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20 Ways We May Be Able To Help You With ONCA

By Mark Blumberg (February 19, 2018)

The Ontario Not-for-Profit Corporations Act (the "ONCA") was passed in 2010 and was originally expected to come into force in 2013, but unfortunately it has been delayed a number of times. Many Ontario non-profit corporations have been waiting since 2010, when ONCA was passed, for the changes to come into effect. Many of these Ontario corporations have held off on making corporate changes because ONCA is "just around the corner".

When ONCA comes into force it will apply to over 50,000 non-share capital corporations currently under the Ontario Corporations Act (the "OCA").

On November 14, 2017 the Ontario government passed a significant act entitled "Cutting Unnecessary Red Tape Act, 2017 (Bill 154)". This act made a number of changes to both the current OCA and the future ONCA.

On December 22, 2017, the Ontario government announced that they are "working to bring ONCA into force as early as possible, with a target of early 2020". This is not a guarantee but a target.

Some Ontario non-profit corporations will wait till the last minute, and long after ONCA has been brought in to force, to focus on the ONCA changes and their impact on the governance of their non-profit. For some corporations this strategy may work fine, but for others it could create a lot of challenges, problems and lost opportunities. Others will rather move to Federal jurisdiction under the Canada Not-for-profit Corporations Act ("CNCA") and skip ONCA altogether.

Every Ontario non-profit corporation that is currently under the OCA should have a strategy for making the changes required by ONCA. Some smaller corporations will do everything themselves while others will wish to obtain legal counsel to assist with the transition.

Here are some of the items that our law firm may be able to assist an Ontario non-profit corporation with when preparing for ONCA:

1. Have a strategic discussion with the executive team of the corporation around various paths for dealing with ONCA, including waiting, making changes now under the OCA and later ONCA or moving to the federal *Canada Not-for-profit Corporations Act*.
2. Facilitate discussion at the board level about the ONCA changes in a way to minimize board time and ensure that the path selected is appropriate for the corporation. The biggest cost of ONCA for many organizations is the indecision and distraction ONCA may cause.
3. Review your Minute Book.
4. Ensure that your corporation has all of its correct and complete letters patent and supplementary letters patent.
5. Order microfiche from the Ontario government and arrange for it to be scanned or printed if there are documents missing or to ensure a complete record.
6. Review your current by-law. Do you require any special features to your by-law? Are changes required now or can they wait till later?
7. Order a corporate profile report to check the records that the Ontario government has on their database are up-to-date and correct.
8. Update certain information that the Ontario government has about the corporation including addresses and names of directors and officers. This seemingly simple process can be quite difficult for non-profit corporations that don't have direct access to the database and need to file paper forms. We can upload new information electronically so it can be placed directly in the Ontario Government ONBIS system.
9. Assist with updating the registered office address that the Ontario government has on file.
10. Have a discussion with the corporation around membership. Who should be members? How many classes of membership should there be? What are the dangers of having multiple classes of membership or the wrong members? What mechanisms should be in place for admitting new members and for removing members? Membership is similar to a shareholding in a for-profit company and it is not the "directors" or "board members".
11. Work with the corporation to create an appropriate governance framework, including the degree to which members make certain changes vs. directors, the role of officers and other stakeholders. Recent changes to the OCA give even OCA corporations much more flexibility.

12. Accumulate by questionnaire all information required, depending on the path selected.
13. Prepare draft documents including articles, by-laws, special resolutions, notices of members meeting etc. depending on path selected and ensuring they comply with all the regulatory requirements of the various regulators.
14. Order NUANS name searches, if required to change the name of the corporation.
15. Assist with the process around having special and annual meetings to implement the necessary corporate changes.
16. Explain to stakeholders why certain changes are required or beneficial and assist with communication both internally and externally.
17. For registered charities obtain CRA approval for proposed object changes if the corporation is a registered charity and arrange for filings afterwards with CRA. The CRA is heavily backlogged and for some registered charities this will actually be the first step long before corporate changes are made. Any filings with CRA have to be carefully considered to comply with legal requirements for registered charities. You don't want to hold up corporate changes because you are waiting for CRA approval.
18. For non-profits that are not registered charities help to ensure that any structure complies with the Income Tax requirements relating to non-profits not earning a profit as outlined in the [NPORIP](#).
19. Obtain the approval of the Public Guardian and Trustee in Ontario (the "PGT") if the corporation is considered by the PGT to be "approved as a charity" and arrange filings with the Ontario government.
20. Coordinate requirements with multiple regulatory bodies such as the PGT, CRA and the Ontario government, if applicable.

For many corporations, the ONCA transition is going to be difficult. Luckily it is the sort of transition that only needs to take place every 50 or so years. It makes a lot of sense to start the process now, obtain appropriate assistance and, at a minimum, determine whether work needs to be completed now or can wait till later. We have a [directory of info on ONCA](#) with articles and resources.

A Blumberg Segal LLP we have a number of lawyers who focus almost exclusively on non-profit and charity law. If we can potentially be of assistance do let us know.

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