

LEGISLATIVE UPDATE

September 2021

Backgrounder

The Ontario Not-for-Profit Corporations Act, 2010, S.O. 2010, c. 15

Context

More than 10 years after Royal Assent of the [Ontario Not-for-Profit Corporations Act, 2010](#) (“ONCA”), the Ministry of Government and Consumer services announced that ONCA is expected to be proclaimed October 19, 2021 and become effective on that same day.

In the last decade, a number of provisions and amendments were proclaimed into force, through Bill 154 Cutting Unnecessary Red Tape Act, 2017 which received royal assent on November 14, 2017 and Bill 276 Supporting Recovery and Competitiveness Act, 2021, which received royal assent June 3, 2021.

Prior to the ONCA, Not-for-Profit corporations were under the Ontario Corporations Act. The ONCA was created to provide Not-for-Profit corporations with a standalone act that would be responsive to their needs.

The Ontario Hospital Associate (OHA) has prepared this backgrounder to provide Members with a non-exhaustive overview of the components of ONCA that may be of interest to hospitals. For further information on ONCA, please refer to the provincial government’s news release and accompanying documents ([link](#)).

Key Highlights and Impact of the Legislation

The Ontario government expects the ONCA to:

- Simplify the incorporation process;
- Clarify rules of governance for not-for-profits;
- Clarify that not-for-profits are able to earn a profit through commercial activities if those profits are reinvested in the corporations to support their not-for-profit purposes;
- Allow some corporations to use a review engagement (a less extensive process for reviewing a corporation’s financial records) instead of an audit;
- Enhance members’ rights and provide actions that can be taken against directors or officers that are not acting in the best interests of the corporation; and
- Join other jurisdictions in Canada that have modernized their not-for-profit corporations’ laws (the *Canada Not-for-profit Corporations Act*, for instance, came into effect on October 17, 2011 at the federal level)

LEGISLATIVE UPDATE

Who Does it Apply to?

If you are a Not-for-Profit corporation incorporated under the Ontario Corporations Act, including hospitals, ONCA applies to you. The ONCA will also apply to (most) Not-for-Profit organizations incorporated under other Ontario laws and statutes (ex. Horticultural societies and conservation authorities incorporated under other laws).

ONCA will not apply to insurance corporations under Part V of the Corporates Act, corporations without share capital that fall under the Co-operative Corporations Act, when a statute clearly says otherwise, and companies with social purposes

Legislative, Regulatory, and Policy Changes

ONCA will automatically apply to organizations when it comes into force on October 19, 2021. The following are some changes that have been introduced under ONCA and their corresponding sections:

- Membership structures must be outlined in the corporation's articles (**s. 48**)
- Members can put forward proposals at annual general meetings and special meetings (**s. 56(1)**)
- Proxy and electronic voting are allowed (**s. 64(1) and s. 67(1)(2)**)
- New eligibility criteria for directors (**s. 23(1)**)
- Minimum number of directors and maximum terms for directors (**s. 30(1)**)
- Distinction between public benefit corporations and other not-for-profit corporations (**s. 1 'Definitions'**)
- Greater flexibility for financial reporting (**s. 44(b)**)
- Offences for contravening ONCA, misleading statements, misuse of membership (**s. 193**)
- Set out a due diligence and good faith reliance defence for directors – a director will not be legally liable in certain circumstances if they acted with the care, diligence, and skill a reasonably careful person would have acted in similar circumstances (**s. 44**)
- List specific requirements for directors and officers to report a conflict of interest (**s. 41**)

It should be noted that ONCA has evolved throughout the last decade. Certain provisions, such as those relating to non-voting members receiving voting rights for fundamental changes, have been removed from ONCA and will no longer apply.

LEGISLATIVE UPDATE

Temporary Suspension to Timeline

In response to COVID 19, a temporary suspension period will be in effect from the proclamation date until December 31, 2021. This suspension period will allow:

- Director and member meetings to be held electronically despite any provisions or corporation's by-laws stating otherwise;
- the chair of a member's meeting to conduct a vote at an electronic meeting as they see fit; and
- member votes to be held by mail, telephone, or electronic means.

Moving Forward

Once ONCA comes into force, Not-for-Profit corporations will have a three (3) year transition period (see section 207 of ONCA for the transition provisions) to review and amend their governing documents to conform to the new Act. The ONCA will automatically apply to any Not-for-Profit organization after three years, regardless of whether governing documents have been amended.

In the interim, the OHA is working with external legal counsel from Borden Ladner Gervais LLP to update the OHA's Corporate Prototype By-Law, which we anticipate will be available in conjunction with a webinar for hospitals later this fall.

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