

## To Incorporate or Not?

*by Blair MacKenzie, FOCA Volunteer and Don Payne, FOCA Director, from FOCA Report to the Membership, Fall 2003*

The answer is that incorporation should at least be considered starting from a relatively early stage.

Incorporation creates an organization with more permanence than an unincorporated group of individuals. The advantages of incorporation become more compelling as an organization grows. There would be little obvious advantage in the Mud Puddle Lake association incorporating so long as its objective is limited to making representations to local governments, or perhaps dealing with local road access issues. But incorporation should at least be on the agenda once the association starts to take on other kinds of activities.

An unincorporated entity has no legal existence apart from its members. It cannot enter into contracts, or at least it cannot do so easily. If an unincorporated entity takes on liabilities or debts, the members of the entity may be personally liable for the amounts owing. By contrast, an incorporated entity can enter into contracts, borrow money, hire and fire employees, and generally undertake liabilities independently of its members. An unincorporated entity cannot hold real estate in its own name, but would have to hold any real estate through trustees. By contrast, an incorporated entity can buy and sell real estate. Incorporation also provides a read-made and relatively easily understood corporate governance framework which is generally flexible enough to permit, through carefully drafted by-laws, whatever formula for community self-government happens to appeal over time to the cottagers of Mud Puddle Lake.

When an organization has multiple risks, such as through land ownership, the operation of a regatta or swimming lessons, or the like, it will generally be best to incorporate and to purchase general liability insurance for the organization as well as directors and officers liability insurance to protect, to the extent this can be done, the directors from personal liability. Mud Puddle Lake may also find that it is easier obtaining government or corporate grants if its association is incorporated than if it is not. Where an organization is organized around a single and limited purpose such as managing a road, then incorporation is less likely to be an attractive option. In that case, one option is simply to purchase road liability insurance. Information on this is available at the FOCA web site.

One downside of incorporation is that incorporation results in the creation of a new legal entity, one that requires a minimum of annual care, feeding, paperwork and bureaucracy. There are annual and other meetings to be held, corporate filings to be kept up to date, a minute book to be kept up to date, and other i's to be dotted and t's to be crossed. But the more the organization grows, the more clearly these disadvantages are outweighed by the benefits of incorporation.

If the decision of the Mud Puddle Lake association is to incorporate, this can be done in a number of ways. The steps involved are not overly complicated, and for those with the time and patience, it can be accomplished without professional help. Sometimes a lake association will have access to a cottager who is also a lawyer who will agree to help out for a reduced fee or perhaps no fee at all. There are some excellent paralegal firms which can incorporate a lake association promptly and at very reasonable rates. Or the association can put the whole matter into the hands of a lawyer.”

*from FOCA Report to the Membership, Fall 2003*

Mud Puddle Lake, Ontario is a mythical lake with a small but dedicated number of community-minded cottagers. They first banded together to argue with their local township against the expansion of a local quarry. Over time, as the number of cottages expanded, they set up what began as a small annual regatta. That led to the idea of swimming and canoe instruction, and eventually, talk turned to the possibility of buying a derelict property on the lake both to prevent it from becoming a hazard and as a permanent base for the association's growing number of activities. The cottagers are also starting to perceive new threats – especially environmental ones – to the future of Mud Puddle Lake, and are starting to look at applying for some government funds to assist in a water quality monitoring program. At what point in this process should the residents of Mud Puddle Lake consider incorporating?

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