

## Key elements of the new Bylaw #5

The Ontario Government formulated a new Act in 2010, the Ontario Not-for-profit Corporation Act (ONCA) that applies to non-profit corporations such as ECFTA<sup>1</sup>. Until now, we have been covered by a more general act that included all corporations, the Ontario Corporations Act (OCA). After a long wait, ONCA came into effect on October 19 of this year.

Though our current Bylaw #4 is largely consistent with ONCA, and ONCA gives corporations 3 years to revise their Bylaws to be consistent, we decided it was timely to change the main bylaw. We derived the proposed Bylaw #5 from a sample bylaw on the Government website<sup>2</sup>. This sample has now become the official “standard” bylaw that will be the default if corporations have no bylaws<sup>3</sup>.

The new Bylaw is somewhat simpler than the old with plainer language. There are relatively few substantive differences between this new bylaw and the existing Bylaw #4. Here are the main ones:

1. There is now a section (1.3) that is explicit about the Act taking precedence if there is a conflict with our Bylaws.
2. The position of co-chair is added (1.1).
3. The Bylaw specifies two signees on all documents; these default to the principal officers, but the Board can designate others (e.g. the executive director) as a signee (1.5). This section combines old sections 16 and 26 except there is now an explicit section on banking (4.1), which replaces old 27 (Deposit of Securities for Safekeeping).
4. ONCA allows a maximum and minimum number of directors to be specified. Our old bylaw allowed the Board to change the actual number. The new Bylaw follows ONCA in that the number can only be changed by special resolution at a members’ meeting (2.1). However, ONCA allows the Board at any time to appoint additional directors up to 1/3 of the member-approved number (2.2).
5. The *term* of directors on the Board was unclear in the old Bylaw: the notion of “two-year terms” meant little since all directors, both new and returning have been presented for election in the slate at the AGM. So for simplicity, the new Bylaw states that the term of a director is normally until the next AGM, but directors can serve only until the 6<sup>th</sup> anniversary of their first appointment or election. (2.2)
6. It was never clear whether or when a director could be reappointed, so we have added that this is possible after a two-year hiatus (2.2)

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<sup>1</sup> <https://www.ontario.ca/laws/statute/10n15>

<sup>2</sup> The older versions of #1 and #3 were replaced by #4. Bylaw #2 still stands and can be seen on our website.

<sup>3</sup> <https://www.ontario.ca/page/not-profit-corporations-act-2010-standard-organizational-law>

7. The description of key officers as “members of the executive” has gone. The old Bylaw did not elaborate on what the “executive” was, and since ONCA and the new Bylaw allow the Board to establish or disband any committees it wishes (2.5 b.), this allows the Board to establish an executive committee as appropriate. There was no mention of committees in the old Bylaw.
8. ONCA recognises that meetings may be conducted virtually, so this has been added (3.7).
9. The descriptions of the duties of the chair, secretary etc. are more detailed, but relegated to “Schedules” at the end of the Bylaw (5).
10. There is now an explicit section on “Protection of Directors and Officers” (6)
11. The definition of a “member” is now much simpler than before (8.1).
12. ONCA allows but does not require the chair to have a deciding second vote in the case of a tie at a members’ meeting. We prefer not to give the chair that power: if the item under consideration is not clearly preferred, the resolution should fail (9.6 e).
13. The old Bylaw did not say who has the right to attend members’ meetings (esp. the AGM). The new Bylaw now defines who has that right. However, we have typically had Annual General Meetings open to any interested people, though only members may vote. This is now explicit (9.8).
14. There is a new section (11) that deals with amending the Bylaw. The Act allows the Board to amend the Bylaws (with a couple of exceptions involving members), and the changes come into effect immediately. However, Bylaw changes must be confirmed at the next members meeting.