

Not-for-Profits Can Change Membership Criteria Even at the Cost of Members

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The recent case of [*Barrie & District Association of Realtors v. Information Technology Systems Ontario 2025 ONSC 3388*](#) confirms that Ontario not-for-profits and charities have the authority to change their membership criteria, even if that may result in existing members becoming no longer eligible for membership.

The Background Facts

In 2023, the applicant, the Barrie & District Association of Realtors® (“**BDAR**”) announced an “integration” with the Toronto Regional Real Estate Board (“**TRREB**”). The respondent, Information Technology Systems Ontario (“**ITSO**”), considered TRREB its primary competitor. Both ITSO and TRREB operate Multiple Listing Service® systems for Realtors® who trade in real estate in Ontario. As a member of ITSO, BDAR had a membership vote and a representative director on ITSO’s board. It also had an obligation to provide all its listing and sales data to ITSO’s MLS® System pursuant to Services Agreement that all ITSO members must enter into. ITSO saw TRREB’s integration with BDAR, whereby TRREB effectively obtained legal control over BDAR, as a threat. As a result of the “integration” between BDAR and TRREB, ITSO’s major competitor now effectively had a seat at ITSO membership meetings and board meetings without TRREB itself being a member of ITSO or being required to share its real estate data on the ITSO MLS® System.

Moreover, TRREB had been systematically moving in on other ITSO members, seeking to integrate them into TRREB’s MLS® System as well. ITSO responded to this threat by amending its by-laws, in accordance with its procedure for doing so, to require members to maintain the same corporate structure and control as when they first joined ITSO. The by-law amendment also provided the ITSO board with the power to review and approve (or reject) any changes in control undergone by members. BDAR challenged the by-law amendment in court, arguing it was impermissibly retroactive, a breach of contract, too vague, and passed in bad faith to specifically target BDAR.

The Court's Decision

Justice S.S. Mathai dismissed BDAR's application, finding that ITSO acted lawfully and within its rights. The by-law amendment was lawful, clear, and made in the best interests of ITSO to prevent competitors like TRREB from gaining control over ITSO members.

The ruling delivers a clear message: if you follow your governing by-laws, procedures and the *Not-for-Profit Corporations Act, 2010* ("**ONCA**"), the Court will rarely second-guess the lawful passage of a by-law or rule change, even if an existing member's status is potentially jeopardized by the change.

The Court's Key Pronouncements

Some of the key principles to take away from the Court's decision include the following:

- Boards have the statutory right to change by-laws, including membership criteria, provided the amendment is passed by the board and then ratified by a two-thirds special resolution of the members as required by *ONCA* and the corporation's by-laws (paras. 61-62, 114).
- Amending membership criteria is not a "retroactive breach of contract" merely because existing members may no longer meet the new membership criteria. When a member joins, it does so with the knowledge that the by-laws and membership criteria may be amended from time to time (paras. 83-88).
- Courts will only intervene in narrow circumstances, including where a not-for-profit or charity (1) breaches its own by-laws, rules or *ONCA*, (2) violates principles of procedural or natural justice, or (3) acts in bad faith. Otherwise, the Court will pay "significant deference" to the corporation's decisions (paras. 69-74).
- The court will not apply the public-law "vagueness" doctrine to a private corporation's by-laws (paras. 90-98). The "vagueness" doctrine has been used by courts to invalidate by-laws passed by municipalities if they are too vague to be complied with. In any event, the by-law amendment in this case was found to be sufficiently clear and not vague.
- Targeting a specific factual concern – in this case, preventing a competitor from exercising control over a member – is not bad faith when the concern is genuine and the process for changing the by-law was fair and in accordance with the rules for changing them (paras. 125-137).

Take-aways for Not-for-profits and Charities Seeking to Change Membership Criteria

1. Establish and follow a solid procedure. Ensure notice, quorum, voting thresholds and ratification steps set out in the by-laws comply with *ONCA* and are strictly followed. Process, even more than motive, was the decisive factor in upholding ITSO's by-law amendment in this case.
2. Document the rationale. Board minutes and communications that record why a change is justified helped establish "good faith" in this case.
3. Plan for fallout. If existing members may be disqualified from membership as a result of a change to membership criteria, have a fair approval/termination pathway ready (e.g., notice, opportunity to be heard, and strict *ONCA* and by-law compliance).

4. Make the hard decision in the best interests of your organization. The high bar for court intervention should give boards comfort that as long as they comply with their by-laws and *ONCA*, their strategic, and sometimes tough, decisions about who should participate in the organization moving forward and what is in the best interests of the corporation are questions for the board and membership as a whole to decide, not individual members or a court.

Governance documents should not be set in stone. They should be living and ever-evolving along with the organization and changing circumstances. If new developments call for changes to membership, properly passed changes will be supported by the law, even at the potential expense of certain members.

[Blaney McMurtry LLP](#) acted for the successful respondent, ITSO, in this case.

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