

Should We Incorporate?



Community groups often consider, or are encouraged to obtain, legal status for their organization as a **non-profit society**.¹ One can operate legally without being incorporated but, with formal legal status, come both advantages and responsibilities.

Incorporation is a big step for most groups. Unless you are told that being incorporated is a requirement for funding, before proceeding down this road you should answer the following questions:

- We are very clear about our mission and the kinds of things we want to do.** Yes No
- The work we do is of ongoing value to the community, the organization is in this for the “long haul”** Yes No
- We will likely be managing funds, possibly hiring staff and renting office space.** Yes No
- We may actively fund raise by soliciting donations, asking for membership fees or organizing special events** Yes No
- We want to be recognized by others as “legitimate” which will mean adopting a formal structure** Yes No

If you answered **NO** to any of these questions your group may want to consider one of the alternatives to incorporation indicated in the following pages. If you answered **YES** to all, your group will benefit from incorporation.

¹ In Nova Scotia most non-profit or not-for-profit organizations are incorporated under the Societies Act. The term society or association is typically part of their legal name. Some organizations are incorporated federally, others provincially under the Co-operative Associations Act or by a special act of the legislature.

Advantages to Incorporating a Non-Profit Organization

1. Accepting government grants

Governments often require that organization applying for and receiving grants be incorporated before any monies will be transferred. The alternatives to incorporation (below) may address some funders' concerns.

2. Limitation on personal liability

Individual members are legally protected from having to pay any of the liabilities or debts that the organization may incur. There are some limits on the extent of this protection and many organizations purchase both organizational liability insurance and directors liability insurance.

3. Public record

Incorporating makes the organization "public" so that any citizen can find out the purposes of the society and who is involved as directors.

4. Formalization of rules

Incorporation requires the formalization of objectives (Memorandum of Association) and the determination of certain structures and rules (By-Laws) as to how the organization will govern itself (e.g. officers, conduct meetings, hold elections) and be accountable.

5. Protection of name

Incorporation protects the organization's name from use by others.

Charitable Status

Incorporating as a non-profit organization does not give an organization the right to issue receipts that may be used by donors for income tax exemptions. If this is of interest, following incorporation, application must be made to Canada Customs and Revenue Agency (CCRA) for registration as a "charity". The criteria may disqualify some groups and the process for approval can be time consuming.²

Responsibilities of Incorporating a Non-Profit Organization

1. Responsibility of a "public" organization

Once you incorporate you have an increased moral obligation to operate in a visible and ethical manner. You need to take seriously the need to hold yourselves accountable to the wider community, to the public.

² The CCRA provides forms relating to charities through its Web site at www.ccra-adrc.gc.ca/charities. It also provides toll-free nation-wide telephone enquiry service at 1-800-267-2384. .

2. Requirement to operate according to formal rules

Incorporating obliges you to follow certain formal rules including the creation of a Board of Directors and by-laws, the taking of minutes of meetings, advertising and holding an Annual General Meeting and abiding by a number of specific meeting procedures. You also have to keep your incorporation “current” by annually submitting several documents to the provincial government including notification of changes to your By-Laws and Board of Directors.³

3. Learning how to manage

Incorporation almost always means learning how to manage money and people, something most volunteer-led groups find their greatest challenge. Incorporating an organization requires those involved to work with formal financial statements.

4. Being clear about the role of the “Board of Directors”

Incorporation means creating a hierarchy of responsibility. A volunteer board of directors is legally “in charge” of what happens. Although they are themselves accountable to a broader constituency, they are legally responsible for directing staff and/or program volunteers.

5. Making a commitment to accountability

Incorporation means accepting the responsibility of meeting a high standard of accountability to your members and/or the wider community for meeting organizational objectives and using financial and human resources appropriately.

Some Alternatives to Incorporation

1. Obtain an organizational partner

Community groups, especially those with a project orientation, should consider “partnering” as an alternative to incorporation. This means finding an existing organization with similar interests to join with you in carrying out the project. They may help you meet the funding qualifications and can give your group some credibility. A partner might be able to contribute some of its own resources (e.g. staff time) and assume some of the administrative responsibilities of the project. While this can mean some loss of some independence, having an existing organization look after project accounting and payroll can be a great advantage.

If you are choosing a partner that is a registered non-profit organization, you will want to ensure that they have a good management record and the capacity to take on additional administrative burden. A municipal government, school board, community college or other “established”

³ Information on what is involved in incorporation in Nova Scotia, including sample by-laws, are available from the Nova Scotia Registry of Joint Stock Companies at www.gov.ns.ca/snsmr/rjsc.

institution can also be good choices as a partner. Typically they have good administrative systems in place.

2. Hand the project off to an existing organization.

If you have done a lot of the groundwork you could hand the project off to an existing organization and stay involved for a short while as an advisory committee.

Some Questions and Answers

Q: Do we need a lawyer to assist us in incorporating?

A: You should not need a lawyer. The process for incorporating as a non-profit organization in Nova Scotia is relatively straightforward, the services of the Registry of Joint Stocks Companies, helpful. You may however want to contact another organization to meet with you to explain particular details. You will likely want to consult a lawyer when applying to the Federal Government for status as a charity.

Q. What does incorporation cost?

A: Currently, the initial or first time incorporation fee in Nova Scotia is \$35.00. It is \$25 a year thereafter to keep your registration current.

Q: Does being “non-profit” mean that we cannot make a profit?

A: No. A non-profit organization may operate with a “surplus” that is, with revenues exceeding expenditures, which result in some money left over at the end of a year. Unless unspent monies have to be returned to a funder, a surplus must be reinvested in the organization. Surpluses cannot be distributed to directors or paid to members as “dividends”.

Q: Should members of the board of directors receive financial compensation for their time?

A: No. Although the Society’s Act does not prohibit non-profit organizations from paying members of the board for their time, ethically this is not consistent with the community’s understanding of what it means to be a non-profit organization and part of the “voluntary sector”. Board members should be volunteers. It is acceptable for directors to be reimbursed for modest expenses they incur in performing their duties such a travel costs to attend meetings. The practice of reimbursing board members should be outlined in a board policy.

Q: What about the requirement that we have members?

A: Under the Nova Scotia Societies Act an association must have members. They are your legal “owners”. They may be a well-defined group who pay membership fees or dues for which they receive services or benefits. Alternatively they may be generally identified group as such as a particular constituency or the residents of a neighbourhood. Some associations have both kinds of members, representing both formal and “moral” owners. Many organizations include the broader community in the latter category. It is your members to whom your association is most accountable.

Q: I have a terrific idea for an institute or centre that I want to set up that will be of benefit to the community. Should I incorporate it as a company or as a non-profit?

A: *If this is your idea and you want to maintain close control of it as the executive director or owner you should probably incorporate it as a company. A non-profit organization may be able to get funding that you cannot get as an entrepreneur, but it requires a truly governing board of “independent” volunteers to whom you as the Executive Director would be accountable.*

Q. What about incorporating as a co-operative? Are there major differences with the Societies Act?

A. *There are significant differences, the principal ones being that co-operatives are permitted to operate as businesses for the benefit of their members, issue shares and distribute profits. There are some groups that have incorporated as “non-profit” cooperatives in order to emphasize their practice of operating for the benefit of a small number of “owner-members” frequently those being organizations themselves. Most however engage in some sort of “trade” activity. More information on incorporating as a co-operative in Nova Scotia can be found at:*

- <http://www.gov.ns.ca/snsmr/coop/>