



Governance Changes and responding to the New Ontario Not-for-Profit Corporations Act (ONCA)

By Mark Blumberg¹ (July 1, 2013)

The *Ontario Not-for-Profit Corporations Act* (“ONCA”) will affect over 50,000 non-profit corporations that are currently incorporated under the *Ontario Corporations Act* (“OCA”). The Ontario government has announced that the ONCA will not be coming into force any earlier than January 2014. As a result of the recent attention surrounding the ONCA, many non-profits and charities are starting to feel unnecessarily apprehensive.

The implementation of the ONCA will provide a good opportunity for Ontario non-profit corporations to assess their governance practices and make improvements. Existing Ontario non-profit corporations will have ample time (three years) from the proclamation date to make any necessary changes to their corporate documents. The Ontario government has begun to provide material so that Ontario non-profits can understand the ONCA framework and how much their organization will be impacted by the ONCA. However, many important documents such as the regulations, forms, and the incorporator’s handbook are

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not yet available to the public. For many organizations it may be prudent to wait a few more months before becoming deeply immersed in the details of the new act as many of the details are not yet known.

If your organization is feeling pressured to take action, there are a few things you can start doing now to save time later:

- 1) Determine what jurisdiction you are incorporated in – are you a federal or Ontario non-profit corporation? Check out your letters patent (articles of incorporation) for this information, but if you don't have these, then try searching the free [Industry Canada database](#) to at least eliminate the possibility you are a federal corporation. Some organizations that are trusts or unincorporated associations will not be affected by the ONCA, and if you are a Federal CCA or CNCA corporation, the ONCA has no applicability to you.
- 2) If you are an Ontario corporation, you may want to consider continuing into the Federal jurisdiction under the *Canada Not-for-profit Corporations Act* (CNCA), in force since October 17, 2011. Ontario non-profit corporations that want to make changes today, for example to by-laws or objects, can avoid the hassle of making changes now and then having to make further changes in a year or two. If you move over to the CNCA then the ONCA will not apply to you and you will be under the new CNCA system which works really well.
- 3) Do you have copies of the letters patent, supplementary letters patent and by-laws for the organization? Do you have a minute book? If not, the letters patent and supplementary letters patent can be obtained from the Ontario government; however they do not keep copies of the by-laws. Also, if you are a registered charity, the Canada Revenue Agency may have copies of some of these documents, but they could be outdated.
- 4) Are the objects/purposes of your organization up-to-date and relevant for the current work of your non-profit? In some cases, it may make sense to update the organization's objects as part of the corporate changes. It is important to remember that all registered charities will need to ask CRA for

pre-approval of these revised objects, which can take months, so this is an example of something that you may wish to start sooner rather than later.

- 5) Is your non-profit's governance structure appropriate? If your current board is ineffective and uncooperative, it would be useful to consider looking into governance training and advice so that the new board can be more successful, strategic and effective.
- 6) Do you have a copy of your most recent by-law? While the Ontario government has released its draft default by-law, it probably does not make much sense to start making revisions to your existing by-law or begin drafting a new by-law until the regulations are disclosed and the act is brought into force, but it is important to have this document available for when the time comes
- 7) Do you know who your members are and do you have an updated list? If there is more than one membership class, do you know the attributes of each class? (ie name, notice, vote, etc)? Members are like shareholders in a for-profit company, except that members don't own the corporation, they control it. Under the ONCA members will have more rights. In some cases non-voting members will even get to vote. Because of this, your organization may wish to clarify who will be the members in the future. Deciding the optimal structure for membership is one of the most important and sometimes difficult decisions required.
- 8) Does the organization want to maintain its current name or change its name?
- 9) Do you have a current list of directors and officers?
- 10) What address do you want to use for your corporation under the ONCA? (Registered or head office address, mailing address etc.)
- 11) Are you up-to-date in the corporate filings for your organization? If not, you may want to do arrears in filings.

Non-profits and charities do not require legal assistance to make the changes under the new ONCA. The Ontario government will provide a large amount of information. However, some non-profits and charities may find it advantageous to retain an experienced non-profit or charity lawyer in order to minimize mistakes, time, acrimony and aggravation.

The ONCA is a dramatic improvement over the OCA and in the long run will help Ontario non-profits to be more effective and better governed.

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