



MEMBERS IN THE CORPORATION

Terms of Reference

Abstract

The purpose of this guide is to provide the framework for member involvement in the Corporation.

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MEMBERS INVOLVEMENT IN THE CORPORATION

INTRODUCTION

REVISION HISTORY

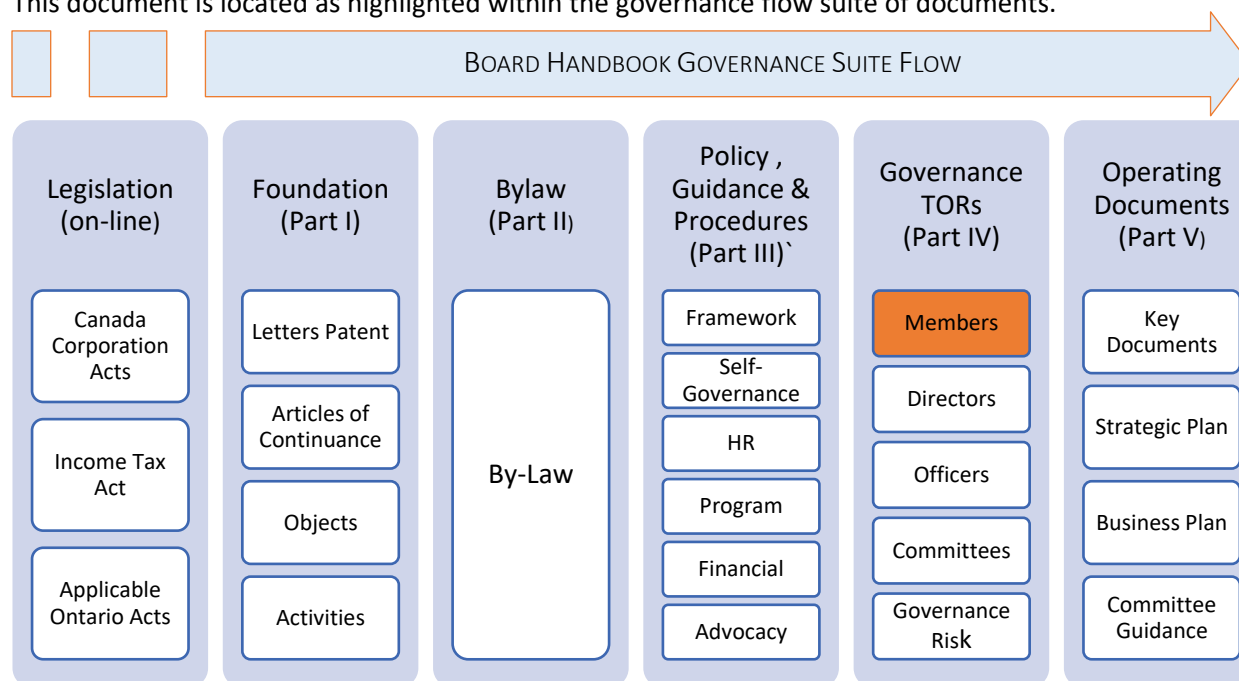
Version	Issue Date	Author	Reason for Change
Draft 1.0	September 2019	Thomas Burnie	Initial draft for comments
Draft 2.0		Thomas Burnie	Second draft comments
Draft 3.0	November 2020	Thomas Burnie	Third draft for comments
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APPROVALS

Version	Issue Date	Approving Authority	Comment
1.0	19 September 2019	Board of Directors	Approval as provisional document
2.0	15 April 2021	Board of Directors	Approval as operating document

GOVERNANCE FLOW SUITE OF DOCUMENTS

This document is located as highlighted within the governance flow suite of documents.



REFERENCES

This document uses the following references:

- Canada Not for Profit Corporations Act (CNCA) <https://laws-lois.justice.gc.ca/eng/acts/C-7.75/>;
- The Corporate Bylaw;
- Office of the Public Guardian and Trustee (OPGT) for Ontario Guidelines for Charities, [Charities - Ministry of the Attorney General \(gov.on.ca\)](http://www.charities.gov.on.ca); and
- The GUILD Corporate Policy, Guidance and Procedures (PGP) Manual.

CONVENTIONS

The following conventions are used;

- “Board” means “Board of Directors”;
- citations from other sources are in *italics*;
- reference to the PGP will include the applicable Bylaw where appropriate; and
- where practicable, [hyperlinks](#) are used internally in this document or externally with other documents.

DISCUSSION

Purpose

The purpose of this guide is to provide the framework for member involvement in the Corporation.

Scope

Following the general implications from the references, the scope includes the:

- Role
- Membership Approval
 - Membership Conditions
 - Vacancy in Office
- Member Rights and Responsibilities
 - Member Rights
 - Member Resolutions
 - Member Agreements
 - Member Responsibilities
 - Disciplining a Member
 - Member Remedies
 - Dispute Resolution

ROLE

A member of a corporation is a person who has been admitted into membership in the corporation and who has a number of rights by virtue of membership in the corporation.¹ The GUILD is an incorporated body with a “closed” membership structure. This closed structure is to satisfy the requirements for sustaining a Board of Directors rather than a revenue generating source from membership dues.

MEMBERSHIP APPROVAL

MEMBERSHIP CONDITIONS

By-law Section 11 states that *there shall be one class of Members in the Corporation. The term of a membership in the Corporation shall be for a period of three (3) years. Membership in the Corporation shall be available only to individuals that are (a) interested in furthering the Corporation's purposes; (b) who have applied for membership and been accepted into membership in the Corporation by resolution of the Board; and (c) that are Directors. Subject to the foregoing, at any time the Corporation may have up to twenty (20) Members. Each Member shall be entitled to receive notice of, attend and exercise one (1) vote at all meetings of the Members of the Corporation.*²

PGP policy 2.4.1 allows that *notwithstanding the three (3) year time limitation, a Member may apply for another term of membership.*

MEMBER RIGHTS AND RESPONSIBILITIES

MEMBER RIGHTS

The GUILD is subject to the CNCA and Part 10 of the Act specifies the rights of a Member in a Not-for-Profit corporation. In summary, the Member has the right to do the following:

- vote at a meeting of the Members;
- receive notice of Members meetings;
- add items to the agenda of Members meetings;
- request the Directors to call a meeting of the Members and to call a meeting themselves if the Directors fail to do so;
- elect Directors and remove them from the Board³,

¹ <https://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs05006.html#toc-07>

² *By Law No 1, Section 11 sets out the conditions for fundamental change in accordance with CNCA*

³ *Canada Not for Profit Corporations Act **Removal of directors, Article 130 (1)** The members of a corporation may by ordinary resolution at a special meeting remove any director or directors from office.*

- approve or confirm by-laws;
- examine corporate records (i.e., minute book);
- receive financial statements and accountant/auditor's report;
- approve major or fundamental changes (e.g., change to the objects/purposes of the corporation);
- appoint the accountant/auditor; and
- if a Member of a not for profit corporation believes there is a denial of membership rights, the Member can ask the Court to enforce a right or to address a problem with the corporation (see [Member Remedies](#) below).

MEMBER RESOLUTIONS

Members make decisions by voting on resolutions, which can either be passed at Members' meetings or adopted by signing written resolutions instead of holding meetings. Decisions can be made by ordinary, special or unanimous resolutions or by consensus decision-making. The CNCA s. 197 (1) describes situations that require special resolutions and associated majority to make decisions.

- **Ordinary resolutions** require a simple majority of votes cast by the Members entitled to vote and who are in attendance at a meeting to be adopted. For example, the election of Directors is a decision that is usually made by ordinary resolution.
- **Special resolutions** require the approval of two-thirds (2/3) of the votes cast by the Members entitled to vote and who are in attendance at a meeting to be adopted. For example, fundamental changes such as amalgamation and continuance require special resolutions.
- **Unanimous resolutions** require the approval of all the votes cast by Members entitled to vote to be adopted. For example, the Members of a designated corporation can pass a resolution to dispense with the appointment of a public accountant as long as the resolution is consented to by all of the Members that are entitled to vote at the annual meeting.

MEMBER RESPONSIBILITIES

A Member, in addition to receiving membership rights, agreed to the responsibility of adhering to the GUILD articles, by-laws, and written policies which include *inter alia*:

- membership conditions such as continuing interest in furthering the Corporation's purposes;
- conflict of interest avoidance; and
- Member discipline for non-adherence to Member responsibilities.

DISCIPLINING A MEMBER

CNFA s. 158 specifically allows the articles or by-laws of a corporation to give the power to discipline a Member or to terminate their membership.

By-law section 15 gives the Board the authority to suspend or expel a Member from the Corporation.

MEMBER REMEDIES

A remedy is a way for a Member to ask a court to enforce a right or to address a problem with a corporation. Listed below are the remedies available to members under the CNCA Part 16:

CNCA s. 251 (1) **Derivative Action** – On the application of a complainant, a court may make an order granting the complainant leave to bring an action in the name of and on behalf of a corporation or any of its subsidiaries or intervene in an action to which such a body corporate is a party, for the purpose of prosecuting, defending or discontinuing the action on its behalf.

CNCA s. 253 **Oppression Remedy** – A complainant (which includes a member or former member) can apply for an oppression remedy on the basis that any act or omission of the corporation, or the exercise of the powers of the directors or officers of the corporation, is oppressive or unfairly prejudicial or unfairly disregards the interests of the member.⁴ The court can make any order it thinks fit, including, but limited to an order:

- appointing directors in place of or in addition to the directors then in office;
- directing a corporation or any other person to pay a member all or part of the amount that the member paid for their membership;
- compensating an aggrieved person.

CNCA s. 259 **Compliance or Restraining Order** – A member can apply to a court for a compliance or restraining order:

- directing the corporation or any director, officer, employee, agent or mandatary, public accountant, trustee, receiver, receiver-manager, sequestrator or liquidator of a corporation to comply with this Act, the regulations or the articles, the corporation's articles, by-laws or a unanimous member agreement,⁵ or
- restraining any person from acting in breach of them and make any further order that it thinks fit.

DISPUTE RESOLUTION

⁴ One situation where such an order might be sought include the corporation failing to call an annual meeting of members as required under Act, or a breach of by-law.

⁵ Another situation may be the Court ordered liquidation and dissolution on application of a member – A member can apply to the court for an order liquidating and dissolving a corporation or any of its affiliates if the court is satisfied that certain specified grounds exist. This could include situations where an act or omission of the corporation is oppressive or unfairly prejudicial to, or unfairly disregards the interests of any member, or where the court is satisfied that it is just and equitable that the corporation should be liquidated and dissolved.

The CNCA is silent on how disputes between Members, or between a group of Members and the Directors, can be resolved.

By-law section 49 describes the mechanism for resolving a dispute or controversy among Members, Directors, Officers, committee Members or volunteers of the Corporation arising out of or related to the articles or by-laws, or out of any aspect of the operations should the issue not be resolved in private meetings between the parties.

GUILD PGM policy 2.10.1 sets out policy statements for resolution and mediation.