

FAQ:

Incorporating a Not-for-profit Corporation

1. What is a not-for-profit corporation (“NFP”)?

An NFP is a separate legal entity, similar to a business (or for-profit) corporation. This means that an NFP can own property in its own name, acquire rights, obligations and liabilities by entering into contracts and sue or be sued.

However, NFPs are also different from business corporations. A NFP corporation is formed for special purposes; not to earn a profit and to share such profit with its members (which are akin to shareholders of a business corporations), directors, officers, etc. Though a NFP can earn a profit, any profit must be used to further the goals of the organization. This means that members of the NFP do not receive dividends.

The special purposes (which are called the objects) of an NFP can vary widely depending on why it was formed. For example, NFPs can be anything from athletic clubs, art and music societies, employer organizations, professional associations, community centers, churches, science and research associations and charitable organizations. The objects will reflect the type of NFP that is being formed. Please refer to question #5 below for more information on the objects of an NFP.

2. Why should I incorporate an NFP?

The answer depends on the activities and the nature of the organization. An unincorporated organization may still achieve its ultimate goals. However, an NFP will limit the personal liability of its members and directors and it will ensure the organization’s continuity.

As mentioned above, an NFP has legal status and all of the powers of a natural person. This means an NFP can shield its members, directors and officers from being held personally liable for any of the NFP’s obligations. Without incorporating, the individuals running the organization can be sued personally.

Also, because an NFP is a separate legal entity, it will exist even when the membership changes. This continuity will ensure the NFP can continue to achieve its purpose indefinitely, or until the NFP is dissolved, similarly to a business corporation.

3. Under which jurisdiction should I incorporate?

An organization can choose to incorporate federally under the *Canada Not-for-profit Corporations Act*, or provincially, which, currently in Ontario, would be under the *Corporations Act*. We recommend that our clients incorporate federally because the current Ontario *Corporations Act* is outdated and will eventually be replaced with Ontario's *Not-for-Profit Corporations Act*. This modernizing legislation will bring important improvements whenever it takes effect. Although it was passed over 10 years ago, this Act has not yet come into force. When it does, all the NFPs incorporated under the *Corporations Act* (Ontario) will need to spend more time and money to review their compliance with the new law.

In addition, currently, Ontario NFPs can only be incorporated "over-the-counter" with the Ontario government, which means the incorporation process can take between 6 to 8 weeks for regular service and about 7 business days with expedited service. When incorporating federally, we can file the necessary documents online and will typically receive confirmation of incorporation within a few business days.

4. How much does it cost to incorporate an NFP?

The legal fees for incorporating an NFP can be significant because usually there are several initial members and it takes time to gather input from them and they often make decisions by consensus.

To control your legal costs of incorporation, we recommend you follow the tips in the answers to question #7 below.

In addition to legal fees, some of the expenses of incorporating a NFP are:

- (a) the government fee to incorporate (\$250 for a federal NFP and for an Ontario NFP, \$155 for regular service or \$255 for expedited service);
- (b) performing a required name search (\$80.00);
- (c) filing an initial notice of directors and officers (\$12.00); and
- (d) the NFP's minute book (\$60.00).

**All expenses are current estimates. Government fees may change. There may be other costs which apply depending on your requirements.*

5. What objects/purposes are acceptable for my NFP?

An NFP's objects will vary depending on the type of organization that is formed.

If, for example, the NFP is an employer organization in the construction industry, one of the objects could be to represent its members in collective bargaining with the relevant trade union and to promote its members' interests.

Non-charitable NFPs have some flexibility in drafting their objects. However, in our experience, the Ontario and Canadian Governments will actively review proposed objects and reject them if they promote purposes for which the NFP cannot act.

Charitable NFPs must include standard objects/purposes to be considered a charitable corporation under the *Income Tax Act*.

Before considering the objects of your NFP, please speak with a member of our team.

6. What is the difference between a constitution and the by-laws?

Typically, a constitution contains a mix of the aims of an organization and the rules which govern its members, whereas the by-laws contain detailed rules about how the NFP must operate and how its members make decisions. You may have an existing constitution which you would like to adapt into by-laws. However, that may not be cost effective because constitutions are often not exhaustive and are missing important by-law provisions.

7. What is the difference between a soliciting and non-soliciting NFP?

The *Canada Not-for-profit Corporations Act* distinguishes between NFPs that are soliciting and non-soliciting corporations. A soliciting corporation receives more than \$10,000 in one financial year from gifts or donations from non-members, grants from government or funds from another soliciting corporation. A non-soliciting corporation has not received more than \$10,000 in the last three financial years from these sources. Different and more onerous rules apply to soliciting corporations, so before you incorporate, you must consider whether your NFP will be receiving such funds.

8. I need to incorporate an NFP quickly. What should I do to ensure the process is completed as quickly as possible?

To speed-up the process of incorporating an NFP, we suggest:

- (a) Choose one person to co-ordinate work with legal and other advisors, to gather details and to organize members and to get documents signed promptly. Just as in football, every process needs a quarterback. Without someone to lead your group through this process, it will take longer and cost more money;
- (b) Filling in our firm's [Not-for-Profit Incorporation Worksheet](#). This document will help you organize everything that we need to incorporate your business. If you are not sure how to fill in any section, please let us know and we would be happy to assist;
- (c) Brainstorming at least three (3) corporate names for the NFP. We will need to obtain pre-approval for your suggested name. Sometimes, a name is not acceptable or already in use, so it will save some time to have more than one option;
- (d) Preparing the names and addresses of the first directors and the officers of the NFP. If you incorporate in Ontario, you will need at least three (3) directors. If you incorporate a federal NFP **and** your NFP is a soliciting corporation, you will also need at least three (3) directors.;
- (e) Preparing the names of the first members. If any of the first members are corporate entities, provide the full legal name of the corporation and the name and title of that corporation's signing officer; and
- (f) Making decisions about the NFP's by-laws sooner rather than later. In hopes of saving time and money, you may want to adapt previously used constitutions or by-laws for a new NFP. Unfortunately, this does not always save money. Adapting the by-laws may take more time and

more money because our team needs to review, revise and have multiple back-and-forth dialogue with you to finalize the draft. You should consider using the Canadian Government's model by-laws for federal NFPs, which we can adopt fairly easily to save costs.

9. What are the roles of the directors, officers and members?

The members of a NFP are different from the shareholders of a business corporation. They do not purchase shares in or own the corporation. To become a member, an applicant must apply for membership and, if they meet the conditions set out in the NFP's by-laws, may be admitted as a member by the directors.

But, like shareholders, members may have the right to vote on certain matters and to be notified and to attend meetings of members. Also, they can elect or remove directors of the NFP.

Subject to any restrictions in a unanimous members agreement, the directors are responsible for the management and affairs of the NFP. Usually, the directors delegate the day-to-day management of the corporation to its officers. Directors and officers have a duty to act honestly, in good faith and in the best interest of the NFP. They also have a duty to act with the same skill and care as reasonably prudent person would in a comparable situation. Please bear in mind that if you are a director, you will have personal liability for certain matters. These can include but are not limited unpaid employee wages, unpaid employee income tax source deductions, Employment Insurance premiums and Canada Pension Plan remittances.

10. I know that business corporations can have different classes of shareholders. Can my NFP have different classes of members too?

Yes, an NFP can have different classes of members. You can divide members into classes with:

- (a) different conditions for membership; (e.g. members in Class A must be an employer in the construction industry and members in Class B must be a union); and/or
- (b) different rights (e.g. Class A has the right to receive notice of and to attend members' meetings and to vote and Class B does not).

11. What are the key documents required for incorporating a new NFP?

The key documents are:

- (a) the Articles of Incorporation (for federal NFPs) or the Letters Patent (for Ontario NFPs). These are the legal foundation or "charter" of the NFP;
- (b) the By-laws of the NFP (its internal rules); and
- (c) the organizing resolutions that set up the internal structure.

12. What do I receive from our firm after incorporation?

We organise all the key documents in the company's minute book. We can deliver it to you or maintain it at our offices. If we retain your Minute Book, as part of our service we would suggest that we prepare annual resolutions for the NFP.

Annual resolutions are typically done shortly after the end of the financial year to ratify the financial statements and confirm past acts, officers and directors. They are also a useful opportunity to ratify any decisions which have been made and need to be recorded in the minutes.

We charge a fixed fee for preparing annual resolutions for a company. Fees would increase for any extraordinary or more complicated minutes.

13. How do I choose the fiscal year-end?

When incorporating a new NFP you must decide on a year-end date. The year-end that you choose cannot exceed 53 weeks from the date of incorporation. Typically, the fiscal year-end will coincide with the end of a calendar month, but that is not a requirement. You can choose your year-end to be any fixed date or you could select a "floating year-end" such as the last Friday of a specified month, as long as your fiscal year does not last more than 53 weeks. You should consider your normal operating cycles when choosing a year-end for your NFP. If you have more than one NFP or related business, you should also consider synchronizing their financial year-ends.

14. Will my new NFP need a GST/HST number?

It depends. You must register your NFP for the GST/HST if it will provide taxable supplies (i.e. supplies of property and services that are made in the course of a commercial activity) in Canada and if it is not a small supplier according to the Canada Revenue Agency. We suggest consulting your accountant to confirm whether your NFP falls into these categories.

15. What is a member agreement? Is it mandatory? Is it a public document?

A member agreement is similar to a shareholder agreement for business corporations. In these agreements, voting members of a NFP can transfer decision-making powers from the directors to the members or can simply agree on how they will vote on specific issues.

Members of federal NFPs that are also soliciting corporations cannot enter into agreements which transfer directors' powers to members.

These agreements are not mandatory and are not public. Please speak with us about whether an agreement would be suitable for you.

16. What issues can a member agreement address?

This depends on whether it is a unanimous members' agreement (all members have signed). If it is unanimous, it can address a wider range of issues and it can restrict the powers of the directors to deal with the management of the NFP.

If you have any questions or concerns about incorporating your NFP, please contact us.

About HHS

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