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ONCA Delayed Again

By: Megan D. Wallace, Business Lawyer

Last week the Ontario Ministry of Government and Consumer Services announced that proclamation of the *Ontario Not-for-Profit Corporations Act* (the “**ONCA**”) continues to be delayed. The Ministry has announced that at least twenty-four months of notice will be provided prior to the ONCA being brought into force. This notice has not yet been provided and it is anybody’s guess as to when it will be announced.

What’s the hold up?

The Ministry has indicated that the ONCA will not be brought into force until the Ontario legislature passes various technical amendments to the legislation and a technological upgrade to Ministry systems is complete.

Should Ontario not-for-profit corporations be actively working towards transition to the ONCA?

In our view it is too early for corporations to begin making changes to corporate structure or governance in anticipation of the transition to the ONCA, primarily because there is still a significant possibility of changes to the legislation.

In addition to the technical amendments noted above, the not-for-profit sector has been vocal about its concerns with the legislation and the government is still consulting with the sector as to those concerns – this consultation may well lead to other changes to the ONCA prior to proclamation.

Additionally, even if the legislation remains in the same form, as of today the government has not yet released the regulations under the ONCA, so there is still some information we do not know as to the requirements for corporations and the transition process itself.

Given the above, we are not recommending that our clients take any steps to revise their governance structure, letters patent or by-laws to become compliant with the ONCA at this time.

The Ontario government will be providing twenty-four months’ notice of proclamation of the ONCA and following proclamation there will be a three year transition period during which all corporations incorporated under the *Corporations Act* will be required to transition to the ONCA. That means there will be a minimum of five years of notice provided to corporations - so there is no rush to begin the transition at this time, particularly without all the relevant information in hand.

Should Ontario Not-for-Profits Delay All Governance Changes until the ONCA?



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For a time it appeared as though Ontario not-for-profit corporations would be wise to hold-off on non-urgent changes to governance structure, letters patent or by-laws in anticipation of the proclamation of the ONCA; however, given the repeated delays, we suggest that corporations continue with their regular processes of governance review and make any changes to structure, letters patent or by-laws as are required to operate effectively under the existing *Corporations Act*.

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