



Office of the Public Guardian and Trustee Charitable Property Program

The Role of the Public Guardian and Trustee Under ONCA

***Understanding the New Ontario
Not for Profit Corporations Act
November 25, 2021***



Fulfilling Mandate



PGT carries out its mandate by:

1. Protecting charitable property in court proceedings;
2. Acting on complaints regarding misapplication of charitable property or breach of fiduciary duties of directors or trustees; and,
3. In limited circumstances, reviewing Ontario applications for incorporation of charitable organizations and corporate- change documents;



ONCA

- On October 19, 2021, the Not-for-Profit Corporations Act came into force;
- The Ontario Business Registry, an online system for applying for articles of incorporation or a change to corporate articles, also started on October 19, 2021.
- The new system reduces the OPGT's role in incorporation or corporate change applications.



PGT Involvement under ONCA

- Ontario Regulation 394/21, Names and Filings, stipulates when the OPGT is involved in corporate applications when:
 - A charitable corporation wishes to change its purposes but does not want to use the 'after-acquired clause' (sections 24 & 27);
 - The applicant wishes to use the term 'Foundation', if the word suggests the corporation is a charity, or the word 'Charity' in the name of the corporation (sections 2.7 & 2.8);
 - If the OPGT has requested notification of any application for changes with respect to the corporation (sections 26 & 33).



The 'After Acquired' clause

- Required for charities who wish to change their purposes;
- Stipulates that charities must use the funds they currently hold for the original purposes;
- Reflects charity law in Ontario which must be followed whether or not the clause is included;



The 'After Acquired' clause

- OPGT generally will approve exclusion of the clause when there is no significant change to the purposes;

Examples include:

- Deleting purposes the corporation no longer intends to carry out or narrowing the scope of the purposes.
- Rewriting the purposes to reflect social changes in the use of certain terminology, for example replacing words such as “crippled” with “disabled” or “people with disabilities”.
- Expanding or otherwise changing the power clauses



The 'After Acquired' clause

“All funds and other property held by the corporation immediately before the articles become effective or that are received subsequently by the corporation pursuant to any will, deed or other instrument made before the articles become effective, together with any income or other accretions to the funds or other property, will be applied only to the purposes of the corporation as they were immediately before the articles become effective.”



Restricted Words: Charity and Foundation

- OPGT approval is required:
 - When the term Foundation is used if it suggests the corporation is a charity
 - When the word Charity is used in the name of the corporation;



Restricted Word: Foundation

- For a corporation to use the term foundation, if it implies the corporation is a charity, it must:
 - Include the OPGT's foundation clause;
 - Comply with the other naming provisions;
 - Have wholly charitable purposes



Restricted Words: Charity

- In order to receive OPGT approval for the use of the term 'Charity', the corporation's purposes must be wholly charitable;
- The use of the term must also comply with the other naming requirements found in the regulation



OPGT has notified Service Ontario of concerns

- Sections 26 and 33 stipulate that the approval of the OPGT is necessary when our office has contacted Service Ontario to indicate we have conducted or are conducting an inquiry into the charity into whether:
 - The corporation, an officer director or incorporator has misused charitable property;
 - An officer, director or incorporator has breached their fiduciary duties in relation to charitable property.
 - The OPGT has notified Service Ontario that our approval is necessary to revive the corporation.¹¹



Not-for-Profit Incorporator's Handbook (the Handbook)

- The Handbook has recently been updated to reflect the changes in the legislation and processes.
- You can find a copy or a link at the OPGT Publications page, OPGT web page, or by emailing us to request a copy. (see final slide)



Service Ontario Contact Info

- If there are specific questions re filings, refer to the regulations, *Not for Profit Incorporators Handbook* (OPGT website site or Publications Ontario) and Notices of Filing Requirements available on the Ontario Forms Repository.
- For further filing questions, Please can contact the call centre at: 1-800-361-3223 or 416 314-8880.
- In respect of governance, MGCS is unable to provide legal advice. However, should you have governance-related ONCA questions, please send your inquiries to: BusinessLawPolicy@ontario.ca.



Contact Information



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OPGT Publications:

<https://www.publications.gov.on.ca/the-office-of-the-public-guardian-and-trustee>