

ONCOLYTICS BIOTECH INC  
Form S-8  
January 10, 2011

As filed with the Securities and Exchange Commission on January 10, 2011  
Registration Statement No. 333-

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM S-8  
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

ONCOLYTICS BIOTECH INC.  
(Exact name of registrant as specified in its charter)

Alberta, Canada  
(State or other jurisdiction  
of  
incorporation or  
organization)

Not Applicable  
(I.R.S. Employer  
Identification No.)

Suite 210, 1167 Kensington Crescent NW  
Calgary, Alberta  
Canada T2N 1X7

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(Address of principal executive offices)

Amended and Restated Stock Option Plan, dated December 1, 2010

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(Full titles of plan)

Dorsey & Whitney LLP  
1400 Wewatta Street, Suite 400  
Denver, CO 80202-5549

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(Name and address of agent for service)

(303) 629-3450

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(Telephone number, including area code, of agent for service)

Copies to:

Kenneth G. Sam, Esq.  
Dorsey & Whitney LLP  
1400 Wewatta Street, Suite 400  
Denver, CO 80202-5549

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Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of “Accelerated filer and large accelerated filer” in Rule 12b-2 of the Exchange Act (Check one):

Large Accelerated Filer  Accelerated Filer  Non-Accelerated Filer  Smaller Reporting Company

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## CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price Per Share(2)	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Shares issuable pursuant to Options outstanding under the Plan	4,703,760	\$3.30(3)(4)	\$15,522,408	\$1,802.15
Common Shares reserved for issuance pursuant to Options available for issuance under the Plan	1,451,237	\$6.52(5)	\$9,462,065	\$1,098.55
<b>TOTAL</b>	<b>6,154,997</b>	<b>--</b>	<b>\$24,984,473</b>	<b>\$2,900.70</b>

(1) Common Shares, without par value, available for issuance by the Registrant pursuant to the Plan described herein.

(2) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(h)(1) under the Securities Act of 1933, as amended (the "Securities Act").

(3) Calculated in accordance with Rule 457(h)(1) under the Securities Act based on the weighted average exercise price of unregistered Options granted under the Plan outstanding as of the date of the filing of this registration statement.

(4) U.S. dollar amount is calculated based on the Bank of Canada's daily noon rate of exchange for the conversion of Canadian dollars into United States dollars on January 5, 2011. On such date the noon exchange rate was US\$1.00 = Cdn.\$0.9947.

(5) Calculated in accordance with Rule 457(c) and Rule 457(h)(1) under the Securities Act based on the average of the high and low prices (US\$6.65 and US\$6.38, respectively) for the Company's Common Shares on January 5, 2011, as quoted on the NASDAQ Capital Market.

## INTRODUCTORY STATEMENT

This registration statement on Form S-8 registers 6,154,997 common shares (“Common Shares”) of Oncolytics Biotech Inc. (the “Registrant”) reserved for issuance pursuant to the exercise of stock options under the Registrant’s Amended and Restated Stock Option Plan, dated December 2, 2010 (the “Plan”). Under the terms of the Plan, the Registrant is authorized to grant stock options exercisable to purchase a maximum of 6,154,997 Common Shares.

If a stock option issued under the Plan expires without the recipient having acquired all of the Common Shares to which such recipient was entitled, the remaining Common Shares shall be released from their allocation and reservation and shall be again available for the purposes of the Plan.

### PART I. INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS

Item 1. Plan Information.\*

Item 2. Registrant Information and Employee Plan Annual Information.\*

\*This information is not required to be included in, and is not incorporated by reference in, this registration statement.

### PART II. INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed or furnished by the Registrant with the Securities and Exchange Commission (the “Commission”) are hereby incorporated by reference in this registration statement:

- (a) the Registrant’s Annual Report on Form 20-F for the fiscal year ended December 31, 2009 filed with the Commission on March 15, 2010;
- (b) all other reports of the Registrant filed pursuant to Section 13(a) or 15(d) of the United States Securities Exchange Act of 1934, as amended (the “Exchange Act”), since the end of the fiscal year covered by the Annual Report incorporated by reference herein pursuant to (a) above; and
- (c) the description of the Common Shares contained in the Registrant’s registration statement on Form F-10 filed with the Commission on June 2, 2010, including any amendment or report for the purpose of updating such description.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act prior to the filing of a post-effective amendment that indicate that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference into this registration statement and to be a part hereof from the date of filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for the purposes of this registration statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this registration statement.

Item 4. Description of Securities.

Not Applicable.

Item 5. Interests of Named Experts and Counsel.

None.

3

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Item 6. Indemnification of Directors and Officers.

Under the Business Corporations Act (Alberta), the Registrant may indemnify a director or officer, a former director or officer, or a person who acts or acted at the Registrant's request as a director or officer or a body corporate of which the Registrant is or was a shareholder or creditor, and the director's or officer's heirs and legal representatives, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the individual in respect of any civil, criminal or administrative action or proceeding to which the individual is involved because of that association with the Registrant or other entity, and the Registrant may advance moneys to such an individual for the costs, charges and expenses of such a proceeding. The Registrant may not indemnify such an individual unless the individual acted honestly and in good faith with a view to the best interests of the Registrant, or, as the case may be, to the best interests of the other entity for which the individual acted as a director or officer or in a similar capacity at the Registrant's request, and, in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the individual had reasonable grounds for believing that the individual's conduct was lawful. In addition, the individual must repay any moneys advanced by the Registrant if the individual has not fulfilled the conditions set out in the preceding sentence. Such indemnification or advance of moneys may be made in connection with a derivative action only with court approval. Such an individual is entitled to indemnification from the Registrant as a matter of right if the individual was not judged by the court or other competent authority to have committed any fault or omitted to do anything that the individual ought to have done, and the individual fulfilled the conditions set forth above.

In accordance with and subject to the Business Corporations Act (Alberta), the by-laws of the Registrant provide that the Registrant shall indemnify a director or officer, a former director or officer, or a person who acts or acted at the Registrant's request as a director or officer, or a body corporate of which the Registrant is or was a shareholder or creditor, and the director's or officer's heirs and legal representatives, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by him in respect of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being or having been a director or officer of the Registrant or other entity if he acted honestly and in good faith with a view to the best interests of the Registrant or, as the case may be, to the best interests of the other entity for which he acted as a director or officer at the Registrant's request, and, in the case of a criminal or administrative action or proceeding that is enforced by monetary penalty, he had reasonable grounds for believing that his conduct was lawful. The Registrant shall also indemnify such person in such other circumstances as the Business Corporations Act (Alberta) permits or requires.

The Registrant maintains a directors' & officers' insurance policy for the benefit of the directors and officers of the Registrant and its subsidiaries against liability incurred by them in their official capacities for which they become obligated to pay to the extent permitted by applicable law.

Item 7. Exemption from Registration Claimed.

Not Applicable

Item 8. Exhibits.

Exhibit No.	Exhibit
<u>4.1</u>	<u>Amended and Restated Stock Option Plan, dated December 1, 2010</u>
5.1	Opinion of McCarthy Tétrault LLP
23.1	Consent of Ernst & Young LLP
23.2	Consent of McCarthy Tétrault LLP (contained in its opinion filed as Exhibit 5.1)

24.1 Powers of Attorney (See page 7 of this registration statement)

4

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Item 9. Undertakings.

(a) The undersigned Registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
  - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act;
  - (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represents no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;
  - (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this registration statement.

- (2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act, (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (h) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its



counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question of whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

SIGNATURES

The Registrant. Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Calgary, Province of Alberta, Canada on this 10th day of January, 2011.

ONCOLYTICS BIOTECH INC.

/s/ Bradley G. Thompson  
Name: Bradley G. Thompson  
Title: Chief Executive Officer

## POWERS OF ATTORNEY

Each person whose signature appears below constitutes and appoints Bradley G. Thompson and Douglas A. Ball, or either one of them, his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for such person and in such person's name, place and stead, in any and all capacities, to sign any and all amendments to this registration statement, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Commission, granting unto said attorneys-in-fact and agents and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or their substitute or substitutes, may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by or on behalf of the following persons in the capacities indicated on January 10, 2011:

Signature	Title
/s/ Bradley G. Thompson Bradley G. Thompson	President, Chief Executive Officer and Chairman of the Board (Principal Executive Officer)
/s/ Douglas A. Ball Douglas A. Ball	Chief Financial Officer and Director (Principal Financial and Accounting Officer)
/s/ William A. Cochrane William A. Cochrane	Director
/s/ Ger van Amersfoort Ger van Amersfoort	Director
/s/ Robert B. Schultz Robert B. Schultz	Director
/s/ Fred A. Stewart Fred A. Stewart	Director
/s/ Ed Levy Ed Levy	Director
/s/ J. Mark Lievonon J. Mark Lievonon	Director
/s/ James Dinning James Dinning	Director



AUTHORIZED REPRESENTATIVE

Pursuant to the requirements of Section 6(a) of the Securities Act of 1933, the undersigned has signed this registration statement, solely in his capacity as the duly authorized representative of Oncolytics Biotech Inc. in the United States, in the State of California, on January 10, 2011.

By: /s/ Karl Mettinger  
Name: Karl Mettinger  
Title: Chief Medical Officer

8

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