

Combining Non-Profits FAQs



PACIFIC LEGAL EDUCATION
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Who this resource is for:

Provincially regulated non-profit societies in British Columbia. Combining non-profits is often quite complicated. This resource provides only a brief overview and should not be used in place of legal advice.

Who created it:

This resource was created for PLEO by UBC law student, Sheldon Falk, and reviewed for accuracy by lawyer and Legal Director, Martha Rans. This resource draws on information obtained from Margaret Mason, a partner at Norton Rose Fulbright. Margaret Mason, QC is a charities lawyer with over 35 years of experience advising donors, charities, and other tax-exempt organizations.

Frequently Asked Questions

Why use the word “combine”?

The word “combine” is broad enough to cover a wide range of legal options including mergers, amalgamations, contracts, collaborations, and sharing resources.

What is the difference between a merger and an amalgamation?

There is not really a difference. They both mean taking two (or more) non-profits and combining them into one non-profit.

How do two non-profits combine?

While the actual process has many more steps, there are four main steps. First, both non-profits must ensure they are up to date with filings to the CRA and the Registrar. Second, together the boards must draft and agree on an amalgamation agreement, which includes the terms and conditions of the amalgamation (e.g. name, constitution, bylaws, and starting directors and members). Third, the members must pass a special resolution approving the amalgamation agreement. Finally, the board must submit an Application to Amalgamate to the Registrar and obtain a Certificate of Amalgamation.

Can a BC non-profit society and a BC charity amalgamate?

Yes, if both are conducting activities in furtherance of charitable purposes. The CRA is not required to consent as it does not have the legal jurisdiction to do so. There are, however, CRA reporting requirements, so this type of combination should only be done with legal advice.

What are other options besides combining non-profits?

Non-profits can, to varying degrees of formality, collaborate on specific projects or initiatives, share resources, co-apply for grants, and support each other without formally combining.

What are some reasons to combine non-profits?

Amalgamation allows for sharing of resources, opportunities to combine expertise and knowledge, reduced competition for funding, and potential operational efficiencies.

What are some reasons to not combine non-profits?

Legally, it may be impossible for certain non-profits to technically amalgamate. For example, if the non-profits were incorporated under different statutes or in different provinces, one or both of the incorporating statutes may not permit the two non-profits to amalgamate. An asset transfer would be the only method of ending up with a single organization.

In practical terms, some non-profits might be better off finding other, less permanent ways of working together. Amalgamations are complicated and should not be viewed as a quick or easy fix or as a way to “save” a failing organization.

In terms of the human element, amalgamations require the agreement of many people, including the boards and members of both non-profits, so it is very possible for an impasse to occur in the process.

How long is the newly combined non-profit liable for the liabilities of the old non-profits?

It depends on how the non-profits were combined. If the non-profits were combined through a formal merger or amalgamation, the liabilities carry over forever. If the non-profits were combined through an asset transfer, the liabilities may or may not carry forward.

When it's not possible to amalgamate and the combination must be by transferring through contract, will the transferring non-profit dissolve? When?

Yes, the non-profit transferring its assets/liabilities will dissolve. The timing of dissolution is planned in advance. Ideally, the transfer will happen in conjunction with the fiscal year end. If the transferring non-profit is a charity, it can ask for charitable status to be revoked and, once given confirmation, file a form T2046 and dissolve thereafter. With respect to a registered charity transferring its assets, generally it takes about a year after the transfer before it is in a position to dissolve.

If we combine, will we lose bequests to the old non-profit?

It depends on how the non-profits were combined. If the non-profits were combined through a formal merger or amalgamation, the bequest will go to the newly combined non-profit. If the non-profits were combined through an asset transfer, the bequest won't automatically go to the newly combined non-profit, but there may be a court procedure available to transfer the bequest to the combined organization.

Since organizational cultural compatibility is so important for a successful merger, at what point should the two non-profits co-locate?

It depends on the circumstances, but co-location is best undertaken at a later stage of combining the non-profits. It might be cause for concern if one of the non-profits gives up its lease, but sharing space and staff to start entwining organizational cultures is not necessarily a bad idea. However, it's very difficult to untangle once you've started.



What does continuation mean?

Continuation means the non-profit transfers its registration of corporate status to another province or territory so it can operate in that location and be subject to that location's non-profit legislation as opposed to that of its original incorporation.

What are some other factors to consider before pursuing a combination?

People

- **Members** - How many do you have? What is the membership structure? Will members be in favour of combination? What steps will need to be taken to get member agreement?
- **Directors** - Are the directors of both non-profits in favour of combining? How many directors will be on the board of the combined non-profit? Which directors will want to be on the board of the combined non-profit? How will you decide who stays and who goes?
- **Employees** - Who are they? How long have they been there? Will some have their employment terminated? Are they unionized? If so, are there barriers to combining in the collective agreements of either non-profits? Is the employee culture of the two non-profits compatible?
- **Volunteers** - How active and involved are volunteers? Will there be a shift in volunteer engagement as a result of the combination?
- **Third Parties** - Do you need landlord consent? Do you have a plan for informing suppliers of the change? Are you subject to any funding conditions which would prevent a combination? Have you entered any contracts which require consent before you combine?

Governance

- **Bylaws** - What impact, if any, does your governance model have on the drafting of the bylaws of the combined organization?
- **Membership Structures** - Do you have open or closed membership? When you combine, is there an expectation your membership structures will change or stay the same?
- **Programs & Services** - Will there be an impact on your programs or services if you combine?



Is Combining Non-Profits a Good Idea?

Source: James Stauch & Cordelia Snowdon, "Considering an Amalgamation" in *Merging For Good: A Case-Based Framework for Supporting Effective Nonprofit Amalgamations* (Calgary: Mount Royal University, 2021) at 10-12.

- **Coercion** - *Would you be pursuing a combination because of some external driver, such as pressure from government, funders, or donors?* **If yes, stop. If no, continue.**
- **Community** - *Would you be pursuing a combination with the interests of the broader community and the clients you serve, if any?* **If yes, continue. If no, stop.**
- **Financial Pressure** - *Would you be pursuing a combination purely, or largely, out of financial necessity?* **If yes, stop. If no, continue.**
- **Appetite for Disruption** - *Is your non-profit at a point at which disruption and change is needed or welcome?* **If yes, continue. If no, stop.**
- **Learning Culture** - *Does your non-profit have a strong learning culture and appetite for innovation?* **If yes, continue. If no, stop.**
- **Collaboration Experience** - *Do you already collaborate with the other non-profit?* **If yes, continue. If no, stop.**
- **Symmetry of Purpose** - *Is there at least one non-profit that you see a symmetry of values/philosophy and purpose with, and that provides an opportunity to either vertically or horizontally scale your work?* **If yes, continue. If no, stop.**
- **Contested Leadership** - *Is there likely to be a contest for leadership of the combined non-profit?* **If yes, stop. If no, continue.**
- **Support from Key Supporters** - *Is there a high likelihood your key supporters will support a combination?* **If yes, continue. If no, stop.**
- **Financial Capacity** - *Do you have enough financial resources to afford a combination?* **If yes, continue. If no, stop.**

