Queen's Law Clinics
Business Law Clinic

Business Law Playbooks

Part 7 – Non-Profit (Unincorporated) Organizations

Prepared by the Queen's Business Law Clinic in collaboration with Queen's Partnerships and Innovation

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About Queen's Partnerships and Innovation

Queen's Partnerships and Innovation ("QPI") aims to advance research, innovation, and knowledge mobilization to strengthen Queen's local, national, and global impact. QPI provides faculty, students, post-doctoral fellows, and other members of the Queen's community with a variety of services and resources to facilitate strategic initiatives and research partnerships. QPI is also proud to work with external organizations (both industry and not-for-profits) to connect them with expertise, resources, and incubation support.

About Queen's Business Law Clinic

The Queen's Business Law Clinic ("QBLC") is a free legal clinic which was established in 2009 to provide year-round legal services to a wide variety of individuals, businesses and non-for-profit organizations in southeastern Ontario. The QBLC aims to help individuals and businesses who would otherwise have difficulty affording legal counsel, while providing Queen's Law students with practical legal experience working with clients, while instilling in them the values of community service and the pro bono tradition. The QBLC is proud to have contributed to the economic growth and social well-being of Kingston and its surrounding communities by helping entrepreneurs, small businesses, charities and not-for-profit organizations with their legal needs.

Why do you need a Playbook?

For many people with little or no previous business or entrepreneurial experience, understanding the relationship between law and business – and how it may affect the success or failure of their business idea – is a very important step. In this series of Playbooks, we seek to provide general information on the legal concepts that should be considered by the entrepreneur starting out their business venture.

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7 Non-Profit (Unincorporated) Organizations

7.1. Introduction

A Non-Profit Organization ("NPO") is defined by the *Income Tax Act* ("*ITA*") as a club, society, or association that is not a charity and that is organized and operated solely for:

- Social welfare (social, recreational, or hobby groups – e.g. golf clubs),
- Civic improvement (some amateur sports organizations – e.g. local hockey leagues),
- Pleasure or recreation (some festival organizations – e.g. parades and seasonal celebrations), or
- Any other purpose except profit.

What is important to qualify as a NPO is that no part of its income can be made payable to or available for anyone's personal benefit.

These types of organizations can be very informal and are very common. For example, any group of people involved in raising funds to open a local library or to assist with a tragedy or disaster relief would be considered a NPO.

Although a not-for-profit ("NFP") corporation is also considered a NPO, when referring to a NPO in this Playbook, we are referring to unincorporated associations. Thus, a NPO is distinct and different from a NFP corporation in that the NPO has not gone through the incorporation process. More information about NFP corporations can be found in the "NFP" Playbook.

7.2. How is a NPO formed?

NPOs are generally simple and inexpensive to create. Unlike a NFP corporation, there is no legislation that governs a NPO or outlines a procedure for its formation. This means that, similar to a sole proprietor and a partnership, there are no formalities required to form a NPO. A NPO will be created when a collection of individuals act together to achieve one of the above purposes. There is no requirement for its members to form a constitution or a set of by-laws, but it is prudent for a NPO to have some sort of agreement among its members to guide decision-making and help settle disputes if one were to arise. A properly executed constitution or other agreement may become a legally binding document that a court will consider should a dispute arise.

7.3. Features of a NPO

A NPO is not a separate legal entity. This means that, unlike a corporation, a NPO is not recognized as separate from the group of individuals who are administering it. A NPO does not have independent power to enter into contracts, it cannot sue or be sued, and it cannot hold property. Its members are not protected from liability. The individuals administering the NPO will be personally liable for all the acts, liabilities, and debts of the NPO.

Because there is no governing legislation for forming a NPO, NPOs are much more flexible in the way that they are structured. For example, NPOs are not required to have a board of directors.

It may be more difficult for a NPO to raise funds required to carry out their operations. A NPO is entirely reliant on donations from the public and contributions from its members. However, a NPO cannot issue tax receipts to donors. The ability to issue tax receipts is a huge benefit to becoming a registered charity, as it can incentivize prospective donors to donating money to the charity.

A NPO is exempt from paying tax on all or part of its taxable income, so long as it meets the definition of a NPO during that tax period. However, a NPO may still have to pay tax on property income or on capital gains.

7.4. Why Use this Vehicle?

There are a few reasons why a NPO might be an appropriate vehicle for your business idea. NPOs are exempt from paying tax and are not subject to the same level of regulatory requirements as charities or NFP corporations.

Some NPOs have no need for the legal protection from liabilities that is provided through incorporation and have more pressing needs for the limited funds available to them. For these NPOs, the initial costs, diminished structural flexibility, and increased regulatory requirements that accompany incorporation outweigh the benefits provided by incorporation. Having fewer regulatory requirements also means that the NPO will be more independent from government and public oversight, which may be attractive to some associations like trade unions and political parties.

7.5. Filing Obligations

There are some filing obligations that may be required by a NPO. A NPO will have to file *Form T1044, Non-Profit Organization (NPO) Information Return* if:

- It received or was entitled to receive taxable dividends, interests, rentals, or royalties totalling more than $10,000 in the fiscal period,
- The total assets of the organization were more than $200,000 at the end of the immediately preceding fiscal period, or
- It had to file an NPO Information Return for a previous fiscal period.

Note that a NPO that meets one of the first two criteria above will subsequently have to file a NPO Information Return at the end of every fiscal period for the rest of its existence, even if it no longer meets those first two criteria.

This form must be filed no later than six months after the end of each of its fiscal periods. Further, depending on the type of NPO, other tax returns may also be required. For example, A NPO will also have to file a *T3 – Trust Income Tax and Information Return* if its main purpose is to provide dining, recreational, or sporting facilities.

7.6. NPOs vs Registered Charities

Many people equate NPOs with charities and use the two terms interchangeably. However, this is not accurate. It is important to remember that the *ITA* prohibits a NPO from also being a registered charity. As a result, each type of organization is distinct.

A charity must apply to the Canada Revenue Agency ("CRA") for registration. This will exempt it from paying income tax and will permit it to issue charitable donation receipts. A NPO is not required to register federally or provincially to acquire its tax-exempt status, but it cannot issue tax receipts for donations or membership fees. NPOs also do not have to comply with the same level of stringent CRA reporting requirements as charities.

Charities must operate to achieve a specified charitable purpose (for more information see Part 6 of this Playbook series). A NPO, on the other hand, is prohibited from operating exclusively for one of those charitable purposes. However, it can operate for any other purpose except profit.

7.7. Steps in Setting up a NPO

7.7.1. Step 1: Decide on an NPO

Decide that a NPO is the appropriate business structure – get legal and accounting advice from experts.

7.7.2. Step 2: Decide on a Name

Decide on a name for the NPO. Do some research and conduct an Enhanced Business Name Search through the Ontario Business Registry to find out whether your proposed name is available. The cost to conduct a search may vary depending on the type of search records requested. You may also conduct a preliminary name search using the opstart.ca free NUANS preliminary search option.

7.7.3. Step 3: Register Name

If your chosen name is available, register your business name in Ontario. Business name registration is effective for five years, after which you must renew it. The cost of registration varies depending on your method of filing. Payment can be made online using a Visa or MasterCard, or by mailing a cheque, money order, or cash to the Ministry of Finance.

7.7.4. Step 4: Protect Intellectual Property
Protect your trademark and purchase a domain using your preferred business name, if applicable. A trademark is a way for the public to identify that the goods or services being provided are from a certain party. This can go a long way in protecting your NPO's reputation, as well as protecting against potential trademark infringement claims. The QBLC offers its clients trademarks advice by assisting them in conducting detailed trademark searches and providing them with a legal opinion on the availability of their proposed trademarks for registration in Canada.

7.7.5. Step 5: Prepare Constitution
Write your constitution or other agreement to structure your NPO. Important things to cover in this document include:

- The purpose of the NPO
- The parties to the agreement and their respective responsibilities
- Names and contact information of the other parties to the agreement, as well as the address of the head office
- Process whereby certain business decisions will be made (unanimous, two-thirds, majority vote)
- Process whereby those in decision-making roles get those positions (Vote by the members? Appointed by certain individuals?)
- A dispute resolution process and how members of the NPO may be disciplined or expelled

7.8. Conclusion
Like a sole proprietorship or a partnership, a NPO is relatively easy and inexpensive to set up. The most important thing to remember is that the NPO's purpose must be for anything besides making a profit but cannot be exclusively for a charitable purpose.

There are significant differences in the legal features of a NPO compared to a NFP corporation or a charity. A NPO is not a separate legal entity, so it does not have powers or liabilities separate from the individuals who administer it. Unlike a charity, NPOs cannot issue tax receipts and there is no need to register to acquire their tax-exempt status. Should you require additional legal advice specific to your situation, the QBLC would be happy to assist you.