CLEO | Community Legal Education Ontario
Éducation juridique communautaire Ontario

Nonprofit Law Ontario
Rules and tools for organizations

Records and Privacy for Nonprofits

Recordkeeping Under ONCA

Access to ONCA Records

Privacy Law Principles for Nonprofits

Presented by:

Benjamin Miller

July 19, 2023

CLEO | Community Legal Education Ontario
Éducation juridique communautaire Ontario

Steps to Justice
Your guide to law in Ontario

Justice pas-à-pas
Votre guide de droit en Ontario

COVID-19: Updates on the law and legal services

Nonprofit Law Ontario
Rules and tools for organizations

Disclaimers

This presentation is:

- **general legal information**. It isn't legal advice tailored for your specific situation. Your contracts can provide greater standards than the statute.
- **A quick glance at corporate and privacy law.** It isn't comprehensive and it doesn't address other areas of law, such as health law. Your contracts and policies matter!
- **law not best practices**. The law sets a minimum. Privacy is about more.
- **law not funder expectations**. Digitization and privacy law costs money.
- **General principles**: Privacy law is always evolving.

CLEO's Legal Needs Study of Nonprofits

The discussion portion of this session will not be recorded and will be kept anonymous.

What we learn will:

- Inform a report and survey we will create
- Inform what resources we offer to nonprofits

We will circulate the results of the final report to each network who contributed.

We hope that everyone will respect the confidentiality of other participants. Feel free to turn off camera and change name.

Recordkeeping in ONCA

Some Key Documents

What Goes in Minutes

Where to Keep Records

How Long to Keep Records For

Some Key Documents

- **Letters patent and supplementary letters patent**
- **Bylaws**: Also known as constitution or governing rules
- **Minute books:** Board, Board Committee, Member, Member Committee
- **Special resolutions**: Motions requiring 2/3 majority support
- **Registers of Directors, Officers, & Members**: 6 years. Includes names, start and end dates, physical address, and, if consented to, email address
- **Director consent forms**: Can look something like this
- **Adequate accounting records:** Enable assessment of nonprofit's true financial position at least quarterly

What Goes in Minutes

1. Name of the Organization and committee
2. Place, date, and time of meeting
3. Attendance:
    1. Roles of individuals, e.g. director v non-director
    2. how they are participating (e.g. phone, electronically)
    3. Role within meeting (chair or secretary)
4. Conflicts of interest: who declared it, what was the issue, what was the conflict?
5. Text of motions/corporate actions
6. Declaration by Chair whether motions passed or failed
7. Votes in favour and against (if simple majority isn't enough). If ballot requested, spoiled ballots as well
8. Whenever requested by any Director at a meeting:
    1. the identity of such Director,
    2. the way in which he/she cast his/her vote, and
    3. a brief statement of his/her objection to the matter or to considering the matter;
9. the signatures of chair and secretary of the meeting.

Where to Keep Records

Default: Nonprofit's registered office (must be physical address. Cannot be PO box)

Board can pass a motion setting other location.

- **Location must be in Ontario** except for:
  - Board minutes,
  - Board committee minutes, and
  - accounting records

Cloud is allowed! But must be accessible from official location

How Long to Keep Records

General rule: At least 7 years for records relevant to the Canada Revenue Agency.

Registered charities: Records must be kept until…

- **Tax receipts**: 2 years after year donation was made
- **Governing documents**: 2 years after dissolution
- **Minutes**: 2 years after dissolution

What if we don't have all our records? Risk of ever needing to rely on them v. cost of recreating. Legal advice may be helpful.

Access to ONCA Records

Board and Auditors

Members

Public

Board and Auditor

Board members: have a right to access all records unless there would be some conflict of interest.

Auditors/Financial Reviewers: Have a right to access all records relevant to their job. Denying them is an offence.

Members

Members have a right to access the following records:

- **Articles and bylaws**
- **Member meeting and member committee minutes** (not board or board committee minutes)
- **Financial statements** (but not accounting records)
- **Registers of directors, officers, and members**

Access to members list is conditional on agreeing to use it for proper purposes (connected to nonprofit).

Public

Members of the public are not entitled to access corporate records, but can find directors and address online. However, bylaws may say otherwise, and…

- **Registered charities**: CRA posts the following:
  - Governing documents
  - Annual information return (including finances)
- **Federally incorporated nonprofits**: Soliciting corporations
  - bylaws
  - Financial statements

Privacy Law Principles

PIPEDA

Privacy Law Principles

CASL

PIPEDA

Personal Information Protection and Electronic Documents Act (PIPEDA)

- Does not generally apply to nonprofits but not carve-out
- Applies to all commercial activity
  - Member benefit organizations can be included
  - LawPro was found to be excluded. A nonprofit daycare was found to be included.

Source: https://www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/the-personal-information-protection-and-electronic-documents-act-pipeda/r_o_p/02_05_d_19/

Privacy Law Principles

- The principles are:

1. Accountability: Point person, policies, protection
2. Identifying Purposes: transparent about what you will use it for
3. Consent: express or implied
4. Limiting Collection: not collecting more than needed
5. Limiting Use, Disclosure, and Retention: only what is needed
6. Accuracy: collect accurately and correct inaccuracies
7. Safeguards: reasonable based on sensitivity of information
8. Openness: policies clear and easy to understand
9. Individual Access: provide requested info to individuals concerned
10. Challenging Compliance: Clear and fair appeal process

Source: https://www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/the-personal-information-protection-and-electronic-documents-act-pipeda/pipeda_brief/

CASL

Canadian Anti-Spam Legislation applies to commercial messages (e.g. fundraising) by nonprofits but not registered charities when fundraising.

- Need consent from recipients
  - **Express**: written or oral but must be provable
  - **Implied**:
    - Membership
    - Conspicuous publication of email address
    - Pre-existing relationship (e.g. purchase, enquiry, volunteered)
- **Withdrawn consent**: must provide unsubscribe button and cannot keep sending (10 days)

If in doubt, just ask! 1-877-249-2782 (CRTC)

Open Discussion

1) What issues are you facing that you think may have a legal aspect to them?
2) Have others faced similar issues? How did you handle it?
3) Using Stepstojustice.ca

Thank you for joining us!
Let's get started!

Benjamin.miller@cleo.on.ca

https://nonprofitlaw.cleo.on.ca