



## **20 Ways We May Be Able To Help You With ONCA as We Go Into 2017**

By Mark Blumberg (November 5, 2016)

The *Ontario Not-for-Profit Corporations Act* ("ONCA") was originally passed in 2010. It has not yet been brought into force. In September 2015, the Ontario government announced that ONCA will be further delayed and that the Ontario government "will provide the sector with at least 24 months' notice before proclamation". It has now been over year and we have not heard anything further so this probably means that ONCA will not come into force until probably 2019 or later.

When ONCA comes into force it will apply to all non-share capital corporations currently under Ontario's *Corporations Act* ("OCA").

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 and problems.

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 can assist with when preparing for ONCA:

1. Have a discussion with 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* (CNCA).
2. Review your Minute Book.
3. Order microfiche from the Ontario government and arrange for it to be scanned or printed.
4. Ensure that your corporation has all of its correct and complete letters patent and supplementary letters patent.

5. Review your current by-law. Do you require any special features to your by-law?
6. Order a corporate profile report to check the records that the Ontario government has on their database.
7. Conduct corporate profile report and check whether your Ontario government records are up to date.
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 corporations that don't have direct access to the Ontario government database.
9. Assist with updating the registered office address that the Ontario government has on file.
10. 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.
11. 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? What mechanisms should be in place for admitting new members and for removing members?
12. 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.
13. Accumulate by questionnaire all information required, depending on the path selected.
14. Prepare draft documents including articles, by-laws, special resolutions, notices of members meeting etc. depending on path selected.
15. Order NUANS name search, if required.
16. Assist with the process around having special and annual meetings to implement the necessary corporate changes.
17. Explain to stakeholders why certain changes are required or beneficial.
18. Obtain CRA approval for proposed object changes if the corporation is a registered charity and arrange for filings afterwards with CRA. This process can easily take a year and is one of the most important to consider now.
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.

Probably my biggest concern with waiting too late to pay attention to ONCA is that there will be a very large number of organizations who are scrambling at the last minute to make changes. Will the Ontario PGT and the Charities Directorate of CRA have the resources to deal with these issues? I fear not and especially late in the three-year transition period, I can see significant backlogs for regulatory approvals that may reach up to 2 years or more. Perhaps not a big deal if the changes are minor, but very frustrating, costly and anxiety inducing if the changes are substantive or urgent.

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.

A Blumberg Segal LLP we have 9 lawyers, 5 of whom focus almost exclusively on non-profit and charity law. If we can potentially be of assistance do let us know.

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