THE BASICS FOR NON-PROFIT ORGANIZATIONS AND CHARITIES

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The Basics for Non-Profit Organizations and Charities

1. **NON-PROFIT ORGANIZATIONS AND CHARITIES DEFINED**

Non-profit organizations and charities are in some respects quite similar. Both operated on a not-for-profit basis in that neither is intended to make profit or distribute profit to members. In addition, they must both devote their resources exclusively to carrying out their stated purposes. As a result, their activities are more restricted than those of other types of organizations, including business corporations. Another similarity is that both non-profit organizations and charities must provide some level of "public benefit", although the definition of what constitutes "public benefit" and the levels of public benefit required is difficult to determine with precision.

Non-profit organizations and charities are also quite different. Each is a distinct type of entity with different legal obligations and rights. For example, the type of public benefit permissible for charities is much narrower than that for non-profit organizations. In return, charitable organizations receive substantial privileges, the most notable of which is the ability to issue tax receipts for donations.

**A. NON-PROFIT ORGANIZATIONS**

There is no clear definition of what constitutes a non-profit organization. The meaning varies depending on the context and governing statute. What seems to be consistent across all definitions is the absence of a view to profit. Accordingly, there is usually a restriction imposed on the ability of non-profit organizations to distribute income to members, pay dividends to members and distribute remaining property to members on winding-up, dissolution or liquidation.

Non-profit organizations can be incorporated under Part II of the *Canada Corporations Act* by three or more persons "for the purpose of carrying on, without pecuniary gain to its members, objects, to which the legislative authority of the Parliament of Canada extends, of a national,

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patriotic, religious, philanthropic, charitable, scientific, artistic, social, professional or sporting character, or the like objects”.2

There are two types of non-profit organizations that can be incorporated in Saskatchewan under *The Non-Profit Corporations Act*, 19953: charitable corporations and memberships corporations. A "charitable corporation" is defined as a corporation incorporated to "carry on activities that are primarily for the benefit of the public", and a "membership corporation" is defined as a corporation incorporated "to carry on activities that are primarily for the benefit of its members". In addition, "activities" respecting a charitable corporation or a membership corporation is defined to include any conduct of the corporation to further its charitable or membership purposes and any business carried on by the corporation. None of these definitions are very helpful in determining what a non-profit organization is. Perhaps the most useful provision under *The Non-profit Corporations Act*, 1995 for this purpose is section 253. It states as follows:

253 The Director may refuse registration of an extra-provincial corporation where:

(a) pursuant to the laws of the jurisdiction where it is incorporated, the extra-provincial corporation may pay dividends to its members;

(b) the activities of the corporation are not of a benevolent, religious, charitable, philanthropic, educational, agricultural, scientific, artistic, social, professional, fraternal, sporting, athletic or similar purpose; or

(c) the name of the corporation is for any reason objectionable.

These requirements are analogous to the definition of non-profit organizations in other provincial jurisdictions. For example, in Alberta under subsection 3(1) of the *Societies Act*4 “[f]ive or more persons may become incorporated ... for any benevolent, philanthropic, charitable, provident, scientific, artistic, literary, social, educational, agricultural, sporting or other useful purpose, but not for the purpose of carrying on a trade or business.” Subsection 4(1) of the *Societies Act* provides that no society shall "declare any dividend or distribute its property among its members during the existence of the society".

2 See subsection 154(1) of the *Canada Corporations Act*.
3 S.S., c. N-4.2.
Another potential source for the definition of non-profit organizations is paragraph 149(1)(1) of the *Income Tax Act*. In order to qualify for an exemption from taxation under that provision, a non-profit organization must have the following characteristics:

1. It must be a club, society or association.
2. It cannot be a charity as determined in the opinion of the Minister of National Revenue.
3. It must be organized and operated exclusively for social welfare, civic improvement, pleasure or recreation or for any other purpose except profit.
4. It cannot have any part of its income payable to or otherwise available for the personal benefit of proprietors, shareholders or members.

Canada Revenue Agency ("CRA") makes the following statements regarding non-profit organizations at paragraph 5 in *Interpretation Bulletin, IT-496R, "Non-Profit Organizations":

5. To qualify under paragraph 149(1)(1), an association must be both organized and operated exclusively for social welfare, civic improvement, pleasure or recreation or for any other purpose except profit. An association may also be organized and operated exclusively for any combination of these purposes. When determining the purpose for which an association was organized, the instruments creating the association will normally be reviewed. These instruments may include letters patent, articles of incorporation, memoranda of agreement, by-laws, and so on. The terms "social welfare", "civic improvement", and "pleasure or recreation" are not defined in the Act. In general terms, social welfare means that which provides assistance for disadvantaged groups or for the common good and general welfare of the people of the community. Civic improvement includes the enhancement in value or quality of community or civic life. An example would be an association that works for the advancement of a community by encouraging the establishment of new industries, parks, museums, etc. Under the categories of social welfare and civic improvement, care must be taken to ensure that the purposes of the association are not those of a charity. Pleasure or recreation means that which provides a state of gratification or a means of refreshment or diversion. Examples include social clubs, golf clubs, curling clubs, badminton clubs and so on that are organized and operated to provide recreational facilities for the enjoyment of members and their families. The phrase any other

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5 R.S.C. 1985, c. 1 (5th Supp.), as amended (the "Income Tax Act").

6 See paragraph 149(1)(1) of the Income Tax Act. The application of these characteristics is discussed in detail below.
purpose except profit is interpreted as a catch-all for other associations that are organized and operated for other than commercial or financial reasons.

Yet another potential source for the definition of non-profit organizations is the *Excise Tax Act*. Certain supplies made by a non-profit organization are eligible for an exemption from goods and services tax ("GST"). Non-profit organizations are eligible for partial rebates of GST paid, provided they receive a sufficient amount of government funding. The definition of a non-profit organization for GST purposes is as follows:

"non-profit organization" means a person (other than an individual, an estate, a trust, a charity, a public institution, a municipality or a government) that was organized and is operated solely for a purpose other than profit, no part of the income of which is payable to, or otherwise available for the personal benefit of, any proprietor, member or shareholder thereof unless the proprietor, member or shareholder is a club, a society or an association the primary purpose and function of which is the promotion of amateur athletics in Canada.

CRA made the following statements in its Policy Statement, P-215, "Determination of Whether an Entity is a 'Non-Profit Organization' for Purpose of the Excise Tax Act (ETA)":

To qualify as a non-profit organization, ideally the governing documents should contain a statement that the entity is organized solely for non-profit purposes. However, in some situations they may not. In those situations the Department will examine the purposes for which the entity was organized to determine whether the entity was organized solely for non-profit purposes. Entities which are organized solely for a non-commercial public purpose will be considered to be organized for non-profit purposes. This public purpose may include: social welfare, civic improvement, pleasure, recreation, relief of poverty, advancement of education or religion or other similar purpose. In general terms, social welfare means that which provides assistance for disadvantaged groups or for the common good and general welfare of the people of the community. Civic improvement includes the enhancement in value or quality of community or civic life. An example would be an association that works for the advancement of a community by encouraging the establishment of new industries, parks, museums, etc. Pleasure or recreation means that which provides a state of gratification or a means of refreshment or diversion. Examples include social clubs, golf clubs, curling clubs, badminton clubs and so on that are organized and operated to provide recreational facilities for the enjoyment of members and their families.

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7 R.S.C. 1985, c. E-15, as amended (the "OST Act").

8 The application of OST to the non-profit sector is described in detail below.

9 See subsection 123(1) of the OST Act.
B. CHARITIES

There is no statutory definition for a charity. The concept has instead developed at common law; the starting point of which is the decision of the House of Lords in the case of The Commissioners for Special Purposes of the Income Tax v. Pemsel\(^1\), and in particular, the legal meaning of the word "charity" given by Lord Macnaghten at 583 of that report:

> How far then it may be asked, does the popular meaning of the word "charity" correspond with the legal meaning? "Charity" in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not following under any of the preceding heads.

The four heads of charity referred to in the Pemsel decision are generally understood to refer to the preamble of the Charitable Uses Act, 1601, 43 Eliz. 1, c. 4, commonly referred to as the Statute of Elizabeth, which listed various activities thought to be charitable at the time. While the Statute of Elizabeth has long since been repealed and is not law in Canada, the list in its preamble has been used to assist in deciding what is or what is not a charity in this country. The common practice in Canada when referring to the Statute of Elizabeth is to cite the preamble in modern English as follows:

> The relief of aged, impotent, and poor people; the maintenance of sick and maimed soldiers and mariners, schools of learning, free schools, and scholars in universities; the repair of bridges, ports, havens, causeways, churches, seabanks, and highways; the education and preferment of orphans; the relief, stock, or maintenance of houses of correction; marriage of poor maids; supportation, aid, and help of young tradesmen, handicraftsmen, and persons decayed; the relief or redemption of prisoners or captives; and the aid or ease of any poor inhabitants concerning payment of fifteens, setting out of soldiers, and other taxes.\(^2\)

To qualify as a charity, an organization must comply with the following common law requirements:

1. The objects or purposes of the organization must be "charitable", falling into one or more of the following four heads of charity:


(a) the relief of poverty;

(b) the advancement of education;

(c) the advancement of religion; and

(d) the advancement of other charitable purposes that benefit the community as a whole in a way that the law regards as charitable.

2. The objects or purposes must be exclusively charitable and not a mixture of charitable and non-charitable purposes. Incidental or secondary non-charitable purposes, however, would not preclude an organization from being considered a charity.

3. The object or purposes must benefit the public or a significant segment of the public.\(^\text{12}\)

II. TYPES OF LEGAL STRUCTURES

There are three main types of legal structures that may be used to establish and operate a non-profit organization or charity: a trust, an unincorporated association and a corporation without share capital.\(^\text{13}\) In determining the appropriate structure for an organization that intends to register as a charity for income tax purposes, it should be kept in mind that for income tax purposes a "charitable foundation" must either be a trust or a corporation.\(^\text{14}\) No such restriction exists in respect of a "charitable organization" or a non-profit organization.

A. TRUSTS

A trust is typically established by a trust document (deed, settlement or instrument) that satisfies the three "certainties" or three essential components of a trust: the certainty of intention, the certainty of subject matter and the certainty of object.

\(^\text{12}\) For CRA's views on what constitutes a public benefit see CPS-024, "Guidelines for Registering a Charity: Meeting the Public Benefit Test", dated March 10, 2006.

\(^\text{13}\) Provided certain restrictions are imposed, corporations with share capital may also be utilized. However, corporations without share capital are more conducive to the non-profit sector because they generally restrict the payment of income to members, the payment of dividends and the distribution of remaining property on winding-up, dissolution or liquidation. It is also possible to use a co-operative without share capital, which is a specialized form of entity that carries on a co-operative basis. Because the use of co-operatives is not common, it will not be discussed in this paper.

\(^\text{14}\) See the definition of "charitable foundation" in subsection 149.1(1) of the Income Tax Act.
The following is a list of some of the advantages of using a trust structure:

1. A trust is easy to establish and less expensive to operate. There are no incorporation fees, corporate filing or annual return requirements and no necessity to dissolve once the trust purposes are complete.

2. The law of trusts affords charitable trusts a number of advantages over other types of *inter vivos* trusts to accommodate charitable activities that provide public benefits, including:

   (a) a relaxation of the certainty of objects requirement. A charitable trust is not required to name persons or beneficiaries, but can instead specify a purpose provided the purpose is confined to what the law regards as charitable. A charitable trust may not, however, be vague or unambiguous; it must enable the trustees to determine how the charitable activities are to be carried out;

   (b) non-application of the rule against perpetuity and inalienability; and

   (c) the equitable jurisdiction of the courts to apply the doctrine of *cy-pres* to a failed charitable trust. Under this doctrine, the terms of a trust will be changed so that the funds can be used for other court approved charitable purposes that are as close as possible to the original purposes set out in the trust document.

The following is a list of some of the disadvantages of using a trust structure:

1. A trust has no separate legal existence. All contracts must be entered into in the name of the trustees and the trust cannot sue or be sued in its own name but only by and through its trustees.

2. A trust can only hold real estate in the name of its trustees, which can create problems in the event of death or resignation.
3. The obligations of a trustee are substantial. A trustee must:

(a) carry out his or her tasks with due care and attention and honesty;

(b) carry out the duties personally and not delegate to another the responsibilities entrusted to him or her; and

(c) place the interests of the beneficiary first and not permit his or her own interests to conflict in any way with the interests of the beneficiary.

4. Trustees have limited rights of delegation under trust law as compared to corporations. Essentially, trustees are limited to delegation of administrative duties.

5. Trust law is generally complicated and maybe difficult to understand for trustees who are not legally trained.

A trust is typically used where the activity to be carried on is for a limited period of time and the level of risk involved is low; for example, the investment and administration of a scholarship or bursary. A trust would likely not be a useful structure where the organization intends to own or lease real estate, enter into contracts or be exposed to a significant risk of liability.

B. UNINCORPORATED ASSOCIATIONS

An unincorporated association is typically established by a memorandum of association or similar document that sets out the purpose of the organization and how it is to be governed, managed and operated. It is common for labour unions and boards to be organized as unincorporated associations.

The following is a list of some of the advantages of using an unincorporated association:

1. An unincorporated association is easy to establish and less expensive to operate. There are no incorporation fees, corporate filing or annual return requirements.

The duties of a trustee are similar in nature to the duties of a director of a corporation without share capital. However, the standard of care is likely higher for trustees (and in particular trustees of a charitable trust) than for directors and officers of a corporation or even unincorporated associations.

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2. An unincorporated association is a very flexible structure. It is governed by contractual rights and obligations as opposed to statute.

The following is a list of some of the disadvantages of using an unincorporated association:

1. An unincorporated association has no separate legal existence. All contracts must be entered into in the name of each of its members and the unincorporated association cannot sue or be sued in its own name but only by and through its members.

2. An unincorporated association can only hold real estate in the name of each of its members, which can create problems in the event of death or resignation.

3. Membership creates a contractual relationship between each member. Accordingly, a change in the relationship requires unanimity, unless otherwise specifically provided.

4. Members of an unincorporated association may be held individually liable for the actions of the association in contract and/or tort.

C. CORPORATIONS WITHOUT SHARE CAPITAL

A corporation without share capital may be incorporated federally by way of letters patent under Part II of the Canada Corporations Act or provincially in Saskatchewan by way of Articles of Incorporation under The Non-Profit Corporations Act, 1995.

The following is a list of some of the advantages of using a corporate structure:

1. A corporation is easy to deal with given that its established practice and procedure is governed by statutory rules.

2. A corporation is a separate legal entity, separate and apart from its members, officers and directors. A corporation can enter into contracts in its own name, sue and be sued in its own name and individual members generally do not incur personal liability for its debts or obligations.

3. A corporation can hold real estate in its corporate name, which is advantageous given the perpetual existence of corporations.
4. Some government grants or funding are only available to incorporated organizations.

5. A corporate structure may be required if the organization intends to apply for a bingo or lottery license.

The following is a list of some of the disadvantages of using a corporate structure:

1. Corporations may be costly and time consuming to establish. Generally, the application process for federal corporations without share capital takes 20 business days for Industry Canada to process and a $200 application fee is payable.

2. Corporations have numerous filing and annual reporting requirements.

3. Corporations will be required to prepare annual financial statements and may be required to appoint an auditor.\(^{16}\)

III. INCORPORATING A NON-PROFIT ORGANIZATION OR CHARITY

A. JURISDICTION OF INCORPORATION

It may be appropriate to incorporate an organization federally where the organization will be operating on a national level or in more than one province or where the object and activities of the organization fall within federal constitutional jurisdiction.

Some advantages of incorporating federally are that there is no requirement to use a corporate ending\(^{17}\) and that there is wider protection from other organizations using the same or a similar name.

\(^{16}\) An auditor is required for federal corporations without share capital. See section 130 of the Canada Corporations Act, which mandates the appointment of an auditor and governs the auditor’s removal and remuneration. An auditor is only required for Saskatchewan corporations without share capital where the corporation is a charitable corporation with revenues in the previous year that exceed $250,000. See below for a detailed discussion of the new rules regarding the ability to waive auditors and review requirements under The Non-profit Corporations Act, 1995.

\(^{17}\) The words "Incorporated" or "Corporation" can be used by a corporation incorporated under Part II of the Canada Corporations Act although there is no requirement that such an ending be used. The words "Limited" or "Company" cannot be used. Under section 10 of The Non-profit Corporations Act, 1995, a Saskatchewan corporation must use one of the following corporate endings: "incorporated", "Incorporee", "Corporation", "Inc." or "Corp."
Where the organization intends to carry on activities only in one province or in areas specifically governed by provincial jurisdiction, it may be appropriate to incorporate the organization in that jurisdiction.

B. SASKATCHEWAN CORPORATIONS WITHOUT SHARE CAPITAL

A non-profit organization or charity may be incorporated in Saskatchewan under *The Non-Profit Corporations Act, 1995*. This legislation is modelled after the well-developed standards of corporate governance found in *The Business Corporations Act*. Unlike the federal letters patent system, the provincial system is a streamlined, as-of-right incorporation process. Saskatchewan Corporations Branch's policy is that incorporations take approximately 2 weeks to process. However, incorporations can be completed on a "rush basis" in a much shorter time frame. Saskatchewan Corporations Branch has developed an Incorporation Kit for applicants intending to incorporate a non-profit organization provincially.

The following must be submitted to Saskatchewan Corporations Branch in order to incorporate a corporation without share capital under *The Non-Profit Corporations Act, 1995*:

1. A Saskatchewan-bias NUANS search report (alternatively, the applicant may request Saskatchewan Corporations Branch to search and reserve a name for a fee of $20 per name).
2. Articles of Incorporation (Form 1).
3. Notice of Registered Office (Form 3).
4. Notice of Directors (Form 6).
5. A $65 incorporation fee (cheque payable to the Minister of Finance).


19 This Incorporation Kit is available at http://www.saskjustice.gov.sk.ca/corporations/pdf/forms/NPKit.pdf.

20 See Appendix "A" for the form of incorporating documents required.
There are two types of corporations under The Non-Profit Corporations Act, 1995: a "membership corporation" and a "charitable corporation". A membership corporation is one that is formed primarily for the benefit of its members and is supported through membership fees, loans or donations or combinations of these. It does not solicit donations from the public or receive government grants. A corporation is a membership corporation if it designates itself as such at the time of incorporation and it has not since been deemed a charitable corporation by virtue of its activities.

A charitable corporation is one formed primarily for the benefit of the public and is characterized as:

1. a corporation which designated itself as a charitable corporation on its Articles; or

2. a corporation, which although it may have designated itself as a membership corporation on its Articles, is deemed to be a charitable corporation because it:

   (a) carries on activities that are not primarily for the benefit of its members;

   (b) solicits or has solicited donations or gifts of money or property from the public;

   (c) receives or has received any grant of money or property from a government or government agency in any fiscal year of the corporation that is in excess of 10%, or any greater amount that may be prescribed, of its total income for that fiscal year; or

   (d) is a registered charity for income tax purposes.

A membership corporation may have one or more directors. A charitable corporation, however, is required to have a minimum of 3 directors, at least 2 of whom are not officers or employees of the corporation or its affiliates. Also, a membership corporation can distribute its property to its members on dissolution, whereas a charitable corporation cannot.

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21 See subsection 2(9) of The Non-profit Corporations Act, 1995.


There currently is no requirement in Saskatchewan for a non-profit corporation to declare its purposes in its Articles. However, CRA will not register an entity as a charity for income tax purposes unless its constating documents restrict the entity to carrying on exclusively charitable activities and purposes. Accordingly, if it is intended that the organization become a registered charity, restrictive language must be included in the Articles and should be included in the Bylaws.

1. **Proposed Amendments**

*The Non-profit Corporations Amendment Act, 1995*[^24] will make certain amendments to *The Non-profit Corporations Act*, 1995, including:

1. Deleting the requirement in the Articles for specifying the municipality in Saskatchewan in which the registered office of the corporation is situated.

2. Reducing the Canadian residency requirement with respect to directors. Once the amendments come into force, one director must reside in Saskatchewan and at least 25% (currently 50%) must reside in Canada.

3. The addition of a new provision relating to the election and appointment of directors. The new provision will provide that a person who is elected or appointed to hold office as a director will be deemed not to have been so elected or appointed unless he or she was present at the meeting in which the election or appointment took place, and he or she did not refuse to hold office as a director, or he or she consented to hold office as a director in writing before the election or appointment or within 30 days after it, or he or she acted as a director pursuant to the election or appointment. Presumably, this provision was added in recognition of the personal liability and other responsibilities that attach to an individual acting as a director of a non-profit corporation.

4. Financial statements and auditor report (if any) must be sent to Corporation Branch not more than 30 days (currently 15 days) after the holding of an annual members’ meeting or immediately after the signing of a written resolution in lieu of such meeting.

[^24]: S.S. 2005, c. 22. These amendments will come into force on proclamation, which the Saskatchewan Department of Justice indicates will occur shortly.
5. Adopting the following new auditor and review requirements:

**Membership Corporations**

A membership corporation can annually resolve not to appoint an auditor and/or not to appoint a reviewer, provided that the resolution is consented to by a majority of not less than two-thirds (currently all) of the members, including those not otherwise entitled to vote.

**Charitable Corporations**

(a) where revenues exceed $250,000 in the previous fiscal year, an audit is required;

(b) where revenues are between $25,000 and $250,000 in the previous fiscal year, the requirement for an audit may be waived, but a "review" is required; and

(c) where revenues are less than $25,000 in the previous fiscal year, the requirement for both an audit and/or a review may be waived by the members.

The waiver of an audit, or a review, or both, as the case may be, must be passed by 80% of the members (currently all), including those not otherwise entitled to vote.

6. Increasing the items for which the Lieutenant Governor in Council may make regulations.

C. **FEDERAL CORPORATIONS WITHOUT SHARE CAPITAL**

Currently, a corporation without share capital is incorporated federally by way of letters patent under Part II of the *Canada Corporations Act*.\(^{25}\) The issuance of letters patent is discretionary. Applicants for incorporation under the federal statute do not have a right to be incorporated and can be refused if the applicant has not complied with policy requirements. The administration of

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\(^{25}\) In July of 2000, Industry Canada consulted the non-profit sector with respect to proposed legislative changes: *Reform of the Canada Corporations Act: The Federal Nonprofit Framework Law*, Corporate Law Policy Directorate. This initiative culminated in the tabling of Bill C-21 on November 16, 2004 in the House of Commons. This enactment would replace the "letters patent" system of incorporation by an "as of right" system of incorporation more analogous to the current system in place in Saskatchewan. Bill C-21, however, died on the Order Paper on November 29, 2005, following the dissolution of Parliament for the most recent general election. It is uncertain whether Bill C-21 will be re-introduced under the new conservative minority government.

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the Canada Corporations Act is the responsibility of Industry Canada. Industry Canada's current policy is that incorporation documents for non-profit organizations will take a minimum of 20 business days to process. Industry Canada has developed an Information Kit to assist applicants for incorporation under Part II. 26

The following must be submitted to Industry Canada in order to incorporate a corporation without share capital under Part II of the Canada Corporations Act: 27

1. Canada-bias NUANS search report (alternatively, the applicant may request Industry Canada to search and reserve a name for a fee of $15 per name. A bilingual name normally requires 2 searches. The applicants may wish to consider adopting a bilingual corporate name if they intend to carry on business in a bilingual region).


3. Affidavit of bona fides (an affidavit or statutory declaration of one of the applicants, sworn before a commissioner for taking oaths, stating that the contents of the application are true).


5. One copy only (unsigned) of the proposed By-laws of the corporation. Industry Canada has developed a model By-Law for non-profit organizations. 28 The use of the model Bylaw is not mandatory. However, in the event that the model Bylaw is not used, the applicant should submit a completed Bylaws Checklist in the form attached hereto as Appendix "C" along with the application in order to expedite.

6. A covering letter, specifying the street address of the Head Office of the corporation. A failure to specify the street address in the covering letter will result in delays.


27 See Appendix "B" for the form of incorporating documents required.


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IV. ANNUAL REPORTING REQUIREMENTS

A. ANNUAL CORPORATE REPORTING REQUIREMENTS

Under The Non-profit Corporations Act, 1995, a non-profit corporation is required to file an annual return and financial statements with Saskatchewan Corporations Branch. An annual return is due one month after the anniversary of the date of incorporation and has a $10 filing fee. If the annual return is filed after the due date, the filing fee is increased to $20. Financial statements showing the assets, liabilities, revenue and expenditures of the corporation, together with a report of the auditor or of the review, if required, must be filed within 30 days (currently 15 days) of the annual meeting. One or more of the directors is required to sign the financial statements indicating that they have been approved by the directors.

If an annual return is not received within 4 months of the due date, the corporation will be struck from the Register of Corporations. If financial statements are not filed within 8 months of the fiscal year-end, the corporation will also be struck from the Register of Corporations.

Under the Canada Corporations Act, a corporation is required to file an Annual Summary (Form 3) on or before June 1 of each year and the filing fee is $30. The Annual Summary sets out information as at March 31 of each year in summary form and includes the corporate name, date of incorporation and how it was incorporated (letters patent), the complete postal address of the directors and the name and complete postal address of the auditor.

B. INCOME TAX REPORTING REQUIREMENTS

1. Non-Profit Organizations

A non-profit organization qualifying under subsection 149(1)(l) of the Income Tax Act may have to file both an Income Tax Return and an Information Return.

A non-profit organization is required to file an Income Tax Return if:

1. it is a corporation; or

2. it is deemed an inter vivos trust under subsection 149(5) of the Income Tax Act that

   (a) has tax payable, or
(b) has disposed, or realized a taxable capital gain on the disposition, of any capital property that is not used directly in the course of providing dining, recreational or sporting facilities to its members; or

(c) has been demanded by the Minister to file a return.

A T2 Corporation Income Tax Return must be filed within 6 months from the end of the corporation's taxation year. A T3 Trust Income Tax and Information Return must be filed within 90 days of the end of the trust's taxation year.

In addition, a non-profit organization is required to file a Non-Profit Organization (NPO) Information Return (Form T1044), if:

1. the total of all amounts received or receivable by the organization in the fiscal period for taxable dividends, interest, rentals or royalties is more than $10,000;

2. the total assets of the organization (determined in accordance with generally accepted accounting principles) at the end of its immediately preceding fiscal period exceeded $200,000; or

3. the association had to file an NPO Information Return for a preceding fiscal period.

An NPO Information Return must be filed within 6 months of the end of the organization's fiscal period.

It should be noted that an organization that is tax-exempt under paragraph 149(1)(1) and is also a registered Canadian amateur athletic association does not have to file an NPO Information Return. Subsection 216(1) of the Income Tax Regulations requires such an organization to file Form T2052, Registered Canadian Amateur Athletic Association Return of Information. Form T2052 must be filed within 6 months of the end of the organization's fiscal period.


30 See T4117, "Income Tax Guide to the Non-Profit Organization (NPO) Information Return".

31 C.R.C. 1977, c. 945, as amended (the "Income Tax Regulations").
2. **Registered Charities**

Charities are exempt from filing the *T2 Corporation Income Tax Return* and the *T3 Trust Income Tax and Information Return*.

All registered charities must file the following documents within 6 months of their fiscal year-end:

1. *Registered Charity Information Return* (Form T301OA);

2. *Registered Charity Basic Information Sheet* (Form TF725);

3. a copy of the registered charity's financial statements;\(^\text{32}\)

4. the list of directors/trustees or like officials (Form TI235-Directors/Trustees Worksheet), with all required information; and

5. the list of qualified donees (Form TI236-Qualified Donees Worksheet) with all the required information, if applicable.

The names of late filers are published on CRA's web site. If a charity, which has been identified as a late filer, does not subsequently file the required documents it may have its registration revoked. Registered charities that are late filing their annual information returns are now liable for a $500 penalty. CRA has indicated that this penalty will only be assessed once the registration of a charity is revoked for failure to file its information return.\(^\text{33}\)

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\(^{32}\) Previously, charities were able to choose whether financial statements could be released to the public. Now financial statements must be made available to the public on request. Accordingly, charities should be cautioned against including sensitive information in their financial statements, such as bank account numbers.

\(^{33}\) See T4033A, “Completing the Registered Charity Information Return”.

*The Basics for Non-profit Organizations and Charities*
V. TAXATION OF NON-PROFIT ORGANIZATIONS AND CHARITIES

A. INCOME TAX ACT

1. Non-Profit Organizations

A non-profit organization is exempt from tax under Part I of the Income Tax Act by virtue of paragraph 149(1)(1). For qualifying non-profit organizations, there is also an exemption from tax under Parts IV, IV.1, VI, VI.1 and Part 1.3. Paragraph 149(1)(1) of the Income Tax Act exempts the following organizations from tax:

(i) non-profit organizations—a club, society or association that, in the opinion of the Minister, was not a charity within the meaning assigned by subsection 149.1(1) and that was organized and operated exclusively for social welfare, civic improvement, pleasure or recreation or for any other purpose except profit, no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof unless the proprietor, member or shareholder was a club, society or association the primary purpose and function of which was the promotion of amateur athletics in Canada;

A non-profit organization that may otherwise qualify for the tax exemption in paragraph 149(1)(1) of the Income Tax Act could nevertheless be subject to tax on its property income if subsection 149(5) applies. This provision will apply where the main purpose of an organization is to provide dining, recreational or sporting facilities for its members. It deems an inter vivos trust to be created and provides that the organization's income from property, as well as certain taxable capital gains, is income of the deemed trust.

As noted above, the following tests must be satisfied for an organization to qualify as an exempt non-profit organization under the Income Tax Act:

1. It must be a club, society or association.

There is no requirement that a non-profit organization be incorporated in order to qualify for the exemption. A non-profit organization may be organized as a trust, a partnership, an unincorporated association, a corporation with share capital (provided that certain restrictions are

34 See sections 227(14) and 181.1(3) of the Income Tax Act.

35 See IT-83 R3, "Non-profit Organizations -- Taxation of Income from Property", dated October 31, 1990 for eRA's views in respect of the over-ride rule.

The Basics for Non-profit Organizations and Charities
imposed, including a restriction on the corporation's ability to distribute income to its members) or a corporation without share capital.

2. *It cannot be a charity as determined in the opinion of the Minister of National Revenue.*

If the Minister of National Revenue forms the opinion that the organization is in fact a charity it will not be exempt from income tax unless it takes positive steps to register with CRA as a charity. A registered charity, unlike a non-profit organization, will be required to comply with the various reporting requirements and restrictions on the use of funds provided for under the Income Tax Act\(^\text{36}\). Where it is not clear whether an entity is a non-profit organization or a charity, it may be prudent to include reference in the Articles to one or more objects or purposes that are clearly not charitable so that the exempt status of the entity can be assured. Another strategy would be to have the entity apply to eRA for charitable registration. If registration is refused, it will constitute *prima facie* evidence that in the Minister of National Revenue's opinion the entity is not a charity.

3. *It must be organized and operated exclusively for social welfare, civic improvement, pleasure or recreation or for any other purpose except profit.*

The terms "social welfare", "civic improvement", and "pleasure or recreation" are not defined in the Income Tax Act. In general terms, "social welfare" means that which provides assistance for disadvantaged groups or for the common good and general welfare of the people of the community. "Civic improvement" includes the enhancement in value or quality of community or civic life. "Pleasure or recreation" means that which provides a state of gratification or a means of refreshment or diversion. The phrase "any other purpose except profit" is interpreted as a catch-all for other associations that are organized and operated for other than commercial or financial reasons.\(^\text{37}\)

\(^{36}\) Most notably, the disbursement quota requirements.

4. *It cannot have any part of its income payable to or otherwise available for the personal benefit of proprietors, shareholders or members.*

An organization may fail to comply with this requirement in a variety of ways, including:

(a) distributing income during the year, either directly or indirectly, to, or for the personal benefit of, any member;

(b) having the power at any time to declare and pay dividends out of income; or

(c) distributing remaining property to its members on a winding-up, dissolution or liquidation.

Under subsection 149(2) of the Income Tax Act, in determining whether this requirement is met, the amount of income of the organization is to be determined on the assumption that taxable capital gains and allowable capital losses are nil. This provision allows a non-profit organization to distribute its net taxable capital gains to a member without prejudicing its tax-exempt status.

eRA has indicated that certain types of payments made directly to members, or indirectly for their benefit, will not, in and by themselves, disqualify an organization from being tax-exempt under paragraph 149(1)(1) of the Income Tax Act.\(^\text{38}\) Such payments include:

(a) salaries, wages, fees or honorariums for services rendered to the organization, provided the amounts paid are reasonable and no more than those paid in arm's length situations for similar services;

(b) payments made to employees or members of the organization to assist them in covering their expenses to attend various conventions and meetings as delegates on behalf of the organization, provided attendance at such conventions and meetings is to further the aims and objectives of the organization; and

(c) campaign expenditures of a political party, provided such payments are reimbursements of reasonable expenses incurred.

\(^{38}\) *Ibid.* at paragraph 12.
A registered Canadian amateur athletic association is able to distribute the proceeds of the gifts it receives to qualifying members without jeopardizing its status as a non-profit organization or as a registered Canadian amateur athletic association by virtue of the closing words in paragraph 149(1)(1) of the Income Tax Act.\(^{39}\)

### 2. Registered Charities

A registered charity is exempt from tax under Part I of the Income Tax Act by virtue of paragraph 149(1)(f). Where an organization qualifies as a registered charity, there is also an exemption from tax under Parts IV, IV.1, VI, VI.1 and Part 1.3.\(^{40}\)

There are two categories of registered charities: charitable organizations and charitable foundations (either public or private). A "charitable organization" is defined for income tax purposes as an organization that meets the following requirements:\(^{41}\)

(a) all the resources of which are devoted to charitable activities carried on by the organization itself;

(b) no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof;

(c) more than 50% of the directors, trustees, officers or like officials of which deal at arm's length with each other and with:

(i) each of the other directors, trustees, officers or like officials of the organization;

(ii) each person described in d(i) or (ii) below;

\(^{39}\) The closing words of paragraph 149(1)(1) of the Income Tax Act are "unless the proprietor, member or shareholder was a club, society or association, the primary purpose and function of which was the promotion of amateur athletics in Canada".

\(^{40}\) See sections 227(14) and 181.1(3) of the Income Tax Act.

\(^{41}\) See subsection 149.1(1) of the Income Tax Act, incorporating the proposed amendments under the July 18, 2005 draft legislation (Part 2 - Technical).
(iii) each member of a group of persons (other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(1)) who do not deal with each other at arm's length, if the group would, if it were a person, be a person described by (d)(i) below;

(d) that is not, at the particular time, and would not at the particular time be, if the organization were a corporation, controlled directly or indirectly in any manner whatever

(i) by a person (other than Her Majesty in right of Canada or of a particular province, a municipality, another registered charity that is not a private foundation, and any club, society or associations described in paragraph 149(1)(1)),

1. who immediately after the particular time, has contributed to the organization amounts that are, in total, greater than 50% of the capital of the organization immediately after the particular time; and

2. who immediately after that person's last contribution at or before the particular time, had contributed to the organization amounts that were, in total, greater than 50% of the capital of the organization immediately after the making of that last contribution; or

(ii) by a person, or by a group of persons that do not deal at arm's length with each other, if the person or any member of the group does not deal at arm's length with a person described in (d)(i) above.

A "charitable foundation" is defined as a corporation or trust that is constituted and operated exclusively for charitable purposes, no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof, and that is not a charitable organization. There are two types of charitable foundations
for income tax purposes: public foundations and private foundations. In order to qualify as a "public foundation", the following additional requirements must be met:42

(a) more than 50% of the directors, trustees, officers or like officials of which deal at arm's length with each other and with:

(i) each of the other directors, trustees, officers or like officials of the foundation;

(ii) each person described in b(i) or (ii) below;

(iii) each member of a group of persons (other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(1)) who do not deal with each other at arm's length, if the group would, if it were a person, be a person described by (b)(i) below;

(b) that is not, at the particular time, and would not at the particular time be, if the foundation were a corporation, controlled directly or indirectly in any manner whatever

(i) by a person (other than Her Majesty in right of Canada or of a particular province, a municipality, another registered charity that is not a private foundation, and any club, society or associations described in paragraph 149(1)(1)),

(A) who immediately after the particular time, has contributed to the foundation amounts that are, in total, greater than 50% of the capital of the foundation immediately after the particular time; and

(B) who immediately after the person's last contribution at or before the particular time, had contributed to the foundation amounts that

42 Ibid.
were, in total, greater than 50% of the capital of the foundation immediately after the making of that last contribution; or

(ii) by a person, or by a group of persons that do not deal at arm's length with each other, if the person or any member of the group does not deal at arm's length with a person described in (b)(i) above.

A "private foundation" is defined under the Income Tax Act as a charitable foundation that is not a public foundation.

B. GOODS AND SERVICES TAX

GST under the GST Act may affect a non-profit organization or a registered charity in a number of different ways. First, most goods and services sold in Canada are subject to GST. The GST is a value added tax on the consumption of goods and services in Canada.\textsuperscript{43} It is designed to be paid by the ultimate consumer or purchaser and is collected by "registrants" at each stage in the production or marketing of goods and services. Registrants who have paid GST on inputs used in "commercial activities" are entitled to claim input tax credits ("ITCs"). In some cases, ITCs are not available to non-profit organizations or registered charities because inputs of these organizations are used to make "exempt supplies" as opposed to "taxable supplies". For policy reasons, the GST Act allows certain entities a rebate for the GST paid on inputs for which ITCs are not available. Without such rebates, these entities would be treated as end consumers for GST purposes with respect to inputs used to make exempt supplies.

In addition, in most cases where a non-profit organization or registered charity makes annual taxable supplies in excess of \$30,000\textsuperscript{44}, the entity will be required to become a GST registrant,\textsuperscript{\textcopyright\,2006-2007}
charge GST on its taxable supplies and collect and remit GST as an agent of the federal government.

1. **Supplies by the Non-Profit Sector**

The GST Act contains a series of definitions for various members of the non-profit sector:

1. **Public Sector Bodies** – defined as a government or a public service body;45

2. **Public Institution** - defined as a registered charity that is a school authority, a public college, a university, a hospital authority or a local authority determined to be a municipality for GST purposes;

3. **Public Service Body** – means a non-profit organization, a charity46, a municipality, a school authority, a hospital authority, a public college or a university.47

The general rule for supplies made by charities (other than charities that are public institutions) is that supplies of both real and personal property are exempt from GST, unless specifically enumerated under section 1 of Part V.1 of Schedule V. The general rule for supplies of personal property (not real property) or a service made by a public institution is that such supplies are exempt, unless specifically enumerated under section 2 of Part VI of Schedule V. Certain real property supplied by a public institution that qualifies as a public service body is exempt from GST under section 25 of Part VI of Schedule V. The general rule for supplies of property and services for public service bodies is that such supplies are taxable, unless specifically exempted under Part VI of Schedule V.

Supplies made by organizations in the non-profit sector may also be exempt as a result of other provisions in the GST Act. For example, "zero-rated" supplies include goods and services

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45 For the purposes of determining exempt supplies under Schedule V, Part VI of the GST Act, a charity is excluded from the definition of "public sector body".

46 A "charity" includes a registered charity for income tax purposes or a registered Canadian amateur athletic association, but does not include a public institution.

47 For the purposes of determining exempt supplies under Schedule V, Part VI of the GST Act, a charity is excluded from the definition of "public service body".
exported from Canada, basic groceries (other than restaurant meals, takeout foods, alcohol, snack foods and sweetened baked goods), certain financial services, prescription drugs and medical devices as well as several other types of goods. Other "exempt" supplies also benefit from no GST, including health care supplies, child care supplies, legal aid services, educational instruction, most domestic financial services and specified residential housing.

2. **Exempt Supplies made for Nominal Consideration or Nil Consideration**

Supplies by way of sale of tangible personal property or services by public sector bodies and charities are exempt if the price paid or payable is equal to the usual charge for such supplies to such recipients and does not, or could not reasonably be expected to equal or exceed the "direct cost" of the supply.48 In addition, a supply made by a public sector body or charity of any property or service where all, or substantially all, of the supplies of the property or service by the organization are made for no consideration, no GST applies even where a charge is made for the particular supply.49 Where either of these exemptions applies, ITCs otherwise permitted for inputs are effectively blocked.

3. **Rebates**

Selected public sector bodies are entitled to a rebate of a prescribed percentage of GST paid on purchases, provided such GST was not eligible for an ITC. The prescribed percentages are as follows:

1. Municipalities 100%
2. Universities and public colleges 67%
3. Schools 68%

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48 See section 6 of Part VI of Schedule V (for public sector bodies) and section 5.1 of Part V.1 of Schedule V (for charities). The phrase "direct cost" is defined to include the total consideration paid or payable (including PST) for an article or material (other than capital property of the supplier) that was purchased by the supplier, to the extent that the article or material is to be incorporated into or is to form a constituent or component part of the property, or is to be consumed or expended directly in the process of manufacturing, producing, processing or packaging the property.

49 See section 10 of Part VI of Schedule V (for public sector bodies) and section 5 of Part V.1 of Schedule V (for charities). eRA’s administrative view is that the all or substantially all means 90%.
4. Hospitals, as well as charities, public institutions and qualifying non-profit organizations providing similar health care supplies 83%

5. Charities and public institutions 50%

6. Qualifying non-profit organizations 50%

C. **PROVINCIAL SALES TAX**

The province of Saskatchewan levies provincial sales tax ("PST") under *The Provincial Sales Tax Act* at the rate of 7% on most tangible personal property and specifically enumerated taxable services. Where a non-profit organization or charity sells or leases tangible personal property or taxable services at a retail sale, the organization will be required to become a "licensed vendor" for PST purposes. A licensed vendor is required to collect and remit PST as agent of the province of Saskatchewan.

Some exemptions from PST that may be relevant to non-profit organizations and charities include: 52

1. artificial limbs and prosthetic appliances and equipment;

2. bibles, testaments, prayer books, missals and hymn books;

3. books, magazines and periodicals;

4. prescription drugs and medicines;

5. electricity purchased for use in public curling rinks, skating rinks and swimming pools that are not operated for profit;

6. equipment designed solely for the use of blind persons, physically handicapped persons or chronic invalids;

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50 Generally defined as non-profit organizations that receive 40% or more of their annual revenues from federal, provincial and/or municipal governments as determined in a prescribed manner.

51 R.S.S. 1978, c. P-34.1.

52 See subsection 8(1) of *The Provincial Sales Tax Act*
7. hearing aids;

8. certain medical devices and monitoring equipment;\textsuperscript{53}

9. optical appliances prescribed by an optometrist or physician; and

10. orthopaedic appliances.

\section*{D. PROPERTY TAX}

Real property tax is levied in Saskatchewan under section 235 of \textit{The Cities Act}\textsuperscript{54} for cities and section 265 of \textit{The Municipalities Act}\textsuperscript{55} for rural municipalities, towns, villages and resort villages. There are a number of exemptions from property tax that are relevant to non-profit organizations and charities, including colleges and universities, certain school divisions and independent schools, churches and cemeteries, public squares, parks and war memorials, public libraries, public hospitals and various charitable organizations and societies. These exemptions can be found in subsection 262(1) of \textit{The Cities Act}, subsection 292(1) of \textit{The Municipalities Act} and various other provincial legislation.

\footnote{\textsuperscript{53} See Saskatchewan Finance's \textit{Information Bulletin} PST-42, which provides a list of exempt and taxable medical equipment and supplies purchased by hospitals, nursing homes and institutions providing medical or palliative care.}

\footnote{\textsuperscript{54} S.S. 2002, c. C-11.1.}

\footnote{\textsuperscript{55} S.S. 2005, c. M-36.1.}

\textit{The Basics for Non-profit Organizations and Charities}
APPENDIX "A"
INCORPORATING DOCUMENTS FOR SASKATCHEWAN CORPORATIONS
WITHOUT SHARE CAPITAL
1. Name of Corporation:
   ABC Society Inc.

2. The municipality in which the registered office is to be situated:
   Saskatoon, Saskatchewan

3. Classes of membership:
   There shall be one class of membership in the corporation.

4. Right, if any, to transfer membership interest:
   No right to transfer membership interest.

5. Number (or minimum and maximum number) of directors:
   The minimum number of directors of the Corporation shall be three (3) and the maximum number of directors of the Corporation shall be ten (10).

6. The Corporation is a charitable corporation.

7. Restrictions, if any, on the activities the Corporation may carry on or the powers the Corporation may exercise:
   (If the Corporation is not intended to be a registered charity, the following language is suggested)
   None.
   (If the Corporation is to be a registered charity, restrictive wording must be included and it is suggested that Canada Revenue Agency pre-approve the wording prior to incorporation)

8. Persons to whom remaining property is to be distributed in the course of liquidation and dissolution of the Corporation:
   (If the Corporation is not intended to be a registered charity, the following language is suggested)
   The remaining property shall be transferred to one or more entities set out in subsection 209(5) of The Non-Profit Corporations Act, 1995 (Saskatchewan).
   (If the Corporation is to be a registered charity, the following language is suggested)
   The remaining property shall be transferred to one or more "eligible donees" described in subsection 188(1.3) of the Income Tax Act (Canada), provided that each such entity is set out in subsection 209(5) of The Non-Profit Corporations Act, 1995 (Saskatchewan).

Note: this section will be removed with the proclamation of The Non-profit Corporations Amendment Act, 2005.
Other provisions, if any:

None.

9. Incorporators:

<table>
<thead>
<tr>
<th>Date</th>
<th>Name</th>
<th>Address</th>
<th>Signature</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 8, 2006</td>
<td>Crystal Lynn Taylor</td>
<td>1500, 410 - 22nd Street East Saskatoon, SK S7K 5T6</td>
<td></td>
</tr>
</tbody>
</table>
PROVINCE OF SASKATCHEWAN
THE NON-PROFIT CORPORATIONS ACT, 1995

NOTICE OF REGISTERED OFFICE
(Subsections 19(2) and (4))

Form 3

Corporation No. _

1. Name of corporation:
   ABC Society Inc.

2. Name of municipality in which registered office is situated:
   Saskatoon, Saskatchewan

3. Location of registered office:
   1500, 410 - 22nd Street East
   Saskatoon, SK  S7K 5T6

4. Mailing address or registered office:
   1500, 410 - 22nd Street East
   Saskatoon, SK  S7K 5T6

5. Effective Date:
   Date of Incorporation

<table>
<thead>
<tr>
<th>Date</th>
<th>Name</th>
<th>Office Held</th>
<th>Signature</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 8, 2006</td>
<td>Crystal Lynn Taylor</td>
<td>Incorporator</td>
<td></td>
</tr>
</tbody>
</table>
PROVINCE OF SASKATCHEWAN
THE NON-PROFIT CORPORATIONS ACT, 1995
NOTICE OF DIRECTORS
Form 6

Corporation No. _

1. Name of Corporation
   ABC Society Inc.

2. On the day of the following person(s) ceased to be directors of the corporation:

   Full Name          Address          Occupation          Resident Canadian
   N/A

3. On the date of incorporation, the following person(s) became directors of the corporation:

   Full Name          Address          Occupation          Resident Canadian
   Ms. Smith          123 Professional Blvd. Saskatoon, SK S7K 0X0 Lawyer Yes
   Mr. Jones          222 Wealthy Way Saskatoon, SK S7N IXI Retired Yes
   Mr. Stewart        343 Charity Road Saskatoon, SK S7K 2X3 Teacher Yes

4. The directors of the corporation are:

   Full Name          Address          Occupation          Resident Canadian
   Ms. Smith          123 Professional Blvd. Saskatoon, SK S7K 0X0 Lawyer Yes
   Mr. Jones          222 Wealthy Way Saskatoon, SK S7N IXI Retired Yes
   Mr. Stewart        343 Charity Road Saskatoon, SK S7K 2X3 Teacher Yes

Date            Name                Office Held          Signature
June 8, 2006    Crystal Lynn Taylor Incorporator
APPENDIX "B"
INCORPORATING DOCUMENTS FOR FEDERAL CORPORATIONS
WITHOUT SHARE CAPITAL
APPLICATION FOR INCORPORATION OF A CORPORATION WITHOUT SHARE CAPITAL UNDER PART II OF THE CANADA CORPORATIONS ACT

To the Minister of Industry:

I

The undersigned hereby apply to the Minister of Industry for the grant of a charter by letters patent under the provisions of Part II of the Canada Corporations Act constituting the undersigned, and such others as may become members of the Corporation thereby created, a body corporate and politic under the name of

ABC SOCIETY INC.

The undersigned have satisfied themselves and are assured that the proposed name under which incorporation is sought is not the same or similar to the name under which any other company, society, association or firm, in existence is carrying on business in Canada or is incorporated under the laws of Canada or any province thereof or so nearly resembles the same as to be calculated to deceive and that it is not a name which is otherwise on public grounds objectionable.

II

The applicants are individuals of the full age of eighteen years with power under law to contract. The name, the address and the occupation of each of the applicants are as follows:

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Occupation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ms. Smith</td>
<td>123 Professional Blvd. Saskatoon, Saskatchewan</td>
<td>Lawyer</td>
</tr>
<tr>
<td></td>
<td>S7K0XO</td>
<td></td>
</tr>
<tr>
<td>Mr. Jones</td>
<td>222 Wealthy Way Saskatoon, Saskatchewan S7N 1X1</td>
<td>Retired</td>
</tr>
<tr>
<td>Mr. Stewart</td>
<td>343 Charity Road Saskatoon, Saskatchewan S7K2X3</td>
<td>Teacher</td>
</tr>
</tbody>
</table>

The applicants listed above and additional persons who have consented to being directors as set out in the attached Schedule A will be the first directors of the Corporation.

III

The objects of the Corporation are:
(The objects should be set forth in the infinitive form, in general terms and be as brief as possible; they should also be compatible with the type of business implied by any descriptive word which may form part of the corporate name.)

(If the Corporation is to be a charity registered with Canada Revenue Agency, it is suggested that you have Canada Revenue Agency approve the objects.)

IV

The operations of the Corporation may be carried on throughout Canada and elsewhere.

V

The place within Canada where the head office of the Corporation is to be situated is Saskatoon, Saskatchewan.

VI

The by-laws of the Corporation shall be those filed with the application for letters patent until repealed, amended altered or added to.

VII (optional)

(The following clause is recommended if the Corporation is to be registered as a charity with Canada Revenue Agency)

It is specifically provided that in the event of dissolution or winding-up of the Corporation, all its remaining assets after payment of its liabilities shall be distributed to one or more "eligible donees" described in subsection 188(1.3) of the Income Tax Act (Canada).

(If the Corporation is charitable in nature but is not intended to be registered as a charity with Canada Revenue Agency, the following wording is recommended)

It is specifically provided that in the event of dissolution or winding-up of the Corporation, all its remaining assets after payment of its liabilities shall be distributed to one or more organizations in Canada carrying on similar activities.

(If the Corporation is intended to be a membership Corporation, you may wish to specify one of the following)

It is specifically provided that in the event of liquidation or winding-up of the Corporation, all its remaining assets after payment of its liabilities shall be distributed rateably amongst the members.

It is specifically provided that in the event of liquidation or winding-up of the Corporation, all its remaining assets after payment of its liabilities shall be distributed to
In accordance with section 65 if the *Canada Corporations Act*, it is provided that, when authorized by by-law, duly passed by the directors, and sanctioned by at least two-thirds of the votes cast at a special general meeting of the members duly called for considering the by-law, the directors of the Corporation may, from time to time

a. borrow money upon the credit of the Corporation;

b. limit or increase the amount to be borrowed;

c. issue or cause to be issued bonds, debentures or other securities of the Corporation and pledge or sell the same for such sums, upon which terms, covenants and conditions and at such prices as may be deemed expedient;

d. secure any bond, debentures or other securities, or any other present or future borrowing or liability of the Corporation, by mortgage, hypothec, charge or pledge of all or any currently owned or subsequently acquired real and personal, movable or immovable, property of the Corporation, and the undertaking and rights of the Corporation.

Any such by-law may provide for the delegation of such powers by the directors to such officers or directors of the Corporation to such extent and in such manner as may be set out in the by-law.

Nothing herein limits or restricts the borrowing of money by the Corporation on bills of exchange or promissory notes made, drawn, accepted or endorsed by or on behalf of the Corporation.

IV

The Corporation is to carry on its operations without pecuniary gain to its members and any profits or other accretions to the Corporation are to be used in promoting its objects.

Dated at the City of Saskatoon, in the Province of Saskatchewan, this 8\textsuperscript{th} day of June, 2006.

\[\begin{align*}
\text{MS. SMITH} \\
\text{MR. JONES} \\
\text{MR. STEWART}
\end{align*}\]
# SCHEDULE A

## FIRST DIRECTORS

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Occupation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ms. Smith</td>
<td>123 Professional Blvd. Saskatoon, Saskatchewan S7KOX0</td>
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<td>Mr. Stewart</td>
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<td>Teacher</td>
</tr>
</tbody>
</table>
CANADA
PROVINCE OF SASKATCHEWAN
CITY OF SASKATOON

IN THE MATTER OF THE CANADA CORPORATIONS ACT REGARDING THE APPLICATION FOR INCORPORATION UNDER PART II IN THE NAME OF ABC SOCIETY INC.

AFFIDAVIT:

I, Ms. Smith, of the City of Saskatoon, in the Province of Saskatchewan, make oath and say as follows:

1. I am one of the applicants herein.

2. I have knowledge of the matter, and that the statements contained in the annexed application are, to the best of my knowledge and belief, true in substance and in fact.

3. I am informed and believe that each applicant signing the said application is of the full age of eighteen years and has power under law to contract and that his or her name and description have been accurately set out in the preamble thereto.

4. The proposed corporate name of the company is not on any public grounds objectionable and that it is not that of any known company, incorporated or unincorporated, or of any partnership or individual, or any name under which any known business is being carried on, or so nearly resembling the same as to deceive.

5. I have satisfied myself and am assured that no public or private interest will be prejudicially affected by the incorporation of the corporation aforesaid.

SWORN BEFORE ME at the City of Saskatoon, in the Province of Saskatchewan this 8th day of June, 2006

______________________________
A Commissioner for Oaths in and for the Province of Saskatchewan
My Commission expires
or Being a Solicitor

MS. SMITH
June 8, 2006

Corporations Canada
Industry Canada
9th Floor, Jean Edmonds Tower South
365 Laurier Avenue West
Ottawa, ON K1A OC8

Dear Sir/Madam:

Re: ABC Society Inc.
Our File: 12345.1

Enclosed herewith are:

1. Application for Incorporation in the name of ABC Society Inc., in duplicate;

2. Affidavit of Ms. Smith sworn before a Commissioner for Oaths in and for the Province of Saskatchewan, in duplicate;

3. Draft By-laws:
   (i) Customized (not previously reviewed), with checklist duly completed;

4. NUANS name search report not more than 90 days old;

5. Cheque for $200.00 payable to the Receiver General for Canada.

The street address of the Head Office is:

1500, 410 – 22nd Street East
Saskatoon, Saskatchewan S7K 5T6

Please return Letters Patent to the undersigned when issued by regular mail.

Yours truly,
APPENDIX "C"

INDUSTRY CANADA NOT-FOR-PROFIT CHECKLIST

Check each provision that is in or attached to the application or otherwise true.

Notes: References in brackets apply to the Policy Statement issued August 22, 2000, concerning Not-for-profit Incorporation which amended the Policy Statement dated April 6, 1998. (See Not-for-profit Policy Summary)

Items in bold are mandatory provisions that must be included in Application or By-laws.

Table of Contents

1. Fees
2. Application for Incorporations
3. By-Laws
4. Application for Supplementary Letters Patent
5. Application for Ministerial Approval of By-Law Amendments

An "X" on this checklist when returned to the client indicates deficiencies

1. Fees (made payable to the Receiver General for Canada)
   _____ Incorporation – Letters Patent - $200
   _____ Supplementary Letters Patent - $50
   _____ Name Search (if done by Corporations Canada - $15 per search, bilingual names require 2 searches)

2. Application for Incorporation (see 1. Applying for Incorporation: Not-for-profit)
   a. Application Document
      _____ 2 copies required to be filed
      _____ Request to the Minister of Industry for the issue of Letters Patent
      _____ Name cited and stated to be not confusing
      _____ Applicants are individuals (see 3 - Application)
         i. minimum of three
         ii. _____ 18 years minimum & power under law to contract
         111. _____ names, addresses, occupation (not position held in the proposed corporation)
         111. _____ a statement that a minimum of three applicants are first directors (see 4 - Application)
v. any first director who is not applicant has consented (see 4 - Application)

Purposes: general (i.e. not a repetition of Section 16 powers), compatible with name (see 5 - Application)

Note: If purposes are repeated in by-laws, they must be identical to what appears here.

Statement that the corporation may carry on business throughout Canada and elsewhere.

Head Office
- place (in application)
- full address (in covering letter)

Statement re: by-laws being filed with application

Statement re: no pecuniary gain to members (see 9 - Application)

Dissolution Clause (optional, but recommended - see "Note" after item 11)

Borrowing powers (optional, see Section 65 of the Act)
- subject to 2/3 of members' approval
- delegation of these powers to directors or officers only

Signature:
- each applicant
- place and date

b. Affidavit or Statutory Declaration of an Applicant (see lb. Affidavit - Application for Incorporation: Not-for-Profit)

1 copy required

States that contents of the application are true

Signed by 1 applicant

Sworn (declared) before a commissioner for taking oaths (eg. lawyer, notary public, Member of Parliament)

Dated and signed after the signing of the application for incorporation as noted above.

c. Name Search

1 copy required

Canada Report, all 5 pages. Dated: (less than 90 days old when filed)

Consent submitted/required
Undertaking submitted/required

Name not confusing or otherwise unavailable


Note: when completing this part insert by-law reference (section/article/number)

I copy only required to be filed

a. Conditions of Membership (see A - By-laws)

who can be a member

how a member is accepted into membership (must be voluntary)

if more than I class of membership: rights + conditions attaching to each class, including voting rights

whether + how members may withdraw

b. Members’ Meeting (see B – By-laws)

time and place of annual meeting

method of giving notice of annual or special meeting

reasonable period of notice

notice of special business must contain enough information to allow the member to make a reasoned decision

quorum is a fixed number (minimum 2) ("members present will constitute a quorum" or "at least X members will constitute a quorum" are not acceptable)

number or proportion of voting members who have right to requisition a special meeting

• directors shall call the meeting

if unequal voting rights, number of votes for each class of members

if meetings by teleconference

• % of members for approval of holding such a meeting

if meetings by other electronic means

• must permit all members participating in the meeting to communicate adequately with each other

• each member consents in advance to method of communication and has equal access

• % of members for approval of holding such a meeting
• procedures for establishing quorum and recording votes
• how security issues will be handled

___ if decision by consensus
• qualify by "unless the Act provides otherwise"
• "consensus" is defined
• means of referring to vote if consensus not reached

___ if proxy right given:
• who can be a proxy holder
  proxy must be in writing
  a form of proxy or a reminder of proxy right to be attached to notice of meeting

___ if majority vote, must be qualified by "unless the Act or these by-laws otherwise provide"

___ if delegate to vote on behalf of subdivision of members
• how delegate is selected

___ if delegate of members is also representative on board of directors,
• delegate can not vote on requisitioned vote
• members have right to attend all meetings

_____ voting by mail ballot for a certain purpose is acceptable unless the Act requires a meeting for that purpose
• specify quorum and voting requirements

_____ written resolutions to approve a certain type of matter is acceptable unless the Act requires a meeting to approve that type of matter.
• specify quorum and voting requirements

c. Directors (see C - By-laws)

_____ reference to board of directors which will manage the corporation
• how elected or appointed

_____ if not a fixed number (3 or more), a minimum of 3
• how number of directors is to be established
• how number of directors is to be changed

_____ if number of directors is not the same as in Application, must include statement referring to first directors in Application and when their term will end
• how number of directors is to be established
• how number of directors is to be changed
  ____ term
  ____ removal by members
  ____ where appointed or elected by group, may be removable only by same group
  ____ remuneration
  ____ alternate directors not acceptable

d. Directors' Meeting (see D - By-laws)
  ____ time and place
  ____ reasonable notice
  ____ quorum, fixed or percentage (minimum of 2 directors)
  ____ voting rights (must be equal)
  ____ if meetings by teleconference
    • ____ % of directors for approval of holding such a meeting
  ____ if meetings by other electronic means
    • ____ must permit all directors participating in the meeting to communicate adequately with each other
    • ____ each director consents in advance to method of communication and has equal access
    • ____ procedures for establishing quorum and recording votes
    • ____ how security issues will be handled
  ____ if decision by consensus
    • ____ qualified by "unless the Act provides otherwise"
    • ____ "consensus" is defined
    • ____ means of referring to vote if consensus not reached
  ____ mail ballot not acceptable except for detailed ballot replacing a director at a meeting
    • ____ motion at meeting is identical to mail ballot
    • ____ documentation/background material available in advance
    • ____ mail ballot cannot replace director for quorum purposes
    • ____ when and who must receive ballot (optional)
    • ____ explain how director attending by ballot will comply with s. 98(4) re conflict of interest
  ____ proxy voting not acceptable
  ____ written resolutions in lieu of meetings not acceptable
e. Officers (see E - By-laws)

____ how appointed or elected

____ specify term if officer is elected and not an employee of corporation

___ removal from office

___ basic duties and responsibilities of each officer specified

___ remuneration

___ custody of the corporate seal

f. Committees (if applicable)

Executive

• ___ appointment

• ___ removal

• ___ duties

• ___ remuneration

Standing

• ___ appointment

• ___ removal

• ___ duties

• ___ remuneration

Other

• ___ appointment

• ___ removal

• ___ duties

• ___ remuneration

Executive Committee Meetings (if applicable) (see G - By-laws)

• ___ when and where

• ___ reasonable notice

• ___ quorum (fixed & min. of 2)

g. Execution of documents (see H - By-laws)

• who can sign on behalf of the corporation

h. Amendments of by-laws (see I - By-laws)

___ mode of repealing or amending by-laws

___ members approval required before Ministerial approval

___ Ministerial approval required before amendments enforced or acted upon
i. Auditor (see J - By-laws)
   ______appointed by members at each annual meeting
   ______to audit financial statements for report to members at annual meeting
   ______may not be director, officer or employee of the corporation without consent of all members

j. Not-for-profit corporations with more than one level in their structure (see 7. Corporations Canada Model By-Law: Not-far-Profit)

   i. Membership

      Levels at which members are found:
      • ______the individual/corporate member, or
      • ______the regional association or
      • ______different classes of membership for different levels
      • ______rights & conditions attaching to each class specified
      • ______how each type of member is admitted to membership

   11. Directors
      • ______how directors are appointed or elected to office
      • ______removal of directors by all voting members or a subdivision of voting members
      • ______how meeting may be requisition by voting members for purpose of removal of directors
         ______no voting through delegates

   iii. Members' Meetings
      • ______notice of members' meeting to go to actual voting members (not delegates, nor regional associations, nor chapters)
      • ______where members' delegates to members' meeting is also representative on board of directors of the corporation:
         ______actual voting members and not delegates vote on removal of directors
         ______actual voting members have right to attend all members' meeting, even though their votes are exercised through delegates
      • ______how the right to vote is exercised
      • ______control by the corporation over its chapters


   a. ______By-Law authorizing application effecting (2 copies):
• Change of name
• Other (not more than 6 months old, see subsection 20(3) of the Act)

b. Application document stating date of passage of the by-law by the members (1 copy)
c. Statutory Declaration (1 copy)
d. Name Search, if applicable (1 copy)

5. Application for ministerial approval of by-law amendments (see 2a. Sample letter requesting Ministerial Approval of by-laws amendments)

a. Letter requesting Ministerial approval, stating date of sanction by voting members (see 2a. Sample letter requesting Ministerial Approval of by-laws amendments)
b. Specific changes described (1 copy), or
   Complete consolidation being filed containing some amendments (1 copy) or
   Submitting a totally new set of by-laws (1 copy).

Refer to items under C above
c. Changes to name, purpose or any other provision of Letters Patent are not acceptable without SLP Application
d. By-law is within nature of things listed under 155(2) of the Act (corporate governance)