

Amalgamation of Charities

Our group is non-profit charity and is thinking of amalgamating with another non-profit charity. Both our groups are theatre/arts groups with pretty much the same objects of incorporation.

Part 1 Issues

Q: If we amalgamate, does the new corporation need to re-apply with the CRA to be a charity?

A: Not necessarily, although you will have to confirm with the CRA which charitable registration number the amalgamated entity intends to use. The CRA may have further recommendations and requirements.

Q: And if so, until then are we able to issue tax receipts under one of the former charities?

A: The amalgamated charity may select one of the charitable registration numbers to continue using. The other charitable registration number will be terminated as of the date of the amalgamation. The remaining charitable registration number may be used to issue tax receipts.

To obtain answers to other questions about the how amalgamated charities need to be reported to the CRA, contact the CRA Charities office at **1-800-267-2384**.

Part 2 Analysis

I. Amalgamation

In an **amalgamation**, two or more corporations combine their membership, assets and liabilities. Though the original corporations no longer have separate identities, they do not cease to exist. Their existence continues in the amalgamated corporation.

II. Federal Corporations

Corporations without share capital which have objects of national, patriotic, religious, philanthropic, charitable, scientific, artistic, social, professional or sporting character, with no pecuniary gain to its members, may be created by the issue of letters patent by the Minister of Industry under section 154 of the *Canada Corporations Act*.¹ Corporations with share capital may amalgamate under section 137 of the *Canada Corporations Act*; however, this power is not extended to corporations without share capital created under section 154. Therefore, there is no ability to amalgamate two federally incorporated charities. The process that may occur is that one corporation surrenders its charter. The remaining corporation may then amend its letters patent (in the case of a name change or a change of object of the corporation) and submit an

Application for Supplementary Letters Patent to the Ministry of Industry. If the by-laws of the remaining corporation also need to be changed, a request for Ministerial approval must be submitted in the form of a letter and must specify:

1. the exact changes which have been made to the existing general by-laws, or attaching a copy of the amending by-law;
2. the date on which the amendments were sanctioned by the members in accordance with the existing general by-laws; and
3. a request for Ministerial approval.

III. Ontario Corporations

The majority of Ontario charitable corporations are incorporated by letters patent issued under the provincial *Corporations Act* through the Companies Branch of the Ministry of Government Services or through the Office of the Public Guardian and Trustee.²

Two or more active Ontario corporations with the same or similar objects of incorporation may **amalgamate** pursuant to s.113 of the *Corporations Act*, R.S.O. 1990, c.C-38.³

IV. Ontario Office of the Public Guardian and Trustee

In Ontario, review and approval of the amalgamation of charitable corporations must be obtained from the Office of the Public Guardian and Trustee. If the application for Letters Patent of Amalgamation is accepted, the Office of the Public Guardian and Trustee will issue a Certificate of Amalgamation and will submit the application to the Companies Branch.

This process is described in the **Not-For-Profit Incorporator's Handbook** from the Office of the Public Guardian and Trustee available at <http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/nfpinc/Default.asp> as follows at page 41, section 6.6.4:

“Subject to certain conditions, the **Corporations Act** allows two or more corporations under that Act to amalgamate as one corporation. If one of the amalgamating corporations is charitable or if the amalgamated corporation is to be charitable, the request to amalgamate must be submitted to the Public Guardian and Trustee for its review and pre-approval.

What to send

The following should be submitted to the Public Guardian and Trustee:

- Duplicate original signed copies of the application for Letters Patent of Amalgamation.
- A signed copy of the Amalgamation Agreement.

- A covering letter setting out the name, address and telephone number of the person or firm to whom the Letters Patent of Amalgamation and any correspondence regarding the application should be mailed.
- A cheque or money order payable to the Public Guardian and Trustee. The fees as of the date of the Not-For-Profit Incorporator's Handbook are set out in Appendix "J".
- If the name of the amalgamated corporation will not be the same as the name of one of the amalgamating corporations, you may send a NUANS search report (described in section 2.13 of the Not-For-Profit Incorporator's Handbook) with your application, but remember that a NUANS search is only valid for 90 days. You may choose not to enclose a NUANS report with the application. You will be contacted when the NUANS report is required.
- The annual audited financial statements for each of the amalgamating corporations for the last three years (or since incorporation, if incorporated less than three years ago). Generally, a corporation (whether charitable or not) whose liabilities exceed its assets will not be permitted to amalgamate with a charitable corporation.
- A copy of the Letters Patent and any Supplementary Letters Patent for each amalgamating corporation unless they have already been filed with our Office.
- The current names and addresses of the directors and officers.

If the objects of the amalgamated corporation will be significantly different from those of one of the amalgamating corporations you may be required to amend the amalgamation agreement to include a clause similar to the following:

"All funds and other property held by the amalgamating corporations immediately before the Letters Patent of Amalgamation become effective or at any time thereafter received by the amalgamated corporation pursuant to any Will, deed or other instrument made before the Letters Patent of Amalgamation become effective, together with all income thereon and accretions thereto shall be applied only to the objects of the respective amalgamating corporation as they are immediately before the Letters Patent of Amalgamation become effective."

If the application for Letters Patent of Amalgamation is accepted, the Public Guardian and Trustee will forward it to Companies Branch. The Public Guardian and Trustee's review portion of the fee is non-refundable even if the applicant discontinues the application."

V. Canada Revenue Agency (CRA)

The **Certificate of Amalgamation** issued by the Office of the Public Guardian and Trustee must be provided to CRA in addition to proof that up to date tax returns have been filed by both charities. This is important because the two charities may have different taxation year ends or the amalgamation may have occurred in the middle of the fiscal year of one of the charities.

The CRA Guide **T4033A Completing the Registered Charity Information Return** available at <http://www.cra-arc.gc.ca/E/pub/tg/t4033a/README.html> explains the requirement for a registered charity to file an annual return. Section A5 of the Guide on page 10 addresses a charity which has undergone amalgamation and invites the charity to contact the CRA:

“A5 – Charity merged or amalgamated

Check “Yes” if the charity has merged, amalgamated, or consolidated with another organization. *Please call us for advice as to what documentation you have to submit.*” (emphasis added)

The amalgamated charity may select one of the charitable registration numbers to continue using. The other charitable registration number will be terminated as of the date of the amalgamation. The annual tax return of the charity with the terminated charitable registration number will show a Fiscal Period Ending as of the date of the amalgamation.

To obtain answers to other questions about the how amalgamated charities need to be reported to the CRA, contact the CRA Charities office at **1-800-267-2384**.

¹ **Canada Corporations Act**

PART II: CORPORATIONS WITHOUT SHARE CAPITAL

154. (1) The Minister may by letters patent under his seal of office grant a charter to any number of persons, not being fewer than three, who apply therefor, constituting the applicants and any other persons who thereafter become members of the corporation thereby created, a body corporate and politic, without share capital, for the purpose of carrying on, without pecuniary gain to its members, objects, to which the legislative authority of the Parliament of Canada extends, of a national, patriotic, religious, philanthropic, charitable, scientific, artistic, social, professional or sporting character, or the like objects.

² **Not-For-Profit Incorporator’s Handbook** from the Office of the Public Guardian and Trustee, page 29, available at: <http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/nfpinc/Default.asp>

“The majority of Ontario charitable corporations are incorporated by Letters Patent issued under the provincial Corporations Act. The procedure for incorporating a charity under the Corporations Act is described in 6.2 and 6.3 below.

There are two other ways to incorporate a charity. They are not discussed in detail in the Not-For-Profit Incorporator's Handbook. If you need further information, you may contact the responsible organizations at the addresses set out below.

By private bill or special Act of the legislature.

The provincial legislature can pass a private bill or special Act establishing a charity. This procedure is generally more time-consuming than the two other methods. Today very few charities are created by private bill or special Acts of the legislature. The procedure for private bills is set out in the publication Standing Orders of the Legislative Assembly and further information can be obtained by contacting Legislative Counsel, Suite 3600, Whitney Block, 99 Wellesley Street, Queen's Park, Toronto, Ontario, M7A 1A2; telephone (416) 326-2841.

By federal Letters Patent issued through Industry Canada.

Letters Patent can be issued under the Canada Corporations Act. Applicants should contact Industry Canada, Corporations Directorate, Jean Edmonds Tower South, 9th Floor, 365 Laurier Avenue West, Ottawa, Ontario, K1A 0C8, telephone (613) 941-9042, for particulars of application procedures, forms and fees. Charities that operate or have property or offices in Ontario must also comply with Ontario law concerning charities even if they are incorporated under federal law.”

³ *Corporations Act*, R.S.O. 1990, c.C-38, s. 113

Amalgamation

113. (1) Any two or more companies, including a holding and subsidiary company, having the same or similar objects may amalgamate and continue as one company. R.S.O. 1990, c. C.38, s. 113 (1).

Agreement

(2) The companies proposing to amalgamate may enter into an agreement for the amalgamation prescribing the terms and conditions of the amalgamation, the mode of carrying the amalgamation into effect and stating the name of the amalgamated company, the names and address for service of each of the first directors of the company and how and when the subsequent directors are to be elected with such other details as may be necessary to perfect the amalgamation and to provide for the subsequent management and working of the amalgamated company, the authorized capital of the amalgamated company and the manner of converting the authorized capital of each of the companies into that of the amalgamated company. R.S.O. 1990, c. C.38, s. 113 (2); 2001, c. 9, Sched. D, s. 5 (4).

Adoption by shareholders

(3) The agreement shall be submitted to the shareholders of each of the amalgamating companies at general meetings thereof called for the purpose of considering the agreement, and, if two-thirds of the votes cast at each such meeting are in favour of the adoption of the agreement, that fact shall be certified upon the agreement by the secretary of each of the amalgamating companies. R.S.O. 1990, c. C.38, s. 113 (3); 1998, c. 18, Sched. E, s. 64.

Joint application for letters patent

(4) If the agreement is adopted in accordance with subsection (3), the amalgamating companies may apply jointly to the Lieutenant Governor for letters patent confirming the agreement and amalgamating the companies so applying, and on and from the date of the letters patent such companies are amalgamated and are continued as one company by the name in the letters patent provided, and the amalgamated company possesses all the property, rights, privileges and franchises and is subject to all liabilities, contracts, disabilities and debts of each of the amalgamating companies. R.S.O. 1990, c. C.38, s. 113 (4).