THE NONPROFIT MANAGEMENT MANUAL

Your guide to starting a nonprofit organization in Ontario

"helping you find your way"

FIRST EDITION

The Ontario Trillium Foundation
La Fondation Trillium de l'Ontario

written by professionals for professionals

The Nonprofit Management Manual

Disclaimer

In developing The Nonprofit Management Manual - a single source toolkit for establishing, managing and governing nonprofit organizations in Ontario - every attempt has been made to provide readers with accurate, authoritative and up to date information regarding the subject matters covered. It is, however, recommended that a competent professional opinion be sought before any action is taken based on the information provided.

Our thanks

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Welcome and Congratulations!

If you're new to the world of nonprofits, then welcome indeed. If you're already involved in an organization and you're looking to improve it, then congratulations on making that incredibly important decision.

This manual has been produced for one reason, and one reason alone: to make the world a better place. At least indirectly, anyway.

The nonprofit sector is founded on idealism. All community-focused organizations, charitable or not, are in existence to make the world a better place. By offering opportunities for sports to children, rescuing stray animals, cleaning up the air we breathe, teaching immigrants basic language skills, or searching for cures to diseases, each and every organization, and the people committed to running them, are, in a thousand different ways, making the world a better place.

By producing this manual, we hope that it will help existing organizations and ones that only exist in someone's imagination to be more effective, to run more smoothly, and to quite simply make the world a better place with greater results and less wasted effort.

It's often said that the charitable, or voluntary sector, is the "third pillar of society", and that without it, our quality of life would be dramatically diminished. This is, of course, quite true, but to be able to play this role, we in the sector need to make sure that this pillar is well constructed and on a solid footing.

Most people come to the charitable sector because they are driven by good intentions. They want to help, they want to fix something, improve something in our society. That's wonderful, but it's not enough. As a very old saying goes, "the road to hell is paved with good intentions." Many organizations which could be of valuable service to our communities fail because of poor planning, poor governance, or poor administration.

We need to recognize that in order for us to really make the world a better place, we need to establish and maintain a structure within our organizations that will allow us to achieve what we set out to do, and in such a way that our principles, our ideals remain the driving force in all our decision-making.

Finally, in an effort to continuously improve ourselves, we're always looking for feedback from those who have used this manual. We want to ensure it is a valuable tool - that it's easy to read and understand, yet comprehensive and full of relevant information. Please feel free to contact us with any comments or suggestions you have to improve this manual. You'll find our contact information on the inside front cover.

Once again, congratulations and welcome! Making the world a better place is the highest calling we can each receive. Let's ensure that each of us, in our own way, does just that, and does it with a level of professionalism and accountability that such a noble calling deserves.

Ken Coulter
Executive Director, WENSNET

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Windsor - Essex

WE NS

NonProfit Support

NETWORK

"BECAUSE CHARITY BEGINS AT HOME"

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Chapter 1 - Getting Started

Karen Kahelin **Lets Start at the very Beginning**

Karen Kahelin

Bio With experience in voluntary sector fundraising, event planning and volunteer co-ordination, Karen Kahelin joined WESNet in 2004 to research, develop and draft the Nonprofit Management Manual. Karen's communication skills in the presentation of the Casino Windsor Cares' community relations program not only made her a recipient of an International Association of Business Communications Silver Quill Award (US District 7) in the Communication Management Category but also proved Karen's extensive knowledge of the burgeoning commercial casino industry and her expertise in the community relations. At present, Karen holds a position at a provincial charitable foundation.

1.1 Let's Start At The Beginning

Establishing a nonprofit organization usually begins with a group of individuals who share a common vision or concern over a specific issue.

How do you get started?

If you are reading this manual, chances are you already have been thinking about your nonprofit organization, and how you see it evolving. To be sure you are starting off on the right foot, take some time and answer the following questions below:

- What is the purpose of your nonprofit organization?
- What need will your organization meet?
- Why do you want to start a nonprofit organization?
- Who will you be helping? (hurricane victims, local sick children, homeless pets)
- Is the need for your organization short or long term?
- What activities/services will you provide to meet the need?
- How do you plan to offer your services?
- Are any of the activities you want to undertake overseen by any government agency? (for example, Day Nurseries Act, Elderly Persons Centre Act, Ministry of Housing, Ministry of Health, Ministry of Training Colleges and Universities)
- Will you require funding for your activities?
- Are any of the services you want to provide funded by any government agency?
- Where will your organization operate? (region, city, province, country)
- How will your organization be different from other similar organizations in your area? (region, city, province, country)
- How will you name your organization? Does it describe what your organization will do?
- What qualifications or experience do you have to start and operate this organization?
- Who will make the decisions on how your organization will be run?
- Will it have a Board of Directors or Advisory Committee?
- Who will be on the Board of Directors?
- Will you have membership in your organization?
- Will it cost money to be a member? Will there be criteria for membership?
- Will you have an office?
- Who will run the office and what authority will they have?
- Will you have paid staff, volunteers or both?
- What type of equipment, supplies, stock, inventory do you need?
- Where will you get the money to purchase property, office space, equipment, supplies?
- Will your organization need a bank account?
- How much money will you need to start your organization?
- Will there be any liability or risk involved in operating your organization?

Although it may not seem like it now, these questions are all related, and it will be to your benefit to take the time to answer them at the very beginning of the process. During this early stage, you need to determine exactly what you want your organization to achieve. Taking the time at the beginning to plan will make the rest of the process much easier.

After answering the questions, go back to the first question and see if your answer is still the same as when you started. If not, you need to spend more time thinking about what you want your organization to do. Try answering all of the questions again while keeping in mind your new answer to question one.

If your answer to the first question is the same, it is time to start writing down some basic thoughts about your organization.

Remember that a successful nonprofit organization is exactly the same as a successful "for profit" business, minus the profit part. You are starting a business - a nonprofit business - so let's get started on the right foot.

1.2 Your Mission Statement

A mission statement outlines the purpose of your organization, what it does and for whom. It helps you stay on track and informs the public about your organization.

How to write a mission statement?

By answering all of the questions above, you have already started to write your mission statement. You need the answers to the following questions: Who are you? What do you do? For Whom? and How?

Example Mission Statement

The Windsor Essex Nonprofit Support Network exists to increase the capacity of the voluntary sector in Windsor-Essex through the provision of facilities, information resources and advocacy services.

> *The Windsor Essex Nonprofit Support Network* ***(who)***
> *exists to increase the capacity* ***(what)***
> *of the voluntary sector* ***(for whom)***
> *in Windsor-Essex through the provision of facilities, information resources and advocacy services* ***(how)***.

Take a few minutes and write down the name of your organization, what it plans to do and for whom. One clear, concise sentence that sets out who you are, what you do and for whom, will clearly indicate to others what your organization is all about. It is also a clear simple statement for you to hold onto during the planning stages that will keep you on the course you want to be on.

WWW.WENSNET.ORG

"BECAUSE CHARITY BEGINS AT HOME"

WENSNet began with a simple concept:
the creation of better, cheaper office space through sharing of costs with other nonprofits.
Eight years, two buildings and a host of nonprofit management services later, the Windsor Essex Nonprofit Support Network continues to attract the attention and respect of the voluntary sector.

As Canadian society relies more and more upon charities to make the world a better place, charities will rely more and more upon agencies that can lower their overhead and improve their organizational performance. WENSNet may be truly unique today, but we're betting that won't be the case in the next ten years.

www.wensnet.org

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CONSULTING

STORAGE

MEETING ROOMS

OFFICE SUITES

Windsor - Essex NonProfit Support Network

Chapter 2 - What "Kind" Of A Nonprofit Do You Want To Start?

Karen Kahelin

2. What "kind" of a nonprofit do you want to start?

After determining your nonprofit organization's mission, you need to decide what type of organization will best meet your goals. In this regard, there are several issues that you must consider.

The purpose of this Chapter is to discuss the various structures that nonprofit organizations can have.

Things that must be considered. Will your organization be….

2.I Incorporated or not?
2.II Nonprofit or charity?
2.III Provincial or Federal?

Regardless of the type of nonprofit organization you decide to form, there is a common rule that governs all nonprofit organizations. This rule states:

The purpose of any nonprofit organization (whether incorporated or not) must be the common good of its members or the attainment of its objectives (objects) and not for the financial well-being of its members.

2.I To Incorporate or Not

An organization that is not incorporated is not registered with the provincial or federal government. It is generally made up of people who come together to achieve a common goal, or because they share a similar interest or pursuit. Examples of organizations that may choose not to incorporate are support groups, a young mother's group, stroke recovery organization or quilter's guild.

Incorporation has nothing to do with the organization's purpose, but with its legal status. In technical terms, if your organization is not "incorporated" is has no separate "legal entity" apart from its members. This means that the members of the unincorporated organization can be held legally accountable for the group's activities.[1]

The legal term for an unincorporated organization is "unincorporated association" or "voluntary association."[2]

(a) Unincorporated Associations

An "unincorporated association" is a group of people who agree upon the structure and purpose of the organization and may choose to write an agreement or memorandum of association or by-laws to govern the organization, but are not required by law to do so.

Unincorporated associations cannot buy, sell, or lease property or borrow money as an organization. The members of the unincorporated association must sign all legal documents on behalf of the unincorporated association.

The benefit to Unincorporated association is that they are not restricted in their activities in any way as long as the activities they ran are in accordance with law. This means that the association does not have to operate within set parameters like an incorporated nonprofit organization does. It also means that members of the association can benefit (but not profit) from the activities of the association.

A Trade Union is another example of an unincorporated association. Members pay dues and benefit from the activities of the association. However, they cannot benefit from any profit from the organization (except in the form of salaries).

(b) Incorporated

What does it mean to "incorporate" your organization? It means that you will complete certain required documentation and file it with the appropriate branch of the provincial (or federal) government. It is essentially "registering" your organization with the government. When you "incorpo-

[1] Donald J. Bourgeois, "The Law of Charitable and Not-For-Profit Organizations", 3rd ed., pg 38

[2] Ibid, pg. 41

rate", your organization will become a "separate legal entity" and will continue to exist even if you are no longer part of the organization. It will be able to own property, sign contracts, borrow money and hire staff.

Your incorporated nonprofit organization will be required, by the Ontario Ministry of Consumer and Business Services, to have by-laws as well as produce financial statements and report any changes to the Ministry. It will also be required to keep proper financial records, minutes of all meetings, an up-to-date register of members and directors and to appoint an auditor. As an incorporated nonprofit your organization will be exempt from paying some taxes including income tax, imposed by the provincial and federal governments.

You should incorporate your organization if you anticipate to have:

- a regular revenue flow or a large budget;
- employees;
- office space or vehicle(s);
- plans to operate over a long period of time; and
- if your group decides that your organization will be able to provide "the most benefit to the public" with minimum risk for the members by incorporating

How do you incorporate your organization?

To start the incorporation process it is necessary to file the proper document (Application for Incorporation of a Corporation without Share Capital) under the Ontario Corporations Act with the Ministry of Consumer and Business Services (MCBS) Companies and Personal Property Security Branch. All the information you need to complete the application form, how to acquire the proper reports and write your *objects* is covered in detail in subsequent chapters.

After you have filed the application with the Ministry and it is approved, you will receive your Letters Patent. Letters Patent is the legal document issued by the provincial government, which grants legal status to your organization - now a corporation. Keep in mind that your nonprofit corporation cannot distribute any profits to the members. "If the charitable or not-for-profit organization operates any business activity, that activity must usually be incidental to the objects of the organization and the income and profits from the activity must be used to further the objects of the organization."[3] This means that any profit from any fundraising activities, after you have paid the expenses of the activities, must be used to further the "objects" of the organization. Objects are the very clear statement of the purpose of your organization that you will compose and will be based on your Mission Statement.

2.II Types of Nonprofit Organizations

Nonprofit organizations can be incorporated either provincially or federally. In Ontario, nonprofit organizations incorporated under the *Ontario Corporations Act* are legally referred to as "Corporations without Share Capital"[4].

To qualify as a provincially incorporated nonprofit organization in Ontario, your organization must fit into one of the following categories as set out in the Ontario Corporations Act:

- General - this includes neighbourhood associations, business or trade organizations, community groups;
- Sports and athletic organizations;
- Social Clubs;
- Service Clubs; and
- Charities (charities are further described in Chapter 3)

After your group decides to incorporate, it is your "objects" (purpose)

[3] Ibid, pg. 8.

[4] R.S.O. 1990, c. C.38

Advocate: "To plead in favour of"

and the "nature of the public benefit" (remember this phrase) that will define whether or not your organization qualifies (by its objects) as a charity. Both nonprofits and charities are operated on a not-for-profit basis and both have to provide a degree of "public benefit." However, organizations that wish to be registered as charities must meet much more stringent rules as to what is charitable

The activities of a nonprofit corporation are limited to what is set out in its objects.

(a) Nonprofit

An organization wishing to incorporate as a nonprofit must have its purpose (why it exists) fall within one of the five categories set out above. A nonprofit that falls within one of the first four categories will have more leeway in carrying out its objects (purposes) than will one in the last category - charities. There is also more leeway in the "public benefit" for a nonprofit corporation as it can mean a specific or identifiable group within the public.

Nonprofit corporations are exempt from paying provincial and federal income tax. They are not, however, eligible to provide tax receipts to people who have made donations.

(b) Charity (the last category of Nonprofits)

In Ontario, charities are under the jurisdiction of the Ontario Ministry of the Attorney General, Office of the Public Guardian and Trustee. The Ministry supervises the work of charities through the C*harities Accounting Act*, making sure that the charitable purposes (objects) for which a charity has been established are met or carried out.[5]

Charities are nonprofit corporations that meet all of the requirements to incorporate as nonprofits as well as meeting the additional requirements of having charitable objects and determining whether or not there is a "public benefit".

The Charities Accounting Act defines charitable purposes (reason for existing) as follows:

- Relief of poverty;
- Advancement of education;
- Advancement of religion; or
- Any other purpose beneficial to the community not falling under the other three purposes.

This means that an incorporated charitable organization's objects must be written to fall within one of the categories set out above.

The second criteria that must be met, along with charitable objects, is whether or not there is a "public benefit". This means that not only must an organization be established with a "charitable" purpose, but it must also "benefit the whole community" - or a large portion of the community. "Whole" or "large portion" is defined in a legal sense and therefore it has many interpretations.

An organization would not be granted charitable status if it were only to benefit one person in the community, even if it had a charitable purpose. However, if the organization has a charitable purpose and benefits a large portion of the community - it will be granted charitable status.

Charities are subject to many more regulations and restrictions than nonprofit organizations, since *charities often solicit funds from the public and may have tax advantages.* One of the major restrictions of a registered charity is the limitation to *advocate** (change the law or public's opinion) for a specific cause. Charities may use only 10% of their operating budget for advocacy

[5] R.S.O. 1190, c.C.10

purposes while remaining income must be used to achieve the charitable purposes specified in the organization's Objects.

Nonprofit and charitable corporations may not use any of their budget to advocate on behalf of any political party or doctrine.

Charities have some tax privileges. Charities are exempt from paying both provincial and federal income tax and have reduced liability for some municipal and other provincial and federal taxes. Charities may be able to apply for a rebate on part of the Goods and Services Tax they have paid. Charities may also apply to register their corporation with the Canada Customs and Revenue Agency to issue official tax receipts to donors.

For all of the information you need to register a provincial charity with the Canada Revenue Agency you should read Registering a Charity for Income Tax Purposes T4063, *Application to Register a Charity Under the Income Tax Act*. The guide contains all of the information you need to register a charity with the CRA[8]. To download a copy of the application visit the Canada Revenue Agency's website at www.cra-arc.gc.ca

Finally, when a charity is dissolved (goes out of business) all of its remaining assets must be distributed to other charities. This is not the case with other nonprofit organizations.

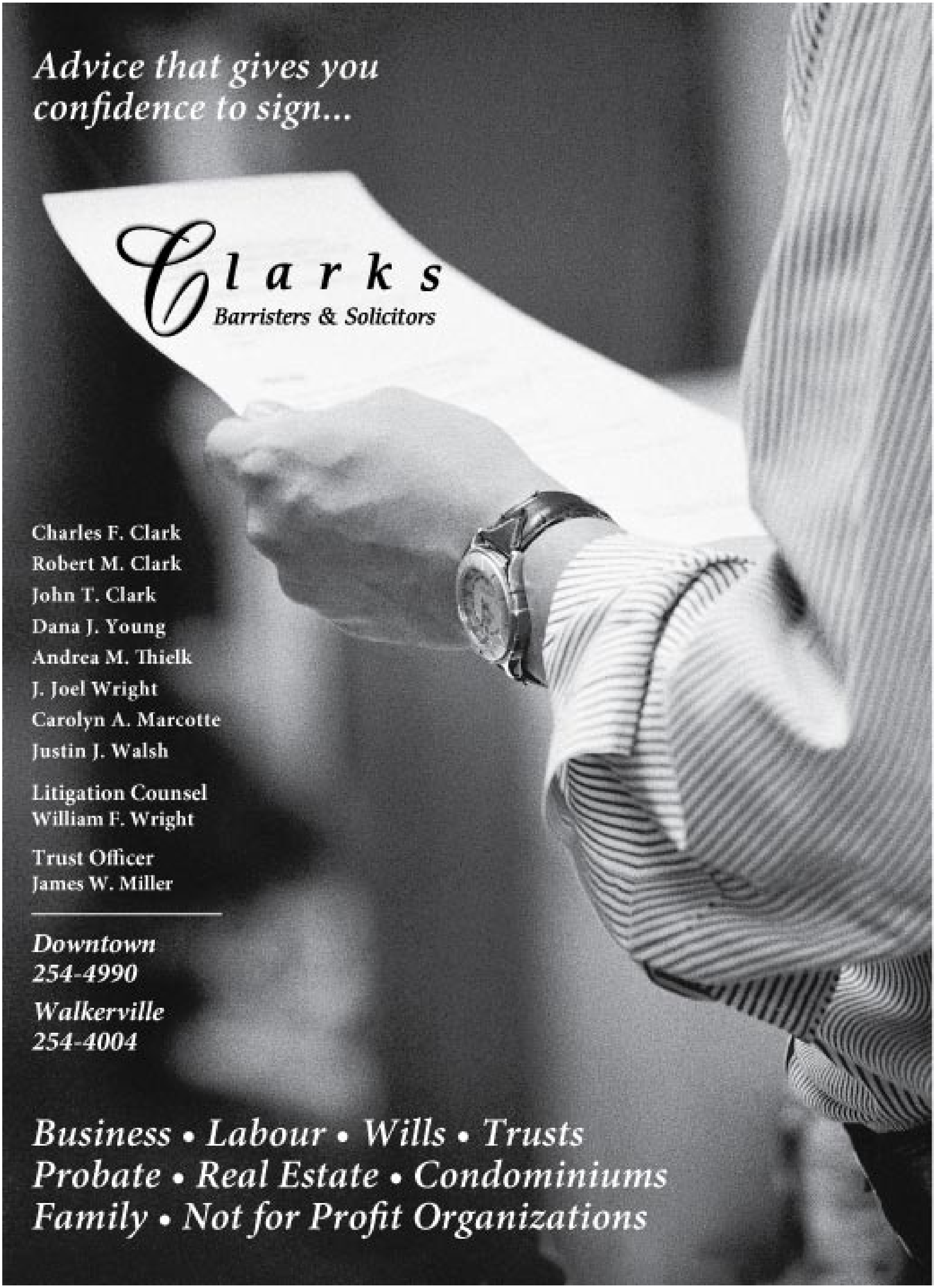
2.III Provincial or Federal Incorporation

If your group is applying to incorporate provincially and is seeking to obtain charitable registration (ability to issue official tax receipts) with Canada Revenue Agency (CRA), your application will be forwarded from the Ontario Ministry of Consumer and Business Services to the Office of Public Guardian and Trustee, which, after it checks the organization's objects and if they are charitable in nature, will forward your application to the Canada Revenue Agency. If you use Preapproved Objects (see Chapter 7) your charitable organization is guaranteed registration with the Canada Revenue Agency.

Federal Registration

You must incorporate your nonprofit organization under the Canada Corporations Act if you want to operate your organization at a national level or in more than one province. Some organizations may incorporate as a provincial nonprofit or charity and then register to operate at a federal level.

There are some differences in the rules for what constitutes a "nonprofit" corporation provincially and federally. A complete guide and kit which include policies, guidelines, procedures, fees, forms and legislation has been prepared by Industry Canada and are available at http://strategis.ic.gc.ca/epic/internet/incd-dgc.nsf/en/h_cs02145e.html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Chapter 3 - A Word From a Lawyer

Dana J. Young

Dana J. Young

Bio Dana attended the University of British Columbia where she earned a Bachelor of Landscape Architecture degree followed by a Bachelor of Laws degree. Dana was admitted to the British Columbia bar in 1993 and the Ontario bar in 1994. Her practice is concentrated on corporate-commercial law including not for profit corporations. She has been involved with a number of community charities including Windsor-Essex Youth Choir, Teen Health Centre, Big Brothers, Lakeview Montessori School, the Windsor-Essex Community Care Access Centre and currently as a director, speaker and trainer for the United Way.

Mitigated: To partially excuse something or make it less serious.

3.1 NON-PROFIT

The term "nonprofit organization" is somewhat of a misnomer in that it suggests that these kinds of organizations do not or cannot profit. This is not the case. There are many profitable nonprofit organizations. What distinguishes nonprofit organizations from for-profit organizations is what can be done with any profits. Profits of a nonprofit organization can only be used in the furtherance of the objects or purposes of the nonprofit organization. This is in contrast to for profit corporations which can not only use profits to further the business of the for-profit organization but can also use profits to enrich the shareholders of the for-profit organization through payment of dividends.

CHARITABLE VERSUS NON-CHARITABLE

There are two types of nonprofit organizations: charitable and non-charitable. Before establishing a nonprofit organization, it is important to understand whether what you contemplate is charitable or not. This will depend entirely on the objects or purposes of the organization.

To qualify as a charity, all of the objects or purposes of the organization must be charitable. More specifically, the objects of the organization must all be for one or more of the following heads:

- relief of poverty;
- advancement of education;
- advancement of religion or other purpose beneficial to the community.

While these heads sound broad, in fact there are specific criteria which must be met in each case as articulated by different judges through the ages.

Qualifying as a non-charitable, nonprofit organization or what is often termed a "straight" nonprofit organization is a little less definitive with different authorities and commentators taking different positions. What can be said is that a non-charitable, nonprofit organization is not a charity and is not a business in that the purpose is something other than personal monetary gain. Typical non-charitable, nonprofit corporations include professional associations and social, recreational or sporting clubs. They are described in more detail in Chapter 2.

STRUCTURING A NONPROFIT

The first step in establishing a nonprofit organization is deciding on how it should be structured. There are three basic ways that a nonprofit organization can be structured, but as you will see, only the corporate structure is generally recommended:

- **Unincorporated Association.**
  A nonprofit organization may be constituted by people getting together with a common purpose. Many charities get their start this way as it is a relatively quick, easy and cheap structure to establish. Perhaps the biggest drawback to an unincorporated association is that each of the members of the group is potentially liable for the actions of the group whether carried out by individuals or as a whole. Since this risk is often significant, generally this structure is not recommended.
- **Trust.**
  A nonprofit organization may also be established by way of a trust declaration, but this is not a very common structure for nonprofit organizations. This structure is generally not recommended because it involves various liability issues for the trustees of the trust and while those liability issues can be ***mitigated****** with the incorporation of corporate trustees, overall there is typically little benefit over the other structures to justify going to such effort. Given that this structure is not common or

generally recommended, no further detail is provided here. Donald J. Bourgeouis, in his text, The Law of Charitable and Not-for-Profit Organizations (3rd Ed., 2002), provides further detail on this structure as well as providing a precedent declaration of trust for those who are interested.

- **Not-For-Profit Corporation.**
  The structure generally recommended for all nonprofit organizations is a corporate structure. This is due to the fact that a corporation constitutes a separate legal person. The concept is that as a separate legal person a corporation ***incurs**** its own liability which is not passed onto the individuals who are involved with the corporation as members or directors. This holds true in relation to a number of matters, but does not provide the blanket protection that is often assumed, especially in the context of directors. This is why liability issues have been a hot topic recently as ***articulated**** in more detail in Chapter 5.

USING MULITPLE CORPORATIONS

In certain instances, it may be advantageous to consider the establishment of more than one corporation. Situations where this is true include the following:

- **Mixed Purposes.**
  Some organizations have more than one purpose. For example, many service clubs have both social and charitable purposes. Where there is a mix of charitable and non-charitable purposes, the organization will not qualify as a charity since the objects or purposes must be exclusively charitable. Where qualification is desirable i.e.- where it is important to be able to issue tax receipts, consideration should be given to the establishment of two related organizations: one that will carry out the charitable purposes and one that will carry out the non-charitable purposes.

- **Creditor Proofing.**
  When an organization is engaged in activities which pose a real risk of liability for the organization or where the organization has a significant build up of assets or some combination thereof, consideration should be given to the establishment of two related organizations: one that will carry out the activities or operations of the organization and one that will hold the assets. This type of structuring is often referred to as creditor proofing or asset protection and is something for profit organizations have long since engaged in but is a relatively new concept to nonprofit organizations. The idea is that if there is something catastrophic which occurs at the operating level, such as a serious debilitating accident giving rise to a huge monetary claim, that claim will be isolated to the operating corporation and the assets held by the related organization will not be eligible to satisfy the claim.

Since many nonprofit organizations are set up to assist individuals, the idea of structuring the organization to avoid payment of a claim from those same individuals may seem distasteful to some. It is, however, important to note that directors of nonprofit organizations, and in particular those that are charities, have a duty to manage and protect the assets of the organization they serve and noted commentators on the subject have suggested that it is ***incumbent**** upon directors to consider multiple corporations in order to fulfil this duty. Further detail can be found in various articles at http://www.charitylaw.ca.

Incurs: To acquire or come into (something usually undesirable); sustain.

Articulated: pronounced distinctly and clearly.

Incumbent: imposed as a duty

By-laws: A law or rule governing the internal affairs of an organization; A secondary law.

3.2 ORGANIZING THE ORGANIZATION – TALKING ABOUT POLICY

Once a decision to establish a nonprofit organization has been made and assuming a corporate structure has been chosen, there are a number of decisions that need to be made about how best to organize the corporation. This all comes down to policy.

A policy is a governing principle. In other words, organizing a corporation involves figuring out which governing principles to apply to the corporation. Some governing principles are part of the law of the land and as such, in the absence of successful lobbying efforts to change the law, they are not optional. Other governing principles can be articulated in the letters patent, the ***by-laws****, by board resolution or operational policy.

The policies of an organization should be consistent and work together from the highest level to the lowest level. When choosing the level at which to articulate policy, regard should be had to whether or not it will be desirable to make amendments relatively difficult or easy. Consideration will be given to each in their order of hierarchy as follows:

Law of the Land.
The law of the land includes statutory law and common law. In terms of statutory law, there is legislation which will be of general application and legislation which will be of more specific application. Legislation which is of general application refers to legislation that applies to all persons, such as the Criminal Code, the Income Tax Act and employment standards legislation. Legislation which is of specific application refers to legislation which applies only to certain persons usually depending on the nature of the entity or its activities. For example, the Corporations Act is legislation of specific application to Ontario provincial nonprofit corporations and the Public Hospitals Act is of specific application to Ontario nonprofit corporations that operate public hospitals. The Ontario Bar Association Continuing Legal Education publications are often a good source for articles summarizing legislation which is commonly applicable to nonprofit organizations and are available at the University of Windsor Law Library with some of them also available through the Essex County Law Library. Full text of the applicable legislation is also available online *(see http://laws.justice.gc.ca/en for federal legislation and http://www.e-laws.gov.on.ca for provincial legislation)*.

In contrast to statutory law, common law is not set out in a series of legislative provisions. Common law is the law which is articulated by judges in different cases over time and as such it is more difficult to figure what may or may not apply to your particular nonprofit organization. Text books and articles can be a good source of information. In particular Donald J. Bourgeouis' text, The Law of Charitable and Not-for-Profit Organizations (3rd Ed., 2002), is an excellent resource. It is important to ensure that any resource which you do access is up to date as the law of the land continually changes. For example, a new federal act for federal nonprofit corporations (Bill C-21 - An Act respecting nonprofit corporations and other corporations without share capital) is anticipated to become law in the next year or so.

Letters Patent.
As described in more detail in Chapter 6, the letters patent is the document which brings a nonprofit corporation into existence at both the federal and provincial levels. The letters patent must set out the objects or purposes of the organization as well

as certain other information as noted in Chapter 6. Beyond the basic requirements, however, there is flexibility to include whatever other policy is desired, providing that such policy is consistent with the law of the land. Generally, however, the letters patent is not the best place to articulate policy. This is because the letters patent cannot be amended without the consent of the directors, consent of the members and government approval at various levels. In other words, if policy is articulated in the letters patent it is difficult to change, especially if membership is widespread and difficult to call together to seek approval. Sometimes policy is strategically placed in the letters patent because it is desirable to make it difficult to change. In most cases, however, such situations can be more appropriately dealt with in the by-laws by establishing different voting thresholds for the provisions in question.

By-laws.

When we talk of "by-laws" of a nonprofit corporation, we are typically referring to a document containing a number of provisions outlining who the membership consists of, how directors are chosen, who may do what on behalf of the organization, the procedures for decision making and other details as to the organizational structure. It is important to note that by-laws are legally ***subordinate**** to the letters patent and the law of the land and accordingly everything in the by-laws must be consistent therewith.

In the case of nonprofit organizations incorporated under the Ontario Corporations Act, the content of by-laws is for the most part wide open – to the point of there being no legal requirement to pass by-laws at all. While there is great flexibility, it is important to understand that a nonprofit organization may be restricted in the absence of certain by-law provisions. For example, a nonprofit corporation incorporated under the Ontario Corporations Act can only establish an executive committee if by-laws have been passed permitting the same. Similarly, it cannot borrow in the absence of by-laws permitting the same. Thus, when drafting by-laws it will be important to have regard to the relevant provisions of the incorporating legislation to ensure the nonprofit organization is not inadvertently restricted.

The situation is entirely different for federal nonprofit corporations. Unlike nonprofit organizations incorporated under the Ontario *Corporations Act*, nonprofit organizations incorporated under the *Canada Corporations Act* must have by-laws which in turn must meet certain minimum content requirements. Moreover, the proposed by-laws for federal nonprofit corporations must be filed along with the application for letters patent with the government and any changes to the proposed by-laws must also be filed for approval. For details about the required by-law items for federal nonprofit corporations and sample by-law provisions see *http://strategis.ic.gc.ca/epic/internet/incd-dgc.nsf/en/h_cs02145e.html.*

The Alberta government in conjunction with the Muttart Foundation have developed a workbook, "Board Development: Drafting & Revising By-laws for Not-for-Profit Organizations in Alberta", available at *www.cd.gov.ab.ca/building_communities/volunteer community/programs/bdp/services/resources/workbooks/index.asp*. While this workbook is based on Alberta law, it contains a great deal of helpful information for general application.

Subordinate: Belonging to a lower or inferior class or rank; secondary; Subject to the authority or control of another.

Governance: The act, process, or power of governing; government: "Regaining a sense of the state is thus an absolute priority, not only for an effective policy against... terrorism, but also for governance itself" (Moorhead Kennedy).

Requisition: A formal written request for something needed.

Amendment: The act of changing for the better; improvement; A correction or alteration, as in a manuscript.

Board Resolutions.
Board resolutions refer to the policies and other decisions passed by the board of directors of an organization. Providing that the board resolutions are consistent with the law of the land, the letters patent and the by-laws of an organization, board resolutions can cover any subject matter and can be amended by the board without the approval of the members. Since, board resolutions are relatively easy to change, this is a good level at which to articulate policy when flexibility is desirable. With the trend towards policy ***governance**** models such as the Carver model, advanced by John Carver, the trend has been to greater articulation of policy at the board level with a decrease at the by-laws level. For sample board policy resolutions consistent with a Carver model see http://www.boundarymanagement.com.

Operational Policy.
Typically, the executive director of an organization is charged with setting operational policy in a manner consistent with the laws of the land, the letters patent, the by-laws and any board policy. For example, operational policy typically includes various human resource matters, financial matters, safety procedures and other policies depending on the nature of the operations.

Conduct.
The conduct of different individuals involved with a nonprofit organization can have a significant impact on individuals served by that organization, and when that impact is negative it can attract liability. The mere articulation of appropriate policy does not on its own ensure good governance, since individuals can always ignore policy, but it is a key component. Good governance is outlined in more detail in Chapter 9.

3.3 KEY POLICY – MEMBERS AND DIRECTORS

As can be seen from the above, there is much to be decided in terms of policy at a variety of levels when establishing a nonprofit corporation. Perhaps the two most significant items to be determined, however, are who the members of the organization will be and how directors will be appointed. As is hopefully apparent from the above, this is because it is the members and directors of an organization who have control over policy, to the extent that it can be internally controlled.

Members
Frequently, the members of a nonprofit organization will also be the directors and the officers of the nonprofit organization. In certain cases this is statutorily mandated. For example, the president of a nonprofit corporation incorporated under the Ontario Corporations Act must also be a director and a member. While the wearing of two and three hats is commonplace, it can lead to confusion. In the writer's experience, it is not uncommon for individuals involved with nonprofit organizations to be unaware of the difference between members, directors and officers, and while typically such individuals can identify the directors of their organization, it is not uncommon that the membership will not be known to them in any definitive way.

Members, through their ability to ***requisition**** meetings to decide any matter and to appoint and remove directors (subject to certain limited exceptions) have the ultimate decision making power. Moreover, the approval of members is required for such things as ***amendments**** to the letters patent and by-laws. Thus, there is great peril in not appreciating the significance of members, and understanding who is and is not a member of a particular organization. Consider, for example, the following situations:

- A school was set up as a charity. Subsequently, some of the parents accused the principal of stealing money. Another group of parents sided with the principal. The by-laws of the school said that anybody who paid an annual $10.00 membership fee could become a member. This is a standard type of membership provision. Over the years, the membership fee had been forgotten with nobody having paid any money. The parents who sided with the principal all quickly paid $10.00 and started making decisions, while the other ***contingent**** held their own meetings, making different decisions. Suffice to say that a difficult situation was made that much more difficult by failing to articulate workable membership policy and failing to keep track of membership.
- The board of directors of a government transfer payment agency all quit at the same time in protest to certain government action. Membership had not been recorded over the years and in result it was impossible to call a membership meeting for the purposes of electing a new board. Again, another difficult situation made worse.

In considering membership provisions, there are three basic options as follows:

- **Open.**
  Open membership refers to a membership structure where anybody can become a member upon paying a fee or filling out an application or other similar requirement.
- **Closed.**
  Closed membership structure refers to a membership structure where membership is restricted. One common type of closed membership is where it is up to the board to admit members. Another type of closed membership is where membership is restricted to a certain group of people. For example, in the context of a parallel foundation, the membership may be restricted to the board of directors of the parent charity. Another common closed membership structure is called a mirror structure where the membership mirrors the board – the directors are the only members.
- **Hybrid.**
  Hybrid membership refers to a membership structure that has both the features of an open and closed structure. For example, some organizations have a large non-voting membership classification which is open to anyone to join, combined with a closed voting membership classification which is restricted.

The nature of an organization and its activities will have a bearing on what type of membership structure is most appropriate. Open membership structures are typically appropriate for grass roots organizations which are dependent on broad-based community support. However, as seen from the previous examples, it is often advisable, especially in the context of open membership structures to institute policy directed at prevention of infiltration by special interest groups or stacking of the board. Examples of such policies include annual automatic termination of membership; board composition and nomination procedures. Closed membership structures are often appropriate where funding is not broad-based, such as in the case of a government transfer payment agency.

Directors

Directors are the individuals who are typically elected by the members, but can also be appointed by virtue of their office. This later type of appointment is referred to as an ***ex officio**** appointment. For example, the policy

Contingent: Dependent on conditions or occurrences not yet established; conditional

Ex Officio: by virtue of one's office. Confers membership on a board to certain officials of an organization might provide that one of the directors shall be ex officio the president of another organization. This is common in the context of parallel foundations or where the membership of the organization is made up of other organizations.

Other types of policies, which are important in the context of directors are those detailing the number of directors, qualifications, removal of directors and how vacancies are filled.

3.4 MANAGING THE CORPORATION

Since corporations are "legal fictions" with no natural existence - no body, soul or brain - they cannot act for themselves, even though they can acquire rights, obligations and liabilities. Corporations must act through human agents – that is the board of directors and the members. While the members arguably have the ultimate decision making power, the directors are generally the most important corporate operatives since they are statutorily charged with the management of the affairs of the corporation. It is important to note that individual directors have no particular authority on their own. The board acts as a collective.

Directors are required to manage all aspects of the affairs of a nonprofit corporation. As has already been covered, the articulation of policy to govern the organization is a big part of the management. Depending on the governance model, the subject areas for policy articulation may be differently described. For example, under "policy governance" management areas are often (see http://www.boarddevelopment.org) broadly categorized as follows:

- **Planning.**
  Determining the values, mission and vision for the nonprofit organization, providing they are at all times consistent with the objects of the corporation as set out in the letters patent; and from there developing and maintaining a strategic plan for the organization. More recently, this area of decision making has also come to include risk management.
- **Finances.**
  Ensuring adequate financial resources for the nonprofit organization and to that end protecting assets, approving an annual budget and monitoring revenues and expenses.
- **Human Resources.**
  - Board development including recruitment, training and evaluation.
  - Hiring an executive director and providing direction to her or him and further, monitoring and evaluating the performance of the executive director.
- **Organizational Structure.**
  Ensuring appropriate organizational structures for the corporation and regularly reviewing their continued appropriateness.
- **Community Relations.**
  Ensuring appropriate community contact and image.

By way of contrast, the Carver model (see John Carver, Boards That Make a Difference (2nd Ed. 1997 and John Carver and Miriam Carver, Reinventing Your Board: A Step-by Step Guide to Implementing Policy Governance, (1997) which is also described as a policy governance model, divides management areas into the following four categories:

- **Ends Policies**.
  Ends policies describe the board's expectations about: the benefit, difference or outcome to be achieved by the charity; the persons for whom the benefit, difference or outcome is

to be made and the expense which the charity is to incur in realizing that benefit, difference or outcome.

- **Board Self-Management Policies.** These policies define the way that the Board shall manage itself. For example, these policies contain details about the types of meetings that the Board will hold; the focus of those meetings and types of committees that will exist.

- **Board – Executive Director Linkage Policies.** These policies describe how the Board ***delegates**** authority to the executive director and the way in which proper use of delegated authority is monitored.
- **Executive Director Limitations.** These are the policies that describe the constraints placed on the executive director's efforts to achieve the ends policies.

Categorizing the subject areas can facilitate discussion and organization but ultimately the categories are not what matters - it is the overall management that is achieved.

While articulation of appropriate policy at appropriate levels is a key part of proper management, it is not the only part. Monitoring policy compliance at all levels of the ***hierarchy**** is just as important. As is often said, "there is no point in having policy if it is not adhered to and enforced". Monitoring best practices are described in more detail in Chapter 9.

3.5 STANDARDS OF CARE WHEN MANAGING

In general terms, directors must fulfill their management function in a "reasonable and prudent manner." What does this mean? The answer is not entirely straight forward because it can vary depending upon the structure of the nonprofit organization, whether the nonprofit organization is charitable or not and on the specific context. Notwithstanding this complexity, the two basic possibilities are as follows:

- **Objective Standard.** The objective standard requires directors to make decisions in a way that a reasonably prudent person would do in an objective sense. In other words, all individuals are treated the same under this standard without regard to their specific knowledge or experience. This is the standard which is likely to be applied when considering responsibilities imposed by ***statute****.
- **Subjective Standard.** The subjective standard requires that a director makes decisions with the degree of ***prudence**** that might be expected of individuals having her or his knowledge and experience. What this means is that a board member who is sophisticated in business, legal or financial matters is going to be held to a higher standard than someone who is less sophisticated in that regard. This is the standard which is likely to be applied when considering responsibilities other than those imposed by *statute*.

Having regard to the differing standards that may be applied, the safest approach for a director is to always act to the highest possible standard. Thus, if a director is sophisticated in business, legal, or financial matters, she or he should ensure that she or he always acts in a way that would be expected of a prudent person having such knowledge and experience. A less sophisticated director should consider raising her or his competence through reading or course work in those areas requiring attention.

Delegate: give an assignment to (a person) to a post, or assign a task to (a person)

Hierarchy: A body of persons having authority; Categorization of a group of people according to ability or status; The group so categorized.

Statute: legislative act: an act passed by a legislative body

Prudence: discretion in practical affairs

Duly Diligent: living up to the standard of care imposed

Disclosure: The act or process of revealing or uncovering.

3.6 DUTIES WHEN MANAGING

As in the case of standard of care, the duties which apply to directors to some extent vary depending on the structure of the nonprofit organization, whether the nonprofit organization is charitable or not and on the specific context. The below is an attempt at a practical distillation of what a board member should keep in mind when making decisions:

Duty to be Duly Diligent
(Fiduciary Duty). A director should be ***duly diligent**** when making decisions. In this regard the director should prepare for meetings; participate in the discussion and decision making; understand what is going on and why. In certain instances, it will mean that a director should seek out the expertise of professional advisors if the situation calls for such expertise and it is not otherwise available from amongst the board members. In short, being *duly diligent* means living up to the standard of care imposed.

Duty to Act in Good Faith.
A director should always act in good faith. This means:

- **Duty to be Honest.**
  A director should always be honest and should take care to ensure full ***disclosure**** of all relevant facts and correct any known or suspected misapprehensions.
- **Duty to be Loyal.**
  A director should always act with a view to the best interests of the organization.
- **Duty to Avoid Conflict of Interest.**
  There are many different types of conflict of interest. A director is required to avoid all general conflicts of interest. Thus, a director should refrain from taking a position which would place her or him in a situation where the interests of the charity would be at odds with her or his personal or professional interests. As an example, a director of a nonprofit organization should not accept a position with a union that represents employees of that organization. From time to time situations may arise when a director has an isolated or specific, as opposed to general, conflict of interest. In such instances, the director should declare the conflict of interest. The conflict of interest should be recorded in the minutes of the meeting, the director should not participate in any discussion or otherwise attempt to influence the decision making of other directors and, to be abundantly cautious, should leave the room when the matter is discussed. It is important to note that in the context of Ontario corporate charities and in the absence of a court order, a director cannot have an interest in a contract with a charity, even if disclosure is made and all the proper procedures are followed. This is further explained below under the duty not to profit.

Duty Not to Delegate Decision Making Function.
Generally, a director should not blindly rely on the opinions of others, or, in other words, get somebody else to make her or his decisions. This duty is often referred to as the 'duty not to delegate' or the 'duty not to fetter discretion'. Sometimes, fulfillment of this duty can be a delicate balancing act-such as when a charity is considering investing funds. Often in such instances, the charity will want the advice of a financial consultant to advise on the proper mix of investments and to help manage those investments. Up until July 1999, it was generally thought that charities were prohibited from investing in mutual funds because there was no way for the charity to have input into the mutual fund manager's decision making with respect to the fund. In July 1999, the Trustee Act was amended to expressly permit investment in mutual funds, but stopped short of articulating how the balancing act should otherwise

be maintained. In June 2001, further amendments to the Trustee Act came into force clarifying the conditions under which an investment manager could be retained, or, in other words, where it was legal for the directors of a charity to delegate their investment decisions. Other than the recent Trustee Act amendments and the ability to delegate to an executive committee, if the proper protocols are followed there are no exceptions to the general 'no delegation' rule.

Duty of Obedience.
The duty of obedience entails the following:

- **Duty to Abide by the Law.** A director should ensure that the decisions made are within the authority of the board and are consistent with the law applicable to the nonprofit organization. This means that the decision must accord with the nonprofit organization's constitution (letters patent in the case of a corporation) and by-laws as well as any relevant statutory or common law.
- **Duty to Implement Decisions.** A director is obliged to assist in implementing valid decisions of the organization. A not uncommon breach of this duty happens when a board member, who was not in favour of a particular decision, leaks information to the press in an effort to undermine the decision.

Confidentiality.
Directors are required to keep all information and matters pertaining to the meetings and the affairs of the nonprofit organization confidential and should not do, or omit to do anything which would undermine that confidentiality. This duty survives any vacating of office.

Duty Not to Profit.
In the case of corporate Ontario charities, a director should not profit directly or indirectly from her or his dealings with the charity, in the absence of a court order. This stems from the provision that is required to be included in the letters patent. This means a director should not do business with the charity - she or he should not provide remunerated services or enter into contracts with the charity. This duty is frequently breached by well meaning but misguided individuals. Typically what happens is that the charity will find itself in the position of needing certain services or products. A director may be able to make the same available directly or indirectly through a friend or relative. The director may believe that she or he is acting in the best interests of the charity because she or he may be able to provide the products or services at a lesser cost than would otherwise be the case, or believes that by providing the same, the charity is not exposed to the potential dishonesty of outsiders. These types of arrangements no doubt often proceed without problem but it is not infrequent that problems are encountered, and when they are, the director that profited, even if it was only by a small amount, may find her or himself liable and with a ruined reputation.

Duty to Protect Assets.
Directors must safeguard the assets of a nonprofit organization.

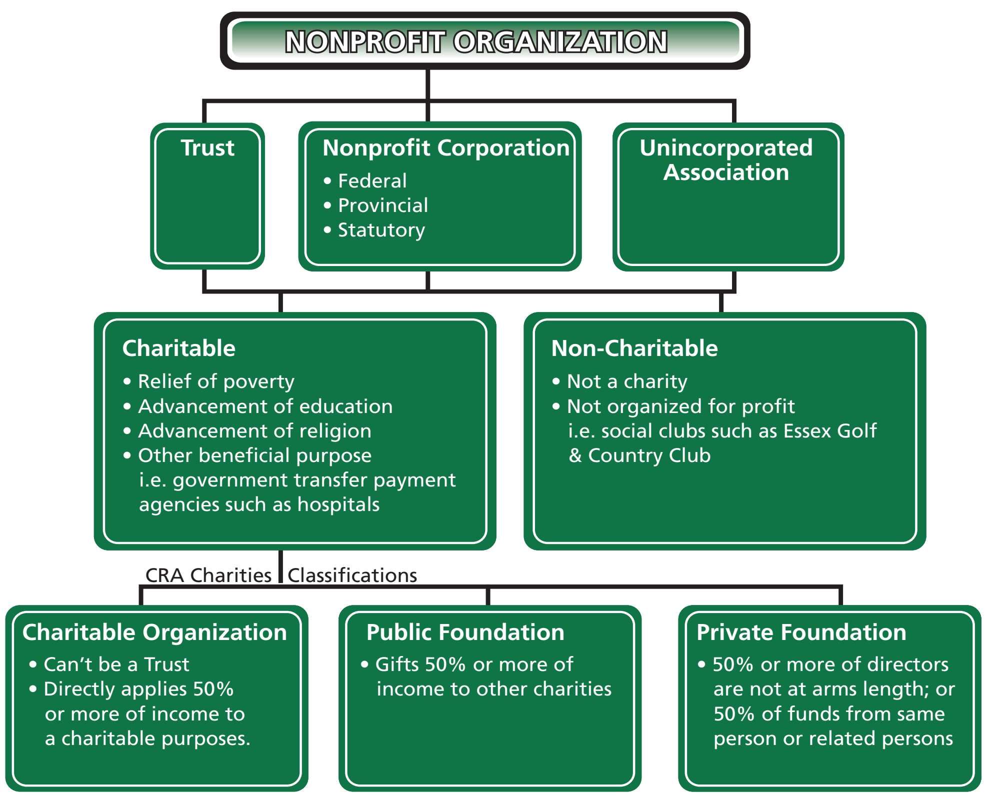
3.7 REGISTERING WITH CANADA REVENUE AGENCY

Only charities, and not straight nonprofit organizations, are eligible to register with Canada Revenue Agency. It is important to note that registration with Canada Revenue Agency is not required in order for an organization to qualify as a charity. Registration is, however, required in order to issue tax receipts. Since tax receipts are typically important to attracting donor dollars, registration is often a practical, if not a technical or legal, requirement for most charitable nonprofit corporations.

Safeguard: a precautionary measure warding off impending danger or damage or injury etc

In order to become a registered charity under the Canada Income Tax Act an application (form T2050) must be completed and submitted to Canada Revenue Agency. Forms are available on line at *http://www.cra-arc.gc.ca/tax/charities/publications_list-e.html*. The process can be slow-taking as many as nine months give or take. Moreover, it is not uncommon for Canada Revenue Agency to require changes to the letters patent. For this reason, Canada Revenue Agency recommends obtaining pre-approval prior to incorporating. Pre-approval, however, also takes a number of months, with the result in the writers experience, that most applicants take their chances and do not seek the pre-approval.

The following chart illustrates the various potential classifications and structures of a charity:



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Chapter 4 - Keeping Track of the Numbers: Financial Records For a Nonprofit

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Bio Sharon McKeown has taught at the University of Windsor on a full- and part-time basis since 1979. She is a graduate of the University of Windsor. She completed her articling for her C.A. designation with Clarkson Gordon in London. She has also worked in public accounting for a number of years.

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Chapter 4 - Keeping Track of the Numbers: Financial Records For a Nonprofit

So you're going to establish a nonprofit organization. As in most aspects of life, there is always the dreaded paperwork to address. This chapter will help you to determine which financial records and documentation are required for your organization.

4.1 TERMINOLOGY

There are a few key terms that are used when referring to the financial records of any business. It is important to be familiar with them.

Assets: Assets are items that a business has on hand that will be used to earn revenue or will be converted to cash in the future. Examples of assets are cash, inventory, supplies, or equipment.

Liabilities: Liabilities are debts. Unpaid bills (accounts payable) or bank loans payable are examples of liabilities.

Revenues: Revenues are what a business earns by providing goods or services to customers. In the case of a nonprofit, sometimes no goods or services are provided to the customer – the revenue takes the form of a donation to the nonprofit. Revenue generally is received in the form of cash, but it may take on other forms. For example, a sports team may receive a gift of uniforms. The uniforms are a donation, and may be recognized as revenue.

Expenses: Expenses are goods or services consumed to earn revenue. These may include such things as salaries, rent, promotional materials or the costs to hold an event.

Surplus or Deficit: When the revenues exceed the expenses in a given period of time or for a given event, the organization earns a surplus. When the expenses exceed the revenues, the organization incurs a deficit. In a profit-focused business this is called a profit or loss, but in the nonprofit sector it is not recognized as a profit.

Accumulated surplus/deficit: This is the total (net) of all surpluses or deficits that have been incurred by the organization since its inception.

4.2 FINANCIAL CONTROLS

A nonprofit business, just like any other business, may take precautions to ensure that all assets are guarded so that none disappear through loss or theft. The most vulnerable asset is cash. The protection of cash is worth addressing at this time, before you incur problems.

When the term cash is used in business, it refers to cash, cheques, money orders, credit card deposits, cashier's cheques, or any other items that can be presented to a bank and converted to cash immediately.

There are three basic rules that should be followed in every business, large or small, to control cash. The exercise is part of a process called "Internal Control".

1. All cash should be deposited in the bank, intact, every day. (An exception to this is that a very small amount of cash may be kept on hand to pay small expenses that must be paid in cash immediately, e.g., coffee and muffins for a meeting). Cash should not be left in a desk drawer or anywhere else that makes it vulnerable to theft or loss. Depositing it in the bank each day also provides a record of when the cash was received. "Intact" means that, in most cases, expenses should not be paid from these funds before they are deposited.

2. To the fullest extent possible, all expenses should be paid by cheque. This provides an independent record of what was paid, when it was paid, and to whom it was paid. To ensure

that funds cannot be misspent, each cheque should be signed by two people.

3. At least two people should be responsible for counting cash when it is received. This rule is important whether you are a very small organization counting the proceeds from a bake sale at a school to a larger organization counting the proceeds from the putting contest at a golf tournament. This makes it impossible for one person to take cash without someone else knowing about it.

It is common to hear horror stories about someone stealing money from the Parents' Association at a school or from a sports team. The above rules make that eventuality very unlikely.

4.3 THE BUDGET

The first financial task that every new organization faces, whether it is a nonprofit or not, whether it is a registered charity or not, whether it is incorporated or not, is to prepare a budget. A budget is a forward-looking roadmap of how an organization will earn and receive money, and how it will spend it.

Remember that even a nonprofit organization is a business. Even though it is not focused on earning a profit, it needs revenue in order to pay costs and to provide funds for the purpose for which it was organized. It must be operated with recognition of the fact that it can't spend what it doesn't have.

It is critical to be realistic when preparing a budget. If the expense section is prepared first, the organization will know how much money it needs to achieve its goals. It must then prepare the revenues section to determine how it will raise the money needed. This exercise must be examined carefully. If the organization does not have a realistic plan to raise the required funds, it should not even begin to undertake the venture.

There are two general types of budgets: operating budgets and capital budgets.

Operating Budgets

Operating budgets are projections of revenues and expenses for a given period of time. They may project the revenues and expenses for a given event (e.g., a dinner to raise funds for equipment) or they may project the revenues and expenses to operate the organization.

Funding organizations (governments, foundations, or in some cases, individual donors) will want to know how the organization intends to achieve its goals. As well as a description of the items or services that will be provided to benefit a group or community, how the organization will fund and pay for these items or services is also required information.

For a very small nonprofit organization it should be very simple. The following is an example of a budget for a soccer team that raises money to help fund the costs of competing in tournaments.

Examples:

Kicks Soccer Team
Budget for the 2004 Soccer Season

Revenues	
Fifty-fifty draw at games	1,200
Barbecue	600
Pasta dinner	850
Tag day	1,700
Total revenues	**4,350**
Expenses	
Entry fees	1,500
Bus rental	600
Food	900
Accommodation	1,350
Total expenses	**4,350**
Surplus/deficit	**0**

For a large organization far more detail will be required. The following is an example of a budget for a health clinic

Be Well
Budget for the Year ending December 31, 2004

Revenues	
Ministry of Health grants	600,000
Municipal grants	25,000
Donations	60,000
Fundraising events	50,000
Total revenues	**735,000**
Expenses	
Salaries	569,000
Payroll taxes and employee benefits	36,800
Rent	24,000
Utilities	1,900
Medical supplies	82,000
Office supplies	4,300
Accounting fees	3,000
Public awareness/promotion	2,800
Cleaning and maintenance	8,000
Automotive expenses/mileage	2,200
Miscellaneous	1,000
Total expenses	**735,000**
Surplus/deficit	**0**

Capital Budgets
Capital items are items that are used for extended periods of time, such as a building or equipment. A capital budget describes how your organization will pay for these items. It may take an organization several years to raise the money for a capital item. In some cases, the sole purpose of an organization is to raise money for a specific piece of equipment, and then the organization ceases to exist.

The following capital budget discloses how an organization hopes to fund the cost of adding 4 treatment rooms to its family services facility.

Family Services
Budget for Facility Expansion

Revenues	
Province of Ontario grants	2,100,000
Corporate donations	950,000
Foundation grants	250,000
Donations from individuals	700,000
Golf tournaments	130,000
Galas	60,000
Other fundraising events	100,000
Total revenues	**4,290,000**
Costs	
Building construction	2,650,000
Architect fees	140,000
Equipment	1,300,000
Fundraising costs	200,000
Total costs	**4,290,000**
Surplus/deficit	**0**

Note that a lot of attention will be given to the fundraising costs. Donors want to be assured that only a small part of their donation will go towards administrative or fundraising costs. They want assurance that most of their donation will go directly to the items for which the money is being raised.

4.4 FINANCIAL STATEMENTS

Financial statements are prepared at the end of each period. They must be prepared at least once a year, but for most organization informal statements are prepared monthly or quarterly to report the progress of the organization. It is unwise to prepare statements only once each year. A lot can go wrong in a year, and the organization may not recognize this without timely financial information. It is best to review monthly financial reports to uncover problems quickly and correct them before they become insurmountable.

Statement of Revenues and Expenses
The statement of revenues and expenses will disclose the actual results of the organization for a given period of

time. Following is an example of this statement for the Be Well health clinic that was examined earlier.

Be Well
Statement of Revenues and Expenses
For the Year ending December 31, 2004

Revenues	
Ministry of Health grants	604,900
Municipal grants	25,000
Donations	64,535
Fundraising events	48,271
Total revenues	**742,706**
Expenses	
Salaries	574,642
Payroll taxes and employee benefits	39,980
Rent	24,000
Utilities	2,327
Medical supplies	91,633
Office supplies	3,740
Accounting fees	3,000
Public awareness/promotion	2,250
Cleaning and maintenance	7,635
Automotive expenses/mileage	1,766
Miscellaneous	648
Total expenses	**751,621**
Deficit	**(8,915)**

These actual results should be compared to the budget to determine what went right and what went wrong. For example, even though revenues were more than budgeted, the organization still incurred a deficit. The major problems are that it spent $5,642 more on salaries than it budgeted, $3,180 more on payroll taxes and benefits than it budgeted, and $9,633 more on medical supplies than budgeted.

Comparing the budget to the actual results does not provide answers: it is the starting point for asking questions. The major question is: "Why is there so much difference between the budget and the actual results"? Only by determining the cause can the organization correct or overcome the problems. When the results are better than expected, the organization should be trying to determine what it did right so that it can repeat these results.

The exercise of comparing actual results to the budget and trying to determine the causes of the difference is called ***variance analysis**.**

Balance Sheet

The ***balance sheet**** is also called the Statement of Financial Position. It discloses the assets, liabilities and accumulated surplus/deficit of the organization at a given point in time. The time chosen for this is the same date as the period end that appears on the Statement of Revenues and Expenses.

A brief example of a balance sheet for Be Well follows.

Be Well
Balance Sheet, December 31, 2004

Assets	
Cash (in bank)	2,479
Medical supplies on hand	14,825
Equipment	83,230
Total assets	**100,534**
Liabilities	
Accounts payable	75,749
Payroll withholdings payable	16,400
Total liabilities	**92,149**
Accumulated surplus	8,385
Total liabilities and accumulated surplus	100,534

Note that the total assets will always be equal to the total liabilities and accumulated surplus. This is why the statement is referred to as a balance sheet.

Note that this is a very simplified version of financial statements. They will be more complex for most organizations. A professional accountant (CA, CGA, CMA) will help the organization meet the standards for proper disclosure.

Variance Analysis: comparing actual results to the budget and trying to determine the causes of the difference

Balance Sheet: discloses the assets, liabilities, and accumulated surplus/deficit of the organization

In Kind: something other than cash is given to the nonprofit

4.5 REGISTERED CHARITIES

A Registered Charity is a nonprofit organization that has the right to issue receipts for donations received that can be used for credits (a form of deduction) on the donor's income tax return.

The chapter in this manual that discusses legal requirements discloses which organizations may become registered charities and how that is done. This section will address only the special accounting requirements for registered charities.

Registered charities are subject to closer scrutiny than other nonprofit agencies because donations given to them can be used to reduce income taxes payable by the donors. An extensive review of financial information by a professional accountant that works outside of the organization is required. This accountant will issue a written opinion about the reasonableness of the financial information.

Even though a registered charity must issue receipts only when donors request them, it should issue receipts for all donations received. This record can then be reconciled with the total donations received at the end of each accounting period. This serves as one more check on the accuracy of the records. Each receipt must disclose the registration (issued by the government) of the charity. It must keep a detailed register of each donor and the amount received.

Most donations are received in cash. Sometimes, however, a donation is received ***in kind****. This means that something other than cash is given to the nonprofit. An example of this is a nonprofit vocational training facility may be given equipment that students use in the classroom. A tax-deductible receipt can be issued to the donor for the fair cost of this equipment. Whenever possible, there should be verifiable documentation that supports the value assigned.

4.6 GOVERNMENT PAPER WORK

Nonprofit organizations do not pay income taxes because they do not have any profits on which to pay. Thus, there is no need to file income tax returns. They are, however, required to file a variety of documents with the appropriate government body.

Very small organizations, such as parent/school groups, do not need to address any government filing requirements. These groups are large in number, but small in size.

Each organization that pays salaries and wages is required to withhold income tax, Canada Pension premiums, Employment Insurance premiums, and health tax from each individual's pay. These amounts must be submitted to the Government of Canada on a schedule that is determined by the amount that is withheld. A professional accountant will help determine the requirement.

Nonprofit organizations also must deal with Goods and Services Tax (GST) requirements. If a nonprofit provides services only, it may not need to address GST issues. Once again, a professional accountant should be consulted to ensure that the organization is in compliance with the requirements.

A registered charity must file annual forms with the federal government disclosing its financial information for the year. This is similar to filing an income tax return and must be accompanied by the organization's financial statements. A professional accountant will help with this filing requirement.

4.7 MOVING FORWARD

When most organizations start up, they are formed by individuals that are knowledgeable about the services or goods that will be provided by the nonprofit. Most of these individuals do not have financial expertise.

It is very important to acquire professional financial advice for all but the smallest nonprofit groups. This is an expense that many would like to avoid, but it is essential to the ongoing successful operation of the organization.

Don't be intimidated by the financial requirements. It is really quite logical, and usually simple, once a system for recording information is established. Do it right, right from the beginning, with professional assistance, and you will be able to concentrate on the great things you are doing for your community.

Chapter 5 - Taxation

Robert Smith

Robert Smith

Bio Robert Smith is a HR Block Canada, Inc's District Manager.

H&R Block is the leading tax preparation company in Canada. Highly skilled, experienced tax preparers, accountants, and bookkeepers offer individuals, small businesses, and proprietorships a wide range of professional services; from preparing personal (T1), corporate (T2), and trust (T3) tax returns, to bookkeeping and payroll, GST remittances, and expert U.S. tax return preparation.

Chapter 5 - Taxation

5.1 Filing Requirements for Nonprofit Organizations and Charities

Before we begin…
The following chapter deals with some very complex and often confusing issues surrounding taxes and filing requirements for nonprofits and charities. While it is important for you to be aware of these issues, this chapter should highlight the need for a well-balanced board of directors with expertise in a number of different areas, such as accounting and taxes.

Don't worry! Even though you may be overwhelmed by all of this information, there are people available who can help you through it all, clarify it and make it easy to understand. So, read on brave person! But understand that it's not as difficult as it might first seem, and a strong board of directors will be your greatest asset in dealing with all these complex issues.

Introduction
Both nonprofit organizations and charities enjoy tax-exempt status under the Income Tax Act, as long as they meet certain requirements. However, they are governed by two completely different sets of rules and each has its own separate reporting requirements. We will begin by examining the differences between them.

What is a Nonprofit Organization?
Under paragraph 149(1)(l) of the Income Tax Act, an organization meets the definition of a nonprofit if it meets the following requirements:

- It is not a charity;
- It is organized exclusively for social welfare, civic improvement, pleasure, recreation or any purpose except profit;
- It in fact operates exclusively for such purposes; and
- It does not distribute or otherwise make available any income for the personal benefit of a member (with the exception of certain amateur athletic organizations).

We'll expand on a couple of these points below:

Organized exclusively for "social welfare, civic improvement, pleasure or recreation…"
According to the Canada Revenue Agency (CRA), examples of organizations that operate for social welfare include those that are set up to assist disadvantaged groups or the common good of the community. An example of civic improvement would be the encouragement of new industries, parks or museums in the community. Social clubs, golf clubs and curling clubs are examples of nonprofits organized for pleasure or recreation.

Organized for "…any purpose except profit"
The requirement that a nonprofit organization must operate for "any purpose except profit" does not mean that it cannot raise funds. However, it must ensure the funds raised are directly attributable to, or connected with, its nonprofit goals or activities.

It is also acceptable for a nonprofit organization to earn income in excess of its expenditures, as long as the accumulated excess does not exceed its reasonable needs to carry on its nonprofit activities. What is "reasonable," however, depends on the nature of the particular organization and the nature of its activities.

What is a Charity?
The Income Tax Act differentiates between nonprofit organizations and registered charities. Both classes of organizations are all or partially tax exempt. However, registered charities have the additional advantage of being allowed to issue official donation receipts to their donors. Registered

charities are held publicly responsible through the Canada Revenue Agency (CRA), and have to meet more rigorous operational requirements.

In order to be accepted for registration as a charity, an organization must be established and operated for charitable purposes and devote its resources to charitable activities. "Charitable purposes" include the relief of poverty, the advancement of education or religion, or purposes that benefit the community in other ways that the courts have held to be charitable.

Limitations on political activities
The courts have held that political purposes are not charitable. Such purposes would include furthering the aims of a political party, promoting a ***political doctrine****, persuading the public to adopt a particular view on a broad social question and attempting to bring about or oppose changes in the law or government policy. Recent changes do allow a charity to engage in non-partisan political activities to the extent that they do not consume more than 10% of the charity's resources. However, partisan political activities (which include supporting or opposing a political party or candidate) are still completely prohibited. The following activities could therefore jeopardize an organization's status as a registered charity:

- Using the organization's premises, equipment, or personnel for political purposes (for example, posting signs for a particular candidate);
- Providing its mailing list to political candidates or parties; and
- Purchasing tickets to fundraisers to benefit political parties, politicians, or candidates.

Further Limitations
In addition to having charitable purposes, the charity must also be able to demonstrate that:

- Its activities and purposes provide a tangible benefit to the public;
- The people it benefits are either the public as a whole, or a significant section of it, which means they are not a restricted group or one where members share a private connection; and
- The charity's activities must be legal and must not be contrary to public policy.

The public benefit requirement means that organizations established to help a single individual (such as the child of a family requiring expensive medical treatment) will not qualify for registration as a charity.

Providing Personal Benefits
A registered charity cannot pay its directors/ trustees and like officials just for holding their positions. The only acceptable reason that a registered charity can pay its directors/ trustees or like officials is if they provide services to the registered charity. The remuneration must also be reasonable under the circumstances.

Disbursement Quotas
A charity has to spend a specified amount of money each year in pursuit of its charitable activities or as gifts to qualified donees. This specified amount is called its "***disbursement quota*.***" There are technical differences in the required disbursement quota, depending on whether the charity falls under the definition of a "charitable organization," a "public foundation," or a "private foundation." However, as a general rule, each year all charities must calculate the total amount of income for which tax receipts were issued, plus any gifts of capital property by way of bequest or inheritance after 1992 and received 10-year gifts. In the following year, at least 80 per cent of this total must be spent on charitable activities or gifts to qualified donees,

Political Doctrine: A policy, position or principle advocated, taught or put into effect concerning the acquisition and exercise of the power to govern or administrate in society.

Disbursement Quotas: The minimum amount that foundations are required to expend for charitable purposes (including grants, charitable activities and within certain limits, administrative cost of making grants. The current disbursement quota in Canada is 3.5% of the average market value of total assets.

and not on administration, fund raising or other operating costs. However, salaries paid to people performing the charitable work can be included in the 80 per cent.

5.2 Nonprofits, Charities and Income Tax

Nonprofits and charities are regulated by the federal government under the Income Tax Act with respect to their tax-exempt status and under the Excise Act with respect to goods and services tax. Many provinces and municipalities also have special rules for licensing and property taxes.

Nonprofit Organizations
Depending on its structure, assets and activities, a nonprofit organization may have to annually file one or more of the T1044 Nonprofit Organization Information Return, or the T2 Corporation Income Tax Return.

T1044 Nonprofit Organization Information Return
The CRA only requires Form T1044 Nonprofit Organization Information Return to be filed if:

- The organization received or was entitled to receive taxable dividends, interest, rentals, or royalties totalling more than $10,000 in the fiscal period;
- The total assets of the organization were more than $200,000 at the end of the immediately preceding fiscal period; or
- The organization was required to file the return for a previous fiscal period.

The type of information required on this two-page return include an itemization of amounts received during the fiscal period, a statement of assets and liabilities, a statement of the remuneration paid to officers or employees and a description of its activities.

The deadline for filing the T1044 is six months after the end of the organization's fiscal period. There is a late-filing penalty of $25 per day to a maximum of $2,500. The minimum penalty is $100. However, as in the case of all penalties levied under the Income Tax Act, it may be waived if the failure to file on time resulted from extraordinary circumstances beyond the taxpayer's control.

Organizations which are required to complete this return should also consult the accompanying CRA Guide T4117, Income Tax Guide to the Nonprofit Organization Information Return.

T2 Corporation Income Tax Return
If a nonprofit organization is incorporated, it is required to file a T2 Corporation Income Tax Return even though it is tax-exempt and so has no tax payable. This is an eight-page return with numerous related schedules. However, if the organization is established in only one province or territory it can use the abbreviated two-page T2 Short.

The T2 or T2 Short must be filed within six months of the end of the corporation's taxation year.

Charities
Registered charities must annually file Form T3010A, Registered Charity Information Return. Attached to this form you will also include:

- A list of directors/ trustees or like officials, with all the required information;
- A list of qualified donees, with all the required information (if applicable); and
- A copy of the registered charity's own financial statements.

For income tax purposes, the government requires that the number of full-time, permanent paid employees be listed on the information return. Along with this information, the CRA requires a list of the different salary ranges and how many people fall in each.

A copy of the charity's own financial statements must also be attached to the return. Financial statements consist of a statement of assets and liabilities and a statement of revenue and expenditures. Any and all sources of revenue should be posted. In the case that the charity does not have any assets or liabilities, or was inactive during the period and had no revenues or expenditures, it must still make available a financial statement showing a minimum of $0 in assets, $0 in liabilities, $0 in revenue, and $0 in expenditures.

Calculation of Disbursement Quota
In addition to providing financial statements, the charity must also list in Section E of the T3010A the revenue and expenditures relevant to the calculation of its disbursement quota. The types of income that must be listed include:

- Donations for which tax receipts were issued;
- Donations received from other charities;
- Other donations for which an official donation receipt was not issued (for example, anonymous gifts, collection boxes, or loose collections);
- Federal government grants, contributions, and contracts for goods and services provided directly by the charity to the federal government or on its behalf;
- Provincial /territorial, and municipal government grants, contributions, and contracts for goods and services provided directly by the charity to these governments or on their behalf;
- Interest and other investment income received or earned such as interest from bank accounts, mortgages, bonds and loans;
- Proceeds received from the disposition of assets;
- Rental income from land and buildings such as rent from a seniors' home operated by the charity or rent from leasing out extra space, for example, a parking lot;
- Memberships, dues and association fees;
- Total revenue received from fundraising;
- Total revenue received from the sale of goods and services; and
- Other revenue, including grants from other charities and income from the rental or leasing of equipment or other resources.

The types of expenditures that must be listed include:

- Advertising and promotions such as meals and entertainment, seminars, presentation booths, publications, and postage related specifically to fundraising;
- Travel and vehicle expenses, accommodation costs, vehicle costs such as gas, repairs, upkeep and lease payments;
- Interest and bank charges;
- Licenses, memberships and dues;
- Office supplies and expenses including postage, minor equipment purchases, and the cost of preparing and distributing annual reports;
- Rent, mortgage payments, maintenance and repairs, utilities, taxes and other expenses related to the upkeep of the premises used by the registered charity;
- Professional and consulting services

Amortization: Payment of a debt in equal instalments of principal and interest, rather than interest only payments

(e.g., legal, accounting, fundraising), education and training for staff and volunteers;

- Wages and salaries;
- Supplies and assets (other than capital assets);
- *Amortization** on capital assets; and
- Research grants and scholarships paid as part of the charity's programs.

The charity must then identify which expenditures relate to charitable activities, management and administrative activities, fundraising activities, political activities and any other activities.

Once submitted, the CRA will calculate the charity's disbursement quota based on this information. Although the quota is not actually calculated on the return, a worksheet is provided in the accompanying guide so that the charity can do the calculation itself.

Filing Requirements
The T3010A information return must be filed each year, no later than six months after the end of the fiscal period. Failure to file can lead to deregistration and a 100% tax on all its assets. The charity must have books and records available at an address in Canada so as to enable an audit. This address must be complete and include the street number; street name; apartment, suite, or lot and concession number; city; province or territory; and postal code.

5.3 GST/HST Requirements

Nonprofit organizations and Charities are not usually required to register for GST (or HST in Newfoundland, Nova Scotia and New Brunswick) unless their revenues are substantial. However, unless they provide only exempt services (see * below), they have the option of registering.

Nonprofit organizations

A nonprofit organization is not required to register for the GST/HST if:

- It only provides exempt supplies; or
- Its total revenues from taxable supplies are not greater than $50,000 in the previous four consecutive calendar quarters or in the current quarter.

If this is the case, the nonprofit organization does not charge GST/HST on its supplies and cannot claim input tax credits on the goods or services it purchases. However, a nonprofit organization may choose to register voluntarily. This is usually advantageous since it can then claim input tax credits on goods and services purchased while not engaged in exempt activities. However, it must also charge GST/HST on those supplies that are not exempt, which may prove to be an onerous administrative requirement.

* The following goods and services are exempt when provided by a nonprofit organization:

- Admission to a place of amusement if the maximum fee charged is $1 or less.
- Admission to athletic events if 90% or more of the performers, athletes, or competitors are not paid directly or indirectly for their participation.
- The sale of goods (except alcoholic beverages and tobacco products) as part of a fundraising activity, as long as:
  - » The nonprofit organization is not in the business of selling those goods;
  - » All the salespersons are volunteers;
  - » The sale price of each item is $5 or less; and
  - » The goods are not sold at an event where similar goods are sold by persons in the business of selling such goods.
- Admission fees to gambling events

if 90% or more of the administrative functions and taking of bets are carried out by volunteers and, in the case of a bingo or casino event, the games are not carried out in a commercial hall or other place used primarily for gambling activities.

- Proceeds from the sale of raffle or lottery tickets, bingo cards or casino bets if the nonprofit organization is the organizer of the event.
- Goods and services sold for direct cost.
- Certain types of membership fees (although the nonprofit organization can choose to treat them as taxable in order to claim related input tax credits).
- Library cards.
- Recreational programs consisting of supervised classes or activities if they are designed for children 14 or younger or are provided primarily to underprivileged individuals or individuals with a disability.
- Food, beverages, or short-term accommodation provided to relieve poverty, suffering, or distress of individuals are exempt (such as charges for meals or accommodation at a shelter).

GST/HST is also not charged on donations and gifts unless the donor receives goods or services in return. However, if the property has little or no resale value such as a key ring, the donation or gift would still not be subject to tax.

A nonprofit organization with annual sales and revenues of $500,000 or less is required to file a GST/HST return annually. However, it may choose to file quarterly or monthly if it wishes. A nonprofit organization with annual sales and revenues of $500,000 to $6 million is required to file quarterly and an organization with sales and revenues of more than $6 million is required to file monthly.

A nonprofit organization with a monthly or quarterly reporting period must file the return and remit any tax owing no later than one month after the end of its reporting period. For nonprofit organizations with annual reporting periods, the deadline is three months after the end of the fiscal year.

Charities

To determine whether a charity should register for the GST/HST, it can use either the $50,000 taxable supply test that applies to nonprofit organizations or it can use the $250,000 gross revenue test. This works as follows:

- If the charity is in its first fiscal year, it does not have to register for GST/HST.
- If the charity is in its second fiscal year, and its gross revenue for its first fiscal year is $250,000 or less, it does not have to register.
- If the charity is in neither its first nor its second fiscal year, and its gross revenue for either of the two previous years is $250,000 or less, it does not have to register.

Gross revenue* includes business income, donations, grants, gifts, property income and investment income, less any amount considered a capital loss for income tax purposes.

The following supplies are exempt when provided by charities:

- Most services (for example, counselling, rehabilitative or educational services);
- Supplies of used and donated goods;
- Short-term residential accommodation of less than one month;
- Meals-on-wheels programs.
- Parking space rentals;

Gross revenue: income (at invoice values) received for goods and services over some given period of time

- Facility rentals (e.g., halls for weddings); and
- Catering services for private functions (e.g., wedding receptions).

In addition, most goods and services sold as part of a fundraising activity are exempt as long as they are not regularly or continually provided throughout the year. The sale of Christmas cards would therefore be exempt whereas the sale of subscriptions to a monthly magazine would not.

The price of admission to a fundraising event such as a dinner or a show is exempt as long as part of the ticket price qualifies as a charitable donation for tax purposes. Items sold for direct cost, recreational programs, admission fees and non-commercial gambling are also exempt under the same general rules as apply to nonprofit organizations.

Charities which have registered for the GST/HST are required to file their GST/HST return annually, regardless of their revenues. However, they may choose to file quarterly or monthly if they so wish.

When determining the amount of tax they owe, charities may use a special “quick method” tax calculation, whereby they remit 60% of the GST/HST collected and claim ***ITCs**** only on certain specified items (primarily capital items).

Public Service Bodies Rebate

Charities and certain nonprofit organizations may be able to claim a 50% rebate on the GST/HST they paid for specified purchases or expenses that do not qualify for input tax credits. In order for a nonprofit organization to qualify for the rebate, the percentage of government funding it receives for a fiscal year, or for the previous two fiscal years, must be at least 40% of its total revenue.

The types of purchases and expenses that would typically qualify for this rebate include:

- Rent, utilities and administration expenses for which the charity or nonprofit organization cannot claim input tax credits;
- Allowances and reimbursements paid to employees;
- Goods and services purchased while engaged in exempt activities; and
- Capital property.

The charity or nonprofit organization does not have to be registered for GST/HST to claim this rebate.

Non-registrants can apply for the rebate for the first time on Form GST66, Application for GST/HST Public Service Bodies’ Rebate and GST Self-Government Refund. Thereafter they will be sent a personalized application form. Registrants can apply for the rebate on the GST/HST return.

Charities can also claim a 100% rebate for the GST/HST they paid on goods and services they exported outside Canada and for which they cannot claim input tax credits. Both Nonprofit organizations and charities that operate a public lending library can also claim a 100% rebate on the GST/HST paid on printed books, audio recordings of printed books, and printed versions of religious scriptures.

Employee Withholding

As in the case of all employers, both Nonprofit organizations and charities are required to withhold income tax, Canada Pension Plan (CPP) contributions and Employment Insurance (EI) premiums from their employee’s remuneration and remit them to the CRA, along with their required employer’s contribution to CPP and EI. They are also required to complete a T4 Summary of the amounts withheld during the year and issue T4 slips to their employees by the end of February of the following year.

There are penalties for failing to withhold and remit the required amounts and failing to file a T4 Information Return. In the case of a nonprofit organization that is incorporated, its directors may also become personally liable for the amounts due.

Chapter 6 - Insurance, Liability and Risk

Bert Weerts

Bert Weerts

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Liability: sums or amounts which one is under obligation to pay

Indemnify: to secure against hurt, loss or damage

There are three distinct areas that a nonprofit organization should focus on when they review their insurance program. They are:

1. Directors and Officers Liability Insurance;
2. Liability Insurance; and
3. Property and related coverages.

6.1. Directors and Officers Liability Insurance.

The Board of Directors oversees all aspects of a nonprofit organization and must maintain the ideals of:

- **Obedience –** to the terms of the organization's bylaws and constitution, as well as the applicable statutes
- **Loyalty –** to act in the best interest of the organization
- **Due Diligence –** to act with the care that a reasonable person in similar circumstance would exercise when in a similar situation

In addition, the Business Judgement Rule requires that directors must act:

1. On an informed basis;
2. In good faith; and
3. In the best interest of the organization.

The breach, or alleged breach, of any of these principles, if it leads to financial loss for any of the organization's stakeholders, could be grounds for legal action. Any financial damages awarded can lead to personal financial ***liability**** for directors and officers. As a result, directors and officers liability has become very important in managing a nonprofit organization's business affairs, and in attracting and retaining directors and officers.

Sometimes things go wrong
In Canada there are over 200 provincial and federal statutes under which directors and officers must comply and can be held personally liable. For example:

- Employment Insurance Act
- Income Tax Act
- Pension Benefits Act
- Corporation Tax Act
- Competition Act
- Consumer Protection Act
- Canada Business Corporations Act
- Securities Act

Everyday decisions can lead to problems and board activities can be challenged. Some common board decisions that have led to claims include:

- Waste of organizational assets
- Wrongful dismissal of employees
- Breach of contract
- Acts beyond granted authority
- Insufficient administration resulting in a loss
- Discrimination of age, race or sex
- Misrepresentation/non-disclosure
- Unremitted withholding taxes

In the event of a loss, liability can rest with an individual board member or the entire board, and can be due to the consequence of a single director's actions or inaction. It is not uncommon for claims to be unjustified or unfounded, however, the costs associated with the investigation and defence can be substantial.

6.1.1 Why Buy Coverage

One question often asked is "Why buy coverage when the organization will ***indemnify**** the directors and officers as outlined in the bylaws?"

When indemnification takes place for the individual directors and officers, the organization pays rather than the individual, so essentially the insurance company is insuring the "indemnification clause" in the by-laws.

Another compelling reason is that the nonprofit organization may be financially impaired or may not have the funds available to provide indemnification which would cause a financial crisis. Finally, through the insurance company, the organization and its directors and officers are defended by lawyers who are experienced in the complexities of this type of ***litigation**** or law suit.

6.1.2 What is Directors and Officers Liability Insurance?

Directors and Officers Liability Insurance is personal protection for the directors and officers of a nonprofit organization against the liabilities which may be imposed upon them while performing their duties in their capacities as directors and officers.

6.1.3 What does a Directors and Officers policy cover?

A Directors and Officers policy provides protection against "wrongful acts" or alleged "wrongful acts". "Wrongful acts" means any error, misstatement, misleading statement, act, omission, neglect or breach of duty committed, attempted, or allegedly committed or attempted, by an insured, individually or otherwise in their insured capacity as a director or officer of the organization.

Coverage includes damages, judgements, settlements, costs and defence costs, excluding penalties or fines or "matters uninsurable under the law." (See 6.1.6.)

6.1.4 How is coverage provided under the policy?

Coverage is provided by two clauses:

Insuring clause 1: Covers the insured person(s) (Directors and Officers) against loss(es) for which they are not indemnified by the insured organization

Insuring clause 2: Covers the insured organization against loss(es) for which it lawfully grants indemnification to its insured person(s) (Directors and Officers).

6.1.5 Who does a Directors and Officers policy cover?

It covers past, present and future directors and officers of the insured organization, as well as directors and officers of any subsidiaries and their heirs, estate and legal representatives or covered directors and officers.

6.1.6 What does a Directors and Officers policy not cover?

1) Risks that are covered under other policies – or - for which no insurance is available such as:

- Claims covered by other directors and officers policies
- Claims related directly or indirectly to pollution
- Bodily injury or property damage
- Failure to maintain insurance
- Claims related to employee pensions or welfare benefit plans
- Nuclear incidents

2) Matters uninsurable under law, for example:

- Illegal personal profit or gains
- Reimbursement of illegally paid remuneration
- Profits or gains realized due to insider information
- Dishonest acts – except defence cost (provided the directors and officers are acquitted)

3) Matters too precarious to ***underwrite*:***

- Pending or prior litigation;
- Circumstances known at the time the policy came into effect;
- Claims made by directors and officers, except wrongful dismissal by former

Litigation: a legal proceeding in a court; a judicial contest to determine and enforce legal rights

Underwrite: To guarantee, as to guarantee the issuer of securities a specified price by entering into a purchase and sale agreement. To bring securities to market.

Subsidiaries: Subsidiaries are those entities over whose financial and operating policies the Group has power to exercise control, so as to obtain benefits from their activities.

Quorum: The minimum number of members who must be present to conduct business

officers (Insured vs. Insured);

- Wrongful acts committed before a company became a subsidiary of the corporation; and
- Service on boards of companies other than the insured company or its ***subsidiaries****

6.1.7 What information does an insurer require to underwrite your risk?

An average Application generally has 12 sections similar to the ones set out below:

1) General information such as organization name, address, date of incorporation, total budget for the next 12 months, sources of income and nature of activities.
2) Limit of liability requested.
3) Corporate information such as if you have ever been in appears with Revenue Canada or sought protection under Creditors Arrangement Act.
4) Operations information on such items as counselling services, employee reviews, disciplinary action, etc.
5) Any announced or contemplated changes. Any changes in the makeup of the present Board of Directors.
6) Board of Directors: How often do they meet? What is ***quorum****? Job descriptions.
7) Operational procedures: How do you communicate with the board? Are there procedures for documenting major decisions?
8) Legal matters: Who provides your legal advice and do they attend meetings?
9) Notice: Who is the insurer's contact on the board?
10) Prior insurance information including facts, claims, circumstances which might possibly give rise to a claim, and who is current directors and officers liability insurance provider. Also require all information on any past claims.
11) Attachments:
    - Most recent and last 2 years financial statements from your accountant. Insurers typically want audited statements but have accepted review engagements in the past
    - Current in-house financial statement
    - Current list of directors and officers
    - Current corporate by-laws
    - List of committees
    - List of subsidiaries (if any)
    - All marketing material
12) Warranties and Signatures: There are between 10 and 12 statements that warrant information. This is signed by the Chairman or President of the Board.

The application must be completed fully as it will become part of your insurance policy.

6.2. Liability

Liability Insurance protects your business against liabilities that arise from your daily operations, the products you sell or the services you provide. Therefore, a general liability insurance embraces a wide variety of policies. Liability policies provide third party coverage so the obligation of the insurer is to pay on behalf of the insured (your organization) and damages for which the insured could be held responsible.

There is no standard liability policy, however, the most common policy provides the broadest coverage is referred to as a Comprehensive General Liability Policy.

6.2.1 Comprehensive General Liability Policy

What it does:

Coverage A

6.2.2 Bodily Injury Liability

"To pay on behalf of the insured *(that's you)* all sums which the insured will become legally obligated to pay as ***compensatory**** damages because of bodily injury." Bodily injury is defined within the definitions portion of the policy.

- The insured *(that's you)*, therefore, does not have to pay claims from its own funds, as the insurer agrees to do this, but the insurer *(the insurance company)* is only committed to pay the victim of the accident and not the insured. The insurer is only responsible for that what the insured is legally obligated to pay; there is no moral obligation to pay such as "goodwill payments," even if the insured desires them to be made.
- Damages are limited to those that are compensatory in nature. This precludes the payment of ***punitive**** or exemplary damages

Coverage B

6.2.3 Property Damage Liability

"To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as *compensatory* damages because of property damage caused by accidents."

- Coverage is provided on an accident basis for property damage. Accident is defined as an unexpected event which happens by chance or which does not take place according to the usual course of things.

In addition to bodily injury and property damage insuring agreements, the insurer also agrees to:

1) Defend any civil suit which alleges any bodily injury or property damage covered by the policy. The insured is relieved of all responsibility for securing legal counsel and for making a defence in court, however they must co-operate in the defence.
2) Pay expenses which would be anticipated in connection with a civil suit such as appeal bonds, etc.
3) Pay costs taxed against the insured in a civil action such as interest costs.
4) Pay reasonable expenses incurred by the insured for first aid and medical help which was necessary at the time of the accident.
5) Pay reasonable expenses incurred by the insured at the insurers request in assisting the insurer in the investigation or defence of any claim or suit.

6.2.4 A Number Of Common Extensions of Coverages

1) Premises or operations
This coverage protects your business in the event of loss due to bodily injury or physical damage arising from ownership, maintenance or use of the insured's premises. This is commonly referred to as "slip and fall" insurance. This coverage also protects the operations performed by your business. So if part of your operation was to provide dinners to shut-ins, and the food spoiled and your client became sick and commenced a suit against you, this portion of the policy would respond. It is important to note that professional services are excluded and if coverage is needed, a professional ***malpractice**** policy would be required.

Compensatory: making ammends

Punitive: Inflicting or aiming to inflict punishment; punishing.

Malpractice: Professional misconduct or lack of ordinary skill in the performance of a professional act which renders the practitioner liable to suit for damages.

Negligent: Failing to providing a proper or reasonable level of care.

2) Products & Completed Operations
This coverage provides protection in the event of a claim pertaining to a product you manufacture, or sell or give away. It could be as simple as a toy that injured a child that you gave away at a fundraiser.

3) Personal Injury
The intent of coverage here is to defend you from suits that contend that you injured someone by: false arrest, detention, imprisonment, libel and slander, defamation of character, wrongful eviction or entry.

4) Tenants Legal Liability
Often a nonprofit organization rents property from a building owner and does not have to insure the building that they occupy because the building owner has insurance. However, in the event that you are held legally libel for property damage done to the building, this portion will pay, subject to the coverage. It is worth noting that property damage expected or intended from the standpoint of the insured is excluded. The most common example is fire damage done to a unit caused by the carelessness of your volunteers, clients or employees.

5) Non-Owned Automobile
This provides coverage for the operations, maintenance or use of non-owned automobiles when damage or injury occurs in direct relation to your business operations. For example, the executive director uses his/her personal automobile on company time and is responsible for an automobile accident that injures a third party. The automobile insurer will defend the ed (the driver) and the nonprofit organization will be defended by this extension of coverage as it did not own the vehicle.

6) Contractor's Protective
This coverage would protect you in the event a hired sub-contractor is held responsible for injury or damage to others, while performing operations under contract with your firm.

7) Incidental Malpractice
This coverage protects you when liability arises from the administration of medical aid by an employee or volunteer which results in injury to a member of the public.

6.2.5 Coverage Not Automatically Included

There are a number of coverages that are not automatically included in a liability policy and have to be arranged separately. The two most important are:

a) Employers Liability
Under the Workers Compensation Act, there are some categories of employees who are not subject to the act, which could include a number of nonprofit organizations. In the event that an employee is not covered by the Act, an employer can be sued if the employee is injured in the course of their employment. The injured employee can successfully recover damages if the employer is found ***negligent*.***

b) Professional liability (Errors & Omissions)
The liability of a professional is based upon the duty of care which the professional owes to their client. When a person represents himself as having professional skills, the law expects that person to show an average amount of competence associated with the discharge of the duties of that profession. If the professional fails to maintain this level of competence, he/she could be considered negligent.
Essentially anyone who gives advice and counselling and certainly anyone who administers healthcare may require this coverage, as professional liability is specifically excluded from a normal liability policy.

6.2.6 Umbrella policies

One significant issue that every board grapples with (or should) is the issue of "how much liability insurance should we carry?" The answer is never easy to define, however limits should be high enough to cover a possible catastrophic loss.

One of the best methods to increase liability limits is to purchase an umbrella policy which provides excess liability limits over the commercial general liability policy , the automobile policy, and possibly other underlying coverages if required.

An umbrella policy is activated when the limits of the primary policy (commercial general liability, for example) have been exhausted or when a claim develops and is not covered by the primary policy but is included in the umbrella coverage. This can occur as umbrella coverage is normally broader than a commercial general liability policy, however, the deductible will be larger (i.e. $10,000) than the deductible under the commercial general liability (i.e. $1,000).

6.3 Property Coverages

All organizations, no mater how small, own or are responsible for business contents such as office equipment, tenants improvements (renovations) and inventory which are used daily in the normal operation of their business. In the event that these contents or assets were no longer available, the operation of the organization would cease or be heavily impaired.

Property insurance provides the protection of these items (your assets) in the event that they are damaged by a covered loss.

Let's look at a few points:

6.3.1 All Risk Insurance

Property coverage is normally granted on an "all risk" (also called broad form) basis. This means that all losses are covered unless they are specifically excluded. The exclusions are broken down by property excluded and perils excluded.

Property excluded includes items that should be insured elsewhere like animals, automobiles, watercraft, furs, money, fine arts and items that you cannot buy insurance for, such as items illegally acquired.

Perils excluded typically include damages caused by rodents, nuclear war, wear and tear, seepage, dishonest/criminal acts by the insured, flood or earthquake, however, these two items can sometimes be added for an additional premium. Therefore, as they are NOT excluded, significant perils such as theft, vandalism, windstorm, and fire are all covered.

6.3.2 Co-Insurance

The Co-insurance Clause that is found in many policies is usually not well understood. This clause is used by insurance companies to protect themselves against people under-insuring their property. It acts as a penalty which makes the insured a co-insurer on any type of loss, full or partial. Each form stipulates that the limit of insurance should represent a stated amount (80%, 90% or 100%) of the insured value at the time of loss. Upon valuation at the time of loss, if it was determined the insured amount was below the form chosen, then the following calculation will be made and its result will be applied to the loss amount:

Amount of insurance carried
x loss amount = $ amount of loss paid
Should have insured (80%, 90%, 100%)

Onus: The burden falling on the prosecution to prove facts in court, as in the onus of proof.

Depreciation: The allocation of the cost of an asset over a period of time for accounting and tax purposes. A decline in the value of a property due to general wear and tear or obsolescence; opposite of appreciation.

Example:

Present amount of insurance carried: $100,000
Co-insurance: 90%
Loss amount: $50,000
Actual amount of contents at time of loss: $200,000

$100,000 x $50,000
$200,000 x 90%

= .5555 x $50,000
= $27,777.78 paid

As illustrated, there is a great ***onus**** on the nonprofit organization to make sure that all property is accounted for and that proper limits are identified to ensure a full recovery in the event of a covered loss.

But what limits should be used?

- If the property that is being insured is mainly office contents inside a secure and well constructed building, most insurance companies will offer replacement cost. The definition of replacement cost is basically new for old, without deduction for ***depreciation****. However, the insurer usually requires that the damaged item must be repaired or replaced with identical property (like kind and quality) and the replacement must be done promptly. Failure to comply with this and a number of other provisions will revert the settlement to actual cash value (depreciation deducted from the loss)
- There are a host of other items that should be reviewed with your insurance broker to ensure that items such as signs, property taken off premises, business interruption, boiler and machinery coverage, and glass coverage are properly identified and covered as need be. Automobile insurance should also be reviewed in the event the nonprofit organization decides to purchase a vehicle.

6.4. Choosing an Insurance Company

This brings us to how to choose an insurance provider. When a broker is selected, that person will (or should) meet with a representative of the organization to become familiar with the organization and what it does. At this meeting, the nonprofit representative should be able to speak very comfortably about the organization and be able to:

- Answer questions about property issues as discussed above;
- Have access to leases, deeds and property documents;
- Have access to financial information and be able to answer questions about corporate governance and internal administration for the Directors and Officers liability policy; and
- Articulate the organization's mandate and how it is fulfilled and provide details on revenue, budgets, procedure and promotional materials.

Once the broker has this information, it will be submitted to a number of insurance companies. The broker will then determine which company is the best fit for the insurance requirements of the organization.

This brings up an interesting point that most people do not know, which is that the insurance industry works a little differently than most suppliers.

Most people do not realize that insurance brokers often represent many of the same insurance companies, and that insurance companies will only deal with one broker at any one time on any specific account. This is usually the broker that first submits information on an account.

The reason this is mentioned is to illustrate the importance of finding a broker that you trust and feel comfortable with. Very often an organization may have a number of brokers review its insurance requirements. When submitting information about the organization to an insurer, the brokers are turned down because they are not the first broker to submit information about that organization. Therefore, it is very important that you interview and are comfortable with an insurance broker before they submit any information on your behalf – or you might end up having to deal with someone who was not your first choice!

Chapter 7 – The Paperwork

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MCBS: Ministry of Consumer and Business Services. The Ministry which approves applications for incorporation in Ontario

NUANS: The Newly Upgraded Automated Name Search (NUANS) is a database owned and maintained by Industry Canada of corporate names (including nonprofit), trade marks and business names

To incorporate a nonprofit organization in Ontario, the following documentation must be forwarded to the Companies and Personal Property Security Branch of the Ministry of ***Consumer and Business Services - MCBS****:

- Two copies of the "Application for Incorporation of a Corporation without Share Capital" (this is how the provincial government refers to "nonprofit" corporations) with original signatures. Photocopies are not acceptable;
- An original Ontario-biased Newly Upgraded Automated Name Search ***NUANS****, more about this to follow;
- A cover letter setting out the name, address and telephone number(s) of the person or firm to whom the Letters Patent or any other correspondence will be sent;
- $155 fee payable to the Ontario Minister of Finance.

The Application for "Incorporation of a Corporation without Share Capital" is Form 2 under the Ontario Corporations Act and must be completed by you or your lawyer. This form is available electronically at *www.cbs.gov.on.ca/mcbs/englis/4VWQQC.htm* or obtained from the Companies and Personal Property Security Branch at no cost. The first page of the form provides clear instructions on how to complete the form as well as what other documentation must be filed.

The following information provides specific instructions for each section of this form.[1]

7.1 Completing the Application

(a) Your Corporate Name
Before you complete the application, you have to pick a name for your organization and have a NUANS search done of that name. NUANS is a database of corporate names (including nonprofit), trade marks and business names owned and maintained by Industry Canada. The "Ontario biased" search will indicate whether or not the name that you have chosen for your nonprofit is available for use in Ontario (which means that no other organization is using that name).

You will need to retain a private business called a "search house" to search the NUANS database and issue an "Ontario biased" report. You can find a list of registered private name search houses at Industry Canada's NUANS Website or in the telephone book yellow pages under the heading "Searchers of Records". The report cannot be dated longer than 90 days when submitted as a part of the application to the *MCBS* for Letters Patent. You will include the original NUANS report with your completed application form.

There are several restrictions and requirements that you must consider when you choose a name for your organization and you can consult Section 13 of The Corporations Act for details. Ultimately, the *MCBS* will approve your proposed name. Here are some things to consider when choosing your name.

The name of your nonprofit:

- Must be memorable, easy to recognize, describe the purpose of the organization and indicate the type of activities of the organization.
- Can include the name of a person or family with written consent.
- May not include the words Limited, Limitée or the short forms. It can include Incorporated, Incorporée, Corporation or the short forms (but none of these are necessary);
- Must have written consent of an existing corporation or business if your name is similar;
- Must have written consent from the Ministry of Training, Colleges and

[1] Companies Branch, *Ministry of Consumer and Business Services*, 2nd Floor, 393 University Avenue, Toronto, ON M7A 2H6. Tel (416) 314-8880; Fax (416) Toll Free: 1-800-361-3223 314-4852; *www.cbs.gov.on.ca/mcbs/English/company_infor.htm*

Universities if it includes the words "college institute" (College Branch) or "university" (University Branch);

- May contain foreign words or phrases provided only letters from the English language are used. Foreign versions of names may be used with permission after permission for the English name is acquired.

(b) Address
Include the address of the head office of your organization (this can be your home address). It must be in Ontario and you must have the full address including the suite number, if any, and the postal code. A post office box or general delivery address is NOT sufficient.

(c) Directors
(Individuals who will manage the affairs of the organization)
Complete this section by writing in the complete names, first, middle name or initial and last name on the left and "address for service" on the right. The address for service usually means the complete home address of the individual. Again, a post office box is NOT acceptable. You must have at least three directors and, of course, you can have more. They must all be at least 18 years of age.

Congratulations - you have completed page 1 of the Application form!

(d) Objects
Page two of the application form is dedicated to your Objects. You can incorporate as a nonprofit charity using preapproved charitable Objects directly with the Ministry of Consumer and Business Services or you can submit your application with Objects that you have written yourself to the Office of the Public Guardian and Trustee (OPGT) for their approval which requires an additional fee of $150. The OPGT then forwards your application to the MCBS. Few organizations will fill the entire page, however, more pages can be added. Complete instructions on writing objects for nonprofits and nonprofit charities will be discussed in Chapter Eight.

(e) Special Provisions
Page three of the application is where you will set out your Special Provisions. One Special Provision that is required for all nonprofit corporations is "The corporation shall be carried on without the purpose of gain for its members and any profits or other accretions to the corporation shall be used in promoting its Objects." As you will see, this provision is pre-printed on page 3.

Standard nonprofit and nonprofit charity Provisions may be used as well as "Preapproved Provisions" that must be used with "Preapproved Objects". For more information on pre-approved special provisions refer to Chapter 8.

(f) Names and addresses of the applicants
Set out the full names, including middle name or initial, of all applicants and their complete address. This must be an address where the applicant can be reached (not a post office box or number). Also, all directors, listed on page one, must be included as applicants.

(g) Signatures
All applicants must sign both copies of the application. Remember two copies must be submitted - both copies must have original signatures; photocopies will not be accepted.

There you have it! You have completed the Application for Incorporation. Now package all of this together and forward it to the:

Ministry of Consumer and Business Services
Companies and Personal Property Security Branch
393 University Avenue, Suite 200
Toronto ON, M5G 2M2

***Remember to include a cheque of $155 for a six to eight week-process time or $255 to get on the expedited track - seven days!

If you have written your own charitable objects, you must send all of your documentation, including the Companies and Personal Property Security Branch fee, to the Office of the Public Guardian and Trustee (OPGT) at:

Ministry of the Attorney General
Office of the Public Guardian and Trustee
Charitable Property Program
595 Bay Street, Suite 800
Toronto ON, M5G 2M6

Remember to include a cheque for $150 payable to the OPGT along with your $155 or $ 255 cheque to the Companies Branch. The OPGT will not fast track your application - that will only happen with the Companies Branch.

7.2 After the application form is filed!

When your organization has been incorporated - which means that your Letters Patent have been issued and sent to you, there are several things you need to do IMMEDIATELY. This includes the initial reporting requirements and other matters under the Corporations Information Act that need to be completed in order for the organization to operate.

(a) File an Initial Return to comply with Section 2 of the *Corporations Information Act.*[2] This form will be sent to you with your original Letters Patent. It is a simple form that comes with instructions and requires you to provide your Ontario Corporation Number, date of incorporation, head office address, mailing address, language of preference and Director and Officer information, which includes names, address, title, residence information and date of appointment.

Send the Initial Return to:

Corporate Notice Section
Companies Branch
Ministry of Consumer and Commercial Relations
393 University Avenue, Suite 200
Toronto, ON M5G 2M2

There is no fee to file the Initial Return. Subsequently, any change(s) that is made to the information set out in the Initial Return requires you to file a Notice of Change. This would include changes to Directors and Officers or the corporation.

(b) There are also several other matters that need to be addressed, which include:

- An Annual Meeting must be held no later than eighteen months after incorporation
- The corporation must appoint an auditor to hold office until your first annual meeting
- Proper accounting records must be kept
- Minutes of all meetings must be kept
- Copies of Letters Patent and any Supplementary Letters Patent, By-Laws and Special Resolutions must be kept;
- A register of all members and directors must be maintained

[2] R.S.O.1990, c. C.39, s.2(1); 1994,c.17,s.33

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Chapter Eight - Writing Objects, Special Provisions and By-Laws

Karen Kahelin

For the purpose of this chapter, we will refer to all nonprofit noncharitable corporations, their objects and special provisions simply as Nonprofit. We will refer to all nonprofit charitable corporations, their objects and special provisions simply as Charitable.

In Chapter One, we talked about taking the time to really know exactly what the purpose of your organization is going to be - this is where having completed those early steps starts to pay off.

8.1 Objects

Objects, or purposes, of a nonprofit corporation are set out in one or more paragraphs in the Letters Patent (Page two of the Application for Incorporation). The object clauses describe the nature of the work, or the organization's purpose in very clear language. Objects do not set out or describe the organization's day-to-day activities. You need to determine your Objects in order to file for incorporation.

For example, WENSNet's Objects read:

The establishment and operation of community centres in Windsor, Ontario for the purposes of:

A) Providing administrative space for local charitable organizations;

B) Provide space for local charitable organizations to operate workshops, programs, athletics, drama, art, music, handicrafts, hobbies and recreation for the benefit of the general public;

C) Providing conferences, training and information services to improve the efficiency of local charitable organizations.

8.1.1 Nonprofit (Noncharitable)

For Nonprofit organizations, objects must clearly and concisely set out the purpose of the organization. However, objects should be kept sufficiently broad to prevent limiting your organization's work. Sample object clauses may be used if they precisely describe the purpose/nature of your organization. Excellent samples can be found in "The Law of Charitable and Not-For-Profit Organizations, Third Edition"[1]. These include sample object clauses for Athletics and Sports organizations, Arts, Community and Business and Professional Organizations, Fraternity and Sororities and Service and Social Clubs.

As you will see from the samples, many nonprofit objects begin with the sentence:

"The establishment and operation of (type of organization here) for the purpose of."

and they end with the final clause;

"for such other complementary purposes that are not inconsistent with these objects."

These phrases keep your Objects sufficiently broad so as to not limit the range of your organization's work.

Sample nonprofit object clauses are as follows:

Athletic and Sports
"The establishment and operation of an athletic and sports club for the following purposes:

- To promote an interest in athletics and sports among the members;
- To encourage organizational athletics and sports;
- To teach and train members in athletics and sports; and
- For such other complementary purposes that are not inconsistent with these objects."[2]

Community Organizations
"The establishment and operation of a community organization for the following purposes:

[1] Donald J. Bourgeois, "The Law of Charitable and Not-For-Profit Organizations", 3rd ed., pg 494

[2] Ibid, pg 494

- To develop and promote community spirit and understanding;
- To acquire, provide, operate and maintain a community facility;
- To organize cultural, community and recreational activities;
- To preserve and promote the traditions of the residents of the community; and
- For such other complementary purposes that are not inconsistent with these objects." [3]

Service Clubs
"The establishment and operation of a service club for the following purposes:

- To promote international relations and welfare;
- To pursue the civic, commercial and social interests of the community; and
- For such other complementary purposes that are not inconsistent with these objects."[4]

Although sample nonprofit object clauses are "sample" clauses, some organizations will be able to use them just as they are. Others will want to write their own objects to clearly define their organization's purpose.

8.1.2 Charity
Objects for a charity registered with the Ontario Public Guardian and Trustee (OPGT) (or with Corporations Canada) must meet more rigid requirements than those of a nonprofit corporation. All charitable objects must clearly set out the charitable purpose of the organization within the meaning of the law. As explained previously, these are limited to:

- relief of poverty;
- advancement of education;
- advancement of religion; and
- other purposes beneficial to the community as determined by the courts, but not falling under any of the above.

As stated in earlier Chapters, charitable objects must provide a degree of public benefit. Raising funds to aid in humane treatment of one animal does not qualify as a charitable object, but raising funds for the humane treatment of animals in your community does. Also, all of your objects must be charitable.

There are charitable objects that are preapproved by the office of the Public Guardian and Trustee for many types of charitable corporations. "Preapproved"means that you do not have to get prior approval from the OPGT to incorporate you charitable organization. This cuts down on the cost of incorporating and can save months in time. It is advisable to use preapproved object clauses if they properly describe your organization's purposes.

If you must write your own objects, be prepared for the approval time to take much, much longer, in some instances up to one year. Preapproved object clauses can be found at Appendix G at the Ministry of the Attorney General Ontario, website *www.attorneygeneral.just.gov.on.ca.*

Finally, charitable objects must be set out precisely so that it is very clear how the assets of the charity will be used. Your objects can be one or more paragraphs. If you use preapproved objects, they must be used word for word as written by the Ministry. You can use preapproved charitable object clauses from different categories to precisely describe your organization - as long as they are used word for word. Here are some samples of preapproved charitable object clauses:[5]

Senior Citizens Centres
"To relieve loneliness and isolation for

[3] Ibid., pg 497

[4] Ibid., pg 499

the aged or to improve their mobility and fitness by establishing, operating and maintaining a senior citizens centre to provide recreation, education, cultural activities and other programs for senior citizens."

Relief of Poverty
"To relieve poverty in developing nations by providing food and other basic supplies to persons of low income, by establishing, operating and maintain shelters for the homeless and by providing counseling and other similar programs to relieve poverty."

Religious Schools
"To establish and maintain a religious school of instruction for children, youths and adults."

Again, keep in mind that charitable objects will be very rigidly assessed. If Preapproved clauses clearly define what your organization is going to do - use them. If they do not, write your own.

8.2 Special Provisions

(a) Nonprofit
There is only one special provision that all nonprofit corporations must have in their letters patent and it is printed on page two of the application for incorporation. It states:

"The corporation shall be carried on without the purpose of gain for its members, and any profits or other accretions to the corporation shall be used in promoting its objects."

If there are other special provisions that you wish your organization to have in your letters patent, they need to be set out under the special provisions section of your application for incorporation.

These would be matters which relate to funding your organization, specifically accepting gifts or donations, how remaining assets will be dealt with upon the dissolution of the organization, the foreign language version of your organization's name or any other matters that you wish to be dealt with in a particular manner.

Keep in mind that making changes to special provisions requires filing for Supplementary letters patent. Most provisions related to the operation of your organization should be covered in your by-laws. Therefore, special provisions should be kept to things that are at the very core of your organization and changing them would change your organizational philosophy.

(b) Charity
There are eight special provisions specified by the Ministry of the Attorney General which must be set out in your application for incorporation when applying for charitable status. The special provisions must be set out word for word with only the "investment of funds" clause having two options to choose from. These special provisions (printed below) are Appendix H at the Ministry of the Attorney General, Ontario's website at *www.attorneygeneral.just.gov.on.ca*. and are as follows:

A. "The corporation shall be carried on without the purpose of gain for its members and any profits or other accretions to the corporation shall be used in promoting its objects.

B. The corporation shall be subject to the Charities Accounting Act and the Charitable Gifts Act.

C. The directors shall serve as such without remuneration and no directors shall directly or indirectly receive any profit from their position as such, provided that directors may be paid reasonable expenses incurred by them in the performance of their duty.

5 *www.attorneygeneral.just.gov.on.ca*, appendix G., April 2005

D. The borrowing power of the corporation pursuant to any by-law passed and confirmed in accordance with s. 59 of the Corporations Act shall be limited to borrowing money for current operating expenses, provided that the borrowing power of the corporation shall not be so limited if it borrows on the security of real or personal property.

E. If it is made to appear to the satisfaction of the Minister, upon report of the Public Guardian and Trustee, that the corporation has failed to comply with any of the provisions of the Charities Acting Act or the Charitable Gifts Act, the Minister may authorize an inquiry for the purpose of determining whether or not there is sufficient cause for the Lieutenant Governor to make an order under subsection 317(1) of the Corporation Act to cancel the letters patent of the corporation and declare it to be dissolved.

F. Upon dissolution of the corporation and after the payment of all debts and liabilities its remaining property shall be distributed or disposed of to charities registered under the Income Tax Act (Canada), in Canada.

G. To invest the funds of the corporation pursuant to the Trustee Act.

-or-

H. To invest the funds of the corporation in such manner as determined by the directors and in making such investment the directors shall not be subject to the Trustee Act, but provided that such investments are reasonable, prudent and sagacious under the circumstances and do not constitute, either directly or indirectly, a conflict of interest.

I. For the above objects and as incidental and ancillary thereto, to exercise any of the powers as prescribed by the Corporations Act, or by any other statutes or laws from time to time applicable, except where such power is limited by these letters patent or the statute or common-law relating to charities."

Although the special provisions meanings are somewhat clear, the legal wording may be confusing. If you don't feel comfortable with your understanding of these clauses, please consult your lawyer or accountant for clarification. Keep in mind, however, that these clauses must be included in your application if you wish to register as a charity.

It can also be noted that any or all of these special provisions can be used in your application to incorporate your nonprofit (noncharitable) organization.

8.3 By-laws

Your by-laws provide the decision making structure which allows your organization to carry out your objects, whether your corporation is nonprofit or a registered charity. They set out specifics for all of the duties and obligations that govern the affairs of the corporation. They are not included in your provincial application for incorporation. However, they must be included if you are applying for incorporation through Industry Canada (federally).

By-laws are written and passed by the general members of the corporation. Standard by-laws usually include the following headings:

1. Head Office location
2. Corporate Seal
3. Mission Statement or Purpose
4. Membership
    - Conditions of Membership
    - fees and dues
    - members voting rights
    - membership cards and certificates
    - suspension or termination of members
    - transfer of memberships

5. Directors

- Duties
- Election, rotation and term of the Board
- Director's qualifications
- Board's powers, appointment, remuneration and functions
- Removal
- Indemnification
- Ex Officio Directors
- Execution of Documents

6. Officers Duties and removal
7. Other Committees

- Executive committee
- Finance
- Planning
- Development (fundraising)
- Human Resources
- Nominating (develop and recruit future board members)

8. Meetings

- Time, place and notice required
- Annual and General Meetings and elections
- quorum necessary
- proxy requirements
- procedure of meetings
- business to be conducted
- Special Meetings and notice required

9. Financial Matters

- Financial Year
- Contracts
- Banking arrangements
- Cheques

10. Amendment of By-Laws
11. Auditors
12. Books and Records
13. Rules and Regulations

- for borrowing money
- to avoid conflict of interest
- for preparing and submitting financial statements

14. Interpretation of Terms
- These will be definitions of terms used within your by-laws

Excellent sample by-laws for nonprofits have been developed by the Institute on Governance and can be found at their website at www.iog.org.

Section 155 of the Canada Corporation Act requires that all by-laws for corporations cover certain specified matters. A good 'model by-law" can be found at the Industry Canada website at www.strategis.ic.gc.ca/epic/internet.

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Chapter 9 - Planning

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Chapter 9 - Planning

Writing your mission statement, objects and by-laws has started you on the path to developing a Business Plan. There are different types of planning that can and need to be done.

9.1 Annual Plan

An Annual Plan deals with achieving specific goals over a twelve month period and usually coincides with your fiscal year. The Annual Plan's objectives are usually carried out by the Executive Director and staff or volunteers or whoever in your organization carries out the day-to-day business. It includes details on what needs to be done, how the task (s) will be carried out, time period, who will perform what task(s) and the expected cost(s).

9.2 Business Plan

A Business Plan is a long-term plan that includes your mission, vision, goals, objectives, activities and strategy set out in one concise document. The Business Plan is used when seeking funds from potential donors, financial institutions or looking for community partners. A proposal for funding and a business plan can be a very similar document, so if you have written a funding proposal you may be able to use a lot of that information in your Business Plan.

Business Plan contains:

- A brief corporate history and description of your organization.
- A description of the services you provide, the need for this service, details of the service delivery and your qualifications for delivering this service.
- All activities your organization plans to carry out.
- A marketing/communication plan indicating how you will get information about your organization to the community.
- Where you operate, geographical references in your city, region, etc.
- A description of any challenges that you face in providing your service and how you will meet and overcome those challenges;
- Your by-laws and a list of your Board of Directors (they can be an appendix to your plan). Indicate that people with interest, enthusiasm, commitment and experience are a part of your organization. Your Board members are crucial to the success of your organization. Their backgrounds, education, experience and community involvement is important information. Board development and recruitment are important indicators of your sustainability!
- A governance plan (see Chapter 9).
- An overview of your day-to-day operations, staff, human resource policies, reporting practices and hiring or employment standards central to your organization.
- A financial plan including accounting practices, financial projections and forecasts. It is important to show that your organization understands financial practices and the importance of accountability and transparency in financial matters.
- Information regarding your funding, how you raise funds and your strategy for the sustainability of funding and operations. Planning for sustainability should not be something that happens after you have lost a major donor or endured a crisis or major challenge.
- A system to measure and evaluate your organization and your programs. How you will evaluate and monitor success and articulate the results is required by most government agencies, foundations and corporate sponsors. It is also important to know how your organization is doing.

- A list of community partnerships (This can be an appendix).

9.3 Strategic Plan

You will develop many strategic plans during the course of your organization's operation. A strategic plan takes your organization from where it is today to where you want it to be in three to five years. Some organizations never write a strategic plan until they experience a crisis. Having prepared a strategic plan may have helped them avoid the crisis in the first place.

Writing a strategic plan requires you to look at the environment in which your organization currently finds itself and how it plans to deliver its service, based on the environment. It is important to remember that your organization operates in a changing and unpredictable environment, so your plan will need to be reviewed, perhaps revised, at least, occasionally. Strategic planning allows the organization to make decisions and adapt to the changing environment because the strategic plan is typically based on a short time period.

To begin a strategic plan, you must clearly define the goals that you wish to achieve. Then, it is a matter of plotting the course of action that will lead you to accomplish those goals.

A strategic plan is typically built on ***consensus**** of the organization's board or members, however, "strategic planning experts" today advise that the planning process should include as many staff levels as your organization may have, including young staff members with creative, fresh points of view and "near-retirement employees" who will not be afraid to be open with their advice. They feel that the planning process should also include interaction with clients and suppliers. This will give you a broad range of information on which to base your plan.

As you can see, there is a lot of planning that needs to be done. Although it is time consuming and a lot of work, planning will help your organization deliver services, stay on target and help you deal with and overcome challenges.

Consensus: An opinion or position reached by a group as a whole

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The Institute On Governance (IOG) is a Canadian, non-profit think tank founded in 1990 to explore, share and promote responsible and responsive governance in Canada and abroad.

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Chapter Ten - Governance of Nonprofit Organizations

Tim Plumptre & Laura Edgar

Laura Edgar - Director

Bio Laura leads the Institute's work in the voluntary sector, with particular focus on civil society - government relations and board governance. In addition, Ms. Edgar manages the Learning Centre, which provides high quality learning events in support of the governance objectives of the Institute. Much of the project work she conducts for the IOG involves learning program design and facilitation, strategic planning, research and project management. She brings to the Institute a strong professional and academic background in business, adult education, the voluntary sector and international development. Her education includes an MA in Economics from the University of Guelph and a Bachelor of Business Administration from Wilfrid Laurier University.

Tim Plumptre - President and Founder

Bio Tim conceived the idea of a non-profit think tank on governance based in Ottawa with both Canadian and international programs; founded Institute On Governance in 1990. Has guided the progressive growth of both programs and staff of IOG. Previously, a senior partner with an international management consulting firm, public servant, journalist, ministerial assistant and foreign service officer. Author of book, "Beyond the Bottom Line: Management in Government" (1988) a bestseller on why management in government differs from business. Adjunct Professor of the School of Public Policy and Administration at Carleton University; frequent speaker on governance and public service reform issues; advisor to ministers and senior officials both in Canada (federal and provincial governments) and abroad.

Governance: the art of steering an organization (or society)

*Governance** is a hot topic these days, and is one of the key factors that influence the success of organizations. However, what governance means, and how it fits within the nonprofit context, is often not clearly understood. In this chapter we explore the meaning and applicability of governance in the nonprofit sector. We begin with a brief examination of what governance and good governance mean, with a particular focus on the roles and responsibilities of boards of directors. Next, we turn to some possible approaches or models for the governance of organizations. Finally, we examine some of the key governance issues that need to be addressed when setting up a nonprofit organization, and pose some questions to get you started.

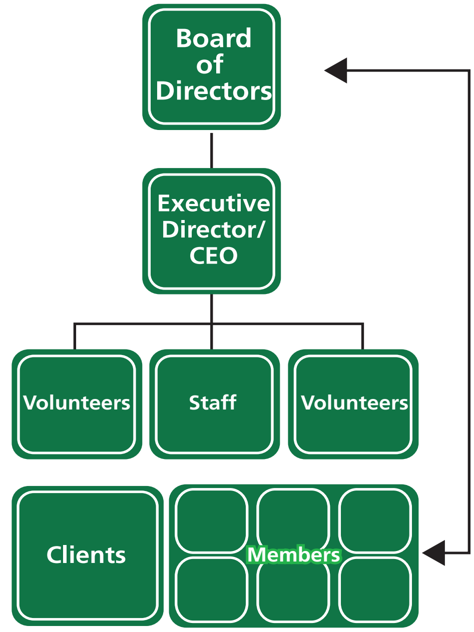
10.1 What is Governance?

Governance
A very simple definition of governance is the art of steering an organization (or society). Governance is about the more strategic aspects of steering, making the larger decisions about direction, relationships and roles. Governance by nature may be messy, tentative, unpredictable and fluid, and is complicated by the fact that it involves multiple actors, not a single helmsman.

A more elaborate definition of organizational governance is as follows:

Governance is the process whereby organizations make decisions on matters of strategic importance. It rests on a framework of structures, policies and traditions that define how power is allocated, who has voice or input into decision-making, how key relationships are maintained, and how decision-makers are held to account.

The key players and relationships in nonprofit organizations tend to look like this:



In looking at the various players and relationships in the nonprofit context it is also important to explore the three distinct roles that are necessary in order for an organization to fulfill its mission: **work** (performing the tasks required to fulfill the mission); **governance** (as defined above); and **management** (the link between governance and work - the organization of tasks, people, relationships and technology to get the job done).

In theory, the divisions between these roles are clear. However, in practice the divisions become blurred, disappear altogether or, more dangerously, become confused. In the nonprofit sector, the Board of Directors is primarily responsible for governance, but its activities might often cross over into the management and work roles of the organization. Senior management is almost always heavily involved in

the governance role. The real danger is not the mixing of these roles but the unclear definition of responsibilities and lost lines of accountability.
As can be seen on the proceeding page, the governance role is an essential part of organizational life. The ramifications of inadequate governance can be great. If an organization fails to carry out this role effectively, it stands to lose credibility with its members and the public at large, damage its ability to carry out policies or deliver services, and ultimately fail at its primary mission or objectives. Poor governance can lead to organizational crisis and failure.

What is good governance?
One goal of good governance is to enable an organization to do its work and fulfill its mission. Good governance results in organizational effectiveness. But good governance is about more than getting the job done. Especially in the nonprofit sector, where values typically play an important role in determining both organizational purpose and style of operation, process is as important as product. Good governance is not only a means to organizational effectiveness but also an end in itself.

Good governance is about both achieving desired results and achieving them in the right way. Since the "right way" is largely shaped by the cultural norms and values of the organization, there can be no universal template for good governance. Each organization must tailor its own definition of good governance to suit its needs and values.

There is plenty of room for different traditions and values to be accommodated within the realm of good governance. At the same time, all is not relative. There are some universal norms and values that apply across cultural boundaries. *The United Nations Development Program*, for example, has published a list of characteristics of good governance[1] . The ***IOG**** then built on this work to develop five good governance principles, which include:

The Five Good Governance Principles
The ***UNDP**** Principles on which they are based

1. Legitimacy and Voice
    - Participation
    - Consensus orientation

2. Direction
    - Strategic vision, including human development and historical, cultural and social complexities

3. Performance
    - Responsiveness of institutions and processes to stakeholders
    - Effectiveness and efficiency

4. Accountability
    - Accountability to the public and to institutional stakeholders
    - Transparency

5. Fairness
    - Equity
    - Rule of Law

Good governance is laden with values but it has a practical side as well. Governance in practice is shaped by organizational structure, traditions, and most importantly people and the relationships between them. A sample of good governance in practice could be defined by:

- A high degree of key stakeholder agreement on mission and values
- Appropriate representation of different stakeholders
- Role clarity and clear lines of accountability
- Positive working relationships between board, management and staff

IOG: Institute on Governance

UNDP: The United Nations Development Program

[1] "Governance and Sustainable Human Development", United Nations Development Programme, 1997

Methodologies: A body of practices, procedures, and rules used by those who work in a discipline or engage in an inquiry; a set of working methods

Linguistic: Words and how we say them our language

- A process for monitoring achievement of objectives
- A balance between stability and flexible response to environmental change
- Respect for organizational norms.

Representation requires further exploration. Effective representation is linked to the legitimacy of the leadership and the decisions they make. Canada is a diverse country, and different segments of the population have unique perceptions and concerns. In order to be responsive to Canadians, an organization needs ways to tap into this diversity, be it through structures, approaches or *methodologies*. Being representative can also be important in establishing organizational credibility and in producing sound, well-balanced results. If the organization is known to be representative of its community's views, then the public, government bodies and other stakeholders will be more likely to turn to the organization as a reliable source of sound information.

A number of formal and informal mechanisms can help an organization be representative. A variety of communities can be engaged through: seats on the Board of Directors; participation on committees; special committees to advise on representation – or to provide input from a certain perspective; membership in the organization; public consultations – that seek a diversity of opinions; and outreach materials designed for a variety of *linguistic* and cultural profiles.

Finally, in advancing any list of characteristics of good governance it is important to note that:

- The principles overlap. Further, none are absolute. Most conflict with others at some point, and this calls for balance and judgment in their application.
- Social context (history, culture and technology) will be an important factor in how this balance is determined and how these principles play out in practice.
- Complexities abound in the application of principles: "the devil is in the details".
- Governance principles are both about ends and means - about the results of power as well as how it is exercised.

10.2 Elements That Shape an Organization's Governance

There is no "one-size-fits-all" model for the governance of an organization. In addition to the many factors listed above, elements that shape an organization and thereby affect how it defines good governance include:

- The needs in the community the organization aspires to fill
- organizational needs
- areas of interest and "business"
- size and complexity
- key stakeholder relationships
- cultural norms, values and accepted traditions
- context and its place in the larger environment
- people, their personalities, and their capabilities.

That said, there are lessons that can be learned by looking at approaches of other organizations, with particular focus on mandates, types of activities, accountabilities, stakeholders, membership structures and partnerships. Some examples will briefly be explored below.

Board Governance
In the nonprofit and public sectors, the primary entity for fulfilling the governance role is the board of directors. A board of directors and a set of by-laws is a requirement for incorporation under relevant federal legisla-

tion and for registration as a charity. An organization is a legally constituted entity that has the status of a person in the eyes of the law. The board of directors of an organization can be held accountable under the law for the performance and actions of the organization, it carries the public trust and accountability on behalf of the organization it governs, and it can protect the directors from personal liability for certain actions of the corporation.

The Basic Role of the Board

Good governance in the nonprofit sector means effective board governance. The board of directors is charged with achieving desired results in the right way. All boards share a fundamental ***stewardship**** role which includes the inescapable basic responsibility to promote the health and well-being of their organizations. For boards of small organizations with few staff resources, these responsibilities will often result in a very hands-on approach to meeting the organization's objectives. As an organization grows, the Board may see its roles shift to oversight.

The governance of an organization is generally defined by a governance framework. The framework will generally have a foundation that consists of core documents of the organization, such as articles of incorporation, bylaws, etc. Building on these core documents are the policies and systems put in place by the organization, including internally developed rules, terms of reference for the board and committees (the tasks they must do), conflict of interest policies and other governance policies.

The tasks that a board must complete requires further attention. What follows is a basic job description of the board, although this may vary from one type of board to another in practice. The tasks necessary to fulfill the governance role fall under three broad categories: representation, decision-making and leadership and accountability.

The job of representation includes representing the members and/or stakeholders of the organization, carrying the public trust, and facilitating the selection of new directors.

The board's responsibility with regard to decision-making and leadership may include establishing the mission and mandate of the organization, developing the strategic direction for the organization and ensuring its implementation, and ensuring that the organization remains responsive to both internal and external change. The board is also responsible for building and maintaining effective links with management and vice versa. This generally includes providing the management of the organization with an accountability structure, advising management on key organizational issues, and the hiring (and possibly firing) of the Executive Director/CEO.

The board also has a responsibility to ensure that the funds of the organization are used for the purposes intended (financial stewardship) and may also create a framework of human resources policies (human resource stewardship). Finally, the board is responsible for risk management, providing guidance on managing the organization through transitional events. The board may also take the role of representing the organization in the community.

The third main responsibility of a board of directors relates to accountability. The board must ensure the transparency of the organization to members, ***stakeholders**** and others, must monitor and evaluate the performance of the organization, must report to stakeholders on perform-

Stewardship: "the careful and responsible management of something entrusted to one's care"

Mandate Statement of an Organization: A responsibility (or responsibilities) given to or conferred on the organization from the outside (such as from its membership).

Mission Statement: a statement of overall purpose. Generally answers the question why are we here?

Stakeholder: people who are (or might be) affected by any action taken by an organization.

ance, and acts as the ultimate source of accountability under the law for the performance and actions of the organization.

In sum, the key tasks of a board of directors are:

- maintaining the longer-term, strategic view
- ensuring effective performance
- ensuring financial and organizational health
- ensuring sound relationships
- managing risk
- rendering account
- communicating and advocating effectively
- ensuring the soundness of the governance system

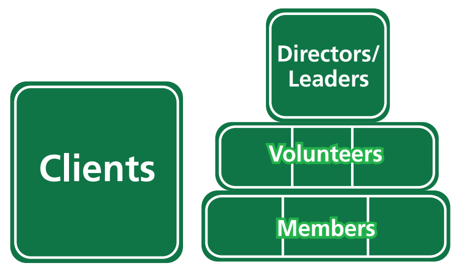
The board's relationship to the senior management of the organization is critical. Senior management is the primary link between the board and the rest of the organization but also carries out important governance functions in partnership with the board. Choosing the CEO is arguably the most important function the board performs.

10.3 Different Approaches to Board Governance

Although all boards carry similar responsibilities, there is great diversity in how they function in both theory and practice. Boards do not all look alike because the organizations they govern are extremely different. These differences mean that organizations vary in they way they define the board's governance role and determine the meaning of good governance. That said, regardless of the governance approach determined most appropriate for any particular organization, all governance approaches should meet the good governance principles outlined earlier in this paper.

In exploring the role of a board of directors in a nonprofit organization it is useful to look at two spectrums. The first is the level of board engagement in the operations of an organization, and runs from highly operational to oversight only. Highly operational boards tend to be involved in a lot of the day-to-day decisions of the organization, such as which contracts should be entered into and signing them, developing communications activities (and often implementing them), etc. Nonprofit organizations in the early stages of their development, and particularly if they have limited or no staff resources, will often be highly operational in nature.

Nonprofit Governance: Early Stages:



As a nonprofit organization grows and takes on staff with the knowledge and expertise to conduct the day-to-day work of the organization, it will likely begin to remove itself from some or all of the operational tasks it has been performing, and start to see its role more as one of oversight. For example, if the organization hires a full-time Executive Director, the board will not need to take on the day-to-day management of the organization and can instead focus on ensuring that the organization meets its objectives (an oversight role). Similarly, if an organization hires a communications officer to develop and implement a communications plan for the organization, the board would generally begin to limit its role in communications, perhaps to the point of providing approval to the communications plan, or possibly just approving an annual communications budget. As this process of moving along the spectrum from operational to oversight occurs, the organization will start to look more like the diagram seen on page 52. It is important to note that there is no right or wrong place to be on the spectrum – where your organization fits will depend on its specific needs and realities.

The second spectrum measures board engagement, and runs from highly engaged to disengaged. Obviously, if a board is highly operational then it is also highly engaged in the issues and decisions of the organization. But if the board is further along the spectrum – providing primarily an oversight role – then the level of engagement or disengagement becomes more distinct. Within the broader oversight function (where most governance questions live) a highly engaged board is one that takes an active interest in key issues facing the organization. The extent of engagement will vary depending on the nature of the issues facing the organization. For example, the board will take an active role in the hiring and/or firing of the Executive Director, including setting ***Terms of Reference****, conducting interviews and deciding who to hire. A board will also take an active role in providing financial oversight, particularly if there are financial difficulties in the organization. On the other hand, if the organization has no key strategic issues facing it, the board may be generally less engaged. The level of engagement of the board is, therefore, likely to vary over time depending on the nature, number and complexities of the issues facing the organization.

Getting Started: Key Questions to Consider

So, now that you have an understanding of the roles and responsibilities of a board of directors of a nonprofit organization, as well as some possible models for approaching the governance of organizations, it's time to start thinking about what the governance of your organization will look like.

Mission, Mandate and Activities

The specific governance arrangements of an organization should be based on what it wants to achieve. Creating a mission statement and defining the key activities of an organization are, therefore, the first steps in developing the governance approach for an organization.

Questions to Ask About Mission, Mandate and Activities

1. What is the overall goal or purpose of the organization?
2. What key activities will the organization undertake in support of the mandate?

Stakeholders

Most nonprofit organizations have a wide array of stakeholders. Often, stakeholders feel that their perspective should be represented in decision-making and that accountability is owed to them. Connecting to and satisfying these stakeholders is a complex task: relationships differ, their weight of influence varies, competing interests must be balanced and conflicting perspectives reconciled. Stakeholders connection with the organization can be legal, such as with members, or practical, such as with funders, or moral, such as with clients, partners, and the public at large.

Questions to Ask About Stakeholders

1. Who are the stakeholders of the organization?
2. Are some stakeholders more important than others? If so, which ones?
3. What governance arrangements would help ensure that

Terms of Reference: a job description for the board and/or any of its committees. Generally includes roles, responsibilities, deliverables, authorities and accountabilities.

Impartiality: an inclination to weigh both views or opinions equally

Ex-Officio: by virtue of one's office. Confers membership on a board to certain officials

different stakeholders' views are taken into account?

Membership
Membership if it exists in an organization, is usually taken from among the stakeholders. Members may or may not be those who are served directly by the organization. They may pay membership fees. Membership may make an organization appear somewhat "exclusive", which can have implications for ***impartiality**** and credibility. Nonprofit corporations require a membership, although the membership can be as small as the Directors of the Board.

Key Questions to Ask About Membership

1. Should the organization have a membership? Why or why not?
2. If yes, who will be the members? Will the members be individuals and organizations, or limited to organizations only?

Board of Directors
Governance Approach
As mentioned previously, most small organizations with limited or no staff resources will have a board of directors who play a significant operational role, but who may move toward a stronger oversight role as the organization grows and staff resources increase. However, moving to a strong oversight role will never suit all organizations. For example, an operational board may continue to be the most appropriate for organizations that have stabilized at a relatively small size. It is important, therefore, to periodically review the governance approach of an organization as it evolves to ensure that the governance structures, functions and practices still reflect and meet the needs of the organization.

Regardless of the approach chosen, it is important to remember that the governance approach of the organization needs to be adapted to meet its specific needs and realities. One size does not fit all!

Key Questions to Ask About Governance Approach

1. What staff resources (paid and/or volunteer) do you have and what operational tasks can they take on?
2. What operational and oversight tasks does the board need to perform?
3. Are there key issues that the board needs to be engaged in?

Board Composition and Appointment
Stakeholder interests need to be represented in the governance process. The Board of Directors plays a key role in representing stakeholder interests in nonprofit organizations: it is charged with achieving desired results in the right way. All boards also have a fundamental stewardship role that includes the inescapable basic responsibility to promote the health and well-being of their organizations.

As noted earlier, the composition of the Board of Directors relates directly to the type of organization it governs. Nonprofit corporations will normally take their board members from their membership and sometimes the broader community. All board members bring to their position a knowledge and skill base that can be applied to the organization's governance. In many cases these members are there in an individual capacity, though occasionally they may represent their organizations. Given that in either case the key responsibility of each board member is to promote the health and well-being of the organization (fiduciary responsibility), it is strongly preferable to have board members participate in their individual capacity.

Board members who sit on a board as representatives of another organization often struggle with acting on behalf of the organization they represent and act in the best interests of the organization to whom they have a fiduciary responsibility.

The board may also have ***ex-officio**** members (such as the Executive Director of the organization). Ex-officio members of the board will normally have the same rights as other directors but do not usually have the right to vote. The rights and powers of members should be identified in the governing documents of the organization.

Finally, the size of a board of directors can vary greatly. Generally speaking, larger boards tend to be more representative but also more cumbersome in terms of decision-making, while small boards have the opposite benefits and challenges.

Key Questions to Ask About Board Composition and Appointment

1. What board size is appropriate?
2. How should the board be composed? Which stakeholders need to be represented?
3. What are the key roles of the board? What skills will be needed to meet these roles?
4. How will decisions be taken? (i.e. by vote or by consensus)
5. Who should select the board members and on what basis, and is an approval process required?
6. Will the Executive Director/ CEO sit on the board in an ex-officio capacity?

Committees

Board committees can be a tool to complement the work of a board of directors. Committees are sub-groups of the larger board who are tasked with conducting a particular piece of the board's work. These committees will generally not have the authority to make decisions on behalf of the board for both practical reasons (effective communication) and for reasons of full board accountability. Using of committees are that they allow a board to focus expertise on key areas and also to manage the flow of information to the larger board in a way that allows for effective decision-making.

There are generally two types of committees. Standing committees are permanent committees struck to deal with ongoing governance or organizational issues. Special committees (or task forces) are shorter-term, ***ad-hoc**** committees struck to deal with a specific governance or organizational issue. Special committees will have a specific issues to address and a timeframe for completing their work. Committees will generally include board members but may also have members who are not board members but who bring to the committee specific knowledge and/or expertise.

Like the board itself, there is no "one size fits all" formula for determining the appropriate committee structure for any particular organization. That said, there are three committees that are fairly standard to most boards – a nominating committee, an audit committee and an executive committee.

A nominating committee oversees the process of board recruitment and deals with the succession planning issues for the board. An audit committee's key function is to act as a liaison between an independent auditor and the organization's financial manager. The breadth of the mandate for an audit committee can vary widely.

Finally, an executive committee is a sub-group of the larger board that oversees the organization between full board meetings. Executive commit-

Ad-hoc: temporary, for one specific purpose

[2] Primer for Directors of Not-for-Profit Corporations, Industry Canada, 2002, pp. 56-57.

tees are often constituted in an organization's bylaws.[2] In addition, most organizations will strike committees that address specific organizations or governance needs, such as a fundraising committee, communications committee or other. All committees should have a terms of reference.

Key Questions to Ask About Committees

1. Does the board require committees to address specific issues?
2. If yes, what committees are required?
3. Will the committees be standing or special?
4. Who will sit on each committee? What specialized skills and/or knowledge are required?
5. How will committees be held accountable to the full board?

Accountabilities

Governance is a process centered around decision-making. Stakeholders, through various means, provide input into the organization, be it by shaping values and ideas or providing financial and human resources. It follows that decision-makers should be held to account for the decisions they make on the stakeholders' behalf and their ramifications for the organization.

Accountability relationships vary greatly with different stakeholders. Accountabilities include not just financial accountability, but also ability to achieve the mandate and activities of the organization. Accountabilities can become quite complex, particularly if the organization begins to develop a range of funding sources or if membership fees are levied.

Key Questions to Ask About Accountability

1. What are be the organization's main accountability relationships?
2. How will the organization demonstrate that it is achieving its mandate?

In Conclusion

Getting to good governance in a nonprofit organization takes time, commitment and a strong understanding of both the organization (goals, activities, size, culture, etc.) and the best governance approach to meet these needs. At its heart, governance in nonprofit organizations is about clearly defined roles and responsibilities for the board, CEO and staff, well-defined accountabilities to stakeholders, and the system of structures, functions and practices that support them.

Good governance prevails when the organization has a well-functioning board (doing the right things), strong values that are reflected in practices, a robust governance framework, sound board-staff relations, strong external relationships and real accountability. The benefits of good governance are that people trust you, you know where you are going and your board truly represents (and is connected to) your membership. In addition, people value your work, you have financial stability and you have the ability to weather crises.

This chapter has attempted to provide you with some of the key issues to consider when developing the governance arrangements for your organization. For further information we invite you to explore our website at www.iog.ca and check the resources of this manual for further information.

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Chapter 11 - Fundraising

Amanda Gellman

Amanda Gellman

Bio Amanda Gellman is Vice-President, University Advancement at the University of Windsor.

A native of Newfoundland and educated in Canada and the US, Amanda joined the University in October 2001 after directing four non-profits on both sides of the border. During her career, she has also volunteered for 40 community-based organizations and received many awards for her leadership, including the 40 under 40 in St. Louis recognition, the McDonnell Douglas' Feed America Award, the University's Charles Clark Award, the Queen's Golden Jubilee Medal, and the Women of the Year 2002 recognition.

Impacted by the changes in government, industry and community, the nonprofit sector has accepted a larger and more complex role in society than it had in the 20th century. Today, the sector competes in the marketplace for resources in order to provide much needed education, health and social programs that significantly impact communities and the economy.

The staff and volunteers of community-based organizations have accepted the challenge of doing more with less while becoming more professional in their management and fundraising strategies. And, they have gained more and more respect in their efforts to help organizations compensate for losses of government dollars and cope with the ever increasing demand for service.

11.1 MISSION DRIVEN FUNDRAISING

Raising money is never the sole purpose of a fund development program. Instead, focus on maintaining realistic expectations about what fundraising can do for your organization and matching your fundraising efforts with mission and program needs. Volunteers and paid professionals are recruited to raise money, but it is not what motivates them or their donors.

More importantly, "quick cash" fundraising schemes will do very little for providing for the long-term needs of your organization. People give to people they trust and to causes they believe in. In short, loyal donors give because they believe in a cause and the people who are asking them to support that cause.

Fundraising Priorities
All nonprofits that accept donations should have some basic fundraising policies in place. Clear guidelines and conflict of interest statements for volunteers and staff to follow regarding the use of donor lists, fees for fundraising consultants, and the acceptance of gifts from donors by staff and volunteers are important. How would your organization react if a staff or Board member were bequeathed dollars by a large donor? It has happened!

The Role of the Fundraiser
The "silver bullet" strategy is a term to describe a method that bypasses best practices, or takes short cuts, when planning for the future.

When is an organization ready to hire a fundraising professional? In smaller or newer nonprofits the fundraiser is oftentimes a volunteer, while larger or more evolved groups generally hire staff to coordinate such activities.

Surprisingly, the average tenure of a paid fundraiser today is 18 - 21 months. Many believe that this is, in part, due to unrealistic expectations from the organization. Whatever the reason, this turnover can have a negative impact on your donors and clients.

Fundraising includes all areas of fund development, including fundraising strategies and plans for special events, direct mail, corporate and foundation giving, new donor acquisition, record keeping and data management, and much more. It is important, within even the smallest nonprofits, that someone is given the primary organizational responsibility for the coordination and implementation of fundraising principals and practices.

At the end of the day, it is important that a person, or group of people, oversee the following essentials of any fundraising program:

- Annual plans for all fundraising campaigns and activities, with linkages to the organization's annual budget;
- Prospect research, donor cultivation and maintenance of donor records;

- Short- and long-term forecasts for potential fundraising campaigns and activities;
- The writing and printing of ***solicitation**** materials, including the packaging of donor opportunities for consideration;
- Volunteer recruitment and fundraising training;
- Regular and constant donor communications, including tax receipts and regular thank you letters and cards; and
- Donor appreciation and recognition events, plaques, walls and/or announcements.

The Donor-centred Approach
Fundraising is the process by which your organization can build long-term and sustainable relationships with donors in order to enhance programs and services. The fundraiser is "the voice for the donor" within the non-profit organization – the person who the donor trusts with his or her money and the person who sets the stage for the organization to build donor loyalty. Over time, the fundraiser helps the donor believe in the mission, see new opportunities for giving and move up the giving pyramid. If and when the fundraiser leaves, the loyalty and the relationship remain with the organization.

The lead fundraiser, paid or volunteer, is the person within the organization who ensures that donor-centred fundraising is the priority of the organization's fundraising program. Fundraisers work with others in the organization to achieve a financial goal, while remembering at all times that fundraising is not just about bringing in dollars. Donor-centred fundraising acknowledges and respects the wishes of each individual donor in order to have a long-lasting impact on revenue potential for the organization.

Working with Limited Resources
Donor appreciation is especially critical for the small shop where the impact is great if donors shift their giving to another cause. The general rule is that a donor should be thanked seven times before asking for the next gift. Keeping this in mind, create a strategy that includes inexpensive ways to thank your donors - a simple telephone call from a board member, a card in the mail, an invitation for coffee, a thank you letter signed by the CEO and board president, a 'meet and greet' with clients, and so forth.

Current and lapsed donors should never be ignored as new relationships are being developed. Where resources are limited, it is important to remember that major gifts are raised person-to-person, and that the building of new relationships has higher costs and lower returns in the short-term than the cultivation of lapsed donors.

Fundraising - a Growing Profession
According to the Canadian Centre for Philanthropy and the Association of Fundraising Professionals (***AFP****), fundraising is one of the fastest growing professions, and the demand for senior ***practitioners**** in larger organizations greatly exceeds the supply. Most paid fundraisers have been employed by an organization that has been in operation for 10 years or more, and except for colleges, universities and large nonprofits, most nonprofits employ only a single professional development officer.

If yours is a new organization, do not fret. There are many people who want to get their feet wet in smaller organizations, many of whom volunteer in order to gain valuable fundraising experience.

Hiring a Fundraiser (Development Officer)
The number of cultural, health, religious, social service, and educational organizations that oversee fundraising

Solicitation: A request for a campaign contribution

AFP: Association of Fundraising Professionals

Practitioners: One who practices something, especially an occupation, profession, or technique.

campaigns is increasing rapidly, and well-trained and experienced fundraisers are in high demand. But hiring a fundraiser can be more complicated than you might think. The pressures of the job, and the lack of support and understanding of the tasks and roles can be difficult for many people. In part, this may also explain why fundraisers change jobs so frequently and why it is important for CEOs and board members to receive fundraising training.

During the interview process, fundraisers need to be queried on their willingness and ability to offer service to other people, and to contend with criticism. They try to understand many sides of an issue, manage volunteers and donors who are dissatisfied or feeling ignored, be attentive to detail while focusing on the big picture, be persistent and flexible when overseeing fundraising committees, and inspire people from all walks of life

Fundraising professionals are hired to work behind the scenes, to support the mission indirectly. They share the success, but they do not usually share the limelight. Just as the applause for fundraising achievement is reserved for dedicated volunteers who lend a helping hand, the confident development officer understands that the public recognition of an organization's accomplishments goes to the CEO, board members, program directors/managers and case workers who have a direct responsibility for fulfilling the mission.

Honesty and integrity rank high among professional fundraisers. They must be able to work as part of your management team, making a broad range of contributions for the betterment of your clients. The role of the fundraiser is to also help the management team understand the needs and desires of donors as they relate to the goals of the organization. Fundraisers should have planning and management experience, including proven success in developing, organizing and implementing special projects. In addition, they need to be able to be assertive and empathetic since they will be the one called upon to say "no" to a donor's request when it does not fit the mission of the organization.

As reported by AFP, the numbers vary widely with respect to compensation. Seventeen percent of professional fundraisers make less than $40,000, while 38% earn between $40,000 and $59,999. Almost one-quarter (23%) make between $60,000 and $79,999, and 23% earn more than $80,000 annually. Most organizations are looking for fundraising generalists – someone who can implement a variety of proven fundraising programs from annual giving to legacy programs. Employment stability can be a concern, but 3- 5-year contracts are common.

Hiring a Fundraising Consultant
Fundraising is a team approach – a group of individuals come together to develop and administer strategies and processes to meet financial goals. Fundraisers are problem solvers who communicate the needs of the organization to the donor with the goal of matching donor interests with those of the organization. They create public awareness and help the organization identify and approach those who might be able to lend a helping hand.

Whether the fundraiser is the CEO, key board member, volunteer or fund development officer, the role is to create donor confidence in the organization and to provide leadership to the process in order to influence the decision to give to that organization. So when does a nonprofit call in short-term outside assistance?

Consultants are hired on a fee-for-service basis to: develop a strategic fundraising plan; help to identify potential prospects; write funding proposals; help with the hiring of a development officer; offer fundraising training to your board members, key staff and the CEO; and the list goes on.

The hiring of a consultant can be important during different stages of development of an organization or a campaign. For example, since seed money can be a challenge for new nonprofits, the CEO or board may decide to hire a consultant to locate resources to boost their bottom line. This can prove to be very beneficial since the skill-set that the nonprofit will later be looking for to manage a multi-layered approach to fundraising may indeed be very different.

Consultants can perform a variety of tasks, but they are never paid a ***commission**** on the money they bring in. Most leave the donor relationship building to those who drive the mission of the organization.

According to the AFP, "donor trust and credibility of the organization suffer when the donor gives to an organization, only to find out that a percentage of the gift went to a consultant. The commission does not reflect the work of the fundraising team. It is exceedingly difficult to credit one individual for a particular success, especially where fundraising volunteers give freely of their time and talent behind the scenes and/or open doors for the consultant."

11.2 ETHICAL STEWARDSHIP AND ACCOUNTABILITY

The ethical stewardship of resources is an essential component of your fundraising program. Donors are becoming increasingly selective, and they have concerns about accountably and community impact. They are directing their support to organizations that clearly respect their wishes and appreciate their generosity.

AFP is the largest membership organization of fundraising professionals in the world and it has a ***code of practice**** for professional fundraisers that has been in place since 1964. Each member of AFP signs the Code when renewing their annual membership. The ***Donor Bill of Rights**** was created AFP with several professional organizations.

In 1998 the Canadian Centre for Philanthropy, in consultation with charities and charity leaders throughout Canada, created the Ethical Fundraising & Financial Accountability Code.

The Code requires requires all fundraising solicitations made by or on behalf of an organization disclose the organization's name and the purpose for which funds are requested. And, it adds that donors are entitled to see the organization's most recent annual report and financial statements, a list of the names of the charity's governing board, and their own donor records.

Benefactors are entitled to know, upon request, whether an individual soliciting funds on behalf of the charity is a volunteer, an employee, or a hired fundraiser. Donors' requests to remain anonymous are to be respected, and that every effort must be made to honour requests to limit the frequency of solicitations and not be solicited by telephone or other technology.

Issuing Tax Receipts
Nonprofits are complex institutions that enjoy tax exemptions because of their public service missions.

Once a nonprofit is a registered charity, the Income Tax Act allows a tax credit to donors in return for their support. As a general rule, tax receipts can be issued for dinners, concerts, shows, golf tournaments, etc. for the amount paid in excess of the value (net cost) of any food, entertainment and other services or consumable goods included in the price of admission.

Commission: compensation is based on a percentage of dollars raised

Code of practice: a set of standards agreed upon and recognized as important to the fundraising profession

Donor Bill of Rights: services a donor can expect to receive from a nonpprofit; can be found at afpnet.org

Appraiser: A person qualified by education, training, and experience to estimate the value of real property and personal property.

For purposes of issuing an official tax receipt, the fair market value of a gift given in-kind is determined on the date the ownership is transferred to the charity. An independent ***appraiser**** should be consulted where the value is unknown or where there is no benchmark. Receipts cannot be issued for business inventory where the business also claims a business expense, unless the business claims the same amount of income.

In addition, tax receipts are not to be issued where the cost of the ticket includes participation in a lottery or draw for prizes or awards that have more than "a nominal value." However, the Canada Revenue Agency indicates that a lottery may be run "in conjunction with another fundraising event without prejudicial effect" if the lottery tickets can be purchased separately from the admission ticket and where the donor is not required to purchase the lottery ticket. Tax receipts for an admission to an event can be issued for the amount paid "in excess of the value of goods and services received" at the fundraising event, but not for the lottery ticket.

If a particular event does not exactly fit the descriptions, professional assistance can be sought through the Client Assistance Division of the Charities Division, Canada Revenue Agency at 1-800-267-2384.

11.3 FUNDRAISING PROGRAMS AND CAMPAIGNS

"Every hour dedicated to planning saves an organization four hours in fundraising activity."

"If you fail to plan, plan to fail."

Sound Familiar? Since the possibilities for diversifying your organization's fundraising program are endless, you must determine in advance what fundraising efforts you can and cannot maintain and what works best for your combined staff and volunteer skill set. Special events, annual giving, capital campaigns, etc. take time from other activities. Costs need to be realistic, and nonprofits have to be sensitive to the privacy needs of donors, making sure that they are not overburdened with requests.

The "Case" for Support

Building the "case" for support is key. The case, written primarily for sponsorship packages and funding proposals, describes the mega goal or vision.

It emphasizes the need for the program (special project or organization), the objectives, and the desired outcome. It describes the criteria for success and the impact if full funding is not received, and it presents evidence of past accomplishments in this and other related areas. If available, the case includes projected costs and, where possible, funds already obtained from government and private sources as well as timelines for the campaign or program.

Annual Giving – Monthly and Annual Donors

Build your donor base through annual giving and your nonprofit will be well on its way towards a sustainable future. Direct mail, calling programs, targeted appeals and person-to-person solicitations are the usual forms of annual giving managed by nonprofits. One advantage of an annual appeal letter is that donors do not always restrict their annual gifts, providing a solid source of unrestricted funds for daily operations.

Many surveys have also found that annual donors are more loyal, and that monthly donors are among your best prospects for legacy gifts. According to fundraising experts, a donor who has given $25 a year for ten years is a more likely a planned giving prospect than a donor who has given one or two large gifts over ten years. The ten-year commitment shows that the donor has more than a casual or short-lived commitment to the cause.

Direct Mail
As noted, experts in the field advise that donors should be thanked seven times for each donation. In addition, they should also each be asked for a gift four to six times a year. The key of course is to have a good, clean mailing list. While pledge/response cards and return envelopes make giving easy for the donor, misspelled names and letters to spouses who have passed away are never well received and leave a lasting impression.

Letters need to look official and they need to be personalized. The stationary can vary with the appeal or the season, but if you do not ask your prospects may never give. House lists separated by area of support, or by small and large donors, ensure that direct mail appeals are targeted to specific audiences. Letters to lapsed donors, or those who have not given over two years (providing you have asked), need to be genuine and inviting.

Prospect Mailing
Some charities use acquired or purchased lists for direct mail campaigns as part of their donor acquisition strategy. Inserts or articles in newspapers, as well as corporate and community-based newsletters, also help small nonprofits spread the word to prospective donors.

Pre-authorized Payments (PAP)
Electronic funds transfer, or automatic debit, can save time and money. Donors like PAP because it is convenient. They don't have to remember to write and mail cheques, especially when on vacation, and payments can be quarterly, semi-annually, or annually. The "sign it and forget it" theory works for pledge maintenance, however, you will have to find new ways to touch base with your PAP donors if you want to increase their giving over time.

Special Events
Galas and concerts are very labour intensive, but they can help nonprofits gain name recognition, and they are a great way to recognize major donors and sponsors.

Events are a good source for donor acquisition, but make sure that you are truly making a profit after you deduct outright expenses, and including time and resources that might have been allocated to other endeavours. Remember that special events can use up an inordinate amount of time and yield very little if you are anticipating a profit from ticket sales alone.

Major Gifts
Major gifts are generally defined as large donations from individuals, corporations and foundations, often pledged over multiple years. Capital or building campaigns are a good model for volunteer involvement in major gift solicitation. Major Gift Officers (MGOs) are often hired to serve as the lead liaison officer between the major donor and the organization.

Funding Proposals
The inexperienced proposal writer can make the language so complicated that the need is difficult to understand and/or it does not adequately describe the impact of the funding. In fact, funding requests can be declined for very simple reasons that could have been avoided if the organization had understood the funding guidelines. Many corporate and family foundations have restrictions regarding their giving priorities, granting cycles, the formatting for proposals, and/or the amount they give to one organization. The proposal has to "grab" the attention of the funder. The organization's

Terminology: A set of standard terms used to describe clinical activities.

need for funding can be described as urgent, but never in crisis. Timelines for implementation should be realistic, clear and concise, and the budget should give evidence of sustainability over a set period of time, i.e. through a solid fundraising strategy. Following are the typical components of a grant request for operational or program funding:

- Cover Letter
- Executive Summary
- Table of Contents
- Introduction
- Challenge - Statement of Need
- Program Objectives - Expected Outcome
- Methods - Strategies
- Evaluation Period: Internal and External
- Future Funding
- Budget
- Attachments, including letters of support and documentation of past successes

Proposals that request funds for programs and services are usually mailed to:

- Heads of family foundations;
- Corporate donation managers;
- Charitable giving officers who manage foundations/trusts; and/or
- Representatives at government offices or agencies

Corporate Sponsorship
The proposal for a sponsorship relationship is vastly different from a request for a donation. The contact point and the ***terminology**** are different, and the savvy nonprofit understands that corporations generally their promotions budget when investing in a sponsorship.

Sponsorship-driven support can result in powerful marketing and public relations tools for fundraising endeavours. Through the development of a sponsorship checklist, an organization can determine in advance what corporate sponsors and their stakeholders will get out of the collaboration. Written agreements between the partners can also ensure sponsor satisfaction and outline the expectations placed on your organization's staff and volunteers.

The following points should be considered when preparing a sponsorship package:

- Does the package focus on common objectives and/or help the sponsor reach a target audience?
- Will the sponsorship help to improve employee morale and/or promote a good corporate image in the community?
- Is full or partial exclusivity available to the sponsor?
- Does the sponsorship align with their corporate vision?

Found below are the typical components of a sponsor package:

- Cover Letter
- Introduction
- Need for the Event
- Measure of Success
- Opportunities for Involvement
- Sponsorship Benefits List
- The Next Step – The Call to Action (Sponsor Agreement)
- Attachments

Sponsorship packages are usually presented to:

- Marketing directors at large firms;
- Brand or advertising teams;
- Businesses leaders looking for advertising opportunities; and/or
- Individuals who are known to sponsor events.

Matching Gifts
Historically utilized by universities, colleges and the United Way, matching gift programs are often overlooked by smaller nonprofits. Nonetheless, while the matching limit is usually

around $500 to $1,000 per year per employee, such amounts can be considered a major gift by many small and medium-sized organizations.

Matching gifts are given to a charity when an eligible employee submits proof of his or her personal charitable gift to the employer, and it is matched by a donation from the employer Most nonprofits have donors qualifying for matching gifts, i.e. employees of the major automotive companies. Some have found that the promise of a corporate match is a motivator for new and lapsed donors alike.

Planned Giving
The Canadian Association of Gift Planners (CAGP) reports that planned giving has enjoyed a phenomenal five-year growth period in Canada and the US.

Contrary to popular belief, legacy donors are not necessarily the wealthiest people in your donor files and/or in your community. Rather, study after study shows that they tend to be loyal, lower-level donors who have given for many years – they are usually the donor who responds to monthly donor programs and who stays with the organization because they feel an emotional connection to the cause. But to reach this group, broad-based legacy marketing through newsletters and magazines has to be repetitive and continuous in order to be effective.

Partnerships with Allied Professionals
A charity does not necessarily need a planned giving specialist on staff to mount a successful program. Gift planning requires people and marketing skills, but the technical expertise can be gained from working closely with allied professionals - lawyers, accountants, trust officers, insurance agents and financial planners. Training sessions that allow staff and volunteers access to resources available to allied professionals such as specialized journals, databases and publications, can help an organization stay abreast of changes in the rules and regulations that apply to legacy giving.

Planned giving committees can also work well for charities. Allied professionals can contribute to the planning and policy-making processes through committee participation.

It is the responsibility of the CEO and board to ensure that ***ethical standards**** are maintained, as allied professionals may be in a position to benefit financially by introductions made through their charitable involvement. Generally speaking, a list of participating allied professionals can be provided to the donor who requests the information, but the "referral list" should be explained carefully to the donor and put in writing.

Endowments
Clear policies and direction are required to address ***endowments****. It is necessary to have board approved policies and procedures in place before the first cheque arrives, especially since some board policies forbid the investing of fundraised dollars.

Once an organization understands and accepts the endowment model, fundraisers can encourage donors to make a bequest for the long-term survival of the organization or of a program. Everyone involved in an "ask" should know who will manage the gift and how much the organization's investments earned in the previous year.

Venture Philanthropy
Strategic or venture philanthropy has been garnering much public attention in the past few years, both from nonprofits and donors looking for something more than traditional "chequebook giving."

Endowments: Funds or property donated to an institution, individual, or group as a source of income.

Ethical standards: fair and moral principals upheld by the profession

Detrimental: Causing damage or harm; injurious

Strategic: preplanned and deliberate; strategic fundraising plans identify goals, strategies and predict outcomes, all of which are shared with the organization to ensure success and create a sense of ownership for the campaign

Venture philanthropy has evolved as major donors have requested a more hands-on role in the management of their gifts. And, although this sounds impressive, some nonprofits have had to change programs and priorities to meet the goals of their major donors.

In such instances, the priority is to help the donor understand the implications of driving the organization or a program in a new direction. The task at hand for the fundraising team is to help the donor embrace the mission and build organizational capacity, while also feeling they have made a tremendous difference. Once again, trust and communication are the key ingredients.

11.4 STRATEGIC* CAMPAIGN PLANS

Internal campaign plans are essential to success, especially where the stakes are high. Following is an outline followed by many nonprofits that engage in strategic fundraising:

- Executive Summary
- Overview: The Case For Support
- Campaign Strategies
- Campaign Materials
- Campaign "Ask" Phases
- Timelines
- Prospects
- Campaign Leadership/Roles & Responsibilities
- Communication Strategy
- Campaign Communications: Internal and External
- Donor Appreciation

Donor Satisfaction

Study after study shows us that donors are frequently dissatisfied with slow gift acknowledgement and lack of meaningful information on the impact of their giving. This is especially a concern for nonprofits with limited resources.

Experienced donors are usually well informed about the charities they support. If they do not like what they see, they go elsewhere. Most choose to stay away from a nonprofit if there is a hint of mismanagement of funds or negative publicity. Donors want to be able to hold their head up high when they attach their name to a charitable cause.

A valuable indicator of fundraising success is performance on donor communication and satisfaction. In a donor-centred environment, fundraising staff and volunteers spend a considerable amount of their time cultivating donors who stopped giving, reduced their giving, or have not yet increased the amount they give annually.

Although attention must be paid to the acquiring of new donors from those who attend your fundraising events, and those identified through prospect research, a revenue loss can occurs when you fail to pay attention to the potential within your existing donor base. Don't waste limited resources on donor acquisition if this causes you to ignore existing or past donor support – your future donors may already be in your circle of friends.

Lapsed Donors

Donors who increase their giving in successive campaigns are sending a message that they approve of what you are doing. Donors who decide to give the same amount or less are also sending a message.

Taking a look at the current situation, nonprofits can determine their future success in fundraising. Following a careful evaluation of current fundraising activity and the growth in both lapsed and new donor lists, a nonprofit can project the collective loss in funding expected over the next ten years. The consequences of long-term inaction can be ***detrimental**** to the success of an organization's mission – and take away its competitive edge as others become more advanced in their fundraising strategies.

Prospect Research
Prospect research is the process of gathering information about prospective donors - individuals, corporations or grant making foundations - in order to direct fundraising efforts. For example, foundation and corporate profile files should include news abstracts, lists of senior directors, philanthropic policies, financial overviews, and giving history, while individual and family files usually include career history, memberships and awards, past and present directorships and giving history.

Winning proposals and letters can increase success in fundraising, but even skilled proposal writers can often have a difficult time identifying prospective donors. The paid or volunteer researcher can reveal linkages to the organization that even the CEO and/or board members would never have imagined. The researcher identifies prospects, their ability to donate, and their charitable interests.

The internet is a source that many use, while a paid electronic resource are not always available to the small nonprofit. Existing donor walls, trade association journals, business magazines and directories, donor lists in annual reports produced by similar nonprofits in other communities, event programs, Who's Who and other directory listings, and the people who support your organization are all resources used in prospect research. The internet is a source that many use; when available, paid electronic prospect research sites are excellent resources.

11.5 IN SUMMARY

Good leadership will prevent your organization from taking short cuts, even when resources are limited. Proceed with strategic plans that will, in the end, help you cultivate "friends" and enhance your public image. Keep in mind that more than 80% of all "donations" (vs sponsorships) in Canada and the U.S. come from individuals rather than from corporations. And, always remember that donors who are thanked appropriately and consistently will remain your loyal supporters. Continue to impress them and they may even help you to build relationships with their friends, colleagues and family members.

FUNDRAISING RESOURCES

- Nonprofit Times
  www.nptimes.com
- Chronicle of Philanthropy
  http://philanthropy.com
- Association of Fundraising Professionals *www.afpnet.org*
- Canadian Association of Gift Planners *www.cagp-acpdp.org*
- Leave a Legacy
  www.leave-a-legacy.on.ca
- Charity Village
  www.charityvillage.com
- Canadian Council for the Advancement of Education
  www.ccaecanada.org
  www.ccaeo.on.ca
- Canada Heritage Guide to Special Event Fundraising
  www.pch.gc.ca/progs/pc-cp/pubs/e/Specev1.htm
- Canada Revenue Agency
  www.cra-arc.gc.ca

Appendix I

Application for Incorporation of a Corporation Without Share Capital

URL

http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/AttachDocsPublish/007-07109~6/$File/07109E.pdf

Appendix 2

Organizational Self-Assessment Checklist*

General

Does your current business address correspond with that on file with the Ministry of Consumer and Business Services, Industry Canada (for federally incorporated nonprofits) and/or Canada Revenue Agency (for charities)?

Yes No Improvements Required Don't Know

Are your organizational activities in accordance with the objects of the corporation as set out in your Letters Patent?

Yes No Improvements Required Don't Know

Have your bylaws been reviewed recently and applicable amendments made (if necessary) so they reflect your organization's structure, activities and responsibilities?

Yes No Improvements Required Don't Know

Is a development plan being created and implemented to ensure sufficient revenues and financial stability of the organization over the long-term?

Yes No Improvements Required Don't Know

Is your organization able to recruit and maintain competent board, staff and volunteers?

Yes No Improvements Required Don't Know

Governance of the Organization

Is there a consensus between the Board and the management of your organization about the organization's mission, programs, priorities and future plans?

Yes No Improvements Required Don't Know

Is your Board working jointly on a resolution of organizational problems with the management?

Yes No Improvements Required Don't Know

Appendix 2

Organizational Self-Assessment Checklist*

Does your Board meet regularly for ongoing communication with and control of the staff?

Yes No Improvements Required Don't Know

Does your Board understand its role(s) in: monitoring your organization's financial well-being; leadership of the organization; participating in fund development; evaluation of staff performance, its own performance and the organization as a whole?

Yes No Improvements Required Don't Know

Does your Board have working committees in area of finance, programs, resource development and public relations?

Yes No Improvements Required Don't Know

Are there written policies for government compliance, financial and conflict of interest issues?

Yes No Improvements Required Don't Know

Management of the Organization

Is the role of the executive director clearly defined and understood by the Board?

Yes No Improvements Required Don't Know

Do facilities and staff of your organization meet all licensing requirements (if necessary)?

Yes No Improvements Required Don't Know

Are the insurance policies reviewed on annual bases to ensure that adequate coverage is in place?

Yes No Improvements Required Don't Know

Are all employees/volunteers who handle money bonded?

Yes No Improvements Required Don't Know

Appendix 2

Organizational Self-Assessment Checklist*

Are all contracts, grant awards, legal documents, personnel files, financial records and board meeting minutes kept in a safe place?

Yes No Improvements Required Don't Know

Are there any personnel policies in place for staff and volunteers, and if yes, are they being reviewed annually by a lawyer or specialist?

Yes No Improvements Required Don't Know

Are all job descriptions current and contain duties, qualifications, supervision, and salary range?

Yes No Improvements Required Don't Know

Financial Management

Are reports filed with regulatory agencies in timely fashion?

Yes No Improvements Required Don't Know

Does the accounting system in place reflect the organization's size and complexity of its activities?

Yes No Improvements Required Don't Know

Does a professional, who is not engaged in the direct operation of the organization, conduct an independent financial audit every year?

Yes No Improvements Required Don't Know

Are financial statements and budget reports being produced and reviewed by the Board at each meeting?

Yes No Improvements Required Don't Know

Is there a plan in place to pay off debt, including line of credit, before incurring additional debt?

Yes No Improvements Required Don't Know

Appendix 2

Organizational Self-Assessment Checklist*

Does the organization maintain cash reserves to cover three months of operating expenses?

Yes No Improvements Required Don't Know

Do cheques require more than one authorized signature?

Yes No Improvements Required Don't Know

Are all bills (except petty cash) being paid by cheque?

Yes No Improvements Required Don't Know

Program Management

Do your program activities support your organization's mission?

Yes No Improvements Required Don't Know

Are new programs developed as a reflection of your organization's mission?

Yes No Improvements Required Don't Know

Is there a filing system in place to track the number of clients served and outcomes achieved?

Yes No Improvements Required Don't Know

Do management and staff have suitable educational and professional backgrounds to perform their duties?

Yes No Improvements Required Don't Know

Does your organization conduct a needs assessment for the services it provides to learn about their relevance for the public? If yes, how often?

Yes No Improvements Required Don't Know

Appendix 2

Organizational Self-Assessment Checklist*

Does the management maintain contact with similar agencies, government bodies and granting institutions in order to minimize duplication of programs offered?

Yes   No   Improvements Required   Don't Know

Do the management, staff and volunteers involved in program implementation receive ongoing training to meet program needs?

Yes   No   Improvements Required   Don't Know

***** This self assessment check list was modeled on the" Self Assessment Check List" published in the third edition of "The Michigan Nonprofit Management Manual" which was prepared and distributed by the Accounting Aid Society, 1999. pg. A1-A8.***

Additional Resources

Chapter 2

- The Law of Charitable and Not-For-Profit Organizations, 3rd ed.
- Registering a Charity for Income Tax Purposes, 2004

- *www.strategis.ic.gc.ca*
- *www.ccra.gc.ca*

Chapter 3

- The Law of Charitable and Not-For-Profit Organizations, 3rd ed.
- Boards That Make a Difference (2nd Ed. 1997 and John Carver and Miriam Carver, Reinventing Your Board: A Step-by Step Guide to Implementing Policy Governance, (1997)

- *http://strategis.ic.gc.ca/epic/internet/incd-dgc.nsf/en/h_cs02145e.html*
- *www.cd.gov.ab.ca/building_communities/volunteer community/programs/bdp/services/resourcesworkbooks/index.asp*
- *http://www.cra-arc.gc.ca/tax/charities/publications_list-e.html.*
- *www.boundarymanagement.com*
- *www.boarddevelopment.org*
- *http://laws.justice.gc.ca/en*
- *www.e-laws.gov.on.ca*
- *www.charitylaw.ca*

Chapter 4

- The Law of Charitable and Not-For-Profit Organizations, 3rd ed.

Chapter 5

- The Law of Charitable and Not-For-Profit Organizations, 3rd ed.
- Registering a Charity for Income Tax Purposes, 2004

- *www.strategis.ic.gc.ca*
- *www.ccra.gc.ca*

Chapter 6

- The Law of Charitable and Not-For-Profit Organizations, 3rd ed.
- Registering a Charity for Income Tax Purposes, 2004

- *www.strategis.ic.gc.ca*
- *www.ccra.gc.ca*

Additional Resources

Chapter 8

- The Law of Charitable and Not-For-Profit Organizations, 3rd ed.
- Registering a Charity for Income Tax Purposes, 2004

- *www.attorneygeneral.just.gov.on.ca*
- *www.iog.org*
- *www.strategis.ic.gc.ca/epic/internet*

Chapter 10

- Governance in the Voluntary Sector: Summary of Case Study Findings, 2001.
- Industry Canada, Primer for Directors of Not-for-Profit Corporations: Rights, Duties and Practices, 2002
- From Jeans to Jackets: Navigating the Transition to More Systematic Governance in the Voluntary Sector, 2003
- Getting to Good Governance: Overcoming the Hurdles, 2002

- Institute On Governance – Board Governance: *www.iog.ca*
- United Way – Board Development: *http://www.boarddevelopment.org/*
- Fundamentals of Effective Board Involvement: *http://www.mentoringcanada.ca/resources/training.html*
- Voluntary Sector Knowledge Network: *http://www.vskn.ca/*

Chapter 11

- Client Assistance Division of the Charities Division, Canada Revenue Agency at 1-800-267-2384.

- Nonprofit Times, *www.nptimes.com www.nptimes.com*
- Chronicle of Philanthropy, *www.philanthropy.com*
- Association of Fundraising Professionals, *www.afpnet.org*
- Canadian Association of Gift Planners, *www.cagp-acpdp.org*
- Leave a Legacy, *www.leave-a-legacy.on.ca*
- Donor Bill of Rights, http://www.helpforcharities.com/billofrights.php

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