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Church Incorporation: Why, How and What's Next (Power Point Presentation)

By Jacqueline M. Connor, B.A., LL.B.

CARTERS.ca

CARTER & ASSOCIATES

BARRISTERS, SOLICITORS & TRADE-MARK AGENT

Affiliated with **Fasken Martineau DuMoulin** LLP

211 Broadway, P.O. Box 440
Orangeville, Ontario L9W 1K4

Tel: (519) 942-0001

Fax: (519) 942-0300

Toll Free: 1-877-942-0001

www.carters.ca

www.charitylaw.ca

OVERVIEW OF TOPICS

- Introduction
- Considering Incorporation
- The Nuts and Bolts of Incorporation
- Dry Bones: How to Make Your Corporation Live
- Effectively Using the Church Corporation

Note: This presentation is based in part on an article entitled "To Be or Not to Be: Incorporation of Autonomous Churches", available at www.charitylaw.ca

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A. INTRODUCTION

- Why Incorporate?
 - Churches are looking at the option of incorporation now more than in the past
 - The need to explain the 'nuts and bolts' of incorporation of Churches
- History
 - Prior to 1828
 - Remedial legislation of 1828 (predecessor to *Religious Organizations Lands Act (ROLA)*)
 - Denominational use of corporations
 - Autonomous Churches have remained primarily unincorporated

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B. CONSIDERING INCORPORATION

- Characteristics of an unincorporated Church
 - A voluntary association of individuals has as no predetermined structure
 - Real property is held by trustees
 - Not a legal entity and cannot maintain or defend legal actions
 - Trustees, officers & members may be personally liable
 - Church liability insurance is not a complete shield

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- Characteristics of incorporated Church
 - Is a separate legal entity
 - Has perpetual existence
 - Provides limited liability for members
 - Allows indemnification for officers and directors
 - Can maintain and defend legal actions
 - Can own assets in its own name

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- **Advantages of Church incorporation**
 - Limited liability protection for members
 - Perpetual existence
 - More effective organizational control
 - Permits indemnification of officers and directors
 - Legal action in name of corporation, not trustees
 - Facilitates ownership of assets
 - *ROLA* would not apply

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- **Disadvantages of Church incorporation**
 - Costs
 - Corporate filings
 - Maintaining corporate records
 - Drafting corporate by-law
 - Leasing land restrictions
 - Objection to government control
- **When is incorporation appropriate?**
 - At any time, but is particularly appropriate in certain situations as follows:

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- Building programs or other expansion
 - Risk related to debt, negligence, third party or volunteer involvement as contractors
 - Obligations and possible liability under employment legislation
- Incurring debt
 - Free individual members from liability for Church's debt
- Entrenchment of biblical beliefs through Statement of Faith and Policy Statements

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- Ministries involving liability exposure
 - Programs directed at youth (schools, camps, children's clubs, missions trips)
 - Counseling ministries
- Wrongful dismissal actions
 - Can expose members and leadership to personal liability
- Church discipline problems
 - Disgruntled members or adherents might decide to sue
- No one-size-fits-all solution
 - Evaluate the Church's needs and exposure
 - Seek legal counsel for advice

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C. THE NUTS AND BOLTS OF INCORPORATION

- **Preparation**
 - **Do it right or not at all**
 - **Could leave Church worse off if done improperly**
 - **Duplicate Church structures**
 - **Confusion in authority and operations**
 - **Church splits**
 - **High cost of repairing poor incorporation**
 - **Exposure of membership to liability**

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- **Designate small committee or one individual to co-ordinate incorporation**
- **Obtain congregational approval to proceed with incorporation**
- **If incorporating a brand new Church, obtain charitable registration number after incorporation**
- **Choice of jurisdiction**
 - **Federal vs. Provincial?**
 - **Advantages of federal incorporation**
 - **Approval required only for basic corporate requirements**
 - **Standardized by-law requirements**

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- **General flexibility for by-law provisions under federal legislation**
- **No involvement of Public Trustee or Companies Branch in Ontario**
- **Fast processing**
- **Name protection across Canada**
- **Documentation**
 - **Form must follow substance**
 - **Incorporation documentation must reflect Church personality**
 - **“Boiler-plate” form of by-law is inadequate**

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- **Consult with denominational head office, if applicable**
 - **Denominations may be able to provide sample documentation**
 - **May need to consent to incorporation and/or subsequent transfer of assets from denomination to Church corporation**
- **Prepare draft application for letters patent to include:**
 - **Names of applicants for incorporation**
 - **Objects**

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- **Statement of faith**
- **Qualification requirements for directors and officers, if applicable**
- **Investment powers and other power clauses**
- **Distribution of assets on dissolution**
- **Prepare draft general operating by-law to include:**
 - **Definitions – i.e., deacons are deemed to be directors of corporation**

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- **Membership – essential to establish authority of Church**
- **Adherents – not recommended**
- **Withdrawal and removal from membership**
- **Resolution of Church disputes**
- **Procedure for discipline of members**
- **Procedure for members meetings**
- **Definition of controlling board (i.e. deacons or elders)**

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- **Number of directors – establish variable number**
- **Rotating board of directors**
- **Conflict of interest for board members**
- **Term and removal of board members**
- **Procedure for board meeting**
- **Definition and procedure for Church elders (if applicable)**
- **Definition and duties of minister**
- **Definition and duties of officers and term**
- **Indemnification**

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- **Nominating committee and finance committee**
- **Standing and special committees**
- **Policy Statements – e.g. children's ministries, lifestyle, etc.**
- **General corporate matters**
- **Amendment provisions**
- **Submit draft incorporation documents to Canada Customs and Revenue Agency (CCRA) for pre-approval (optional)**

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- Obtain formal congregational approval for application for letters patent and general operating by-law
- Confirm availability of corporate name
- Submit signed documentation to the federal government with checklist
- Issuance of letters patent and choosing implementation date of transfer of assets and liabilities

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D. DRY BONES: HOW TO MAKE YOUR CORPORATION LIVE

- Overview
 - Getting incorporated only first step
 - Second and equally important step is initial transfer of assets and liabilities from unincorporated Church and dissolution of unincorporated Church
- Choosing effective date of transfer of assets and liabilities
 - Calendar year end date ideal
 - CPP and EI considerations
 - Disbursement quota considerations

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- Initial meetings of directors and members of Church corporation
 - Convene meetings of initial directors to:
 - Adopt by-laws (general operating by-law)
 - Approve acceptance of members, charitable numbers and assets and liabilities of unincorporated Church
 - Approve indemnification of unincorporated Church
 - Convene a meeting of initial members to:
 - Approve by-laws

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- Confirm directors elect officers
- Appoint auditor
- Convene final meeting of members of unincorporated Church to:
 - Advise the congregation that incorporation is complete and Church operations will be transferred as of effective date
 - Authorize transfer of members, charitable numbers and assets and liabilities
 - Authorize dissolution of unincorporated Church

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- **Transfer of membership to incorporated Church**
 - Temporary “deemed” membership
 - Existing members agree to be under the authority of the Church corporation
 - Membership application for new members
- **Transfer of charitable registration number to incorporated Church**
 - Send letter to CCRA with corporate documents
 - Usually granted as a matter of course, but an updated statement of activities may be requested

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- **Transfer of assets to incorporated Church**
 - Ensure that transfer conforms to terms in trust documents with regard to religious doctrine, religious practice and usage of property
 - Conveyance required for real property and bill of sale for chattels
- **Assumption of debt by Church corporation and indemnification of unincorporated Church**
 - In return for the transfer of assets, all debts and obligations of the unincorporated Church are assumed by the incorporated Church

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- Incorporated Church agrees to indemnify the unincorporated Church in case of legal action arising out of the debts and liabilities
- Notify any secured creditors of transfer
- **New banking documents**
- **Filing of government forms**
 - Initial reports to federal and provincial governments
 - Initial reports to Public Guardian and Trustee
 - “Annual summary” to federal government
- **Obtain final report from legal counsel**
 - Providing details of Church incorporation
 - Outlining duties and liabilities of directors

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E. EFFECTIVELY USING THE CHURCH CORPORATION

- **Proper use of corporate name**
 - “Use it or lose it”
 - Inform creditors, suppliers and employees of incorporation in writing
 - Change Church publications (stationery, business cards, bulletins, web-site, etc.)
 - Officers should sign documents clearly in their capacity as an officer of the corporation

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- Proper use and registration of ministry names
 - Independently recognizable operating names of Church ministries need to be registered under *Business Names Act* (Ontario)
- Protection of corporate and ministry names
 - Trade-mark registration
 - Section 9 official marks no longer available
- “Taking care of business”
 - Annual meetings of members
 - Board of directors meetings

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- Maintaining corporate records
 - Government filing for changes in head office, directors and by-laws
 - Corporate minute book maintenance
- Associated corporations to be considered
 - Parallel foundation
 - Separate corporations for high risk ministries, schools, etc.

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