



## 20 Ways We May Be Able To Help You With ONCA

By Mark Blumberg, Lize-Mari Swanepoel and Lynn Gluckman (November 10, 2021)

The Ontario Not-for-profit Corporations Act ("ONCA") was passed in 2010 and came into force on October 19, 2021. ONCA will affect over 50,000 Ontario non-profit corporations.

Every Ontario non-profit corporation that is currently under the OCA should have a strategy for making the changes required by ONCA. Some smaller corporations may undertake the required changes themselves, while others may wish to obtain legal counsel to assist with the transition.

Here are some of the items that our law firm may be able to assist with when preparing for a "transition" under ONCA:

1. Have a strategic discussion with the executive team of the corporation around various paths for dealing with ONCA, making changes under ONCA, or moving to the federal *Canada Not-for-profit Corporations Act* (the "CNCA").
2. Facilitate a discussion at the board level about the ONCA changes in a way that minimizes board time and ensures that the path selected is appropriate for the corporation. The biggest cost of ONCA for many organizations will be the indecision and distraction that ONCA may cause to the organization.
3. Review the corporation's Minute Book and/or governing documents.
4. Ensure that the non-profit has all of its governing documents, such as letters patent, supplementary letters patent, and by-laws.
5. Order documents from the Ontario government to ensure a complete record.
6. Review the corporation's current by-law and discuss any special features that the corporation may require.
7. Have a discussion with the corporation around membership. Who should be members? How many classes of membership should there be? What are the issues with having multiple classes of membership or the wrong members? What

mechanisms should be in place for admitting new members and for removing members? Membership is similar to a shareholding in a for-profit company (not the “directors” or “board members”). Having an appropriate membership structure is probably the most important governance consideration.

8. Order a corporate profile report to check that the records on the Ontario government’s database are up-to-date and correct.
9. Update certain information about the corporation on the Ontario government’s database, including names and addresses of directors and officers, and the registered office address of the corporation .
10. Ensure that the Ontario Ministry has the non-profit’s official email address on file and obtain a company key for the Ontario non-profit.
11. Work with the corporation to create an appropriate governance framework, including the degree to which members make certain changes vs. directors, the role of officers and other stakeholders.
12. Accumulate all information required to facilitate the path selected (i.e. stay under ONCA or move to the CNCA).
13. Prepare draft documents including articles, by-laws, special resolutions, notice of members meeting etc., depending on the path selected, and ensure they comply with all the requirements of the various regulators.
14. Order NUANS name searches, if changing the name of the corporation.
15. Assist with the process of having special and annual meetings to implement the necessary corporate changes.
16. Explain to stakeholders why certain changes are required or beneficial and assist with communication both internally and externally.
17. For registered charities, obtain CRA approval for proposed object changes and arrange for filings with CRA. If objects are being changed, CRA will not just review objects but will also require a detailed statement of activities for each new object being proposed. The CRA may become quite backlogged and for some registered charities this will actually be the first step - long before corporate changes are made. Any filings with CRA will have to be carefully considered and must comply with legal requirements for registered charities.
18. For non-profits that are not registered charities, help to ensure that any structure complies with the *Income Tax Act* (Canada) requirements relating to non-profits not earning a profit as outlined in the [NPORIP](#).
19. Depending on the nature of the changes, if the corporation is considered by the Public Guardian and Trustee in Ontario (the “PGT”) to be “approved as a charity” it may be necessary to obtain the PGT approval.

20. Coordinate requirements with multiple regulatory bodies such as the PGT and CRA, and the Ontario government or Corporations Canada, if applicable.

For many corporations, the ONCA transition will be challenging. It makes sense to begin understanding the process now, obtain appropriate assistance and, at a minimum, determine whether work needs to be completed now or at a later date. We have a [directory of information on ONCA](#) with articles and resources.

At Blumberg Segal LLP, all of our lawyers focus on non-profit and charity law. If you wish to retain our law firm, please [contact us](#).

To keep up to date, you can check our [ONCA directory with new articles and blog posts](#) or you can sign up for our Blumbergs' [monthly newsletter](#).

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