

KEEPING CURRENT

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Three Tips for Ontario Not-for-Profit Corporations as ONCA Deadline Approaches

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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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The transition deadline to comply with the *Not-for-Profit Corporations Act, 2010* (Ontario) ("ONCA") is quickly approaching.

The ONCA came into effect on October 19, 2021, and applies automatically to all non-share capital corporations incorporated under Part III of the *Corporations Act* (Ontario). If a non-share capital corporation's by-laws and other governing documents, including letters patent and any supplementary letters patent, are not updated to comply with the ONCA **as of October 19, 2024**, any provisions that conflict with the ONCA will be deemed to be amended to be compliant. This may result in confusion, as it will not be clear to members and directors how their governing documents have been amended and which provisions are still in effect and valid.

Despite the approaching deadline, a non-share capital corporation does not need to panic if it does not or is unable to file updated documents before the deadline. Such a corporation can continue to operate and will not lose its corporate status (or charitable status,

if applicable), solely for reasons of not updating its documents to comply with the ONCA. However, if the October deadline is missed, a corporation should still take the necessary steps as soon as possible to update the provisions in its governing documents so that directors and members will not need to guess as to which provisions are invalid and deemed to be amended to comply with the ONCA,

The ONCA has introduced new mandatory, default, and elective provisions to be included in the articles and in the bylaws. Because these provisions can effect day-to-day operations for non-share capital corporations, they will need to update their governing documents to comply with these new provisions. At the same time corporations may also want to take this opportunity to conduct a comprehensive governance review.

We offer directors of non-share capital corporations the following three tips when considering how to comply with the ONCA:

- 1. Create a committee or small group of advisors to guide the process to comply with the ONCA.**

A small group of two to four individuals who are familiar with the corporation's history, operations, and/or governance matters can help guide the process of complying with the ONCA by identifying the corporation's priorities and areas for change moving forward.

2. Gather all governing documents and review.

Corporations should locate all of their governing documents which include letters patent, supplementary letter patent, by-laws, and any by-law amendments. If it is unclear if some documents are missing, legal professionals are able to assist by ordering copies of a corporation's letters patent and supplementary letters patent that are on file with the Ministry of Public and Business Service Delivery.

The committee or group overseeing the ONCA transition process should review their documents and consider if any general changes are needed in addition to reviewing changes that are required under the ONCA. As part of this process, a committee should identify if they require the assistance of external legal counsel.

3. Allow enough time for director and member approvals.

The ONCA transition documents must be approved by the board and by the members of a corporation. For corporations with open memberships, the board will want to consider whether to bring the ONCA transition documents to the members at an annual meeting or call a special meeting. Either way, the board will need to ensure that there is enough time to finalize the documents, have them approved by the board, and provide sufficient and adequate notice to the members.

Conclusion

With the transition deadline fast approaching, non-share capital corporations should consider what next steps they can take to comply with the ONCA either **before October 19, 2024** or as soon as possible afterwards.

Gardiner Roberts LLP would be pleased to review your existing corporate governance documents and assist you in the transition process. For more information on the ONCA transition and how our lawyers can assist you, please refer to our previous posts on the ONCA [here](#) and [here](#) or contact one of our [non-profit and charity law specialists](#) directly.

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