

GOVERNANCE/COMPLIANCE

Ontario non-profits await new legislation

By MARK BLUMBERG

More than 59,000 Ontario non-profit corporations are listed on the province's ONBIS database. While some may be dormant, many that are active will need to consider the impact of new corporate legislation in the province and how it will affect them.

In 2010 the provincial government passed the *Ontario Not-for-Profit Corporations Act* (ONCA). It was originally expected to come into force in 2013 but unfortunately has been delayed a number of times. According to the Ministry of Government and Consumer Services' latest update, ONCA is not expected to take effect before 2016. When it does come into force, it will apply to almost all non-profit corporations currently under the *Ontario Corporations Act* (OCA).

While some may still be unaware of the legislation, many Ontario non-profit corporations have been waiting for the changes to come into effect, holding off on making corporate changes of their own because ONCA is "just around the corner."

Another viable option is to transfer to the federal jurisdiction and continuing under the *Canada Not-for-profit Corporations Act* (CNCA), but it's important to consider different variables before



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making that move. One minor advantage of moving to the federal jurisdiction is that some perceive a federal corporation as more prestigious. If an Ontario non-profit corporation's activities and stakeholders are international in scope, for example, some outside the country may have not heard of "Ontario" but are quite familiar with "Canada."

Also, if an Ontario non-profit corporation has directors from outside of the province on its board, they may prefer to be working with a corporation that is governed by one federal corporate act rather than by a provincial Ontario act.

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Furthermore, if a person is involved with multiple corporations, some federal and some provincial, governance will be more consistent and straightforward if all are subject to the same act.

In addition, many corporate changes for charities in Ontario require approval from the Ontario Public Guardian and Trustee (PGT), which can slow down the process and create more red tape and costs for non-profit corporations. Moving from Ontario to federal jurisdiction can allow Ontario non-profit corporations that are also registered charities to avoid the extra layer of corporate regulation provided by the PGT. Registered charities would still be overseen by the CRA, but would no longer need to get approval from two charity regulators for a corporate change.

Another advantage is that the CNCA is already in effect, which means there is no need to wait for the ONCA. Corporate changes can be made almost immediately without having to be revisited when the ONCA comes into effect. Also, the federal corporate system run by Industry Canada at this time

appears to be better organized and more up to date. Ontario still uses microfiche when copies of corporate documents are requested, for example, while Industry Canada can mail PDFs of documents in a day. (This may change once the Ontario system is revamped and improvements are made to the current structure.)

An advantage of staying in the Ontario jurisdiction is that a corporation can avoid any action until the ONCA comes into force, and will then have another three years to make corporate changes.

Under the ONCA, the audit exemption for public benefit corporations will be higher (\$500,000) than the current exemption under the CNCA for soliciting corporations (\$250,000). This may help some organizations with higher revenue that want to avoid an annual audit.

Also, if an Ontario non-profit corporation has ex-officio directors on its board, it can maintain the same structure under the ONCA. The CNCA does not allow ex-officio directors.

Lastly, if a person is involved

with a large number of Ontario non-profit corporations it may be best for consistency's sake to keep them all under the OCA, and then make adjustments to make their governance consistent with ONCA. It is easier to operate and set up governance structures for several organizations under one piece of legislation. Also, some organizations (for various different reasons) may wish to, or be required to remain as Ontario non-profit corporations.

There are different routes to consider under the OCA. Which ever way is taken, all Ontario non-profit corporations should begin wrapping their heads around these issues in the next year or two in preparation for an inevitable corporate transition.

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