

 <p>BARRISTERS SOLICITORS TRADEMARK AGENTS</p>	<p>The Ottawa Region 2021 <i>Charity & Not-for-Profit Law</i> Webinar February 11, 2021</p>
<p>How Charities and NFPs Can Prepare for the ONCA</p> <p>By Jacqueline M. Demczur, B.A., LL.B.</p> <p>jdemczur@carters.ca 1-877-942-0001</p> <p>© 2021 Carters Professional Corporation</p>	
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<p>A. THE ONCA IS COMING SOON!</p> <ul style="list-style-type: none">• <i>Ontario Not-for-Profit Corporations Act, 2010</i> (“ONCA”) is expected to be proclaimed soon in 2021• It will replace <i>Ontario Corporations Act</i> (“OCA”), whose Part III governs non-share capital corporations• It’s taken a LONG time to get the ONCA to this point<ul style="list-style-type: none">– Royal assent in October 2010– Proclamation delayed several times since 2013– Reasons? Technical amendments (done Nov. 2017) and tech improvements (still to be done?)– Some draft Regulations released in June 2020 but more to come– Proclamation deadline extended by Motion 89 (Sept 2020) to December 31, 2021 at latest	
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- 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

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

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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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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, e.g. 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

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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

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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

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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



4. 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
- 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)
- 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, meaning that since that the ONCA's proclamation will be sometime in 2021, the class vote provisions have died as of December 31, 2020
- 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, *e.g.* membership list
 - Numerous remedies available to utilize

E. KEY TAKEAWAYS

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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