

## **SHOULD A LIONS CLUB INCORPORATE?**

The simple answer is **YES**.

A business incorporates to protect the owners (shareholders) from the personal responsibility to pay the debts of the business. Likewise a Lions Club should incorporate so that each member does not become responsible to pay the debts of the Club, if the Club is not able to pay its creditors.

Limited, Ltd, Incorporated, and Inc. are all terms that mean the same i.e. limited liability for the (shareholders/officers/directors of the Corporation) members of the Club.

Notwithstanding the incorporation, there are certain debts that come out of an incorporated Club and become the responsibility of the directors of the Club such as government claims and employee claims. The government claims usually are GST, PST, and employee source deductions. Employee claims could be wages, holiday pay, vacation pay and/or separation pay.

All of the directors of an incorporated Club may not necessarily be involved in the payment of the Clubs bills, however they would still be held responsible unless they take steps to make sure the payments are being made. The expression used in defence of a government claim is “due diligence”. With this in mind, each of the directors should insist that the treasurer report at each board of directors meeting on the payment of all government and/or employee claims and the report should be recorded in the minutes. If the directors are still concerned about their liability, a motion should be made at each meeting to “pay” any government and/or employee claims.

For the majority of Lions projects, there are neither employees nor sales taxes. However, for example, there could be if a Club manages a hall and/or runs a bar.

Incorporation is a precautionary measure to protect the individual members. As long as the Club is able to pay its debts (including government; employees; personal injury claims) then being incorporated is not a factor.

If a Club is not incorporated, and if the Club is not able to pay its debts, then the creditors have the right to pursue the personal assets of each member of the Club to satisfy any outstanding obligation to the creditors. Each member is considered to be part of the non-incorporated body carrying on the association known as a Lions Club.

An example of where a problem could arise is where a Club is running a "beer tent". Say a patron has too much to drink, has an accident on the way home, and alcohol is determined to be a factor. Each member of an unincorporated Club could be held personally liable and most likely would be included in any litigation. This has the effect of exposing their "family" assets.

Recently a Club in our District was included in an action. It was incorporated and in good standing with the Corporations Branch and Lions International. The members of that Club are protected from third parties.

Although there are certain administrative functions that must be carried out as a result of incorporation, the benefits associated with protection from third parties clearly outweighs any administration functions.

A Provincial annual information return is required to be filed with the Ministry of Consumer and Commercial Relations to name the new officers and directors. Currently there is no fee for this filing.

The Club should hold a formal annual meeting with the minutes recorded in the Minute Book, along with the minutes of directors meetings (resolutions) held throughout the year. As the Lions year ends on June 30, it is recommended that the annual meeting should be held shortly thereafter to record and confirm the appointment of the New Officers.

There are some legal costs to incorporate, usually less than \$1,000; however, if you have a solicitor who is willing to incorporate your Club "pro bono" (meaning no fees, only disbursements) the actual cost is in the area of \$500/600. The solicitor will provide a Corporate Seal, and a Minute Book, which must be kept up to date. The Minute Book will contain:

- a By-law relating generally to the conduct of the business and affairs of the Corporation;
- Certificate and Consent of each Director (must be a Canadian citizen);
- Exemptions from Audit under the Ontario Business Corporations Act;
- Appointment of officers;
- Security of Documents; and
- Banking Resolutions.

The mechanics of Incorporation are relatively simple. You must obtain a Nuans Report, which is simply a document that indicates that there are no other corporations in Ontario with your Club name. This search is normally obtained from Dye & Durham at a cost of \$61. Either the Club or their solicitor can make this search.

Once you have a Nuans Search, you can then select the members of your Club who wish to be the Applicants for the Corporation and who also will be the first Directors of the Corporation.

Having completed your search and decided the incorporators (usually 5), you then "sweet talk" some solicitor into putting together the Application for Incorporation of a Corporation without Share Capital. The secret is getting one who won't charge any fees, i.e., "pro bono".

The reason that a solicitor would be better suited than simply doing it yourselves is the fact that there is a double threshold that you must meet.

Firstly, your Application for Articles of Incorporation must be sent to the Office of the Public Guardian & Trustee, Charitable Property Program. That office determines whether you meet its requirements. There is a fee of \$150 payable to the Minister of Finance for this Application.

Secondly, having passed the Charitable Property Program, your Application now goes to the Minister of Consumer & Commercial Relations, along with another fee of \$150 payable to the Minister of Finance.

If everything is acceptable, you will receive Letters Patent. At this point in time, your Corporate Seal and Minute Book is ordered. If you want your Club's name on the outside of the Minute Book you might have to pay +/- \$15 more for the Minute Book.

One of the items stressed by Bill Watson, apart from the benefits of incorporation, was the fact that you should make sure that your Club, if incorporated, has complied with the reporting rules with the Ministry. Failure to comply can result in the revocation of the Letters Patent. In which case, the members of a Club could be left with no third party protection in situations where the Lions International insurance policy may not apply.

I would like to acknowledge the contribution of solicitor William D. Watson, a former Lion and Past Region Chair, in the preparation of this paper on Incorporation.

Lion Jack Fisher, CMA, CIRP,  
(Chartered Insolvency & Restructuring Professional)  
MDA Treasurer

Jack is a Trustee in Bankruptcy  
Now retired from Alan Lawson, Fisher Inc. who have offices throughout District A-3

Nov/07