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Amalgamation : Merging Non-Profit Organizations

Introduction

This info-sheet provides legal information for non-profit organizations (NPO) seeking to merge with one or several other NPOs. The information provided here sets out the basic rules that apply to provincially and federally incorporated organizations. However, organizations should be aware that they can tailor their organizational structure to suit their needs, preferences and goals as long as certain basic rules are followed.

This info sheet also provides links to great resources on building collaborative relationships. The structures and relationships to informal partnerships between organizations, or organizations and aligned projects, are limitless. It all depends on your context and goals. Please see the end of this document for these references.

How do we know if an amalgamation is worthwhile for our organization?

When determining whether to merge with another NPO, organizations will need to consider a number of factors:

- Compatibility of missions;
- What each groups is bringing to the table;
- Financial situations/context;
- Compatibility of organizational cultures and practices;
- Agreement between boards and membership in favour of a combined organization;
- Relationships of power and in/equality;
- Potential for broader exposure and achievement of organizational goals;

Provincial Amalgamation

Merging two provincially incorporated NPOs: What do we have to do?

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In order to merge two NPOs in Quebec, both must already be incorporated with the Registraire des entreprises Québec [REQ]. For information on incorporating your organization, see:

COCO Info-Sheet

Incorporation of a Non-Profit Organization in Quebec

<http://coco-net.org/en/node/339>

There are two types of amalgamation available to Quebec NPOs. Which type is appropriate will depend on the relationship between the two organizations. However, there are certain general rules that apply to all NPOs that wish to merge.

NPOs must enter into a joint agreement and describe:

- Terms and conditions of the amalgamation;
- Mode of putting the amalgamation into effect;
- Name of the new NFP;
- Names, callings and places of residence for board members and how they will be elected.

This amalgamation agreement must be submitted to members of both NPOs. Each NPO must hold a special general meeting (SGM). In order for the agreement to be adopted, this agreement must be approved by at least 2/3 of members present at the SGM.

TYPE 1:

If the organizations are unconnected, how can they merge?

TYPE 1 :Ordinary Amalgamation: this procedure applies to NPOs that have different memberships. At a special general meeting (SGM) held specifically for that purpose, the NPO must present to its membership the terms and conditions of amalgamation and a by-law approved by the board instructing that the NPO be dissolved. The by-law must be confirmed by 2/3 of voters present at the SGM.

The agreement must include specific information about the applicants of the new NPO, address of head office, financial information and transfer of finances information, by-laws of the organization

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resulting from the amalgamation, provisions needed to complete the process and organization/management of new NPO.

What must be included in the articles of amalgamation for TYPE 1:

- Name of the organization;
- Quebec judicial district where head office is found;
- Name and address of each founder;
- If more than one classes of membership exists, the rights, privileges, conditions and restrictions attaching to each class must be mentioned;
- The precise number or the minimum and maximum number of board members; and
- The limits, if any, imposed on its activities;
- And any other provisions permitted by law to be set out in the by-laws, in addition to the provisions permitted by this act to be set out. Which means anything else you want for the NPO resulting from the merger that may find itself in the bylaws or the *Companies Act*. Example, the NPO resulting from the merger must function by consensus (if this finds itself in one of the original NPOs bylaws).

TYPE 2:

What if a parent organization and its subsidiary want to merge?

TYPE 2: Simplified Amalgamation: this procedure applies where a parent NPO and a subsidiary for which the parent organization holds at least 50% of the votes to elect the board of the subsidiary.

Board members must adopt a resolution providing that:

- the membership of the subsidiary will be cancelled;
- the articles of amalgamation will be identical to the constituting act (lettres patentes) of the parent NPO; and
- the board of the NPO resulting from the amalgamation will be that of the parent organization and its by-laws will be those of the parent NPO or those prescribed by the board members of the parent NPO.

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What happens to the debt and existing contracts of the merging organizations?

Any existing debt is transferred to new entity for both types of amalgamation. The new organization assumes the obligations and continues to honour the existing contracts of the previous non-profit organizations. Note that amalgamation will not be permitted if the new organization cannot discharge its liabilities. Also if the organization's liabilities are larger than the value paid for its assets, amalgamation will not be permitted.

How is the application processed?

A joint application for amalgamation must then be sent to the REQ. If the application is granted, the new NPO is officially registered. Once articles of amalgamation, fee and accompanying required documents have been submitted the REQ will prepare a certificate attesting to the amalgamation. Please see the REQ website's further description of the amalgamation process:

REQ Website

Amalgamation of a Non-Profit Organization in Quebec

http://www.registreentreprises.gouv.qc.ca/en/modifier/modifier_actes/fusion.aspx

Note that the majority of the REQ website is available in French only. Please contact COCo if you need help navigating the site.

Other Options

What we often see in the community sector is one organization blending into another. This is often done outside the legal process of merging, however the end result often appears the same. This means that two groups that once functioned independently (and have different memberships) end up functioning as the same entity—albeit one of the two original groups may be predominate in the new formation. Once an organization dissolves, it must distribute its resources. So if organizations are thinking of combining their forces, they would need do this before dissolution.

The Info-Sheet below explains how to dissolve an NPO:

COCo Info-Sheet

Dissolution of a Non-Profit Organization

<http://coco-net.org/en/node/5178>

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Can a charity merge with a NPO that is not a charity?

No. A charity can only merge with another registered charity. So if only one organization has charitable status, the other organization wishing to merge must obtain charitable status. For more information on Charitable Organizations, please see:

COCO Info-Sheet

Charitable Organizations: Applying for Charitable Status

<http://coco-net.org/en/node/342>

FEDERAL AMALGAMATION

The federal legislation does not specify that amalgamating organizations must have similar mandates in terms of their social purpose. However, it is important that organizations consider the compatibility of their mandates and memberships before merging. Although there is no legal responsibility to ensure that mandates are well suited, there could be organizational difficulties if missions conflict.

Merging federal non-profit organizations: How do we do it?

In order to merge two or more non-profits organizations, each must be incorporated under the new *Canada Not-for-profit Corporations Act*. If you are a federally incorporated NPO that was incorporated under the former *Canada Corporations Act*, you will need to transition to the new Act before October 17, 2014.

Corporations Canada Transition Guide

Guidelines for federal not-for-profit corporations

http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/h_cs04954.html

What form of amalgamation is right for my organization?

Some of the things to think about when deciding whether to merge with another NPO include:

- Compatibility of missions;

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- What each groups is bringing to the table;
- Financial situations/context;
- Agreement between boards and membership in favour of a combined organization;
- Relationships of power and in/equality
- Potential for broader exposure and achievement of organizational goals;
- Whether the organizations want to do business outside of Quebec.

The form of amalgamation that is right for your organization will depend on the relationship between the organizations. If the two organizations are legally unrelated, this means that they do not have the same membership and are not legally recognized as connected.

TYPE 1: What is the procedure for merging unrelated NPOs?

Type 1: Long-form Amalgamation: Where the merging organizations are not connected and do not have the same membership long-form amalgamation is the appropriate process of amalgamation. Since each NPO is distinct in terms of its membership and board members, special rules apply to this form of amalgamation.

The board members of each organization must enter into an amalgamation agreement which must then be sent to both memberships for approval. The amalgamation agreement contains certain details:

- How the memberships of each amalgamating corporation will be converted into memberships of the amalgamated NPO;
- Whether the by-laws of the amalgamated organization will be those of one of the former organizations and if not, a copy of the new by-laws;
- Additional details describing the operation and management of the new organization;
- Name and address of all proposed board members.

The amalgamation agreement must also contain the articles of incorporation. These will be the articles of incorporation for the new NPO.

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What is in the Articles of incorporation?

- Statement of the organization’s purpose or mission;
- Name of the corporation;
- Province where the registered office is found;
- Classes of members that the organization is permitted to establish and, if there are two or more classes or groups, any voting rights attaching to each of those classes or groups;
- Number of board members or the minimum and maximum number of board members;
- Any restrictions on the activities that the organization can engage in; and
- Statement explaining how property will be distributed once the organizations have merged.

How must notice be given to members?

The amalgamation agreement must be approved by the membership of each NPO. Each NPO must give notice of a meeting to its members and must include a copy of this notice in the amalgamation agreement.

What voting rules are required for TYPE 1

The agreement must be submitted to the members of each organization and approved by special resolution by members in order to be considered adopted. “Special resolution” means a resolution passed by a majority of not less than two thirds of the votes cast on that resolution.

The new act provides for the creation of different forms of membership (groups and classes) within a single NPO. For more information on voting rights and class or group votes, please see:

Corporations Canada

Right to vote, and class or other group votes under federal act

<http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs05006.html#rightvote>

Special voting rules must be followed for amalgamation:

Each membership within an NPO has the right to vote regarding the amalgamation agreement whether or not it otherwise carries the right to vote.

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Members of a class or group of members of each NPO may vote separately as a class or group regarding the amalgamation agreement if the agreement includes a provision that provides for this exception.

An amalgamation agreement can provide that the agreement may be terminated by the board members of each NPO at any time before the certificate of amalgamation has been issued in spite of membership's approval of the agreement.

For more information on voting rights and membership approval, see:

Corporations Canada

Additional rules regarding membership approval

<http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs05008.html#amalgamations>

TYPE 2:

If a parent organization is merging with a subsidiary?

Type 2: Vertical Short-form Amalgamation: This is the appropriate form where a parent organization merges with one or several of its subsidiaries. In this situation, the membership of each amalgamating subsidiary must be held by the amalgamating NPO. The amalgamation is approved by a resolution of the board members of each NPO. The resolutions must provide that memberships in the amalgamating subsidiary will be cancelled without repayment of membership fees. The membership that is "cancelled" is not actually lost because these members are included in the other organization's membership.

Articles of Amalgamation of the amalgamated (subsidiary) NPO should be the same as the articles of the amalgamating parent corporation, except for the corporate name. The merging subsidiary may retain its own separate articles of amalgamation. If the merging subsidiary wants its articles of amalgamation to be different, they must the following form either before or after the amalgamation:

Corporations Canada

Articles of Amalgamation – Form 4004

[http://www.ic.gc.ca/eic/site/cd-dgc.nsf/vwapj/4004-Form-EN.pdf/\\$FILE/4004-Form-EN.pdf](http://www.ic.gc.ca/eic/site/cd-dgc.nsf/vwapj/4004-Form-EN.pdf/$FILE/4004-Form-EN.pdf)

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What must be included in the Articles of Amalgamation

For a sample form which lays out what must be included in the articles of amalgamation, please see below:

Corporations Canada

Sample Articles of Amalgamation – Form 4009

[http://www.ic.gc.ca/eic/site/cd-dgc.nsf/vwapj/4009-Form-EN.pdf/\\$FILE/4009-Form-EN.pdf](http://www.ic.gc.ca/eic/site/cd-dgc.nsf/vwapj/4009-Form-EN.pdf/$FILE/4009-Form-EN.pdf)

The articles of amalgamation must include the articles of incorporation (see pg 6).

Do the members or board members approve the amalgamation?

If the above conditions are met, this short-form of amalgamation does not require approval by members or an amalgamation agreement. It is the board members of each corporation who, by resolution, approve the amalgamation.

TYPE 3:

If two or more subsidiaries want to merge together?

TYPE 3: Horizontal Short-form Amalgamation: This form is designed to merge two or more wholly owned subsidiaries of one organization. In this case multiple subsidiaries of a parent organization combine. As a result, the membership in all but one of the amalgamating subsidiary NPOs must be cancelled without any repayment of capital for those memberships.

Except for corporate name, the articles of amalgamation are the same for the newly amalgamated organization and the former NPOs. If the desire exists for the articles to be different, they must be in the following form either before or after the amalgamation:

Corporations Canada

Articles of Amalgamation – Form 4004

[http://www.ic.gc.ca/eic/site/cd-dgc.nsf/vwapj/4004-Form-EN.pdf/\\$FILE/4004-Form-EN.pdf](http://www.ic.gc.ca/eic/site/cd-dgc.nsf/vwapj/4004-Form-EN.pdf/$FILE/4004-Form-EN.pdf)

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Do the members or board members approve the amalgamation?

If the above conditions are met, this short-form of amalgamation does not require approval by members or an amalgamation agreement. It is the board members of each corporation who, by resolution, approve the amalgamation.

What documents must be sent to Corporations Canada for all forms of amalgamation?

For all forms of amalgamation, the articles of amalgamation, notice of registered office, and notice of board members must be sent to Corporations Canada. The board each amalgamation organization must attach a declaration that each organization will be able to pay its debts and creditors have been informed and do not object to the amalgamation. Corporations Canada will issue a certificate of amalgamation after receiving the articles of amalgamation.

Links to Community Resources

Below are some articles that provide information regarding NPOs and merging.

This document provides advice and encourages organizations to think the role of personal relationships in establishing partnerships or other organizational mergers. It is helpful for organizations considering a partnership who are wondering where to start:

Ferronato & Perryman

Non profit mergers and other deep partnerships

This paper discusses mergers as a strategic choice for Canadian NPOs. It describes that varies types of mergers available, and outlines the steps that will lead to a successful merger:

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Claude Perras

Formulating and implementing a merger strategy in the not-for-profit sector

This article is useful for both NPOs and also charities. It outlines potential pitfalls involving in mergers between NPOs:

Mark Blumberg, The Philanthropist

Mergers and amalgamations within the Canadian non-profit and charity sector

[http://www.canadiancharitylaw.ca/index.php/blog/comments/mergers and amalgamations within the canadian non-profit and charity sector/](http://www.canadiancharitylaw.ca/index.php/blog/comments/mergers_and_amalgamations_within_the_canadian_non-profit_and_charity_sector/)

Resources and Information on Collaboration & Partnerships:

There are other types of collaborative relationships available to NPOs that do not involve incorporating your organizations. Note that these documents use the term “partnership” as a catch all term for the process of productive and collaborative relationships between organizations. This is not the same process as establishing a legally recognized partnership. The links below provide information on what to think about and what options are available if you would like to join with another organization in pursuing a common goal.

Victoria Health Partnership Analysis Tool: This document can help organizations reflect on the partnership they have created or develop a better understanding of the range of purposes of a potential collaboration. Although the document is aimed at health care groups, it provides general information and describes benefits of and strategies for organizational change as well as tactics for managing the transition to a new organizational form:

VicHealth

Partnership Analysis Tool

<http://www.vichealth.vic.gov.au/en/Publications/VicHealth-General-Publications/Partnerships-Analysis-Tool.aspx>

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This toolkit aims to help a variety of organizations develop and maintain partnerships. It explains the meaning and purpose of partnerships, identifying possible partners, and also discusses management, decision-making, and liability issues:

Collaboration Roundtable

The Partnership Toolkit: Tools for Building and Sustaining Partnerships

The qualities/resources that a “good” or successful partnership are described. The term and phases of partnership are laid out in this document. “Social Partnership Projects,” where NPOs and private business join to great strategic alliances are also explored:

Sherri Torjman

Partnerships: the good, the bad and the uncertain

This document is intended as a support for a critical conversation about the effective qualities and uses of a Basis of Unity. These points could be used as a handout or reproduced on flip charts of slides:

COCo Document

Guidelines for an Effective Basis of Unity

<http://coco-net.org/en/node/3928>

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