

PRELIMINARY

The incorporation of a non-profit organization is a purely voluntary act and it is not mandatory that the members apply for incorporation.

RESULTS OF INCORPORATION

The Societies Act was proclaimed in 1953 as a vehicle under which any five or more persons wishing to incorporate a society may do so by submitting certain documentation to the Registrar of Joint Stock Companies. A society under this Act is a body corporate, the same as a corporate body created under the Companies Act, that is to say, a society is a corporate entity separate and apart from the members with the power to hold property and carry out the objects as set forth in the Memorandum.

LIMITATION OF INCORPORATION

Subject to Section 5 of the Societies Act, any five persons may, by subscribing to a Memorandum of Association, submitting By-laws, a list of first directors and the appointment of a recognized agent, form a society. The purpose for which a society may be incorporated are restricted to the items set out in Section 3 cited as follows:

“A society may be incorporated under this Act to promote benevolent, philanthropic, patriotic, religious, charitable, artistic, literary, educational, social, professional, recreational, sporting or any other useful object, but not for the purpose of carrying on any trade, industry or business.”

ADVANTAGES

The reasons or advantages for incorporation may be divided into several categories:

1. **Protection of Name** - prior to incorporating, the name must be reserved by our office to ensure that it is not currently being used by any other organization, be it a body corporate or a partnership, in this Province.
2. **Public Record** - through incorporation, the objects and By-laws of the organization are placed on public record so that any individual may ascertain the purposes of the society and the regulations of management by simply checking the records at the Registry of Joint Stock Companies.
3. **By-laws** - one of the most common frailties of non-profit organizations is the continual transfer on an annual basis of the books and records from one secretary to another. In many cases, the original By-laws of the association are misplaced and consequently time may be wasted at the annual or special meetings determining the correct method of conducting meetings, powers of directors, appointment of officers, etc. The secretary may request a photocopy of same from the Registry of Joint Stock Companies to ensure that the method of transacting business is done so according to the regulations laid down by the society
4. **Personal Liability - Under Section 27** - “No member of a society shall, in his individual capacity, be liable for any debt or liability of the society beyond the amount of any subscription, dues or fees payable by him to the society.” Note that directors are potentially personally liable for the debts of the Society. Please see an insurance company for information on Directors Liability Insurance.

The society may sue or be sued under its legal name.

5. **Tax-exempt Receipts** - incorporation under the Societies Act does not give the society the right to issue receipts which may be used by the donor for income tax exemption purposes. Should a society wish to grant tax exempt receipts, then application must be made to Canada Customs and Revenue Agency.
6. **Grants** - in most cases, any government department which provides grants to non-profit or charitable organizations insists on the organization becoming incorporated prior to the approval of the grant.

HOW TO INCORPORATE

In order that incorporation may be effected under the Societies Act, certain documentation must be filed with the Registrar as follows:

7. **Name Reservation** - prior to incorporation, the proposed name of the society must be reserved by the office of the Registrar of Joint Stock Companies (424-7770). Name reservation is free for societies.
8. **Memorandum of Association** - the Memorandum of Association must state:
 - a. the name;
 - b. the objects or purposes for which the society is to be incorporated;
 - c. the proviso clause with respect to the carrying on of business and that no profits will accrue to the members (optional);
 - d. term or condition respecting dissolution or winding up (optional);
 - e. the registered office of the society;
 - f. the general geographic area where the activities are to be carried on;
 - g. the Memorandum is to be subscribed by a minimum of five individuals. The names, addresses and occupations of the subscribers may be typed on the last page of the Memorandum, however all subscribers must sign their names in their own handwriting,. All signatures are to be witnessed by an individual who is not one of the subscribers.
9. **By-laws**- the By-laws are the everyday rules of management and contain clauses with respect to membership, appointment of directors, duties of directors, appointment of officers, duties of officers, financial reporting, method of calling and conducting meetings, etc.
10. **List of Directors** - this list must contain the names, addresses and occupations of the first directors of the society, and must be signed by one of the directors.
11. **Fees** - incorporation fee is \$35.00. Annual renewal fee is \$25.00.
12. **Annual Requirements** - subject to Section 19 and 20 of the Act, every society must file annually:
 - a. a list of directors as appointed at the last annual meeting. The list **must be signed by one director** and must list all directors names, addresses, occupations and dates of appointment. A list should be also filed any time during the year in which a change of directors has occurred, either through vacating of office, dismissal, etc.
 - b. a financial statement must be filed annually. The financial statement **must be signed by the auditor or by two directors**. This statement is to be in a form of a balance sheet and income statement and a copy of the report filed at the annual meeting for examination by the members is sufficient for filing.
13. **Amendments** - any amendments under the Societies Act may only be effected by special resolution; a special resolution being a resolution passed by a minimum of three-fourths of the members present, either in person or by proxy, where proxies are allowed, at a meeting duly called and convened for the purpose of passing said resolution, and must be approved by the Registrar before taking effect. The directors have no power to alter the By-laws or the Memorandum of Associations.

