

The Coordinator of the HNN received an e-mail from a member of the public in which the writer asked for information on what constitutes a not-for-profit group or organization. This was her response:

Hello. I hope I am interpreting your question about what constitutes a not-for-profit correctly....

An important caveat here is that I am not a lawyer so if you are seeking legal advice on this, you would need to check with a lawyer. However, based on years of working in the nonprofit sector, I can share the following observations with you.

The key distinguishing features of a not-for-profit are that it operates with no monetary gain for the individuals associated with it, e.g., members, Board members, etc. and it is organized for some shared benefit for its members (e.g., community garden groups, self help groups), or the community or a group in the community. Any "profits" it may realize from its activities, e.g., a fundraising barbecue, go back into the operations of the organization. Given these as the basic characteristics of not-for-profits, they exist in a number of forms.

There is a distinction to be made between what is legally a not-for-profit corporation and not-for-profits that operate on a more informal basis. In this more general sense, there are lots of smaller groups operating that have organized together for some benefit and are known as not-for-profits. From what you described, your group probably fits in here.

Often in the life of such a group, a decision is made to become a bit more formal in their organization and they will decide to incorporate as a not-for-profit corporation. Incorporation of not-for-profits in Ontario is currently governed by the Ontario Corporations Act, and incorporation has both benefits and responsibilities associated with it. It requires a corporate name search, developing a constitution or bylaws, and the establishment of a Board of Directors. There are also certain regular reporting requirements.

Often, the impetus behind a decision to incorporate is financial: most funders will provide grants only to incorporated bodies. (Sometimes, an organization will be awarded a grant to administer on behalf of an unincorporated group, but this tends to be the exception rather than the rule.) There are other reasons to incorporate as well.

Incorporation as a not-for-profit can be done through the Province (also federally, but that is usually done only by organizations operating federally. I personally have worked only with groups that are becoming incorporated through the province.) The process of incorporation is not overly onerous and there are fees for this, but they are not overly steep. The process has a couple of steps to it.

Having said this, there is a new Ontario Not-for-profit Corporations Act that will come into effect in July of 2013. It will supercede the current legislation that has not-for-profits incorporate under the Corporations Act. The new legislation has important implications for not-for-profits that are currently incorporated or who wish to incorporate. For example, the role of members changes quite dramatically under this new Act and many of us in the sector are working to

understand all the implications and the processes through which existing not-for-profit corporations will be able to align themselves with any new or changed requirements.

The final thing I should share with you is the distinction between a not-for-profit, a charity and a Registered Charity. It is possible through the not-for-profit incorporation process to incorporate as a charity, but this is not quite the same as being a Registered Charity for income tax purposes. Being a registered charity allows an incorporated organization to issue charitable tax receipts for donations (monetary and in-kind) and is a status that can be granted only by the Canada Revenue Agency. Becoming a registered charity is a far more complex process with significant responsibilities attached, and only organizations pursuing defined charitable activities are granted this status. You must be incorporated as a not-for-profit in order to be eligible for charitable status. Many charities are very large with lots of staff, volunteers and programs but they, too, are not-for-profits.

I hope this has been helpful to you. The Not-for-profit Incorporator's Handbook provides lots of answers about incorporating and was developed by several of the provincial ministries that have an interest in the incorporation process for not-for-profits. You can find it on-line at:

<http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/nfpinc/>