

Aptlaw.com

A law newsletter for charities and NFPs by Adam Aptowitzer LL.B.

Adam Aptowitzer

Barrister & Solicitor

Suite 203

Richmond St. W.

Toronto, ON

Phone 416.712.2218

Fax 416.850.6087

adam@aptlaw.com

<http://www.aptlaw.com>

Privacy Series

1. [Does PIPEDA apply to Charities and NPOs?](#)

2. [Collecting Information.](#)

3. [Storage and Use of Personal Information.](#)

4. [Accountability and Recourse in PIPEDA](#)

Other Newsletters:

[2004 Budget Highlights for Charities and NPOs](#)

[Charity Involvement in Political Advocacy](#)

Next Newsletter

Fundraising

Inter-provincially

Please forward your

A Note from the Editor

Having finished the privacy series (and a topical article on charities and political advocacy), we now begin a two part series on operating inter-provincially. This newsletter will deal with those corporate filing regulations that affect corporations operating in more than one jurisdiction (for example a federally incorporated entity performing charitable operations in Manitoba). The second newsletter will deal with filings for organizations that raise funds in different provinces (e.g. a charity raising funds in Quebec for its operations in Manitoba). Essentially, the series will be a survey of the regulations in different provinces.

Again, we have experienced a very large increase in readership and I want to welcome all of our new readers. Please remember that this newsletter's purpose is to alert non-lawyers to legal issues that may arise for charities and Not-for-Profits, but it does not answer all the questions related to those legal issues. If you have any specific questions, you should contact a lawyer.

Charitably,
Adam

Operating as a Corporation

People often see corporations as tools of for profit large businesses; however, there are a variety of reasons why charities would incorporate. The most prominent is that incorporated entities generally protect the directors from liabilities that would arise against them personally if they were directors of unincorporated groups. Multiple corporations can also help charities protect their assets. As such, many if not most, charities operating in Canada today are incorporated.

A corporation protects charities by bringing to life a separate legal "person" with many of the same responsibilities as an individual. This corporate person is separate from the directors and from any other corporations with which it may have a connection (similar to a baby in a family – it may be connected to its parents but the baby is a separate person). This legal entity has responsibilities similar to individuals in filing documents with the government. Perhaps obviously though, a corporation cannot act of its own accord and requires its directors to make the necessary filings. Just like parents of a child, the directors are responsible for meeting all the needs of the corporation, and that

comments & suggestions by
[clicking here](#)

the corporation does not break any laws. If the parents conduct their duties according to the accepted standard, then even if the child gets sick or breaks the law the parents are not held accountable. On the other hand if the parents do not meet this standard there may be criminal punishment for the parents. This is the area known as director's liability, which I will write about in future newsletters.

A corporation is incorporated (born) into a certain jurisdiction – either provincial or federal - and is governed by the corporate laws of that jurisdiction (although it can change jurisdictions). Where a corporation operates in more than one jurisdiction, there are generally laws (and registration fees) which require the registration of the business name and yearly filings with the “non-home” government (in addition to the incorporating jurisdiction yearly filings). Perhaps the most confusing element of filing inter-provincially is determining if a corporation actually operates in a province. In some provinces, operating may require an actual building or extensive operation whereas in other provinces the technical definition of ‘operating’ may mean conducting a telephone conversation with a potential donor in that province. Generally, while there are compliance costs of filing this documentation it certainly behooves a corporation eager to avoid penalties to file the necessary paperwork.

Of course, there are a variety of filings (other than the ones discussed below) a corporation may have to make in order to operate in a specific jurisdiction including: WSIB, PST, or environmental, if you have any doubts if your organization needs to make these filings please [contact me](#).

Business Names

Generally, any entity operating in a province will have to register the name under which it operates in that province. This is especially true where the corporation has a number of operating names. Business name registration does not indicate ownership over a name but will serve as evidence of use if there is a trademark dispute and it will notify the public of the entity behind the name. Conversely, if a charity uses a name in a province without conducting a name search and registering that name it may inadvertently use a previously registered name, thus inviting potential litigation. Hence, all corporations should do a search and registration of a business name when beginning operations in a new province. These searches range in price. The links provincial links below should give you more information about the requirements in that province.

Corporate Filings

[British Columbia](#)

Not-for-Profit and Charitable extra-provincial corporations operating in B.C. are under no obligation to register with the government. However, unregistered corporations have

no legal standing in B.C. and are therefore incapable of acquiring an interest in land, or maintaining a legal proceeding in BC. The fees for extra provincial registration are about \$130.

[Name Approval Request Form](#)

[Registration Statement](#)

[B.C. Corporate Registry Forms](#)

[Alberta](#)

Generally, all corporations with any presence in Alberta must file the appropriate registration forms within 30 days of the commencement of essentially any business transactions at all in Alberta. The government fees range from \$230 to \$350.

[Alberta Extra Provincial Registrations](#)

[Saskatchewan](#)

Extra-provincial corporations must file registration forms if they are carrying on business in Saskatchewan (for example holding title or interest in land, maintaining an office, place of business or telephone number). The total government fees are approximately \$130.

[Requirements](#)

[Request for Name Search and Name Reservation form](#)

[Power of Attorney Form](#)

[Application of Registration](#)

[Manitoba](#)

Extra-provincial corporations carrying on any 'undertaking' (for example if the corporation has an agent, representative, warehouse, office, place of business, telephone number or carries on a business or undertaking in Manitoba) must register with the government. The registration is required within 30 days after commencing the undertaking. The fee for an extra-provincial registration is roughly \$100.

[Requirements](#)

[Request for Name Reservation](#) (online)

[Request for Name Reservation](#) (paper)

[Application for Registration Form #5](#)

[Request for Service – Form #19](#)

[Power of Attorney – Form #8](#)

Ontario

Corporations carrying on business in Ontario must file a Form 2 Initial Return with the Ministry of Consumer and Business Services. The form must be filed within 60 days of commencing business activity in Ontario. There is no fee for this filing.

[Form 2 – Initial Return/Notice of Change by an Extra-Provincial Corporation](#)

Quebec

Corporations carrying on any activity in Quebec must register no later than 60 days after beginning the activity. The fee for extra-provincial registration is \$32.

[English Guide to Declaration of Registration Legal Person Form](#)

[Déclaration d'immatriculation Personne Morale](#) (French Only)

New Brunswick

Provincially incorporated corporations are not obligated to file for registration in New Brunswick. However, non – registered corporations are unable to maintain a legal proceeding in a New Brunswick court. (This restriction does not apply to federally incorporated corporations).

[Appointment of Attorney for Service – Form 25](#)

[Consent to Act as Attorney for Service – Form 25.1](#)

[Additional Information Form: Registration of Extra Provincial Non-Profit Corporations](#)

Nova Scotia

Not-for-Profit and Charitable extra-provincial corporations currently cannot register as such in Nova Scotia (although business name registrations are still possible).

Prince Edward Island

Generally, any extra-provincial corporation conducting activity in PEI (whether initiated in or outside the province) must register under the Licensing Act. The registration is valid for one year and the minimum fee is \$200.

[Application for License or Registration Certificate](#)

Newfoundland

Extra-provincial corporations that conduct activities involving a physical presence in

Newfoundland (i.e. holding title or an interest in land, or maintaining an office in the province) must file with the Department of Government Services and Lands, Commercial Registrations Division. The fee is approximately \$250.

[Requirements](#)

[Statement for Registration – Extra Provincial Company \(Form 24\)](#)

[Statutory Declaration – Form 25](#)

[Power of Attorney – Form 26](#)

[Northwest Territories](#)

Corporations carrying on any activity in the Northwest Territories must register with the Department of Justice, Registrar of Corporations within 30 days of commencing business in the Territory. The fee is \$100.

[All Extra-provincial forms](#)

[Statement of Registration Extra-Territorial Corporation \(Form 18\)](#)

[Notice of Registered Office \(Form 21\)](#)

[Yukon Territory](#)

Corporations carrying on activities that involve a physical presence in the Yukon must register within 30 days of the commencement of business. The appropriate department is the Department of Community Services, Corporate Affairs and the fee is \$320.

[Statement of Registration \(Form 11-01\)](#)

[Notice of Attorney for Service \(Form 11-02\)](#)

[Notice of Directors and Officers \(Form 1-03\)](#)

*To unsubscribe from this newsletter send an email with the subject line "unsubscribe" by [clicking here](#)

Adam Aptowitzer distributes the above newsletter on the understanding that it does not constitute legal advice or establish the solicitor/client relationship by way of any information contained herein. The contents are intended for general information purposes only and under no circumstances can it be relied upon for legal decision-making. This newsletter is current only as of the date above and does not reflect any subsequent changes in the law. Readers are advised to consult with a qualified lawyer and obtain a written opinion concerning the specifics of their particular situation.