



Ready or Not?
***It's Time to Get Complaint with the
Ontario Not-for-Profit Corporations Act***

OASIS CONFERENCE 2014

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Overview

1. An Overview of ONCA
2. Status & Timing of ONCA
3. Highlights of ONCA
4. The Continuance Process
5. Practical Steps to Compliance

1. What is ONCA?

- New legislation governing not-for-profit corporations in Ontario
- Replaces *Ontario Corporations Act* (OCA)
- Provides a modern legal framework for not-for-profit corporations
- Current legislation has not been substantively updated in over 60 years
- Similar legislation in force at federal level

2. When will ONCA come into effect?

- Bill was introduced on May 12, 2010
- ONCA received Royal Assent on October 25, 2010
- Proclamation date has been delayed
- Bill 85 introduced in March 2013 includes numerous amendments to ONCA
- ONCA will come into effect no earlier than 6 months after Bill 85 is passed (likely 2015)

3. Highlights of ONCA

A. Members

- Thrust of new legislation empowers members
- By-laws must set out conditions for membership
- Membership classes must be set out in Articles
- Articles or by-laws may give directors, members or committee the power to discipline/ terminate members

3. Highlights of ONCA

B. Membership Classes & Voting Rights

- Must be at least **one** class of voting members
- If corporations have more than one class of membership, must set this out in Articles
- Class veto is possible
- Proxies and/or other means of voting are mandatory for **all meetings of members**

3. Highlights of ONCA

C. Voting Rights of Non-voting Members

- Limited voting rights for non-voting members
 - Extraordinary sale
 - Amalgamation
 - Continuance to another jurisdiction
 - Change of rights/conditions to non-voting members or other classes relative to non-voting members

3. Highlights of ONCA

D. Enhanced Rights of Members

- Greater access to financial statements & certain corporate records
- Can elect and remove directors at any time
- Can raise at matter as a “proposal” at meetings

3. Highlights of ONCA

E. Expanded Remedies of Members

- Rectification Order
- Dissent or Appraisal Remedy
- Compliance or Restraining Order
- Derivative Action
- Application for Investigation

3. Highlights of ONCA

F. Membership Considerations

1. Voting rights of non-voting members
2. Single class of membership
3. Making non-voting members
“supporters”, “patrons”, “sponsors”, etc.
4. Amending membership structure prior to
ONCA coming into effect

3. Highlights of ONCA

G. Directors

- Minimum of 3 directors (for PBC, not more than one-third can be employees)
- Maximum 4 year term
- Members may elect and remove directors by ordinary resolution
- Directors not required to be members
- Ex-officio directors are permitted

3. Highlights of ONCA

G. Directors (con't)

- Board may elect up to one-third the number of directors elected at last meeting of members
- Not more than one-third of the directors of a public benefit corporation may be employees of the corporation or of any of its affiliates
- Not allowed to send a delegate to a meeting of directors

3. Highlights of ONCA

H. Director Remuneration & Conflict of Interest

- Directors may fix compensation
- Directors may receive reasonable remuneration for acts performed for the corporation in another capacity
- Directors must report a conflict of interest

3. Highlights of ONCA

I. Expanded Rights of Directors

- May borrow money without members' authorization (subject to by-law & articles)
- May make, amend or repeal by-laws
- Statutory duty of care (objective standard of care)
- Due diligence and good faith defence

3. Highlights of ONCA

J. Incorporation & Corporate Powers

- Incorporation “as of right”
- Certificate of Incorporation
- Incorporation under *ONCA* will only take a few days and can be completed online
- Letters Patent under *OCA* are replaced by Articles of Incorporation under *ONCA*

3. Highlights of ONCA

J. Incorporation & Corporate Powers (con't)

- Purposes of corporation set out in articles, not in by-laws
- Purposes may be of a commercial nature
- Must include classes of membership and voting rights in articles
- Registered charities must comply with CRA but no longer require PGT approval

3. Highlights of ONCA?

K. Public Benefit Corporations

- Corporations are classified as public benefit corporations (PBCs) or non-public benefit corporations (Non-PBCs)
- PBCs are:
 - charitable corporations; or
 - Non-charitable corporations receiving more than \$10,000 per year in donations or government funding

3. Highlights of ONCA?

L. Implications of Being a PBC

- Higher standards & tighter regulations
- Not more than one-third of directors can be employees
- Higher thresholds regarding auditing requirements
- Property must be distributed to similar corporations upon dissolution
- Corp may oscillate between PBC/non-PBC

3. Highlights of ONCA?

M. Financial Reporting Options (PBC)

- Gross Annual Revenue (GAR) less than \$100,000
 - May dispense with appointment of auditor
 - May dispense with audit and review engagement
- GAR \$100,000 to less than \$500,000
 - May dispense with appointment of auditor
 - May elect for review engagement
- GAR of \$500,000 or greater
 - Annual appointment of auditor required
 - Audit required

3. Highlights of ONCA?

N. Financial Reporting Options (Non-PBC)

- Gross Annual Revenue (GAR) less than \$500,000
 - May dispense with appointment of auditor
 - May dispense with audit and review engagement
- GAR of \$500,000 or greater
 - May dispense with appointment of auditor
 - May elect for review engagement

4. The Continuance Process

- Once ONCA comes into effect, existing corporations governed by OCA will have a **three-year period** to transition to incorporation under ONCA
- Failure to meet compliance deadline will result in governance documents being deemed to comply with ONCA
- Non-compliant provisions will be invalidated resulting in uncertainty of governance structure
- Default by-law will apply if not passed within 60 days

4. The Continuance Process

- Cannot make certain changes that affect a class or group of members at the same time as applying for Certificate of Continuance
- Prudent to continue under ONCA sooner rather than later within grace period (target 2015 AGM if legislation is in effect)
- Ontario corporations may want to consider incorporating under the Canada *Not-for-Profit Corporations Act*

5. Practical Steps to Compliance

1. Form a Governance Committee
2. Determine affected corporations (consider family-run self-directed support corporations as well)
3. Review Letters Patent and By-laws
4. Consider amendments to membership structure (make changes prior to ONCA)
5. Prepare Articles of Continuance

5. Practical Steps to Continuance (con't)

6. Prepare new By-laws
7. Get membership approval
8. File Required Documents
9. Fulfill CRA requirements

QUESTIONS



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