) A member may gain voting member status as soon as they have met the requirements for voting membership.” “3.02(a) A voting member loses voting membership status as soon as they no longer meet any of the requirements for voting membership. (b) A voting member may lose membership status altogether if upon losing voting membership status they also fail to qualify for membership status.” “3.04 Membership in all of the above classes ends as soon as the individual or organization no longer meets the requirements of that membership class.” | |

## Required Discussions

Required discussions, like required changes, are elements of your By-Laws that are simply not compliant with the ONCA; however, there is no clear-cut solution, but rather a question that the organization must consider. This is usually the area where the most consultation will be necessary.

1. Strict matters of compliance

The two examples below show the primary reason it is appropriate to include an issue in discussion as opposed to change. Namely, the By-Laws obviously lack something required for compliance with the ONCA, however, the ONCA offers the By-Laws discretion and so no one solution presents itself as the obvious suggestion to be made. This only becomes more important when there are potentially controversial matters at hand (e.g. the removal of a member).

**Examples**:

|  |  |  |
| --- | --- | --- |
| **By-Law Article**: 3.09 | | **Act Text**: 51(1) |
| “Any member of the Corporation may be removed as a member by resolution of the Board.” | | “The articles or by-laws may provide that the directors, the members or any committee of directors or members have power to discipline a member or to terminate their membership. **If the articles or by-laws provide for such a power, they must set out the circumstances and the manner in which that power may be exercised**.” |
| **Issue**: | No circumstances are provided under which such a resolution may take place. | |
| **Suggestion**: | Add specific circumstances under which such a discussion may take place. | |

|  |  |  |
| --- | --- | --- |
| **By-Law Article**: N/A | | **Act Text**:28(2) |
| N/A | | If there is not a quorum of directors or if there has been a failure to elect the number or **minimum number of directors provided for in the articles**, the directors then in office shall without delay call a special meeting of the members to fill the vacancy and, if they fail to call a meeting or if there are no directors then in office, the meeting may be called by any member. |
| **Issue**: | This minimum number is nowhere specified. | |
| **Suggestion**: | Discuss. | |

1. Not strict matters of compliance

In the above two examples, there are very important differences between what the ONCA allows and the options offered by the By-Laws. In both cases, the By-Laws are more stringent. Because the By-Laws are more stringent, technically speaking, nothing needs to be done to bring these elements in compliance with the ONCA. However, the above matters were included in the “required” section because they are such important matters that the reviewer considered that any general update of the By-Laws for the ONCA must consider whether these stringencies should be kept. Consequently, they were included more for reasons of prioritization than analysis. This reflects the reviewer’s discretion, and should not be done lightly.

**Examples**:

|  |  |  |
| --- | --- | --- |
| **By-Law Article**: N/A | | **Act Text**: 68(1) |
| N/A | | “Subject to section 76, at each annual meeting, members of a corporation shall by ordinary resolution appoint… (b) a person to conduct a review engagement of the corporation.” |
| **Issue**: | We currently have no measures discussing the possibility of a review engagement (only audit) although, given our annual income, we are eligible for it. | |
| **Suggestion**: | There is an explanation here of the differences and why choose one over the other. <http://www.njnonprofits.org/Audit_vs_reviewEisnerAmper2011.pdf>  Keep the language to include and require strictly auditors. | |

|  |  |  |
| --- | --- | --- |
| **By-Law Article**:9.01 | | **Act Text**:85(1) |
| The Board of Directors may not at any time borrow money on the credit of the Corporation; or charge, mortgage, hypothecate or pledge all or any of the real or personal property of the Corporation including book debts, rights, powers, franchises and undertakings to secure any securities or any money borrowed, or other debt, or any other  obligation or liability of the Corporation. | | “Unless the articles or the by-laws provide otherwise, the directors of a corporation may, without authorization of the members,  (a) borrow money on the credit of the corporation;  (b) issue, reissue, sell or pledge debt obligations of the corporation;  (c) give a guarantee on behalf of the corporation to secure performance of an obligation of any person; and  (d) mortgage, pledge or otherwise create a security interest in all or any property of the corporation, owned or subsequently acquired, to secure any obligation of the corporation.” |
| **Issue**: | 9.01 is not obligatory, it is an extra stringency. | |
| **Suggestion**: | I recommend we keep 9.01, but I bring it up because it’s not my project to keep from the Board information that I don’t think they should act on. | |

## Suggested Change and Discussion

Suggested changes and discussions largely come from one of three scenarios:

(A) the ONCA specifically offers the By-Laws an area of discussion regarding a matter on which your By-Laws are silent;

|  |  |  |
| --- | --- | --- |
| **By-Law Article**:BL2-9 | | **Act Text**:88 |
| WHOLE SECTION | | “A corporation may invest its funds as its directors think fit, subject to its articles or by-laws or any limitations accompanying a gift.” |
| **Issue**: | We do not mention anywhere in the By-Laws what guidelines investments should follow. | |
| **Suggestion**: | I think we should use this as an opportunity to set ethical restrictions on where we invest, for instance, no tobacco, alcohol, or gambling (which are the areas that are usually excluded by ethical investment funds). | |

(B) The ONCA sets out requirements that your organization is bound by that you may want to make known to your organization through your By-Laws;

|  |  |  |
| --- | --- | --- |
| **By-Law Article**:11.02 | | **Act Text**:69(4) |
| “The members of the Corporation may, by resolution passed by a majority of the votes cast at a general meeting duly called for the purpose, remove any auditor of the Corporation before the expiration of her term of office and shall, by a majority of the votes cast at that meeting, appoint another auditor in her stead for the remainder of her term.” | | “An auditor or person appointed to conduct a review engagement who is disqualified under this section shall resign immediately after becoming aware of the disqualification.” |
| **Issue**: | The current text does not mention conditions under which removal should be automatic | |
| **Suggestion**: | Add 11.03 “Resignation. An auditor or person appointed to conduct a review engagement who is disqualified due to a lack of independence shall resign immediately after becoming aware of the disqualification. An auditor or person appointed to conduct a review engagement lacks independence if they or their business partner: (a) is a business partner, a director, an officer or an employee of The Fulcrum or any of its affiliates, or is a business partner of any director, officer or employee of The Fulcrum or any of its affiliates, (b) beneficially owns or controls, directly or indirectly, a material interest in the debt obligations of The Fulcrum or any of its affiliates, or (c) has been a receiver, receiver-manager, liquidator or trustee in bankruptcy of The Fulcrum or any of its affiliates within two years before the person is proposed to be appointed as auditor of the corporation or to conduct a review engagement of the corporation. ” | |
| **Note:** | It is a matter of best practice that this text or its equivalent should be sent to the auditor each year. | |

(C) ONCA wording is more efficient than the wording of the By-Laws (though not incompatible in any way);

|  |  |  |
| --- | --- | --- |
| **By-Law Article**: 4.01, 4.03 | | **Act Text**: 48(7) |
| “The Authorized Representative so appointed shall be entitled to represent and where applicable  vote on behalf of such member at all meetings of members and to sign waiver instruments and, where applicable, resolutions for and on behalf of such member.”  “An Authorized Representative shall be entitled to act as a director of the Corporation.” | | “The corporation shall recognize any individual authorized by a member corporation or other entity to represent the member at meetings and the individual may exercise all the powers of that corporation or entity on its behalf.” |
| **Issue**: | This list format is inefficient and may go too far or not far enough depending on what right members have. | |
| **Suggestion**: | Eliminate text above from 4.01 and 4.03. Make 4.01 the Act text. | |

# Step 3-Reporting the Results

Once the analysis is completed, it must be communicated clearly to the Board (or equivalent). As they may not read every single change identified, three things must be communicated above all:

1. **The quantity of the changes required**-communicating how many changes/discussions are required and suggested will give your Board an idea of how much work remains to be done. Break-downs by chapter and by the above categories are useful for conveying which areas of your By-Laws require the most work, and to what degree the changes as part of this process are large and mandatory, or simply an opportunity to improve the By-Laws.
2. **The Big Questions**-In all likelihood, because your analysis will have identified so many small problems and offered immediate solutions, many of your changes will be uncontroversial and don’t need to be highlighted at the Board level. Your report of the results should therefore only focus on those issues that are likely to be large, require a lot of discussion, and possibly be controversial and/or emotional topics. Flagging the discussions immediately will make sure that, at the Board level, no one will be surprised or feel that important questions are being lost or hidden in an administrative process.
3. **The Path Forward**-At this point, you should seek feedback on how to proceed, to what extent the Board, organization members, and even external stakeholders would like to be directly involved in the remaining process, appropriate timelines, etc. In the following section, one possible consultation process is suggested.

# Step 4-Consultations

In my opinion, the best By-Laws reflect three things: institutional memory, practitioner needs, and (possibly) stakeholder desires. The ONCA update is an opportunity to bring the By-Laws in line with these three things in a way that can’t realistically be done every year. But in order to make the most of this opportunity, an extensive and well-directed consultation process is necessary.

1. Institutional Memory

By-Laws are meant to provide consistency and guidance to an organization over many years. As years pass and organizations change, grow, and learn, much might be added or altered in the By-Laws. Depending on the organization and the records keeping practices, the rationale for these changes, additions, or even the original drafting of the By-Laws may be partially or wholly lost on the current Board and the individual(s) responsible for the ONCA update. As a result, changes might be suggested that fail to grasp the original intent or practical implications of certain By-Laws. This is a real danger and can lead to internal inconsistency, not only within the By-Laws, but between the By-Laws and long-held practices.

One way to avoid the kind of issue described above is to begin your consultation process with those members of your organization who have been around the longest (whether or not they occupy the most senior positions). By their mere presence at past revisions of the By-Laws they may be able to offer you valuable insight into whether a by-law is genuinely outdated or has some rationale that continues to be relevant. It is therefore recommended to have a separate meeting with these members be held. In it, you should present each proposal, one at a time, focussing on required changes and discussions first, and only moving to suggested changes and discussions if there is time. For each, the questions that should be asked should be designed specifically to gain historical information, for example:

1. I found this wording perplexing. Do you remember why it was written this way?
2. Do you remember why this article was added?
3. Was this measure introduced in response to something?

As suggested in the work plan, this should be your first round of consultation and becomes more urgent if certain senior members are leaving soon.

1. Practitioner Needs

At the end of the day, By-Laws need to be put into practice. Consequently, a large part of how you should judge your By-Laws comes down to how easily and effectively they are implemented by your organization’s members on a day to day basis, and how they further your organization’s overall mission. For instance, giving guidance to your office manager as to when and how to send out notices for annual general meetings, specifying what information needs to be included. For your By-Laws to achieve this level of guidance, they must be clear, realistic, and fit well within your organization’s culture and current practices (unless those practices are illegal of course!). This means two things for who you consult with and how you consult with them. It is important to consult with employees, Board members, and others who will be responsible for implementing your By-Laws. Like the first stage of consultation, this group should be presented each proposal one by one. However, unlike the first stage, this stage of consultation can be split into two sections (1) explaining required changes (2) discussing possible changes.

The first part of these consultations will therefore be primarily about educating your organization about the new requirements and therefore serves as an early start to implementing the new rules. However, discussion is possible here as there may be room to clarify, shorten, and simply the way required changes are written. Therefore in this first section of consultation the appropriate questions might be:

1. Does this wording make sense to you?
2. How would you put this into practice? (to test understanding)
3. Can you think of any simpler way to say this without changing the meaning?

The second part of the consultation will involve the big questions. In this part, you should focus first and foremost on the required discussions, then, if there is time remaining, the suggested changes and suggested discussions. The most important thing to keep in mind at this stage of the process is that you have already done a lot of work in the analysis stage to make the discussion topic as precise and contained as possible. In open discussions, especially with a group that may not be accustomed to discussing questions of policy, it is very easy to go off track, get distracted, or propose solutions that conflate multiple By-Laws. Here, more than any other stage, it is vital to present each proposal one by one and be careful to keep the discussion focussed on the proposal at hand. Discussions should be open and your primary job is listening, but such big discussions can easily drag on ineffectively. It is important to take time upfront to explain the old By-Law, the incompatibility with the new rules, and your own proposed solution, articulating clear expectations and needs, before seeking feedback. While this may sound cumbersome and less consultative, I am confident that it will ultimately facilitate a discussion that leaves participants satisfied rather than frustrated.

1. Stakeholder Desires

If your organization serves an engaged population, offering them a chance to be part of the ONCA update may be much appreciated. While I do not have experience in this area, I imagine a less stringent version of (B) is what’s called for seeking feedback that will be considered but not trump (A) or (B) feedback.

# Some Parting Thoughts

I would like to close with a few reflections.

Ultimately, every organization has its own context, needs, quirks, strengths, and limitations. This method is hardly a golden formula. It is more like a guide that can be amended in any way to suit your needs. It’s primarily purpose is to answer the question “where do I begin?” and provide you with a default strategy of attack in case you don’t want to start from scratch.

I also want to reiterate what has been emphasized throughout: the ONCA update is an opportunity! The process may seem large, technical, and time-consuming at this point, but I am confident that with the support of this method and a bit of determination, whoever oversees this process will gain many benefits. Firstly, they will learn things about their organization they never knew before and be a better volunteer or employee as a result. Secondly, I have no doubt that their work will be roundly appreciated for the money, time, and heartache, it will save.

Finally, while I’m not an expert, I am enthusiastic enough about these administrative matters to have written this up and so you can bet I will be enthusiastic enough to answer any questions you might have! If this guide is too confusing or incomplete, there is also a YouTube video and a PowerPoint presentation that explains the process. If you prefer a more responsive approach, I would be happy to personally do a workshop and training with you and/or your organization (free of charge!) either by Skype or in person as resources allow. Therefore, you should feel free to contact me.

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Happy updating!