

COMMUNITY CARE DURHAM

SUMMARY OF SIGNIFICANT DIFFERENCES BETWEEN CURRENT BY-LAW AND NEW BY-LAW**

*****This document is intended to address key differences between the Current By-law and the New By-law, and to do so in a summary manner only. This document should be read in conjunction with the new By-laws.***

All references below to:

- i. **“Articles”** means the Articles of Amendment of CCD that will be filed as part of the transitions of its constating documents to ONCA.
- ii. **“CCD”** mean Community Care Durham.
- iii. **“Current By-law”** means By-law No. 1 of CCD, as amended by the By-law passed on June 28, 2022.
- iv. **“Current Letters Patent”** means, collectively, CCD’s Letters Patent dated February 24, 1983 and Supplementary Letters Patent dated September 12, 2003.
- v. **“New By-law”** means the new By-law, By-law No. 2 of CCD, that will be developed to (among other things) ensure compliance with ONCA.
- vi. **“ONCA”** means the *Ontario Not-for-Profit Corporations Act, 2010*.
- vii. **“Questionnaire”** means the questionnaire prepared by Fasken and completed by CCD.

	Subject	Current Provision of Letters Patent or Current By-law	Relevant Provision in ONCA	Update in New By-law
A. LETTERS PATENT / ARTICLES				
1.	Special Provisions	<p>The Directors shall serve without compensation and no director shall, directly or indirectly, receive any profit from his position as such; reasonable expenses incurred by any director in the performance of his duty may be paid;</p> <p>Upon the dissolution of the Corporation and after the payment of all debts and liabilities, the remaining property of the Corporation shall be distributed or disposed of to charitable organizations which carry on their work solely in Ontario.</p>	<p>The Office of Public Guardian and Trustee’s (“PGT”) prescribed Special Provisions for Ontario charities are as follows:</p> <p>2. The corporation shall be subject to the Charities Accounting Act.</p> <p>3. No director shall receive remuneration for services provided in the capacity as a director, although they may be paid reasonable expenses incurred by them in the performance of their duties. Unless otherwise prohibited by the corporation, a director may be compensated for services other than as a director pursuant to the regulation made under the Charities Accounting Act, or with court approval or an order made under section 13 of the Charities</p>	The Articles of Amendment include these provisions required by the PGT.

	<u>Subject</u>	<u>Current Provision of Letters Patent or Current By-law</u>	<u>Relevant Provision in ONCA</u>	<u>Update in New By-law</u>
			Accounting Act. 4. The Corporation shall be entitled to invest the funds of the Corporation pursuant to the Trustee Act. 5. Upon the dissolution of the corporation and after satisfying the interests of its creditors in all its debts, obligations and liabilities, its remaining property shall be distributed to a Canadian body corporate that is a registered charity under the Income Tax Act (Canada) with similar purposes to its own, the Crown in right of Ontario, the Crown in right of Canada, an agent of either of those Crowns or a municipality in Canada.	
2.	Range of Number of Directors	N/A	Section 22(2): The corporation’s <u>articles</u> may provide for a minimum and maximum number of directors.	To reflect your response to the Questionnaire, we have introduced a range in the number of directors (i.e., a minimum and maximum board size) of 3 and 15. This min and max can be changed in accordance with the By-law.
B. BY-LAWS				
MEMBERSHIP MATTERS				
1.	Members and Conditions of Membership	The voting membership of Community Care shall consist of: a) Registered clients of Community Care b) Registered volunteers of Community Care c) Board of Directors	Section 48(1): the conditions of membership of a corporation must be set out in its By-laws. Section 48(6): Only one vote per member unless the articles provide otherwise	No change. Membership stays the same. Note: Section 3.02 of the Current By-law that disclaims liability for Members has not been carried over to the New By-law, but is a matter of fact (i.e., Members do not have liability under ONCA).
2.	Meetings Generally	Section 1 of the Current By-law pertains to the Board (composition, etc.) and Section 3 of the Current By-law pertains to the Members (composition, etc.). However, Section 4 – which	The provisions pertaining to meetings of the Board and Members are distinct.	The New By-law has two separate sections to address Board meetings, on the one hand (see Article 6 of New By-law) and Members’ meetings, on the other hand (see Article 4 of New By-law). This distinction is important given the significant distinctions between the rules under ONCA applicable

	<u>Subject</u>	<u>Current Provision of Letters Patent or Current By-law</u>	<u>Relevant Provision in ONCA</u>	<u>Update in New By-law</u>
		relates to meetings – mixes the two (Board and Members meetings).		to Board and Members’ meetings – e.g., Members may vote by proxy at Members’ meetings; Directors cannot vote by proxy at Board meetings.
3.	Special Meetings	Section 4.03 addresses Annual Meetings of Members. However, while Section 4.02 of the Current By-law addresses “Special Meetings”, these are “Special Meetings” <i>of the Board</i> .	Section 52(2) – The directors may at any time call a special meeting of the members. Section 57(7) – Addresses all of the matters which must be addressed at a special meeting.	A section addressing special meetings of Members has been added to the New By-law (which new section is compliant with the provisions of ONCA pertaining to special meetings of Members (see previous column). See Section 4.2 of New By-law and Section 4.3.
4.	Matters to Be Addressed at Annual Meeting	<p>S. 4.03 - Each year, within three (3) months of the end of the fiscal year, CCD shall conduct an Annual General Meeting of the membership.</p> <p>a) Purpose</p> <p>(i) The President shall give a report and present an audited financial statement on behalf of the Board of Directors.</p> <p>(ii) The Chief Executive Officer shall give a report on the operations of the Corporation.</p> <p>(iii) The auditor shall be appointed.</p> <p>(iv) The names of the members of the Board as referred to in By-Law No. 1, Section 1.04 shall be presented to the membership for ratification and election as directors.</p> <p>(v) Members' motion(s) as referred to in By-Law No. 1, Section 4.03 (d), and any other business requiring approval of the general membership shall be</p>	S. 68(4) The remuneration of an auditor or person appointed to conduct a review engagement may be fixed by ordinary resolution of the members or, if not so fixed, shall be fixed by the directors.	<ul style="list-style-type: none"> In the New By-law, the language of Section 4.03(a)(iv) and (v) of the Current By-law is amended as follows: <i>[Note: Changes in strike through (deletions) or underline (additions)]</i> <p>(iv) The names of the members of the Board as referred to in By-Law No. 1, Section 1.04 shall be presented to the membership for ratification and election as directors. The election of directors to fill any vacancies on the Board (Section 4.1(c)(ii) of New By-law). <i>[Note: As discussed with CCD, the slate of candidates will not necessarily be limited to those vetted by through the nominations process set out in the By-law and may include nominees of Members submitted by way of a ‘Proposal’ under ONCA. Such nominees must be presented (provided that the requirements of ONCA pertaining to proposals have been met), but the Board can distinguish between the Board’s slate of nominees versus the slate containing any nominees of Members.]</i></p> <p>(v) Members' motion(s) as referred to in By-Law No. 1, Section 4.03 (d), and any other business requiring approval of the general membership shall be presented. Such other business as may properly come before the meeting, having regard to, among other things, the notice requirements of Section 4.3(c)¹ (see Section 4.1(c)(iv)). <i>[Please see our note below in item 8 regarding these motions and the formal process set forth in</i></p>

¹ Section 4.3(c) stipulates the information that must be included in a notice of Members’ meeting. This is a requirement of ONCA.

	<u>Subject</u>	<u>Current Provision of Letters Patent or Current By-law</u>	<u>Relevant Provision in ONCA</u>	<u>Update in New By-law</u>
		presented.		<i>ONCA regarding Proposals.]</i> <ul style="list-style-type: none">• The New By-law has been amended to include the appointment of an Auditor / Accountant to hold office until the next Annual Meeting as an agenda item for all Annual Meetings (see Section 4.1(c)(iii)). We note that even if an Auditor / Accountant has been selected by the Board via an RFP process, the Members should still vote to approve the Auditor / Accountant on an annual basis. We note, however, that motions for the “approval” of Auditors / Accountants will give Members two options: 1) for; and 2) withhold. As withholding from the vote is not a negative, only one “for” vote is required for the presented Auditor/Accountant to be confirmed by the Members. This reflects ONCA and is distinct from most other motions (except voting for Directors) which Members are to vote “For” or “Against” in respect of.
5.	Notice of Meetings	<p>S. 4.03 - Each year, within three (3) months of the end of the fiscal year, CCD shall conduct an Annual General Meeting of the membership.</p> <p>[...]</p> <p>b) Notice</p> <p>The members and the auditor of the Corporation shall be notified by publication at least ten (10) days before the time fixed for the holding of such a meeting. No errors or omission in giving such notice for a meeting shall invalidate or make void any proceedings taken or had at such meeting.</p>	<ul style="list-style-type: none">• Section 52(1): members’ meetings must be called at least once every 15 months.• Section 55(1): members must be given at least 10 days’ notice of any meeting, but not more than 50 days’ notice.• Section 55(7): All business transacted at a special meeting of the members and all business transacted at an annual meeting of the members is special business except for the following:<ul style="list-style-type: none">○ Consideration of the financial statements.○ Consideration of the audit or review engagement report, if any.○ An extraordinary resolution to have a review engagement instead of an	<p>To comply with ONCA, the following changes have been made in the New By-law:</p> <ul style="list-style-type: none">• An Annual Meeting is to be held not later than 15 months after the date of the last Annual Meeting (see Section 4.1(a) of the New By-law).• Notice of the Annual Meeting shall be given at least 10 days (this reflects Current By-laws) but no more than 50 days (this reflects ONCA) before the Annual Meeting (see Section 4.3(b) of the New By-law).• Where “Special Business” is to be conducted at a Members’ meeting, the Members must be given sufficient information to permit them to form a reasoned judgment on the business; and (2) the text of any Special Resolution that will be presented to the meeting. This reflects ONCA. See Section 4.3(c).

	<u>Subject</u>	<u>Current Provision of Letters Patent or Current By-law</u>	<u>Relevant Provision in ONCA</u>	<u>Update in New By-law</u>
			<p>audit or to not have an audit or a review engagement.</p> <ul style="list-style-type: none">○ Election of directors.○ Reappointment of the incumbent auditor or person appointed to conduct a review engagement. <ul style="list-style-type: none">• Section 55(8): A notice of a <i>special meeting of members</i> must: (i) state the nature of the business in sufficient detail to permit the member to form a reasoned judgment on the business; and (ii) the text of any special resolution to be submitted to the meeting.	
6.	Quorum for Meetings	S. 4.03 c) - The quorum shall be the number of members present.	<ul style="list-style-type: none">• Section 57(1): unless the By-laws provide otherwise, quorum for a <i>meeting of members</i> is a majority of <u>members entitled to vote at the meeting</u>, whether in person or by proxy.• Section 57(2): if a quorum is present at the opening of a <i>meeting of the members</i>, the members present may proceed with the business of the meeting, even if a quorum is not present throughout the meeting, unless the by-laws provide otherwise.	As a number or percentage must be included for quorum, and in consideration of the large membership, the quorum for Members' meetings has been set at 25 Members. See Section 4.6.
7.	Resolutions	S. 4.03 d) - Any member may submit a motion(s) for consideration at the Annual General Meeting. The motion must be submitted to the President of Community Care by the end of the fiscal year (March 31). The Board shall be notified of such motion(s).	ONCA sets out a formal process by which members may: i) requisition a meeting of members; and ii) submit and discuss "proposals" (being a matter that the member wishes to have addressed at a members' meeting). ONCA prescribes the requirements for proposals (e.g., how they must be submitted to the Board, the timing of such submission, the contents of the submission) and the obligations in respect of any	As the right of members to submit proposals under ONCA cannot be taken away by the By-law (such that it will necessarily apply), Section 4.03d) of the Current By-law has <u>not</u> been carried over into the New By-law as it would create redundancies and confusion as to what process applies. Due to the length of the process in ONCA re proposals, this process has not been included in the New By-law, but Members will nonetheless have the right to make such proposals.

	<u>Subject</u>	<u>Current Provision of Letters Patent or Current By-law</u>	<u>Relevant Provision in ONCA</u>	<u>Update in New By-law</u>
			<p>such proposal:</p> <p>56 (1) A member entitled to vote at an annual meeting of the members may, (a) give the corporation notice of any matter that the member proposes to raise at the meeting, referred to as a “proposal”; and (b) discuss at the meeting any matter with respect to which the member would have been entitled to submit a proposal.</p> <p>(2) A corporation <u>shall include</u> the proposal in the notice of meeting required under section 55.</p> <p>[...]</p> <p>(5) A proposal may include nominations for the election of directors if the proposal is signed by not less than 5 per cent of the members of a class or group of members of the corporation entitled to vote at the meeting at which the proposal is to be presented or a lower percentage that is set out in the by-laws, but this subsection does not preclude nominations being made at a meeting of the members. 2010, c. 15, s. 56 (5).</p> <p>ONCA also prescribes instances where the Board does not have to put forward a proposal to a members’ meeting (e.g., where it is clear the proposal is to enforce a personal claim or redress a personal grievance).</p>	
8.	Voting	<p>S. 4.01c) Each member has one vote, except the President who shall only vote in the event of a tie.</p> <p><i>[Note: It appears that this provision only extends to Board meetings and that there is no corresponding provision for Members’ meetings.]</i></p>	N/A	<p>As a matter of good governance, we recommend that:</p> <ul style="list-style-type: none">• all members in the case of Members’ meetings) be given a single vote (which would include the President, as they are a Director); and

	<u>Subject</u>	<u>Current Provision of Letters Patent or Current By-law</u>	<u>Relevant Provision in ONCA</u>	<u>Update in New By-law</u>
				<ul style="list-style-type: none"> there is no casting or tie-breaking vote. If a motion does not achieve a majority vote, then the motion is lost. <p>The above recommendations are reflected in Section 4.8 of the New By-law.</p>
9.	Proxies	S. 4.03d) The proxy shall be [...] presented to the President of the Board <u>prior to</u> the Annual General Meeting.	S. 64(4) The directors may by resolution fix a time <u>not exceeding 48 hours</u> , excluding Saturdays and holidays, before any meeting or continuance of an adjourned meeting of the members before which time proxies to be used at that meeting must be deposited with the corporation or an agent of the corporation, and any period of time so fixed must be specified in the notice calling the meeting.	The provisions of the New By-law (see Section 4.10(a)) regarding proxy voting, reflect the requirement of ONCA that proxies cannot be required to be deposited more than 48 hours in advance of the Annual Meeting.
10.	Voting by Telephonic or Electronic Means	Not specifically addressed.	<p>S. 67 (1) A <u>corporation may provide in its by-laws for voting by mail or by telephonic or electronic means, in addition to or instead of voting by proxy.</u></p> <p>Same</p> <p>(2) <u>Voting by mail or by telephonic or electronic means may be used only if,</u></p> <p><u>(a) the votes may be verified as having been made by members entitled to vote; and</u></p> <p><u>(b) the corporation is not able to identify how each member voted.</u></p>	Section 4.10(b) of the New By-law addresses the ability of the Members to vote by telephonic or electronic means, in the circumstances permitted by ONCA (see underlined portion of the applicable provision of ONCA in the preceding column). Voting in this way would be in addition to proxy voting (i.e., Members could vote in-person at the meeting; Members could vote through proxy, or Members could attend and vote by telephonic or electronic means).
11.	Holding a Members' meeting by Communication Facility (e.g., Zoom; Teams)	Not specifically addressed.	S. 53(5) If the directors or members of a corporation call a meeting of the members <u>and if the by-laws so provide, the directors or members, as the case may be, may determine that the meeting be held entirely by telephonic or electronic means that permits all participants to communicate adequately with each</u>	Section 4.11 of the New By-law addresses the fact that Members' meetings may be held entirely by Communication Facility, in the circumstances permitted by ONCA (see underlined portion of the applicable provision of ONCA in the preceding column).

	<u>Subject</u>	<u>Current Provision of Letters Patent or Current By-law</u>	<u>Relevant Provision in ONCA</u>	<u>Update in New By-law</u>
			<u>other during the meeting.</u>	
12.	Attendance at Members' meetings by Communication Facility	Not specifically addressed.	S. 52(4) Unless the by-laws provide otherwise, any person entitled to attend a meeting of the members may participate in the meeting by telephonic or electronic means <u>that permits all participants to communicate adequately with each other during the meeting if the corporation makes such means available.</u> A person so participating in a meeting is deemed for the purposes of this Act to be present at the meeting.	Section 4.11 of the New By-law addresses the ability of Members attend meetings by Communication Facility, in the circumstances permitted by ONCA (see underlined portion of the applicable provision of ONCA in the preceding column). This would mean: Members could attend in-person at the meeting (if a physical meeting is held, rather than the meeting being held entirely virtually); Members could attend a meeting through a proxy, or Members could attend the meting by communication facilities.
DIRECTOR AND OFFICER MATTERS				
1.	Qualifications	<p>S. 1.03 - Each director shall:</p> <p>a) be a member of the Corporation;</p> <p>b) support the objectives of the Corporation as stated in the Letters Patent and the Board Governance Policies as established by the Board of Directors;</p> <p>c) be qualified by the terms of the Letters Patent of the Corporation;</p> <p>d) be at least 18 years of age;</p> <p>e) not be an undischarged bankrupt nor a mentally incompetent person;</p> <p>f) be a resident of the Regional Municipality of Durham;</p> <p>g) meet the criteria set out in 1.05 hereof.</p> <p>If a person ceases to be qualified by the above terms, he/she ceases to be a director.</p>	<p>Section 23(1): The following persons are disqualified from being a director of a corporation:</p> <p>1. A person who is not an individual.</p> <p>2. A person who is under 18 years old.</p> <p>3. A person who has been found under <i>the Substitute Decisions Act, 1992</i> or under the <i>Mental Health Act</i> to be incapable of managing property.</p> <p>4. A person who has been found to be incapable by any court in Canada or elsewhere.</p> <p>5. A person who has the status of bankrupt.</p> <p>s. 26 - <u>The members of a corporation</u> may, by ordinary resolution at a special meeting, remove from office any director or directors, except persons who are directors by virtue of their office.</p>	<p>Per your response to the Questionnaire, paragraph f) of Section 1.03 of the Current By-law has not been included in the New By-law [i.e., the requirement that an individual be a resident of Durham.]</p> <p>To reflect: (1) the requirements of ONCA; (2) the requirements applicable to CCD on account of its status as a registered charity; and (3) the change requested by CCD in its response to the Questionnaire (as set out above), Section 5.3 (together with Section 1.1 (Definitions)) set out the qualifications for Directors as follows [Note: Changes in strike through (deletions) or underline (additions)]:</p> <p><u>"Each director shall not be an Excluded Person"</u> (Section 5.3)"</p> <p>Section 1(n), "Excluded Person" means:</p> <p>a) <u>a person who is not an individual</u>;</p> <p>b) any person who is under 18 years of age;</p> <p>b) support the objectives of the Corporation as stated in the Letters Patent and the Board Governance Policies as established by the Board of Directors;</p> <p>c) be qualified by the terms of the Letters Patent of the Corporation;</p>

	Subject	Current Provision of Letters Patent or Current By-law	Relevant Provision in ONCA	Update in New By-law
				<p><u>[Note: The Articles will not include any requirements.]</u></p> <p>c) not be an undischarged bankrupt nor a mentally incompetent person a person who has been found under the <i>Substitute Decisions Act, 1992</i> or under the <i>Mental Health Act</i> to be incapable of managing property;</p> <p>d) a person who has been found to be incapable by any court in Canada or elsewhere;</p> <p>e) be a person who has the status of bankrupt; and</p> <p>f) not be a person who is an “ineligible individual” as defined under the <i>Income Tax Act</i>; and</p> <p>g) any Director who has breached the Corporation’s Code of Excellence for Directors and in respect of whom, the Board has not waived the Breach.**</p> <p>f) meet the criteria set out in 1.05 hereof. _____ **This is not a pre-condition for a Director, but a condition once elected/appointed as a Director. As the right to remove Directors is a right reserved to Members, the Board cannot itself remove a Director for improper behaviour, etc. Accordingly, it is necessary to include compliance with the Corporation’s Code of Excellence as a qualification for Directors, such that if a Director breaches that Code (and such breach is not waived by the Board), the Director becomes ineligible to serve and is deemed to longer be a Director.</p>
2.	Removal	S. 1.07 - The Board may remove, for cause, any Director of the Corporation	<ul style="list-style-type: none"> Section 26(1): directors can be removed by <u>ordinary resolution of the members</u> at a special meeting [...]. 	<p>Section 5.6(b) of the New By-law departs from section 1.07 of the Current By-law, in that it reflects the right of Members only to remove Directors (see preceding column):</p> <p>“A director may be removed by ordinary resolution of the members at a special meeting.”</p>

	<u>Subject</u>	<u>Current Provision of Letters Patent or Current By-law</u>	<u>Relevant Provision in ONCA</u>	<u>Update in New By-law</u>
3.	Vacancy in Office re Leaves of Absence	S. 1.07 - A Director seeking a leave of absence from the Board is permitted for a maximum period of twelve (12) months total or consecutive over a period of four (4) years. The leave of absence shall run concurrent with the Directors appointment on the Board. It is recommended that a notice of 30 days be given prior to departure.	This is not permitted by ONCA. An individual either is or is not a director.	This Section has been removed from the New By-law. If a Director wishes to take a leave, they must resign from the Board and then re-apply in respect of any vacancy on the Board.

	<u>Subject</u>	<u>Current Provision of Letters Patent or Current By-law</u>	<u>Relevant Provision in ONCA</u>	<u>Update in New By-law</u>
4.	Notice of Meetings	S. 4.01 (a) Notice of meetings shall be given verbally at the meeting immediately preceding the meeting in question, if practicable, and in any event at least ten (10) days before the time fixed for the holding of such a meeting. [...]	<p>S.34(3) Notice of Board meetings does not need to specify the purpose of the meeting unless the matter being dealt with pertains to:</p> <ol style="list-style-type: none">1. To submit to the members any question or matter requiring the approval of the members.2. To fill a vacancy among the directors or in the position of auditor or of a person appointed to conduct a review engagement of the corporation.3. To appoint additional directors.4. To issue debt obligations except as authorized by the directors.5. To approve any financial statements under section 83.6. To adopt, amend or repeal by-laws.7. To establish contributions to be made, or dues to be paid, by members.	Section 6.4 of the New By-law has been updated to reflect Section 34(3) of ONCA (see preceding column).
5.	Meetings by Communication Facility	Not specifically addressed.	S. 34(6) Unless the by-laws provide otherwise, <u>a director may, if all the directors of the corporation consent, participate in a meeting of the directors or of a committee of directors by telephonic or electronic means that permits all participants to communicate adequately with each other during the meeting.</u> A director so participating in a meeting is deemed for the purposes of this Act to be present at the meeting.	<p>Section 6.7 of the New By-law addresses the ability of the Directors to attend Board meetings by telephonic or electronic means, in the circumstances permitted by ONCA (see underlined portion of the applicable provision of ONCA in the preceding column).</p> <p>We note that all Directors must consent to the holding by meetings in this manner. We would suggest Directors be asked on an annual basis to consent (in writing) to the holding of Board meetings in this manner, such that it is not necessary for consent to be obtained at every Board meeting held by telephonic or electronic means.</p>
6.	Voting	S. 4.01c) Each member has one vote, except the	N/A	As a matter of good governance, we recommend that:

	<u>Subject</u>	<u>Current Provision of Letters Patent or Current By-law</u>	<u>Relevant Provision in ONCA</u>	<u>Update in New By-law</u>
		President who shall only vote in the event of a tie.		<ul style="list-style-type: none"> all members of the Board, in the case of a Board meeting, be given a single vote (which would include the President in each case, as they are a Director and thus, a Member); and there is no casting or tie-breaking vote. If a motion does not achieve a majority vote, then the motion is lost. <p>The above recommendations are reflected in Section 6.11 of the New By-law.</p>
7.	Protection of Directors and Officers	<p>S. 1.09 - Includes what appears to be standard provisions indemnifying the directors and officers and limiting their liability to the maximum extent permitted by law.</p> <p>Extends to current and former directors and officers.</p>	Section 46 of the Act provides up-to-date provisions.	<p>Section 10.2 of the New By-law reflects the language of ONCA regarding indemnification. It departs from the language in the Current By-law in that it:</p> <ul style="list-style-type: none"> The indemnity expressly extends to: (1) Committee members (as well as Directors and Officers) and (2) former Directors, Officers, and Committee members. The indemnity only extends to those covered where the person was exercising their powers and <u>acted in good faith, with a view to the best interests of CCD, exercising the skill, care and diligence that a reasonably prudent person would exercise in comparable circumstances</u>. This is distinct from paragraph 1 of Section 1.09(b) of the Current By-law which appears to indemnify Directors and Officers in respect of: (1) costs, expenses, etc. incurred by them in respect of anything they did in the execution of their duties (this is distinct as there is no requirement to act in good faith, exercise skill, etc.) and (2) costs, expenses, etc. incurred by them in “relation to the affairs thereof”, except where the costs, expenses, etc. arose from the Director’s wilful neglect or default (again, this is distinct from the New By-law / ONCA, as it provides a broader indemnification – i.e., the indemnification right is not available only when the Director wilfully acts negligently or in default – whereas under the New

	<u>Subject</u>	<u>Current Provision of Letters Patent or Current By-law</u>	<u>Relevant Provision in ONCA</u>	<u>Update in New By-law</u>
				By-law / ONCA, the indemnification right is only available where the Director has acted in accordance with the conditions underlined above).
8.	Protection of Directors and Officers	Section 1.09b) A director and officer acting in furtherance of a resolution duly passed by the Board shall be deemed to be acting in good faith and without wilful neglect or default	<p>S. 43 (1) Every director and officer in exercising his or her powers and discharging his or her duties to the corporation shall,</p> <p>(a) act honestly and in good faith with a view to the best interests of the corporation; and</p> <p>(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.</p> <p>Duty to comply with Act, etc.</p> <p>(2) Every director and officer shall comply with,</p> <p>(a) this Act and the regulations; and</p> <p>(b) the corporation’s articles and by-laws.</p> <p>Cannot contract out of statutory duty</p> <p>(3) No provision in a contract, the articles, the by-laws or a resolution relieves a director or officer from the duty to act in accordance with this Act and the regulations or relieves him or her from liability for a breach of this Act or the regulations.</p> <p>Reasonable diligence defence</p> <p>44 A director is not liable under section 39² and has complied with his or her duties under subsection 43</p>	<p>See above. A Director’s vote on a resolution is relevant to whether the Director will be liable. In determining liability, reference is made to the requirements imposed on Director’s to act in good faith, etc. (refer to underlined portion of text in preceding row, under the same heading), and in the previous column, as set out in Section 43(1) of ONCA, whether the Director complied with the Act and the By-laws, and also in certain circumstances, whether the Director undertook the necessary diligence. See preceding column. Not all of this language is replicated in the New By-law (nor is it included in the Current By-law) due to its length. Nonetheless, these provisions of ONCA will apply.</p> <p>Under ONCA, Directors now have the ability to register their dissent (further details of this right below).</p>

² Being: 39 (1) Directors who vote for or consent to a resolution authorizing either of the following are jointly and severally liable to restore to the corporation any money or property so paid or distributed and not otherwise recovered by the corporation: 1. A payment or distribution to a member, a director or an officer contrary to this Act. 2. A payment of an indemnity contrary to this Act.

	<u>Subject</u>	<u>Current Provision of Letters Patent or Current By-law</u>	<u>Relevant Provision in ONCA</u>	<u>Update in New By-law</u>
			<p>(2)³ if the director exercised the care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances, including reliance in good faith on,</p> <p>(a) financial statements of the corporation represented to him or her by an officer of the corporation or in a report of the auditor of the corporation or of a person who conducted a review engagement of the corporation to present fairly the financial position of the corporation in accordance with generally accepted accounting principles;</p> <p>(b) an interim or other financial report of the corporation represented to him or her by an officer of the corporation to present fairly the financial position of the corporation in accordance with generally accepted accounting principles;</p> <p>(c) a report or advice of an officer or employee of the corporation, if it is reasonable in the circumstances to rely on the report or advice; or</p> <p>(d) a report of a lawyer, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by them.</p>	
9.	Remuneration of Directors	The Directors shall serve as such without remuneration, and no director shall directly or indirectly receive any profit from his/her position as such, provided only that directors may be reimbursed for reasonable expenses incurred by them in the performance of their duties.	N/A	A Regulation to the Charities Accounting Act sets out a required process where a charity wishes to remunerate a Director for services provided in another capacity (for example, if one of your Directors wishes to provide accounting services on a reduced fee basis). If this is something that CCD does or may do in the future, you should consider adding a specific reference to the requirements of the Regulation to the <i>Charities Accounting Act</i> re same in the New By-law.

³ Being: (2) Every director and officer shall comply with, (a) this Act and the regulations; and (b) the corporation’s articles and by-laws.

	<u>Subject</u>	<u>Current Provision of Letters Patent or Current By-law</u>	<u>Relevant Provision in ONCA</u>	<u>Update in New By-law</u>
10.	Conflict of Interest	S. 1.10 - Contains COI provisions.	Conflicts of Interest are addressed in section 41 of the Act which depart from those contained in section 1.10. [Too lengthy to include. However, they can be viewed at: https://www.ontario.ca/laws/statute/10n15#BK26]	<p>The New By-law reflects the provisions of ONCA pertaining to conflict of interest, as these are mandatory. While the provisions are too lengthy to include here, we note the following:</p> <ol style="list-style-type: none"> 1. ONCA sets out a process for both Directors and Officers to announce their conflict of interest. 2. Unlike the Current By-law (which gives the Board the discretion as to whether a Director is to excuse themselves from the meeting and the vote in respect of the matter in which they are conflicted), the New By-law reflects ONCA in that it requires conflicted Directors to not attend any portion of a Board meeting at which a contract or transaction in respect of which they have a conflict will be discussed (and to not vote), unless the contract or transaction relates to indemnity or insurance for Directors, or is with an affiliate of the Corporation. <p>The Directors and Officers should be made aware of the requirements for conflicts of interest under the New By-law and ONCA, and CCD should take steps to ensure conflicts are dealt with in accordance with the New By-law and ONCA.</p>
11.	Registering Dissent	Silent	<p>45 (1): A director who is present at a meeting of the directors or of a committee of directors is deemed to have consented to any resolution passed or action taken at the meeting, unless,</p> <p>(a) the director's dissent is entered in the minutes of the meeting;</p> <p>(b) the director requests that his or her dissent be entered in the minutes of the meeting;</p> <p>(c) the director gives his or her dissent to the secretary of the meeting before the meeting is terminated; or</p> <p>(d) the director submits his or her dissent immediately after the meeting is terminated to the corporation.</p>	<p>Sections 6.11(c), (d) and (e) replicate the provisions of ONCA re the right of Directors to register their dissent. However, with respect to the ability to register dissent under Section 45(1)(d), the New By-law (Section 6.11(c)(iv)) states that the dissent must be submitted on the same day as the meeting that the motion (that is the subject of the Director's dissent) was raised.</p>

	<u>Subject</u>	<u>Current Provision of Letters Patent or Current By-law</u>	<u>Relevant Provision in ONCA</u>	<u>Update in New By-law</u>
			<p>2010, c. 15, s. 45 (1).</p> <p>(2) A director who votes for or consents to a resolution is not entitled to dissent under subsection (1).</p> <p>(3) A director who was not present at a meeting at which a resolution was passed, or action taken is deemed to have consented to the resolution or action unless within seven days after becoming aware of the resolution, the director,</p> <p>(a) causes his or her dissent to be placed with the minutes of the meeting; or</p> <p>(b) submits his or her dissent to the corporation.</p>	
12.	Officers – Secretary	<p>S. 2.05 - Secretary - The Secretary shall:</p> <ul style="list-style-type: none"> ensure the minutes of the meetings of the Corporation are recorded and signed; ensure the security of the Corporate Seal, the records and documents of the Corporation; and perform other duties as may be assigned, from time to time, by the Board. 	Limited duties prescribed to the Secretary (or any other officer) by ONCA.	In the New By-law, we have added additional duties for the Secretary (see Section 8.2(c)) – e.g., preparing and maintaining up-to-date ledgers of directors, members, and officers.
COMMITTEES				
1.	Finance, Audit and Risk Committee	<p>S. 5.02 - The Finance, Audit and Risk (FAR) Committee shall be appointed by the Board and chaired by a Board Member. See the Terms of Reference for composition.</p> <p>The FAR committee will be responsible for the financial oversight of the organization as per the</p>	<p>Section 80(1) - A corporation may have an audit committee and, if it does, <u>the majority of the committee must not be officers or employees of the corporation or of any of its affiliates.</u></p> <p>(2) The corporation shall give the auditor or person appointed to conduct a review engagement notice of the time and place of any meeting of the audit committee. The auditor or person appointed to</p>	The New By-law contemplates the FAR Committee (together with the Recruitment and Development Committee, the Quality and Safety Committee, the Fund Development Committee, and the CEO Performance and Evaluation Committee) in Article 7. We have added reference to ONCA in respect of the composition of the FAR Committee given the requirements of Section 80(1) of ONCA. CCD will need to update any corresponding policies / terms of reference to reflect the prescribed composition requirements.

	<u>Subject</u>	<u>Current Provision of Letters Patent or Current By-law</u>	<u>Relevant Provision in ONCA</u>	<u>Update in New By-law</u>
		Terms of Reference and report to the Board of Directors. This includes a tendering process for the selection of auditor will take place as needed, or every four years.	conduct a review engagement is entitled to attend the meeting at the expense of the corporation and be heard, and shall attend every meeting of the committee if requested to do so by one of its members	