



Business Law Playbooks

Part 6 – Charities and Charitable Status

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

Table of Contents

6	Charities and Charitable Status.....	3
6.1.	Advantages & Disadvantages of Registration	4
6.1.1.	Advantages.....	4
6.1.2.	Disadvantages	4
6.2.	Considerations.....	5
6.3.	Application Process	7
6.3.1.	Step 1: File the Application	7
6.3.2.	Step 2: Request for Additional Information	7
6.3.3.	Step 3: Application Denied	7
6.3.4.	Step 4: Application Approved	8
6.4.	Describing Charitable Activities	8
6.5.	Supporting Documentation.....	8
6.5.1.	Incorporation	8



6.5.2. Constitutions.....	8
6.5.3. Trusts.....	9
6.6. Conclusion	9

About Queen's Partnerships and Innovation

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

About Queen's Business Law Clinic

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

Why do you need a Playbook?

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

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The information contained in this document is provided by QPI in collaboration with the QBLC. This information is intended for educational and informational purposes only, and should not be construed as legal advice or as an offer to perform legal services on any subject matter. The contents set out in these Playbooks contain general information only and may not reflect current legal developments or information. This information is not guaranteed to be correct, complete or current. Queen's University, including, QPI and QBLC, makes no warranty, expressed or implied, about the accuracy or reliability of the information in this Playbook. Users of the Playbooks should not act or refrain from acting on the basis of any information included in the Playbooks without seeking appropriate legal advice on the particular facts and circumstances unique to them from a qualified lawyer. The Playbooks are not intended to be a substitute for professional legal advice. Speak with a qualified lawyer if you have any specific questions after reading through these Playbooks. Queen's University, including, QPI and QBLC, hereby disclaims any and all liability to any party for any direct, indirect, implied, punitive, special, incidental or



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6 Charities and Charitable Status

There are three forms that a registered charity can take: (1) a charitable organization, (2) a private foundation, or (3) a public foundation. The form the registered charity takes is dependent upon the structure, mode of operation, and sources of funding. With one director, official, or trustee, the registered charity will be designated as a private foundation. To be designated as a public foundation or a charitable organization, more than 50% of the directors, officials, or trustees must be at arm's length.¹

	Charitable Organization	Private Foundation	Public Foundation
Can be established as...	A corporation, trust, or under a constitution	A corporation or trust	A corporation or trust
Purposes	Only charitable purposes	Only charitable purposes	Only charitable purposes
Activities	Primarily carries on its own activities that are charitable in nature	Carries on its own charitable activities and/or funds qualified donees	Generally, gives upwards of half of its income to qualified donees annually
Directors, Officials, and Trustees	More than 50% at arm's length	More than 50% not at arm's length and/or	More than 50% at arm's length
Funding Sources	From a variety of arm's length donors	More than 50% from a person or group that control the charity	From a variety of arm's length donors

In order to register, the charity must apply to the CRA. Registered charities and non-profit-organizations both operate on a non-profit basis; however, registered charities must use their resources (financial, property, personnel) for charitable purposes that target either: poverty relief, the advancement of religion or education, or other purposes benefiting the community. Examples of registered charities include food banks, universities, missionary organizations, and animal shelters. While you can operate as a charity without registration, if you wish to be able to

¹ Canadian Revenue Agency, "Types of Registered Charities (Designations)" (2016) DOI: <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/registering-charitable-qualified-donee-status/apply-become-registered-charity/establishing/types-registered-charities-designations.html>.



issue official donation receipts and not pay income tax, you must register. A charity, whether registered or unregistered, cannot be a non-profit organization.²

For a [glossary](#), please see the resources provided by the CRA.

6.1. Advantages & Disadvantages of Registration

6.1.1. Advantages

Becoming a registered charity allows an organization to issue official donation receipts, to receive CRA designation status as a charitable organization or public/private foundation, and to be exempt from paying income tax. It also makes the organization eligible to receive gifts from other registered charities, increases public credibility, and exempts many goods and services you provide from GST/HST.

6.1.2. Disadvantages

The advantages afforded by registration also come with corresponding obligations. As a registered charity, you must devote the organization's funds, personnel, and property to the pursuit of its charitable purpose and activities. You must maintain your organization's status as a legal entity, maintain the control, direction, and use of the organization's resources, and keep proper books and records.³ Furthermore, you must issue proper donation receipts, file annual forms and returns, and meet annual spending requirements. Finally, you must inform the Charities Directorate about any changes to your organization's mode of operation or legal structure.⁴

For additional [checklists](#), please see the resources provided by the CRA.

Please note that some of the documentation provided – including governing documents, financial statements, annual information returns, and public portions of the application form – will be available to the public.

² Canadian Revenue Agency, "Advantages and Obligations of Becoming a Registered Charity" (2018) DOI: Canadian Revenue Agency, "What is the difference between a registered charity and a non-for-profit organization?" (2016) DOI: <https://www.canada.ca/en/revenue-agency/services/charities-giving/giving-charity-information-donors/about-registered-charities/what-difference-between-a-registered-charity-a-non-profit-organization.html>.

³ Canadian Revenue Agency, "Books and Records" (2016) DOI: <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/books-records.html>.

⁴ <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/registering-charitable-qualified-donee-status/apply-become-registered-charity/deciding/advantages-obligations-becoming-registered-charity.html>.



6.2. Considerations⁵

Is your organization a Canadian resident?

- Your organization **must** be a resident in Canada to qualify for charitable registration in Canada. Organizations incorporated in Canada are deemed to be Canadian residents.
- If your organization is not considered a Canadian resident, you cannot register.

Does your organization meet one or more of the four categories (poverty relief, the advancement of religion or education, or other purposes benefiting the community)? Is your organization otherwise prohibited from registration?⁶

- Your organization must meet at least one of the four charitable purposes that have been identified by the common law in Canada. While the purposes or the aim of the organization must meet one of the four objectives, the activities or how the organization carries out its purposes can be different.
- If your organization does not meet one of the four categories, you will not be able to register.
- Registered charities also cannot support private benevolence or the benefit of a particular individual or private group (i.e. fundraising for a specific family who lost their house in a fire).
- The income of a registered charity cannot be used for the purpose of benefiting its members personally.
- Organizations devoting their resources, or part of their resources, to indirect or direct support or opposition of a candidate for public office or a political party will not qualify.
- Organizations with the goal of earning a profit will not meet registration qualifications.
- Related business activities promoting or accomplishing the charitable purpose are permitted for charitable organizations and public foundations. Business activities are prohibited for private foundations.
- Organizations participating in illegal activities, activities that are contrary to public policy, or that indirectly or directly support terrorism will not qualify for registration.

⁵ Canadian Revenue Agency, "Should You Apply For Charitable Registration?" (2016) DOI: <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/registering-charitable-qualified-donee-status/apply-become-registered-charity/deciding/should-apply-registration.html>.

⁶ Canadian Revenue Agency, "What is Charitable?" (2019) DOI: <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/registering-charitable-qualified-donee-status/apply-become-registered-charity/deciding/factors-that-will-prevent-organization-being-registered-a-charity.html>.



Does your organization meet the public benefit test?⁷

- The organization's purposes and activities must meet this test. The organization must demonstrate that the purposes and activities provide a measurable public benefit and that the people eligible for benefits are either a significant segment of the public or the public as a whole.
- The beneficiaries cannot be connected by a private association and cannot be a restricted group.

Do you plan to hire employees or recruit volunteers?

- Having employees or volunteers may be necessary for the success of the organization.
- While having employees or volunteers does not determine if you can register, if you do hire employees, you **must** submit the required payroll deductions.

Can you meet the ongoing obligations associated with registration (i.e. annual returns)? Are you aware of the penalties if you do not meet these obligations?

- To meet the ongoing obligations of registration, a registered charity must: maintain the status of a legal entity by keeping up with annual post-incorporation obligations; keep proper records and books; devote resources to the charitable purpose; file the required annual return; direct and control the use of the organization's resources; meet annual spending requirements; and issue proper donation receipts.
 - Directors or trustees of registered charities are responsible for the management and administration of the charity and ensuring that the charity follows all applicable laws and regulations.
 - The eligibility of each Board Member could impact the registration of the charity. More than 50% of the governing officials of the registered charity must be at arm's length. Furthermore, the CRA also has the authority to refuse, suspend, or revoke registration where ineligible individuals sit on the Board, control, or manage the organization.⁸
- If the ongoing obligations are not met, the charity will face consequences such as financial penalties, having the tax receipting privilege suspended, or even the loss of its registration.

⁷ Canadian Revenue Agency, "What is Charitable?" (2019) DOI: <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/registering-charitable-qualified-donee-status/apply-become-registered-charity/establishing/what-charitable.html>.

⁸ Canadian Revenue Agency, "Ineligible Individuals" (2016) DOI: <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/ineligible-individuals.html>.



Have you considered the consequences of the revocation of your organization's status or ending the organization's operations?

✓ If status is revoked or if operations voluntarily come to an end, the organization will not be able to issue donation receipts, will no longer qualify as income tax exempt, and must give all remaining assets to a qualified donee or pay the full value of the assets as a revocation tax.

✗ If the organization is no longer a registered charity, there are strict procedures regulating the liquidation of assets, tax implications, and the loss of the ability to issue donation receipts. Registration may be revoked voluntarily, as a result of failure to file, as the result of an audit, and for other reasons (i.e. loss of corporate status). While organizations typically do not start with their end in mind, these are relevant factors to consider. Furthermore, if your charitable registration is revoked, the name of your organization and the reason for the revocation will be published.⁹

6.3. Application Process¹⁰

6.3.1. Step 1: File the Application

- ✓ If the application is complete, you will receive an acknowledgement letter stating approximately how long the wait for review will be.
- ✗ If the application is incomplete, it will be rejected and returned.

To generate an [application document checklist](#), please visit the CRA website.

6.3.2. Step 2: Request for Additional Information

- ✓ You may be contacted for additional documentation or information. This may include the opportunity to amend your organization's purposes. If this occurs, you will usually have a period of 60 days to respond.
- ✗ The application will be denied, and a final decision issued if the purposes or activities are not demonstrated to be charitable.
- ✓ If you believe all of the necessary information has been provided, you can respond in writing accordingly and a final decision will be issued.
- ✗ If you do not respond, the application will be considered abandoned, and the file will be closed. There is no right to appeal this decision, but you will be able to reapply.

6.3.3. Step 3: Application Denied

- ✗ If the purposes or activities are found not to be charitable, a letter will be issued stating that the application has been denied.

⁹ Canadian Revenue Agency, "Types of Revocation" (2018) DOI: <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/revoking-registered-status/types-revocation.html#volrev>.

¹⁰ Canadian Revenue Agency, "Application Review Process" (2018) DOI: <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/registering-charitable-qualified-donee-status/apply-become-registered-charity/application-review-process.html>.

- ✘ If the application is denied, the decision can be appealed within 90 days by filing a notice of objection.

6.3.4. Step 4: Application Approved

- ✓ If the application is approved, notice of registration will be issued.

6.4. Describing Charitable Activities

One of the key portions of the application is the description of charitable purposes and activities. Within the application, you must describe each of the activities you will undertake to achieve the purpose. Fundraising is not in-and-of-itself a charitable activity and cannot become the main emphasis of the charity. You will also have to show how it benefits the public. The description will have to be extensive covering considerations such as: detailed plans, the intended object to be achieved, fees charged (if any), how beneficiaries are selected and who they are, length and frequency of the activities, any volunteer/employee involvement, how direction and control will be maintained over these activities and the organization's resources, the necessary logistics (i.e. buildings, transportation, etc.), and any other relevant information.¹¹

6.5. Supporting Documentation

Registered charities must be legally established as evidenced by articles of incorporation, letters patent, a constitution, or trust documents. As part of the registration process, an organization's governing documents as well as any amendments must be submitted. The type of documentation required depends on the form of the organization.¹²

6.5.1. Incorporation

Applicants registering as a charitable organization, or a public/private foundation can incorporate. For the advantages and disadvantages associated with incorporation, please see the appropriate Playbook. The incorporation documents will vary depending on the jurisdiction of incorporation. For-profit corporations are ordinarily inappropriate to register as a charity given that charities operate on a not-for-profit basis. These documents must have an effective date and be signed or stamped by the relevant authority.¹³

6.5.2. Constitutions

Non-incorporated organizations can seek registration under a constitution. The constitution must include, at a minimum: the organization's name and purpose, that the organization will be operated with any profits or assets being used to promote the organization's purpose, that the

¹¹ Canadian Revenue Agency, "Describing Your Activities" (2018) DOI: <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/registering-charitable-qualified-donee-status/apply-become-registered-charity/apply/describing-your-activities.html>.

¹² Canadian Revenue Agency, "What is a Governing Document?" (2019) DOI: <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/registering-charitable-qualified-donee-status/apply-become-registered-charity/establishing/what-a-governing-document.html>.

¹³ Canadian Revenue Agency, "Incorporation Documents" (2018) DOI: <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/applying-registration/governing-documents/incorporation-documents.html>.

organization will be operated without the purpose of member gain, how the directors of the organization will be replaced, the structure of the governing body, the effective date, and the signatures of three or more of the directors of the organization.¹⁴

6.5.3. Trusts

Applicants registering as a charitable organization, or a public/private foundation can be established through a trust document. The trust document must include at a minimum: the trust name, the name of the person(s) making the declaration or the settlor(s), the trust's charitable purposes, the names of the initial trustees, how the property of the trust will be administered, an acknowledgement that the initial property of the trust has been transferred and received by the trustee(s), assurance by the trustee(s) that all property will only be used for the purposes set out in the trust document, how trustees will be replaced, the effective date, and the trustee signatures. It is also recommended that the document include a provision allowing the purposes to be amended to correspond to legislative and common law requirements for registration.¹⁵

6.6. Conclusion

If you are considering registering your charity, you may wish to contact the Queen's Business Law Clinic for assistance.

The above does not constitute legal advice regarding the validity of any of the above documents. We recommend you seek legal advice before incorporating, creating a constitution, or enacting a trust. Much of the information in this document is sourced from information published by the Government of Canada. This document has not been endorsed by, or produced in affiliation with, the Government of Canada.

¹⁴ Canadian Revenue Agency, "Constitutions" (2018) DOI: <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/applying-registration/governing-documents/constitutions.html>.

¹⁵ Canadian Revenue Agency, "Trusts" (2018) DOI: <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/applying-registration/governing-documents/trusts.html>.