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- Advantages of being a registered charity:
 - It is tax exempt
 - Can issue official tax receipts to donors
 - Can receive gifts from a registered charity
 - Entitled to a 50% rebate on HST/GST
 - Benefit from the charitable sector's positive reputation
- Benefits to providing tax receipts to donors
 - Individuals - tax credit
 - Businesses - tax deduction




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1. Charitable Organization

- All resources must be devoted to charitable activities
- Three legal forms permitted:
 - Corporations
 - Unincorporated associations
 - Trusts
- Generally considered to be a "doer" organization
- May disburse funds to qualified donees (e.g. generally other registered charities) provided that such disbursement is not more than 50% of its income
- No personal benefit to members, directors or trustees
- No control by related persons and no control by a person who has contributed more than 50% of the capital or someone related to such person
- May carry on limited political activities and related business activities




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2. Public Foundations

- Not a "charitable organization", i.e. it therefore primarily not a "doer" organization
- Generally considered to be a "funding" organization
- May disburse funds to other qualified donees (e.g. other registered charities) with more than 50% of its income to be given to qualified donees
- No control by persons who are not at arms length
- No control by a person who has contributed more than 50% of the capital or someone related to such person
- May carry on limited political activities as well as related business
- However may not acquire control of any corporation or incur certain debts




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3. Private Foundations

- Not either a “charitable organization” nor a “public foundation” (therefore a default category)
- May disburse funds to qualified donees (e.g. generally other registered charities) with no limit on percentage of income given to qualified donees
- May be closely held and controlled
- However may not carry on any related business
- Also may not acquire control of any corporation or incur certain debts
- Subject to complicated “excess business holdings” rule, as well as other limitations




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C. OVERVIEW OF NON-PROFIT ORGANIZATIONS


- To qualify as a non-profit organization, an organization must:
 - Not be a charity
 - Be organized exclusively for social welfare, civic improvement, pleasure, recreation or any other purpose except profit
 - Be operated exclusively for social welfare, civic improvement, pleasure, recreation or any other purpose except profit
 - Not distribute or otherwise make available for the personal benefit of a member any of its income
- E.g. trade associations, sporting organizations, social clubs, service clubs



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- A non-profit can operate with partially charitable goals, whereas a registered charity cannot, like a service club
- A non-profit does not pay tax
- But it has no tax receiving privileges for donations received
- However, more flexibility and less regulations
 - No CRA application or approval process
 - No T3010B annual return
 - No fundraising guidance requirements
 - Less requirements for books and records
 - No restrictions on political activities
 - No restrictions on foreign activities



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D. LEGAL STRUCTURES FOR CHARITIES AND NON-PROFIT ORGANIZATIONS

- 1) Trusts;
- 2) Unincorporated associations;
- 3) Corporations without share capital;

1. Trusts

- Generally regarded as the relationship between the settlor (the donor) and the trustee
 - Trustee holds the trust property for the benefit of some persons or for some objectives (e.g. charitable)
 - The benefit of the property accrues to the beneficiaries of the trust, not the trustee
- Useful where there will be a limited number of individuals wishing to aid in the administration of a non-profit or charitable endeavour




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2. Unincorporated Associations

- Defined as “a group of two or more persons united together by mutual consent in order to determine, deliberate and act jointly for a common purpose”
- Members may be governed by a contractual arrangement, referred to as a “Memorandum of Association”, a Constitution, or bylaws
 - No legal capacity to sue or be sued, as the organization is not a legal person
- Not available for public or private foundations



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3. Corporations without Share Capital

- Incorporation results in the creation of a separate legal person and provides the members with protection from liability
- Akin to the traditional share capital corporation, except that there are no shareholders who have ownership interest, but rather members who elect the board
- Can be incorporated either federally under the *Canada Not-for-Profit Corporations Act* or provincially under the *Ontario Corporations Act*
 - Must set out the purposes of the corporation, describing the scope of its proposed activities




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E. OPERATIONAL ISSUES

- Implement appropriate hiring policies and practices for employees and volunteers
- Use restricted trust funds only in accordance with their applicable restrictions
- Protect trade-mark and copyright from infringement within Canada and abroad
- Ensure compliance with anti-terrorism, money laundering legislation and anti-corruption laws both locally and abroad
- Implement operational and risk management policy statements, e.g.:
 - Child Protection
 - Sexual Harassment
 - Workplace Safety




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F. LEGAL RISK MANAGEMENT AND LIABILITY


- Exposure of not-for-profits to liability goes further than the loss of assets and/or the insolvency or winding up of a not-for-profit
- Directors may personally face legal action against themselves by donors, members, third parties, and governmental authorities for breach of their fiduciary duties or breach of trust
- Liability and risk management must be reviewed from many different standpoints, including from the level of the organization or corporation and from the level of directors and officers



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- At the level of the corporation/organization, directors and managers must consider:
 - Choice of non-profit or charitable structure
 - Whether to incorporate or not
 - Vicarious liability of officers, staff, and volunteers
- At the level of the directors and officers, consideration should be given to:
 - Roles and duties of directors and officers
 - Standard of care and duty of care
 - Liability of directors
 - Rights and powers of directors
 - Statutory protection of directors



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- Other means of reducing risk include:
 - 1) Due diligence in operations (managing the corporation)
 - 2) Risk transfer documents (e.g. consents and releases)
 - 3) Indemnification of directors and officers
 - 4) Directors and officers insurance
 - 5) Legal risk management committees
 - 6) Independent legal advice for directors in crisis



QUESTIONS?
