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Guide to Church Incorporation

Background

CBOQ has for many years recommended that each of its member churches consider incorporation based on their own unique circumstances. Incorporation is not a solution for every church an d therefore it is strongly recommended that good research, with legal assistance, be undertaken before beginning the incorporation process.

This guide provides a basic outline of the pros and cons of church incorporation, an implementation process, and some suggestions for ongoing effective use of the incorporated model of church governance. This guide is only applicable to churches in Ontario, since local churches in Quebec are required to be incorporated.

The Non-Incorporated Church

A non-incorporated church is by definition a voluntary association of individuals – people who have committed to work together towards a common cause. Following are some of the legal characteristics of such an association:

- Association cannot hold property – therefore elect trustees to act on behalf of the whole
- Property is held by the trustees under legislation called Religious Organizations Land Act (ROLA)
- Trustees must be named in mortgages, contracts, etc.
- While the church has a name, it is not have an identity in law separate from its members
- Lawsuits brought on behalf of or against the church must be brought by or against the trustees
- Trustees, officers, and members are ultimately liable for actions of the church
- Church liability insurance is not a complete shield

The Incorporated Church

As an incorporated church, the organization does have a separate legal entity apart from its members. This provides both structure and limited liability for the membership. Following are some of the legal characteristics of an incorporated body:

- Separate legal entity – church exists separate from its membership
- Corporation can hold property in its own name
- Perpetual existence – the corporation exists indefinitely
- Limited liability for members – provides some shield for the members, protecting their personal assets. Members cannot be found liable just because they are members.
- Indemnification of officers – church is allowed to purchase Directors and Officers insurance, which provides protection for the leadership against personal loss
- With some exceptions, Church is able to buy, sell, lease and mortgage property as would any corporation

Disadvantages of Incorporation

There are some disadvantages of incorporation, which may persuade a church not to proceed. Some of these are:

- Cost – the cost to incorporate may be onerous for a small congregation. Most of the cost will, of course, be legal fees. If the incorporation committee is able to do the initial research and draft documentation, then costs can be kept to a minimum. Some lawyers will entertain some pro-bono work, especially if they are members of the church.
- Time – the process is not quick and most churches take 12 – 18 months to complete the full process. It is better to take one's time, prepare the documents properly and cycle through the process right the first time.
- Greater regulation/compliance – once incorporated, there is some need to comply with the applicable legislation (i.e. filing annual reports) and to pay closer attention to the procedures required in the church's new bylaw.

Advantages of Incorporation

The following are a few situations where incorporation could be advantageous:

- Building program or expansion – brings risks related to debt, negligence, third party or volunteer involvement
- Incurring debt – risk related to fundraising efforts
- Risky ministries – risk related operating schools, camps, children's clubs, teen ministries, mission trips, community ministries
- Employment – risk related to wrongful dismissal, etc.
- Volunteers – risk related to church discipline, child abuse, etc.

Types of Incorporation

There are two options for incorporation: Federal (under the new Canada Not-For-Profit Corporations Act – "the CNCA") or Provincial (under the proposed Ontario Not-For-Profit Corporations Act – "the ONCA"). While each piece of legislation has specific requirements for structure, membership, bylaws, etc., both have been found to work well for Baptist churches. The CNCA and ONCA are new Acts that have different new requirements. The ONCA is not expected to be in force until 2016.

A chart of the financial reporting requirements under CNCA is listed on the following page.

Financial Reporting Requirements

Type of Corporation	Gross Annual Revenues	Appointment of Public Accountant (PA)	Review Engagement or Audit
Soliciting	$50,000 or less	Members must appoint a PA by ordinary resolution at each annual meeting. Exception – Members may waive appointment by annual unanimous resolution.	PA must conduct review engagement, but members may pass an ordinary resolution to require an audit instead. (If no PA is appointed, then compilation only.)
	More than $50,000 and up to $250,000	Members must appoint a PA by ordinary resolution at each annual meeting	PA must conduct an audit, but members can pass a special resolution to require a review engagement instead.
	More than $250,000	Members must appoint a PA by ordinary resolution at each annual meeting	PA must conduct an audit.
Non-Soliciting	$1 million or less	Members must appoint a PA by ordinary resolution at each annual meeting. Exception – Members may waive appointment by annual unanimous resolution.	PA must conduct review engagement, but members may pass an ordinary resolution to require an audit instead. (If no PA is appointed, then compilation only.)
	More than $1 million	Members must appoint a PA by ordinary resolution at each annual meeting.	PA must conduct an audit.

For more information, please visit website: https://corporationscanada.ic.gc.ca.

Implementation Process for Consideration

Experience has taught that a small committee or task force who are willing to see the process through is important. The committee should be composed of a broad range of individuals, especially those who might have outside/professional experience (i.e. lawyers, business owners, people who serve on other Boards, etc.)

Their mandate would be to:

- Research pros & cons and make recommendation to the congregation
- Determine type of incorporation to pursue
- Collect sample documents and determine what changes may be required in current church structure – Warning: make as few changes as necessary so as not to confuse incorporation with church restructuring.
- Prepare information for the application (please visit https://corporationscanada.ic.gc.ca)
    - Name of church, address, head office–legal assistance required to search name
    - Charitable objects–statement of church's purpose–broad enough to cover the activities the church intends to undertake in the near future
    - Powers/restrictions on activities of Board
    - Where assets will go if dissolution is necessary–must be another charity with like charitable objects
    - Names and addresses of first applicants
- Prepare draft bylaw
    - Need to address
        - Membership, rights of members and meetings

    - Directors and officers appointment and meetings
    - Auditors
    - Exercise of borrowing and other corporate powers
    - Indemnification
    - Custody of minutes and other records
- Send draft documents to provincial/federal authorities and Canada Revenue Agency for pre- approval
- Amend documents if necessary
- Obtain final congregational approval
- Submit final signed documentation

Once the relevant authority has issued incorporation documents, the following steps should be taken:

- Initial organizing resolutions of Directors
    - Adopt the general operating bylaw
    - Adopt a banking resolution
    - Confirm incorporators as the first members
    - Adopt the corporate seal
    - Choose an effective date
    - Approve use and registration of ministry names other than full corporate name, if necessary
- Convene a meeting of members
    - Approve the general operating bylaw
    - Confirm the Directors until the first annual meeting
    - Elect any Officers that need to be elected
    - Transfer membership to the incorporated church
    - Authorize transfer of assets, charitable number and dissolution of the unincorporated church
- Directors take responsibility for:
    - Writing to CRA to request transfer of charitable registration to the new entity
    - Arrange for transfer of assets–convey property and chattels–research and transfer any trust obligations (i.e. endowments resulting from a bequest)
    - Arrange for assumption of liabilities–notify creditors, leases
    - Forward incorporation documents, bylaws, banking resolutions and new signature cards to bank(s)
    - Notify all employees, contractors, etc. of change in name
    - Dissolve unincorporated church
    - Reprint everything that has the church name on it to ensure that the new corporate name appears properly
    - Ensure annual meeting is held in accordance with corporate requirements and that meetings of the Directors are held in a timely manner
    - Maintain corporate records ensuring that annual filings are completed and that the corporate minute book is kept current
    - Maintain good archival records (can be sent to the Canadian Baptist Archives)