



## How to Incorporate

*by Laurent Thibault*

### Introduction

Since most cultural organizations will likely be non-profit, the focus of this “How To” piece is on non-profit incorporation. A not-for-profit corporation is an organization that provides products or services without making a profit. It is an artificial 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.

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.

It is not mandatory for a not-for-profit organization to incorporate. However, unincorporated organizations do not have a separate legal existence apart from their members.

Although it can be advantageous to use the services of a lawyer to incorporate, this comes at a cost, and is not a requirement. There are plenty of free government sources that provide all the advice necessary to incorporate.

### Advantages & Disadvantages of Incorporation

Advantages of incorporation includes 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. 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.

Many sources of grants such as the Ontario Trillium Foundation require an organization to be incorporated before they can apply for grants.

A disadvantage is that a corporation 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.

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.

### **Should you register the corporation as a Charity ?**

Charities are a special kind of not-for-profit corporation. In order to be a charity, a corporation must meet the general requirements for not-for-profit corporations and some additional special requirements such as having only "objects that promote public benefit".

This "Registered Charity" status can be useful in fund-raising since Charities may be able to issue tax receipts. However, this status also has several important obligations that a non-profit organization run by volunteers may find onerous, including keeping detailed records; filing an annual return, etc. To become a Registered Charity, you must apply to the Charities Directorate of the Federal Canada Revenue Agency.

A clear and thorough explanation of how to apply to become a “Registered Charity” is available here:

<http://www.cra-arc.gc.ca/charities/>

### **Practical steps on how to incorporate**

Since the actual practical steps on how to incorporate are explained clearly and simply (including forms to fill in, etc.) in several documents provided by the Ontario and Canadian Governments, it is not necessary to outline them here. Below are three good sources of information on non-profit incorporation on the internet.

1) Ontario Government “Not For Profit” Guide

<http://www.cbo-eco.ca/en/index.cfm/starting/getting-started/not-for-profit-guide/>

and the Ontario Attorney General’s “Not-For-Profit” Incorporation Handbook

[http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/nfpinc/Not\\_for\\_Profit\\_Incorporators\\_Handbook\\_EN.html](http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/nfpinc/Not_for_Profit_Incorporators_Handbook_EN.html)

2) Corporations Canada (Government of Canada web site for a “not-for-profit” incorporation)

<https://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs04970.html>

3) CorporationCentre.ca (A Private service for a fee)

[http://www.corporationcentre.ca/docen/pinc/home.asp?t=nonprofit&gclid=Cj0KEQjwouW9BRCN0ozlifTI6\\_cBEiQAD9gNsfz19Z7rLnhters-TfzPrezY93yZJci\\_gsQZowGrg58aAra38P8HAQ](http://www.corporationcentre.ca/docen/pinc/home.asp?t=nonprofit&gclid=Cj0KEQjwouW9BRCN0ozlifTI6_cBEiQAD9gNsfz19Z7rLnhters-TfzPrezY93yZJci_gsQZowGrg58aAra38P8HAQ)

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