Incorporated Not-for-Profit Organizations in Canada

Incorporating provides the organization with its own identity separate from the Directors or founder. This arrangement has benefits both legally and practically for the operation of the organization. There are also liability issues for those individuals that are attached to a non-incorporated organization. The individuals and their personal assets are at risk if the organization is sued and insurance is more difficult to obtain.

Incorporated	Un-incorporated
• Can own property in its name	• Cannot own property in its name
• Separate legal entity	• Not a separate legal entity
• Limited liability protection for its members	• No liability protection for its members
• Allows for indemnification of directors and officers	• Does not allow for indemnification of directors and officers
• Can sue or be sued in the name of the organization	• Cannot sue or be sued in the name of the organization
• Must comply with *Corporations Act*	• *Corporations Act* does not apply
• Must file/report several forms	• Not necessary to file/report forms
• Liability risks for directors and officers	• Liability risks for members
• Directors have continuing obligations to the corporation which cannot be relieved by resignation	• “Directors” can resign and may be relieved of their obligations
• Can apply for numerous grants for incorporated entities	• Cannot apply for as many grants

Why would you want to be incorporated?

Advantages

- A corporation is a separate legal entity, has the capacity to own property, to sue and be sued, and affords limited liability protection to its members. This means 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 otherwise, making it easier to enter into numerous transactions in the name of the corporation (such as banking, owning real estate, or signing a lease or contract). There are also numerous grants available to incorporated organizations that are not available to un-incorporated organizations.

Disadvantages

- A corporation is subject to some supervision by the Government and must conduct its affairs in accordance with the applicable statutes (e.g., constitution or by-laws, election of directors, calling of meetings of members are all governed by the Corporations Act). A corporation is required to report information on a regular basis (see list below). Failure to comply with reporting could render the corporation and its directors and officers liable to penalties, including the cancellation of the corporation.

Obligations of Incorporated Organizations

An incorporated organization must fulfill certain annual responsibilities including keeping corporate records and filing an annual return with the government. Please note that the federal government, as well as each Provincial/Territorial government, has regulations and obligations regarding Not-For-Profit organizations. As such, please make sure to consult but the Government of Canada obligations, as well as your respective provincial/territorial government. All links can be found on the following page.

File an annual return every year

- This is not your income tax return. This is your corporate Annual Return that provides up-to-date information about your not-for-profit corporation. This must be filed within the 60 days following your corporation’s anniversary date.

File any change of registered office address

- This is the registered address for your corporation. Corporations Canada may use this address to remind you to file your Annual Returns. This must be filed immediately if the address changes, and can be done online, off-line, or through email and is typically free of charge.

Report changes regarding directors

- You must report the election/appointment of a new director, the resignation or removal of a director, and any change in address of a current director. This must be filed within 15 days of the change and can be done online, off-line, or through email and is typically free of charge.

File financial statements and public accountant’s report

- This applies to “soliciting” not-for-profit corporations, which generally are those that receive public donations and/or government grants in excess of $10,000 in a single year. These must be filed not less than 21 days before each annual meeting, and can be filed online, off-line, or through email and is typically free of charge.

Keep your articles up to date

- Your articles set out basic information about your not-for-profit corporation which is made available to the public. You are required to amend your articles if you make changes to any of the following:
    - Corporation’s name
    - Province/Territory in which your registered office is located
    - The fixed, minimum, or maximum number of directors
    - The classes, or regional, or other groups of members
    - The restrictions on the activities the not-for-profit may carry on
    - The statement of the purpose of the not-for-profit corporation
    - The statement regarding the distribution of property remaining on liquidation
    - Any other provision included in your articles

As soon as amendments have been made, you must file the changes online, by email, or mail, and there is a charge of $200.

Send copies of by-laws

- You are required to send copies of:
    - All new by-laws
    - Any changes to by-laws
    - Any repeal of by-laws

You must file within 12 months of confirmation by the members either online, by email or mail, and is typically free of charge.

Any not-for-profit corporation that defaults for a period of one year in sending any fee, notice or documents required by the NFP Act could be dissolved. Dissolution terminates the existence of a corporation and can have serious legal repercussions.

Web Link for Online Filing Centre with Corporations Canada:
https://www.ic.gc.ca/app/scr/cc/CorporationsCanada/hm.html?locale=en_CA

Reporting obligations under the Canada Not-for-profit Corporations Act (NFP Act): https://ised-isde.canada.ca/site/corporations-canada/en/not-profit-corporations/your-reporting-obligations-under-canada-not-profit-corporations-act-nfp-act

Check with your provincial government to find additional requirements for not-for-profit organizations within your province.

The respective provincial and territorial Acts are listed below:

- Ontario – Ontario Not-for-Profit Corporations Act (ONCA) – https://www.publications.gov.on.ca/300775
- Alberta – Alberta Societies Act – https://open.alberta.ca/publications/s14
- British Columbia – BC Societies Act – https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/15018_01
- Manitoba – Manitoba Corporations Act (Part XXI) – https://web2.gov.mb.ca/laws/statutes/ccsm/c225.php?lang=en
- Saskatchewan – Saskatchewan Non-Profit Corporations Act – https://publications.saskatchewan.ca/#/products/120423
- Quebec – Quebec Companies Act (Part III) – https://www.legisquebec.gouv.qc.ca/en/tdm/cs/c-38
- New Brunswick – New Brunswick Companies Act – https://laws.gnb.ca/en/document/cs/C-13?_gl=1*1e960kl*_ga*ODU4NTU4NDkyLjE2OTE2OTA1MjA.*_ga_F531P4D0XX*MTY5MTY5MDUyMC4xLjEuMTY5MTY5MDc3OC4wLjAuMA..
- Nova Scotia – Nova Scotia Societies Act – https://nslegislature.ca/sites/default/files/legc/statutes/societie.htm
- Prince Edward Island – PEI Companies Act – https://www.princeedwardisland.ca/en/legislation/companies-act
- Newfoundland and Labrador – Newfoundland and Labrador Corporations Act (Part XXI) – https://www.assembly.nl.ca/legislation/sr/statutes/c36.htm
- Nunavut – Societies Act – https://www.nunavutlegislation.ca/en/consolidated-law/societies-act-consolidation
- Northwest Territories – Societies Act – https://www.justice.gov.nt.ca/en/legislation/#gn-filebrowse-0:/s/societies/
- Yukon – Yukon Societies Act – https://yukon.ca/en/yukon-societies