



The purpose of this paper is to provide some clarity on the purpose of a foundation and why most donors will find more advantage on donating their funds to an existing organization such as the WindsorEssex Community Foundation.

What is a foundation?

A foundation is a registered corporation incorporated either under the *Not-for-Profit Corporations Act* of Ontario or under the Canada *Not-for-Profit Corporations Act*. Its “purpose” or “objects” in its constitutive documents (in Ontario called Articles of Incorporation) is to generally to receive and maintain funds that are distributed annually to other registered charities.

Upon incorporation, a foundation will be recognized as a charity by the Ontario Public Guardian and Trustee (“OPGT”). This is different from recognition by Canada Revenue Agency (“CRA”) under the *Income Tax Act*. There are, thus, two levels of authority overseeing such organizations in Ontario, with two sets of rules and guidelines that must be followed. The rules are complicated for lay persons and compliance could be costly.

A foundation once incorporated may also apply for charitably status from the CRA under the Income Tax Act. The process is tedious and involves completing a lengthy application. The timeline for review of the application varies but prior to the COVID-19 Pandemic it was taking over 9 months for processing. The timeline should not be understated.

A foundation will either be characterized as public or private. CRA defines a public foundation as a corporation where more than 50% of its governing officials are at arm’s length to one another (meaning there is no blood relationship between the parties).¹ It generally receives funding from arm’s length donors and it may carry out its own charitable activities aside from just making distributions to charities.² A public foundation may carry on business that is related to the foundation.³ The Community Foundation is an example of such a foundation.

A private foundation, on the other hand, usually has directors who operate at non-arm’s length to one another (e.g. they are related).⁴ A private foundation cannot carry on any business.

A public and private foundation has a board of directors and members (like shareholders), just as any other charitable corporation. The board must act in the best interests of the foundation and cannot, except in limited circumstances receive any remuneration for such work.⁵ This is very different from for-profit corporations where directors are free to receive direct compensation for acting as a member of the Board.

This is just the tip of the iceberg. Governing these organizations is complicated!

¹ 149.1(1), 251(1)(2) of the Income Tax Act.

²: see e.g. <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/charities-giving-glossary.html>

³ 149.1(4)

⁴ see 149.1(1) which actually only defines a private foundation as “not a public foundation”. In other words, if you do not fit the criteria of a public foundation, you are a private foundation.

⁵ see O. Reg. 4/01: APPROVED ACTS OF EXECUTORS AND TRUSTEES, Charities Accounting Act



Establishing a Foundation

The chart below shows some of the advantages and disadvantages of establishing a foundation

Advantage	Disadvantage
Control over how money is spent and how the organization is governed.	Lots of homework initially and long-term needs to educate governing officials on proper board governance.
The ability to obtain a charitable tax receipt.	Initial (\$10,000.00) and long-term annual (\$10,000.00+) costs.
Meaningful, long-term impact in the community.	Time Consuming to Set up (9-12 months).
	Annual disbursement quota requirements may make this difficult to manage.
	The need for a succession plan when the founders pass away.
	Non-compliance can lead to revocation of status and a 100% tax.

Contributions to Other Foundations/Charities

There are many public foundations in Canada (e.g. the Windsor-Essex Community Foundation), many of which have the resources and expertise to set up funds that address many of the advantages that an individual may want from running their own foundation but without the disadvantages.

These organizations:

1. Can develop a donor-specific plan catered to the individual needs of that donor;
2. Leave the donor in control over most decisions regarding their donation without the hassle of the regulatory burden;
3. Will agree to use of the funds donated for a specific purpose;
4. Will provide annual updates to donors on the success of the fund;
5. Save costs to the donor because they manage the money for the donor and will take care of all compliance issues;
6. Have the networks to know what charities are in need in Windsor-Essex;
7. Maintain a good governance model that will leave a donor feeling like their funds are in trusted hands;
8. Keep the funds local.

A contribution to another public foundation can also make meaningful impact at a small amount. Individuals with as little as \$25,000.00 can start their own fund. The public foundation may also have existing funds which cater to the interests of a donor already, so the donor may invest directly in that fund. The advantage of this is that the funds are not targeted to one specific charity.

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Fees

Obviously, everyone cares about the fees. The fees charged to run the foundation are, in the grand scheme, nominal. The foundation may charge 1-3% annually as a fee. Compare this to the costs of incorporating and completing an audit of a donor's individual foundation each year on a donation of \$1,000,000.00:

Cost annually	Cost in Public Foundation	Cost of Private Foundation
Legal fees	Nil.	\$2,500.00
Audit fees	Nil.	\$12,000.00
Bank fees (1%)	Nil.	\$10,000.00
Rent, insurance and other costs	Nil.	\$5,000.00
Management fees (2%)	\$20,000.00	\$0.00
TOTAL:	\$20,000.00	\$29,500.00

This is a very basic example. The costs of a private foundation may be greater. The public foundation is able to lower the costs to the individual plan holder because it manages money for many donors and can spread those costs across many plans. As of 2023, the WindsorEssex Community Foundation managed over \$27,000,000.00 in long-term assets.