

The Georgian Yacht Club

Incorporated October 30, 1952

Incorporated under the Corporations Act which had been in place for many years prior to our incorporation. Incorporation gives the organization significant privileges and benefits but also places certain obligations on it.

Corporations Act was replaced by the Ontario Not-for-profit Corporations Act. Passed in 2010 but not enacted until 2021. All Non-profit corporations, incorporated in Ontario, must bring their corporate governance documents into compliance with the new Act by October 2024. The GYC Bylaws Committee started work on this shortly after 2010 in anticipation of enactment but this kept getting put off by the Ontario Government. Active work by the current committee members began last winter.

Bylaws Committee (ad hoc)

- Paul Middlebrook (Chair)
- Michael Forcier
- John Gilbert
- Paul Weitendorf
- Brad Findlay
- Paul Beattie
- Becky Middlebrook
- Vicki Findlay (Recording Secretary)

Multiple invitations to the general membership were made in order to populate the committee. These are the individuals who participated in the work.

Two members are lawyers and five of the members have considerable corporate governance experience with non-profits outside our own organization.

Overall, the documents that have been developed, presented to the Board and posted for review by the members represent over 250 person hours of work by these volunteers.

Task

- To bring the corporation's Governance documents into compliance with the Ontario Not-For-Profit Corporations Act and standards of corporate governance AND
- To leave our processes as unchanged as possible so that the members would experience minimal differences on a day-to-day basis

Corporate Documents

- Corporations do not have “Constitutions”
- Corporations do have
 - Articles of Incorporation (formerly Letters Patent) - governance
 - Bylaws - governance
 - Policies - operations

Articles

- Corporation name
- Head office location
- Purpose(s) – also known as Object(s)
- Number of directors
- Membership classes and rights
- Dissolution

The first three are defined in our original Letters Patent, including that we are a not-for-profit corporation. The last three are required in the Articles by ONCA. These were frequently included in bylaws in the past, although we have never included a dissolution clause.

Bylaws - What they are

- Rules by which the corporation is governed
- Includes
 - members' roles and responsibilities
 - directors' elections and terms of office
 - officers' appointments and responsibilities
 - meeting procedures
 - finances
 - notice requirements for board and members' meetings
 - adoption and amendment of bylaws

Bylaws - What they are not

- How-to manual for day-to-day operation of the corporation's business

Process

- In-house vs hiring out
- Resources
 - ONCA
 - Ontario Government websites
 - Ontario Business Registry
 - Community Legal Education Ontario (CLEO)
 - Ontario Sailing Association (OSA)
 - Carter's Professional Corporation websites
- Current documents reviewed
- Templates

Many organizations approach this task by handing their old documents to a corporate law firm, answering some questions and then receiving the converted documents for subsequent approval. We considered this but felt that we could manage this in-house.

We made use of multiple resources, most of which are listed here. After reviewing information from these resources, the first task was to review our current Articles and Bylaws. The Articles required the addition of the items shown on a previous slide. It was clear that much of the content of the Bylaws was strictly operational in nature. This is understandable. The old Corporations Act was very generalized and somewhat vague so organizations had a tendency to develop very detailed bylaws to compensate. ONCA is very detailed and simpler bylaws make conflicts between the Act, the Articles and the Bylaws much less likely. Once the operational items were removed, there was not a great deal of content left and it was in a very disorganized form. We considered trying to adjust what was left but decided that utilizing a pre-existing template and modifying it to reflect our governance details would be the best approach to ensure compliance with ONCA and corporate standards. Multiple legally-vetted templates are available and they really don't differ from each other materially.

Changes

- Amendments to the Articles (addition of items required but not previously included)
 - Defining a range of numbers of directors – allows for flexibility for the corporation should future circumstances change
 - Defining a single class of corporate members with voting rights – Associates would continue to be recognized as operational members but not corporate members - maintains current practice whereby Associates do not vote under any circumstance
 - Dissolution

Once again, our goal was to avoid changing our organizational routines as much as possible. Within the Articles, it is now common practice to identify a range of acceptable numbers of directors since changing the Articles at a later date is quite complex. We suggested a minimum of 8 and maximum of 15, while identifying the number of 12 in the Bylaw as we have always done, There is, however the flexibility to change this number if deemed advisable at some time in the future.

We recommended defining a single class of corporate members which would be the same as our operational full members. Leaving Associates out of the governance documents means that there would be no circumstance under which they would be entitled to vote. They would still remain operational members under operating policy. Once again, the end result is no different than our current approach to Associates.

Dissolution is a complicated item. The Act lays out how a corporation goes about dissolution but provides options as to how any residual value of assets would be distributed. These options depend, first and foremost on whether or not the corporation is a “Public Benefit Corporation”. This includes all charities and any corporation which has received a donation or grant from a non-member source of

more than \$10,000 within the last 10 years. If it is a public benefit corporation, the residual assets must be distributed among other public benefit corporations with similar purpose. If not a public benefit corporation, the options are to distribute them to other non-public benefits with similar purposes or to distribute them to the current members “rateable with their rights and interests”. We have at one time been a public benefit corporation, although we are not one currently. To choose any of the last 2 options, we must commit to never becoming a public benefit corporation. As for the distribution among the members, our approach has always been that a membership carries no value and that the corporation is not a share capital organization. It may be challenging to see how such distribution would play out. In addition, an option which distributes any residual elsewhere would eliminate the angst voiced over the years about someone or some group selling the assets out from under the members. In the end, we recommended following the option of allowing for the possibility that the corporation may receive funding from outside and becoming a public benefit.

Bylaw Changes

- Essentially all operational items removed and to be incorporated into policies This includes the appendices attached to current bylaw document.
- Limit to the number of consecutive terms for a director
- Board may appoint a Managing Committee with powers limited within ONCA. This allows replacement of “Summer Mode” which is in conflict with quorum requirements within the Act.
- Operational committees not listed within the Bylaws document. They would continue to function under operations.

Bylaw Changes

- Nominating Committee recommended to include the current Commodore (or delegate director) – Consistent with corporate best practices.
- No fixed date for the Annual Meeting of the Members – allows for flexibility under unexpected circumstances – Annual Meeting must be held by law.
- Special Meeting of the Members can be requisitioned requiring signatures of 10% of Members (replaces 20 Members) – Requirement under ONCA
- Chair/Commodore votes on all resolutions with the Members. Tied second vote means defeat of the motion. – As a Member, the Chair cannot be denied a vote – applies to both meetings of the Members and the Board
- Spending and borrowing restrictions removed from bylaws - operational

Questions received

- Why were mooring, membership, rules and appendices not included in the draft bylaw?
- Why were the bylaws “re-written” as opposed to just being “revised”?
- Why were the spending and borrowing limits removed?
- Why is it being recommended to approach dissolution as a “Public Benefit Corporation”?

First: All operational and need to be moved to policy.

Second: Explained previously under “Process”

Third: Operational

Fourth: Explained under Changes to Articles

Questions

- Under Section 1.04, Severability and Precedence, if a bylaw is determined to be in conflict with the Act, would it be amended?
- Membership upon death vests in the estate. Does this change our approach to the spouse/offspring?
- Current committees (aside from Nominating Committee) are not named. Can these committees be dissolved?
- What powers are not eligible for delegation to a committee?
- Who facilitates electronic participation at board meetings? Consent of all directors required?

First: Yes, all bylaws are required to comply with the Act so amendment would be required.

Second: No, in fact, even at present, our memberships are not transferrable. Our current practice is to give the application of the spouse or offspring special preference and this would continue under operating policy.

Third: As operational committees, these committees do not address governance. Therefore, they are not named in the Bylaws. They would continue under policy unless, at some time, it is determined that a given committee is no longer required.

Fourth: These powers are listed in the Act and relate to basic governance items, such as creating new classes of members, changing bylaws, taking resolutions to the Members.

Fifth: Anticipated that the Corporation would provide the platform and meeting-end hardware. The remote director would be expected to provide their own device. The requirement of consent from all directors is straight out of the Act. May be related to ensuring that meetings are unlikely to be disrupted by background interference or ensuring the director's environment is suitable for maintaining the confidentiality of corporate proceedings.