

# Boards Basics Primer

**Prepared by: John Miller, OODP Consultant**  
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# Board Basics Primer

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### **What is ONCA and why is it important?**

ONCA (the Ontario Not-for-Profit Corporations Act) is the law that governs not-for-profit corporations. It defines legal responsibilities, governance standards, accountability, member rights. Non-profit Boards are required by law to follow it.

### **Why Do Incorporated Non-Profits Have a Board?**

Incorporated non-profits are a legal entity and are required to have a Board made up of a minimum of three Directors. The Board is legally responsible for the affairs of the non-profit and is ultimately accountable back to the government, and to others such as its clients. Boards are expected to uphold the public trust by ensuring the ASO does what it was established to do.

### **What are our Articles and how are they different from our by-laws?**

Articles of incorporation are your ASO's foundational legal documents. They include the ASO's name, purpose, registered office address, and membership structure. They sometimes define limits like the geographic area where the ASO operates. They should be reviewed from time to time to ensure they accurately reflect the evolving purpose of your ASO.

### **What does it mean to have by-laws, and how is it different from Board policy?**

By-laws are legally required under ONCA and establish the foundational governance rules for a non-profit, covering board composition, elections, and meeting requirements. Boards must follow their own by-laws, and members can hold them accountable if they fail to do so. Board policies are more flexible. They add detail and can be amended at any board meeting. Policies cannot contradict by-laws or ONCA.

### **Who makes by-law changes and when are they in effect?**

Boards may enact immediate changes to by-laws, but they still must be brought forward to members at the next Annual or Special Meeting, who retain the ultimate authority to approve or overturn board decisions.

### **Who is allowed to see our by-laws?**

All members and board directors must be granted access to an organization's by-laws. Prospective members and staff also often want to review them. Many organizations adopt the common practice of posting by-laws on their websites or circulating them to interested parties.

### **Is every Board policy a governance policy?**

No. Sometimes Board enact operational policies either intentionally or due to confusion about their proper role versus the Executive Director's (ED's) delegated authority. True Board policies should focus on governance. It is important for Boards to understand the distinction between governance oversight and operational management.

### **What is a governance policy?**

A governance policy is one passed by the Board that states high-level rules, expectations, and limits for the organization. It defines how the Board operates and what authority is delegated to the ED. They can also set expectations for the ED as to how they must lead: high-level standards around treatment of staff, service users, and members of the community.

### **What is an operational policy?**

An operational policy is one that is normally approved by an Executive Director. Operational policy should set specific expectations as to how “operations” function, e.g., programs and services; human resources, anti-racism and anti-oppression standards; health & safety; financial management; fundraising; community engagement; IT and cybersecurity; & physical plant management.

### **What is the Board’s role in operational policy?**

If a Board is trying to operate in a governance-focused model, the Board should not *approve* operational policy. However, it is appropriate for the Board to *receive* operational policy and review it to ensure that it aligns with governance policy and legal requirements. If the Board is concerned the policies may not conform to its own governance policy, they can ask the ED to revise or amend an operational policy.

### **Who is allowed to make operational decisions—Board or the ED?**

The Board delegates operational decisions to the ED. Normally, the Board stays out of operations unless there is a crisis and, at that time, they have the right to intercede in or pull back the ED’s authority, including in order to make operational decisions.

### **Is everything in our Board manual or Board folder a Board policy?**

“Board manuals” are now usually a Board’s shared (digital) folder. These folders often include policies, but also other materials like orientation documents or reports. Sometimes, operational policies are found in these manuals/ folders for quick reference purposes.

### **Who is allowed to see our policies? And when should we share them?**

*Governance policies:* The Board is not required to share its governance policy with anyone other than the Board. Despite this, it is the practice of many organizations to make these more widely available—to members and to staff. Some even post them on their website. However, Boards should have careful risk discussions if they choose to make them public.

*Operational policies:* Operational policies should only be seen by Board and staff, with the exception of any policies intentionally written for viewing by service users or community-members.

### **What is a Board model and who / what decides under which model we operate?**

A Board model is the model the Board itself chooses as to how it will govern the organization—and the Board may change its model from time to time or deviate from it in a crisis. It clarifies, generally, whether its focus will be solely on governance, or some mix of governance and operations. If there is to be some focus on operations, the Board should be crystal clear as to what that focus will be and who (the ED, or the whole Board, or one of its Committees) will do what. Other aspects of the model will pertain to how the Board leads, e.g., through consensus? in a more hierarchical way? etc.

### **What is quorum, and what are the rules?**

Quorum is the minimum number of voting members needed to make decisions. ONCA states that:

- A quorum is the minimum number, or percentage, of voting members you need to be present at a meeting for a nonprofit to be able to vote officially on issues.
- If you lose quorum during a members' meeting, the meeting can *continue* unless your governing documents (by-laws) say otherwise, but you can no longer vote on an item during that meeting (unless a person comes back and you regain quorum).

It's important to check what your by-laws say about what is the minimum number or percentage of voting members, and whether or not a meeting has to end, even for discussions, when you lose quorum.

### **Does our Board need to vote? Or can we work on consensus?**

It is up to your Board whether you make a decision by consensus or whether you vote. Your model of decision-making may be defined in your by-laws, or in your governance policies. Consensus doesn't mean unanimity – some people may “stand aside”; the equivalent of abstaining in consensus models. If there is a vote at a meeting, this means there will be a show of hands. Ballots, which are secret, are only used in certain instances in Members' meetings (e.g.: if requested). It is important to ensure that the correct number of people have agreed to a resolution/ to a motion. This depends on whether or not the matter being decided requires an “ordinary resolution” as defined under ONCA (requiring 50 percent plus 1), or a “special resolution” (requiring a 2/3rds majority). The matters requiring a special resolution are defined in ONCA.

### **What is the purpose of motions and how should they work if used properly?**

A motion is the same as a resolution. An ordinary resolution is a motion that requires 50% plus 1 to pass, and a special resolution is a motion that requires a 2/3rds majority to pass. Motions give clarity on what people are voting for or agreeing to via consensus. People authorized to make decisions in the meeting (in Board meeting or a Members' meeting) can propose to change the wording of a motion to make it clearer or even to change its purpose, but everyone must agree to the change in wording first. Then they have to agree to pass the motion “as amended.” After a motion's wording is settled, it is customary to ask if there is any discussion or further information that people require in order to make up their minds. Finally, the meeting is asked to vote on the motion or agree to it by consensus. If the correct number of people at the meeting agree with the motion, either by vote or by consensus, it is said that “the motion is carried”. If the correct number do *not* agree, “the motion is defeated.” Motions are not always necessary for routine matters that get decided in meetings and recorded in minutes.

### **Do we need to follow Roberts Rules of Order or some other rules of parliamentary procedures?**

No. These are optional tools to help manage meetings. If your Board has decided to follow Robert's Rules of Order or some other form of parliamentary procedures, they can do so informally, without putting it in by-laws.

### **Do motions require a seconder?**

No, they do not, unless your by-laws require it.



### **How must we record decisions?**

Decisions must be recorded in minutes. The simplest way is to make a motion, record the motion in minutes, and then say if the motion was carried, defeated or... deferred to another meeting. For more routine and less controversial matters, you may simply record what has been decided, without a motion (e.g., “The Board asked the ED to bring back a report at the next meeting on matter X”). You do not need to record the number of votes, or who voted for what. However, at meetings of members (AM or Special Meeting), it is customary to record the number of votes in favour, the number of votes against, and the number of abstentions. This is because it is difficult to enact a proper consensus decision-making model with the number of people who attend members’ meetings. However, sometimes, a Member or a Board member may ask that their name be recorded as voting one way or another, and if so, you may minute their name and the way they voted.

### **What is an abstention?**

An abstention is when someone present at a meeting chooses not to vote. In some consensus models, they allow a person to “stand aside”, which is similar to an abstention. In this case, the person does not wish to block the consensus process and can live with what is being decided.

### **What is a Member?**

A Member (often capitalized to indicate its legal meaning) is a person who applies and is accepted as a Member by the Board, under the rules stated in ONCA and in your organization’s by-laws. The main purpose of Members is to vote at Annual Meetings and Special Meetings, and thereby elect Board members, approve audited financial statements, vote on any resolutions duly put before them, etc. Members cannot direct daily affairs of the organization and they can’t fire an ED.

### **What are your responsibilities to Members and what are their rights?**

Members have a variety of rights under ONCA, include receiving proper notice of meetings, proposing motions or calling Special Members’ meetings. Their rights may be further defined in your by-laws and governance policies. The Board must engage them, provide information, and treat them fairly.

### **Should all service users or community members become Members of the corporation?**

Not all service users or community members are interested in becoming “Members” under the meaning of ONCA. Also, to become a Member means their names and email addresses must be disclosed to another Member if requested (but *not* whether or not they are a service user). Everyone who signs up to be a Member—but especially service users—should be informed of the limits of privacy protection noted above. ASOs should never pressure people to join.

### **Who has a right to see our Membership list and what Member info are we required to collect?**

Under ONCA, you must collect names, emails, and an address for service. Members can access names and emails of other Members, but not personal addresses or phone numbers.

### **Who has a right to see our Board list, including names and addresses?**

Board member names should be public. Personal contact details should not be shared, but messages can be forwarded to Board members.

### **Who is/should be allowed to see Board minutes?**

Typically, only Board members and certain officials (e.g., auditors, court appointed investigators and certain other government officials). Some organizations share selected minutes publicly but should be careful not to make Board minutes on confidential matters available to the public, or even to other internal interest-holders.

### **Why do we get a Board package and what should be in it?**

The purpose of a Board package is to inform all Board members of the agenda of the meeting and ensure that all Board members have had time to properly prepare themselves for discussion and decisions. It includes the agenda and key documents so time isn't wasted reviewing materials during the meeting.

### **Who is allowed to come to a Board meeting?**

Only Board members, those sitting on the Board ex-officio (for instance, the ED or an invited Indigenous Knowledge Carrier), and invited guests (staff or other) have the right to attend Board meetings. Other Members of the corporation who are not Board members do *not* have the right to attend Board meetings.

### **What is a “consent agenda”?**

A “consent agenda” item has things that are non-controversial, routine, and that shouldn't require discussion (e.g., minutes, committee reports). Board members have the right to ask that any item be removed from the consent section, so that it may be properly discussed. The items remaining in the consent portion are approved as a group of items, with one motion.

### **Planning for and structuring a decent Board or committee agenda**

The Board chair—and sometimes the whole Executive committee—plans the Board agenda in consultation with the ED. Matters should be organized and identified as either 1) “For information”; 2) “For discussion”; or 3) “For decision.”

### **How should Board minutes be taken and by whom? Where should they be stored?**

Board minutes should summarize decisions and key points, not record everything said. They should be stored securely and accessed only by appropriate people. If it is required by by-laws or is the custom of the organization, the number of votes in favour, against and abstaining will be recorded. Despite their title, the “Secretary” of the Board is not required to take minutes but often does in smaller ASOs. Minutes should be stored in a secure digital folder accessible only to the ED, to Board members, and to staff providing support to the Board.

### **What is an in-camera Board meeting, when should it be used and how should minutes be taken and stored?**

A meeting held *in camera* (Latin for “in a chamber” or “in private”) is one where certain Board conversations are held confidential to other non-Board members who may normally be in the meeting. These should be used judiciously, and only for matters requiring sensitive discussion—for instance discussing a performance review of an ED or when a finance or audit committee meets with auditors without management present. Board members have a right to be at meetings: meetings held *in camera* cannot exclude them. When going *in camera* there should be a motion,

and it should indicate who is permitted to be in that meeting. Minutes can be requested by auditors and may also be requested under certain extremely rare court proceedings. Special minute-taking and storage protocols are required, if minutes are kept.

### **What is the role of the Board's Secretary?**

The Secretary ensures records are kept, meetings are organized, and Board administration is handled (these tasks can be delegated).

### **What is a Board committee and how is it different from an operational committee?**

A Board committee is any committee that the Board creates. The Board must lead Board committees, and it is customary for a Board member to chair it (this is highly recommended). The purpose of a Board committee is to accomplish work requiring more detailed focus and conversation, in between Board meetings. Board committees must report back to the Board in writing and should have clear terms of reference. An operational committee is normally struck by the ED and reports to them. Their purpose is to support the ED in achieving the mission of the organization, and they often relate to human resources or fundraising. However, they may relate to other areas of operations.

### **Who is allowed to attend committee meetings?**

Only those named in the terms of reference, and those invited on an ad hoc basis are permitted to attend committee meetings. Sometimes Board members are invited to attend operational committee meetings because of particular expertise. They should clarify if they are there as a Board member or wearing another volunteer hat. In times of crisis, the Board may decide it must attend operational committee meetings. They cannot be refused attendance.

### **What kind of decision-making power and authority does a Board committee have?**

Only what the Board delegates—some powers (like changing by-laws or approving financial statements) cannot be delegated.

### **What is a board workplan?**

A Board workplan is a kind of critical path document developed a few months before the beginning of the fiscal year that lists all of the items of work that the Board and each of its Committees decide to take on for the coming year. Each item will indicate its timing. Some examples include the months in which Board and Committee meetings are to be held and due dates for funder reports.

### **What are our responsibilities regarding our major funders?**

Boards have a legal responsibility to ensure that funds you have signed agreements for are spent the way you agreed. Furthermore, you're expected to ensure that reports are produced, reviewed by the Board where expected, and submitted on time. You must use funds as agreed, report properly, and communicate early if issues arise. Furthermore, the communication should not only be through your ED. Communication from both Board members and the ED in times of crisis can increase funder confidence.

### **When should we engage with our major funders?: *Early warning check-ins***

In the following circumstances, Boards should have consistent, open communication with funders as a key partner, to inform them of potential issues or organizational risks:

- Service continuity risk (vacancies, leave; turnover; you can't recruit or retain staff);
- Financial instability (reserves are depleted, other funding is paused, you've lost significant fundraising revenue);
- Lack of engagement or tension between the ED & the Board;
- Office instability (e.g. landlord tension, leases are ending, there's a potential eviction)
- Decreased partnerships;
- Board instability (insufficient membership, governance issues)
- Negative public media/ community perceptions)

### **When should we engage with our major funders?: *Alerts to more immediate or significant danger***

In the following circumstances, Boards should ensure immediate early engagement with funders as a key partner so that they may help you develop communication & transition or stabilization plans:

- When issues escalate to a critical level (when multiple are at or could reach a crisis point);
- When there is significant financial pressure that could lead to closure, or inability to deliver services
- When there is community criticism that likely will gain media attention or result in letters to politicians (you should help your funders to prepare for this)
- If there is an imminent eviction from your office space
- If an ED is terminated, or if there is a termination of a management team member
- If the Board is fragmented (unmanaged or unproductive conflict) or there has been a mass resignation or removal of Board members.

### **What's an Annual Meeting?**

An Annual Meeting (usually called an annual general meeting) is the annual meeting of an ASO's corporate Members. It is called by the Board. Under ONCA, it must happen within 18 months of incorporation, and thereafter, 15 months of the previous AM.

The AM should happen after the end of the fiscal year, with enough time to produce an audit that has been reviewed by and approved by the Board. An ED cannot call an AM.

### **What is a Special Members' meeting?**

A Special Members' Meeting is generally a meeting held in between AMs for a "special business". Technically, an AM can *also* be a Special Meeting if "special business" is conducted at it. Despite the above, normally, Special Meetings are those held in between AMs because the organization cannot wait for the next AM. A Special Meeting can only be called if the proper conditions are met in ONCA and only if the proper notice to Members has been given. A Board (not the ED) may call a Special Members' meeting, and under particular circumstances, Members can compel the Board to call a Special Meeting.

### **Whose job is it to plan and manage an AM or Special Members' meeting and what are some considerations?**

The Board is responsible, though logistics may be delegated to the ED. Careful planning is essential, especially if there are controversial or complicated items to discuss, or if there are tensions among the Membership. Sometimes a lawyer and/ or a "parliamentarian" will help you to run the meeting.

### **Who is allowed to attend an AM or Special Members' meeting?**

Members (including the Board, who are automatically deemed Members under ONCA) or their proxy, your auditor, and invited guests are the only people permitted to attend the meeting, unless your by-laws say otherwise. Your auditor not only should attend your AM; they have a right to attend any meeting of your Members, at your expense. The ED sits on the Board ex-officio and is therefore expected to be at the AM. It is within the Board's right to refuse entry to any others who show up uninvited, to ask such people to leave, and/or to pause your meeting until such people leave.

### **Can motions be brought before an AM or a Special Members' meeting if they weren't on the agenda sent out?**

No, they cannot, with the following exception: Members may nominate another person to run for office as a director (board member) at an AM or Special Meeting, even if the person was not included as a candidate in the meeting notice.

### **What is a proxy and must our by-laws allow for proxies?**

A proxy is a term used to describe a form given by a Member to someone else so that that person may vote for them at an AM or Special Meeting. Proxies are permitted under ONCA but only if your by-laws allow for them. If your organization permits proxies, it is best to read the relevant section in ONCA and ask for advice on designing a proper proxy form.