ESTABLISHING A CANADIAN CHARITY

The purpose of this chapter is to provide both the layperson and the professional with information on how to organize a charity and apply to become a registered charity. This general information should not replace consultation with professionals such as lawyers and accountants.

There are many advantages for a group to register as a charity in Canada. First, the organization can issue official tax receipts, which will reduce the individual and/or corporate donor’s income tax payable. Secondly, other registered charities, such as local churches, are able to provide funding for the group’s programs. Thirdly, the group is exempt from paying tax on its income. Fourthly, a rebate is available to a registered charity for part of the Goods and Services Tax (GST) and the Harmonized Sales Tax (HST) it paid or owed on its purchases. These advantages, however, bring increased government and public scrutiny.

The registration places the charity under the provisions and regulations of the *Income Tax Act (ITA)*. Charities are also subject to other federal and provincial legislation that governs their operations. In Ontario, for example, the Office of the Public Guardian and Trustee is very active in ensuring charities comply with trust law obligations.

If incorporated as a society or corporation, a charity will also be subject to the provisions and regulations of the law under which it is incorporated. All charities are also subject to the provisions of common law. This includes all charities which are organized without a formal incorporation, such as charitable trusts.

A charity, because it usually solicits funds from the public and enjoys specific legal and tax advantages, is also subject to stringent reporting requirements.

Before applying to Canada Revenue Agency (CRA) for approval as a registered charity, the group must organize itself. This involves choosing a name, establishing a board, clarifying the charitable purpose, and selecting the type of organizational structure. To qualify for registration, a charity must reside in Canada, have been either created or established in Canada, and qualify as either a charitable organization or a charitable foundation as defined in the *ITA*. A branch, section, parish, congregation, or other division of a charity may be separately registered if such a group raises donations on its own behalf.
Chapter 1: Establishing a Canadian Charity

BEFORE STARTING A NEW CHARITY

A number of issues should be considered before undertaking the process of forming and registering a new charity. The time, effort, and cost involved in this process can be significant, and these resources might be better used by an existing charity with an established presence or expertise in the proposed area of ministry. Individuals with new program ideas should consider approaching other organizations to determine the possibility of collaboration before obtaining a separate registration.

In some cases, however, a new registered charity may be the appropriate way forward. For example, an existing charity may be unable or unwilling to support the new ministry, or the purpose of the new charity may be so unique that it would not be suitable to try to fit it within another organization’s programs. For those new charities, the remainder of this chapter is devoted to a discussion of the key issues to consider and steps that will need to be followed in order for it to be established.

CHOOSING THE NAME

Whether incorporated or unincorporated, a charity needs to have a name. When choosing a name, it is well to bear in mind the many and varied situations in which the charity’s name will be used. How will the name appear when used on stationery, signs, or websites? How will it sound on the telephone? It would be to the advantage of the charity to have a name that is distinctive and memorable.

After the initial choice has been made, the proposed name should be checked against names listed in telephone directories, municipal directories, magazines, and on the Internet. If the proposed name is confusingly similar to the name of an existing charity or business, abandon it and go to a second or third choice.

If the charity decides to incorporate, the process of setting up the corporation or society will require a formal name search. The name will be approved as part of the process of incorporating. It will need to meet the specific requirements of the respective incorporating law.

When incorporating, the name of a charity is set out in the instrument of incorporation (known as “letters patent” or “articles of incorporation” or other equivalent). If organized as an unincorporated entity, such as a charitable trust, the name is established in the declaration of trust. In that case, a formal name registration or search may not be necessary, but it may still be prudent in order to avoid the possibility of conflict or confusion with other organizations.

SELECTING BOARD MEMBERS

To set up a charity requires a board of at least three individuals who are not related to each other.¹ The board members may not receive either direct or indirect remuneration for rendering services to the

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¹ A charity may consist of a smaller board, but would be designated as a private foundation (which is subject to more restrictions). For more information, see Chapter 2: Charitable Organizations and Private or Public Foundations.
If the group is going to incorporate, these individuals will be the first directors. If the choice is to organize as an unincorporated charitable trust, the same restrictions apply. In that case the board members technically are called “trustees” rather than directors.

Generally, board members are elected by members, and officers are appointed by the board. The number of board members and how they are elected is set out in the governing documents of the charity.

To be a board member of a charity is often considered to be an honour. It is important to recognize that significant responsibilities and potential liabilities are placed on a person who serves on the board of a charity. Neither the board members, officers, nor members “beneficially own” the charity, nor do they have any right of ownership to any particular asset of the charity. The charity may not be operated for pecuniary gain of its members, board members, or officers.

**INELIGIBLE INDIVIDUALS**

CRA has the right to suspend receipting privileges or revoke the registration of a charity where an “ineligible individual” (as defined below) controls or manages the charity directly or indirectly in any manner whatsoever, or is a director, trustee, officer, or like official of the charity. CRA can also refuse to register a charity where the application is made by an “ineligible individual” or where an “ineligible individual” will be involved either directly or indirectly in the management of the charity. While the Act does not prohibit an ineligible individual from being in a role of control or management in a charity, it gives CRA the authority to consider whether any actions need to be taken against a charity or individual in circumstances where an individual would be deemed ineligible.

An “ineligible individual” may be any of the following:

- A person with an unpardoned criminal record for a “relevant criminal offence.” The term “relevant criminal offence” is one that relates to financial dishonesty, including tax evasion, theft, and fraud, or which is relevant to the operation of the charity, such as offences involving breaches of the public trust.

- A person who has been found guilty of a relevant offence within the past five years. A “relevant offence” is a non-criminal offence either specifically relevant to the operation of a particular

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2 A person who sits as a trustee or on a charity’s board of directors has a fiduciary obligation to, among other things, avoid conflicts of interest. Courts in the United Kingdom and Ontario have held that a director who receives remuneration from a charity is generally in breach of that fiduciary duty because it creates a conflict between his/her personal financial interest and duty to the charity. In Ontario, the Public Guardian and Trustee has made it clear that a charitable director cannot be paid for services provided in any capacity unless permitted by a court order. In other common law provinces, the existing British and Ontario precedents against employees as board members have not yet been tested in the courts. However, the reasoning in those decisions will likely be persuasive should a case arise. For more information, see CCCC FAQ #11, online: http://www.cccc.org/members_faq_show/11.

3 *ITA*, ss. 149.1(4.1) and 188.2(2)(d).

4 *ITA*, s. 149.1(25).


6 *ITA*, s. 149.1, definition of “relevant criminal offence.”
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charity or an offence of financial dishonesty contravening any law in Canada.\footnote{ITA, s. 149.1, definition of “relevant offence.”} Offences of this type include breaches of charitable fundraising, consumer protection, and securities legislation.

- A person who controlled or managed, either directly or indirectly in any manner whatsoever, a registered charity during which time the charity engaged in conduct constituting a “serious breach of the requirements for registration”\footnote{According to CRA, examples of “conduct that constituted a serious breach” include involvement in improper receipting arrangements, abusive tax shelters, and providing undue private benefits to directors. CRA has informed CCCC that directors of a charity that has had its registration revoked solely for failure to file a T3010 on time will generally not be viewed as ineligible individuals under this provision (although there may be exceptional cases).} resulting in the revocation of the charity’s registration within the preceding five years.\footnote{This provision applies equally to someone who controlled or managed a registered Canadian amateur athletic association (RCAA) which had its registration revoked for a serious breach committed during his/her tenure.}

- A person who was a promoter of a tax shelter for which a charity or RCAA’s registration was revoked within the previous five years.\footnote{ITA, s. 149.1(1), definition of “ineligible individual.”}

Criminal or relevant offences are not required to have been committed in Canada. They will be captured by this provision if, committed anywhere in the world, they would be criminal or relevant offences if committed in Canada. The CRA has indicated that any conviction for an offence involving a form of “financial dishonesty” will be relevant to the definition of “ineligible individual,” and that other offences may also be relevant. A relevant offence is one which either relates to financial dishonesty or is relevant to the operation of the organization. For example, if both Mr. A and Ms. B were convicted of causing unnecessary suffering to an animal, but Mr. A is a trustee of a food bank while Ms. B is a director of an organization that operates an animal rescue shelter, Mr. A will not be an ineligible individual while Ms. B will be considered an ineligible individual. This is because the offence for which Mr. A was convicted is not relevant to the operation of the organization with which he is involved, while Ms. B’s offence is relevant to the operation of the organization with which she is involved.\footnote{“Ineligible Individuals” CRA supra note 5.}

While the legislation does not require registered organizations to do searches or to proactively determine whether an ineligible individual is a member of the board or controls and manages the organization, charities should now invest more time and care into recruiting suitable individuals to participate as directors, trustees, and senior staff.\footnote{Ibid.} It is suggested that charities implement a thorough screening process for all prospective leaders, such as directors, trustees, and senior staff. A sample declaration has been prepared for use by member charities to avoid the involvement of ineligible individuals. The declaration is included at the end of this chapter, with a discussion below.

Although charities are not required to perform background checks, there is no other way to confirm the absence of criminal history. Some charities may find this financially onerous and time consuming.
There are some searches charities can undertake on their own. For example:

- **Internet Search.** Conducting an Internet search of the name of a candidate may result in a match. Care should be taken to ensure that any information on the Internet is addressing the relevant candidate and not another individual with the same name, particularly where the name is fairly common.

- **Reference Checks.** Every charity should require references for each candidate. Time will be required to contact those individuals for interviews. Notes of the conversation should be kept, including the time, date, and duration of the conversation and the name of the individual who conducted the interview. Specifically addressing the four criteria listed on the declaration at the end of this chapter will provide additional evidence of due diligence by the charity.

- **CanLII Search.** The Canadian Legal Information Institute (“CanLII”) is a nonprofit organization managed by the Federation of Law Societies of Canada. CanLII makes available, free to the public, copies of all reported Canadian court cases. The CanLII website\(^\text{13}\) will search for matches for any candidate’s name typed onto the “full text” line, if that name is listed in a reported case. Here again, caution must be exercised in determining whether any responses are actual matches for the candidate. Also, not all court cases in Canada are reported, so the CanLII database does not contain every Canadian case.

- **Professional Qualifications Search.** If the candidate is a member of a self-governing body, as an accountant, lawyer, or registered fundraiser, permission may be obtained to consult with the licensing body to determine if there is a history of complaints. If the candidate holds degrees or accreditation from an educational institution, confirmation may also be obtained from the university or college. The candidate will be required to consent to these inquiries.

If an organization is found to have an ineligible individual in a position of trust, control, or management, the legislation gives the CRA the power to

- refuse to register;
- suspend receipting privileges for one year;
- revoke registration.

However, prior to any measures taken, the organization will have an opportunity to explain why it is necessary to keep the ineligible individual or to outline the internal measures which have been put in place to protect vulnerable beneficiaries and assets of the organization. If it is found that the beneficiaries and assets have been adequately and appropriately protected, sanctions may not be imposed, even if the organization has an ineligible individual on its board or in a position of control or managements vis-à-vis the organization.\(^\text{14}\)

\(^{13}\) CanLII: http://www.canlii.org/en/index.html.

\(^{14}\) “Ineligible Individuals” CRA *supra* note 5.
Furthermore, there are instances where an organization may wish to have people with similar life experiences to those the organization serves in important positions, even if that person is an ineligible individual. For example, certain beneficiary communities may have a history of involvement with crime, and in some cases, it may be desirable for an organization operating in such communities to welcome past offenders into its operations, as such individuals may be able provide important insights into the welfare of the beneficiary community. In such a case, the organization must be prepared to provide an adequate response to the CRA explaining the role and contribution of the ineligible individual if the CRA expresses concern about him or her.\(^\text{15}\)

### Declaration of Not Being an Ineligible Individual

A sample declaration has been prepared as an additional due diligence measure to avoid the involvement of ineligible individuals.\(^\text{16}\) This declaration can be implemented immediately by having those currently in the relevant positions sign the declaration. The ITA does not contain exceptions for individuals who have already assumed their roles. All future personnel changes in these positions can also be required to sign. The documents should be executed and witnessed simultaneously to prevent fraud. These declarations should be kept permanently with the employee records of the charity.

Consideration will need to be given to which staff positions need to sign the declaration. The ITA provides that ineligible individuals include those who, in any manner whatsoever, directly or indirectly control or manage the operation of the charity.\(^\text{17}\) This will include the chief executive officer. Beyond the most senior position, each charity has a unique organizational structure. Consequently, each charity will be required to determine which staff positions either directly or indirectly control or manage the operation of the charity.

For best practice, the declaration should be signed annually to ensure ongoing due diligence by the charity. A policy may also be developed allowing the automatic removal of a director or trustee found to have violated the annual declaration (this may also require amendments to the charity’s governing documents, i.e., bylaws).

### CLARIFYING THE GROUP’S PURPOSE

The group wishing to establish a charity needs to have a clear statement of purpose that describes the reason for the charity’s existence. Inclusion of such a statement in an organization’s governing documents is also a prerequisite for registration as a charity under the ITA by CRA. This usually requires one or more paragraphs called object clauses or purpose statements and is required no matter how a group chooses to organize or under what law it decides to incorporate.

It is customary to have a comprehensive primary object clause, often followed by one or more

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\(^{15}\) *Ibid.*

\(^{16}\) See the sample document at the end of this chapter. The document is also available at [http://www.cccc.org/members_sample_documents_view/html/43](http://www.cccc.org/members_sample_documents_view/html/43). Note that this is not a document required by CRA and should not be filed with CRA. Rather, it is intended to provide an internal measure to be used by the charity as a voluntary best practice.

\(^{17}\) *ITA*, s. 149.1(1), definition of “ineligible individual.”
secondary clauses. To be a charity the purpose must be exclusively charitable in law, which involves four principal areas: 18

1. relief of poverty;
2. advancement of education; 19
3. advancement of religion; and
4. other purposes beneficial to the community, as determined by the courts, but not falling under any of the above. 20, 21

DRAFTING PURPOSES FOR CHARITABLE REGISTRATION

The purpose statements or object clauses need to be tailored to fit the unique nature of the work the charity will undertake. It is not acceptable simply to reproduce the four principal heads of charity. The stated purposes should contain enough information to

1. ensure that a charitable public benefit is provided and
2. define the scope of the activities engaged in by the organization. 22

To be eligible for charitable registration, CRA advises that a purpose should identify three elements:

1. the charitable purpose category, for example, “to relieve poverty,” “to advance education,” “to advance religion” (although in most cases one would expect this to be self evident, CRA recommends that applicants “err on the side of precision” to help avoid potential problems associated with uncertainty)
2. the means of providing the charitable benefit (for example, “by providing housing,” “by operating

19 The courts do not consider the provision of general, selected information and opinion to constitute education or training in the charitable sense. For advancement of education to occur, there must be some “legitimate, targeted attempt at educating others” (Vancouver Society of Immigrant & Visible Minority Women v. Minister of National Revenue, [1999] 1 S.C.R. 10 at para. 171, online: http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/1676/index.do). See also Hostelling International Canada - Ontario East Region v. MNR, 2008 FCA 396, where the Federal Court of Appeal determined that providing an opportunity for the public to educate themselves by making low-cost accommodation available to the travelling public is not charitable.
20 In AYSA Amateur Youth Soccer Association v. Canada (Revenue Agency), 2007 SCC 42, [2007] 3 SCR 217, available at http://www.canlii.org/en/ca/scc/doc/2007/2007scc42/2007scc42.html, the Supreme Court of Canada determined that the promotion of amateur sport in Canada is not charitable activity. Sport can be charitable only if ancillary to another recognized charitable purpose, such as advancing either education or religion or relieving poverty. The promotion of sport alone is not charitable. CRA subsequently released guidance CPS-027, Sports and Charitable Registration, available at http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-027-eng.html. The guidance provides information for organizations using sport in conjunction with a charitable purpose to become registered as a charity.
22 Vancouver Society, supra note 15 at para. 159.
Drafting charitable objects is an exercise in precision, and professional assistance is advisable. On the one hand, if a purpose is worded in language that is too broad (i.e., it allows for both charitable and non-charitable activities and/or the delivery of unacceptable benefits to private individuals) or too vague (i.e., may be interpreted in different ways), the charity may not be eligible for registration. On the other hand, an organization does not want its purposes to be worded too narrowly, as this could prove to be very restrictive as it tries to carry out its mandate.

Engaging in activities beyond the scope of the objects set out in the governing document is not permissible. This is because property raised by a charity is generally deemed by law to be held in trust and must be applied to further the organization’s charitable purpose(s). Therefore, a charity’s property can not be unilaterally applied for a different purpose, even if that other purpose might also be charitable in its own right, without court approval. Where a charity uses property for purposes not in the object clauses, it places its board members at risk. They may be required to personally repay the money used for such unauthorized purposes, as it may constitute a breach of trust.

**ADDITIONAL CONSIDERATIONS UNDER CORPORATE STATUTES**

If the group decides to incorporate, the wording and format of the object clauses (or purpose statements) needs to meet the specific requirements of the legislation under which the group is incorporating. It is possible to have approval from a provincial or federal authority that handles the incorporation and be rejected for charitable registration by CRA. It takes extra care to be in compliance at both levels.

Some jurisdictions, such as Ontario, have pre-approved object clauses. A charity should only use

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24 Courts have affirmed that a charitable corporation holds its corporate assets beneficially to be used only and strictly in accordance with its charitable objects. A charity’s directors have fiduciary obligations to ensure that a charitable corporation’s assets are applied in accordance with its corporate objects. See *Christian Brothers of Ireland in Canada (Re)* (2000), 47 O.R. (3d) 674 (C.A.) and *Rowland v. Vancouver College Ltd.*, [2000] 8 W.W.R. 85 (B.C.S.C.) affirmed 205 D.L.R. (4th) 193 (B.C.C.A.). A charity established as a charitable trust must also ensure that all of its assets are applied to the special charitable purpose for which it was formed.

25 See *Victoria Order of Nurses for Canada and Victoria Order of Nurses for Canada - Ontario Branch v. Greater Hamilton Wellness Foundation*, 2011 ONSC 5684 (CanLII), online: http://canlii.ca/t/fmnh5.

26 See *Victorian Order of Nurses*, ibid., where the court held that a charity owed a duty to their historic donors to apply the charitable property in a manner consistent with its charitable purposes as they were communicated to the public at the time that the gifts were made.

27 *Ibid.* at para. 74: “[A] breach of trust occurs when a charitable corporation applies its property to purposes that are beyond the scope of its objects...regardless of whether those other purposes are...charitable or non-charitable” [citing *Weinberg et al v the Grey Bruce Humane Society et al.* (1999) (Ont. G.D.), unreported].
the pre-approved object clauses if one or more of the clauses describe the intended purposes of the group. The activities planned by the charity will help determine the wording of the object clauses.

Mission or vision statements are often used to express the purpose for which a charity exists. To meet the requirements of the law, the wording of a charity’s object clauses (or purpose statements) needs to be in a more precisely stated form. A charity’s legal authority to carry out any and all activities is derived from or limited by the constating document and not the mission statement. A mission statement must always be consistent with the objects or restrictions in the charity’s constating document (the governing document which created the organization, such as letters patent, articles of incorporation, or declaration of trust).

DECIDING ON THE ORGANIZATIONAL STRUCTURE

Some charities operate as incorporated entities under federal legislation. Others choose to operate under a specific provincial incorporating act. A charity can also be chartered by a special act of Parliament or of a provincial legislature. Some charities can carry on their activities just as effectively without incorporating. The appropriate organizational structure for each charity will depend on its specific needs, circumstances, and activities.

It is important to note that, regardless of how a charity is organized, its directors or trustees will be held to a high standard as fiduciaries. Since charities secure funding through gifts for specific charitable purposes, they are considered to be purpose trusts. If a charity is incorporated, it is a purpose trust with a corporate trustee. If a charity is not incorporated, it is a purpose trust with individual trustees. In the Toronto Humane Society28 case, the court found that a charitable corporation was a trustee of its property held for charitable purposes and although its directors were not trustees, they were subject to all the duties and obligations of trustees.

Deciding on the organizational structure is an important decision that each group needs to weigh carefully. Incorporation offers certain advantages. At the same time, it also places added responsibilities on the charity. Before proceeding with a final decision on organizational structure, it is advisable to consult with a lawyer who has experience in corporate matters relating to charities, and who, given all the facts, can advise whether formal incorporation would be advantageous, or whether another form of organizational structure would be more appropriate. The following discussion provides a general overview of some issues to consider.

Advantages of Incorporation

The corporation (also referred to as a “society” in some provinces) is a separate legal entity. It is an artificial person having an independent existence 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.

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unless its members or the government take steps to dissolve it. Therefore, it is easier to enter into a number of transactions such as banking, owning real estate, or signing a lease or contract, in the name of the charity. Incorporation also offers certainty as to ownership of assets because, being a separate legal entity, it has the right to own property in its own name. In unincorporated charities, ownership vests in the name of individual trustees or in some cases, the “membership.” This may give rise to confusion or conflicts when it comes to selling or transferring property if those individuals are not clearly defined or agreed upon.

Since an incorporated charity is a separate legal entity, its obligations and liabilities generally do not become those of its members. This means that a claimant, in most instances, could not access the personal assets of a charity’s members to satisfy the corporation’s debts and obligations. If the charity is sued, it is named as defendant as an incorporated entity, and not its members. This is referred to as “limited liability” protection and is one of the more significant advantages of incorporation. Although comprehensive insurance coverage is available to unincorporated charities, there may be instances where insurance is insufficient to cover the entire claim (for example, an automobile accident with multiple claimants). If the charity is incorporated, the members’ personal assets would be protected from the lawsuit. If unincorporated, however, they could theoretically be personally exposed to liability. In addition, there are certain claims that may not be covered by insurance at all, such as the non-payment of debts. The limited liability protection available to members of an incorporated charity would generally protect their personal assets from such claims.

To be sure, a member may be sued if he or she acts in a negligent or improper manner, but the claim would be based on his or her own negligence, not his or her status as a member of the charity. In addition, incorporation does not immunize a director from exposure to personal liability if he or she fails to meet their legal duties and standard of care as fiduciaries.

Obligations Associated with Incorporation

A charity that is incorporated must meet certain requirements under the incorporating law. These may include the requirement to file returns with the appropriate incorporating authority. For example, the letters patent (or its equivalent) and/or bylaws of the corporation or society, the election of directors, and the calling of meetings of members are usually governed by the incorporating law. Should a corporation wish to amend its governing documents, it may be required to obtain government approval before the changes become effective (depending on the jurisdiction). In addition, an incorporated charity may be required to appoint an external auditor to prepare audited financial statements on an annual basis.29 Failure to comply with reporting or disclosure requirements could render the charity and its directors and officers liable to penalties. In some cases, the ultimate penalty for failure to comply with

29 For details on the requirements of each jurisdiction, see Chapter 29: Financial Statements and the External Audit.
the requirements of the governing corporate legislation is dissolution of the charity.\footnote{In \textit{The Warriors of the Cross Asian Church v. Masih et al.}, 2007 CanLII 41440 (ONSC), available at http://www.canlii.org/en/on/onsc/doc/2007/2007canlii41440/2007canlii41440.pdf, the Ontario Superior Court of Justice determined that a church incorporated pursuant to the Ontario \textit{Corporations Act} must be wound up for legislative breaches that were more than merely technical in nature. The church was found to have failed to maintain adequate records sufficient to determine membership in the corporation. Consequently, since there was no way to ascertain who the members were, there was insufficient evidence to determine whether the members of the board of directors had been properly elected.}

**Considering the Options Available in Canada**

The group organizing the charity needs to consider whether the activities of the proposed charity may come under the supervision or regulation of, or be of interest to, a ministry or an agency of the government. Will the charity seek financial assistance from a government agency? Are the proposed activities of the charity regulated by a ministry or an agency of a government? Government bodies may require the charity to be incorporated in order to be eligible for funding. If so, then it may also be wise to consult the appropriate ministry or agency prior to deciding under what law to incorporate. Some government ministries or agencies may require contact with them prior to incorporation and some may also offer assistance in drafting objects for the proposed corporation. Such consultation with a regulating body may, in the long run, save considerable time, inconvenience, and expense.

Many charities that choose to incorporate do so under a provincial law. Some provinces have more than one law under which a charity can incorporate. All organizations should make informed decisions about how and where to incorporate.

It is not necessary to incorporate federally to be able to work in more than one province or to work internationally; however, federal incorporation can simplify the extra-provincial registration process, as some provinces have removed certain requirements for federally incorporated charities.\footnote{Generally, a charity incorporated in one jurisdiction that wishes to carry on extensive operations or activities in another Canadian jurisdiction is required to register as an extra-provincial corporation. Requirements vary in each province, but they generally apply to both provincially and federally incorporated charities, although the latter are exempt from certain requirements. For example, Alberta, Saskatchewan, Northwest Territories, and Nunavut do not require a name search or name reservation form to be filed by federally incorporated charities. New Brunswick allows federally incorporated charities to commence or maintain legal proceedings in that province without registering.}

The new \textit{Canada Not-for-Profit Corporations Act} (“\textit{CNCA}”) has simplified the process for federal incorporation.\footnote{S.C. 2009, c. 23 (“\textit{CNCA}”), online: http://laws.justice.gc.ca/eng/acts/c-7.75/.} A similar provincial statute for Ontario, the \textit{Not-for-Profit Corporations Act, 2010} (“\textit{ONCA}”) may come into force by 2020.\footnote{S.O. 2010, c. 15 (“\textit{ONCA}”). A number of resources related to the \textit{ONCA}, including a draft bylaw and plain language guide, is available on the Ministry of Consumer Services website at http://www.sse.gov.on.ca/mcs/en/Pages/Not_For_Profit.aspx.}

**Operating Without Incorporating**

If a charity chooses not to incorporate, it can be organized as a charitable trust. A charitable trust is not a separate legal entity, and its existence is based on its members: a group of individuals who voluntarily associate to advance a charitable purpose. The basic governing document of a charitable
trust is a declaration of trust, which must contain a clear and precise definition of the trust’s charitable purpose. A constitution setting out governance issues (such as appointment of trustees, membership rules, etc.) should also be adopted. This method of organizing is more expedient than incorporation and does not preclude incorporation in the future. However, if an organization is considering incorporation in the future, it should give serious consideration to doing so initially, as incorporation at a later date will likely necessitate filings with, and receiving a new registration number from, CRA.\(^{34}\) The Province of Quebec does not permit organizing as a charitable trust.

Organizing by way of a declaration of trust does not provide limited liability for members or directors as incorporation does. Although the same insurance coverage for liability protection is available in either case, it may be inadequate to satisfy a large claim, which could potentially place the personal assets of members at risk. In addition, non-payment of debts (such as monies borrowed for a new building, for example) could create potential personal liability for members of an unincorporated charity.

All assets owned by a charitable trust require appointment of successive trustees. In the case of a religious organization, land can be held through duly appointed trustees, in accordance with provincial legislation.\(^{35}\) A trust needs to rely on members and/or trustees to commence legal action or enter into contracts on its behalf and in a representative capacity — it can not do so on its own.

Another difference between a charitable trust and a corporation is the nomenclature. For example, the governing board of an incorporated charitable organization is technically called the board of directors. Where the charitable organization is set up under a declaration of trust, its governing board is called a board of trustees. The function of the board is relatively similar.

A summary of the main differences between incorporation and organization as a charitable trust are set out in the following chart:


<table>
<thead>
<tr>
<th>Incorporated charities</th>
<th>Unincorporated charity organized by declaration of trust</th>
</tr>
</thead>
<tbody>
<tr>
<td>More costly/complicated to establish at the outset.</td>
<td>Less cost and more expedient to establish at the outset.</td>
</tr>
<tr>
<td>A separate legal entity – can contract and sue in its own name.</td>
<td>Trustees generally must act on organization’s behalf in a representative capacity for contractual matters. Charity has no capacity to sue, and will need to involve either trustees or members in a representative capacity.*</td>
</tr>
<tr>
<td>Generally provides limited liability protection for members (in their capacity as members).**</td>
<td>Members could potentially be personally liable for debts and obligations of charity.</td>
</tr>
<tr>
<td>Governing documents (i.e., letters patent and bylaws) are subject to legislative requirements and restrictions.</td>
<td>Generally governed by its own by-laws and constitution without need for government approval of corporate matters. However, trust document is still governed by principles of trust law and must meet certain legal requirements.</td>
</tr>
<tr>
<td>More stringent filing requirements (such as annual returns to responsible government body). May have annual audit requirements. In addition, governmental approval may be required for initial governing documents and certain changes thereafter.</td>
<td>Not subject to filing or registration requirements under corporate legislation (although the same filing requirements with the CRA apply, such as the annual T3010 information return).</td>
</tr>
<tr>
<td>Provides certainty as to property ownership – property is owned by the corporation***</td>
<td>Property is held in trust by successively appointed trustees for a particular charitable purpose. For religious organizations, provincial legislation may allow for perpetual ownership of land without having to name a new trustee every time one needs to be replaced. Unless the matter of ownership is clearly spelled out in the trust document and consistently followed, there may be uncertainty and conflict as to who holds the charity’s property in trust, and for what charitable purpose.</td>
</tr>
</tbody>
</table>

* In some cases, an unincorporated entity may not even have legal standing to sue through a representative. For example, in *Campbell et. al. v. Toronto Star Newspapers Ltd. et. al.* (1990), 73 D.L.R. (4th) (Div. Ct. – Gen. Div) the court dismissed a lawsuit brought by a member on behalf of a church that had allegedly been defamed. The court concluded that an unincorporated church was not an entity or person in law except to the extent of being able, through its trustees, to hold land and to sue and be sued in regard to its interest in such land by virtue of Religious Organizations Land Act (“ROLA”): “The church has no persona for any other purpose and therefore could not suffer a defamation. Indeed, if the church had such a persona as could be defamed, then the church itself could sue for such wrong and would not need to sue through a representative.”

** See, for example, ONCA s. 91(1) and CNCA s. 36.

*** For its part, the CRA recommends the following: “If an organization owns or intends to own land or buildings, the Canada Revenue Agency recommends that it become incorporated for the purpose of holding title to the real property. Incorporation can ensure that a registered charity is better able to protect its assets. However, an unincorporated charity can have the use of real property where it is held in trust by trustees acting on behalf of the organization.” See Summary Policy CSP-T07 “Titleholding” online: http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/csp/csp-t07-eng.html.
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A charity should carefully consider the advantages and disadvantages of the two main types of organizational structure. The appropriate choice will depend on the particular circumstances of each organization. Charities that are involved, or plan to be involved, in higher risk programs, such as working with young people, operating camps, schools, or counselling ministries, will want to very carefully consider the potential liabilities associated with those activities. Smaller organizations that carry out low-risk activities may find it more advantageous to initially operate as a charitable trust.

In every case, it is recommended that an organization make an informed decision based on input from its board, leadership, and membership (all of whom may be impacted by the choice of structure), after obtaining legal advice from a lawyer well-versed in charity law.

THE GOVERNING DOCUMENTS

A new charity will be required to draft and adopt governing documents to organize and administer its affairs. An incorporated charity’s governing or constating documents consist of its initial governing document (called “articles of incorporation,” “constitution,” “letters patent,” or other term depending on the jurisdiction) and bylaws.

The initial governing document sets out the charity’s foundational governing rules and is filed with the government at the time of incorporation. This document forms the basis for the corporation’s governance and legal existence.

The bylaws are the rules that govern the internal operations of the organization and are usually passed after incorporation. The bylaws are usually more detailed than the articles and can modify some of the default rules set out in the incorporating legislation.

Unincorporated charities have different governing documents, the primary one usually being a declaration of trust, which sets out the purposes and activities of the organization.

It is important to distinguish between the governing documents referred to above and internal documents, such as policies or resolutions approved by the board. Board policies and resolutions can set out operational practices, but cannot override or replace the fundamental rules of governance that are set out in (and reserved for) the constating documents.

The differences between a charity’s initial governing document, bylaws, and policies are highlighted in the following charts (note: this is for information purposes only — specifics may vary according to each jurisdiction of incorporation).
### Articles of Incorporation (also referred to as letters patent or constitution)

<table>
<thead>
<tr>
<th>What should be included?</th>
</tr>
</thead>
<tbody>
<tr>
<td>(note: depending on the legislation, some of this information may be mandatory)</td>
</tr>
<tr>
<td>• corporate name</td>
</tr>
<tr>
<td>• number of directors</td>
</tr>
<tr>
<td>(either fixed or a min. and max. range)</td>
</tr>
<tr>
<td>• statement of charitable purposes</td>
</tr>
<tr>
<td>• any restrictions on activities that the corporation may carry on</td>
</tr>
<tr>
<td>• membership groups or classes</td>
</tr>
<tr>
<td>• distribution of property if and when corporation dissolves</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>What additional information can be included?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Generally, anything not required to be set out in the bylaws. However, it is often preferable to include any additional rules in the bylaws or in board policies, as they are easier to amend.</td>
</tr>
</tbody>
</table>

**NOTE:** as a condition of charitable registration, CRA requires a statement that the organization will be operated without purpose of gain for its members, and that any profits or other assets of the organization will be used solely to promote its objectives. CRA also recommends inclusion of a clause prohibiting remuneration of directors. *In addition, certain provincial statutes have clauses that can be problematic for charitable registration.**

<table>
<thead>
<tr>
<th>Who approves?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Original incorporators. Any subsequent amendments must be approved by a special resolution of the members (typically 2/3 majority of the votes cast). Any amendments must also be filed with the appropriate government authority.</td>
</tr>
</tbody>
</table>

* For more information see CRA, “Completing Form 4031, Articles of Continuance (transition),” online: [www.cra-arc.gc.ca/chrts-gvng/chrts/prtngr/fmp4031-eng.html](http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtngr/fmp4031-eng.html).

** For more information, see: [www.cra-arc.gc.ca/chrts-gvng/chrts/pplng/gdc/ncd-eng.html](http://www.cra-arc.gc.ca/chrts-gvng/chrts/pplng/gdc/ncd-eng.html).
## Bylaws

| What should be included? (note: depending on the legislation some of this information may be mandatory) | • who can be a member or director  
• procedures for calling and conducting directors’ and members’ meetings  
• how directors are to be chosen and how long they are to serve  
• how decisions affecting the organization are to be made |
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>What additional information can be included?</td>
<td>Generally, anything not required to be set out in the articles. However, it is often preferable to include non-fundamental operational issues in board policies, as they are easier to amend as may be necessary from time to time.</td>
</tr>
<tr>
<td>Who approves?</td>
<td>Unless the bylaws state otherwise, directors generally have the power to make, repeal, and amend the bylaws, but any such change must be approved by the members at their next regular meeting. In some cases, certain fundamental changes can only be made by the membership. Some jurisdictions require copies of any new, amended, or repealed bylaws to be filed with the government.</td>
</tr>
</tbody>
</table>
ESTABLISHING THE POWERS AND SPECIAL PROVISIONS IN THE INITIAL GOVERNING DOCUMENT

A charity receives its identity from its name and its purpose, both of which must be in its initial governing document (i.e., the articles of incorporation/equivalent or the declaration of trust).

Depending on the jurisdiction of incorporation, it may be necessary for the charity to set out its specific powers right after the object clauses in the initial document. These might include the power to accumulate funds, to solicit donations and grants, to hold and dispose of real property, among others. If no powers are stated, the incorporated charity may be limited to the specific powers provided for in the incorporating act. For an unincorporated charitable trust, these powers of the charity are enumerated in its declaration of trust. Charities incorporated under the new CNCA and ONCA, however, will have

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36 For example, under the existing Ontario Corporations Act, R.S.O. 1990, c. C.38, a corporation may only carry out an action authorized by the objects set forth in its letters patent or the statute. Any act outside of this scope is ultra vires (outside of the power of the directors), and its validity could be challenged.
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the capacity and the rights, powers, and privileges of a natural person. As a result, the constating documents are not required to contain a lengthy list of special powers and instead, only need to specify the restrictions to be imposed on the corporation. For charities, this will include at minimum a statement to the effect that the corporation shall not carry on any activities other than those in furtherance of its stated charitable purposes.

In addition to the corporate powers, there is a need for special provisions to be set out in the initial governing document which relate to the duties and obligations of the charity and its governing board. One of the most critical of these, when applying for registered charity status with CRA, is the dissolution clause. This clause should state that, upon winding up or dissolution, all of the charity’s remaining assets after payment of its debts will be distributed to one or more registered charities in Canada with similar charitable objects. Other specific items which may be included in the special provisions section are

- minimum and maximum number of directors and term lengths;
- borrowing powers, including any limitations on the directors’ power to borrow;
- non-profit clause;
- remuneration of directors clause; and
- membership classes and voting rights.

DEVELOPING BYLAWS

An incorporated charity’s bylaws need to be prepared in accordance with the provisions of the statute under which it was incorporated. That statute may, for example, limit what can be included in the bylaws and/or mandate the inclusion of certain items. Generally, the key items that should be included in a charity’s bylaws include the following:

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37 CNCA, ss. 7(1)(e) and (f), 16, and 17; ONCA, ss. 8, 15, and 16.
38 CNCA, s. 148(2)(b); ONCA, s. 43(2)(b).
39 The CRA’s suggested wording is: “The corporation 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 furtherance of its purposes.”
40 CRA does not permit the remuneration of directors merely for acting as directors and recommends that a corporation that intends to become a registered charity should include a statement in its articles that directors may not be remunerated merely for acting as directors. CRA’s suggested wording is: “Directors shall serve without remuneration, and no director shall directly or indirectly receive any profit from his or her position as such, provided that a director may be reimbursed for reasonable expenses incurred in performing his or her duties. A director shall not be prohibited from receiving compensation for services provided to the corporation in another capacity.” With respect to the last sentence, however, it should be noted that charities are subject to trust law obligations which are separate from, and in addition to, the requirements of the Income Tax Act, and which generally prohibit a director from receiving remuneration from a charity in any capacity (see footnote 2, supra).
41 Although many existing organizations set out membership classes in their bylaws, the CNCA and ONCA now require this information to be set out in the articles: CNCA, s. 7(1)(c); ONCA, s. 48(3).
42 This section is primarily directed at incorporated charities, as they are subject to specific requirements under corporate legislation, although unincorporated charities may also find the principles discussed in this section helpful in developing their internal rules.
1. Clearly Defined Membership

Charities need to consider what type of membership they wish to have. Many organizations look to their membership for certain resources, such as donations or volunteers, and may want to make the membership as broad as possible. This may be appropriate for some organizations, but it is important to remember that members also have a number of rights and powers under corporate legislation. For example, members are responsible for electing a Board of Directors, who in turn are responsible for managing and operating the organization. Members are also ultimately responsible for adopting, amending, and repealing bylaws.

In the past, many organizations employed a multi-membership class structure, in which only select classes of members had the right to vote. However, under the CNCA and ONCA, all members now have the right to vote as a class on certain fundamental changes (such as those which affect the rights of the membership class, deal with amalgamation or continuance, or relate to the sale, lease, or exchange of all or substantially all of the corporation’s property).

In light of these changes, charities may wish to re-examine their membership structures. Some corporations may wish to “collapse” all membership classes into one class in order to avoid the “separate class vote” requirements. It may be best to have only a single class of members to avoid the complexity of having to deal with a diversity of interests from multiple classes of members when the corporation wants to move quickly to take advantage of an opportunity. Others who are particularly concerned about a loss of control to an unwieldy membership may choose to have a closed membership, or “self-perpetuating board,” where the only members are the directors. Others still may prefer to maintain a larger membership, because of the accountability it provides to the organization’s leadership.

There is no one-size-fits-all approach: each organization’s situation is different, and charities need to weigh the pros and cons of the various options available in conjunction with legal advice specific to their circumstances.

2. Membership Eligibility

Once the membership structure is decided upon, the bylaws should, at a minimum, address who can be a member of the organization, how they are to be admitted, and what (if any) conditions they must fulfil in order to become eligible. Case law is clear that the discretion to screen applications should be clearly bestowed to directors in the bylaws, and this discretion must be exercised reasonably and in good faith. Rejections on the basis that the member might not support the objects of the corporation must be supported by “compelling evidence...with a high degree of probability.” To create more

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43 If the charity is governed by the ONCA or CNCA, this information must be set out in the articles, not the bylaws: *ibid.*
44 *CNCA*, ss. 199, 206(4), 213(4), and 214(5)-(6); *ONCA*, ss. 111(4), 118(5), and 116(3).
45 Under the CNCA, the bylaws must set out the conditions required for being a member of the corporation, including whether a corporation or other entity may be a member (s. 154).
certainty, religious charities should consider including in their bylaws a requirement that members agree and adhere to the organization’s Statement of Faith (which would also be set out in the bylaws).\textsuperscript{48}

3. **Members’ Rights and Remedies**

The articles or bylaws of a corporation may generally provide the directors, the members, or a committee of directors or members, with the power to discipline a member or terminate their membership.\textsuperscript{49} If this power is provided, the articles or bylaws should set out the circumstances and the manner in which the power may be exercised.\textsuperscript{50} Notice to the member, the right to be heard or provide submissions, the method for making the decision, and whether the decision is final or subject to appeal are all issues that should be considered.

4. **Members’ Meetings**

Many charity disputes that end up in court arise from members’ meetings and allegations that they were not conducted properly. Sometimes failure to comply with the rules set out in the bylaws and/or the governing legislation can result in the meeting being declared invalid, and any decisions made would be “null and void.” To prevent this from occurring, bylaws should clearly set out how members’ meetings are to be conducted, and these rules should be consistently followed and documented in well-kept minutes and other records (such as copies of notices). Here are a few (non-exhaustive) issues to consider:

(a) **Notice.** How will members be provided with notice of meetings? Legislation may require the manner of notice to be set out in the bylaws, failing which a default rule may apply. The default rule can be a very onerous method of providing notice, so charities should consider specifying in the bylaws one of the other options available under the legislation.

(b) **Quorum.** What will be the minimum number of members necessary in order for a meeting to be held? Some statutes have a default rule (e.g., a majority of members entitled to vote) that can be modified by the bylaws.\textsuperscript{51}

(c) **Absentee voting.** Will absentee voting be accommodated? The ONCA requires a corporation to offer absentee voting to its members, but not all corporate statutes do. Under the CNCA, for example, corporations may permit absentee voting, and if they do, only certain methods are available (voting by proxy, voting by mailed-in ballot, and voting by means of telephonic, electronic, or other communication facility). The methods of absentee voting and the

\textsuperscript{48} See also *Khalsa Diwan Society of Victoria v. Bal*, [1982] B.C.J. No. 1632 (S.C.) where the court concluded that the executive of the society had the authority under its constitution to determine if an applicant for membership had satisfactory “religious qualifications.”

\textsuperscript{49} CNCA, s. 158; ONCA, s. 51 (1).

\textsuperscript{50} Ibid.

\textsuperscript{51} The CNCA, for example, requires that if a different quorum is provided, it must be expressed in the bylaws as (i) a fixed number of members, (ii) a percentage of members, or (iii) a number of percentage of members that is determinable by formula (s. 70).
procedures of collecting, counting, and reporting the results of any vote should be set out in the bylaws.

5. Directors’ Qualifications

Charities should consider adopting eligibility criteria for their directors, as well as their members. Most corporate statutes contain basic qualifications that all directors must meet (i.e., they must be 18 or older, not declared incapable by a court, must not have the status of a bankrupt, etc.). If the charity requires that directors be members of the corporation, this needs to be specified in the bylaws. Some issues to consider might include agreement with a statement of faith and adherence with a code of conduct and/or other policies (e.g., conflict of interest).

In addition, the bylaws should address when a director can be required to resign. There may be legislative requirements that limit such procedures (the CNCA and ONCA indicate that directors can be removed by the membership, but they do not bestow such a power on the other directors). To avoid the need for a membership vote on the removal of a director, it may be prudent to require all directors to agree, when they join the board, to voluntarily resign if they no longer meet the eligibility requirements set out in the bylaws or the ITA (i.e., the “ineligible individual” rules). This is a sensitive area with legal ramifications, and again, due process needs to be afforded. Legal advice is especially recommended in drafting these bylaw provisions.

There are many important issues that charities should consider as they draft their governing documents. This chapter has presented a number of those issues to assist charities in starting the discussion about how they want to frame their organizational structure. Additional items that charities may wish to include in their bylaws include

- the date of a corporation’s financial year-end;
- the process and special requirements for banking arrangements;
- the process for appointing officers, as well as the rules regarding their qualifications and duties;
- the procedures for calling and conducting directors’ meetings; and
- the process for amending bylaws.

CCCC encourages charity leaders to take an active role in instructing and working with legal counsel to ensure that their bylaws reflect their organization’s characteristics and needs and are drafted in a comprehensible manner for all those who will be required to implement them.

Drafting, amending, and adopting bylaws may not be the most exciting project a charity will engage in, but it is one of the most important. Although bylaws are legal documents that must meet certain technical requirements, and may seem restrictive and onerous, they exist to enhance an organization’s efficiency, not to impede it. The purpose of a bylaw is to provide internal rules and procedures, and

52 See CNCA, s. 126(1); ONCA, s. 23(1).
53 CNCA, s. 126(2); ONCA, s. 23(2).
54 CNCA, ss. 129-130; ONCA, ss. 25-26.
if well-drafted and consistently followed, bylaws will help an organization operate smoothly, avoid litigation, and ultimately fulfill its charitable mission.

APPLYING TO CRA FOR REGISTERED CHARITY STATUS

Only after a group has organized itself can it apply for registration with CRA. The application requires supporting documentation, such as copies of the governing documents, and details about how the charity will accomplish its stated objectives. CRA's Charities Directorate will review draft governing documents on a one-time basis if they are submitted with a complete application for registered status. It is generally advisable that an organization seeking registration submit its application to CRA before applying for incorporation or finalizing the declaration of trust to ensure its purposes will be accepted as charitable, as changes can be much more difficult to make after the fact. If CRA determines that the applicant is likely to qualify for registration, it will be asked to provide “certified” copies of the governing documents within 60 days. If you do not provide the requested information within 60 days, CRA will close your file without any further notice. Unlike a denied application, closed applications cannot be appealed. If CRA requests further clarification and/or information with respect to your application, or suggests changes to the charity’s purposes, the charity will have 60 days to comply with same. If the charity does not respond within that timeframe, CRA will consider the application abandoned and the file will be closed without further notice to the applicant. If the organization would still like to become a registered charity after its file has been closed, it can re-apply to CRA by sending in a new application with all the required documents.

A complete application to the Charities Directorate of the CRA includes a completed Form T2050, Application to Register a Charity under the Income Tax Act. The application requires basic information about the charity certified by the signatures of two authorized directors or trustees. A plain language guide to completing the T2050 is available online and should be reviewed carefully by applicant charities.

If an incorporated organization, the application also needs to include

- a certified to be true copy of the original letters patent or equivalent, bearing the seal, signature, or stamp of the federal or provincial incorporating authority that established the corporation or society;
- a photocopy of the corporation’s bylaws with an effective date certified to be current by two board members.

55 For incorporated organizations, certified means that the documents bear an effective date and are stamped by the appropriate registrar. For organizations created by a constitution, certified means that the constitution contains the signatures of at least three current directors/trustees or like officials of the organization and bears an effective date. For trust documents, certified means that the document contains the signatures of the trustees and bears an effective date. See CRA, Application Review Process, online: http://www.cra-arc.gc.ca/chrts-gvng/chrts/pplyng/pprp-eng.html.


If an unincorporated organization, the application also needs to include a copy of the declaration of trust or constitution, with original signatures of at least three board members. The document should also show the date the entity was created.

Many charities not incorporated consider themselves to be unincorporated associations governed by a constitution. This particularly applies to small, autonomous churches. CRA indicates that a charity describing itself in that way will be registered under the ITA, if it otherwise qualifies for registration. If the charity is not incorporated, CRA normally requires the governing documents to be certified by at least three trustees of the organization.

If a branch, section, parish, congregation, or other division of an existing charity wishes to register separately from its “parent” organization, a letter of good standing or a letter of confirmation must be filed, depending on which entity is to have control over its daily operations.

In all cases the application needs to include the following:

- A statement of activities which the charity intends to carry on in pursuit of its charitable purposes.
- The financial statements for the last completed year or fiscal period. The charity also needs to file a realistic budget for its first 12 months of operations, including a forecast of assets and liabilities if it has not commenced its activities or completed its first fiscal year.
- A list of the applicant’s directors, trustees, or like officers (in churches that are hierarchical in structure, this may include the priest, pastor, minister, or similar religious leader) with their full names, addresses, and occupations.

To be registered with CRA, a charity’s objects must be exclusively charitable, although it may have ancillary powers to enable it to carry out its charitable purposes. A group which has some charitable objects and some which are not clearly and exclusively charitable, will not be registered by CRA as a charity. If it is not clear whether an object is charitable, it is considered not charitable.

### Description of Actual/Prospective Charitable Activities

CRA places considerable emphasis on the statement of activities which is required with each application for registration. The charity is expected to provide specific details of the programs to be carried on to further its objects or purposes and how such programs are to be carried on. CRA advises applicants to answer at least the following questions when completing its statement of activities:

- What exactly does the organization do or plan to do?
- How do the activities help achieve the organization’s stated purposes?
- Where will the organization carry out its activities?

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58 For more information, see Q8 of T4063, supra note 57.
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- Will the organization carry out its activities itself (through employees or volunteers) or use an intermediary to carry out its activities?
- How many employees and/or volunteers does the organization have or hope to have? Does the organization have the capacity to carry out its activities?
- Who benefits from the organization’s activities and how are the beneficiaries selected?
- What fees, if any, will the organization charge its clients?
- How does the organization intend to raise funds?\(^{59}\)

A recital of the charity’s objects or purposes as contained in its constituting documents will not be accepted by CRA as a statement of activities. A charity is required to carry out its own activities, and this is usually met by using its own staff (including volunteers, directors, or employees). However, some or all of the charity’s activities may be carried on through agents appointed by the charity, and they may also be carried on jointly with other charities that may not be registered charities in Canada. In all cases, however, the charity is required to demonstrate that it maintains direction and control over the use of its resources. One example of demonstrating direction and control is the existence of an agency or joint activity agreement that sets out the responsibilities of an intermediary engaged by the charity.\(^{60}\)

CRA will likely request copies of such agreements before registration is granted when a charity proposes to be active in a foreign country through these means.

DENIAL OF REGISTRATION AND THE APPEAL PROCESS

If CRA denies the application for registration, the organization may, within 90 days after the day on which the notice denying registration was mailed, file an objection in a manner authorized by the ITA, setting out the reasons for the objection and all relevant facts. Where CRA’s appeals officer confirms the prior determination, the charity may appeal the refusal to register to the Federal Court of Appeal.

Grounds for Refusing Charitable Organization Status

The following are some of the reasons why an application may be denied:\(^{61}\)

- the objects are not wholly and exclusively charitable
- the objects are either too broad or are vague
- the power clauses include a purpose which is not legally charitable

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61 For more information, see CRA’s webpage “Factors that will prevent an organization from being registered as a charity” (July 20, 2010), online: http://www.cra-arc.gc.ca/chrts-gvng/chrts/pplyng/ftwp-eng.html.
• the name of the group does not reflect the purposes set out in the application
• the organization is primarily promoting private members’ interests or benefits
• the organization is pursuing political purposes
• the organization’s liabilities exceed the assets
• the organization is established and resident outside Canada
• the organization is established for making a profit
• an ineligible individual will be involved either directly or indirectly in the management of the charity

REGISTERING IN QUEBEC

Charities in Quebec must register federally and provincially. This change occurred in 1989. This is because a tax credit for gifts to a charity federally registered after March 7, 1989, may be allowed for Quebec income tax purposes only if the charity was also registered in Quebec. For a non-Quebec charity to make its federal and provincial registrations effective on the same date, it must apply for registration in Quebec within thirty days of receiving confirmation that it is federally registered.

To register in Quebec, the charity must submit to the Ministère du Revenu du Québec (MRQ) the prescribed application Form TP-985.5-V, the documents it submitted for federal registration, as well as the registration notification received from CRA.
DECLARATION OF NOT BEING AN INELIGIBLE INDIVIDUAL

as Defined in Subsection 149.1(1) of the Income Tax Act,
RSC 1985, c. 1 (5th Supplement)

- This sample document is provided as a general guideline to assist CCCC member charities.
- This information does not constitute legal or other professional advice.
- Appropriate modifications are required to suit the facts applicable to each situation.

I, (name of individual), serving in the capacity of (director, trustee, officer, chief executive officer, etc.) with (name of organization) registered with Canada Revenue Agency as (BN/Registration Number), declare that I am not an ineligible individual by affirming all of the following statements:

1. I do not have an unpardoned criminal record either in Canada or internationally, involving financial dishonesty, tax evasion, theft, fraud, or other offences involving breaches of the public trust; and

2. In the previous five years, I have not been found guilty of a relevant offence either in Canada or internationally. A relevant offence is a non-criminal offence either specifically relevant to the operation of a particular charity or is an offence of financial dishonesty contravening any non-criminal laws such as breaches of legislation for charitable fundraising, consumer protection, or securities regulation; and

3. In the previous five years I have not been a director, trustee, officer, like official, or an individual who controlled or managed either directly or indirectly in any manner whatever, a registered charity during which time the charity engaged in conduct which resulted in the registration of the charity being revoked; and

4. In the previous five years I have not been a promoter of a tax shelter for which involvement the registration of a charity was revoked.

I acknowledge that any dishonesty on my part as to the truth of this declaration:

- may result in a one-year suspension of (name of charity) to issue official receipts as authorized by Canada Revenue Agency; or

- may result in the charitable status of (name of charity) being revoked by Canada Revenue Agency; and

- will result in the immediate termination of my role with (name of charity), whether I am an employee or volunteer.

_________________________________________  ___________________________
Signature                                      Date

Witness
This publication is provided by CCCC to its members and other authorized users as a general information service only and as such does not constitute legal or professional advice. Every attempt has been made to provide accurate and current information. However, legislation and regulations, common law, and CRA’s administrative practices may have changed since this information was published. Readers should obtain competent legal and other appropriate professional advice for their individual needs before applying any information contained in this publication to their specific situation. The publisher, authors, and editor expressly disclaim all and any liability to any person, whether a purchaser of this publication or not, in respect of anything done or omitted to be done by such person in reliance upon the contents of this publication.