

Resolving Statutory Ambiguity Regarding By-law Amendments Under the Not-for-Profit Corporations Act, 2010 (Chifor et al. v. Windsor/Essex County Humane Society)

Non-Profit & Charities | Not-for-profit Corporations Act (ONCA)

22 July 2026

Chifor et al. v. Windsor/Essex County Humane Society, 2026 ONSC 667, serves as an important reminder to Ontario not-for-profit corporations of the requirement for boards of directors to exercise their discretion in good faith. The decision also addresses a longstanding statutory ambiguity under Ontario's *Not-for-Profit Corporations Act, 2010* (the “ONCA”) [1] regarding whether certain by-law amendments require approval by a special resolution of the members.

In this decision dated February 4, 2026, the Court held that the members of Ontario not-for-profit corporations must approve by special resolution any by-law amendments relating to the transfer of membership rights, notice to members, and proxy voting. As a result, approval by ordinary resolution or simple majority of the members is insufficient for such amendments.

This decision aligns with the ONCA's stated objectives of enhanced membership rights by ensuring that certain key changes affecting members' governance rights must be approved by a special resolution of the members.

The Facts

The Windsor/Essex County Humane Society (the “**Society**”) is a not-for-profit corporation under the ONCA and is a registered charity.

The Society had a by-law in place that provided for an open membership model with certain membership requirements. Members were required to be at least 18 years old, reside in the territory served by the Society, pay membership fees, and be approved by the Society's board of directors (the “**Board**”). However, in practice, the Board did not formally pass any resolutions to approve members, but still treated individuals who applied and paid the membership fees as full members of the Society.

As part of a corporate governance update, the Society attempted to transition from its open membership model, as outlined above, to a closed membership model, which would limit membership in the Society exclusively to the Board. The by-law to implement this change, among others, was passed by the Board on June 11, 2024 (the “**June 2024 By-law**”). At the time of the Board approving this by-law, it was to take effect when the Society's Articles of Amendment were approved later in the fall.

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Two weeks later, the Board terminated the long-time executive director of the Society, which was a controversial decision among employees, volunteers, and the public. Following this, more than 100 individuals signed up to become members of the Society. These individuals paid the required membership fee. It was communicated to these individuals through the standard email confirming receipt of their online membership application that they would be able to vote at the upcoming annual general meeting of the members.

The Board, suspecting that these new members joined to support the former executive director and presuming that such individuals did not have the best interests of the Society at heart, declined to formally approve the individuals who joined after June 11, 2024 and did not permit them to vote at a special meeting of the members held on October 4, 2024. At this same meeting, the June 2024 By-law, which was amended to take immediate effect, was approved by a simple majority of the members.

The Issues

The Court identified two issues:

1. Did the Board act in bad faith by refusing to approve new members? and
2. Does the ONCA require that the new by-law be passed by a special resolution of the members?

The Decision

The Court determined that (1) the Board acted in bad faith by refusing to approve new members and (2) the ONCA does require a special resolution of the members to pass by-laws relating to the transfer of membership rights, notice to members, and absentee voting. Therefore, the new by-law of the Society was deemed to be of no force and effect. The Court ordered the Society to hold a new AGM, at which the new members would be entitled to receive notice and vote.

1. The Board acted in bad faith by refusing to approve the new members

The Court found the Board's conduct was arbitrary and in bad faith, and determined that anyone who submitted membership applications and paid membership fees before the record date of September 13, 2024 was a member of the Society and entitled to vote at the special meeting of the members.

The Court explained that while the by-laws required the Board to approve memberships, this requirement had been "honoured in its breach", which made the sudden enforcement of this provision suspicious. The Court further stated that the Board was wrong to assume that the new members were only interested in the reinstatement of the former executive director as opposed to the Society more broadly. Furthermore, the Court explained that the Board could not deny membership in the Society to individuals based on a concern that the new members would vote to remove the Board, or on the assumption that they would vote to reject the new by-law, as this is contrary to the Board's good faith obligations.

2. The Amendments to the by-law required a special resolution under the ONCA

On the second issue, the Court determined that the June 2024 By-law of the Society was void because it was not approved by a special resolution of the members, which requires a two-thirds majority of members entitled to vote for approval.

Section 17 of the ONCA states (emphasis added):

By-laws

17(1) Unless the articles or the by-laws otherwise provide, the directors may by resolution make, amend or repeal any by-law that regulates the activities or affairs of the corporation, ***except in respect of a matter referred to in clause 103 (1) (g), (k) or (l).***

Member approval

(2) The directors shall submit the by-law, amendment or repeal to the members at the next meeting of the members, and the members may confirm, reject or amend the by-law, amendment or repeal ***by ordinary resolution.***

Under Part XI Fundamental Changes, section 103(1) of the ONCA states (emphasis added):

Amendment of articles

103 (1) ***A special resolution of the members*** is required to ***make any amendment to the articles*** of a corporation to,

...

(g) add, change or remove a provision respecting the transfer of a membership;

...

(k) change the manner of giving notice to members entitled to vote at a meeting of members;

(l) change the method of voting by members not in attendance at a meeting of the members;...

Section 17 is clear that its application is to the by-laws of a not-for-profit corporation, while section 103 appears on its face to relate specifically to the articles.

The Court held that by-law amendments relating matters listed in 103(1)(g), (k) and (l) require a special resolution of members. The Court explained that in a plain reading of section 17 of the ONCA, by-laws can be passed by ordinary resolution **except in** respect of matters outlined by section 103(1)(g),(k) and (l), which are given special treatment. As these sections are considered fundamental changes, they require confirmation by special resolution as outlined in section 103.

The Court expanded that permitting directors to make and amend by-laws regarding matters in section 103(1)(g),(k) or (l), which require confirmation by special resolution of the members, is consistent with the *Canada Not-for-Profit Corporations Act* (the “**CNCA**”) [2]. Furthermore, the Court noted that section 197(1) of the CNCA is similar to section 103 of the ONCA, but the CNCA is explicit it applies to both the articles and by-laws of a corporation. While the Society argued that since the ONCA did not include the by-laws in section 103, the Court should refrain from reading these words into the statute, the Court explained that a plain reading of the ONCA indicates the intent to treat the by-laws regarding sections 103(1)(g)(k) and (l) as requiring a special resolution for approval.

The Court determined that the June 2024 By-law concerned matters relating to sections 103(1)(g)(k) and (l) of the ONCA, and therefore would have required confirmation by a special resolution of the members. Since the 2024 By-law was approved only by a simple majority, it ceased having any effect at the special meeting of the members no later than October 4, 2024.

Key Takeaways

The Court will take steps to intervene in cases where directors are acting in bad faith or arbitrarily. Furthermore, it is important to clearly follow the requirements as outlined in a corporation’s by-laws, as the Court will not intervene to enforce provisions that the corporation itself has not enforced in practice.

The Court’s decision may be viewed as expanding the scope of judicial scrutiny over board decisions. The Court’s decision to disregard the Board’s decision regarding the admission of new members constitutes a considerable degree of interference by the Court regarding the duties and responsibilities of a board of directors. This reinforces that boards should exercise care when making decisions, such as when admitting or rejecting members, so that their decisions are consistent, well-documented, and defensible, as the Court will intervene if it determines it is necessary for fairness.

Furthermore, corporations under the ONCA should ensure that any amendments to their by-laws meet the applicable thresholds. While such amendments may ordinarily be passed by ordinary resolution, changes to transfer of membership rights, notice to members, and absentee voting must be approved by a two-thirds majority.

It is widely acknowledged among the practitioners in this area that section 17 of the ONCA is poorly drafted. While the Court in this case attempts to resolve the ambiguity in this section, it was not done in a way that reflects the opinions of most lawyers practicing in the area. While the Society initially appealed the decision, the appeal was abandoned before it could be heard, meaning the Court of Appeal will not be able to weigh in on the interpretation of the ONCA.

Some lawyers in the practice area, including some of these authors, would argue that section 17 of the ONCA should be interpreted to mean that by-law amendments relating to matters section 103(1)(g), (k) or (l) do not take effect until they have been approved by an ordinary resolution of the members. However, out of an abundance of caution, many lawyers have been advising clients to proceed by way of special resolution, and, given this decision, this practice should be continued unless further changes to the ONCA are made.

It is important to note that this statutory ambiguity in the ONCA has attracted institutional attention and comment. In its February 20, 2025 submission to the Ministry of Public Business Service Delivery and Procurement, the Ontario Bar Association included a recommendation that section 17 be amended to clarify what level of member approval is required for certain by-law amendments, and that an ordinary resolution is the appropriate standard. [3] No response has been received from the Ministry and absent any further caselaw on this matter, the most prudent course for not-for-profit corporations and practitioners is to act in accordance with this decision. A PDF version is available for download [here](#).

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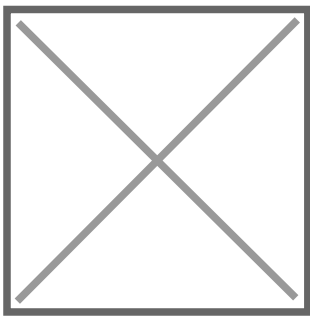
[1] S.O. 2010, c. 15

[2] SC 2009, c. 23

[3] Proposed Amendments to the Not-for-Profit Corporations Act, 2010 | Ontario Bar Association

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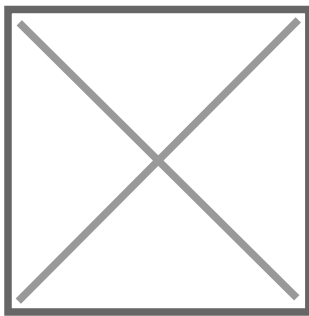
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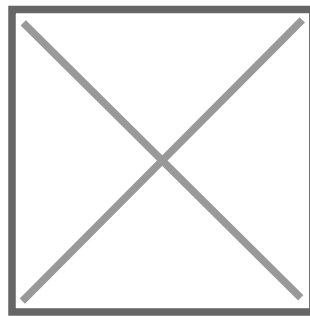
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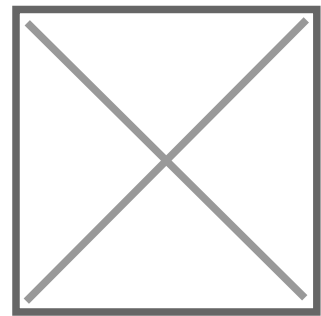
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