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Considering a Combination

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Overview

- the opportunity - why consider a formal combination?
- what can go wrong?
- the road to amalgamation - significant issues to be resolved
- requirements of corporate legislation

Why Consider a Formal Combination?

- there are 86,000 registered charities in Canada
- a strategic benefit to both organizations
 - opportunities arise from the combination that would not otherwise be present
 - the natural result of a successful collaboration between organizations
- a lifeline because of a catastrophic event
 - board/governance/organizational failure
 - withdrawal of core funding
 - funder requirement

Why Consider a Formal Combination? (cont.)

- improved services, cost savings and other efficiencies can be realized
 - may free-up resources to reinvest internally
- eliminate brand confusion
 - Breast Cancer and Canadian Cancer Society
 - simple CRA search – 194 cancer related charities
- reduced funding and increased competition
 - in BC agencies in a particular sector were told by the Province that on a going forward basis only a single agency in a region would be funded
- desire of funders to have grant recipients work in collaboration/cross-sectorally

Why Consider a Formal Combination? (cont.)

- the failure of governance may be so extreme that the organization is not capable of continuing independently
- larger organization provides more opportunity for employees to advance

What Can go Wrong?

- ego and emotion
 - decision-making paralysis
 - distraction from mission
- “cultural” differences
- failure to build trust with a former competitor
- “rationalizing” senior employees
- cost efficiencies not realized
- lengthy adjustment period
- external communications issues
 - need to rebuild awareness
 - lack of acceptance from donors, funders
 - loss of goodwill

Significant Issues for Resolution

- People
 - Membership
 - need to prepare the membership
 - history and “ownership”
 - willingness to accept change
 - Board is making a recommendation – members have the final say
 - Employees/Senior Managers
 - who will lose their job?
 - resistance/lack of cooperativeness
 - severance
 - unions?
 - Directors
 - who will leave/resign
 - surprisingly, often seen as an opportunity by many to honourably conclude their service

Significant Issues for Resolution (cont.)

- Governance
 - alteration to governance structure?
 - open v. closed membership
 - “real” members for governance purposes as opposed to supporters
 - number of directors
 - qualifications of directors
 - involvement of external bodies
- Financial and Programmatic
 - impact on revenue streams
 - rationalizing of programs
 - combination
 - cessation
 - tax exemption
 - can discover incorrect or missing filings that require “fixing”
 - may wish to apply for charitable registration

Significant Issues to Resolve

- Third Party Consents
 - landlords
 - contractors
 - grantors
- External Communications and Branding
 - timing
 - approvals
 - trade-marking
 - social media
 - monitoring and response
 - damage control (particularly if result of catastrophic event)

Requirements of Corporate Legislation

- determine legislation of incorporation
 - *Societies Act*
 - *Business Corporations Act*
 - *Canada Not-for-Profit Corporations Act*
- if both incorporated under the same legislation, then generally the requirements are:
 - Amalgamation Agreement
 - negotiated by the parties
 - sets new/ongoing name, objects, bylaws (governance model), first directors, members
 - Board resolutions from both parties
 - Members' Resolution from both parties

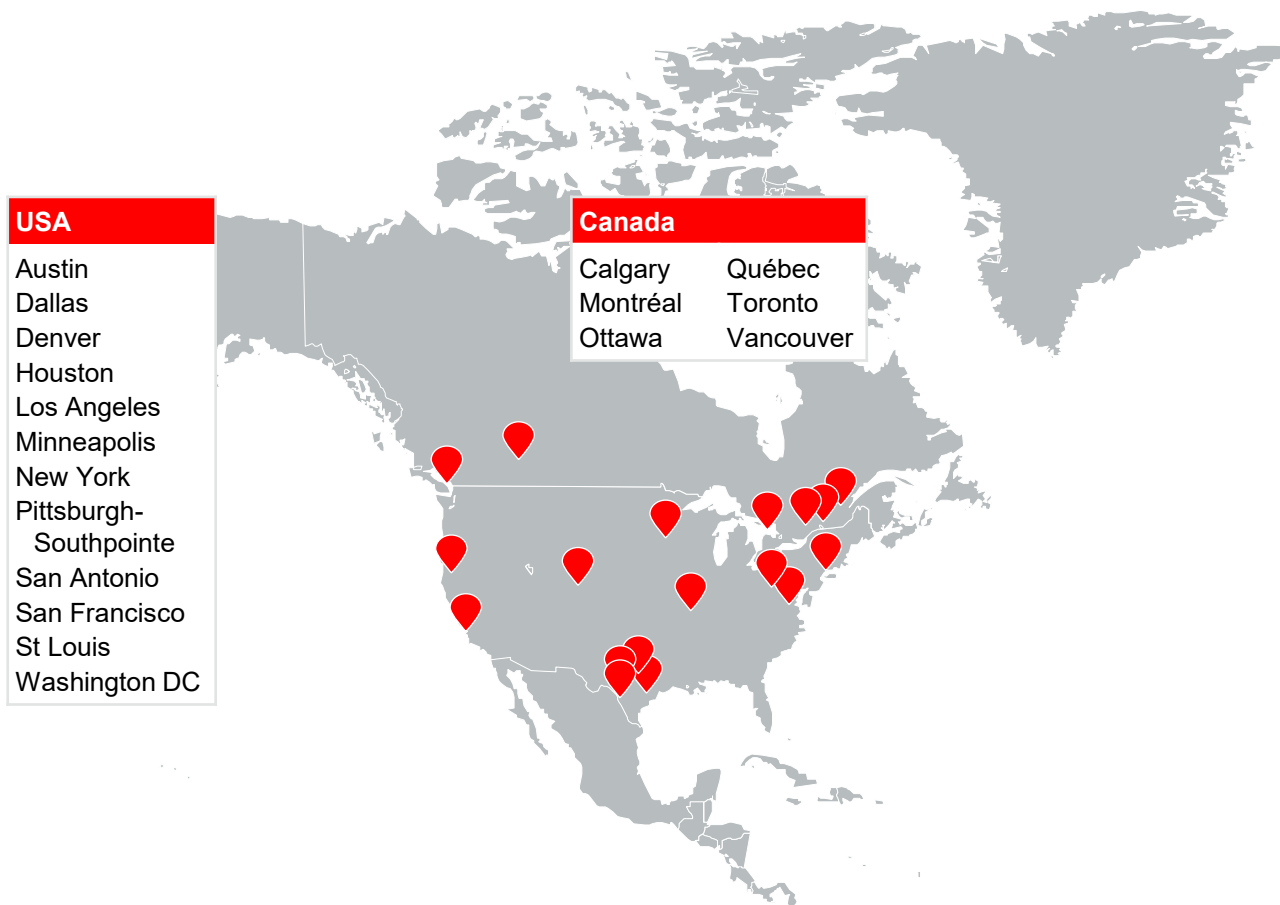
Requirements of Corporate Legislation (cont.)

- if incorporated under different legislation, then two options:
 - **Asset and Liability Transfer/Dissolution**
 - parties negotiate an Asset and Liability Transfer Agreement
 - all assets, employees, contracts transferred to one organization, transferor organization ultimately dissolved
 - as part of process, name for continuing organization and governance negotiated and continuing organization makes changes as required
 - not optimum if transferring entity has estate expectancies
 - **Continuance and then Amalgamate**
 - one entity continues under the appropriate corresponding legislation
 - in effect is treated as if originally incorporated under the legislation
 - thereafter the two organizations amalgamate

Moving Forward

- can often be the most challenging part of the whole process!
- great attention must be paid to integration and cultural transfer

USA and Canada



The logo consists of a stylized, upward-pointing chevron shape in a gold color, positioned above the first letter of the text.

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