

BRIEFING NOTE

Ontario Equestrian Federation (the “**Corporation**”), as an Ontario non-share capital corporation, is currently under the jurisdiction of the Ontario *Corporations Act*. The Ontario *Corporations Act* is anticipated to be replaced in 2015 by the Ontario *Not-for-profit Corporations Act, 2010* (the “**ONCA**”).

Amendments to the current By-Law No. 1 of the Corporation are proposed that will (a) reflect certain governance changes; (b) comply with the Ontario *Corporations Act*; and (c) reflect, to the extent permitted under the Ontario *Corporations Act*, the ONCA. Once the ONCA comes into force, the By-Law No. 1 will need certain final amendments that cannot be made at this time because such amendments would not comply with the Ontario *Corporations Act*.

The amendments will be made to By-Law No. 1 in two phases: Phase 1 and Phase 2. The proposal is that amendments made during Phase 1 will be approved by the Board of Directors on the September 9, 2014 meeting and voted on by the Members at the 2014 Annual General Meeting. Phase 2 amendments will be addressed at a later date to be determined.

The following are the major differences between the current By-Law No. 1 and the proposed new By-Law No. 1. Also included is a list of issues to be addressed in Phase 2 at a later date.

PHASE 1 (2014)

The changes that will be voted on at the 2014 Annual General Meeting are as follows:

1. MEMBER CLASSES

Currently, there are nine classes of Members of the Corporation:

- Individual Senior Members (voting)
- Individual Junior Members (non-voting)
- Family Members (non-voting)
- Member Associations (non-voting)
- Member Competitions (non-voting)
- Industry Members (non-voting)
- Member Horse Facilities (non-voting)
- Honorary Members (non-voting)
- Affiliate Organizations (non-voting).

The new By-Law No. 1 proposes having one Member class that will consist of those persons who currently qualify as Individual Senior Members. Each Member will have the

right to receive notice of, attend, and vote at each meeting of Members. Each Member will have one vote. Each Member will be required to pay an annual membership fee set by the Board.

The current non-voting Members will retain all of their current rights as Members, other than their title as Members. Their new titles will be as follows:

- Junior Affiliates
- Family Affiliates
- Member Affiliates
- Competition Affiliates
- Industry Affiliates
- Horse Facility Affiliates
- Honorary Affiliates
- Affiliate Organization Affiliates

This change is proposed for two reasons:

1. Under the ONCA, non-voting members will have the right to vote, as a class, in certain circumstances. This right will not be in the best interests of the Corporation.
2. The role of a ‘member’ under law includes fulfilling certain governance responsibilities that may not be of interest to the current Members. It is in the best interest of the Corporation to only have Members that are engaged in the Corporation, interested in governance, and committed to promoting the mission, vision, and values of the Corporation.

2. MEMBER MEETINGS

The current By-Law No. 1 allows thirty (30) Members in good standing to request a Members’ meeting.

However, the Ontario *Corporations Act* states that a written requisition of Members carrying not less than ten percent (10%) of the voting rights must be provided to the Board in order for the Board to be obligated to call a Members’ meeting.

This correction has been made in the proposed new By-Law No. 1 in order to comply with the Ontario *Corporations Act*.

3. RESOLUTIONS IN WRITING

The Ontario *Corporations Act* states that resolutions in writing can replace Member and Board meetings whenever necessary. This ability has been added to the proposed new By-Law No. 1 to comply with the Ontario *Corporations Act*

4. QUALIFICATION OF DIRECTORS

The Ontario *Corporations Act* sets out certain qualifications that a director must meet; these have been added to the proposed new By-Law No. 1 to comply with the Ontario *Corporations Act*.

In addition, the *Income Tax Act* (Canada) prohibits individuals classified as ‘ineligible individuals’ (e.g. those who have been convicted of a relevant criminal offence) from becoming directors of registered charities. It is best practice to abide by this restriction, even though the Corporation is not a registered charity.

5. HONORARY DIRECTORS AND PAST-PRESIDENTS

There will be no Honorary Directors or Past-Presidents; currently, the individuals with these titles can attend Board meetings, and speak at such meetings, but cannot vote.

6. REMOVAL OF DIRECTOR

Under the current By-Law No. 1, a director can be removed by a vote of 75% passed at a Members’ meeting.

However, the Ontario *Corporations Act* requires a 2/3rds vote of the Members to remove a director. This correction has been made in the proposed new By-Law No. 1 to comply with the Ontario *Corporations Act*.

7. REQUIRED RESIGNATION OF DIRECTOR

Under the current By-Law No. 1, a director position is automatically terminated when the director or his/her spouse becomes an employee of the Corporation.

In addition, the Board can request the resignation of a director if he/she misses three consecutive meetings or more than fifty percent (50%) of the meetings of the Board within a one-year period, without adequate reason.

However, the Ontario *Corporations Act* does not permit a director's position to be automatically terminated upon the occurrence of a certain event, and does not allow a board of directors to request that a director resign from office.

In order to comply with the Ontario *Corporations Act*, and to meet best practices, the proposed new By-Law No. 1 has been reworded to state that a director is deemed to have resigned if:

- (a) he/she misses two (2) consecutive meetings of the Board or fifty percent (50%) or more of the meetings of the Board within a one year period, without adequate reason (as determined by the Board in its sole discretion);
- (b) the director and/or the director's spouse becomes an employee or a contractor of the Corporation; or
- (c) if, in the sole discretion of the Board, such director has not abided by the By-Law, policies, or codes of the Corporation.

8. NUMBER OF BOARD MEETINGS

The new By-Law No. 1 proposes adding a requirement for the Board to meet at least four times per year. There is currently no minimum number of meetings set out in the By-Law. Directors have a duty under law to meet a standard of care that is based on reasonableness and prudence.

9. ELECTRONIC/TELEPHONIC PARTICIPATION AT BOARD MEETINGS

The Ontario *Corporations Act* states that directors may participate in Board meetings by telephonic or electronic means provided that all other directors participating in the meeting consent. This ability applies automatically to directors unless the by-laws state otherwise.

10. LOCATION OF BOARD MEETINGS

The current By-Law No. 1 states that Board meetings can be held at any place within or outside of Ontario. In the new By-Law No. 1, the ability to hold Board meetings outside of Ontario has been removed.

11. QUORUM

The current By-Law No. 1 sets quorum at a Board meeting to forty percent of the directors.

However, the Ontario *Corporations Act* states that quorum at a Board meeting shall be a majority, unless the Letters Patent, Supplementary Letters Patent, or a special resolution of the Members states otherwise. The Letters Patent of the Corporation do not set out a quorum, and no special resolution of the Members has been passed specifying a quorum.

As a result, the new By-Law No. 1 sets quorum at a majority in order to comply with the Ontario *Corporations Act*.

12. COMPENSATION

The Ontario *Corporations Act* permits directors to be remunerated for services provided to the Corporation in a capacity other than as a director, unless the by-laws state otherwise.

Based on best practices, and in order to avoid any possibility of a conflict of interest, the new By-Law No. 1 states specifically that directors cannot be remunerated for services provided to the Corporation in a capacity other than as a director.

13. PROTECTION OF DIRECTORS AND OFFICERS

The Ontario *Corporations Act* provides corporations with the ability to protect their directors and officers. For example, a corporation shall purchase directors' and officers' liability insurance, and shall indemnify its directors and officers. The new By-Law No. 1 sets out these options; they are not mandatory.

14. EXECUTION OF DOCUMENTS

The current By-Law No. 1 states that the Board may, by resolution, authorize any person to sign documents on behalf of the Corporation. This means that each time a document needs to be signed, the Board must pass a resolution stating who has the authority to sign the document.

The new By-Law No. 1 states that assignments, contracts, obligations and other documents and instruments in writing requiring execution by the Corporation shall be signed in accordance with the Corporation's Financial Policy. The Financial Policy shall be reviewed, and if required, amended, annually by the Board. The Board can also pass a resolution from time to time stating that additional individuals have signing authority for a particular document.

15. BY-LAW AMENDMENTS

The current By-Law No. 1 requires a majority vote of the Board and a 2/3rds vote of the Members before a by-law amendment becomes effective.

Only a majority vote of the Board is required under the *Corporations Act* to pass by-law amendments; these amendments are effective immediately, but must be passed at the next Members' meeting by a two-thirds vote in order to remain effective. The new By-Law No. 1 sets out these requirements in order to comply with the *Corporations Act*.

16. MISCELLANEOUS

Information and details regarding the (1) Directors' Code of Conduct, (2) Conflict of Interest, and (3) nomination process for election of the directors has been removed from the new By-Law No. 1 because such information can be (or already has been) placed in a policy/code of the Corporation.