

Incorporating a Not-For-Profit Organization

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Organizations that are looking to incorporate as a not-for-profit in Alberta have two options: the *Societies Act* or the *Companies Act*. While many choose to incorporate under the *Societies Act*, the decision about which Act is right is not always clear.

In this article, we explore some of the advantages and disadvantages of incorporating under the *Companies Act*. We also discuss one option of organizing that might be attractive to some organizations looking to benefit from the advantages of the *Companies Act* while minimizing the disadvantages. We conclude with some of the steps involved in filing for incorporation under the *Companies Act*.

Advantages of the Companies Act

If you are one of the many not-for-profits that are looking to establish a social enterprise that is primarily intended to further your fundraising efforts, you can only do so under the *Companies Act*. The *Societies Act* does not permit incorporation for the *purpose of carrying on a trade or business*. Fundraising efforts may be classified as a business purpose.

Another advantage to incorporating under the *Companies Act* is that you have more flexibility when naming your organization. This is useful when you are looking to creatively market your social enterprise.

Disadvantages of incorporating under the Companies Act

The *Companies Act* is more complex than the *Societies Act*. One example, is that not-for-profit under this Act must decide if they will file as private or public company. A private company must satisfy these three criteria:

1. Has less than 50 members;
2. Prohibits a general invitation to the public to become members; and
3. Prohibits any transfer of the interest of a member in the company.

Unless your not-for-profit follows these rules, the company will be classified as public. This entails much more stringent filing and reporting requirements. For example, before its annual meeting, a public company is required to mail a copy of the financial statements of the company to every shareholder. Public companies are also required to file a certified copy of their financial statements to the Alberta Corporate Registry annually. Private companies do not have these requirements.

The Best of Both Options?

If you operate a substantial social enterprise, you can consider splitting off that portion of the business and incorporating it under the *Companies Act*. The primary corporation remains under the *Societies Act* and can be structured to control the split off Company. Using this method gives you access to some of the benefits found in both Acts. Another advantage is that, should the social enterprise fail, the whole society would not be in jeopardy.

Filing for Incorporation

Filing for incorporation under the *Companies Act* involves some key considerations:

- A private company must have a minimum of two Directors upon incorporation; a public one requires a minimum of three.
- You will need to file a Search Report, a Memorandum of Association and Articles of Association.
- A company can be limited by shares or limited by guarantee.
- In a company limited by shares, the liability of the Members is limited to the amount, if any, unpaid on the shares respectively held by them.

In a company limited by guarantee, the liability of the Members if the company is dissolved, is limited by the Memorandum of Association to the amount that the Members may respectively undertake to contribute to the assets of the company.

If you are considering incorporating your not-for-profit, consult legal counsel for advice on what makes sense for your organization. The [business solutions group](#) at Duncan Craig LLP would be happy to assist you.

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