Revisiting Charitable Trusts as an Organizational Option

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Within the next year or so, charities and non-profits which are incorporated under both Federal and Ontario no-share corporation legislation will be faced with mandatory changes which will require re-registration under the soon to be effective corporate legislation and which has much stricter rules relating to what can and cannot be incorporated into the by-laws. There will also be more onerous requirements depending upon whether a corporation is receiving funds from the public or from the government.

This sea change in the law will also have an impact on decisions for new organizations which are being created…most notably in which jurisdiction they wish to incorporate under.

It may be time for organizations to take a look at another option, namely using an operating trust which takes it out of any of the statutory rules and which gives a lot more flexibility.

In most common law countries outside North America, the “normal” way to set up a charity is by the settling of a trust for charitable purposes. Indeed, when you look at the case law and the texts on the subject of charity, the language of “trust” is paramount. Yet, in Canada as well as in the United States, the most common way to create a charity is by way of a corporation which has no share capital.

One can speculate about the reasons for this “new world” philosophy. Many believe it is simply because law schools teach only minimal trust law and because the commercial world, particularly banks, are unfamiliar with the workings of trusts. Thus, using corporations becomes the norm.¹

While almost all lawyer in Canada have (we hope) at least a basic understand of the law of trusts, it remains for most of them an arcane area except when the trust is

¹ We use the term “corporations” in its broadest term, given that there are any number of limited liability entities which can be created under provincial acts. The CRA does not have any particular policy on the form of a charity and indeed often registers “bodies’ which have no technical legal existence other than a sort of constitution, signed by one or more individuals.
created as part of a will or estate plan. But when it comes to charitable trusts, many of the rules which were learned in the basic trust courses go by the way. The rule against perpetuities seldom applies. The rule against inalienability does not apply. And of prime importance, a charitable trust can be created for a “purpose” and need not have a specific beneficiary.  

It is beyond the scope of this paper to delve into the common law of charitable trusts but anybody who works in this area should be familiar with the extensive discussion in *Waters’ Law of Trusts in Canada* in Chapter 14.

While it should be beyond debate, it is important to note that the Income Tax Act specifically and implicitly endorses the use of charitable trusts. The definition of charitable organization simply refers to an applicant which is an “organization whether or not incorporated” (which includes trusts) and the definition of a charitable foundation is more limited but explicit referring to “a corporation or trust”.

The use of trusts has many attractions which corporations do not share. These include:

- Privacy, since there is no corporate record which can be searched by “outsiders”.
- Flexibility, since the trust need not follow the corporate rules and the settlor (the person who creates it) can allow the trustees to set their own operational rules.
- The ability to explicitly allow trustees to act at their discretion within broad guidelines also offers maximum flexibility.
- There is no need for “members” and directors, since the people who operate the trust are simply the trustees. This in turn eliminates extra meetings, minutes and resolutions.

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2 For a discussion of non-charitable purpose trusts in an income Tax context, see *LIUNA Local 527 Members Training Trust Fund v Canada* [1992] 2 CTC 2410 and how the validity was “saved” by the provisions of the Ontario Perpetuities Act.

3 Third edition, Waters, Gillen, Smith (Thomson Carswell, Toronto, 2005)

4 ITA subsection 149.1(1).

5 ibid

6 Of course, if the trust becomes a registered charity, much information is available on the CRA’s Charity web site.
• The trust deed itself can be amended simply by following the rules in the document...whatever they might be
• The trustees can serve indefinitely and there are no statutory limits
• The Trustees, if the document so provides, can replace themselves, add new blood or maintain the status quo
• The creation of a trust is cheaper as there is no need to reserve a corporate name or pay filing fees; there are no annual corporate filings required either; and in terms of turn-around time, the full trust can usually be created, signed, sealed and delivered in a day or so without government bureaucrats having any say.
• Aside from the general CRA rules, only provincial Public Trustees have jurisdiction over trusts if there are potential problems. Given that most provincial Public Trustee offices are reactive and not proactive (Ontario tends to be the exception) unless some complaint is lodged (perhaps by a trustee or perceived beneficiary) there is seldom any interference in operations. The common law rule is that trusts are resident where a majority of the trustees reside. Recent tax cases seem to be adding a corporate test, namely where functional control resides if de facto this lies with people other than the trustee.7

So why are trusts not used more often?

By far the most significant reason is that unlike the directors of a charitable or non-profit corporation, the trustees have personal liability for the debts of the trust and for actions of the trust. This possibility of liability tends to scare people away from being a trustee.

But the real question is whether the fear is justified?

First, it should be recognized that even corporate directors have significant potential exposure for personal liability under legislation ranging from the Income Tax Act to various environmental acts. So trustees have only the same exposure there.

Second, in practical terms, for many types of charities, notably foundations, personal exposure ranges from minimal to nil. A group of trustees which oversees the investment of capital and the distribution of income is not likely to have much risk exposure. For example, the Nunavut Trust which was set up to receive land claim settlement money holds in excess of $1 billion in assets. The trustees are six individuals.

We would not, however recommend the trust option for a charity which is active in providing services to people at risk or having similar objects where liability can easily flow from unauthorized actions of employees.

Third, it is possible to protect the Trustees by use of both indemnities and insurance. The acceptability of the use of insurance was confirmed in Ontario by the case of Pandher v. Ontario Khalsa Darbar

And fourth, in more and more cases, it is possible to use a corporation as the trustee of a charity. Where this is done, the individuals who serve as officers of the charitable trusts do so as agents or employees of the corporate trustee. This was for many years standard practice with trust companies being the charitable trustees…especially where the charitable trust was created by a will. But in most provinces, a corporate trustee need not be a trust company, given that corporations have the legal capacity of a human being under their statutes of incorporation.

In the case of a charitable trust where there is just a single corporate trustee, the CRA takes the position that it will automatically be classified as a private foundation which may or may not be a problem, depending upon the facts. If warranted, there can be multiple corporate trustees.

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8 We were involved for many years with a trust which has more than a billion dollars in investments where the trustees have never indicated any concern whatsoever about personal liability given the nature of their obligations, namely to invest the funds and make annual payments to beneficiaries.
9 http://www.nunavuttrust.ca/
10 2010 ONCA 273
11 This trustee corporation can be a business corporation or a non-profit.
There are other reasons why trusts are not much used. If you look at the list of benefits (which is not all inclusive) of using a trust, it becomes apparent that the attractions are primarily “control” and privacy factors. Obviously, with a charity which is “public”, it may be attractive to have much more transparency, to have wide membership and to have regular elections for the board. While these things *can* be achieved through a well drafted trust deed, it is arguable that using the corporate form is more appropriate in such cases.

But where the organization is essentially a private one, say with a single beneficiary charity, the use of a trust may have attractions. Thus, if you have a public charity which has broad membership and which has a high level of transparency, the use of a trust to create an “associated foundation” may be appropriate, insulating it from short term considerations and allowing the trustees to take the long view.

A third reason for not using trusts is, if we can be blunt, ignorance. Setting up a corporation requires very little legal skill and can be off-loaded to young lawyers and para-legals. Thus incorporating is comparatively easy. A good trust deed takes some considerable thought by somebody who has a fair idea of what he or she is doing. Related to this issue is the fact that when dealing with outsiders such as banks, we have found an almost incredible lack of understanding of the law of trusts…and that goes for trust companies as well.

We hardly believe that Canadians who wish to set up charities will suddenly become aficionados of trusts. But the fact of the matter is that in many cases, there is a knee-jerk reaction which leads to incorporation where the objectives might be achieved quicker, cheaper and with more flexibility by using a trust. We are, we might add, great fans of using such trusts in the case of the creation of private foundations where publicity is not sought and where family continuity can be more easily maintained.

As we said earlier, the substantive changes in no-share corporate statutes federally and in Ontario may warrant another and more sympathetic look at the use of trust.
The Trust Deed: The very nature of the trust lends itself to creative and imaginative drafting so that it can be customised. The CRA has some requirements which are set out on its web site.\footnote{http://www.cra-arc.gc.ca/chrts-gvng/chrts/pplyng/gdc/trsts-eng.html}

“Applicants that seek registration as a charitable organization, a public foundation, or a private foundation may be established under a trust document.

For registration purposes, a trust document must contain at least the following requirements:

- the trust's name;
- the names of the original trustees;
- the trust's purposes;
- the rules governing how the trustees of the trust will administer all money received;
- a provision in which the trustees give assurance that all money received will be spent only for the purposes outlined in the trust document;
- a provision detailing how the trustees will be replaced;
- the effective date of the document; and
- the signatures of the trustees.”

Those familiar with trusts will see that there is nothing particularly onerous in these requirements in the context of a basic Deed of Trust. As with any application for registration, the key element is the definition of the trust purposes.

In the appendix to this paper you will find a model and simple charitable trust deed. But a few clauses which are of some interest from other, more complex trust deeds may be of interest.

Example 1: In this case, the foundation is public but the funding came from one family. To try to ensure that there never will be a majority of non-arm’s length trustees, we find the following provision:

“\textbf{There shall be a minimum of five Trustees hereunder; provided however,}
that the Trustees shall have the power from time to time to increase the number of Trustees to seven. In no case shall there be less than five trustees of whom no more than two shall be Family Trustees\textsuperscript{13}. In the event that there is an increase in the number of trustees to seven, there shall always be three Family Trustees. In the event that there are seven trustees, the Trustees may reduce the number to five.”

**Example 2:** In this case, the settlor expects that the trust will last several generations and is aware that as time passes, many of the trustees will not have known him. He wants to give a clear explanation of why he set up the trust knowing, of course, that he cannot interfere with trustee decision making.

“The Settlor shall have the right to provide one or more documents which are designed to offer guidance to present and future trustees as to his philosophy as to the operation of the foundation and examples of programmes which he thinks should be considered as worthy of support. These documents are not part of the trust deed and are intended to provide examples of how the settlor strongly wishes the purposes as set out in purposes clause to be interpreted. The document will be available to all trustees, present and future, to expand upon the settlor’s hopes for the foundation.”

**Example 3:** You can place limits and set criteria for trustees beyond the bare bones of being a living sentient human being who is at least 18 years old.

“In order to be appointed a Trustee, an individual must meet the following requirements:

(a) Be at least 30 years of age;
(b) Have proven professional skills that are viewed as useful and appropriate by the Trustees;
(c) Have experience in community service or philanthropy with an emphasis on those causes which are reflected in the purposes of the trust;
(d) In the opinion of the Trustees, be dedicated to the values supported by the trust:
(e) In the opinion of the Trustees, be able to work effectively with the other members of the Board and with the family of the Settlor.”

\textsuperscript{13} This is a defined term in the Deed of Trust.
**Example 4:** The settlor wanted to help groom younger members of the family for involvement with the trust though not necessarily as trustees.

“The Trustees may establish a Junior Advisory Board, the purpose of which is to involve potential Family Trustees in the activities of the trust from an early age and to teach the importance of philanthropy and of contributing to the betterment of the community. The minimum age of those who are appointed to the Junior Advisory Board is 13. The Trustees may use their own discretion in the creation and operation of the Junior Advisory Board as well as naming those who are welcome to participate.”

**Example 5:** The following is an indemnification clause which, if the assets of the trust are substantial can be used instead of insurance, though of course it is possible to use both to protect the trustees.

“Every Trustee or other person who has undertaken or is about to undertake any liability on behalf of the trust or any company controlled by the trust and his heirs, executors, administrators and other personal representatives, respectively, as agreed upon by the Trustees at their discretion, shall from time to time and at all times, be indemnified and saved harmless out of the funds of the trust, from and against:

(a) All costs, charges and expenses whatsoever which such Trustee or other person sustains or incurs in or about any action, suit or proceeding which is brought, commenced or prosecuted against him, or in respect of any act, deed, matter or thing whatsoever, made, done or permitted by him, in or about the execution of the duties of his office or in respect of any such liability;

(b) All other cost, charges and expenses which he sustains or incurs in or about or in relation to the affairs thereof, except such costs, charges or expenses as are occasioned by his own willful neglect or default.”

**Example 6:** The variation of trust provision can be exceedingly simple and straightforward.

“This Trust Deed may be varied by a unanimous vote of the Trustees.

Notwithstanding paragraph 8.0, no amendment to paragraphs (purpose clauses) of this Trust Deed may be made.”

Of course, a much more complex formula could be used. For example, in the Nunavut Trust which we referred to earlier, it takes four out of six trustees to amend the
Deed of Trust but the four must have at least one representative of each of the three regions which comprise Nunavut.

**Example 7:** If you have a situation where the trust has a substantial holding in corporate shares and you worry about whether an issue of conflict comes up, here is a clause which can be used.

“It is explicitly recognized that the trustees may be a shareholder of, employed by, retained by or otherwise be involved with corporations or businesses in which the trust has a financial interest. It is explicitly provided that such involvement with a corporation or business does not in itself constitute a conflict of interest and the settlor does not desire that a Trustee recuse himself or herself from voting on issues which come before the board of Trustees solely because of his or her relationship to such business or corporation.”

At the start of this paper we referred to the ongoing process of substantially amending corporate law as it applies to not-for-profit corporations. This will of course require thousands of charities to scramble to continue under the new legislation in both Ontario and federally. While this sort of thing may happen only once in a generation or two, all legislation can even on an annual basis be subject to amendment.

From our perspective one of the beauties of using a trust is that because the applicable law is the common law, it is hugely unlikely that anything done by politicians or bureaucrats can substantively interfere with the provisions of the trust deed. At the same time, if changes are needed, it can be very easy if the trustees are so empowered, to make changes to meet changed circumstances.
Appendix

The following is a simple and basic Deed of Trust\textsuperscript{14} which has some simple and fundamental provisions which should be incorporated in all charitable trust deeds though as we have pointed out in the paper, almost any provision can be drafted to meet the specific needs and desires of the client.

DECLARATION OF TRUST

THIS DECLARATION OF TRUST is made the day of , 2011 by:
A of the City of Mississauga, in the Regional Municipality of Peel in the Province of Ontario
-and-
B of the City of Toronto in the Province of Ontario
-and-
C of the City of New Delhi in India

(herinafter called the “Trustees”, which expression shall, where the context so permits, include the Trustee or Trustees for the time being of this Deed)

WHEREAS it has been resolved to constitute a Trust for the objects hereinafter declared
AND WHEREAS the Trustees have raised the sum of $10 and intend to raise other funds and accept gifts for the said objects

NOW THEREFORE THIS DEED WITNESSETH AND IT IS HEREBY AGREED AND DECLARED as follows:

ARTICLE ONE

Definitions

1.1 “Founding Trustee” means one of the three individuals named at the outset of this Deed of Trust
1.2 Majority of Trustees” shall have the meaning described in Article 5.01(v) hereof.
1.3 “Trust” as used in this deed of trust means the XXX Trust.
1.4 “Trust Fund” is defined to include the current assets of XXX Trust as well as after acquired property which will be held in trust pursuant to this Declaration of Trust
1.5 “Trustee” includes those individuals or bodies corporate which are the trustees at the time reference is made.

ARTICLE TWO

Establishment of Trust

2.01 A charitable Trust is hereby established in the name of XXXX Trust.
2.02 The objects of the Trust are as follows:

\textsuperscript{14} For technical reasons, this was created by way of Declaration of Trust and thus has no settler \textit{per se}. 
(a) To promote education through the establishment of one or more degree granting post-secondary educational institutions and other educational programmes in such countries as the trustees shall designate in order to provide courses and training in the field of information technology.

(b) To provide and maintain a scholarship fund for needy and above average scholars to enable them to continue their studies at such educational institutions established pursuant to paragraph (a) or such other recognized institutions which have established joint educational programmes with such institutions or have made other arrangements to work co-operatively with them;

(c) To transfer such income or capital as the directors determine to one or more qualified donees as that term is applicable under the *Income Tax Act (Canada)*.

(d) In furtherance of the objects of the trust, to acquire, rent or build premises in which classes and related activities are held, to hire staff to teach the courses and to handle administrative issues, to develop course materials which are appropriate and to enter into joint ventures, partnerships or agency arrangements which are designed to establish and maintain the institutions referred to in paragraph (a).

**ARTICLE THREE**

**Duty of Trustees**

3.01 The Trustees shall deal with the Trust Fund in accordance with this Declaration of Trust and the Trustees shall conduct all activities in such a manner so as to ensure that the objects of the Trust.

3.02 The Trustees shall hold the Trust Fund in trust for the purposes of the Trust as may be determined from time to time by the Trustees in accordance with the stated objects of the Trust. The Trustees shall pay such amounts out of the Trust as shall be required to properly fund the charitable activities of the Trust, the amount of which shall be determined by the Trustees in the exercise of their absolute discretion.

**ARTICLE FOUR**

**General Powers**

4.01 The Trustees shall hold the capital and income of any cash, cheques, securities, investments, personal property, real property or other interests received or otherwise acquired for the Trust Fund in trust to be used for the exclusive purpose of the objects of the Trust.

4.02 The Trustees may invest in their names any monies or the proceeds of any property or interests received or otherwise acquired that are not required for the immediate purposes of the Trust. The investments may be in securities or other investments in which such trust monies or proceeds may by law be invested. The Trustees may from time to time deal further with the investments and may from time to time reinvest any amounts that are payable. When making investment decisions, the Trustees shall invest as a prudent person would; provided that when making investments, the Trustees shall not be limited to investments authorized by law for trustees.

4.03 Any property received or otherwise acquired shall be vested in the Trustees.

4.04 The Trustees may from time to time open and maintain an account or accounts at a financial institution or institutions in Canada. They may establish such accounts outside Canada where in their opinion the establishment of such accounts is necessary to facilitate the objectives of the trust. The Trustees may at any time pay any monies forming part of the Trust Fund to the credit of the account or accounts or place the money on deposit with any financial institution or institutions. All cheques and orders for payment shall be signed by a trustee or any person authorized to sign such documents by the trustees.
4.05 The Trustees may pay and incur out of the Trust any charges or expenses and disburse any funds of the Trust which are in the opinion of the Trustees necessary or advisable for the carrying out of any of the purposes of the Trust.

4.06 The Trustees may appoint, consult or obtain assistance from any agent, counsel, investment adviser, accountant, appraiser, professional real estate manager or other adviser as, in the discretion of the Trustees, shall be considered necessary or advisable for the purpose of discharging the duties and exercising the powers of the Trustee hereunder and to pay compensation from the Trust for the services of any such persons.

4.07 The Trustees may lend money at below commercial rates of interest or without interest at all for the purposes of carrying out the objects of the Trust.

4.08 The Trustees may incur debts or may borrow money on such terms and conditions as they may determine.

4.09 In addition to the foregoing powers, the Trustees may exercise all such powers as they would have had this trust been constituted under the Canada Business Corporations Act, provided that this clause shall not be interpreted as giving the Trustees the power to undertake any act which would extend the activities of the Trust beyond the purposes set out in paragraph 2.02 and which would be inconsistent with either the Income Tax Act (Canada) or the common law rules relating to charitable purposes and activities.

ARTICLE FIVE
Regulations of the Trust

5.01 The following regulations shall govern the procedures of the Trustees:

(i) there shall be at least three trustees hereunder; provided however, that the Trustees shall have the power from time to time to increase or decrease the number of Trustees hereunder by the vote of a Majority of the Trustees;

(ii) the Trustees may annually or more often as may be required appoint from among their number, officers holding the positions of President, Chairman, Secretary and Treasurer Any person who ceases to be a Trustee hereunder shall automatically cease to hold the position as an officer of the Trust; if one or more of the trustees is a body corporate, that trustee may name one or more individuals to act as its agent in conducting the business of the trust and to serve as an officer of the trust;

(iii) any Trustee may, at any time, convene a meeting of the Trustees provided at least forty-eight (48) hours written notice has been given to the other Trustees of the matters to be discussed and the time, date and location of the meeting;

(iv) two (2) Trustees shall form a quorum for any meeting of the Trustees;

(v) all decisions made by the Trustees shall be determined by a Majority of the Trustees present at a meeting of Trustees. The Trustees may act either by a resolution passed at a meeting of Trustees or by an instrument in writing signed by a majority thereof, and any such decision or act of a Majority of the Trustees shall for all purposes of this Agreement, be deemed the decision or act of the Trustees and shall be full warrant to any person for any action taken in connection therewith;
in the event that there is a tie vote on any resolution, the Chair shall have a second or casting vote;

 notwithstanding paragraphs (v) and (vi) no resolution passed by the Trustees shall be valid unless at least one founding trustee has voted in favour of it; this paragraph shall become invalid in the event that no founding trustee remains on the board;

 meetings may be held by conference call or by similar telecommunications or electronic means;

 any resolution of the Trustees may, from time to time, be rescinded or varied by a Majority of the Trustees;

 the Trustees shall provide and keep a minute book. The proceedings of the Trustees shall be entered in the minute book. The Chair shall sign the minutes at the conclusion of each meeting or at a future meeting when the minutes have been duly confirmed by the Trustees;

 the Trustees shall provide books of account to record all money received or paid out on behalf of the Trustees and shall arrange for annual statements to be prepared in a manner consistent with generally accepted accounting practices;

 any Trustee may at any time resign office on thirty (30) days' notice in writing given to the remaining Trustees or upon such shorter notice as the remaining Trustees may be willing to accept. Any vacancy that may occur among the Trustees, whether by an increase in the number of Trustees, or by resignation, death or otherwise, may from time to time be filled by the remaining Trustees;

 any person so appointed as a Trustee hereunder shall, as well before as after the trust fund becomes by law or by assurances or otherwise vested in him or her, have the same powers, authorities and discretions and may in all respects act as if he or she had been originally appointed a Trustee by this Agreement;

 the Trustees shall have the power from time to time to appoint any person or persons, whether or not a Trustee, on behalf of the Trustees either to sign contracts, documents and instruments in writing generally or to sign specific contracts, documents or instruments in writing. The term “contracts, documents or instruments in writing” as used in this Agreement shall include applications, notifications, returns of information, reports and filings of any nature or kind (governmental, regulatory or otherwise), deeds, mortgages, hypothecs, charges, conveyances, transfers and assignments, releases, receipts and discharges for the payments of money or other obligations, conveyances, transfers and assignments of shares, share warrants, stocks, bonds, debentures or other securities and all paper writings;

 the Trustees may adopt any other rules and regulations which they may from time to time deem proper to govern their own procedure;

 Trustees may be reimbursed for all expenses incurred by them in the carrying out of their duties

 **ARTICLE SIX**

 **Trustees’ Standard of Care**

 6.01 All duties and powers and authorities imposed or conferred upon the Trustees hereunder will be exercisable by the Trustees honestly and in good faith with a view to the best interests of the Trust. In
connection therewith, the Trustees will exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances; and for greater certainty, the standard of care and duties imposed upon the Trustee with respect to its responsibilities under the Declaration of Trust shall not be less than those imposed upon the officers and directors of a corporation incorporated under the *Canada Business Corporations Act*.

**ARTICLE SEVEN**

**Limitation on Trustees Liability**

7.01 The Trustees, their officers, agents and employees will not be liable to the Trust or any beneficiary of the Trust for relying in good faith on any document that apparently is properly executed or for any depreciation of or loss to any of the assets of the Trust, for relying or declining or failing to act on the report or opinion of any agent, counsel or adviser employed by the Trustees in good faith, for any other action or failure to act, except for a breach of a Trustee's duties and responsibilities and its standard of care, diligence and skill as set out in Section 6.

**ARTICLE EIGHT**

**Indemnification of Trustees**

8.01 The Trustees will be indemnified from the Trust Fund for any losses, liabilities and expenses incurred without wilful misfeasance, bad faith, negligence or disregard of its obligations and duties, including its duties of care, diligence and skill.

8.02 The Trustees may take out policies of insurance for the purpose of indemnifying the trustees, officers or employees of the trust and may charge the trust fund with the cost of such premiums.

**ARTICLE NINE**

**Liability to Third Parties**

9.01 All acts done, written instruments executed and all obligations and liabilities incurred by or on behalf of the Trustees or by any person who is an officer, employer or agent of the Trustees, in the performance of the responsibilities, powers and authorities of the Trustees and in accordance with the standard of care, diligence and skill referred to in this declaration, shall be conclusively taken to have been done, executed or incurred only by or on behalf of the Trustees in their capacity as Trustees. All written instruments creating or evidencing any such obligations and liabilities shall, wherever feasible contain a provision to the effect that each obligation thereunder shall not be binding upon, nor shall any resort be had to the property of any of the beneficiaries and that all such obligations enforceable by any person against the Trustees or against any person who is an officer, employer or agent of the Trust shall bind the Trustees or if such other person only to the extent that the Trustees or such other person as the case may be is entitled to be indemnified out of the assets of the Trust.
ARTICLE TEN
Charitable Registration

10.01 The Trustees shall apply for charitable registration of Nextrail Global Trust under the provisions of the Income Tax Act (Canada). Any expenses related to this application may be paid from the Trust Fund.

ARTICLE ELEVEN
Amendment of Trust Declaration

11.01 A Majority of Trustees may, from time to time amend this Declaration of Trust as the Trustees consider necessary to fulfil the objects of the Trust. However, no change shall be made to the objects of the Trust prior to consent being given by the Canada Customs and Revenue Agency.

ARTICLE TWELVE
Dissolution of Trust

12.01 Upon dissolution of the Trust, other than by incorporation, and after payment of all debts and liabilities, the remaining property of the Trust shall be distributed to one or more qualified donees as that term is defined under the Income Tax Act (Canada).

IN WITNESS WHEREOF this Declaration of Trust is signed and sealed this day of , 2011.

Signed, sealed and delivered
in the Presence of:

__________________________
(signature)  
Witness

__________________________
(signature)  
Witness

__________________________
(signature)  
Witness