



Flow Chart to Incorporate A Not-for-Profit Organization

This paper is geared to not-for-profit lake associations which are considering incorporation. The following information is intended as a general guide only for the do-it-yourselfer, or those who wish to share some duties with a lawyer. For legal advice, consult legal counsel.

The legislation governing not-for-profit corporations in Ontario is the Corporations Act, specifically Part III, sections 117-133 and Part VII, sections 272-334. You can obtain a copy of the Corporations Act and its regulations from the Ontario Government Bookstore, 880 Bay Street, Toronto, Ontario, M7A 1N8. Telephone 416-326-5300 or 1-800-668-9938, different from Summary of Mechanics page 1. The Corporations Act may also be available in the reference department of your local public library. The Corporations Act is available on the Internet at www.e-laws.gov.on.ca. (Click on statutes and associate regulations. An alphabetical listing should appear. Click on "C" for the Corporations Act). Furthermore, the Ministry of Attorney General's publication, Not-for-Profit Incorporator's Handbook, available from the above noted bookstore, or the internet at www.attorneygeneral.jus.gov.on.ca/english/family/pgt/nfpinc/, provides the lay person with some information on the nature of the not-for-profit corporation and guidelines on how to incorporate. On the Home Page, www.e-laws.gov.on.ca/home_E.asp?lang=en, click on "How to Order" for addresses, telephone numbers and costs of the various publications referred to in this document.

The first major steps you will need to take are making the decisions as to whether or not to incorporate your organization and whether now is a good time to do it.

STEPS IN DECISION-MAKING:

Step #1 – Making the Decision to Incorporate

Here are some other pros and cons to consider:

| The pros | The cons |
|--|---|
| Limits personal liability - Individual members of the corporation are exempt from personal liability for the corporations debts and liabilities. | Initial costs-\$250.00 DIY - \$1500.00 Legal |
| Reserves your organization's name | Increased reporting requirements |
| Easier to obtain funding, bank loans | Substantial volunteer hours |
| Insurances more readily available | |
| Organization can own property | |
| Can make legal binding decisions | |

Step #2 – Making Decision regarding Timing of the Process

This decision rests mainly on the following:

- a) Volunteer hours available. Take into account the amount of help you will have available. For instance, the Corporations Act requires that your association have a constitution and associated by-laws. Developing this document and finalizing it with your association is a lengthy process (see Step #1 in the Process section below).
- b) Funds available: Another important aspect of your decision-making is deciding on whether you will do your own incorporation, hire a lawyer to do it for you or share the work with a lawyer. This relates entirely to costs. A lawyer will charge approximately \$1,500.00. When you do it yourself, you will need \$250.00 - \$500.00 Here is a simple breakdown of costs.

| Item | Cost |
|--|----------|
| The Corporations Act and Regulations if not downloaded | \$36.00 |
| Not-for-Profit Incorporator's Handbook if not downloaded | \$8.00 |
| Nuans Search | \$50.00 |
| Application Fee | \$155.00 |
| Total | \$249.00 |

The hardest part is creating your constitution and by-laws. The rest of the application is straight forward.

STEPS IN THE PROCESS OF INCORPORATING:

Step #1.

You will need a constitution that has been ratified by members of your organization. It is essential that this be finished before you start your incorporation process. Bourinot's Rules of Order, 4th edition by Geoffrey Stanford, available through your public library or local bookstore, is a good resource publication. Page 70 contains a typical form of a constitution. You might also reference the constitution and by-laws of other lake or not-for-profit associations which should be more than willing to provide you with a copy. Just cut and paste to fit the needs of your association. As well, though, whoever volunteers to develop the original draft of the constitution should read Parts III and VII of the Corporations Act to ensure that the constitution and by-laws drafted contain reference to the items required. For example, the by-laws need to outline the number of directors on your board. S. 283 (2): The board of directors of a corporation shall consist of a fixed number of directors not fewer than three. S. 285.(1): A corporation may by special resolution increase or decrease the number of its directors. If you already have a constitution, someone will need to review it to ensure that it contains reference to all the required items. This preliminary process in itself is time consuming to develop and have ratified by your members.

Step #2.

If you decide to do it yourself, obtain an Application for Incorporation of a Corporation without Share Capital - Form 2 Corporations Act from the Ontario Ministry of Consumer and Business Services, Companies and Personal Property Security Branch, 393 University Avenue, Suite 200, Toronto ON M5G 2M2 or download it from the Internet in PDF format at - www.cbs.gov.on.ca/mcbs/english/5GFN7G.htm. Click on Company Forms; Click on Corporations Act; Click on Form 2 Application. (You can print these forms but you cannot save them). This application when accepted will constitute the charter of the corporation, known as "Letters Patent".

Step #3.

You will need to establish a corporate name that reflects the objects of the corporation which are not for profit. Because your group's name needs to be unique, decide on several names for your organization. When your list of corporate names has been established, do a pre-search of these names by applying for a NUANS (newly updated automated name search) report from a private search house. (Check the yellow pages for "Searchers of Records" or the Internet for "NUANS Reports"). If the name you have chosen is acceptable, you will receive a report stating that the name you have chosen will be protected for 90 days. Do not, therefore, start this process until you are within 90 days of approving your constitution and by-laws. 90 days should be sufficient time to allow you to complete the other steps in the process and have your application approved. Should your process exceed 90 days, you will have to re-apply for a NUANS Report.

Step #4.

Submit your completed Application for Incorporation, the original copy of the NUANS report, a covering letter and your application fee (at present, \$155.00) to the Ministry of Consumer and Business Services, Companies and Personal Property Security Branch (address above). In about six weeks, if everything is in order, you should receive your Letters Patent bearing your Ontario Corporation Number.

Step #5.

Shortly after receiving your Letters Patent, you will receive in the mail, Form 1 - Initial Return, from the Ministry of Consumer and Business Services. This report requires detailed information about the directors on your board and must be returned to the Ministry within 60 days. It seems unusual but for the purposes of Form 1, the election date of your Directors/Officers is the date your organization was incorporated even though your Directors/Officers may have been elected prior to this date. On subsequent submissions of Form 1 any new Directors/Officers will show the actual date elected. Near the anniversary date of your incorporation, the MCBS will mail you an Annual Return form to be completed and returned to them within 90 days of your incorporation date/anniversary.

Step #6.

Following your incorporation, in about 60 days, you should receive a letter from Canada Customs and Revenue advising that it has opened a corporate income tax account on your behalf and has assigned you a "business number". Accompanying the letter will be a "request for information" form, requesting similar information filed with the MCBS, which you must complete and return, and a pamphlet which provides details about registering.

Step #7.

Within 18 months of incorporation, an organization is required to hold an annual general meeting, with subsequent AGM's taking place within 15 months. In the meantime, an organization must keep accurate accounting records, minutes and membership information.

If changes are made to the information initially provided, such as directors' names and addresses, it is required that a Form 1 be sent, noting the new information, within 15 days. This can be done in hard copy or over the internet by accessing www.oncorp.com or www.cyberbahn.ca for a fee.

Step #8.

Even though your corporation does not have to pay income tax, an income tax return on Form T2, Corporation Income Tax Return, must be filed within six months of your organization's fiscal year and every year thereafter. Form T2 is a multi page return that requires basic information and a financial statement for your fiscal year. If required, contact the tax service office in your area for further information.

Publications you can download from the Internet for more detail:

www.e-laws.gov.on.ca - The Corporations Act
The Corporations Information Act of Ontario
The Corporations Tax Act of Ontario
Not-for-Profit Incorporator's Handbook

www.foca.on.ca - Non-profit Association's Do-it-Yourself Incorporation
Incorporation - Pros and Cons
Summary of the Mechanics of Incorporation and Fees
Steps to Incorporation for Not-for-Profit Organization in Ontario.