

# Incorporated Ministries

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October 2016



The United Church of Canada  
L'Église Unie du Canada

Incorporated Ministries (October 2016)



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The October 2016 edition has no substantive changes.

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## Background

At General Council 39, August 2006, a motion was adopted to approve policy changes to Appendix IV allowing for three categories of defined relationships with incorporated bodies and supervision and to revise *The Manual* to reflect those policy changes. The Manual Committee revised *The Manual* so that section 429 was expanded to include elements of Appendix IV, and subsequently Appendix IV–Applications for Incorporation was removed.

In February 2007, a consultation of the Conference Executive Secretaries was held to discuss the changes to section 429, including the impact of shifting the supervisory role from congregations/presbyteries to the Conference, and to identify the resources required to facilitate the work. To provide clarity, language changes were made to the category descriptions outlined in the original report to GC39. Through the discussions, it was identified that additional guidelines were necessary to assist in implementing section 429.

In June 2007, a group met to expand on the work of the Conference Executive Secretaries. They focused on answering the questions that had been raised at the initial consultation, revising the language of the categories to address these concerns, and identifying more specifically what to include in the additional guidelines. The following is a reflection of this cumulative work.

*Note:* In the 2013 edition of *The Manual*, section 429 was renumbered as section B.8.

### **IMPORTANT**

**Pages 5–8 are the official policy. The remaining pages of this handbook are guidelines for implementing this policy.**

# Incorporated Ministries Policy

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**This section is a summary of the official policy.**

1. Any group considering becoming a corporation and maintaining an affiliation with The United Church of Canada must first request and receive the written consent of the Conference (or of the General Council if the activity goes beyond the jurisdiction of a single Conference) and the administrative approval of the General Council Office.  
  
The Conference will receive applications for incorporation and consider such applications, ensuring that
  - the incorporation is essential for the fulfillment of the objectives and that no other committee, body, or board of trustees is reasonably able to substitute for the corporation
  - applications and the proposed bylaws comply with the requirements as set out by the General Council or its executive
2. The Conference shall make a decision whether to consent to incorporation only after administrative approval has been secured from the General Council Office.
3. When the activity of the incorporated ministry will extend beyond the jurisdiction of the Conference, consent to incorporate shall be sought from the General Council.
4. The United Church recognizes three categories of defined relationships with incorporated ministries:
  - United Church incorporated ministries, with which the United Church has a close and vital relationship
  - incorporated multiple participant ministries, in which the United Church is a participant
  - legacy incorporated ministries, which originated with the United Church, but which have since distanced themselves from the United Church
5. The Conference shall be responsible for oversight of both the incorporation and the ongoing activities.
6. The following incorporated ministries are excepted from the oversight of the Conference:
  - Observer Publications Inc.
  - incorporated ministries operating in more than one Conference, in which case the General Council may assume responsibility for oversight or assign responsibility to one or more Conferences
  - other incorporated ministries that have requested and received from the General Council an exception and for which oversight responsibility has been assigned to one or more courts

# Requirements of Incorporation

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**This section is the detailed official policy.**

To be incorporated as a United Church ministry, an organization must meet provincial/federal requirements as well as the following. There are two categories of defined relationships with incorporated bodies:

- Category 1: The United Church of Canada Incorporated Ministries
- Category 2: Multi-party Incorporated Ministries with Multiple Participants

For ministries that have a historical affiliation with the United Church who have reached a point where this relationship no longer serves the ministry or the church, the ministry may choose to be recognized as a legacy ministry. While continuing to recognize the origins and historical relationship, the legal relationship between the ministry and the United Church would cease.

## **Category 1: The United Church of Canada Incorporated Ministries**

This category affirms the close and vital relationship of the church to the corporation.

1. These corporations shall comply with the requirements of *The Manual*, section B.8, and the Incorporated Ministries Policy.
2. A majority of board members shall be approved by the supervising Conference of The United Church of Canada, and the Conference Executive Secretary of the supervising Conference shall be ex officio a corresponding member of the board of the corporation (receives notices of meetings and minutes of meetings, has the right to attend all meetings, but is non-voting).
3. There shall be annual reporting to the supervising Conference of the membership of the board, the minutes of the annual meeting, financial statements (audited/independently reviewed by a qualified person), and insurance coverage (including naming The United Church of Canada as Additional Insured).
4. The supervising Conference shall determine acceptable levels of insurance coverage.
5. The supervising Conference has authority to permit the corporation to determine its own manner of determining the membership of the corporation. The majority of the membership of the incorporated ministry shall not be members of the supervising Conference or, in the case where the Conference delegates to another court its supervising role, the majority of the incorporated ministry membership shall not be members of that supervising court.

6. Approval from the supervising Conference and higher court is required for changes to articles of incorporation and changes to corporate bylaws.
7. Approval from the supervising Conference is required in advance for capital fundraising initiatives and appeals affecting other parts of The United Church of Canada.
8. Indebtedness may be subject to prescribed limits as deemed appropriate by the supervising Conference.
9. The supervising Conference as part of its oversight role shall ensure that a periodic review of the purpose, goals, and mission of the incorporated ministry takes place, including a pastoral visit to the incorporated ministry. The Conference may delegate this responsibility to another court.
10. These ministries will adhere, at all times, to the applicable policies, standards, and regulations as they may be enacted by the General Council or its executive from time to time.
11. The assets of these corporations shall vest in The United Church of Canada in the event that the corporation ceases to function or its corporate existence is terminated.
12. Any corporations created by Category 1 corporations shall be organized and supervised according to *The Manual*, section B.8, and the Incorporated Ministries Policy.
13. Any sale, transfer, mortgaging, acquisition, or leasing of land must have the prior written consent of the supervising Conference.
14. The incorporated ministry shall not, without the prior written consent of the supervising Conference, initiate or in any way engage in proceedings that might result in the voluntary winding up of the corporation.
15. The provisions of each of the preceding paragraphs herein may be changed or modified only with the prior written consent of the supervising Conference and the administrative approval of the General Council.

## **Category 2: Multi-party Incorporated Ministries with Multiple Participants**

This category acknowledges The United Church of Canada as one of two or more participants in a corporation.

1. The level of representation of corporation members and the board of directors will be identified in the bylaws of the incorporated ministry and will normally be in proportion to the level of participation of the United Church. The representative members will be approved by the supervising Conference of The United Church of Canada.
2. There will be annual reporting to the supervising Conference of the membership of the board, the minutes of the annual meeting, financial statements (audited/independently

reviewed by a qualified person), and insurance coverage (including naming The United Church of Canada as Additional Insured). Similar reporting may be required by the supervising body of other participants.

3. The participants with a view to incorporating shall enter into an operating agreement. This operating agreement shall include the extent to which the participants will contribute to and participate in the realization of the mission of the incorporated ministry, and determine the policies and administrative standards that shall apply to the incorporated ministry and its operations. (These guidelines shall be informed by and comparable to the standards and policies approved by the parent bodies.)
4. Oversight visits shall take place as determined by the supervising Conference in consultation and collaboration with the other participant(s).
5. The incorporated ministry will determine whether to participate in The United Church of Canada's or the participant's comparable or more rigorous applicable policies, standards, and regulations as they may be enacted from time to time.
6. The operating agreement will set out the distribution of assets in the event that the corporation ceases to function or its corporate existence is terminated.
7. Any corporations created by Category 2 corporations will be organized and supervised according to *The Manual*, section B.8, and the Incorporated Ministries Policy.

## Legacy Relationship

This designation includes those incorporated ministries that, by mutual decision with The United Church of Canada, acknowledge the origins and/or history of the ministry within the church but for practical or theological reasons seek their independence by severing formal relationships with The United Church of Canada.

1. The formal relationship of the corporation to the Church will be severed only following consultation and the applicable approval(s) of the severance agreement between the incorporated ministry and the supervising Conference on behalf of The United Church of Canada.
2. Recognizing The United Church of Canada's pastoral concern for the continuance of the ministry, as well as the church's fiduciary responsibility to the generosity and gifts of past members of the church to these ministries, the disposition of The United Church of Canada's interest in the incorporated ministry's personal and real property will be negotiated according to the policies of the General Council as they are amended and updated from time to time. Details of the negotiated disposition plans will be included in the severance agreement.



# When to Incorporate

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*The Manual* states the following:

## **B.8. Incorporated Ministries**

### **8.1 Application**

An incorporated ministry is another form of local ministry unit. This section (B.8) on incorporated ministries applies to any corporation that

- (a) carries on any activities related to United Church activities;
- (b) uses the name of The United Church of Canada, in whole or in part;
- (c) indicates to others that it is connected to the United Church in some way; or
- (d) takes on financial responsibility or any other kind of responsibility that might also create responsibility for the United Church.

The corporation must comply with all of the requirements for incorporated ministries in the United Church.

### **8.2 Incorporation**

Pastoral charges, courts, and other bodies accountable to the United Church may incorporate a ministry. They must follow the United Church's process for incorporation and meet the United Church's requirements for incorporated ministries. If the incorporation is approved, the corporation is called an "incorporated ministry."

This forms the historical grounding of incorporation in The United Church of Canada.

However, this may no longer reflect the reality of every ministry that emerges from a United Church congregation or ministry. A ministry that chooses to incorporate must also determine whether its relationship with The United Church of Canada will continue or if this is the point at which it moves forward independently. There are advantages and disadvantages in remaining affiliated with the church and in distancing the relationship with the church. However, there are situations when it is clear that the corporation must abide by section B.8 and the Incorporated Ministries Policy. The corporation must abide by *The Manual* requirements in the following situations:

1. The name of The United Church of Canada or that of any local congregation is part of the identity of the corporation—for example, Drop-in Centre of the United Church.
2. The corporation serves the church or a church-related ministry in providing programming for the ministry.
3. Services are provided totally or substantially by the church—that is, by the ministry personnel or congregation.

4. Residual interest in assets is vested with The United Church of Canada as identified by letters patent or bylaws.
5. A risk exists to the congregation or The United Church of Canada as a whole that can best be minimized by creating a separate structure through incorporation.
6. There is a direct and ongoing United Church connection—administration, governance, involvement (e.g., fundraising), and so on.

## Steps to Incorporation: Category 1

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1. Consider these questions:
  - Why incorporate?
  - Why incorporate under the Incorporated Ministries Policy?
2. Consult with the Conference regarding the decision to incorporate. Approval from the Conference is required if the corporation is to be recognized by the United Church as a ministry of the church. If the ministry will cross Conference boundaries, consultation with the other Conference(s) (and with General Council) is also required.
3. Consult with a lawyer. The incorporating body should seek legal advice from its own counsel, separate from any provided by the presbytery or Conference.
4. Research the requirements for incorporation either federally or in your province/territory (see Resources on page 37 for contact information).
5. With assistance from legal counsel, draft requirements for incorporation as outlined by the governmental jurisdiction to which you intend to apply.
6. Submit an application for incorporation to the supervising Conference, including
  - a. an application for incorporation on the forms acceptable to the appropriate provincial or federal authorities
  - b. a draft of the proposed bylaws (see Appendix B for suggested bylaw provisions)
  - c. a request for administrative approval from General Council
  - d. a request for the consent of the supervising Conference
7. Ensure the application for incorporation provides that
  - a. the purposes of incorporation are in accord with those of The United Church of Canada
  - b. a majority of board members are approved by the supervising Conference
  - c. the Conference Executive Secretary of the supervising Conference is ex officio a corresponding member of the board of the corporation (receives notices of meetings and minutes of meetings, has the right to attend all meetings, but is non-voting)
  - d. in the event that the corporation ceases to function or its corporate existence is terminated, all of its assets are vested in The United Church of Canada

8. Create bylaws that provide that
  - a. the corporation establishes a manner of determining membership but in no case are a majority of the members of the corporation members of the supervising Conference or, where the Conference delegates its supervising role, members of the supervising court, if not already provided for in the application for incorporation
  - b. annual reporting to the supervising Conference includes the membership of the board, the minutes of the annual meeting, financial statements (audited/independently reviewed by a qualified person), and insurance coverage (including naming The United Church of Canada as Additional Insured)
  - c. a formal budget includes an indication of how the incorporated ministry will meet generally accepted accounting principles and practices appropriate to the size, scope, and assets of the incorporated ministry, and includes the identity of the person or firm that will audit or review the books
  - d. the majority of the directors are approved by the supervising Conference
  - e. insurance is kept in force covering fire, comprehensive liability, and such other insurable items in such amounts as the supervising court may require, with The United Church of Canada named as Additional Insured on all insurance policies
  - f. approval is required in advance from the supervising Conference for capital fundraising initiatives and appeals affecting other parts of The United Church of Canada
  - g. any sale, transfer, mortgaging, acquisition, or leasing of land has the prior written consent of the supervising court
  - h. no fee is paid to any director of the corporation as such, but a director may be paid for other services rendered to the corporation and may be reimbursed for expenses properly incurred on behalf of the corporation
  - i. the corporation does not, without the prior written consent of the supervising Conference, initiate or in any way engage in proceedings that might result in the voluntary winding up of the corporation
  - j. the assets of these corporations vest in The United Church of Canada in the event that the corporation ceases to function or its corporate existence is terminated
  - k. the provisions of each of the preceding paragraphs may be changed or modified only with the prior written consent of the supervising Conference and the administrative approval of the General Council
  - l. approval from the supervising Conference and higher court is required for changes to articles of incorporation and changes to corporate bylaws
9. Receive consent to incorporate from the supervising Conference or, if multiple Conferences, the General Council.

## Steps to Incorporation: Category 2

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1. Consider these questions:
  - Why incorporate under the Incorporated Ministries Policy?
  - Are there similar requirements by the supervising body (or bodies) of the other participant(s)?
2. Arrange a preliminary meeting between all participants and any others to which the participants may be accountable. This may be the first of several meetings required between all bodies.
3. Research the requirements for incorporation either federally or in your province/territory (see Resources on page 37 for contact information).
4. Consult with a lawyer. The incorporating body should seek legal advice from its own counsel, separate from any provided by the presbytery, Conference, or supervising body of other participants.
5. Consult with the Conference about the decision to incorporate. Approval from the Conference is required if the corporation is to be recognized by the United Church as a ministry of the church. If the ministry will cross Conference boundaries, consult as well with the other Conference(s) and with General Council. Similar approval may be required from the other supervising body or bodies.
6. Draft requirements for incorporation as outlined by the governmental jurisdiction to which you intend to apply.
7. Submit an application for incorporation to the supervising Conference, including
  - a. an application for incorporation on the forms acceptable to the appropriate provincial or federal authorities
  - b. a draft of the proposed bylaws
  - c. a draft of the operating agreement between participants (see Appendix C for a checklist)
  - d. a request for administrative approval from General Council
  - e. a request for the consent of the supervising Conference
8. Ensure the application for incorporation provides that
  - a. the purposes of incorporation are in accord with those of The United Church of Canada and other participants as required
  - b. board members representing The United Church of Canada are approved by the supervising Conference
  - c. the Conference Executive Secretary of the supervising Conference is ex officio a corresponding member of the board of the corporation (receives notices of meetings and minutes of meetings, has the right to attend all meetings, but is non-voting)
  - d. in the event that the corporation ceases to function or its corporate existence is terminated, assets are vested as determined in the operating agreement between participants

9. Ensure that the operating agreement provides
  - a. the extent to which participants will contribute to and participate in the realization of the mission (in the areas of finance, governance, property, and so on—see Appendix C)
  - b. policies and administrative standards that apply to operations
  - c. distribution of assets in the event that the corporation ceases to function or its corporate existence is terminated
  
10. Create bylaws that provide that
  - a. the corporation determines a manner of determining membership but in no case are a majority of the members of the corporation members of the supervising Conference or, where the Conference delegates its supervising role, members of the supervising court, if not already provided for in the application for incorporation
  - b. annual reporting to the supervising Conference includes the membership of the board, the minutes of the annual meeting, financial statements (audited/independently reviewed by a qualified person), and insurance coverage (including naming The United Church of Canada as Additional Insured)
  - c. the directors representing The United Church of Canada are approved by the supervising Conference
  - d. insurance is kept in force covering fire, comprehensive liability, and such other insurable items in such amounts as the supervising court may require, with The United Church of Canada named as Additional Insured on all insurance policies
  - e. approval is required in advance from the supervising Conference for capital fundraising initiatives and appeals affecting other parts of The United Church of Canada
  - f. any sale, transfer, mortgaging, acquisition, or leasing of land has the prior written consent of the supervising court and the next higher court
  - g. no fee is paid to any director of the corporation as such, but a director may be paid for other services rendered to the corporation and may be reimbursed for expenses properly incurred on behalf of the corporation
  - h. the corporation does not, without the prior written consent of the supervising court, initiate or in any way engage in proceedings that might result in the voluntary winding up of the corporation
  - i. the assets of the corporation vest in The United Church of Canada, as outlined in the operating agreement, in the event that the corporation ceases to function or its corporate existence is terminated
  - j. the provisions of each of the preceding paragraphs may be changed or modified only with the prior written consent of the supervising Conference and the administrative approval of the General Council
  - k. approval from the supervising Conference and higher court is required for changes to articles of incorporation and changes to corporate bylaws
  
11. Receive consent to incorporate from the supervising Conference or, if multiple Conferences, the General Council.

# Guidelines for the Process to Sever the Legal Relationship with The United Church of Canada

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This section describes the steps involved in severing the legal connections between The United Church of Canada and an incorporated ministry. This process does not affect the status of the corporation as a legal entity. The steps outlined are those required to implement the change in relationship. Costs associated with this process would normally be borne by the corporation.

## Chronology

1. Either the corporation or the supervising Conference initiates a consultation to explore the severance of the legal relationship. This consultation involves all principal stakeholders, including, at a minimum, the incorporated ministry, the Conference, and the presbytery (or presbyteries). It may also include congregations if they have been responsible for major tasks (e.g., the appointment of board members).
2. The corporation indicates its desire to proceed with the process.
3. The Conference and the corporation confirm what is involved in the process and agree on a timeline for accomplishing the next steps.
4. There is disclosure by the corporation, as identified.
5. The corporation and the Conference negotiate a financial resolution with respect to property and assets.
6. The corporation revises its corporate documentation, including bylaws and letters patent (as required).
7. The corporation consults the broader stakeholders. These may include members of the broader community who have been involved in the service of the incorporated ministry, major benefactors, founding donors, and congregations that contributed significant monies or provided volunteers. It may also include any opinion leaders or strong past participants who would be upset to learn about the action being taken only after it has been completed (e.g., by word of mouth or through the media).
8. The corporation determines, in consultation with the Conference, the necessary changes to identifiers.
9. The supervising Conference gives its approval for the process to move forward.
10. The corporation implements the necessary transition steps, including
  - a. communication plan
  - b. Conference access to records
  - c. change of identifiers
11. All parties celebrate a new beginning.

## Requirements

### 1. Disclosure

In the interest of fairness and transparency, there must be full and timely disclosure of relevant information related to the corporation's affairs. This includes but is not limited to the following:

- a. insurance
  - policy
  - outstanding claims
- b. claim and incident reports for both insured and uninsured matters
- c. outstanding legal or regulatory issues including but not limited to
  - municipal bylaw infractions
  - fire marshal orders
  - outstanding property taxes
  - employment standards
  - occupational health and safety concerns
  - realty tax
  - Canada Revenue Agency matters
- d. related corporations and foundations

### 2. Property and Assets

Understanding that God is the source of all, the following three principles govern the financial resolution of the incorporated ministry's assets:

- Faithful stewardship of the assets that members and friends have contributed for the purpose of fostering God's mission through the incorporated ministry is honoured and maintained.
- Due care is taken to ensure that the incorporated ministry's viability is not jeopardized by the financial resolution with respect to its assets.
- Assets attributable to the United Church are not alienated by the incorporated ministry now or in future, except with appropriate agreed compensation.

To effect the severance,

- a. full disclosure of assets and liabilities, satisfactory to the supervising Conference, is made by the corporation, including
  - an audited statement
  - a list of creditors and suppliers
  - a list of trusts, legacies, and endowments, and the terms of each
  - title search(es)
- b. the financial investment of The United Church of Canada in the incorporated ministry is ascertained, and a financial resolution is concluded
- c. any financial resolution required in point (b) requires the approval of the General Council

3. Changes to Bylaws and Incorporating Documents
  - a. Any changes to bylaws to move to sever the legal relationship require the approval of the supervising Conference and the supervising court as identified in existing bylaws.
  - b. All references to approval, supervision, oversight, or accountability by The United Church of Canada or one of its supervising bodies must be removed from the bylaws of the corporation.
4. Removing United Church Identifiers
  - a. The corporation agrees to remove all related identifiers from the property and its operational activities.
  - b. The name “United Church” is removed from the corporate name and all operational documents and property, including but not limited to letterhead, electronic identifiers, telephone listings, signage, and promotional literature.
  - c. The name or symbols of the United Church are removed or modified to reflect the severance (e.g., a historic plaque may be installed noting the historical connection only).
5. Communicating the Change in Relationship

To honour the historic relationship between the corporation and the United Church, a joint communication plan should be developed involving both the ministry and the supervising Conference.

  - a. The plan should include a celebration event acknowledging the new beginning.
  - b. The communication plan includes the following:
    - wider church community (congregations, presbytery, other denominations)
    - community in general (local newspaper and other media)
    - general stakeholders (founders and key benefactors)
    - other appropriate parties
6. Miscellaneous
  - a. The incorporated ministry provides the United Church with an indemnity for all present and future claims against the church relating in any way to the operations of the incorporated ministry.
  - b. Copies of the following records are provided as requested by the Conference:
    - insurance policies
    - letters of incorporation



## **Life after Severance**

1. Corporations make their own inquiries regarding their eligibility for church funding from the United Church and church-related sources.
2. The supervising court no longer approves or appoints members to the board.
3. The corporation may seek board members who are members or adherents of the United Church. However, these members or adherents do not speak on behalf of or represent the United Church in their capacity as board members.
4. The corporation and the United Church may explore new ways to provide service to the community. This may include programming, chaplaincy, use of facilities, volunteer opportunities, and so on.
5. The formal severance has no effect on the corporation's participation in the pension plan and group benefits of the United Church.

# Guidelines for Supervision

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The relationships between the corporations and their existing supervising courts are as varied as the ministries themselves. Much time and effort has been put into developing these relationships over the years, and the changes to *The Manual, 2007*, should be considered in this light. Each Conference looks at the specific ministries and presbyteries as the transition is made to Conferences being the supervising court. While there may be benefits in supervision remaining at a more local level (presbytery), the final responsibility for supervision lies with the Conference. The following may assist in conversations during this transition phase.

If a Conference chooses to delegate responsibility to presbytery, it needs to be clearly understood that it is the Conference's responsibility to provide training and support to ensure the supervision is carried out.

1. What are the elements of supervision?
  - a. Ensure compliance with requirements.
  - b. Notify and follow up on reporting requirements (monthly and annual).
  - c. Act on received reports, including:
    - Review financial statements.
    - Review annual reports.
    - Determine acceptable levels and review insurance statements for compliance.
    - Approve board membership.
    - Approve articles and bylaws.
  - d. Give advance approval of capital fundraising initiatives.
  - e. Set prescribed levels for indebtedness.
  - f. Establish the process and requirements for oversight reviews, including visits.
  - g. Ensure oversight reviews meet requirements.
  - h. Receive, review, and make decisions on requests for sale, transfer, mortgaging, acquisition, or leasing of land.
2. Are checks in place to ensure that supervision occurs?
  - a. The body responsible for oversight (Conference corporations committee, presbytery, or other identified “supervisor”) gives a report on compliance/visitation to the Conference, highlighting issues that need to be addressed or followed up on.
  - b. Issues that may have an impact on the broader church should be brought to the attention of the General Council Secretary by the Conference Executive Secretary.
3. What does an oversight visit look like for an incorporated ministry?
  - a. The overall “health” of the ministry is assessed.
  - b. Financial aspects are reviewed (e.g., Is the ministry in trouble? Is there a plan to address replacement of capital assets?).

- c. The relationship between the board and the staff is examined (e.g., Is the relationship healthy? Is there a clear definition of roles for each?).
- d. The distinction between “membership” and “board members” is observed; is it clear?
- e. Separate meetings with staff, board members, and the executive are conducted (somewhat akin to an audit).
- f. Opportunity for continuing staff education is assessed; is a working program in place to provide this?

Before the oversight visit, the supervising Conference and the General Council Office should discuss any matters that require specific attention. Frequency of visits may be determined by need: Recurrent visits may be warranted where there are ongoing issues, while visits may be less frequent once the ministry is deemed “healthy.”

Correspondence, complaints, and/or accolades regarding the ministry are reviewed before the meeting; websites, informal flyers, and so on should also be checked.

4. Who is involved in an oversight visit?

- a. At minimum, the director or chief staff person, the board chair, and the treasurer (i.e., two members of the board) are involved.
- b. Other senior level staff may be invited, such as those with direct responsibility for the programs.
- c. Ideally, there is some conversation with program participants.
- d. If the presbytery has any delegated responsibility or shared supervision, a member of the presbytery who has knowledge of the ministry should be involved; this is particularly important if there has been a close relationship before the transition.
- e. Ideally, two members from the Conference are involved: a Conference staff person may be appropriate, as well as a member of the Conference committee that has the responsibility for corporations.

5. How does an oversight visit differ from an accreditation visit?

An accreditation visit is not a substitute for an oversight visit. The purpose of an accreditation visit is to determine compliance with administrative standards. An oversight visit is a broader review of the ministry, including programming content and the financial and organizational health of the ministry. It is an opportunity to address issues that may have been identified through other processes.

6. How can an oversight visit and an accreditation visit be linked?

- a. Use the accreditation report in planning the oversight visit to identify issues that may need to be addressed.
- b. Participate in an accreditation visit when invited to attend; participants then report back to the Conference.

7. Where national standards are in place, how do we ensure there is coordination and follow-up on identified concerns and issues?

Make conscious effort to review reports received by the Conference regarding the accreditation status of any ministry. This report will be a discussion point during oversight visits as well as a means of identifying issues that may otherwise not be identified during a visit. Where there are no national standards, the oversight visit needs to take this into consideration. Give additional attention to areas that otherwise would be addressed by standards.

If Conference is contemplating delegating responsibilities under section B.8.3, consider the following points. It is important to understand that, in delegating, *all* the identified roles must be delegated to avoid duplication, confusion, and issues being overlooked.

1. Delegation is determined on a case-by-case basis and can be withdrawn by Conference at any time.
2. Delegation may be to the presbytery in which the organization is located, to another presbytery, or to another Conference. This may be due to geographic location or expertise available in the area.
3. Consider the level of risk presented by the ministry.
4. Assess the skills, experience, and capacity possessed by the body that is to assume oversight.
5. Do not delegate to a body where existing or potential inherent organizational conflict of interest may exist (e.g., there is a mirror executive, or a lack of distinction in leadership).

# Appendix A: Excerpt from “Report to Revise Appendix IV of *The Manual*, General Council 39, 2006”

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## Introduction

Appendix IV of *The Manual* deals with the formation, reporting requirements, and oversight of corporations carrying out activities in the name of The United Church of Canada. A major revision of Appendix IV is being proposed for consideration by General Council in August 2006. Why? A number of problems have been identified by some United Church corporations with provisions of Appendix IV that seem to be hindering their governance and operations. Significant changes also have taken place since 1998 in the operating environment for non-profit organizations in Canada related to due diligence and vicarious liability. Finally, the supervision of United Church corporations as currently described in Appendix IV presents a major challenge to Conferences, presbyteries, and congregations, many of which do not have the capacity to do this work adequately.

Extensive consultation within the General Council Office resulted in a discussion paper in spring 2004 outlining the problems and a proposal for revising Appendix IV. The Program Committee—Programs for Mission and Ministry (PC-PMM) approved the distribution of this discussion paper in September 2004 to all United Church non-congregational ministries, Conference offices, and presbyteries with the hope that the wisdom of the entire church could be brought to bear on formulating an appropriate policy for revising Appendix IV.

This draft report with recommendations reflects the comments received from the consultation process. It is respectfully submitted by the Duty of Care Program Advisory Committee that General Council be asked in August 2006 to discern answers to the following questions:

- 1) Should corporations continue to be used as an organizational vehicle for mission in light of the changing legal and regulatory environment and increased public demand for accountability by not-for-profit organizations?
- 2) Do the courts of the church have the ability to appropriately supervise corporations, including exercising a duty of care for staff, volunteers, clients, and participants in the programs and activities of corporations?
- 3) How should the church redefine its relationship with corporations that no longer have a close and vital connection to the church’s current understanding of mission, including how the capital assets, primarily land, and buildings are dealt with when the relationship between the United Church and a corporation is redefined?

## The Problems

Significant changes in the operating environment for non-profit corporations have increased the requirement for the United Church to exercise a duty of care in supervising related corporations to meet the increased risks posed by programs, including

- the application of vicarious liability to non-profit organizations
- legal and regulatory changes affecting all non-profit organizations

Specific problems with the provisions of Appendix IV and their application have been identified:

- the availability of a majority of United Church directors to be appointed to boards, including the required expertise
- borrowing and indebtedness limits are too low
- the requirement for a majority of United Church directors, even in partnership situations
- inadequate supervision by the courts of the church
- corporations that are operating in the name of the United Church but are not known to the church or were incorporated outside of Appendix IV
- inadequate communication to corporations of the content of amendments to Appendix IV
- non-compliance of corporations with the provisions of Appendix IV
- the distance that has grown between some corporations and the courts of the United Church
- the apparent lack of Appendix IV supervision of congregation-sponsored corporations
- Appendix IV corporations creating their own non-profit or for-profit corporations such as foundations without the approval of the appropriate courts of the church

## Appendix IV as It Now Stands

Appendix IV currently offers one model for structuring the relationship between the United Church and its related corporations. This may have been appropriate in the past, but the changes and problems identified above indicate the need to review the underlying policy of Appendix IV.

In a superficial sense, Appendix IV is a method for licensing the use of the name of The United Church of Canada for non-congregational ministries. Separate incorporation according to provincial, territorial, or federal registration takes place, creating a separate legal entity, but Appendix IV stipulates the conditions to be met if that corporation is to be publicly identified or named as a United Church–related corporation. When the appropriate court of the United Church does not fulfill its requirements to supervise these corporations, or when a corporation by choice or by chance fails to fulfill their requirements according to Appendix IV, the licensing agreement for the use of the name has been violated.

Where a corporation is in non-compliance with Appendix IV, a process should be put in place to bring it into compliance. Failure to come into compliance after reasonable steps have been taken by all sides should result in the corporation no longer being able to publicly present itself as being associated with the United Church. Unfortunately, there are a number of corporations that are not in compliance but continue to function as United Church–related corporations. Compounding this unfortunate situation is the fact that the supervisory mechanism for corporations is not working in many Conferences, presbyteries, and congregations.

As a result, some corporations identifying themselves with the United Church are benefiting from the public recognition and trustworthiness afforded the United Church without adequate supervision. This situation potentially puts the name and the assets of the United Church at risk in situations where things go terribly wrong.

## Appendix B: Suggested Standard Clauses to Address Policy Requirements

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This section covers The United Church of Canada’s requirements for inclusions in the bylaws of incorporated ministries. Note that these are only examples—they need to be tailored to the specific needs of the ministry and the provincial/federal requirements. Seek legal counsel to ensure that all necessary requirements for incorporation have been met.

The **corporation** is a corporation described in section B.8.1 of *The Manual* (referred to as a “Category 1 corporation”). The following provisions are included in order to comply with the requirements of *The Manual* and the guidelines established by the General Council of The United Church of Canada for Category 1 corporations:

- a. For the purposes of this section of the bylaws, “**General Council**” means the General Council of The United Church of Canada, “**supervising Conference**” means the XXXXXXXXXXXX Conference of The United Church of Canada or its successor, and “**The Manual**” means the edition of *The Manual* published by The United Church of Canada that is in effect at the relevant time.
- b. the corporation shall determine its own manner of determining its membership but in no case shall a majority of the members of the corporation be members of the supervising Conference. In the event that the Conference delegates to another court its supervising role, the majority of the incorporated ministry membership shall not be members of that supervising court.
- c. the corporation shall adhere, at all time, to the applicable policies, standards, and regulations as they may be enacted by the General Council or its Executive from time to time
- d. any corporations created by Category 1 corporations shall be organized and supervised according to the Incorporated Ministries Policy
- e. the majority of the directors shall be approved by the supervising Conference, and the Conference Executive Secretary of the supervising Conference shall be ex officio a corresponding member of the board and as such shall receive notices of meetings and minutes of meetings and have the right to attend all meetings in a non-voting capacity
- f. annual reporting to the supervising Conference shall include the membership of the board, the minutes of the annual meeting, financial statements (audited/independently reviewed by a qualified person), and insurance coverage (including naming The United Church of Canada as Additional Insured)
- g. insurance shall be kept in force covering fire, comprehensive liability, and such other insurable items in such amounts as the supervising Conference may require, with The United Church of Canada named as Additional Insured on all insurance policies



- h. approval shall be obtained in advance from the supervising Conference for capital fundraising initiatives and appeals affecting other parts of The United Church of Canada
- i. indebtedness is subject to the prescribed limits as deemed appropriate by the supervising Conference
- j. any sale, transfer, mortgaging, acquisition, or leasing of land must receive the prior written consent of the supervising Conference
- k. the corporation shall not, without the prior written consent of the supervising Conference, initiate, or in any way engage in, proceedings that might result in the voluntary winding up of the corporation
- l. the assets of the corporation shall be vested in The United Church of Canada in the event that the corporation ceases to function or its corporate existence is terminated
- m. the provisions of this paragraph may be changed or modified only with the prior written consent of the supervising Conference and the administrative approval of the General Council. In the event of any conflict or inconsistency between the provisions of this section and any other section of the bylaws, the provisions of this section shall govern
- n. approval from the supervising Conference and General Council is required for changes to articles of incorporation and changes to corporate bylaws

# Appendix C: Category 2 Multi-party Incorporated Ministries—Checklist for Operating Agreement

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## Contents

- A. Ownership Interests of the Participants in the Incorporated Ministry
- B. Governance
- C. Obligations of the Participants to Provide Funding to the Incorporated Ministry
- D. Policies and Administrative Standards
- E. Operations
- F. Dissolution of the Corporation/Corporation Ceasing to Function
- G. Alternatives to Dissolution (Buyout)
- H. Conflict Resolution Process

### **A. Ownership Interests of the Participants in the Incorporated Ministry**

- Do the participants hold equal interests in the incorporated ministry (e.g., 50–50 for two participants, one-third for each of three participants, etc.)?
- If not, are the unequal interests based on
  - the value of the original contribution (property or funds) of each participant?
  - the ability of each participant to contribute financially to the incorporated ministry?
  - other factors (specify)?
- Is there provision for changing the ownership interests (e.g., if one participant contributes additional property or funds at a later date)?

### **B. Governance**

*Note: Basic governance matters are included in the incorporated ministry’s constitution and bylaws. Additional governance matters may be included in the operating agreement.*

- Directors

*Note: Guidelines provide that the level of representation of corporation members and the board of directors be identified in the bylaws of the incorporated ministry and that they normally be in proportion to the level of participation of the United Church. The representative members are approved by the supervising Conference.*

- Officers
  - Will the participating partner groups alternate in filling the office of president (and/or other offices) of the incorporated ministry?
  - Will one participant be entitled to nominate the president (and other officers)?
  - Will there be no restriction (i.e., officers will simply be elected by the board of directors per standard corporate practice)?
- Decision-making
  - Will decisions be made by consensus?
  - For incorporated ministries with three or more participants, will decisions be made by majority?
  - Has any participant made a particular contribution to the incorporated ministry (e.g., real property) for which there needs to be a specific decision-making provision?
  - Will any participant have the right to veto decisions made in relation to certain program matters (e.g., where participant's faith or policy positions might conflict with those program matters)?

### **C. Obligations of the Participants to Provide Funding to the Incorporated Ministry**

- What is the mechanism for determining the amount of each participant's funding contribution?  
Examples:
  - fixed amounts each year (plus COLA or other incremental increase)
  - each participant has a fixed percentage interest in the incorporated ministry and contributes that percentage to the incorporated ministry's annual budget
  - a formula based on various factors (original capital contribution, ability of participant to contribute, etc.)
  - contributions of staff time or property in lieu of financial contribution
- How may adjustments to the funding contributions be made?
  - only if initiated by a participant? If so, how often?
  - by automatic review? If so, how often (e.g., every five years)? What is the review process? (See "H. Conflict Resolution Process.")
- What is the process for addressing defaults by participants in making their financial contribution to the incorporated ministry?
  - notice and curative period provisions? If so, how long a curative period?
  - remedies for ongoing default; would dispute resolution process apply? (See below.)

## D. Policies and Administrative Standards

These would include, for example, policies on sexual abuse/harassment, dispute resolution, human resources, finances, governance, and privacy.

- Which participant's policies will be adopted for the incorporated ministry?  
*Note: Guidelines provide that The United Church of Canada's policies, standards, and regulations must be followed unless those of another participant are comparable or more rigorous, in which case either may be used.*
- Are any new policies or standards to be developed for the incorporated ministry? If so, which ones? How will they be developed?
- What is the process for making changes to the policies? Is the process initiated by any of the participants or by automatic periodic review?

## E. Operations

- Name
  - What name(s) will be used by the incorporated ministry?
  - Is the incorporated ministry entitled to use the name(s) of the participants in the operations of the incorporated ministry?
  - Where the participants vary significantly in size (e.g., where there is one major and other minor participants), how will that be reflected in the public image of the incorporated ministry?
- Executive director
  - What is the process for recruiting and hiring an executive director—anything in addition to the human resource policies adopted by the incorporated ministry?
- Charitable registration number
  - Will the incorporated ministry apply for one?
- Scope of incorporated ministry's work
  - What is the mission statement of the incorporated ministry?
  - How may the mission statement be changed? At the initiation of any participant or by automatic periodic review? If by periodic review, after what time period (e.g., five years)?
- Real property
  - Is real property being donated or sold by one participant to the incorporated ministry? If so, transfer-of-property documents must be prepared, signed, and registered.
  - Is real property being leased by one participant to the incorporated ministry? If so, a lease needs to be prepared and signed.

**F. Dissolution of the Corporation/Corporation Ceasing to Function**

- Decision to dissolve the incorporated ministry
  - Are any specific provisions to be added to the process under civil law (e.g., participants agree to pursue the incorporated ministry’s conflict resolution process before any participant initiates the dissolution process, unless the decision to dissolve is a mutual one by all participants)?
- How are the incorporated ministry’s assets to be distributed to the participants?
  - after all liabilities are paid in full?
  - by their percentage ownership interest?
  - by another method for calculating the shares of each participant (specify)?

**G. Alternatives to Dissolution (Buyout)**

- Consider including the right of one participant to “buy out” the other participant(s) should the other participant(s) wish to leave the incorporated ministry. Include details of the buyout process, such as
  - time frames
  - calculation of buyout price (e.g., percentage share of fair market value of incorporated ministry’s assets)
- May additional participants be added? May a new participant “buy out” the interest of another participant in the incorporated ministry? Is approval required from other existing participants for any new participants?

**H. Conflict Resolution Process**

- How will participants resolve issues between them?
- May either participant initiate the dispute resolution process? Under what circumstances?
- What are the specific details of the process? Consider including a triage; for example, consensus decision-making, mediation, and arbitration.

## Appendix D: Guidelines for Conference Oversight

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In accordance with *The Manual* (section B.8.3) of The United Church of Canada, Conferences are responsible for overseeing the operation of United Church corporations that function within their bounds. Conferences are urged to establish a committee that focuses solely on corporations. The following guidelines are intended to assist in defining the mandate and role of such a committee.

### Membership and Skill Set

The committee should be composed of a minimum of three people. The upper limit may be determined by the number of corporations in the Conference or by the geographic area. Members may be elected or appointed by the Conference.

Ideally, members of this committee should have some or all of the following skills:

- knowledge of incorporation matters, bylaws, and the United Church *Manual* requirements
- the ability to understand balance sheets and audited statements, and the skill to identify potential problems in same
- experience in governance and general management, especially with not-for-profits
- knowledge of the insurance industry, or access to those with this knowledge
- a solid understanding of the structure and polity of The United Church of Canada

### Primary Functions

The role of the committee is to advise and assist the Conference executive on the administration of section B.8 as it relates to the ongoing health of the incorporated ministries.

### Applications

1. Receive and consider requests for incorporation from any body whose objectives are in accord with the United Church, per the Incorporated Ministries Policy. Such requests may come forward through the presbytery in which the ministry is located.
2. Ensure consistency with section B.8 of *The Manual* and the Incorporated Ministries Policy and any accompanying policies and guidelines that may be set forth by the General Council from time to time. Advise the applying body of necessary changes, and in due course, make recommendation(s) to the Conference Executive Secretary or the executive of the Conference. Such recommendation(s) are to be made only after administrative approval has been received from the GCO.

3. Receive and consider requests for incorporation for any subsidiary body (e.g., foundations) of existing corporations to ensure compliance with section B.8 of *The Manual* and the Incorporated Ministries Policy.
4. Administer changes in the status of a corporation, including revision of bylaws and management of the legacy process.

### **Supervision**

1. Ensure that the ongoing ministry of these corporations is in accord with The United Church of Canada.
2. Review the reports, filings, insurance certificates, audited statements, and lists of directors submitted annually by the corporations in compliance with section B.8 of *The Manual* and the Incorporated Ministries Policy.
3. Advise Conference of any non-compliance of the corporations.
4. Provide an assessment of the ongoing health of the corporations, including financial and operational functions.
5. Recommend the revision of letters patent, articles of incorporation, and/or bylaws of these corporations so as to maintain their effectiveness within the policies and procedures of The United Church of Canada.
6. Maintain a continuing liaison with United Church corporations for which the Conference has oversight.
7. Review requests and advise the Conference regarding corporation property, including the sale, transfer, leasing for a term of five years or more (including all rights of renewal), mortgaging, or acquisition of any real property. Such action requires the written consent of the Conference before being undertaken.
8. Provide guidelines and advice regarding dissolution of corporations.
9. Develop and undertake a program of visiting corporations.
10. Provide support and general advice to incorporated ministries.

# Appendix E: Checklist for Corporations

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## Applications

- Approval has been requested from the Conference.
- Letters patent have been drafted.
- Bylaws have been drafted.
- Bylaws include
  - requirements for membership, including appropriate representation of the United Church, and approval of same by supervising Conference
  - naming of the Conference Executive Secretary as an ex officio corresponding member
  - provision for annual reporting to the supervising Conference
  - need for administrative approval of the GCO and approval from the supervising Conference for changes to bylaws and/or articles of incorporation
  - need for approval from the supervising Conference for capital fundraising initiatives that affect the wider United Church of Canada
  - vesting of assets with The United Church of Canada in the event the corporation ceases to function or the corporate existence is terminated; need to move letters patent/articles of incorporation
  - need for prior written consent of the supervising Conference for any sale, transfer, mortgaging, acquisition, or leasing of land
  - stipulation that the incorporated ministry shall not, without the prior written consent of the supervising Conference, initiate or in any way engage in proceedings that might result in the voluntary winding up of the corporation
- Letters patent and bylaws have been approved by the supervising Conference.
- Letters patent and bylaws have received administrative approval from the General Council Office (GCO).
- All necessary paperwork (e.g., letters patent, bylaws) have been filed with the appropriate government offices and registration fees have been submitted.
- Copies of letters patent and bylaws have been sent to the supervising Conference and the GCO.



**Revisions to Bylaws**

- Draft bylaw revisions have been submitted to the supervising Conference for approval when changes are required.
- Draft bylaw revisions have been submitted to the GCO for administrative approval.
- Written administrative approval for bylaw revisions has been received from the GCO.
- Written approval for bylaw revisions has been received from the supervising Conference.

**Reporting**

- Annual reporting has been sent to supervising Conference and includes
  - annual report
  - financial statements
  - list of current board members
  - proof of insurance
  - charitable status filing (if the corporation is a registered charity)
  - corporation status filing
- List of board members has been approved as required.

# Appendix F: Checklist for Conferences

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## Applications

- Approval has been requested from Conference.
- Draft letters patent have been received.
- Draft bylaws have been received.
- Bylaws include
  - requirements for membership, including appropriate representation of the United Church, and approval of same by supervising Conference
  - naming of the Conference Executive Secretary as an ex officio corresponding member
  - provision for annual reporting to the supervising Conference
  - need for administrative approval of the General Council Office (GCO) and approval from the supervising Conference for changes to bylaws and/or articles of incorporation
  - need for approval from the supervising Conference for capital fundraising initiatives that affect the wider United Church of Canada
  - vesting of assets with The United Church of Canada in the event the corporation ceases to function or the corporate existence is terminated; need to move letters patent/articles of incorporation
  - need for prior written consent of the supervising Conference for any sale, transfer, mortgaging, acquisition, or leasing of land
  - stipulation that the incorporated ministry will not, without the prior written consent of the supervising Conference, initiate or in any way engage in proceedings that might result in the voluntary winding up of the corporation
- Letters patent and bylaws have received administrative approval from the GCO.
- Copies of letters patent and bylaws have been received by the supervising Conference and the GCO.

## Revisions to Bylaws

- Draft bylaw revisions have been received by the supervising Conference for approval when changes are required.
- Draft bylaw revisions have been received by the GCO for administrative approval.
- Written administrative approval for bylaw revisions has been received from the GCO.
- Written approval for bylaw revisions has been sent by the supervising Conference to the corporation.

## Reporting

- Annual reporting has been received by the supervising Conference and includes
  - annual report
  - financial statements
  - list of current board members
  - proof of insurance
  - charitable status filing
  
- List of board members has been approved as required.

# Glossary

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**accreditation visit** A visit, generally on-site, to review the ministry's compliance with the administrative standards specific to the work conducted (e.g., camps, community ministry, seniors' facilities).

**administrative approval** Approval by an executive officer of the approving body, without the requirement of a formal motion of approval by the body itself.

**annual reporting** An annual comprehensive and detailed report of the activities, programs, and financial situation of the corporation.

**appropriate consultation** Conferring with the supervising Conference and other necessary bodies well before decisions are finalized.

**board members/directors of corporation** The governing body that oversees the management of the corporation and is responsible for all aspects of the corporation's operations.

**ceases to function** The corporation stops conducting any activity. This may be indicated by one or more of the following: ceasing to carry out the ministry for which it was incorporated, ceasing to employ staff, ceasing to conduct financial activity (e.g., fundraising, bank account withdrawals, deposits), or ceasing to have physical premises from which operations are conducted.

**corporate existence terminated** By action of the appropriate governmental authority, the corporation is no longer recognized under the law as a separate legal entity.

**generally accepted accounting principles** Rules and guidelines followed in the preparation of financial statements, including the cost principle, the revenue principle, the matching principle, the objectivity principle, the consistency principle, and the fiscal year.

**members/membership of corporation** People who have been admitted as members of the corporation, according to the process set out in the corporation's bylaws, and who have the rights associated with membership that are also set out in the corporation's bylaws, which may include the right to vote.

**participants** Two or more entities that contribute to the establishment of the new corporation and who take on responsibility for oversight and governance.

# Resources

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## **Recommended Handbook**

Ontario Ministry of the Attorney General, Office of the Public Guardian and Trustee, *Not-for-Profit Incorporator's Handbook* (Toronto: Publications Ontario, 2008). Download from [www.attorneygeneral.jus.gov.on.ca/english/family/pgt/nfpinc](http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/nfpinc).

## **Government Registrars and Resources**

Visit Corporations Canada at <http://corporationscanada.ic.gc.ca>.

Search Corporations Canada to find “provincial registrars.”



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