

EXTRA-PROVINCIAL CORPORATE AND FUNDRAISING COMPLIANCE FOR CHARITIES*

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A. INTRODUCTION

A provincially or federally incorporated charity that wishes to operate as an extra-provincial corporation in a province must consider the need for three primary corporate and fundraising registrations: extra-provincial registrations, business name registrations, and charitable fundraising registrations. Charities operating across Canada will also need to consider other compliance issues including, but not limited to, privacy, investment powers, and anti-terrorism legislation, which are beyond the scope of this *Charity Law Bulletin* (“*Bulletin*”). This *Bulletin* will focus on extra-provincial corporate and fundraising registrations applicable to charities.

B. EXTRA-PROVINCIAL REGISTRATION

A charity incorporated in one jurisdiction but also carrying on operations or activities in a different Canadian jurisdiction is generally required to register as an extra-provincial corporation. This extra-provincial registration does not result in the creation of a new legal entity, but rather serves to record the presence of an existing corporation in the registering jurisdiction. Although there are no uniform mandatory registration requirements applicable throughout Canada, the absence of an extra-provincial registration may, in certain

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provinces, render the extra-provincial entity incapable of commencing or defending a legal proceeding and/or holding title to land in that province. As such, where a charity anticipates carrying on extensive activities in a province, it is recommended that the charity register extra-provincially regardless of whether such registration is mandated in that province. It should be noted that, in addition to any extra-provincial registrations, a charity must continue to maintain itself in the jurisdiction in which it was incorporated. As extra-provincial registration requirements are different in each province, charities will need to carefully review the provincial requirements in this regard.

1. Alberta

Given the expansive wording of the Alberta legislation, extra-provincial corporations that carry on charitable activities in the province must register pursuant to the *Business Corporations Act* (Alberta). To register, the following documents must be filed with an authorized service provider in Alberta:

- ◆ Original Alberta Search Report from the NUANS database, not more than 90 days old (for non-federally incorporated charities only);
- ◆ Statement of Registration form;
- ◆ Notice of Attorney for Service form;
- ◆ Notice of English/French Name Equivalency form; and
- ◆ Copies of the corporation's letters patent or charter documents, certified by a company official, a notary public under seal, or a government official.

The registration is required within 30 days after the commencement of business activities in Alberta. Fees for registration will vary with the choice of authorized service provider, but will include the government filing fee of \$100. There will be an additional charge for the NUANS search where one is necessary. An extra-provincial corporation that does not carry on business for the purpose of gain may be exempted from the government fee required for an extra-provincial registration. Charities can apply for this exemption, as well as a parallel reduction in the authorized service provider's fee, by writing a letter to the Registrar attesting to the fact that it does not carry on business for the purpose of gain.

2. British Columbia

Registration of extra-provincial societies carrying on operations in British Columbia is optional pursuant to the *Society Act* (British Columbia). However, failure to register will render the charity incapable of maintaining a proceeding in a British Columbia court or acquiring an interest in land in the province under the *Land Title Act* (British Columbia). Moreover, the Registrar of Companies may require an extra-provincial society carrying on operations in the province to apply for registration under the *Society Act* (British Columbia).

To register, the following documents must be filed with the Ministry of Finance, Corporate and Personal Property Registries:

- ◆ Name Approval Request form;
- ◆ Statement on Registration Extra-provincial Society form;
- ◆ Copies of information documents, certified by the incorporating authority;
- ◆ Certificate of Good Standing (Status) issued by the incorporating authority; and
- ◆ Copy of the society's bylaws, certified by an officer or director of the society.

The registration fee is \$100, with a \$30 fee for the corporate name search.

3. Manitoba

Given the expansive wording of the Manitoba legislation and the lack of clarity on the type of activities that would mandate a registration, it is recommended that extra-provincial corporations that carry on activities in Manitoba register pursuant to the *Corporations Act* (Manitoba). To register, the following documents must be filed with Manitoba Consumer and Corporate Affairs, Companies Office:

- ◆ Request for Name Reservation form;
- ◆ Application for Registration form;
- ◆ Request for Service form;
- ◆ Power of Attorney (this item is not required of federal corporations that have both a registered office and a resident director or officer in Manitoba);
- ◆ Certificate of Status (only required if the corporation is over 90 days old); and
- ◆ Copies of incorporating documents.

Registration is required within 30 days of the commencement of business or an undertaking in Manitoba. The fee for extra-provincial registration is \$70. There is an additional \$30 fee for the corporate name search.

4. New Brunswick

Pursuant to the provisions of the *Business Corporations Act* (New Brunswick), an extra-provincial charitable corporation that carries on activities in the province may apply to be exempted from the registration requirements. Moreover, communications with Services New Brunswick, Corporate Affairs has confirmed that even the application for the exemption is optional. However, failure to register will render the corporation incapable of commencing or maintaining any legal proceeding in the province. This restriction does not apply to federally incorporated extra-provincial entities. The fee to be exempted from registration is \$100. In order to apply for exemption, the following documents must be filed with Service New Brunswick, Corporate Affairs Branch:

- ◆ A letter indicating the corporation does not carry on business for the purpose of gain and that it wishes to apply for an exemption from the extra-provincial registration requirement under the *Business Corporations Act* (New Brunswick);
- ◆ A copy of the incorporation documents, plus amendments, if any (these do not need to be certified);
- ◆ Appointment of Attorney for Service (Form 25);
- ◆ Consent to Act as Attorney for Service (Form 25.1); and
- ◆ Additional Information Form: Exemption of Extra-Provincial Non-Profit Corporations.

5. Newfoundland and Labrador

Given the expansive wording of the legislation, extra-provincial companies carrying on activities in the province that involve a physical presence in the province must register pursuant to the *Corporations Act* (Newfoundland and Labrador). To register, the following documents must be filed with the Department of Government Services and Lands, Commercial Registrations Division:

- ◆ Statement for Registration – Extra Provincial Company (Form 24);
- ◆ Request for approval of the corporate name;
- ◆ Statutory Declaration (Form 25);

- ◆ Power of Attorney (Form 26); and
- ◆ Copy of constating documents.

There is a \$250 fee for registration, as well as a \$10 fee for each direct request to the Registrar to conduct a corporate name search.

6. Northwest Territories

Given the expansive wording of the legislation, extra-territorial corporations carrying on activities in the territory must register pursuant to the *Business Corporations Act* (Northwest Territories). To register, the following documents must be filed with the Department of Justice, Registrar of Corporations:

- ◆ Request for Name Reservation form (for non-federally incorporated charities only);
- ◆ Statement of Registration Extra-Territorial Corporation (Form 12);
- ◆ Notice of Registered Office (Form 21);
- ◆ Certified true copies of the charter of the corporation, including any amendments; and
- ◆ Certificate of Status or good standing from the incorporating jurisdiction, not more than 30 days old.

Registration is required within 30 days of commencing business in the territory. There is a \$100 fee for registration, and a \$25 fee for the corporate name search.

7. Nova Scotia

An extra-provincial registration is not required for extra-provincial corporations without share capital carrying on activities in Nova Scotia. There is currently no statutory scheme under which extra-provincial corporations may seek registration in the province.

8. Nunavut

Given the expansive wording of the legislation, it is recommended that extra-territorial corporations carrying on activities in the territory register pursuant to the *Business Corporations Act* (Nunavut). To register, the following documents must be filed with the Department of Justice, Registrar of Corporations:

- ◆ Request for Name Reservation form (for non-federally incorporated charities only);
- ◆ Statement of Registration Extra-Territorial Corporation (Form 12);
- ◆ Notice of Registered Office (Form 21);
- ◆ Certified true copies of the charter of the corporation, including any amendments; and
- ◆ Certificate of Status or good standing from the incorporating jurisdiction, not more than 30 days old.

Registration is required within 30 days of commencing business in the territory. There is a \$100 fee for registration, and a \$25 fee for the corporate name search, where applicable.

9. Ontario

Extra-provincial corporations without share capital that begin to carry on business in Ontario must register pursuant to the *Corporations Information Act* (Ontario). Registration is accomplished by filing an Initial Return (Form 2) with the Ministry of Consumer and Business Services, Companies and Personal Property Security Branch, within 60 days after the corporation begins to carry on business in Ontario. A Notice of Change (the same Form 2) is required where the extra-provincial corporation later amends its corporate name through supplementary letters patent, or changes its head office location. There is no fee for this registration.

10. Prince Edward Island

Given the expansive wording of the legislation, extra-provincial corporations that carry on any activities in the province must register pursuant to the *Licensing Act* (Prince Edward Island). Charities should note that activities initiated from outside the province, including phone solicitations and mailings, will necessitate registration, unless the applicant is a federal corporation with its head office in the province. In order to register, an Application for License or Registration Certificate form must be filed with the Corporate Section of the Consumer, Corporate and Insurance Services. The fee for registration will vary depending upon the nature of the business, but generally non-share corporations will be required to pay a minimum fee of \$200.

11. Quebec

Extra-provincial corporations carrying on any activity in Quebec must register pursuant to *An Act Respecting the Legal Publicity of Sole Proprietorships, Partnerships and Legal Persons* (Quebec). Corporations must file a Declaration of Registration Legal Person form with the Inspector General of Financial Institutions of Quebec, no later than 60 days after the date on which registration is required. The fee for registration is \$32.

12. Saskatchewan

An extra-provincial charitable corporation must register in Saskatchewan if it holds title or interest in land, or if it maintains an office, warehouse, place of business or telephone number in the province. To register, the following documents must be filed with Saskatchewan Justice, Corporations Branch:

- ◆ Request for Name Search and Name Reservation form (for non-federally incorporated charities only);
- ◆ Application for Registration form;
- ◆ Power of Attorney form;
- ◆ Verified Articles of Incorporation; and
- ◆ Original Certificate of Status issued by the home jurisdiction.

The fee for extra-provincial registration is \$110, of which \$10 is a fee for publication of the registration in the Saskatchewan Gazette. There is a \$20 fee for the name search, where one is necessary.

13. Yukon Territory

Extra-territorial corporations carrying on activities which involve a physical presence in the territory must register pursuant to the *Business Corporations Act* (Yukon Territory). The registration is effected by filing the following documents with the Department of Community Services, Corporate Affairs:

- ◆ Statement of Registration (Form 11-01);
- ◆ Notice of Attorney for Service (Form 11-02);
- ◆ Notice of Directors and Officers (Form 1-03);
- ◆ Certified true copies of the corporation's original incorporating documents and any amendments thereto, certified by a director, officer of the corporation or a notary public; and

- ◆ Certificate of Good Standing from the home jurisdiction.

Extra-territorial registration is required within 30 days of when the corporation commences carrying on business in the territory. There is a \$320 fee for registration, which includes a \$20 fee for the Yukon Gazette Notice Publication fee.

C. BUSINESS NAME REGISTRATION

While a charity will have only one corporate name, it may also utilize multiple other operating names in its dealings with the public. A charity may need to register all of its multiple operating names in the provinces in which they are used. It is important to note that the registration of a business name does not grant the charity any right to ownership of the name, but merely serves to record the charity's use of the business name and to inform the public of the registrant's identity. Failure to perform appropriate name searches in the relevant jurisdiction prior to taking any steps to use and register a business name could result in owners of a pre-existing corporate name or trade-mark commencing an action against the charity for infringement of intellectual property rights associated with the pre-existing name. Although not all jurisdictions require a name search to be conducted before registering, it is advisable to conduct the search as part of the charity's due diligence to ensure the business name is available to be registered. It is important to note that federal trade-mark registrations are not recognized under the business name regime in certain provincial jurisdictions. As business name registration requirements are different in each province, charities will need to carefully review the provincial requirements in this regard.

1. Alberta

Charities and other non-share capital corporations may register their business names pursuant to the *Partnership Act* (Alberta). Registration is effected by filing a Declaration of Trade Name form. Although not mandatory, conducting a name search prior to registering a business name is recommended in order to ensure the name chosen is available. The fee for a business name registration will vary depending on the authorized service provider, but will include the government filing fee of \$10. There is no exemption from the government fee for business name registrations.

2. British Columbia

Charities and other non-share capital corporations may register their business names under the *Partnership Act* (British Columbia). Registration is effected by filing a Statement of Registration of General Partnership or Sole Proprietorship form. As it is mandatory to conduct a name search before registering the business name, a Name Approval Request form must also be submitted with the registration. Once a name has been approved, it will be reserved for a period of 56 calendar days, during which time the charity must submit the Statement of Registration. There is a \$40 fee for business name registration, and \$30 fee for business name search.

3. Manitoba

Charities and other non-share capital corporations may register their business names pursuant to the *Business Names Registration Act* (Manitoba). However, an extra-provincial registration is required before a business name registration may be effected. A Registration of a Business Name form must be filed, along with a Request for Name Reservation form, within one month of commencing business in Manitoba. The fee for registration is \$45, with an additional \$30 fee for the business name search.

4. New Brunswick

Charities and other non-share capital corporations may register their business names pursuant to the *Partnerships and Business Names Registration Act* (New Brunswick). In order to register, a Certificate of Business Name form, and an Additional Information Form: Business Name Registration form must be filed and is required within two months of commencing activity in the province. However, an application for exemption from the extra-provincial registration requirement must be made before a business name may be registered. An Atlantic-based NUANS name search report, not more than 90 days old, must also be obtained. There is a \$110 fee for a business name registration, which includes a \$10 fee for publication of the registration in the Royal Gazette. The fees associated with the NUANS report are separate and will vary depending on the service provider.

5. Newfoundland and Labrador

There is no requirement for a business name registration in the province, which does not maintain any type of business name registry.

6. Northwest Territories

Corporations carrying on business and using a name or designation other than their full corporate name must register pursuant to the *Partnerships Act* (Northwest Territories). To register, the corporation must file a Declaration of Use of a Business Name (Form 2). Although not a requirement, it is recommended that a name search be conducted before registering a business name. Registration is required within 60 days after the business name is first used. The fee for a business name registration is \$50.

7. Nova Scotia

Corporations that operate under a name other than their corporate name must register their business names pursuant to the *Partnerships and Business Names Registration Act* (Nova Scotia). To register, an Application for Registration of a Business Name, Sole Proprietorship or Partnership in Nova Scotia form, and a Name Reservation Request form must be filed with Service Nova Scotia and Municipal Relations, Registry of Joint Stock Companies. Extra-provincial non-share capital corporations will also have to file an Appointment of Recognized Agent. The fee for registration is \$50, with additional fees for the business name search.

8. Nunavut

Corporations that wish to use a name or designation other than their own name to carry on business in the territory must register pursuant to the *Partnerships Act* (Nunavut). To register, the corporation must file a Declaration of Use of a Business Name (Form 2). Although not a requirement, it is recommended that a name search be conducted before registering a business name. An extra-provincial registration is not required before a business name registration may be completed. Registration must occur within 60 days after the business name is first used. The fee for a business name registration is \$50.

9. Ontario

Corporations that carry on business or identify themselves to the public under names other than their full corporate names must register such names as business names pursuant to the *Business Names Act* (Ontario). To register, a Business Names Act form (Form 2) must be completed. Although not a requirement, it is recommended that a name search be conducted before registering a business name. Fees range from \$60 to \$80, with an additional \$12 fee for a name search.

10. Prince Edward Island

Charities and other non-share capital corporations may register their business names pursuant to the *Partnership Act* (Prince Edward Island). An extra-provincial registration is required before a business name registration may be obtained. This business name registration is effected by filing a Declaration for Registration of a Business Name form. A mandatory name search must be enclosed with the registration. The fee for registration is \$60, while the name search fee is \$40.

11. Quebec

Corporations carrying on an activity using a name other than their full corporate name must register pursuant to *An Act Respecting the Legal Publicity of Sole Proprietorships, Partnerships and Legal Persons* (Quebec). Registration is effected by filling in the section entitled “Other Names Used in Quebec” in the Declaration of Registration Legal Person form used to for extra-provincial registration. Although it is not mandatory to conduct a name search, it is recommended that charities exercise due diligence by doing so in advance of filing the Declaration. There is no separate fee for the business name registration.

12. Saskatchewan

Charities and other non-share capital corporations may register their business names pursuant to the *Business Name Registration Act* (Saskatchewan). However, an extra-provincial registration is required before a business name registration may be completed. The Request for Name Search and Reservation form must be submitted with the Business Name Registration form to complete the registration. The fee

for business name registration is \$60, of which \$10 is the fee for publication of the registration in the Saskatchewan Gazette. Fees for the name search vary depending on the type of search requested.

13. Yukon Territory

Charities and other non-share capital corporations may register their business names pursuant to the *Partnership and Business Names Act* (Yukon Territory), however, an extra-provincial registration is required before a business name registration may be completed. This registration is effected by filing a Declaration of Business Name form. Although it is not mandatory to conduct a name search, it is recommended that charities exercise due diligence by doing so in advance of filing the Declaration. The fee for registration is \$25.

D. CHARITABLE FUNDRAISING REGISTRATION

A few provinces have legislation governing charitable fundraising activities that require registration by extra-provincial entities with a charitable purpose, as described in further detail below. The various provincial charitable fundraising statutes vary in their content and application, and each should be carefully reviewed for any potential implications for a particular charity's activities.

1. Alberta

Charities who use services provided by a "fundraising business" that receives payment for making or managing solicitations made on behalf of the charitable organization, as well as charities who intend to raise more than \$25,000 in gross contributions in its financial year from solicitations to individuals in Alberta must register under the *Charitable Fund-raising Act* (Alberta). Where a charity raises more than \$25,000 during or after a campaign, registration is required within 45 days after the contributions reach \$25,000 in Alberta. To register, an application for Charitable Organizations form must be filed with an authorized service provider. If the organization is registering for the first time, it must enclose copies of their solicitation materials and telemarketing scripts, if any, with their application. Fees vary depending on the authorized service provider, but include the government filing fee of \$60.

2. Manitoba

Organizations making solicitations for a charitable purpose must register pursuant to *The Charities Endorsement Act* (Manitoba), except where exempted by that act. To register, an Application for Authorization to Solicit Funds form must be filed with the Consumer and Corporate Affairs, Consumers' Bureau. There is no fee for this registration. Charities should also be aware of other compliance requirements under *The Charities Endorsement Act* (Manitoba), which include those that apply where a person hires a promotional agency to assist in fundraising activities for a charitable purpose.

3. Ontario

Charities receiving or holding property for charitable purposes must report details of such information to the Office of the Public Guardian and Trustee of Ontario ("PGT") within one month after the execution of the written instrument transferring or vesting property in the charity, pursuant to s. 1 of the *Charities Accounting Act* (Ontario). As there is no prescribed form, this notice can be provided by writing a letter to the PGT describing the nature of the charitable property and enclosing the following documents:

- ◆ Copy of the letters patent for incorporated charities or the constitution for unincorporated charities that establishes and governs the charity, with any deeds of trust and endowment fund agreements entered into by a charity from time to time;
- ◆ Street and mailing addresses of the charity;
- ◆ Names and street and mailing addresses of its directors and officers;
- ◆ All legal and popular or common names or acronyms by which the charity is known or identified; and
- ◆ Registration and business information numbers assigned by Canada Revenue Agency, Charities Directorate ("CRA") for charitable donation and tax-credit purposes.

Following the initial notice to PGT, a charity will have to provide notice of any future supplementary letters patent to the PGT. There is no fee for this registration. All charities, regardless of their incorporating jurisdiction, will also need to forward copies of issued supplementary letters patent and amendments to general operating bylaws to CRA.

As additional compliance and/or notice requirements may be required under the *Charities Accounting Act* (Ontario), charities carrying on activities in Ontario are advised to carefully review the provisions of the act.

4. Prince Edward Island

The *Charities Act* (Prince Edward Island) does not apply to an organization or foundation that is a registered under the federal *Income Tax Act* (Canada), nor to a church seeking financial support from among its members for religious purposes or objects connected with the church. All other charities that directly or indirectly solicit or make any appeal to the public for donations or attempt to make any collection for any charity or charitable fund in the province must register pursuant to the *Charities Act* (Prince Edward Island). Failure to do so constitutes an offence under the *Charities Act* (Prince Edward Island). To register, an Application for Registration of a Charity form must be filed with the Consumer, Corporate and Insurance Division, Office of the Attorney General. There is no fee for registration.

5. Quebec

Charities that solicit and receive any donations or income from the province must seek separate charitable status in Quebec pursuant to the *Taxation Act* (Quebec). Upon submission of the Quebec charitable registration application, the Quebec Ministry of Revenue will assign the applicant charity the same BN/Registration Number as is assigned by CRA for charitable purposes. This will enable the charity to issue charitable donation receipts for the purposes of the Province of Quebec. Charitable fundraising registration is effected by filing the following documents with the Government of Quebec, Minister of Revenue:

- ◆ Application for Registration as a Charity or a Canadian Amateur Athletic Association;
- ◆ Certified copy of the incorporating documents;
- ◆ Statement of Activities;
- ◆ Copy of Statement of Assets and Liabilities;
- ◆ List of names, addresses and positions or titles for all directors and officers; and
- ◆ Copy of the CRA's letter granting charitable registration.

There is no fee for a Quebec charitable fundraising registration.

6. Saskatchewan

There is no legislation requiring charitable fundraising registration by charitable organizations. However, the *Charitable Fund-raising Businesses Act* (Saskatchewan), recently enacted by the province and effective as of January 1, 2003 regulates charitable fundraising businesses. This act should be reviewed by charities intending to solicit donations in Saskatchewan, given the compliance requirements applicable to fundraising activities carried on within the province.

7. Provinces Without Charitable Fundraising Registration

The provinces of British Columbia, New Brunswick, Newfoundland and Labrador, and Nova Scotia, and the territorial units of the Northwest Territories, Nunavut, and Yukon do not currently have legislation governing charitable fundraising activities.

E. CONCLUSION

Given the diverse nature of the various provincial corporate and fundraising registration requirements in each province, charities carrying on activities across Canada are recommended to carefully review the applicable requirements in each province in order to ensure compliance. Once the initial registration requirements have been completed, charities will need to continue to meet its ongoing corporate and fundraising obligations by complying with applicable annual filing requirements in each of the provinces, updating information with local registries, as necessary, as well as adhering to obligations imposed by the charity's home jurisdiction and as required by CRA.