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Church Incorporation: Why, How and What's Next

(Power Point Presentation)

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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

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

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

- 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

- 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

- 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

- 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

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- Approval required only for basic corporate requirements
- Standardized by-law requirements

- 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:

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• Definitions – i.e., deacons are deemed to be directors of corporation

Adherents – not recommended

· Membership - essential to establish

• Withdrawal and removal from membership

authority of Church

- Resolution of Church disputes
- · Procedure for discipline of members
- · Procedure for members meetings
- Definition of controlling board (i.e. deacons or elders)

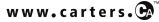
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- Number of directors establish variable number
- Rotating board of directors
- Conflict of interest for board members
- · Term and removal of board members
- · Procedure for board meeting
- Definition and procedure for Church elders (if applicable)
- · 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

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- Submit signed documentation to the federal government with checklist
- Issuance of letters patent and choosing implementation date of transfer of assets and liabilities

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

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- Send letter to CCRA with corporate documents
- Usually granted as a matter of course, but an updated statement of activities may be requested

- 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

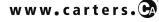
- Incorporated Church agrees to indemnify the unincorporated Church in case of legal action arising out of the debts and liabilities
- Notify any secured creditors of transfer
- · New banking documents
- Filing of government forms
 - Initial reports to federal and provincial governments
 - Initial reports 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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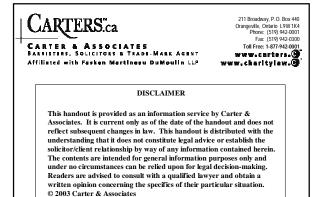
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- Proper use and registration of ministry names
 - Independently recognizable operating names of Church ministries need to be registered under *Business Names Act* (Ontario)
- Protection of corporate and ministry names
 - Trade-mark registration
 - 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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