

Incorporation for Not-For-Profit Organizations

The following information has been taken from the Government of Ontario's Not-For-Profit Incorporator's Handbook, which was prepared jointly by the Companies and Personal Property Security Branch of the Ministry of Government Services and the Office of the Public Guardian and Trustee for Ontario, Charitable Property Program of the Ministry of the Attorney General.

A complete copy of the Not-For-Profit Incorporator's Handbook can be downloaded from the Ministry of the Attorney General's web site:

http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/nfpinc/Not_for_Profit_Incorporators_Handbook_EN.pdf

Introduction

The purpose of this article is to provide general information on the nature of a not-for-profit corporation and guidelines on how to incorporate such a corporation.

Not-for-profit corporations incorporated in Ontario are governed by the Corporations Act and the Regulations made under it. Incorporation of not-for-profit corporations under the Act is at the discretion of the Minister (or his delegate). This is in contrast to 'incorporation as of right' for business corporations incorporating under the Business Corporations Act. While certain pertinent sections to the Act and the Regulations are included in this article. The reader is, however, referred to the Corporations Act and the Regulations to examine those sections not set out here.

This article contains general statements concerning the requirements of the Act and Regulations which are intended to serve only as a general guide and not as a substitute for statute when dealing with specific problems. Also, reference to this article should not be a substitute for consultation with a lawyer on legal considerations or an accountant on financial matters.

Nature of a Corporation

In law, a corporation is an artificial person or a legal entity having an independent existence, separate and distinct from that of its members. The corporation owns property in its own name, acquires rights, obligations and liabilities, enters into contracts and agreements and has the capacity to sue and be sued as would a natural person.

Thus, for example, a corporation may be insolvent while its individual members may be wealthy. As a separate legal entity a corporation is not affected by changes in its membership and its existence continues in perpetuity unless its members or the government take steps to dissolve it.

A corporation is managed or governed by a board of directors, which is elected by the members. The board of directors, in turn, elects a president and appoints other officers such as a secretary, treasurer etc. who are responsible for the actual operation of the corporation.

The directors, officers and members do not "own" the corporation, nor do they have any right of ownership to any particular asset of the corporation and the corporation may not be operated for pecuniary gain of its members, directors or officers.

In certain circumstances, a not-for-profit corporation may engage in activities that are revenue producing and that produce a surplus, or "profit". However, such activities must be incidental to the principal objects of the corporation and in furtherance of the principal objects.

For example, a Softball Association may hold a dance to raise funds for new uniforms for their teams. If, after paying the expenses, the dance produces a "profit", the monies belong to the Softball Association and must be used for the benefit of the Association (i.e. to purchase new uniforms for its team).

Should You Incorporate?

The act of incorporation offers certain advantages to the incorporators and their successors but at the same time it also places certain responsibilities upon them. Accordingly, before proceeding with incorporation, the members of an unincorporated organization should give the matter serious consideration. In this regard you may wish to consult a lawyer who has experience in corporate matters and who, given all the facts, can advise you whether it would be to your advantage to incorporate.

If you need a lawyer, you may wish to contact the Lawyer Referral Service of The Law Society of Upper Canada. For a small fee the Lawyer Referral Service will provide the name of a lawyer who will provide a free consultation of up to 30 minutes to help you determine your rights and options.

It is not mandatory for a not-for-profit organization to incorporate. There are in existence hundreds, possibly even thousands, of unincorporated organizations in Ontario that are carrying on their activities without any hindrance. Unincorporated organizations do not have a separate legal existence apart from their members.

Advantages of Incorporation

As the corporation is a separate legal entity distinct from its members and has the capacity to own property, to sue and be sued, it affords limited liability protection to its members. This means that individual members are not personally liable in certain instances, for the corporation's debts and obligations.

The corporation is not affected by changes in its members, be it due to death or any other reason. Therefore, it is easier to enter into a number of transactions in the name of the corporation such as, banking, owning real estate or signing a lease or contract.

A majority of the members of the corporation have the power to bind the others by their acts.

Disadvantages of Incorporation

As the corporation is a creature of statute, it is subject to some supervision by the Government of Ontario and it must conduct its affairs in accordance with the applicable statutes. For example, the constitution or by-laws of the corporation, the election of directors and the calling of meetings of members are all governed by the Corporations Act. In addition, a corporation is required to report certain information on a regular basis to certain departments of the Government.

Failure to comply with reporting or disclosure requirements could render the corporation and its directors and officers liable to certain penalties, including the cancellation of the corporation.

Types of Corporations

Not-for-profit corporations are organizations that carry on activities without pecuniary gain. They are incorporated under Part III of the Corporations Act as corporations without share capital. They are all subject to section 126, which states:

Not to be carried on for gain -- section 126(1)

126. (1) A corporation, except a corporation to which Part V applies, **shall be carried on without the purpose of gain for its members and any profits or other accretions to the corporation shall be used in promoting its objects and the letters patent shall so provide**, and, where a company is converted into a corporation, the supplementary letters patent shall so provide.

Applications will not be accepted where the objects indicate that it is being incorporated for the purpose of profit.

Below are categories of the most common types of not-for-profit corporations:

- A. General type - this would include such corporations as ratepayers' associations, professional associations, community organizations, etc.;
- B. Sporting and athletic organizations;
- C. Social clubs - these are corporations with objects in whole or in part of a social nature;
- D. Service clubs such as Rotary, Lions, Kiwanis and Optimist;
- E. Charities - these would include religious organizations and organizations that are engaged in carrying out certain good works that are of benefit to society.

One of the main differences between a charity and another type of not-for-profit corporation is that upon dissolution a charity is required to distribute its remaining assets to other charities, not to its members, whereas another type of not-for-profit corporation may (unless prohibited from so doing in its charter or by-laws) on dissolution distribute its remaining assets among its members. Also, a charitable corporation, because it usually solicits funds from the public and enjoys certain legal and tax advantages (e.g. under the federal Income Tax Act), is subject to more stringent reporting requirements than a not-for-profit corporation of another type. In Ontario, sporting and athletic organizations are not eligible to incorporate as a charity.

Incorporation Process and Corporate Maintenance

If a decision is made to incorporate, you should take the following steps:

- FIRST STEP** Determine if objects of the organization will be those of a charity. Note: Softball Associations are not eligible to incorporate as a charity in the province of Ontario.
- SECOND STEP** Select the proposed corporate name.
- THIRD STEP** Prepare and file the application for incorporation.
- FOURTH STEP** Following the receipt of the Letters Patent of incorporation, organize the corporation.
- FIFTH STEP** The organization of a corporation is followed by an ongoing activity of "corporate maintenance", that is, ensuring that the corporation complies with the reporting requirements and conducts its affairs in accordance with the applicable Acts and Regulations.

Choosing Your Corporate Name

Name not to be Deceptively Similar

The Act (section 13(1)(a)) provides that a corporation shall not be given a name that is the same as or similar to the name of a known corporation, association, partnership, individual or business if the use of the proposed name would be likely to deceive, except where the existing corporation, association, etc. gives a consent in writing. The existing entity may also be required to dissolve or change its name.

In other words, the Act permits the granting of a similar corporate name so long as the proposed name is not CONFUSINGLY or DECEPTIVELY SIMILAR to an existing name. No identical names are permitted, regardless of whether consent is given or the existing entity changes its name or dissolves.

Name to be Distinctive

Basically, to comply with the provisions of the Act, new corporate names must be "distinctive" - and this distinctiveness must survive certain media distortion as the corporation

identifies itself to the various sectors of the public with which it interacts - including other corporations, its members, creditors, the general public and government agencies. In other words, a new corporate name must be such that it will not be confused with EXISTING names of corporations, trademarks or unincorporated organizations and will not MISLEAD or CONFUSE the public as to the undertaking or nature of the corporation or its relationship to other corporations.

Types of Distinctiveness

The name itself may be distinctive or may acquire its distinctiveness through long use.

Usually the most distinctive or unique names have a coined word as the distinctive element, for example:

- Avinta Social Club
- Zaltak Hockey Association
- 5-P Bowling Club

Unusual use or combination of generic words may produce a distinctive name, for example:

- All-That-Jazz Club
- Sorcerers Hockey Club
- Magic Eleven Soccer Club

Words that are coined using parts of other words, geographical location, numbers, initials and dictionary words make a less distinctive name, for example:

- Sundance Social Club
- Kenora Hockey Association
- Guelph Dance Club
- Northern Lights Skating Club

Elements of A Corporate Name

Most corporate names consist of three elements:

1. The **DISTINCTIVE** element is the main identifier of the corporate name. It may be a coined word or a dictionary word used in a fanciful sense quite different from its ordinary meaning or a geographic term. Every corporate name must have a distinctive element.
2. The **DESCRIPTIVE** element describes the nature of the main corporate undertaking. Care should be taken not to use terms that may be deceiving or misleading.
3. The **LEGAL** element indicates the status of the organization as an incorporated body. Either "Corporation" or "Incorporated" or "Incorporée" or their abbreviations may be used. The use of a legal element is optional.

Note: A corporation without share capital cannot have "Limited", "Limitée" or the corresponding abbreviations as part of the name.

DISTINCTIVE ELEMENT	DESCRIPTIVE ELEMENT	LEGAL ELEMENT
Canvelo	Softball	Inc.
Village Green	Girls Softball Association	
Don Mills	Boys Softball	Corp.

Name not to be too General

Regulation 181(section 5) provides that a corporate name shall not be too general. The reason for this prohibition is that corporate names that are too general tend to infringe on a number of existing names, are likely to contribute to confusion and unduly restrict or limit the possibility of using names in the future that otherwise would be available to the public except for the existence of the name that is too general.

A corporate name that is too general may be defined as a name that usually lacks the distinctive element.

Example A: names that are too general consist of words of general meaning that have no distinctive element to them and for the purposes of a corporate name consist of only the descriptive and the legal element:

- Student Exchange Corporation
- Cycling Club Inc.
- Friendship Society

Example B: a general name can be rectified by adding the distinctive element:

- Don Mills Student Exchange Corporation
- Canvelo Cycling Club Inc.
- Soundville Jazz Singers Friendship Society

Name not to Suggest Connection with the Crown

The Act (clause 13(1)(b)) provides that a corporation shall not be given a name that suggests or implies connection with the Crown or the Royal Family.

The consent of the Governor General, on advice from the federal Department of Canadian Heritage, has to be obtained by the applicant where the word "Royal" is used as a prefix in a corporate name and where it suggests Royal Patronage. The onus is on the applicant to obtain such consent.

Example A: corporation names that suggest Royal Patronage and need the consent of the Governor General:

- The Royal Agricultural Winter Fair
- The Royal Canadian Yacht Club
- The Prince Charles Youth Foundation

Example B: corporation names where "Royal" is used as a descriptive adjective in the use of "majestic" or "grand" and Royal Patronage is not suggested and therefore the consent of the Governor General, is not required:

- Royal Wave Surfing Association
- Royal Mountain Ski Club

Name not to Suggest Connection with Government

The Act (section 13(1)(b)) provides that a corporation shall not be given a name that suggests or implies connection with any government or a government department, agency or activity without the written consent of the appropriate authority.

In this connection particular attention should be given to the use of the words "Canada" and "Ontario". Federal Government departments are using names such as "Canada Revenue Agency", "Industry Canada" and care should be taken with proposed corporate names using this style.

Example A: names that suggest or imply government connection:

- Heritage Ontario
- Multi-Culture Canada
- Metro Toronto Sports and Recreation Authority

Example B: names implying government connection may be modified by rearranging and adding words thus eliminating the suggested government connection:

- Heritage Association of Kingston, Ontario
- Canadian Multi-Cultural Society of Timmins
- Sports and Recreation Association of Metro Toronto

Use of the Name of Another Province

Certain other provinces restrict the use of the name of their province in a corporate name. Accordingly, where it is desired to use the name of another province in a proposed corporate name, the incorporators should first contact the Director, Corporations Branch or Registrar of Companies, as the case may be, of the province in question to ensure the name will be acceptable. A name is not permitted that suggests or implies a connection with the Crown or government or any department, branch, bureau, service, agency or activity of any government without the consent in writing of the appropriate authority.

Languages Permitted in the Corporate Name

In Ontario the name for a not-for-profit corporation may be in any language, provided that only letters from the Roman alphabet or Arabic numerals or a combination thereof, together with such punctuation marks and other marks as are permitted by Regulation (O.Reg. 181 - section 8) are used, and the name complies with the requirements set out in the **Corporations Act** and its Regulations. The English language is an example of a language which uses letters from the Roman alphabet.

Despite the above, the **Corporations Act** (section 22) provides that a not-for-profit corporation may have a special provision in its Letters Patent or Supplementary Letters Patent allowing for the use of the approved corporate name in any form and any language. In other words, an exact translation of the corporate name into another language may be used. This is permitted, provided that such form and such language are clearly set out in the special provision.

Prohibited Words / Expressions

The Regulation (O. Reg. 181) prohibits the use of some words and expressions and restricts the use of others. Here is a summary of such prohibitions and restrictions:

Subsection 3 (1)

The following words and expressions shall not be used in a corporate name:

- "Amalgamated", unless the corporation is an amalgamated corporation resulting from the amalgamation of two or more corporations.
- "College" "institute" or "university" except with a consent in writing on behalf of the Ministry of Training, Colleges and Universities
- "Engineer" or "engineering" or any variation thereof, except with the consent in writing of the Association of Professional Engineers of Ontario.
- "Royal" where used as an adjective, unless the consent of the Crown has been obtained through the Governor General.
- Numerals indicating the year of incorporation, unless the proposed corporation is the successor to a corporation the name of which is the same as or similar to the

proposed corporation, or the year is the year of amalgamation of the corporation.

- Any word or expression that would lead to an inference that the corporation is a business corporation.

Subsection 6(1)

A corporate name shall not contain a word or expression, an element of which is the family name of a particular individual who is living or who has died within the previous thirty years, whether or not preceded by a given name or initials, unless the individual, his heir, executor, administrator, assigns or guardian consents in writing to the use of his name. Certain limited exceptions are set out in subsections 6(2) and (3).

Section 7

A corporate name shall not contain any word or expression in any language that describes in a misleading manner the activities or services in association with which the corporate name is proposed to be used.

Section 9

A corporate name shall not exceed 120 characters in length, including punctuation marks and spaces.

The **Corporations Act** and its Regulations are available on the ServiceOntario e-laws Web Site at www.e-laws.gov.on.ca and should be available in the reference department of your local public library or they may be purchased through the ServiceOntario Publications website at www.publications.serviceontario.ca/ecom.

Choosing the Corporate Name

When choosing the corporate name, consider the many and varied situations in which the corporate name will be used. For example, the name may be used visually (on stationery, signs, uniforms, cheques, correspondence, newsprint, advertising, etc.) and auditorially (telephone, radio, television). In each of these uses it would be to the advantage of the corporation to have a name that is memorable. To this end, the name should be distinctive and short.

Usually, a coined word or a dictionary word used in a fanciful sense quite different from its ordinary meaning can make a corporate name that is both distinctive and memorable. For example, "Canvelo Cycle Club" (for a cycling club) and "Magic Eleven Soccer Club" are likely to be memorable names that are easy to use visually and auditorially. As a rule of thumb, avoid using long, cumbersome names such as "Chirpsqueak Society of Friends of Non-Migratory Song Birds of South-Western Ontario".

Using your imagination in coining the distinctive element and carefully searching the proposed corporate name will, in the long run, save you time and money. Accordingly, when your group decides to incorporate, the following steps are recommended for choosing a corporate name:

1. Get your group together for a "brainstorming" session to come up with a word or words that would make the proposed name unique. A coined word usually is very effective. Try to have a least three choices.
2. Check section 13 of the **Corporations Act** and its Regulations to ensure that the proposed name does not conflict with the Act or the Regulations. The Regulations prohibit the use of certain words and restrict the use of others. The Act and the Regulations are available on the ServiceOntario e-laws Web site at www.e-laws.gov.on.ca and should be available in the reference department of your local

public library or they may be purchased through the ServiceOntario Publications website at www.publications.serviceontario.ca/ecom.

3. After the initial choice has been made, check the proposed name against the names listed in the telephone directories, municipal directories, hobby or sports magazines, etc. Many of these publications should be available in your local public library or on the Internet. If your proposed name is confusingly similar to the name of an existing organization or corporation then abandon it and go to your second choice, third choice and so on, and if necessary, back to some more "brainstorming".
4. If the proposed corporate name will require consent from an individual or an existing organization, the applicants should obtain written consent before ordering a name search. For example, where the proposed corporation is to be affiliated with an existing corporation with a similar name the applicants should contact the existing corporation to ensure the organization will provide written consent.

Checklist

You may save time and expense by checking the proposed name against this check-list. Remember, Search Houses charge a fee for each search of a proposed name. Accordingly, before requesting the required original Ontario-biased NUANS name search report, use this check-list to satisfy yourself that the name you have chosen does not conflict with the Act and Regulations.

Is the proposed name:

1. PROHIBITED BY THE ACT OR REGULATIONS?
 - Section 13 of the Act and sections 3, 4, 5, 6, 7, 8 and/or 9 of Regulation 181.
2. DISTINCTIVE?
 - (a) Too general?
 - Section 5 of the Regulations
 - (b) Only descriptive?
 - (c) Primarily only name or surname?
 - Sections 5 and 6 of the Regulations
 - (d) Primarily or only geographic name?
 - Section 5 of the Regulations
3. MISLEADING?
 - Section 7 of the Regulations
4. DECEPTIVE / CONFUSING?
 - Section 13 of the Act

Check local telephone directories and the Internet for identical or deceptively similar names. Consider degree of similarity of:

- appearance
- sound
- meaning

The Corporate Name Search Report

If the proposed name does not appear to be deceptively/confusingly similar to the name of an existing organization or corporation, and does not appear otherwise to contravene the Act or the Regulations, then you should contact a Search House in order to obtain an

original Ontario-biased NUANS name search report for the proposed name of the corporation.

Warning - use of the Proposed Name

Do not complete the application for incorporation until you receive the name search report. The completed application must be submitted with the original Ontario-biased name search report. The name search report cannot be dated more than 90 days prior to the submission of the application. For example, applications submitted on November 28th could be accompanied by an original Ontario-biased name search report dated as early as August 30th, but not dated earlier. **Do not** print any stationery, or order a corporate seal or enter into any transactions using the corporate name until the Letters Patent incorporating the corporation are issued.

Incorporation

Pre-incorporation Considerations

At this point, you should consider whether the activities or undertaking of the proposed corporation may come under the supervision or regulation of, or be of interest to a Ministry or an Agency of the Government. In particular:

- Will the corporation seek financial assistance from the Government?
- Are the proposed activities of the corporation regulated by a Ministry or Agency of the Government?
- Will the corporation engage in activities that would supplement services provided by a Ministry or Agency of the Government?

If the answer to any one of the above questions is "yes", then it may be wise to consult the appropriate Ministry or Agency prior to completing the application. Some Ministries or Agencies may require that you contact them prior to incorporation and some may also offer suggestions for drafting objects for the proposed corporation.

Such consultation with the regulating bodies may, in the long run, save you time, inconvenience and expense.

For example:

- if the corporation is to operate a nursery school, home for children or a day care service, you should consult the Ministry of Children and Youth Services;
- if the corporation is to provide a home for the aged, you should consult both the Ministry of Community and Social Services, and the Ministry of Municipal Affairs and Housing;
- if the corporation is to provide cultural or citizenship programs you should consult the Ministry of Citizenship and Immigration or the Ministry of Culture;
- if the corporation is to provide education or training programs you should consult the Ministry of Education and the Ministry of Training, Colleges and Universities;
- if the corporation is to be a charity, you should consult the Office of the Public Guardian and Trustee (Ontario) and Canada Revenue Agency, Taxation;
- if the corporation is to provide health care services or to engage in related activities or if the corporation is to be an association of health care professionals, you should consult the Ministry of Health and Long-Term Care;
- if the corporation is to provide prisoner rehabilitation services you should consult the Ministry of Community Safety and Correctional Services.

Note: This is not an exhaustive list of instances where other Ministries are to be consulted.

Completion of Application - General Comments

The Application for Incorporation of a Corporation without Share Capital, (Form 2 approved by the Minister as provided for in the Regulations to the Corporations Act), is available on the ServiceOntario web site at www.ServiceOntario.ca or in person from the Ministry of Government Services.

Detailed instructions for completion accompany each set of application forms and those instructions are not repeated in the article. The information in this article is more general and is intended to clarify and supplement the instructions that are supplied with the application forms.

Head Office

Every corporation is required to have a head office in Ontario (section 277 of the Act). This does not necessarily mean that a corporation must own or lease a special building or a suite of offices. The intention of the Act is to have an address formally designated as the head office of the corporation where certain records are kept and where the corporation may be reached by an interested party. Some incorporators use their home address for this purpose and accordingly that address is set out in Item 2 of the application for incorporation.

Directors

The first directors, not fewer than three (section 283 of the Act) individuals named as directors in the Letters Patent, are the directors of the corporation until replaced by other individuals duly elected in their stead (section 284 of the Act). The first directors of the corporation have all the powers, duties and liabilities of directors that are elected to the board.

The office of director places on that person responsibilities and even liabilities. Accordingly, any person accepting a directorship should be prepared to assume the responsibilities that go with the director's office.

Generally, no person is permitted to be a director of the corporation unless he or she is a member of the corporation, and if the person ceases to be a member, he or she automatically ceases to be a director (section 286). However, a person may be a director of a corporation if he or she becomes a member of the corporation **within ten days** after his or her election or appointment as a director. If the person fails to become a member within the ten days, the person immediately ceases to be a director, and cannot be re-elected or reappointed unless he or she is a member of the corporation.

Objects - General

Definition of Objects

Objects are concise statements of the ultimate purpose of the corporation.

Content of Objects

The principal objects, that is, objects which describe the primary undertaking of the corporation, should be the first statement, followed by secondary objects, if any.

The objects should not be an enumeration of the proposed activities and/or the aims of the corporation. It is advisable to keep the objects statement short but broad in nature, since a general object will include the particulars normally included in that sort of undertaking. On the other hand, the objects should be sufficiently specific so as to avoid ambiguity.

Examples

- The objects for a community youth organization might be drafted as follows:

The establishment and operation of a youth organization for the purpose of:

- a) promoting the best interests of teenagers in the Town of Kenora;
- b) promoting interest in athletics, sports and recreation and establishing and maintaining facilities and equipment for same.

and other complementary purposes not inconsistent with these objectives.

- The objects of a ratepayers' association might be drafted as follows:

The establishment and operation of a residents' association for the purpose of

- a) promoting the interests of the residents of the community of Central Don Mills;
- b) carrying on research into problems connected with development of real property in the community.

- The objects of a social club, with premises, might be drafted as follows:

The establishment and operation of a social club for the purpose of

- a) promoting social and recreational activities among the members of the corporation;
- b) providing recreational facilities and a club house for the accommodation of members of the corporation and their guests.

Note: Clause 4, on the Application for Incorporation of a Corporation Without Share Capital under which the objects are set out (i.e. "The objects for which the corporation is incorporated are:") must contain objects only and not powers or special provisions.

Ancillary Powers

All corporations automatically acquire incidental and ancillary powers unless withheld in the Letters Patent or Supplementary Letters Patent. These powers are set out in clauses 23(1)(a) to (p) and (s), (u) and (v) of the Act. Any powers to be withheld pursuant to subsection 23(2) should be specified in clause 5 of the application under Special Provisions. All corporations also automatically acquire the powers set out in section 275 of the Act.

Special Provisions

The applicants may ask to have embodied in the Letters Patent any provision that may be made the subject of a by-law of the corporation except for provisions concerning the term of office for the directors or providing for the election and retirement of directors in rotation. The only provision that must appear in the Letters Patent of a corporation that is not a charity is the "No Gain" clause, which is pre-printed on the form. In most cases it is sufficient to set out the special provisions in the by-laws rather than the Letters Patent as provisions included in the Letters Patent cannot be changed without filing Supplementary Letters Patent.

Some items that may be included in the special provisions section are:

- I. Borrowing powers (see wording in section 59)
- II. Distribution of assets
- III. Director's remuneration
- IV. Membership qualification
- V. French or foreign version of name
- VI. Other powers

Objects and Special Provisions – Key Points

The 'objects' in the Letters Patent set out the purposes of the corporation, and the 'special provisions' deal with matters of corporate governance. All such provisions must fall within the

scope of the **Corporations Act**. When an application for Letters Patent or Supplementary Letters Patent contains provisions that are not acceptable, the applicant is given an opportunity to revise the application. The Act (sections 4, 5 and 9) provides authority for the Ministry to exercise discretion in reviewing applications and requiring revisions to proposed provisions.

Supporting Documents

Under certain circumstances an application for incorporation must be accompanied by supporting documents. For example where the proposed name of the corporation is similar to a corporation, association, partnership or individual, a consent of that person would be required.

Checklist

- a) Have you fully completed all items in the application and, if not applicable, so stated?
- b) Have you enclosed with the application
 - o an original Ontario-biased NUANS Name Search Report for the proposed name of the corporation?
 - o a cheque for the appropriate amount made payable to the Minister of Finance?
 - o the appropriate supporting documents, if required?
 - o a covering letter with the name, phone number and address of a contact person.

Timing

An application for incorporation is usually processed within approximately 6 to 8 weeks of receipt in the Branch. The Letters Patent will bear the effective date as of the date of delivery unless the application is returned for revision, in which case Letters Patent will bear an effective date as of the date of redelivery to the Companies and Personal Property Security Branch, provided the application is correct.

For an additional payment there is an expedited service available on request with a processing time of 7 business days. The expedited service fee is for the review of application by the end of the seventh business day following the day of the request. When documents are deficient, they will be returned to the client for amendment and the expedite service time no longer applies.

Organization and Start Up

Organization and Start Up

Once the corporation has received its Letters Patent, a number of essential steps are required to be initiated so that the directors may properly administer the affairs of the corporation. Among these steps are:

- establishing directors' quorum
- adoption of by-laws
- banking and financial arrangements
- appointment of auditors
- appointment of officers

It is advisable to retain the services of a lawyer who specializes in corporation law to ensure the corporation is properly organized and the directors understand their responsibilities. By

having the corporation properly organized, you should eliminate a number of potentially serious problems in the future.

You should refer to the:

- **Corporations Act**
- **Corporations Information Act**

The above Acts are available on the ServiceOntario e-laws website at www.e-laws.gov.on.ca or can be purchased through the ServiceOntario Publications website at www.publications.serviceontario.ca/ecom.

In addition, detailed procedural information and precedents may be found in the:

- Ontario Corporation Manual;
- Ontario Corporations Law Guide; and
- Canadian Corporate Secretary's Guide.

These are private publications and are usually available in the reference department of most public libraries.

Corporate Maintenance and Filing Requirements

Annual Meeting

An annual meeting of the members of the corporation must be held not later than eighteen months after incorporation and subsequently not more than fifteen months after the holding of the last annual meeting. (section 293)

Election of Directors and Officers

Usually the directors are elected annually at the general meeting by the members of the corporation. Directors in office at the time are retired and, if eligible, may seek re-election to resume office for another year. (section 287(1)(2))

Generally directors are elected by members, and officers are appointed by the board of directors.

There are three exceptions:

- directors by virtue of their office (ex-officio directors) (section 127)
- election of directors in rotation (section 287 (5))
- division of members into territorial or common interest groups (section 130)

Quorum for Meetings

The quorum for meetings of directors is a majority, unless otherwise provided for in the Letters Patent, Supplementary Letters Patent or in a special resolution of the corporation, and in any event shall not be less than two-fifths of the board of directors. (section 288)

Reporting Requirements

Initial Return

Within 60 days after the date of incorporation, the corporation is required to file an Initial Return (see section 2 of the Corporations Information Act) setting out the prescribed corporate information (e.g. head office address, directors and five most senior officers) with the Companies and Personal Property Security Branch.

Notice of Change

Subsequently, if there is any change to the information filed with the Ministry, such as a change in the Board of Directors or the corporation's head office address, the corporation must file a Notice of Change (section 4 of the Corporations Information Act) within 15 days after the change takes place.

Currently, there is no fee for filing the Initial Return/Notice of Change, Form 1 with the Companies and Personal Property Security Branch. The appropriate form is supplied to you at the time of incorporation. Additional forms may be obtained in person from the Companies and Personal Property Security Branch and are also available on the ServiceOntario website at www.ServiceOntario.ca.

The Initial Notice/Notice of Change can be filed in person or by mail to the Companies and Personal Property Security Branch or electronically through one of the Service Providers under contract with the Ministry of Government Services. For information about the Service Providers visit the ServiceOntario website at www.ServiceOntario.ca.

Corporations Information Act Annual Return Filings for Corporations

The following outlines the Corporations Information Act Annual Return (CIA AR) filing requirement changes and options for tax/fiscal years ending after December 31, 2008 when the Canada Revenue Agency will collect the CIA AR instead of the Ontario Ministry of Revenue. Ontario corporations will continue to have the option of filing electronically through the Service Providers under contract with the Ontario Government:

- Non-profit corporations subject to the Ontario Corporations Act that are charities registered under the federal Income Tax Act (ITA) will file their Corporations Information Act Annual Return with the Canada Revenue Agency using either the Charities RC232WS - Director/Officer Worksheet and Ontario Corporations Information Act Annual Return, or the Charities RC232 - Ontario Corporations Information Act Annual Return Worksheet in combination with the T1235, Director/Trustees and Like Officials Worksheet. The appropriate worksheet(s) must be submitted along with the T3010 Registered Charity Information Return.
- Non-profit corporations subject to the Ontario Corporations Act that are not charities registered under the federal ITA, will file a Schedule 546, Corporations Information Act Annual Return for Ontario Corporations, together with their T2 return with the Canada Revenue Agency.

Ontario non-profit corporations will file their CIA AR to the Canada Revenue Agency within six months after the end of their tax or fiscal year-end. Previously, the CIA AR was filed within 60 days of the anniversary of incorporation or amalgamation.

Non-profit corporations will continue to have the option of filing and correcting their CIA AR electronically with the Service Providers under contract with the Ontario government.

Non-profit corporations that are charities registered under the federal Income Tax Act will receive a 'turnaround' Corporations Information Act worksheet from the Canada Revenue Agency that must be filed together with their T3010 Registered Charity Information Return with the Canada Revenue Agency. Other non-profit corporations will no longer receive a 'turnaround' document.

The CIA AR must be filed with the Canada Revenue Agency together with your T2 Corporation Income Tax Return or your T3010 Registered Charity Information Return. The

Canada Revenue Agency will not accept a stand-alone Corporations Information Act Annual Return.

The Canada Revenue Agency will make available the Corporations Information Act Annual Return schedules and worksheets in December 2008.

For anniversary dates ending on or before December 31, 2008, non-profit corporations will continue to file their CIA AR with the Ontario Ministry of Revenue within 60 days of the anniversary of the incorporation or amalgamation.

Penalties for Failure to Comply with Filing Requirements

The importance of submitting these filings cannot be over-emphasized. Failure to comply may lead to cancellation of the Letters Patent and dissolution of the corporation. Penalties are provided in the Corporations Information Act for individuals (up to \$2,000) and for corporations (up to \$25,000) where reporting requirements are not complied with. Also, a corporation that is in default of the reporting requirements is not capable of maintaining an action in any court in Ontario in respect of business carried on by the corporation except with leave of the court.

Additional Reporting Requirements

Where a corporation is regulated or funded by a Ministry or Agency of the Government, it may be required to comply with other reporting requirements in addition to those contained in this article.

Audit Provisions

For not-for-profit corporations whose annual income is greater than \$100,000, members of the corporation must appoint an auditor to hold office until the first annual meeting and at each annual meeting, must appoint one or more auditors to hold office until the next annual meeting. There is no waiving of this statutory requirement (sections 96.1 and 133).

In respect of a financial year of a corporation where the corporation's annual income is less than \$100,000 and all the members consent in writing, corporations are exempt from a financial audit.

Record Keeping Requirements

A not-for-profit corporation is required, among other things, to meet certain record keeping obligations such as:

- proper books of account and accounting records (section 302)
- minutes of meetings of members and directors (section 299)
- maintain copies of Letters Patent, Supplementary Letters Patent, By-Laws and Special Resolutions (section 300)
- a register of its members and directors (section 300)

Use of Corporate Name

The name of a corporation is set out in the instrument of incorporation (Letters Patent) or if subsequently changed, in the instrument of amendment (Supplementary Letters Patent) and that is the name that the corporation must use (for exception see paragraph 5.11) in all transactions.

Changing Corporate Name

A corporation may apply for Supplementary Letters Patent to change its corporate name. (see section 131 of the Act and section 19 of Regulation 181)

Use of a Name Other than Corporate Name

A corporation may use a name other than its corporate name. For example, a corporation called Federation of Ontario Moose Callers may carry on its undertaking under the assumed name "Ontario Moose Callers".

However, **NO** corporation shall carry on business in Ontario **or** identify itself to the Ontario public by a name other than its corporate name unless the assumed name is first registered with the Companies and Personal Property Security Branch (section 2(1) of the **Business Names Act**). The appropriate registration form, (Form 2, under the **Business Names Act**) is available on the ServiceOntario website or in person from the Companies and Personal Property Security Branch. Business names can be searched and registered online through ServiceOntario's website at www.ServiceOntario.ca, through self-help workstations and electronically through Service Providers under contract with the Ministry of Government Services.

A corporation, which has registered and uses a name other than its corporate name is required to set out both its registered name and its corporate name on all contracts, invoices, negotiable instruments and orders for goods and services issued or made by the corporation (Section 2 (6) of the **Business Names Act**).

Changing the Authorized Number of Directors

The number of directors of a corporation is established at the time of incorporation, being the number of first directors named in the Letters Patent.

The board of directors of a corporation shall consist of a fixed number of directors not fewer than three (subsection 283(2)).

A corporation may by special resolution increase or decrease the number of its directors (section 285).

"Special Resolution" (section 1) means a resolution passed by the directors and confirmed with or without variation by at least two-thirds of the votes cast at a general meeting of the members of the corporation duly called for that purpose, or in lieu of such confirmation, by the consent in writing of all the members entitled to vote at such a meeting.

A Notice of Change under the Corporations Information Act must be filed with the Companies and Personal Property Security Branch within 15 days of any change to the directors of the corporation.

Changing the Location of the Head Office

The location of the head office is established in the Letters Patent. However, a corporation may by special resolution (see Part 5.12) change the location of its head office to another place in Ontario (section 277).

A Notice of Change under the Corporations Information Act must be filed with the Companies and Personal Property Security Branch within 15 days of a change to the head office of the corporation.

Changing the Objects and Special Provisions

A corporation may apply for Supplementary Letters Patent to change all or any of its objects and/or special provisions set out in the Letters Patent (see section 131 of the Act and section 19 of the Regulations).

If the corporation is, or after issuance of Supplementary Letters Patent, would be funded, supervised, etc. by a Government Agency or Ministry, it is wise to consult with the funding or

supervising Agency or Ministry prior to completing the application for Supplementary Letters Patent.

Applications to change the objects or special provisions of Non-Profit Charitable Corporations must be accompanied by evidence that the proposed change meets the criteria for charitable corporations as set out by the Charitable Property Program of the Office of the Public Guardian and Trustee (Ontario).

The Application for Supplementary Letters Patent (Form 3 approved by the Minister as provided for in the Regulations to the Corporations Act), is available on the ServiceOntario website or in person from the Ministry of Government Services.

Detailed instructions for completion accompany each set of application forms and those instructions are not repeated in this article. The information in this article is more general and is intended to clarify and supplement the instructions that are supplied with the application forms.

Income Tax Act Considerations

A charity or not-for-profit corporation may be exempt from federal income tax either as a "non-profit organization" as described in paragraph 149(1)(l) of the federal Income Tax Act, or if registered as a charity within the meaning of section 149.1.

Although an organization may not qualify for charitable status, the non-profit-non-charitable designation may still be advantageous from a federal income tax point of view. For more information visit the Canada Revenue Agency website at: www.cra-arc.gc.ca.

Ontario Corporations Tax Requirements

Corporations, whether share or non-share, which are exempt from both income tax and capital tax, are not required to file annual Ontario Corporations Tax Returns (CT-23) with the Ontario Ministry of Revenue.

Exempt corporations are defined for income tax purposes under section 57 of the Ontario Corporations Tax Act (the Act) and for capital tax purposes under section 71 of the Act. The Corporations Tax Act is available on the ServiceOntario e-laws website at www.e-laws.gov.on.ca and should be available in the reference department of your local public library or they may be purchased through the ServiceOntario Publications website at www.publications.serviceontario.ca/ecom.

Dissolution - Surrender of the Charter

Where a corporation no longer serves the purpose for which it was incorporated or where the members have lost interest in the corporation, it may be desirable for the members to terminate the existence of the corporation. To voluntarily dissolve a non-profit corporation pursuant to Section 319 of the Act an Application for Surrender of Charter must be completed and submitted to the Companies and Personal Property Security Branch. Charitable corporations must also obtain approval to the dissolution from the Office of the Public Guardian and Trustee (see part 6.6.2).

The Application for Surrender of Charter/Termination of Corporate Existence, (Form 9 approved by the Minister as provided for in the Regulations to the Corporations Act), is available by phone or in person from the Ministry of Government Services.

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