

Aligning  
Structure with  
Strategy

Incorporation and Other Options



Supplemental Handout Package

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# Introduction

A **non-profit organization** is an association, club, or society that is operated exclusively for social welfare, civic improvement, pleasure, recreation, or any other purpose except profit (Canada Revenue Agency, 2015). No part of the organization's income can be payable to or available for the personal benefit of any proprietor, member, or shareholder. Any surpluses realized from the activities of the organization are used solely for the purpose of promoting the objects of the organization and are not distributed among its board members or general membership. Some examples of non-profit organizations include service clubs, sports associations, theatre, dance and music groups, activity clubs, religious fellowships, educational and literary societies and community services associations.

The term **not-for-profit** is synonymous with non-profit. This term was coined and has become popular in recent years because it is believed to more clearly depict the fact that, although these organizations do not exist for the purpose of making a profit, they can appropriately generate surpluses over and above expenditures. The two terms are used interchangeably.

**Incorporation** is the process of forming a distinct legal entity (corporation) separate from its owners. In the non-profit sector, many organizations incorporate to acquire legal status and the benefits that go along with that status. It is not uncommon, however, to find non-profit organizations that choose **not** to incorporate. An organization or group is not required to incorporate, so the decision whether or not to incorporate is made by each group. In making that decision, it is important for the group to be aware of the advantages and disadvantages of incorporating. Many non-profit organizations believe the advantages far outweigh the disadvantages and non-profit organizations and those who are involved with them may run unnecessary risks if they are not incorporated.

To be recognized as legal entities in Alberta, non-profit organizations can become incorporated under a variety of Acts of the provincial and federal governments. They can also be designated as registered charitable organizations in Alberta and registered charities with Canada Revenue Agency.

This document provides information on incorporating and on obtaining charitable status as of the date it was written. Further details and the most current information can be found online:

- For more information on provincial incorporation and charitable registration, go to [www.servicealberta.gov.ab.ca](http://www.servicealberta.gov.ab.ca)
- For more information on federal incorporation go to [www.corporationscanada.ic.gc.ca](http://www.corporationscanada.ic.gc.ca)
- For more information on registered charities under Canada Revenue Agency, go to [www.cra-arc.gc.ca](http://www.cra-arc.gc.ca)

*Note: The information in this resource is may be accurate only as of the date it was developed. Information may have changed since the development of this resource. Always verify information and refer to the original sources for the most up-to-date and accurate information.*

# Obligations of Incorporation

Once incorporated or registered, an organization must conduct business in Alberta according to the provisions set out in the Act that governs them. Since an incorporated organization exists independently of its members, its operations must be properly documented and its relationship with members, volunteers and paid staff clearly defined. Requirements common to most legal entities include the following:

- Completing initial paperwork to establish governing documents and structures.
- Holding regular meetings of directors and members.
- Holding an annual general meeting of members and maintaining proper records of the meeting.
- Maintaining formal minutes of the meetings of directors and members.
- Filing annual financial and other statements to various government offices.
- Maintaining proper financial records of the organization.
- Maintaining records of any property purchased by the organization.
- Maintaining proper employee records. Most employers must comply with Occupational Health and Safety and Employment Standards legislation. In Alberta, the majority of employers are required by law to have workers' compensation insurance for all workers and must notify the Workers' Compensation Board within 15 days of hiring their first worker.
- Acquiring liability and other forms of insurance appropriate to the activities of the organization.
- Addressing issues with respect to the ownership of goods produced in the course of the organization's operation and copyright to any intellectual property.

# Advantages of Incorporation

**Permanence and Autonomy** – The public's perception of an incorporated organization is one having a more permanent status than an unincorporated group. As long as the organization files the required documents with the appropriate government registry, it continues to exist. The organization is recognized as an autonomous entity by the law instead of a group of individuals. It has the powers and authority given to it in the legislation under which it incorporates, subject to any restrictions it has imposed upon itself in its incorporating documents. In the eyes of the law, an incorporated organization can *only* do the things which are within the limits of the objects stated in the incorporating document.

**Limited liability** – A member of a society may not be held responsible for the debts or liability of the society. The organization itself is liable for contracts and debts entered into or incurred



in its name which provides some protection to its members. However, *board* members may be personally liable for certain decisions and actions such as wages of employees or damages from not meeting acceptable standards in exercising their duties as board members.

**Formal structure** – Incorporation structures the affairs and activities of the organization, defining its basic framework and governing rules. This formal structure forces everyone to be more careful in the way the organization is governed and what activities are carried out. It can be very helpful to an organization in areas such as resolving conflicts.

**Ability to hold property and enter into contracts** – An incorporated organization may hold title to property and enter into contracts in its own name, rather than under the names of individual board members on the organization's behalf. Many businesses and lending institutions feel more comfortable dealing with an incorporated body.

**Access to funding** – Many funding agencies and donors will only provide financial assistance to incorporated organizations. Also, the Gaming Commission requires organizations to be incorporated before issuing licences for raffles, casinos and other gaming fundraising activities.

**Income tax** – All incorporated organizations must file annually with Canada Revenue Agency, however non-profit organizations do not pay taxes on retained earnings.

**Goods and Services Tax (GST)** – Non-profit organizations are given special consideration under GST regulations.

**Litigation** – The board of an incorporated organization can sue and be sued, however these processes are more straightforward for an incorporated organization.

## Disadvantages of Incorporation

**Cost** – There are some fees associated with incorporating and making amendments to incorporation documents and bylaws, however they are minimal. A lawyer is not required, however if applying for incorporation under the Companies Act, the application needs to be reviewed more carefully and a lawyer should be consulted which adds to the cost.

**Initial paperwork** – The initial process of applying for incorporation under any Act takes some time and can often seem confusing to someone who is not a lawyer.

**Statutory requirements** – The organization must follow the requirements of Act under which it has been incorporated. This makes running the organization more formal and complex.

**Administrative filings** – Every year an annual return must be filed at the appropriate government registry. The return may include things like the address, contact list of directors and officers, and audited financial statements. Changes in the directors and amendments to the bylaws or other incorporating documents must also be filed.

# Incorporation Options

The process of incorporation depends on the type of entity you want to incorporate. Each type of entity is regulated by a legislative Act and has unique forms and fees that must be submitted. Incorporation options available for non-profit organizations are as follows:

- **Society** – The most widely used form of non-profit incorporation is the society. Incorporation under Alberta's **Societies Act** is the simplest and least costly way to incorporate. However, organizations 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.
- **Non-profit Company or Part 9 Company** - Non-profit organizations that are or will be involved in a business operation of a permanent nature that generates significant revenue (such as a second hand store or a golf course), should incorporate the organization or the business operated by the organization under 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.
- **Not-for-profit Corporation** – Non-profit organizations that are or will be involved in a business operation of a permanent nature that generates significant revenue that are national in scope and operate in many provinces should consider incorporating under a federal statute called the **Canada Not-for Profit Corporations Act**.
- **Extra-Provincial Corporation** - Non-profit and profit corporations formed outside Alberta that want to conduct business in Alberta can register as an Extra-Provincial Corporation under the provincial **Business Corporation Act** which applies to a business or organization that is incorporated under another jurisdiction so it can carry on operations in Alberta. If you extra-provincially register the corporation, you will have only one corporation to look after.
- **Religious Society** – Religious organizations can incorporate under Alberta's **Religious Societies Land Act**.
- **Cooperative** – Organizations that operate using cooperative principles can consider incorporating under Alberta's **Cooperative Associations Act**.
- **Private Act of the Legislature** - Some non-profit organizations are incorporated under a private Act which has been tailor made for a major organization which needs special provincial legislation. Examples of this are Agricultural Societies which are regulated by the Agricultural Societies Act and public libraries which are regulated by the Libraries Act.

# How to Incorporate

Incorporation under provincial legislation, such as the Societies Act or Alberta Companies Act, is done through **Service Alberta's Corporate Registry** which handles incorporation for non-profit organizations as well as businesses that operate for profit.

Corporate Registries is:

- For businesses: a place where they can obtain limited liability for business ventures.
- For societies and non-profit groups: a place to get official recognition for their groups.
- For sole proprietors and partnerships: a place to register the name of the business.
- For the general public: a vast repository of information on all of these organizations.

Corporate Registry does *not* act as an enforcement agency, provide legal counselling services, supervise the conduct of corporations or non-profit organizations, nor act as a mediator in the case of internal disputes.

Incorporation under federal legislation, such as the Canada Not-for Profit Corporations Act, is done through **Corporations Canada** which handles incorporation for the creation and governance of federal for-profit and not-for-profit corporate entities. Their role with respect to Part II of the Canada Corporations Act (CCA) which applies to not-for-profit incorporation is to:

- Ensure that the requirements of the CCA have been met
- Assist those involved with a federal not-for-profit corporation during the corporation's existence, including its creation, amendment and dissolution.

## NUANS® Name Search Reports

NUANS® name search reports must accompany other documentation when incorporating a company in Alberta. NUANS® (Newly Upgraded Automated Name Search) is a computerized search system that compares a proposed corporate name or trade-mark with existing corporate names, business names and trade-marks in a national database. This comparison determines the similarity that exists between the proposed name or mark and existing names, and produces a list of names that are found to be most similar. Requesting a NUANS® search takes only a few minutes. Your report is usually ready within two to three business hours. NUANS® is a registered trade-mark of the Government of Canada.

In Alberta, NUANS and Business Name Reports are purchased through an authorized NUANS search house. You can use this website to find an authorized NUANS search house nearest you: [http://www.nuans.com/houses-maisons/nm\\_form-forme\\_mn\\_en.cgi](http://www.nuans.com/houses-maisons/nm_form-forme_mn_en.cgi)

## Society

A **society** may be incorporated by five or more people who share 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. That means it cannot be engaged in any type of ongoing business operations, especially if these business operations are significant. The Societies Act regulates societies incorporated in Alberta, except for Religious Societies and some other groups that have their own specific legislation such as Agricultural Societies and Libraries.

### **How is a society formed?**

To form a society, you must provide a society name and address, a NUANS® report, the objectives or purposes for which the society was incorporated, the bylaws for the society, and the filing fee. At least five persons (either individuals or incorporated bodies or a combination of both) must sign the application as the incorporators of the society. These steps are outlined next.

#### **Step 1: Determine a society name**

Your society's name must not be the same, or similar to, any other society or corporation's name (Service Alberta, 2015). A society name should consist of three parts or elements, all of which must be present in the name, but not in any particular order.

- Distinctive element - a unique, distinctive word or location that makes the society's name different from others.
- Descriptive element - describes what the society is or does.
- Legal element - must be one of the following terms:
  - o Society
  - o Association
  - o Club
  - o Fellowship
  - o Guild
  - o Foundation
  - o Institute
  - o League
  - o Committee
  - o Council
  - o Board
  - o Centre
  - o Bureau

Your name must not be the same or similar to any other society or corporation's name. A NUANS® report is required to ensure that no one else has the identical name. The complete NUANS® report is submitted with the request for incorporation and must be less than 91 days old.

#### **Step 2: Develop objects and complete an application form**

Complete the application to form a society. The most recent form can be found on Service Alberta's webpage. On the application form, you must write the objects or purpose for which the society was incorporated. If the objectives on the standard application do not meet your organization's needs, you can cross out the ones that do not apply OR you can prepare your own application with customized objectives. The objects must be drafted clearly and precisely because they define what the society has the power to do. Take special care if the society wants to become a registered charity, as some objects will not qualify for registration with the Canada Revenue Agency as a registered charity.

#### **Step 3: Complete a set of bylaws**

The bylaws set out the way the society is organized and the rules surrounding all of its activities. Your bylaws must include, for example, how new members join and what their rights and responsibilities include. Other bylaws must set out how the membership will be notified of meetings, how directors may be appointed and removed, etc. Occasionally, society members disagree on how to handle internal matters. Societies must prepare to



resolve their own internal disputes as Corporate Registry does not provide a counselling service on matters other than forms and the documents filed with them. To ensure that internal disputes are handled fairly, Corporate Registry recommends including a bylaw outlining an arbitration procedure.

Corporate Registry can provide a standard set of documents including both the application and bylaws. The society may choose to use the standard documents or may create its own application and bylaws. Bylaws may be amended after incorporation and changes must be registered with Corporate Registries (no charge for societies).

#### **Step 4: Set the address**

Determine the mailing address of the society and complete the applicable form, which can be located from Service Alberta's website.

#### **Step 5: Submit the documents for approval**

Send the completed forms in duplicate, the NUANS® report, and the incorporation fee (\$50 as of May 2015) to the Corporate Registry office for review.

#### **Step 6: Certificate of Incorporation**

If the requirements are met, Corporate Registry will approve and process the submission and issue a Certificate of Incorporation under the Societies Act.

## **Non-profit Company or Part 9 Company**

If an organization is involved in a substantial business or trade or has substantial holdings, with objects other than the acquisition of gain, it must incorporate the organization or the business part of the organization as a **non-profit company** also known as a **Part 9 company** under the Companies Act (Part 9). The organization must prove to the Registrar that it is formed for the purpose of promoting art, science, religion, charity or any other useful object (such as a second hand clothing store) or is formed solely for the purpose of promoting recreation for its members (such as a golf club or junior hockey club) and that its intention is to apply any profits or other income of the association in promoting its objects and to prohibit payment of any dividend to its members. The Companies Act is more complex than the Societies Act and applications need more careful review so lawyers should be consulted.

There are two types of non-profit companies:

- Private non-profit companies have restrictions on the number of members or shareholders, the number of shares or membership transfers, and there are restrictions on invitations to the public to subscribe for shares or debentures of the company. The specific wording of the provisions can be found in the Companies Act. At least two people are needed to form a private company.
- Public non-profit companies do not have the restrictions of private companies, however they have numerous and much more stringent filing requirements. At least three people are needed to form these companies.

Most non-profit groups needing to incorporate under the Companies Act should make certain they do so as a *private* company. Those groups with more than 50 members normally incorporate the organization under the Societies Act and then incorporate a private Part 9 company to operate the business part. It can be set up so the society controls the separate company. If the business fails, the whole society does not go down with it.

### **How is a non-profit company formed?**

To form a non-profit company, you must provide a company name and address, a NUANS® report (unless you have a 'numbered' name), the type of non-profit company and the purposes for which it was incorporated, the articles for the company (internal operating rules), and the incorporation fee. These steps are outlined in more detail below.

### **Step 1: Determine a name**

There are two different types of names:

1. 'Named' Names - should consist of three parts or elements:
  - Distinctive element: the part that sets your name apart from other names, making it easy to remember.
  - Descriptive element: describes what the non-profit company does or is.
  - Legal element: this is optional in a 'named' name, however if present, it must be Ltd. or Limited.

Your name must not be the same or similar to any other company's name. A NUANS® report is required for a 'named' name to ensure that no one else has the identical name. If you want to use a name that is similar to another name, you will need to obtain written permission from the other group to use the similar name. The complete NUANS® report is submitted with the request for incorporation and must be less than 91 days old.

2. 'Numbered' Names: must consist of three parts or elements.
  - The numbered part assigned by Corporate Registry
  - The word Alberta
  - Either Ltd. or Limited.

A NUANS® report is not necessary for a numbered name.

### **Step 2: Complete Memorandum of Association**

This document includes the objects of the company and the type of non-profit company; limited by guarantee or limited by share. In a company limited by shares, the Memorandum must set out details describing the shares. These details will include that a fixed number of shares must be authorized. An unlimited number is not acceptable. The Memorandum will also state that the share structure is divided into shares without nominal or par value, or divided into shares comprised partly of one of the foregoing classes and partly of the other. Objects cannot indicate the carrying on of a profit making business. The Memorandum must have a clause stating that no dividends or income will be paid to members and that all profits or any income, if any, must be used to promote the company objects.

### **Step 3: Complete Articles of the Association**

Articles of Association are the operating rules for the company. Companies that are 'limited by shares' may adopt 'Table A' of the Companies Act instead of creating their own set of articles. If 'Table A' is adopted it must be signed by the same people who signed the memorandum.

Companies 'limited by guarantee of the members' may also adopt 'Table A' but they must remove the provisions that refer to shares, liens, transfers and alteration of capital, etc.

### **Step 4: Set the address**

Determine the mailing address of the company and complete the applicable form, which can be located from Service Alberta's website.

### **Step 5: Complete directors form, if applicable**

Complete a directors form when the memorandum or articles indicate that the initial subscribers will also be the first directors of the company. Otherwise, the directors form does not need to be completed and submitted until the first directors have been elected.

### **Step 6: Submit the documents for approval**

Send the documents (in duplicate), NUANS® report, incorporation fee (\$75 as of May 2015), location of registered office and mailing address for the company to the Corporate Registry office for review and approval. Corporate Registry personnel will review your submission.

### **Step 7: Certificate of Incorporation**

If the requirements are met, Corporate Registry will process the request and issue a Certificate of Incorporation under the Companies Act.

## **Canada Not-for-Profit Corporations Act**

A **not-for-profit corporation** may be incorporated under a federal statute called the **Canada Not-for-profit Corporations Act** by three or more people for the purpose of carrying on objects of a national, patriotic, religious, philanthropic, charitable, scientific, artistic, social, professional or sporting character, or the like objects.

Organizations that are national in scope and operate in many provinces are the only ones which should consider incorporating under this Act. Even if an organization operates in other provinces besides Alberta, it does not need to incorporate under the Canada Corporations Act. Instead, it can be incorporated as a non-profit company in Alberta and then register in other provinces as well. This is usually simpler and quicker than incorporating under federal law.

### **How is a not-for-profit corporation formed?**

An application for incorporation and the proposed general bylaws are submitted to Corporations Canada to create your corporation. Corporations under the Canada Not-for-profit Corporations Act can be created (i.e., incorporated) by filing a request through Corporations Canada's Online Filing Centre. The cost and approval time for filing online is lower than filing the application by email, fax, or mail. If the documents comply with

requirements, Corporations Canada will issue Letters Patent, with the application for Letters Patent attached and will grant Ministerial approval of the general bylaws.

### **Step 1: Determine a name**

There are two different types of names:

#### 1. "Named Names"

The proposed name must be distinctive, i.e., it must not be misleading or likely to be confused with names used by other organizations and businesses. In general, a corporate name is distinctive if it does not make those who encounter it think of another organization or business.

A NUANS® report is required for a 'named' name to ensure that no one else has the identical name. The NUANS Name Search Report must be dated not more than ninety (90) days prior to the receipt of the articles by Corporations Canada. More information about choosing a name is available on the Corporations Canada website.

#### 2. 'Numbered' Names: must consist of three parts or elements.

- The numbered part assigned by Corporate Registry
- The word Canada
- One of the following prescribed terms: Association, Center, Centre, Foundation, Foundation, Institute or Society.

A NUANS® report is not necessary for a numbered name.

### **Step 2: Item 2: The province or territory in Canada where the registered office is situated**

Indicate the province or territory in Canada where your registered office is to be situated. Note: Do not include the street address here. The street address will be indicated on Form 4002 – Initial Registered Office Address and First Board of Directors.

### **Step 3: Minimum and maximum number of directors**

Indicate the minimum and maximum number of directors. If the number is fixed, indicate the same number in both boxes.

Every corporation must have at least one director, except a soliciting corporation (i.e., one that receives public donations and/or government grants in excess of \$10,000 in a single financial year). A soliciting corporation must have no fewer than three directors, at least two of whom are not officers or employees of the corporation or its affiliates.

### **Step 4: Statement of the purpose of the corporation**

Include a statement that describes the purpose(s) of the corporation. Note: If your corporation intends to become a registered charity, it is strongly recommended that the Charities Directorate of the CRA be consulted on this statement before submitting your application for incorporation.

### **Step 5: Restrictions on the activities that the corporation may carry on, if any**

Set out any restrictions on activities that the corporation may carry on. If there are no restrictions required, indicate "none" or leave this item blank. Note: If your corporation intends

to become a registered charity, it is strongly recommended that the Charities Directorate of the CRA be consulted on this statement before submitting your application for incorporation.

#### **Step 6: The classes, or regional or other groups, of members that the corporation is authorized to establish**

The articles must set out how the members will be organized into classes or groups and set out the voting rights for each class or group. Members with voting rights are entitled to vote at members meetings (e.g., elect directors and the public accountant).

A corporation must have at least one class or group of members, in which case, all members are voting members. A corporation may have two or more classes or groups of members and not all classes or groups have to be given the right to vote. If there is more than one class or group of members, the articles must give the right to vote to at least one class or group.

#### **Step 7: Statement regarding the distribution of property remaining on liquidation**

Every corporation must include a statement to deal with any property that may remain upon liquidation.

When your corporation stops operating, you will need to dissolve it. Before a corporation can be dissolved, it must dispose of its property. This involves:

- returning property to another person if the property was originally given to the corporation on the condition that it be returned when the corporation is to be dissolved
- paying any debt or other liabilities of the corporation
- distributing any remaining property according to the statement set out in this item of the articles.
- Property includes fixed property (e.g., land and buildings), movable property (e.g., office equipment, tools and cars) and other assets such as cash, bonds and shares.

Registered charities and soliciting corporations must provide that any property remaining upon liquidation be distributed to one or more qualified donees, within the meaning of the Income Tax Act. However, if a registered charity has its registration revoked, there is a further restriction that the assets may only be distributed to qualified donees that also meet the definition of eligible donees under the Income Tax Act. For more information, see the Canada Revenue Agency website.

#### **Step 8: Additional provisions, if any**

Include any other provisions your corporation would like to have in its articles (e.g., any provisions required to satisfy the requirements of other legislation). If there are no other provisions, indicate "none" or leave this item blank.

While there is no limit to the provisions that could be part of this section of the articles, common provisions include non-profit clause for registered charities, remuneration of directors clause for registered charities, borrowing powers, increase the majority vote by members, foreign corporate name, fill a vacancy on the board of directors, additional directors, and class or group voting by members on amendments to articles. The CRA



website provides example wordings for these provisions, however the list is not definitive and the wording is not mandatory. If you want to use other provisions, you may wish to consult a lawyer or other business professional to be sure that they are permitted under the NFP Act.

### **Step 9: Declaration**

These articles must be signed by the incorporator(s). If an incorporator is a company or other incorporated body, the articles must be signed by an individual authorized by that body.

### **Step 10: Submit the documents for approval**

Send all articles, form 4002, the NUANS name search (if applicable), and the fee (\$200 if online; \$250 if emailed, faxed, or mailed as of MAY 2015) to Corporations Canada.

### **Step 11: Bylaws**

Within 12 months of the by-laws being confirmed by the members, the corporation must send a copy to Corporations Canada.

## **Business Corporation Act - Part 21**

The Business Corporation Act (Part 21) regulates profit and non-profit corporations formed outside Alberta that want to conduct business in Alberta as an **extra-provincial corporation**. The Act states that within thirty days after the commencement of business in Alberta, every extra-provincial corporation, including federal corporations, must register in Alberta if certain conditions apply. Registration is different from incorporation. Incorporation creates a new legal entity, which is also an option, however there would then be two corporations to look after – the one formed outside Alberta and the one formed in Alberta. Registration, on the other hand, registers a corporation that is incorporated under another jurisdiction so it can carry on operations in Alberta. If you extra-provincially register the corporation, you will have only one corporation to look after.

### **How does an extra-provincial corporation register?**

Once you determine if you need to be registered, you will need to provide a corporate name that is available for use in Alberta, a NUANS® report, the name and contact information for your attorney for service, copies of your charter documents and the registration fee.

### **Step 1: Determine if your corporation must be extra-provincially registered**

This can be determined based on the conditions outlined in the Business Corporations Act or by consulting a legal professional authorized to practice law in Alberta.

### **Step 2: Determine your name for use in Alberta**

To find out if your existing corporation's name is available for use in Alberta you will need to obtain a NUANS® report. If your name is not available, you may register with an assumed name, in which case you will require another NUANS® report, or you may use the numbered version of your home jurisdiction name.

### **Step 3: Appoint an attorney for service**

An attorney for service is someone who represents your corporation in Alberta. It may be, for example, the Alberta manager of the extra-provincial corporation, or an accountant. It does not have to be an actual attorney.

### **Step 4: Obtain copies of your charter documents**

Copies of charter documents that were given to you when the corporation was formed in the home jurisdiction as well as all amendments must be submitted. They must be certified to be true copies by a company official, a notary public under seal, or a government official. A list of documents required can be obtained from Corporate Registry. These documents do not include bylaws, articles, rules, and regulations. If documents are in a language other than English or French, you will need to provide an English translation of the charter documents, certified by a company official or notary public.

### **Step 5: Submit the documents for approval**

Send the documents to an authorized service provider who will review your submission.

### **Step 6: Certificate of Registration**

If the requirements are met, the service provider will process the request and issue a Certificate of Registration.

## **Religious Societies Land Act**

A **religious society** is a group such as the congregation of a church or religious denomination. A religious society must incorporate to take title of land to be used for a church building or burial ground. The Religious Societies' Land Act regulates religious societies incorporated in Alberta. Incorporation permits the religious society to up to 320 acres of land. Incorporation also ensures that the land held by the religious society is dealt with in accordance with the wishes of the group.

### **How is a religious society formed?**

To form a religious society, you must provide a religious society name and address, a NUANS® report, the incorporation fee, and other information including the rules that the congregation must follow when dealing with matters that concern the religious society.

### **Step 1: Determine a name**

The name must include

- A local description
- The distinctive name or designation of the church or religious denomination to which the proposed religious society belongs.
- A word that indicates it is a religious society such as Church, Fellowship, Ministry / Ministries, Assembly, etc.

Your name must not be the same or similar to any other religious society, society or corporation's name. A NUANS® report is required to ensure that no one else has the identical name. If you want to use a name that is similar to another name, you will need to

obtain written permission from the other group to use the similar name. The complete NUANS® report is submitted with the request for incorporation and must be less than 91 days old.

## **Step 2: Complete a Declaration of Incorporation of a Religious Society form**

This form contains information about the:

- Denomination and/or governing body of the congregation
- Names or positions of the persons who are entitled to vote on church business
- Names or positions of the officers who may deal with the congregation's property
- Rules that the officers must follow when dealing with the property of the congregation
- Quorum at any meeting of the congregation
- Other rules or provisions
- Street or mailing address
- The affidavit must be signed by a person who has personal knowledge of the information provided.

## **Step 3: Submit the documents for approval**

Send the forms, NUANS® report, and incorporation fee (\$50 as of May 2015) to the Corporate Registry office for review.

## **Step 4: Certificate of Incorporation**

If the requirements are met, Corporate Registry will approve and process the submission and issue a Certificate of Incorporation under the Religious Societies Land Act.

# **Cooperatives Act**

A **cooperative** (Company Code 22) is a business organization started by people who want to use services or buy goods as a group, have an equal say in how the business is run, and share in any profits the business makes. They are governed by seven international principles for such organizations. At least three people are required to start a cooperative. Alberta-based cooperatives must be incorporated and out-of-province cooperatives wanting to do business in Alberta must be registered under the Cooperatives Act. This does not apply to some cooperatives which are registered under their own specific legislation (e.g. Alberta Wheat Pool, Credit Union Act).

## **How is a cooperative formed?**

To incorporate an Alberta-based cooperative, you need to provide the cooperative name and address, a NUANS® report, Articles of Incorporation, Summary of Articles of Incorporation and Statutory Declaration, a contact list of Directors, and the incorporation fee. The requirements are different to register an extra-provincial (out of Alberta) cooperative.

## **Step 1: Determine a name**

Your name must not be the same or similar to any other cooperative or corporation's name. A NUANS® report is required to ensure that no one else has the identical name. If you want to use a name that is similar to another name, you will need to obtain written permission from the other group to use the similar name. The complete NUANS® report is submitted with the request for incorporation and must be less than 91 days old.

## **Step 2: Determine the Articles of Incorporation**

Draft the Articles of Incorporation and finalize them at an incorporation meeting. See the Service Alberta webpage for information about what must be and what may be included in Articles. Three or more members must sign the Articles of Incorporation.

## **Step 3: Complete a Summary of Articles of Incorporation and Statutory Declaration form**

This summary is for department use; you must still provide the Articles of Incorporation from step 2.

## **Step 4: Set the address**

Determine the mailing address of the cooperative and complete the Notice of Address/Change of Address form, which can be located from Service Alberta's website.

## **Step 5: Complete Notice of Directors/Change of Directors/Change of Director's Address Form**

Determine the directors and complete the applicable form, which can be located from Service Alberta's website.

## **Step 6: Submit the documents for approval**

Send the documents (in duplicate), NUANS® report, \$100 filing fee, location of registered office and mailing address for the cooperative to the Director of Cooperatives at Service Alberta for review and approval. Service Alberta personnel will review your submission.

## **Step 7: Certificate of Incorporation**

If the requirements are met, your request will be processed and the Director of Cooperatives will issue a Certificate of Incorporation under the Cooperatives Act.

## **Step 8: Bylaws**

Within 180 days of the issuance of the Certificate of Incorporation, the directors must hold a members' meeting to determine and adopt the bylaws. The bylaws come into force the day they are made, or any later date specified in the bylaws or in the resolutions adopting them. Bylaws must be filed within 60 days of the date they come into force. They must be signed by the directors and must have an attached Affidavit of Execution verifying the signatures. Every member and investment shareholder is entitled to receive a copy of the cooperative's bylaws free of charge once a calendar year.

# **Private Act of the Legislature**

Some non-profit organizations are incorporated under a private Act which has been tailor made for a major organization which needs special provincial legislation. Examples of this are Agricultural Societies which are regulated by the Agricultural Societies Act and public libraries which are regulated by the Libraries Act. This procedure is rather complex and usually involves lawyers.

# CHARITABLE ORGANIZATIONS AND CHARITIES

## ALBERTA: Charitable Organization

### Registering as a Charitable Organization with Service Alberta

Service Alberta oversees and enforces legislation and regulations that set standards for charitable organizations and professional fundraisers, provides legal authority for non-profit societies to incorporate and helps protect the public from fraudulent, misleading or confusing solicitations.

### How is this different from registering a charity with Canada Revenue Agency?

Being registered as a charitable organization in Alberta means that you are registered under the Charitable Fundraising Act. This registration should not be confused with being a registered charity with the Canada Revenue Agency. It does provide a charitable registration number, but does *not* allow you to write charitable donation tax receipts. Charitable status for tax purposes is only granted by the Canada Revenue Agency (CRA) as explained on the following page.

### Who must be registered?

A charitable organization must be registered under the Charitable Fundraising Act if:

- It uses a fundraising business.
- It intends to raise more than \$25,000 in gross contributions in its financial year from solicitations (requests for contributions) to individuals in Alberta.
- During or after a campaign it finds it has raised more than \$25,000 (if so, the charity must register within 45 days after the contributions reach \$25,000).

The Act applies to any incorporated or unincorporated organization that is formed for a charitable purpose, even if the organization is incorporated under the Societies Act or registered as a charity with Canada Revenue Agency. It also applies to any person asking for contributions for a charitable purpose or charitable organization, even if that person is not connected to any charitable organization. A charitable purpose includes any philanthropic, benevolent, educational, health, humane, recreational, religious, cultural or artistic purpose.

### Who does not need to be registered?

- A charity asking for contributions from its members or their immediate families.
- A charity asking for goods (e.g. furniture for an office, not for resale) or services (e.g. volunteers) that it will use for its administration or other non-charitable purpose.
- A charity raising funds through raffles, pull tickets, bingos or casinos (they would need to contact Alberta Gaming and Liquor Commission for licensing information).

### How to register

To register a charitable organization you must do the following:

#### Step 1: Complete an application form

Complete the application form, which can be found from the Service Alberta website.



## **Step 2: Develop Solicitation Materials**

All charitable organizations registering for the first time must submit copies of their solicitation materials and any telemarketing scripts that will be used to solicit donations. These will be reviewed to make sure the information meets the Act's disclosure requirements.

## **Step 3: Submit all documents for approval**

Send the documents to Service Alberta for review and approval. A \$60 registration fee which is for a one year registration effective the date it is issued.

## **Step 4: Annual Renewal**

Registration takes effect the date it is issued. The department will send you a renewal notice, the appropriate forms and instructions before your registration expires. You must tell Service Alberta if your organization's address changes.

# **CANADA: Registered Charity**

## **What is a Registered Charity?**

A registered charity is an organization established and operated for charitable purposes, and must devote its resources to charitable activities. The charity must be resident in Canada, and cannot use its income to benefit its members (Canada Revenue Agency, 2015). A charity also has to meet a public benefit test. To qualify under this test, an organization must show that:

- its activities and purposes provide a tangible benefit to the public;
- those people who are eligible for benefits are either the public as a whole, or a significant section of it, in that they are not a restricted group or one where members share a private connection, such as social clubs or professional associations with specific membership;
- the charity's activities must be legal and must not be contrary to public policy.

For an organization to be registered, its purposes have to fall within one of the following categories:

- The relief of poverty
- The advancement of education
- The advancement of religion
- Certain other purposes that benefit the community in a way the courts have said is charitable (note: not all purposes that benefit the public or are worthwhile are considered charitable by the courts so not all non-profit organizations are eligible)

There are three types of charities identified by the Income Tax Act:

- Charitable Organization
- Public Foundation
- Private Foundation

## **Registering a charity with Canada Revenue Agency for income tax purposes**

The CRA regulates charities registered under the Income Tax Act in Canada. Through the Charities Directorate, the agency registers qualifying organizations as charities, gives technical advice on operating a charity, and handles audit and compliance activities. Organizations that are charities and that meet other requirements of the Income Tax Act can be designated as *registered* charities with Canada Revenue Agency. A registered charity receives a registration number and is entitled to issue tax receipts. Not all charities or charitable organizations are registered charities with Canada Revenue Agency.

Every registered charity must be established by a governing document, such as articles of incorporation, letters patent, trust deeds or constitutions. The type of documentation needed for registration depends on whether the organization's designation is a charitable organization, public foundation or private foundation. An organization's governing documents must accompany its application for charitable registration.

### **Why register as a charity with Canada Revenue Agency?**

The primary advantages to being a registered charity are:

- The organization may issue official tax receipts for gifts it receives from individuals and corporate donors.
- Once a charity is registered, it is exempt from paying income tax under Part I of the Act.
- The registered charity is eligible to receive a GST/HST exemption.
- The charity is eligible to receive gifts from other registered charities, such as foundations.
- A registered charity has increased credibility in the community.

### **What are the obligations of a registered charity?**

Once an organization is registered with CRA as a charity, it must:

- Devote its resources to charitable purposes and activities according to the 80% 'disbursement quota'.
- File its annual Form T3010, Registered Charity Information Return, within six months of the charity's fiscal period end and continue to meet the other requirements of the Act.
- Maintain adequate books and records and make them available for audit upon request.
- Follow the requirements of the Act when issuing official donation receipts.
- Keep the Charities Directorate updated on changes to the organization (e.g. name, address, purposes).

### **What should an organization know when it seeks to incorporate under the laws of Alberta?**

It is recommended that organizations forming a society in Alberta *not* use the listed purposes provided on the Application to Form a Society if they intend to apply for registration as a charity with CRA. Some of the purposes that are listed are analogous to those which the courts have determined are *not* charitable, while others are simply too vague and broad to clearly identify any recognized charitable aim. Instead, the organization should provide a clear list of its own purposes in the application.

### **How to register**

For information on how to become a registered charity with the CRA, follow the instructions

provided on this CRA website: <http://www.cra-arc.gc.ca/E/pub/tg/t4063/t4063-e.html>

### Note on Political Activities

The amount of resources a charity can allocate on political activities in a year is determined by its annual income for the previous year. Organizations with annual incomes:

- **below \$50,000** can devote up to 20% of their resources to political activities in the current year.
- **between \$50,000 and \$100,000** can devote up to 15% of their resources to political activities.
- **between \$100,000 and \$200,000** can devote up to 12% of their resources to political activities.
- **Above \$200,000** can devote up to 10% of their resources to political activities.

For more information: <http://blog.imaginecanada.ca/2012/01/31/the-role-of-canadas-charities-in-public-policy-and-advocacy/>

### Creative Structuring

It is possible to have a registered charity or foundation that interacts with an unincorporated, for-profit incorporated, or nonprofit organization. Often this is done to enable social enterprise, or to separate out an organization's political activities.

#### Examples

- Free the Children/Me to We: <http://www.theglobeandmail.com/news/national/marc-and-craig-kielburgers-do-gooding-social-enterprise/article4389008/?page=all>
- Tides Canada: <http://tidescanada.org/about-us/financials/>
- Pembina Institute / Foundation: <https://www.pembina.org/donate>

# Alternatives to Incorporation

## Looking before you leap

Have an idea for a non-profit organization or initiative? You DO NOT have to move immediately to incorporate. Take a breath and consider:

### 1) Building on what exists

- a) Join an existing effort
- b) Pitch a special project to an existing non-profit or funder
- c) Start a local chapter of a local, regional or national organization

### 2) Doing it yourself

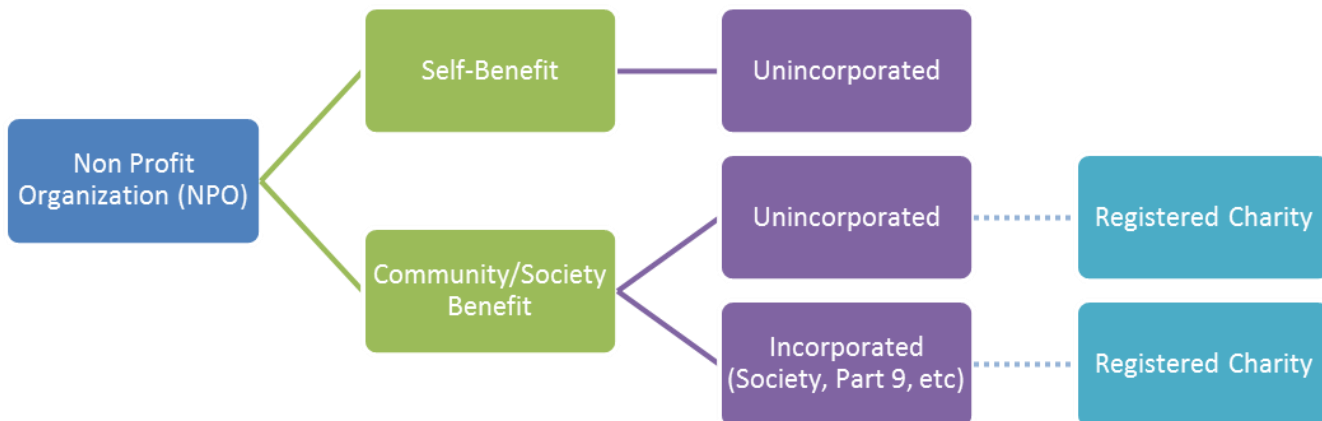
- a) Create a new non-profit organization
- b) Develop a collaborative group
  - i. Coalition, partnership, community of practice, etc.
  - ii. Fiscal sponsorship

\*in either instance (1 or 2), you can choose to incorporate or not.

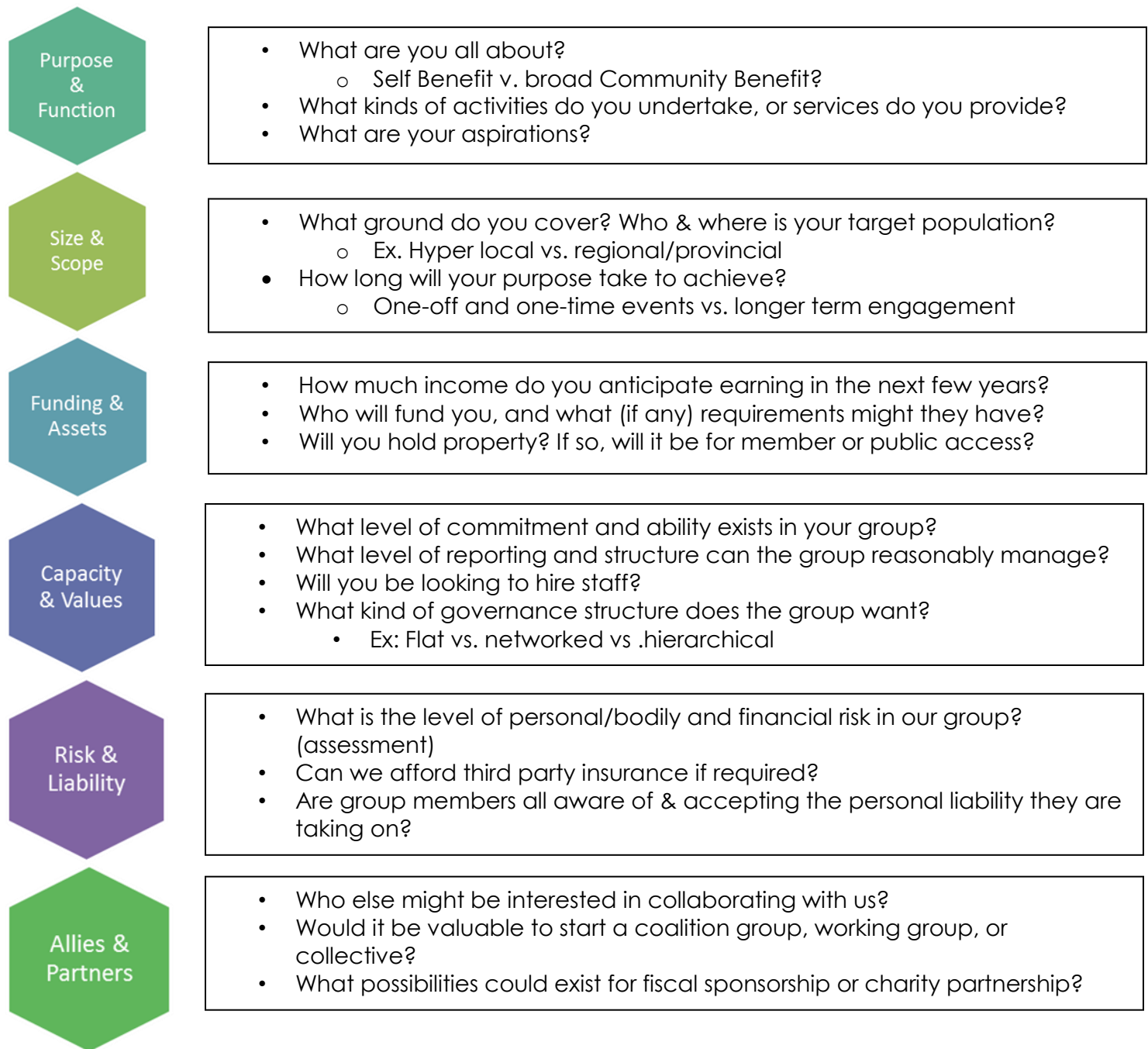
For a good primer to help navigate the question of whether or not to incorporate, see:

- <http://www.carters.ca/pub/seminar/charity/2010/rmp1213.pdf>

## Non-Profit Tree of Life



## Unincorporated Associations



### Additional Notes

#### Funding & Assets

Unincorporated non-profit associations are tax exempt – as long as they maintain a 'reasonable' level of reserve in their bank account. You must register with the CRA if you have over \$200,000 in assets. Unincorporated groups can still take out loans, though the risk is higher and will remain with the individual members.



Unincorporated associations are not legally recognized as a landlord or tenant; they can't pass title lease or endorsement as an *entity*. The title or lease must be signed by all members. If the property is for general public use, the risk is much higher and incorporation should be considered (or a hefty insurance policy!).

See:

- <http://www.carters.ca/pub/seminar/chrchlaw/ott/11/kjc0216.pdf>

### Risk & Liability

- Main difference between incorporated and unincorporated organizations is that the latter lack the liability protections that incorporation affords the officers and members of the former
- Debts or other liabilities can generally be met out of the assets of the organization
- If this isn't possible, individuals are on the hook

#### Other Risk Management Strategies

As discussed in more detail in Chapter 7, there are many different ways that groups of all types and sizes can minimize their liability risks. Be sure to consider these simple, effective strategies:

- **Adapt your activities.** If your group identifies a specific activity that exposes the group and its members to risk, consider changing that activity or eliminating it altogether.
- **Use signed waivers.** When appropriate, get participants to sign waivers releasing the group from liability.
- **Find an umbrella group.** If an umbrella group exists for your type of organization, operating under it can help minimize your liability exposure. For example, sports teams typically play in leagues or enter tournaments sponsored by umbrella groups, which often allow and may require every participant to sign up for the group's insurance plan.

See:

- <http://www.carters.ca/pub/book/2002/LCNPOch2.pdf> pages 40, 48
- <https://books.google.ca/books?id=1wAdCAAAQBAJ&q=unincorporated#v=snippet&q=unincorporated&f=false>

### Shared Platforms, 'Fiscal Sponsorship', Charitable Venture Organizations

- Lack standard term and definition in Canada
- CRA allows Canadian charities to use 'intermediaries' who are not registered charities
- Can lead to better impact, reduced admin burdens, more access to funding, credibility

## Links

NUANS Searches: [www.nuans-canada.ca](http://www.nuans-canada.ca)

Service Alberta: [www.servicealberta.gov.ab.ca](http://www.servicealberta.gov.ab.ca)

Canada Revenue Agency: [www.cra-arc.gc.ca](http://www.cra-arc.gc.ca)

Corporations Canada: [www.corporationscanada.ic.gc.ca](http://www.corporationscanada.ic.gc.ca)

Societies: <https://www.servicealberta.ca/716.cfm>

Non-Profit Company or Part 9 Company: <https://www.servicealberta.ca/714.cfm>

Not-for-Profit Corporations: [http://corporationscanada.ic.gc.ca/eic/site/cd-dgc.nsf/eng/h\\_cs04953.html](http://corporationscanada.ic.gc.ca/eic/site/cd-dgc.nsf/eng/h_cs04953.html)

Extra-provincial Cooperatives: <https://www.servicealberta.ca/713.cfm>

Cooperatives: <https://www.servicealberta.ca/1041.cfm>

Religious Societies: <https://www.servicealberta.ca/715.cfm>

Charitable Organization: <http://www.servicealberta.gov.ab.ca/661.cfm>

Registered Charities: <http://www.cra-arc.gc.ca/E/pub/tg/t4063/README.html>

## Sources

In addition to the above websites, information for the development of this resource was obtained from:

"tides canada initiatives society: charitable venture organizations: a new infrastructure model for canadian registered charities": <http://thephilanthropist.ca/original-pdfs/Philanthropist-23-2-408.pdf>

United Way publication on Fiscal Sponsorship in Calgary:  
<http://www.calgaryunitedway.org/main/images/Research/Neighbourhood%20Strategy/Work-In-Progress-2-Fiscal-Sponsorship.pdf>

Alberta Community Development and The Muttart Foundation. Drafting and Revising Bylaws for Not-for-profit Organizations in Alberta. Edmonton, Alberta, 2009 (Revised Edition).

Grant MacEwan College and the Government of Alberta Board Development Program. Resources on Boards in the Not-for-Profit Sector. Edmonton, Alberta, 2006.

Province of Alberta, Societies Act, 1996

Resource Centre for Voluntary Organizations (RCVO). How to Incorporate as a Non-profit Organization, 2006.