



Ontario Federation of Agriculture

Seeking changes to the:

Ontario Not-for-Profit Corporations Act, 2010

The Ontario Not-for-Profit Corporations Act, 2010 (ONCA) is intended to provide more transparency and accountability by not-for-profit corporations to their members. This is delivered through significant changes in members' rights and directors' (corporations') responsibilities versus those in the current Ontario Corporations Act.

However, the ONCA radically alters the current rights and privileges of OFA members in terms of elections and voting. In addition the Act confuses the role of members with regards to making "proposals" at an AGM or Special Meeting.

In practice the ONCA encroaches on the rights that OFA members currently enjoy.

These issues need to be addressed with amendments to the current version of the ONCA.

Summary of concerns:

The ONCA extends new rights to members, intending to ensure corporations are more accountable to their respective memberships.

Of most concern to the OFA is:

- Directors will be elected by all voting members at the AGM
 - This effectively eliminates geographic based elections. Our present structure allows all members to vote for a director from their area – an important issue for OFA members.
 - In effect, this change limits members' abilities to participate in elections due to distance, expense and time required to attend the AGM.
- Classes or groups of members can be assigned different voting rights
 - Classes effectively have veto power over administrative proposals as each class must approve proposals
 - Non-voting classes also have the right to vote (although this is now subject to the amendments proposed in Bill 85 which would delay enactment until the expiry of the three year transition period)
 - If classes or groups of voting delegates are established for the purposes of voting at the AGM then the election of Directors by geographic region is significantly compromised in terms of the number of voting members per region.

- Members can vote through proxies
 - With diligence and use of technology a single member or non-member could assemble sufficient proxy votes to elect or remove a director or directors from the corporation, or effect the adoption of any proposal.
 - This exposes the corporation to risk of “takeover” by special interests, again, not in the best interests of members.
- “Proposals” brought to the AGM or Special Meetings may or may not be binding on the Board
 - Boards may be protected from liability arising from binding proposals through the Immunity clause but members or others may be left without redress for any damages that may have been caused (although see Part XIV – Members Remedies).
- Audited financial statements must be available to members who request them 21 days in advance of the AGM
 - This will require delaying the date of the annual meeting.

Required Changes:

In light of the expressed concerns with the ONCA, the Ontario Federation of Agriculture proposes amendments to the *Not-for-Profit Corporations Act, 2010* as follows:

- 1) Proxy voting, and who is eligible to be a proxy holder, is an option that may be provided for in the By-law of the Corporation
- 2) Election of regional directors, or directors representing particular groups of members, can be made by eligible voting members in defined geographic regions at the option of the corporation (as enabled in a By-law ratified by members) without triggering a class veto right on other matters.
- 3) A by-law may provide that “Proposals” brought by members to the AGM or Special Meetings are non-binding on the corporation. The corporation should be obligated to report back to members on the Board’s treatment of any proposal passed by members. Section 56 must be amended to allow for the option that votes will be taken but that proposals can be non-binding.
- 4) Audited financial statements can be made available to members 10 calendar days prior to the AGM.