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**The Annual 2020  
Church & Charity Law™ Webinar  
Goes *Virtual* - November 5, 2020**

**PREPARING CHURCHES AND  
CHARITIES FOR THE ONCA**

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 <p>BARRISTERS SOLICITORS TRADEMARK AGENTS</p>	<p>The Annual <b>Church &amp; Charity Law™ Webinar</b> <i>Goes Virtual – November 5, 2020</i></p>
<p><b>Preparing Churches and Charities for the ONCA</b></p> <p>By Jacqueline M. Demczur, B.A., LL.B.</p> <p><a href="mailto:jdemczur@carters.ca">jdemczur@carters.ca</a> 1-877-942-0001</p> <p>© 2020 Carters Professional Corporation</p>	
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2
<p><b>A. THE ONCA APPEARS TO FINALLY BE HERE!</b></p> <ul style="list-style-type: none"><li>• <i>Ontario Not-for-Profit Corporations Act, 2010</i> (“ONCA”) is expected to be proclaimed soon</li><li>• It will replace <i>Ontario Corporations Act</i> (“OCA”), whose Part III governs non-share capital corporations</li><li>• It’s taken a LONG time to get the ONCA to this point<ul style="list-style-type: none"><li>– Royal assent in October 2010</li><li>– Proclamation delayed several times since 2013</li><li>– Reasons? Technical amendments (done Nov. 2017) and tech improvements (still to be done?)</li><li>– Some draft Regulations released in June 2020 but more to come</li><li>– Proclamation deadline extended by Motion 89 (Sept 2020) to December 31, 2021 at latest</li></ul></li></ul> <p><a href="http://www.charitylaw.ca">www.charitylaw.ca</a> <span style="float: right;"><a href="http://www.carters.ca">www.carters.ca</a></span></p>

- Original purposes of the ONCA:
  - Enhanced corporate governance and accountability
  - Simplified and more modern incorporation process
  - More membership rights
  - Improved protections for directors and officers
- Continue to monitor updates on the Ministry's website at <https://www.ontario.ca/page/rules-not-profit-and-charitable-corporations> and [www.charitylaw.ca](http://www.charitylaw.ca)

## B. WHAT DO YOU MEAN WE HAVE TO CHANGE? IMPLICATIONS OF THE ONCA'S PROCLAMATION

- ONCA applies to all OCA corporations automatically
- Optional transition process within 3 years of proclamation to make necessary changes to current governing documents
- Prudent to go through transition by preparing both of the following documents reflecting the ONCA's detailed requirements:
  - Articles of amendment
  - New general operating by-law

5

- Otherwise, if no transition done, then corporation will not be dissolved BUT...LPs, SLPs, by-laws and special resolutions deemed to come into conformity with ONCA
- Only exceptions are those provisions listed in the ONCA (ss. 207(3)) which can remain valid beyond the 3 year ONCA transition period
- Result? Uncertainty

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6

## C. DO IT RIGHT - HOW TO GET READY FOR YOUR ONCA TRANSITION

### 1. Collect governing documents

- Letters patent, supplementary letters patent
- All by-laws, including amendments
- Collect governance related documents, eg. org charts, policies, manuals, etc.
- Confirm your corporation is actually under the OCA and needs to transition to the ONCA

### 2. Review governing documents

- Do they reflect current governance process? If not, what is the process?
- Are changes desired? Write them down, create a wish list

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### 3. Review key ONCA features

- This understanding will help you figure out how your current governance structure will be impacted by the ONCA and how to draft your new ONCA documents
- Need to understand the ONCA framework
  - Rules in the Act
  - Regulations (still to come)
  - Articles and By-laws
- Three types of rules in ONCA
  - Mandatory rules – Cannot be overridden
  - Default rules – Can be overridden if stated
  - Alternate rules – Can be opted into if desired

### 4. Compare ONCA rules with current governance

- Are the current by-laws or desired governance structure/process inconsistent with ONCA? What to do if they are?

### 5. Prepare new ONCA documents

- Articles of amendment to amend portions of Letters Patent (“LP”) offside of the ONCA’s requirements
- Current by-law will need to be replaced or substantially revised because the ONCA differs so much from the OCA

## 6. Obtain membership approval and complete filings

- Need special resolution of members to approve
- File articles of amendment with the Ministry (but not the by-laws)
- Registered charities need to file all of the ONCA documents with Canada Revenue Agency, Charities Directorate

## D. OVERVIEW - KEY ELEMENTS OF THE ONCA

### 1. Incorporation and Corporate Powers

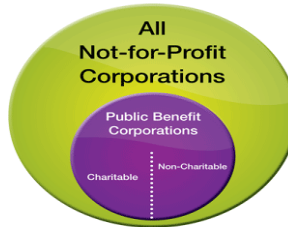
- Incorporation as of right with only 1 incorporator
- Certificate of incorporation issued - no more LPs
- No need to file by-laws or financial statements
- Default ONCA by-law applies if no by-law adopted
- Corporation will have powers of a natural person

### 2. Public Benefit Corporations (PBCs)

- Corporations will be PBCs or non-PBCs
- PBCs include charitable corporations and non-charitable corporations receiving more than \$10,000 in public donations or government funding
- Additional requirements imposed on PBCs

### 3. Financial Review

- Members required to appoint at each AGM by ordinary resolution an auditor or person to conduct review engagement
- There are rules for exemption depending on gross annual revenues (GAR) for (1) need to appoint an auditor and (2) audit vs. review engagement
- Exemption rules/thresholds differ if PBC vs non-PBC



### Directors

- Minimum 3 directors, with range possible if in Articles
- Directors elected at AGMs
- Ex-officio directors possible
- Appointment of directors by Board between AGMs
- If different member groups elect x directors to the Board, must structure members as separate classes
- Directors no longer need to be members
- Maximum 4 year term of directors

13

- No limit though on maximum number of terms
- Staggered terms for directors possible
- Removal of any director by majority vote of members (mandatory)
- Directors must consent in writing to take office

## 5. Members and their Rights/Remedies

- A corporation must have members, with articles to set out member classes
- If 1 class, all members must be voting, but if 2+ classes, voting rights must be given to at least 1 class
- By-laws must set out the conditions for membership
- Default rule is 1 vote per member (subject to articles)

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14

- ONCA originally gave all member classes (even non-voting) separate vote on fundamental matters and certain amendments to articles, i.e. a veto
- Bill 154 (2017) proposed delaying implementation of all membership class votes for at least 3 years after the ONCA's proclamation
- Motion 89 excluded extending these class vote provisions, but if these provisions come into effect (or not) depends on when the ONCA is proclaimed:
  - if proclamation is in 2021, then the class vote provisions would die by Dec 31 2020, but
  - if proclamation is by Dec 31, 2020, then provisions will remain valid, although they may be unlikely to be enacted by the Government

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15

- Default rules to terminate membership
- Articles or by-laws may give directors, members or a committee the power to discipline or terminate members within mandatory parameters
- Members may remove directors by majority vote, with exception of ex officio directors
- Members have extensive rights and remedies, which must be respected (cannot contract out)
  - Requisition members' meetings
  - Submit proposals
  - Access corporate records, eg. membership list
  - Numerous remedies available to utilize

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16

## E. TAKEAWAY TIPS!

Monitor the ONCA

Have a committee in charge of the process

Engage your board of directors

Prepare early

Seek legal help

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