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Ontario *Not-for-Profit Corporations Act* - Transition and Next Steps

By Linda J. Godel and Alexandra Zavalunov

As we reported last week, the Ontario government announced that, after almost 11 years, the Ontario *Not-for-Profit Corporations Act* (ONCA) is finally being proclaimed into force effective October 19, 2021 (**proclamation date**).

Most Ontario not-for-profit corporations are currently governed by the *Corporations Act* (Ontario) (OCA). Once the ONCA comes into effect in October, it will apply automatically to these Ontario not-for-profits. However, any provisions in a not-for-profit's governing documents (i.e., letters patent, supplementary letters patent, and by-laws) that conflict with the ONCA will remain in effect for three years (**transition period**), after which these provisions will be deemed to be amended to comply with the ONCA, subject to certain exceptions. For example, under both the OCA and the ONCA, at least 10 days' notice is required to be given for members' meetings, whereas the ONCA also prescribes a maximum period of 50 days. At the end of the transition period, if a not-for-profit's by-laws do not contain the 50 day limit, they will be deemed to be amended to include it.

The ONCA has evolved since it was first introduced. Most notably, the provisions which would have given non-voting members voting rights with respect to certain fundamental changes and those that would have required certain fundamental matters to be approved by separate classes of members are no longer contained in the ONCA.

In addition, a temporary suspension period with respect to specific provisions of the ONCA will be in effect from the proclamation date until December 31, 2021 (unless further extended) in response to COVID 19 (**suspension period**). During this suspension period, meetings of directors and members may be held electronically despite any provision in a not-for-profit corporation's articles or by-laws which may provide otherwise. As well, during the suspension period, the chair of a members' meeting may conduct a vote at an electronic meeting as the chair sees fit and a vote of the members may be held by mail, telephone or electronic means whether or not the governing documents of the not-for-profit permit a vote to be held in that manner.

Although there are no formal requirements to transition under the ONCA (as was the case for federal not-for-profit corporations under the *Canada Not-for-profit Corporations Act*), Ontario not-for-profit corporations should take steps to consider, and if necessary, amend their governing documents prior to the end of the transition period so that their governance requirements are clearly articulated. If they do not do so, following the transition period, Ontario not-for-profits may not recognize whether provisions in their governing documents and any related actions would or could be offside the ONCA.

The Ontario government has indicated that it will provide more information with respect to the ONCA closer to the proclamation date and we will continue to monitor new developments. We would be happy to answer any questions that you may have about the ONCA, the transition process and any governance matters that may affect your organization.

Authors



Linda J. Godel
Partner

Tel: 416 643 8809
lgodel@torkinmanes.com



Alexandra Zavalunov
Associate

Tel: 437 253 2741
azavalunov@torkinmanes.com

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