

## **The Quick And Dirty Guide To Getting Your Organization Incorporated as a Non Profit Society**

**– or –**

## **How I Learned To Stop Worrying And Love Prefabricated Legal Documents**

**By Jonathan Middleton**

There comes a moment in many artistic collaborations when the individuals involved think seriously about incorporating as a non-profit organization. Obviously, in many situations this is not necessary: ad hoc groups are still able to garner a certain amount of grant support, and carry with them a flexibility that suits many artist projects. For longer term projects, however, *incorporating brings a level of legitimacy that gives you better access to funding and allows you to separate your organization's finances from your personal finances*, to name a couple of key benefits.

A common misperception about incorporation, and consequently a typical hurdle or deterrent, is that the process is unduly complicated or that you'll require a lot of money to hire a lawyer to draft the necessary legal documents (bylaws, objects, and so on). This is really not the case. Sorry, but let me be perfectly clear: *You do not have to hire a lawyer*. It's true that you'll have a few forms to fill out, and that there is a small amount of money required for filing fees, but the process is far from onerous. And hey – just think of it as practice for all those grants you're going to write.

### Types of non-profit incorporation

First of all you should know that non-profit organizations can be incorporated under either provincial or federal law. The process is reasonably similar, but there are slight variances between the two levels of government, as there is between different provincial governments in Canada. Typically, any organization that sees the bulk of its activities within one province incorporates at the provincial level, and you'll find that 99% of your fellow arts orgs are incorporated this way, so for simplicity I'm going to focus on incorporation under Ontario law. Most of what I am sharing can be adapted for other provinces or Federal incorporation with just a small amount of additional research.

### So where to start?

Fill out an *Application for Incorporation of a Corporation without Share Capital*, which falls under the jurisdiction of the Corporations Act (not

to be confused with the Business Corporations Act which deals with for-profit companies). The filing fee for said forms is \$155 or \$255 if you need to rush them. My advice is to call up the Ministry of Government Services (Consumer and Business Services) at 416-314-8880 or 1-800-361-3223 and have them mail them to you, which they are happy to do for free. They will send everything in a package with very clear instructions. If you're in a rush, the forms are conveniently available online at <http://www.cbs.gov.on.ca/mcbs/english/5GFN7G.htm>.

### NUANS means Name Search

Technically, NUANS stands for *Newly Upgraded Automated Name Search*, which is just a fancy way of saying "name search". You need one of these to prove to the government that no one is already using the name you want. These are conducted by private companies, which you can either find in your Yellow Pages listed under *Searchers of Records* or on the Internet by searching *NUANS Ontario*; prices vary somewhat (a recent search found fees ranging from \$22 to \$39.95) so you may want to shop around. You'll also want to be sure you get an *Ontario-biased NUANS*, as you'll need to incorporate. The good thing is that a NUANS can take as little as an hour or two to receive. However, they do expire. So be sure to incorporate your organization within 90 days of receiving your NUANS result or you may have to get another.

### Objects and Bylaws

Ok, this is where many people worry that they need to hire a lawyer. I'll qualify what I said earlier by saying that you generally don't need to. That is, if you're happy to use some fairly generic version of these documents, there are pre-written versions of objects and bylaws you can adopt for free. *Objects are basically your constitution or basic goals of your organization*, using the prefab version will also save you the cost (\$150) of having the Office of the Public Guardian and Trustee examine your Objects should you be applying as a charitable organization (and lets presume you are). By using the "pre-approved" Objects, you save the fee, and any potential legal cost of drafting the documents.

The pre-approved charitable objects for arts organizations are:

- a) To educate and increase the public's understanding and appreciation of the arts by providing performances of an artistic nature in public places, senior citizens homes, churches, community centres and educational institutions and by providing seminars relating to such performances.

- b) To provide instructional seminars on topics related to the performing and visual arts.
- c) To produce performing arts festivals for the purposes of educating and advancing the public's understanding and appreciation of performing arts and to educate artists through participation in such festivals and related workshops.

### Bylaws

Unlike the Federal government and other provincial governments, Ontario considers an organization's bylaws to be an internal document, and does not require you to send them with your application. However, as *bylaws act as the rules by which your organization will run*, you need to have them documented in some form. Again, rather than pay to have a lawyer draft these, there are a number of ways you can find some to use and/or adapt for your needs. Conveniently, governments that do require bylaws to be submitted generally provide a default set that is suited to most organizations. In British Columbia, for example, these are referred to as *Schedule B of the Society Act*, and can be found at : [http://www.qp.gov.bc.ca/statreg/stat/S/96433\\_01.htm#ScheduleB](http://www.qp.gov.bc.ca/statreg/stat/S/96433_01.htm#ScheduleB). You will of course need to edit the template to remove BC references and tailor to your own needs, but the forms should provide a basic framework. Another good option is to ask another arts organization to have a look at their bylaws as an example.

At this point, you should be well on your way to getting your organization incorporated. If you would like further reading on the subject, a *Not-For-Profit Incorporator's Handbook* is available from the Ontario government bookstore:

Bookstore (Walk in service)  
Main Floor, 880 Bay Street  
Toronto ON M7A 1N8

Publications Ontario (Mail Order)  
50 Grosvenor Street  
Toronto ON M7A 1N8

You can also order the publication by phone at 416-326-5300 or 1-800-668-9938 or by visiting <http://www.publications.gov.on.ca>.

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