

GUIDE TO LAW FOR NON-PROFIT ORGANIZATIONS IN NOVA SCOTIA



LEGAL INFO 
NOVA SCOTIA

ABOUT THIS GUIDE

This Guide provides a basic overview of the legalities of establishing and operating a **not-for-profit/non-profit** in Nova Scotia. This publication is a guide only and should not replace advice from trusted advisors.

Navigating the legal landscape of **not-for-profits** can be complicated and overwhelming. We hope this Guide will reduce the mystery and confusion around non-profit law and help individuals better understand the legal requirements that apply to their situation.

This Guide focuses on Nova Scotia **non-profits**, but also touches on federal **not-for-profits** and the process of incorporating under federal law.

This Guide covers the following:

1. What is a non-profit?
2. What are the different types of non-profits?
3. How does a group incorporate a non-profit under provincial law?
4. How does an organization incorporate a non-profit under federal law?
5. How does an organization register a charity?
6. Operating your non-profit after incorporation

NOTE

Terms bolded in **BOLD BLUE** throughout this Guide are defined in the “What do the words mean?” section at the end of this publication.

ACKNOWLEDGMENTS

2020 EDITION

Writing: Jacqueline R. Ruck, BOYNECLARKE LLP

Editing: Wendy Turner, Legal Information Society of Nova Scotia

Graphic Design: Lisa Neily Graphic Design

Support for the 2004 of this guide was provided in part by Environment Canada. Additional support for 2007 updates to the Guide was provided by the CRA Charities Directorate. The Legal Information Society of Nova Scotia thanks Gilles Deveau, Barrister and Solicitor, for legal advice relating to the 2004 edition of this guide.

This publication contains general legal information only and is not intended to serve as a replacement for professional legal or other advice.

© 2004 & 2007 & 2020 Legal Information Society of Nova Scotia

ISBN 0-88648-414-6

CONTENTS

WHAT IS A NON-PROFIT?	6
INCORPORATING A NON-PROFIT UNDER NOVA SCOTIA LAW	10
NOVA SCOTIA SOCIETY	11
MINUTE BOOK	22
POWERS OF A NON-PROFIT	23
AMALGAMATION AND CONTINUANCE	24
DISSOLUTION OF A NON-PROFIT	24
FEDERAL INCORPORATION	26
CHARITABLE NON-PROFIT ORGANIZATION.	31
OPERATING A NON-PROFIT	40
EMPLOYMENT LAW	45
VICARIOUS LIABILITY	52
PRIVACY POLICIES	55
CONCLUSION	56
WHAT DO THE WORDS MEAN?	57
FURTHER INFORMATION.	59

WHAT IS A NON-PROFIT?

The [Government of Canada](#) defines a **non-profit organization** (“**NPO**”) as a club, society, or association organized and operated solely for social welfare, civil improvement, pleasure or recreation, or any other **purpose** except profit.

The Nova Scotia **Societies Act**, at section 3(1) says:

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

Essentially, a non-profit is not established for profit, like a traditional company, but rather for the public good. This is a very important distinction which becomes even more crucial when determining whether a non-profit may become a registered charity in Canada.

TYPES OF NOT-FOR-PROFITS

Not all **NPOs** are the same and any group wanting to establish a non-profit should determine what type of organization will best suit the group’s specific needs.

We will look at the following three types of NPOs:

- Unincorporated Non-Profit;
- Incorporated Non-Profit; and
- Charitable Non-Profit.

UNINCORPORATED NON-PROFIT

A non-profit that is not incorporated is often referred to as an informal non-profit. Often there are no written rules to be followed, nor is there a formal membership. There are no board members or officers. Rather, this kind of organization is usually the result of a group of like-minded individuals who have aligned themselves to achieve a very specific, sometimes short-term, goal.

The following scenario is an example of an unincorporated non-profit:

Julie wants to run in an upcoming marathon to raise money to find a cure for leukemia, in honour of her friend, Suzie, who is battling cancer. Julie's friends, supportive of the initiative, agree to run with Julie and raise money to help the cause. Julie and her friends meet weekly and begin training. They call themselves "Suzie's Warriors". In total, they raise over \$3000. Funds raised are donated to the Leukemia & Lymphoma Society.

Following the race, although the friends run together occasionally, they no longer have weekly training sessions and they stop fundraising aggressively as they had done in the lead up to the race.

In this scenario, Julie and her friends have a specific goal – to raise money in order to help find a cure for leukemia. To accomplish this goal, they form a running club, to support one another as they train to run a marathon and raise money for cancer research.

There is no need to incorporate in this scenario as it was a short-term goal with little to no formalities required. The club did not employ anyone, nor did they have volunteers. When the race was over, Julie and her friends abandoned the running club and stopped training as a group.

INCORPORATED NON-PROFIT

An incorporated **non-profit** is more formal, and this kind of **NPO** must get government approval to incorporate. Once incorporated, the **NPO** is a legal entity. An incorporated **NPO** must have members, directors, and officers and there are specific rules to be followed for each of these parties. This type of **NPO** is regulated by applicable legislation and **governing documents**. Directors must make sure the **NPO** upholds all rules to which they are bound.

The following scenario is an example of an organization that should incorporate:

Samantha and Matthew are passionate runners from Dartmouth, Nova Scotia. They travel from city to city across Canada competing in different races, always with the goal of raising money for various causes. The pair decided to establish a race weekend in Dartmouth, Nova Scotia called the “Dartmouth Race Weekend” with various races occurring on a Saturday and Sunday in the spring. The **purpose** of the race will be not only to empower runners and walkers as they achieve their own personal physical goals, but also raise money for various causes in the community. It will be a big challenge to plan an event of this size, but Samantha and Matthew are for up for the task.

Samantha and Matthew should consider incorporation because:

- A significant amount of money will be raised to benefit charities in the community;
- There is always the possibility for injury when participating in a race. Samantha and Matthew are concerned about personal liability and want to protect themselves;
- The Dartmouth Race Weekend is intended to be an annual event which will hopefully grow year to year; and
- Samantha and Matthew will need lots of help to pull this off, including help from many volunteers and a couple employees.

For the above reasons, Samantha and Matthew are ideal candidates for incorporation.

REGISTERED CHARITY NON-PROFIT

Many **NPOs** apply to become a registered charity under the Income Tax Act, R.S.C., 1985.

The following scenario is an example of a non-profit that should consider becoming a registered charity:

Jack and Charlie founded an **NPO** to support families taking care of cancer patients called “Family Support Society” or “FSS”. FSS offers support groups for family members caring for loved ones. They also organize fun events for family members in an effort to relieve some of their stress, such as movie nights, hikes, and dinners. Jack and Charlie incorporated as they were growing rapidly and needed to hire staff and volunteers.

They would like to be able to offer tax receipts to those who donate to the **NPO**. The organization is also looking to take advantage of some of the tax advantages that come with being a registered charity. Lastly, FSS want to be able to receive donations from other registered charities.

FSS should discuss charitable status with their accountant and lawyer.

INCORPORATING A NON-PROFIT UNDER NOVA SCOTIA LAW

TYPES OF INCORPORATED NON-PROFITS

There are many different types of incorporated **non-profits**. Organizations looking to incorporate should discuss their plans with a lawyer to make sure an application to incorporate is done properly and under the correct legislation. When looking to incorporate a Society, consider the following options:

1. **Specific Acts** – Some entities such as the Canadian Dental Association, the Nova Scotia Barristers’ Society, and the National Research Council of Canada must incorporate under specific legislation. Cooperative organizations are also a form of non-profit created by virtue of a statute, federal or provincial legislation.
2. **General Legislation** – The Societies’ Act or the Canada Not-For-Profit Corporations Act S.C., 2009 (“**NFP Act**”) are for more general incorporations that do not fall under other legislation as set out above.

This Guide focuses on groups formed under the **Societies’ Act** and the **NFP Act**.

NOVA SCOTIA SOCIETY

The following sets out the requirements to establish an incorporated non-profit under Nova Scotia law.

Steps to starting a non-profit in Nova Scotia

1. Define the organization's purpose
2. Choose the organization's name
3. Apply to incorporate

STEP 1: WHAT IS YOUR ORGANIZATION'S PURPOSE?

Define the Organization's Objects/Purpose

Defining an organization's **purpose** sounds like an obvious first step. However, it often proves more challenging than expected. While a general understanding of an organization's function is a great starting point, it is important to narrow the focus of an **NPO**.

Answering the following three questions will help to define the **purpose**:

1. What is the organization's overarching goal?
2. Who will benefit from the organization's work?
3. How will the organization's **purpose** be fulfilled?

What is the organization's overarching goal?

Make sure your organization's **purpose** is in line with the **Societies' Act**. You must keep the rules under that legislation in mind.

Section 3(1) of the **Societies Act** says:

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

An organization's **purpose** must fall into one of the above **purposes**. Section 3 is quite broad and allows space for many different organizations to incorporate under the **Societies Act**.

You should also consider whether the purpose meets the requirements for registering a charity under the Income Tax Act. If the organization applies to become a registered charity, even in the distant future, having **purposes** that already align the Income Tax Act requirements will save time and money down the road.

Who will benefit from the organization's purpose?

Answer this question in as much detail as possible. Knowing exactly who the organization will benefit is important. For example, an organization established to relieve poverty should narrow its focus to determine exactly who will benefit from its work. Poverty is a large problem and there are many ways in which a group could tackle this issue. An example of a narrow focus is an organization created to relieve poverty experienced by impoverished youth between ages 12-18 in the Cape Breton Regional Municipality.

How will you advance your goals?

An organization should be able to provide concrete examples of how its **purpose** will be achieved. This type of strategic planning is crucial to accomplishing the organization's goals. Continuing with the example set out above, the way an organization relieves poverty in the lives of youth ages 12-18 in Cape Breton Regional Municipality might be by operating a soup kitchen on weekdays and offering an after-school drop-in centre for youth to visit after school and enjoy a healthy snack in a comfortable environment.

STEP 2: CHOOSE A NAME

Choosing a Name

Once you have the organization's **purposes/objects** clearly established, the next step is to choose a name for the organization. The organization's chosen name must be approved by the **Registry of Joint Stock Companies** (the "**Registry**") before you can start using it. Do not order business cards, publish advertisements, create social media accounts, or sign any contracts using the organization's name until registration has been finalized.

A name must meet all of the following criteria:

- Be Unique;
- Contain a Distinctive Element;
- Contain a Descriptive Element; and
- Have a Legal Ending.

Be Unique

A name must not be confusing or misleading to the public. If "Dartmouth Area Race Association" is a pre-existing name for another organization, the name "Dartmouth Race Weekend" might not be approved as it is not unique and could easily lead to public confusion. A name should set a group apart from others and while it may share some elements with other names, it should be as unique as possible.

Contain a Distinctive Element

A name should distinguish one organization from another. The distinctive element in "Dartmouth Race Weekend Association" is "Dartmouth", as it tells the public where this race is situated and distinguishes this group from other similar organizations. It is important to note special permission might be required if an organization wants to use the name of a place (eg. Dartmouth) in their registered name.

Contain a Descriptive Element

A name should clearly communicate an organization's purpose and not leave the public guessing about what the group does. Using our example again, in the name "Dartmouth Race Weekend Association" "Race Weekend" is the descriptive element and clearly explains the purpose of this organization.

Legal Ending

Societies in Nova Scotia must have the word "Society" or "Association", or the French translation of those words, at the end of their name. To use a different ending, the applicant must seek special approval from the **Registry**.

A cooperative may use the word "Co-operative" at the end of their name.

Some organizations are permitted to use the word "Foundation" at the end of their name. To use this name, the **Registry** will require proof that the organization has at least \$50,000 at its disposal.

For more information on name reservation and registration, visit "[Guide to Choosing a Name](#)", at www.rjsc.ca, compiled by the **Registry**.

Using an Individual's Name

Often a group will want to use the name of an individual in the name of their organization. For example, Jane Smith may choose to create the "Jane Smith Animal Rescue Society".

In that situation you must give the **Registry** written consent from the person whose name will be used, to make sure they have agreed to allow their name to be used. You must always get consent from someone with that name if you want to use a last name. You do not need consent if the organization just wants to use a first name and no last name in the organization's name.

Reserving a Name

A lawyer can assist in name reservation. However, a group may choose to do this on their own. There are two steps for name reservation.

Preliminary Search

First, do a preliminary search to make sure no other company or organization is already using a name which could lead to confusion with the proposed name. Visit the **Registry's** [database search](#), and enter the proposed name to see what other names are similar.

Next, ask the **Registry** to do a preliminary search. You can ask for this by mail, by calling the **Registry**, or in person at an Access Nova Scotia Centre or the head office of the **Registry**.

If there is a conflict with your proposed name, search another name.

Nuans Search

The next step is to do a NUANS Search. NUANS is a computerized search system that compares a proposed name with existing corporate names and business names in a national database. If the preliminary search does not find a conflict with the organization's proposed name, fill out and submit a [Name Reservation Request](#) form (available from the Registry) at any Nova Scotia Access Centre, at the Registry, or apply online by visiting [acesstobusiness.snsmr.gov.ns.ca](https://www.accesstobusiness.snsmr.gov.ns.ca). There is no fee for a name reservation request for Societies in Nova Scotia.

Allow plenty of time to complete this step. Although the average wait time for name approval is 2 business days, the wait could be longer.

For more information on reserving a name, visit Service Nova Scotia's information page at novascotia.ca/sns/paal/rjs/paal261.asp

Registering a Business Name

Once the name is reserved, you can register and incorporate your society.

Once a name is reserved, it is reserved for 90 days. Applicants may apply for business name registration by completing and submitting this [form](#).

You can register your organization's name when you apply to incorporate.

STEP 3: APPLY TO INCORPORATE

Incorporation Package

If your group wants to incorporate a Nova Scotia Society you must follow the rules in section 5 of the **Societies Act**:

*Any five or more persons, desiring to incorporate a society, may make and subscribe a memorandum in the form in Schedule A, and shall transmit it, with the **by-laws** of the society agreed upon by them for the administration of the society, and the proper fees to the Registrar, together with a list of the persons appointed by the subscribers to act as first directors, stating their full names, addresses and occupations and the period for which they will so act, the address of the registered office of the society and the place where its activities will be chiefly carried on.*

Your organization's application for incorporation will be rejected by the **Registry** if you do not follow all parts of Section 5.

You must do an incorporation package that contains all of the following information and then submit the package to the **Registry**:

- Memorandum of Association
- List of First Subscribers
- Society classification
- By-laws of the society
- Directors and Officers
- Recognized Agent
- Notice of Registered Office

Memorandum of Association

A Memorandum of Association must include:

- the exact name on reserve with the **Registry**
- the **objects** or **purpose** of the Society, and
- the registered office to the Society
- a list of the 5 first subscribers to the **Memorandum of Association**.

You will find a sample **Memorandum of Association** at <https://novascotia.ca/sns/pdf/ans-rjsc-society-memorandum-of-association-for-a-non-profit-society.pdf>

Identify the First Subscribers

The **Memorandum of Association** must be signed by at least 5 individuals who are “subscribing” to the **Memorandum of Association**. These are the first five individuals who are committed to the organization’s **purpose** and support its incorporation. The **Memorandum of Association** must include the name, occupation, signature and civic address of each subscriber. These signatures must be witnessed.

Society Classification

If your organization wants to incorporate a non-profit under the **Societies Act** you must choose which classification best describes your organization’s purpose. The purpose is the very core of your organization. It is the reason your organization exists. Purpose can also be described as the **objects** of the Society or the objectives.

Options include:

1. **Culture and Recreation** – This includes media and communications, performing arts, sports, recreation and social clubs.
2. **Education and Research** – This includes higher education, medical research, science and technology, and elementary, primary and secondary education.
3. **Health** – This includes hospitals, nursing homes, mental health treatments, and crisis interventions.
4. **Social Services** – This includes child welfare, family services, refugee assistance, and services for elderly.
5. **Environment** – This includes pollution control, environmental beautification, animal protection and welfare, and natural resources conservation.
6. **Development and Housing** – This includes social development, economic development, housing assistance, community and neighbourhood organizations.
7. **Law, Advocacy and Politics** – This includes advocacy organizations, civil rights associations, legal services, and victim support.
8. **Philanthropic Intermediaries and Volunteer Promotion** – This includes grant-making foundation, fundraising organization, and volunteer promotion.
9. **International exchange/friendship/cultural programs** – This includes international disaster relief and international human rights efforts.
10. **Religion** – This includes congregations and associations of congregations.
11. **Business and Professional Associations.**

Other – If your organization has a **purpose** that will benefit the public but does not fit into one of the categories listed above, your organization should state what category would be more appropriate to define its **purpose**.

By-Laws

In order to incorporate, a **not-profit** must be governed by **By-Laws** which will be reviewed and approved by the **Registry**. The Nova Scotia Government provides sample **By-Laws** at <https://novascotia.ca/sns/pdf/ans-rjsc-society-incorporation-forms.pdf>. However, these sample **By-Laws** should not limit an organization in crafting rules and obligations that meet their specific goals and needs. A lawyer can help you develop **By-Laws**.

The **Societies Act** says **By-Laws** should include the items set out in Schedule B to the **Societies Act** and discussed below:

1. **Terms of admission of members and their rights and responsibilities** – The **Societies Act** says a **Society** must have members. **By-Laws** should set the rules about who may be a member of the **non-profit**, and how one may become a member. **By-Laws** may require members to pay an annual membership fee. **By-laws** may also state all directors will also be members.
2. **Conditions under which membership ceases and manner (if any) in which a member may be expelled.** It is not only important to state how one may become a member but also how one may be removed as a member or reasons one might cease to be a member. For example, breaching the **By-Laws** may be grounds for removing someone as a member. Death will automatically terminate membership.
3. **Mode and time of calling general and special meetings of the Society** – Societies should have members' meetings and directors' meetings, all of which should be discussed in the non-profit's **By-Laws**. The **By-Laws** should also clearly say how often meetings will happen, and how notice of meetings will be given.
4. **Number constituting a Quorum** – There must be quorum to have a meeting, whether it is a directors' meeting or a members' meeting. **Quorum** means the minimum number of members or directors who must be in attendance for a meeting to be held. The **By-Laws** should define "quorum". For example, quorum could simply be a majority of the members or directors. Or, quorum could be 2/3 of the members and directors.
5. **Rights of voting** – Becoming a member or director of a Society comes with certain rights and privileges, such as the ability to vote on certain matters. **By-Laws** should set out how votes may be cast. For example, will parties be permitted to vote by proxy when they are unable to attend? Will votes be accepted by electronic communication?
6. **Appointment and removal of directors and other officers and their duties, powers, and remuneration** – The **By-Laws** should set out who may serve as a director and how a director may be removed. **By-Laws** should also consider whether directors may delegate their powers to officers or committees. It is common for directors to delegate certain powers to an executive director, for example, who is responsible

for the day-to-day operation of the organization and may be a paid employee of the organization. The same applies to officers. Societies often have a President and Secretary or Chairperson and Treasurer. Some Societies may also choose to have a Vice-Chairperson or Vice-President. Often By-Laws include a provision indicating that directors will serve without remuneration.

7. **Exercise of borrowing powers** – It is common for non-profits to borrow funds. The By-Laws should set out the rules about what approvals must be in place before borrowing funds, and any other rules about borrowing power. For example, By-Laws could say the directors do not need consent of the members to exercise borrowing powers if the amount being borrowed is under \$10,000.
8. **Audit of accounts** – By-Laws should say how an auditor will be appointed and say that written reports will be provided to members on an annual basis providing updates about the financial well-being of the Society.
9. **The seal of the society** – Incorporated entities should buy a seal which is to be used on certain corporate documents and contracts. By-Laws should say where the seal will be kept and who is authorized to use the seal.
10. **Manner of making, altering and rescinding By-Laws** – By-Laws may be amended as a Society develops and their needs change. By-Laws should set out how they may be altered, amended or rescinded. Any change to By-Laws must get approval from the Registry before taking effect.
11. **Preparation and custody of minutes of proceedings of meetings of the Society and of the directors and other books and records of the Society** – Record every meeting amongst the members and directors of a Society. By-Laws should say who will be responsible for record keeping. By-Laws should also say where records should be kept (usually in the Society’s minute book) and how other records of the Society should be maintained.
12. **Time and place at which the books and records of the Society may be inspected by members** – Members are entitled to review the organization’s books and records. The By-Laws should provide some rules about this review.
13. **Execution of contracts, deeds, bills of exchange and the instruments and documents on behalf of the society** – An incorporated non-profit is a legal entity. It can enter into contracts, borrow money, and sign cheques in its name. By-Laws should say who may sign documents on the Society’s behalf.
14. **Members’ Meetings** – By-laws should set out the rules for members’ meetings. By-laws should discuss whether members may vote by proxy and how a proxy vote would happen. By-Laws should discuss how much notice must be provided to members before a meeting and how notice should be provided to members (letter, e-mail etc.). By-laws should also say what items will be discussed at an annual general meeting.

Notice of Directors and Officers

Using the Notice of Directors and Officers, online at <https://beta.novascotia.ca/notice-officers-and-directors-society>, applicants must list all those who will serve as directors and officers. You must include first and last name, middle initial, residential address and occupation for each director or officer. One director or officer must sign the document.

Recognized Agent

Every Society must have a recognized agent and their name and address must be filed with the **Registry**. The recognized agent must be a resident of Nova Scotia (see section 7 of the **Societies Act**). The recognized agent will receive all communication from the **Registry** and will be served papers if a lawsuit is started against the Society. As part of the incorporation package, an Appointment of Recognized Agent Form, online at <https://beta.novascotia.ca/appoint-or-change-recognized-agent-business-or-non-profit> must be filled out indicating the name of the Society, the recognized agent's first and last name, middle initial and address, and a signature of one of the directors.

Notice of Registered Office

The final piece of the incorporation package is to notify the **Registry** of the Society's registered office. Section 17 of the **Societies Act** says:

*Every society shall have a registered office in the Province to which all communication and notices may be sent and at which process may be served on the society, and shall file with the **Registry** notice of every change of situation of that office within fourteen days of the change.*

Every society must have a registered office located in Nova Scotia. Organizations must fill out the Notice of Registered Office Form, online at <https://beta.novascotia.ca/file-or-change-your-registered-office-address-incorporated-companies>, and include the name of the Society, along with the civic address, and mailing address (if different from civic), the name of an individual who can be contacted by the **Registry** and a telephone number they may be reached. This form must be completed by an officer or director.

Successful Application

If the **Registry** finds that your group's application meets all statutory requirements, your Society will get:

- a certificate of incorporation, and
- a certificate of registration for the Society's name.

Unsuccessful Application

If your application does not comply with the **Societies Act**, the Registrar will reject the application. Amendments may be made, and your group may submit an amended application - hopefully with a successful outcome.

MINUTE BOOK

Every incorporated society should have a **minute book**. A minute book should present the organization's history and should be updated continually.

What's in a minute book?

A **minute book** should include:

- **The Certificate of Incorporation** – Issued to the Society by the **Registry** on incorporation.
- **The Certificate of Registration** – Issued to the Society by the **Registry** once a name is registered.
- **Memorandum of Association** – Sets out the organization's **purpose** (also known as **objects**).
- **By-Laws** – The By-laws establish further rules to be followed by members, directors, and officers.
- **Minutes of Meetings of members** – Record of all meetings held amongst the Society's members.
- **Minutes of Meetings of directors** – Record of all meetings held amongst the directors.
- **Resolutions of Members and Directors** – Any resolution of the directors or members should be recorded in the minute book.
- **Directors' Register** – Lists the name and residential address of each director, date when they became a director and the date they stop being a director.
- **Members' Register** – Lists the name and residential address of each member, the date when they became a member and the date they stop being a member.
- **Officers Register** – Lists the name and residential address of each officer, the date when they became an officer and the date they stop being an officer.

POWERS OF A NON-PROFIT

Once a society is incorporated, it becomes a legal entity and has several powers, all of which are set out in section 10 of the **Societies Act**:

- Acquire real estate
- Lease real estate
- Sign agreements and sue or be sued in its corporate name
- Use its funds and property for the fulfillment of its objects and purposes
- Borrow, raise and secure the payment of money and, issue debentures or mortgage its real property to secure the payment of money borrowed by it, provided such actions are authorized by its by-laws
- Draw, make, accept, endorse, discount, execute, and issue promissory notes, bills of exchange and other negotiable or transferable instruments, provided such actions are in accordance with its by-laws
- Change its name or objects
- Subscribe to or become a member of any other society or association;
- Do all such other acts and things as are identical or conducive or consequential upon the exercise of its powers or the attainment of its objects.

Some powers require a **special resolution** before they can be exercised. A **special resolution** means a resolution passed by at least $\frac{3}{4}$ of the Societies' members at a general meeting. Members must get notice before the meeting.

The Registry must approve:

- any change to a society's name and/or objects
- any changes to a society's **By-Laws** (see section 13(3) of the **Societies Act**.)

AMALGAMATION AND CONTINUANCE

Amalgamation: the **Societies Act** does not allow two societies to amalgamate – that is, join together to become one society. Rather, one of the two societies must surrender its certificate of incorporation and dissolve and transfer its assets to the other.

Continuance: Continuance is not allowed under the **Societies’ Act**. For example, if a society is incorporated under Ontario law, but later wants to become a Nova Scotia society, the society must incorporate as a new entity under Nova Scotia law.

DISSOLUTION OF A NON-PROFIT

Why dissolve a non-profit?

Once a Society is incorporated, it is a legal entity with rules and obligations. Societies may choose to formally dissolve and stop being a legal entity. This is sometimes called “winding up”.

Here are some reasons a Society might wind-up:

- the Society met its goals and is no longer required
- loss of Board members and staff
- loss of funding and/or resources,
- inability to meet the organization’s financial or other needs, or
- the organization’s work is complete.

A Society wanting to **wind up** must prepare a **Wind up Package** to submit to the Registry, available online at <https://beta.novascotia.ca/wind-forms-societies> or directly from the Registry.

Wind up Package

If your Society wants to wind up you must prepare and submit the following documents to the **Registry**:

- Special Resolution
- Statement of Income and Expenditures
- Balance Sheet
- Petition for surrender of Certificate of Incorporation

Special Resolution

A **special resolution** of the members authorizing the dissolution of the Society. This makes sure the Society's members consent to dissolve the Society.

Statement of Income and Expenditures

This statement should include the total amount of membership fees collected, moneys collected through fundraising, as well as the cost of expenditures such as insurance and salaries.

Balance Sheet

The balance sheet should include the value of current assets and liabilities.

Petition For Surrender of Certificate of Incorporation

Non-profits must submit a petition to the **Registry** to surrender its certificate for incorporation. A petition includes the date of incorporation, a statement saying all debts and liabilities have been paid, or if not, that creditors have consented to dissolution. The original Certificate of Incorporation must also be submitted with the petition.

Once a society is wound up, it is no longer a legal entity and previous members, directors and officers should no longer act as though the Society exists.

Templates of all of the above documents are available from the Registry, and are online at <https://beta.novascotia.ca/wind-forms-societies>.

FEDERAL INCORPORATION

Some organizations may choose to incorporate a federal not-for-profit corporation under the **Canada Not-For-Profit Corporations Act** S.C., 2009. (“**NFP Act**”).

Just like incorporating provincially, organizations that want to incorporate federally must submit a number of documents to **Corporations Canada** for review and approval. To apply for federal incorporation, applicants must follow the steps set out below:

Step 1: Choose a Name

Step 2: Articles of Incorporation

Step 3: Build your By-Laws

STEP 1: CHOOSE A NAME

Similar to naming requirements for a provincial Society, the name of a federal not-for-profit must meet certain requirements. The name must be distinctive, must not cause confusion with other names or trademarks, cannot include any items which have been prohibited, must not suggest governmental or institutional sponsorship or control, must not be mis-descriptive, and must contain a mandatory term, if required.

Distinctive

A distinctive name means the name differentiates an organization from another. An example of a distinctive name is Flinn’s Animal Shelter Society. In this name, “Flinn” is the distinctive element that sets the name apart from other animal shelters.

Confusion

Avoiding confusion is a main concern when choosing a name. Names which are too similar to pre-existing names will most likely not be approved. If a name is too similar to another name, the applicant may be asked to provide additional information to justify using the proposed name. For example, you may need to elaborate about the type of work the organization will do. Identifying the geographic location where the Society will operate may also assist in getting a name reserved, and help avoid confusion.

Prohibited Items

The name must not include the following:

- “Parliament Hill” or “Colline du Parlement”
- “Royal Canadian Mounted Police”, “RCMP”, “Gendarmerie royals du Canada” or “GRC”
- “United Nations”, “UN”, “Nations Unies” or “ONU” (if that name is connected to the United Nations)
- “Cooperative”, “Co-op”, “Pool” or “Cooperative” if that name implies a cooperative venture and a cooperative is not being incorporated; or
- Anything obscene.

Governmental or Institutional Sponsorship or Control

Unless the organization gets written consent, a name should not imply that the organization:

- carries on business under royal or governmental patronage
- is sponsored by the Government of Canada, a provincial or territorial government, or a foreign government
- is connected with a university or a professional association
- carries on the business of a financial institution or intermediary, or
- carries on the business of a stock exchange.

Misdescriptive Names

A name cannot mislead the public about:

- the business, goods or services the name relates to
- conditions under which goods or services will be produced or supplied
- persons to be employed in the production or supply of the goods or services, and
- place of origin of the goods or services.

Nuans Name Search Report

Your organization should order a Nuans Name Search Report before applying to register a name. The report will show existing names and trademarks that are either the same as or similar to the proposed name. To order a report, go to <https://www.ic.gc.ca/eic/site/075.nsf/eng/home> to visit Corporations Canada’s online tool. A reservation number will be provided along with the report.

Pre-Approval

Organizations may choose to seek pre-approval of a name before incorporating. Pre-approval expires 90 days after the date you get approval. To get pre-approval, applicants must first get a Nuans Name Search Report. You can request Pre-Approval online at <https://www.ic.gc.ca/app/scr/cc/CorporationsCanada/bs/nmprvl.html?lang=eng>.

Registering A Name

When an organization is ready to incorporate, Corporations Canada requires the following information along with the organization's application for incorporation:

- Confirmation that the name meets the requirements set out above
- Nuans name search report reservation number
- Additional information about the name, like more detail about the nature of the group, and
- Any supporting documents Corporations Canada may ask for.

STEP 2: ARTICLES OF INCORPORATION

Applicants must complete [Form 4001](https://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs05260.html), available online at <https://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs05260.html> Form 4001 is the organization's **Articles of Incorporation**.

Organizations should think about the requirements to become a registered charity if they are thinking about federal incorporation. That will save time and money if the organization later decides to apply to become a registered charity.

The Articles of Incorporation must include:

- **Name** – The corporate name may be submitted in French, English, or both. The name must be distinctive, not misleading, and not confusing. Go to https://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/h_cs03922.html for more information about naming a federal entity.
- **Registered Office** – the province or territory where the registered office will be located.
- **Minimum and Maximum number of directors** – Once this number is set, the not-for-profit must not have fewer or more than the range of directors set out in the **Articles of Incorporation**.
- **Purpose** – Set out the purpose of the organization. If the organization wants to apply for charitable registration, this statement should coincide with the charitable purposes required for charitable registration.

- **Activities** – Include any restrictions on the organization’s activities.
- **Classes** – Categorize how members will be organized and set out voting rights of each class. Every organization must have at least one group of members. If there is only one group, it must be a voting group.
- **Statement regarding distribution of property remaining on liquidation** – a federal not-for-profit may choose to dissolve and give up its status as a legal entity. The articles must say how the property held by the not-for-profit should be distributed on dissolution.
- **Non-Profit Basis** – **CRA** recommends a corporation’s articles include a statement saying the corporation will operate on a non-profit basis. However, this is not a requirement.
- **Remuneration for Directors** – **CRA** recommends corporations that want to get charitable status include a statement saying directors may not be paid for acting as a director.
- **Borrowing Powers** – Based on the **NFP Act**, an organization may borrow and grant security on property without prior approval from members. Limits may be placed on these powers to provide for member consent.
- **Majority Vote** – The **NFP Act** states an ordinary resolution requires a majority of members’ consent. A **special resolution** must have 2/3 majority. These requirements may be amended in the **Articles of Incorporation**.
- **Declaration** – Articles must be signed by the incorporators (those incorporating the corporation).

To review model **Articles of Incorporation**, visit Corporations Canada website at <https://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs05016.html>

Form 4002 – Initial Registered Office

You must complete **Form 4002** and provide the address of the initial registered office of your not-for-profit. You must also provide the first and last name of the initial directors, and their addresses. Form 4002 is online at [https://www.ic.gc.ca/eic/site/cd-dgc.nsf/vwapj/FRM-4002-e.pdf/\\$file/FRM-4002-e.pdf](https://www.ic.gc.ca/eic/site/cd-dgc.nsf/vwapj/FRM-4002-e.pdf/$file/FRM-4002-e.pdf)

Fee

You must submit the incorporation fee with your application. At the time of publishing this Guide, the fee charged by **Corporations Canada** is \$200. Applicants should confirm the fee requirements at the time of incorporation.

STEP 3: BUILD YOUR BY-LAWS

By-Laws must be approved by Corporations Canada to make sure they comply with the **NFP Act**. However, By-Laws are not required at the time of incorporation. Your organization has 12 months from the date members confirm By-Laws to submit the By-Laws to Corporations Canada for approval.

Corporations Canada offers a By-Law builder for not-for-profit corporations on their website at <https://www.ic.gc.ca/eic/site/cd-dgc.nsf/frm-eng/NGRR-8AFNVX>. You can use this tool to write your organization's By-Laws but make sure you craft your By-Laws to meet your group's specific needs, so do not feel limited by By-law builder. A lawyer will be able to assist in drafting By-Laws.

By-Laws for federal NFPs should include clear details about:

1. **Membership** – Who may be a member and how members are chosen. Also important is how members are removed or when membership will end.
2. **Meetings of Members** – A general guide about how often member meetings will happen and the way meetings may be called.
3. **Voting** – Rules about how members and directors may exercise their vote.
4. **Directors** –Who may become a director and how one may become a director. Also, details about how a director may be removed or resign.
5. **Directors' Meeting** –Set out how often directors' meetings will happen, who will chair the meetings, and what notice must be provided before directors' meetings.
6. **Officers** –Identify what officers the not-for-profit will have (such as President and Secretary) and set out their roles.
7. **Amendments** – By-Laws should evolve with a non-profit's evolution. Explain how the not-for-profit may amend its By-Laws, recognizing that any changes made are subject to Corporations Canada's consent.

CHARITABLE NONPROFIT ORGANIZATION

Non-profits wanting to get charitable status must submit an application to the **Canada Revenue Agency (CRA)**. Not every non-profit is a registered charity. This designation is just for groups who meet the requirements in the Income Tax Act for charitable status.

BENEFITS OF CHARITABLE REGISTRATION

There are several advantages to becoming a registered charity. Mainly:

- An organization can issue donation receipts for gifts it receives
- A charity is exempt from paying income tax under Part I of the Income Tax Act
- Registered charities can donate gifts to other registered charities
- The public tends to trust organizations with charitable status and may be more inclined to donate
- Many goods and services your organization offers are exempt from goods and services tax/harmonized sales tax.

WHO QUALIFIES?

To be or not to be a charity?

Not every organization will be permitted to be registered as a charity. The **CRA** is a gate-keeper, admitting only those groups who meet the strict qualifications in the Income Tax Act. A group could have a noble, admirable **purpose** but not be considered “charitable” under the Income Tax Act.

Before deciding to apply for charitable status, organizations should be able to answer ‘yes’ to all three of the questions below:

1. Is your organization resident in Canada?
2. Are all of your organization’s **purposes** charitable as that term is defined in the Income Tax Act?
3. Are all of your organization’s resources dedicated to the furtherance of charitable activities?

If the answer is no to one or more of the above questions, **CRA** will not permit your organization to become a registered charity.

Charitable Purpose

If your organization wants to become a registered charity the organization must fulfill one of the charitable **purposes** listed below:

- the relief of poverty
- the advancement of education
- the advancement of religion, or
- other **purposes** that benefit the community.

The Relief of Poverty

Organizations created to relieve the difficulties of those who lack necessities such as food and water fall in this category. Interestingly, courts have found groups established to *prevent* poverty do not fall within this **purpose**. Rather, this **purpose** is reserved for those assisting individuals and groups already living in poverty (Credit Counselling Services of Atlantic Canada v Minister of National Revenue.)

Examples of activities which may fulfill this **purpose** include operating food banks, offering clothing to those in need, or assisting individuals who have lost their belongings following a natural disaster such as a hurricane or earthquake.

Advancement of Education

This **purpose** is quite broad. Activities which might be found to support this **purpose** include the establishment of a school, outreach programs aimed at educating Nova Scotians about African Nova Scotian issues, or doing research to find a cure for heart disease. Scholarships and bursaries also fall into this category.

Advancement of Religion

CRA applies a two-pronged test when determining whether a group is advancing religion:

1. The organization must be sharing its beliefs, by preaching or otherwise.
2. The members must uphold the teachings on which their faith or beliefs are based.

Examples of an organization fulfilling this **purpose** would be a group that operates a place of worship with regular gatherings for services, workshops, or musical gatherings. A religious school would also qualify.

Other Purposes Beneficial to the community

This **purpose** appears to be a bit of a catch all but is far from open-ended. If an organization is not relieving poverty, advancing religion, or advancing education, they may fall into this last category. However, to qualify, the organization must be able to clearly explain how it will benefit the community.

Examples of organizations that might fall into this category:

- an organization offering counselling to relieve loneliness for older adults
- a hotline for youth with mental health issues
- a foundation established to make donations to other “qualified donees”. The Income Tax Act defines a qualified donee as an organization that is a registered charity. For example, an organization could be created with the sole purpose of raising funds to then donate those funds to charities of its choosing.

APPLYING FOR REGISTRATION

Application

You apply for charitable status online. Applicants must first set up a “[My Business Account](#)” through the CRA and apply online at www.canada.ca/en/revenue-agency/services/charities-giving/charities/registering-charitable-qualified-donee-status/apply-become-registered-charity.html

Once your group has decided to apply for charitable status, it is a good idea to create a “[Application Checklist](#)”, which you can do online at canada.ca/en/revenue-agency/services/charities-giving/charities/registering-charitable-qualified-donee-status/apply-become-registered-charity/apply/create-application-checklist.html. Just answer a series of questions and the website will generate a checklist of items to consider before applying for charitable registration.

The Application is detailed, so you should be prepared to provide the following:

- **Name of Organization**
- **Organization’s Purpose** – the organization’s **purpose/objects** must be limited to those **purposes** deemed to be charitable under the Income Tax Act
- **Activities** – The application should include a list of activities which will specifically fulfill each **purpose** listed
- **Fundraising Activities** – **CRA** wants to know activities the organization will engage in to fulfill its **purpose**
- **Financials** – Even an organization that incorporated and then immediately applied for charitable registration must provide financials representing a 12-month period. For an organization that has not been in existence that long, the financials should show the group’s targets. This will include the total amount raised by fundraising efforts, amounts spent on fundraising, other expenses such as staff, legal fees, or accounting fees and office supplies
- **Supporting Documentation** – Newspaper articles, minutes from director and member meetings, and any other supporting documentation that shows the organization’s **purpose**
- **Directors** – Submit a list of directors. The list must include the name, address, phone number, date of birth, and occupation of each director
- **By-Laws** – If **By-Laws** have been created, they must be submitted
- **Constituting Documents** – The constituting documents mean the documents that established the organization such as **Articles of Incorporation** or **By-Laws**. Certificates of Incorporation and Registration should also be submitted, along with the **Memorandum of Association**, as applicable.

Review Process

The path to charitable registration can be long and you should expect to wait at least 3-6 months before hearing a response from a **CRA** representative.

CRA will only review complete applications. If **CRA** determines your organization's application is incomplete, your application will be rejected and returned to you.

If an application is complete, **CRA** will send the applicant an acknowledgment letter. The letter will let you know about how long it will be before the application is sent to an examiner for a detailed review.

The examiner may contact the applicant to get further information or clarification. This should not put you off. Rather, if your organization wants to go ahead with the application process, respond fully to the examiner's questions. The applicant has 60 days to respond to the examiner's request, from the date the examiner asks.

If your organization does not respond, **CRA** will consider the application abandoned and close the file.

If your organization responds by saying the information has already been provided, this will be taken into consideration when making a final determination.

Lastly, if your organization's response does not show a charitable **purpose** or provide activities in support of a charitable **purpose**, the application will be rejected, and you will be notified accordingly.

Successful Application

If **CRA** finds your organization's application is in line with the Income Tax Act and corresponding laws, your organization will be granted charitable registration and issued a registration number and an effective date of registration.

Reasons for Unsuccessful Applications

CRA is a gatekeeper for charitable registration. Not every application is successful. Common reasons for unsuccessful applications include:

- **Non-Charitable purposes** – An organization might have a **purpose** that many would consider charitable but if those **purposes** are not in line with the strict interpretation of “charitable **purpose**” in the Income Tax Act, the organization will not get charitable status.
- **Personal purposes** – **CRA** will carefully review an application to make sure an organization has not been established to benefit only its members. For example, a group of musicians looking to raise public awareness of solely their own music would not be considered charitable.
- **Private benefit** – An organization granted charitable status must be able to demonstrate how it will benefit the greater public, or at minimum, a substantial segment of the public. A non-profit established to benefit a particular family who lost all their belongings in a fire will not be granted charitable status. Or, a group created to raise money for an elderly person to be able to pay their medical bills, would most likely not be considered a public benefit.
- **Political Interest** – Non-profits must not directly support or oppose political parties or candidates.
- **For-Profit Activities** – An organization established to operate a revenue generating business, with the goal of making a profit, will not get charitable status.

Re-applying for Charitable Status

If an organization wants to persevere and re-apply to register as a charity, they may do so. However, **CRA** may stipulate that the organization must wait a certain period of time before reapplying. A new application must be submitted, and they will be subject to all the same rules set out above.

Appealing Decision by **CRA**

If **CRA** rejects an application after determining the applicant’s **purposes** or activities are not charitable, the applicant may file a notice of objection, appealing the decision. The notice may be mailed to:

Assistant Commissioner
Appeals Branch
250 Albert Street
Ottawa ON K1A 0L5

Receipts

As discussed above, a registered charity can issue donation receipts, often called “tax receipts”. Donation receipts must include the following:

- Name of **CRA**
- Website Address of **CRA**. If the website changes, charities’ donation receipts should be updated
- A statement indicating this is an official receipt for income tax **purposes**
- Name and address of the charity. This name and address must match the information provided to **CRA**
- Serial number
- The date the donation was made (year is enough but specifics are encouraged)
- The date the receipt was issued
- The full name and address of the donor
- The amount of the donation
- The amount and description of any advantage received by the donor (see discussion below about meaning of “Advantage”)
- The eligible amount of the gift (see discussion below about meaning of “Eligible Amount of Gift”); and
- Signature of an authorized representative of the charity.

Non-Cash Gift Receipts

In addition to all items listed on a cash-gift receipt, a non-cash gift receipt must also include:

- The date the gift was received
- A description of the donation
- The name and address of an appraisal, if the gift was appraised.

Advantage to Donor

An “advantage” means the value of anything received by the donor in consideration for the gift. For example, some charities will provide calendars to its donors, or perhaps items are auctioned off to raise money for a charity. The advantage is the total value of goods or services provided to the donor, not inclusive of any applicable tax.

Eligible Amount of Gift

An “Eligible Amount of Gift” is about what amount of a donation is eligible for a donation receipt. If a donation of \$100 is made to a local theatre and in return for this gift, the donor received tickets valued at \$50 to a production put on by the theatre, the “eligible amount of gift” is \$50 as that is the amount that exceeds the “advantage” (see above for the definition of “advantage”).

Non-Compliance

Once a non-profit becomes a registered charity, it must continue to comply with all requirements and obligations set out in the Income Tax Act. Failure to do so could result in the following:

- **Letter of Instruction** – These letters will inform the charity how to comply with the Income Tax Act
- **Compliance Agreements** – This Agreement will outline the charity’s failure to comply with the Income Tax Act. The charity must agree to correct any defaults and comply on a go forward basis
- **Sanctions** – Status as a registered charity could be temporarily suspended which means the organization would not be considered a “qualified donee” throughout the suspension and would be unable to issue tax receipts. **CRA** could also enforce financial penalties at its discretion
- **Revocation** – An organization’s charitable status could be revoked.

More details about penalties and suspension may be found at www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/penalties-suspensions.html

Revocation

In the event of revocation, all of the following apply:

- The organization can no longer issue receipts for donations
- The organization is no longer exempt from income tax
- The organization's name and the reason for the revocation will be published in the Canada Gazette and in the List of Charities on **CRA's** Website
- All assets held by the former charity must be transferred to an eligible donee
- Your organization will no longer be considered a charity for provincial tax **purposes**.

Winding-Up

Once **CRA** issues a letter indicating the charitable status will be revoked, or a T2051A is issued, the winding-up period or revocation period begins the very next day and expires a year later. During this time, the organization must complete and file a **Form T2046**, available online at <https://www.canada.ca/content/dam/cra-arc/formspubs/pbg/t2046/t2046-17e.pdf>. A revocation tax may be also need to be paid. Consult with an accountant to determine what payments must be paid.

OPERATING A NON-PROFIT

Get to work!

Once your group is incorporated, the work begins. There are now rules which must be followed. It is crucial that the board of directors, specifically, understands these rules.

Reporting to Members

Traditionally, a non-profit will appoint an **auditor** at their **Annual General Meeting** (“AGM”). The board of directors are required to disclose information about the finances of the non-profit on an annual basis. Typically, this reporting happens at the AGM.

NON-PROFIT INFORMATION RETURN

Who is Required to File an NPO Information Return?

Some non-profits may be required to file a Non-Profit Information Return with **CRA**. Filing **Form T-1044** (online at <https://www.canada.ca/content/dam/cra-arc/formspubs/pbg/t1044/t1044-17e.pdf>)

is required if:

- The NPO was entitled to receive taxable **dividends**, interest, royalties, or rentals totalling more than \$10,000 in the fiscal period
- The NPO’s total assets were more than \$200,000 at the end of the immediately preceding fiscal period; or
- The NPO had to file an NPO information return in a previous fiscal period.

Timeline for Filing an NPO Information Return

NPOs must file the NPO Information Return no later than 6 months after the end of their fiscal period. Returns may be mailed to:

Jonquiere TC
T1044 Program
PO Box 1300 LCD Jonquiere
Jonquiere QC G75 0L5

If the NPO has more than one fiscal period, the NPO Information Return must be filed for each fiscal period.

If an organization misses the deadline to file the NPO Information Return, there is a penalty of \$25 for each day the filing is delayed. However, there is a minimum penalty of \$100 and a maximum penalty of \$2500.

Organizations should discuss all filing requirements with their accountant or financial advisor to ensure compliance.

Board of Directors

Directors have been referenced several times in this Guide but deserve a more in-depth discussion. Directors must be elected pursuant to the guiding legislation, **Articles of Incorporation** and **By-Laws** governing the non-profit. Directors are often coined the 'operating mind' of a non-profit and they are charged with operating the non-profit in accordance with its **governing documents**.

Common Roles of Directors

Although every Society is different, common roles held by directors include:

- Accountability to members
- Hiring staff
- Choosing accountant and legal advisors
- Approving the budget
- Approving strategic plans of various committees
- Ensuring society is meeting its mandate
- Continued review of **memorandum of association** and **by-laws** to ensure they continue to meet society needs.

Selecting Board Members

A non-profit's **By-Laws** should set out the way directors are chosen. Usually, directors are elected at the AGM and then approved at a directors meeting.

Committees

By-Laws often grant directors the ability to delegate their powers to other individuals or bodies, such as executive directors, or committees. Committees are typically composed of directors and individuals who are not on the board of directors. As non-profits grow directors may find that running the organization is too great a challenge for them alone and delegating to committees is often worthwhile.

Executive Committee

The powers held by an executive committee vary and depend on what powers they are given by the directors. Officers (President, Secretary, Vice President) often form the executive committee.

Nominating Committee

The directors may set up a nominating committee. A nominating committee may recruit potential board members based on the group's needs. For example, the board may be seeking a new member with experience in accounting. The Board would then give the nominating committee the job of finding such an individual. Nominating Committees often take the following factors into consideration when evaluating whether someone should be nominated as a board member:

- The cultural diversity of the board
- Representation from the legal community
- Representation from financial experts
- Regional diversity
- Competency of proposed nominees and their commitment to the board and organization as a whole.

How Many Board Members are required?

While **By-Laws** may provide a range in terms of how many directors an organization may have, a board and a nomination committee will need to consider on an annual basis what the exact number should be. There may be years when a lower number will suffice due to the expertise and commitment on the part of current board members. Other times, more directors may be required to properly fulfill the board's mandate.

Liability

One main advantage to incorporating over not incorporating is limiting one's liability. Directors are charged with the responsibility of operating the non-profit and in the course of fulfilling their duties, they may expose themselves to liability.

Director's Liability

If an individual or group wants to start a court action (lawsuit) against a non-profit, it is generally the organization named as the party being sued, and not the directors personally. In the case of an unincorporated non-profit, a law suit will be against the individuals running the club, group or organization as there is no legal entity to name.

It is possible for a director to be named personally, despite being on the board an incorporated non-profit. If the director went beyond the scope of their authority pursuant to the non-profit's **governing documents**, or if it can be shown that the director exercised gross negligence in performing their duties, they may be named personally.

Insurance

It may be possible to insure a non-profit and its directors against liability. Practically speaking the cost of insurance premiums are often so high that many organizations simply cannot afford to get the insurance. That said, it is important to know what insurance is available. Organizations should speak to an insurance agent who can provide all available options. Some of those options include:

- **Comprehensive General Liability (CGL):** protects the organization and its directors against claims for bodily injury (injuries from a slip, a fixture falling down and injuring someone at a public event, a motor vehicle accident), and property damage (damage to the roof of the building)
- **Environmental Liability Insurance (ELI):** protects the organization and its directors against some environmental claims (as limited by provincial statute) such as conservation damage (harm to wildlife as a result of damage to a stream), spills (heating oil escaping from a control), and waste (hazardous substances poured down the drain and emptied into a watercourse)
- **Director' and Officers' Liability (D&O):** protects the organization and its directors against claims for obligations such as unpaid mandatory remittances for Employment Insurance and Canada Pension Plan for employees.

- **Errors and Omissions Insurance (E&O):** protects organizations and directors through two basic types of coverage. The first is corporate reimbursement coverage, which provides coverage to the non-profit for the amount it is forced to reimburse directors for legal fees and judgments. The second provides coverage for directors and officers in the event the organization is unable or unwilling to indemnify them. Generally, E&O policies are claims made policies (for claims made during the time of the policy only) and not occurrence-based policies (for claims arising out of incidents that took place during the time the policy was in place, regardless of when the claim was made). This can be a problem in the case of sexual harassment and abuse lawsuits for incidences that occurred many years earlier.

Conflict of Interest

Directors must be mindful when a conflict of interest arises. A conflict of interest occurs when a director puts their own benefit ahead of the organization's, or, the director has obligations to other organizations which conflict with the work of the organization at hand.

An example of the first conflict is if a director recommended his accounting firm handle the non-profit's finances, even though the organization does not have the budget to pay the high fees of the director's firm.

An example of the second conflict is if a director is on the board of the Canadian Cancer Society and also on the board of a tobacco manufacturers trade association.

If a conflict comes up, the director should notify the others on the board of the conflict and remove themselves from certain votes or discussions on certain matters. If the conflict becomes impossible to compartmentalize, the director may consider resigning from the board.

EMPLOYMENT LAW

As a non-profit grows the Board may need to hire employees to help carry out the organization's mandate. A non-profit's by-laws will typically allow the Board to delegate its duties to committees, officers, **employees**, or **independent contractors**.

INDEPENDENT CONTRACTOR OR EMPLOYEE

Independent Contractor or Employee: What's the difference?

Independent Contractor

An **independent contractor** is a separate, independent entity and not an extension of an employer. An independent contractor has their own business and provides services to other individuals, groups or organizations.

Employees and independent contractors can be very similar, and it might be hard to distinguish between the two at times.

The following characteristics set independent contractors apart from employees.

An independent contractor:

- Uses their own tools to do a job
- Determines how work will be performed and when
- Submits invoices for payment
- May use subcontractors to do a job, and
- May be responsible for Harmonized Sales Taxes.

Hiring independent contractors instead of hiring employees can be attractive to some employers. For example, costs are reduced as the non-profit is not responsible for offering benefits, such as health and dental coverage, to independent contractors. There is no need for payroll in a contract for service arrangement, so there are added cost savings. Independent contractors often mean greater flexibility. For example, an organization may choose to hire an independent contractor during a busy season and end the relationship or put the arrangement on hold during a slower period.

Employees

The Labour Standards Code (the “**Code**”) sets out the parameters of an employer’s relationship with their **employees** and provides the minimum requirements to be followed in Nova Scotia, including wages, vacation pay, overtime pay, and termination.

The following characteristics set employees apart from independent contractors:

- An employee’s pay is subject to statutory deductions
- An employee is subject to the Code
- An employer dictates what hours an employee must work, and
- An employee will typically use their employer’s tools (such as computer, phone, photocopier) to fulfill their duties.

Many non-profits consider there to be many advantages to hiring employees. For example, many employers believe an employee has a greater sense of loyalty to the organization than an independent contractor. This loyalty can lead to greater productivity and a greater commitment to fulfilling the organization’s goals. Another advantage is employers typically have greater control over scheduling and the flow of work when they hire employees. Additionally, employees in small organizations often fulfill many roles and their job description may be broader than the limited scope of an independent contractor.

WRITTEN AGREEMENTS

Put it in writing

Whether your organization chooses to hire an independent contractor or an employee, the nature of the relationship should be set out in writing. It is important to establish expectations, roles, and responsibilities, regardless of the nature of the relationship.

Ideally, the Agreement will state whether the individual is an independent contractor or employee. Independent contractors will sometimes have their own contracts for service which they will want customers to sign before providing services.

The Agreement should also address remuneration and set out how often payments will be made, in what amounts, and the method of payment.

An employment agreement should also include the following:

- **Vacation** – How much vacation is the employee entitled to and how do the vacation days accrue?
- **Sick Days** – How many sick days is the employee entitled to and how do the sick days accrue?
- **Benefits** – In addition to vacation, what benefits will the organization offer? Is health and dental care covered by an employee group plan?
- **Rules and Responsibilities** – What are the employee’s duties?
- **Termination** – Why might the employer terminate the employment arrangement?

POLICIES

Once a non-profit chooses to hire employees, it may wish to establish policies on various matters, to make sure employees are aware of the employer’s expectations and standards.

Policies should meet a group’s specific needs and reflect the group’s unique values. Policies must also comply with all applicable laws including the Code and Human Rights Act. Policies a group might consider putting down in writing include:

- Harassment Policy
- Privacy Policy
- Dress code Policy
- Leave Policy (including, but not limited to, parental leave, sick leave, bereavement leave, reservist leave), and
- Confidentiality Policy.

It is important to remember that the [Code](#) sets out the minimum standards to be followed and a group’s policies may exceed those standards. As a general rule, provided an employer is meeting the minimum standards in the [Code](#), they are in compliance.

Contact the Nova Scotia Labour Standards Division for more info about minimum standards in the Code.

novascotia.ca/lae/employmentrights/

1-888-315-0110 or 902-424-4311

REMUNERATION

An employee must receive remuneration for all time spent working. The Code states employees must be paid at least twice a month and must be paid within 5 days after the end of the pay period.

Employees must, at the very least, be paid minimum wage. Minimum Wage is set by government and subject to change. Employers should make sure they are meeting the minimum requirement and be aware of any changes to minimum wage.

DEDUCTIONS

An employer must make sure statutory deductions are applied to their employees' wages. Deductions must be made for income tax, Canada Pension Plan, and Employment Insurance. If the employer offers benefits, there will typically be additional deductions to apply.

VACATION TIME/PAY

Employees are entitled to 2 weeks' vacation after each 12-month period of work. Employees should be permitted to use this vacation time within 10 months after such 12-month period.

Following 8 years of service, an employee must be given 3 weeks' vacation.

Although employees are entitled to take vacation, it is ultimately the employer who approves when vacation time may be taken and vacation should not interfere with the organization's work.

OVERTIME PAY

If an employee works more than 48 hours in one week, they are entitled to receive 1 1/2 times their regular pay for each additional hour worked.

The above is the general rule and can vary. If you are not sure whether your employees are entitled to overtime, you should contact an employment lawyer or Nova Scotia Labour Standards.

HOLIDAY PAY

In Nova Scotia, qualifying employees receive the following days as holidays with pay:

- New Year's Day;
- Heritage Day;
- Good Friday;
- Canada Day;
- Labour Day;
- Christmas Day; and
- Remembrance Day

To qualify for the above holidays, an employee must be entitled to pay 15 days out of a 30-day period prior to the holiday and must have worked on their last scheduled shift or day prior to the holiday and on the first scheduled shift following the holiday.

TERMINATION

Terminating an Employee

If an employer decides to terminate an employee the employer must make sure it meets or exceeds the standards set out in the Code. Notice of termination must be in writing. This does not mean an employer cannot have a face to face meeting with the employee, but it should be accompanied with written notice.

Depending on how long an employee has been working for the organization, different notice periods, or pay in lieu of notice, must be provided. The following table sets out the minimum requirements with respect to notice.

LENGTH OF EMPLOYMENT	NOTICE PERIOD
More than 3 months, less than 2 years	1 Week
2 years or more, less than 5 years	2 weeks
More than 5 years, less than 10 years	4 weeks
More than 10 years	8 Weeks

Often employers will pay the employee their wages for the notice period, instead of having the employee work that amount of time. For example, an employee who worked for 7 months with an organization could be offered 1 week of pay instead of working for a final week.

In certain scenarios notice is not required, and an employee may be terminated immediately, without any obligation on the part of the employer to make any further payments. An employer may choose to terminate an employee for cause, which means the employee's acts are so egregious that the employer may terminate immediately and will be under no obligation to pay the employee anything further.

If an employee is terminated for cause, the employer must set out the reasons why they are being terminated. For example, if the employer has documented evidence the employee is stealing money from the organization, this may be grounds for termination for cause. However, the employer must set out the details of the theft in the termination letter, which must include as much detail as possible including specific dates theft took place and amounts of money taken.

Given the complexities of termination, it is often a good idea for an employer to discuss termination with a lawyer prior to enforcing the termination.

Get legal advice if you are terminating an employee.

Employee Providing Notice

An employee must also provide notice to the employer if they wish to leave their employment. How much notice an employee must provide depends upon their length of service as set out below:

LENGTH OF EMPLOYMENT	NOTICE PERIOD
3 months or more, less than 2 years	1 Week
2 years or more	2 Weeks

LEAVES

An employee is entitled to take leave from work for numerous reasons.

In Nova Scotia, the following leaves are available to employees:

- Compassionate Care Leave
- Critically Ill Adult Care Leave
- Critically Ill Child Care Leave
- Pregnancy and Parental Leaves
- Domestic Violence Leave
- Crime-related Child Death or Disappearance Leave
- Emergency Leave
- Reservist Leave
- Bereavement Leave
- Sick Leave
- Citizenship Ceremony Leave, and
- Court Leave.

The minimum amount of time an employee should be given for each leave is set out in the [Code](#), however, an employer may choose to exceed these standards in certain circumstances.

An employer must not fire, lay off, or discriminate in any way against an employee who has taken, or has said they intend to take, a leave the employee has a right to take under the Code.

VICARIOUS LIABILITY

An organization is represented by many different individuals and groups. A board of directors represents the non-profit, as do its officers, staff and volunteers. It is important to understand what liability an organization might incur as a result of an action or inaction on the part of one of its stakeholders.

A non-profit may have an action (lawsuit) started against them due to actions of its employees. This type of indirect liability is called “**vicarious liability**” and is based on the relationship one party has with another. For example, an employer-employee relationship.

To determine if vicarious liability exists in an employment scenario, courts will use a two-pronged approach:

1. Is there in fact an employee-employer relationship? For example, is the “employee” actually an independent contractor who, therefore, is not a representative of the organization?
2. Was the wrongdoing committed in the course of employment or were the employee’s actions committed outside of working hours, while doing activities that are completely unrelated to work?

If it is established that the individual is in fact an employee, and, the action was committed on the job, the courts will then take a deeper dive into the facts and determine whether:

- The employee was authorized by the employer to perform such acts; or
- If the actions were unauthorized but so closely connected to authorized acts, that it was reasonable to consider them to be authorized.

The following is an example of vicarious liability:

Jim is a delivery driver who works for a meal delivery service for seniors called “Feeding Seniors”. One day in January, the weather was particularly bad, and visibility and road conditions were poor. Advisories were issued for people to stay off the roads, if possible. The executive director of the non-profit told Jim the deliveries still had to be made, on time, without delay. Feeding Seniors had an excellent reputation for its prompt deliveries, rain or shine. Jim loaded up the organization’s van and proceeded to drive to his destinations. He made the first two stops without incident, however, due to the weather he was beginning to fall behind schedule. On the way to his third stop, he increased the speed of his vehicle to make sure the meals arrived on time. Unfortunately, he hit a patch of ice, spun out of control and hit another car on the road. The driver of the other car suffered minor injuries. The matter ended up in court and Feeding Seniors was found to be responsible for the crash.

In the above situation, Jim was an employee, performing his job. He was authorized to drive the vehicle and followed the non-profit’s policy to ensure delivery was on time, no matter the weather.

The following is an example where vicarious liability would most likely not be established:

Jim finished his deliveries for the week. At the end of a shift, employees were expected to return the van, as the non-profit's policy was clear that the van was only to be used for meal delivery service. As Jim was about to start the engine to drive back to Feeding Senior's office, he got a call from a friend, Peter, asking him to stop by his house for a barbecue. Peter lived just a block away from Jim's last delivery. Jim was hungry after a long afternoon of deliveries. Instead of returning the van, Jim decided to stop into his friend's house for a quick bite to eat, then return the vehicle. On his way to Peter's house, Jim looked down to change the dial on the radio. He didn't notice the light had turned red and the car in front of him stopped. He rear-ended the car in front of him, causing damage.

As set out above, we already established Jim is an employee, however, in this case, he was not performing authorized acts. In fact, his actions were in direct violation of Feeding Senior's policy. For this reason, it would be increasingly more difficult to establish vicarious liability.

Nonetheless, the risk of vicarious liability means non-profits should have proper insurance in place as matters such as the one described above can prove costly.

PRIVACY POLICIES

The Personal Information Protection and Electronic Documents Act (**PIPEDA**) is federal legislation that sets out the rules to be followed with respect to the collection of data by commercial enterprises. PIPEDA only applies to organizations who collect, disclose or use personal information in the course of commercial activities. PIPEDA defines commercial activities as “any particular transaction, act or conduct or any regular course of conduct that is of a commercial character, including the selling, bartering or leasing of donor, membership or other fundraising lists.”

Based upon the above, there are some non-profits that are subject to PIPEDA. For example, a golf or athletic club is engaged in commercial activities and as such, falls under PIPEDA.

However, non-profits are generally regarded as not being subject to PIPEDA. Nonetheless, many non-profits follow PIPEDA’s principles for two key reasons:

1. If a non-profit were found to be subject to PIPEDA, it would be far easier to show compliance than to try to argue they are not subject to the legislation; and
2. The public has an increased expectation that organizations will protect their personal information. Most donors expect a non-profit to protect the information they provide and not misuse any information being shared with the organization.

In light of the above, many non-profits choose voluntary compliance with PIPEDA and choose to put privacy policies in place.

What should a privacy policy include?

There are a few main points every privacy policy should include:

1. **Privacy Statement** – This is an overarching statement that reflects the non-profit’s commitment to protecting the data it collects.
2. **Consent** – The policy should make it clear the organization will seek consent before collecting someone’s personal information. Individuals should know exactly what information is being provided.
3. **Purpose of Data Collection** – The policy should set out the reasons the non-profit will collect data and explain that the organization will not use information for any other purposes.
4. **Safeguarding** – Explain what measures the organization will take to protect the data it collects.

5. **Who Can Access the Data?** – Advise who can access the information collected. In recent years there has been much concern over companies selling data to third parties. Your policy should make it clear who will be able view the data collected.

A privacy policy should be clear and easy to read. It is important those taking the time to read the policy understand what the policy is saying. A group should use plain language to set out its policy and ensure it is properly communicating the privacy standards.

CONCLUSION

Non-profits are created to fulfill certain **purposes**, none of which may be for profit. There are various types of non-profits. Organizations should make sure they establish the kind of non-profit that best suits their needs and meets all legal requirements.

A non-profit may be incorporated, or, a group may choose a less formal approach and not incorporate. Once a group incorporates, there are rules that must be followed. The board of directors should ensure an organization is run pursuant to the group's **governing documents**, and with all relevant laws, such as the Labour Standards Code and Human Rights Act.

An organization may choose to apply to **CRA** to become a registered charity. With this status comes even more rules and obligations, particularly in relation to make sure the non-profit is fulfilling its purpose. While there are tax advantages to becoming a charity, there are also specific reporting requirements which must be met.

Establishing a not-for-profit may be challenging at times, but it can also be a rewarding and beneficial endeavour.

WHAT DO THE WORDS MEAN?

In this document, the following words have the following meanings unless otherwise set out in this Guide:

Annual General Meeting: a meeting of the member of a not-for-profit, organized annually to review the previous fiscal year, related financial statements, elect new members, directors and discuss other items as the members or directors may deem appropriate;

Articles of Incorporation: the documents filed with Corporations Canada which set out certain rules to be followed by the not-for-profit, as well as important information about the not-for-profit;

Auditor: an independent advisor appointed to conduct an audit of the not-for-profit;

By-Laws: a set of rules which are created by and govern a not-for-profit;

Canada Revenue Agency or CRA: the agency responsible for administering tax laws for the Government and Canada and most provinces and territories;

Code: the Labour Standards Code R.S., c 246.

Dividends: those funds distributed to shareholders or a company or member of a cooperative;

Employee: an individual employed by an employer to do work who is subject to the Code;

Governing Documents: the documents which set out the rules and obligations of the not-for-profit and include the Memorandum of Association or the Articles of Incorporation;

Human Rights Act: Human Rights Act R.S. c.214.

Independent Contractor: a person contracted to perform services who is not an employee.

NFP Act: the Canada Not-For Profit Corporations Act, S.C. 2009;

Non-Profit: an organization established for a specific purpose or goal, other than profit;

Not-for-profit: a Non-Profit;

NFP: a Non-Profit;

Memorandum of Association: the document to be filed with the Registry containing, amongst other things, the purpose(s) of the not-for-profit;

Objects: the objective or purpose of the not-for-profit;

PIPEDA: Personal Information Protection and Electronic Documents Act S.C. 2000 C.5

Purpose: Objects;

Quorum: the number of members or directors which must be present to conduct business at a meeting;

Registry: the Registry of Joint Stock Companies;

Societies Act: the Societies Act R.S. c.435;

Special Resolution: a resolution passed by a majority of not less than 2/3 of the votes cast by members with respect to a particular resolution;

Vicarious Liability: when one person is legally responsible for the actions or inactions of another.

Wind Up: the dissolution of a not-for-profit.

FURTHER INFORMATION

WHO	WEBSITE
Canada Revenue Agency Charities Directorate	www.canada.ca/en/services/taxes/charities.html
Corporations Canada	www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/home
Human Rights Commission (NS)	humanrights.novascotia.ca
Imagine Canada	sectorsource.ca
Labour Standards Division (NS)	novascotia.ca/lae/employmentrights/
Office of the Privacy Commissioner of Canada	www.priv.gc.ca
Registry of Joint Stock Companies (NS)	rjsc.gov.ns.ca/rjsc/
Resources for Non-profits (NS)	novascotia.ca/NonProfitSector/resources.asp

GUIDE FOR NONPROFIT ORGANIZATIONS IN NOVA SCOTIA

© 2004 & 2007 & 2020

Legal Information Society of Nova Scotia
1741 Brunswick Street Suite 150B
Halifax, Nova Scotia
Canada B3J 3X8
www.legalinfo.org

LEGAL INFO 
NOVA SCOTIA