

Incorporated Ministries

February 2019



The United Church of Canada
L'Église Unie du Canada

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Policy adopted by the 39th General Council (2006); amended by the General Council Executive November 2007; amended by the General Council Executive May 2008. First formal publication of this handbook November 2008, revised April 2013, May 2014, and October 2016.

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Background

The 39th General Council 2006 approved 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. Section 429 of *The Manual* was expanded to include elements of Appendix IV and subsequently Appendix IV: Applications for Incorporation was removed.

In 2015, a new category of incorporated ministry was identified: independent corporations. Intended for incorporated ministries whose origins are within the United Church but are highly regulated through government legislation and other mechanisms, these ministries would not have direct supervision from a church body but could have a close ongoing relationship with the United Church. This relationship would be a missional one rather than a supervisory role. At this time, corporations that fall into this category are primarily seniors' facilities and seniors'/ low-income housing corporations.

As of January 1, 2019, oversight for most incorporated ministries lies with the regional councils under The United Church of Canada's new governance structure. Section A.8 of *The Manual*, 2019 defines the criteria by which a corporation may be recognized as a United Church incorporated ministry. The incorporated ministries policy outlined in this handbook provides the detailed requirements.

IMPORTANT

The official policy is found on pages 5–8. The remaining pages of this handbook are guidelines for implementing this policy.

Incorporated Ministries Policy

The United Church's official policy for incorporated ministries is set out on pages 5–8, in conjunction with the requirements of incorporation, Section A.8, *The Manual, 2019*.

1. The United Church of Canada recognizes four categories of incorporated ministries:
 - supervised incorporated ministries, with which the United Church has a close and vital relationship and that are under supervision of a church body as outlined in this policy
 - independent incorporated ministries, which may or may not have a close ongoing relationship with the United Church but are not under supervision of a church council
 - multiple participant incorporated ministries, in which the United Church is a participant
 - legacy incorporated ministries
2. Any United Church group considering becoming a corporation must first request and receive the written approval of the regional council (or of the General Council if the activity goes beyond the jurisdiction of a single regional council) and the administrative approval of the General Council.

The regional council and the General Council may give approval to the incorporation if satisfied that

- the incorporation is essential for fulfilling the objectives and no other committee, body, or board of trustees is reasonably able to substitute for the corporation
 - the application and the proposed bylaws comply with the requirements set out in this policy, as may be amended from time to time by the General Council, its Executive, or its Sub-Executive
3. Supervised incorporated ministries are
 - corporations where the primary function involves holding real property or financial assets—i.e., extension councils, property development corporations, and foundations
 - any other type of incorporated ministry that the General Council, its Executive, or its Sub-Executive has decided to include as supervised incorporated ministries
 4. The regional council is responsible for oversight of the supervised incorporated ministry.
 5. Where a supervised incorporated ministry operates in more than one regional council, the General Council may assume responsibility for oversight, assign responsibility to one or more regional councils, or make other provisions that it considers appropriate.

6. Independent incorporated ministries are
 - corporations where the primary function involves housing and/or seniors' care
 - any other type of incorporated ministry that the General Council, its Executive, or its Sub-Executive has decided to include as independent incorporated ministries

The regional council has no responsibility for oversight of the independent incorporated ministry or its activities.

Requirements of Incorporation

To be incorporated, an organization must meet provincial/federal requirements. Corporations that will have an ongoing relationship with the United Church also need to meet the United Church requirements as may be defined from time to time by the General Council or its Executive. These requirements vary depending on which category the incorporated ministry falls into.

Category 1: Supervised Incorporated Ministries

This category affirms the close and vital relationship of the United Church to the corporation. The incorporated ministry must include the following clauses in its articles of incorporation or its bylaws to the satisfaction of the regional council and the General Council. Where permitted under federal or provincial requirements, paragraph 9 must be included in the articles of incorporation.

1. These incorporated ministries adhere, at all times, to the applicable policies, standards, and regulations as they may be enacted by the General Council or its Executive or Sub-Executive from time to time, including this policy.
2. The incorporated ministry determines its own means of identifying its corporate membership. However, at no time will the majority of the membership of the incorporated ministry be members of the supervising regional council.
3. A majority of board members of the incorporated ministry must be approved by the supervising regional council of The United Church of Canada; the Executive Minister of the supervising regional council (or their successor) will be a corresponding member of the board of the incorporated ministry (receives notices of meetings and minutes of meetings, has the right to attend all meetings, but is non-voting).
4. The incorporated ministry reports the following annually to the supervising regional council:
 - membership of its board of directors
 - minutes of the annual meeting

- financial statements (audited/independently reviewed by a qualified person)
 - insurance coverage (including naming The United Church of Canada as Additional Insured)
5. Approval from the supervising regional council is required in advance for capital fundraising initiatives and appeals by the incorporated ministry that affect other parts of The United Church of Canada.
 6. The incorporated ministry's indebtedness may be subject to prescribed limits as deemed appropriate by the supervising regional council.
 7. Any sale, transfer, mortgaging, acquisition, or leasing of land by the incorporated ministry must have the prior written consent of the supervising regional council.
 8. The incorporated ministry shall not, without the prior written consent of the supervising regional council, initiate or in any way engage in proceedings that might result in the voluntary winding up of the incorporated ministry.
 9. The assets of these incorporated ministries shall vest in The United Church of Canada in the event that the incorporated ministry ceases to function or its corporate existence is terminated.
 10. Changes to the United Church bylaw requirements may be made only with the written consent of the supervising regional council and the administrative approval of the General Council.
 11. Changes to the articles of incorporation may be made only with the prior written consent of the supervising regional council and the administrative approval of the General Council.

Category 2: Independent Incorporated Ministries

This category acknowledges the role of the United Church (or any part of it) in establishing the incorporated ministry.

1. These incorporated ministries will not be subject to oversight and accountability of a supervising court, nor shall their bylaws contain any references to The United Church of Canada or a supervising regional council, except as set out below.
2. Independent incorporated ministries may have an ongoing relationship with a United Church congregation or other local ministry unit, and the corporation's bylaws may contain provisions reflecting that relationship.
3. Independent incorporated ministries must include in their charter a provision that the assets of the corporation be vested in The United Church of Canada if the incorporated ministry ceases to exist and that written approval is required from The United Church of Canada to amend this clause.

Category 3: Multi-party Incorporated Ministries with Multiple Participants

This category acknowledges the United Church as one of two or more participants in an incorporated ministry.

1. The level of representation of corporate members and the board of directors must 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 board members representing the United Church must be approved by the supervising regional council of The United Church of Canada.
2. The participants considering incorporating enter into an operating agreement. This operating agreement includes 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 will apply to the incorporated ministry and its operations. (These guidelines will be informed by and comparable to the standards and policies approved by the parent bodies.)
3. The operating agreement will set out the distribution of assets in the event that the incorporated ministry ceases to function or its corporate existence is terminated. There will be annual reporting to the supervising regional council of the membership of the board, the minutes of the annual meeting, financial statements (audited/independently reviewed by an appropriate professional), 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.
4. The incorporated ministry will determine whether to participate in the United Church's or the participant's comparable or more rigorous applicable policies, standards, and regulations as they may be enacted from time to time.

Category 4: Legacy Incorporated Ministries

An existing incorporated ministry that has a historical affiliation with the United Church may choose to end any formal relationship it has with the United Church if the incorporated ministry and the supervising regional council agree that this step would be in their mutual best interest. While continuing to recognize the origins and historical relationship, the legal relationship between the ministry and the United Church would cease.

1. The formal relationship of the incorporated ministry to the United Church will be severed through a severance agreement between the incorporated ministry and the supervising regional council and the General Council on behalf of The United Church of Canada.
2. Recognizing 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's interest in the incorporated ministry's personal and real property will be negotiated and finalized according to the policies of the General Council as they are amended from time to time. Details of the negotiated disposition plans will be included in the severance agreement.

When to Incorporate

The Manual states the following:

A.8. Incorporated Ministries

A council may incorporate a ministry. The council must follow the United Church's process for incorporation and meet the United Church's requirements for incorporated ministries for any ministry 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.

If the process is followed and all requirements are met, the incorporation may be approved and then known as 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. The decision to remain affiliated with the church comes with positives and negatives. 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. The United Church of Canada holds the residual interest in the corporation's assets 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

1. Consider these questions:
 - Why incorporate?
 - Why incorporate under the Incorporated Ministries Policy?
2. Consult with the regional council about the decision to incorporate. Approval from the regional council is required if the corporation is to be recognized as a ministry of the United Church. If the ministry will cross regional council boundaries, consultation with the other regional council(s) (and with General Council) is also required.
3. Consult with a lawyer to understand the legislative requirements for incorporation. The incorporating body should have its own legal counsel for this purpose.
4. With assistance from legal counsel, draft the requirements for incorporation as outlined by the governmental jurisdiction to which you intend to apply.
5. Submit an application for incorporation to the supervising regional council, including
 - an application for incorporation on the forms acceptable to the appropriate provincial or federal authorities
 - a draft of the proposed bylaws (see Appendix A for suggested United Church bylaw provisions)
 - a request for the consent of the supervising regional council(s)
 - a request for administrative approval from General Council

When the decision to incorporate involves other participants who are not United Church, the steps to incorporation essentially remain unchanged. What does change are the conversations leading toward incorporation. It is essential that all the participants' requirements and obligations to their supervising bodies are met.

An operating agreement between all parties is a requirement for corporations of this type. It should, at minimum, include

- the extent to which participants will contribute to and participate in realizing the mission (in the areas of financial support, governance, property, etc.)
- policies and administrative standards that apply to operations
- distribution of assets in the event that the corporation ceases to function or its corporate existence is terminated

Guidelines for Severing the Legal Relationship with The United Church of Canada

This section describes the steps involved in severing the legal connections between The United Church of Canada and an incorporated ministry—that is, changing the relationship. This process does not affect the status of the corporation as a legal entity. When the legal relationship with the United Church is severed, the ministry is recognized as a Category 4 Incorporated Ministry. Costs associated with this process are borne by the corporation.

Chronology

1. Either the corporation or the supervising regional council(s) initiate a consultation to explore severing the legal relationship. This consultation involves the incorporated ministry and the regional council(s), and may also include congregations if they have been responsible for major tasks (e.g., appointing board members).
2. If the decision is to move forward with severing the legal relationship, the regional council and the corporation confirm what is involved in the process and agree on a timeline for accomplishing the next steps.
3. The corporation consults the broader stakeholders: 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. These 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).
4. There is disclosure by the corporation, as identified in the Severance Agreement.
5. The corporation and the regional council 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 supervising regional council gives its approval for the process to move forward.
8. The corporation implements the necessary transition steps, including
 - communication plan
 - regional council access to records
 - change of identifiers (see more on these below)
9. All parties celebrate a new beginning.

Requirements

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

- insurance
- outstanding legal or regulatory issues, including claim and incident reports for both insured and uninsured matters
- financial documents, including last financial report and Canada Revenue Agency filing

The assets of the corporation need to be considered in the severance process. The investments of the founders and those who have supported the ministry need to be considered, as is the ongoing work of the ministry. 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.

Before the severance is finalized, the corporate documents—bylaws and incorporating documents— need to be revised to remove all references to approval, supervision, oversight, or accountability by The United Church of Canada. A draft version is sent to the supervising regional council and the General Council.

All identifiers that include the name “United Church” must be removed from the corporate name and all operational documents and property. Where the name or symbols of the United Church cannot be removed, a plaque or other means of communication may be installed noting the historical relationship.

To honour the historical relationship between the corporation and the United Church, develop a joint communication plan involving the ministry and the supervising regional council. This should be seen as a celebration and an acknowledgement of the work that will continue.

Appendix A: Suggested Standard Clauses to Address Policy Requirements

This section covers The United Church of Canada's requirements for what to include in the bylaws of incorporated ministries. The clauses may need to be tailored to the specific needs of the ministry and the provincial/federal requirements, but they must be included in some form. Seek legal counsel to ensure that all necessary requirements for incorporation have been met.

It is recommended that where terms specific to the United Church are used, definitions are given. These may be included either as clauses or included with other definitions.

- a. For the purposes of this section of the bylaws, "**General Council**" means the General Council of The United Church of Canada, "**supervising regional council**" means the XXXXXXXXXXXX Regional Council 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 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.
- c. The corporation shall determine its own manner of determining its corporate membership but in no case shall a majority of the members be members of the supervising regional council.
- d. The majority of the directors shall be approved by the supervising regional council.
- e. The Executive Minister of the supervising regional council or their successor shall be 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 regional council 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 regional council 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 regional council 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 regional council.

- j. Any sale, transfer, mortgaging, acquisition, or leasing of land must receive the prior written consent of the supervising regional council.
- k. The corporation shall not, without the prior written consent of the supervising regional council, 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 regional council and the administrative approval of the General Council.
- n. Approval from the supervising regional council and the General Council is required for changes to articles of incorporation.

Resources

Incorporated Ministries Guidelines Expands on this policy. Download from www.united-church.ca/handbooks

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.

Government Registrars and Resources

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

Search Corporations Canada to find “provincial registrars.”



www.united-church.ca/handbooks