

---

# SPECIAL NOTICE TO ALL CBOQ CHURCHES INCORPORATED IN ONTARIO

## IMPLEMENTATION OF THE NEW ONTARIO NOT-FOR- PROFIT CORPORATIONS ACT

MARCH 16, 2011

---

As you may be aware, the Government of Ontario passed the new *Ontario Not-for-Profit Corporations Act* (the “ONCA”) in October 2010. While it has not yet come into effect, it is expected that the ONCA will come into force some time in 2012.

Please note that CBOQ churches may be incorporated provincially in Ontario under the *Corporations Act* (Ontario) or federally under the *Canada Corporations Act*. This notice regarding the ONCA only applies to Ontario incorporated churches. However, federally incorporated churches should be aware that the Government of Canada has also passed new legislation, the *Canada Not-for-Profit Corporations Act* (“CNCA”), which is expected to come into force sometime in June 2011, although this could be delayed in the event of the calling of a federal election. Please see a separate parallel CBOQ notice about the CNCA for more information.

Your church should be aware of the following key elements of the ONCA:

- ONCA corporations will have the capacity and rights of a natural person.
- Objective standard of care as opposed to subjective standard of care.
- Due diligence defence available.
- Enhanced members’ rights.
- Enhanced members’ remedies.
- Non-voting members have a right to vote to approve certain fundamental changes.
- Introduction of the concept of public benefit corporation with complex audit or review requirements.
- Mandatory provisions requiring solicitation of proxies.

Once the ONCA is in effect, all churches incorporated under the current *Corporations Act* (Ontario) will have three years in which to continue under the ONCA. Although a corporation that does not complete the continuance process within this time period will not be dissolved by the Ministry, all its letters patent, supplementary letters patent and by-laws will be deemed to be amended to comply with the new statutory requirements, resulting in any provisions which are not in compliance with the ONCA being deemed to be invalid. This will result in uncertainty in relation to which provisions of your church’s by-laws remain valid and, therefore, it is advisable for your church to take the following steps to complete the continuance process:

- Reviewing its letters patent and replacing them with articles of continuation to be prepared;
- Replacing or substantially revising its by-laws. The ONCA contains detailed provisions and rules for corporations to operate under and current by-laws under the *Corporations Act* (Ontario) will not comply with these new requirements; and
- Preparing other documents that may be required by the Ministry of Government Services.

In addition, since your church is a registered charity, then in the event that you are contemplating a change of objects, it would be advisable to obtain approval of your new objects from Canada Revenue Agency in advance. This may also be a good opportunity to consider completing other outstanding amendments to your church's by-laws, either before the ONCA continuation or as part of the continuation process.

All CBOQ churches which are incorporated provincially in Ontario are strongly encouraged to contact their legal counsel to discuss the ONCA and the steps which will need to be taken to complete the required continuation. Please contact the CBOQ if you are interested in obtaining additional resource materials on the ONCA or require assistance in retaining legal counsel who can assist you with your continuation under the ONCA.