



2026 Spring Webinar Series

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ONCA Issues After the Transition Period: Practical Advice and Tips

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Topics for Discussion

- Overview and Purpose of the ONCA
- New Incorporations under the ONCA
- ONCA Transition Period for Existing Ontario NFP Corporations
- Post-ONCA Transition Period
- What to Look for Now re the ONCA
- Key Features of ONCA Continuance Documents
- How to Navigate Your ONCA Continuance Process
- High Level Review of Specific ONCA Provisions
- ONCA Governance-Related Issues to Consider
- Ontario Business Registry (OBR) Issues and Tips

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A. Terminology to Keep in Mind

- A corporation is a legal “person” separate and apart from its members and directors
- **“NFP” or “not-for-profit” is generally a corporate term, meaning a membership based not-for-profit corporation**
- An “NFP” can have different income tax status:
 - Registered charity
 - Non-charitable but tax-exempt non-profit organization
- **“NPO” is generally a tax term, meaning a non-profit organization under the ITA**

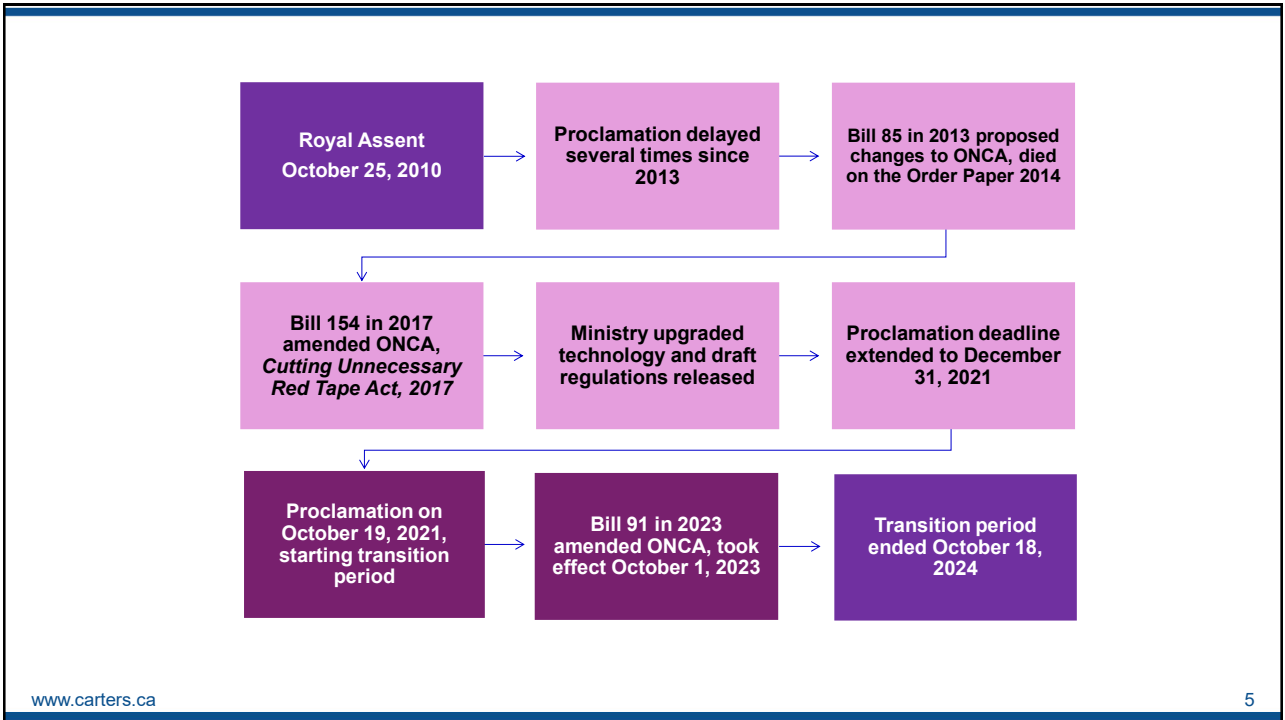


B. Overview of the ONCA

- The Ontario *Not-for-Profit Corporations Act, 2010* (“ONCA”) was proclaimed into force on October 19, 2021
- Following proclamation, the ONCA automatically applied to all non-share capital membership corporations under Part III of Ontario *Corporations Act* (“OCA”)

Share capital social clubs	}	These types of corporations under Part II of OCA have 5 years from October 19, 2021, i.e. until October 18, 2026 to continue under the ONCA, the <i>Co-Operative Corporations Act</i> or the <i>Ontario Business Corporations Act</i>
Special Act corporations	}	Need special case-by-case review
Corporations Sole	}	ONCA does not apply except as prescribed (see O. Reg. 396/21)

- The ONCA does not apply to corporations established under the *Canada Not-for-Profit Corporations Act* (“CNCA”) or unincorporated voluntary associations



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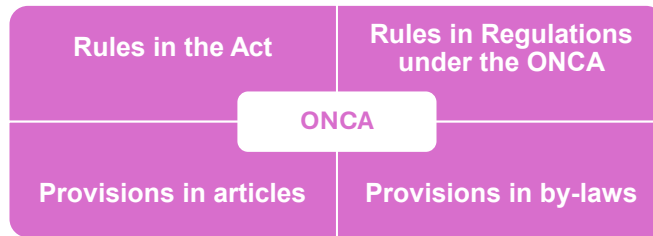
C. Purpose of the ONCA and Key Features

- A modern regulatory regime for not-for-profit corporations in Ontario
- Enhanced corporate governance, transparency and accountability
- Makes incorporation process for new corporations more efficient
- Enhances rights of members
- Increases protections for directors and officers
 - Statutory duty of care
 - Due diligence and good faith defence
- Distinguishes between public benefit corporations (“PBCs”) and other not-for-profit corporations (“non-PBCs”)
- Simplifies review of a corporation’s financial records
- Provides electronic document filing through the online Ontario Business Registry, which was also launched on October 19, 2021

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ONCA Framework



- ONCA is modeled after the rules for public for-profit corporations
- Many rules in ONCA that were not in the OCA
- The new rules are complicated
- Need to know and understand how the rules work with each other

D. New Incorporations Under the ONCA

- ONCA now provides incorporation as of right – no more “letters patent”, instead use “articles of incorporation”
- Powers of a natural person – no more power clauses required
- Standard information in Articles: (1) name; (2) purposes; (3) official email address; (4) registered office address in Ontario; (5) first incorporators
- New information to be provided:
 - Primary Activity Code
 - Number of directors – fixed number or range
 - Membership classes and applicable voting rights
 - Mandatory special provisions if also a registered charity
 - Consents from first directors who are not incorporators
- Must prepare ONCA compliant by-law but no need to file with Ministry
- However, the Ministry’s default by-law will apply if no by-laws adopted within 60 days of incorporation: <https://www.ontario.ca/page/not-profit-corporations-act-2010-standard-organizational-law>

- If a new ONCA corporation will be seeking charitable status under the *Income Tax Act* (Canada) (“ITA”), it is no longer necessary for the Public Guardian and Trustee of Ontario (“PGT”) to review and approve its purposes
- However, the PGT needs to consent to any corporate name including the words “Foundation” or “Charity”, with the use of “Foundation” requiring inclusion of foundation purpose clause in the Articles
- The PGT has updated its Not-for-Profit Incorporator’s Handbook: <https://www.publications.gov.on.ca/301543>
- In the past, new registered charities located in Ontario had to advise the PGT of their registrations, but this requirement is no longer in place
- If future articles of amendment are prepared to amend purposes, the PGT’s consent to exclude “after acquired” clause may be required

E. ONCA Transition Period for Existing Ontario NFP Corporations

- Following proclamation, all Part III OCA corporations had 3 years, *i.e.*, until October 18, 2024, to bring their articles and by-laws into compliance with the ONCA rules
- However, this transition process was optional, meaning that if an OCA corporation did nothing to complete its transition to the ONCA, either during the transition period itself or after the October 18, 2024, expiry date, it would not be dissolved
- During the ONCA transition period:
 - Any provisions in an OCA corporation’s letters patent (“LP”), supplementary letters patent (“SLP”), by-laws and special resolutions that were inconsistent with the ONCA would continue to apply and take precedence over inconsistent ONCA requirements
 - However, if the by-laws and special resolutions were silent on any matter addressed in the ONCA, then those ONCA provisions applied right away

Current documents	If do nothing after proclamation of ONCA		Optional transition during first 3 years after proclamation
	During first 3 years after proclamation	At end of 3 rd year	
LP SLPs	- LP and SLPs continue to govern even if inconsistent with ONCA	Provisions inconsistent with ONCA will be deemed amended to comply with ONCA => uncertainty and messy	Adopt articles of amendment Goals: - Ensure comply with ONCA - Certainty and no mess
By-laws Special resolutions	- By-laws continue to govern even if inconsistent with ONCA - ONCA applies to areas not addressed in the by-laws	Provisions inconsistent with ONCA will be deemed amended to comply with ONCA => uncertainty and messy	Adopt new ONCA-compliant by-law or amend by-law to comply with ONCA Goals: - Ensure comply with ONCA - Certainty and no mess

F. Post-ONCA Transition Period

- After October 18, 2024, if no transition process has been completed, then any provisions in a corporation’s LP, SLP, by-laws and special resolutions are deemed to be amended to comply with the ONCA
- The problem with this deeming approach is that it will be difficult to determine *which provisions* are deemed to be amended and *in what way* they are to be deemed to have been amended to comply with the ONCA
- So, while completing ONCA transition process is optional, the prudent course of action was, and continues to be, for all corporations under the ONCA to complete this process (now called “continuance” since transition period is over) by:
 - adopting new articles of amendment,
 - restated articles of incorporation, and
 - a new ONCA-compliant by-law
- This ensures certainty of the corporation’s governance documents and compliance with the ONCA’s detailed requirements

- However, given that the ONCA transition period has expired and assuming no transition steps have been undertaken to date, it means that if an Ontario corporation wants to undertake a certain corporate procedure (such as to amend its purposes or remove a director), it will need to:
 - review its current OCA by-law, review the corresponding requirements in the ONCA and then determine whether the current by-law complies with the ONCA
 - if not, then the applicable by-law provision will be automatically deemed to have been amended to comply with the ONCA
- In this situation, the corporation will have to read its by-laws subject to any deemed amendments under the ONCA, and there will be many most likely!
- This is messy and confusing, particularly if the need for the desired corporate procedure is taking place in the middle of a governance dispute

G. What to Look For Now re the ONCA

- Starting point with all NFP corporations is their corporate status
- First, need to obtain their corporate profile to confirm they are under ONCA and, if so, whether they have had articles of amendment and/or restated articles issued
- Then review existing corporate documents and determine their ONCA-compliance:
 - Has the corporation completed its ONCA transition/continuance?
 - If yes, has the corporation *fully* completed the process? Adopting a new ONCA by-law is not enough, and the corporation will need to “fill in the gaps”
 - Have Articles of Amendment been issued?
 - How about Restated Articles?
 - Also, if yes, has the corporation actually completed the process *correctly*?
 - Do its new corporate documents fully comply with ONCA requirements? If not, need to amend them
 - If no, what are the implications for the corporation and how to address?
 - Need to complete the ONCA continuance process now

H. Key Features of ONCA Continuance Documents

Need ONCA-Compliant By-law

- Current by-law
 - **Are there provisions that do not comply with ONCA?**
 - Are there gaps where it does not address some of the new ONCA rules?
- Need to know how the ONCA rules work in order to know
 - What rules must be followed?
 - What rules may be overridden, how to override, and where to put overriding provisions (articles vs by-law)?
 - What rules can be opted into and where to put opt-in provisions (articles vs by-law)?
 - What else to include in by-law?
- **Normally, more efficient and cost-effective to draft a fresh by-law than to amend the current by-law**

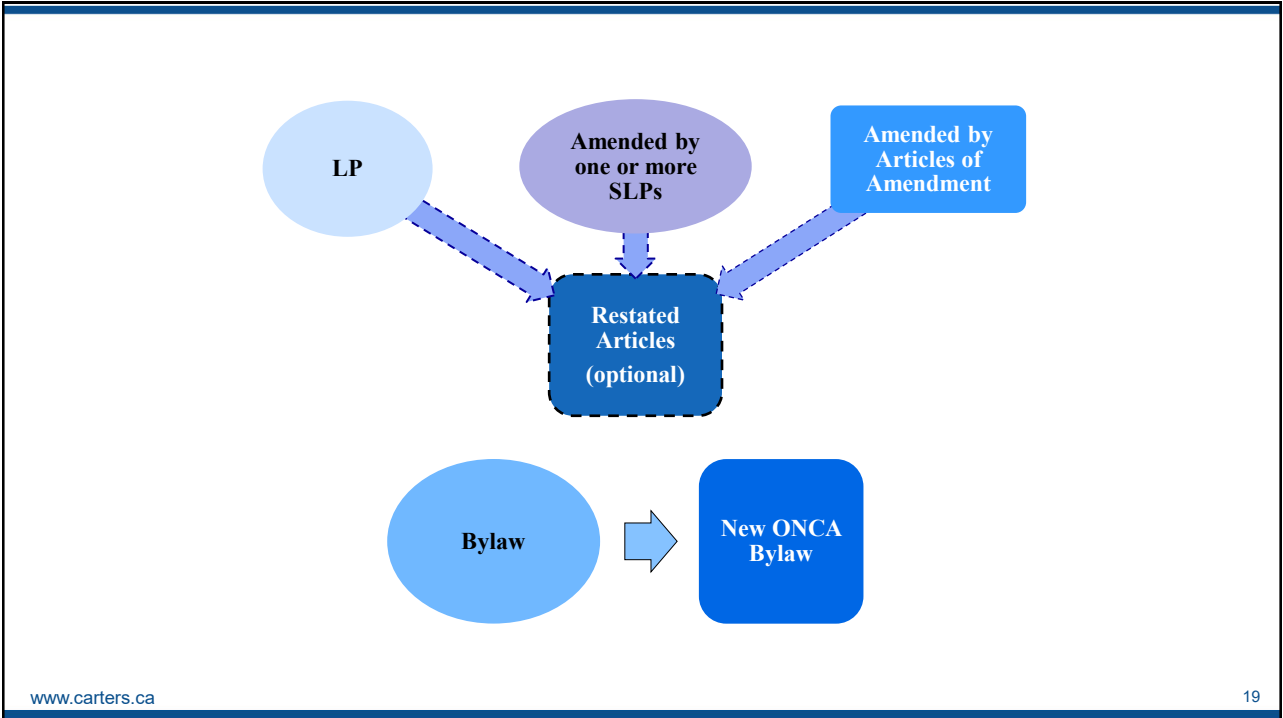
Three Types of Rules in ONCA

Mandatory Rules	Cannot be overridden by the articles or by-laws	Corporations must follow these rules
Default Rules	Apply automatically if articles/by-laws silent but can be overridden by the articles or by-laws	Corporations may override the default rules Overriding provisions may be set out in articles or by-laws – depending on the rules in question
Optional Rules	Options for corporations to opt in to have certain optional rules apply	Corporations may opt in to the options available Opt-in provisions may be set out in articles or by-laws – depending on the rules in question

Articles of Amendment and Optional Restated Articles

- Simply adopting an ONCA-compliant by-law is not sufficient
- ***LP and SLPs need to be amended to comply with new ONCA requirements – by Articles of Amendment***
 - Set out the following in the articles
 - Number of directors
 - Number of membership classes and voting rights
 - Dissolution clause needs to comply with new rules in the ONCA
 - Add “special provisions”
 - Default mandatory “special provisions”
 - Other provisions as required to co-ordinate with mechanisms in the by-law
- ***Certain default provisions will be automatically inserted into the Articles – need to anticipate them when doing Articles of Amendment***

- After amendment by Articles of Amendment, corporation will need to refer to several governing documents, namely:
 - LP
 - LP as amended by any SLPs in the past
 - LP (and SLPs) as amended by Articles of Amendment
- ***Instead, it is possible to consolidate all these into Restated Articles of Incorporation***
 - Would replace LP, all SLPs, and Articles of Amendment with a single, coherent document, making it much easier to navigate going forward
 - Need to carefully consider how to consolidate
 - There are, though, additional filing fees and processing time
- Process is complicated – it is not just filling out forms



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I. How to Navigate Your ONCA Continuance Process	
Collect governing documents	<p>Confirm corporation is actually under the OCA</p> <hr/> <p>Collect LP, SLPs, by-laws (including amendments)</p> <hr/> <p>Collect governance related documents - e.g., organizational charts, policies, manuals</p>
Review governing documents	<p>Do they reflect current governance process? If not, what is current governance process?</p> <hr/> <p>Are changes desired? Write them down, come up with a wish list</p>
Study key ONCA features	<p>Determine how current governance structure will be impacted by the ONCA</p> <hr/> <p>Understand the ONCA framework and rules in the ONCA and Regulations</p> <hr/> <p>Are the current by-laws or desired governance structure/process inconsistent with ONCA? What to do if they are?</p>

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Prepare articles of amendment and restated articles	<p>Articles of Amendment – to amend LP and SLPs</p> <p>Optional to prepare Restated Articles of Incorporation – to consolidate provisions in LP, SLPs and Articles of Amendment</p>
Prepare ONCA-compliant by-law	<p>By-law will need to be replaced or substantially revised because the ONCA is very different from OCA</p> <p>Generally easier to start with fresh ONCA by-law than to amend current by-law</p> <p>Some changes may require consideration and consultation with members, some changes may only be administrative</p>
Approval and filings	<p>Board and members to adopt articles and by-law</p> <p>If applicable – obtain consent from Public Guardian & Trustee (charities only)</p> <p>File Articles of Amendment (and Restated Articles) with the Ministry (but not by-laws), Ministry will issue Certificate of Amendment (and Certificate of Restated Articles)</p> <p>Registered charities - file articles and by-law with Canada Revenue Agency, Charities Directorate</p>

J. High Level Review of Specific ONCA Provisions

Members

- ONCA corporations are membership-based
- Enhanced rights of members under ONCA
- Default is one class of members, all voting
- If 2 or more classes, at least 1 class must have voting rights
- By-laws must set out the conditions required for being a member
- Can have *ex officio* members (*i.e.*, by virtue of office)
- Default termination on death, resignation, removal, expiry of membership term, liquidation or dissolution
- ONCA allows directors, members or committee to discipline members or terminate subject to articles/by-laws – acting in good faith and fair and reasonable manner
- Directors are elected by the members at annual members' meetings
- A special resolution of the members is required to make amendments to the articles

Members' Meetings

Annual Meetings

Must be held within 18 months from incorporation and not later than 15 months after holding the preceding annual meeting (and no more than 6 months after the year end)

Special Meetings

May be called by board at any time or requisitioned by members representing 10% of voting rights

Notice of Meeting

Must be given 10 to 50 days before the meeting

- If a meeting of the members is held by telephonic or electronic means, the notice must include instructions for attending, participating and voting at the meeting
- A members' meeting held by telephone or electronic means must **enable all persons entitled to attend the meeting to reasonably participate**
- A vote at a meeting of the members may be conducted entirely by one or more telephonic or electronic means or by a combination of one or more telephonic or electronic means and voting in person unless the by-laws expressly provide otherwise

Members' Rights

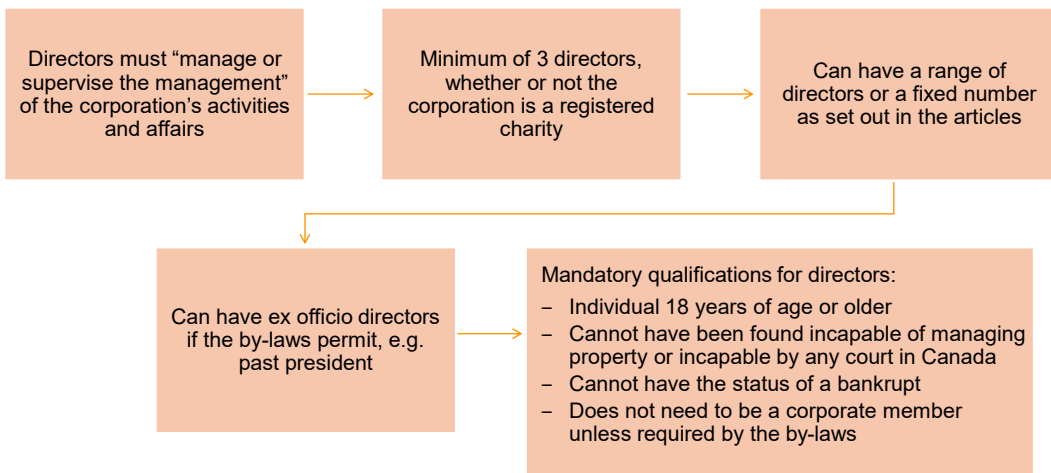
- Members have enhanced rights under ONCA including the right to:
 - Access corporate records and obtain membership lists – ss. 95, 96, 98
 - Receive notice of members meetings and to vote – ss. 55, 58, 59
 - Elect directors – s. 24(1)
 - Remove directors by ordinary resolution (except *ex officio* directors) – s. 26
 - Appoint the auditor or person to conduct a review engagement – s. 68
 - Requisition members' meeting (with 10% of voting rights) – s. 60
 - Submit proposals to amend articles, by-laws or require any matter to be discussed at annual meetings (can be done by any member) – s. 56
 - Submit proposal to nominate directors (need 5% of members) – ss. 56(5)(6)

Members' Broad Remedial Powers

- Members also have broad remedial powers under ONCA including:
 - To obtain certain types of court orders e.g., compliance and restraining orders, court ordered wind-up and liquidation
 - To apply to start a derivative action – excluding “religious corporations”
 - To apply for a court ordered investigation for the grounds set out in s. 174, including where there is conduct that is oppressive or unfairly prejudicial



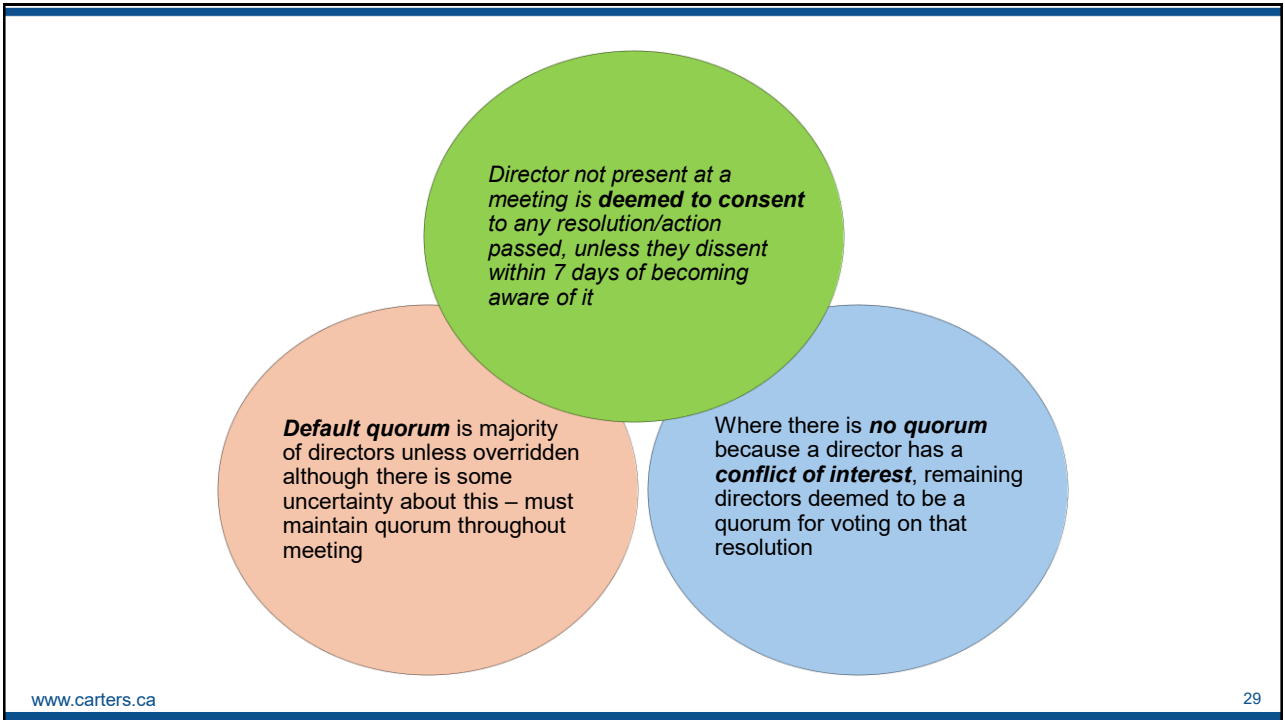
Directors



- **Members elect directors at annual members' meetings**
- Term of office of any elected director can be 1 year to maximum of 4 years as provided in the by-laws – no maximum number of terms
- **Rotating terms permitted**
- With certain exceptions, **directors must consent in writing within 10 days to hold office**, or are deemed not to have been elected or appointed - however, their acts are valid even if there are irregularities after this 10 day period
- Directors entitled to attend and be heard at every members' meeting
- Subject to the articles and by-laws, directors, officers and employees of the corporation can be remunerated for acting in these capacities, with the directors to fix the remuneration
- Subject to the by-laws, directors, officers and members may receive reasonable remuneration and expenses for any services that they perform for the corporation in any other capacity
- **However, ONCA corporations that are registered charities must include a provision in the articles prohibiting remuneration for directors, subject to exceptions under the Charities Accounting Act**

Directors' Meetings

- Subject to articles or by-laws, and other than first meeting, directors can meet at any place and on any notice that the by-laws provide
- Notice of a meeting of the directors does not need to state the place of the meeting if it is to be held entirely by telephonic or electronic means
- **If a meeting of the directors is held by telephonic or electronic means, the notice must include instructions for attending, participating and voting at the meeting**
- **A directors' meeting held by telephone or electronic means must provide that all persons attending the meeting are able to communicate with each other simultaneously and instantaneously**
- Members have no right to attend board meetings
- No proxies or delegates allowed at directors' meetings



Public Benefit Corporations and Non-Public Benefit Corporations

- All corporations are either Public Benefit Corporations (“PBCs”) or non-Public Benefit Corporations (“non-PBCs”)
- PBC is defined as:
 - a) A charitable corporation; or
 - b) A non-charitable corporation that receives more than \$10,000 or other prescribed amount in a financial year,
 - In the form of donations or gifts from persons who are not members, directors, officers or employees of the corporation; or
 - In the form of grants or similar financial assistance from the federal government or a provincial or municipal government or an agency of any such government

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- The definition of PBC turns on the meaning of “charitable corporation” - not limited to registered charities under the *Income Tax Act* (Canada)
- Could include unregistered charities and any corporation that is deemed to be a trustee under the Ontario *Charities Accounting Act* (“CAA”)

• Timing

- Charitable corporations are always PBCs
- For non-charitable corporations, PBC always applies for the following financial year beginning at the first annual meeting of members - never applied retroactively - would cease to be a PBC at the end of that financial year

• Consequences of being a PBC:

- Subject to **more stringent financial review** requirements than non-PBCs
 - Default is that audit is required unless the rules in Section 76 permit a review engagement or a waiver of both

- **Restrictions on the composition of the board of directors of a PBC**
 - Not more than one-third of the directors may be employees of the corporation or of any of its affiliates
- **Restrictions on how any remaining property of a PBC can be distributed upon dissolution or liquidation**
 - Charitable PBCs - net assets must be distributed to a Canadian corporation that is a registered charity with similar purposes, or to the government
 - Non-charitable PBCs - net assets must be distributed to a PBC with similar purposes, to a Canadian corporation that is a registered charity with similar purposes, or to government



Audit Rules for PBCs

Type of Corp/Gross Annual Revenues (GAR)		Requirements for an Auditor	Audit/Review Engagement
Public Benefit Corporation (PBC) with GAR of	\$100,000 or less (ss.76(1)(b))	May, by extraordinary resolution (80%), decide not to appoint an auditor	May dispense with both an audit and a review engagement by extraordinary resolution (80%)
	More than \$100,000 but less than \$500,000 (ss.76(1)(a))	May dispense with an auditor and have someone else conduct a review engagement. This requires an extraordinary resolution (80%)	May elect to have a review engagement instead of an audit by extraordinary resolution (80%)
	\$500,000 or more (by implication of ss.68(1))	An auditor must be appointed annually	Audit is required

Audit Rules for Non-PBCs

Type of Corp/Gross Annual Revenues (GAR)		Requirements for an Auditor	Audit/Review Engagement
Non-PBC corporation with GAR of	\$500,000 or less in annual revenue (ss.76(2)(b))	May, by extraordinary resolution (80%), dispense with an auditor	May dispense with both an audit and a review engagement by extraordinary resolution (80%)
	More than \$500,000 in annual revenue (ss.76(2)(a))	May, by extraordinary resolution (80%), dispense with an auditor, and instead appoint a person to conduct a review engagement	May elect to have a review engagement instead of an audit by extraordinary resolution (80%)

K. ONCA Governance-Related Issues to Consider

Objects/Purposes

- ***A corporation's current objects may be outdated***
 - Even if they generally reflect the corporation's main purposes, the objects may not provide full corporate authority for all current programs and activities
 - If this is the case, then it is important for the Board to address this issue:
 - To ensure the corporation has full corporate authority to carry out all programs and activities, failing which the corporation/board may be exposed to risk
 - To satisfy section 43(2) of the ONCA, which requires directors/officers to comply with the Act, its regulations and the corporation's own articles and by-laws
- ***May be necessary for current objects to be deleted and replaced, or supplemented, with new updated purposes set out in the Articles of Amendment, not the by-laws***

- Note - If a charitable corporation wants to update its purposes, the Articles of Amendment form will automatically insert the "after acquired" clause, regardless of the changes being made, unless the Public Guardian and Trustee ("PGT") has provided written consent to waive it
- ***Implications of having "after acquired" clause:***
 - Funds and other property acquired before the Articles of Amendment can only be used for the purposes that were in place **before** the Articles of Amendment became effective
 - Funds and other property acquired **after** the Articles of Amendment can only be used for the new purposes as changed by the Articles of Amendment
- Having the after acquired clause in the Articles of Amendment can be very problematic for a corporation
- Need to write to PGT to obtain written consent to waive the after acquired clause
 - **NEW!** Cannot write to PGT until after Members have formally approved Articles of Amendment

Member Issues

- ***If rights in one member category differ from those in another category, e.g. voting, then there could be multiple member classes which must be listed in Articles of Amendment***
 - Preferable to avoid having multiple classes of members due to enhanced rights of members: even non-voting classes have limited enhanced rights (although no separate class voting as in CNCA)
 - Having multiple classes also makes it more complex to determine who fulfills the qualification requirements for each member class in order to vote etc.
- ***Suspension and termination of membership now subject to detailed ONCA requirements to provide procedural fairness***
- Better to rely on Board admission process for new and renewal members:
 - To deal with “difficult” members
 - To ensure that the corporation knows who its members are and is maintaining proper membership records as required by ONCA

Director Issues

- ***Review size of the Board of Directors - a large Board may make discussion of key operational issues challenging and impact the Directors' ability to fulfill their fiduciary duties to manage or oversee the management of the corporation***
- A Board that is too small is not ideal from a good governance perspective
- ONCA requires minimum of 3 Directors with no maximum number requirement - ideal size is a minimum of 5 to a maximum of 9 to 12
- Consider Directors' term and maximum term of office – Are changes required? Any exceptions for Directors who are elected as Officers?
- ***Board composition – Elected Directors vs. Ex officio Directors***
- Be aware of Members' rights under ONCA to nominate Directors from AGM floor – Consider use of advance notice by-law provisions
- Director Consents – Required under ONCA

- Under ONCA, directors who fail to meet mandatory and objective qualification requirements no longer qualify to be directors, e.g. bankruptcy, found incapable
- Directors can also be removed for discretionary reasons but only by majority vote of the members
- Members are permitted to remove a director for any reason at any time by Ordinary Resolution (majority vote) at properly called members' meeting
 - Many by-laws have 2/3rd vote requirement to remove a director or automatic termination for missing meetings – not consistent with ONCA
 - Under OCA, members could remove directors by a 2/3rd vote, but this amended by the ONCA to provide for Ordinary Resolution (majority)
 - Only classes of members with the right to elect specific directors can remove those directors, or fill vacancies related to that director
- Note – Members cannot remove *ex officio* directors – consideration when determining board composition

Members' Meeting Issues

- ***Annual meetings: Must be held within 6 months of fiscal year end, mandatory business includes receiving the financial statements, electing directors as required and appointing the auditor***
- ***Special meetings called by the Board or requisitioned by Members (10% min.)***
- Notice period: 10 to 50 days before meeting
- Record date: Can be helpful to "cut off" new memberships within designated time period before members' meeting
- ***Quorum: Can be high or low so consider consequences of either approach***
- Voting: Unless the articles or by-laws expressly provide otherwise, a vote may be conducted entirely by one or more telephonic or electronic means or by a combination of one or more telephonic or electronic means and voting in person
- Remember - Notice of a members meeting to be held by telephonic or electronic means must include instructions for attending and participating in the meeting including, if applicable, instructions for voting by such means at the meeting

Proxy Issues

- **Proxies are optional under ONCA but very complicated**
- A member may appoint a proxyholder only if the by-laws provide for it
- A proxyholder need not be a member of the corporation, unless required by the articles or by-laws
- If offer proxies, need to carefully follow all ONCA rules and ensure use of ONCA-based proxy form templates
- Written form of proxy must comply with detailed requirements set out in the regulations under the ONCA

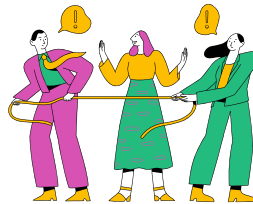
Conflict of Interest

- Under ONCA a director or officer of a corporation must disclose to the corporation if:
 - They are a party to a material contract or transaction with the corporation; or
 - If they are a director or an officer of, or have a material interest in, a party to a material contract or transaction with the corporation
- Conflicted director or officer cannot attend any part of meetings at which the material contract is discussed and cannot vote on resolution to approve
- Note - if directors of charitable corporation decide to proceed with material contract or transaction in which a director has an interest, then that director shall be immediately required to resign from the board or be removed by passing of a board resolution to that effect

Limited exception:

- Ontario Reg. 4.01 under *Charities Accounting Act* (Ontario) (“CAA”) and related PGT Guidance permit remuneration of directors who provide certain services to the corporation without court order
- If the remuneration is authorized by a formal court order (open court) or a consent order through the PGT under CAA, section 13

- **Directors who are cross-appointed - e.g., on the board of a charity and its foundation - may face ongoing or repetitive conflicts or potential conflicts that could impair their ability to participate on both boards**
- Charitable directors could be forced to resign or be removed
- Advisable to consider other ways of obtaining input from other entities instead of cross-appointed directors - such as inviting participation of guests



Remuneration of Directors and Officers

- As discussed, it is a conflict of interest and breach of trust for a charity to pay any monies of the charity to any director as remuneration for any services rendered in any capacity (subject to exceptions under the CAA and regulations)
- **The total prohibition on payments to directors does not apply to NPOs, but it is not the norm for them to receive remuneration – NPO directors are also subject to fiduciary duties**
- Most people serve in officer roles as a form of service and/or for the prestige
- Paying a person to serve as an officer changes the nature of their relationship with the corporation
 - Shift from being a volunteer performing an act of service over to being a staff person with the resulting perspective change
- **Best to have officers serve without any self interest in carrying out their responsibilities**

Officers

- **ONCA requires each corporation to have one director who is appointed chair of the board and must carry out the duties of the chair in accordance with the by-laws**
- Under the OCA, each corporation was required to have a president and existing OCA corporations therefore typically have a president and vice-president – part of corporate culture
- Now need to re-name the president as “chair”, or “president and chair”
 - This is an issue that comes up in completing Ontario Business Registry filings
- If that is not desirable, the by-laws can simply provide that the president is the chair for the purposes of the ONCA



L. Ontario Business Registry (OBR) Issues and Tips

Official Email Address

- The corporation must designate a unique, mandatory email address within OBR
- The official email address will be used for all Ministry of Public and Business Service Delivery and Procurement (Ministry) correspondence and confirmation of filings, such as to obtain the company key (see next slide)
 - The Ministry automatically distributes company keys to the official email address when a new business is registered or incorporated in the OBR
- Remember to update the email address with the Ministry if there has been a change, and this can be done when completing the ONCA continuance process
- The official email address must be entered in the Articles of Amendment as well
- It is best to use an email address such as info@corporation.com by a corporation to avoid issues that could arise following termination of an officer or director, etc.

Company Key

- A company key is similar to the personal identification number (PIN) that a person uses at the bank or to access other online accounts or services
- This 9-digit number is provided by the Ministry to all corporations registered in Ontario
- There are two methods to obtain a new company key in order to access OBR:
 - Official email address on file: Company key is sent to the corporation's official email address recorded with the Ministry – available through the following link: <https://www.appmybizaccount.gov.on.ca/onbis/companykey/?lang=en>
 - Postal code of registered office: If it matches Ministry records, company key is mailed to registered office address on file (confirm postal code through corp. profile)
- TIPS:
 - If official email address OR registered office address (postal code) is outdated with the Ministry, company key cannot be accessed and triggers additional administrative steps: (1) ordering a corporate profile report (2) verifying or updating corporate records and (3) taking steps to correct information
 - Operational Impact: Delays in corporate filings and transactions requiring immediate access, such as filing annual return/notice of change or registering a business name


North American Industry Classification System (NAICS) Code


- If not previously provided, the corporation or other entity, must select the NAICS code which best describes the main activity of the corporation or other entity
- The NAICS code is collected for administrative purposes for corporations and may be shared with other government bodies for the purpose of administering their programs under the authority of the *Business Regulation Reform Act, 1994*
- However, it does not appear on the public record
- For more information, reference can be made to the Notice – Corporations Information Act – Filing an Annual Return, at the following link: <https://forms.mgcs.gov.on.ca/en/dataset/on00229https://forms.mgcs.gov.on.ca/en/dataset/on00229>

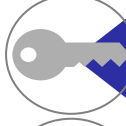
Annual Corporate Returns vs Notices of Change


- The annual return is due within 6 months of the corporation’s financial year end
 - Changes in the officer/director information and/or changes in administrative information, such as registered office address, official email address, and/or NAICS code may be reported when filing the annual return
- A notice of change must be filed within 15 days after a change in any directors’ or officers’ information, and/or the administrative information
- The registered office address and directors’ information is automatically included in the Restated Articles of Incorporation based on most recent filings with the Ontario Ministry – so important to keep this information up-to-date!
- Information for filing an initial return or notice of change for Ontario corporations can be found at the following link: <https://forms.mgcs.gov.on.ca/en/dataset/on00230>
- Information for filing an annual return can be found at the following link: <https://forms.mgcs.gov.on.ca/dataset/on00229>

Key Takeaways

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The governing documents of charities and NFPs which did not transition before October 18, 2024 are deemed to be amended to comply with ONCA
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The deeming approach leads to uncertainty, so it is recommended that charities and NFPs continue under the ONCA as soon as possible
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The ONCA has many mandatory, default and optional rules, which have governance implications and challenges that charities and NFPs need to be aware of, even in the post-transition / continuance period
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Charities and NFPs should become proficient in their ability to use online tools, such as the Ontario Business Registry, or hire intermediaries or service providers, in order to comply with ongoing ONCA requirements



Jacqueline M. Demczur, B.A., LL.B. – A partner with the firm, Ms. Demczur practices in charity and not-for-profit law, including incorporation, corporate restructuring, and legal risk management reviews. Ms. Demczur has been recognized as a leading expert in charity and not-for-profit law by *Lexpert*, *The Best Lawyers in Canada*, and *Chambers and Partners*. She is a contributing author to Industry Canada's *Primer for Directors of Not-For-Profit Corporations* and has written numerous articles on charity and not-for-profit issues for the *Lawyers Weekly*, *The Philanthropist* and *Charity & NFP Law Bulletin*, among others. Ms. Demczur is also a regular speaker at the annual *Charity & Not-for-Profit Law Seminars*.

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