

KEEPING CURRENT

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Non-share capital corporations in Ontario have one year left to update key corporate documents

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Founded in the 1920s, Gardiner Roberts LLP has grown to become a strategically placed mid-sized business law firm with a diverse client base which includes several of Canada's largest banks, public companies including mining, high tech and software companies, real estate enterprises, lenders and investors.

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Non-share capital corporations in Ontario have just one year left to update their by-laws and other governing documents to be compliant with new not-for-profit legislation. The *Not-for-Profit Corporations Act, 2010* (commonly referred to as the “**ONCA**”) came into force on October 19, 2021, and applies automatically to all non-share capital corporations incorporated under an Ontario statute, including all corporations incorporated under Part III of the Corporations Act (Ontario). If a non-share capital corporation's governing documents are not updated by October 19, 2024, most provisions that do not comply with the ONCA will be deemed to be amended to be compliant. This could lead to significant confusion, as it will be unclear which provisions will be deemed to have been amended and how they have been changed. Non-share capital corporations should amend their governing documents before October 19, 2024 to be compliant with the ONCA and to avoid future uncertainty.

Transitions under the ONCA take time, particularly when a corporation's governing documents have not been

recently updated and no longer reflect its current practices. However, even those corporations with relatively recent bylaws, letters patent, and/or supplementary letters patent should be prepared for the transition process to take at least several months. This is because the ONCA is more prescriptive than previous legislation, with mandatory, default, and elective provisions. The directors and members of these non-share capital corporations may need to have substantive discussions to determine which elective provisions they should opt into and which default provisions they should opt out of, depending on their regular practices and the direction they see for their organization going forward.

This required transition to the ONCA presents an excellent opportunity for Ontario non-share capital corporations to review and update their governance practices and to become more familiar with the changes in the legislation governing not-for-profits in the province. Corporations that are also registered charities will have additional considerations.

At Gardiner Roberts, we have assisted many clients through the transition process over the last two years and have developed a short checklist to help corporations and their board manage the transition smoothly. We recommend that non-share capital corporations and their boards:

1. Collect and review corporate governing documents, including by-laws, letters patent, any supplementary letters patent, and recent member resolutions.
2. Obtain a corporate profile report and review the information to ensure that directors and officers are updated and all annual returns have been filed.
3. Obtain the corporation's Company Key, which will allow the corporation to access the online Ontario Business Registry.
4. Create a committee to handle the transition to the ONCA.
5. Prepare ONCA-compliant documents, including by-laws, articles of amendment, and restated articles of incorporation.
6. Have the board and the members approve the ONCA transition documents prior to filing them with Service Ontario. Member approval can be done at a special meeting of members combined with the annual meeting of members. Corporations with large memberships and/or set meeting dates will need to plan accordingly.

We would be pleased to review your existing corporate governance documents and assist you through the transition process. Please feel free to contact one of our [non-profit and charity law specialists](#).

ONCA FAQs

1. How do I know if my organization is governed by the ONCA?

Check your governing documents. If the corporation was incorporated under the federal Canada Not-for-profit Corporations Act, then you do not need to transition. If, however, your corporation was incorporated under the Corporations Act (Ontario) or another Ontario corporate statute, and you have members (not shareholders), then you likely need to transition to the ONCA. If you're not sure, you can now search the [Ontario Business Registry](#) for free.

2. How long will the ONCA transition process take?

We are finding that most corporations take three to six months to go through the ONCA transition process. That includes a review of the corporate documents, preparing new or revised bylaws, and preparing and filing articles of amendment and restates articles of incorporation.

3. How much will the transition process cost?

The cost really depends on the structure of your corporation and on how much drafting is needed for the new ONCA-compliant documents. We have found that there is large range in costs. We can generally provide an estimate once we have reviewed an organization's current documents and had a preliminary discussion.

4. Will my corporation be dissolved if we don't transition?

No. Corporations will not be dissolved if they do not transition to the ONCA by October 19, 2023. They will continue to exist, and all provisions that are not inconsistent with the ONCA will continue in effect. However, provisions that are not compliant with the ONCA will be deemed to be amended,



resulting in uncertainty in what governing provisions apply. Corporations that miss the deadline should proceed with the transition as soon as possible.

5. My corporation was incorporated under the Corporations Act (Ontario) as a social club and has share capital. Does the ONCA apply?

No, the ONCA does not automatically apply to share capital social clubs. However, share capital social clubs incorporated under the Corporations Act (Ontario) will need to continue out from under that act by October 19, 2026. They can choose to continue under the ONCA as a non-share capital corporation, or they can continue as a share capital corporation or a cooperative corporation. Please see our [previous blog post](#) on this topic.

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