OVERVIEW OF TOPICS

• Considering Incorporation
• The Nuts and Bolts of Incorporation
• Bringing your Corporation to Life
• Effectively Using your Corporation
• Charitable Status vs. Non-profit Status

A. CONSIDERING INCORPORATION

1. Characteristics of an unincorporated association
   • A group of individuals who associate on a voluntary basis for a common purpose reflected in its constitution or memorandum of association
   • The association has no legal existence apart from the members themselves
   • The members of the association may be liable for debts and civil liabilities of the association
   • Unable to sue or be sued, contract or hold property in own name
2. Advantages of incorporation
   • Limited liability protection of members
   • Perpetual existence as separate legal entity from its members, directors and officers
   • More effective organizational control
   • Indemnification of directors and officers
   • Can maintain and defend legal actions
   • Can own assets in name of corporation; no need to use individual trustees

3. Disadvantages of incorporation
   • Costs
   • Completing corporate filings
   • Maintaining corporate records
   • Drafting corporate by-laws

4. When is incorporation appropriate?
   • Anytime, but particularly when:
     – Contemplating expansion or incurring debt
     – Operations involving liability exposure

5. Nature of a non-share corporation
   • A share capital corporation is owned by its shareholders and the purpose of the corporation is to generate profit
   • A corporation without share capital is not owned by anyone but is governed by its members, officers and directors for non-profit purposes
B. NUTS AND BOLTS OF INCORPORATION

1. Preparation
   • Designate an individual or small committee to co-ordinate incorporation
   • If applicable, obtain unincorporated association’s approval to proceed with incorporation

2. Choice of jurisdiction
   • Federal or provincial?
   • Both jurisdictions in process of enacting new legislation
   • Discuss choice of jurisdiction with legal counsel
   • This presentation will generally use current Canada Corporations Act for illustrative purposes

3. Governing documents
   • Letters Patent (Articles of Incorporation)
     – Establishes the corporate purposes and restrictions
     – If corporation intends to apply for charitable status important that objects be exclusively charitable
     – Location of head office
     – Dissolution clause – assets to an organization with similar objects
• General operating by-law
  – Sets out governance structure and key internal operational procedures
  – Key provisions under the current federal act: number and qualifications of directors; election of directors; classes and qualifications of members; procedures for admission of members; notice and quorum requirements for meetings of directors and members; appointment of officers; committees; fiscal year end; signing authority;

3. Approval of unincorporated association
• Obtain formal approval of members of unincorporated association of application for incorporation and draft general operating by-law
• Confirm availability of corporate name
• Submit documents to federal government

C. BRINGING YOUR CORPORATION TO LIFE
• After issuance of letters patent, necessary to confirm the structure of the corporation through adoption of initial organizing resolutions which will confirm the first directors and members, adopt by-laws, approve the banking resolution etc.
• Corporate filings; business names registration
• Transfer assets from unincorporated association to corporation
D. CHARITABLE STATUS VS NON-PROFIT STATUS

1. Generally
   While both types of entities operate on a not-for-profit basis, they are defined differently under the Income Tax Act

2. The fundamentals of a charity
   - At common law includes:
     - Relief of poverty
     - Advancement of education
     - Advancement of religion
     - Other purposes beneficial to the community as recognized by the courts

3. What are the tax advantages of being a charity?
   - A charity does not pay tax on income or capital gains
   - A charity can issue charitable receipts to donors as tax credits for income tax purposes

4. Application for charitable status
   - Completed application signed by two directors or officers
   - Application requires financial information and detailed statement of activities to be carried out in furtherance of objects

5. Requirements of charitable status
   - Devote its resources to charitable purposes and activities carried on by itself
   - Must not pay any of its income to its members, other than salaries or reimbursement for expenses
• Keep proper books and records
• File registered charity information return within six months of the year end
• Restrictions on business and political activities

6. The fundamentals of a non-profit organization
• Club, society or association
• Must not be a registered charity or a charity at common law

• Organized and operated exclusively for social welfare, civic improvement, pleasure or recreation or any other purpose except profit
• No part of the income can be payable or available to any proprietor, member or shareholder (other than salaries, expenses)
• CRA has indicated that, “profit should generally be unanticipated and incidental to the purpose or purposes of the organization”

• CRA has cautioned that retaining excess funds beyond immediate operating costs may be evidence that an organization is operating with a profit purpose, but, “this will not in and of itself result in the organization failing to qualify as a 149(1)(l) entity”
• Therefore non-profits must justify any excess surplus
7. What are the tax advantages of being a non-profit organization?
   • A non-profit organization does not pay tax on income or capital gains, except income from property of an organization whose main purpose is to provide dining, recreation or sporting facilities
   • A non-profit organization cannot issue charitable receipts for income tax purposes

8. What are other advantages of being a non-profit organization?
   • No CRA application or approval process
   • No T3010 annual return
   • No fundraising guidance requirements
   • No restrictions on political activities
   • Not as many restrictions on how to spend resources
9. What are the filing requirements for a NPO?
   • If incorporated must file a tax return even if exempt from tax (short form)
   • May have to file an NPO Information Return if total amount received or receivable in fiscal year for dividends, interest, rentals, or royalties is more than $10,000; or
   • The assets in the fiscal year exceed $200,000

CONCLUSION
   • Important to know what you wish to accomplish
   • No one size fits all
   • Be aware of the regulatory requirements
   • Start off in way you would like to continue