



Bruce Trail
CONSERVANCY

PROPOSED NEW BTC BY-LAWS: AN OVERVIEW

Purpose and Overview of Presentation

- This presentation is intended to outline the context and rationale for the proposed new BTC By-laws and describe the key changes to the By-laws
- It will cover the following:
 - Background: The Ontario Not-for-Profit Corporations Act
 - BTC's current By-laws
 - Objectives of the new By-laws
 - Key changes to the By-laws
 - Next steps

Background: The Ontario Not-for-Profit Corporations Act

- After more than ten years, the new Ontario Not-for-Profit Corporations Act, 2010 (ONCA) was proclaimed into force effective October 19, 2021. The ONCA replaced the Ontario Corporations Act, the corporate legislation which previously applied to Ontario corporations without share capital such as the BTC
 - According to the Province, the ONCA “modernizes governance for Ontario’s not-for-profit corporations and significantly reduces the bureaucratic burden on them, moving from paper-based filings to digital services and providing enhanced flexibility.”
- The BTC has three years to transition under the ONCA
 - During this time, any provisions in the BTC’s governing documents (that is, its letters patent, supplementary letters patent, By-laws and policies) that are not compliant with the ONCA will remain in effect
 - After the three-year period has expired, all non-conforming provisions in the BTC’s governing documents will be deemed to have been amended to conform with the ONCA (with some limited exceptions)

Background: The Ontario Not-for-Profit Corporations Act

- Although there is no formal requirement to amend the By-laws or file articles of amendment (to update letters patent and supplementary letters patent) under the ONCA, if the BTC does not do so, its governing documents may not reflect the actual rules of governance that apply to it

Current BTC By-laws

- The current By-laws were last amended in 2017, at the Annual Meeting of Members held on September 23, 2017
- These amendments included changes to the nomination and election of Directors (eg., term limits) and other revisions based on best practice and in anticipation of ONCA
- The need to now bring the BTC By-laws into compliance with ONCA provides the opportunity to update and improve the current By-laws
- The BTC Board of Directors has engaged legal counsel with expertise in not-for-profit governance who has prepared new, more 'plain language' By-laws for consideration, rather than piecemeal amendments to the current ones

Objectives of New By-laws

The new By-laws will:

- Achieve compliance with ONCA; in this regard, the changes are primarily process-related rather than substantive
- Be easier to understand and follow, while being guided by the language of ONCA
- Streamline the BTC's governance processes and procedures
- Introduce the concept of a minimum and maximum number of Directors, as a permitted alternative to the current fixed number of 19
- Reduce BTC Directors' Board tenure (term limit) from 9 years to 6 years while allowing them to stand for re-election after an absence from the Board of three years or more

The following slides describe the key changes reflected in the new By-laws against these objectives, with references to the relevant new sections



Make the By-laws Easier to Understand and Follow

- **Definitions, Section 1.1** - Definitions have been added at the beginning of the new By-laws for ease of reference
- **Protection of Directors and Officers, Section 5.1** - This section succinctly replaces the much lengthier sections 45-48 in the current By-laws regarding indemnification of Directors and officers

Make the By-laws Easier to Understand and Follow

- **Conflict of Interest, Section 6.1** – While ONCA sets out detailed requirements of Directors and officers involving disclosure of a conflict and, in the case of Directors, prohibition on voting on a related motion, a brief reference to this important duty of officers and Directors, not included in the Current By-laws, is made in the New By-laws for emphasis and clarity
- **Voting by Proxy at Members’ Meetings, Section 8.10** – ONCA and its regulations contain specific requirements for proxies. Rather than repeating some or all of these, this section refers to ONCA for the sake of simplicity and to avoid misinterpretation
- **Financial Matters, Article 9** - A separate article has been added to consolidate all financial matters in one place for ease of reference; in addition, a reference to borrowing powers is added because banks and other lenders usually require a borrowing by-law (even though the Directors have the power to borrow under ONCA)

Streamline Processes and Procedures

- **Execution of Documents, Section 1.4** – This simplified section consolidates and replaces three repetitive clauses in the current By-laws dealing with the execution of documents (sections 31-33)
- **Filling Vacancies on Board, Section 2.6(b)** - The ability of the Directors to fill a vacancy on the Board of Directors between Annual Meetings has been simplified to state that if the Directors fill a vacancy on the Board, the person appointed holds office for the remainder of the vacant term

Streamline Processes and Procedures

- **Calling Board Meetings, Article 3** - The process for calling and holding board meetings has been streamlined. For example:
 - **Section 3.3 (b)** - The ability of Directors to vote on a time-sensitive motion by email has been deleted since, per ONCA, a motion may only be passed at a meeting or by a written resolution signed by all Directors
 - **Section 3.2(b)** - The ability of the Chair to call a meeting on 24 hours' notice has been added which will, for example, help facilitate decision-making on time-sensitive land acquisition opportunities
 - **Section 3.4** – A process has been added to provide for the appointment of a chair of a Directors' meeting if the Chair unable to attend
- **Optional Vice Chair, Section 4.1** – This makes it optional, rather than a requirement, that a Vice Chair be appointed, since a Vice Chair of the BTC Board of Directors has not always been appointed and ONCA only requires that a Chair be appointed

Streamline Processes and Procedures

- **Disciplining or Terminating Members, Section 7.3** - The process for disciplining or terminating Members has been shortened for simplicity; in addition, the reference to the Governance Committee has been removed since a governance committee is not established in the By-laws.
 - In this regard, it would be preferable for further details on disciplining or terminating members to be set out in Board Policy for greater flexibility; for example, functions can be assigned to the Governance Committee or other committees by policy should the Directors wish to do so
- **Amendment of By-laws, Section 11.1** - This section addresses the specific requirements of ONCA on how to amend the By-laws, removing references to the Governance Committee (per above) and administrative matters that are better left to board policy (eg., how changes to or errors and omissions in the By-laws are communicated to the Members)

Minimum and Maximum Number of Directors

Number of Directors, Sections 2.2 and 2.4

Section 2.2 adds, as an alternative to the current fixed number of 19 Directors, the concept of a minimum and maximum number of Directors, as set out in the Articles of the BTC.

- The Members of the BTC will be asked at the 2023 AGM to approve Articles of Amendment providing for a minimum of 16 and a maximum of 19 Directors and also to approve a special resolution empowering the Board to determine the number of Directors from time to time within that min-max number
- This will allow the Board to reduce the total required Directors to as few as 16 in a particular year if the Nominating Team established by the Board is unable to identify enough highly qualified candidates to effectively maintain the number of Directors at 19
- In order to “codify” the BTC Clubs’ rights to preserve their representation on the Board, section 2.4(c) states that “Each Club shall be entitled to nominate one Director to hold office on the Board at any one time”

Change in BTC Directors' Board Term Limit

Election and Term, Section 2.4

This section sets the initial term limit of Directors who are first elected at the 2024 AGM and thereafter at two three-year terms, to a maximum consecutive term limit of six years. This change increases the Board's opportunities to bring on new Directors thus allowing the Board to react in a timely manner to the BTC's strategic directions as they evolve and to be responsive to the consequential Director competency requirements. Decreasing the maximum tenure to six years may also accelerate the achievement of the Board's diversity objectives.

- Directors first elected at the 2024 AGM and thereafter may stand for re-election, after an absence from the Board of at least three years, but may not serve on the Board for more than a lifetime maximum of 12 years
- Section 2.4(b) and section 4.1 provide an exception to the new term limit to allow the Chair to hold that position for up to four years

Next Steps

- Following the February 27 and 28 Town Hall meetings, with the feedback of the Members through the Town Halls, the Board hopes to finalize the draft By-laws and related Articles of Amendment and Special Resolutions and recommend them to the Membership, to be voted on at the BTC annual meeting on October 14, 2023
- Consistent with our current By-laws, the proposed new By-laws will be shared with the Membership through the summer issue of the *Bruce Trail Conservancy Magazine*