



**HOW TO PREPARE FOR THE ONCA:
AN OVERVIEW FOR COMMUNITY ASSOCIATIONS**

Judith Shane, BA, MSW, RSW, LLB
LAC & Associates Consulting

WHAT IS ONCA?

On October 19, 2021, the Ontario Not-for-Profit Corporations Act, 2010 (ONCA) was proclaimed and is now law in Ontario. A main purpose of ONCA is to produce more efficient and effective governance for not-for-profit (nfp) corporations such as community associations (CAs), charities, religious groups, and social clubs.

Until October 19, 2021, nfp corporations were governed by the Ontario Corporations Act (OCA) which also governs other types of corporations including those with shareholders. ONCA replaces Part III of that Act for non-share capital membership corporations.

HOW DOES ONCA AFFECT YOUR CA?

Is your CA incorporated provincially?

No. If not then you are unaffected by this change in law. Neither OCA nor ONCA apply to your CA. (An unincorporated CA typically has a constitution and by-laws are optional). If your CA is incorporated federally, ONCA does not apply.

Yes. An incorporated CA has governing documents such as Letters Patent (founding documents), possibly Supplementary Letters Patent and by-laws (current governing documents). Under ONCA, Letters Patent have been renamed Articles of Incorporation.

An incorporated CA typically also has other governance documents such as a Corporate Minute Book, historical records, and special resolutions. If your CA is incorporated provincially (under Ontario law) then ONCA automatically applies to you.

If you are unable to locate your Letters Patent, copies are available from the Ontario Ministry of Government and Consumer Services.

IF YOUR CA IS INCORPORATED

Your governing documents will continue to operate as your governing tools for the next three years until October 18, 2024. This happens even if these documents are not currently in compliance with ONCA.

You have this three-year period to bring your governing documents (Letters Patent and by-laws) into compliance.

After this transition period, any clauses or provisions in your governing documents that are non-compliant will be overridden by ONCA. This means that non-compliant provisions will no longer operate. The appropriate ONCA provisions will be substituted as law.

COULD A CA DO NOTHING DURING THE TRANSITION PERIOD?

Yes. Your current governing documents will continue to fully operate for the next three years. Your corporation will not be dissolved by the government of Ontario when the transition period ends.

However, any provisions in your governing documents that do not comply with the mandatory rules in ONCA will no longer be valid. Your CA may then not be functioning in compliance with the laws of Ontario.

Changes will be required to the by-laws. ONCA has brought in, amongst other things, administrative changes, more membership rights, and improved protections for directors.

By-laws lay out the rules and framework for the structure and operations of a CA. They regulate the corporation's activities and the procedures for decision making. By-laws are dynamic, often requiring changes and updating during the life of the association.

Your CA may find it confusing to know how to properly operate. A period of uncertainty may ensue while you study ONCA to determine how to amend your operating documents. You will need to determine which ONCA rules are mandatory, which may be overridden and, which are optional.

Amendments to your by-laws require the approval of your membership. All of this takes time. The three- year transition period is intended to allow for a deliberative, reflective, and unrushed process.

WHEN SHOULD YOUR CA BEGIN THE TRANSITION PROCESS?

That depends on what your CA wants and needs to do to become compliant with ONCA. Some CAs may not have updated their by-laws in years. They might consider this a worthwhile and timely opportunity to do a partial, substantive, or complete revamping and rethinking of their by-laws through a governance review.

Other CAs may have been following the ONCA developments over the past decade and already begun amending their governing documents. Therefore, some minimal revisions (such as administrative changes) may be all that is necessary.

Other factors may determine how early in the transition process to begin. Listed below are several of these factors including related questions to consider:

Updating required: Do your current operating documents reflect your current operating practices? Are you governing more by long standing practices and custom than by the content of your by-laws? Check your Corporate Minute Book. (A Minute Book functions as the official record of a corporation's activities and documents such as Letters Patent, by-laws, register of directors, resolutions amending by-laws and special resolutions, minutes of Board and members' meetings.)

Complexity: How complex are your by-laws? What is the structure and scope of operations of your CA? Some CAs have numerous committees and sub-committees. Others operate community centres and provide programming.

Human Resources: What is the extent of your personnel resources? Can you strike a governance committee or ONCA working group to review and amend your governing documents? Are there directors or members with expertise?

Membership size: What is the size of your membership? If substantial changes to your by-laws are planned or necessary, it may take many months. Your membership will need time to review the recommended or required changes. A vote at an Annual Meeting or at a Special Meeting is necessary. If it is a large and active membership, allow time for extensive consultation and revisions.

Outside help: Comparing and contrasting your by-laws with corresponding ONCA provisions, determining options, and including new provisions where previously your by-laws were silent, is intricate work. Knowledge of the law and good drafting skills will help. Outside governance or legal advice might provide useful guidance and perspective.

Financial Resources: Availability of outside advice may also depend on your CA's financial resources and ability to pay for such assistance.

STEPS TO TAKE THROUGH THE TRANSITION PROCESS

1. Create a working group or governance committee to review governing documents and draft changes. This group/committee should regularly report its progress and recommendations to the Board of Directors. Allow substantial time for explanation, discussion, and revision.
2. Engage outside assistance if deemed helpful or necessary.
3. Review your Letters Patent, Supplementary Letters Patent (if any), by-laws and amendments. Check your Corporate Minute Book for historical context and for deviations from your current operating procedures.
4. Read the ONCA. Learn how its rules will impact the governance of your CA. Compare and contrast ONCA's rules and regulations with your CA governing documents. Are there inconsistencies? Pay particular attention to the director and member provisions.
5. Prepare and draft amendments to make your governing documents compliant with ONCA.
6. Seek approval from your Board of Directors for the draft amendments.
7. Seek consultation and approval from your membership. Prepare a description and explanation of each proposed amendment. Allow plenty of time for notice and review. Hold a Special Meeting or at your next Annual Meeting vote on the proposed changes.
8. Update your corporate records to include the changes made (including your Corporate Minute Book). Changes to your by-laws do not need to be filed with the Government of Ontario. Amendments to your Letters Patent do.

NOTE: This basic guide is for information purposes only. It is not intended as legal advice.