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ONTARIO POSTPONES IMPLEMENTATION OF NEW NOT-FOR-PROFIT CORPORATIONS ACT

By Clifford Goldfarb and Taylor Teasdale

The effective date of the *Ontario Not-for-Profit Corporations Act* ("ONCA") has yet again been postponed, this time indefinitely. While no detailed explanation was given for the delay, it is clear that the new electronic registration and corporate management system that the Province has been developing for the ONCA, as well as for all of its other corporate and business registration statutes, has been delayed and there is no firm date for its completion.

On September 17th the Ontario Ministry of Government & Consumer Services announced on its website that the Ministry will give at least 24 months' notice before proclamation, but identified no projected date of proclamation. This means that the ONCA will not come into effect before 2018 at the earliest.

When the ONCA finally comes into force, it will govern the formation and operation of non-share capital corporations under Ontario law. The ONCA will automatically apply to most non-share capital corporations governed by the current *Ontario Corporations Act* ("OCA"), as well as to entities formed under certain special Ontario acts.

When it was passed in 2010, the ONCA was welcomed by the non-profit and charity sectors as a much needed overhaul of the statutory framework governing not-for-profit corporations in Ontario. Improvements under the ONCA would include enhanced corporate governance features, greater corporate accountability, increased member rights, and more protection from personal liability for directors and officers. Many of these changes will require a rethinking of the current governance models of existing OCA and special act corporations.

Once the ONCA is in force, corporations will have three years to amend their charter documents and by-laws to bring them into compliance. If a corporation fails to meet this deadline, its documents will be deemed to have been amended to the extent necessary to comply with the ONCA. For some corporations, it will be more appropriate to make these amendments prior to the implementation of the ONCA. However, until a definite date for proclamation is given and certain necessary substantive and technical amendments are made to the ONCA, we do not recommend that changes be made in anticipation of the ONCA. If your organization has a current reason to review its governance, you should consider making any desirable changes now. If you would like to take advantage of some of the major changes which the ONCA will bring to OCA corporations without having to wait for its implementation, you may wish to consider continuing under the *Canada Not-for-Profit Corporations Act*, which has many of the same features.

If you would like to have further information on the ONCA, or to discuss the governance needs of your organization, please feel free to contact Clifford Goldfarb, James Parks, Taylor Teasdale, or your primary lawyer at Gardiner Roberts.

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