

## Diocese of Ontario

## LEGAL STATUS OF CHURCHWARDENS

By *The Church Temporalities Act of 1843*, Churchwardens during their term of office are “as a corporation to represent the interest of (their) church and the members thereof”.

By an Act of 1876 relating to the Diocese of Ontario, the Synod was authorized to make canons regulating existing vestries and their organization and the duties of Churchwardens, and providing for the organization of vestries in the Diocese and prescribing the duties and powers of the Vestries and Churchwardens in these other Churches.

By an Act of 1893 relating to this Diocese (*An Act Respecting The Incorporated Synod of Ontario, 1893*), all Churchwardens appointed under any canon of the Diocesan Synod were given the same status, powers and responsibilities on behalf of their church, station or parish and its members, as Churchwardens were given under the church Temporalities Act. As a result the Churchwardens are a legal entity in law and in all business agreements the corporate name shall be used. The legal designation is “The Churchwardens of the Church of \_\_\_\_\_”.

It will be noted that the parish or the congregation is not itself incorporated and that the Incumbent is not a member of the corporation. The corporate status of the Churchwardens is important. A corporation is a legal person separate from the persons who are its members. It can acquire, hold and dispose of property and make contracts and acquire rights and incur obligations of all or any of its members. Thus any property acquired by the Churchwardens does not belong in law to the Churchwardens as persons nor to the Incumbent nor to the congregation. It is, of course, held in trust for the benefit of the congregation under certain conditions.

There must be two Churchwardens duly elected and appointed in accordance with the Diocesan Canons to bring the corporation of Churchwardens into existence. In order that an act may be an act of the corporation, both Churchwardens must act together. When they so act, within the scope of their authority and in accordance with their powers, they incur corporate obligations on behalf of the congregation which bind its property. They do not incur any personal liability or impose any such liability on individual members of the congregation, in so doing, unless they or others voluntarily assume separate personal responsibility, for example, as guarantors.

Acting beyond their authority they do not bind congregational property or members of the congregation, and they become personally liable for any debt or obligation incurred. One Churchwarden acting without the concurrence of the other or acting while sole warden does not bind the property of the congregation, and becomes solely personally liable for any obligation incurred. An irregular or unauthorized act can be later ratified and confirmed by the concurrent act of both Churchwardens, with the approval of the Parish/Congregational Council or Vestry where such approval is required, but unless so ratified, confirmed and approved it remains the personal act of the individual who performs it.