ONCA: Lessons learned for public hospitals

October 21, 2025

The Ontario *Not-for-Profit Corporations Act, 2010* (the ONCA), proclaimed in force on Oct. 19, 2021, is now the foundational corporate governance legislation for most Ontario Hospitals.

In 2021, BLG worked with the Ontario Hospital Association to create new ONCA-compliant prototype governance documents to assist Hospitals in transitioning to ONCA, and to take advantage of flexibility and protections provided by ONCA. Most hospitals used these templates to assist in completing their transition process during the 3-year transition window provided for by the legislation (and took the opportunity to further modernize their governing documents and governance processes). That window closed a year ago on October 18, 2024.

Hospitals that have not yet taken active steps to modernize their governance document are now 'deemed' to comply with ONCA. This can create uncertainty as the words in your governance documents may not be what legally governs the activities and affairs of the Hospital. That uncertainty could cloud the validity of Hospital corporate decisions, or result in liability related to not following correct processes. It is possible that these risks could be material. These risks can be mitigated by transitioning to ONCA compliant governance documents.

Hospitals that completed their ONCA governance document modernization but did so before October 2023 should take note that the Ontario Government amended ONCA in October 2023; you should consider if these amendments impact your governance documents and whether a further amendment is required to ensure they are fully aligned and consistent with ONCA. (See the Ontario Hospital Association's bulletin on the October 2023 amendments.)

ONCA lessons learned

Some of the most common corporate and governance issues arising post ONCA include:

- **Conflicts management:** ONCA introduced an enhanced conflicts management regime whereby directors must leave the meeting for the relevant portion of discussion (not just disclose the conflict and refrain from voting). The OHA's Sample Board Policy on Conflict of Interest clarifies that this is expected of

officers and committee members as well. Quorum is not lost if directors leave a meeting for conflict management purposes. Not only should Hospitals ensure their by-laws and policies reflect enhanced ONCA requirements, but Boards should embed these enhanced conflicts management practices in Board culture and meeting processes, and document them properly in meeting minutes. We have observed that some directors continue to take a narrow view of conflict declarations and in our view the right approach to proactive conflict management in the hospital sector is a conservative approach that errs on the side of declaration. Conflicts management has recently been a source of many questions across the sector.

- **Enhanced borrowing flexibility:** While not strictly related to ONCA, many Hospitals took the governance modernization opportunity created by ONCA to remove a longstanding borrowing restriction in constating documents that arose from a historical requirement of the Office of the Ontario Public Guardian and Trustee (for more information on this borrowing restriction, see our article here). Given the current fiscal climate faced by the Hospital sector, it is very important for Hospitals to have the maximum flexibility to borrow if and as necessary. Accordingly, if your hospital continues to have a legacy borrowing restriction in your letters patent, supplementary letters patent or articles, consider filing articles of amendment to remove it now, so you do not have an impediment to deal with if you need to borrow in the future.
- **Audit committee composition:** The October 2023 amendments to ONCA imposed a requirement that audit committees be comprised only of directors. Many Hospitals have historically involved community representatives on their audit committee for a variety of good governance reasons, and this amendment to ONCA caused many Hospitals to revisit committee terms of reference and committee composition to ensure their approach remains compliant.
- **Ministry approval of articles**: Section 4(1) of the *Public Hospitals Act* now requires that all changes to public hospital constating documents require approval by the Minister of Health. Accordingly, before filing articles of amendment with the Director under ONCA (through Service Ontario), hospitals are now required to make a submission to the Ministry of Health (including the proposed articles of amendment, an explanatory document highlighting the proposed changes, and a copy of the hospital's existing letters patent, supplementary letters patent and articles). The Hospital should expect this process to take at least 30-60 business days. Our recent experience has been that simple articles of amendment have been approved by the Minister of Health at the short end of that range. The Ministry process to approve more significant governance changes, such as the incorporation of a new hospital corporation or the amalgamation of an existing public hospital with another corporation, is more involved. Note that Hospital by-laws do not require Minister approval.
- **Corporate recordkeeping**: While ONCA did not materially change corporate recordkeeping requirements, it served as a reminder that certain corporate documents must be maintained, including a directors' register, members' register, and property register. In addition, Hospitals must keep the Ontario Government's publicly accessible corporate registry current, listing the names of directors and officers and their start and end dates. As registered charities, Hospitals must also provide a copy of all changes to articles and by-laws to the Canada Revenue Agency. As part of the ONCA transition, many Hospitals reviewed their records and noted that process improvements were needed to ensure compliance with these ongoing requirements.

BLG worked with the Ontario Hospital Association to update the Guide to Good Governance to reflect ONCA requirements. It can be accessed here.

If you need assistance bringing your hospital's governing documents into compliance with ONCA, or have any other corporate or governance questions, please contact any member of BLG's health sector corporate and governance team.

By

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