



HVACR HERITAGE CENTRE CANADA [HHCC]

START-UP YEARS 1999-2020

ESSENTIAL DOCUMENT SERIES

DOCUMENT NO. 1

FOUNDING DOCUMENT

FINAL REPORT FOR HVACR HERITAGE CENTRE CANADA,

FILE 01-0034-TSC

CARTER AND ASSOCIATES, JUNE 04, 2004

REISSUE FEBRUARY 2020

BY

HHCC, COLLECTIONS AND CURATORIAL SERVICES [CCS]

[CCS Reference: File 114-4; Document: HVACR Final Report – Jan 14, 2020]

FINAL REPORT

For

HVACR HERITAGE CENTRE CANADA

FILE NO. 01-0034-TSC

JUNE 04, 2004

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CARTER & ASSOCIATES
BARRISTERS, SOLICITORS & TRADE-MARK AGENT
Affiliated with **Fasken Martineau DuMoulin LLP**

211 Broadway, P.O. Box 440,
Orangeville, Ontario L9W 1K4
Phone: (519) 942-0001
Fax: (519) 942-0300

www.carters.caTM
www.charitylaw.caTM



HVACR Heritage Centre Canada HHCC

Memorandum

From: Leslie Oliver and Hart Holmstrom Members HHCC Founding Committee 1990

To: HHCC Board of Directors

Subject: The Reissue of HHCC's Founding Document

Date: February 12, 2020

Twenty years after the establishment of its Founding Committee, and profiting by its experience as a young “Start-Up”, HHCC looks forward to moving on. As a collections-based, research-based, and public education- based, NFP organization with a national mandate it is committed to helping tell the stories of Canada’s rich heritage of material culture to a wide range of 21st century, Canadian audiences.

As part of its commitment to renewal HHCC is revisiting its national mission and mandate, as authoritatively set out in its founding document, “Final Report for HVACR Heritage Centre Canada”¹. Across its 13 Sections the report variously provides the essential understandings on which HHCC continues to build: including: its reasons for being, its authority to act, its working context, purposes, corporate objects, and its public commitments, as well as its requirement under law, as a Canadian charitable organization. As such it provides the authoritative platform on which the Organization will now continue to build.

The report, as revised July 7, 2004, and forwarded to Hart Holmstrom of the Founding Board, came with the recommendation that ***“We would strongly recommend that a copy of this binder be made for and distributed to each current and future Director of HVACR for their information”***. An essential dictum which we continue to honor.

Accordingly, we have had the report reprinted for three-hole punch - as originally produced by Carter Associate. An initial re-printing of 8 numbered copies has been made, sufficient for existing board members and significant others. We recommend that the digital reprint be retained by Collections and Curatorial Services in file 114-4 [Founding Documents], that numbered printed copies be loaned to active board members in trust, as a condition of board membership, that they be returned following the end of tenure, and that they remain as the permanent property of HHCC.

Sincerely,

Hart Holmstrom and Leslie Oliver
Members of HHCC Founding Committee 1990
Members of HHCC Founding Board of Directors 2003
Members of HHCC Board of Directors 2020

¹ See “Final Report for HVACR Heritage Centre Canada, File No. 01-0034-TSC, June 4, 2004”, Carter and Associates, available from CCS Data Centre “HHCC Founding Doc/HVACR Final Report, Jan14 2020”

**FINAL REPORT
For
HVACR HERITAGE CENTRE CANADA**

I N D E X

TAB **DOCUMENT**

"A" ***REPORT***

- 1) Final Report to the Board of Directors of HVACR Heritage Centre Canada dated June 04, 2004

"B" ***ATTACHMENTS TO REPORT***

- 1) Letters Patent issued September 23, 2002
- 2) Supplementary Letters Patent issued October 15, 2003
- 3) General Operating By-law No. 1
- 4) Letter to CCRA dated May 7, 2003 applying for the charitable registration number
- 5) Letter to CCRA dated November 21, 2003 requesting the granting of the charitable registration number to the Corporation following the issuance of the October 15, 2003 Supplementary Letters Patent
- 6) Letter from CCRA dated November 26, 2003 confirming the granting of a charitable registration number to the Corporation
- 7) Letter to the PGT dated May 17, 2004
- 8) Ministry of Consumer and Business Services, Ontario Corporate Number dated March 22, 2004
- 9) Article entitled Remuneration of Directors in Ontario
- 10) Condensed Charity Legal Risk Management Checklist
- 11) Blank Form 3 (federal)
- 12) Blank Form 2 (provincial)



CARTER & ASSOCIATES

BARRISTERS, SOLICITORS & TRADE-MARK AGENT
Affiliated with Fasken Martineau DuMoulin LLP

Terrance S. Carter B.A., LL.B.
Counsel to Fasken Martineau DuMoulin LLP
Mervyn F. White B.A., LL.B.
Jacqueline M. Connor B.A., LL.B.
Theresa L.M. Man B.Sc., M.Mus., LL.B.
Mark J. Wong B.A., LL.B.

Esther S.J. Oh B.A., LL.B.
John M.C. Latham B.A., LL.B.
R. Johanna Blom B.A., J.D.
COUNSEL:
Bruce W. Long B.A., LL.B.
Donald J. Bourgeois B.A., LL.B.
Jane Burke-Robertson B.Soc.Sci., LL.B.

June 04, 2004

**LETTER SENT BY EMAIL
AND LETTER AND ENCLOSURES SENT BY COURIER**

HVACR Heritage Centre Canada
c/o Hart Holmstrom (Temp Air)
100 Dufferin Street South
Alliston, ON L9R 1T9

"PRIVATE & CONFIDENTIAL"

Attention: Hart Holmstrom

Dear Sir:

Re: HVACR Heritage Centre Canada
Re: Our File No. 01-0034
Re: Incorporation, Charitable Status & Strategic Planning

Further to my recent correspondence with Hart Holmstrom, please find enclosed the final report letter to the Board of Directors of HVACR Heritage Centre Canada ("HVACR") for inclusion in the Minute Book of HVACR. This final report on the incorporation, charitable status and initial organization of HVACR, together with a summary of applicable federal and provincial laws governing charitable corporations, will serve as a helpful reference tool for the Board of Directors in managing the corporation and being apprised of their duties and responsibilities as directors.

In addition to the preparation of the final report letter, we have also prepared a final report binder for HVACR. This binder contains a copy of the report, together with copies of the Corporation's corporate documents, copies of forms filed and registrations completed by HVACR, and supplementary reference materials. It also includes a blank Form 3 (federal corporate annual summary) and Form 2 (Ontario corporate changes) for future use by HVACR. We would strongly recommend that a copy of this binder be made for and distributed to each current and future Director of HVACR for their information.



C A R T E R & A S S O C I A T E S

BARRISTERS, SOLICITORS & TRADE-MARK AGENT
Affiliated with Fasken Martineau DuMoulin LLP

Terrance S. Carter B.A., LL.B.
Counsel to Fasken Martineau DuMoulin LLP
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COUNSEL:
Bruce W. Long B.A., LL.B.
Donald J. Bourgeois B.A., LL.B.
Jane Burke-Robertson B.Soc.Sci., LL.B.

June 04, 2004

SENT BY COURIER

HVACR Heritage Centre Canada
c/o Hart Holmstrom (Temp Air)
100 Dufferin Street South
Alliston, ON L9R 1T9

"PRIVATE & CONFIDENTIAL"

Attention: Hart Holmstrom

Dear Sir:

Re: HVACR Heritage Centre Canada
Re: Our File No. 01-0034
Re: Incorporation, Charitable Status & Strategic Planning

A. INTRODUCTION

1. Purpose of Report

This report has been prepared to explain how **HVACR HERITAGE CENTRE CANADA** (referred to as the "Corporation") has been established and organized, as well as how it functions as a charitable corporation. In addition, this letter will provide a general overview of the duties and responsibilities of directors of a charitable corporation and some of the basic provisions of the *Income Tax Act* that generally apply to charities.

It is important that every member of the Board of Directors of the Corporation be given a copy of this report together with all of the enclosures that are referred to at the end of this report, and that they be asked to read them in their entirety. In addition, a copy of this letter should be forwarded to the accountant and auditor for the Corporation. While the letter is lengthy, it will serve as a helpful reference tool in the future. **As such, a copy of this letter should be placed at the front of the minute book of the Corporation for future reference and copying as necessary.**

Please note that any reference in the report to "**Board of Directors**" is deemed to mean the **Board of Directors of HVACR Heritage Centre Canada** and any reference to "**Corporation**" is deemed to mean **HVACR Heritage Centre Canada** as an incorporated entity.

Main Office Location

211 Broadway, P.O. Box 440
Orangeville, Ontario, Canada, L9W 1K4
Tel: (519) 942-0001 Fax: (519) 942-0300

Toll Free: 1-877-942-0001

www.carters.ca

www.charitylaw.ca

Toronto Meeting Location

Toronto Dominion Bank Tower, Suite 4200
TD Centre, Toronto, Ontario, Canada
(by appointment) Tel: (416) 675-3766

Since this report includes an explanation of some situations where directors may be found personally liable, it is essential that each Member of the Board of Directors of the Corporation who receives a copy of this report keeps the report **confidential** and does not discuss its contents with any one else without an authorizing resolution from the Board of Directors.

This report deals with only the initial organization of the Corporation.

2. Previous Reports

This reporting letter is sent to you pursuant to my interim report of March 22, 2004, which was preliminary in nature. Therefore it is important that the matters that were discussed therein be understood in the larger context of the comments and recommendations presented in this report.

B. REPORT ON INCORPORATION

1. Letters Patent

As indicated in previous correspondence, the Federal Government, through Industry Canada, issued Letters Patent incorporating **HVACR Heritage Centre Canada** on **September 23, 2002**. I confirm that the original copy of the Letters Patent has been inserted in the Minute Book. I have enclosed a copy of the same with this report for your information.

2. Supplementary Letters Patent

As indicated in previous correspondence, the Federal Government, through Industry Canada, issued Supplementary Letters Patent amending some of the objects of **HVACR Heritage Centre Canada** on **October 15, 2003**. I confirm that the original copy of the Supplementary Letters Patent has been inserted in the Minute Book. I have enclosed a copy of the same with this report for your information.

3. Basic Nature of a Corporation

A corporation is an artificial person or legal entity, separate and distinct from that of its members. A corporation holds property in its own name, acquires rights, obligations and liabilities, enters into contracts and agreements, and has the capacity to sue and be sued, as would a natural person. In addition, there is no personal liability of members for a corporation's debts or obligations.

A corporation is managed or governed by a board of directors that is elected by its members. The board of directors either elects or appoints the officers, i.e., chairperson, or president, secretary, treasurer, or secretary/treasurer, etc., who are responsible for the actual operations of the corporation. Alternatively, the members of the corporation may elect officers. Officers can be identified by other names, provided that the names of those officer positions are set out in the by-laws of a corporation.

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Neither the directors, officers nor members own the corporation, nor do they have any right of ownership to any particular asset of the corporation and a corporation may not be operated for pecuniary gain of its members, directors or officers when it is a charitable corporation.

4. Letters Patent

(a) Charitable Objects

The charitable objects of the Corporation were originally established in the Letters Patent issued by Industry Canada on September 23, 2002, as amended by the Supplementary Letters Patent on October 15, 2003. The current charitable objects of the Corporation are set out below for ease of reference:

1. *To further, promote, support and facilitate the study, research and understanding of the history and development of the heating, ventilation, air conditioning and refrigeration industry in Canada and abroad ("HVACR Industry").*
2. *Provided that these objects shall include only those which are exclusively charitable at law, and in furtherance of the foregoing:*
 - (a) *to identify, retrieve and preserve historical artifacts and archival resources of the HVACR Industry;*
 - (b) *to establish, operate and maintain a centre or centres to publicly make available the historical artifacts, archival resources and educational materials of the HVACR Industry through all available means, including exhibits, publications and the use of electronic and internet communications and interaction;*
 - (c) *to commission research and communicate the results therefrom to further the study and understanding of the HVACR Industry;*
 - (d) *to educate individuals working in the HVACR Industry, as well as the general public, about the HVACR Industry;*
 - (e) *to promote, support, facilitate and co-ordinate dialogue, networking and strategic partnerships between individuals, groups and organizations in the various sectors of the HVACR Industry in order to further the study and understanding of the HVACR Industry;*
 - (f) *to promote, develop, and distribute educational, resource, and study materials for individuals, groups and organizations to further the study and understanding of the HVACR Industry;*

- (g) *to develop, organize and conduct classes, meetings, tutorials, discussions, activities, programs, courses, seminars, conferences, workshops, and symposiums for individuals, groups and organizations to further the study and understanding of the HVACR Industry;*
- (h) *to establish, own, and/or operate one or more publishing offices, printing plants, distribution centres, or retail facilities for the publication, printing, distribution and sale of all types of literature and publications directly related to the objects of the Corporation;*
- (i) *to produce programs and materials directly related to the objects of the Corporation for presentation, broadcast and distribution on any means of audio, visual, computer, electronic or other forms of communication as may become available from time to time;*
- (j) *to acquire and hold land for the purposes of the Corporation;*
- (k) *to receive and maintain a fund or funds for the objects of the Corporation and to apply from time to time all or part of the income and/or capital thereof for the said objects, and for the benefit of charitable organizations that are registered as such under the Income Tax Act (Canada), as amended from time to time, and that have charitable objects similar to the objects of the Corporation;*
- (l) *to associate, co-operate and affiliate with any association or organization, incorporated or unincorporated, with charitable objects similar to the objects of the Corporation;*
- (m) *to give property and funds of the Corporation to "qualified donees" as defined under the Income Tax Act (Canada), as amended from time to time, to further the objects of the Corporation; and*
- (n) *to carry on "related businesses" within the meaning of the Income Tax Act (Canada) as amended from time to time, in furtherance of the objects of the Corporation.*

It is essential that all activities of the Corporation fall within the parameters of the charitable objects. Any activities outside the stated charitable purpose would be *ultra vires* the statutory authority given to the Corporation at its inception and would be **null and void.** This could mean that the members of the Board would be held personally liable for losses to the Corporation arising out of activities authorized by the Directors that were outside of the corporate authority set out in the Letters Patent, the October 15, 2003 Supplementary Letters Patent and any subsequent Supplementary Letters Patent.

(b) Dissolution Clause

In Section VI of the Letters Patent, it stated that upon dissolution or winding up of the Corporation, all of its remaining assets after payments of its liabilities, shall be distributed to one or more charities that are registered as such under the *Income Tax Act* (Canada), as amended from time to time, or equivalent designation under such legislation, which have similar objects to the Corporation, provided that prior to such event any special or restricted purpose trust funds held by the Corporation shall be transferred to a new trustee appointed by the directors of the Corporation to be applied in accordance with the applicable terms of trust.

5. General Operating By-law

The structure for the Corporation and the means by which it carries on its day-to-day activities were originally set out in General Operating By-law No. 1, which can be amended from time to time.

A copy of the current General Operating By-law is included with this report. It is important that each member of the Board receives a current copy of the General Operating By-law and be familiar with the provisions contained in it.

6. Charitable Status

The Corporation received a charitable registration number by Canada Revenue Agency ("CRA") on the 15th day of October 2003, which number is **85897 8489 RR0001**.

We are including with this report copies of the following correspondence to and from CRA regarding the Corporation:

- a) Letter to CCRA dated May 7, 2003 applying for the charitable registration number;
- b) Letter to CCRA dated November 21, 2003 requesting the granting of the charitable registration number to the Corporation following the issuance of the October 15, 2003 Supplementary Letters Patent; and
- c) Letter from CCRA dated November 26, 2003 confirming the granting of a charitable registration number to the Corporation.

We confirm that the original letter from CRA dated November 26, 2003 confirming the charitable registration number has earlier been filed in the Minute Book of the Corporation for safe-keeping.

7. Initial Organizing Resolutions Passed on September 24, 2002 at 7:00 p.m.

The following is a summary of the resolutions passed by the Board of Directors to initially organize the Corporation, the originals of which were earlier enclosed in the Minute Book for the signature of the appropriate persons:

- i) the adoption of General Operating By-Law No. 1 regulating the manner in which the Corporation conducts its stated charitable purposes;
- ii) the appointment of officers of the Corporation;
- iii) the adoption of the banking resolution required by the Royal Bank of Canada to determine the signing officers for cheques and the process for conducting other banking business and authorizing signing officers;
- iv) the appointment of signing officers;
- v) the adoption of the corporate seal of the Corporation;
- vi) the approval of the location and mailing office of the head office of the Corporation;
- vii) the location of the Corporation's books and records as being the head office of the Corporation;
- viii) the acceptance of the initial Members of the Corporation;
- ix) the authorization for applying for Charitable Status for the Corporation;
- x) the authorization for preparing a Statement of Activities for the Corporation;
- xi) the authorization to investigate the cost of obtaining Directors and Officers Liability Insurance for the Corporation;
- xii) the authorization for a special meeting of the initial Members.

7. Members Initial Organizing Resolutions on September 24, 2002 at 7:30 p.m.

Immediately after the Board of Directors passed the above-mentioned resolutions, the initial Members of the Corporation met on September 24, 2002, at 7:30 p.m., to pass the following resolutions, the originals of which were earlier enclosed in the Minute Book for the signature of the appropriate persons:

- i) the confirmation of passage of General Operating By-law No. 1;
- ii) the appointment of the Auditor;
- iii) confirmation of the number of Members on the Board of Directors being six (6);
- iv) the election of Members to the Board of Directors;
- v) confirmation of the past actions of the Board of Directors of the Corporation; and
- vi) confirmation to investigate to cost of obtaining Directors and Officers liability insurance.

8. Bank Accounts and Investments

In relation to the various bank accounts and investments of the Corporation, it will be necessary that written notification be given to each institution advising that the ownership of the said investments or the bank accounts are now to be recorded in the name of the Corporation. I am

assuming that all of the bank accounts of the Corporation are now in the name of the Corporation. Copies of the Letters Patent, Supplementary Letters Patent and General Operating By-Law should be given to the bank with the request that the bank accounts for the Corporation be recorded in the name of the Corporation.

9. Consent To Act As Directors

You will see in the Minute Book of the Corporation that there are Consents for each of the Directors to sign. This confirms that the individuals who will serve as Directors are agreeable to take on the responsibility that being a Director entails as well evidencing his or her agreement with the Objects contained in the Letters Patent for the Corporation.

10. Application For Membership

Each of the first and any new Directors must also sign an Application for Membership in the Corporation. The Application is contained in the minute book for the Corporation. This confirms that those individuals who agreed to be Members of the Corporation are in agreement with the Objects of the Corporation as set out in the Letters Patent as well as the Policy Statements put into effect from time to time. In the future, each prospective Member should be provided with a copy of the Letters Patent and By-laws of the Corporation before being asked to subscribe for Membership.

20. Procedure To Be Followed For Future New Board Members and Members of the Corporation

General Operating By-law No. 1 of the Corporation establishes a "closed membership" corporation whereby its Directors and Members are one and the same individuals. Therefore, in the future, as new Directors of the Corporation are to be elected, the following procedures should be followed:

- a) The individual should sign an Application for Membership in the Corporation;
- b) The individual should sign a Consent to act as a Director of the Corporation;
- c) The Board of Directors of the Corporation will need to admit the individual as a Member of the Corporation; and
- d) The Members of the Corporation will then elect the individual as a Director of the Corporation.

21. Decisions of The Board of Directors

The Corporation carries on its activities under the direction of the Board of Directors. The Board makes its wishes known by making resolutions concerning what it wants done. In essence, any decision made by the Board of Directors should be reflected by a resolution. Resolutions are recorded as part of the minutes of the Board to be signed by either the Chairperson or the

Secretary. The officers and employees of the Corporation then carry out the decisions of the Board. The day-to-day activities of the Corporation do not require resolutions of the Board.

11. Correct Use Of Corporate Name

One of the advantages of incorporation is that the liability of the Corporation is limited to the assets of the Corporation rather than to its Members. However, it is important to ensure that persons dealing with the Corporation know that they are dealing with a corporation as opposed to an association of individuals. To this end the following should occur:

- a) All the paper work involving the Corporation, including charitable receipts, contracts, letterhead, agreements, and signs should use the full corporate name as much as possible.
- b) Whenever any Officer of the Corporation signs anything on behalf of the Corporation, whether it be for contracts, orders, cheques, or anything else, those Officers must first write the proper name of the Corporation and sign under it, and set out the capacity in which they are acting, either as Chairman or Vice-Chairman, etc. For instance:

HVACR Heritage Centre Canada

Per:

- Chairperson

- c) Any public documentation or notice should be done in the name of the Corporation as set out above, whether such documents be in the form of business cards, letterhead, notices, publications, etc.

12. Consequences of Improper Identification

It is very important that all of the Corporation's affairs are conducted using the proper method of signing as outlined above. Failure to identify the Corporation properly may result in the individual signing the document for the Corporation also being exposed to liability for the obligations contained in the document.

13. Use of Name Other Than Corporate Name

A Corporation may use a name other than its corporate name. However, no Corporation can hold itself out to the public in Ontario or in any other province using a name other than its corporate name unless that name is first registered with the Province of Ontario pursuant to the *Business Names Act* (Ontario).

In the event that the Corporation carries on activities under a business name other than the Corporation name, such as "HVACR Heritage Centre Canada", the Corporation will need to register the name under the *Business Names Act*. You will need to advise our office if this occurs and we will prepare the necessary registration form together with authorizing Board resolution.

It is essential to use the full corporate name in conjunction with any business name to ensure limited liability in its operations for its members. An example of how this can be done is as follows:

HVACR*

* a division of

HVACR Heritage Centre Canada,

or

HVACR Heritage Centre Canada,

operating as

HVACR

In addition, if there are any documents that are being signed under the name of the Corporation, it is essential that the full corporate name be used or in the alternative, if only the business name is used, then the proper designation would be as follows:

HVACR* a division of

HVACR Heritage Centre Canada,

Per:

_____ - Chairperson

14.

Fund-raising Activities

As fund-raising activities are an essential aspect of the operations of the Corporation, I would refer you to a recently written article prepared for the Canadian Association of Gift Planners entitled "Looking a Gift Horse in the Mouth" Avoiding Liability in Charitable Fundraising Updated, dated October 5, 2001, that will help to identify some pitfalls to avoid in a legal context in dealing with various fund-raising programs. The paper is too long to reproduce in this report. A full copy of the paper and various appendixes can be found at our web site at www.charitylaw.ca.

15. Decisions of the Board of Directors

A charitable corporation carries on its activities under the direction of the Board of Directors. The Board makes its wishes known by making resolutions concerning what it wants done. In essence, any decision made by the Board should be reflected by a resolution. Resolutions are recorded as part of the minutes of the Board to be signed by the Chairperson or the Secretary. The officers and employees of a charitable corporation then carry out the decisions of the Board. The day-to-day activities of Corporation do not require resolutions of the Board.

See All

16. Annual Meeting of Members

The Corporation as a non-share capital corporation is required by law to have at least one meeting a year of its Members. The annual Members meeting is separate and apart from the Board of Directors meetings and the annual Members meeting is to be held no later than December 30th of each year. The annual Members meeting is distinct from the annual special members meeting to be held any time. The Members are authorized at the annual meeting to transact the following business:

- (a) to receive a report or reports from the Board;
- (b) to receive a report from the Auditor on the financial statements for the Corporation in accordance with the Act;
- (c) to establish, increase or decrease the number of Directors within the minimum and maximum numbers set out in Section 7.01;
- (d) to elect Directors as required;
- (e) to appoint an Auditor for the current Fiscal Year and to fix or authorize the Board to fix remuneration for the Auditor;
- (f) to approve past actions of the Directors and Officers; and
- (g) to transact any other business properly brought before the meeting.

At the special election meeting, the Members are authorized to transact any business, the general nature of which is specified in the notice calling the meeting.

The Secretary should ensure that minutes are kept of the annual meetings to reflect all of the above-mentioned matters. The minutes should be signed by the Secretary and by the Chairperson of the meeting and inserted into the minute book in chronological order. Draft copies for the first annual meeting of Members have been inserted in the Minute Book that can be used as a guide for future annual meetings of Members.

It is important that the minutes of the Board and Membership meetings be kept in the corporate minute book. When additional minute books are needed, an additional volume should be obtained using the same format as the one that has been forwarded to you, except that it will be marked "Vol. 2". Keeping the Board and Membership meeting minutes in sequentially numbered volumes will ensure that the records of the Corporation are kept in good order. I would also suggest that each page of the minutes of Directors and Members meetings for each volume be numbered sequentially, ie, Vol. 1 - pg. 1, Vol. 1 - pg. 2, etc. This type of organization can prove very helpful if the Corporation wishes to index the Board resolutions by computer in the future.

The Secretary should be made familiar with the minute book together with this reporting letter.

Specifically, the Secretary will need to maintain the various registers at the back of Vol. 1 of the minute book in relation to the list of Directors, Officers, Members and various government forms that are required to be filed.

It is very important that minutes of the meetings of the Board and its members be kept up to date. In the event that the Corporation is audited by CRA, one of the first things they will look at is the completeness of your records in the minute book. That is why it is important to keep all minutes of the Board of Directors and Members in the minute book of the Corporation.

I am assuming that you will arrange to maintain your own corporate minute book. However, if you require assistance at any time, please do not hesitate to contact us as our firm does provide corporate services in this regard.

17. Policy Statements

It is important that the Board consider adopting Policy Statements on matters of important applications, particularly where the Corporation needs to protect potential victims, i.e., by establishing policies on avoiding sexual abuse or sexual harassment. You will notice in the General Operating By-law that whenever a Policy Statement is adopted by the Board and approved by the membership, it is deemed to be part of the General Operating By-law. This process will add force and effect to the Policy Statement, provided that all Directors, Members, Volunteers and Employees of the Corporation are fully aware of what the Policy Statements are. As such, it is important to not only adopt Policy Statements but to properly communicate them to all affected individuals in question. If the Corporation requires assistance in the preparation of Policy Statements, please do not hesitate to contact us.

18. Regulations, Rules and Guidelines

As staff develops procedures on major administrative matters, the Board of Directors will need to review and adopt them as regulations. These regulations will then become part of the corporate records by which the Corporation operates on a day-to-day basis in accordance with the terms of the General Operating By-law for the Corporation.

It is important that Regulations are maintained and kept up to date, with copies being given to each Member of the Board of Directors, and all executive staff. In addition, the original copy of the Regulation needs to be inserted into the minute book in the section marked "Regulations" and marked as "Reg. 2001-1", "Reg. 2001-2", etc.

19. Banking Documents

If you change banks, new banking documents will have to be prepared and filed with the new bank. There will also be legal work to be done at that time to prepare the required banking resolutions.

20. Books And Records

The Corporation is required to keep the following records in the custody of the Secretary, or some other officer specially charged with that duty, at its head office:

- a) a copy of the incorporating statute, and/or Letters Patent, any Supplementary Letters Patent, and all By-laws of the Corporation;
- b) the name of all persons or entities who are or have been Members;
- c) the addresses of each person or entity while that person or entity is a Member;
- d) a register of the names and addresses of Directors and Officers;
- e) proper book accounts and accounting records; and
- f) minutes of meetings of Members and Directors.

Most of these documents are kept in the minute book, which is also to be kept at the head office for the Corporation.

21. Initial Reporting Requirements

Even though the Corporation is a federally incorporated company, it will be carrying on activities in the Province of Ontario. In this context, it is important to understand the overlapping jurisdiction that the federal and provincial governments have over a federally incorporated charity.

While the federal government has ultimate jurisdiction over the Corporation arising from its incorporation under the *Canada Corporations Act* and by virtue of its charitable registration under the *Income Tax Act* (Canada), each of the provinces in which the Corporation carries on its operation will have a legitimate interest in jurisdiction pertaining to its operations as a charity within the boundaries of their particular province.

(a) *Charities Accounting Act* (Ontario)

In Ontario, there are legal requirements imposed on charities that will need to be complied with. These obligations, imposed by virtue of the *Charities Accounting Act* (Ontario), primarily involve the Office of the Public Guardian and Trustee ("PGT") for the Province of Ontario. The following is a brief synopsis of the documents and information that need to be filed with that office for all newly created and ongoing charities in Ontario.

Pursuant to the *Charities Accounting Act* (Ontario), every charitable corporation which holds property for charitable purposes must give within one month of the inception of the Corporation written notice to the PGT. Upon receipt of such notice and in order to properly monitor the application of funds and activities of the charity, the PGT requires the

following information and documentation:

- i) notification of inception;
- ii) a copy of the complete Letters Patent together with any other Supplementary Letters Patent that are issued;
- iii) the street and mailing address of the charity and the names and street addresses of the operating directors and officers;
- iv) a short summary of any assets and liabilities on inception;
- v) the date chosen as the fiscal year end;
- vi) the official Charity Business Number given by CRA;
- vii) a copy of the annual audited financial statement each year, but only if required by the PGT.

The address is:

The Office of the Public Guardian and Trustee
595 Bay Street, Suite 800
Toronto, Ontario
M5G 2M6

I have prepared the initial letter to the PGT dated May 17, 2004, in accordance with the above-mentioned requirements, a copy of which letter is enclosed with this report for your reference.

As well, on an ongoing basis, all charities in Ontario are required to file notice with the PGT of any change in the above mentioned list of information, i.e., supplementary letters patent, change of head office, directors or officers, etc.

When concern about the administration and management of the charity arises, the PGT can require the charity to pass its accounts in court. If it is found that the charity has misapplied or misappropriated funds from that directed by the Letters Patent, the PGT may apply to a court for an order appointing himself or herself as trustee over the charity. Such misappropriation or misapplication of charitable funds may also warrant legal proceedings against the Directors of the Corporation.

Besides being legally required to comply with the *Charities Accounting Act* (Ontario) and provide the appropriate information and documentation to the PGT, a charity that registers with the PGT derives the following benefits:

- (i) it will be informed of any bequest or interest if may have under any Will probated in Ontario;
- (ii) it will encourage the PGT to represent the charity's interest in any legal proceedings such as passing of accounts, will interpretation, contestation of a will or variation of trust;
- (iii) the charity can consult with the staff of the Office of the PGT to obtain information and advice on matters affecting the charity; and
- (iv) the charity can seek the advice of the PGT on any new proposal it may wish to undertake.

(b) *Ontario Corporations Information Act*

In addition to the above requirements with the PGT of Ontario, pursuant to the *Ontario Corporations Information Act*, a federal corporation must also file a "Form 2 Notice". This Form 2 Notice pertains to extra-provincial corporations (i.e. non-Ontario corporations) that must provide information pertaining to the address of the corporation, the name of the corporation and its principal business office in Ontario.

We previously completed the Form 2 Initial Notice for the Corporation, which was forwarded to you for your approval. After receiving your approval, we forwarded the Form 2 Initial Notice to the Government of Ontario for processing and by a notice dated March 22, 2004, the Government of Ontario issued Ontario Corporation No. 1611605 to the Corporation as an extra-provincial corporation located in Ontario. We confirm that we previously forwarded the original notice to you on March 30, 2004 and inserted the original letter in the Minute Book of the Corporation under the "Forms Filed" section.

22. Ongoing Reporting Requirements

There are numerous ongoing government reporting requirements at both the federal and provincial level for charitable corporations. These requirements may vary from time to time and it is absolutely essential that the reporting requirements be kept up to date. It will be the responsibility of the Corporation to ensure that the reports are prepared and sent to the appropriate government agency.

I have attempted to provide you with an outline of the reporting requirements in this letter but such information is obviously subject to change by the government in the future. Failure to provide the correct reporting information to the applicable government may result in charitable status with CRA being revoked and/or the revocation of the Letters Patent by the federal government. This would be an extremely serious matter and at all costs should be avoided. Unfortunately, errors do happen and therefore you must take active steps to ensure that the correct reporting requirements are made.

The following is a summary of the present reporting requirements of both the federal and provincial governments:

(a) Federal Government - Industry Canada

Under the *Canada Corporations Act*, you will need to file an annual summary referred to as a Form 3, effective as of **March 31st** of each year on or before **June 1st** of each year which specifies the corporate name, the manner and date of incorporation, the complete address of the head office of the Corporation, the date and place of the last annual members meeting, and the names and complete addresses of the Directors as well as the auditor of the Corporation. Any default by a corporation in filing the annual return is an offence and liable on summary conviction to a fine up to \$100.00 for each day of the default. Every director or officer who knowingly authorized, permitted or acquiesced in such default is also guilty of an offence and liable to a similar fine.

There is currently a \$30.00 filing fee that needs to be forwarded with the Form 3 addressed to:

INDUSTRY CANADA, Corporations Directorate
9th Floor, Journal Tower South
365 Laurier Avenue West
Ottawa, Ontario K1A 0C8

We have enclosed herein a blank copy of the Form 3 which you will need to ensure is completed and forwarded to the Federal Government each year by June 1st, together with the filing fee.

(b) Federal Government - Canada Revenue Agency

As a registered charity with CRA, the Corporation is required to file within six (6) months following its fiscal year end a Registered Charity Information Return (Form T3010). Since the year-end for the Corporation is June 30th, its annual return must be filed on or before **December 30th** of each year.

As the Registered Charity Information Return is a public document, it is strongly recommended that the Board of Directors review and approve it before filing with CRA. As well, before being approved by the Board, it is strongly recommended that the Corporation's auditor and/or lawyer review the Annual Charity Information Return.

In addition, the Corporation will also be responsible to provide a financial statement to CRA. The financial statement submitted in support of the charity's annual Information Return must provide a detailed breakdown of expenditures made in respect of its charitable activities including those performed by its agents and all registered charities to which funds have been gifted in the year of the return.

Failure to file these returns is cause for CRA to revoke the Corporation's charitable registration number. Upon revocation of this registration, the charity loses its tax exemption on income, the right to issue official tax credit receipts to donors and is subject to a revocation tax.

(c) Province of Ontario - Public Guardian and Trustee

As indicated earlier under the heading Initial Reporting Requirements, the Office of the PGT must be notified of documents making or recording changes, information changes with respect to names and mailing addresses of trustees, directors and officers and name changes. In addition, the Office of the PGT may require audited financial statements, but only if specifically requested to do so.

Notice of a bequest or gift of real or personal property under the terms of a will or instrument in writing must be sent by registered letter to the PGT and must be filed within one month of the date of death of the testator. The Notice is to state the nature of the property received and is to be accomplished by a copy of the Will.

The PGT will be entitled to information pertaining to land held in Ontario. The *Charities Accounting Act* (Ontario) places a restriction on a charity with respect to the use of land held for charitable purposes. If land held for charitable purposes is not being actually used or occupied for the charitable purposes of the organization for three (3) years, or is not required for the actual use for the charitable purposes of the organization, and will not be so needed in the immediate future, the PGT has the authority to vest the land in itself by filing a Notice at the Land Registry Office. The three (3) year period can be extended by a court order for a further three (3) years.

Although it seldom has application, the *Charitable Gifts Act* (Ontario) requires any charity receiving an interest in a business by means of a gift to divest itself of such portion thereof if it represents more than 10% interest of such business. Such divestiture is to be completed within seven (7) years of the gift. Annual returns must be filed with the Public Trustee before March 31st of each year where the charity holds more than 50% interest in a business. Non-compliance can result in up to one (1) year imprisonment of the corporation's directors or a fine not to exceed \$10,000.00.

(d) Province of Ontario - Ministry of Consumer and Business Services

Pursuant to the *Corporations Information Act* (Ontario), a Form 2 Notice pertaining to extra-provincial corporations must be filed every time that name of the corporation, the head office address of the Corporation, or its principal business office in Ontario changes. The Notice is to be forwarded to the Ministry of Consumer and Business Services within fifteen (15) days of the change taking place. The address that the form is to be addressed to is:

Compliance Section, Companies Branch
Ministry of Consumer and Business Services
393 University Avenue
2nd Floor
Toronto, Ontario, M7A 2H6.

There is no filing fee for this form. A blank copy of the Form 2 is enclosed for future reference.

(e) Penalties under the *Corporations Information Act*

The importance of submitting the above mentioned filings with the Province of Ontario cannot be overemphasized. Penalties are provided in the *Corporations Information Act* for individuals (up to \$2,000.00) and for Corporations (up to \$25,000.00) where there is non-compliance with the reporting requirements. Also, a Corporation that is in default of the reporting requirements is not capable of maintaining any action in any court in Ontario in respect of any contracts made by the Corporation.

(f) Province of Ontario - *Business Names Act*

As indicated above, no Corporation can carry on business in Ontario and identify itself to the public in Ontario by a name other than its corporate name unless a separate business name is first registered by filing a notice under the *Business Names Act* (Ontario). The registration of a business trade name does not give you ownership of the business trade name but it does comply with the requirements of the *Business Names Act* (Ontario) so that there is disclosure to the general public to determine who owns and operates a business under the particular business trade name in question.

The appropriate registration form may be obtained either from our office or from:

Information Services, Companies Branch
Ministry of Consumer and Business Services
393 University Avenue, 2nd Floor
Toronto, Ontario, M7A 2H6
(416) 314-8880.

A business name registration requires a filing fee of \$80.00 for each business name that is used in Ontario and **must be renewed every five (5) years**. A change in the business name must be filed with the Ministry of Consumer and Business Services within 15 days of the change occurring.

The *Business Names Act* (Ontario) also states that a corporation must set out its registered name as well as the corporation's full name on all contracts, invoices, negotiable instruments, and orders involving goods or services issued or made by the corporation.

Failure to comply with the Act would expose individuals to penalties of up to \$2,000.00 and corporations up to \$25,000.00. In addition, failure to comply with the Act would preclude the Corporation from maintaining or proceeding with actions in court in Ontario without leave of the court. Further, the limited liability protection of the Corporation might be lost.

From a practical standpoint, there needs to be a careful review of all trade names and trademarks used by the corporation to determine what business name would need to be registered under the *Business Names Act* (Ontario).

(g) Anti-Terrorism – *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and *Anti-Terrorism Act* (Canada)

The *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) imposes obligations on various entities, including financial institutions and certain professionals, to report certain kinds of transactions to the Financial Transactions and Reports Analysis Centre. Amendments to the Act brought about by the *Anti-Terrorism Act* may impact charities indirectly to the extent that these are found to be “trust companies” or “authorized ... to engage in the business of dealing in securities”.

Reporting obligations apply to “suspicious” transactions and other transactions as prescribed in the regulations, which include cross-border and large cash transactions. Cross-border transactions must be reported if they involve more than \$10,000, regardless of the nature of the instrument involved or the circumstances surrounding the transaction. Large cash transactions relate to any domestic transactions that involve more than \$10,000 in cash.

Even if a charity is not itself subject to the obligation to report, it should be aware that there is a strong probability that it will be the subject of a report by its bank, accountant, or other professional in the course of the charity’s routine transactions, especially if it deals internationally and with certain countries in particular.

(h) Other Provincial Reporting Requirements

In the event that the Corporation will be carrying on activities in provinces other than Ontario, it will be necessary to ensure that there is compliance with applicable legislation and regulations in effect in each province that the ministry is operating in. In this regard, if you require assistance in determining compliance requirements for other provinces, please advise me and we will provide you with a summary of the reporting obligations.

(i) Assistance in Completing Reporting Requirements

In the event that the Corporation requires assistance in maintaining the various reporting requirements on an ongoing basis, we can establish a reminder system and complete the required government forms on an ongoing basis. If you require assistance in this regard,

please do not hesitate to speak with me, otherwise I will assume that the Board will be monitoring and maintaining the applicable reporting requirements on its own.

23. Audit Requirements

As indicated above, Members of the Corporation must appoint an auditor at each annual Membership meeting. The auditor must audit the accounts of the Corporation for reports to the Members at the subsequent annual meeting. However, the auditor does not have to be a chartered accountant.

Preferably, the accounts should set out in detail the capital assets, the income, expenditures or disbursements and investments. If the financial statement is prepared in a business format, explanatory notes should be added to disclose any conflict of interest or non-arms-length transactions, or payments to a trustee in any capacity whatsoever. In some cases, it may be necessary to include an explanatory note to particularize how the charitable activities are carried out.

24. By-law Approval

By-laws passed by the Corporation that constitute an amendment to or repeal of the existing general operating by-law will require approval of the Federal Government through Industry Canada. Other by-laws that do not affect the general operating by-law do not require ministerial approval and can be passed by the Board of Directors subject to approval by the members at the next annual meeting.

Those matters that are contained in the Letters Patent can only be changed by Supplementary Letters Patent. This would require the approval of the Board of Directors and a vote of not less than two thirds (2/3rds) of the Members of the Corporation and apply to the Federal Government for the issuance of Supplementary Letters Patent.

25. Changing the Location of Head Office

The location of the head office of the Corporation is established in the Letters Patent as being in the City of Mississauga, in the Regional Municipality of Peel, in the Province of Ontario. However, a corporation may by special resolution change the location of its head office to another municipality in Canada. Specifically, in the event that the Corporation decides to change its head office location, it will be required to adopt a by-law, sanctioned by a two-thirds (2/3rds) vote of the members, to change the place, (i.e., the municipality) where the head office of the Corporation is situated and then advertise notice of such head office change in the Canada Gazette.

The specific street address within the municipality where the head office is located can be changed without a by-law being passed. However, the change of mailing address within the municipality must be reflected in notices to the Federal Government using the enclosed Form 3, the Provincial Government using the enclosed Form 2 and written notification to CRA. As such, even a change of street address within a municipality can be a cumbersome matter and therefore should not be

changed lightly.

C. DUTIES AND LIABILITIES OF DIRECTORS

1. Introduction

Notwithstanding that a corporation provides limited liability protection to its members, directors of a corporation may still face some personal liability arising from the application of various statutes and common law. The liability of directors of charitable corporations is based on the premise that they are the directing minds of the corporation and therefore should be responsible in law for the misdeeds of the corporation in certain instances.

What this section of the letter will focus on is an explanation of the duties that are imposed upon directors of charitable corporations in accordance with both statute law and common law together with an explanation of some steps that can be taken by directors to limit their exposure to liability. However, given the complexity of this area of the law, it is impossible to provide a comprehensive report on every aspect of directors' and officers' liability. As such, this section of the letter is intended to be a summary only to highlight some of the more important areas of exposure to legal liabilities for the directors of charitable corporations.

2. Subjective Standard of Care

There are statutory provisions for share capital corporations (i.e. a business corporation) that establish the standard of care expected of a director of a profit-making corporation. For business corporations, the standard is an objective standard of what a "reasonably prudent person" would do in the circumstances. However, there is no similar provision in the *Canada Corporations Act* covering non-share capital corporations, whether such non-share capital corporations operate as charitable corporations or simply as not-for-profit corporations. The standard of care that applies to directors of a charity and/or a not-for-profit corporation is a common law subjective standard as opposed to the less onerous statutory objective test. A subjective test means that a director of a charity is expected to act with a degree of skill and care that would be reasonably expected from a person with that person's knowledge and experience as opposed to an objective test of what a "reasonably prudent person" would do.

The effect of a subjective test means that the standard of care applied can differ between two persons. A lawyer, for example, will be required to meet a higher standard of care than another director on the board who has no legal training. Similarly, a person with substantial business experience would have a higher standard than a person who has no business experience. For this reason, individuals who are sought after to be directors on the basis of their skills and experience will be subject to a higher standard of care than others. However, this does not mean that a person's inexperience in the business world will exclude that person from liability. It is probable that as a bare minimum, inexperienced members of the board will be expected to perform their functions in the same manner as a prudent person would. As such, the standard of care expected of directors of the corporation would at the very least be what one would expect from a prudent person, with the standard of care being extended on a subjective basis for those individuals serving

the board who bring with them a higher degree of knowledge and experience.

In addition to this already high standard of care, the directors of a charitable corporation face additional expectations imposed upon them by virtue of the fact that the corporation is a charity. As a charitable corporation, the courts in Ontario have imposed many of the obligations required of trustees upon directors notwithstanding the fact that the directors are not referred to as trustees in either the *Canada Corporations Act*, or the By-laws of the Corporation. The rationale for this approach is based upon the perception by the PGT of Ontario under the auspices of the Attorney General that monies that are entrusted to a charity, whether that charity be a charitable trust, charitable corporation or an unincorporated association, are monies that are given pursuant to a public trust for a charitable purpose. As such, the persons that are the "directing minds" of the charity must manage the account for those monies in the same manner as if he or she was a trustee under a declaration of trust or pursuant to the term of the testamentary trust in a will.

This approach is supported by the provisions of the *Charities Accounting Act* (Ontario) that state any corporation incorporated for charitable purposes is deemed to be a trustee. In addition, there have been a number of recent cases that state that directors, although not technically trustees, are expected to fulfil the same fiduciary obligations as a trustee would in administering a trust or estate. The over-riding fiduciary duty that arises from the trustee analogy means that members of the board of directors are required to act with loyalty, honesty, in good faith and must avoid personal profit. The potential for personal liability in a director breaching his or her fiduciary duty has nothing to do with whether a director has acted in bad faith. Rather, to fulfil the fiduciary duties imposed upon directors, a director must not have any personal interest that could possibly conflict with the interests of the corporation that he or she is bound to protect.

3. Summary of Common Law Duties

The following is a brief overview of the various common law duties imposed upon directors of a charitable corporation.

(a) Duty to Act Honestly

A director has a duty to act in an honest manner in his or her dealing with the charity, to avoid placing himself or herself in a conflict of interest with the corporation and to not act in a fraudulent manner.

(b) Duty of Diligence/Duty to Act in Good Faith

A director has a duty to act in good faith. By this, it is meant that a director has an obligation to diligently attend to his or her duties as required by the law. The duty to be diligent requires that the director must be familiar with all aspects of the corporation. This means that the director must attend a sufficient number of board meetings so that he or she is familiar with the operations of the charity. If a director cannot be present at a board meeting, he or she should arrange to review the minutes of the meeting and the financial statements presented at such meetings. Although directors must diligently oversee the

operations of the charity, where advice that is required is of a specialized nature, the board of directors, to diligently fulfil their obligations, must obtain the service of a qualified professional in the area in question.

(c) Duty of Loyalty

A director's sole interest is to be loyal to the corporation. The duty of loyalty is required so that the director does not place their interests in conflict with that of the corporation.

(d) Duty to Exercise Power

The duty to exercise power includes the following:

(i) Managerial Duties

The board of directors is responsible for the management of a charitable corporation. This will involve developing policies and direction for the corporation as well as supervising management and staff.

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(ii) Books and Records

The board of directors is responsible to maintain books, records, and minutes of the corporation. Directors must hold funds collected from the public in trust only for designated charitable purposes. As such, directors are required to maintain proper books, records and minutes of the corporation to substantiate their accounts and decisions in relation to the monies received. Directors must hold funds collected from the public in trust only for designated charitable purposes. As such, a director is required to maintain proper books, records and minutes of the corporation to substantiate their accounts and decisions in relation to the monies received.

(iii) Corporate Goals and Objectives

The director of the charitable corporation must be aware of and fulfil corporate objectives. The goals and objectives of the charity have to be of primary importance when considering whether to start operations of related businesses, investment of monies of the charitable corporation, conducting political and lobbying activities, and fundraising.

(e) Duty of Obedience

The director has an obligation to ensure that valid corporate decisions are implemented and to see that both the corporation and its officers and agents are obeying the applicable laws.

(f) Duty to Avoid Conflict of Interest

Members of the board of directors must both declare and avoid any conflict of interest or an appearance of anything that would give the director a personal benefit. If there is a conflict of interest, the director must declare the conflict of interest, not participate in any discussion or vote, and, if the conflict is of an ongoing nature or is significant enough, the member of the board should resign.

As well, directors cannot receive remuneration from the charitable corporation. This is because they have trustee-like duties and cannot benefit from charitable property except with court approval. The result is that directors are not entitled to hold salaried positions or contracts within the charitable corporation except with the approval of the court. A more detailed discussion of this matter is contained in the articles on "Remuneration of Directors" attached as a schedule to this Report. In this regard, it is essential that no member of the board of directors receive a salary or other form of remuneration, from the corporation, otherwise such person will disqualified from being on the board of directors.

These are regulations that are anticipated under the *Charities Accounting Act* (Ontario) that will permit remuneration of directors in limited circumstances and which is contemplated by the General Operating By-Law for the Corporation. However there regulations are not yet in effect. Directors must not only avoid a potential conflict of interest but also must ensure that they avoid any appearance of a conflict of interest.

(g) Duty to Invest

Directors must be familiar with the investment powers and restrictions contained within the operative Letters Patent of the corporation and applicable provincial legislation, such as the *Trustee Act* (Ontario).

The Letters Patent for the Corporation states that the directors are to invest the monies of the corporation as a "prudent investor" would in similar circumstances. This means that the directors must exhibit the same care and control over the investments of corporate monies as they would over their own monies. There have been significant amendments to the *Trustee Act* under Bill 25, which means that the board will need to meet on a more frequent basis to monitor investment decisions instead of being able to delegate investment decision making to an investment broker. To provide the board with more information on the implications of both the proposed changes to the *Trustee Act* as well as the "prudent investor" rule in the Letters Patent for the Corporation, I would refer you to the Charity Law Bulletins available at our website, www.charitylaw.ca.

The duty to invest involves a very high level of responsibility and requires that the directors must actively be cognisant of and monitor all investments that are made involving the monies of the corporation. Where the amount of money to be invested is of a sizeable amount, then the directors should obtain the services of competent investment counsellor for advice (but not decision making) as opposed to attempting to invest the monies

themselves, particularly where they do not have personal expertise in investment matters.

(h) Duty of Prudence

Notwithstanding that a director may have expertise in a particular area, he or she must exercise their duties in a prudent manner. This means that the director's role must be done in a cautious and sober manner while, at the same time, striving to achieve the most practical result for the charity.

(i) Continuation of Duty

A director has a continuing obligation with the charity and cannot simply relieve himself or herself from the duties by resigning from the corporation unless there are adequate individuals to replace the person resigning. If a director is resigning solely for the purpose of attempting to avoid personal liability, the resignation will not only be ineffective but may very well constitute a fiduciary breach of duty by the director because he or she has put his or her own best interest of personal protection ahead of that of the corporation.

(j) Fiduciary Obligation

A fiduciary duty is an obligation to act honestly, in good faith, and in the best interest of the corporation so as to avoid a director acting in a self-serving manner. This obligation is similar to that expected of an executor of an estate towards the assets of the estate and the beneficiaries of which he or she has control. This means that the directors must mind the interest of the charity first and not allow their personal interest or prejudices to affect their conduct and decisions.

(k) Duty of Care

As part of their fiduciary duty, directors of not-for-profit corporations have an obligation to exercise due diligence in overseeing and managing the operations of the corporation. This would include, for instance, attending board of directors' meetings, supervising the operations of the corporation, monitoring compliance with the corporate objects as set out in the corporation's letters patent, and ensuring that resolutions adopted by the board of directors are based upon informed decisions of the board of directors.

Due diligence also means that directors must be familiar with all aspects of the corporation. Accordingly, directors should avoid missing board of directors meetings if at all possible. If a director cannot be present at a board meeting, the director should arrange to review the minutes of the meeting together with any financial statements or reports that were presented at such meetings, and then follow up with appropriate questions at the next board meeting if a matter is not clear.

The obligation of directors of not-for-profit corporations to oversee the operation of the corporation and ensure compliance with the objects of the corporation is much more

onerous than the limited role of directors suggested in some models of board governance originating in the United States which advocate that directors should limit themselves to policy matters only and leave responsibility for administration and day-to-day matters with the executive staff of the charity. This limited role for directors of not-for-profit corporations does not reflect the onerous obligations that are legally imposed upon directors in Canada, particularly directors of charitable corporations.

The implementation of due diligence by the board of directors will provide a good defense to claims of negligence and to alleged violations of some statutory liabilities. For example, under the *Income Tax Act* (Canada), directors of a registered charity have a duty to file various governmental filings and to remit employment income tax to CRA. To avoid liability, the director must be able to show that he or she took positive action in seeing that the corporation complied with the requirements under the Act. If the director can show that they exercised the degree of care, diligence and skill that a reasonably prudent person would do in the same circumstance, then they will not be personally liable for any failures of the corporation to comply with that Act.

However, directors of charitable corporations need to be aware that due diligence will not provide a defense for all statutory violations, i.e. failure to comply with the *Anti-terrorism Act* (Canada). Under the *Anti-terrorism Act* (Canada), directors of charitable corporations may be liable for the actions of the charity in facilitating a "terrorist activity" despite that the directors may have exercised appropriate due diligence steps to prevent such events from occurring. Therefore, directors and their legal advisors will need to carefully review the *Anti-terrorism Act* (Canada) and related federal legislation to ensure that the corporation complies with the applicable provisions and guard against becoming unwittingly caught by such legislation.

D. OVERVIEW OF STATUTORY OBLIGATIONS FOR DIRECTORS

1. Overview of Statutory Obligations for Directors

There are a large number of federal and provincial statutes that establish specific offences and penalties for acts and omissions committed by directors and officers of corporations. The reasoning behind imposing this liability on corporate directors and/or officers is the recognition that a corporation cannot sufficiently punish itself. In order to make the corporation feel the full weight of the law, it is felt that its directors and officers must also be exposed to the same liability of the corporation. A brief general summary of some of the key statutes that impose liability upon directors is set out below, some of which may be relevant to the corporation.

(a) Canada Corporations Act - Wages and Vacation Pay

In accordance with section 99 of the *Canada Corporations Act* ("CCA"), directors of not-for-profit corporations are jointly and severally liable for all unpaid wages due for services performed by employees for the corporation while they were directors of the corporation. However, no similar reference to liability for vacation pay is contained in the CCA.

This debt liability for unpaid wages of employees is limited to six months' wages. However, such claims against directors must be brought while the person is still a director or within twelve months after he or she ceases to hold office. Further, claims for unpaid wages must be commenced within six months after the wages became due and were not paid by the corporation, or after the corporation has been liquidated or has been assigned into bankruptcy. This is an absolute liability provision and, as a result, directors must ensure that wage obligations to employees are kept current and up to date.

(b) *Canada Corporations Act - Conflict of Interest*

In accordance with section 98 of the CCA, every director who has any kind of interest, direct or indirect, in a proposed contract with the corporation must declare his interest at a meeting of the directors of the corporation when the contract is first taken into consideration. If the disclosure of the conflict of interest is made and the director does not vote on the contract in question, then the director will not be held accountable for any profit realized from the contract, subject to special considerations for directors of charitable corporations discussed later in this chapter. Failure to make the required disclosure can result in a summary conviction and a minimum fine of \$1,000.00 under section 149 of the CCA.

(c) *Canada Corporations Act – Books, Minutes and Records*

Pursuant to sections 109, 112 and 117 of the CCA, every corporation is required to maintain proper books, minutes, and accounting records. Under section 113, failure of a corporation to comply with this statutory requirement to keep books required by the CCA will result in a summary offence and/or a penalty not exceeding \$20.00 for each day that such neglect continues. A summary of the obligations in this regard are as follows:

- A corporation is required to keep copies of its corporate documents, ie. the letters patent, all by-laws, any supplementary letters patent and any memorandums of agreement, minutes of all meetings of members, directors and the executive committee, as well as to maintain proper books of account and accounting records. It is an offence under section 149 of the CCA for a director, officer or employee to make a false entry in the minutes of the corporation, registers, or books of account.
- Corporate documents must be open for inspection by any director or member during normal business hours and must be kept at the head office of the corporation.
- It is an offence to use a list of members to sell securities under section 111.1(3) of the CCA. It is also an offence under section 111.1(5) of the CCA to sell a list of all or any members of the corporation. This is something that many not-for-profit corporations are aware of, particularly charitable corporations.

- Under section 149 of the CCA, every director, officer or manager of a company who commits any act contrary to the CCA or fails or neglects to comply with such statutory requirements for which a specific penalty is not already prescribed for such offence is liable, on summary conviction, to a fine up to \$1000.00 and imprisonment for not more than one year, or both.

(d) *Income Tax Act - Failure to Remit Employee Deductions*

Directors of charitable corporations are personally liable in the event the charity does not comply with the numerous reporting requirements of the Act pertaining to the operation of a registered charity, the disbursement of funds and the receiving of donations that are made to the corporation.

Under the *Income Tax Act*, directors are also jointly and severally liable to pay all employee income tax deductions that the corporation has failed to remit to CRA. The liability of directors in this regard continues for two years after a director ceases to be a director.

To avoid liability, the director must be able to show that he or she took positive action in seeing that the corporation complied with the requirements under the Act. If the director can show that they exercised the degree of care, diligence and skill that a reasonably prudent person would in the same circumstance, then they will not be personally liable for any failures of the corporation to comply with the Act.

(e) *Excise Tax Act - Failure to remit G.S.T.*

Directors are liable for any failure by the corporation to collect and remit the Goods and Services Tax. Liability continues for two years after the person ceased to be a director. A defence of due diligence is available similar to that under the *Income Tax Act*. Further, because the collection of GST is the subject of a statutory trust under the provisions of the *Excise Act*, it may be a good idea for directors to establish a separate trust fund for GST remittances.

(f) *Employment Insurance Act - Failure to Remit E.I.*

Directors are jointly and severally liable under the *Employment Insurance Act* for the full amount owing where the corporation has failed to remit either the employer or employee employment insurance contributions to the federal government.

(g) *Canada Pension Plan Contributions*

Directors are also jointly and severally liable where the corporation has failed to remit the appropriate contribution premiums due under the *Canada Pension Plan* (Canada) on behalf of each of its employees.

(h) *Retail Sales Tax (Ontario) - Failure to Remit Retail Sales Tax*

Similarly, failure on the part of a corporation to remit Ontario retail sales tax will shift responsibility to the directors. They will be both jointly and severally liable for any such remission failures.

(i) *Workplace Safety and Insurance Board Act (Ontario)*

Directors will not be liable for any failure by the corporation to remit these premiums unless it can be shown that they intended not to pay them.

(j) *Employment Standards Act (Ontario)*

Under this Act, corporations are bound to pay wages, vacation pay, termination pay, and severance pay. Directors may be liable for large fines for authorizing, permitting or acquiescing in the corporation's failure to pay. Further, Directors are personally responsible to pay six months' wages and twelve months' vacation pay of employees (Section 6). It is an offence for a director to refuse to follow an order to pay these amounts, with a maximum fine of \$50,000.00.

(k) *Pensions Benefits Act (Ontario)*

A corporation is obligated to make contributions to an employee pension plan and to hold this money in trust for its employees. Directors who fail to pay these pension benefits may be ordered by the court to make up the contributions. If the director fails to comply, they will be subject to a maximum fine of \$25,000.00.

(l) *Ontario Health Insurance Program*

Corporations are required to pay OHIP premiums for all its employees. Under the *Ontario Health Insurance Act*, the directors are personally liable to pay any premiums on which the corporation had defaulted regardless of whether they had any role in the default. Additionally, under the *Ontario Employee Health Tax Act*, corporations are also required to pay a tax to the health insurance scheme. It is an offence to not pay the tax and directors may be subject to a penalty if they direct, authorizes or participated in any way with the tax avoidance.

(m) *Occupational Health and Safety Act (Ontario)*

Directors are required to take all reasonable steps to ensure that the corporation complies with the provincial workplace health and safety requirements. If the corporation fails in these duties the corporation will face a maximum fine of \$500,000.00 and the directors will be subject to a maximum of fine of \$25,000.00 and one year in prison. In order to avoid conviction under this Act, it is important that directors ensure that the corporation implement a system to ensure health and safety in the workplace.

The scope of the legislation is dependent on the number of employees. Presently, the legislation generally requires the appointment of a health and safety representative if there are more than five employees and a health and safety committee if there are more than twenty employees.

(n) *Environmental Protection Act (Ontario) and Related Legislation*

Directors are required to take reasonable care to prevent the unlawful discharge of a contaminant into the natural environment. Any failure to fulfil this duty is an offence. The Ontario *Pesticides Act* and the *Ontario Water Resources Act* also contain similar offences. Further, the Ontario *Environmental Protection Act* makes the people in control of a contaminant the ones responsible for the cleaning up or reimbursing others for the clean-up costs related to a spill of the contaminant. Directors may be liable for such costs if the corporation does not pay itself. An example of director liability can be seen in a recent decision where two directors of the Bata corporation were found guilty of an offence under the *Ontario Water Resources Act*.

Directors may become liable for contamination simply by virtue of the corporation owning land in Ontario. As such, before either purchasing or receiving a gift of land, it is essential that an appropriate environmental audit first be obtained to ensure that there is no contamination on the property.

(o) *Child and Family Services Act (Ontario)*

Certain persons in the course of their professional or official duties who have reasonable grounds to suspect child abuse has or is about to occur has a duty to report it to the appropriate authorities. The non-reporting of suspected child abuse is a provincial offence. A charitable corporation and its directors and officers may be liable where its employees fail to report suspected child abuse and where child abuse occurs as a result of its failure to properly monitor its employees and operations.

(p) *Trustee Act (Ontario)*

The power of directors of a federal charitable corporation to make investments is generally derived from the CCA and its letters patent. Section 16 of the CCA grants federal not-for-profit corporations with the power "*to invest and deal with the monies of the corporation not immediately required in such manner as from time to time may be determined*". The letters patent of the corporation may also contain specific provisions in relation to investment powers that override or supplement those already permitted by statute. In addition, since directors of a not-for-profit corporation also have a common law duty to invest special purpose funds for their specific purposes, they have the corresponding power to deny requests or demands by donors or other third parties to divert such funds for any other purposes.

Where a federal not-for-profit corporation holds property in trust, such as an employee benefit fund, or where the not-for-profit corporation is a registered charity, provincial legislation may mandate the investment power with which a corporation operating in a particular province may invest its assets. In Ontario, the *Trustee Act* establishes that directors of a charitable corporation have the power and duty to invest the assets of the corporation as a prudent investor would. This statutory power to invest includes the power to invest in mutual funds and the power to delegate investment decision making to qualified investment managers, provided that the corresponding statutory requirements are strictly complied with, such as complying with mandatory investment criteria, establishing and complying with an investment plan, and ensuring that a written agency agreement is entered into between the corporation and the qualified investment manager appointed by the board of directors.

For more information on the requirements of both investment plans and disbursement policies, please see Section F below.

(q) General Comments About Statutory Offences

All of the offences in the above mentioned statutes are considered to be strict liability offences. In other words, it is immaterial whether or not the directors intended that the corporation violate the statutory provisions in question. The only defence that can be established in one of "due diligence" which requires that the directors be able to prove to the satisfaction of a court that the directors have taken reasonable steps in the circumstances to ensure that the provisions of the Act in question could have been complied with.

2. Liability for Lack of Corporate Authority

The activities of a not-for-profit corporation can only be undertaken within the parameters of the corporate objects set out in the letters patent of the corporation, as amended by any supplementary letters patent, where applicable.

If directors permit the corporation to undertake activities that are outside the authority of the corporation's objects, i.e. an *ultra vires* activity, they will become exposed to personal liability for the consequences of those actions. To avoid such liability, each director should obtain and carefully review the corporation's letters patent and supplementary letters patent, if applicable, when they first become a director, as well as review the current general operating bylaw for the corporation. All of these corporate documents should be reviewed by all of the directors of the corporation at regular intervals, i.e. at least once a year.

The corporate objects may require amendments from time to time in order to expand them where the corporation has or is contemplating embarking upon activities that extend beyond the limits of its current corporate objects. It is important to expand the objects of the corporation before new activities are commenced, since the grant of supplementary letters patent amending the objects cannot be made retroactive. For charitable corporations, the board of directors would need to

obtain the pre-approval of CRA before changing the charitable objects of the corporation, as well as the pre-approval of the PGT for charitable corporations incorporated in Ontario.

3. Contract Liability for Directors

Directors who sign contracts for a not-for-profit corporation may face potential liability if the contracts entered into were not properly authorized by board resolution, or if the directors knowingly induced breach of the contract subsequent to the contract being signed. To reduce this possibility, directors should ensure that corporate contracts are duly authorized by the board of directors, and by members of the corporation when required by statute. Directors also need to exercise due diligence in ensuring that the terms of the contracts are complied with in order to avoid any allegations of their wrongful interference in inducing breach of contract.

4. Negligent Mismanagement by Directors

Directors of not-for-profit corporations may also face personal liability where the activities of the corporation are alleged to have been negligently mismanaged by its directors. Some examples of negligent mismanagement are where the directors have permitted unsafe conditions to exist on the corporation's property that leads to a slip and fall incident, or they have permitted the negligent operation of a corporate vehicle or a third party vehicle that is involved in activities on behalf of the corporation.

Directors' liability can also arise where the directors fail to adequately supervise the hiring of employees and volunteers or to adequately monitor the conduct of such employees and volunteers in their work for the corporation, particularly where there are allegations of sexual abuse of children and/or harassment of employees.

In addition, legal action by a former employee of a corporation who alleges that he or she has been wrongfully dismissed can result in claims against directors on a personal basis where the directors may have acted with malice or otherwise improperly in dismissing the employee.

Other situations where a director may face possible liability due to negligent mismanagement are where a director:

- (a) knowingly draws cheques against insufficient funds;
- (b) fails to inform members of the eroding financial position of the charity;
- (c) fails to prevent depletion of the corporate assets;
- (d) allows excessive debt financing without having an adequate sinking fund;
- (e) allows unauthorized investments; or
- (f) pays excessive salaries, bonuses or benefits to staff.

5. Breach of Trust by Directors

Directors could be found liable for a breach of trust in the following situations:

(a) Breach of Trust Involving Charitable Purposes

Directors have a fiduciary obligation to follow the charitable purpose contained in the letters patent of the corporation. It may be a breach of trust to apply charitable funds for purposes that are beyond the scope of the stated charitable purposes. Further, it may be a breach of trust for Directors to pursue courses of action that cause the corporation to lose money or assets in reckless disregard of the need to fulfil the charitable purposes of the corporation.

(b) Breach of Trust Involving Donors

Directors could also be held liable for breach of trust involving donors. This could occur where the directors fail to disburse funds in accordance with donors' restrictions, or redirects funds given for one purpose, for example a building fund, to another use. A breach of trust will also occur where there has been a failure to hold endowment funds or other donor restricted funds in accordance with the terms imposed by the donor.

(c) Breach of Trust Against the Charity

A breach of trust might also be committed by directors against the charity itself. This could occur where a director was self-dealing in business matters involving the charity, was receiving remuneration or loans from the corporation, or was diverting charitable funds to themselves.

(d) Breach of Trust Against Creditors

Lastly, directors of charitable corporations could also be liable for breach of trust involving creditors. This could occur where funds that were designated to pay a debt are being used for other purposes, where donations are being directed to a parallel charity to avoid having to pay the debts of the financially troubled charity, or where funds are being used to pay off loans to directors ahead of other creditors.

6. Protection from Liability

(a) Indemnification

The *Canada Corporations Act* ("CCA") allows a corporation to indemnify a director against personal liability. Specifically, Section 93 of the CCA permits a not-for-profit corporation to adopt a bylaw indemnifying the directors and officers of the corporation from and against all costs, charges and expenses that he or she may sustain or incur from any action, suit or proceeding

brought against him or her for any act, deed, matter or thing made, done or permitted by him or her in the course of the execution of their duties, and against all other costs, charges or expenses against him or her in relation to the affairs of the corporation, except when such costs, charges or expenses arise from the director or officer's own willful neglect or default. However, corporate indemnification is not available if the director is guilty of "wilful neglect or default" or "fraud" in the exercise of his or her duties.

It is also important to recognize that an indemnification bylaw is only as strong as the corporate assets or insurance policy of the charity. If the charitable corporation has little or no assets of its own with which to indemnify the director, then the director is personally responsible to repay the debts of the corporation out of his own financial resources. As such, it is important that the corporation obtain directors and officers insurance as discussed below, unless the objectives of the corporation do not involve exposure to risk.

While it is advantageous and advisable to adopt an indemnification by-law, it would be of little assistance in the following circumstances where:

- i) the corporation did not have sufficient assets or insurance coverage to meet the financial obligations of the indemnity;
- ii) the director or officer's acts were beyond the scope of his or her authority as a director, or when a director has acted without good faith or dishonesty;
- iii) where the director or officer's actions or lack of actions constitute wilful neglect or default;
- iv) where the director or officer's actions or inaction constitute a breach of his or her own fiduciary obligations to the corporation, even if such actions or inaction did not amount to wilful neglect or default;
- v) where a director or officer is held personally liable pursuant to a statutory liability for monetary payments, such as unpaid wages or government deductions; or
- vi) where a director or officer is involved in a Criminal Code offence, such as sexual abuse against children or violation of provisions of the *Anti-terrorism Act* (Canada).

Even though the CCA permits not-for-profit corporations to indemnify directors and officers, often corporations will fail to either adopt indemnification by-laws or, if they do, will fail to ensure that they are properly adopted. Such failures may occur for various reasons, some of which are described below for reference purposes:

- i) the corporation may have been in existence for a number of years and its board of directors may never have been advised of the importance of passing an indemnification by-law;

- ii) the wording of the indemnification by-law may incorrectly reflect the indemnification provision of a business corporation rather than the indemnification provisions contained in the CCA for not-for-profit corporations; or
- iii) the indemnification by-law may never have been approved by the members of the corporation as required by the CCA.

(b) Review and Enhancing General Liability Coverage

Since general liability coverage is generally done on an occurrence basis as opposed to a claims made basis, it is important that the corporation obtain as large a general liability policy as it can obtain and afford. An occurrence basis policy means that the insurance coverage that is acquired in 1999 will be the policy called upon to provide protection for claims arising out of an occurrence in 1999 no matter when the claim may arise. Since an action for abuse, particularly sexual molestation of a child, may not occur for many years in the future, the amount of coverage that is obtained in 1999 will need to be an amount sufficient to cover a claim which may not arise for five, ten or fifteen years in the future.

In addition, it is essential that the general liability policy not exclude coverage for sexual abuse and/or molestation of children and also provides protection for claims arising out of mental anguish or distress under the heading of personal injury.

It is also important that directors of a not-for-profit corporation be aware of the limitations that may exist in the general liability insurance coverage for the corporation. Limitations in this regard may include:

- i) insufficient amount of insurance to cover all anticipated risks;
- ii) exclusion of coverage for sexual and/or physical abuse of children;
- iii) exclusion of coverage for sexual harassment;
- iv) limitation on the geographic area covered by the policy;
- v) limitation on who is covered under the terms of the policy;
- vi) exclusion of coverage for penalties and fines;
- vii) limitations on legal cost coverage;
- viii) exclusion of coverage where there has been a failure by the corporation to advise of changes in insurable risks; and

- ix) exclusion of coverage where there has been a failure by the corporation to report claims on a timely basis.

Your insurance broker should be requested to provide a written report each year on what insurance is provided, what risks are not covered by the policy, and what recommendations the broker would make to improve the insurance coverage. In addition, any change in material risks needs to be reported to the insurance company and to the broker in writing.

c) Maintaining Historical Record of Insurance Coverage

Since general liability coverage is usually on an occurrence basis as opposed to a claims made basis, it is important that the corporation maintain a record of all insurance policies as well as a record of all insurance brokers. This information will prove crucial in the event that a claim arises in five or ten years in the future for an occurrence that happened today.

d) Directors and Officers Liability Coverage

Since the general liability insurance policy of a not-for-profit corporation will provide only limited protection to directors or officers in relation to wrongful acts alleged against them, it is important for a corporation that is involved in activities that may expose directors or officers to personal liability to ensure that the corporation obtains a separate insurance policy for its directors and officers to supplement the general liability insurance coverage of the corporation.

While there are as many different kinds of directors and officers liability insurance policies as there are insurance companies, the normal endorsement on such insurance policies will usually provide protection for directors and officers of not-for-profit corporations for the following:

- i) damages which they become legally obligated to pay and for which the corporation cannot or will not pay; and
- ii) claims made against a director or officer for whom the corporation is obliged to indemnify.

When obtaining directors' and officers' liability insurance, some of the more important considerations to keep in mind are the following:

- i) the policy should extend to all past and present directors, officers and committee members of the corporation;
- ii) it is essential that notice be given to the insurer prior to the termination of the policy period of any possible or potential claims that the directors and officers of the corporation may be aware of, since directors and officers insurance policies are normally issued on a "claims made basis";

- iii) the policy should include a provision that notice of cancellation of the policy be directed not only to the corporation but also to the chairman of the board of directors so that the board will have an opportunity to receive notification of any intended cancellation of the policy;
 - iv) since the purpose of directors and officers liability insurance is to complement the general liability insurance coverage of the charitable corporation, the amount of such coverage should, if possible, match the amount of the general liability policy, assuming that the quantum of coverage is available and the charitable corporation can afford the applicable premiums;
 - v) the purpose of a directors and officers liability policy is to insure against risks that are otherwise not covered under the general liability insurance policy. However, since directors and officers liability insurance does not cover all actions against directors and officers, it is important to review the exclusions contained in the coverage and, where possible, to obtain additional coverage, as necessary; and
 - vi) it is important for directors to understand that directors and officers liability insurance of a not-for-profit corporation will likely not provide coverage for actions by public authorities for breach of trust arising out of a mishandling of trust funds, improper investments, violations of the *Anti-terrorism Act* or other statutory violations.
- e) Authorization to Acquire Directors and Officers Insurance

In the opinion of the PGT, a charitable corporation in Ontario is not permitted to either indemnify its directors or purchase directors and officers liability insurance without first obtaining court approval because there is a perceived benefit that may be received by its directors. This extension of the common law rule prohibiting remuneration of directors of charitable corporations has proved to be an awkward restriction on the operation of charitable corporations.

As a result, regulations have been adopted under the *Charities Accounting Act* (Ontario) to permit a charitable corporation in Ontario to indemnify its directors or officers from personal liability for acts or omissions arising from the performance of his or her duties, provided that the requirements of the regulations are followed and the corporation does not indemnify a director for liability arising from a failure of the directors to act honestly or in good faith in performing his or her duties.

These same regulations also permit the purchase of directors and officers insurance to cover personal liability arising from the acts or omissions of directors or officers of a charitable corporation in performing their duties. However, neither the terms of the directors and officers insurance nor the terms of the indemnification by-law may impair a third party's right to bring legal action against the director or officer. In addition, the regulations state that the purchase of the insurance policy must not unduly impair the carrying out of the religious, educational, charitable or public purposes for which the charity holds property. The regulations further state

that the board of directors of the corporation must consider the following criteria before giving an indemnity or purchasing directors and officers insurance:

- i) the degree of risk to which the director or officer is or may be exposed;
- ii) whether, in practice, the risk cannot be eliminated or significantly reduced by means other than the indemnity or insurance;
- iii) whether the amount or cost of the insurance is reasonable in relation to the risk;
- iv) whether the cost of the insurance is reasonable in relation to the revenue available to the charity; and
- v) whether it advances the administration and management of the charitable property to give the indemnity or purchase the insurance.

The regulations state that no indemnity may be paid or insurance purchased if to do so would result in the amount of debt and liability of the corporation exceeding the value of the charitable property or would render the corporation insolvent. In addition, the indemnity may only be paid or the insurance purchased from the charitable property to which the personal liability relates and not from any other charitable property. This means that income from donor restricted funds, such as endowment funds, that would otherwise not normally attract liability for a director or officer should not be used to purchase directors and officers liability insurance or to pay an indemnity claim.

For more information on this topic, please see Charity Law Bulletin #4 available at our website, www.charitylaw.ca.

f) Other Sources of Insurance

In addition to the corporation acquiring directors and officers liability insurance, a director may also be able to obtain supplementary insurance for himself or herself as a director under either his or her home-owner policy or if the individual is a municipal appointee, through the general liability or corporate indemnification coverage of the municipality. Each board member should be encouraged to make independent inquiries in this regard.

g) Insurance Coverage for Sexual and/or Harassment

If the current insurance policy of a not-for-profit corporation does not provide protection for sexual abuse and/or harassment where the corporation is facing a risk in this regard, it is essential that the board of directors be made aware of this lack of coverage, since the directors will stand a significant risk of being exposed to personal liability if such claims should arise.

Where insurance coverage for sexual abuse and/or harassment is available, it would be advisable that directors obtain such coverage on an "occurrence basis" as opposed to a "claims made basis".

Although it may be possible to obtain a specific policy for claims arising out of sexual abuse and/or harassment based upon a "claims made" basis, such coverage is not retroactive. This means that claims for abuse allegations which were made prior to the implementation date of the "claims made" coverage would be expressly excluded from coverage. In addition, "claims made" insurance may result in gaps in insurance coverage for either past or future occurrences, which in turn could lead to increased liability exposure for the directors of the corporation.

The better alternative, where available, is to obtain and maintain "occurrence based" coverage, since it has the benefit of providing coverage for all incidents occurring during a particular period in time (i.e. the coverage period of the policy), regardless of when the claim is made and regardless of whether or not a future board of directors remembers to maintain the insurance policy in the future. As such, it is generally in the best interests of the board of directors of a not-for-profit corporation to ensure that there is insurance coverage for sexual abuse and/or harassment in place and if possible that it be "occurrence based" coverage.

h) Other Means of Reducing Liability Exposure of directors

Other means of reducing exposure of board members to legal liability can be summarized as follows:

- i) reducing the numbers of the board of directors;
- ii) increasing the use of committee and advisory boards as opposed to increasing the number of members of the board of directors;
- iii) rearranging personal assets of board members with their spouse; and
- iv) establishing a legal risk management committee to identify areas of risk, recommend remedial steps they can be taken, and generally advise the board on implementing due diligence procedures for purposes of establishing a defence of due diligence in the event of an action against Board Members. In this regard, a copy of a Charity Legal Risk Management Checklist is included with this report for review and further discussion.

E. THE CORPORATION AS A REGISTERED CHARITY

1. Charitable Status and Tax Advice

The Corporation's charitable registration number was issued 2003 by Canada Revenue Agency on the 15th day of October, which number is **85897 8489 RR0001**.

2. Application for Charitable Status in Quebec

The Province of Quebec requires that a separate application for charitable status be obtained in that province for any donations that originate in Quebec. However, since it is our understanding that donations are unlikely to be raised in the Province of Quebec, it will not be necessary at this time to prepare and file an application for charitable registration form with the Province of Quebec and file a prescribed return within six (6) months of each financial year end. In the event that this situation changes in the future, please advise if you would like our office to prepare the necessary application for charitable status in the Province of Quebec.

3. General Obligations as a Registered Charity under the *Income Tax Act*

It is the responsibility of each member of the board of directors to ensure that the corporation complies with all requirements imposed upon a registered charity pursuant to the provisions of the *Income Tax Act*. The comments that follow are a summary only and are not intended to replace the more detailed comments contained in various bulletins, circulars and publications provided from time to time by CRA.

(a) Advantages of Charitable Status

The *Income Tax Act* provides two significant tax advantages to all registered charities. The first is that once a charity is registered under the *Income Tax Act*, any income earned by it is exempt from tax. Secondly, donations to a registered charity entitle an individual to a tax credit that is deductible in computing the taxable income of a donor.

(b) Basic Requirements of Maintaining "Charitable Organization" Status

For the charity to maintain its status as a charitable organization in Canada, the board must ensure that the corporation is constituted and operated exclusively for charitable purposes and that no other part of its income may be payable to or otherwise made available for the personal benefit of any member, director, officer or trustee thereof. The charitable objects of the Corporation are those that are set out in its Letters Patent. In addition, the board must ensure that the corporation remains a resident of Canada, i.e. its head office must be in Canada and a majority of its directors must be Canadian residents.

(c) General Requirements to Expend Income

The *Income Tax Act* specifies that not less than 80% of the gross funds for which the charity issued official receipts in the immediately preceding year may be expended on charitable activities. This 80% distribution rule is an attempt by CRA to ensure that received funds are used on a current basis for such charitable purposes with fund-raising and related administrative costs being kept at a reasonable level.

Excluded from the calculations of the 80% disbursement rule are charitable receipts issued for:

- i) gifts of capital by way of bequests or inheritance;
- ii) gifts which are subject to a trust that it, or property substituted for it, be held for at least ten (10) years; or
- iii) gifts from a registered charity.

An annual audit will ensure that the charity is adhering to the 80% disbursement quota. Application can be made to CRA on Form T-2094 for an amount to be deemed disbursements. This is a relieving provision when there is a disbursement deficiency. The Act also has provisions from carrying back and forward disbursements excesses.

There are additional disbursement requirements imposed on public and private foundations. These are outlined briefly later in this letter.

(d) Capital Endowments

In the event that the charity as a charitable organization decides to build up a capital endowment, which is not to be expended in the following year pursuant to the above-mentioned 80% disbursement requirement, it will be necessary for the charity to first obtain pre-approval from CRA so that the charity will not be in violation of the disbursement requirement.

(e) Private Benevolence

At present, for a gift to qualify as an exemptible charitable donation, it must be shown that the donation is not given for "Private Benevolence". "Private Benevolence" will occur where a gift is specified that it must be used or given for the benefit of any particular individual as opposed to furthering the general objectives of the charity itself. Therefore, persons contributing to the charity should not designate that their donations must be used for the support of any one particular person or family. Instead, it has become a generally acceptable procedure that a donor may suggest that their contributions be used for the support of a particular person or family with the charity. CRA will accept a "suggestion" as opposed to a "designation" because a "suggestion" means that the control pertaining to the expenditure of the funds still lies with the charity as opposed to the donor. However, CRA, as stated in Interpretation Bulletin IT-110R3, will not accept "suggestion" or "direction" if the gift results in a benefit accruing to the donor or to any person not dealing at arms length with the donor.

(f) Rental of Property

In the event that the charity rents all or any portion of its facility or properties to a corporation, organization or other legal entity that is not a Canadian registered charity, then the charity must ensure that the rent or remuneration that is received for the rental of the

facility or property is set at the then fair market value. The rationale for this requirement is that the use of charitable property for purposes other than for registered charities in Canada must result in the charity receiving fair market value rent or remuneration. This does not mean that the property of the charity can be rented on a continuous basis to entities that are not registered Canadian charities, as this would constitute a breach of the obligation to use all of the charitable property exclusively for charitable objectives. However, for those few instances where the facilities or property of the charity are used by entities that are not registered charities, then the rent or remuneration that is received must be at fair market value.

However, as a result of a change in CRA's policy as set out in Interpretation Bulletin IT-11R3, it is essential that the "suggestion" or other similar type of non-binding direction not result in any benefit occurring to the donor nor any person not dealing at arms length with the donor.

(g) Tax Receipts

CRA sets out the numerous requirements that relate to the content of an official tax receipt issued by a Canadian charity. It is essential that all requirements be followed exactly before any tax receipts are issued.

Every official receipt issued by a registered organization must contain a statement that it is an official receipt for income tax purposes and must show:

- i) a statement that it is an official receipt for income tax purposes;
- ii) the name and address in Canada of the organization as recorded with the Minister of National Revenue;
- iii) the registration number assigned by the Minister to the organization;
- iv) the serial number of the receipt;
- v) the place and locality where the receipt was issued;
- (vi) the day on which the receipt was issued when it differs from the date of the donation;
- vii) the name and address of the donor including, in the case of an individual, the person's first name or initial;
- viii) the amount of the donation;
- ix) the signature of a responsible individual or individuals who have been authorized by the organization to sign official receipts; and

- x) it must be made in duplicate with a copy being retained by the charity.

Where the organization issues an official replacement receipt, the replacement receipt must state that it is replacing the original receipt and must state both its own serial number and the serial number of the original receipt. Any spoiled official receipt forms must be marked "cancelled" and be retained by the organization as part of their records. Where donations are received after the end of the calendar year, an official receipt for the previous year can still be issued if the donation was mailed in the previous year and the cheque or other instrument is dated in that year. If these two conditions are not satisfied, then the receipt applies to the current year. If you need more information about the content of this receipt, you can either contact our office or your accountant.

Computer generated official donation receipts are acceptable by CRA provided that they are legible and the integrity of the computer data entries is sufficiently guaranteed. Such guarantees would include the circumstances under which the data are entered, stored and protected against alteration. CRA has indicated that protection against unauthorized access is a key security precaution that they will require.

(h) Independent directors

A charity which is classified as a "charitable organization" as opposed to a foundation by CRA must have independent directors or trustees, and as such more than 50% of the directors, trustees, officers or similar officials of such organizations must deal with each other at "arms length". "Arms length" generally means that directors, trustees, officers and the like cannot be related to each other by blood, marriage or adoption. If 50% or more of its directors, trustees or officers are related to each other, the charity would cease to be a "charitable organization" and would be designated instead as a "private foundation". The effect of being a private foundation is discussed below.

(i) Source of Funding

At any time during the lifetime of the charity, not more than 50% of the charity's total capital contributions from all sources may be contributed by a person or group of persons not dealing with each other at "arms length". Failure to meet this requirement will also result in the charity being designated as a "private foundation".

(j) Revocation of Registration

Once any charity commences to function, failure to meet any one of the requirements in filing returns on a timely basis can result in the revocation of a charity's registration. The *Income Tax Act* contains a penalty tax provision which is severe and if applied may result in the discontinuance of a charity's activities. A Canadian charity can lose its registration for any one of the following reasons:

- i) The organization ceases to be a charity as defined under the Act and/or ceases to be a resident of Canada (which is determined by the residency of its directors).
- ii) The registered charity fails to file the annual Information Return as required (these returns are discussed below).
- iii) The registered charity issues a receipt for a gift or donation otherwise done in accordance with the *Income Tax Act* and the regulations of the *Income Tax Act* or issues a receipt that contains false information.
- iv) The registered charity fails to keep books and records as set out in the *Income Tax Act* (which requirements are discussed below).
- v) A security certificate is issued against the registered charity by the Minister of National Revenue and the Solicitor General under the *Charities Registration (Security Information) Act*, part of recent anti-terrorism legislation, stating that there are reasonable grounds to believe that the charity has made, makes or will make resources available to a Terrorist Group, as defined in the Act.
- vi) The registered charity applies to the Minister of National Revenue in writing for revocation of its registration.

It is essential that the Minister of National Revenue always have the current address of the charity and whenever the address of the charity changes, the charity must inform CRA as soon as possible. This will enable CRA to contact the charity quickly if additional information is required. Failure to respond to correspondence sent by CRA will ultimately result in the revocation of a charity's registration.

(k) Public Annual Return to CRA

The *Income Tax Act* (Canada) specifies that a registered charity is required to file, within six (6) months following its fiscal year end, a Registered Charity Information Return and Public Information Return and schedules (Form T3010). There have been a number of significant amendments made to the T3010 that make it much more onerous and complicated than it has been in the past, particularly as it relates to compliance with the 80% disbursement requirement and an explanation of charitable activities carried on outside of Canada or payments made to "non-qualified" donees.

The charity is also responsible for providing a financial statement to CRA, including a statement of receipts and disbursements and a statement of assets and liabilities. The financial statements submitted in support of the charity's annual information return must disclose the source of income and provide a detailed breakdown of expenditures made in respect to its annual charitable activities, including those performed by its agents and all

registered charities to which funds have been gifted in the year of the return.

The T3010 form has now been amended to require public disclosure concerning the following matters:

- i) the activity of the charity;
- ii) the disbursements of the charity; and
- iii) any accumulation of property.

(I) Gifts of Shares or Debts in Private Corporation

As a result of the 1997 Federal Budget and further amendments announced in July 1997, a gift of a debt obligation of a person or partnership or the share of a capital stock of a corporation that does not deal at arms length with the charity (other than the shares of a debt obligation that are listed on a prescribed stock exchange) may prejudice the amount of the charitable receipts that can be issued.

If the prospective director of the Church is considering making a donation of shares in a private corporation to the Church, such as redeemable preference shares in a family holding corporation, the new "anti-avoidance" provisions under section 118.1(13) of the *Income Tax Act* would preclude the donor from being a member of the board of directors of the corporation and receiving a charitable receipt for the value of the shares.

Without dealing with all of the technical complexities of the "anti-avoidance" provisions under the *Income Tax Act*, the *Income Tax Act* stated that if an individual gifted securities that are deemed to be "Non Qualifying Securities" to a charity, a credit for the donation would be denied at the time that the gift was made and the donor would only be entitled to receive a charitable receipt if the charity subsequently disposed of the "Non-Qualifying Security" within a period of sixty (60) months from the date of the gift.

A "Non-Qualifying Security" is defined as including shares, obligations or securities of a corporation or person with whom the donor does not deal at "arms length". Specifically excluded from the definition of "Non-Qualifying Securities" are obligations, shares and other securities listed on a prescribed stock exchange and deposits with financial institutions.

Some relief was made to the above mentioned "anti-avoidance" provision by establishing an "Excepted Gift" exemption from what is otherwise a "Non-Qualifying Security". An "Excepted Gift" is defined under Section 118.1 (19) of the *Income Tax Act* as a gift, which meets the following four (4) requirements:

- i) an "Excepted Gift" is limited to shares of a corporation as opposed to debts;
- ii) the donee charity must not be a "Private Foundation".

- iii) the donor must deal at arms length with the donee charity.
- iv) the donor must deal at arms length with each director, trustee, officer and like official of the donee charity.

The practical effect of the definition of "Excepted Gifts" is that no charitable receipt can be issued for the gift of shares or other security of a corporation that are not the shares or securities of a publicly traded company on a prescribed stock exchange when the gift is made by a director, trustee, officer or other like official of a "Public Foundation" or a "Charitable Organization", or by anyone related to or otherwise not dealing at "arms length" with such person. The limitation on what constitutes an "Excepted Gift" effectively prohibiting the donor of shares in a private corporation from being on the board of directors of a recipient charity cannot be circumvented by the donor simply resigning from the board of directors and then making the gift of shares before being re-elected back onto the board of directors. CRA would likely see such sequence of events as a contrived arrangement that would likely be subject to challenge on an audit.

The above-mentioned requirement for an "Excepted Gift" would also have equal application in relation to gifts made by directors, officers and like officials of the Church as a "Charitable Organization".

What is important to remember is that the charity should not receive shares or debt in a private corporation (i.e., one that is not listed on a prescribed stock exchange) without first seeking legal or accounting advice to determine the current status of the income tax provisions on this issue and their implications on the proposed gift.

(m) Books And Records

All registered Canadian charities are required to keep complete books of account and records at the corporation's designated head office to verify the donations made to it. This is why it is essential to keep CRA informed of any change of address of the head office as the head office is the place that the books and records must be kept. Duplicate copies of the receipts issued for donations must also be kept. In addition, before any books and records may be disposed of, the Minister of National Revenue must give permission.

(n) Change of Year End

If the charity wishes to change its year end, permission must be first obtained from CRA upon explaining the reason for the change.

(o) Change of Name and/or Address

CRA must be informed of any change of name or change of address of the charity. This would require that the appropriate legal documents be forwarded to CRA such as

Supplementary Letters Patent changing the name or notice of special resolution changing the head office.

4. Public and Private Foundations

Although the corporation has been registered as a "charitable organization", CRA reserves the right at any time to re-designate the charity as either a "public foundation" or a "private foundation". As such, it is important to understand the basic distinction between a charitable organization and public and private foundations as well as some of the more important implications that flow from a change of designation.

A foundation (whether public or private) is operated exclusively for charitable purposes as opposed to a charitable organization, which must devote all of its resources to charitable activities. The practical application of this distinction means that a foundation can distribute all of its funds to other registered Canadian charities in fulfilment of its charitable purpose whereas for a charitable organization to fulfil its obligation to devote all of its resources to charitable activities must carry on the charitable activities itself with no more than 50% of its income in a year being transferred to other charities.

The distinction between a public and a private foundation is determined by the relationship of the officials of the foundation as well as its source of funding. A public foundation is required to have more than 50% of its Directors, Trustees, Officers or Officials deal with each other at arms length (as discussed earlier in this letter). In addition, not more than 50% of the contributed capital (defined as being the total contribution from all sources during the lifetime of the charity) can come from one person or group of people not dealing at arms length. If either of these two requirements is not met, then the foundation is designated as a private foundation.

The disbursement requirements for a foundation are both similar as well as different from those of a charitable organization. The disbursement requirements for foundations are extremely complex and must be calculated by a chartered accountant.

However, for purposes of understanding the distinction between charitable organizations and charitable foundations, the following is a brief summary of the disbursement requirements imposed upon both public and private foundations:

- (a) Both public and private foundations are required to expend at least 80% of received donations received in the immediately preceding year excluding gifts received by way of bequest or inheritance, ten year gifts and gifts from other registered charities (subject to (ii) below). This 80% disbursement rule is identical to the one imposed upon charitable organizations.
- (b) Public foundations are required to expend 80% of the amount of gifts received from a registered charity in the immediately preceding year other than a specified gift (which is a gift of capital from a registered charity in computing its disbursement quota). A private foundation is subject to the same disbursement requirement except that the percentage is

increased from 80% to 100% of gifts received from a registered charity in an immediately preceding year other than a specified gift. In the event that the charity becomes either a public or private foundation and wishes to receive a gift from another charity where it is not intended to expend the capital of that gift in the following year (such as in the situation of a donation which must be held in trust for at least ten years), it is essential that the gift be designated as a "specified gift". Otherwise, the charity receiving the gift will be required to expend at least 80% of the gift (100% in the situation of a private foundation) in the following year.

- (c) The third disbursement requirement imposed upon both public and private foundations is intended to ensure that investments of the foundation produce a minimal amount of income used annually for charitable purposes. If investments of the foundation do not generate income, other funds must be found or the disbursement quota cannot be met. The calculation is extremely complex and is impossible to adequately explain in this letter. However, it is important to understand that a foundation is required to disburse 4.5% of the property owned by it and not used directly in charitable activities or administration, i.e. investment properties. The quota is based on a twenty-four month period prior to the fiscal period in question. It is necessary to establish the value of the property in question at the beginning of the period and at the end of the current fiscal year. You then aggregate the values and multiply by 4.5% that establishes the disbursement quota. From this amount are permitted certain deductions. They are as follows:
- (i) 5/4 of the amount of the 80% disbursement of received income referred to in paragraph (b) above;
 - (ii) 5/4 of the disbursement amount in relation to gifts received from other charities referred to in paragraph (b) above.

The amounts of the deductions are subtracted from the value of the assets and the net amount is multiplied by 4.5%. The effect of these deductions are to exclude the full amount of the received donations and donations from other charities received in the previous year from the 4.5% disbursement requirement for investment properties.

In addition to the distinction between a public and private foundation referred to above, recent changes to the *Income Tax Act* in the February, 1997 Budget as amended in December, 1997 imposed a number of restrictions that apply only to private foundations as opposed to public foundations. A brief summary of some of the limitations imposed on private foundations are set out below for ease of reference.

- (a) New rules have been introduced to encourage donations of publicly traded shares to charities other than private foundations. The proposal provides that where appreciated stocks and bonds of companies listed on a prescribed stock exchange are donated to a charity and other qualified donees other than a private foundation, only thirty-seven and one half percent (37.5%) of the capital gain will have to be brought into income (i.e. the usual inclusion in income of seventy-five percent (75%) of the gain is now reduced by one

half). This provision applies to gifts made after February 17th, 1997 and before January 1st, 2002. However, this provision does not apply to gifts to a private foundation.

- (b) If shares or debts of a private company are gifted to a private foundation, then the donor will be denied a tax credit for the donation in the year in which it was made. That is, the gift is ignored for the purpose of a charitable donation tax credit. However, if the private foundation disposes of the security within sixty (60) months (i.e. 5 years) from the time that the donation was made, then the foundation can issue a donation receipt for the gift. This limitation is problematic for individuals who wish to transfer shares or debt of a private company or a holding company to a private foundation without being prepared to have those shares or debt in the private company sold within five years. As a result, before any gift, other than cash, is made to a private foundation our office or your accountant should be consulted to discuss the tax ramifications of the gift.

As is evident from the above discussion, the implications of being designated as either a public or private foundation can have a profound effect upon the disbursement obligations imposed under the *Income Tax Act* (Canada). For this reason, it is essential that the source of funding to the charity be carefully monitored as well as the relationship of members on the board of directors.

5. Interpretation Bulletins and Information Circulars

Although this portion of the letter is intended to be an overall summary of the obligations, which need to be maintained with CRA, it is impossible to cover every possible situation that may arise in dealing with CRA. CRA publishes a series of Interpretation Bulletins and Information Circulars relating to charities which are being constantly updated. Some of the following Bulletins and Circulars may be of interest. If you wish to obtain copies, you can either contact CRA directly or obtain a copy from our office.

- a) Interpretation Bulletin IT-110R3 – Gifts and Official Donation Receipts;
- b) Interpretation Bulletin IT-226R – Gift to a Charity of a Residual Interest in Real Property or an Equitable Interest in a Trust;
- c) Interpretation Bulletin IT-244R3 – Gifts by Individuals of Life Insurance Policies as Charitable Donations;
- d) Interpretation Bulletin IT-288R2 – Gifts by Individuals of Capital Properties to a Charity and Others;
- e) Interpretation Bulletin IT-297R2 – Gifts in Kind to Charity and Others;
- f) Interpretation Bulletin IT-179R – Change of Fiscal Period;
- g) Interpretation Bulletin IT-407R4 – Dispositions of Cultural Property to Designated Canadian Institutions;

- h) Interpretation Bulletin IT-419R – Meaning of Arm's Length;
- i) Information Circular IC-75-23 – Tuition Fees and Charitable Donations Paid to Privately Supported Secular and Religious Schools;
- j) Information Circular IC-77-6 – Registered Charities: Designation as Associated Charity;
- k) Information Circular IC-84-3R5 – Gifts to Certain Charitable Organization Outside Canada;
- l) Information Circular IC-84-3R5 Attachment to IC-84-3R5 – Gifts to Certain Charitable Organization Outside Canada;
- m) Information Circular IC-87-1 – Registered Charities – Ancillary and Incidental Political Activities;
- n) Information Circular IC-75-2R6 – Contributions to a Registered Political Party or to a Candidate at a Federal Election;
- o) Information Circular IC-78-10R3 – Books and Records Retention/Destruction;
- p) Brochures and Guides RC4142 – Tax Advantages of Donating to Charity;
- q) Brochures and Guides P113 – Gifts and Income Tax;
- r) Brochures and Guides RC4108 – Registered Charities and the Income Tax Act;
- s) Brochures and Guides T4063 – Registering a Charity for Income Tax Purposes;
- t) Brochures and Guides RC4106 – Registered Charities: Operating Outside Canada;
- u) Brochures and Guides RC4143 – Registered Charities: Community Economic Development Programs;
- v) Brochures and Guides T4033-2002 – Completing the Registered Charity Information Return;
- w) Policy Statement CPS-019 – What is a Related Business?;
- x) Policy Statement CPS-022 – Political Activities; and
- y) Registered Charity Newsletters from August of 1991 to the present.

Full copies of the Interpretation Bulletins can be found on the CRA website at "www.cra-adrc.gc.ca".

F. GENERAL MATTERS

1. Charity Legal Risk Management Checklist

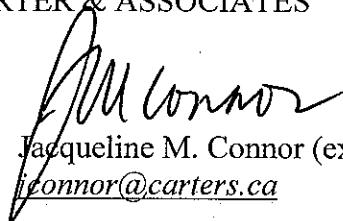
I have enclosed with this letter a copy of the condensed version of the Charity Legal Risk Management Checklist. There are numerous issues contained in the Checklist and a summary that should be discussed to implement a comprehensive legal risk management approach to operating the Corporation, although not all issues in the checklist will be relevant to the Corporation.

G. CONCLUSION

I trust that this report setting out the procedures and obligations involved in running the Corporation as a charity will be of assistance to you. If you have any questions arising out of the contents of this letter or the enclosures herein, please feel free to contact our office to discuss those items further.

Yours truly,
CARTER & ASSOCIATES

Per:



Jacqueline M. Connor (ext. 224)
jconnor@carters.ca

JMC:mcv (x246)
Enclosures

S:\CLIENT FILES\HVACR\Incorporation, Charitable Status & Strategic Planning (01-0034)\Report FINAL June 04 04.doc



Industry Canada Industrie Canada

Canada
Corporations Act

Loi sur les
corporations canadiennes

C A N A D A

LETTERS PATENT

WHEREAS an application has been filed to incorporate a corporation
under the name

HVACR HERITAGE CENTRE CANADA

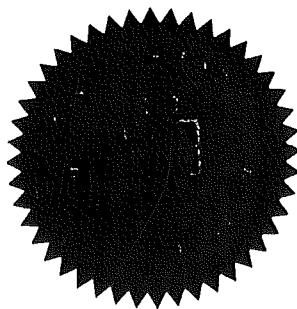
THEREFORE the Minister of Industry by virtue of the powers vested
in him by the *Canada Corporations Act*, constitutes the applicants
and such persons as may hereafter become members in the corporation
hereby created, a body corporate and politic in accordance with the
provisions of the said Act. A copy of the said application is
attached hereto and forms part hereof.

Date of Letters Patent - September 23, 2002

GIVEN under the seal of office of the Minister of Industry.

for the Minister of Industry

File Number: 410899-0



Canada



Industry Canada Industrie Canada

OCT 21 2002

Corporations Directorate
9th floor
Jean Edmonds Towers South
365 Laurier Avenue West
Ottawa, Ontario K1A 0C8

October 17, 2002

Direction générale des Corporations
9^e étage
Tour Jean Edmonds sud
365, avenue Laurier ouest
Ottawa (Ontario) K1A 0C8

01-0034

Your file Votre référence

Our file Notre référence

410899-0

Mrs. Jacqueline M. Connor
Carter & Associates
Barristers & Solicitors
211 Broadway
Orangeville, Ontario
L9W 1K4

Re - Objet: HVACR HERITAGE CENTRE CANADA

Enclosed herewith, is the document issued in the above matter.

A notice of issuance of CBCA documents will be published in the *Canada Corporations Bulletin*. A notice of issuance of CCA documents will be published in the *Canada Corporations Bulletin* and the *Canada Gazette*.

IF A NAME OR CHANGE OF NAME IS INVOLVED, THE FOLLOWING CAUTION SHOULD BE OBSERVED:

This name is available for use as a corporate name subject to and conditional upon the applicants assuming full responsibility for any risk of confusion with existing business names and trade marks (including those set out in the relevant NUANS search reports(s)). Acceptance of such responsibility will comprise an obligation to change the name to a dissimilar one in the event that representations are made and established that confusion is likely to occur. The use of any name granted is subject to the laws of the jurisdiction where the company carries on business.

Vous trouverez ci-inclus le document émis dans l'affaire précitée.

Un avis de l'émission de documents en vertu de la LCSA sera publié dans le *Bulletin des sociétés canadiennes*. Un avis de l'émission de documents en vertu de la LCC sera publié dans le *Bulletin des sociétés canadiennes* et dans la *Gazette du Canada*.

S'IL EST QUESTION D'UNE DÉNOMINATION SOCIALE OU D'UN CHANGEMENT DE DÉNOMINATION SOCIALE,
L'AVERTISSEMENT SUIVANT DOIT ÊTRE RESPECTÉ:

Cette dénomination sociale est disponible en autant que les requérants assumment toute responsabilité de risque de confusion avec toutes dénominations commerciales et toutes marques de commerce existantes (y compris celles qui sont citées dans le(s) rapport(s) de recherches NUANS pertinent(s)). Cette acceptation de responsabilité comprend l'obligation de changer la dénomination de la société en une dénomination différente advenant le cas où des représentations sont faites établissant qu'il y a une probabilité de confusion. L'utilisation de tout nom octroyé est sujette à toute loi de la juridiction où la société exploite son entreprise.

For the Director, Corporations Directorate
pour le directeur, Direction générale des corporations

Canada

**APPLICATION FOR INCORPORATION FOR A CORPORATION
WITHOUT SHARE CAPITAL UNDER PART II OF
THE CANADA CORPORATIONS ACT**

TO: THE MINISTER OF INDUSTRY

I

The undersigned hereby applies to the Minister of Industry for the grant of a charter of Letters Patent under the provisions of Part II of the *Canada Corporations Act* constituting the undersigned, and such others as may become members of the Corporation thereby creating a body corporate and politic under the name of:

HVACR HERITAGE CENTRE CANADA

The undersigned having satisfied themselves and are assured that the proposed name under which incorporation is sought is not the same or similar to the name under which any other company, society, association or firm, in existence is carrying on business in Canada or is incorporated under the laws of Canada or any province thereof or so nearly resembles the same as to be calculated to deceive, and that it is not a name which is otherwise on public grounds objectionable.

II

The applicants are individuals of the full age of eighteen years with power under the law to contract. The name, the place of residence and the calling of each of the applicants are as follows:

	<u>Name</u>	<u>Address</u>	<u>Occupation</u>
1.	Norman Bertrand Fraser	187 Poyntz Avenue Toronto, Ontario M2N 1J5	Sr. Sales Executive (Retired)
2.	George Leslie Oliver	68 Spruce Street Aurora, Ontario L4G 1R8	Prof. Engineer (Retired)
3.	Martin Vandenberg	R.R. #1, 2280 Regional Road 81 St. Catharines, Ontario L2R 6P7	Businessman
4.	Hart Milton Holmstrom	139 Victoria Ste. E. P.O. Box 731 Alliston, Ontario L9R 1V8	Business Owner

5.	Murray Wayne Gamble	16 Trailsmoke Crescent Etobicoke, Ontario M9C 1M1	Wholesaler (Retired)
6.	Edmund Anthony Athaide	24 Hanover Road, Suite 1510 Brampton, Ontario L6S 5K8	Construction Manager (Retired)

The said Norman Bertrand Fraser, George Leslie Oliver, Martin Vandenberg, Hart Milton Holmstrom, Murray Wayne Gamble and Edmund Anthony Athaide will be the first directors of the Corporation.

II

The Objects of the Corporation are:

1. To further, promote, support and facilitate the study, research and understanding of the history and development of the heating, ventilation, air conditioning and refrigeration industry in Canada and abroad ("HVACR Industry") and its contribution to public wellbeing, societal development and culture.
2. Provided that these objects shall include only those which are exclusively charitable at law, and in furtherance of the foregoing:
 - (a) to identify, retrieve and preserve historical artifacts and archival resources of the HVACR Industry;
 - (b) to establish, operate and maintain a centre or centres to publicly make available the historical artifacts, archival resources and educational materials of the HVACR Industry through all available means, including exhibits, publications and the use of electronic and internet communications and interaction;
 - (c) to commission research and communicate the results therefrom to further the study and understanding of the HVACR Industry;
 - (d) to educate individuals working in the HVACR Industry, as well as the general public, about the HVACR Industry;
 - (e) to promote, develop, and distribute educational, resource, and study materials for individuals, groups and organizations to further the study and understanding of the HVACR Industry;

- (f) to develop, organize and conduct classes, meetings, tutorials, discussions, activities, programs, courses, seminars, conferences, workshops, and symposiums for individuals, groups and organizations to further the study and understanding of the HVACR Industry;
 - (g) to establish, own, and/or operate one or more publishing offices, printing plants, distribution centres, or retail facilities for the publication, printing, distribution and sale of all types of literature and publications directly related to the objects of the Corporation;
 - (h) to produce programs and materials directly related to the objects of the Corporation for presentation, broadcast and distribution on any means of audio, visual, computer, electronic or other forms of communication as may become available from time to time;
 - (i) to acquire and hold land for the purposes of the Corporation;
 - (j) to receive and maintain a fund or funds for the objects of the Corporation and to apply from time to time all or part of the income and/or capital thereof for the said objects, and for the benefit of charitable organizations that are registered as such under the *Income Tax Act* (Canada), as amended from time to time, and that have charitable objects similar to the objects of the Corporation;
 - (k) to associate, co-operate and affiliate with any association or organization, incorporated or unincorporated, with charitable objects similar to the objects of the Corporation;
 - (l) to give property and funds of the Corporation to "qualified donees" as defined under the *Income Tax Act* (Canada), as amended from time to time, to further the objects of the Corporation; and
 - (m) to carry on "related businesses" within the meaning of the *Income Tax Act* (Canada) as amended from time to time, in furtherance of the objects of the Corporation.
3. For the attainment of the above objects and as incidental and ancillary thereto, to exercise any of the powers as prescribed by the *Canada Corporations Act* or any other statutes or laws from time to time applicable, except where such power is contrary to the statutes or common law relating to charities and in particular without limiting the generality of the foregoing:
- (a) to solicit and receive donations by bequests, devises, legacies, gifts, grants, or benefit of trusts, and to enter into agreements, contracts and undertakings incidental thereto;
 - (b) to acquire by purchase, contract, donation, lease, devise, gift, or otherwise, real property or interests therein, and to hold the same for the actual use and occupation of the Corporation or for carrying on its objects, and to

sell, grant, convey, mortgage, hypothecate, pledge, charge, lease, or otherwise dispose of such real property or interests therein from time to time as occasion may require, and to acquire other real property or interests therein in addition thereto or in place thereof, as may be considerable advisable;

- (c) to acquire by purchase, contract, donation, legacy, gift, grant, bequest or otherwise, any personal property or interests therein, and to enter into and carry out any agreements, contracts or undertakings incidental thereto, and to sell, grant, convey, mortgage, hypothecate, pledge, charge, lease or otherwise dispose of the same or any part thereof, from time to time as occasion may require, and to acquire other personal property or interests therein in addition thereto or in place thereof, as may be considered advisable;
- (d) to invest and reinvest the fund or funds of the Corporation in such manner as determined by the Directors from time to time, and in making such investments, the Directors shall be governed by the *Trustee Act* (Ontario), as amended from time to time, as well as the power to subdelegate investment decision making to qualified investment managers;
- (e) to establish a common trust fund in which donations received by the Corporation, whether or not designated, are combined for the purpose of facilitating investment, and to operate such fund in accordance with terms of reference established by the Board from time to time;
- (f) to accumulate from time to time part of the fund or funds of the Corporation or the income therefrom subject to any statutes or laws from time to time applicable;
- (g) to employ and pay such assistants, clerks, agents, representatives, and employees, and to establish, equip, furnish, maintain, operate, manage and staff appropriate offices, facilities and programs complementing such purposes, and to incur such reasonable expenses as may be necessary therein;
- (h) to exercise all voting rights and to authorize and direct the execution and deliver of proxies in connection with the shares or obligations in any company or corporation held by the Corporation;
- (i) to take up proportions of any increased capital of a company or corporation in which the Corporation may at any time hold shares or obligations, to purchase any additional shares or obligations in such company or corporation; to join in any plan for the reconstruction or re-organization or for the sale of assets of any company or corporation, or part thereof; to enter into any pooling or other agreement in connection with the shares or obligations of a company or corporation held by the Corporation; and to give consent to the creation of any mortgage, lien or indebtedness of any company or corporation whose shares or obligations are held by the

Corporation;

- (j) to require payment of all sums of monies and claims to any real or personal property in which the Corporation may have an interest, and to compromise in any such claims, and generally to pursue payment in its corporate name through whatever means are available at law;
- (k) to draw, make, endorse, execute and issue cheques and other negotiable instruments; and
- (l) to perform any manner of actions as are incidental or ancillary to the attaining of the above mentioned objects of the Corporation.

III

All Directors and Officers of the Corporation are required as a qualification thereof to be a Member of the Corporation.

IV

The operations of the Corporation may be carried on throughout Canada and elsewhere.

V

The place within Canada where the head office of the Corporation shall be situated in the City of Brampton, in the Region of Peel, in the Province of Ontario.

VI

It is specifically provided that in the event of dissolution or winding up of the Corporation, all of its remaining assets after payments of its liabilities, shall be distributed to one or more charities that are registered as such under the *Income Tax Act* (Canada), as amended from time to time, or equivalent designation under such legislation, which have similar objects to the Corporation, provided that prior to such event any special or restricted purpose trust funds held by the Corporation shall be transferred to a new trustee appointed by the directors of the Corporation to be applied in accordance with the applicable terms of trust.

VII

In accordance with Section 65 of the *Canada Corporations Act*, it is provided that, when authorized by by-law, duly passed by the directors and sanctioned by at least two-thirds of the votes cast at a special general meeting of the members duly called for considering the by-law, the directors of the Corporation may from time to time:

1. borrow money upon the credit of the Corporation;
2. limit or increase the amount to be borrowed;
3. issue debentures or other securities of the Corporation;

4. pledge or sell such debentures or other securities for such sums and at such prices as may be deemed expedient; and
5. secure any such debentures, or other securities, or any other present or future borrowing or liability of the Corporation, by mortgage, hypothec, charge or pledge of all or any currently owned or subsequently acquitted real and personal, movable and immovable, property of the Corporation, and the undertaking and rights of the Corporation.

Any such by-law may provide for the delegation of such powers by the directors to such officers or directors of the Corporation to such extent and in such manner as may be set out in the by-law.

Nothing herein limits or restricts the borrowing of money by the Corporation on bills of exchange or promissory notes made, drawn, accepted, or endorsed by or on behalf of the Corporation.

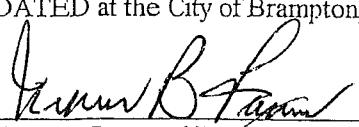
VIII

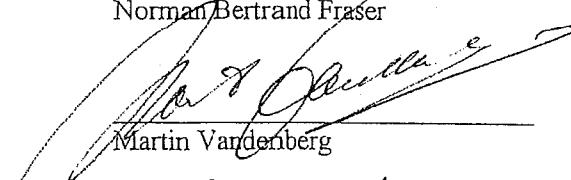
The by-laws of the Corporation shall be those filed with the application for Letters Patent until repealed, amended, altered or added to.

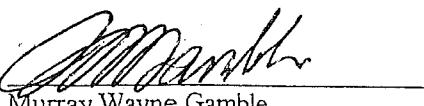
IX

The Corporation is to carry on its operations without pecuniary gain to its members and any profits or other accretions to the Corporation are to be used in promoting its objects.

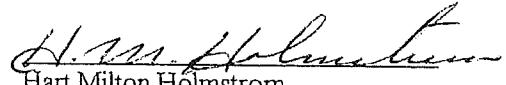
DATED at the City of Brampton, in the Province of Ontario, this 8th day of August, 2002.

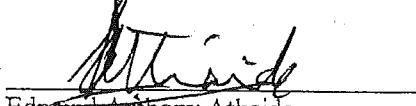

Norman Bertrand Fraser


Martin Vandenberg


Murray Wayne Gamble


George Leslie Oliver


Hart Milton Holmstrom


Edmund Anthony Athaide



Industry Canada Industrie Canada

Corporations Canada
9th floor
Jean Edmonds Towers South
365 Laurier Avenue West
Ottawa, Ontario K1A 0C8

Corporations Canada
9^e étage
Tour Jean Edmonds sud
365, avenue Laurier ouest
Ottawa (Ontario) K1A 0C8

01-0034

Your file Votre référence

November 14, 2003

Our file Notre référence

Jacqueline M. Connor
Carter & Associates
211 Broadway
Orangeville, Ontario
L9W 1K4

410899-0

Re - Objet: HVACR HERITAGE CENTRE CANADA

**Enclosed herewith, is the document issued
in the above matter.**

A notice of issuance of CBCA documents
will be published in the *Canada
Corporations Bulletin*. A notice of issuance
of CCA documents will be published in the
Canada Corporations Bulletin and the
Canada Gazette.

**IF A NAME OR CHANGE OF NAME IS
INVOLVED, THE FOLLOWING CAUTION
SHOULD BE OBSERVED:**

*This name is available for use as a corporate name
subject to and conditional upon the applicants
assuming full responsibility for any risk of confusion
with existing business names and trade marks
(including those set out in the relevant NUANS search
reports(s)). Acceptance of such responsibility will
comprise an obligation to change the name to a
dissimilar one in the event that representations are
made and established that confusion is likely to occur.
The use of any name granted is subject to the laws of
the jurisdiction where the company carries on
business.*

**Vous trouverez ci-inclus le document émis
dans l'affaire précitée.**

Un avis de l'émission de documents en vertu
de la LCSA sera publié dans le *Bulletin des
sociétés canadiennes*. Un avis de l'émission
de documents en vertu de la LCC sera publié
dans le *Bulletin des sociétés canadiennes* et
dans la *Gazette du Canada*.

**S'IL EST QUESTION D'UNE DÉNOMINATION
SOCIALE OU D'UN CHANGEMENT DE
DÉNOMINATION SOCIALE,
L'AVERTISSEMENT SUIVANT DOIT ÊTRE
RESPECTÉ:**

*Cette dénomination sociale est disponible en autant que
les requérants assumment toute responsabilité de risque
de confusion avec toutes dénominations commerciales
et toutes marques de commerce existantes (y compris
celles qui sont citées dans le(s) rapport(s) de
recherches NUANS pertinent(s)). Cette acceptation de
responsabilité comprend l'obligation de changer la
dénomination de la société en une dénomination
différente advenant le cas où des représentations sont
faites établissant qu'il y a une probabilité de confusion.
L'utilisation de tout nom octroyé est sujette à toute loi
de la juridiction où la société exploite son entreprise.*

For the Director, Corporations Canada
pour le directeur, Corporations Canada

Canada



Industry Canada Industrie Canada

Canada
Corporations Act

Loi sur les
corporations canadiennes

C A N A D A

SUPPLEMENTARY LETTERS PATENT

issued to

HVACR HERITAGE CENTRE CANADA

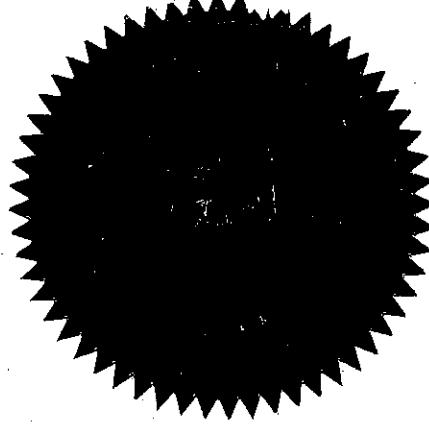
The Minister of Industry by virtue of the powers vested in him by the Canada Corporations Act, does hereby vary the objects of the corporation as provided in By-law No.2 of the said Corporation, a copy of which is annexed hereto to form part of these presents.

Date of Supplementary Letters Patent - October 15, 2003

GIVEN under the seal of office of the Minister of Industry.

for the Minister of Industry

File Number: 410899-0



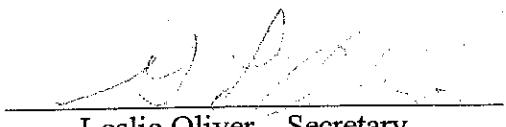
Canada

HVACR HERITAGE CENTRE CANADA

C E R T I F I C A T E

Certified to be a true copy of By-law No. 2 of **HVACR HERITAGE CENTRE CANADA** enacted by the Directors the 8th day of October, 2003 and sanctioned by a vote of not less than two thirds (2/3rds) of the members voting at a special general meeting of the corporation held for that purpose at the City of Etobicoke on the 8th day of October, 2003.

Per:


Leslie Oliver – Secretary

I have authority to bind the Corporation.

HVACR HERITAGE CENTRE CANADA

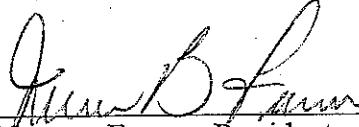
BY-LAW NO. 2

A By-law to amend the objects and other provisions of the Letters Patent and to authorize application for the issuance of Supplementary Letters Patent to confirm the same.

BE IT ENACTED AND IT IS HEREBY ENACTED as By-law No. 2 of **HVACR HERITAGE CENTRE CANADA** (herein called "the Corporation") that:

1. That the Corporation be and is hereby authorized to make application to the Minister of Industry Canada for the issuance of Supplementary Letters Patent, a copy of which is attached hereto as Schedule "A", confirming this By-law insofar as it relates to amending the primary object of the Letters Patent.
2. That the directors and officers are hereby authorized and directed to do, sign and execute all things, deeds, and documents necessary or desirable for the due carrying out of the foregoing.

ENACTED this 8th day of October, 2003.

per 
Norman Fraser - President

per 
Leslie Oliver - Secretary

We have authority to bind the Corporation.

Schedule "A"

APPLICATION RESPECTING AMENDMENT AND VARIATION OF PROVISIONS OF LETTERS PATENT

TO: THE HONOURABLE THE MINISTER OF INDUSTRY

The application of: HVACR HERITAGE CENTRE CANADA

HUMBLY SHEWETH THAT:

1. Your Applicant was incorporated under the *Canada Corporations Act* by Letters Patent dated September 23, 2002.
2. On the 8th day of October, 2003, a by-law was enacted, being By-law No. 2 of the by-laws of your Applicant, authorizing an application for Supplementary Letters Patent amending and varying the provisions of the Letters Patent incorporating your Applicant by amending Part II Section 1 of the Letters Patent which presently reads as follows:

"II

The Objects of the Corporation are:

1. *To further, promote, support and facilitate the study, research and understanding of the history and development of the heating, ventilation, air conditioning and refrigeration industry in Canada and abroad ("HVACR Industry") and its contribution to public wellbeing, societal development and culture."*

and confirm the insertion of the following wording in its place:

"II

The objects of the Corporation are:

1. *To further, promote, support and facilitate the study, research and understanding of the history and development of the heating, ventilation, air conditioning and refrigeration industry in Canada and abroad ("HVACR Industry").*
3. On the 8th day of October, 2003, the said By-law No. 2 was sanctioned at a special general meeting of the Members of the Corporation duly called for the purpose of considering the same, by a vote of not less than two thirds (2/3rds) of the Members represented either in person or by proxy at such meeting.
4. Such Supplementary Letters Patent are not desired for any improper purpose and are deemed necessary and expedient in the interest of your Applicant.

5. Your Applicant is not in arrears in filing its annual summaries.

YOUR APPLICANT THEREFORE ASKS THAT Supplementary Letters Patent may be granted amending and varying the provisions of the Letters Patent incorporating your applicant in pursuant of said By-law No. 2.

DATED AT the City of Etobicoke, this 8th day of October, 2003.

HVACR HERITAGE CENTRE CANADA

per _____ - Director

per _____ - Director

We have authority to bind the Corporation.

GENERAL OPERATING BY-LAW NUMBER 1

HVACR HERITAGE CENTRE CANADA

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GENERAL OPERATING BY-LAW NUMBER 1

A By-Law relating generally to the transaction of the affairs of

HVACR HERITAGE CENTRE CANADA

hereinafter referred to as the "Corporation".

WHEREAS the Corporation was incorporated by Letters Patent issued by the Federal Government of under the *Canada Corporations Act* on the 23rd day of September, 2002.

AND WHEREAS the By-law herein was attached to the application for Letters Patent as the draft General Operating By-law and is now being formally adopted.

NOW THEREFORE BE IT ENACTED as the General Operating By-law No. 1 of the HVACR Heritage Centre Canada (the "Corporation") as follows:

PART I: DEFINITIONS, FUNDAMENTAL TERMS AND INTERPRETATIONS

1. DEFINITIONS

1.01 In this By-Law and all other By-laws and Resolutions of the Corporation unless the context otherwise requires, the following definitions shall apply:

- (a) "Act" means the *Canada Corporations Act*, R.S.C. 1970, c.C.32 as amended from time to time and any statute enacted in substitution thereof, and in the case of such substitution, any references in the By-law of the Corporation to provisions of the Act shall be read as references to the substituted provisions thereof in the new statute or statutes;
- (b) "Agent" means any Person who performs services on behalf of the Corporation and receives remuneration for such services;
- (c) "Auditor" means the Person, corporations, partnerships, joint ventures, unincorporated associations, or other form of business organization appointed by the Membership to audit the financial statements of the Corporation in accordance with the Act and this General Operating By-Law;
- (d) "Board" or "Board of Directors" means the Board of Directors of the Corporation;
- (e) "By-law" or "By-laws" means any By-law of the Corporation from time to time in force and effect, including this General Operating By-law;
- (f) "Chair" means the Chair of the Members Meetings, who shall be the Chairperson of the Corporation or as otherwise provided for in this General Operating By-law;

- (g) "Chair of the Board" means the Chair of the Board of Directors, who shall be the Chairperson of the Corporation or as otherwise provided for in this General Operating By-law;
- (h) "Committee" means a Committee of the Corporation as established in accordance with this General Operating By-law;
- (i) "Committee Member" means a Member of a Committee of the Corporation;
- (j) "Constitution" means the Letters Patent (including the Objects), General Operating By-law, By-laws, and any Policy Statements, Rules, Regulations or Guidelines adopted by the Corporation from time to time;
- (k) "Corporation" means the legal entity incorporated without share capital under the Act by Letters Patent dated the 23rd day of September 2002 under the name of "HVACR Heritage Centre Canada", through which its Members, Employees, Volunteers and Agents may together pursue the Objects of the Corporation;
- (l) "Director" means a member of the Board of Directors;
- (m) "Documents" includes deeds, mortgages, hypothecates, charges, conveyances, transfers and assignments of property, real or personal, immovable or moveable, agreements, releases, receipts and discharges for the payment of money or other obligations, conveyances, transfer and assignments of shares, bonds, debentures or other securities and all paper writing;
- (n) "Employee" means any full-time or part-time Employee of the Corporation or any contract for service provider who is deemed to be an Employee for purposes of the *Income Tax Act* (Canada), where applicable;
- (o) "Fiscal Year" means the Fiscal Year of the Corporation commencing on the 1st day of July and ending on the 30th day of June in the next calendar year;
- (p) "General Operating By-law" means this By-law, any amendments thereto, and any other By-laws of the Corporation intended to amend or replace the General Operating By-law herein;
- (q) "Letters Patent" means the Letters Patent incorporating "HVACR Heritage Centre Canada", as from time to time amended and supplemented by Supplementary Letters Patent;
- (r) "Meeting of Members" or "Membership Meetings" or "Members Meeting" means any annual or special Meeting of Members;
- (s) "Member" means a Member of the Corporation;
- (t) "Members" or "Membership" means the collective Membership of the Corporation;
- (u) "Objects" means the charitable Objects of the Corporation as contained in the Letters Patent that all Directors and Members are required to subscribe to;
- (v) "Officer" means an Officer of the Corporation as described in this General Operating By-law;

- (w) "Person" means an individual Person, but does not include corporations, partnerships, trusts, or unincorporated organizations;
- (x) "Policy Statements" means any Policy Statements adopted pursuant to this General Operating By-law from time to time in pursuance of the Objects of the Corporation;
- (y) "Resolution" means a Resolution passed by either the Board of Directors, a Committee or by the Members, including those represented by proxy (where applicable) by a simple majority vote of fifty percent (50%) plus one of those voting, including those Directors, Committee Members or Members who are present or represented by proxy, unless the Act or this General Operating By-law otherwise requires;
- (z) "Rules", "Regulations" or "Guidelines" means any Rule, Regulation or Guideline adopted pursuant to this General Operating By-law from time to time concerning the management and operations of the Corporation;
- (aa) "Section" means a Section of this General Operating By-law;
- (bb) "Strategic Plan" means the Strategic Plan established by the Board from time to time to pursue and implement the Objects of the Corporation;
- (cc) "Vice-Chair" means any Vice-Chair of the Board of Directors, who shall be the Vice-Chairperson of the Corporation or as otherwise provided for in this General Operating By-Law; and
- (dd) "Volunteer" means any Person who performs services or programs on behalf of the Corporation without receiving remuneration, other than repayment of out of pocket expenses.

2. FUNDAMENTAL TERMS AND INTERPRETATION

- 2.01 Objects - This General Operating By-law and any other By-laws of the Corporation shall be strictly interpreted at all times in accordance with and subject to the Objects contained in the Letters Patent of the Corporation, which for purposes of this General Operating By-law are incorporated by reference and made a part hereof. If any of the provisions contained in this General Operating By-law are inconsistent with those contained in the Letters Patent or the Act, the provisions contained in the Letters Patent or the Act, as the case may be, shall prevail.
- 2.02 Interpretation - In this General Operating By-law and all other By-laws and Resolutions of the Corporation, unless the context otherwise requires, the following interpretations shall apply:
 - (a) words importing the singular number include the plural and vice versa;
 - (b) words importing the masculine gender include the feminine and neutered genders unless this Bylaw otherwise specifically provides; and
 - (c) words importing or referring to Person or Persons shall include individual persons only and shall specifically exclude corporations, partnerships, trusts and unincorporated organizations.

2.03 Headings - Headings used in this General Operating By-law are for convenience of reference only and shall not affect the construction or interpretation thereof.

PART II: MEMBERSHIP

3. DEFINITION OF AND ADMISSION INTO MEMBERSHIP

3.01 Definition of Membership – Membership in the Corporation shall consist only of those Persons recorded as Members of the Corporation as of the date of the passing of this General Operating By-Law. Thereafter, Membership in the Corporation shall be attained only by those Persons who:

- (a) have signed a Membership Statement to evidence:
 - (i) their commitment to further the Objects of the Corporation;
 - (ii) their agreement with the terms of the Constitution, consisting of the Letters Patent (including the Objects), the General Operating By-law herein, all By-Laws of the Corporation from time to time, and all Policy Statements, Rules, Regulations and Guidelines adopted by the Corporation from time to time and the processes and procedures set out herein;
- (b) are over the age of twenty-one (21);
- (c) whose application for membership has been approved by a Resolution of the Board;
- (d) are Directors of the Corporation or are elected as Directors of the Corporation, within the 10 days of becoming Members, or is the Executive Director.

3.02 Admission to Membership - An application for Membership shall be submitted to the Board. If the Board is satisfied that the application for Membership satisfies all of the definitions of Membership as set out in Section 3.01, then in its sole discretion by a two-thirds (2/3rds) majority Resolution of the Board, such Person shall thereafter become a Member of the Corporation.

3.03 No Membership Fees - There shall be no Membership fees or dues unless otherwise directed by the Board of Directors.

3.04 Membership Record - A record of Members of the Corporation shall be kept by the Secretary of the Corporation.

4. DUTIES AND RIGHTS OF MEMBERSHIP

4.01 Duties and Rights - Membership in the Corporation shall carry the following duties and rights;

- (a) the duty to further the Objects of the Corporation as contained in the Letters Patent;
- (b) the duty to respect and submit to the procedures of the Corporation as expressed in its Constitution;

- (c) the right to receive notice of, attend, speak and participate at all Meetings of Members; and
 - (d) the right to a single vote at all Meetings of Members.
- 4.02 Membership Non-Transferable - Membership in the Corporation is non-transferable.
- 5. RESIGNATION AND TERMINATION OF MEMBERSHIP**
- 5.01 Resignation of Membership - Members may resign at any time from Membership in the Corporation by delivering a written notification of their resignation to the Chairperson or Secretary of the Corporation, which resignation shall become effective immediately thereafter.
- 5.02 Termination of Membership - Membership in the Corporation shall automatically terminate upon occurrence of any of the following:
- (a) a Member resigns in writing in accordance with Section 5.01;
 - (b) if a Member is no longer a Director of the Corporation;
 - (c) a Member failing to maintain all of the qualifications of Membership set out in Section 3.01 as determined in the sole discretion of the Board by a two thirds (2/3rds) majority Resolution;
 - (d) if at a Meeting of Members of the Corporation called for that purpose, the Members determine by a two third (2/3rds) majority Resolution that a Member is to be removed as a Member of the Corporation, provided that such Member is first offered an opportunity to be heard; or
 - (e) on the death of the Member.
- 5.03 Deemed Co-ordinated Resignations - If a Member resigns or is removed from Membership in the Corporation and holds a position of either a Director or Officer of the Corporation, that Member shall be deemed to have immediately resigned from his or her position as either or both a Director and Officer of the Corporation.
- 6. MEMBERSHIP MEETING**
- 6.01 Annual Meeting - There shall be an annual Meeting of Members of the Corporation at such time and place as determined by the Board of Directors, provided that the Annual Meeting of Members shall be held at least once in every calendar year and not more than six (6) months after the fiscal year end of the Corporation. Such meetings may be held outside of Canada if the Members of the Corporation resolve to do so.
- 6.02 Business of Annual Meeting - The annual Meeting of Members shall be held to transact such business as is required by the Act and as determined by the Board from time to time, but at a minimum shall be held to do the following:
- (a) to receive a report or reports from the Board;

- (b) to receive a report from the Auditor on the financial statements for the Corporation in accordance with the Act;
 - (c) to establish, increase or decrease the number of Directors within the minimum and maximum numbers set out in Section 7.01;
 - (d) to elect Directors as required;
 - (e) to appoint an Auditor for the current Fiscal Year and to fix or authorize the Board to fix remuneration for the Auditor;
 - (f) to approve past actions of the Directors and Officers; and
 - (g) to transact any other business properly brought before the meeting.
- 6.03 Special Meetings - The Board may at any time call a special Meeting of Members for the transaction of any business, the general nature of which is specified in the notice calling the meeting. A special Meeting of Members may also be called by the written request of at least twenty percent (20%) of the total number of Members entitled to vote. The Chairperson shall send notice of such special Meeting of Members within thirty (30) days of the receipt of such written request.
- 6.04 Notice of Meetings - Notice of any annual or special Meeting of Members shall be provided to Members by any of the following means:
- (a) by mail sent to each Member not less than ten (10) days before the Meeting of Members is to take place;
 - (b) by electronic notice, including facsimile transfer or e-mail, sent to each Member not less than four (4) days before the Meeting of Members is to take place;
 - (c) by personal service to each Member not less than four (4) days before the Meeting of Members is to take place; and
 - (d) in the event of an emergency, as determined by the Chairperson, by telephone notice to each Director not less than twenty-four (24) hours before the Board meeting is to take place.
- Such Notice shall include the date, time, place and purpose of the Meeting of Members and shall contain sufficient information to permit the Members to make a reasonable judgment on the decision to be taken. Notice of each Meeting of Members must remind Members that Members have the right to vote by proxy.
- 6.05 Waiver of Notice - A Member may waive notice of a Meeting of Members and attendance of any such Person at a Meeting of Members shall constitute a waiver of notice of the Meeting, except where such Person attends a Meeting for the express purposes of objecting to the transaction of any business on the grounds that the Meeting of Members is not lawfully called.
- 6.06 Omission of Notice - The accidental omission to give notice of any Meeting of Members or any irregularity in the notice of any such Meeting of Members or the non-receipt of any notice by any Member or by the auditor of the Corporation shall not invalidate any Resolution passed or any

- proceedings taken at any Meeting of Members, provided that no Member objects in writing to the Chair of such omission or irregularity within thirty (30) days after the date of such meeting.
- 6.07 Quorum - A quorum for any annual or special Meeting of Members shall be constituted by the presence of a simple majority of the Members of the Corporation. No business shall be transacted in any Membership Meeting unless the requisite quorum is present at the commencement of business. If a quorum is not present at the time appointed for a Meeting of Members within such reasonable time thereafter as the Members present may determine, the Members present and entitled to vote may adjourn the meeting to a fixed time and place subject to the notice requirement in Section 6.04 and may not transact any other business, otherwise the Membership Meeting shall be at an end. Only those Members present in person, by telephone or electronically shall be counted in determining whether or not a quorum is present.
- 6.08 Chair of Member Meetings - The Chair of Member Meetings shall be:
- (a) the Chairperson;
 - (b) if the Chairperson is absent or unable to act, then the Vice-Chairperson; and
 - (c) if the Chairperson and the Vice-Chairperson are absent or unable to act, then a Director appointed by the Board by Resolution.
- 6.09 Voting Rights of Members and Casting Vote of Chair - All Members shall be entitled to one (1) vote on each question put to the Members at any Meeting of Members. Unless otherwise required by the provisions of the Act or this General Operating By-law, all questions proposed for consideration at a Meeting of Members shall be determined by a majority Resolution of the votes cast of the Members in present and voting. A Member shall be considered to be present at any Meeting of Members if he attends such meeting in person, by telephone conference call or by other electronic means. In the case of equality of votes, the Chair presiding at the meeting has a second or casting vote.
- 6.10 Voting Procedures - At all meetings of Members, every question shall be decided by a show of hands, unless a secret ballot on the question is required by the Chair or requested by any member. Whenever a vote by a show of hands has been taken upon a question, a declaration by the Chair that a Resolution has been carried or lost by a particular majority is determinative and an entry to that effect in the minutes of the Corporation is conclusive evidence of the fact without proof of the number of proportion of votes recorded in favour of or against the motion, except in such cases where a secret ballot is conducted.
- 6.11 Secret Ballot - If, at any meeting, a secret ballot is requested, it shall be taken in the manner as the Chair directs. The result of a secret ballot shall be deemed to be the Resolution of the meeting at which the secret ballot was required. A request for a secret ballot may be withdrawn at any time prior to its taking.
- 6.12 Voting Rights and Proxies - Votes at Meetings of Members may be given either personally or by proxy, provided that the proxy appointed is either the Secretary or the Chair, or alternatively a Member, provided that such Member shall represent no more than two other Members at such meeting. At every meeting at which a Member is entitled to vote, every Member present or appointed by proxy to represent a Member shall have one (1) vote for each Member present or represented by proxy. The Member or the Member's attorney authorized in writing shall execute a proxy. A proxy may be in the

following form, or some similar form:

"The undersigned Member of the **HVACR HERITAGE CENTRE CANADA**, hereby appoints the Secretary [or _____, a Member] as the proxy of the undersigned to attend and act at the Meeting of the Members of the said Corporation to be held on the _____ day of _____ [year], and at any adjournment or adjournments thereof in the same manner, to the same extent, and with the same power as if the undersigned were present at the said meeting or such adjournment or adjournments thereof.

DATED the _____ day of _____, [year]

Signature of Member

Name of Member -"

The Board may from time to time make rules regarding the lodging of proxies at some place or places other than the place at which a meeting or adjourned Meeting of Members is to be held and to determine particulars of such proxies being cabled, telegraphed or sent by facsimile, e-mail or other electronic means, or in writing before the Meeting of Members or adjourned Meeting to the Corporation. The Chair may, subject to any rules made as aforesaid, in the Chair's discretion, accept telegraphic, cable, facsimile, e-mail or other electronic means, or written communication as to the authority of any Person claiming to vote on behalf of and to represent a Member notwithstanding that no proxy form as stated above conferring such authority has been lodged with the Corporation, and any votes given in accordance with such communication accepted by the Chair shall be valid and shall be counted.

6.13 Meeting by Telephone or Other Electronic Means - If a majority of the Members of the Corporation consent either at a Meeting of Members by Resolution or by consents signed individually by a majority of the Members, a Meeting of Members of the Corporation may be held by telephone conference call or by other electronic means that permits each Member to communicate adequately with each other, provided that:

- (a) the Board of Directors of the Corporation has passed a Resolution addressing the mechanics of holding such Meeting of Members in dealing specifically with how security issues are to be handled, the procedure for establishing a quorum and recording votes;
- (b) each Member has equal access to the specific means of communication to be used; and
- (c) each Member has consented in advance to meeting by electronic means using the specific means of communication proposed for the Meeting of Members.

6.14 Procedural Code - The rules of procedures for Members Meetings, Board meetings and all Committee meetings shall follow the *Sturgis Standard Code of Parliamentary Procedure*, by the most current edition, except where varied by the General Operating By-law.

6.15 Adjournments - Subject to other provisions of this General Operating By-law, any Meeting of Members may be adjourned to any time and from time to time by the Chair with the consent of the meeting and any business may be transacted at any adjourned meeting that might have been transacted at the original

meeting from which the adjournment took place in accordance with the notice calling the same, provided that no notice of such adjournment need to be given to the Members.

PART III: BOARD OF DIRECTORS

7. ESTABLISHMENT OF THE BOARD OF DIRECTORS

- 7.01 Number of Directors - The affairs, business and property of the Corporation shall be managed by a Board of Directors, which shall consist of not less than five (5) and not more than twelve (12) Members, as determined by the Members by Resolution from time to time.
- 7.02 Provisional Directors - The applicants for incorporation shall become the first Directors whose term of office on the Board of Directors shall continue until their successors are elected. At the first meeting of Members, the Board of Directors then elected shall replace the provisional Directors named in the Letters Patent.
- 7.03 Qualifications for Directors - The qualifications to be a Director of the Corporation shall include all of the following:
- (a) the Person shall at the time of his election or within 10 days thereafter, be a Member of the Corporation, having signed a current Membership Statement as outlined in Section 3.01;
 - (b) the Person must be over the age of twenty-one (21), and have power under law to contract;
 - (c) the Person must be in full agreement with the Constitution, consisting of the Letters Patent (including the Objects), the General Operating By-law, Policy Statements, Rules, Regulations or Guidelines adopted by the Corporation from time to time;
 - (d) save and except where specifically permitted by law, the Person and his spouse, father, mother, child, brother or sister, or spouses of such family members, must not be an employee, agent or contractor who is receiving remuneration, either directly or indirectly, from the Corporation, and such other individual is living with and/or is financially supporting or supported by the Person;
 - (e) the Person must not be an undischarged bankrupt, or become one at any time during his or her term as a Director;
 - (f) the Person must not be a mentally incompetent person, or become one at any time during his or her term as a Director; and
 - (g) the Person must not be in contravention of the conflict of interest provisions set out in Section 15 of this By-Law.
- 7.04 Composition of Board of Directors - The Board of Directors shall consist of not less than fifty one percent (51%) of Members who are residents of Canada and not more than forty-nine percent (49%) of Members who are “*related persons*” for purposes of the *Income Tax Act* of Canada.

8. NOMINATION AND ELECTION OF DIRECTORS

- 8.01 Nomination of Directors - Nomination of qualified Persons to be elected as Directors and admitted as Members of the Corporation shall be made by the Board by a two-thirds (2/3rds) majority Resolution.
- 8.02 Election of Directors - The Board of Directors shall be elected at the annual Meeting of Members by the Members from persons who are Members or who become Members of the Corporation within ten (10) days of the date of their election.

9. ROTATING TERM OF BOARD OF DIRECTORS

- 9.01 The members of the Board of Directors shall be elected and shall retire in rotation every two (2) years. At the first Meeting of Members immediately after passage of this By-Law, one half (1/2) of the Board of Directors shall be elected to hold office until the end of the first full fiscal year after that date and one half (1/2) to hold office until the end of the second full fiscal year after that date, and subsequently at each annual Meeting of Members thereafter, members of the Board of Directors shall be elected to fill the position of those members of the Board of Directors whose term of office has expired and each member of the Board of Directors so elected shall hold office until the end of the second full fiscal year after his or her election.

10. TERM AND MAXIMUM TERM

- 10.01 Term of Director - Each Director shall be elected for a term of two (2) years.
- 10.02 Maximum Term for Director - A Director shall be eligible for re-election to the Board at the end of their two (2) year term, provided that no member of the Board serves for more than six (6) consecutive years without a minimum one (1) year absence from the Board, after which time such Person shall be eligible for re-election to the Board.

11. RESIGNATION AND REMOVAL OF DIRECTORS

- 11.01 Resignation of Director - If for any reason a Director chooses to resign, a letter of resignation shall be directed to the Chair of the Board, who in turn shall call it to the attention of the Board of Directors, which Board shall then have the power to accept such resignation between Meetings of Members. Such letter of resignation shall, as much as possible, set out the reasons for the departure of the Person from the Board.
- 11.02 Removal of a Director - The position of a Director shall be automatically vacated if any of the following occurs:
- a Director resigns in writing in accordance with Section 11.01;
 - a Director no longer fulfils all of the qualifications to be a Director in Section 7.02 as determined in the sole discretion of the Board by a two thirds (2/3rds) majority Resolution;

- (c) at a Meeting of Members of the Corporation called for that purpose, the Members determine by a two thirds (2/3rds) majority Resolution that a Director be removed from office provided that the Director is first given an opportunity to be heard;
 - (d) a Director is found by a court to be mentally incompetent;
 - (e) a Director becomes bankrupt;
 - (f) a Director becomes prohibited from being a Director by reason of any order made under the Act; or
 - (g) a Director dies.
- 11.03 Written Notification of Removal of an Elected Director - When a Director is deemed to have automatically resigned in accordance with Section 11.02, the Corporation shall not be required to take any further action other than the sending of written notification to the Director that he or she is no longer a Director effective as of a certain date as determined by the Board.
- 11.04 Deemed Co-ordinated Resignation - Where a Director resigns or where a Director is removed as a Director pursuant to Section 11.02, then such Person shall be deemed to have also automatically resigned as a Officer and/or Committee member, as applicable, provided that the Board may in its discretion subsequently re-appoint such Person as a Committee member if the Board deems it appropriate in the circumstances.

12. FILLING VACANCIES OF DIRECTORS

- 12.01 Filling Vacancies - So long as a quorum of Directors remains in office, any vacancy occurring on the Board shall, as much as possible, be filled for its unexpired term within ninety (90) days from the date on which the Board declares the seat vacant either:
- (a) by election if an annual Meeting of Members falls within the ninety (90) day period; or
 - (b) where no annual Meeting of Members falls within the ninety day period, by having those Directors remaining in office designate a suitable Person from among the Members to fill the vacancies for the unexpired term, provided that such Person fulfills all the qualifications to be a Director as set out in Section 7.02.
- 12.02 Continuation of Director's Powers - Notwithstanding vacancies, the remaining Directors may exercise all the powers of the Board so long as a quorum of the Board remains in office. If no quorum of Directors remains in office, the remaining Directors shall forthwith call a special Meeting of Members to fill the vacancies for the unexpired terms.

13. AUTHORITY OF THE BOARD OF DIRECTORS

- 13.01 General Authority - The Board shall govern, administer, manage and control the affairs, activities, business and property of the Corporation.

13.02 **Specific Authority** - Without limiting the generality of the foregoing, the Board shall be authorized to carry out the following duties and responsibilities:

- (a) to exercise overall responsibility over the day-to-day administration and operations of the Corporation, either on its own or through the Executive Director, if applicable, or through other Persons as may be designated from time to time, and to authorize expenditures on behalf of the Corporation from time to time in the furtherance of its Objects;
- (b) to provide direction and leadership for the Corporation in pursuing its Objects;
- (c) to work in conjunction with the Executive Director, where applicable, to facilitate the general oversight and work of the Corporation;
- (d) to delegate responsibility and concomitant authority to the Executive Director, where applicable, or such Officers or Persons as may be designated from time to time by the Board, for the management and operation of the Corporation, its programs, facilities and various agencies;
- (e) to establish the selection process for the appointment of the Executive Director and to appoint the Executive Director in accordance with such process and ensure the ongoing evaluation of the Executive Director;
- (f) to establish Policy Statements not inconsistent with this General Operating By-law which will provide the general framework within which the Executive Director, counseling staff and administrative staff will establish programs and procedures for the ongoing work of the Corporation and the day-to-day management thereof;
- (g) to establish procedures for monitoring compliance with the Act, the Letters Patent, the By-laws herein and applicable legislation;
- (h) to regularly review the functioning of the Corporation in relation to the Objects of the Corporation as stated in the Letters Patent, the By-laws, and the Policy Statements, and to demonstrate accountability for its responsibility to the annual Meeting of Members;
- (i) to ensure the establishment of provisions of an Occupational Health and Safety program and other such programs as required by law or deemed beneficial to the Corporation;
- (j) to work on a collaborative basis with other organizations, agencies and institutions in the community for purposes of furthering the Objects of the Corporation;
- (k) to appoint such agents and engage such employees, either on its own or as delegated to the Executive Director, as it deems necessary, and such agents and employees shall have the authority and shall perform such duties as shall be prescribed by the Board, or by the Executive Director on its behalf, at the time of such appointment;
- (l) to establish other offices and/or agencies as deemed necessary by the Board from time to time;
- (m) to take such steps as may be deemed requisite to enable the Corporation to acquire, solicit, or receive legacies, gifts, grants, settlements, bequests, endowments, and donations of any kind whatsoever for the purpose of furthering the Objects of the Corporation;

- (n) to make or cause to be made for the Corporation in its name any kind of contract in which the Corporation may lawfully enter into;
 - (o) to invest funds for the benefit of the Corporation in accordance with such terms as the Board may prescribe in an investment policy pursuant to the investment powers contained in the Letters Patent;
 - (p) to enter into trust agreements with a trust company for the purposes of creating a trust fund in which capital and interest may be made available for the benefit of providing the interest to the Corporation in accordance with such terms as the Board may prescribe;
 - (q) to prescribe such Rules and Regulations not inconsistent with this General Operating By-law relating to the efficient management and operations of the Corporation; and
 - (r) to generally exercise such power and to do such other acts and things as the Corporation, by its Letters Patent, the Act or otherwise authorized to exercise and do by law.
- 13.03 **Board Report** - The Board shall, through the Chair of the Board, report to the Membership at the annual Membership Meeting. At the said meeting, the Chair of the Board shall be available to answer any questions by Members and to entertain any motion arising from the floor concerning the proceedings of the Board.
- 14. NO REMUNERATION OF DIRECTORS**
- 14.01 The Members of the Board shall serve as such without remuneration and no Member of the Board shall directly or indirectly receive any profit from his or her position as such, nor shall any Member of the Board receive any direct or indirect remuneration from the Corporation, except where specifically permitted by law, provided that Directors may be reimbursed for reasonable expenses incurred by them in the performance of their duties.

15. CONFLICT OF INTEREST

- 15.01 **Prohibition** - Save and except where specifically permitted by law, Directors and their spouses, children, parents, siblings, or the spouses of such children, parents or siblings who are living with and/or are financially supporting or supported by the Director, shall not enter into a contract, business transaction, financial arrangement, or other matter with the Corporation in which they have any direct or indirect personal interest, gain or benefit.
- 15.02 **Disclosure** - Any Director who has any direct or indirect personal interest, gain or benefit in an actual or proposed contract, business transaction, financial arrangement or other matter, with the Corporation as described in Section 15.01, whether permitted by law or not, shall declare their interest therein at the first opportunity at a meeting of the Board.
- 15.03 **Material Interest** – Notwithstanding section 15.01 and 15.02, no disclosure or prohibition of involvement is required in relation to any actual or proposed contract, business transaction, financial arrangement, or other matter with the Corporation unless the direct or indirect personal interest, gain or benefit of the Director in such contract, business transaction, financial arrangement or other

matter is of a material nature. The phrase "material nature" shall mean that the Director in question, directly or indirectly, is personally receiving a material benefit or gain of some kind, either financially or otherwise, with the determination of "material nature" in such circumstances to be determined by the Board from time to time.

- 15.04 Procedure Where Disclosure - The Chair of the Board shall request any Member of the Board who has declared a direct or indirect personal interest, gain or benefit, in any proposed contract, business transaction, financial arrangement, or other matter, with the Corporation to absent herself or himself during the discussion of and vote upon the matter, with such action being recorded in the minutes.
- 15.05 Consequences of Contravention - In the event that the Board proceeds with a contract, business transaction, financial arrangement, or other matter, in which a Director has a direct or indirect personal interest, gain or benefit in contravention of Section 15.01, save and except where permitted by law, such Director shall be required to immediately resign from the Board, failing which he or she shall be deemed to have resigned from the Board upon the passing of Board Resolution to that effect.

16. BOARD OF DIRECTORS MEETINGS

- 16.01 Regular Meetings - Regular meetings of the Board shall be held at such time and place as shall be determined by the Chair of the Board or approved by the Board, but not less than once a year.
- 16.02 Annual Election Meeting - The Board shall hold a meeting within ten (10) days following the annual Meeting of Members for purposes of the election and appointment of Officers, admittance of Members, and the transaction of any other business that may be necessary.
- 16.03 Special Meetings - Special meetings of the Board may be called by the Chairperson or the Vice-Chairperson, or by the Secretary on advice of the Chair or Vice-Chair, or upon written request of any two (2) Directors to the Chair or Secretary who shall then give notice of a special meeting of the Board to each Director.
- 16.04 Notice of Meetings - Notice of any regular or special meetings of the Board shall be provided to Directors by any of the following means:
 - (a) by mail sent to each Director not less than ten (10) days before the Board meeting is to take place;
 - (b) by electronic notice including facsimile transfer or e-mail, sent to each Director not less than four (4) days before the Board meeting is to take place;
 - (c) by personal service to each Director not less than two (2) days before the Board meeting is to take place; and
 - (d) in the event of an emergency, as determined by the Chair, by telephone notice to each Director not less than twenty-four (24) hours before the Board meeting is to take place.

The Board may appoint a day or days in any month or months for regular meetings of the Board at an hour to be named, and with regard to such meeting, no notice needs to be given. A Director's meeting may be held without notice immediately following the annual Meeting of Members.

- 16.05 Waiver or Notice - Whenever any notice of the meetings of the Board of Directors is required to be given under the provisions of the Act or of the Letters Patent, or by these By-laws, a waiver thereof in writing signed by the Person or Persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Attendance at a meeting by a Person entitled to notice shall constitute a waiver of notice of such meeting, except where attendance is for the express purpose of objecting to the transaction of business because the meeting is not lawfully called or convened.
- 16.06 Omission of Notice - The accidental omission to give notice of any meeting of the Board or any irregularity in the notice of any such meeting of the Board or the non-receipt of any notice by any Member or by the auditor of the Corporation shall not invalidate any Resolution passed or any proceedings taken at any meeting of the Board, provided that no Director objects in writing to the Chair or such omission or irregularity within thirty (30) days of the relevant meeting.
- 16.07 Quorum - A quorum for the transaction of business at any meeting of the Board shall be a majority of the Directors determined by the Members in accordance with Section 7.01 without regard to any vacancies. Only those Directors present in person, by telephone or electronically shall be counted in determining whether or not a quorum is present.
- 16.08 Chair of the Board - The Chair of the Board of Directors shall be:
- (a) the Chairperson;
 - (b) if the Chairperson is absent or unable to act, then the Vice-Chairperson; and
 - (c) if the Chairperson and all Vice-Chairpersons are absent or unable to act, then a Director appointed by the Board by Resolution.
- 16.09 Voting Rights and Casting Vote of Chair - All Directors shall have one (1) vote on each question put to the meeting. All questions arising at any meeting of Directors shall be decided by a Resolution of the Directors present and voting, unless the Act, Letters Patent or By-laws otherwise provide. A Director shall be considered to be present at any meeting of Directors if he attends such meeting in person, by telephone conference call or by other electronic means. In the case of an equality of votes, the Chair of the Board shall have a second or casting vote.
- 16.10 Voting Procedures - At all meetings of the Board, every question shall be decided by a show of hands unless a secret ballot on the question is required by the Chair of the Board or requested by any Director. When a recorded vote on the question is required by the Chair of the Board or requested by any Director, the secretary shall record the names of the Directors and whether they voted in support or opposition. A declaration by the Chair of the Board that a Resolution has been carried and an entry to that effect in the minutes of the Board is conclusive evidence of the fact without proof of the number or proportionate votes recorded in favour or against the Resolution.
- 16.11 Minutes - Minutes shall be kept at all meetings of the Board and signed by the Chair of the Board and the Secretary. Minutes of each Board meeting shall be submitted to all Board Members prior to the next Board meeting for their approval, and once approved, copies shall be made available to each Director.

16.12 Meeting by Telephone or Other Electronic Means - If a majority of the Directors consent either at a Board Meeting by Resolution or by consents signed individually by a majority of the Directors, a Meeting of the Board of Directors may be held by telephone conference call or by other electronic means that permits each Director to communicate adequately with each other, provided that:

- (a) the Board of Directors of the Corporation has passed a Resolution addressing the mechanics of holding such Board Meeting in dealing specifically with how security issues are to be handled, the procedure for establishing a quorum and recording votes;
- (b) each Director has equal access to the specific means of communication to be used; and
- (c) each Director has consented in advance to meeting by electronic means using the specific means of communication proposed for the Board meeting.

16.13 Confidentiality - Every Director, as well as every Officer and Committee Member, staff or volunteer shall respect the confidentiality of matters brought before the Board or before any Committee of the Board, or any matter dealt with in the course of employment or involvement of such Person in the activities of the Corporation.

PART IV: OFFICERS AND EMPLOYEES

17. OFFICER POSITIONS

17.01 Mandatory Officers - The Officers of the Corporation shall include:

- (a) a Chairperson;
- (b) a Vice-Chairperson, as necessary;
- (c) a Secretary;
- (d) a Treasurer; and
- (e) or in lieu of a Secretary and a Treasurer, a Secretary-Treasurer; and
- (f) an Executive Director.

17.02 Other Officers - The Board may appoint such other Officers as the Board determines is appropriate and the duties of such Officer shall be determined in the discretion of the Board.

18. DEFINITION OF OFFICERS

18.01 Chairperson - The duties of the Chairperson shall be as follows:

- (a) to call meetings of the Board;
- (b) to preside at all meetings of the Board as Chair of the Board;
- (c) to preside at all Meetings of Members as Chair;
- (d) to perform such other duties as may from time to time be determined by the Board or the Membership;

- (e) to ensure the fairness, objective and completeness of matters occurring at such meetings;
- (f) to preside as Chair of the Executive Committee, if applicable;
- (g) to ensure that all directives and Resolutions of the Board are carried into effect;
- (h) in the absence of the Executive Director, to oversee the operations and management of the Corporation;
- (i) to be an Ex-officio member of all Committees and be included in the calculation of the authorized number of Committee members;
- (j) to report at each annual Meeting of Members concerning the operations of the Corporation;
- (k) in the absence of an Executive Committee to determine and fix the remuneration and/or allowances of the non-Board officers with the approval of the Board by Resolution; and
- (l) to sign all By-Laws of the Corporation with the Secretary or other officers as designated by the Board.

18.02 Vice-Chairperson - The duties of the Vice-Chairperson shall be as follows:

- (a) in the event that the Chairperson is not able to function in such position, then the Chairperson shall be replaced by the Vice-Chairperson of the Board, who shall exercise all the authority and comply with all the obligations of the Chairperson; and
- (b) to carry out such other duties as may from time to time be determined by the Board or the Membership.

18.03 Secretary - The duties of the Secretary shall be as follows:

- (a) to keep minutes of the Board, Committee and Membership Meetings, and present the minutes of previous Membership Meetings when called upon to do so;
- (b) to conduct all correspondence on behalf of the Corporation arising out of such meetings.
- (c) to publish the time and place for all Members Meetings with due notice;
- (d) to be the custodian of the seal of the Corporation, which the Secretary shall deliver only when authorized by Resolution of the Board to do so and to such Person or Persons as have been named in the said Resolution;
- (e) to be the custodian of all papers and documents of the Corporation;
- (f) to keep copies of all testamentary documents and trust instruments by which benefits are given to the use of the Corporation;
- (g) to perform such other duties as may from time to time be determined by the Board; and

(h) to in the absence of the Secretary, the duties of the Secretary shall be performed by such other Director who is temporarily appointed by Resolution of the Board.

18.04 Treasurer - The duties of the Treasurer shall be as follows:

- (a) to be the custodian of the books of account and accounting records of the Corporation required to be kept by the provisions of the Act or otherwise by law;
- (b) to deposit all monies, securities and other valuable effects in the name and to the credit of the Corporation in such chartered bank or trust company or in the case of securities, in such registered dealer in securities as may be designated by the Board from time to time;
- (c) to disburse the funds of the Corporation as may be directed by proper authority taking proper vouchers for such disbursements;
- (d) to submit a financial report at each regular meeting of the Board indicating the financial position of the Corporation on a timely basis;
- (e) to submit an annual audited financial report to the Board and to the Members of the Corporation of the financial operations of the Corporation;
- (f) to ensure that no Members of the Board receive any remuneration from the Corporation unless such monies are for purposes of reimbursing such Person for legitimate expenses incurred on behalf of the Corporation or has otherwise been authorized by-law;
- (g) to carry out such other duties as directed from time to time by the Board or the Membership; and
- (h) to in the absence of the Treasurer, the duties of the Treasurer shall be performed by such other Director who is temporarily appointed by Resolution of the Board.

18.05 Executive Director - The duties of the Executive Director shall be as follows:

- (a) to be responsible to the Board for the organization, management and day-to-day activities of the Corporation in accordance with the Resolutions, By-laws, Policy Statement and Rules and Regulations established by the Board from time to time;
- (b) to ensure that appropriate systems and structures are in place for the effective management and control of the Corporation and its resources, including the employment, development, control, direction and discharge of all employees of the Corporation, if applicable;
- (c) to ensure structures and systems for the development, review and recommendation of new programs, program expansions or changes to establish an organizational structure to ensure accountability of all departments and staff for fulfilling the Constitution;
- (d) to ensure effective human resources, planning and identifying resources implication, if applicable, for the needs of the Corporation;
- (e) to establish an organizational structure to ensure accountability of all departments and staff for fulfilling the Constitution of the Corporation, as well as the Resolutions of the Board;

- (f) to provide leadership and support of the Board's responsibility to develop and periodically review the Constitution of the Corporation;
- (g) to develop and provide leadership as necessary for furthering the Constitution of the Corporation;
- (h) to communicate with related charities and promote the co-ordination and/or planning of programs and services;
- (i) to represent the Corporation externally to the community, government, media and other organizations and agencies;
- (j) to supervise and review all publications, fund-raising, conferences, and public relations programs operated by the Corporation;
- (k) to be responsible for the payment by the Corporation of all salaries, allowances and amounts due from and owing by the Corporation which fall within the privy and scope of the approved annual budget or otherwise may be established from time to time by Resolution of the Board;
- (l) to be an Ex-officio member of all Committees and be included in the calculation of the authorized number of Committee members;
- (m) to report at each Annual Meeting of Members concerning the operations of the Corporation;
- (n) to receive notification of and to attend all meetings of the Board as a non-Member thereof, provided that the Executive Director shall have the right to be present and fully participate at all meetings of the Board, save and except when the Board is discussing the position, salary or benefits of the Executive Director, if applicable; and
- (o) to perform such other duties as may from time to time be determined by the Board or the Membership.

19. QUALIFICATION FOR OFFICERS

- 19.01 A Person may be considered for election as an Officer of the Corporation if such Person fulfills all of the following qualifications:
- (a) the Person must be at least twenty-one (21) years of age;
 - (b) the Person must be in full agreement with the Constitution, consisting of the Letters Patent (including the Objects), the General Operating By-law, Policy Statements, Rules, Regulations or Guidelines adopted by the Corporation from time to time; and
 - (c) the Person must be a Member and Director of the Corporation in good standing, save and except for the position of the Executive Director, which position shall specifically provide that such Officer shall not be a Director of the Corporation.

20. ELECTION OF OFFICERS

20.01 The Directors shall elect from amongst themselves the Officer positions of Chairperson, Vice-Chairperson, Secretary, Treasurer, and/or Secretary-Treasurer.

21. APPOINTMENT OF EXECUTIVE DIRECTOR

21.01 The Executive Director shall be appointed, when deemed necessary, by a Board of Directors in accordance with its approved selection process.

21.02 The Board may at any time revoke or suspend the appointment of the Executive Director by the unanimous decision of all members of the Board of Directors, provided that the exercise of such discretion does not derogate from the obligation imposed upon the Corporation at law to deal with the Executive Director as an employee, if applicable, in a fair and equitable manner.

22. DELEGATION OF DUTIES OF OFFICERS

22.01 The Officers of the Corporation shall be responsible for the duties set forth in this By-law but are not necessarily required to perform such duties personally, and as such may delegate to other Persons the performance of any or all of such duties, provided that such Officer remains accountable to the Board in relation to the duties that have been so delegated.

23. TERM AND MAXIMUM TERM OF ELECTED AND APPOINTED OFFICERS

23.01 Term of Board Officers - The term of office for all elected Officers is one (1) year and expires at the first Board meeting after the annual Meeting of Members every year, save and except the Executive Director, who shall hold office at the discretion of the Board.

23.02 Maximum Term - No Director shall serve as Chairperson, Vice-Chairperson, Treasurer, Secretary, or Secretary-Treasurer of the Board for more than six (6) consecutive years in the same Officer position, provided however, that following an absence of at least one (1) year from the same Officer position, the same Director may be re-elected or re-appointed to the same Officer position.

23.03 Other Officer Positions - The maximum term of six (6) years in the preceding Section 23.02 shall not preclude a Director from holding another Officer position after the expiry of the maximum term of the original officer position, provided, however, that a Director shall not hold more than one Officer position at the same time.

24. RESIGNATION AND REMOVAL OF OFFICERS

24.01 Resignation of Officers - If for any reason any Officer chooses to resign, a letter of resignation shall be directed to the Chair of the Board, who in turn shall call it to the attention of the Board of Directors, which resignation shall be deemed to have been accepted as of the effective date stated in the resignation.

- 24.02 Removal of Officers - An Officer shall be deemed to have been automatically removed from his or her Officer position if any of the following occur:
- (a) the Officer resigns in writing in accordance with Section 24.01;
 - (b) the Officer is no longer a Director or a Member of the Corporation;
 - (c) the Officer no longer fills all the qualification requirements to be a Board Officer in Section 19.01 as determined in the sole discretion of the Board by at least two-thirds (2/3rds) majority Resolution;
 - (d) the Board of Directors adopts a Resolution to remove a Board Officer for any reason by at least a two third (2/3rds) majority Resolution at a Board Meeting duly called for that purpose, provided that such Officer is first offered an opportunity to be heard;
 - (e) if an Officer becomes prohibited from being an Officer by reason of any order made under the Act;
 - (f) the Board Officer resigns in accordance with Section 24.01; or
 - (g) upon the death of an Officer.
- 24.03 Notification of Removal - When an Officer is deemed to have been automatically removed in accordance with the preceding Section 24.02, the Corporation shall not be required to take any further action other than the sending of written notification to the Officer that he or she is no longer an Officer effective as of a certain date as determined by the Board.
- 24.04 Filling Vacancy of Officers - If the office of any Officer of the Corporation shall be or become vacant by reason of death, resignation, removal, or otherwise, the Board by Resolution may appoint a Person to fill such vacancy for the unexpired term of such Officer position.

25. TERMS OF ENGAGEMENT FOR EMPLOYEES AND VOLUNTEERS

- 25.01 All Employees of the Corporation (which shall be deemed to include all full-time and part-time Employees, and all contract for service providers who are deemed to be Employees for purposes of the *Income Tax Act*, where applicable), and all Volunteers who perform services on behalf of the Corporation, shall be required to be committed to furthering the Objects of the Corporation, which commitment shall be reflected in any engagement agreement that may be utilized from time to time with such Employees or Volunteers.

26. REMUNERATION OF NON-BOARD OFFICERS AND EMPLOYEES

- 26.01 The reasonable remuneration and/or allowance of all non-Board Officers, Employees or Agents of the Corporation as determined appropriate by the Board shall be fixed by the Board by Resolution.

PART V: ADVISORY BOARD

27. ADVISORY BOARD

- 27.01 **Establishment of Advisory Board** - The Board of Directors may establish an Advisory Board consisting of a minimum of three (3) and a maximum of nine (9) Persons. Although a member of the Advisory Board is not required to be a member of the Corporation, such Person will be deemed to be a Volunteer under Section 25.01, and as such will be required to be committed to furthering the Objects of the Corporation, which commitment shall be reflected in any engagement agreement that may be utilized from time to time as provided therein.
- 27.02 **Duties of the Advisory Board** - The Advisory Board shall have the following duties:
- (a) provide observations and recommendations concerning the current operations of the Corporation;
 - (b) make recommendations to the Board of Directors concerning the overall long term directions of the Corporation in achieving its Objects;
 - (c) review and make recommendations concerning the Strategic Plan for the Corporation; and
 - (d) require that membership on the Advisory Board shall be served without remuneration, provided that an Advisory Board member may be paid reasonable expenses incurred in the performance of the duties as a member.
- 27.03 **Nature of Recommendations** - All recommendations of the Advisory Board shall be subject to the approval of the Board of Directors and any administrative decisions involving the operations of the Corporation based upon any recommendations or observations of the Advisory Board shall be made at the sole discretion of the Board of Directors.
- 27.04 **Composition of Advisory Board** - The composition of the Advisory Board shall be made up as follows:
- (a) At least one (1) number of the Advisory Board shall be a Director of the Corporation appointed by the Board, who shall be the Chair of the Advisory Board.
 - (b) The remaining members of the Advisory Board shall be made up of non-Members of the Corporation.
- 27.05 **Appointment of Members to Advisory Board** - The Board may, in its sole discretion, appoint Persons to be members of the Advisory Board.
- 27.06 **Term of Office of Advisory Board** - The term of membership on the Advisory Board shall be one (1) year to run from January 1st of the year in which they are appointed until December 31st of the same year.
- 27.07 **Maximum Term of Advisory Board Members** - There shall be no maximum term of office for a member of the Advisory Board and as such, a member will be eligible for re-election to the Advisory Board at the end of his or her term on a consecutive basis thereafter.

- 27.08 Removal of Advisory Board Members - The Board of Directors may remove any member of the Advisory Board by Resolution and may also fill any vacancy on the Advisory Board by Resolution.
- 27.09 Quorum - A majority, but not less than three (3) members of the Advisory Board, shall constitute a quorum for the transaction of business at any meeting of such Advisory Board.
- 27.10 Notice of Meeting - Meetings of the Advisory Board shall be held at such times determined by the Chair of the Advisory Board, provided that 24 hours' written, telephone or facsimile transfer notice of such meeting shall be given, other than by mail, to each member of the Advisory Board. Notice by mail shall be sent at least ten (10) days prior to the meeting.
- 27.11 Place of Meetings - Meetings of the Advisory Board shall be held at the head office of the Corporation or at any other place as designated by the Chair of the Advisory Board in the notice calling the meeting.
- 27.12 Meeting by Telephone or Electronic Means - If a majority of the Advisory Board consents, either at a Advisory Board meeting by Resolution or by consents signed individually by majority of the Advisory Board, a meeting of the Advisory Board may be held by telephone conference call or other electronic means that permits each Advisory Board Member to communicate adequately with each other, provided that:
- (a) the Board of Directors has passed a Resolution addressing the mechanics of holding such Advisory Board meeting and dealing specifically with how security issues should be handled, the procedure for establishing quorum and recording votes;
 - (b) each Advisory Board Member has equal access to the specific means of communication to be used; and
 - (c) each Advisory Board Member has consented in advance to meeting by electronic means using the specific means of communication proposed for the Board meeting.
- 27.13 Voting Procedures - Questions arising at any meeting of the Advisory Board shall be decided by a majority of the members of the Advisory Board present and voting. An Advisory Board Member shall be considered to be present at a meeting of the Advisory Board if he attends such meeting in person, by telephone conference call or by other electronic means. In the event of an equality of votes, the Chair of the Advisory Board, shall have a second or casting vote.
- 27.14 Minutes of Meeting - Minutes shall be kept of all Advisory Board meetings and a summary report of such meetings shall be presented to the Board of Directors at the next meeting of the Board.

PART VI: BOARD COMMITTEES

28. EXECUTIVE COMMITTEE

- 28.01 Establishment of Executive Committee - If deemed necessary, the Board may establish an Executive Committee from time to time composed of the Chairperson, Vice-Chairperson, Treasurer and Secretary or Secretary-Treasurer, or such four Directors that the Board may appoint from time to

time. The Executive Director, if applicable, shall attend and participate at meetings of the Executive Committee, but shall not be a member of the Executive Committee or have a vote thereon.

- 28.02 Duties of the Executive Committee - The Executive Committee shall have the following duties:
- (a) to exercise the full powers of the Board in respect of the management and affairs of the Corporation in between meetings of the Board (save and except only such acts which by law must be performed by the Directors themselves) in all cases in which specific direction has not been given by the Board of Directors;
 - (b) all actions and expenditures authorized by the Executive Committee shall be reported to the Board of Directors at the next meeting of the Board, but shall not require the approval or ratification of the Board of Directors;
 - (c) to study, advise and make recommendations to the Board on any matter directed by the Board;
 - (d) to require that membership on such Committee shall be served without remuneration, provided that a Committee member may be paid reasonable expenses incurred in the performance of the duties of a Committee member; and
 - (e) to perform such other duties as may be determined by the Board time to time.
- 28.03 Term of Membership on Executive Committee - The term of office for ex-officio members of the Executive Committee shall be the same as their respective terms as either Board Officers or Committee chairs. The term of office for members of the Executive Committee who are Directors is one (1) year from the date of appointment until the date of the first Board Meeting after the next annual Meeting of Members.
- 28.04 Maximum Term on Executive Committee - No appointed Members of the Executive Committee may serve for more than three (3) consecutive terms on the Executive Committee without a minimum of a one (1) year absence from the Executive Committee, after which time such Person shall be eligible for re-appointment to the Executive Committee.
- 28.05 Removal of Executive Committee Members - Any member of the Executive Committee may be removed upon a two third (2/3rds) majority Resolution of the Membership.
- 28.06 Filling Vacancy on Executive Committee - The Board of Directors may, in their discretion, fill any vacancy of any appointed Director on the Executive Committee by appointment of a replacement.
- 28.07 Quorum -A majority, but not less than three members, of the Executive Committee shall constitute a quorum for the transaction of business at any meeting of the Executive Committee.
- 28.08 Chair - The Chairperson for the Corporation shall be the Chair of the Executive Committee.
- 28.09 Notice of Meeting - Meetings of the Executive Committee shall be held at such times determined by the Chair, provided that 24 hours' personal service, telephone, electronic, including facsimile transfer or e-mail, notice of such meeting shall be given to each member of the Executive Committee. Notice by mail shall be sent at least ten (10) days prior to the meeting. Notice of meetings may be waived by any Member of the Committee.

- 28.10 Place of Meetings - Meetings of the Executive Committee shall be held at the head office of the Corporation or at any other place as designated by the Chair in the notice calling the meeting.
- 28.11 Meeting by Telephone or Electronic Means - If a majority of the Executive Committee consents, either at a Committee meeting by Resolution or by consents signed individually by majority of the Executive Committee, a meeting of the Executive Committee may be held by telephone conference call or other electronic means that permits each Committee Member to communicate adequately with each other, provided that:
- (a) the Board of Directors has passed a Resolution addressing the mechanics of holding such Executive Committee meeting and dealing specifically with how security issues should be handled, the procedure for establishing quorum and recording votes;
 - (b) each Executive Committee Member has equal access to the specific means of communication to be used; and
 - (c) each Executive Committee Member has consented in advance to meeting by electronic means using the specific means of communication proposed for the Committee meeting.
- 28.12 Voting Procedures - Questions arising at any meeting of the Executive Committee shall be decided by a majority of the members of the Executive Committee present and voting. An Executive Committee Member shall be considered to be present at a meeting of the Executive Committee if he attends such meeting in person, by telephone conference call or by other electronic means. In the event of an equality of votes, the Chair of the Executive Committee, shall have a second or casting vote.
- 28.13 Secretary of the Executive Committee - The Secretary, or in lieu thereof, the Secretary-Treasurer, shall be secretary of the Executive Committee, failing which the members of the Executive Committee shall by Resolution appoint one of its own members to be the secretary of the Executive Committee.
- 28.14 Minutes of Meeting - Minutes shall be kept of all Executive Committee meetings and a summary report of such meetings shall be presented to the Board at the next meeting of the Board.

29. AUDIT COMMITTEE

- 29.01 Establishment of the Audit Committee - The Board may appoint an Audit Committee each year consisting of the Treasurer and one or two other members of the Board of Directors appointed by the Board, provided that no member of the Audit Committee shall be related as defined for the purposes of the *Income Tax Act* to any other member of such Committee.
- 29.02 Duties of the Audit Committee - The Audit Committee shall have the following duties:
- (a) to review the internal controls in the audit program of the Auditor;
 - (b) to review the annual financial statements of the Corporation together with discussing those financial statements with the Auditor;

- (c) to make recommendations to the Board with respect to the financial statements of the Corporation and the fees, if any, paid for audit services;
- (d) to require that membership on the Audit Committee shall be served without remuneration, provided that a Committee member may be paid reasonable expenses incurred in the performance of the duties of the Committee member.
- 29.03 Term of Office on Audit Committee - A Director appointed to the Audit Committee shall hold office for a term of one (1) year and shall be eligible for re-appointment to the Audit Committee thereafter.
- 29.04 Maximum Term of Office on Audit Committee - There shall be no maximum term of office for membership on the Audit Committee and as such, an Audit Committee member will be eligible for re-election to membership on the Audit Committee at the end of his or her term on a consecutive basis thereafter, provided that such Audit Committee member continues to meet the qualification requirements to be an Audit Committee member.
- 29.05 Removal - The Board may remove any member of an Audit Committee by Resolution and may also fill any vacancy on any Committee by Resolution.
- 29.06 Filling Vacancy on Audit Committee - The Board of Directors may in their discretion, fill any vacancy of any appointed Director on the Audit Committee by appointment of a replacement.
- 29.07 Quorum - Two (2) members of Audit Committee shall constitute a quorum.
- 29.08 Chair - The Board shall appoint one of the members of the Audit Committee, other than the Treasurer, to be the Chair of the Audit Committee.
- 29.09 Notice of Meeting - Meetings of the Audit Committee shall be held at such times determined by the Chair, provided that 24 hours' personal, telephone electronic, including facsimile transfer or e-mail notice of such meeting shall be given to each member of the Audit Committee. Notice by mail shall be sent at least ten (10) days prior to the meeting. Notice of meeting may be waived by any Member of the Committee.
- 29.10 Place of Meetings - Meetings of the Audit Committee shall be held at the head office of the Corporation or at any other place as designated by the Chair in the notice calling the meeting.
- 29.11 Meetings by Telephone or Electronic Means - If a majority of the Audit Committee consents, either at a Committee meeting by Resolution or by consents signed individually by majority of the Audit Committee, a meeting of the Audit Committee may be held by telephone conference call by other electronic means that permits each Committee Member to communicate adequately with each other, provided that:
- (a) the Board of Directors has passed a Resolution addressing the mechanics of holding such Committee meeting and dealing specifically with how security issues should be handled, the procedure for establishing quorum and recording votes;
- (b) each Audit Committee Member has equal access to the specific means of communication to be used; and

- (c) each Audit Committee Member has consented in advance to meeting by electronic means using the specific means of communication proposed for the Committee meeting.
- 29.12 Voting Procedures - Questions arising at any meeting of the Audit Committee shall be decided by a majority of the members of the Audit Committee present and voting. A member shall be considered to be present at a meeting of the Audit Committee if he attends such meeting in person, by telephone conference call or by other electronic means. In the event of an equality of votes, the Chair of the Audit Committee, shall have a second or casting vote.
- 29.13 Secretary of the Audit Committee - The secretary of the Audit Committee shall be determined by Resolution of the members of the Audit Committee.
- 29.14 Minutes of Meeting - Minutes shall be kept of all Audit Committee meetings and a summary report of such meetings shall be presented to the Board at the next meeting of the Board.

30. STANDING COMMITTEES

- 30.01 Establishment of the Standing Committee - The Board of Directors may by Resolution establish such Standing Committee as it determines necessary from time to time. The number of members on each Standing Committee and the mandate of such Standing Committee may be determined by Resolution of the Board of Directors from time to time, provided that a majority of the members of each Standing Committee shall be Members of the Corporation.
- 30.02 Duties of the Standing Committee - The specific duties of each Standing Committee arising from the mandate given by the Board shall:
- be determined by such Standing Committee in writing and approved by the Board;
 - include the keeping of minutes of each meeting;
 - be task orientated;
 - be to report and make recommendation to the Board as requested by the Board;
 - require that the Chair of each Committee submit a report on that Committee's activities over the past year at the annual Meeting of Members; and
 - require that membership on such Committee shall be served without remuneration, provided that a Committee member may be paid reasonable expenses incurred in the performance of the duties of a Committee member.
- 30.03 Qualifications for Membership on Standing Committees - A Person may be considered for appointment to a Standing Committee if such Person is either a Member in good standing or if not a Member, has signed an Engagement Agreement that may be utilized from time to time to evidence that he or she is a Volunteer of the Corporation and agrees to further the Objects of the Corporation and be subject to the authority of the Corporation as expressed in this Constitution.

- 30.04 Appointment of Members to Standing Committees - At the first meeting of the Board following the annual Meeting of Members of the Corporation, or as soon as possible thereafter, the Board shall appoint Persons to be members of the Standing Committees as it determines is appropriate and who have met the qualifications to be a Committee member.
- 30.05 Term of Office on Standing Committee - The term of office for any appointed member of a Committee is one (1) year to expire at the first Board meeting after the annual Meeting of Members each year.
- 30.06 Maximum Term of Standing Committee Members - There shall be no maximum term of office for membership on the Standing Committee and as such, a Standing Committee member will be eligible for re-election to membership on the Standing Committee at the end of his or her time on a consecutive basis thereafter, provided that such Standing Committee member continues to meet the qualification requirements to be an Standing Committee member.
- 30.07 Removal of Standing Committee Members - The Board may remove any member of a Standing Committee by Resolution and may also fill any vacancy on any Committee by Resolution.
- 30.08 Filling Vacancy on Standing Committee - The Board of Directors may in their discretion, fill any vacancy of any appointed Director on the Standing Committee by appointment of a replacement.
- 30.09 Quorum -A majority of the members of the Standing Committee constitutes a quorum for the transaction of business at any meeting of such Standing Committee.
- 30.10 Chair - The Board of Directors shall by Resolution appoint from amongst the Directors of the Corporation a Chair for each Standing Committee who shall thereafter be deemed to be a member of such Standing Committee.
- 30.11 Notice of Meeting - Meetings of the Standing Committee shall be held at such times determined by the Chair, provided that 24 hours' written, telephone or facsimile transfer notice of such meeting shall be given, other than by mail, to each member of the Standing Committee. Notice by mail shall be sent at least ten (10) days prior to the meeting. Notice of meeting may be waived by any Member of the Committee.
- 30.12 Place of Meetings - Meetings of the Standing Committee shall be held at the head office of the Corporation or at any other place as designated by the Chair in the notice calling the meeting.
- 30.13 Meeting by Telephone or Electronic Means - If a majority of the Standing Committee consents, either at a Committee meeting by Resolution or by consents signed individually by majority of the Standing Committee, a meeting of the Standing Committee may be held by telephone conference call or by other electronic means that permits each Committee Member to communicate adequately with each other, provided that:
- (a) the Board of Directors has passed a Resolution addressing the mechanics of holding such Committee meeting and dealing specifically with how security issues should be handled, the procedure for establishing quorum and recording votes;
 - (b) each Committee Member has equal access to the specific means of communication to be used; and

- (c) each Committee Member has consented in advance to meeting by electronic means using the specific means of communication proposed for the Committee meeting.
- 30.14 Voting Procedures - Questions arising at any meeting of the Standing Committee shall be decided by a majority of the members of the Standing Committee present and voting. A member shall be considered to be present at a meeting of the Standing Committee if he attends such meeting in person, by telephone conference call or by other electronic means. In the event of an equality of votes, the Chair of the Standing Committee, shall have a second or casting vote.
- 30.15 Secretary of the Standing Committee - The secretary of the Standing Committee shall be determined by Resolution of the members of the Standing Committee.
- 30.16 Minutes of Meeting - Minutes shall be kept of all Standing Committee meetings and a summary report of such meetings shall be presented to the Board at the next meeting of the Board.

31. AD HOC COMMITTEES

- 31.01 Establishment of Ad Hoc Committees - The Board by Resolution may establish such Ad Hoc Committees as it determines necessary from time to time. The number of members on each Ad Hoc Committee shall be determined by Resolution of the Board of Directors from time to time, provided that a majority of the members of each Ad Hoc Committee shall be Members of the Corporation.
- 31.02 Specific Duties of Ad Hoc Committees - The specific duties of each Ad Hoc Committee arising from the mandate given by the Board shall:
- be determined by such Ad Hoc Committee in writing and approved by the Board;
 - include the keeping of minutes of each meeting;
 - be task orientated;
 - be to report and make recommendation to the Board as requested by the Board;
 - require that membership on such Committee shall be served without remuneration, provided that a Committee member may be paid reasonable expenses incurred in the performance of the duties of a Committee member.
- 31.03 Qualifications for Membership on Ad Hoc Committees - A Person may be considered for appointment to an Ad Hoc Committee if such Person is either a Member in good standing or if not a Member, has signed a Commitment Letter to evidence that he or she is a volunteer of the Corporation and agrees to further the Objects of the Corporation and be subject to the authority of the Corporation as expressed in this Constitution.
- 31.04 Appointment of Office on Ad Hoc Committees - The Board shall appoint Persons to be members of the Ad Hoc Committee who have met the qualifications to be an Ad Hoc Committee member as the Board determines is appropriate.

- 31.05 Term of Office on Ad Hoc Committees - The term of office for any appointed Member of an Ad Hoc Committee shall be determined in the discretion of the Board.
- 31.06 Removal of Ad Hoc Committee Members - The Board may remove any members of an Ad Hoc Committee by Resolution and may also fill any vacancy on any Committee by Resolution.
- 31.07 Filling Vacancy on Ad Hoc Committee - The Board of Directors may in their discretion, fill any vacancy of any appointed Director on the Ad Hoc Committee by appointment of a replacement.
- 31.08 Quorum - A majority of the members of an Ad Hoc Committee constitutes a quorum for the transaction of business at any meeting of such Ad Hoc Committee.
- 31.09 Chair - The Board of Directors shall by Resolution appoint from amongst the Directors of the Corporation a Chair for each Ad Hoc Committee who shall thereafter be deemed to be a member of such Ad Hoc Committee.
- 31.10 Notice of Meeting - Meetings of the Ad Hoc Committee shall be held at such times determined by the Chair, provided that 24 hours' personal, telephone electronic, including facsimile transfer or e-mail notice of such meeting shall be given, to each member of the Ad Hoc Committee. Notice by mail shall be sent at least ten (10) days prior to the meeting. Notice of meeting may be waived by any Member of the Committee.
- 31.11 Place of Meetings - Meetings of the Ad Hoc Committee shall be held at the head office of the Corporation or at any other place as designated by the Chair of the Ad Hoc Committee in the notice calling the meeting.
- 31.12 Meetings by Telephone or Electronic Means - If a majority of the Ad Hoc Committee consent, either at a Committee meeting by Resolution or by consents signed individually by a majority of the Ad Hoc Committee, a meeting of the Ad Hoc Committee may be held by telephone conference call or by other electronic means that permits each Committee Member to communicate adequately with each other, provided that:
- (a) the Board of Directors has passed a Resolution addressing the mechanics of holding such Committee meeting and dealing specifically with how security issues should be handled, the procedure for establishing quorum and recording votes;
 - (b) each Committee Member has equal access to the specific means of communication to be used; and
 - (c) each Committee Member has consented in advance to meeting by electronic means using the specific means of communication proposed for the Committee meeting.
- 31.13 Voting Procedures - Questions arising at any meeting of the Ad Hoc Committee shall be decided by a majority of the members of the Ad Hoc Committee present and voting. A member shall be considered to be present at a meeting of the Ad Hoc Committee if he attends such meeting in person, by telephone conference call or by other electronic means. In the event of an equality of votes, the Chair of the Ad Hoc Committee, shall have a second or casting vote.

- 31.14 Secretary of the Ad Hoc Committee - The secretary of the Ad Hoc Committee shall be determined by Resolution of the members of the Ad Hoc Committee.
- 31.15 Minutes of Meeting - Minutes shall be kept of all Ad Hoc Committee meetings and a summary report of such meetings shall be presented to the Board at the next meeting of the Board.

PART VII: PROTECTION AND INDEMNITY

32. PROTECTION AND INDEMNITY TO DIRECTORS, OFFICERS AND OTHERS

- 32.01 Protection of Directors, Officers and Others - Except as otherwise provided in the Act, no Director, Officer Committee Member or Employee shall be liable for the acts, receipts, neglects or defaults of any other Director, Officer, Committee Member or Employee of the Corporation or for any loss, damage or expense happening to the Corporation through the insufficiency or deficiency of title to any property acquired by the Corporation for or on behalf of the Corporation or for the insufficiency or deficiency of any security in or upon which any of the moneys of or belonging to the Corporation shall be placed out or invested or for any loss or damage arising from the bankruptcy, insolvency or tortuous act of any person including any person with whom or which any moneys, securities or effects shall be lodged or deposited or for any loss, conversion, misapplication or misappropriation of or any damage resulting from any dealings with any moneys, securities or other assets belonging to the Corporation or for any other loss, damage or misfortune whatever which may happen in the execution of the duties of the Director's, Officers' or Committee member's respective office or trust or in relation thereto unless the same shall happen by or through such person's wilful neglect or default. The Directors, Officers and Committee members shall not be under any duty or responsibility in respect of any contract, act or transaction whether or not made, done or entered into in the name or on behalf of the Corporation, except such as shall have been submitted to and authorized or approved by the Board of Directors.
- 32.02 Indemnity to Directors, Officers and Others - Every Director, Officer, Member, Committee member, Employee, Volunteer or other Person (with "Person" in this Part to include Corporation, partnerships, joint ventures, sole proprietorships, unincorporated associations and all other forms of business organizations) of the Corporation, and his or her heirs, executors and administrators, and estate and effects, respectively, who has undertaken or is about to undertake any liability on behalf of the Corporation, shall from time to time and at all times, be indemnified and saved harmless out of the funds of the Corporation from and against the following:
- (a) all costs, charges and expenses whatsoever that such Director, Officer, Member, Committee Member, Employee, Volunteer or other Person sustains or incurs in or about any action, suit or proceeding that is brought, commenced or prosecuted against the Director, Officer, Member, Committee member, Employee, Volunteer or other Persons for or in respect of any act, deed, matter or thing whatsoever, made, done or permitted by them, in or about the execution of the duties of their office or in respect of any such liability; and
 - (b) all other costs, charges and expenses that the Director, Officer, Member, Committee Member, Employee, Volunteer or other Person sustains or incurs in or about or in relation to the affairs thereof, except such costs, charges and expenses as are occasioned by their own wilful neglect or default.

- 32.03 Indemnity to Others - The Corporation shall also indemnify any such Persons as described above in such other circumstances as the Act or law permits or requires. Nothing in this By-law shall limit the right of any person entitled to indemnity to claim indemnity apart from the provision of this General Operating By-law to the extent permitted by the Act or law.

PART VIII: POLICY STATEMENTS

33. POLICY STATEMENTS

- 33.01 Establishing Policy Statements - In consideration of the ongoing need for the Corporation to provide policies, guidelines and directions to its Members, Directors, Officers, employees and volunteers in pursuing the Objects of the Corporation, the Corporation may adopt Policy Statements on such matters as are deemed necessary from time to time by the Board and such Policy Statements upon adoption as set out below shall be deemed to be part of this General Operating By-law and the Constitution.
- 33.02 Adoption of Policy Statements - A Policy Statement may be proposed or amended by the Board or a Committee so charged, but shall not become operative until first approved by a seventy-five percent (75%) majority Resolution of the Board and ratified by a seventy-five percent (75%) Resolution of the Members at a Meeting of Members duly called for that purpose.

PART IX: RULES, REGULATIONS AND GUIDELINES

34. RULES, REGULATIONS AND GUIDELINES

- 34.01 The Board of Directors or the Membership may adopt, amend, or repeal by Resolution, Rules, Regulations or Guidelines not inconsistent with this General Operating By-law or the Constitution relating to the management and operation of the Corporation as the Board of Directors or the Membership may deem appropriate from time to time.
- 34.02 Any Rule, Regulation or Guideline adopted by the Board of Directors shall continue to have force and effect until amended, repealed, or replaced by a subsequent Resolution of the Board of Directors or the Membership, which Membership Resolution, if applicable, shall take priority over any conflicting Resolution of the Board of Directors.

PART X: WAIVER AND DISPUTE RESOLUTION

35. WAIVER

- 35.01 Notwithstanding anything else contained herein, Membership, Directorship, Committee Membership, Employment or Volunteerism in the Corporation is given upon the strict understanding that removal of such Person as a Member, Director, Officer, Committee Member, Employee or Volunteer in accordance with the Constitution, or any other proceedings contained therein, shall not give such Person any cause for legal action against either the Corporation, the Board of Directors, any Officer, any Member, or Committee Member, Employee or Volunteer and the acceptance of Membership, Directorship, Committee Membership, Employment or Volunteerism shall constitute

conclusive evidence of a waiver by the Member, Director, Committee Member, Employee or Volunteer of all rights of action, causes of action, and all claims and demands against the Corporation, its Members, the Board of Directors, Officers, Committee Members, Employees or Volunteer of the Corporation in relation to any of the actions or proceedings or matters arising out of the Constitution or involving the Constitution in any manner whatsoever, and this provision may be pleaded as a complete estoppel in the event that such action is commenced in violation thereof.

36. MEDIATION AND ARBITRATION

- 36.01 Disputes or controversies amongst Members, Directors, Officers, Committee members, Employees or Volunteers of the Corporation are as much as possible to be resolved in accordance with mediation and/or arbitration

37. DISPUTE RESOLUTION MECHANISM

- 37.01 Dispute Resolution - In the event that a dispute or controversy amongst Members, Directors, Officers, Committee Members, Employees or Volunteers of the Corporation arising out of or related to this General Operating By-law, the Letters Patent or Policy Statements, or out of any aspect of the operations of the Corporation is not resolved in private meetings between the parties, then without prejudice to or in any other way derogating from the rights of the Members, Directors, Officers, Committee Members, Employees or Volunteers of the Corporation as set out in this General Operating By-law or the Act, and as an alternative to such person instituting a law suit or legal action, such dispute or controversy shall be settled by a process of dispute resolution as follows:

- (a) the dispute or controversy shall first be submitted to a panel of mediators whereby one party to the dispute appoints one mediator, the other party, (or if applicable the Board of the Corporation), appoints another mediator, and the two mediators so appointed jointly appoint a third mediator. The three mediators will then meet with the parties in question in an attempt to mediate a resolution between the parties.
- (b) If the matter is not resolved through mediation, then the said mediators shall arbitrate and decide all issues in accordance with the provisions of the *Arbitration Act* of Ontario and the award of the mediators in their role as arbitrators shall be final and binding upon the parties and the judgement once given may be entered by any court having jurisdiction.
- (c) The number of mediators can be reduced from three to one upon the agreement of all parties.
- (d) All costs of the mediators appointed in accordance with this section shall be borne equally by the parties to dispute or the controversy.

PART XI: FINANCIAL MATTERS

38. FINANCIAL YEAR END

- 38.01 Unless otherwise ordered by the Board, the fiscal year end of the Corporation shall be the 30th day of June, in each year.

39. FINANCIAL STATEMENTS AND ANNUAL BUDGET

- 39.01 The Treasurer, Secretary, or Secretary/Treasurer, together with assistance from the Audit Committee, if applicable, shall prepare prior to the annual Meeting of Members each year, the following:
- (a) financial statements for the preceding year prepared in accordance with the financial reporting standards of the Canadian Institute of Chartered Accountants for Charitable and Non-Profit Organizations as may be in place from time to time; and
 - (b) an annual budget for the upcoming year prepared in consultation with the Chair of each standing and special Committee, and to include the budget and expenditures of at least the previous year.

40. AUDITOR

- 40.01 The Members of the Corporation shall at its Annual Meeting appoint an Auditor who shall not be a Member of the Board or an Officer or an Employee of the Corporation or a partner or employee of any such Person and where financially possible, is to be duly licensed under the provisions of the applicable provincial legislation, to hold office as an Auditor until the next Annual Meeting of Members of the Corporation.
- 40.02 The Auditor shall have all the rights and privileges and be subject to the provisions set out in the Act and shall perform the audit function as prescribed for therein.
- 40.03 In addition to making a report at the annual Meeting of Members of the Corporation, the Auditor shall from time to time report either verbally or in writing to the Audit Committee on the audit work with any necessary recommendations.

41. BORROWING

- 41.01 Borrowing Authority - Subject to the limitations set out in the Act, the Letters Patent of the Corporation and this By-law, the Board may:
- (a) borrow money on the credit of the Corporation;
 - (b) limit or increase the amount to be borrowed;
 - (c) issue debentures or other securities of the Corporation; or
 - (d) pledge or sell such debentures or other securities for such sums and at such prices as may be deemed expedient; and
 - (e) secure any such debentures, or other securities, or any other present or future borrowing or liability of the Corporation, by mortgage, hypothec, charge or pledge of all or any currently owned or subsequently acquired real and personal, movable and immovable, property of the Corporation, and the undertaking and rights of the Corporation.

41.02 Authorization - From time to time, the Board may authorize any Director or Officer or other Persons of the Corporation to make arrangements with reference to money borrowed or to be borrowed as to the terms and conditions of the loan thereof, and as to the security to be given therefor, with power to vary or modify such arrangements, terms and conditions and to give such additional security as the Board may authorize and generally to manage, transact and settle the borrowing of money by the Corporation.

PART XII: GENERAL PROVISIONS

42. CORPORATE SEAL

42.01 The seal, an impression thereof is stamped in the margin hereof or as changed by Resolution of the Board from time to time, shall be the seal of the Corporation.

43. EXECUTION OF DOCUMENTS AND CHEQUES

43.01 Documents - Contracts, documents or any instruments in writing requiring the signature of the Corporation shall be signed by any two Officers or Directors and all contracts, documents and instruments in writing so signed shall be binding upon the Corporation without further authorization or formality. The Board shall have the power from time to time by Resolution to appoint any two Directors, Officers or other Persons on behalf of the Corporation to specifically sign contracts, documents and instruments in writing. The Board may give the Corporation's power of attorney to any registered dealer in securities for the purposes of the transferring of and dealing with any stocks, bonds, and other securities of the Corporation. The seal of the Corporation when required may be affixed to contracts, documents, and instruments in writing signed as aforesaid whereby any officer or officers appointed.

43.02 Cheques - All cheques, drafts or orders from the payment of money and all notes and acceptances and bills of exchange shall be signed by two Officers, or Directors, or other designated Persons, whether or not an Officer or Director of the Corporation, and in such manner as the Board may from time to time determine by Resolution.

44. SECURITIES FOR SAFEKEEPING

44.01 The securities of the Corporation shall be deposited for safekeeping with one or more bankers, trust companies or other financial institutions to be selected by the Board of Directors. Any and all securities so deposited may be withdrawn, from time to time, only upon the written order of the Corporation signed by such Officer or Officers, agent or agents of the Corporation, and in such manner, as shall from time to time be determined by Resolution of the Board of Directors and such authority may be general or confined to specific instances. The institutions which may be so selected as custodians by the Board of Directors shall be fully protected in acting in accordance with the directions of the Board of Directors and shall in no event be liable for the due application of the securities so withdrawn from deposit or the proceeds thereof.

45. HEAD OFFICE

- 45.01 The head office of the Corporation shall be in the City of Brampton, in the Region of Peel, in the Province of Ontario.

46. BOOKS AND RECORDS

- 46.01 The Board shall see that all necessary books and records of the Corporation required by the By-laws of the Corporation or by any applicable statute or law are regularly and properly kept.

47. NOTICE

- 47.01 For purpose of sending notice to any Member, Director or Committee member, the address of the Director, Member or Committee Member shall be his or her last address recorded in the books of the Corporation, or if no address has been given therein, then to the last address as such Director, Member or Committee Member known to the Secretary.

- 47.02 The signature of any Director or Officer of the Corporation to any notice or Document to be given by the Corporation may be written, stamped, type written or printed.

- 47.03 Where a given number of days notice is required to be given under the By-laws and Letters Patent of the Corporation, the day of service or posting of the notice shall not, unless it is otherwise provided, be counted in such number of days, but shall include the date from which the notice is given.

- 47.04 The declaration of the Secretary or the Chairperson that notice has been given pursuant to this General Operating By-law shall be sufficient and conclusive evidence of the giving of such notice.

48. AMENDMENT OF LETTERS PATENT AND BY-LAWS

- 48.01 Notwithstanding the Act, the Letters Patent of the Corporation may only be amended by a two thirds (2/3rds) Resolution of the Board of Directors voting at a meeting called for that purpose and sanctioned by a two thirds (2/3rds) Resolution of the Members voting at a Meeting of Members duly called for the purpose of considering the said amendment.

- 48.02 The By-laws of the Corporation not embodied in the Letters Patent may be repealed or amended by By-law and enacted by a two thirds (2/3rds) vote of the Board of Directors at a meeting called for that purpose and sanctioned by an affirmative two thirds (2/3rds) vote of the Members at a Meeting of Members duly called for the purpose of considering the said By-law, provided that the repeal or amendment of such By-law shall not be enforced or acted upon until the approval of the Ministry of Industry Canada has been obtained.

ENACTED this 24th day of September 2002 under the seal of the Corporation.

Per: _____
Chairperson - Norman B. Fraser

Per: _____
Secretary – G. Leslie Oliver

IN WITNESS WHEREOF we the Directors of the Corporation have hereunto set our hands at the City of Mississauga, this 24th day of September 2002.

Norman B. Fraser

G. Leslie Oliver

Martin Vandenberg

Hart M. Holmstrom

Edmund Athaide

M. Wayne Gamble

CONFIRMED by a two thirds (2/3rds) vote of the Members of the Corporation this 24th day of September, 2002.

Per: _____
Secretary – G. Leslie Oliver



C A R T E R & A S S O C I A T E S

BARRISTERS, SOLICITORS & TRADE-MARK AGENT

*Trade-Mark Agent

Affiliated with and Counsel* to

Fasken Martineau DuMoulin LLP

211 Broadway, P.O. Box 440

Orangeville, Ontario L9W 1K4

Email: info@carters.ca

Phone: (519) 942-0001

Fax: (519) 942-0300

www.carters.ca

Terrance S. Carter B.A., LL.B.*

Mervyn F. White B.A., LL.B.

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

Theresa L.M. Man B.Sc., M.Mus., LL.B.

Mark J. Wong B.A., LL.B.

Esther S.J. Oh B.A., LL.B.

Bruce W. Long B.A., LL.B. (Counsel)

Donald J. Bourgeois B.A., LL.B. (Counsel)

May 7, 2003

SENT BY COURIER

Canada Customs and Revenue Agency

Charities Division

320 Queen Street, Tower A

Ottawa, ON K1A 0L5

Dear Sir/Madam:

Re: HVACR Heritage Centre Canada

Re: Our File No. 01-0034

Re: Application for Charitable Status

We are the solicitors for "HVACR Heritage Centre Canada" (the "Applicant"), which corporation is applying for charitable registration as a "charitable organization" pursuant to paragraphs 149.1(1) of the Income Tax Act (Canada).

The Applicant was incorporated by Letters Patent issued by Industry Canada pursuant to Part II of the *Canada Corporations Act* on September 23, 2002, federal corporate file number 410899-0. The head office of the Applicant is:

HVACR Heritage Centre Canada
5 Sandhill Court, Unit A
Brampton, ON L6T 5J5

In support of the application for charitable status of the Applicant as a "Charitable Organization", we are pleased to enclose the following documents:

1. an executed Application for Registration as a Charity under the *Income Tax Act*, form T-2050 E (00) for the Applicant;
2. a certified copy of the Letters Patent incorporating the Applicant, certified by two Directors of the Applicant; and

3. a certified copy of the General Operating By-law No. 1 for the Applicant, certified by two Directors of the Applicant.

On behalf of the Applicant, we would request that this application for charitable status be reviewed on an expedited basis.

If you have any questions concerning the enclosed application, please do not hesitate to contact the undersigned.

Yours truly,
CARTER & ASSOCIATES

Per:

JMC:eso
Encl.

Jacqueline M. Connor (ext. 224)
jconnor@carters.ca

cc: HVACR Heritage Centre Canada

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CARTER & ASSOCIATES
BARRISTERS, SOLICITORS & TRADE-MARK AGENT
Affiliated with Fasken Martineau DuMoulin LLP

Terrance S. Carter B.A., LL.B.,
Counsel to Fasken Martineau DuMoulin LLP
Mervyn F. White B.A., LL.B.
Jacqueline M. Connor B.A., LL.B.
Theresa L.M. Man B.Sc., M.Mus., LL.B.
Mark J. Wong B.A., LL.B.
Esther S.J. Oh B.A., LL.B.
John M.C. Latham B.A., LL.B.
COUNSEL:
Bruce W. Long B.A., LL.B.
Donald J. Bourgeois B.A., LL.B.
Jane Burke-Robertson B.Sc.Sci., LL.B.

November 21, 2003

SENT BY FACSIMILE AND
BY REGULAR MAIL

Canada Customs and Revenue Agency
Charities Directorate
Ottawa, Ontario
K1A 0L5

ATTENTION: Robert Webster, Senior Charities Officer, Charities Directorate

Dear Sir:

Re: HVACR Heritage Centre Canada
Re: Our File No. 01-0034
Re: Incorporation, Charitable Status & Strategic Planning

We are the solicitors for HVACR Heritage Centre Canada ("HVACR"). Further to our correspondence of October 6, 2003, I am writing to advise CCRA that our client has obtained Supplementary Letters Patent issued on October 15, 2003 by Industry Canada amending its primary objects. Please find enclosed a copy of the issued Supplementary Letters Patent for the information and records of CCRA.

Accordingly, upon receipt of the enclosed documentation, it is our understanding that the application for charitable status of HVACR can now be approved by CCRA. At this time, we would ask that the charitable registration number be issued at your earliest convenience.

In order to update the records of CCRA, please note that the head office address of HVACR has been changed to the following:

HVACR HERITAGE CENTRE CANADA
5045 Orbitor Drive
BLDG. 11, Ste. #300
Mississauga, ON L4W 4Y4

Main Office Location
211 Broadway, P.O. Box 440
Orangeville, Ontario, Canada, L9W 1K4
Tel: (519) 942-0001 Fax: (519) 942-0300

Toll Free: 1-877-942-0001
www.carters.ca
www.charitylaw.ca

Toronto Meeting Location
Toronto Dominion Bank Tower, Suite 4200
TD Centre, Toronto, Ontario, Canada
(by appointment) Tel: (416) 675-3766

Thank you for your assistance in this matter and I look forward to hearing from you at your earliest opportunity.

Yours truly,
CARTER & ASSOCIATES

Per: *[signed]*

JMC:mcv
Encl.

Jacqueline Connor (ext. 224)
jconnor@carters.ca

c.c. HVACR Heritage Centre Canada

\FILESVR01\Company\CLIENT FILES\HVACR\Incorporation, Charitable Status & Strategic Planning (01-0034)\letter to CCRA nov 21 03.doc



Canada Customs
and Revenue Agency Agence des douanes
et du revenu du Canada

DEC 02 2003

Jacqueline M. Connor
Carter & Associates
Barristers, Solicitors & Trade-Mark
Agent
211 Broadway, P.O. Box 440
Orangeville ON L9W 1K4

Your file/Votre référence
01-0034

Our file/Notre référence
3023483

November 26, 2003

**SUBJECT: NOTIFICATION OF REGISTRATION
HVACR Heritage Centre Canada**

Dear Ms. Connor:

We are pleased to inform you that, based on the information supplied, and assuming that the activities will be as stated in the application, we have determined that the organization qualifies for tax-exempt status as a registered charity under paragraph 149(1)(f) of the *Income Tax Act* (the *Act*).

Registration has been granted on the understanding that HVACR Heritage Canada Centre will not undertake any activity(ies) beyond those described in its application, unless it has received prior approval to do so from our office. Accordingly, if at some future time the organization wishes to pursue a new activity/program that was not described in its application for charitable registration, it must provide our office with a detailed description of the proposed activity/program so that we may determine whether or not it is acceptable. This is necessary to ensure that the organization will operate within the limitations imposed by the *Income Tax Act*.

REGISTRATION INFORMATION

- the charity's **Business Number** is **85897 8489 RR0001**;
- the charity is **registered effective October 15, 2003**;
- the charity is **designated as a Charitable Organization**;
- the charity's **fiscal year end** has been established as **June 30th**;
- the charity will have to **file its first annual return on or before December 31, 2004**, for the fiscal period ending **June 30, 2004**.

The following paragraphs and the documents attached to this letter will further explain the operational requirements the charity must meet, its filing requirements, the issuance of receipts, etc. Please take a few minutes to look over this information, and refer to this letter for any questions relating to the charity's status.

General Information

Enclosed is a copy of a document entitled *Registered Charities and the Income Tax Act* which will assist you in complying with the operational and filing requirements that must be satisfied in order to maintain the organization's registered charity status. If you have any questions or require further assistance, please do not hesitate to contact our Client Assistance Group, either by phone at (613) 954-0410 or toll-free 1-800-267-2384, or by mail to the Charities Directorate, Canada Customs and Revenue Agency, Ottawa, ON K1A 0L5. Any questions pertaining to the GST may be addressed by telephoning toll-free at 1-800-959-5525.

The Charity's Business Number

The Business Number (BN) system was implemented in April 1997. The BN consists of a nine-digit root, followed by a two-letter, four-digit account identifier. The nine-digit root is the same for each account the organization may have with Canada Customs and Revenue Agency (CCRA). However, the two-letter, four-digit account identifier will be different for each account. The organization's charitable status is acknowledged by the RR0001 - account identifier. Please note that the charity's BN should be written **in full**, including its charity account identifier, on all receipts it issues.

The Charity's Designation

We have determined that the organization is a **charitable organization** because it meets the requirements of that definition as set out under subsection 149.1(1) of the *Act*. This designation determines the operational requirements that the charity will have to meet under the *Act*. These requirements are described in the information document referred to above. If you think this designation does not accurately reflect the present structure, source of funding or mode of operation of your organization, please write to us within sixty days of the mailing of this letter, clearly setting out your reasons.

At a later date, if the charity undergoes any of the modifications described in the next section, it may be required to change its designation. You may also wish, for other reasons, to see the organization's designation changed. In both cases, you would have to apply for re-designation by completing form *T2095*.

Changes in the Charity's Purposes, Activities, Sources of Support or Directors

We have registered the organization based on the information provided with the application. If the organization wishes to formally change its stated purposes or objects, it should obtain our prior approval, because this may affect its status. If the organization wishes to undertake programs and activities that are materially different from those in the information already submitted to us, it should make sure that they are within the scope of the organization's stated purposes. Moreover, if the programs or activities are different from those we reviewed, they may not be charitable. As a precaution, we recommend that you check with us beforehand. If the organization actually undertakes programs that are not charitable, its registration may be revoked.

Furthermore, if the charity's sources of support, character, or method of operation were to change, you are required to advise us immediately, so that we may consider any impact this may have on its registered status. In addition, you are required to advise us if the relationships (by blood, marriage or adoption) among the directors and officials change.

These types of changes might affect the charity's designation and the operational requirements it has to meet under the *Act*.

Issuing Receipts Acknowledging Gifts to the Charity

In order for donors to benefit from the tax incentives associated with gifting to a charity, they must receive an official receipt issued by a registered charity. Official receipts are those issued by a registered charity that meet the requirements set out under Regulation 3501 of the *Income Tax Regulations*. **Official receipts can only be issued to acknowledge gifts to the charity.** A gift is defined as a voluntary transfer of property without valuable consideration. For more information on what constitutes a gift in charity law and issuing receipts, please refer to our website at www.cra-adrc.gc.ca/charities or by calling our toll free line at 1-800-267-2384.

Filing the Charity's Annual Information Return

Every registered charity must file an information return each year and it must be filed no later than six months after the end of its fiscal period. Beginning with fiscal periods ending in 2003 and after, an information return includes:

- Form T3010A, *Registered Charity Information Return*, and the *Registered Charity Basic Information Sheet*;
- The list of directors/trustee or like officials, with all the required information;
- The list of qualified donees, with all the required information (if applicable); and
- A copy of the registered charity's financial statements.

The information that must be included annually in the return may differ substantially from that available in your current books and records. Here are some items of information you will have to provide on the return:

- a breakdown of gifts including those for which **official tax receipts** were issued and those from other registered charities;
- disbursements, including amounts spent on fund-raising, administrative expenditures, political activities, and those spent specifically on charitable programs; and,
- a breakdown of remuneration to directors, executive officers, to employees engaged in charitable activities and to employees engaged in other activities.

Although the information return forms are forwarded annually to all registered charities for their use and to remind them that the return must be filed, it is the charity's responsibility to ensure that it meets its annual filing requirements, without prior notice by CCRA. It is important, therefore, for the Charities Directorate to always have the current address of the charity. **Failure to file the return within the prescribed six-month period following each fiscal year end could result in the revocation of the organization's registered status** (see below).

Please note that the information return forms are not currently available; we will send you the information return forms shortly under separate cover.

Gifting and Dissolution or Winding-Up of the Charity

A registered charity may gift only to donees described in subsection 149.1(1) of the *Act* (see page 5 of the pamphlet *Registered Charities and the Income Tax Act*), both during the life-time of the charity and upon its dissolution.

Remuneration of Directors

Subsection 149.1(1) of the *Income Tax Act* states that no part of the income of a registered charity can be payable to, or otherwise available for the personal benefit of any of its proprietors, members, shareholders, trustees, or settlors. This means that directors of registered charities must not receive any income from the charity simply for being named as director. However, the tax legislation does permit the charity to reimburse its directors for any expenses they incur while performing their duties. As well, the charity can make reasonable payments for the time the directors devote to the charity's affairs, either when they are acting as directors or in some other capacity.

Other Possible Requirements Associated with Charitable Status

The organization is now registered for federal income tax purposes. However, depending on which part of Canada it carries on its activities, there may be provincial legislation or municipal by-laws that could govern its operations. These rules may require you to file

reports or annual returns, or to apply for licenses in connection with various aspects of its activities, such as fund-raising. If you are unfamiliar with these requirements, you should contact the appropriate provincial and municipal authorities to determine the relevant requirements.

Charity Audits

Through ongoing audit and review programs, CCRA endeavours to ensure that the requirements for continued registration are met. Further, a number of registered charities are investigated by CCRA each year on the basis of random sampling and a review of the annual returns filed by charities. Where the charity is not complying with the Act, its registration may be revoked.

Revocation of Charitable Status

In the event that the charity loses its charitable status, either on a voluntary basis or for cause, it would lose its tax-exempt status as well as its authority to issue official receipts for income tax purposes. Further, it would be subject to a tax equal to the value of any remaining assets not disposed of in a prescribed manner. Please refer to the section entitled *Revocation of a charity's registration* at page 13 of the document entitled *Registered Charities and the Income Tax Act*.

Because this letter could help resolve any questions about the charity's charitable status, you should keep it in your permanent records.

Please visit our website at www.cra-adrc.gc.ca/charities which we update frequently.

Yours sincerely,



Bob Webster
Senior Charities Officer
for Maureen Kidd,
Director General
Charities Directorate

Attachments



C A T E R & A S S O C I A T E S

BARRISTERS, SOLICITORS & TRADE-MARK AGENT
Affiliated with Fasken Martineau DuMoulin LLP

Terrance S. Carter B.A., LL.B.
Counsel to Fasken Martineau DuMoulin LLP
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John M.C. Latham B.A., LL.B.
R. Johanna Blom B.A., J.D.
COUNSEL:
Bruce W. Long B.A., LL.B.
Donald J. Bourgeois B.A., LL.B.
Jane Burke-Robertson B.Soc.Sci., LL.B.

May 17, 2004

SENT BY REGULAR MAIL

Ministry of the Attorney General
The Office of the Public Guardian and Trustee
Charitable Property Program
595 Bay Street, Suite 800
Toronto, ON M5G 2M6

Dear Sir/Madame:

Re: HVACR Heritage Centre Canada
Re: Our File No. 01-0034
Re: Incorporation, Charitable Status & Strategic Planning

We are the solicitors for HVACR Heritage Centre Canada (the "Corporation") incorporated under the provisions of the *Canada Corporations Act*.

Pursuant to the requirements of the *Charities Accounting Act* of Ontario, we wish to provide you with the following information:

1. The date of incorporation for HVACR was September 23, 2002.
2. We have enclosed herein a copy of the complete Letters Patent issued by Industry Canada for the said corporation together with the Supplementary Letters Patent issued by Industry Canada on October 15, 2003.
3. The head office for the corporation is the City of Mississauga at 5054 Orbitor Drive, Building 11, Ste. #300, Mississauga, Ontario, L4W 4Y4.
4. The mailing address of the said corporation is HVACR Heritage Centre Canada, 5054 Orbitor Drive, Building 11, Ste. #300, Mississauga, Ontario, L4W 4Y4.
5. The street and mailing address for the operating directors and officers are set out in the enclosed copy of Letters Patent.
6. The date of the fiscal year end of the corporation is the 30th day of June of each year.
7. We have enclosed a copy of a list of directors of the Corporation.

Main Office Location

211 Broadway, P.O. Box 440
Orangeville, Ontario, Canada, L9W 1K4
Tel: (519) 942-0001 Fax: (519) 942-0300

Toll Free: 1-877-942-0001

www.carters.ca
www.charitylaw.ca

Toronto Meeting Location

Toronto Dominion Bank Tower, Suite 4200
TD Centre, Toronto, Ontario, Canada
(by appointment) Tel: (416) 675-3766

8. The Ontario Corporation Number issued by the Ministry of Consumer and Business Services is 1611605 as in accordance with the enclosed copy of notification.
9. The Charitable Registration Number for the Corporation is 85897 8489 RR0001.

If you have any question concerning the enclosed documentation or the contents of this report, please do not hesitate to contact me.

Yours truly,
CARTER & ASSOCIATES

Per: *[signed]*

JMC:mcv
Enclosure

Jacqueline Connor (ext. 224)
jconnor@carters.ca

c.c. HVACR Heritage Centre Canada

S:\CLIENT FILES\HVACR\Incorporation, Charitable Status & Strategic Planning (01-0034)\Letter to PGT May 17 04.doc

Ministry of
Consumer and
Business Services

Ministère des Services
aux consommateurs
et aux entreprises

Registration Division
Companies and Personal
Property Security Branch
393 University Ave., Suite 200
Toronto ON M5G 2M2

Division de l'enregistrement
Direction des compagnies et
des sûretés mobilières
393, av. University, bureau 200
Toronto ON M5G 2M2



March 22, 2004

Corporations Information Act

Your Reporting Requirements

HVACR HERITAGE CENTRE CANADA
JACQUELINE M. CONNOR
CARTER & ASSOCIATES BARRS
211 BROADWAY
P O BOX 440
ORANGEVILLE ON L9W 1K4

This is your Ontario Corporation Number (OCN)

1611605

Regulations require that this number is stated in all notices submitted under the *Corporations Information Act*. This number must be stated in ALL correspondence with the Companies and Personal Property Security Branch.

Initial Return

The *Corporations Information Act* states that every extra-provincial corporation, other than a corporation of a class exempted by the Regulations, that begins to carry on business in Ontario shall file an Initial Return, Form 2, within sixty (60) days after the date the corporation begins to carry on business in Ontario. The Initial Return you have just filed has generated an Ontario Corporation Number and created a file for the public record for your corporation.

Notice of Change

In addition to the Initial Return you have recently filed, you are required to file a Notice of Change for every change in the information within 15 days after the change or changes take place. There is no fee for filing these notices.

Forms

Forms may be obtained from the Ministry at the above noted address or by calling (416) 314-8880, 1-800-361-3223 or TDD (416) 212-1476. Forms are also available on the Ministry's website at www.cbs.gov.on.ca. To access the forms, select the 'Business Information' option at the top of the Ministry's home page.

Business Name

- (a) No corporation shall carry on business in Ontario or identify itself to the public in Ontario by a name other than its corporation name unless the name is first registered. The appropriate registration form may be obtained from the Companies and Personal Property Security Branch or by calling one of the above noted telephone numbers.
- (b) A corporation which has registered and uses a name other than its corporate name is required to set out its corporate name and all registered business names on all contracts, invoices, negotiable instruments and orders for goods or services.

Penalties

Sections 13 and 14 of the *Corporations Information Act* provide penalties for contravening the Act or Regulations.

Section 18(1) of the Act provides that a corporation that is in default of a requirement under this Act to file a notice or that has unpaid fees or penalties is not capable of maintaining a proceeding in a court in Ontario in respect of the business carried on by the corporation except with leave of the court.

Copies of the *Corporations Information Act*, the *Corporations Act* and the *Business Corporations Act* may be obtained from the Government Bookstore, 880 Bay Street, Toronto, Ontario M7A 1N8 or by calling (416) 326-5320. They can also be ordered online via the Publications Ontario website at www.publications.gov.on.ca. The Acts are also available at no charge on the Internet at www.e-laws.gov.on.ca.

REMUNERATION OF DIRECTORS IN ONTARIO

and

UPDATE ON REMUNERATION OF DIRECTORS IN ONTARIO

Reprint of Previously Published Articles, January 1995

Authored by Terrance S. Carter

AN ANALYSIS OF REMUNERATION OF DIRECTORS OF CHARITIES IN ONTARIO

A. INTRODUCTION

The issue concerning remuneration of directors of charities in Ontario has, until the last four years, attracted little attention. Invariably, the salaried chief administrative officer of a charity was a member of its board of directors. For purposes of this paper, "board of directors" is defined as meaning any body or group that controls the operations of the charity whether that group consists of the board of directors, board of governors, board of management or, in the case of an incorporated church, the board of deacons or board of elders.

The paid chief administrative officer of a charity, whether such officer be the executive director or president or, in the case of an incorporated church, the pastor, has generally been entitled to be a member of the board of directors by virtue of his position as the key employee.

The rationale for such an arrangement has generally been to provide the person who was ultimately responsible for the day to day operations of the charity

with input into the overall direction of the charity. The fact that the chief administrative officer or pastor, in the case of an incorporated church, was a paid member of the board of directors, was generally not considered to be a conflict of interest, or if it was, it was considered to be of a minor nature. From a practical standpoint, it was thought that other members of the board of directors of the charity would be able to provide an effective accountability group to thwart any attempt by the chief administrative officer to unilaterally run the charity under a monopoly of power.

This was the general status of affairs for a great number of corporate charities who had salaried chief administrative officers until the release of the landmark Ontario case of *Re Toronto Humane Society*¹ in 1987. That decision, and two other subsequently reported cases, has clarified the law in Ontario. Charitable corporations now may not pay members of their board any form of remuneration for services rendered without court approval, even though the

services are provided at a reasonable or below market cost. As a result, a chief administrative officer of an Ontario charitable corporation who is a salaried employee of the charity cannot continue to be a member of the board of directors of the charity for which he works.

In addition to providing clarity on the specific question of remuneration, the Ontario cases have raised important collateral questions, which although not answered by the court decisions, are important issues to address.

1. Are there amendments which should be made to the bylaws of a charitable corporation to comply with the recent court decisions? If so, what changes should be made to allow a paid employee to continue to have input into operations of the board?
2. Do the principles that have been enunciated by the courts have any application to unincorporated charities, and in particular, unincorporated churches?
3. Is there a procedure available to obtain approval of payment of a salary to a director other than obtaining court approval?
4. What steps should be taken in respect to reporting payments that have been made to members of a board in the past?
5. Do the recent decisions prohibit a director from receiving compensation for expenses in fulfilling his duties as a director?

In order to explore these and other questions, this paper will attempt to explain the basic issues the courts have had to grapple with, the facts surrounding each case, and the practical implications that result. It should be understood that the information contained in this paper is for general discussion purposes only and is not intended to be relied upon for purposes of a professional opinion. Any persons or charities considering altering their current practice in relation to remuneration of directors should first contact their legal counsel and accountant to discuss these issues further.

B. THE DICHOTOMY OF RESPONSIBILITY FOR DIRECTORS OF CORPORATE CHARITIES

If a director of a share capital corporation is permitted to receive a salary from the corporation that he serves, why shouldn't a director of a corporate charity? To understand this discrepancy it is necessary to examine the dichotomy that has developed in the responsibilities

of directors of corporate charities. While a director of a corporate charity is in many ways akin to a director of a share capital corporation, a director of a corporate charity is also subject to the obligations imposed by trust law which place a much higher fiduciary obligation upon him in relation to what he may or may not do with the charity's assets.

On the broader corporate side of the dual role of a director of a corporate charity, there are a number of provisions in the **Corporations Act**² of Ontario which suggest that a director of a charitable corporation should be able to receive remuneration from the corporation in the same manner as the director of a share capital company. Section 274 of the **Corporations Act** states that a corporation is deemed to have had from its creation the capacity of a natural person. This would suggest that unless otherwise restricted by other sections of the **Corporations Act** or other legislation, a charitable corporation has the ability to do what ever its board of directors decides. This would include theability to pay salaries or other remuneration to its directors without such action being ultra vires the jurisdiction granted to the corporation under the provisions of the **Corporations Act**.

Further, section 126(2) of the **Corporations Act** specifically states that a director may receive reasonable remuneration and expenses for his services to the corporation as a director and may also receive reasonable remuneration and expenses for his services in any other capacity unless the Letters Patent or bylaws of the corporation otherwise provide. Letters Patent issued by the Province of Ontario in recent years now include such a prohibition. The following is the standard limitation now included in all Ontario Letters Patent.

"The directors shall serve without remuneration and no director shall, directly or indirectly, receive any profits from his position as such; reasonable expenses incurred by any director in the performance of his duty may be paid."

This provision prohibits a director being paid for his services as a director of a corporate charity. However, it is not clear whether such prohibition also precludes a director receiving monies from the corporation as remuneration for services supplied to the charitable corporation in some other capacity other than as a director, ie. as a professional advisor or administrator. Even if the provision does not preclude such payment, the courts have characterized the role of a director of a corporate charity with so many attributes of a trustee that the payment of remuneration to a director would now be considered to be a breach of trust.

The development of the role of a director of a corporate charity as a trustee has evolved generally

through the establishment of case law. However, it has also been referred to indirectly through the provisions of the Charities Accounting Act⁴ of Ontario. Section 1(2) of the Charities Accounting Act states that "*any corporation, incorporated for religious, educational, charitable or public purpose shall be deemed to be a trustee within the meaning of this Act...*" Although the Charities Accounting Act does not specifically state that the director of a corporate charity is a trustee, recent case law has held that if a corporate charity is a trustee of charitable property, then a director of the corporate charity must by implication be considered to be a trustee of the property of the charity. Fortunately, it is not necessary to look at the more difficult and esoteric issue of whether or not a director of a corporate charity is in fact a trustee for all purposes. In the context of remuneration of directors it is only necessary to look at the more limited issue of why the courts consider that the director of a corporate charity has the fiduciary obligations of a trustee concerning the property of the charity and why that results in a prohibition on payment of remuneration to its directors.

C. REVIEW OF CASE LAW ON REMUNERATION OF DIRECTORS

While Ontario courts have dealt with the issue of the trustee-like characteristics of director of charitable corporations only in the past five years, there have been English cases going back almost 100 years which have not only dealt with this issue but now form the basic precedents upon which Ontario case law has developed.

Bray v Ford In the 1896 decision of *Bray v Ford*⁴, the House of Lords in England was faced with an appeal on a libel action commenced by a solicitor who had received payment from a charity for services rendered by him as a lawyer when at the same time he served on its board of directors. The libel complained of was a letter which had been circulated to members of the charity alleging that the solicitor, while holding the fiduciary position of being a member of the board of directors, had illegally and improperly received payments for his services as a solicitor. In determining whether or not there was a basis for the libel action, the House of Lords had to determine whether or not the action of the solicitor in receiving payment for services was justified. In this regard, the court held that the solicitor was not warranted in making a charge for his professional services when he was also on the board of directors of the charity. The court held at page 51 of the decision that:

"It is an inflexible rule of a court of equity that a person in a fiduciary position, such as the respondent's, is not, unless otherwise expressly

provided, entitled to make a profit; he is not allowed to put himself in a position where his interest and duty conflict. ...It is based on the consideration that, human nature being what it is, there is danger, in such circumstances, of the person holding a fiduciary position being swayed by interest rather than by duty, and thus prejudicing those whom he is bound to protect."

Although the House of Lords did not state that a director of a corporate charity was a trustee of charitable property, the fiduciary obligations placed upon such a director not to receive remuneration from the charity was clearly akin to the obligation placed upon a trustee of charitable property.

Re The French Protestant Hospital

The English courts further articulated the position that had been taken in *Bray v Ford* in the 1951 decision of the Court of Chancery in *Re The French Protestant Hospital*⁵. In that decision, the court reviewed the Charter of the French Protestant Hospital originally incorporated in 1718. One of the bylaws of the corporation prohibited a director from directly or indirectly being interested in the supply of any goods or any work for the Hospital. For a number of years, a solicitor and a surveyor had both been members of the board of directors and had received remuneration for their services, although at a reduced rate. To accommodate these two directors, the Hospital corporation amended the bylaw that had prohibited payment of monies to directors so that it would not prevent a director receiving compensation for professional services. The issue that the court had to deal with was whether or not the proposed bylaw permitting payment to directors was valid. The court held that it was not. The argument that was presented to the court was that while the Hospital corporation was a trustee of the charitable property, the directors of the corporate charity were not themselves trustees and therefore were entitled to amend the bylaws for the corporation to permit payment to directors who had provided professional services. While the court agreed technically that it is the corporation that holds the charitable property, the court refused to be bound by the usual concepts of corporate law and pierced the corporate veil to examine the actual relationship that was in place between the directors themselves and the charitable property as opposed to simply reviewing what was the responsibility of the corporation to its property. The court held at page 570 of the decision that since it was obvious that a charitable corporation was completely controlled by its board of directors and since a charitable corporation holds its property in trust, the directors of a charity "...are as much in a

fiduciary position as trustees in regard to any acts which are done respecting the corporation and its property." The court went on to state that:

"It is quite plain that it would be entirely illegal if they [the directors] were simply to put the property, or the proceeds of the property of the corporation, into their pockets and make use of it for their own individual purposes or for their purposes as a whole, and not for the purposes of the charitable trust for which the property is held. Therefore, it seems plain that they are, to all intents and purposes, bound by the rules which affect trustees."

In following *Bray v Ford*, the court concluded that unless there was some provision in the constitution of a charity, the directors of a corporate charity had no right to make any profit or claim remuneration out of the property of a charitable corporation. As there was nothing contained in the Letters Patent of the Hospital or its bylaws which permitted payment of services to directors of the charity, it was improper for the board of directors to pass a bylaw giving authority to the corporation to make payments which had been specifically prohibited under previous provisions of its bylaws.

David Feldman Charitable Foundation

Although the *Re Toronto Humane Society* decision is often quoted as the first Ontario authority to deal with a director's trustee-like obligation concerning charitable property, there was an earlier decision which established this principle. In the 1987 case of *Re David Feldman Charitable Foundation*⁶ the court had to determine whether the director of a private charitable foundation established by that director was authorized to lend money that had been given to the foundation to the director's own personal company. The court reviewed the terms of the Letters Patent of the foundation and concluded that a charitable trust had been created for maintaining a fund with part or all of the income to be used as donations to recognized Canadian charities. The court recognized that pursuant to section 1(2) of the **Charities Accounting Act**, the corporation itself was deemed to be a trustee within the meaning of that Act. However, the court went further and stated that the directors were also trustees of the foundation. Based upon the fiduciary obligation arising from the trustee relationship, the court held that the decision of the directors to loan monies from the foundation to a limited company of one of its directors was a direct conflict of interest and as such the directors had committed a breach of trust.

Toronto Humane Society

The subsequent 1987 landmark decision of *Re Toronto*

Humane Society involved the Public Trustee of Ontario exercising its jurisdiction under the provisions of the **Charities Accounting Act** to bring a court application that in part questioned the remuneration paid to an employee who was also a member of the board of directors. In 1986, differences arose amongst the members and directors of the Society about its future direction. The **Toronto Humane Society** came under the control of the president and those directors who supported an organization dedicated to obtaining legislation which would abolish the statutorily sanctioned practice of removing impounded animals for scientific research purposes. The newly appointed president proposed a restructuring of the board of directors and subsequently arranged to have five directors elected officers of the Society who were friends and associates of the president. Two of the directors later became paid employees of the Society at significant salaries.

Before the court could review the irregularities which were alleged to have taken place within the Society, the court first had to determine whether or not a charitable corporation was a trustee that was subject to the jurisdiction of the court. The court found that the charitable corporation was, at least for the purpose of the property of the charity, a trustee and subject to its review. The court then turned its attention to the status of the directors of the corporation. It could have held that the Society was a charitable corporation created by statute and that as long as the provisions of the statute were appropriately observed, the obligations of the directors were met. The position advocated by the Public Trustee of Ontario, however, was that a charitable corporation is a trustee of its property and since the corporation was without "*a body to be kicked or a soul to be damned*" its directors must be held to the duties and obligations of a trustee. As such, the Public Trustee argued that a director, in his capacity as a trustee cannot put himself in a position where duty and interest conflict and that therefore there could be no remuneration paid to a trustee in his connections or activities in or about the trust without the approval of the court.

A major consideration was the self serving actions of the board of directors in an attempt to redirect the activities of the Society in a direction not previously taken. The court observed at page 246 of the decision that;

"charitable institutions ... are reasonably easy victims for any small determined group with the intention of taking control... When one couples with it the capacity to pay substantial remuneration there arises a situation which all human experience dictates should be avoided."

The court was not interested in whether a director of a corporate charity was a trustee in the pure sense of the word. Rather, the court concluded that the directors were under a fiduciary obligation to the Society and since the Society was dealing with charitable property, the directors were under a fiduciary obligation in relation to the property of the charity. Since the president and the newly elected directors of the **Toronto Humane Society** had decided to pay one of its directors a salary, the court had little alternative but to find that there had been a self serving application of the charitable monies to the director in contravention of the fiduciary obligations of the directors. As directors were considered to be imbued with the characteristics of a trustee, the court held that the only proper way in which a director could obtain remuneration would be pursuant to the express provisions in the trust document or by order of the court.

As a caveat, the court suggested that there might be a mechanism that could be arranged to obtain approval for payment of remuneration to directors from the Office of the Public Trustee without having to obtain court approval. However, no explanation of the jurisdiction under which the Public Trustee could exercise this authority was given.

Faith Haven Bible Training Centre

In the 1988 decision of *Re Faith Haven Bible Training Centre*⁷, the Ontario Surrogate court was asked to review the decisions of the board of directors concerning the distribution of a portion of the money and property of the charity to some of the current directors and past employees as compensation for past services upon the corporation's decision to cease operations. In 1975 the founders of the charity decided to establish a school dedicated to the provision of Christian education and training. In 1977 the founders of the school applied for and were granted Letters Patent under Part III of the Corporations Act under the name of "Faith Haven Bible Training Centre". In 1985, a decision was made to close down the school, sell its assets and dissolve the corporation.

Since 1983, the bylaws of the corporation had been ignored by its officers and directors in that no annual meetings of the membership were held. This meant that the directors simply continued in office without re-election and accordingly the decision to cease operations was made by the directors acting alone without a supporting special resolution by its members. Similarly, the board of directors unilaterally made the decision concerning the distribution of the assets of the charity.

It is worth noting that the Letters Patent of the

corporation contained one of the usual restrictions required by the Public Trustee of Ontario that, "*upon the dissolution of the corporation and after payment of all debts and liabilities, its remaining property shall be distributed or disposed of to charitable organizations which carry on their work solely in Canada*". Why the Board of Directors thought that they had any type of discretion at all concerning the distribution of the assets is not explained in the decision but clearly any payments to the directors or past employees of the charity in its dissolution were in contravention of the specific direction in the letters Patent concerning how the assets were to be distributed on dissolution.

The specific decisions of the Board of Directors which the Public Trustee objected to included (i) a transfer of an automobile to one of the directors and (ii) the payment of approximately \$109,000.00 to various past employees of the corporation for past services, which employees included some of the then current members of the board of directors. In reviewing the actions of the board, the court held that the corporation held its net assets as a trustee to be distributed in accordance with the terms set out in the Letters Patent of the corporation. The court held further that whether or not the directors should be designated as trustees or whether they should be classified as fiduciaries bound to see to the execution of the trust was immaterial since the obligations and the end result that should have occurred were the same. Not surprisingly, the court held that the terms of the trust had not been fulfilled and the board of directors had acted in a conflict of interest in authorizing payments of both property and monies to former staff and current members of the board of directors.

The court went further than the earlier decisions and stated that since the breach of trust could not be excused, the directors of the charity should be personally responsible to repay to the corporation the monies and property wrongfully paid out. It was not just the directors who had received benefits that were held personally responsible to repay the monies but all of the members of the board of directors in place at that time. This was so even though one of the directors who received a benefit refrained from voting on the decision to pay monies to himself.

Fortunately for the directors, the Public Trustee provided assistance by suggesting that the court had jurisdiction under section 35 of the Trustee Act⁸ to excuse the honorarium that had been paid to past employees. In relation to the vehicle and the cash that had been transferred and/or paid to some of the directors, the Public Trustee also suggested to the court that such payments could be justified pursuant to the jurisdiction given to the court under section 61 of the

Trustee Act that allows the court to grant a fair and reasonable allowance to trustees for their care, pains and trouble and time expended in or about an estate. Although the directors were not required to repay the almost \$125,000.00 that had been paid out of the corporation's assets, it is interesting to note that the directors had to rely upon the provisions of the Trustee Act as opposed to the Corporations Act to obtain the necessary jurisdiction for the court to approve the otherwise illegal payments. It is ironic that the Trustee Act governing the high fiduciary responsibilities of trustees was the legislation that had to be used to grant relief for directors of a corporation that had attempted to run its affairs pursuant to the lower standards associated with operating a charity as a corporation as opposed to a charitable trust. The fact that the Trustee Act was invoked by the court in this case is evidence that directors of charitable corporations may very well be subject not only to the remedial provisions of the Trustee Act but to the more onerous obligations established for trustees under the provisions of that legislation.

Harold G. Fox Education Fund v Public Trustee
In the 1989 decision of **Harold G. Fox Education Fund**⁹ the court again dealt with the issue of whether directors of a corporation under Part III of the Ontario Corporations Act have the right to provide for reasonable payment to a director for services rendered in a capacity other than as a director. The case involved a private trust fund which was established in 1966 to provide monies for educational purposes. One of the directors acted in the capacity as executive director of the funds and received compensation from 1972 through to 1986 of approximately \$35,000. In 1986, the board of directors passed a resolution to authorize the payment of \$1,000 per month to the director as compensation to him for his part time duties as administrator. The monies from the fund were primarily used to allow law students from England to article with Ontario law firms and vice versa.

After the **Re Toronto Humane Society** decision was released, the directors of the **Harold G. Fox Education Fund** prudently decided to disclose to the Public Trustee the past payments that had been made. The Public Trustee could have taken such information under advisement and not made the past payments an issue considering the confusion that had existed before the **Re Toronto Humane Society** case in 1987. However, the Public Trustee alleged that the payments to the executive director could not be justified and as such the past payments could not be ignored. As the Public Trustee would not approve the payments, the directors of the fund felt compelled to make an

application to the court pursuant to the provisions of the **Charities Accounting Act** to obtain a direction concerning whether or not past payments as well as future payments to the executive director were legitimate payments by a charity even though the executive director was and would continue to be a member of the board of directors.

The court was sympathetic to the plight of the directors and their sincerity in wishing to obtain its approval. The court came to the conclusion that the compensation which had been paid was for legitimate services which were required by the charity and would have otherwise required that a special administrator be retained by the charity at a salary in accordance with those requirements. Having established that value had been received by the charity for the payment, the court reviewed the provision of section 126 of the **Corporations Act**, the limitations contained in the Letters Patent concerning payments to directors and section 61 of the **Trustee Act** and concluded that in the circumstances the payments were appropriate. However, the court did state that approval of the court should have been obtained before the payments were made.

The application that was before the court requested approval not only for past payments but approval for prospective payments to the executive director. Given the obvious integrity concerning the administration of the fund and the fact that the corporation and the directors would remain under the authority of the **Charities Accounting Act**, the court held that it would be appropriate to allow a reasonable compensation for future work as presented to the court in the amount of \$1,000.00 per month.

The fact that the court approved future payments to directors required that the court go beyond the provisions of section 61 of the **Trustee Act** which limits court approval to payments for past services. Instead the court was required to invoke its inherent jurisdiction over the operations of charities. Whether or not the court will be prepared to exercise this same type of jurisdiction with every charity that is brought before the court under the provisions of the **Charities Accounting Act** is not clear. As such, the decision in **Harold G. Fox Education Fund** should not be relied upon as a guarantee that the court will approve future payment of remuneration to directors in every application.

Given the harshness of the comments contained in the earlier decision of **Re Faith Haven Bible Training Centre**, it is somewhat surprising that the court was as sympathetic in its comments as it was in the **Harold G. Fox Education Fund** decision. However, there were two mitigating factors that justify the difference

in approach. Firstly, the directors of the charity reported the past payments that had been made on their own instead of waiting for an audit to be conducted by the Public Trustee. Secondly, when the Public Trustee concluded that the payments to the executive director had not been appropriate, the directors took the initiative to bring an application before the court. By doing so, the directors evidenced an attitude of full disclosure to both the Public Trustee and to the court instead of an attempt to cover up. Charities that have paid remuneration to members of the board of directors in the past may be well advised to consider disclosing such payments to the Public Trustee instead of waiting for an arbitrary audit to reveal any impropriety of payments. This approach would probably only receive sympathetic treatment from either the Public Trustee or the court if it related to payments prior to the 1987 **Re Toronto Humane Society** decision or for a reasonable period thereafter when the directors first became aware of the effect of the decision. As Donna Campbell in her case comment on "Remuneration of Directors" in the **Philanthropist**¹⁰ has stated, the comment by the court that approval should have been obtained before any payments were made to directors is "*a warning that, in future, directors who make such payments first and then seek approval of their action may do so at their peril*". This is particularly true in light of the critical comments directed towards the directors of the charity in **Re Faith Haven Bible Training Centre** decision.

D. PRINCIPLES RESULTING FROM CASE LAW

The following is a summary of the principles that can be elicited from the cases discussed above.

1. A charitable corporation in Ontario is considered to be a trustee in relation to its charitable property pursuant to the provisions of the **Charities Accounting Act**.
2. Whether or not directors of corporate charities are trustees for all purposes or are only imbued with the fiduciary responsibilities of trustees in the limited context of the property of a charity has not been determined definitively. The **Re Toronto Humane Society** and the **Harold G. Fox Education Fund** decisions would suggest that the director of a corporate charity is at most charged with the fiduciary obligations of a trustee in relation to the property of a charitable trust. The **Re David Feldman Charitable Foundation** and the **Re Faith Haven Bible Training Centre** decisions, however, would suggest that a director is a trustee in the fuller meaning of the term.
3. All of the judicial decisions are consistent in stating that the trustee like fiduciary obligations placed upon directors of corporate charities in relation to charitable property clearly makes it a conflict of interest and a breach of trust for directors to pay any monies of the charity or transfer any of its property to any director as remuneration for any services rendered by the director. The **Re Faith Haven Bible Training Centre** decision constitutes judicial acceptance of the proposition that payments made in contravention of this restriction will leave each member of the board of directors jointly and severally liable to repay the monies that were illegally paid.
4. Although the **Re Toronto Humane Society** and the **Harold G. Fox Education Fund** cases suggested that the Public Trustee might be able to approve both past and future payments to directors of charities, there does not appear to be any legislative authority for the Public Trustee to take on this role. From a practical standpoint, the Public Trustee might review past payments and decide not to make an issue of such payments, subject to the residual right or any other interested person to require a formal passing of accounts under the **Charities Accounting Act**. This review by the Public Trustee would in effect constitute an indirect approval process for past payments. However, the Public Trustee does not have the ability to either directly or indirectly approve future payments to directors.
5. Since the court in both the decisions of **Re Faith Haven Bible Training Centre** and **Harold G. Fox Education Fund** invoked provisions of the **Trustee Act** to find the necessary authorization to legitimize payments that had been made to directors, it would appear that the **Trustee Act** as a whole will have application to directors of corporate charities. This will be an important consideration for future directors to consider before becoming directors of charities, as their responsibility for the assets of the charity will be under the same scrutiny as an executor would be on the administration of an estate. I suggest that few directors of corporate charities in Ontario would

Although there remains some judicial confusion concerning whether or not a director is a trustee of a charity for all purposes, there is a consensus among all of the decisions that at the very least a director is charged with the fiduciary obligations of a trustee in relation to the director's dealing with the charitable property. To that extent, there is no doubt that a very high fiduciary obligation has been placed upon directors of charities in dealing with its assets.

consider that their role as members of a board of directors was subject to the same scrutiny of the courts as the executor of an estate. Granted, it is not clear from the judicial decisions whether or not a director of a corporate charity is a trustee at law. However, from a practical standpoint, whether or not a director is a trustee is of little consequence. The net effect of being a director of a corporate charity is that such person will be subject to the provisions of the Trustee Act and will be required to fulfil the same fiduciary duties as a trustee in relation to the assets of the charity.

E. APPLICATION OF PRINCIPLES TO UNINCORPORATED CHURCH ORGANIZATIONS

An important collateral issue raised but not specifically dealt with by any of the cases is whether or not an employee of an unincorporated charitable organization, such as a pastor of a church, is precluded from holding the position as a member of the controlling board in the same way that an employee of a corporate charity is precluded from being a member of the board of directors. Although the **Re Toronto Humane Society** decision dealt only with the situation of directors of a corporate charity, the principle developed by the court in that decision as well as in the subsequent decisions of **Re Faith Haven Bible Training Centre** and **Harold G. Fox Education Fund** involved the recognition of the trustee-like obligations of directors not to put themselves into a position of a conflict of interest by receiving payments of money or other remuneration. Since an unincorporated church is recognized by Revenue Canada under the provisions of the **Income Tax Act¹¹** (Canada) and by the Province of Ontario under the provisions of the **Charities Accounting Act** to be a charitable trust, the persons controlling the charitable trust as trustees will be charged with at least the same level of fiduciary obligations to hold the church property in trust as a director of an incorporated charity would be.

This trust relationship is underscored by the provisions of the **Religious Organizations' Lands Act¹²** of Ontario which states that unincorporated churches may hold, sell, mortgage and lease land on behalf of a church organization by means of at least three trustees duly appointed by the church to hold such property in trust. Even though the three trustees appointed under the provisions of the **Religious Organizations' Land Act** may be different from the controlling board of the church, there would probably be the same trustee fiduciary obligations imposed upon the members of the controlling board as upon the duly appointed trustees in consideration of the fact that the controlling board is really the body vested with the

authority to make decisions in relation to the charitable property, whereas the trustees appointed on behalf of the church are generally intended to act as bare trustees only. This would not relieve the formal trustees from personal liability but rather would expand the group of persons upon whom the fiduciary obligations of a trustee would be imposed to include not only the formal trustees but all members of the controlling board of the church.

Although the application of the **Re Toronto Humane Society** and subsequent decisions have yet to be specifically applied to the context of an unincorporated church, the position of the Public Trustee's Office of Ontario is that the legal form of the charity is of little consequence, as the Public Trustee considers all persons responsible for the use of charitable property to be akin to trustees whether they are formally recognized as a trustee or are designated with some other title such as director, deacon, elder, or whatever. In other words, the Public Trustee sees all persons in control of a charity to be trustees, if not in name at least in practice and will hold each of the members personally liable for any misuse of the charitable property or breach of trust. As such, an individual such as a pastor who receives his salary from an unincorporated church organization would be in a breach of trust if he was to remain as a member of the controlling board. This is so notwithstanding the fact that he may absent himself for any vote that involves a review of his salary or other benefits that he may be receiving from the unincorporated church. The **Re Faith Haven Bible Training Centre** decision is authority for the proposition that simply declaring a conflict of interest and not voting on a board decision involving the payment of monies to a director does not excuse the director from personal liability arising from the consequences of a breach of trust.

Since the decision of **Re Toronto Humane Society** suggested that payment to a director could be authorized if the trust document permitted such payments, suggestions have been made that the constitution of an unincorporated church could be amended to specifically permit a pastor as a member of the controlling board to receive a salary. However, since a church is a charity which holds its property as a public trust, the beneficiaries of which go beyond the immediate members of the church, those members of the church themselves could not authorize an amendment to the constitution of the church to permit payment to members of the controlling board such as a pastor.

F. PRACTICAL CONSEQUENCES FOR THE OPERATION OF CHARITIES IN ONTARIO

Whether or not the courts in other provinces across Canada will adopt the decisions rendered by the Ontario courts is not clear but there is a strong possibility that the reasoning of the Ontario courts as enunciated in the recent court decisions may be followed in other jurisdictions in Canada. As such, both incorporated and unincorporated charities elsewhere in Canada would be wise to heed the warnings that have been given by the Ontario courts. In light of the court decisions, there are a number of practical steps that a charity operating in Ontario should consider, whether or not such charity is incorporated, or is an unincorporated entity such as a church.

1. If a director of a charity has been receiving a salary or other remuneration from the charity and intends to remain as a member of the board of directors, he should immediately cease receiving a salary or any other remuneration.
2. If a member of the board of directors wishes to continue to receive a salary or other remuneration from the charity in consideration of his role as either an employee, executive director or in the case of a church, a pastor, then such person should immediately resign from the controlling board and the bylaws of the charity should be amended to ensure that his position does not entitle him to membership on the board.
3. If, as will probably be the case with most charities, the executive director continues to be employed by the charity and resigns from the board but wishes to continue to have a viable role as a participant in meetings of the controlling board, amendments would have to be made to the bylaws or constitution of the charity to accommodate these changes. This would involve redefining the role of such person in his capacity as an executive director or pastor so that such position provides him with the right to attend and participate at all meetings of the controlling board but not have the right to vote or be recognized as a member of the board. In relation to a church, whether incorporated or not, there is always the fear that a pastor may lose his ability to provide leadership in the church if he is not a voting member of the board. However, from a practical standpoint, if a pastor is not able to exercise influence over the church by virtue of his presence and spiritual leadership, any attempt to rely upon his voting authority on the controlling board would be short lived and more than likely futile. As such, removing a pastor from the controlling board but
- redefining his position to allow him to have the right to attend and participate but not vote should result in little, if any deterioration in his position and authority.
4. For those churches, whether unincorporated or not, which for theological reasons cannot accept that the pastor of the church would not be a member of the board, there is the alternative of creating a two-board structure. One board would be solely responsible for the spiritual direction of the church, such as a board of elders on which the pastor could be a full member. The other board would be charged exclusively with the responsibility of managing the property and monies of the church, such as a board of deacons. It would be this second board that would function as the trustees or the quasi-trustees of the charitable property of the church. The pastor would not be a member of the second board, although the description of his office could specify that he would have the right to attend and participate but not vote at all meetings of that board.
5. If for whatever reason, the charity decides that the executive director, employee or pastor of the charity must remain as a member of the controlling board of the charity, then the only alternative would be to make an application to the court upon notice to the Public Trustee to request approval for prospective payments as was done in the *Harold G. Fox Education Fund* case. Although both the *Re Toronto Humane Society* and the *Harold G. Fox Education Fund* decisions allude to a procedure whereby the Public Trustee could approve payments to directors before they occurred, there is no legislative framework for the Public Trustee to exercise such authority. Whether or not this will change in the future is yet to be seen.
6. In relation to past payments that have been made to directors or other members of the controlling board of the charity, the prudent course would be to make disclosure to the Public Trustee. Although the Public Trustee does not have authority to approve past payments, the Public Trustee does have authority to review the accounts of all charities by virtue of the jurisdiction granted to it under the *Charities Accounting Act*. As such it has the statutory authority to require that it be informed of all activities concerning the use of charitable property. Informing the Public Trustee of those payments would allow the Public Trustee to review the actions of the board and make a decision on whether or not to take issue concerning such payments. In those situations where the Public Trustee was satisfied that the payments were reasonable and decided not to take issue with the

payments, it would be unlikely that the Public Trustee would require a formal passing of accounts under the **Charities Accounting Act**. Any future challenge by the Public Trustee concerning past payments that had already been disclosed could be met with a response to the court that the matter had already been disclosed and had been received without objection by the Public Trustee. Such position would not preclude the Public Trustee from objecting at a later time, but at least the disclosure would likely elicit a more sympathetic reception by the court. As such, it is probably better to disclose to the Public Trustee improper payments that have been made to directors made in a voluntarily basis instead of having the matter discovered by the Public Trustee in an audit initiated under the provisions of the **Charities Accounting Act**. There is obviously a risk involved with making such a disclosure; in that the Public Trustee might decide, as they did in the **Harold G. Fox Education Fund** decision, that the payments were not appropriate, thereby requiring the charity to make application to the court under the **Charities Accounting Act** to obtain the necessary approval. However, for those charities that have acted as *bona fides* charitable organizations with a board of directors that is arms length from the paid executive director and have made payments to the executive director through ignorance of the law, it is probable that the Public Trustee would take a somewhat sympathetic approach towards such a charity, particularly in consideration of the fact that the charity had initiated making the disclosure. Since there are literally hundreds of charities in Ontario, if not thousands, that have in the past made payments of salaries or other remuneration to directors or other members of the controlling board in contravention of the fiduciary obligations of directors of charities, it would be helpful if the Public Trustee's Office would issue a formal policy statement that the disclosure of past payments made prior to the 1987 decision in the **Toronto Humane Society** case or up to such time that the board can reasonably be assumed to have become aware of the decision would not result in formal audits being required under the **Charities Accounting Act** or charges of breach of trust being made in those situations where the payments were reasonable in the circumstances. In this regard, it is probable that the Public Trustee would want to be satisfied that the charity had received value in return for the payment of services provided by the director, that the board of directors was arms length from the director receiving payments, and that the payments had been made through inadvertence and in ignorance of the state of the law as disclosed by the **Toronto Humane Society** decision in 1987. As it is impossible to predict what

the responsibility of the Public Trustee will be in every situation it is essential that charities that have made payments in the past to directors or other members of their controlling board consult with their legal counsel and accountant concerning what disclosure, if any, is to be made to the Public Trustee.

7. While there is a clear prohibition upon a director receiving remuneration to fulfil his duties as a director, both section 126 of the **Corporations Act** as well as the general prohibition provision contained in Letters Patent issued by the Province of Ontario contemplate and approve a director receiving compensation for reasonable expenses incurred by the director in the performance of his duties. For instance, the payment of reasonable mileage charges for the use of a director's vehicle to attend a board meeting would be a legitimate disbursements of the charity's monies. However, if the payment to the director was in the form of a car allowance which resulted in more monies being paid to a director than would otherwise be paid out to reimburse a director for mileage costs, then such payment would be a misuse of the authority granted to a charity to allow a director to receive compensation for reasonable expenses. Although it is beyond the scope of this paper, a relevant collateral issue concerns whether the broader ambit of what a director can receive as compensation under a federal incorporation would permit a director to receive employment remuneration as opposed to being limited to simply a repayment of expenses. In this regard, the model bylaw provided by the Minister of Consumer and Corporate Affairs Canada in relation to incorporations of companies without share capital under Part II of the **Canada Corporations Act**¹³ specifically states that nothing in the usual limitation that a director may not receive remuneration to act as a director shall "*preclude any director from serving the corporation as an officer or in any other capacity and receive compensation therefore*". The question remains whether this permissive provision in the model bylaw for federal charitable corporations could be relied upon to circumvent the fiduciary duties established by the court in the recent Ontario decisions. If the concept that a director of a charitable corporation is imbued with trustee-like characteristics is accepted by the courts in future decisions involving federal charitable incorporations, then the consequences of applying trust law to charitable corporations incorporated under Part II of the **Canada Corporations Act** would most likely take precedent over a strict interpretation of a charity's bylaw under corporate law, notwithstanding that such bylaws may have been approved by the Minister of Consumer and Commercial Affairs for Canada.

G. CONCLUSION

As a result of the 1987 decision rendered in the **Re Toronto Humane Society** case, followed in the **Re Faith Haven Bible Training Centre** and **Harold G. Fox Education Fund** decisions, it is now clear that directors of charitable corporations in Ontario can no longer receive remuneration from the charity on which board they serve in relation to services provided to the charity either in their role as a director or in any other capacity. In addition, the same principle would appear to apply to members of the controlling board of unincorporated charities such as churches. Failure to comply with this restriction will leave the members of the board jointly and severally liable to repay monies improperly paid by the charity during such period of time that they were members of the board whether or not they voted on the resolution to pay such monies. As such, salaried officers of charities, whether incorporated or not, should be removed as members of the controlling board. At the same time, salaried officers of those same organizations can maintain input into the leadership of their organization by amending the bylaws or constitution of their charity to provide that such salaried persons may attend and participate at meetings of the controlling board provided that they do not become members of it or have the right to vote.

In light of the activist role being evidenced by the decisions of the courts in Ontario as well as by the Public Trustee's Office, it would be prudent for charitable organizations in Ontario to review their bylaws and constitutions to ensure that they comply with the current state of the law in Ontario. Given the number of charities in Ontario that are probably operating in contravention of the law as stated in the **Toronto Humane Society** decision, there will likely be more litigation pending before the courts. As such, Ontario charities would be wise to ensure that they have taken all steps necessary to avoid being the subject matter of future judicial decisions in the evolution of the law on remuneration of directors.

Footnotes

1. **Re Toronto Humane Society** (1967), 60 O.R.(2d) 236.
2. **Corporations Act**, R.S.O. 1980, c.95 as amended.
3. **Charities Accounting Act**, R.S.O. 1980, c.65, as amended.
4. **Bray v Ford** [1896] A.C.44.
5. **Re The French Protestant Hospital**, [1951] 1 Ch.567
6. **Re The David Feldman Charitable Foundation**, (1987), 58 O.R.(2d) 626
7. **Re Faith Haven Bible Training Centre** (1988), 29 E.T.R. 198.

8. **Trustee Act**, R.S.O. 1980, .512 as amended.
9. **Re Harold G. Fox Education Fund v Public Trustee** (1989), 69 O.R.(2d) 742.
10. **C. Donna L. Campbell**, "Case comment; Remuneration of Directors" (1990), *The Philanthropist*, Winter 1990, Volume IX No.1.
11. **Income Tax Act**, S.C. 1970-71-12, 63 as amended.
12. **Religious Organizations Land Act**, R.S.O. 1980, c.448.
13. **Canada Corporations Act**, R.S.C. 1970, c C-32.

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UPDATE ON REMUNERATION OF DIRECTORS OF CHARITIES IN ONTARIO

The issue of remuneration of directors of charities in Ontario and in particular its application to ministers who are members of the controlling board of either incorporated or unincorporated churches has been the subject of ongoing discussions since the CCCC Bulletin No. 3 entitled "An Analysis of Remuneration of Directors of Charities in Ontario" was published in June of 1991 (Editor's note: Reprint copies of Bulletin No. 3 are available by contacting the CCCC office and should be referred to to obtain a full understanding of issues dealt with by this Bulletin.)

Specifically, there has been some debate concerning two matters: (i) whether ministers who are members of the controlling board of either incorporated churches or unincorporated churches (as opposed to being members of a board which deals only with spiritual matters), are subject to the same trustee-like fiduciary obligations as directors of non-church corporate charities and as such should not be put in a conflict of interest without court approval where they receive a salary while remaining members of the controlling board that oversees the financial and temporal affairs of their church; and (ii) assuming that the answer to (i) is yes, is there a simplified process of obtaining the requisite court approval or an alternative to securing court approval altogether?

In relation to the first matter, the determinative factor involves identification of the duties that are imposed at law upon a minister by virtue of his or her membership on the controlling board of a church. Since a church is a public charity the property of which is to be used exclusively in the fulfilment of its charitable objectives, a member of the controlling board of that church, whether the member be a lay person or a minister, has a fiduciary obligation not to place himself or herself in a position of a conflict of interest by receiving remuneration from that church. The legal form in which the church operates, ie, as a corporation or as an unincorporated association, should make little difference, since the church in both situations is a public charity. As such, the individuals who control the property and financial affairs of the church are imbued with these same trustee-like fiduciary obligations, whether those individuals are directors of an incorporated church or members of a board of an unincorporated church association.

While there have been no court decisions which have specifically addressed the issue of whether ministers of churches are subject to the same trustee-like fiduciary obligations as directors of corporate charities, it is quite possible that a court might decide that the same principles should apply in a church

context, whether the church be an incorporated entity or not. As a result, it would be prudent that all members of the controlling board of a church avoid receiving any form of remuneration from that church, whether those members be paid ministers or lay members of the church.

It has been suggested that a technique available to circumvent the conflict of interest of ministers remaining on the controlling board of a church while receiving a salary from it is to amend the letters patent or constitution of the church to specifically authorize such payments. This suggestion emanates from the obiter dicta (ie., the secondary comments of the court not essential to the primary decision) in Re Public Trustee and Toronto Humane Society (1987), 60 O.R.(2d) 236. At page 247 of the decision, the court stated that a director of a charity, in accordance with his fiduciary obligations, could only receive remuneration either by order of the court or by express provision in the trust document. Although the court in that case did not have to deal with the issue of amending trust documents, the suggestion has been made that where court approval is not pursued for whatever reason, there is still the option of amending the church "trust documents" to authorize payments to ministers who remain members of the controlling board of the church.

However, all charities, whether incorporated or not including churches, are of a public nature, the beneficiaries of which are the public at large as opposed to the individual members of that charity. As a result, unlike a private trust where the beneficiaries and/or the settlor may have the ability to amend the trust document to permit its trustees to receive payments from the trust property, no similar option is available for a public charity like a church. This is particularly so since it is questionable whether the letters patent of an incorporated church or the constitution of an unincorporated church in fact constitute a trust document in any event.

This issue was dealt with in part in the decision of Re French Hospital [1951], 1 Ch.567,. In that case, the French Hospital attempted to pass an amending bylaw to permit payments to some of its directors for professional services, specifically for the legal and surveying services provided by some of its board members. The court held that since the letters patent creating the hospital corporation (in that case issued in 1718) had not authorized the payment of remuneration of directors, it would be contrary to the fiduciary obligations of directors of the charity to permit such payments now. As such, it would be questionable and

probably ineffective for the members of a church to attempt on their own and without court approval to amend the letters patent or constitution of their church to authorize the continuing payment of a salary or other remuneration to their minister while the minister remains a member of the controlling board of the church. Although the courts may eventually determine a different approach in dealing with ministers who are members of the controlling board of a church, until that occurs, the current case law in Ontario suggests that the only option for churches that wish to have their minister remain on the controlling board of their church, (assuming that they do not want to amend the description of the role of the pastor in relation to the controlling board of the church, as discussed in CCCC Bulletin No. 3 in June, 1991), is to obtain court approval. This position is consistent with that enunciated by the Office of the Public Trustee of Ontario.

The continuing need for court approval leads to the second issue; whether there is a simplified process of obtaining court approval or possibly an alternative to having to secure court approval altogether. At the September, 1992 annual conference of the Canadian Council of Christian Charities held in Toronto, the previous Public Trustee, Hugh Paisley, Q.C., suggested an alternative to court approval whereby the Office of the Public Trustee might informally review and approve remuneration paid to an individual on the church board for that person's services as a church minister, provided that the church could substantiate that there were adequate safeguards and accountability measures in place.

In response to this proposal, the author on behalf of the Canadian Council of Christian Charities, communicated with the office of the Public Trustee and submitted a draft letter for consideration which was intended to form the basis of a precedent to be used by interested churches in Ontario, both incorporated and unincorporated, to obtain informal approval for the payment of remuneration to ministers who remained as members of the controlling board of their churches. However, due to the resignation of Hugh Paisley, Q.C., as Public Trustee of Ontario in December of 1992, a response to the form of the precedent letter was left in abeyance for a number of months. In the response received in June of 1993 from Eric Moore, Director and Legal Counsel of the Charitable Property Division of the Public Trustee's Office, he regrettably advised that notwithstanding the earlier comments that had been made by the previous Public Trustee, Mr. Hugh Paisley, Q.C., at the CCCC conference in September of 1992, there was no statutory or case law authority that could authorize the

Office of the Public Trustee to give approval for informal applications made to its office. The complete text of Mr. Moore's letter is included at the end of this bulletin as a schedule and should be read in full.

Although Mr. Moore's letter states that the Office of the Public Trustee is not aware of any case law or legal basis which would exempt ministers from the prohibition of receiving remuneration while remaining members of the controlling board of their church, his letter does suggest that there may be an alternative to formal and costly court application to obtain the requisite court approval. In this regard, the Canadian Council of Christian Charities is currently in the process of consulting with the Office of the Public Trustee to determine how an informal court application can be brought which would be both simple and inexpensive. Although such a procedure would still involve a court application, it is contemplated that the application would be based on a pre-approved precedent form and would not require any attendance by either a lawyer or by anyone else on behalf of the church unless circumstances warranted it.

While the issue of remuneration to ministers who are members of the controlling board of churches has been a difficult subject for many churches, it is a serious issue with the latent potential to be more problematic in the future. As such, it is prudent to deal with the issue sooner as opposed to later so that the applicable remedial steps can be taken. As a result of the co-operation being received from the Office of the Public Trustee of Ontario, it is hoped that a practical and inexpensive method to address the issue will be available in the near future for those churches that wish to have their ministers remain on the controlling board of their churches. Further information concerning this issue will be published in future CCCC Bulletins.

[See - Schedule A: Letter from the Public Trustee on next page.]

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SCHEDULE "A"
LETTER FROM THE OFFICE OF THE PUBLIC TRUSTEE

**MINISTRY OF THE ATTORNEY GENERAL
OFFICE OF THE PUBLIC TRUSTEE
145 Queen Street West
Toronto, Ontario, M5H 2N8**

03 June, 1993

*Mr. Terrance S. Carter
Wardlaw, Mullin, Carter & Thwaites
Barristers & Solicitors
235 Broadway
Orangeville, Ontario L9W 2Z5*

Dear Mr. Carter:

I am writing further to your correspondence and our telephone discussions regarding churches' board members being remunerated as the churches' ministers and the proposal that the Public Trustee might informally review and approve that remuneration. You have expressed the matter somewhat differently, as churches' paid ministers being on the churches' boards and the Public Trustee approving the paid ministers remaining on the boards, but the Public Trustee's concern is charitable property and, consequently, the remuneration, not board membership.

I apologize for the delay in responding but, as you know, a new Acting Public Trustee assumed her responsibilities only recently and needed some time to consider this issue.

As you know, the Courts have held that persons who are responsible for the administration and management of charitable property (directors of an incorporated charity, trustees of a charitable trust, etc.) may not be directly or indirectly remunerated in any capacity whatsoever without prior Court approval. The Courts have characterized payment of such remuneration without that prior approval as breach of trust, for which the persons responsible for the administration and management of the charitable property presumptively may be held jointly and severally personally liable. When the Courts determine, after the fact, that approval would have been given had it been sought before payment of remuneration, they may excuse what they continue to characterize as the breach of trust of paying the remuneration without prior Court approval, sometimes also making costs Orders adverse to the persons who ought to have requested the approval before the remuneration was paid.

It is this office's understanding of the Courts' decisions and, perhaps, implicit in the express requirement of prior Court approval, that any remuneration of any persons who are responsible for the administration and management of charitable property is to be exceptional rather than usual.

The Courts have not suggested that this law does not apply either to churches and their board members or, more particularly, to churches' board members being remunerated as the churches' ministers. The Courts might make such a legal distinction - although there are reasons why it should not be made - but, until the Courts do enunciate such a distinction, we must assume the general law applies to churches and their board members.

I understand that the Courts' decisions have generated concern in board of churches associated with the Canadian Council of Christian Charities. Apparently, many of these boards have remunerated and continue to remunerate board members for services as the churches' ministers, without Court approval of the remuneration or the Court's excusing the breach of trust in having paid such remuneration without prior Court approval. I should point out that the Courts' decisions apply generally to persons who are responsible for the administration and management of charitable property, not just to churches' board members.

I also understand that this issue was a topic of discussion at the September, 1992 conference of the Canadian Council of Christian Charities, which the previous Public Trustee, Hugh Paisley, Q.C., attended and addressed. I understand that Mr. Paisley suggested that, as an alternative to Court approval, this office might informally review and approve remuneration paid to an individual on a church's board for the individual's services as the churches' minister.

We have examined whether this office can provide these approvals and have concluded that it cannot. The Public Trustee has no apparent jurisdiction to approve remuneration and to incidentally excuse any breach of trust in respect of remuneration previously paid without Court approval. Determination of these issue is exclusively within the Courts' jurisdiction over trusts and charitable property.

The Public Trustee, naturally, has general views as to what the law may require or permit and brings those views to bear on specific charities law matters. For example, if the Public Trustee is satisfied that a charities' board members' application for Court approval of remuneration and to be excused from a breach of trust in paying remuneration without prior Court approval is proper, the Public Trustee usually advised in writing of non-objection, so the expense of legal counsels' attendance before the Court can be avoided. The Public Trustee's views are not determinative, they are the views of a governmental body with standing to enforce charities law, and they are not binding on the Courts. While the Courts have approved of the Public Trustee accommodating proper applications to the Courts for approval, they have never suggested that judicial determination could be dispensed with or that the Public Trustee could determine these issues on his or her own.

Obiter dicta in certain Court decisions, that "on notice to the Public Trustee approval might be given by fiat", appear to be the foundation for this suggestion that the Public Trustee has some undefined jurisdiction to give approvals outside Court. This is a misunderstanding of "fiat", an ancient term of legal practice that has fallen into disuse, which essentially means an uncontested, over-the-counter application to the Court for its formal authorization.

Clearly, there is a very great difference between the Public Trustee having general views on charities law's requirements, even making those general views publicly known, and taking positions on specific matters before the Courts, on the one hand, and purporting to determine specific matters outside of court, in effect as if a court, on the other.

While there may be a case for an alternative to court determination of these issues, I am sure you will appreciate that it may also be thought most undesirable that these issues should be purportedly determined in government officials' offices rather than in public. What is at stake, after all, is charitable property that none of the parties to the issues own except for the purpose of applying that property to charitable purposes.

I am sorry for the confusion caused to you and your colleges and hope that this letter now clarifies the issue for you. I would be pleased to meet with you and representatives of the Canadian Council of Christian Charities to further discuss these issues and how they might be addressed.

Yours truly,

Eric Moore
Director and Legal Counsel
Charitable Property Division

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LEGAL RISK MANAGEMENT CHECKLIST FOR CHARITIES

By Terrance S. Carter, B.A., LL.B. and Jacqueline M. Connor, B.A., LL.B.

A. INTRODUCTION

The operations of charities have become complex and the possibility of litigation against charities occurring as a result of their operation is greater than ever before. The exposure of charities to liability goes further than the loss of charitable assets and/or the insolvency or winding up of a charity. Directors of charities may also face possible legal action against them personally by donors, members, third parties and governmental authorities for breach of their fiduciary duties or even breach of trust in failing to adequately protect or apply the assets of a charity. Given the increased risks to both charities and their directors, there is an increasing need to protect charitable assets from lawsuits and creditors on a pro-active basis.

The purpose of this legal risk management checklist is to provide a brief outline of some of the more important issues that directors and/or executive directors of a charity, whether incorporated or not, may need to consider in ensuring due diligence in the operation of the charity, as well as an overview of liability exposure faced by charities in Canada and some of the steps available to protect charities against such risks. As it is impossible to adequately address all aspects of liabilities being faced by charities and the pro-active steps which need to be taken to protect against such risks, this checklist provides only a general overview of some of the considerations that charities and their board of directors may need to be aware of to both identify and manage legal risks. Some of the comments and recommended procedures contained in this legal risk management checklist may also be applicable to not-for-profit non-charitable organizations.

B. IDENTIFICATION AND MANAGEMENT OF LEGAL RISKS

1. Is charitable status needed?
 - a) Do charitable receipts need to be issued?
 - b) Can the organization work under the auspices of an existing charity?
 - c) Business donors may not require charitable receipts.
2. General overview of organizational & legal documentation
 - a) Identify the existence and location of key organizational documents
 - Develop an inventory of key documents
 - Maintain central location for key documents
 - b) Identify key organizational documents for an unincorporated charity
 - Constitution and amendments, if applicable
 - Policy statements, if applicable
 - c) Key organizational documents for a corporate charity
 - Letters patent and supplementary letters patent, if applicable
 - Membership covenant and mission statement, if applicable
 - By-laws and resolutions
 - Directors, members and debt registers
 - Copies of government filings
 - d) Determining other key legal documents
 - Leases, deeds and mortgages
 - Agency, association and joint venture agreements
 - License agreements
 - Business name, trade-marks and domain names
 - Charitable registration number
 - Policy statements, i.e. sexual abuse policy statement
 - Insurance policies

3. Review of key documents for unincorporated charity

- a) Are there objects stated in the constitution and are they exclusively charitable?
- b) Do constitutional documents correctly reflect how the organization is actually structured and operated?
- c) Is a copy of the constitution filed with the appropriate government agencies, i.e. with Canada Revenue Agency ("CRA") and the Public Guardian and Trustee ("PGT")?

4. Review of corporate structure

- a) Review of letters patent
 - Is the name in the letters patent the correct name of the charity consistent with the charitable objects of the charity?
 - Are its objects exclusively charitable?
 - Are the activities carried out by the charity authorized by its charitable objects?
 - Is the dissolution clause complementary to the charitable objects?
- b) Review of supplementary letters patent
 - Has there been a change of corporate name?
 - Has there been a change of corporate objects?
 - What is the effect of a change of objects upon existing charitable property?
- c) Letters patent of amalgamation (only for Ontario corporations)
 - Are the charitable objects the same or similar?
 - What are the terms of the amalgamation agreement?
 - Is the existing charitable property held in trust for the charitable objects of the previous charitable corporations?
- d) Need to review corporate by-law for basic terms, such as
 - Do provisions conflict with letters patent?
 - Do provisions reflect changes to applicable corporate legislation?
 - Is there an adequate indemnification provision?
 - Has the indemnification provision been authorized in accordance with the *Charities Accounting Act* (Ontario)?
 - Are the by-law amendment procedures consistent with corporate legislation?

- e) Was the initial corporate organization of the charity properly done?
- f) Was there a documented transfer of assets and liabilities on incorporation?
- g) Are the records of board decisions and/or membership meetings complete?
- h) Was there adequate board and/or members' authorization for indebtedness?
- i) Have corporate records been properly maintained?
- j) Have necessary corporate filings and registrations been kept up to date?
 - Ontario Corporations:
 - ♦ Initial Notice and Notice of Change - Form 1
 - ♦ *Business Name Act* (Ontario) registrations
 - ♦ Mandatory reporting to Public Guardian and Trustee
 - Canada Corporations:
 - ♦ Annual Summary (Form 3) – Canada
 - ♦ Extra-Provincial Initial Notice (Form 2) – Ontario
 - ♦ *Business Name Act* (Ontario) registrations
 - ♦ Mandatory report to Public Guardian and Trustee
 - Does the charity operate and/or fundraise in any other provinces? If so, there may need to be registration as an extra-provincial corporation and/or fundraiser in other provinces.
- k) Has there been loss of corporate status for failure to maintain government filings?
- l) Is the charity aware of the importance of proper use of corporate name and operating names?
- m) Has the charity developed and implemented a policy statement on child abuse, sexual abuse, sexual harassment or bullying, where applicable?

C. UTILIZING MULTIPLE CHARITABLE CORPORATIONS

1. Should the charity consider utilizing multiple charitable corporations for its high risk activities in order to reduce liability exposure?
2. Should the charity consider establishing and utilizing a parallel foundation for either fundraising or protection of charitable assets?
3. Has consideration been given to balancing indirect control of multiple corporations with issues involving cross over liability?
4. Has consideration been given to implementing indirect control through contracts and/or licensing agreements as an alternative to corporate control?

D. BOARD MANAGEMENT ISSUES

5. Is the charity able to identify which group is in charge of the charity?
 - a) i.e., Where does the de facto control of the charity lie? Is it with a board, a committee or executive staff?
 - b) Is board authority recognized by the membership?
6. Are there clearly defined lines of authority between the board and the executive staff?
7. Does the board meet on a regular basis and do all directors regularly attend?
8. Does an independent audit committee need to be established to review financial statements and the auditors' report?
9. Is there adequate communication of board responsibilities to existing and future board members?
 - a) Need to create a board binder of all corporate documents, as well as an explanation of the general operations of the corporation as a charity and the board of directors' legal duties and liabilities
 - b) Need to provide regular updates on changes in the law to board members

E. REDUCING BOARD LIABILITY

1. Do any directors receive direct or indirect remuneration or other financial benefit from the charity in contravention of their fiduciary duties?
2. Has the charity adequately indemnified its directors and officers in accordance with the *Charities Accounting Act* (Ontario)?
3. Is there corporate authority to acquire directors' and officers' liability insurance in accordance with the requirements of the *Charities Accounting Act* (Ontario)?
4. Has the board delegated too much responsibility to executive staff by restricting itself to policy decisions only without careful and ongoing monitoring and review?
5. Should the charity consider reducing the size of the board to limit the number of people who are exposed to liability as directors?
6. Is the charity effectively making use of committees as an alternative to a large board of directors?

7. Should the charity consider implementing an advisory board to complement the board of directors without a corresponding exposure to liability?
8. Has the charity established a comprehensive due diligence review procedure by establishing and utilizing the appropriate legal risk management checklists?
9. Has a risk management committee of the board been established?

F. INSURANCE CONSIDERATIONS

1. Has the charity maintained a historical record of its insurance coverage in the event of a future claim?
2. Is there occurrence-based or claims-made insurance coverage for sexual abuse?
3. Has the charity provided full written disclosure of all risks to its insurer to avoid denial of coverage?
4. Does the charity request regular reports from its insurance broker on existing coverage, exclusions from coverage and recommendations to enhance coverage?
5. Is there a regular review of the adequacy and extent of general liability coverage and property insurance?
6. Is there directors' and officers' liability coverage in place and is it reviewed on a regular basis?

G. THIRD PARTY USE OF CHARITABLE PROPERTY

1. Is the charity aware of the potential liability exposure in permitting third parties to use its property?
2. Has the charity developed and implemented a third party property use agreement with appropriate indemnification?
3. Does the charity require evidence of liability insurance from third party users of its facilities?
4. Does the charity charge appropriate fair market rental fees to non-charities?

H. REAL PROPERTY ISSUES

1. Has the charity identified and evaluated the extent of liability exposure from contamination?
2. Has the charity addressed and rectified encroachments with neighbouring lands?
3. Are there charitable trust restrictions in old trust deeds on title and, if so, are they being complied with?

4. Are municipal zoning and legal non-conforming uses being complied with?
5. Could the charity be forced to sell surplus land under *Charities Accounting Act* (Ontario) if it has been held for more than three years?
6. Has the charity reviewed its entitlement to possible exemption from municipal property taxation, or reviewed its assessment for accuracy, or its entitlement to a possible rebate of property taxes?

I. INTELLECTUAL PROPERTY ISSUES

1. Does the charity need to register any of its key names and/or logos as trade-marks?
 - a) Identify trade-marks
 - b) Protect trade-marks by registration
 - c) Use trade-marks in conjunction with appropriate markings
 - d) Ensure that any third parties using trade-marks enter into a trade-mark licensing agreement
2. Has the charity protected its trade-marks by multiple corresponding domain names?
3. Who owns the copyright for publications of the charity?
4. Should copyright be registered, assigned or licensed?

J. EMPLOYMENT AND VOLUNTEER MATTERS

1. Has the charity developed appropriate hiring policies and practices for its employees?
2. Is there need for an employment contract with employees?
3. Is there a need to develop and adopt policy statements and/or manuals for employees as well as volunteers?
4. Do employees and volunteers who deal with children need to be screened and supervised, together with criminal record checks, in accordance with an appropriate sexual abuse policy statement?
5. Is there need for a discipline procedure for employees and/or volunteer members?
6. Is the charity aware of and complying with applicable statutory requirements, such as pay equity, employment standards, human rights legislation, privacy legislation and occupational health and safety prerequisites?

K. CHARITABLE AND FUNDRAISING ACTIVITIES

1. Has the charity ensured that its charitable activities are done in accordance with its charitable objects?
2. Are fundraising and/or administrative costs kept within the 80/20 disbursement quota?
3. Has provincial fundraising legislation, where applicable, been complied with?
4. Have fundraising programmes been reviewed by legal counsel?
5. Are donors' rights to require accountability respected, particularly rights under the *Charities Accounting Act* (Ontario)?
6. Does the charity have a privacy policy in place in order to protect donors' rights?
7. Do sponsorship agreements include appropriate control over use of trade-marks?

L. FISCAL MANAGEMENT ISSUES

1. Are all salaries, benefits and statutory deductions being paid by the charity on a timely basis with appropriate reports to the board of directors?
2. Is the charity operating with a deficit and, if so, for how long?
3. How is the deficit being funded?
4. Has a sinking fund been established to retire debt of the charity?
5. Are investments being offered to the public without full disclosure to potential investors?
6. Are charitable funds being used to fund separate business operations of the charity?
7. Is there violation of the *Charitable Gifts Act* (Ontario) by the charity owning more than 10% of a business?

M. INVESTMENT ISSUES

1. What investment powers apply to surplus funds of the charity?
 - a) Prudent investor rule under the *Trustee Act* (Ontario) will generally apply
 - b) However, specific investment powers may sometimes apply as contained in
 - Letters patent or supplementary letters patent
 - Endowment and gift agreements
 - Testamentary gifts
2. Does the charity need and/or have an investment policy?
 - a) Documenting compliance with prudent investor rule
 - b) Establishing requirements for delegation of investment decision making
 - c) Prohibition on sub-delegation

N. DONOR RESTRICTED TRUST FUNDS

1. Are there donor restricted trust funds being held by the charity?
 - a) Building funds
 - b) Endowment funds (perpetual)
 - c) Ten year gifts under the *Income Tax Act*
 - d) Special project funds
2. Are restricted funds being used only in accordance with applicable restrictions?
3. Are restricted funds being used in whole or in part for general operational purposes or are they being borrowed against?
4. Are restricted funds segregated from operating funds?
5. Is there compliance under the *Charities Accounting Act* (Ontario) to co-mingle restricted funds for investment purposes?
6. Is the board of the charity aware of the consequences of breach of trust for failing to comply with restricted funds?

O. MAINTAINING CHARITABLE REGISTRATION

1. Is the legal name of the charity and/or its operating name consistent with the records of CRA?
2. Does CRA have the current head office address of the charity?
3. Has the charity obtained Quebec charitable status for fundraising in Quebec?
4. Does the charity submit its annual charity information return (Form T3010A) within 6 months of the financial year end of a charity?
5. Has the charity complied with its disbursement quota?
6. Is the charity involved in political activities within CRA limits?
7. Is the charity involved in related business activities within CRA guidelines?
8. Is the charity aware of the applicable rules concerning the issuance of charitable receipts including the new rules on split receipting and anti-tax shelter provisions?
9. Are agency and/or joint venture relationships with non-qualified donees properly documented and implemented?
10. Does the board of directors review the annual return (T3010A) for the charity before it is filed each year?
11. Is the charity prepared for a spot audit by CRA?

P. NATIONAL AND/OR INTERNATIONAL RELATIONSHIPS

1. Are relationships with national organizations and/or subsidiary chapters adequately documented with specific reference to control trade-marks?
2. Are relationships between national and international organizations adequately documented in order to effect an international operation?
3. Has the ownership of trade-marks and/or copyrights been determined and documented?
4. Have trade-marks and copyrights been adequately protected and licensed in Canada and in other countries as necessary?

Q. ANTI-TERRORISM LEGISLATION

1. Does the charity carry on operations that may require it to be in compliance with anti-terrorism legislation?
 - a) International operations
 - b) Domestic operations
2. Has the charity undertaken appropriate due diligence procedures in complying with anti-terrorism legislation?
 - a) Development of an anti-terrorism policy statement
 - b) Development of resource materials on anti-terrorism legislation
 - c) Requiring disclosure statements for board members and staff
 - d) Evaluating all charitable programs for compliance
 - e) Requiring disclosure statements from affiliated charities, third party agents and/or partners and conducting appropriate inquiries
 - f) Determining when to make inquiries of donors
 - g) Conducting due diligence internet searches on directors, officers and agents
3. Are directors aware of risks associated with failing to comply with anti-terrorism legislation?
 - a) Loss of charitable status
 - b) Personal liability in civil law
 - c) Possible criminal law sanction

CARTERS.ca**CARTER & ASSOCIATES**
BARRISTERS, SOLICITORS & TRADE-MARK AGENT
Affiliated with Fasken Martineau DuMoulin LLP211 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**

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Industry Canada

Corporations
Directorate9th Floor
Jean Edmonds Towers, South
365 Laurier Ave. West
Ottawa, Ontario
K1A 0C8

Industrie Canada

Direction générale
des corporations9ième étage
Tours Jean Edmonds, sud
365, av. Laurier ouest
Ottawa (Ontario)
K1A 0C8

FORM 3
ANNUAL SUMMARY
(Section 133)

FORMULE 3
SOMMAIRE ANNUEL
(Article 133)

As of 31st March Au 31 mars

A Name and Mailing Address Nom et adresse postale de la compagnie	B Postal Address of Head Office, if different from A Adresse postale du siège social si différente de A
--	--

C Incorporated by - Incorporée par <input type="checkbox"/> Letters Patent <input type="checkbox"/> Special Act Lettres - patentes Loi spéciale	D Date of incorporation Date de l'incorporation	E Last annual meeting of shareholders or members held prior to April 1st Dernière assemblée annuelle des actionnaires ou membres tenue avant le 1er avril Date Place - Lieu
--	--	--

F Names and addresses of the persons who at the date of the return are the Directors of the company. Variations from the authorized number of Directors should be explained.	Noms et adresses des personnes qui à la date du rapport, sont administrateurs de la compagnie. Un changement dans le nombre d'administrateurs devrait être expliqué.
--	--

NAMES AND COMPLETE POSTAL ADDRESSES - NOMS ET ADRESSES POSTALES COMPLÈTES

1	9
2	10
3	11
4	12
5	G Name and complete postal address of the auditor of the Company Nom et adresse postale complète du vérificateur de la compagnie
6	
7	Signature (Officer or Director) Signature (Fonctionnaire ou administrateur) Title - Titre
8	Telephone No. - N° de téléphone Date
	Received - Reçu Date
IC 3151 (1998/04)	DEPARTMENT ONLY - MINISTÈRE SEULEMENT Date received - Date de réception Validation

Canada

Key Code - Code clé	Cheque - Chèque	Amount - Montant
---------------------	-----------------	------------------

Canada Corporations Act
ANNUAL SUMMARY
FORM 3
INSTRUCTIONS

Loi sur les corporations canadiennes

SOMMAIRE ANNUEL
FORMULE 3
INSTRUCTIONS

1. APPLICATION

This annual summary must be filed on or before the first day of June each year by the following corporations:

- a) companies with share capital incorporated under Part I of the Canada Corporations Act;
- b) companies with share capital incorporated by special act of Parliament;
- c) corporations without share capital incorporated under Part II of the Canada Corporations Act; and
- d) corporations without share capital incorporated by special act of Parliament.

The only companies or corporations exempted are those incorporated after the 1st day of March of the current year.

2. PENALTIES [Section 133(3)]

Default - A company that makes default in complying with any requirement of this section is guilty of an offence and is liable on summary conviction to a fine of not less than twenty dollars and not more than one hundred dollars for each day during which the default continues; and every director or officer who knowingly authorized, permitted or acquiesced in any such default is guilty of an offence and is liable on summary conviction to a like fine.

3. BYLAWS

Bylaws changing the location of the head office and the number of directors are regulated by sections 24 and 89 of the Canada Corporations Act. Such bylaws must be filed with this department.

4. FEES

The filing fee is \$30.00.

Completed documents in duplicate and fees payable to the Receiver General of Canada, are to be sent to:

**The Director, Corporations Directorate
Industry Canada
9th Floor
Jean Edmonds Towers, South
365 Laurier Ave. West
Ottawa, Ontario
K1A 0C8**

1. APPLICATION

Ce sommaire doit être déposé le ou avant le 1er juin de chaque année par :

- a) les compagnies avec capital-actions constituées en vertu de la partie I de la Loi sur les corporations canadiennes;
- b) les compagnies avec capital-actions constituées par loi spéciale du Parlement;
- c) les corporations sans capital-actions constituées en vertu de la partie II de la Loi sur les corporations canadiennes; et
- d) les corporations sans capital-actions constituées par loi spéciale du Parlement.

Les seules compagnies ou corporations exemptées sont celles constituées après le 1er mars de l'année courante.

2. SANCTIONS [Article 133(3)]

Une compagnie qui omet de se conformer aux prescriptions du présent article est coupable d'une infraction et passible, sur déclaration sommaire de culpabilité, d'une amende d'au moins vingt dollars et d'au plus cent dollars pour chaque jour que dure cette omission; et tout administrateur ou fonctionnaire qui, sciemment, a autorisé ou permis cette omission ou y a consenti est coupable d'une infraction et passible, sur déclaration sommaire de culpabilité, d'une amende semblable.

3. RÈGLEMENT

Les règlements qui changent l'endroit du siège social ainsi que le nombre d'administrateurs sont régis par les articles 24 et 89 de la Loi sur les corporations canadiennes. Ces règlements doivent être déposés à notre ministère.

4. HONORAIRE DE DÉPÔT

Le droit est de \$30.00

Les documents complétés en duplique et les droits payables au Receveur Général du Canada, doivent être envoyés à :

**Le Directeur, Direction générale des Corporations
Industrie Canada
9ième étage
Tours Jean Edmonds, sud
365, av. Laurier ouest
Ottawa (Ontario)
K1A 0C8**



Ministry of
Consumer and
Business Services

Ministère des Services
aux consommateurs
et aux entreprises

Companies and Personal
Property Security Branch
393 University Ave, Suite 200
Toronto ON M5G 2M2

Direction des compagnies
et des sûretés mobilières
393, av. University, bureau 200
Toronto ON M5G 2M2

Page 1/Page 1

FORM 2- EXTRA PROVINCIAL CORPORATIONS/

FORMULE 2 - PERSONNES MORALES EXTRA-PROVINCIALES

Please type or print all information in block capital letters using black ink.
Prière de dactylographier les renseignements ou de les écrire en caractères
d'imprimerie à l'encre noire.

INITIAL RETURN/NOTICE OF CHANGE /

Corporations Information Act

RAPPORT INITIAL/AVIS DE MODIFICATION

Loi sur les renseignements exigés des personnes morales

For Ministry Use Only À l'usage du ministère seulement	2. Ontario Corporation Number Numéro matricole de la personne moraile en Ontario	3. Date of Incorporation or Amalgamation Date de constitution, ou fusion Year/Année Month/Mois Day/Jour	1. Business Corporations/ Société par actions Not-For-Profit Corporation/ Personne morale sans but lucratif	Initial Return Rapport initial	Notice of Change Avis de modification
4. Corporation Name Including Punctuation/Raison sociale de la personne morale, y compris la ponctuation			For Ministry Use Only À l'usage du ministère seulement		
5. Address of Registered or Head Office/Adresse du siège social c/o / a/s			For Ministry Use Only À l'usage du ministère seulement		
Street No./Nº civique	Street Name/Nom de la rue	Suite/Bureau			
Street Name (cont'd)/Nom de la rue (suite)					
City/Town/Ville	Province, State/Province, État				
Country/Pays	Postal Code/Code postal				
6. Address of Principal Office in Ontario/Adresse du bureau principal en Ontario Street No./Nº civique			<input type="checkbox"/> Same as Above/ Même que celle ci-dessus	<input type="checkbox"/> Not Applicable/ Ne s'applique pas	
Street Name/Nom de la rue			Suite/Bureau		
Street Name (cont'd)/Nom de la rue (suite)					
City/Town/Ville	ONTARIO, CANADA				
Postal Code/Code postal					
7. Language of Preference Langue préférée			<input type="checkbox"/> English/Anglais	<input type="checkbox"/> French/Français	
8. Former Corporation Name if applicable/Raison sociale antérieure de la personne morale, le cas échéant.			<input type="checkbox"/> Not Applicable/ Ne s'applique pas		
9. Date commenced business activity in Ontario/ Date de début des activités en Ontario Year/Année Month/Mois Day/Jour			10. Date ceased carrying on business activity in Ontario/ Date de cessation des activités en Ontario Year/Année Month/Mois Day/Jour <input type="checkbox"/> Not Applicable/ Ne s'applique pas		
11. Jurisdiction of Incorporation/Amalgamation or Continuation. (Check appropriate box) Do not check more than one box. Ressort de constitution/de fusion ou prorogation (cocher la case pertinente). Ne cocher qu'une seule case.					
1. <input type="checkbox"/> ALBERTA	2. <input type="checkbox"/> CANADA	3. <input type="checkbox"/> NEW BRUNSWICK	4. <input type="checkbox"/> NOVA SCOTIA	5. <input type="checkbox"/> QUEBEC	6. <input type="checkbox"/> YUKON
ALBERTA	CANADA	NOUVEAU- BRUNSWICK	NOUVELLE- ÉCOSSE	QUÉBEC	YUKON
7. <input type="checkbox"/> BRITISH COLUMBIA					
8. <input type="checkbox"/> MANITOBA	9. <input type="checkbox"/> NEWFOUNDLAND	10. <input type="checkbox"/> PRINCE EDWARD	11. <input type="checkbox"/> SASKATCHEWAN	12. <input type="checkbox"/> NORTHWEST TERRITORIES	13. <input type="checkbox"/> NUNAVUT
MANITOBA	TERRE-NEUVE	ISLAND ÎLE-DU-PRINCE- ÉDOUARD	SASKATCHEWAN	TERRITOIRES DU NORD-OUEST	NUNAVUT
If other please specify / Si autre, veuillez préciser					

This information is being collected under the authority of The Corporations Information Act for the purpose of maintaining a public data base of corporate information. /
La Loi sur les renseignements exigés des personnes morales autorise la collecte de ces renseignements pour constituer une banque de données accessible au public.

FOR MINISTRY USE ONLY/À L'USAGE DU MINISTÈRE

07201 (02/2002)

See deficiency letter enclosed/Voir l'avis d'insuffisance ci-joint

Please type or print all information in block capital letters using black ink.

Prière de dactylographier les renseignements ou de les écrire en caractères d'imprimerie à l'encre noire.

FOR MINISTRY USE ONLY À L'USAGE DU MINISTÈRE SEULEMENT	Ontario Corporation Number/ Numéro matriculé de la personne morale en Ontario	Date of Incorporation or Amalgamation Date de constitution ou fusion Year/Année Month/Mois Day/Jour	For Ministry Use Only À l'usage du ministère seulement
--	---	---	---

12. Name and Office Address of the Chief Officer/Manager in Ontario/
Nom et adresse du bureau du directeur général/gérant en Ontario

Last Name/Nom de famille

First Name/Prénom

Not Applicable/Ne s'applique pas

Middle Name/Autres prénoms

Street Number/Numéro civique

Street Name/Nom de la rue

Street Name (cont'd)/Nom de la rue (suite)

Suite/Bureau

City/Town/Ville

Postal Code/Code postal

ONTARIO, CANADA

Date Effective
Date d'entrée en vigueur

Year/Année Month/Mois Day/Jour

Date Ceased
Date de cessation
des fonctions

Year/Année Month/Mois Day/Jour

13. Name and Office Address of Agent for Service in Ontario - Check One box

Nom et adresse du bureau du mandataire aux fins de signification en Ontario. Cocher la case pertinente.

Not Applicable/Ne s'applique pas

Only applies to foreign business corporations
S'applique seulement aux personnes morales étrangères

a) Individual or
un particulier ou b) Corporation
une personne morale

Complete appropriate sections below/Remplir les parties pertinentes ci-dessous.

a) Individual Name/Nom du particulier

Last Name/Nom de famille

First Name/Prénom

Middle Name/Autres prénoms

b) Ontario Corporation Number/Numéro matriculé de la personne morale en Ontario

Corporation Name including punctuation/Raison sociale, y compris la ponctuation

c) Address/Adresse

c/o / a/s

Street No./N° civique

Street Name/Nom de la rue

Suite/Bureau

Street Name (cont'd)/Nom de la rue (suite)

City/Town/Ville

Postal Code/Code postal

ONTARIO, CANADA

14. (Print or type name in full of the person authorizing filing./ Dactylographier ou
inscrire le prénom et le nom en caractères d'imprimerie de la personne qui
autorise l'enregistrement.

I/
Je

Check appropriate box /
Cocher la case pertinente

D) Director/Administrator

O) Officer/Dirigeant

P) Other individual having knowledge of the affairs
of the Corporation/Autre personne ayant
connaissance des activités de la personne morale

certify that the information set out herein, is true and correct.
atteste que les renseignements précités sont véridiques et exacts.

NOTE/REMARQUE: Section 13 and 14 of the Corporations Information Act provide penalties for making false or misleading statements, or omissions.
Les articles 13 et 14 de la Loi sur les renseignements exigés des personnes morales prévoient des peines en cas de déclaration fausse ou trompeuse, ou d'omission.

This information is being collected under the authority of The Corporations Information Act for the purpose of maintaining a public data base of corporate information, /
La Loi sur les renseignements exigés des personnes morales autorise la collecte de ces renseignements pour constituer une banque de données accessible au public.

FOR MINISTRY USE ONLY/À L'USAGE DU MINISTÈRE



See deficiency letter enclosed/Voir l'avis d'insuffisance ci-joint



Ministry of
Consumer and
Business Services

Companies and Personal
Property Security Branch

393 University Ave, Suite 200
Toronto ON M5G 2M2

FORM 2

**Initial Return/Notice of Change
by an Extra Provincial Corporation**

Corporations Information Act

Instructions for Completion

The attached form is to be used by a corporation that is incorporated, continued or amalgamated **in a jurisdiction other than Ontario**:

- (A) as an Initial Return to be filed within 60 days of the date of commencing business activity in Ontario;
OR
(B) as a Notice of Change to be filed within 15 days after the change or changes take place in the information previously filed.

A duplicate copy of this return/notice must be kept at the corporation's registered office or principal place of business in Ontario and must be available for examination.

Please type or print all information **in block capital letters using black ink**.

All items on Form 2, page 1 and page 2 must be completed in full, unless otherwise indicated.

Documents filed with the Companies and Personal Property Security Branch must be neat, legible and suitable for microfilming. Documents that do not conform to this standard will be returned to the corporation.

All dates must be completed using the following numeric format:

January 3, 1999 would be:

Year	Month	Day
1999	01	03

Addresses must be completed in full, including the street number and name, the city or town and the unit or suite number, if applicable. The province or state, country and postal code must be included when required. **Do not use abbreviations for provinces, states or countries. Post office box numbers cannot be used.**

Please note that any handwriting or typing outside the designated boxes will be ignored; it is not part of the approved form.

FEE

There is no fee for the filing of an initial return or notice of change.

PENALTIES

Sections 13 and 14 of the **Corporations Information Act** provide penalties for contravening the Act or Regulations.

Section 18(1) of the Act provides that a corporation that is in default of a requirement under this Act to file a return/notice or that has unpaid fees or penalties is not capable of maintaining a proceeding in a court in Ontario in respect of the business carried on by the corporation except with leave of the court.



Ministère des Services
aux consommateurs
et aux entreprises

Direction des compagnies
et des sûretés mobilières

393, av. University, bureau 200
Toronto ON M5G 2M2

FORMULE 2

Rapport initial/Avis de modification

par les personnes morales extra-provinciales

Loi sur les renseignements exigés des personnes morales

Directives pour remplir la formule

La formule ci-jointe est à l'usage des personnes morales constituées, prorogées ou fusionnées **dans tout ressort autre que l'Ontario:**

- OU**
- A) soit à titre de rapport initial, et elle doit être déposée dans les soixante (60) jours du début des activités en Ontario;
 - B) soit à titre d'avis de modification, et elle doit être déposée dans les quinze (15) jours qui suivent toute modification aux renseignements produits antérieurement.

Un double du rapport est conservé au bureau d'affaires principal de la personne morale en Ontario et doit être disponible pour examen.

Prière de dactylographier les renseignements ou de les écrire **en caractères d'imprimerie à l'encre noire.**

Toutes les rubriques de la formule 2, pages 1 et 2, doivent être dûment remplies, sauf indication contraire.

Les documents déposés auprès de la Direction des compagnies et des sûretés mobilières sont microfilmés; ils doivent, par conséquent, être propres, lisibles et adaptés à cette opération. Les documents qui ne répondent pas à cette norme seront renvoyés à la personne morale.

Les **dates** doivent être écrites dans l'ordre numérique suivant :

Par exemple :

le 3 janvier 1999 s'écrirait

année	mois	jour
1999	01	03

Indiquer **l'adresse** au complet, y compris le numéro civique et le nom de la rue, la ville, le numéro d'unité ou de bureau, le cas échéant. Inclure également la province ou l'État, le pays et le code postal, le cas échéant. **Ne pas utiliser d'abréviations pour la province, l'État ou le pays. Une case postale ne constitue pas une adresse.**

NOTE : Tous renseignements inscrits au stylo ou à la machine hors des cases ou des sections désignées ne seront pas pris en compte.

DROITS

Aucun droit n'est exigible pour le dépôt d'un rapport initial, ni pour un avis de modification.

INFRACTIONS ET PEINES

Les articles 13 et 14 de la **Loi sur les renseignements exigés des personnes morales** prévoient des peines pour la contravention à la présente loi ou à ses règlements d'application.

Le paragraphe 18 (1) prévoit que la personne morale qui a omis de déposer un rapport/avis conformément aux exigences de la présente loi ou d'acquitter des droits ou pénalités ne peut introduire ni continuer une instance devant un tribunal de l'Ontario à l'égard des activités exercées par cette personne morale, sauf avec l'autorisation du tribunal.

COMPLETION OF PAGE 1

- Item 1:** **Initial Return/Notice of Change by a business corporation/not-for-profit corporation:**
Indicate whether an extra-provincial corporation is filing an Initial Return or a Notice of Change by placing an **X** in the appropriate box.
(Choose **one** box only.)
- Item 2:** **Ontario Corporation Number:**
Insert the Ontario Corporation Number. This number appears in the top right corner of the Extra-Provincial Licence issued to the corporation.
If the corporation does not require a licence, the number will be assigned upon filing the Initial Return.
- Item 3:** **Date of Incorporation or Amalgamation:**
Insert the full date of incorporation or amalgamation, whichever is the most recent.
Where an amalgamation has taken place since last filing, please submit a photocopy of the Certificate of Amalgamation with Form 2.
- Item 4:** **Corporation Name:**
Insert the name of the corporation, including punctuation and spacing.
- Item 5:** **Address of Registered or Head Office:**
Do not leave this blank.
Complete the full address of the Registered or Head Office. Post Office box numbers cannot be used. A street address or lot and concession number is required.
- Item 6:** **Address of Principal Office in Ontario:**
If the address is the same as the address of the Registered or Head Office, place an **X** in the box provided.
If this item is not applicable, place an **X** in the box provided.
If the address of the principal office is different from the address of the registered or head office, complete this item in full.
- Item 7:** **Language of Preference:**
Specify whether you prefer to receive correspondence from Companies and Personal Property Security Branch in English or French.
- Item 8:** **Former Corporation Name:**
Insert the most recent former name of the corporation, including spacing and punctuation.
- Item 9:** **Date Commenced Business Activity in Ontario:**
Insert the date the corporation commenced business activity in Ontario.
- Item 10:** **Date Ceased Carrying on Business Activity in Ontario:**
Insert the complete date on which the corporation ceased carrying on business activity in Ontario.
If not applicable, place an **X** in the box provided.
- Item 11:** **Jurisdiction of Incorporation, Amalgamation or Continuation:**
The jurisdiction of incorporation, continuation or amalgamation (whichever is most recent) must be indicated by placing an **X** in the appropriate box. If the jurisdiction is one other than those listed, set out the name of the jurisdiction in full in the space provided.

COMPLETION OF PAGE 2

Complete the Ontario Corporation Number and the Date of Incorporation or Amalgamation (whichever is most recent).

- Item 12:** **Name and office address of the Chief Officer/Manager in Ontario:**
If this item is not applicable to your corporation, place an **X** in the box provided.
If applicable, complete the name in full, providing the last name, first name, and middle name/initials. Complete the full office address of the Chief Officer/Manager in Ontario.
- Date Effective:**
Insert the date the Chief Officer/Manager in Ontario assumed his/her position.
- Date Ceased:**
Insert the date the Chief Officer/Manager in Ontario ceased to hold his/her position.
If the date ceased has been completed, the date the Chief Officer/Manager assumed his/her position must also be completed.
- Item 13:** **Name and office address of Agent for Service in Ontario:**
If the corporation is incorporated outside of Canada, an agent for service is required.
If the requirement for an agent for service is not applicable, place an **X** in the box provided.
If Item 14 is applicable, indicate if the agent is an individual or a corporation with its registered office address in Ontario. If the agent is an individual, complete section (a) his/her last name, first name, middle name/initials and section (c) full address.

If the agent is a corporation, complete section (b) the Ontario Corporation Number and the full Corporation name, including punctuation and spacing, and section (c) full address.

Please Note: For a foreign corporation, (business corporation incorporated or continued under the laws of a jurisdiction outside of Canada), to change information about an Agent for Service, a completed Form 2, Revised Appointment of Agent for Service under the Extra-Provincial Corporations Act (Ontario) must accompany the document you are presently completing.

Not for-profit corporations incorporated outside of Canada do not require an Agent for Service and therefore a Revised Appointment of Agent for Service is not required for these corporations.

- Item 14:** **Person Authorizing Filing:**
Print the name of the person authorizing this filing. This must be a director, officer or other individual having knowledge of the affairs of the corporation. The name of the individual must be completed in the box provided and an **X** must be placed in the appropriate box to indicate whether the individual is a director, officer or other individual having knowledge of the affairs of the corporation.

The completed form must be mailed or delivered to:

Ministry of Consumer and Business Services
Companies and Personal Property Security Branch
393 University Avenue Suite 200
Toronto ON M5G 2M2

COMMENT REMPLIR LA PAGE 1

- Rubrique 1.** **Rapport initial/Avis de modification par une société par actions/une personne morale sans but lucratif :**
Indiquer si la personne morale extra-provinciale dépose un rapport initial ou un avis de modification en cochant (x) la case appropriée.
- Rubrique 2.** **Numéro matriculé de la personne morale en Ontario :**
Le numéro matriculé de la personne morale en Ontario apparaît dans le coin supérieur droit du Permis extraprovincial de la personne morale. Lorsqu'aucun permis n'est exigible pour la personne morale, le numéro matriculé sera donné au moment où le rapport initial sera déposé.
- Rubrique 3.** **Date de constitution ou fusion :**
Inscrire la date au complet de constitution ou de fusion (celle qui est la plus récente).
Lorsqu'une fusion a eu lieu depuis le dernier dépôt, une photocopie du certificat de fusion doit être déposée avec la formule 2.
- Rubrique 4.** **Raison sociale de la personne morale :**
Indiquer la raison sociale de la personne morale, y compris la ponctuation et les espaces.
- Rubrique 5.** **Adresse du siège social :**
Ne pas laisser cet espace en blanc.
Indiquer l'adresse du siège social. Une case postale ne constitue pas une adresse. Il faut indiquer un numéro et un nom de rue ou un numéro de lot ou de concession, s'il y a lieu.
- Rubrique 6.** **Adresse du bureau principal en Ontario :**
Si l'adresse est la même que celle du siège social, cocher (x) la case appropriée.
Si cette rubrique ne s'applique pas, cocher (X) la case appropriée.
Si l'adresse du bureau principal est différente de celle du siège social, remplir cette rubrique au complet.
- Rubrique 7.** **Langue préférée :**
Indiquer si vous préférez recevoir la correspondance de la Direction des compagnies et des sûretés mobilières en français ou en anglais.
- Rubrique 8.** **Raison sociale antérieure :**
Indiquer la raison sociale antérieure, y compris les espaces et la ponctuation. Si cela ne s'applique pas, cocher (x) la case appropriée.
- Rubrique 9.** **Date de début des activités en Ontario :**
Indiquer la date de début des activités en Ontario.
- Rubrique 10.** **Date de cessation des activités en Ontario :**
Indiquer la date au complet à laquelle l'entreprise a cessé ses activités en Ontario. Si cela ne s'applique pas, cocher (x) la case appropriée.
- Rubrique 11.** **Ressort de constitution / de fusion ou prorogation :**
Pour indiquer le plus récent ressort de constitution, de prorogation ou de fusion (le plus récent), cocher (x) la case pertinente.
Si le ressort n'est pas parmi les ressorts qui sont mentionnés, indiquer le nom du ressort au complet dans l'espace prévu à cet effet.

COMMENT REMPLIR LA PAGE 2

- Indiquer le numéro matriculé de la personne morale en Ontario et la date de constitution ou de fusion (celle qui est la plus récente).
- Rubrique 12.** **Nom et adresse du bureau du directeur général /gérant en Ontario :**
Si cette rubrique ne s'applique pas, cocher (x) la case appropriée.
Si elle s'applique, indiquer le nom au complet en donnant le nom de famille et le(s) prénom(s). Indiquer l'adresse complète du bureau du directeur général ou gérant en Ontario.
Date d'entrée en vigueur :
Indiquer la date où le directeur général ou gérant en Ontario est entré en fonction.
Date de cessation :
Indiquer la date où le directeur général ou gérant a cessé ses fonctions en Ontario.
Si la date de cessation des fonctions a été indiquée, la date où le directeur général ou gérant est entré en fonction doit également être indiquée.
- Rubrique 13.** **Nom et adresse du bureau du mandataire aux fins de signification en Ontario :**
Si la personne morale a été constituée à l'extérieur du Canada, un mandataire aux fins de signification est exigé.
Si l'exigence d'un mandataire aux fins de signification n'est pas applicable, cocher (x) la case appropriée.
Si la rubrique 14 s'applique, indiquer si le mandataire est un particulier ou une personne morale dont l'adresse du siège social est en Ontario.
Si le mandataire est un particulier, remplir la partie a), son nom de famille et son (ses) prénom(s) et la partie c), son adresse complète.
Si le mandataire est une personne morale, remplir la partie b), le numéro matriculé de la personne morale en Ontario et le nom de la personne morale au complet, y compris la ponctuation et les espaces et la partie c), son adresse complète.
- Remarque : Pour modifier des renseignements concernant le mandataire aux fins de signification, une personne morale étrangère (société à but lucratif constituée ou maintenue en vertu des lois d'une compétence législative extérieure au Canada) doit remplir la Formule 2 - Revised Appointment of Agent for Service requise aux termes de la Loi sur les personnes morales extraprovinciales (Ontario) et la soumettre avec le présent document.
- Les personnes morales à but non lucratif constituées à l'extérieur du Canada ne peuvent pas désigner ou constituer de mandataire aux fins de signification : par conséquent, elle n'ont pas à soumettre la Formule 2 - Revised Appointment of Agent for Service.
- Rubrique 14.** **Personne autorisant l'enregistrement :**
Dans la case prévue, indiquer en lettres majuscules le nom complet de la personne autorisant le dépôt de la formule.
Indiquer ensuite si cette personne est un administrateur, un dirigeant ou une personne ayant connaissance des activités de la personne morale, en cochant (x) la case appropriée à droite.
- La formule dûment remplie doit être envoyée par la poste ou livrée à l'adresse suivante :
Ministère des Services aux consommateurs et aux entreprises
Direction des compagnies et des sûretés mobilières
393, av. University, bureau 200
Toronto ON M5G 2M2