

SOCIETY GUIDE FOR BRITISH COLUMBIA

Written for
COMMUNITY LEGAL ASSISTANCE SOCIETY

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WARNING AND WAIVER

This guide is produced for educational purposes. Users of the guide should not rely on the guide for legal advice or as a substitute for legal advice

This is a general guide and cannot contemplate all eventualities. We recommend use of this guide in conjunction with legal advice.

The law, including Acts, Regulations, Registry Procedure and Court Precedents can change without warning. The users of this guide should check with a lawyer to ensure that the information in this guide is up to date.

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ONLINE RESOURCES

The Central Registry in Victoria handles the incorporations of societies. The Central Registry has a website that contains important information, including::

1. The name reservation process; and
2. The completion and filing of various forms and documents, including Annual Reports (these forms change from time).

You should consult the website of the Central Registry. At the present time it is located at:

<http://www.bcregistryservices.gov.bc.ca/>

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I. INTRODUCTION

A. Purpose of this Guide

This Guide provides a step-by-step outline of the procedure for incorporating a Society in British Columbia. It will also tell you:

- 1) what you must do each year after your Society incorporates to keep it in good standing;
- 2) how to establish and maintain your Society's financial records; and
- 3) how to apply for and maintain the status of a registered charity with the Canada Customs and Revenue Agency.

Although this Guide might be useful for all types of Societies, it was written for small non-profit Societies that provide benefits and/or services to its members or the public with a limited budget.

This Guide contains neither a copy of the *Society Act* of British Columbia nor its corresponding Regulations. Copies of the Society Act and Regulations are available on the internet. You can use a search engine and put in the words "Statutes of British Columbia".

Your group should not rely solely upon this Guide for information; **you should get legal assistance before attempting to incorporate a Society**. You should also refer to the Corporate Registry web site which contains useful information.

B. What is special about an Incorporated Organization?

A legally incorporated organization is a separate legal entity, just like a real person. The Society's existence does not depend on any one person remaining alive. Rather, the organization will "live" as long as it continues to meet the requirements set out by the provincial government. Consequently, an incorporated organization may enter contracts and/or sue other entities in its own corporate name.

C. First Things First: Should Your Group Incorporate?

To decide whether your group should incorporate ask yourself whether its intended activities require "corporate status" or whether it can remain as an "unincorporated organization"? If your group answers "yes" to most of the following questions, it should seriously consider "incorporating".

- 1) Will your organization own or deal in real property (i.e. land)?

If so, your group should either incorporate as a Society OR appoint a Trustee to hold property for your organization.

- 2) Will your organization enter into contracts as a regular part of its activities (e.g. buy and sell things, hire employees, lease premises, etc.)?

If so, your group should incorporate so that the person(s) entering contracts on your organization's behalf will not be held personally liable for them.

- 3) Does your organization expect to raise funds or receive any gifts?

If so, your group should incorporate because a Society may receive gifts in many situations in which an unincorporated organization cannot (e.g. under a will).

- 4) Will the Officers or members of your organization incur debts on behalf of the organization?

If so, your group should incorporate because doing so will, in most circumstances, shield the members and Officers of your Society from being held personally liable for its debts.

- 5) Does your organization plan to ask for donations from individuals or corporations to finance its work?

If so, your group will gain credibility by acting as an incorporated Society. Further, your incorporated group will be in a much better position to receive grants from the government and/or private charities. Finally, incorporated Societies may apply to the Canada Customs and Revenue Agency for charitable status which will allow your group to provide donors with tax-deductible receipts.

D. What Kinds of "Corporate" Structures are Available in British Columbia?

There are four methods of incorporation in British Columbia (aside from becoming incorporated under a special act of the Legislature or Parliament). These methods of incorporation are:

- 1) as a Society under the *Society Act*;
- 2) as a co-op under the *Cooperative Association Act*;
- 3) as a Provincial company under the *Business Corporation Act* or as a Federal company under Part I of the *Canada Corporations Act*; and
- 4) as a Federal Society under Part 11 of the *Canada Corporations Act*.

Each kind of incorporated organization will generally have its own purposes. N.B. A **Society** is usually incorporated by a group of people who wish to assist others or engage in non-profit group activities. In other words, its activities are directed outward and are not aimed at making money for its members. A Society that is only incorporated in British Columbia must limit its activities to this province.

A **cooperative association's** activities, on the other hand, are directed inward. It provides goods and/or services to its members/shareholders rather than to the public at large. N.B. A company's activities are usually directed outward as it provides goods or services to the public. Rather than keeping its profits, however, a company passes them on to its shareholders.

A **federal non-profit corporation's** purpose is very similar to that of a Society incorporated under British Columbia's *Society Act*. This type of organization, however, normally intends to be national in its scope and operation. Groups interested in this form of organization should note that it is much more expensive to incorporate under the *Canada Corporations Act* Part 2 than under British Columbia's *Society Act*. Additionally, the federal *Act* has more extensive reporting requirements which add to the cost of maintaining a federal Society. The Federal government has set up a web site with the necessary documents to incorporate a federal society. The link is:

http://corporationscanada.ic.gc.ca/epic/internet/incd-dgc.nsf/en/h_cs02147e.html

Reporting and Non-Reporting Societies

Although this Guide focuses on the legal requirements for non-reporting Societies, it will also outline the different requirements for reporting Societies. An organization can become a reporting Society by:

1. stating so in the society's bylaws;
2. ordinary resolution filed with the Registrar of Companies;
3. The purpose of carrying on a business trade industry profession for profit or gain.
4. an organization may become a reporting society by declaring so in it's bylaws and filing it with the Registrar of Companies;
5. Carrying on insurance businesses to find the *Financial Institution Act*;
6. Being a society requiring consent under Section 2 of the *Society Act* or Section 20(d) of the *Society Act*. This includes hospitals, and organizations.
7. Is ordered to be a reporting society;
8. Is a holding corporation for the purposes of the *Business Incorporation Act*.

A non-reporting society by definition is any society that is not a reporting society. However, even if you are a non-reporting society you still have to file Annual Reports with Corporate Registry.

Extra-Provincial Societies

An extra-provincial Society is one which is not incorporated in British Columbia but which carries on any operations within the province. Extra-provincial Societies should refer to sections 75-82 of the *Society Act* for information on the legal requirements which they must meet.

This Guide only discusses incorporation under the *Society Act* in British Columbia. For a list of sources that discuss incorporation in other provinces or by using another corporate structure please refer to Appendix "B".

II. STEP BY STEP PROCEDURE FOR INCORPORATING A SOCIETY

A. Overview

The Corporate Registry in Victoria, British Columbia is the government agency responsible for incorporating both companies and Societies in British Columbia. The following "checklist" outlines the steps that your group must follow to incorporate as a Society:

- 1) Reserve a name for your Society with the Corporate Registry.
- 2) Decide on the purposes of your Society.
- 3) Decide on the contents of your Constitution.
- 4) Decide on the contents of your by-laws.
- 5) Make copies of both your Constitution and by-laws.
- 6) Have five (5) or more members of your organization sign all copies of your Constitution and by-laws. If your Society plans to represent the interest of an occupation or profession, you will need fifty (50) members to incorporate and you will need to follow the provisions of sections 86 and 87 of the *Society Act*.
- 7) Prepare copies of the "Notice of Address" form for your Society.
- 8) Prepare copies of the "List of First Directors" form for your Society.
- 9) Send the Corporate Registry the following:
 - a) two (2) properly signed and witnessed copies of your Constitution and by-laws;
 - b) one (1) copy of the "Notice of Address" form of your Society;
 - c) one (1) copy of the "List of First Directors" form of your Society; and
 - d) a certified cheque or money order for \$100.00 payable to the Minister of Finance.

B. Step By Step

STEP ONE: Reserve a Name for Your Society.

The Corporate Registry will not process your group's incorporation documents until its proposed name has been approved and reserved. To search for and reserve your Society's desired name, you (or your group) must simply complete a standard form (see Appendix "C") and send a \$30 fee to the Corporate Registry in Victoria. Your request may include up to three names for your Society, in

order of preference. While the Corporate Registry will not reserve names over the phone, you may request that they send their approval to you by fax rather than by mail.

Methods of Applying for Your Society's Name

You can apply for your Society's name in the following ways:

1. **By Mail:** Submit your Name Approval Request form with the required fee by cheque or money order payable to the Minister of Finance.
2. **By Government Agent:** Visit your local Government Agent's office. Upon payment of the prescribed fee, they can provide you with the Name Approval Request form and will submit your request to the Name Reservation Unit for examination, at the Registries.
3. **By BC Online:** If you have a BC Online account you can submit your request electronically.

NOTE: Once approved, your Society's name will only be reserved for fifty-six (56) days. If you do not submit your incorporation documents within these 56 days, you must begin this process again.

Deciding On a Name

The Corporate Registry issue a pamphlet called "Guidelines Used by the Corporate Registry in the Approval of Names for the Incorporation of British Columbia Companies and Registration of Extra-Provincial Companies". Your group should read this document before submitting your Society's desired name because the Corporate Registry will not incorporate your Society if its proposed name is unacceptable. There is more information about acceptable names on the web site of the Corporate and Personal Property Registries. That web site is as follows:

<http://www.fin.gov.bc.ca/registries/corppg/forms/reg46.pdf>

You may obtain a copy of this pamphlet either from (1) the Corporate Registry, (2) a provincial Government Agent's office, (3) at their internet site or (4) within the legal publication *CCH British Columbia Corporations Law Guide* (at pps. 731-3 to 731-8) which is available at all law libraries in the Province.

The general rules are as follows:

1. The name of your Society must not be identical or similar to that of an existing Society so as to mislead or confuse.
2. The name of your Society should include a description of its purpose (e.g. a food bank for West Vancouver might call itself the "West Vancouver Food Bank Society").
3. The word "Society", "Association" or "Club" must be included in your Society's name. If you want to include the words "Social Club" you must acquire approval from the Minister of Finance in Victoria.
4. Using the words "British Columbia" or "B.C." in your Society's name might create the impression that it is affiliated with the government. Thus, to use these words, your group must meet two requirements. First, you must apply to the Provincial Secretary of the Province for permission to use the words "British Columbia" or "B.C.". Secondly, you must prove that your group represents a majority of persons involved in the activity.

If you want to call yourself, for example, the "Dog Breeders Society of British Columbia", or ("B.C.") or the "British Columbia (or "B.C.") Dog Breeders Society", you must prove that your Society, at the time of application for incorporation, represents at least 60% of dog breeders in the province. Further, you must establish that your Society represents dog breeders in all areas of Province (e.g. the 60% you represent could not all be from the City of Vancouver).

If your group wishes to call itself "Vancouver Dog Breeders Society of B.C.", however, you would not have to meet the requirements outlined above because the Corporate Registry considers "B.C." in this context to mean only that your Society is located in British Columbia.

You can now see why you want to get your Society's proposed name approved before you send your incorporation documents to Victoria.

5. If your Society wants to use the words "City" or "Municipality" in its name (e.g. "City of Vancouver Dog Breeders Society") you must first get the City or Municipal council's approval.

If you omit the word "City" or "Municipality" from your Society's name (e.g. "Vancouver Dog Breeders Society") no such approval is required because "Vancouver" simply designates the locale of your Society.

6. Any terms implying government authority such as "Board", "Council", "Bureau", and "Service" will also require the appropriate approvals.
7. If your Society wishes to incorporate as a branch of an existing Society, you must include both the word "Branch" and your geographic location in its name (e.g. "B.C. Dog Breeders Association - Vancouver Branch").

Preferably, your group should select at least two potential names for your Society in case the Corporate Registry rejects your first choice.

STEP TWO: Decide on the Purposes of Your Society.

Purposes of Your Society

The *Society Act* provides that a Society may be incorporated to promote any purpose of a "national, patriotic, religious, philanthropic, charitable, provident, scientific, fraternal, benevolent, artistic, educational, social, professional, agricultural, sporting, or other useful purpose". These categories are very general and your Society will probably want to be much more specific in outlining its purposes.

In some cases, a Society may require special permission to incorporate for a specific purpose. The ownership, management and operation of a "Hospital" require the prior consent of the Minister of Health. For more information, please refer to section 2 of the *Society Act*.

The Business of Your Society

Your Society cannot incorporate for the main purpose of carrying on a "business, trade, industry or profession". However, your Society can carry on some form of business if it is "incidental" to your Society's purposes and provided that it is not for "profit or gain". In short, you can operate a business to finance the main purposes of your Society.

Any profit, gain or dividend generated by your Society cannot be distributed to any of its members. However, your Society can hire employees (who may or may not be members of your Society) to operate a business designed to produce revenue to allow your Society to carry out its purposes. This distinction is a fine one and thus, **we strongly encourage you to seek legal advice before your Society carries on a business.**

Charitable Status under the Income Tax Act

To qualify as a registered charity, your Society must ensure that its purposes meet Canada Customs and Revenue Agency's definition of "charitable" under the *Income Tax Act*. Generally, to meet this requirement, your Society's purposes must be for:

- 1) the relief of poverty;
- 2) the advancement of religion;
- 3) the advancement of education; or
- 4) other purposes of a charitable nature beneficial to the community as a whole.

To fall within the above parameters, your Society cannot have as a main purpose the "advocacy of political action". Your Society can however carry out some political action if it is incidental to its main purposes. For more information on what Canada Customs and Revenue Agency classifies as political action you should check Canada Customs and Revenue Agency's web site.

The above definition of "charitable" obviously excludes a number of purposes for which you could incorporate your Society under the *Society Act* in British Columbia. Again, we recommend that your group obtains **legal assistance in drafting its purpose to ensure that it qualifies for charitable status** under the *Income Tax Act*.

Practical Considerations

Your Society's purposes should be clear enough to define its true objectives yet general enough to account for future developments. Though these two principles may conflict, a Society which fails to consider future developments might find itself unable to act as it wishes because that particular action is not permitted by its own Constitution!

Drafting the Purposes of Your Society

In drafting the purposes of your Society you should always start with the word "To.....". For example, the purposes of a Society designed to stress responsible pet ownership might read, "*To promote and encourage responsible pet ownership in the Lower Mainland of British Columbia*".

The following introductory words are used most frequently in phrasing "purpose" clauses:

- | | |
|-----------------|------------------|
| 1) To promote | 6) To foster |
| 2) To establish | 7) To co-operate |
| 3) To maintain | 8) To carry on a |
| 4) To conduct | 9) To encourage |
| 5) To assist | 10) To develop |

A list of helpful purpose clauses are outlined at Appendix "N" for your convenience.

STEP THREE: Decide On the Contents of Your Constitution

In its simplest form, a Society's Constitution must simply contain its name and purpose. However, if your Society is going to apply to be a registered charity under the Income Tax Act, you must also include a "non-profit", a "winding-up" and an "alterability" clause to your Constitution.

The Non-profit Clause

The "non-profit" clause simply states that no part of the Society's income may be paid to any of its members for simply being members. As mentioned previously, this clause does not prevent a Society from paying its employees for their work. It does mean, however, that a Society must ensure that no conflict of interest exists if one of its Directors also acts as an employee. (Sections 25-28 of the *Society Act* discuss conflict of interest situations). To avoid any appearance of bias or conflict of interest, we recommend that you not hire any members of your Society, and especially

your Directors, as employees. If your Society is a charity, you should seek legal advice before paying any money (except expenses) to your Directors.

A typical "non-profit" clause might read: *"The activities and purposes of the Society shall be carried on without purpose of gain for its members and any income, profits or other accretions to the Society shall be used in promoting the purposes of the Society."*

The Winding-up Clause

A "winding-up" clause (which may appear in a Society's Constitution or by-laws) outlines what will happen to the Society's assets when it ceases to exist. If no such clause exists when the Society ceases to exist, a member's resolution may be passed to direct its remaining assets or they may be disposed of in accordance with section 73 of the *Society Act*.

Winding-up clauses commonly provide that the Society's assets are to be transferred to another registered charity and might read as follows: *"Upon winding up or dissolution of the Society, the assets which remain after payment of all cost, charges, and expenses which are property incurred in the winding up shall be distributed to a registered charity or registered charities in British Columbia, as defined in the **Income Tax Act** (Canada), as may be determined by the members of the Society at the time of winding up or dissolution."*

The Alterability Clause

If your Society's Constitution contains more than just its name and purposes and you do not want these additional clauses to be altered in the future, you must say so expressly. If you do not provide that a clause is "unalterable" it is presumed to be "alterable" and may be changed by special resolution of the Society's members at a duly called and constituted meeting. The Charity Division of the Canada Customs and Revenue Agency and the Gaming Commission both require a winding-up clause. The Gaming Commission prefers a winding-up clause that leaves the assets to a British Columbia charity. These agencies want an unalterable winding up clause.

Sample Draft Constitutions

Appendix "D" contains a sample draft Constitution that complies with the requirements of both the *Society Act* and the *Income Tax Act*. Appendix "E" contains a sample draft Constitution that complies with the requirements of the *Society Act* for a non-profit organization.

NOTE: Neither of these samples contain the "purpose" clauses required for registration under the *Society Act* or the *Income Tax Act*.

STEP FOUR: Decide On the Contents of Your By-laws.

While a Society's Constitution defines its goals and objectives, its by-laws define its daily management rules. The *Society Act* (section 6) requires that every Society's by-laws address the following issues:

- 1) The terms under which a person may be admitted to the Society.
- 2) The rights of members of the Society.
- 3) The duties of members of the Society.
- 4) The conditions under which a member ceases to be in "good standing".
- 5) The conditions under which a person's membership in the Society ceases.
- 6) The manner, if any, in which a member may be expelled.
- 7) The procedure for calling general meetings.
- 8) The voting rights of members at general meetings.
- 9) A statement of whether proxy voting is permitted and if so, provisions for it.
- 10) The method by which Directors of the Society are to be appointed.
- 11) The duties of the Directors.
- 12) The powers of the Directors.
- 13) The remuneration (if any) to be paid to the Directors.
- 14) The manner in which Directors may be removed.
- 15) The method by which the Officers of the Society are to be appointed.
- 16) The duties of the Officers.

- 17) The powers of the Officers.
- 18) The remuneration (if any) to be paid to the Officers.
- 19) The manner in which Officers may be removed.
- 20) The methods under which the Society may exercise its power to borrow money.
- 21) The manner in which the minutes of the members' meetings and Directors' meetings of the Society are to be prepared and kept.

Your Society's by-laws are by no means restricted to the above-noted items. You may include additional items and you should include any by-laws required to clarify the structure and procedures of your Society. You may, for example, include provisions:

- 1) allowing or restricting minors and/or corporations from membership (section 7(5));
- 2) for the transfer of a member's interest in the Society (section 9);
- 3) for the establishment of branch Societies (section 18(1));
- 4) allowing or restricting a Director who has an interest in a contract or transaction with the Society from being included in a quorum requirement at a Directors' meeting at which this contract or transaction is approved (section 28(2));
- 5) authorizing or restricting the Society from investing in certain types of securities (section 32(3));
- 6) governing the inspection of certain documents by members and Directors (section 37);
- 7) for increasing a quorum for general meetings to more than three (section 61);
- 8) setting membership dues;
- 9) establishing procedures for general meetings, Directors' meetings, the establishment of committees, and the use of the Society's seal of the Society; and
- 10) regarding the auditor's responsibilities.

NOTE: In some instances, the *Society Act* provides default rules regarding defined issues which operate automatically unless a Society provides otherwise.

Once adopted, your Society's by-laws are a form of contract between it and its members. Any good contract tries to outline, in a straightforward and simple manner, the rights and responsibilities of the Society, its Officers and its members. Further, well drafted by-laws try to provide solutions for dealing with problems between a Society and its members before they arise.

Appendix "F" of this Guide contains a set of by-laws that have been developed by the Community Legal Assistance Society from our experience with charitable/non-profit groups over the years. These by-laws meet the minimum requirements for incorporation under the *Society Act*. Though your Society is welcome to develop its by-laws based on our model, remember that the *Society Act* provides your group with much flexibility in drafting its by-laws provided you address the twenty-one items discussed earlier.

When you have decided on the content of your by-laws make sure that they make sense to you and to the average reader. Remember that since your Society can "live forever" the by-laws will probably out live you and you want to make sure that they are understandable and easy to follow. The Registrar of Companies no longer reviews the bylaws of the society submitted for incorporation. In the past the registrar would review the bylaws to make sure they complied with the *Society Act*. The registrar no longer does this. Therefore, it is your responsibility that you make sure that your bylaws comply with the *Society Act*.

Some of the more important items to consider regarding by-laws are outlined below.\

Members

Your Society's members may be voting or non-voting and may be divided into numerous classes such as full members, honorary members, associate members, retired members and so on. If your Society is going to have different classes of members (e.g. voting members and non-voting members), the rights and obligations of each class must be stipulated in its by-laws. The only two restrictions on membership in the *Society Act* are that non-voting members cannot exceed voting members in number without the permission of the Corporate Registry (section 7) and that Directors cannot create new classes of members from time to time by resolution.

NOTE: Unless expressly stated, membership is not transferable (section 9).

Meetings

The *Society Act* has several rules regarding a Society's meetings including the following:

1. members be given fourteen (14) days written notice before a meeting is held (section 60);
2. a Society need not hold its annual general meeting in a certain month each year (section 56);
3. a Society that wishes to allow proxy voting must expressly say so in its by-laws (section 6(1)(d)); and
4. a member of a Society who is not in "good standing" cannot vote at a meeting (section 62).

Directors and Officers

Your Society must have at least three Directors, who may or may not also be members of your Society. There is no equivalent minimum requirement for the number of Officers. Your organization should define how its Directors and Officers will be elected, appointed or nominated.

The following combinations are possible:

- 1) all your members can automatically be appointed as Directors;
- 2) your members can elect Directors at the annual general meeting;
- 3) your members can elect Officers (e.g. President, Treasurer, Secretary, etc.) who automatically become Directors;
- 4) your members can elect Directors and the Directors can then appoint Officers; or
- 5) your members can elect both the Directors and the Officers.

Regardless of the procedure your Society adopts, it must be properly described in its by-laws. However, you should be aware that a Director may always be removed by a special resolution regardless of what a Society's by-laws state (section 31).

As mentioned earlier, if your Society hopes to become a registered charity under the *Income Tax Act*, your by-laws must contain a clause such as the following: "*No Director or Officer shall be remunerated for being or acting as a Director or Officer, but a Director or Officer may be reimbursed for all expenses necessarily and reasonably incurred by him/her while engaged in the affairs of the Society.*"

NOTE: This clause does not prohibit a Director or Officer from being paid in his/her capacity as an employee (e.g. Executive Director). See, however, our prior warning regarding the requirements of the Society Act and our prior advice to seek legal advice before paying your Directors any money (except to reimburse expenses). Charities should not have Directors as paid employees.

Inspection of your Society's Documents by Directors and Members

Section 37 of the *Society Act* specifies that unless your by-laws indicate otherwise, all of its records (including its financial records) may be inspected by any Director or member on reasonable notice. Reasonable notice for non-reporting Societies is two days and in addition the society must provide two consecutive hours each business days in which documents are available for inspection. There are also additional requirements set out in *the Society Act* regulations. Please note that a society may by its bylaws provide a different regulation of the inspection of documents. It is strongly recommended that you deal with the inspection of documents in your bylaws.

Seal

Your Society does not have to have a seal, but it is usually easier to deal with banks if it has one. If your Society plans to get a corporate seal, its by-laws must provide as such and must outline which Officers and/or Directors may use it.

Borrowing Money

You must set out the borrowing powers of your Society in its by-laws.

Auditor

While a "reporting Society" must have an auditor, a "non-reporting" Society may have an auditor. A reporting society must, at least 10 days before the Annual General Meeting provide to its members a copy of the Financial Statement. This can be done in a manner provided for in the bylaws. Otherwise, it has to be done by mail. A non-reporting society must place before the Annual General Meeting a Financial Report, and the auditor report (if any). The report of the directors, and any other report required by the bylaws must also be presented.

NOTE: The *Society Act Regulations* contain requirements with respect to Financial Statements and provisions for the inspection of your Society's books of accounts and records.

STEP FIVE: Make Two (2) Copies of Your Constitution and By-laws.

Remember that your Society's final Constitution and by-laws must be followed by:

- 1) the date on which they were signed;
- 2) space for the signatures of those who are signing as "applicants for incorporation" (minimum of five);
- 3) the full name and residential address of those signing as "applicants for incorporation"; and
- 4) space for the signature of a witness to each and every "applicant for incorporation" (witnesses should not be applicants for incorporation).

NOTE: Where names are required, you must include each individual's full given name, initials are unacceptable. The above-mentioned signatures must be originals, you cannot simply photocopy one document which has been signed by all those required to do so.

STEP SIX: Have a Minimum of Five (5) Members of Your Organization Sign its Constitution and By-laws.

Have five (5) "founding" members of your Society sign each of the two (2) copies of the Constitution and by-laws, in the presence of a witness. It is not acceptable to sign one copy of the documents and make photocopies for the other two copies. Then have the witness (es) sign to attest to each member's signature. Do not use initials. Use full names.

STEP SEVEN: Prepare Two (2) Copies of the "Notice of Address" Form for your society.

A sample "Notice of Address" form is provided at Appendix "G" for your convenience. This notice must be signed by one of the proposed Directors of your Society.

NOTE: The *Society Act* provides that every Society must have a street address in British Columbia to which all communication, notices and court documents may be sent. You may have a post box in addition to your Society's street address. If your Society

changes its address, it must send a new "Notice of Address" form and a \$15 fee to the Corporate Registry.

STEP EIGHT: Prepare Two Copies of the "List of First Directors" Form for Your Society.

This list must be signed by one of the founding Directors of your Society. A sample "List of First Directors" is located at Appendix "H" of this Guide for your convenience.

STEP NINE: Send Your Society's Application to the Corporate Registry.

If you have followed all of the instructions in this Guide, this step is the final one for incorporating your Society in British Columbia. Using the draft cover letter found at Appendix "I", send the following items to the Corporate Registry:

- 1) two (2) signed copies of your Constitution and by-laws;
- 2) one (1) signed copy of your "Notice of Address" form;
- 3) one (1) signed copy of your "List of First Directors" form; and
- 4) a certified cheque or money order for \$100.00 made payable to the Minister of Finance.

NOTE: Please see Appendix "O" which contains a checklist for a Society's incorporation documents published by the government.

The Corporate Registry will return a certified copy of your Constitution and by-laws as well as a Certificate of Incorporation (with your Society's incorporation number) to you. He or she will then publish a copy of your Society's Certificate of Incorporation and its purposes in the *B.C. Gazette*.

CONGRATULATIONS! Your Society is now fully operational in British Columbia.

III. POST INCORPORATION PROCEDURES

A. Important Warning

This section of the Guide deals with one of the most difficult areas for almost all Societies: keeping your Society up to date. The penalties for not keeping your Society up to date with the Corporate Registry can be quite severe. For example, if your Society operates for more than six (6) months with less than three (3) members, its Directors can be held personally liable for all debts incurred during that time (section 24(8)).

From your Society's "inception" you should:

- 1) set up your Society's books and records properly; and
- 2) ensure that a responsible person takes responsibility for keeping these records up to date.

At the Community Legal Assistance Society we have seen too many Societies involved in tremendous problems simply because they have neglected basic record keeping for their Society.

NOTE: If your Society is a reporting one, you must have (and pay) an auditor who is either an accountant or a person certified by the Auditor Certification Board. Ideally, your Society's Directors should appoint an auditor immediately upon incorporation and work with him or her to set-up your Society's financial records. (You should discuss the possibility of using a "one-write" bookkeeping system). Although "non-reporting" Societies are not required to do so, they are advised to do the same.

Outlined below is a list of steps that your Society should take immediately after incorporation.

B. Step by Step...

STEP ONE: Set Up Your Society's Book and Records.

Your Society's founders should set-up its first books and records, including:

- 1) a register of members;
- 2) a minute book for members' and Directors' meetings; and
- 3) your Society's financial records.

To set-up proper books, we recommend that your Society buys the following items:

- 1) a loose-leaf note book binder (3 ring) and paper;
- 2) a standard "Company" minute book, preferably in loose leaf form;
- 3) a ledger book with at least 18 columns;
- 4) a double entry ledger book;
- 5) a cash book; and
- 6) a journal.

The *Society Act* specifies that all of your Society's books and records must be kept at its "official" address (unless the Directors pass a resolution specifying that the books are to be kept elsewhere). If your Society becomes a registered charity, Canada Customs and Revenue Agency requires that you to keep certain records at your Society's "official" address, including:

- a) the duplicates of all donation receipts issued by your Society; and
- b) "sufficient" records to enable the donation receipts issued, income received and any disbursements made to be verified by Canada Customs and Revenue Agency.

Prepare A Register of Members

It is an offence under the *Society Act* to fail to keep a register of members. You must set out the full names of *all* of your members (including its founders) and include their respective residential (rather than business) addresses. We recommend that you include the following headings on the top of each page of your membership registry:

- 1) Name;
- 2) Date Admitted;
- 3) Residence Address;
- 4) Membership Type; and
- 5) Date Membership Ceased.

Prepare the Minute Book of Members' Meetings and Directors' Meetings

To keep a proper minute book you should use a standard company minute book (available from most major office supply stores) and insert your Society's:

- 1) Certificate of Incorporation;
- 2) certified Constitution and by-laws;
- 3) banking resolutions;
- 4) members' meeting minutes; and
- 5) Directors' meeting minutes.

The Form of Minutes

Your Society's meeting minutes should include the following information:

- 1) The name of your Society, the type of meeting (members or Directors) and its date;
- 2) The time and place of the meeting;
- 3) A list of attendees;
- 4) A summary of the general discussions which took place at the meeting;
- 5) A concise statement regarding motions passed at the meeting. This includes:
 - a) the name of the person who made a motion;
 - b) the name of the person who seconded the motion;
 - c) the exact wording of the motion; and
 - d) the disposition of the motion (whether it passed or was rejected by the meeting);
- 6) The time the meeting was adjourned; and
- 7) The signatures of the person taking the minutes at the meeting and the meeting's chairperson.

Prepare the Financial Records of the Society

Setting-up a Society's financial books and accounts is a complicated process and we therefore recommend that you consult a bookkeeper or accountant to assist you in this process. Remember that reporting Societies must set-up their books to reflect the requirements of section 65 of the *Society Act* and the *Regulations*.

STEP TWO: Open A Bank Account.

The *Society Act* requires that all Societies have at least one account with a bank, credit union or trust company. The process for establishing your accounts is outlined below.

The Directors of your Society must hold a meeting to pass a resolution establishing who may deal with the Society's bank account(s) and who may sign its cheques. Before the Board meeting at which you plan to pass your banking resolution you should get the necessary forms from the financial institution with which you plan to deal. Please note the financial institution may require a special form of a resolution to be passed by your group. You should check with the financial institution before you pass the resolution of the directors.

When passing your banking resolution you should consider how best to protect your Society's funds from possible misappropriation by a member authorized to deal with its funds. We suggest that you incorporate two control measures. First, open two bank accounts (one savings and one chequing), each of which require the signatures of two different people to withdraw funds. Provided that those authorized to sign for one account are not authorized to sign for the other, no one person can divert your Society's funds.

Secondly, place all funds received in your Society's savings account. Then transfer an amount of money equivalent to your estimated monthly expenditures from the savings account to the chequing account. **Never sign cheques in advance.** If your Society's money is only ever transferred from your savings account to your chequing account you are less likely to fall prey to the misappropriation of funds. If you use these control measures, your Society must have four dishonest people who agree to misappropriate funds before it will suffer a major loss.

A sample banking resolution is shown below:

"MOTION by Sandy Bloggs, SECOND by Jim Crowe and UNANIMOUSLY RESOLVED that the Society open one savings account and one chequing account with the ABC Credit Union, Broadway and Main Street Branch, in Vancouver, British Columbia, and that the President and Secretary be authorized to transact generally any business relating to the savings account and the Vice-President and Treasurer be authorized to transact generally any business relating to the chequing account."

NOTE: If you are very concerned about the possible misappropriation of your Society's funds you may require that a Director or an Officer give the necessary security (e.g. a bond) to ensure the faithful discharge of his or her duties (section 30, *Society Act*).

If you are in doubt about any of the procedures at your financial institution, ask the manager for his or her assistance.

STEP THREE: Obtain A Charitable Tax Number.

If your Society wishes to accept tax deductible donations, it must apply to Canada Customs and Revenue Agency for charitable status.

Definition of A "Charity"

Legally, a charity is an organization (in your case a Society) whose sole purposes are:

- a) the relief of poverty;
- b) the advancement of religion;
- c) the advancement of education; or
- d) "other purposes" of a charitable nature beneficial to the community as a whole.

You **should** consult Canada Customs and Revenue Agency's Information Circular on Registered Charities for more detailed information about the definition of a "charity".

Obligations of Charitable Organizations

Before your Society decides to apply for recognition as a charitable organization, it should understand the obligations and restrictions imposed by this designation. Specifically, a registered charity must file an annual report and return with Canada Customs and Revenue Agency every year. Further, there may be restrictions on the type of business a charity may carry on. **You should get legal advice about this area of the law before applying for charitable status.**

Check List for Registration as a Charitable Organization

- 1) There are various up-to-date forms and information packages on the Canada Customs and Revenue Agency's web site. The forms are available free of charge from Canada Customs and Revenue Agency (1-800-267-2384) or can be downloaded from their web site.
- 2) Complete both copies of form T2050.

- 3) Send Canada Customs and Revenue Agency a copy of your Society's Constitution, by-laws and Certificate of Incorporation.
- 4) Check your Society's Constitution and by-laws to ensure that they include:
 - a) a non-profit clause;
 - b) a winding-up clause;
 - c) a non-alterability clause; and
 - d) a charitable purpose.
- 5) Prepare a statement detailing your Society's anticipated activities.
- 6) Prepare a budget, signed by two members of your board of Directors and approved by the Directors, for submission to Canada Customs and Revenue Agency. Your budget should set-out sources of revenue (e.g. donations, membership fees, etc.). If your Society has been operating previously, include a copy of a statement of receipts and disbursements and a statement of assets and liabilities from the last fiscal period.
- 7) Prepare a list of Directors of your Society, including their residential addresses and their occupations.
- 8) Forward one copy of the application form T2050, together with a copy of your Constitution and by-laws, a statement of activities, the financial statements and your list of Directors to:
Canada Customs and Revenue Agency Taxation
Attention: Charities Division
Ottawa, Ontario
K1A 0L8.

Potential Problem Areas

A number of potential problem areas for charities are summarized below.

1) ***Political Activities:***

An organization whose main purpose is political activity will not be granted charitable status. Political activities in charity law means more than supporting a political party such as the NDP or the Conservatives. Political activities include lobbying the government to change public policy and trying to change public opinion. A charity may, however, carry on political activities that are incidental to its other purposes. **If your Society plans to carry on any sort of political activity you are advised to get independent legal advice.**

2) **Networking:**

“Networking” should neither be included as one of your Society’s purposes nor as one of its activities because Canada Customs and Revenue Agency states that you cannot “network” with other organizations unless they are also “charities”. This position is based on the idea that no charity can transfer resources to a non-charity.

3) **Education:**

If your Society plans to publish material as part of its activities, you must send Canada Customs and Revenue Agency a sample of your publication(s) with your application package.

4) **Private Interest:**

A charitable organization must have a public rather than a private interest. For example, a Society incorporated to offer lectures to its members only is not charitable, whereas a Society incorporated to offer lectures to the general public is.

Appeals - Rejection of Charitable Status

If your Society is not accepted as a registered charitable organization you should get legal advice concerning the appeal process.

IV. OTHER POST-INCORPORATION REQUIREMENTS

A. General Meetings

If your Society holds a members meeting for any purpose, including an annual general meeting (AGM), you must ensure that it is called in accordance with the *Society Act* and your Society's by-laws. Section 57 of the *Society Act* states that general meetings must be held in British Columbia, unless the Corporate Registry gives permission for it to be held outside the province. In addition, proper notice of the meeting (and any proposed by-law changes) must be given to your members (and your Society's auditor, if you have one). What constitutes "proper notice" is defined by the *Society Act* and your Society's by-laws. For example:

- 1) Section 60 of the *Society Act* requires that written notice of a general meeting be given to your members at least fourteen (14) days in advance. (This requirement can only be waived by the unanimous written consent of all of your members.)
- 2) Section 23(1) of the *Society Act* provides that by-laws may be changed by a special resolution but section 1 requires that members receive at least fourteen (14) days notice of the proposed "special" resolution before it is put to a vote.

A copy of a sample "Notice of An Extraordinary Meeting" can be found at Appendix "J".

B. Filing Special Resolutions

Section 66 of the *Society Act* requires that a copy, in duplicate, of a special resolution must be sent to the Corporate Registry. (Appendix "K" includes a special resolution notification form for your convenience.)

- 1) The Corporate Registry has the power to approve or disapprove the proposed resolution. Consequently, no special resolution takes effect until it is approved by the Corporate Registry. Two exceptions to this rule exist.
- 2) Special resolutions passed either to remove a Director from office or to change the number of Directors a Society has take effect immediately.

NOTE: If your Society is considering any changes to its structure you should consult the *Society Act* to determine if such changes are permissible and if any procedural requirements are set out.

C. Requisitioned General Meetings

Section 58 of the *Society Act* permits ten per cent (10%) of a Society's members to "requisition" a general meeting even when Directors refuse to do so. The Directors must call a meeting within twenty-one days of receiving the member's demand at the Society's registered office. If they fail to do so, the requisitioning members may call a general meeting independently and, in some circumstances, hold the Directors personally liable for its costs.

D. Annual General Meetings

Section 56 of the *Society Act*, requires every Society to hold an AGM at least once in every calendar year and no more than fifteen (15) months after its previous AGM (or within fifteen months of its incorporation). The notice provisions discussed above also apply to AGMs.

Section 64 of the *Society Act* requires that the following reports be given at a non-reporting Society's AGM:

- 1) a financial statement;
- 2) the auditor's report (if one exists);
- 3) the Directors' report to the members; and
- 4) any further information that is specified in the Society's by-laws.

Similarly, section 65 of the *Society Act* sets-out the reports which must be provided at a reporting Society's AGM. Generally, the requirements for financial statements are much more detailed than those for non-reporting Societies and an auditor's report is required.

Filing the Annual Report

Within thirty (30) days of your Society's AGM, you must send an Annual Report containing:

- 1) the date and location of the AGM;

- 2) the full names and residential addresses of the Society's Directors;
- 3) the number of voting and non-voting members of the Society;
- 4) a statement that the Society has an indirect or delegate voting system, if that is the case; and
- 5) you do not have to file the financial statements with the annual report but you should have it available for inspection by the public.

A sample annual report can be found in Appendix "L" for your convenience.

E. Changing your Society's Constitution and By-laws

If your Society wishes to change either its Constitution or its by-laws it must send the Corporate Registry a special resolution and a filing fee of \$50.

NOTE: Under the *Society Act* you can change your Society's by-laws by adding to, altering or deleting them by special resolution. However, the only parts of your Constitution that you may change are its name, its purposes and any other "alterable" provisions. If your Society is a registered charity under the *Income Tax Act*, you should not change your by-laws without pre-clearance from Canada Customs and Revenue Agency.

F. Bringing a Society "Up to Date"

In too many cases the person responsible for ensuring that a Society's Annual Reports are filed with the Corporate Registry fails to do so. If this happens, the Corporate Registry will not transact any business with the Society until it is brought "up to date". Further, the Corporate Registry may remove a Society from the register of Societies, revoking its incorporation, if it fails to file documents two years in a row. Appendix "M" contains a sample letter which may be sent to the Corporate Registry to determine if your Society is in "good standing".

G. Winding Up, Dissolution and Strike Off: The "Death" of a Society

There are basically three ways that a Society may cease to exist:

- 1) by being "struck off" the register of Societies by the Corporate Registry;
- 2) by surrendering its Certificate of Incorporation to the Corporate Registry; or
- 3) by "winding up".

Strike Off

The Corporate Registry can remove a Society that has failed to file any return, notice, or document (including Annual Reports) for at least two years in a row from the register. Doing so essentially “kills” the Society. There is no reason to panic because the Corporate Registry’s office usually takes more than two years to strike a Society off the register (unless someone complains about its default) and it must warn the Society of its impending doom before it is struck off the register.

Surrender

The *Business Corporation Act* and the *Society Act* allows a Society to dissolve itself voluntarily by passing an ordinary resolution (50+% majority) that it wishes to surrender its Certificate of Incorporation and asking the Corporate Registry to strike it off the register. In addition to the resolution, you must send the Corporate Registry:

- 1) the Certificate of Incorporation that was issued to your Society when it incorporated; and
- 2) a statutory declaration (i.e. sworn statement) by two or more of your Society’s Directors that there are no debts, liabilities, or obligations owed by your Society. Also there should be a declaration as to what will happen to the assets.

Winding Up

If your Society owes anyone money, you may only dissolve it by following the "winding up" procedure in the *Business Corporation Act*. We strongly encourage you to get legal assistance to “wind up” your Society because it is a very complicated process involving the use of a professional liquidator.

NOTE: If your Society is a registered charity and it ceases to operate, you must notify Canada Customs and Revenue Agency by sending the final copies of the annual returns and financial statements, and detail the final disposition of the charity’s assets.

H. Fiduciary Duties

Directors owe a fiduciary duty to act in their Society's, rather than their own, best interest. This means that Directors cannot acquire financial gain, enter contracts with, or become employees of a

Society for which they act unless a special procedure is followed. Breaking this rule means that a Director has breached his or her fiduciary duty and he or she will have to account for (i.e. repay) any profits acquired.

As previously mentioned in our discussion of section 27 of the *Society Act*, a Director cannot gain from any transactions unless:

- a) he or she notifies all Directors, in writing, of his or her conflicting interest in a transaction before the Board approves it (the interested party cannot participate in the vote); or
- b) the members of the Society, by a 75% vote, approve that the transaction is fair.

For the above reasons, we strongly recommend that you obtain legal advice before paying your Directors any money other than to reimburse expenses.

I. Goods and Services Tax

Your Society should contact Canada Customs and Revenue Agency at 666-4644 (Vancouver) or 1-800-561-6990 (long distance) or look at their web site to obtain information about your Society and the G.S.T.

APPENDICES

- A. Where you can obtain the Society Act and its Regulations
- B. Additional Sources of Information
- C. Name Approval Request Form
- D. Constitution - Charitable Organization
- E. Constitution - Non-profit Organization
- F. Sample By-laws
- G. Notice of Address Form
- H. List of First Directors Form
- I. Letter to Accompany Incorporation Documents
- J. Notice of Extraordinary Meeting
- K. Resolutions Report Form
- L. Annual Report Form
- M. Letter to Inquire About the Standing of Your Society
- N. Special Incidental Purpose Clauses
- O. Checklist for Society Incorporation Documents