

How to Incorporate as a Non-profit Organization

Incorporating a non-profit organization within Alberta requires some thoughtful work. In preparation, it is first important to understand the different types of non-profit structures in Alberta.

A Society, a Part 9 Company or a Canadian Company?

At the provincial level of registration, when an organization seeks to establish not-for-profit status, there are a number of options available for consideration. In the Board Development book series, *Drafting and Revising Bylaws for Not-for-profit Organizations in Alberta: A Guidebook*, the Muttart Foundation and Alberta Community Development outline the following options for incorporation:

Societies Act

Most not-for-profit organizations in Alberta incorporate under the Societies Act, a statute of the province of Alberta. Incorporation under this statute is the simplest and least costly way to become incorporated.

However, many organizations do not realize that this act does have one drawback, Section 3 of the Societies Act states:

3(1) Five or more persons may become incorporated under this Act for any benevolent, philanthropic, charitable, provident, scientific, artistic, literary, social, educational, agricultural, sporting or other useful purpose, but not for the purpose of carrying on a trade or business.

This means that an organization incorporated under the Societies Act cannot be engaged in any type of active ongoing business operations, especially if these business operations are significant.

If your organization is involved in significant business activities, you need to consider one of the following alternatives when incorporating.

Alberta Companies Act (also known as a Part 9 Company)

Many not-for-profit organizations in Alberta are incorporated under the Alberta Companies Act. One of the main advantages of incorporating under this Act is that an organization can engage in business activities. The Societies Act restrictions on such activities do not apply.

If your not-for-profit organization is, or will be, involved in a significant business operation of a permanent nature, seriously consider the Alberta Companies Act. A second-hand store to raise funds is an example of a business that a not-for-profit organization might be involved in.

The Canada Corporations Act

A not-for-profit organization may incorporate under a federal statute called the Canada Corporations Act. Organizations that are national in scope and operate in many provinces are the only ones which should consider incorporating under this Act.

Incorporating under the Canada Corporations Act is similar to incorporating under the Alberta Companies Act.

Even if your organization operates in other provinces besides Alberta, you do not need to incorporate under the Canada Corporations Act. You can incorporate your society or not-for-profit company in Alberta and then register it in another province if you want to. This is usually simpler and quicker than incorporating under federal law.

Other Special Statutes

There may be other special statutes under which incorporation can or should occur. The following are two examples:

Organizations that operate using cooperative principles can consider the Cooperative Associations Act;

Religious congregations desiring to incorporate for the purpose of holding land can consider the Religious Societies Land Act.

These statutes are for special situations. Therefore they are not usually relevant to most not-for-profit organizations.

Private Act of the Legislature

A not-for-profit organization can be incorporated by a private act of Legislature. This means a specialized act of the province of Alberta is tailor made for a particular organization. This act must be sponsored by a member of the Legislature who introduces it as private bill. The procedure is rather complex and usually involves lawyers. This option is usually only used by a major organization which needs specialized legislation.

While registration as a not-for-profit organization does not in and of itself guarantee successful registration with the Canada Revenue Agency as a charity, public foundation or private

foundation, it establishes clearly defined terms of reference from which the application for federal incorporation can be undertaken.

By incorporating as a non-profit your organization is also garnering the benefits of a legal structure and the bylaws established for your organization will, if drafted effectively, provide for a board of directors, membership, expectations regarding fiscal management and accountability, employees and other core areas of essential governance. This documentation provides vital guidance during the ongoing activities, growth and transitions of the organization. It also establishes an entity that is greater than an individual, enabling a diversity of participation at all levels.

Incorporating a society

To incorporate a Society within the province of Alberta:

- Determine and clearly articulate the purpose/objectives of the organization.
- Select a name. The name must be distinctive, descriptive and include one of the following: Society, Fellowship, Institute, Council, Bureau, Association, Guild, League, Board, Club, Foundation, Committee or Centre. Once a name has been decided on, you will have to obtain an Alberta Name Search Report
- Develop the bylaws of the organization. Bylaws are the rules and regulations that set out the way the organization will be managed. Bylaws are also known as the Constitution, Charter, and/or Governing Rules. Information on creating effective bylaws is available in Board Development book series, *Drafting and Revising Bylaws for Not-for-profit Organizations in Alberta: A Guidebook*, and by using the references available through Alberta Government Services website on 'How to Incorporate a Society'.
- List the incorporators of the society. The application requires the names and addresses of at least five persons. Each person must sign the application in front of a witness and the witness must sign his/her name.

Additional Information on how to incorporate a society can be found on the Service Alberta website: <http://www.servicealberta.gov.ab.ca/900.cfm>

All application forms can be accessed on-line at: <http://www.servicealberta.gov.ab.ca/272.cfm>

For assistance, call the Consumer Contact Centre 780-427-4088 in the Edmonton area or 1-877-427-4088 toll free in other areas in Alberta. Forms can be picked up at any of the private registry offices (addresses can be found in the phone book). Submit the application along with

the Name Search Report, the objects, the bylaws and a list of incorporators to the Alberta Government Registry. Registry personnel will review the documents and reject or accept them in the name of the Registrar.

Definitions

Non-Profit Organization: a general term denoting any organization formed whereby any profits realized from the activity of the organization are used solely for the purpose of promoting the objects of the organization and are not paid to the members.

Non-Profit Company: a term primarily used by Alberta Government Services to denote a nonprofit organization that will operate a company for profit but the profits will be used solely for the purpose of promoting the objects of the organization and will not be paid to members (e.g. Salvation Army Thrift Shop).

Not for Profit Organization: synonymous with non-profit organization. The term was coined to rid the notion that the term non-profit may suggest organizations do not make any profit. Not for Profit means an enterprise can make a profit but the organization does not exist solely to do so.

Non Governmental Organization (NGO): an organization that is not government. Most often the term is used to differentiate between government, which in all respects is a non-profit organization, and other non-profit organizations.

Society: an association of persons united by a common aim or interest or principle. Alberta Corporate Registry views a society as an association of five or more people who share a common recreational, cultural, scientific or charitable interest. A society may not incorporate primarily to carry on a trade or business.

Registered Society: a society that has been incorporated with the Corporate Registry of Alberta Government Services.

Resources

Drafting and Revising Bylaws for Not-for-profit Organizations in Alberta: A Guidebook (revised ed.) (2003). Edmonton, AB: The Muttart Foundation and Alberta Community Development.

Useful website:

Service Alberta-- Charitable Organizations

http://www.servicealberta.gov.ab.ca/Charitable_Organizations.cfm

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This article was written by Dree Thomson-Diamond, CFRE; 2006

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