



Dissolution of a Non-Profit Organization

In theory, we know that our organizations can't and shouldn't live forever. But in practice, we tend to operate with the assumption that our primary goal is to keep our organizations alive and that when they die we have failed. Accepting that dissolution is a natural part of an organizations' life cycle is important. At the same time, we should not ignore the larger societal and systemic trends that are leading to nonprofit closures.

A non-profit organization can be dissolved by a decision on the part of its members or by law. This guide provides a summary of the steps a provincially incorporated non-profit organization must take if it decides to close its doors (“auto-dissolve”), or if it is forcibly dissolved.

Voluntary Dissolution of a provincial non-profit

The Companies Act provides for the possibility of a non-profit’s voluntary dissolution. Voluntary dissolution is final and can never be revoked. In other words, once an organization successfully applies to “auto-dissolve”, it cannot legally resume its activities as an incorporated organization.

First step: The organization’s board members call a special general assembly for the specific purpose of passing a resolution to bring the organization’s life to an end. This resolution must have the support of at least two-thirds of the members present at the special general assembly.

PUBLISHED AUGUST 2011

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Second step: The organization must have paid its debts or assured their payment, or their creditors must have consented to the dissolution. Board members at the time of the dissolution are jointly responsible for the organization's outstanding debts. However, board members can be relieved from this obligation if they can demonstrate that they acted diligently and in good faith. For example, if they hired an external accountant or auditor, or if they had expressly dissented from the board's decisions.

There are also laws concerning the distribution of the organization's remaining property ("liquidation"). According to the *Registraire des entreprises* (REQ), anything purchased with public donations should be transferred to an organization that has a similar mandate. If this kind of liquidation clause is not expressed in the organization's by-laws, there remains an expectation that remaining property is distributed in this manner, in order to respect the donors' intentions.

For an example of a by-law that provides a liquidation clause ("clause relative a la liquidation") see page 15 of *Comment constituer une personne morale sans but lucratif*: [http://www.registreentreprises.gouv.qc.ca/documents/guides/re-303.g\(2010-10\).pdf](http://www.registreentreprises.gouv.qc.ca/documents/guides/re-303.g(2010-10).pdf)

Remaining property that was not purchased with public donations must be distributed as described in your lettres patentes. If your lettres patentes is silent on this matter, the remaining property is divided among your members. However, if the organization is a charity it must distribute all of its resources to charitable activities rather than to its members.

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Third step: The organization must file a declaration of its intention to auto-dissolve with the REQ. The notice of intent to dissolve must be published in a local newspaper. You can then submit this declaration of intent with the necessary supporting documents, such as the board approved resolution, annual reports which have not yet been released, and the information concerning the newspaper in which your intention was published.

For more information regarding this declaration of intent and the documents necessary for dissolution, go to:

http://www.registreentreprises.gouv.qc.ca/en/modifier/liquider_dissoudre/dissolution-compagnie.aspx

Once the Registrar has accepted the organization's request for dissolution, an official date for "auto-dissolution" is assigned. At that time the organization is removed from the Registrar. This brings an end to its incorporation and legal personality – a construct which allowed the organization to act as an independent "person" in the eyes of the law.

Forced Dissolution ("Ex-Officio – Radiée d'office")

In practice, the main reason that the REQ cancels ("revokes") an organization's registration is for not filing two consecutive annual reports. Although the REQ can forcibly dissolve an organization for this reason, a request can be made to revive

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the organization (to “cancel the revocation”). This request can be made by anyone with a clear stake in the organization. In the context where this request is made so that the organization can continue its work, this tends to be conditioned on the organization providing missing documents (such as annual reports and declarations).

This request can also be made by someone to whom the organization owes money. Technically, if a non-profit has been forced to dissolve, the organization and board members are immune to claims from creditors (its not forced to pay its debts). However, it is important to keep the following in mind: 1) an organization that has been forced to shut down keeps its legal personality until all judicial and administrative procedures governing the dissolution have come to an end, and 2) the organization can very easily be brought back to life if a request is made to have have the dissolution cancelled. Therefore a creditor can easily apply to the REQ to revive the organization in order to pursue them in court for outstanding debts. In other words, forced dissolution is not a mechanism that allows organizations to hide from creditors.

Check out some of the great resources we used to create this info-sheet:

Guide (Martel, Paul)

Administrateurs de corporations sans but lucratif: Le guide de vos droits, devoirs et responsabilités (Éditions Wilson & Lafleur, Martel Ltée., Montréal, 2^e édition, 2000)

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Comité sectoriel de main-d'œuvre (CSMO)

Fiche 2: La structure juridique des OBNL et la gouvernance démocratique in Boîte à outils: La gouvernance démocratique
http://www.csmoesac.qc.ca/uploads/documents/menu_sections/boite_a_outils.pdf

Votre association, personne morale sans but lucratif

Votre association, personne morale sans but lucratif: Pour les administrateurs et les membres des associations
(Éditions Publications Québec, Sainte-Foy, Québec, 4e édition, 2001)

The Companies Act

<http://www.canlii.org/en/qc/laws/stat/rsq-c-c-38/latest/rsq-c-c-38.html>
Sections 28, 29 and 32 of The Companies Act address dissolution. This Act previously governed all businesses and organizations incorporated in Quebec. In 2011, most of the Act was repealed, but the sections that govern non-profit organizations remain in effect. The Quebec government intends to draft a new Act that will specifically govern non-profits within the next two years.

Act Respecting the Legal Publicity of Enterprises

<http://www.canlii.org/en/qc/laws/stat/rsq-c-p-44.1/latest/rsq-c-p-44.1.html>
Sections 54-57, 59, 64 address “voluntary” and “forced” dissolution

Some of these resources are currently only available in French. Please contact COCo if you need help navigating them.

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