

The background of the slide is a blue-tinted photograph of a beach at dusk or dawn. In the foreground, several birds are standing on the wet sand. The middle ground shows waves breaking on the shore. In the background, there are mountains under a cloudy sky. A semi-transparent map of Atlantic Canada is overlaid on the left side of the image. A white rectangular box with a thin black border is positioned in the upper left quadrant, containing the title and subtitle text.

# Guide to Law

for Nonprofit Organizations in Atlantic Canada



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## ABOUT THIS GUIDE

This guide will help nonprofits increase their knowledge of the laws in Atlantic Canada that relate to running an organization. It will help you:

- choose the right organizational structure for your group;
- avoid fines; and
- avoid liability charges.

It will help your group research important legal issues from developing a constitution to properly preparing tax information. We have tried to use plain language wherever possible although we could not avoid the use of legal terms entirely. Where they have been used, we have included an explanation or defined them in the Glossary (Appendix F). Words that are **bolded** in the text are found in the Glossary.

In developing and researching this guide, we sought input from nonprofit groups, government departments, legal, and communications experts. It has also been reviewed by the public legal education organizations in New Brunswick, Newfoundland and Labrador, and Prince Edward Island.

### *using the guide*

A Guide to Nonprofit Law in Atlantic Canada is divided into the following main sections for quick reference:

- About this Guide
- Types of Nonprofit Organizations
- Creating and Dissolving an Organization
- Operating a Nonprofit



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- Miscellaneous

These sections contain a variety of sub-sections. This guide also includes appendices with contact information, legislative references, sample contracts and bylaws.

**Note: Charities Regulatory Reform**

The Voluntary Sector Initiative (VSI) is a joint initiative between the Government of Canada and the voluntary sector that was launched in June 2000. Specifically, the VSI is focused on strengthening the relationship between the sector and the government, and enhancing the capacity of the voluntary sector. Under the VSI, a Joint Regulatory Table (JRT) was convened in November 2000 to study and make recommendations for improving the legislative and regulatory environment in which the voluntary sector operates. The JRT released its report, *Strengthening Canada's Charitable Sector: Regulatory Reform*, on May 5, 2003.

In response to the JRT recommendations, a 5-year regulatory reform initiative has been developed by the Canada Revenue Agency (CRA), in cooperation with the Department of Finance. This initiative focuses on five major areas of charity regulation:

- service improvements;
- public awareness and sector outreach;
- monitoring and sanctions;
- appeals; and
- collaboration among federal, provincial, and territorial governments.

The goal of the initiative is to improve the regulatory framework for charities while increasing public and voluntary sector confidence in the regulation of charities. The federal budget has secured funding for this initiative, and implementation of the new regulatory framework is underway.



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

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## **TYPES OF NONPROFIT ORGANIZATIONS**

### ***What is a nonprofit organization?***

“An organization is group of people organized to accomplish an overall goal. Organizations can range in size from two people to hundreds of thousands.” (Carter McNamara, Introduction to Organizations, [www.mapnp.org/library/mgmnt/org\\_thry.htm](http://www.mapnp.org/library/mgmnt/org_thry.htm))

“A nonprofit is an organization whose purpose is to serve a public good rather than make a profit; net earnings are not distributed to the owners or shareholders (as in a private corporation) or to the members but are retained for the purpose for which the organization was established.” (Canadian Centre of Philanthropy. Glossary Definition, [www.ccp.ca/glossary](http://www.ccp.ca/glossary))

In this Guide we will consider three types of nonprofit organizations:

- Informal nonprofit organization
- Incorporated nonprofit organization
- Charitable nonprofit organization

### ***Unincorporated (informal) nonprofit organization***

Informal nonprofits are often small and community-based. They are sometimes referred to as voluntary associations. Members of this type of organization more often focus on direct action rather than use money to achieve their purposes. For example, they may grow food and donate it to others. This is the most informal organizational structure with the least amount of paperwork – and along with that it offers the least amount of protection for its members. The more that money is used to achieve the purposes of an organization the more government reporting requirements and other legal obligations are incurred.



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Unincorporated nonprofits, which are not designated charities, with a small budget may not have to file an annual income tax return or appropriate information return. However, they must comply with the requirements of the Income Tax Act, which include activities such as preparation of T4 forms for salaries. The CRA still has the authority to demand an income tax return be filed.

If an unincorporated nonprofit has total assets of over \$200,000 or receives income from such things as rentals, royalties, interest, or taxable dividends of over \$10,000 a year, it must file a Non-Profit Organization (NPO) Information Form (T1044) annually with the CRA.

### ***Incorporated nonprofit organization***

A nonprofit can apply to become incorporated either provincially or federally. Incorporation gives the organization a legal existence that is separate from its members and directors. This allows the nonprofit to enter into contracts and own property as an entity. In some jurisdictions, Newfoundland and Labrador for one, an incorporated nonprofit is called a “corporation without share capital.”

Incorporation has some benefits. It can provide some protection to staff and members of the Board of Directors in that the corporation/organization would be the object of a lawsuit rather than individual members. Being incorporated also protects an organization’s name from being used by others. The next section in this guide provides details on how to incorporate.

Incorporation also carries with it some additional obligations. Once incorporated, a nonprofit must file a Corporation or Co-operative Income Tax Return with the CRA and must also file updated information annually with the provincial or federal incorporation authority.

An incorporated nonprofit can earn a profit, but the profit must be used to further the goals of the group rather than to pay dividends to members. Most nonprofit corporations, however, are not involved in commercial enterprises that intend to generate an excess of revenue over expenses.



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Nonprofit corporations may also be run as co-operatives, whereby members share in the control and responsibility of the organization and benefits are returned to the members in proportion to their use of services.

Nonprofit co-operatives are also governed by guidelines set out in separate legislation pertaining to co-operatives. Under the Newfoundland and Labrador *Co-Operatives Act*, a co-operative incorporated under that *Act* whose primary purpose is to carry on activities or to provide services that are primarily for the purpose of the members or the general welfare of the community is called a Community Service Co-operative. You should refer to that *Act* for guidelines for incorporation in Newfoundland and Labrador.

**Tip:** The *Income Tax Act*, which is enforced by the Canada Revenue Agency (CRA), outlines income and tax issues relating to all types of nonprofits. The CRA also awards charitable status to nonprofits. The CRA has a number of interpretation bulletins, guides, and forms. Visit [www.cra-arc.gc.ca/](http://www.cra-arc.gc.ca/).

The Income Tax Act describes a nonprofit organization in general terms as:

- organized exclusively for social welfare, civic improvement, pleasure, recreation, or any other purpose except for profit;
- operated exclusively for the same purposes for which it was organized or any other purpose mentioned above;
- not being a charity; and
- not distributing or making available income for the personal benefit of its members unless it is an association for the promotion of amateur athletics.

If a nonprofit (either incorporated or unincorporated) meets these conditions, it can apply for tax-exemption status on taxable income. In certain cases when a nonprofit is ruled tax exempt, it may have to pay some taxes on property income. For more information read *Income Tax Act - Non-Profit Organizations IT- 496R*, a tax interpretation bulletin from the Canada Revenue Agency (CRA) that can also be downloaded at <http://www.cra-arc.gc.ca/E/pub/tp/it496r/it496r-e.html>.



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### **Charitable nonprofit organization**

A charity is a form of a nonprofit that engages in activities generally beneficial to a community. However, doing good work does not automatically make an organization a charity. There are a number of rules and regulations that charities must comply with, which are discussed later in the guide. A charity may or may not be incorporated. All charities who have been registered as such by the CRA can issue income tax receipts for donations and are exempt from paying both federal and provincial income tax.

There are three types of charities:

1. Charitable Organizations fund their own activities at least partly out of donations received. The Ecology Action Centre and the Canadian MedicAlert Foundation are examples of charitable organizations.
2. Public Foundations give more than 50% of their annual income to charitable organizations or other qualified donees to carry out charitable activities. The Metro United Way, the Newfoundland Arts Council, and the Nova Scotia Health Research Foundation are all examples of public foundations.
3. In most instances (but not all), Private Foundations obtain their funds through a non-arm's length relationship with a major financial supporter or members of a particular family or other closed group. They carry on their own activities or give funds to other qualified donees. They cannot engage in business activity of any kind and must be set up either as a trust or as a corporation. Examples of private foundations include the Windsor Foundation and the T.R. Meighen Foundation.

Other than Private Foundations, regardless of the type of charity, less than 50% of the organization's directors can be legally related to one another (i.e., more than 50% must be at "arm's length" – not be related or have close business ties), and at least 50% of all funds must come from "unrelated" donors. Generally, registered charities also have to spend 80% of the funds they received in a prior year for which they issued charitable receipts to advance the organization's objectives.



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Charitable nonprofits differ from other nonprofits in that they are:

1. Exempt from income taxes (only some non-charitable nonprofits are exempt)
2. Able to issue official tax receipts for gifts received (including money), thereby reducing the taxable income of corporations and the income tax payable of individuals. Donor gifts qualify for a 17% credit up to the first \$200 and 29% for any amount over \$200. This is also true for gifts in-kind; or materials donated. These include gifts of land and company shares. For in-kind gifts, the tax break afforded to the donor is based on the fair market value of the donation. For gifts in-kind of less than \$1000, it is generally left up to the nonprofit charity to decide what is the fair market value. More often, however, it is simply the retail or market price for the good. For example, if a local computer dealer donated two desktop computers, the fair market value would be equivalent to what those two computers would normally sell for (not including applicable taxes). For gifts over \$1000, the Canada Revenue Agency recommends an independent appraisal.
3. Able to qualify for up to a 50% refund on HST/GST paid out.

Once it is registered as a charity (see forward Applying for Charity Status), an organization must:

- devote its resources to charity;
- continue to meet the other requirements of registration; and
- file Form T3010A, Registered Charity Information Return, with the CRA Charities Directorate within six months of its fiscal year end.

If an organization does not meet these obligations, it may lose its registered charity status.

In PEI, if the organization raises funds for benevolent, educational, cultural, charitable, or religious purposes and is **not** registered by the CRA it must register as a charity with the provincial government if it will raise funds over \$100. The registration is free. The organizations must keep proper minutes of meeting and books of account. To



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register, PEI organizations should contact the Consumer Corporate and Insurance Division of the office of the Attorney-General.



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## **CREATING AND DISSOLVING AN ORGANIZATION**

### ***What are the steps to starting a nonprofit?***

1. defining a purpose
2. naming an organization
3. developing governing documents: constitution and bylaws
4. incorporating an organization
5. applying for charity status

### ***Defining a Purpose***

#### ***What is the purpose of your organization?***

The first step of developing any organization is to decide who the group is and what it will do. Answering these questions will help define goals and objectives for the organization.

- Why did this organization form?
- What will this organization be doing?
- What is this organization doing that is not being done by other organizations?
- Who is likely to participate and/or be served by this organization?

Nonprofit organizations should be able to communicate who they are, where they are now, where they want to go, how they are going to get there, and their progress. Informal discussion can answer these questions or more structured processes such as strategic planning can lead to development of planning documents. Defining a



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succinct purpose at the outset will assist you later, for instance, when you fill in required forms such as Articles of Incorporation.

**Tip:** For more information on Strategic Planning, consult Environment Canada's Community Programs website and download *Planning for Change: Strategic and Program Planning for Non-Profit Groups* or call 1-800-633-5755 to order a copy.

### ***What type of nonprofit is best for your group?***

There are countless situations where publicly minded people sharing a common purpose come together as a group. Here are three hypothetical examples:

#### 1. Informal nonprofit organization

A group of friends and relatives of Maggie MacLeod, a six-year old child with a learning disability who requires out-of-province treatment over a two-year period, wish to come together to raise funds to cover the cost of relocating her family so they can be near Maggie while she is undergoing treatment and contributing towards the cost of treatment.

The “Maggie Treatment Fund” may simply require a chequing account to keep the proceeds from modest fundraising activities such as auctions and car washes. It will not be holding assets such as land or equipment and will not be renting commercial space. It will also be around for a limited period of time, dissolving when Maggie’s family returns. Such a nonprofit would be informal, without a formal corporate structure, except perhaps for the bank’s requirements of two signing authorities on cheques.

#### 2. Incorporated nonprofit organization

A neighbourhood group in Souris, PEI, may wish to improve fitness activities and encourage healthy lifestyles by converting a neighbourhood tennis court into a hockey rink in the winter. This would involve scheduling night-time snow removal, purchasing snow-removal equipment, and applying for grant money from the municipal



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government. The neighbourhood group may wish to choose a more formal structure as it will probably own assets (equipment) and make formal applications for government assistance. The community rink will probably have a long life, with the need for succession planning as parents become less interested as children grow older and as some residents move away over time. Such a group would probably choose to be incorporated as a society under the Prince Edward Island *Companies Act* (or comparable legislation in the province where it is active) with a statement of purpose (known in some cases as “letters patent” or in other cases “memorandum of association”) and bylaws (rules setting out how the organization is to conduct its affairs).

### 3. Charitable nonprofit organization

A high school parents’ and alumni group may wish to set up a nonprofit to accept contributions from donors to buy and operate sports facilities and transport vehicles, and ask for government support for after-school environmental programs to teach children how to better understand natural areas in their neighbourhood. The group, with its intent to encourage large donations from alumni and plans to purchase expensive assets, is clearly much larger and more ambitious than the Maggie MacLeod fund (see above). It may be operating vehicles, transporting children to events, holding title to land, etc., all of which suggests a high level of activity. It would, therefore, be suitable for incorporation under either provincial or federal laws and may consider seeking registered charity status if it wishes to issue tax receipts to those making donations.

In all of these cases, the nature and scale of the collective purpose will help the group decide on the formal structure for the nonprofit. Governments generally require more details on how a nonprofit is structured and operates as the group becomes more structured and applies for incorporation and/or charitable tax status.

#### ***Naming an Organization***

An informal nonprofit can choose a name for the organization and is not required to register it. However, the organization may be using a name that is already registered by another group. Therefore, it may be a good idea to officially register the name to ensure its use will not be challenged by whoever does register it. A name is the



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organization's identity in the community. It stands for what the group does and sets it apart from others. Some organizations hire outside expertise such as advertising or marketing firms to help create a name.

As a separate, legal entity, incorporated nonprofits and charitable nonprofits need a formal, official name. They must register their prospective name with the appropriate federal or provincial government body.

### ***How does our organization choose a name?***

The composition of the name is important. The name typically consists of three parts:

1. the identifying part (e.g., Nova Scotia, St. John's);
2. the descriptive part (e.g., environment, heritage); and
3. the category (e.g., society, as in Nova Scotia Nature Trust Society, or association, as in Learning Disabilities Association of New Brunswick).

The name of an incorporated nonprofit must be approved by either Industry Canada, if incorporating under the laws of Canada, or by the provincial government. Organizations operating at the provincial level will not need to incorporate federally but do need to register provincially to conduct business in each jurisdiction where it will operate.

The proposed name must comply with the governing legislation. For instance, in Newfoundland and Labrador, the *Corporations Act* permits English, French or bilingual names. The Act requires that all names be followed by the word "Limited", "Limitée", "Incorporated", "Incorporée", or "Corporation". The abbreviations "Ltd.", "Ltée", "Inc", or "Corp" may also form part of the full corporate name.

Some names will be rejected. The name must not be confusingly similar to another company's name, must not be deceptive of its activities and must be sufficiently distinctive. For example, the Registry of Joint Stock Companies in Nova Scotia rejected the names "Sable Island Conservatory" and "Sable Island Conservation Trust" as being too



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similar to “Sable Island Conservancy,” a name already registered by another group. “Sable Island Trust” was rejected by the Registry as “too general” and/or confusing given the financial and investment notions of “trust.” The name that was finally approved was Sable Island Preservation Trust.

The Newfoundland and Labrador *Co-operatives Act* sets out the guidelines for naming a non-profit co-operative. Any change of name must be registered with the Registrar of Co-Operatives.

### ***How does our organization conduct a name search?***

You should conduct a name search to learn if a name is already registered and to weed out potentially unacceptable names. This should be done as part of choosing a name for your nonprofit.

Depending on the province, the legislation regulating registering an organization may be under a *Corporations Act* or specific legislation for societies. In some cases, the registry may be geared for for-profit business registration, but look closely as nonprofits may be listed as a special class of business or corporation. A preliminary selection of names, usually three names, should be made and submitted for approval in order of priority. The accepted name will be reserved without charge for a period of 90 days, after which time someone else may pick it up if it is not used. The name of a group is not the same thing as a trademark, which will be discussed later on in the guide.

#### **Tip:**

Prince Edward Island - search for names on the [Corporate/Business Names Registry website](#) or by contacting the Consumer, Corporate & Insurance Division of the Office of the Attorney-General at 902.368.4577.

Nova Scotia - check out the [Registry of Joint Stock Companies website](#).

Newfoundland and Labrador - link to the [Registry of Companies](#) located at the Confederation Building in St. John's.

New Brunswick - search for names on the [Corporate Affairs Registry](#) under business names.



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## **Developing Governing Documents: Constitution and Bylaws**

### **What are governing documents?**

All nonprofits, other than informal organizations such as Maggie’s Treatment Fund, should create governing documents including a Constitution (also referred to as a charter, Articles of Association, or Articles of Incorporation) and bylaws. When a nonprofit is applying to be incorporated, a Memorandum of Association, or Articles of Incorporation, and Bylaws are required. To register as a charitable nonprofit, an organization must be either incorporated or be governed by a legal document called a trust or a constitution. This document has to explain the organization’s purposes and structure. A board of directors and corporate officers get their authority from the governing documents.

### **What is in a constitution?**

A constitution is a document drawn up by an organization’s first (founding) directors and must contain the signature of a minimum number of individual “subscribers” or members, as set out in either the provincial or federal incorporating laws.\* These documents usually require such information as:

- the organization’s proposed name;
- its purpose/ restriction on the organization’s activities;
- that it shall not operate for financial gain of its members;
- the organization’s structure (president, chair, secretary, treasurer, etc.);
- the location of the registered office, or, where the activities are of a social nature, the full address of the clubhouse or building that the organization is maintaining;

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\* If you are contemplating registering for charitable status under the *Income Tax Act*, the CRA Charities Directorate requires a minimum of three signatures.



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- the minimum and maximum number of directors;
  - how the organization appoints new directors or the names of the first directors; and
  - the effective date of the constitution.

In Newfoundland and Labrador, the Articles of Incorporation must also expressly state that each first director becomes a member upon incorporation. Additional information may be added as “Schedules”. Other documents, such as Notice of Directors and Notice of Registered Officer, must be filed as well.

If the group plans to apply to become a charitable nonprofit, note that the CRA places a great deal of emphasis on the wording of the constitution. Broad goals and objectives leave too much room for the organization to take part in non-charitable activities. In light of this, organizations should take great care when writing their constitution.

### ***What is the most important part of a nonprofit’s constitution?***

The most critical part of a nonprofit’s constitution is the “objects” or “purposes” that have to be listed in the incorporation documents. An incorporated nonprofit will need to set up its objects as a fundamental starting point. Objects refer to the basic purposes or objectives for which the nonprofit exists. For example, an organization’s purpose may be to improve the environment. An object could be:

To increase knowledge of ecological sensitive areas in Ship’s County through school-based programs, demonstrations, and site tours.

If a nonprofit is incorporating so that it can purchase land, it may require specific objects related to holding or purchasing real estate such as:

To buy, own, hold, lease, mortgage, sell, and convey such real and personal property as may be necessary or desirable in the carrying out of the objects of the Society.

As well, a nonprofit corporation must have a clause that relates to the fact that members will not gain or profit. For example:



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The Society is not allowed to carry on any trade, industry, or business. The Society shall not carry on any operations that result in a personal gain for any of the members. Any surplus or any accretions of the Society shall be used solely for the purposes of the Society and the promotion of its objects.

**Tip:** For a sample Memorandum of Association (constitution) please visit the Nova Scotia Registry of Joints Stocks at [www.gov.ns.ca/snsmr/rjsc/forms.stm](http://www.gov.ns.ca/snsmr/rjsc/forms.stm) or see the latest version of Donald Bourgeois's book *The Law of Charitable Not-For-Profit Organizations*. For printable versions of required Forms under the Newfoundland and Labrador *Corporations Act* visit the Registry of Companies at <http://www.gs.gov.nl.ca/cca/cr/corp-about.stm> .

If a nonprofit wishes to apply for registered charity status, it must meet the list of charitable objects as set out in the *Income Tax Act* (Canada). The CRA will examine the nonprofit's objectives to determine if they are consistent with the activities carried out (or proposed to be carried out) by the nonprofit. If a nonprofit doesn't pursue an application for registered charity status at the time of incorporation and this is contemplated some time later, the original objects may need to be amended to meet the CRA's test of "charity" by filing amended documents with the incorporation authority. It is important that the objects and the activities carried out under them be consistent. If a decision or action of a nonprofit is found to be outside the objects, it may be struck down because the nonprofit does not have the authority to make such a decision. Charitable objects are described in more detail later.

### ***What are requirements under other legislation?***

There may be other requirements depending on the nature of the activities conducted by the society. Certain activities, for example, may require certification of the incorporated nonprofit organization by certification authorities e.g., donation of ecologically significant woodland under the federal *Income Tax Act* or designation of nonprofits under the Nova Scotia *Conservation Easements Act*. When in doubt, consult a lawyer.

### ***What are bylaws?***

Bylaws, which are outlined in the incorporation documents, deal with how the nonprofit manages its affairs and set out the various rights and responsibilities of its members, directors, and officers. Unlike the Articles of Incorporation or Memorandum of Association, bylaws do not have to be publicly filed. Bylaws set out the operating rules of the nonprofit: explain who may act on behalf of the organization; set out how decisions are



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made; when meetings should be held; how membership may be terminated, suspended, or transferred; the process for appointment of officers; and how the organization will be structured, among other things. All incorporated nonprofits are required to have bylaws although the specific requirements may change from province to province.

Sample bylaws are found in Appendix C.

### ***How do bylaw requirements vary from province to province?***

#### **New Brunswick**

New Brunswick's Companies Act provides information on what an organization's bylaws may deal with and gives directors of the organization the authority to make bylaws.

#### **Newfoundland and Labrador**

The Newfoundland *Corporations Act* lists items that the directors of the corporation may include in the bylaws of a corporation without share capital. The bylaws do not have to be submitted to the Registrar of Companies, but they must not be contrary to the provisions of the Articles of Incorporation. For instance, the directors may make bylaws with respect to admission as members, membership fees, cards, and certificates, time, place and conduct of meetings, how the members may be divided into groups, and the mode of conduct of the affairs of the corporation. For a full list of permissible content of the bylaws, see sections 428 and 429 of the *Corporations Act*.

#### **Nova Scotia**

Nova Scotia legislation requires that bylaws be submitted with the application for incorporation and must be approved by the Registry of Joint Stock Companies. This is usually a straightforward approval process.

#### **Prince Edward Island**

Bylaws must be included with the application for letters patent under the Prince Edward Island *Companies Act* and must set out the items listed in s. 90(2) of the Act.



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### Requirements under the *Income Tax Act*

If the nonprofit intends to seek registered charity status under the *Income Tax Act*, its bylaws are required to contain the following clause:

No part of the income of the Society shall be payable to or otherwise available for the personal benefit of any director of the Society, and the Society shall not be operated for the **pecuniary** profit of any of its directors. Nothing herein shall derogate from the powers of the Board of Directors to grant **remuneration** to those staff and members engaged for the purpose of the Society pursuant to these bylaws.

This means Board members should not profit from their position as a director.

If a nonprofit has total assets of over \$200,000 or receives rental income, royalties, interest, or taxable dividends of over \$10,000 a year, it must file a NonProfit Organization Information return.

### *How are bylaws amended?*

It will say in the bylaws themselves how they may be amended, or changed. To amend the bylaws of the Society, a Special Resolution is often required to be approved by a set number of the members present at a general meeting. You should note the voting requirements for passing resolutions in your jurisdiction. Under the Newfoundland and Labrador *Corporations Act* “Special Resolution” is defined as a resolution of passed by a majority of not less than 2/3 of the votes cast by the shareholders who voted in respect of that resolution or a resolution that is signed by all the shareholders entitled to vote on that resolution.

The bylaws could also provide for a special majority vote for certain types of decisions, e.g., the removal of a member. Often a board member or a committee is in charge of making recommendations for changes to the organization’s bylaws.

### Outside the bylaws

There are two general prohibitions on the activities that can be carried out by a nonprofit:



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1. A nonprofit cannot be in business to make a profit. Any money made from any business operation undertaken by the nonprofit must be used to further the nonprofit's purpose. For example, a charitable organization that runs a health care centre can operate a cafeteria from which it makes a profit but such profit must be used to further the organization's fundamental nonprofit purposes.
  2. Members of the nonprofit cannot receive financial gain as a result of the activities of the nonprofit. For example, a board member cannot accept a contract to renovate the nonprofit's interpretation centre and be paid to do the job.

In addition, all incorporated entities, including business corporations, only have the power to carry out activities and make decisions as permitted by their constitution (in particular, their Articles of Incorporation); their bylaws; and any provincial or federal legislation governing the activities of nonprofits. If an action or decision is held to be outside these powers, it will likely be deemed by a court to be outside its constitution or, in legalese, *ultra vires*. The general membership of the nonprofit could not legally ratify or endorse such a decision or action and the directors may be held personally liable (i.e. they may be on the hook to honour the obligation made).

The Newfoundland and Labrador *Corporations Act* specifically sets out that a nonprofit corporation must restrict its activities to the following types of activities: patriotic, religious, philanthropic, charitable, educational, scientific, literary, historic, artistic, social, professional, fraternal, and sporting or athletic.

### ***What are some examples of prohibited activities?***

- Granting degrees or conferring academic achievement awards, and
- Licensing members.

In order to carry out such activities as these, a nonprofit needs to have a special charter granted by the government. For example, the New Brunswick Medical Society licenses doctors and the University of Prince Edward Island grants degrees to those students who fulfill the requirements of an academic program of study.



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## ***Incorporating an Organization***

### ***What are the three types of incorporation for nonprofits?***

The three types of incorporation for nonprofits are:

1. They may be incorporated under special legislation specific to that nonprofit. This establishes the basic legal structure of the organization as well as provides for its objects and powers. These include the Canadian Dental Association, the Nova Scotia Barristers' Society, and the National Research Council of Canada.
2. Many nonprofits are incorporated under legislation specific to a certain type or class of nonprofit. For example, boards of trade can be incorporated under the federal Boards of Trade Act. Cooperative organizations are also a form of nonprofit created by virtue of a statute, federal or provincial.
3. Perhaps most common, are government statutes dealing with general incorporation of nonprofits. Federal and provincial governments have authority to incorporate a nonprofit (also called a society in some provinces). For example, in Nova Scotia, the Registry of Joint Stock Companies governs corporations under both the *Societies Act* and the *Corporations Registration Act*. The *Canada Business Corporations Act*, at the federal level, provides for the incorporation of “national, patriotic, religious, philanthropic, charitable, scientific, artistic, social, professional or sporting character or the like objects.”

Any nonprofit incorporated under the laws of a province or of the laws of Canada or laws specific to itself or its class of activity is a corporate body. It has a legal life of its own independent from its members. It can enter into contracts, own property, sue, and be sued. With some exceptions, its members have limited (but typically no) liability for the actions of the organization. However, board members while making decisions for the nonprofit are more vulnerable to being held liable for acts or omissions (see Board of Directors).

The key aspect of a nonprofit is that none of the profits resulting from its activities are returned to members, except for salaries or compensation paid to members who are also employees or contractors.



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### ***Does our organization need to be incorporated? What are the questions we need to ask?***

While there are a variety of formal legal structures available for an organization, there are two major factors that will affect your choice:

1. Will the nonprofit be charitable in nature and, therefore, be eligible for registered charity status? and
2. What will be the legal liability (obligations) taken on by its members?

If your answer is “yes” to any or all of the following questions then the likelihood is that your organization should incorporate:

- Will the nonprofit own or deal in land such as purchasing land or leasing property?

If yes, it should be formally incorporated.

- Will the nonprofit enter into contracts as part of its regular activities?

If yes, the convenience of a formal, predictable corporate structure as to who makes decisions, who has signing authority, etc. is important.

- Does the nonprofit expect to receive or solicit gifts (including money)?

If yes, donors may expect to receive a charitable receipt in return for their gift.

- Is the nonprofit dependant on government financial support, at least in the initial stages of its activities?

If yes, government bodies will likely insist on certain formalities, such as incorporation.

- Will the nonprofit incur debts for which its members may be held liable?

If yes, incorporation can provide limited liability protection to members.



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- Will the nonprofit earn income from its activities?

If yes, it will probably have to file an income tax return in the name of the nonprofit corporate entity that earned the income.

### ***What are the requirements of incorporation?***

The steps for incorporation include:

- registering a name;
- filing a Constitution (Memorandum of Association or Articles of Incorporation) and Bylaws (if required in the jurisdiction);
- supplying a list of directors;
- identifying the location of the organization's office; and
- providing appropriate fees.

Depending on the requirements in your jurisdiction, you will need to obtain the correct forms to give notice of directors and notice of registered offices. For instance, in Newfoundland and Labrador, these forms are available from the Registry of Companies.

Once incorporated nonprofits are required to keep and file documents as part of their incorporation. It is a good idea to put procedures in place that spell out who is in charge of the following:

- maintaining books and records;
- holding and keeping a record of necessary meetings;
- electing and/or appointing directors and officers; and



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- filing income tax information.

The incorporated nonprofit must file the following each year with the appropriate provincial or federal authority:

- Financial statements as prescribed in the nonprofit's bylaws and applicable legislation;
- Notice of Directors and Notice of Registered Offices, where there has been a change of directors or officers of the corporation. The Notice of Directors is basically a list of directors elected following the most recent annual general meeting. This form is also used where changes in directors occur due to vacancies and resignations;
- Income tax return. Failure to file an income tax return on time may put the nonprofit's status in jeopardy; and
- Any other annual returns required by provincial legislation.

If the nonprofit intends to be national in scope, then it should consider incorporating under the *Canada Business Corporations Act*, a federal statute. This will allow it to operate under its own name in all of the provinces and territories. For example, the Canadian Cancer Society has national and provincial branches. A national company will need to register as an extra-provincial company in every province where it intends to conduct business

### ***What is a corporate seal?***

A corporate seal is an official stamp of the organization and is often required on legal documents such as contracts. Financial institutions and major funders often require the use of a corporate seal as well as persons with whom you enter into formal contracts. Evidence, such as Minutes of meetings, may be required to show that the appropriate authority (members or Directors) approved the signing of the document as set out in the organization's constitution.

### **Fees and Costs**

There is a fee charged by the provincial or federal government to register a nonprofit company or charity and to conduct a name search. A nonprofit will also have to purchase a corporate seal, books of account and Minute



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books. A fee is also charged upon the filing of provincial yearly reports with the incorporating authority. There is no fee associated with applying for charitable status under the *Income Tax Act* (CRA Charities Directorate).

### **Applying for Charity Status**

Once an organization is registered under the federal *Income Tax Act* with the Charities Division of the CRA, it is exempt from tax on its income (e.g., revenue from book sales), and it may issue receipts for gifts from donors.

### **What is the key consideration in determining whether a nonprofit meets the test of a charity?**

The key consideration in determining whether a nonprofit meets the test of a charity is whether its objects, or purposes, are charitable, both in terms of the wording of the objects and the consistency between the objects and the activities of the organization. The CRA uses the terms “objects” and “purposes” to mean the same thing.

There are four divisions of charitable objects that are acceptable to the CRA:

1. relief of poverty;
2. advancement of religion;
3. advancement of education; and
4. other miscellaneous purposes recognized by the courts as charitable.

Tip: The Voluntary Sector Initiative was developed to strengthen the voluntary sector and to enhance the relationship between the sector and the government of Canada. The initiative has one of many theme areas including regulation of charities. For more information, visit [www.vsi-isbc.ca/eng/joint\\_tables/regulatory/index.cfm](http://www.vsi-isbc.ca/eng/joint_tables/regulatory/index.cfm).



### **Top 10 myths about being and becoming a charity**

Here is the Not-for-Profit and Charity Law Website's top 10 list of myths with quick answers – (source: <http://www.extension.ualberta.ca/lawnow/nfp/define2.htm>) based on current Canadian law and administrative practice:

#### No. 1 – We Do Good Work

Not good enough. All good work is not charitable. It must be legally beneficial to the community.

#### No. 2 - It's Just An Application

No. Being a charity is a privilege and the supporting documentation must prove the case that the organization will legally operate in a way the law recognizes as charitable.

#### No. 3 - It's Our Right

There is no right to charitable status. The CRA, relying on its interpretation of numerous cases, can grant status only where the organization is legally a charity.

#### No. 4 - It Can't Take That Long

There is a backlog of up to a year. The CRA is short-staffed and has recently changed its administrative practice of pre-clearing objects. A full application must be made, and it is not unusual for the acknowledgement to take three months or more.

#### No. 5 - We Can Save The Donations

Once registered as a charity, the rules under the Income Tax Act apply. Each year a charity is generally required to spend 80% of the money for which it gave out charitable receipts in the prior year. This amount is its Disbursement Quota. If a charity wants to accumulate money, it may do so as long as it can still meet its Disbursement Quota otherwise it must make a special application to the CRA.



#### No. 6 - But We Need To Raise Money

A worthy purpose on its own does not qualify. And only charities can give receipts that qualify for tax credits. (This does not mean it has to give receipts for all funds received.)

#### No. 7 - Everybody Benefits

This is a variation on good works and worthy causes and the answer bears emphasis: only some activities that are of benefit to a broad range of people qualify as charitable.

#### No. 8 - It Will Help Us With Sales

There are a number of rules about charities carrying on a related business. But making money is not a charitable purpose. If an organization tries a business activity, it must be careful it doesn't go over the line between permissible charitable activity and prohibited commercial activity.

#### No. 9 - There's A Lot of Things We Need To Do

Again, and at the risk of repetition – good works are not necessarily charitable.

#### No. 10 - We Can Just Give Out Receipts While We Wait for Registration

This is a form of gambling not worth the payoff. The CRA Charities Directorate refuses many applications. And often those applications cannot be corrected. Donors are disappointed; money may have to be returned; the problems are not worth the price.

#### ***When have charitable objects failed to meet the test?***

Charitable objects have generally failed to meet the test if:

- they were too vague;



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- the educational purpose did not consist of sufficiently formal and structured education, or there was a lack of original or balanced research;
  - purposes included unacceptable political objectives as opposed to acceptable activities which includes political activities in furtherance of a charitable purpose; and/or
  - the purpose and activities were of a general public interest but not of a nature and extent to constitute charitable activities. For example, a “welcome wagon” agency facilitating the arrival and settlement of new residents to a certain town may be helpful and friendly but not necessarily charitable.

### ***Can a registered charity conduct some political activities?***

A registered charity may carry on some political activities. These activities must meet three tests:

1. help the charity achieve its goals,
2. not be partisan in nature, and
3. meet the 10% rule (generally not more than 10% of the charity’s resources\* may be used to further political goals).

For example, a charity established to protect wildlife could inform citizens how laws governing the disposal industrial waste might benefit wildlife but if it promotes a campaign to influence legislators to create such laws it would be engaging in a political activity that would be reviewed under the 10% rule.

The CRA has published a Policy Statement (CPS-022 ~ <http://www.cra-arc.gc.ca/tax/charities/policy/cps/cps-022-e.html>) that describes “information for registered charities on political activities and allowable limits under the *Income Tax Act*”... and “explains how (the CRA) distinguish(es) between political and charitable activities. In

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\* The exact percentage may vary depending on the charities’ annual income. For a precise figure/calculation, see the CRA Policy Statement CPS-022.



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addition, it seeks to clarify the extent to which charities can usefully contribute to the development of public policy under the existing law.”

***How is a registered charity reviewed to ensure it maintains its charitable purpose?***

A registered charity is required to file an annual information return with the CRA. The primary purpose of this information is to ensure that the charity is compiling with the limits imposed on such organizations. If it is not, its charitable status will be revoked. For more information about this see below, Filing the Annual T3010A(05).

***What are advocacy groups?***

Advocacy groups work for the advancement of a particular value, belief, or mission. Earth Action and Greenpeace are examples of advocacy groups. Lobbying is one way advocacy groups promote their cause or secure passage of legislation important to furthering their cause. It is important to remember that advocacy groups, those groups whose driving purpose is to convince others of the correctness of their position, are not eligible for charitable status at law. Remember too that lobbying may be subject to other specific laws passed by the federal or provincial government intended to regulate this type of activity.

***Is membership news and information sharing via a website considered advocacy?***

It is important that a nonprofit’s charitable activities, in the context of education, be non-partisan, limited in advocacy, and factual and instructional. Advocacy may be a worthy and necessary purpose for a nonprofit, but the CRA will look at an organization’s advocacy activities to ensure they do not cross the line into prohibited political lobbying. Political activities carried out by a charity cannot normally constitute more than 10% of the charity’s resources (see note above at page 32).



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### ***How should non charitable objects be treated?***

An object is examined by the CRA both in terms of what it describes and the activities that must be consistent with and naturally flow from the object. Sample objects acceptable to the CRA can be found in Appendix D of *The Law of Charitable and Nonprofit Organizations* Third Edition by Donald J. Bourgeois (2002, pages 499-503).

Another set of standard objectives is contained in the *Not-for-Profit Incorporator's Handbook* prepared jointly by the Companies Branch of the Ministry of Consumer and Commercial Relations and the Office of the Public Guardian and Trustee for Ontario, Charitable Property Division.

(<http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/nfpinc/default.asp>)

### ***What must an application package to the CRA contain?***

An application package to the CRA for charitable status must contain:

- a completed application (Form T2050) (found on the CRA's home page at <http://www.cra-arc.gc.ca/E/pbg/tf/t2050/README.html> or by phoning 1-800-959-2221 [English] which includes providing information such as:
- a completed copy of the governing document(s) under which the organization was established;
- a statement showing full details of the activities and/or programs to be carried out by the organization in meeting its objects or purposes;
- a financial statement for the organization's most current fiscal year or, if not yet in operation, a proposed budget or estimate of income and expenditures as well as anticipated assets and liabilities for the first year of operation; and
- a list, providing the name, civic address and occupation of all current or proposed directors and officers.



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### ***What is the turn-around time for approval by the CRA?***

The turnaround time for approval by the CRA is usually three months but it can take longer. The Charities Directorate will review draft objects (see page 10 of ‘Registering a Charity for Income Tax Purposes’ (T4063) (<http://www.cra-arc.gc.ca/E/pub/tg/t4063/t4063eq.html>)).

### ***What if your application for registered charity status is turned down?***

If the CRA determines that your application fails to meet the requirements of the *Income Tax Act* and rejects your application you should first contact the CRA Charities Directorate to see if the problem can be resolved. Beyond that you may:

- challenge the CRA ‘s interpretation of the materials you have submitted to them. Specifically, you can respond to the CRA by demonstrating how the materials you have submitted show that the purposes or objects and activities of your organization are charitable with further submissions. You will have 60 days within which to answer the CRA’s concerns. If you are still not satisfied with the CRA’s further review, you have the right to appeal to the Federal Court of Canada as provided under sections 172 (3) and 180 of the Income Tax Act.
- qualify for an exemption from income tax on the nonprofit’s income under paragraph 149(1)(1) of the Income Tax Act. However, tax-exempt status does not give you the authority to issue official donation receipts to donors for income tax purposes.

### ***Annual Filing of the T3010A: Registered Charity Information Return Package***

#### ***What does the CRA Charities Directorate do?***

The section of the CRA which deals with charities is called the Charities Directorate. It is responsible for registered charities under the Income Tax Act. The Charities Directorate:

- decides which organizations qualify to be registered as a charity;



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- gives technical advice on how to run a charity;
  - examines the records and financial accounts of charities to check that they are accurate and that they meet CRA requirements;
  - educates charities about what they are required to do under the Income Tax Act;
  - monitors charities to make sure they are complying with the law; and
  - provides information to the public.

### ***What is an Information Return?***

An Information Return is the form that registered charities are required to file with the Charities Directorate each year to show that they have complied with federal tax laws.

A complete Registered Charity Information Return (T3010A (05) at the date of writing) must include all of the documents listed below:

- Basic Information Sheet (this sheet must be returned to the Charities Directorate even if no changes have been made);
- Form T3010A (05);
- A copy of the organization's financial statements;
- Directors and Trustees Worksheet; and
- Qualified Donees Worksheet (if applicable).

Charitable organizations will receive a document called a 'Registered Charity Information Return Summary' about 4 to 8 weeks after the Charities Directorate receives the completed Information Return package. This is a new form



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which replaces the old Notice of Confirmation. It confirms that the Charities Directorate has received and processed the charity's annual return.

***When does a registered charity have to file its Information Return?***

Under the Income Tax Act the Information Return (and any required attachments) must be filed no later than six months after the end of the registered charity's fiscal period. For example, if the fiscal year end is March 31st, the charity's annual information return is due by September 30th. A charity's fiscal period should be set out in the organization's bylaws (if they exist) or other constitutional document.

***What will happen if the Information Return is not filed in time?***

The names of late filers will now be published on the CRA website. (Once a charity has filed the required information return its name will be removed from the list.) [www.cra.gc.ca/charities](http://www.cra.gc.ca/charities)

At any time after the six months the CRA can take away the organization's charitable status for failing to file an information return. Generally this penalty is a last resort and the CRA will give an organization a number of warnings first. However the CRA can take charitable status away immediately in certain serious cases for example where an organization cannot or will not bring itself into compliance.

Normally if the CRA does not receive the return within 5 months after the end of the charity's fiscal period a computer generated reminder will be sent out. If the return is still not received after 7 months a 'Notice of Intention to Revoke' will be sent out. The charity then has 90 days to file an objection if it believes it has met the filing requirements and its charitable status should not be taken away. (For a full explanation of how this works in practice see the Guide, 'Completing the Tax Return Where Registration of a Charity is Revoked' on the CRA website (<http://www.cra-arc.gc.ca/E/pub/tg/rc4424/rc4424-e.pdf>)).



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The charity can also be fined \$500. This penalty will only be imposed after a charity has had its charitable status taken away for failure to file its information return and then applies to be re-registered. The charity must pay all amounts outstanding – including GST/HST; payroll; late filing penalties – to avoid paying a Revocation Tax.

To encourage charities to comply with the Income Tax Act, new penalties have been introduced in addition to removing charitable status. These penalties can be applied to organizations whose fiscal periods began after March 22nd, 2004.

The CRA aims to educate charities about their reporting requirements via their website, call centre, written guides, roadshows and by offering advice following an audit. It is only if this education process has failed and an organization is still not complying with the rules that the CRA may decide to issue a penalty. Generally the CRA will only impose a penalty if the charity has been given a warning first. However in serious cases a penalty may be applied immediately.

A charity may receive a penalty for any of the following:

- failing to file a return;
- issuing receipts with incomplete or misleading information;
- failing to keep proper books and records;
- carrying on an unrelated business;
- providing undue personal benefits (e.g. a charity makes a cash gift to a director's relative); and
- inappropriately transferring funds.

For more information on this see the CRA summary policy, 'Sanctions CSP-S17', which is available on the CRA website at: <http://www.cra-arc.gc.ca/tax/charities/policy/csp/csp-s17-e.html>.



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### ***What information from the return will be made available to the public?***

Under the Income Tax Act most of the information on a charitable annual return is available to the public. Anyone can either look at a charity's annual return on the CRA website ([www.cra.gc.ca/charities](http://www.cra.gc.ca/charities)) or ask for a copy to be sent to them. This means the annual return is a good opportunity for a charity to provide a description of its activities in order to show the public that they are an organization that deserves support. Only the parts of the Registered Charity Information Return which are marked confidential (Sections B and I) will not be released to the public. Included in these confidential sections are the personal details of a charity's directors and trustees; the location of the charity and its books and records; and the name and address of the person who completed the return.

The charity's financial statements are now also available to the public on request. Charities should therefore be careful not to include sensitive information such as a bank account number within their financial statements.

### ***What is the Disbursement Quota?***

The Disbursement Quota is the minimum amount of money that a registered charity must spend either on charitable programs or as gifts to qualified donees (usually other registered charities) in order to keep its charitable status. The reason behind the quota is to protect the public by making sure that most of a registered charity's funds are used to further its charitable purposes and activities. It also encourages charities not to accumulate too much money and to keep their other expenses at a reasonable level.

To help charities plan their spending, the Disbursement Quota is largely based on what happened in previous years. This means that at the end of the year, a registered charity should have a fairly clear idea of how much it will need to spend on its charitable programs the following year.

The CRA provides a calculation of a charity's Disbursement Quota figure based on the information provided by the charity in its annual Information Return. This figure will then be indicated on the charity's Registered Charity Information Return Summary.



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A charity may decide it would be helpful to calculate their Disbursement Quota in advance. It is quite a complicated calculation but the charity can use the worksheet provided in the Guide to help them do this (<http://www.cra-arc.gc.ca/E/pbg/tf/t1259/t1259-fill-05e.pdf> ). It should be noted that this worksheet is for the Charity's use only and should not be filed with the charity's annual Registered Charity Information Return.

For more information about how to calculate the Disbursement Quota see the section at the back of the Guide, "Completing the Registered Charity Information Return" headed 'Calculating the Disbursement Quota' (<http://www.cra-arc.gc.ca/E/pub/tg/t4033a/t4033a-e.html>).

For more information about recent changes to the Disbursement Quota see the CRA Guide, "Registered Charities: What's new? Important changes to the law affecting registered charities" (RC4414-E) (<http://www.cra-arc.gc.ca/E/pub/tg/rc4414/rc4414-07e.pdf>).

### ***What help is available for charities that are struggling to complete their annual Registered Charity Information Return?***

The Legal Information Society of Nova Scotia has developed an online version of the Information Return and associated worksheets. These forms contain pop-up notes as you go through giving simple explanations of what information is being requested and how to access more detailed explanations if necessary.

The CRA Charities Directorate has trained staff who can also assist you.

1-800-267-2384 for toll-free, long-distance calls (English)

1-888-892-5667 for toll-free, long-distance calls (bilingual)

1-800-665-0345 for toll-free TTY service for persons with a hearing or speech impairment

954-0410 for local Ottawa calls (English)

954-6215 for local Ottawa calls (bilingual)



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Look at the CRA website for details of free CRA information sessions (Roadshows) in your area aimed at helping registered charities comply with their reporting requirements under the Income Tax Act (<http://www.cra-arc.gc.ca/tax/charities/roadshow/letter-e.html>).

You may decide you need help completing your Registered Charity Information Return from a professional advisor such as a Chartered Accountant or tax lawyer.

### ***What does loss of charitable status mean?***

If a charity loses its registered status this means that it will no longer be able to issue tax receipts for donations that it receives. Many donors will no longer want to give money to an organization if there is no tax benefit for them.

There is also a risk that the organization may have to pay a ‘revocation tax’ which is equal to the full value of any remaining assets that the organization has.

### ***Can an organization get its charitable status back again?***

If an organization has had its charitable status taken away it can apply for re-registration by completing Form T2050: ‘Application to Register a Charity under the Income Tax Act’ (<http://www.cra-arc.gc.ca/E/pub/tf/t2050/README.html>). As of September 1, 2006, if its status was revoked for non-filing, the charity may be required to pay a \$500 penalty depending on when the organization received its Notice of Intention to Revoke.

For more information, see the CRA guide entitled, ‘Registering a Charity for Income Tax Purposes’ (T4063) (<http://www.cra-arc.gc.ca/E/pub/tg/t4063/t4063eq.html>).

To find out what documents the charity will need to submit look at the CRA website (<http://www.cra-arc.gc.ca/tax/charities/newregistration-e.html>).



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## ***Winding Down***

Sometimes an organization will decide to close its doors. This may happen because of:

- the loss of all or a substantial amount of funding from a major funder or backer;
- the loss of primary focus and vision because of the need to “create” programs to apply for and receive funding;
- the creation of a heavy workload for staff and the organization by an increase in programs contributing to burnout;
- falling short on the financial requirements (or unable to meet the needs) of the organization; and/or
- the loss of Board members and staff, or
- the work of the organization has been completed.

A successful dissolution will have a minimal effect on the organization’s clients; involve Board and staff; and ensure the organization’s good reputation remains intact.

The Newfoundland and Labrador *Corporations Act* requires that the Articles of Incorporation of a corporation without share capital must state that, upon dissolution, and after payment of debts and liabilities, the remaining property of the corporation must be distributed to an organization in the province whose activities are charitable in nature or beneficial to the community.

A sample clause such as the one below on dissolution is often found in the organization’s constitution.

Dissolution or winding up: If for any reason the operations of the Society are terminated or are wound up, or are dissolved and there remains after satisfaction of all its debts and liabilities, any property whatsoever, this shall be paid to some other charitable organization in Canada, having objects similar to those of the Society.

If the nonprofit is a registered charity then the CRA Charities Directorate will require that the charitable organization receiving the property from the dissolution or winding up be an eligible donee.



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Under the Newfoundland and Labrador *Corporations Act*, dissolution or winding up of an incorporated nonprofit must be carried out in accordance with Part XVI of that Act. Articles of Dissolution must be sent to the Registrar of Companies, who, upon receiving the Articles of Dissolution, will issue a Certificate of Dissolution. The nonprofit corporation stops existing as of the date shown on the Certificate. The Registrar of Companies, alone, also has the power to dissolve a nonprofit corporation. There are four circumstances under which the Registrar can do this:

1. the nonprofit has not started its work within three years of the date shown on the Certificate of Incorporation;
2. the nonprofit has not carried out its work for three consecutive years;
3. the nonprofit has not sent returns, notices, documents or fees as required; and
4. the nonprofit is in default for one year in sending required notices, documents or fees.

The Registrar of Companies cannot immediately dissolve the nonprofit corporation – you will have at least 120 days to fix any default or to communicate with the Registrar about why/how your nonprofit company can stay alive. You should note that this part of the *Corporations Act* will not apply if your nonprofit is insolvent or bankrupt. In that case, the federal *Bankruptcy and Insolvency Act* will apply.

In PEI, the process for winding down or “surrendering its charter” is set out in s. 74 of the *Companies Act*. If the assets of the nonprofit have not been disposed of at the time of the surrender they will be forfeited to the Crown (s. 75).

As in other jurisdictions, if an incorporated nonprofit does not file its Annual Report or pay the required fee to the government or has not carried on business for three consecutive years, the Director of Corporations may dissolve the nonprofit company (s. 72).

A Federally registered charity may also apply to have its registration revoked or it can be revoked by the CRA upon certain grounds. If the registration is revoked, it may have to pay taxes on assets and some donations. A tax return must be filed whether or not taxes are payable.



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## **OPERATING A NONPROFIT**

The details of the organization's structure and procedures need to be described in its bylaws. Sample clauses to be included as bylaws of the organization for each section covered in Operating a Nonprofit are included in the Appendices.

### ***Finances***

#### ***How is an auditor chosen?***

Traditionally, nonprofits appoint an auditor at their Annual General Meeting (AGM).

#### ***Are nonprofits obligated to report back to members about the financial standing of their organization?***

Yes, nonprofits are obligated to report back to members about the financial standing of the organization. This is usually done at the AGM and/or in an annual report. It may be a full audit or a financial review in accordance with the requirements of the organization's bylaws.

### ***Board of Directors***

The Board of Directors is chosen by the general members to serve as the "operating mind" of the organization. To be efficient and purposefully carry out its objects, the Board should choose and follow a model by which its business will be carried out. Specifically, a Board must be clear on what types of decisions it is responsible for, who does what between the Board and its staff, staff and volunteers, among other things. These should be described in detail in the bylaws of the organization.



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### ***What about committees?***

Boards generally benefit from setting up committees that report directly to them and have advisory, as opposed to decision making, function. Some standard committees, such as an Executive Committee or Financial/Audit Committee, may be included in the bylaws.

In particular, the Newfoundland and Labrador *Corporations Act* permits the directors to make by-laws allowing the nonprofit corporation to divide members into groups and to elect directors on the basis of these groups. The by-laws should also set out the number and qualifications of such members, the rules governing meetings, and the powers of delegates at meetings, among other things.

### ***What is an Executive Committee?***

An Executive Committee acts on behalf of the board of directors. They have only as much power as the Board is permitted to give them in accordance with the bylaws. Executive committees are an organizational consideration, not a legal requirement. The Executive Committee typically consists of the officers of the nonprofit, i.e., President, Vice-President, Secretary and Treasurer.

### ***What are the types of nonprofit membership?***

There can be a number of classes or types of membership, including voting, non-voting, full members, associate members, honorary members, and former (founding) members. These will be set out in the bylaws.

Who can become a member varies but, at a minimum, there is typically a minimum age requirement and that the member be resident in the province or country.

Another requirement is payment of membership dues, which can be set either by the general membership at the AGM or by the board of directors.



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An additional, more rigorous condition of membership may be used to prevent “instant” members being brought in at the last minute prior to an AGM as supporters of those promoting contentious issues. Voting rights, for example, can be restricted to those who have held a membership for a specified period of time (e.g. has to have been a member for one year before earning voting rights). This would have to be specified in the bylaws and accepted by the general membership.

The Newfoundland and Labrador *Corporations Act* provides that, unless the articles or by-laws of the corporation otherwise provide, there is no limit on the number of members in the corporation. Admission to membership can be restricted by the articles and by-laws, and persons may be admitted by resolution of the Directors. The Directors are permitted to make by-laws governing many aspects of members, including membership fees, meetings, and voting.

### ***Who can serve on the Board of Directors?***

As an organization, you need to set out in the constitution or bylaws who can serve on the Board of Directors. Do they have to be a member for a certain period of time? Do they need to be a resident of Canada or over the age of 19? You should be aware that some legislation automatically disqualifies the following categories of individuals from acting as directors: individuals who are less than 19 years of age; mentally incompetent individuals (including those judged so by a tribunal in Canada or elsewhere); and, bankrupts.

In Newfoundland and Labrador, a corporation must have at least three directors. The *Corporations Act* also permits persons holding some office outside of the nonprofit corporation to become a director.

### ***How are Board members selected?***

The first, or incorporating, Directors must be chosen before a company incorporates, as the names of the first directors must be provided to the Registry of Companies at the time the Articles of Incorporation are filed. There are various means by which to choose the first director, including general consensus of the founding members or a vote among those members. Once the nonprofit is incorporated, the members of the Board of Directors are



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typically elected by the general membership at the first AGM. In the case of vacancies during the year prior to the next AGM or where Board members want to add to their responsibilities, the elected Board members can appoint replacement members (up to a set number) for a term that runs to the next AGM. Board members can be elected by the general membership at the AGM or appointed by directors at a Board meeting.

### ***What is a Nominating Committee?***

A Nominating Committee may be used to recruit members to the Board for each AGM. The committee would consider the needs of the organization when recruiting prospective new members. Among these may be special areas of expertise, educational background, past Board experience, employment background, membership status, and geographical, cultural and linguistic background.

The Nominating Committee should consider, in no particular order of precedence, the following factors in recommending potential Board members:

- competency, willingness and availability to perform the duties of members of the Board;
- the availability of individuals competent and able to serve as members of the executive;
- whether there are sufficient women, men, and members of minority communities on the Board;
- representation from the scientific and cultural communities;
- representation from non-governmental organizations;
- representation of individuals who can help attract funding to the Society;
- representation from different geographical areas in the Province; and
- representation by individuals who bring such other qualities to the job as the Nominating Committee sees fit or the Board requests.



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The Nominating Committee shall present its recommendations directly to the AGM of the Society without need of having the same approved by the Board.

***How many Board members does our organization require?***

The number of Board members is not fixed but best determined in relation to the needs of the organization. It can be set at a maximum, e.g., 5, 10, 12, 15, or remain open-ended. Board members' terms are often staggered, e.g., three members hold office for three years, three members for two years and three members for one year. This method of electing members limits turnover and reduces the risk of any one group taking over control of the Board. The number of consecutive terms a Board member may serve is also usually spelled out in an organization's bylaws. Some jurisdictions set a minimum number of directors so you should check this requirement.

***Meetings***

***How are decisions made?***

The general membership is the ultimate decision making authority in the nonprofit. It makes decisions by way of general meetings, whether annual, special (called to discuss a specific matter that has suddenly come up) or extraordinary meetings.

A notice period informing members about the AGM should be set out in the bylaws and needs to be followed exactly.

***Can meetings be conducted via teleconference, videoconference, or some other means?***

Members may agree that Board meetings can be conducted via teleconference, videoconference, or some other means. They may also agree that certain members be included in the meeting via telephone or videoconference.



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### ***What is a quorum?***

A quorum is the number of officers or members needed to legally conduct a meeting and transact business. A number may be set for an AGM e.g., 10 or 20 members. The quorum for a meeting of the Board may be a majority of Board members or a fixed number. If there is not a quorum present, the meeting should not proceed because any business conducted or decisions made are not enforceable. However, discussion can still take place.

### ***Liability***

Potential for liability may exist at a number of levels in the organization. In relation to the Board of Directors, the overall purpose of a Board of Directors is to manage the affairs of the organization. In doing so, the Board provides the direction to the organization to permit it to carry out its objects and to ensure that the organization meets its legal obligations, maintains its status and is financially responsible. In performing these functions there are a number of potential pitfalls.

### ***What is directors' liability?***

Generally, directors have no personal liability if the nonprofit is held legally accountable. If directors of a nonprofit or charity act within their authority and are reasonable in making decisions, they cannot be held liable for the unforeseen consequences when things go bad. However, if the directors act beyond that authority they can lose their legal protection from personal liability. For example, failing to see that proper deductions are sent to the CRA has resulted in the directors being personally liable for the amounts not sent. Contracting with a company in which a director has a personal interest without disclosing that interest could result in that director being responsible to the company for the profit in the contract. Deciding not to clear ice and snow from a sidewalk where it is obvious that damage will result could lead to personal liability for the directors. This may or may not be covered by insurance.



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### ***What is limited liability?***

With exceptions, individual members of a Board of Directors have limited liability for the actions of the organization. The incorporated organization, like incorporated (or limited) for-profit companies, is considered by law to be a separate legal entity (it enters into its own contracts, owns its own property, etc., in its own name) and is distinct from its individual members.

### ***What are the general duties of directors?***

Directors are expected to exercise a direct supervisory and management role in the organization's chain of command. The general duties of a director are as follows:

- Duty of Loyalty: to act honestly and in good faith to advance the best interests of the organization
- Duty of Care: to use care, diligence and skill in performing duties
- Overseeing an office(s)

In some cases, directors or officers will propose that someone replace them at a meeting of the Board. Unless the bylaws so provide, Board members cannot simply assign or transfer their obligations to colleagues or associates.

### ***What is personal liability?***

Directors have a duty to take an active interest in the affairs of their organization. In doing so, there may be instances where they may be negligent by reason of an act or omission in discharging their duties. For example, they may fail to renew an insurance policy, or they may release private and confidential information about an employee of the nonprofit.



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### ***What is the ‘due diligence’ defence?***

In certain cases, directors can seek the protection of the “due diligence” defence; they can claim that they took all the reasonable steps to prevent an unfortunate incident from happening. However, in many cases, specific laws define liability. To use a defence of due diligence, clear and effective delegation and reporting between Board and staff supported by a formal and comprehensive policy of the organization are required.

### ***What about liability for regulatory offences?***

Directors can be found personally liable for regulatory offences under various laws. These include:

Liability for financial governance:

Federal

- *Canadian Pension Plan Act*
- *Unemployment Insurance Act*
- *Income Tax Act*
- *Pension Benefits Act*
- *Excise Tax Act (HST)*

Provincial

- *Health Services Tax Act*
- *Occupational Health and Safety Act, RSNL 1990, c. O-3*
- *Workplace Health, Safety and Compensation Act, RSNL 1990, c-W11*



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- *Income Tax Act, 2000*, SNL 2000, c. I-1.1

Environmental liability imposed by statute:

Federal

- *Canadian Environmental Protection Act*
- *Hazardous Products Act*
- *Transportation of Dangerous Goods Act*
- *Fisheries Act*

Provincial

- *Environment Act*
- *Environmental Protection Act*, SNL 2002, c. E-14.2

### ***How can directors be protected?***

The provincial or federal statute under which a nonprofit is incorporated may contain a provision that protects a member or director from being sued for the wrongs of the nonprofit. The following is an example: “No member of a society shall, in his individual capacity, be liable for any debt or liability of the society...”

The members and directors of a nonprofit may be protected by virtue of a provision, known as an “indemnification clause”, in the governing documents (bylaws) of the nonprofit. The following is an example of a section of a nonprofit’s bylaws:

Every member of the Board and their heirs, executors, administrators, successors and assigns, and estate and effects, shall be indemnified and saved harmless out of the funds of the Society from and against all costs, charges, and expenses which shall or may be sustained or incurred in any action or proceeding which is brought or prosecuted against him/her for or in respect of any act, deed, matter, or thing made, done, or permitted by him/her in or about



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the execution of duties of office, and also from and against all other costs, charges, and expenses which shall be sustained or incurred in or about or in relation to the affairs thereof, except such costs, charges, and expenses as are occasioned by his/her own wilful neglect or default.

However, such protection will not be of much use where the nonprofit becomes insolvent (runs out of money and assets) and therefore does not have adequate resources to indemnify directors. Also, nonprofits that rely on government funds and charitable donations may not be permitted to use a substantial amount of such funds to indemnify directors.

### **Liability Insurance**

Directors are responsible for seeing to it that the assets of the nonprofit are protected. They are also responsible for insuring against possible liabilities. Insurance is a common way to do that. The scope of coverage will determine who will be paid and what is covered. It is important to ensure that insurance covers those things for which the organization is responsible. In practice, the cost of insurance premiums may be so high it is beyond the means of the organization. Therefore, it is best to comparison shop.

An organization may wish to take out insurance against the risks of being sued. Such insurance will not cover civil claims that arise from criminal acts or reimbursement of fines for conviction of criminal or quasi criminal activity since such fines are not considered losses.

The following are examples of general insurance policies designed to protect directors against possible exposure to lawsuits:

**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



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stream), spills (heating oil escaping from a control), and waste (hazardous substances poured down the drain and emptied into a watercourse).

Directors' 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 nonprofit 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.

It is a good idea, especially when new Directors are elected, to have a meeting with an insurance broker to review the coverage and effect of insurances in place to protect the organization.

### **Due Diligence**

Whether you are a Director, have been approached to serve as a Director, or are an association seeking new Directors, answering these questions will help you determine how well a nonprofit is being run. Of course, the age of the nonprofit as well as the nature of its activities will govern the nature and extent of the inquiries made. In general, it is a good idea to ensure that:

- Is there is a constitution (Memorandum of Association, Articles of Incorporation) and bylaws?
- If incorporated, is the nonprofit in good standing with the Registry of Joint Stock Companies (in Nova Scotia), the Registry of Companies (in Newfoundland and Labrador) or the equivalent office in another province with respect to financial statements filed, list of directors, annual returns, notice of offices, and fees paid?



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- Do the actual activities of the nonprofit agree with the objects set out in the constitution?
  - Is there a current annual budget and/or strategic plan that outlines where the nonprofit is going and how it proposes to get there?
  - Is there an annual audit or financial review conducted by an outside auditor?
  - Are there financial statements for the past few years?
  - Does the Board receive regular financial updates?
  - Is there appropriate insurance at adequate levels of coverage?
  - Are the rights and obligations of the nonprofit under significant legal contracts clear?
  - Are there job descriptions and reporting requirements for employees? and
  - Are the minutes and resolutions of the AGM and Board meetings from the past year available?

### Decision Making

Directors and officers have a set of standard duties under the nonprofit's bylaws. These include; attending meetings, preparing for meetings, and exercising their duties fully and completely as required under the bylaws. Typically, the Board sets the broad direction for the nonprofit, and staff put this into action. For example, the Board sets a fundraising policy, but does not control how a fundraising plan is actually implemented. Many Boards prefer to stay away from involvement in the day-to-day operation of the organization. In small nonprofits the board have to wear two hats and take a policy and task-orientated role.

### Improving Board Performance

Some basic responsibilities most Boards assume to be effective include:



**Mission and Strategic Objective:** setting the overall purpose for the organization-why it should exist, who it should serve, what services it should provide, and what values and ethical guidelines it should follow.

**Fiscal and Legal Oversight:** ensuring that the organization behaves in a fiscally and legally responsible manner. This includes such matters as overseeing investments, capital budgeting, property management and compliance with various laws applying to the organization.

**Chief Executive Officer (CEO) or Executive Director (ED) Selection and Evaluation:** ensuring that the best person holds the position of CEO/ED and performs it at a satisfactory level of competence.

**Boundary Spanning:**

represents the interests of the organization to its external public; and

ensures that the interests of key external stakeholders are made known inside the organization.

**Resource Development:** ensures that the organization obtains adequate funds to enable it to achieve its objectives.

**Management Systems:** ensures that the organization is managed efficiently and effectively, e.g., that it has the right administrative structures and policies, information systems, human resource policies, etc.

**Board Self-Management Management:** activities aimed at ensuring the board itself is as effective as it can be, e.g., setting its criteria for membership, training its members, evaluating the effectiveness of its meetings.

(Excerpted with permission from “Improving Board Performance” by Vic Murray, *The Philanthropist*, Vol. 13, No. 4, p 3 - 37. See also, Canadian Centre for Philanthropy Website, [Board & Governance](#))

### ***What is conflict of interest?***

Conflict of interest generally arises from two situations: when a director advances their own personal interest over their duty to promote the best interests of the nonprofit (e.g., the nonprofit chooses to buy an insurance policy from



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a director who is an insurance broker); a director represents two conflicting interests even though there may be no personal benefit (e.g., a director sits on both the board of the Canadian Cancer Society and a tobacco manufacturer's trade association).

The best approach for directors is to be alert and note conflict issues that may indicate a problem early on so they may be addressed. A director should make full disclosure of any potential conflicts and at least abstain from all discussions and decisions where there is such a potential or the appearance of a potential conflict. Directors may have to abstain from voting on certain matters where a conflict has arisen, and in fact, this is a good practice. The minutes of the meeting should record the non-participation of the Director.

## **Staffing**

### **Salaried Employee or Independent Contractor**

#### ***What is an employee?***

An employee is a person who provides ongoing labour for pay; either money or other compensation. The law presumes employees continue to be employed until they are terminated, quit, or the term of their contract of employment ends.

#### ***What is the difference between salaried employees and independent contractors?***

The determination of whether a paid staff person is an employee or an independent contractor can have significant implications on a number of fronts: vicarious liability (the liability of the employer for the wrongs caused by the employee); employee's dismissal rights (an employee's right to severance pay or payment in lieu of notice); and obligations of the employer to withhold money for employee deductions. Employers are required by law to withhold (hold back and not pay to the employee) and remit to the government compulsory paycheck deductions such as Income Tax, Employment Insurance benefits and Canada Pension Plan premiums from the salaries of employees, but not from the payments made to non employees. Additionally, penalties and back payments may be



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imposed on the employer if staff persons who have been treated as independent contractors are instead found by the CRA to be employees.

***How does our organization determine whether a staff person is an employee or an independent contractor?***

The test for determining whether a staff person is an employee or an independent contractor depends on four factors:

1. Degree of Control: An employer has the right to control what is done and the way in which work is carried out. In contrast, an independent contractor has more leeway as to how the work will be performed. For example, an independent contractor may sub-contract to others a portion of the work to be done, whereas an employee is expected to personally perform the tasks set out by the employer.
2. Ownership of Tools: Independent contractors are expected to provide their own tools and supplies necessary in carrying out their work, whereas employees use the supplies provided by the employer. For example, independent contractors would typically have their own computers and vehicles.
3. Chance of Profit or Risk of Loss: Remuneration or payment for an independent contractor is based on the deliverables achieved at the end of the contract. An employee is paid on the basis of a periodic block of services provided, such as weekly or bi-weekly pay periods, regardless of the achievement at work.
4. Organizational Test: The degree of integration of the staff person into the workings of the organization is greater for an employee in the sense that an employee is more “family” than an independent contractor. For example, an employee will be part of a pension plan, health plans and group benefits; independent contractors do not typically enjoy such benefits.



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An employer simply cannot label a relationship “independent contractor” and expect the CRA not to look beyond the label. Indeed, even if an individual incorporates her own limited company, no deductions or withholdings are made, and that individual obtains a tax number, that is not conclusive as to the relationship in the eyes of the CRA.

### ***How does our organization make the relationship clear?***

The best way to establish the type of relationship is to have a formal agreement, a contract, between the two parties explicitly describing the relationship and stating what is intended.

NOTE: Appendix D provides samples of an employment contract and an independent contractor’s agreement.

### ***What is Workers Compensation?***

Workers’ Compensation provides financial and other support to employees who are injured on the job. The laws vary from province to province. However, in all provinces the full cost of workers’ compensation insurance is borne by the employer. In return, workers cannot sue employers for their on-the-job injuries. To find out if your organization should be paying workers’ compensation premiums, contact your local workers’ compensation board.

An important feature of workers’ compensation legislation is the duty of the employer to reemploy the injured employee as well as to accommodate the work or the workplace to the needs of the worker on the mend, as long as such accommodation does not cause undue hardship for the employer. Many employers will set up their own “early return to work” program.

### ***Hiring and holding on to an employee***

If done the right way, hiring and holding on to an employee will pay huge dividends down the road, as it confirms your desire to attract (and keep) the right (and best) people. This may be a function of the Board for some positions or may be delegated to the CEO/ED of the organization.

As an employer, the nonprofit must take notice of legislation that controls the hiring of employees. Provincial labour standard codes contain requirements for employers affecting such things as terms of employment – hours of



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work, minimum wage, vacation (vacation pay), equal pay for equal work, pay protection, statutory holidays, the employment of children, and protected leaves – pregnancy and parental leave, bereavement and jury (court) duty.

Provincial human rights legislation prohibits discrimination in the workplace on certain defined grounds. For example, the employer is generally restricted from asking questions on such prohibited grounds of discrimination as the following: age; race; colour; religion; gender; sexual orientation; physical or mental disability; marital or family status; and political belief, affiliation or activity.

These requirements can affect employment screening and selection practices used by the employer (interview questions that can be asked, background checks that can be undertaken, and testing on such matters as ability, aptitude and medical fitness). In such cases, the employer must be able to show that its question to the applicant was a legitimate workplace requirement. For example, if the employee's work requires frequent travel to remote, isolated areas to do field work, the employer should describe such a requirement to the applicant and be able to demonstrate that such requirements would make it impossible to accommodate certain employees without resulting in hardship for the employer (e.g. not holding a valid driver's licence). Also, pre-employment medical testing (including drug testing) before a conditional offer is made is unacceptable when such testing is being used to, in effect, screen candidates. Any intention by the employer to approach present or previous employers about the applicant may only be done with the prior permission of the applicant.

## **Firing an Employee**

### ***What is termination?***

Termination happens when the employer gives notice, telling an employee when they are finished work. This notice period is the time between when the employee is first told the job is over until the date when they are no longer working. Every employee is entitled to a period of notice the basic term of which will be established by legislation and may vary in accordance with the nature of the employee's position (generally, the more senior the position, the longer the notice period required); length of service of the employee to the employer (the longer the employee was employed, the longer the notice period), employee's age (the older the employee, the longer the



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notice period) and the employee's future prospects (the longer the expected amount of time it would take to get a similar job, the longer the notice period). If proper notice isn't given, people are entitled to their normal pay as if they had worked the period of notice or they may sue the employer for wrongful dismissal.

### ***What is due cause?***

An employer can terminate without notice or pay instead of notice only where there is due cause (also known as just cause). Cause is a legal reason that justifies an employer immediately dismissing an employee. Cause could include theft, too many days away from work and lying to the boss are all reasons for immediate dismissal. However, not all acts of dishonesty will constitute automatic grounds for dismissal. Rather, an employer must be able to demonstrate that the degree of employee's dishonesty was incompatible with the continuation of the employment relationship. Where termination for cause is being considered, it would be prudent to consult a lawyer.

Without a written agreement setting out the terms of the work, the law will substitute its own standard version. So it is important – both as an employer and an employee – to pay careful attention to the terms of the employment relationship and to write the details down in a clear, legally enforceable way. Whenever you terminate an employee, the circumstances surrounding the dismissal will be very important in determining whether there really was due cause. Even more generally, any type of disciplinary action (up to and including termination) must be reasonable and justifiable in the circumstances. The organization may be wise to consult a lawyer or the human rights body in the jurisdiction before taking any action.

### **Liability of nonprofits for employees and volunteers**

A nonprofit may be sued for an indirect act originating from the acts (or omissions) of its employees, agents (contractors) or volunteers. The principal is known as vicarious liability. The responsibility of supervisory teachers in schools to their pupils and of hospitals to their patients are examples of vicarious liability, and is not strictly limited to vicarious liability for employers, but also to nonprofits in respect of volunteers under their direction. In the case of nonprofits that offer care-giving services to children, several different tests may be applied regarding the duty of the care-giver to the person cared for. However, the general test for the care-givers' duty of care is a two-part test:



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1. Is there a sufficiently close proximity between the care-giver and the victim in terms of supervision and control by the care-giver over the victim; and
  2. Whether there are circumstances limiting (a) the scope of duty (e.g., the direct supervision and control of a camp counsellor over a child not registered at the camp); (b) the class of persons to whom this duty is owed (e.g., whether children were in need of supervision by an adult); and (c) the damages to which such breach of duty may give rise (e.g., whether sexual molestation is the direct cause of a learning disability in the victim). In another example, where a child is the victim of accidental physical harm, e.g., accidentally falling down the stairs, the test for an employee's behaviour is the standard of care of a prudent and careful parent. The risk of a child falling down the unguarded stairs is generally foreseeable and the danger is significant. Moreover, the circumstances of the day care giver (low pay, temporary position) will not help the nonprofit in justifying a lower standard of care.

The nonprofit is vicariously liable when it has ultimate control over the caregiver. The test for vicarious liability of an employer for an employee's sexual abuse focuses on whether the employer's enterprise and empowerment of the employee materially increases the risk of the sexual assault and hence the harm. However, a direct (contractual) relationship between the nonprofit and the person harmed will be necessary, with the nonprofit exercising discretion or power over the employee, and the employee acting inside of his scope of duties as employee. If it is clear that the opportunity for intimate private control and parental care required by the employee's terms of employment created a special environment that facilitated the employee's sexual abuse, the nonprofit will be held liable.

Vicarious liability also operates in the following circumstances: where an employee gets into a car accident and injures someone in the course of their employment; where an employee leaves a piece of equipment in a walking path and someone trips and injures herself; where an employee fails to clear debris or ice from steps or a ramp and someone slips and injures herself; and, where an employee discharges a pollutant into a nearby pond or stream.



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Nonprofits are also generally held responsible for the wrongdoings of its volunteers. An Alberta farmer and member of the Board of Directors of Farmers for Peace was injured in 1988 while loading goods with a front end loader onto a truck destined to assist with relief efforts to Nicaragua. As a volunteer, it was found that the farmer was to be considered an employee and caused the nonprofit to be responsible for acts of volunteers. The test applied to determine if a nonprofit is responsible for the acts (or omissions) of a volunteer is whether the volunteer was acting within the scope of his authority (whether the decision/act of the volunteer was incidental to, or consistent with, the performance of his authorized duties). Therefore, a volunteer can be treated the same way as an employee for purposes of vicarious liability even if the volunteer's involvement with the nonprofit is for a single, isolated occasion and even if the volunteer is acting without payment from the nonprofit.

In addition, there are statutory duties to be taken into account by a nonprofit in respect of the acts (omissions) of its employees or volunteers. For example, child welfare legislation generally requires that a person who believes a child is in need of protection from harm must report such concern to the director of child services. The driver of a vehicle is generally required under motor vehicle legislation to ensure children are wearing appropriate restraints (e.g., seat belts).

Furthermore, the nonprofit may still be vicariously liable even when it has delegated its activities to an independent contractor. A nonprofit cannot hire an independent contractor to avoid legal responsibilities. By delegating a task that was part of the nonprofit's objectives and its mandate, the nonprofit continues to be ultimately responsible. Therefore, a practical way for the nonprofit to protect itself is by either carrying insurance that protects itself against the wrongs of independent contractors, or, insists that independent contractors carry insurance that protects the nonprofit from being sued.

#### **A Code of Conduct for Employees and Volunteers**

A nonprofit can take steps to assist it in clarifying what types of dishonest and unprofessional conduct will result in termination for a problem employee (cancelling an agreement with an independent contractor or disassociating it from a volunteer) by establishing policies, codes of ethics of best practices and rules of conduct.



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Screening prospective employees is also possible, provided that screening practices are consistent with the legal issues set out in “Hiring and holding on to an Employee.” Also, a nonprofit which has supervision and control over children (e.g. camping situations) or provides activities involving significant risk of physical harm (e.g. adventure travel) should educate employees and volunteers about appropriate and timely measures (non-confrontational, effective and safe) to respond to, and report, unacceptable behaviour to a specified authority in the organization (often the Board of Directors).

Employees should also be made aware of the importance of the basic rules of conduct set out by human rights statutes, including the prohibition in respect of discrimination and workplace sexual harassment. Each province has its own Human Rights Code or Act, but those statutes are very similar.

# MISCELLANEOUS

## *Copyrights*

In Canada, the Federal Copyright Act confers to owners of copyrights the right to reproduce, perform or publish an original “work.” A work may belong to any one of the following four categories: Literary (newsletter article, published research report, software application, etc), dramatic (promotional or instructional videos, etc.), musical (sound recordings, etc.) and artistic (photography, painting, cards, etc.). The author of the work retains the “body of law” with respect to the work. This means that the work cannot be reproduced without permission. For example, to place a cartoon from a local newspaper into your own newsletter constitutes a copyright violation. However, it is common in commercial publishing for authors to sell copyright to an editor for a fee and/or royalties. In return, the editor takes care of the editing, printing, distribution and marketing.

### *How is an admissible work defined?*

#### **The work must conform to the definition found in the Copyright Act.**

The Copyright Act stipulates that copyrights apply to “all literary, dramatic, musical and artistic works.” This definition does not apply to other works. For example, individuals may not claim copyright protection of a photograph in which they appear. They may, however, claim rights related to commercial exploitation of their images, under the right to privacy. If someone has merely discussed the concept of a brochure, copyright is not yet applicable. Once a version of the brochure has actually been produced, however, copyright would apply. Ideas are not subject to copyright, but the specific expression of an idea is subject to copyright.

#### **The work must be original.**

A work produced as a copy of another original work constitutes a copyright violation and cannot in itself be protected. For example, a drawing or a sketch of an organic material composting apparatus cannot be taken from a government information publication and used elsewhere simply by adding a few changes (i.e., different line colors



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or font sizes) and then stating that one is the “author” of the drawing. A new work can be different from the original version and still be considered a copy of the original.

**The work must be produced from a basic talent.**

The work must involve an application of a basic talent, even though it does not have to be the expression of a completely new idea.

***How can you protect yourself as an author?***

**Confidentiality and Non-Competitive Agreement**

When an author has identified who will use a work, protection of confidentiality can be ensured through clauses in a confidentiality and non-competition agreement, as follows: acknowledgement of the original author agreement to not to use the work without consent of the original author.

**Registration of the work with the Canadian Intellectual Property Office (Industry Canada)**

Even though an author does not renounce the rights concerning a work by not registering the work under the Copyright Act, registration nonetheless constitutes visible notification to the public confirming ownership of the work. If another person contests ownership of the work, the author can cite the registration and place the burden on the dissenter to prove their allegations. However, registration of the work does not in itself prove that the author is the actual owner of the work.

***What constitutes a Copyright violation?***

A copyright violation occurs as soon as an act is committed that only the owner of the work would have the right to commit, unless consent was granted by the owner. Examples of violations are: copying an article or using a song in a commercial without gaining the permission of the author.



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### ***What can an author do when a violation occurs?***

There is a series of standard measures to address copyright violations. Once a violation has been confirmed, a formal notification letter is forwarded to the offender, outlining the unacceptable use that has been observed and stating that the author wishes to reinforce their copyright, citing the applicable statutes and outlining actions the author wishes the infringing party to take and will be the associated consequences if the actions are not taken. (See Annex E).

### ***What is acceptable use and what exceptions exist?***

#### **Where permission is granted by the author to use the work, in whole or in part**

An author may grant anyone permission to use all or part of their works, normally in exchange for some form of compensation, or at least public acknowledgement of the original author. In most cases, permission must be in written form. A description of the rights being accorded (details of what use is permitted) is extremely important and must be very carefully outlined.

In some cases, permission is obtained by means of a broader agreement, covering an entire institution, under the terms of which a university or several universities, for example, could negotiate a global agreement with a number of publishers. Certain precautions must still be taken, even in these types of situations. First of all, this will be difficult in some cases as the works involve a number of authors, not all of whom may have given their permission for use their works. Secondly, such agreements must contain conditions regarding use of the works.

#### **Reasonable Use**

Nothing in the law restricts the use of a work in an accepted and specific manner, where the result of such use is in the public interest. This normally comprises literary works, such as critiques, studies, analyses or newspaper commentary and university research. Such use is always subject to:



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### **Acknowledgment of the source (name of publication, date, page); and/or Name of the author**

A literary work composed, compiled or prepared using information obtained from observations during a public performance or an event which is advertised is not protected by copyright, but any recordings or publishing of a performance or event may be protected by copyright. As such, coverage of the events and deliberations at the Halifax G7 Summit, or Céline Dion's wedding, would be free from copyright protection. However, Céline Dion would have recourse to copyright protection regarding commercial exploitation of her image, if a photograph appeared in a commercial brochure intended for another person's personal gain.

A number of factors affect whether an exception to "accepted use" will apply. The following are general criteria of acceptability:

The subject or nature of the proposed use (educational or non-profit use would be more acceptable than commercial or profit-oriented use).

The nature of the work subject to copyright (eg., a published compilation of legal forms prepared for lawyers could for the most part be freely used by them, compared to a novel adapted to video).

The proportion of the work used compared to the size of the original (the likelihood of acceptable use decreases as the amount of material used from the original increases).

The effect that use will have on the market value of a work. This is perhaps the most important factor in determining if use is acceptable.

### **Public Domain**

The Copyright Act stipulates that copyrights apply as long as the author is alive, plus 50 years following death. As a consequence, original non-published works of William Shakespeare would not be protected by copyright.



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## **Moral Rights**

These are rights retained by an author to prevent their work from being used in a manner that would damage the integrity of the work. Such damage could result from physical modification of the work or the fact that the work is used by the new owner in association with a product, service, cause or institution that would have a compromising effect on the artistic integrity of the work. For example, a judge ruled that the creator of Canada Goose sculptures at the Eaton's Centre could preclude the centre from disguising the figures with Christmas decorations during the holiday season by invoking the fact that the use of costumes altered and devalued the original work.

It is not permissible to alter a work without obtaining a written formal release by the author. Moral rights cannot simply be passed to the new owner by the original author.

## **Trade-marks**

### ***What is a trade-mark?***

A trade-mark is a word, a design or a form used to identify, for commercial purposes, the goods or services of an originator. The goal is to make the good or services distinct and prevent someone else from using the same trade-mark. For example, the following are all trade-marks associated with a popular soft drink: the words "Coca-Cola," the combination of a red background and a white wave and the distinctive form of the Coca-Cola bottle.

Trade-marks can be obtained through one of two methods: usage or registration. In the first instance, they become protected under common law simply through their use in conjunction with a product or service. This form of protection is automatic and permanent. Secondly, trade-mark protection can be obtained through registration under the federal Trade-marks Act. Registration of a trade-mark offers more comprehensive protection, as it constitutes a proof of ownership, that is, the registered party is assumed to be the owner of the trade-mark until a dissenter can provide evidence to the contrary. It takes approximately eight months to process a registration, which is then valid for fifteen years, renewable indefinitely in fifteen year periods thereafter.



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On the other hand, there are restrictions as to what can be made the subject of trade-mark under the federal Trade-marks Act. For example, the following items cannot be registered:

The name of living persons (even if it is the name of the applicant);

Words describing goods and services associated with the trade-mark (such as: “Greenacre Organic Growers Association”);

Words having a common or popular definition, even if they are not specifically descriptive (for example, “Fill” - a term used commonly in construction to designate soil or earth);

Words that clearly describe the original geographic location associated with the good or service (such as “Corner Brook” ); and

Words borrowed from another language (Such as use of the word “vin” in English instead of “wine”).

The following are variations on the standard form of a trade-mark:

**Certification Mark:** identifies a quality standard for a good or service, such as the “Möbius Band” symbol universally associated with recycling, or descriptors such as “cotton” or “wool,” used to denote the composition of a textile.

**Distinctive Features:** goods which are distinguished by their form or packaging, such as “Life Savers” (a candy in the shape of a circle), or cookies in the form of a cat.

**Trade-Name:** identifies the name under which the company does business, but does not constitute a trade-mark unless it serves to distinguish goods or services, such as “Coca-Cola.”

**Official Mark:** where a trade-mark has not been accorded though usage or the normal sense, a Non-Profit Organization (NPO) may have recourse to options not open to other applicants. If the trade-mark office accepts the NPO as a “public authority,” the latter may obtain an official mark to use words that might not otherwise meet the



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criteria for a trade-mark. For example, the Province of Nova Scotia has a government mandate and is therefore by all accounts a “public authority, so the “Waterfront Development Corporation”, as an example, might be an accepted official NPO.

The two levels of criteria for determining what constitutes a public authority are as follows:

**Public and non-Private goods:** A public authority, whether constituted under the Copyright Act or any other law, must carry out operations and achieve objectives for the good of the general public and not for profit or private gain. This criterion is relatively easy to meet.

**Sufficient degree of government control:** The government must exert a sufficient degree of control over the creation and operation of the entity to reinforce its nature as a “public authority.” Examples of “government control” can include: inclusion of government personnel as administration Board members of the NPO, clauses stating that financing accorded to the NPO would have to be returned if certain conditions are not met, the fact that the government could impose mandatory service standards on the NPO, for example, in the case of a children’s hospital or community public health centres.

## ***Defamation***

### ***What is defamation?***

Defamation is the general term that describes an affirmation which causes prejudice to the private, professional or commercial reputation of another person. This goes beyond mere exchange of insults or unkind sentiments - these are serious allegations regarding the targeted person, which essentially have the effect to discredit the person and destroy the respect of others for that person. It is better known by these two forms: Slander (verbal defamation) or libel (written defamation).

The threat of defamation is particularly prevalent for NPOs, given the current tendency towards controversial news coverage that targets individuals. For example, a background piece in a newspaper naming three tobacco manufacturers and stating that they are responsible for cancer-related illnesses would be defamatory. A profile in



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an internal bulletin forwarded by e-mail stating that a certain Mr. Leblanc had accomplished great things despite going through a divorce and suffering from depression would be defamatory, if it were established that Mr. LeBlanc did not suffer from depression and/or was not going through a divorce.

The following criteria must be met before a lawsuit for defamation can be registered:

**Defamatory nature of Statements:** It is not sufficient to simply state that a declaration is false or misleading. It must also result in a real loss to the complainant, as in some cases a false declaration can either be mostly harmless or even turn out to be beneficial.

**Identification of the Wronged Person:** The accusation must clearly identify or mention the specific person that has suffered injurious consequences. The Royal Bank could not easily be considered the victim of defamation as a result of a simple statement such as “The Big Banks and their pro-free trade puppets are all corrupt.”

**Publication:** The defamatory statements must have been transmitted to a third party.

**Identification of the Source:** The source of defamation must be clearly identifiable as the author of the defamatory remarks.

**Falsehood:** The remarks must be false or imprecise. Truth is a complete defence against a suit for defamation.

**Damages:** The extent or nature of prejudice will depend on the private, professional and commercial reputation of the complainant and the importance of that reputation.

Here are some examples of allegations liable to place an organization in an awkward position:

**Criminal Conduct** (for example, stating that a lawyer had committed fraud where this was not the case)

**Sexually Transmitted Disease** (stating that a person has a venereal disease when this is not true)



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Incompetence or Professional Misconduct (for example, stating that a doctor has had their license revoked, when only a fine had been levied)

Financial distress or irresponsibility (avoid terms such as insolvency, bad credit rating, unpaid bills)

Juxtaposition, that is, a statement that, even if not defamatory in itself, could become defamatory when combined with another statement with the result of discrediting someone (for example, a cable TV show where the type of mercury in a given type of paint is discussed immediately after coverage of deaths or poisonings caused by effluent containing another type of mercury).

Non-Patriotic Behaviour (for example, an organization accuses veterans of having targeted civilian targets).

Political affiliation (for example, a neutral person is named as partisan towards a political party).

What are some preconceived ideas regarding Defamation?

Here are some preconceived ideas regarding how defamation can be avoided:

The fact that something has already been stated about someone in the past does not preclude a second lawsuit. It is possible that a publication is more prominent than that used in the first instance, or the opinion of the claimant may have since the first article, or it's possible one party now believes the other has more money.

A statement made in jest could become defamatory if it is taken out of context and published again in a more serious manner. Statements made in ordinary conversation could ultimately be considered defamatory.

### ***What are the possible defences?***

Truth: The best defence against a lawsuit for defamation is to establish that the statement(s) are true, even if damaging. For example, an ecology group would be allowed to state that the products of a company do not meet the criteria to be considered “environmentally friendly” according to government standards, if this is the truth.



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Fair remarks: Opinions and Points of View can be protected from defamation:

- a) if they are fair and factual: a fair comments defence aims to protect people who wish to express their opinion regarding questions of public interest. The following elements must be present to invoke this defence:
- b) the statement must be verifiably in the public interest and not simply a rumour;
- c) the statement must constitute an honest and accurate opinion of the author, with expression of opinion clearly delineated from statement of the facts;
- d) statements must be based in facts;
- e) the author must not have malicious intent.

Consent: if the person consents to the publication of information regarding them, this is a defence against a suit for defamation. However, it is probably rare that this type of permission is given and can be proven.

Privileged Platform: An elected official may have recourse to the privileged platform defence in the case of a public charge regarding statements made in the course of official duties, or a person having the obligation to provide certain information. An absolute privilege is accorded to Members of Parliament or a legislature regarding remarks made in the House (but not outside). There can also be conditional privileges for personnel engaged in other professions where a certain degree of protection regarding statements is considered beneficial to public interest in the course of the activity. For example, a nurse is obliged to report to the relevant professional organization any nursing practices violations observed, even if the report would prove prejudicial to the person in question.

### ***What are the potential repercussions?***

If the statement is written, the originator can be requested to correct the statement in a subsequent issue; books or publications already distributed may be taken out of circulation, or offensive statements can be retracted.



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Normally, an official apology and public retraction are required. In the majority of provinces, a law regulating defamation lawsuits exists.

New Development in the area of defamation: SLAPP – Lawsuits Against Public Participation

A new tactic in the area of law regarding defamation in the United States (and to a certain degree in Canada) is being used by companies who feel their commercial decisions and their reputations are negatively affected by activists opposed to certain projects. Aggressive developers and promoters of ecologically-sensitive projects have used the threat of a defamation lawsuit against activists, for example, with the aim of reducing the activists' ability to raise objections. This tactic is called Lawsuits Against Public Participation, or SLAPP.

Recently, some organisations who have been victims of SLAPP have responded with equally effective tactics. To arm themselves against SLAPP, these victims can invoke the freedom of expression guaranteed by the Canadian Charter of Rights and Freedoms.

### ***Protection of Privacy***

#### ***What is Protection of Privacy?***

The principle of a right to private life is drawn from several sources of jurisprudence (as opposed to laws specifically issued by governments) and rests on the premise that everyone has the right to peace and quiet.

Advice: A good portion of the law in this area has been the subject of new legislation, both provincial and federal. These laws are only now entering into force and will be covered in greater detail in subsequent versions of this section, when they are released. (See PIPED) [http://www.cio-dpi.gc.ca/pgol-pged/piatp-pfefvp/course1/mod2/mod2-3\\_f.asp](http://www.cio-dpi.gc.ca/pgol-pged/piatp-pfefvp/course1/mod2/mod2-3_f.asp)

Whether through legislation or court decisions, the essential goal is to protect persons from emotional distress that results from violation of their privacy. The right to privacy comprises several aspects, of which three are



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particularly important for a NPO: breach of privacy, public divulcation of private information and commercial exploitation.

### ***What is a breach or intrusion?***

The typical lawsuit for a breach of privacy results from a physical intrusion into a property or surveillance of the property. However, there are a few exceptions to this rule of thumb:

- (1) in cases where a photograph was taken in a location open to the public (the photograph simply represents that which any other person could have seen or heard);
- (2) where consent was given by a person holding exclusive rights to the property;
- (3) where photographs are taken with a normal camera (available for regular sale) and the camera was not hidden or disguised;
- (4) where the public interest and the journalistic impact of the picture outweighs the right to privacy.

What is public divulcation of private information?

It is a violation of personal privacy, even if the information is correct. The information must be of a private and sensitive nature whose divulcation would be highly prejudicial, where legitimate public interest does not exist. For example, it is widely accepted that the public divulcation of personal medical information is illegal. Health Care institutions have in fact been severely punished for using patient rosters to build massive mailing lists during funding campaigns, producing the risk that identification of the sender would permit linking of the person and the institution. In cases where information of this nature must be shared with a third party (lawyers, doctors, human resource personnel, etc.), the information must be delivered in a sealed envelope marked “personal and confidential”.



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### ***What is Commercial Exploitation?***

Commercial exploitation means the use of an image (photograph, voice, etc.) of a person, without their consent, for publicity purposes. In these cases, written authorization must be obtained before the image can be used.

### ***What is Exclusive Information and Confidentiality?***

An NPO may hold information, in addition to various works potentially eligible for copyright protection, for which they wish to invoke ownership rights. For example, these may include membership lists, donor profiles, prize lists, etc. The NPO would want to prevent anyone (usually employees or volunteers) from using this information for their own purposes or for unauthorized commercialization. The NPO can protect itself by ensuring that employees and volunteers sign an agreement recognizing that the NPO is the proprietor of such information and clearly outline the conditions under which the information may be used.

Sample Clause: “While this agreement remains in force, the [employee] [consultant] will have access to confidential information and/or commercial information belonging to [the NPO]. For the duration of this agreement, and at all times thereafter, the [employee] [consultant] may not divulge confidential or secret information, either directly or indirectly, or make any use whatsoever of the information, except where execution of the current agreement requires such use by [the employee] [the consultant]. Upon termination of the current agreement, all documents and files belonging to the NPO will be returned as soon as practicable following the end of the agreement.

### ***Publicity***

#### ***What are the restrictions on publicity and what constitutes false publicity?***

There are several laws in Canada to regulate the manner in which products and services are commercialised and sold to the consumer. However, false publicity is probably the area of law most pertinent to NPOs, in particular, the regulations regarding false publicity found in the federal Competition Act.



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In Canada, the Competition Act allows the federal government to make rules against “statements that are misleading or false in a material respect” (52(1)). To obtain a conviction, the regulating authority must prove the physical elements of the infraction – that an act has actually been committed. On the other hand, an accused must establish that, in the circumstances, reasonable prudence was exercised in order to avoid a misleading effect – the “due diligence” defence.

“Green marketing” is a good example of a situation where an NPO must examine what is attributed to a product or service they wish to sell or endorse. When an environmental pretence affects a product’s performance, this pretence may considerably influence a consumer purchase decision. It must be truthful and based on appropriate and precise tests, according to normally accepted industry standards.



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## **APPENDICES**

### ***APPENDIX A: LEGISLATIVE INFORMATION & CONTACTS***

There is no single regulator for nonprofits. All levels of government may pass laws or bylaws relating to nonprofit activity. The federal government, for instance, regulates nonprofits and charities under the Income Tax Act for tax exemption and under the Excise Tax Act for goods and services tax. At the provincial level, there may be special rules for property tax. And at the municipal level, towns and cities may license some nonprofit activity.

#### **Federal Government Acts**

Excise Tax Act <http://lois.justice.gc.ca/en/E-15/index.html>

Income Tax Act <http://lois.justice.gc.ca/en/I-3.3/index.html>

Lobbyists Registration Act <http://lois.justice.gc.ca/en/L-12.4/index.html>

#### **Contacts**

##### **Canada Revenue Agency (CRA)**

Nonprofit Organization Main Page <http://www.CRA-adrc.gc.ca/tax/nonprofit/menu-e.html>

Charities Main Page <http://www.CRA-adrc.gc.ca/tax/charities/menu-e.html>

Charities Directorate, Canada Revenue Agency,  
Ottawa, ON K1A 0L5

Toll free: 1-800-267-2384 (English) or 1-888-892-5667 (Bilingual) Fax: (613) 954-8037



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## **Industry Canada**

### *Corporation Directorate*

365 Laurier W, Jean Edmonds Tower S, 9th Floor,  
Ottawa, ON K1A 0C8

Tel.: (613) 941-2837, Fax: (613) 941-5783, E-mail:  
shaw.richard@ic.gc.ca

Responsibility: policy and legislation for federally-  
incorporated nonprofits

### *Corporate Government Branch*

561F-235 Queen Street, Ottawa, ON K1A 0H5

Tel.: (613) 952-0738, Fax: (613) 952-2067, E-mail:  
gill.lee@ic.gc.ca

Responsibility: federal corporate law policy as it  
affects federally incorporated charities

### *Lobbyists Registration Branch*

<http://strategis.ic.gc.ca/lobbyist/>

Registrar, 66 Slater Street, 22nd Floor, Ottawa, ON  
K1A 0C9

Tel.: (613) 957-2760, Fax: (613) 957-3078, E-mail:  
lobbyists.reg@ic.gc.ca

Responsibility: the public registry of lobbyists and the  
Lobbyists' Code of Conduct.

### *Voluntary Sector Task Force*

<http://www.vsi-isbc.ca>

90 Sparks Street, Room 723, Ottawa, ON K1A 0A3

Tel.: (613) 943-2760, Fax: (613) 943-2766, E-mail:  
sfletcher@pco-bcp.gc.ca

Responsibility: reviewing the relationship between the  
federal government and the voluntary sector.

## **Provincial Governments**

### **New Brunswick**

#### **Acts**

Companies Act & Regulations <http://www.gnb.ca/acts/acts/c-13.htm>



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<http://www.gnb.ca/justice/regs/c-13reg.htm>

Lotteries Act <http://www.gnb.ca/acts/acts/1-13-1.htm>

### **Contacts**

#### **Service New Brunswick - Corporate Affairs Registry**

<http://www.gnb.ca/snb/e/6000/6600e.htm>

Service New Brunswick, City Centre, 432 Queen  
Street, P.O. Box 1998, Fredericton, N.B., E3B 5G4

Tel.: 1 (888) 832-2762, Fax: (506) 453-2613

Responsibility: incorporation of nonprofits

#### **Department of Finance: Lotteries Commission of New Brunswick**

P.O. Box 3000, Fredericton, NB E3B 5G5

Tel.: (506) 453-2623, Fax: (506) 453-3044

Responsibility: lotteries and gaming licensing.



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**Department of Justice: Credit Union, Co Co-operative & Trust Companies Branch**

P.O. Box 6000, Fredericton, NB E3B 5H1

Tel.: (506) 453-2315 Fax: (506) 453-7474

Responsibility: incorporation of credit unions, co-ops, and trust companies.

**Newfoundland & Labrador**

**Acts**

Corporations Act <http://www.gov.nf.ca/hoa/statutes/c36.htm>

Lotteries Act <http://www.gov.nf.ca/hoa/statutes/L5391.htm>

Co-Operatives Act <http://www.gov.nf.ca/hoa/statutes/C35-1.htm>

**Contacts**

**Department of Government Services and Lands:  
Commercial Registrations Division**

<http://www.gov.nf.ca/gsl/cca/cr/>

P.O. Box 8700, Ground Floor, Confederation Building, East Block, St. John's, NF A1B 4J6

Tel.: (709) 729-3316, Fax: (709) 729-0232

Responsibility: incorporation of co-operatives.

**Department of Government Services and Lands:  
Trade Practices and Licensing Division**

<http://www.gov.nf.ca/gsl/cca/tpl/>

P.O. Box 8700, 2nd Floor, Confederation Building, West Block, St. John's, NF A1B 4J6

Tel.: (709) 729-2660, Fax: (709) 729-3205

Responsibility: lotteries



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## Nova Scotia

### Acts

Societies Act <http://www.gov.ns.ca/legi/legc/statutes/societie.htm>

Gaming Control Act <http://www.gov.ns.ca/legi/legc/statutes/gamingc1.htm>

### Contacts

#### **Department of Justice, Registry of Joint Stock Companies**

<http://www.gov.ns.ca/snsmr/rjsc/>

Catherine E. Smith, Registrar

P.O. Box 1529, Halifax, NS B3J 2Y4

9th Floor, Maritime Centre, 1505 Barrington Street,  
Halifax, NS B2Y 3K5

Automated Service for general information, or to have  
forms faxed or mailed to you:

Tel.: (902) 424-7770 or Toll free: 1-800-225-8227,

Fax: (902) 424-4633,

E-mail: [joint-stocks@gov.ns.ca](mailto:joint-stocks@gov.ns.ca)

Responsibility: Nova Scotia Societies Act and  
registration of societies.

#### **Alcohol and Gaming Authority**

<http://www.gov.ns.ca/aga/licensing.htm>

General Inquiries: (902) 424-6160 or Toll free: 1-877-  
565-0556

E-mail: [agalice@gov.ns.ca](mailto:agalice@gov.ns.ca)

Responsibility: lotteries and gaming licensing.



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## Prince Edward Island

### Acts

Charities Act <http://www.gov.pe.ca/law/statutes/pdf/c-04.pdf>

Companies Act <http://www.gov.pe.ca/law/statutes/pdf/c-14.pdf>

### Contacts

#### **Consumer, Corporate and Insurance Division, Office of the Attorney General**

<http://www.gov.pe.ca/oag/ccaid-info/index.php3>

4th Floor, Shaw Bldg., 95 Rochford Street, P.O. Box  
2000, Charlottetown, PE C1A 7N8

Tel.: (902) 368-4585, Fax: (902) 368-5355, E-mail:  
[ewgoodwin@gov.pe.ca](mailto:ewgoodwin@gov.pe.ca)

Responsibility: registration under the PEI Charities  
Act, fundraising agreements between fundraisers and  
charities, gaming licenses, lotteries, etc.

### International Organizations

#### **Association of Fundraising Professionals**

<http://www.nsfre.org/>

1101 King Street, Suite 700, Alexandria, VA 22314

Voice: (703) 684-0410, Fax: (703) 684-0540, E-mail:  
[nsfre@nsfre.org](mailto:nsfre@nsfre.org)

#### **BoardSource**

<http://www.boardsource.org/>

1828 L Street, NW, Suite 900, Washington, DC  
20036-5114 USA

Tel.: (202) 452-6262, Fax: (202) 452-6299, E-mail:  
[mail@boardsource.org](mailto:mail@boardsource.org)



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## **National Organizations**

### **Canadian Association of Gift Planners**

<http://www.cagp-acpdp.org/>

P.O. Box 4084, Edmonton, AB T6E 4S8, E-mail:  
[cagp@tnc.ab.ca](mailto:cagp@tnc.ab.ca)

Or call Glyn Smith at (780) 430-9494 or Toll free at  
1-888-780-9494, Fax: (780) 438-4837

### **Canadian Centre for Philanthropy**

<http://www.ccp.ca/>

425 University Avenue, 7th Floor, Toronto, ON M5G  
1T6

Tel.: (416) 597-2293, Fax: (416) 597-2294

An initiative of the Canadian Centre for Philanthropy:  
<http://www.nonprofitscan.ca> - A comprehensive  
source of information on the charitable and voluntary  
sector

### **Charity Village**

<http://www.charityvillage.com/>

Central and Eastern Canada/Head Office

Doug Jamieson, President

CharityVillage Ltd., 160 Main Street South, P.O. Box  
92536, Brampton, ON L6W 4R1

### **Ethics Practitioners Association of Canada**

385 Leighton Terrace, Ottawa, ON K1Z 6J7

Tel.: (819) 595-2695, Fax: (819) 595-2695, E-mail:  
[jitie@cyberus.ca](mailto:jitie@cyberus.ca)

### **Resource Center for Voluntary Organizations**

Karen Spiess, Coordinator

5-132, 10070-104 Ave., Edmonton, AB T5G 4S2

Tel.: (780) 497-5616, Fax: (780) 497-5634, E-mail:  
[spiessk@admin.gmcc.ad.ca](mailto:spiessk@admin.gmcc.ad.ca)



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## Regional Organizations

### **Society of Fundraising Executives**

Marnie Chapman, President

c/o IWK Grace Foundation, P.O. Box 3064, Halifax,  
NS B3J 3G6

Tel.: (902) 428-8242, Fax (902) 428-8000, E-mail:  
mchapman@iwkgrace.ns.ca

### **Community Services Council of Newfoundland and Labrador**

Penelope Rowe, CEO

*Mailing Address St. John's*

*Community Services Council  
Suite 201, Virginia Park Plaza  
Newfoundland Drive  
St. John's, NL  
A1A 3E9*

*Tel: (709) 753-9860*

*Fax: (709) 753-6112*

*Email: csc@csc.nf.net*

### *Mailing Address, Gander*

Community Services Council Voluntary Resources  
Centre

P.O. Box 2222

2nd Floor, McCurdy Complex, Markham Place  
Gander, NL A1V 2N9

Tel: (709) (709) 651-1140

Fax: (709) 651-1142

Toll-free Technical Support: 1-877-651-1140

Email: bettinaford@csc.nf.net

Virtual Resources Centre [www.envision.ca](http://www.envision.ca)



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### Other Relevant Information

#### **Association of Fundraising Professionals (ASF)**

(formerly the National Society of Fundraising Executives)

#### **Donor Bill of Rights**

[http://www.nsfre.org/tier3\\_cd.cfm?folder\\_id=868&content\\_item\\_id=1238](http://www.nsfre.org/tier3_cd.cfm?folder_id=868&content_item_id=1238)

#### **Statement of Ethical Principles and Standards of Professional Practice:**

[http://www.nsfre.org/tier3\\_cd.cfm?folder\\_id=897&content\\_item\\_id=1068](http://www.nsfre.org/tier3_cd.cfm?folder_id=897&content_item_id=1068)

#### **The Accountable Nonprofit**

[http://www.nsfre.org/tier3\\_cd.cfm?folder\\_id=897&content\\_item\\_id=1072](http://www.nsfre.org/tier3_cd.cfm?folder_id=897&content_item_id=1072)

#### **Ethical Fundraising and Financial Accountability Code (Canadian Centre for Philanthropy)**

[http://www.bgccan.com/upload/ethical\\_code.pdf](http://www.bgccan.com/upload/ethical_code.pdf)

#### **Draft Model Code for Fundraising Accountability (Charity Village ®)**

<http://www.charityvillage.com/cv/research/rstew4.html>



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## **APPENDIX B: INFORMATION RESOURCES**

### **Books and Publications**

#### **Charities and Not- for- Profit Employment Law Handbook**

Stewart D. Saxe & Jean A. Brough, ISBN: 0433438304, LexisNexis™ Butterworths Canada Ltd.,

168 pages, 2002, Price: \$50.00 CDN

This resource focuses on laws specific to Ontario and British Columbia. Topics covered include: wages, hours, worker's compensation, termination, benefits, vacations and more.

To order see: <http://www.butterworths.ca/>

#### **Charities Handbook: Income Tax Fundraising and Accounting 2002 Edition**

Ronald C. Knechtel, C.A., C.M.A., and Dick L. Kranendonk, Ed. D., Canadian Council of Christian

Charities, 2002, Price: \$95.00 CDN

This handbook is for religious organizations, as well as other charities, and covers topics such as: taxation, charitable gifts, reporting, borrowing rights, accounting, and employment.

To order see: <http://www.cccc.org/>

#### **The Law of Charitable and Not-for-Profit Organizations, 3 3rd rd Edition**

Donald J. Bourgeois, ISBN: 0433431032, LexisNexis™ Butterworths Canada Ltd.,

524 pages, 2002, Price: \$135.00 CDN

This a valuable reference tool for Canadian charities and nonprofits. Topics covered include: legal structures, incorporation, bylaws and statutory requirements, taxation, supervision, fundraising, and much more.

To order see: <http://www.butterworths.ca/> To borrow from CAP call 1-800-663-5755



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### **Charities and Not-for-Profit Administration and Governance Handbook**

Donald J. Bourgeois, ISBN: 0433439761,  
LexisNexis™ Butterworths Canada Ltd.,

232 pages, 2001, Price: \$75.00 CDN

This handbook provides important information on organizational structure, financial accountability, the role of directors, risk reduction policies, privacy, asset protection and much more.

To order see: <http://www.butterworths.ca/>

### **Exploring Revenue Diversification Possibilities for New Brunswick Environmental Groups**

(For the Revenue Diversification Committee of the New Brunswick Environmental Network)

Cindy Coates, Office Assistant, New Brunswick Environmental Network (NBEN), 2001, Price: Free

This booklet examines charitable status, alternative workplace payroll deduction fundraising, affinity credit cards, and more.

To order contact: New Brunswick Environmental Network, 167 Creek Road, Waterford, New

Brunswick, E4E 4L7, Tel.: (506) 433-6101, Fax: (506) 433-6111, E-mail: [nben@nbnet.nb.ca](mailto:nben@nbnet.nb.ca)

### **Looking for Status? Information on Incorporating in New Brunswick and Obtaining Charitable Status Under the Canada Income Tax Act**

Alice Manning, Student-At-Law, University of New Brunswick, Prepared for Member Groups of the New Brunswick Environmental Network (NBEN), 2001, Price: Free

This document contains information on charity registration, incorporation in New Brunswick, completing Form T2050, and contact information.

To order contact: New Brunswick Environmental Network, 167 Creek Road, Waterford, New Brunswick, E4E 4L7, Tel.: (506) 433-6101, Fax: (506) 433-6111, E-mail: [nben@nbnet.nb.ca](mailto:nben@nbnet.nb.ca)

### **A Guide to the Responsibilities of Corporate Directors in Canada**

Shelley Obal, Ed., Osler, Hoskin and Harcourt LLP, 2000, Price: Free

This guide discusses the responsibilities and liabilities of directors in corporations. Contents include: duties,



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governance, taking action, risk management, and more.

To download see:

<http://www.osler.com/index.asp?layid=117&csid=3029&csid1=0&csid2=0&menuid=294&miid=296>

### **Charities and Not-for for-Profit Fundraising Handbook**

Donald J. Bourgeois, ISBN: 0433424559, LexisNexis™ Butterworths Canada Ltd., 248 pages, 2000, Price: \$75.00 CDN

This a valuable reference tool that examines the legal requirements of fundraising for Canadian charities and nonprofits. Topics covered include: fundraising purposes, director and officer accountability, charity registration, gaming, special events, the Internet, planned giving, and much more. To o borrow from CAP: Call us toll free at 1-800-663-5755 or (902) 426-2266 locally (Halifax Regional Municipality)

To order see: <http://www.butterworths.ca/>

### **The Law of Advocacy by Charitable Organizations: The Case for Change**

Richard Bridge, ISBN: 096879130, IMPACS - Institute for Media, Policy and Civil Society, 34 pages, 2000, Price: Free This document examines the current Canadian law governing advocacy by charities, including, its downfalls, case studies, and recommendations for changes.

To download see: <http://www.impacs.org/>

### **The Law of Charitable and Casino Gambling**

Donald J. Bourgeois, ISBN: 0433413964, LexisNexis™ Butterworths Canada Ltd., 340 pages, 1999, Price: \$96.00 CDN

Topics covered include: lottery licences, lottery operation, gaming and the role of government.

Ontario regulations are covered in depth.

To order see: <http://www.butterworths.ca/>

### **Charities and Not-for-Profit Law**

Charity and Not-for-Profit Law, Sole, Small Firm and General Practice, Trusts and Estates, Young Lawyers' Division, 1998, 320 pages, Price: \$110.00 CDN



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“What are the legal aspects of conditional gifts? When and how do inter-charity transfers of funds occur? How can you make creative use of private foundations while still protecting donors’ rights and intentions? How will new Ontario legislation — the Charities Accounting Act of Ontario, the proposed New Investment Powers for Charities and the Law Reform Commission Report on the Law of Charities — impact on what you do and affect advice you give? What can you do about drafting disastors for charitable gifts? These and many other important issues affecting charities today are covered in this practical publication” (Taken directly from: [http://www.oba.org/charity\\_en/publications.asp?code=98CHA0424C-PM](http://www.oba.org/charity_en/publications.asp?code=98CHA0424C-PM)).

### **Charities Doing Commercial Ventures: Societal and Organizational Impacts**

Brenda Zimmerman and Raymond Dart, ISBN: 1896703267, Trillium Foundation and Canadian Policy Research Networks Inc., 1998, Price: Free

This paper examines the forms of charitable commercial enterprise, self-sufficiency and economic dependence, the separation or integration of commercial and social ventures, fee-for-service, and more. To download see: <http://www.cprn.ca/cprn.org>

### **Work in the Nonprofit Sector: The Knowledge Gap**

Katie Davidman and Gordon Betcherman, Canadian Policy Research Networks; Michael Hall, Canadian Centre for Philanthropy; & Deena White, University of Montreal, in Volume 14, No.3 of

The Philanthropist, September 1998, Price: Free

This article discusses human resources issues in the Canadian nonprofit sector and offers recommendations for the future.

To download see: <http://www.cprn.org>

### **Charity and Not-for-Profit Law: The Emerging Specialty Health Law, Trusts and Estates**

1997, 419 pages, Price: \$110.00 CDN

“Charities and not-for-profit organizations are quickly becoming a major economic force within the Canadian economy, and are often referred to as the “third sector” after the government and the private sector. This comprehensive publication deals with current legal issues, including fundraising, risk management and corporate structure. The materials are directed to lawyers providing advice to charities



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and not-for-profits, and to executive staff now working in the third sector. Checklists and precedents are included” (Taken directly from: <http://www.oba.org/>).

**Handbook on Good Practices for Laws Relating to Non-Governmental Organizations (Discussion Draft)**

Prepared for the World Bank by The International Center for Not-for-Profit Law, 1997, Price: Free This document examines key issues and best practices for laws relating to nonprofit organizations. Topics covered include: structure and governance, activities and operations, fundraising, reporting, taxation, and more.

To download see: <http://www.icnl.org/handbook/>

**Organizational and Supervisory Law in the Nonprofit Sector**

Ronald Hirshhorn and David Stevens, CPRN Working Paper No. CPRNI01I, ISBN: 1896703186,

Canadian Policy Research Networks Inc., 1997, Price: Free

This working paper contains sections on definitional and analytical starting points, laws governing organizational form, and supervisory law.

To download see: <http://www.cprn.org>

**Guide to Accounting for Not-for-Profit Organizations, Revised Edition**

Kenneth J. Caplan, ISBN/ISSN: 0459563211, CARSWELL, Supplemented Book, 1997

Price: \$225.00 CDN

This is an informative resource of the accounting and financial reporting requirements of nonprofits and includes sample statements and checklists. Topics discussed include: revenue recognition, collections, functional and program accounting, financial statement presentation, budgeting, and more.

To order see: <http://www.carswell.com/>

**Forming and Managing a Nonprofit Organization in Canada: Second Edition**

Flora MacLeod, Self-Counsel Press, 1996, Price: \$14.85 CDN



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Includes a wealth of information on nonprofits including: Board formation, record-keeping, incorporation, legal issues, staffing, charitable registration, taxation, and more.

To order phone (604) 986-3366

### **The Charity and Not for- Profit Sourcebook**

Arthur Drache, ISBN/ISSN: 0459574450,  
CARSWELL, Supplemented Book, 1995,

Price: \$240.00 CDN

This is an informative resource of the legal considerations for charities and nonprofits. Contents of this publication include: case laws, court decisions, provincial legislation, taxation, and more.

To order see: [http://www.carswell.com/law\\_index.asp](http://www.carswell.com/law_index.asp)

### **Without a View to Profit: NonProfits and Charities**

Charity and Not-For-Profit Law, 1995, 433 pages,  
Price: \$110.00 CDN

“There are thousands of nonprofits and charities operating in Canada ranging from small groups

concerned with local issues, to substantial organizations with 100 million dollar budgets. These materials outline how such entities are created, maintained and ultimately wound up.” (Taken directly from: <http://www.oba.org/>).

### **Canadian Not-for-Profit News: The Insider’s Edge on Current Developments in Canadian Nonprofit Organizations**

Arthur Drache, ISBN/ISSN: 11951729, CARSWELL,  
Annual Subscription Newsletter,

Price: \$185.00 CDN

This is a monthly newsletter outlining current information on taxation and other issues of relevance to registered charities and nonprofits. Specific sections include: revenue views, analysis and commentary, tax planning tips, and more.

To order see: [http://www.carswell.com/law\\_index.asp](http://www.carswell.com/law_index.asp)

Non-Profit Organizations

Legal Information Society of Nova Scotia

Price: Free (under 10 copies)



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## Journals

Advancing Philanthropy

Association Management

Board Member

Canadian Fundraiser

Common Ground

Front & Centre: Voice of Canada's Charitable,  
Voluntary Community

Fund Raising Management

Grassroots Fundraising Journal

Journal of Volunteer Administration

Nonprofit and Voluntary Sector Quarterly

Nonprofit Management and Leadership

Philanthropy

Responsive Philanthropy

The Chronicle of Philanthropy

The Grantsmanship Center Magazine

The Nonprofit Quarterly

The Nonprofit Times

Voluntas

## Websites

### Board Development

<http://www.boarddevelopment.org/>

This website contains information on board governance and effective board operations for the Canadian voluntary sector.

### Canada Revenue Agency (CRA)

<http://www.CRA-adrc.gc.ca/>

The CRA's website contains a wealth of information for both charities and nonprofits, including, the application to register a charity, newsletters, tax forms, interpretation bulletins, and more.



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### **Canadian Centre for Philanthropy: Legal & Regulatory Web Page**

<http://www.imaginecanada.ca/languagepreference.asp>

This is a webpage of links to resources on changes, current and other legal and regulatory information for nonprofits.

### **CharityLaw.ca**

<http://www.charitylaw.ca/>

Taken directly from the website: “CharityLaw.ca provides information on legal issues of interest to charities and not-for-profit organizations both in Canada and internationally. Charity Law Bulletin is a timely publication which provides brief synopses of current developments in the law of charities. More detailed commentaries appear in Charity & the Law Update and Church & the Law Update published approximately three times per year. Articles and materials from seminars on a variety of related topics are also available on the site.”

### **Course Materials for Arthur B. C. Drache’s, QC Class in the School of Policy Studies’ Spring Term**

<http://queensu.ca/homepage/>

Documents and papers available on this website include: Broadening the Definition of Charity; Charities, Nonprofits and Business Activities; Charities, Public Benefit And the Canadian Income Tax System: A Proposal For Reform; Key Income Tax Provisions Relating to Charities and Nonprofits; Regulating Virtue: A Purposive Approach to the Administration of Charities in Canada; Tax Rules and Charitable Donations; What is Charitable Activity; and more.

### **International Center for Not-for-Profit Law(ICNL)**

<http://www.icnl.org/>

The ICNL’s mission is “to facilitate and support the development of civil society on a global basis by assisting the creation and improvement of laws and regulatory systems that permit, encourage, and regulate the not-for-profit sector in countries around the world.” The website contains global information on laws of relevance to nonprofits.



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## **Not-for-Profit and Charity Law**

<http://www.extension.ualberta.ca/faculty/index.aspx>

This is an excellent website containing lots of information for nonprofits and charities. Sections include: The Law Now Not-For-Profit and Charity Reprint Series, Frequently Asked Questions, and Links.



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## **APPENDIX C: BYLAWS**

### **Short Form Example**

#### **BYLAWS OF “xx” SOCIETY**

1. In these bylaws, unless there be something in the subject or context inconsistent therewith
  - (a) ‘Society’ means (insert name of your society)
  - (b) ‘Registrar’ means the Registry of Joint Stock Companies appointed under the Nova Scotia Companies Act.
  - (c) “Special Resolution” means a resolution passed by not less than three quarters of members entitled to vote either present in person or by proxy, where proxies are allowed, at a general meeting of which notice specifying the intention to propose the resolution as a special resolution has been duly given.

#### **MEMBERSHIP**

2. The subscribers to the Memorandum of Association and such other persons admitted to membership in accordance with these bylaws, and none other, shall be members of the Society, and their names shall be entered in the Registry of Members accordingly.
3. For the purposes of registration, the number of members of the Society is unlimited.
4. Every member of the Society is entitled to attend any meeting of the Society and to vote at any meeting of the Society and to hold any office, but there shall be no proxy voting.
5. Membership in the Society is not transferable.



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6. Any individual over the age of 18 years residing in Nova Scotia who upholds the objects of the Society and contributes to the support of the Society an amount to be determined annually at the General Meeting can be a member of the Society.

7. No formal admission to membership shall be required and the entry in the Registry of Members by the Secretary of the name and address of any organization or individual shall constitute an admission to membership in the Society.

8. Membership in the Society shall cease upon the death of a member, or if s/he resigns her/his membership by giving notice of this intention in writing to the Society, or if s/he ceases to qualify for membership in accordance with these bylaws.

#### FISCAL YEAR

9. The fiscal year of the Society shall be the period from [first month] in any year to [twelfth month] in the year next following.

#### MEETING

10. (a) The ordinary or annual general meeting of the Society shall be held within three months after the end of each fiscal year of the Society;

(b) An extraordinary general meeting of the Society may be called by the Chair/President or by the directors at any time, and shall be called by the directors if requested in writing by at least twenty five per centum (25%) in number of the members of the Society.

11. Three days' notice of a meeting, specifying the place, day and hour of the meeting and, in the case of special business, the nature of such business, shall be given to the members. Notice shall be given in writing and by sending it through the post in a prepaid letter addressed to each member at his last known address. Any notice shall be deemed to have been given at the time when the letter containing the same would be delivered in the ordinary



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course of post and in providing such service it shall be sufficient to prove that the envelope containing the notice was properly addressed and placed in the post office. The non receipt of any notice by any member shall not invalidate the proceedings at any general meeting.

12. At each ordinary or annual general meeting of the Society, the following items of business shall be dealt with and shall be deemed to be ordinary business:

Minutes of last general meeting;

Consideration of the annual report of the directors;

Consideration of the financial statements, including balance sheet and operating statement and the report of the auditors thereon;

Election of directors for the ensuing year;

Appointment of Auditors.

All other business transacted at an ordinary or annual general meeting shall be deemed to be special business. All business that is transacted at an extraordinary general meeting of the Society shall be deemed special.

13. No business shall be transacted at any meeting of the Society unless a quorum of members is present at the commencement of such business. The quorum shall consist of five members.

14. If within one half hour from the time appointed for the meeting, a quorum of members is not present, the meeting, if convened upon the requisition of the members, shall be dissolved.

In any case, the meeting shall stand adjourned to such time and place as a majority of the members then present shall direct and if at such adjourned meeting a quorum of members is not present, it shall be adjourned sine die (without specifying a future date or time).



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15. (a) The President of the Society shall preside as Chair at every general meeting of the Society;
- (b) If there is no President or if s/he is not present at any meeting, the Vice President shall preside as Chair;
- (c) If there is no President or Vice President or if at any meeting neither the President nor the Vice President is present, the members present shall choose someone of their number to be Chair.

16. The Chair shall have no vote except in the case of a tie. In the case of a tie, the Chair shall have a casting vote.

17. The Chairperson may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting, other than the business left unfinished at the meeting from which the adjournment took place, unless notice of such new business is given to the members.

18. At any meeting, unless a poll is demanded by at least three members, a declaration by the Chairperson that a resolution has been carried and an entry to that effect in the book of proceedings of the Society shall be sufficient evidence of the fact, without proof of the number or proportion of the members recorded in favour of or against such resolution.

19. If a poll is deemed in manner aforesaid, the same shall be conducted in such manner as the Chairperson may prescribe and the result of such poll shall be deemed to be the resolution of the Society in general meeting.

#### VOTES OF MEMBERS

20. Every member shall have one vote and no more.

#### DIRECTORS

21. Unless otherwise determined by general meeting, the number of directors shall not be less than five or more than fifteen. The subscribers to the Memorandum of Association of the Society shall be the first directors of the Society.



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22. Any member of the Society shall be eligible to be elected a director of the Society.
  23. Directors shall be elected by members at each ordinary or annual general meeting of the Society.
  24. The members shall elect as a director, a representative nominated by each of the organizations which support the work of the Society and the remaining directors shall be elected by the members from among their number, as the case may be.
  25. At the first ordinary or annual general meeting of the Society and at every succeeding ordinary or annual general meeting, all the directors shall retire from office but shall hold office until the dissolution of the meeting at which their successors are elected. Retiring directors shall be eligible for re election.
  26. Should a director resign her/his office or ceases to be a member in the Society, whereupon her/his office as director shall ipso facto be vacated, the vacancy thereby created may be filled for the unexpired portion of the term by the Board of Directors from among the members of the Society.
  27. The Society may, by special resolution, remove any director before the expiration of the period of office and appoint another person in her/his stead. The person so appointed shall hold office during such time only as the director in whose place he is appointed would have held office if s/he had not been removed.
  28. Meetings of the Board of Directors shall be held as often as the business of the Society may require and shall be called by the Secretary. A meeting of directors may be held at the close of every ordinary or annual general meeting of the Society without notice. Notice of all other meetings, specifying the time and place thereof, shall be given either orally or in writing to each director within a reasonable time before the meeting is to take place, but non receipt of such notice by any director shall not invalidate the proceedings at any meeting of the Board of Directors.
  29. No business shall be transacted at any meeting of the Board of Directors unless at least one third in number of the directors are present at the commencement of such business.



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30. The President or, in her/his absence, the Vice President or, in the absence of both of them, any director appointed from among those directors present shall preside as President at meetings of the Board.

31. The President shall be entitled to vote as a director and, in the case of an equality of votes, s/he shall have casting vote in addition to the vote to which s/he is entitled as a director.

### POWERS OF DIRECTORS

32. The management of the activities of the Society shall be vested in the directors who, in addition to the powers and authorities by these bylaws or otherwise expressly given them, may exercise all such powers and do all such acts and things as may be exercised or done by the Society provided they are not expressly directed or required to be exercised or done by the Society in general meeting. In particular, the directors shall have power to engage a coordinator and to determine her/his duties and responsibilities and her/his remuneration. The directors may appoint an executive committee, consisting of the officers and such other persons as the directors decide.

### OFFICERS

33. The officers of the Society shall be a President, a Vice President, a Treasurer and a Secretary. The officers of Treasurer and Secretary may be combined.

34. The directors shall elect one of their number to be the President of the Society. The President shall have general supervision of the activities of the Society and shall perform such duties as may be assigned to her/him by the directors from time to time.

35. The directors may also elect from their number a Vice President. The Vice President shall, at the request of the directors and subject to its directions, perform the duties of the President during the absence, illness or incapacity of the President, or during such period as the President may request her/him to do so.

36. (a) There shall be a Secretary of the Society who shall keep the minutes of the meetings of members and directors and shall perform such other duties as may be assigned to her/him by the directors. The directors shall



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appoint the Secretary and may also appoint a Treasurer of the Society to carry out such duties as the directors may assign. If the directors think fit, the same person may hold both offices of Secretary and Treasurer.

(b) The directors may appoint a temporary substitute for the Secretary who shall, for the purpose of these bylaws, be deemed to be the Secretary.

#### AUDIT OF ACCOUNTS

37. The auditor of the Society shall be appointed annually by the members of the Society at the ordinary or annual general meeting. If the members fail to appoint an auditor, the directors may do so.

38. The Society shall make a written report to the members as to the financial position of the Society. The report shall contain a balance sheet and operating account. The auditors shall make a written report to the members upon the balance sheet and operating account, and in every such report, s/he shall state whether, in her/his opinion, the balance sheet is a full and fair balance sheet required by the Society and properly drawn up so as to contain the particulars required by the Society and to exhibit a true and correct view of the Society's affairs. The report shall be read at the annual meeting. A copy of the balance sheet, showing the general particulars of its liabilities and assets and a statement of its income and expenditure in the preceding year, audited by the auditor, shall be filed with the Registrar within fourteen days after the annual meeting in each year as required by law.

39. The Society has power to repeal or amend any of these bylaws by a special resolution passed in the manner prescribed by law.

#### MISCELLANEOUS

40. The Society shall file with the Registry with its Annual Statement a list of its directors with their addresses, occupations, and dates of appointment or election, and within fourteen days of a change of directors, notify the Registry of the change.



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41. The Society shall file with the Registry a copy in duplicate of every special resolution within fourteen days after the resolution is passed.
  42. The seal of the Society shall be in the custody of the Secretary and may be affixed to any document upon resolution of the Board of Directors.
  43. Preparation of minutes, custody of the books and records, and custody of the minutes of all the meetings of the Society and of the Board of Directors shall be the responsibility of the Secretary.
  44. The books and records of the Society may be inspected by any member at any reasonable time within two days prior to the annual general meeting at the registered office of the Society.
  45. Contracts, deeds, bills of exchange and other instruments and documents may be executed on behalf of the Society by the President or the Vice President and the Secretary, or otherwise as prescribed by resolution of the Board of Directors.
  46. The borrowing powers of the Society may be exercised by special resolution of the members.

### **Long Form Example**

The “long form” is a more detailed, comprehensive version of the minimum requirements or bare essentials contained in the “short form.” For example, the “long form” contains stricter conditions on eligibility for membership (articles 3 and 4) and directorship (article 4) and features add-ons such as conflict of interest (article 7) and nominating committee (article 16).

### BYLAWS OF “xx” SOCIETY

#### ARTICLE 1 NAME

1.01 The name of this organization shall be the “[],” referred to throughout these bylaws as the “Society.”

#### ARTICLE 2 OBJECTS



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2.01 The objects of the Society are to:

- a) promote voluntary land conservation around the shores of the Gulf of Maine by providing the leadership, information, skills, and resources.
- b) conserve portions of the Gulf of Maine to maintain ecological integrity by working cooperatively with government, business, and citizens through the development of marine protected areas.
- c) protect the Gulf of Maine from pollution and other harmful activities by supporting economic incentives that fine the polluter not the conserver.

2.02 In order to achieve its objects the Society may:

- a) purchase, lease, accept by gift or trust, or otherwise acquire any real or personal property of any kind which the Society may deem necessary for the purpose of the Society;
- b) receive money by way of gift or otherwise and accept, hold, sell, or administer funds, gifts, legacies, and benefits to property of any sort, without limitation as to amount, value, or source, and use the income or any part of the principal of the funds of the Society to achieve the objects of the Society;
- c) employ staff and carry out research and any other functions which are deemed necessary;
- d) enter into contracts, joint management agreements, arrangements or agreements of any kind with any corporation, partnership, individual, group of individuals, government, or authority whether federal, provincial, municipal, local, or otherwise, which are conducive in the opinion of the Society to the achievement of the objects of the trust, and obtain from them any property rights, privileges, concessions, or assistances which the Society may deem desirable; and



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e) do all such things as incidental or conducive to attaining the objects and exercising the powers of the Society including, without limiting the generality of the foregoing, the exercise of all rights, duties, and powers envisaged by section 10 of the Societies Act.

2.03 It is hereby declared that:

a) Society is a nonprofit, charitable corporation which shall not carry on any business or trade for the profit of its members; and the Society shall hold the property it may acquire in trust for application to achieve the objectives of the Society.

b) Upon dissolution of the Society and after payment of all debts due and liabilities, its remaining property shall be distributed or disposed of to registered charities recognized by the Canada Revenue Agency as having objects the same or similar to the objects of the Society which carry on their work solely in Canada; and no part of any property of the Society shall be available to its members upon such dissolution.

### ARTICLE 3 MEMBERSHIP

3.01 Except as otherwise provided in these bylaws, any person who subscribes to the objects of the Society may apply for membership in the Society.

3.02 Any corporation, partnership, or society which subscribes to the objects of the Society shall be eligible for associate membership in the Society. Each associate member shall be deemed to be one member, and may designate a person as its representative at any meetings of the Society, and that person shall be eligible to vote subject to Article 4.08. Such designated representative of such an associate member shall be eligible to be elected to the Board or appointed by the Directors to the Board. If the designated representative of such an associate member is also a member of the Society, that individual shall only have the right to cast one vote in respect of any motion before a meeting.



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3.03 Application for membership in the Society shall be made to the Board which may either accept or reject the application.

3.04 Honorary members of the Society may be appointed by the Board but cannot vote.

3.05 All members, honorary members and designated representatives of associate members have the right to speak and make representations at meetings of the Society and, with the exception of honorary members, all members and designated representatives of associate members shall have the right to vote and to hold office.

3.06 The rights of membership in the Society are subject to the payment of all annual and special dues set in accordance with Article 4.04 of this bylaw.

3.07 The Board of Directors of the Society by majority vote at any meeting duly called may by bylaw terminate the membership of any member, but such action shall have no force or effect until approved by at least three quarters of the vote cast at a special general meeting of the members of the Society duly called for this purpose.

#### ARTICLE 4 MEMBERS OF THE SOCIETY GENERAL MEETINGS

4.01 The annual general meeting of the Society shall be held in each year within three months of the fiscal year end of the Society.

4.02 Special general meetings of the Society may be called by the President or the Board as they see fit. The President shall call a special general meeting of the Society when requested, in writing, by any ten members of the Society.

4.03 Fifteen voting members of the Society shall be the quorum for any annual general meeting or special general meeting of the Society.

4.04 The annual membership fee and special dues of the Society shall be approved by the Board.



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4.05 At each annual general meeting of the Society the members shall receive a written audited statement of the financial affairs of the Society prepared by a chartered accountant chosen by the members of the Society at the last annual general meeting of the Society. The statement will cover the period from the last annual general meeting of the Society to the date of its presentation, or as close thereto as may be possible using standard accepted accounting principles.

4.06 At each annual general meeting of the Society, the Board, the Treasurer, and the various committees established from time to time by the Board shall present reports to the members.

4.07 Special Resolutions shall be passed by not less than three-quarters of such members entitled to vote present in person at a general meeting. Notice of such meeting must be properly given and shall specify the intention to propose such a resolution as a special resolution.

4.08 The following members shall be eligible to vote at any general meeting of the Society:

- a) if the member has been a member for less than one year prior to the date of such general meeting, such member must have been accepted for membership pursuant to Article 3.03 at least six (6) months prior to such general meeting;
- b) if the member has been a member for one year or more prior to the date of such general meeting, such member shall have voted at least once in the two most recent annual general meetings.

#### ARTICLE 5 BOARD OF DIRECTORS

5.01 The property, business, and affairs of the Society shall be managed by a body called the Board of Directors (the “Board”).

5.02 All powers of the Society, unless specifically delegated in these bylaws, in the Societies Act, or otherwise by law, shall be carried out by the Board.



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5.03 A candidate shall be eligible for election or appointment to the Board only if he or she meets all of the following eligibility criteria:

1. over the age of nineteen (19) years;
2. a resident of Canada;
3. a fully paid up member of the Society for a minimum of two (2) consecutive years immediately following the first annual general meeting of the Society; and
4. voted in one of the two (2) most recent annual general meetings of the Society immediately following the first annual general meeting of the Society.

5.04 The Board of the Society shall consist of up to fifteen members of the Society, nine of whom shall be elected as follows:

a) at the inaugural annual general meeting of the Society, there shall be an election of a Board of Directors consisting of:

- i. three members of the Society who shall hold office for a term of three years,
- ii. three members of the Society who shall hold office for a term of two years, and
- iii. three members of the Society who shall hold office for a term of one year;

b) at each annual general meeting of the Society following the inaugural meeting, the members of the Society shall elect, for a term of three years each, a maximum of three members of the Society to the Board to replace those members whose term has expired.

5.05 Should a member of the Board chosen pursuant to Article 5.03(a) or 5.03(b) cease to be a member of the Board of Directors for any reason, the Board may appoint any member or designated representative of an associate



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member to complete the balance of that former Director's term. Such an appointment shall be submitted to the next annual general meeting of the Society for approval.

5.06 The Board may appoint up to six additional members to hold office for a term as designated by the Board of up to one year, and are eligible for re-appointment at the end of that term. The Board may appoint a new member to fill a vacancy created before the expiry of a term. Appointed Board members must be members of the Society.

5.07 Meetings of the Board shall be called by the President of the Society, or by the Secretary of the Society if requested by at least two members of the Board.

5.08 A quorum shall consist of five (5) members of the existing Board for a meeting of the Board.

5.09 The Board of Directors may create committees and may delegate, in writing, any of its powers to any such committee except the following powers:

- a) to call special meetings of the members of the Society;
- b) to elect any members of the executive, to prescribe their duties, and to determine their remuneration;
- c) to establish, levy, and assess collection of dues;
- d) to enter into agreements to acquire and use property and to approve all land purchases of the Society;
- e) to adopt and publish rules governing the use of acquired properties and the personal conduct of people thereon; and
- f) to mortgage or pledge any assets of the Society.

5.10 Should a Director fail to attend three out of any four consecutive meetings of the Board without adequate excuse, he or she may be removed from the Board by a majority vote thereof, provided however, that notice of the



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motion to remove that Director shall be mailed to that Director at least one week in advance of any meeting of the Board at which such a resolution will be considered.

5.11 Directors may be removed from the Board by special resolution of the membership at any meeting of the Society, provided however, that written notice of the motion to remove a member of the Board must be given to the Secretary a sufficient period of time in advance of the meeting to enable the Secretary to give notice to the members in accordance with Article 10.03 and in particular Article 10.03(a).

5.12 The subscribers to the Memorandum of Association may elect an Interim Board of up to fifteen (15) individuals, who shall organize the affairs of the Society and who shall have all powers of the Board, including, the power to admit people to membership, elect an executive, choose an Executive Director, organize an annual general meeting or special general meeting, or carry on such other activities to promote the objects of the Society as this bylaw provides for. The Interim Board may also appoint an auditor to serve until the first annual general meeting. The Interim Board may appoint other Directors, to a maximum of fifteen (15), and may fill vacancies in the initial Board.

5.13 The term of office of an officer selected pursuant to Article 5.12 shall not count toward determining the maximum term of office under Articles 6.13 and 6.15.

5.14 A Director shall not be eligible to be elected to more than two (2) consecutive terms on the Board.

5.15 A Director may participate in a meeting of the Directors or a committee of the Board by electronic means. Each participant in such an electronic meeting must be able to communicate simultaneously with all of the others in attendance at such meeting, and is deemed to be present, and to have agreed to participate.

## ARTICLE 6 OFFICERS

6.01 The executive of the Society, who shall also be known as the officers, shall consist of the President, the Vice President, Secretary and the Treasurer.



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6.02 The positions of Secretary and Treasurer may be combined in one person.

6.03 Some or all of the duties of the Secretary may be delegated by the Board to the Executive Director.

6.04 The President of the Society shall preside over all meetings of the Society and Board, shall have general supervision of the affairs of the Society, and shall perform such other duties as may be assigned by the Board.

6.05 The Vice President of the Society shall preside over any meeting of the Society or Board in the absence of the President, and shall perform such other duties as may be assigned by the Board.

6.06 The Secretary of the Society shall have custody of the corporate seal, shall keep the minutes of all general meetings of the Society and all meetings of the Board, shall maintain all records of the Society as may be required by the Societies Act or by similar legislation, and shall perform such other duties as are assigned by the Board. These duties shall include, but not so as to limit:

- a) filing Notice of Registered Office with the Registry of Joint Stock Companies;
- b) maintaining a register of members as required by to Section 18 of the Societies Act;
- c) filing the List of Directors with the Registry of Joint Stock Companies;
- d) filing all Special Resolutions with the Registry of Joint Stock Companies; and
- e) making available a copy of the Memorandum and Bylaws as required by to Section 23 of the Societies Act.

6.07 The Secretary, in addition to keeping the books and records of the Society, shall make those books and records, including these bylaws, available for inspection by members of the Society at the Registered Office of the Society, or in such other location where the records are kept or at a location agreed to by a member making the request between the hours of 9 a.m. and 5 p.m. Monday to Friday within 72 hours of their receipt of such a request.



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6.08 The Treasurer of the Society shall maintain all books of account of the Society, shall have custody of all funds, including trust funds, of the Society, shall cause to be prepared an annual audited financial report and other reports as requested by the Board and shall perform other such duties as may be assigned by the Board.

6.09 The Board may elect such other executive members and appoint such other officers of the Trust as sees fit. The Board may determine the term in office, remuneration, and the duties to be assigned any officer or executive member appointed in accordance with this paragraph.

6.10 The executive officers may be elected or removed by majority vote of the Board. At the first meeting of the Board of Directors following the annual general meeting, or as soon after as is practicable, the Board shall elect from among its members the officers of the Society.

6.11 The immediate past President of the Board shall be a member of the executive of the Board provided that he or she is a member of the Society.

6.12 The President or members of the Board designated by the President shall act as spokespersons for the Society. The Board or, failing them, the President, may designate such other individuals to act as spokesperson for any particular purpose or purposes as they or he or she deems advisable.

6.13 No officer of the Board shall be eligible to serve more than two consecutive one year terms in the same office.

6.14 There shall be no salary or Directors' fees paid to the Board members, as set out herein. Compensation to individual Board members for expenses incurred in discharging his/her duties as a member of the Board will be in the discretion of the Board.

6.15 Members of the executive must be members of the Board, subject to the provisions of Article 6 of the bylaw and any member of the executive who ceases to be a member of the Board for any reason shall also cease to be a member of the executive of the Society.



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6.16 The signing officers of the Society for the certification or endorsement of all legal documents, bills of exchange, promissory notes, and other negotiable or transfer instruments shall be any two of the President, Vice President, Secretary, Treasurer, and Executive Director of the Society. Where the office or duties of secretary are combined with those of another office under to Articles 6.02 and 6.03, the two signing officers who sign must be different individuals.

#### ARTICLE 7 CONFLICT OF INTEREST

7.01 An employee, or the spouse, dependent or member of an employee's immediate family, is not eligible to become a director.

7.02 To be eligible to become a director, a candidate must submit, by the close of nominations, a statement indicating the candidate's willingness to stand for election, and to follow any rules and policies regarding elections established by the Board, signed by the candidate, and by five other members, or by a representative of the nominations committee.

7.03 To continue as a director, a member shall, by a date set by the Board, sign a certificate stating that the director:

- a) is qualified to act as a director;
- b) is aware of the duties of a director;
- c) has disclosed all personal, employment and business relationships with the Society or its employees, suppliers, contractors or directors, or with other candidates for election to the Board;
- d) will disclose any future conflicts of interest as soon as they arise;
- e) will comply with all rules and policies set by the Board regarding conflicts of interest.



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## ARTICLE 8 EXECUTIVE DIRECTOR

8.01 The Board may appoint an Executive Director of the Society. Remuneration and other terms of appointment of the Executive Director shall be in the discretion of the Board.

8.02 The Executive Director shall be entitled to attend at meetings of the Board unless excluded by majority vote of the Board. The Executive Director shall not otherwise be a member of the Board.

## ARTICLE 9 LACK OF QUORUM

9.01 Should a quorum not be present at any general meeting of the Society within thirty minutes of the time for which it was called, the meeting may proceed if at least twenty members of the Society are present, provided that no resolution is passed at the meeting.

## ARTICLE 10 NOTICE OF MEETINGS

10.01 Notice of all annual general meetings or special general meetings of the Society shall be given in accordance with Article 10.03.

10.02 The provisions of Article 10.03 shall apply, with the necessary changes in points of detail, to meetings of the Board, provided that the auditor of the Society need not be given notice of the meetings of the Board.

10.03 Notice of meetings of the Society shall be given in accordance with the following conditions:

- a) the notice shall be printed, written, or typewritten and shall state the day, hour, and place of meeting and the general nature of the business to be transacted;
- b) the notice shall be served either personally, by facsimile, or by sending through the post, in a prepaid wrapper or letter, to each member of the Society entitled to such a notice and, save as otherwise provided, to the auditor of the Society;



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- c) the notice shall be served at least ten days (exclusive of the day of mail transmittal and of the day for which notice is given) before the date of the meeting;
  - d) the notice shall be directed to such addresses of each member and the auditor of the Society as appears on the books of the Society. If no address is given therein, the notice shall be directed to the last address of each such member as may be known to the Secretary, and to the auditor at his/her business address;
  - e) a meeting of members of the Society may be held for any purpose at any date and time within the Province of Nova Scotia without notice if all members entitled to notice of such a meeting are present in person at the meeting or if not present in person shall have signified their assent in writing to such meeting being held;
  - f) the auditor of the Society need not be given notice of special general meetings of the Society; and
  - g) notice of any meeting or irregularity in the notification of any meeting may be waived by any member and by the auditor of the Society.

10.04 The non receipt of a notice of any meeting shall not invalidate any resolution passed or any proceedings taken at any meeting.

#### ARTICLE 11 FISCAL YEAR

11.01 The fiscal year of the Society shall begin on April 1 and end on March 31 of the following year.

#### ARTICLE 12 LIABILITY

12.01 Every member of the Board and their heirs, executors, administrators, success and assigns, and estate and effects, shall be indemnified and saved harmless out of the funds of the Society from and against all costs, charges, and expenses which shall or may be sustained or incurred in any action or proceeding which is brought or prosecuted against her/him for or in respect of any act, deed, matter, or thing made, done, or permitted by her/him in or about the execution of duties of office, and also from and against all other costs, charges, and expenses which



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shall be sustained or incurred in or about or in relation to the affairs thereof, except such costs, charges, and expenses as are occasioned by her/his own wilful neglect or default.

#### ARTICLE 13 CHARITABLE STATUS

13.01 No part of the income of the Society shall be payable to or otherwise available for the personal benefit of any member or officer of the Society, and the Society shall not be operated for the pecuniary profit of its members or officers. This does not remove the power of the Board to grant remuneration to those staff, executive members, and officers engaged for the purpose of the Society pursuant to these bylaws.

#### ARTICLE 14 CORPORATE SEAL

14.01 The corporate seal of the Society shall consist of such form or contain such other words as the Board may from time to time determine. An impression of the seal is affixed to this document.

#### ARTICLE 15 AMENDMENTS

15.01 These bylaws may be amended or repealed and a new bylaw or bylaws may be enacted by the special resolution of the members of Society at any general or special meeting of the members under Article 4.07. Notice of the meeting shall be given in accordance with Article 10.03 of these bylaws.

15.02 No new bylaw, nor any repeal or amendment of an existing bylaw or bylaws shall have any effect until the Society receives the approval of the Registry of Joint Stock Companies as required by the Societies Act.

#### ARTICLE 16 NOMINATING COMMITTEE

16.01 The Board shall appoint at least three individuals, at least one of whom must be a member of the Board and at least one of whom shall not be a member of the Board but must be active in the work of committees of the Society or otherwise with the Society, to serve as a Nominating Committee prior to the end of a fiscal year.



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16.02 Members of the Nominating Committee shall not be eligible to seek election to the Board at the annual general meeting immediately following their appointment.

16.03 The Nominating Committee shall search for appropriate candidates for election to the Board, including re-election as the bylaws permit.

16.04 The Nominating Committee shall consider, in no particular order of precedence, the following factors in recommending potential Board members:

- a) competency, willingness and availability to perform the duties of members of the Board;
- b) the availability of individuals competent and able to serve as members of the executive;
- c) whether there are sufficient women, men, and members of minority communities on the Board;
- d) representation from the scientific and cultural communities;
- e) representation from non-governmental organizations;
- f) representation of individuals who can help attract funding to the Society;
- g) representation from different geographical areas in the Province of Nova Scotia;
- h) representation by individuals who bring such other qualities to the job as the Nominating Committee sees fit or the Board requests;

16.05 The Nominating Committee shall present its recommendations directly to the annual general meeting of the Society without need of having the same approved by the Board.

#### ARTICLE 17 INTERPRETATION

17.01 In this bylaw unless the context requires otherwise:



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- a) “year” shall mean from one annual general meeting to the next;
  - b) words importing the plural number include the singular and vice versa;
  - c) “bylaw” includes these bylaws and all amendments thereto;
  - d) all Articles shall be read with any changes of gender that are required;
  - e) “members” and “members of the Society” means individual members and not designated representatives of associate members;
  - f) “board” means Board of Directors;
  - g) “director” means member of the Board and shall not include the Executive Director;
  - h) “officer” means any of the President, Vice President, Secretary or Treasurer.



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## **APPENDIX D: EMPLOYMENT AGREEMENT & INDEPENDENT CONTRACTOR AGREEMENT**

### **Sample Employment Agreement**

Made as of the first day of January 2002.

BETWEEN:

Nonprofit SOCIETY, a society incorporated under the laws of Nova Scotia (the “Society”)

OF THE FIRST PART

AND JEAN JOBSTER, of Halifax, Nova Scotia (“Employee”)

OF THE SECOND PART

WHEREAS:

1. Employee is the Executive Director of the Society, a nonprofit society incorporated under the laws of Nova Scotia;
2. The Society and Employee are desirous of entering into an employment relationship for their mutual benefit;
3. The Society and Employee wish to clarify certain obligations and rights in respect of said employment relationship;

NOW THEREFORE in consideration of the covenants and other agreements hereinafter contained the parties hereto covenant and agree as hereinafter set out:

1. Employee agrees that she will at all times faithfully, industriously, and to the best of her skill, ability, experience and talents, perform all of the duties required in the position of Executive Director of the Society. In carrying out these duties and responsibilities, Employee shall comply with all reasonable Society policies, procedures, rules and



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regulations, both written and oral, as are announced by the Society from time to time. It is also understood and agreed by both parties hereto that the assignments, duties, responsibilities and reporting arrangements of Employee may be changed from time to time by the Society at its discretion.

2. As full compensation for all services provided for herein, the Society shall pay or cause to be paid to Employee, and Employee shall accept:

(a) a salary at an annual rate of \$xx to be paid in regular instalments in accordance with the Society's usual paying practices, but not less frequently than monthly;

(b) xx% of the premium of a health, disability, medical, dental benefits currently provided by the Society to its employees.

(c) reimbursement for reasonable expenses incurred in the normal course of business for which receipts are provided.

(d) such payments shall be subject to such deductions by the Society as the Society is from time to time required to make pursuant the law, government regulation or order or by agreement with or the consent of Employee.

3. Employee shall be entitled to xx weeks vacation with pay during each full year of employment and to a pro-rated portion should employment terminate for any reason or cause before the completion of the year. The time for vacation is to be mutually agreed on. Vacation time not used in one year can be carried over into the next year only, but any such carry-over vacation time cannot accumulate to increase the vacation in subsequent years.

4. The employment of Employee may be terminated by the Society at any time by notice in writing from the Society to Employee for just cause. The Society agrees that if the employment of Employee as provided for herein is terminated without just cause within xx months of the date hereof, the required notice to be provided to Employee by the Society shall be deemed to be xx months.



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5. Employee shall not, either during the term of her/his employment or at any time thereafter, disclose to any person, unless required by law, any secrets or confidential information concerning the business or affairs or financial position of the Society or any Society with which the Society is or may thereafter be affiliated.
  6. Employee shall not, either during the term of her/his employment or for a period of eighteen (18) months from the effective date of termination of employment hereunder:
    - (a) intentionally act in any manner that is detrimental to the relations between the Society and its customers, employees, funders or others; and
    - (b) solicit any employees of the Society or be connected with any person, firm or corporation soliciting or servicing any customers or funders of the Society.
  7. Employee understands and agrees that the Society shall suffer irreparable harm in the event that s/he breaches any of her/his obligations under this agreement and that monetary damages shall be inadequate to compensate the Society for the breach. Accordingly, Employee agrees that, in the event of a breach or threatened breach by her/him of any of the provisions of this agreement, the Society, in addition to and not in limitation of any other rights, remedies or damages available to the Society at law or in equity, shall be entitled to an interim injunction, interlocutory injunction and permanent injunction in order to prevent or to restrain any such breach by Employee, or by any or by all of Employee's partners, employers, employees, servants, agents, representatives, and any and all persons directly or indirectly acting for, on behalf of, or with Employee.
  8. Employee agrees to devote her/his work time exclusively to the performance of her/his duties with the Society and shall not be employed or engaged in any other business without the prior written approval of the Society.
  9. The written provisions of this Agreement shall constitute the full extent of the Employment Contract between the Society and Employee regardless of any oral engagements or understandings which may presently or hereafter exist between the Society and Employee. No waiver or modification of this provision of this agreement shall be valid unless in writing and duly executed by both the Society and Employee.



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10. This agreement shall endure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns, provided however that this Agreement is personal to Employee and may not be assigned by her/him.

11. This agreement is made in accordance with and is subject to the laws of the Province of Nova Scotia and the parties hereto irrevocably attorn to the jurisdiction of the Court of the Province of Nova Scotia.

12. If any provision of this agreement is invalid, illegal or incapable of being enforced by reason of any rule of law or public policy, all other provisions of this Agreement shall remain in full force and effect and no provision be deemed to be dependent upon provisions unless so expressed herein. In the event that a provision of this Agreement is invalid, illegal, or incapable of being enforced, it shall be deemed to be amended and modified so that it is valid, legal and capable of being enforced to the greatest extent possible to the benefit of the Society.

13. Any written notice or communication to be given by one party to the other shall be deemed to be duly given or delivered to the other party when delivered by hand or sent by mail to the following addresses:

(a) if to Society: xx

(b) if to Employee: xx

Either party may at any time give notice to the other party of any change of address of the party giving such notice and from and after the date giving such notice the address therein specified shall be deemed to be the address of such party for the giving of notice hereunder.



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IN WITNESS HEREOF the parties hereto have properly executed this agreement as of the day and year first above written.

SIGNED, SEALED, AND DELIVERED

Society

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By:

Witness

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Employee

Witness

**Sample Independent Contractor Agreement**

SCHEDULE “A” AGREEMENT

INDEPENDENT CONTRACTOR STATUS, LIABILITY & INDEMNITY

1. Consultant is, and at all times during the term of this Agreement, an independent contractor providing professional research services to [Society]. While [Society] may instruct Consultant as to the objectives or results desired, Consultant shall have complete control in the manner in which Consultant attempts to achieve the objects and results contemplated by this Agreement. Nothing contained in this Agreement shall be construed to create a relationship of principal and agent, employer and employee, servant and master, partnership or joint venture between the parties. Consultant shall have no power to commit or bind [Society] in any manner whatsoever. As Consultant is an independent contractor, Consultant represents and warrants to [Society] and acknowledges that [Society] is relying on such representations and warranties that:

a) Consultant will become a “registrant” if required by the Excise Tax Act (Canada);



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b) Consultant is and shall be liable for all payments required to be made pursuant to the Income Tax Act (Canada), including without limitation, any withholdings or deductions required to be made pursuant to the Canada Pension Plan Act (Canada), the Employment Insurance Act (Canada) or such other applicable legislation or regulations. Consultant shall, from time to time, provide [Society] with evidence of compliance with these representations and warranties as reasonably requested by [Society].

2. [Society] shall have no liability to Consultant or to others for acts or omissions of the Consultant. Consultant shall defend, indemnify and otherwise hold harmless [Society] from and against any and all claims of whatsoever kind and nature arising out of the negligent acts or omissions of Consultant, Consultant's employee's or others acting for or representing Consultant.

DATED at Halifax, Nova Scotia, this [] day of [], [].

SIGNED, SEALED AND DELIVERED

in the presence of [Society]

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By: \_\_\_\_\_ Witness \_\_\_\_\_

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Consultant \_\_\_\_\_ Witness \_\_\_\_\_



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## Sample Contract Agreement - Intellectual Property Rights

### SCHEDULE “B” AGREEMENT

#### INTELLECTUAL PROPERTY RIGHTS

WHEREAS [Consultant] [Employee] is a [Researcher] for the [Society] with respect to work in which intellectual property rights arise:

1. [Society] shall be entitled to and shall solely and exclusively own all results and proceeds of the services provided by [Consultant] [Employee] under the terms of this Agreement including all rights, throughout the universe, in perpetuity, including copyright, in and to such services. [Consultant] [Employee] further hereby waives any and all moral rights in such services or in any other results or proceeds provided by [Consultant] [Employee] to [Society] under this Agreement. [Consultant] [Employee] agrees that the above assignment and waiver entitles [Society] to control the development and exploitation of such services absolutely in perpetuity and in all media, whether now existing or developed in the future.
2. [Consultant] [Employee] warrants and agrees that all materials, works, ideas and dialogue which is written, composed, prepared, interpolated by [Consultant] [Employee] in connection with such services shall be wholly original and shall not be copied in whole or in part from any other work, except that submitted to [Consultant] [Employee] by [Society] to be used in relation to such services. [Consultant] [Employee] further warrants that neither the said material nor any part of it, will, to the best of [Consultant] [Employee]’s knowledge, violate the rights of privacy or constitute defamation against any person, firm or corporation and that material will not infringe the copyright held by any person. [Consultant] [Employee] further warrants and agrees to indemnify and hold [Society] harmless against all liability or loss (including reasonable legal fees and costs) which they or any of them may suffer by reason of the breach of any of the terms or warranties contained in this paragraph.



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3. All rights granted or agreed to be granted to [Society] under this Agreement vest in [Society] immediately and shall remain so vested whether this Agreement expires in the normal course or is terminated for any cause or reason.

DATED at Halifax, Nova Scotia, this xx day of [], [].

SIGNED, SEALED AND DELIVERED

in the presence of [Society]

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By:

Witness

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Employee (Consultant)

Witness



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## **APPENDIX E: COPYRIGHT**

### **Sample Copyright Infringement Letter**

January 1, 2004

John Jones, Jones & Company  
1 First Tower, 555 King Street  
Halifax, Nova Scotia B3K 1P6

Re: ABC Society Copyright Infringement

Dear Mr. Jones:

I am legal counsel for ABC Society. It has come to the attention of my client that Jones & Company has infringed ABC Society's copyright in the [describe the 'work']. In particular, [describe the circumstances of its unlawful use, e.g. where it was seen].

The skill and effort that went into the preparation and production of the [describe the 'work'] was that of ABC Society. The original and distinctive work which you are passing off as your own belongs to ABC Society. In addition, the effect of your use of the work in question is to directly and significantly compromise the business interests of ABC Society.

Under the federal Copyright Act, it is clear that a copyright claim subsists in [describe the 'work'] as a [identify the 'work' as being a literary, artistic, etc. 'work']. As the author of [describe the 'work'], ABC Society's lawful right of ownership in such advertisement carries with it the exclusive right to produce or reproduce work, or any substantial part thereof. Furthermore, the Copyright Act provides the following remedies: s.34 (1) Where copyright in any work has been infringed, the owner of the copyright is, subject to this Act, entitled to all remedies by way of injunction, damages, accounts and otherwise that are or may be conferred by law for the infringement of a right. ABC Society hereby directs you to stop immediately all use or reproduction of its [describe the 'work'] and holds



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you fully accountable for any and all damages including an accounting of profits made by Jones & Company from the illegal use of ABC Society's [describe the 'work']. Furthermore, I hereby request that you or your solicitor provide me with all [describe the 'work'], including copies, used by or in the possession of Jones & Company. In addition, you or your solicitor shall provide me with assurances that Jones & Company's infringement of ABC Society's copyright will cease immediately. If you do not comply with these requests by 5:00 p.m. on Friday, xx 2004, I have clear instructions from my client to make an application to the Supreme Court of Nova Scotia to confirm and enforce my client's rights. As part of our claim, we will be seeking the legal costs of such application as well as other costs.

I will be waiting for your reply.

Yours truly,



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## **APPENDIX F: GLOSSARY**

**10% rule** Not more than 10% of a registered charity's actions can be focused on political activities. The exact percentage may vary depending on the charities' annual income. For a precise figure/calculation, see the CRA Policy Statement CPS-022.

**Annual General Meeting (AGM)** A meeting of the members of a nonprofit to review the previous fiscal year and related financial statements and other reports, elect new members, and discuss future directions.

**Article** Clause or an item in an agreement or contract (from: The Pocket Oxford Dictionary, Eighth Edition, Edited by Della Thompson, 1992, Oxford: Clarendon Press, p.41).

**Assets** The entire property of a company or society.

**Audit** An examination of the financial accounts and transactions of an organization by an accountant or auditor.

**Auditor** An independent person appointed by the organization who conducts the audit.

**Casual employee** An employee who is working for a set period of time, not a permanent employee.

**Certification Authorities** Responsible legislative body. For example Registry of Joint Stocks in Nova Scotia.

**Commercial exploitation** This is where someone's likeness (e.g., photograph, voice) is used without the person's consent for advertising.

**Co-operatives** Groups whereby members share in the control and responsibility of the organization, and benefits are returned to the members in proportion to their use of services. Also: A Corporation that is organized and operated on a co-operative basis in accordance with special legislation to govern co-operatives.

**Corporate body** A corporate body is a business that has been legally incorporated. Corporations may have shareholders if they are in business to make money or members if they are a nonprofit organization. As a



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corporation, a company has certain legal rights such as the right to hire and fire employees, own property, and sue other companies or individuals. Corporations pay a lower tax rate than individuals and protect individuals in the organization from personal liability (a legal obligation).

**Corporate seal** A corporate seal is an official stamp of the organization and is often required on legal documents.

**Defamation** Damages arising from a statement causing harm or injury to the private, professional or business reputation of another person. It is often known loosely in each of its two forms: slander (spoken word) or libel (written word).

**Disbursement Quota** Each year a registered charity is required to spend 80% of the money for which it gave out receipts on charitable activities it carries out or as grants to Qualified Donees.

**Due Diligence** Claim that a board for example took all the reasonable steps to prevent an unfortunate incident from happening

**Duty of care** To use care, diligence and skill in performing duties.

**Duty of loyalty** To act honestly and in good faith to advance the best interests of the organization

**Derogate** Becoming worse, to detract.

**Dividends** Profit that is distributed to shareholders of the company or members of a cooperative.

**Fair market value** A value that is consistent with the retail price of goods or services.

**Incorporator** Person who signs the Articles of Incorporation.

**Letters Patent** An official document that creates a society and grants it authority from the appropriate government body to carry out the objects of its organization.



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**Lobbying** Lobbying is one way advocacy groups promote their cause or secure passage of legislation important to furthering their cause. For example, a charity established to protect wildlife might urge citizens to press for stricter laws governing how industrial waste is disposed.

**Name** As a separate legal entity, any society needs a formal, official name. There are general criteria applied for determining what is acceptable. The composition of the name is important. The name typically consists of three parts: (1) the identifying part (e.g., Nova Scotia, St. John's); (2) the descriptive part (e.g., environment, heritage); and (3) the category (e.g., society, association). The name must be approved by the federal or provincial government.

**Ordinary Resolution** A resolution passed by a majority of the votes cast by the members who voted in respect of that resolution.

**Partisan** Strong, especially unreasoning, supporter of a party, cause, etc.

**Policy governance model** Based on the notion that the Board sets the broad direction for the nonprofit, and staff put this into action. For example, the Board sets a fundraising policy, but does not control how a fundraising plan is actually implemented. Many Boards prefer to stay away from involvement in the day-to-day operation of the organization. This is carried out by staff.

**Pecuniary** Having to do with money.

**Personal liability** A person is "liable" for a debt or an award of damages resulting from a wrongful act indicates that they are responsible for paying the debt or compensation.

**Qualified donee** These are organizations that can, under the *Income Tax Act*, issue official tax receipts. They include registered charities; registered athletic and arts organizations; all levels of government; the United Nations; and others.



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***Quorum*** A quorum is the number of officers or members needed to legally conduct a meeting and transact business.

***Remuneration*** Means to compensate or pay an individual(s) for work completed or services rendered.

***Special meeting*** A meeting held for a specific purpose.

***Special Resolution*** A resolution passed by a majority of not less than 2/3 of the votes cast by the members who voted in respect of a particular resolution, or a resolution signed by all the members entitled to vote on that particular resolution.

***Statutes*** Laws enacted by a legislative body of government (parliament or provincial legislatures).

***Subscribing members*** Usually a set number of subscribers are required for the memorandum of association of the society. These people can be given the authority to elect an interim Board of Directors who will serve until the first annual general meeting is held.