

Provincial Borders Are Not Imaginary Lines Operating Inter-Provincially in Canada

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Introduction

Perhaps the most onerous, yet unknown, set of obligations facing charities in Canada are the filing requirements inherent in operating in more than one province. These obligations are incurred in the corporate area as well as in the charity and fundraising spheres. While in general the obligations simply involve filing the proper corporate form, the consequences of not fulfilling the obligations can be severe. In the corporate area different provincial acts levy penalties of a various magnitudes, and in the charity area in Quebec (for example), failing to comply with the provincial legislation could result in invalid receipts for Quebec donors.

Interprovincial borders then are not simply imaginary lines to be blurred or ignored when it suits the organization. They have a fundamental, if largely unknown, effect on the environment in which charities operate in Canada and all charities need to take into account these laws when reviewing their yearly obligations.

British Columbia

Extra-provincial registration

An extra-provincial society, (except for ones providing insurance), may apply to register in British Columbia and may only conduct operations in British Columbia if registration is granted.¹ The application fee is \$100.00. Applications are given to the Registrar of Companies and may be granted a certification of registration. Certification may have with it conditions of registration.² Detailed information is available in the notice “Information for Registration of an Extra-provincial Society.”³

Steps to extra-provincial registration

1. Apply for approval of the extra-provincial society’s name (details below). This is not required if the society is a federal corporation.
2. File a Statement on Registration of Extra-provincial Society with copies of the certified incorporating documents, a statement of good standing from the incorporating body and a certified copy of the society’s by-laws.⁴
3. File the constitution and by-laws using either Form 1 (if using the bylaws set out in Schedule B of the Society Act); Form 2 if adapting the Schedule B bylaws with changes or additions; and Form 3 if using a customized set of bylaws for the society.
4. File the List of First Directors using Form 4⁵ and Notice of Address of Society using Form 5.⁶ These can be filed either online or by mail.⁷
5. The society must file an application for appointment of an attorney if they have not already done so.
6. The Registrar will assess the application and either issue the certificate of registration or refuse it. If granted, registration will be published and copies will be sent to the society’s head office and appointed attorneys.

Unless the registrar otherwise provides, the extra-provincial society must comply with the laws relating to by-laws, names, constituting provisions and any changes therein.

Names

¹ BC Society Act s. 75 (1-2) (the “BCSA”).

² *Ibid.* s. 76(4).

³ Available online at: <http://www.fin.gov.bc.ca/registries/corppg/forms/REG15.pdf>

⁴ Available online at: <http://www.fin.gov.bc.ca/registries/corppg/forms/0792FILL.pdf>

⁵ Available online at: <http://www.fin.gov.bc.ca/registries/corppg/forms/0774FILL.pdf>

⁶ Available online at: <http://www.fin.gov.bc.ca/registries/corppg/forms/0742FILL.pdf>

⁷ Form available online: <http://www.fin.gov.bc.ca/registries/corppg/forms/form33.pdf>. To submit the application, go to www.corporateonline.gov.bc.ca or through a BC OnLine account or by mail through Dye & Durham at 734 Broughton Street, Victoria, British Columbia V8W 1E1. More information is available online at www.dyedurhambc.com.

Extra-provincial corporations must request to reserve their corporate name. This can be done either online;⁸ at a Government Agent's office; at an OneStop service delivery location;⁹ by a BC OnLine account; or by mail.¹⁰ They may submit three name choices to the Names Examiner of the Registrar of Companies. The filing fee online is \$31.58 and by mail is \$30.00. A name will be reserved for 56 calendar days. The Names Examiner only searches the Corporate Registry, so a society would be prudent to run a NUANS and trademarks registry search for the names of BC firms, trademarks or corporations registered outside the province. If all your submitted names are rejected, a society must restart the process with three new submissions. Further details are available on the "Name Approval Request Instructions" circular.¹¹

Appointed Attorney

Once the certificate of registration is granted, the extra-provincial society must appoint a person resident in British Columbia to act as its attorney for service, authorized and directed by the society to accept all legal notices and proceedings brought to, by, or against the society.¹² Within a week after this appointment, the society must file the appointment – including name and contact information – with the registrar and no more than a week may pass between the termination of the first and any subsequent appointments. Any changes to the appointment require a notice of change to be filed with the registrar.

Maintaining an Extra-Provincial Society

To maintain an extra-provincial registration, the society must file:¹³

- A verified copy of amendments to the constitution and by-laws within a month of any taking place. Each change requires a \$15.00 filing fee.
- Any changes to the address of the head office, directors¹⁴ (form 7) or the addresses (form 5), name or attorney for service. Each filing requires a \$15.00 filing fee.
- The Annual Report Form 11 prepared within thirty days of each general meeting, a \$25.00 fee applies.¹⁵

⁸ The online application is available at <https://www.bcregistryservices.gov.bc.ca/nro/>

By mail, Dye and Durham can file the application on your behalf but an additional service fee applies. Dye & Durham at 734 Broughton Street, Victoria, British Columbia V8W 1E1. More information is available online at www.dyedurhambc.com.

⁹ www.bcbusinessregistry.ca

¹⁰ Submit your application with the three names in descending order of preference. Along with a fee by cheque or money order payable to the Minister of Finance, to the Corporate Registry, PO Box 9431 Stn Prov Govt, Victoria BC V8W 9V3.

¹¹ <http://www.fin.gov.bc.ca/registries/corppg/forms/0708BFILL.pdf>

¹² BCSA s. 77

¹³ Ibid. s. 78.

¹⁴ Available online at: <http://www.fin.gov.bc.ca/registries/corppg/forms/0775FILL.pdf>

These forms may be submitted by mail to:

Ministry of Finance
BC Registry of Services
PO Box 9431
Stn Prov Govt,
Victoria BC V8W 9V3.

A charity can apply to the registrar to change its name or purposes by a special resolution so long as they are in keeping with charitable purposes.¹⁶ The by-laws may be changed by providing a copy of the special resolution to do so to the registrar.¹⁷ A copy of these resolutions should be submitted by Form 10.¹⁸

A change of name does not affect the rights and obligations of a society, nor does it nullify legal proceedings against the society. If the constituting documents of the charity make any provisions other than the name and purposes, the possibility of future changes to these other provisions must be expressly included in the constituting documents. If there is no statement about future changes, the provisions are alterable.¹⁹

Revocation and Winding up

The registrar may, for good cause, suspend or revoke the registration of the extra-provincial society or cancel a suspension or revocation.²⁰ The Registrar will first notify the society of non-compliance. If the society does not respond with an outline of intended compliance, the Registrar will publish the notice to revoke in the British Columbia Gazette. If there is still no notice that the society intends to comply within a month of publication, the registration may be revoked.

Failure to file an Annual Report could result in being struck from the register and dissolution.

To cease business operations in British Columbia, an extra-provincial society may voluntarily apply to dissolve. The society should send a letter by mail,²¹ signed by the current director of the society, stating that it has ceased its operations in British Columbia and desires to be removed from the register.²² The filing fee is \$15.00 and the notices are processed as the Registrar receives them. For an additional \$100.00, a society may expedite deregistration. Priority service usually takes 24 hours.

¹⁵ Available online at: <http://www.fin.gov.bc.ca/registries/corppg/forms/0731BFILL.pdf>

¹⁶ BCSA s. 20(1)

¹⁷ Ibid. s. 23.

¹⁸ Available online at: <http://www.fin.gov.bc.ca/registries/corppg/forms/0782FILL.pdf>

¹⁹ BCSA. s. 22.

²⁰ Ibid. s. 79

²¹ Letters should be sent to the Corporate Registry, PO Box 9431 Stn Prov Govt, Victoria BC, V8W 9V3.

²² BCCA s. 259(1); SA s. 71(1).

Restoration

If, for whatever reason, a society is struck from the register, it may apply for restoration of the registration within ten years of being struck. Restoration will deem a society to have had continued existence so all filings from the time of the initial registration will be required. Forms, further information on restoration and applicable fees are outlined in the notice “Information for Restoration of a Society or Extra-provincial Society.”²³ The previous name of the society may no longer be available so a name search, as outlined above, should be conducted anew.

Advantages of registration

Registration is not mandatory but does have legal advantages. If registration is granted, the extra-provincial society may maintain legal proceedings in British Columbia with respect to its contracts and acquire or hold interests or title in land in British Columbia (under the British Columbia *Land Title Act*).²⁴

Finances

There is no requirement to file financial statements with the Corporate Registry however these must be made publicly available upon request.²⁵

Fundraising Legislation

There is no legislation specifically aimed at extra-provincial charitable fundraising in British Columbia as there is in Alberta.

Acquiring Property

Societies may acquire or hold interest or title in land.

²³ Available online at: <http://www.fin.gov.bc.ca/registries/corppg/forms/REG32.pdf>

²⁴ BCSA s. 81.

²⁵ Ibid. ss. 95(3).

Alberta

Extra-Provincial Registration

Extra-Provincial non-share capital corporations are continued under the Alberta *Business Corporations Act* (“ABCA”). Registration as an extra-provincial corporation must take place before or within thirty days of beginning to carry on business in Alberta.²⁶ The Registrar will issue a certificate of registration if the application is filed in full. The ABCA provides an expansive (although not exhaustive) list of activities that will deem an organization to be carrying on business in Alberta and therefore must register:²⁷

- its name or any associated name is listed in any Albertan telephone directory;
- its name or any associated name appears and an address in Alberta is given in an advertisement;
- it has an agent, warehouse, office or other place of business resident in Alberta.
- it solicits business in Alberta;
- it owns any estate or interest in land in Alberta;
- it is the holder of a vehicle registration certificate under the Alberta *Traffic Safety Act*, unless it neither picks up or delivers goods in Alberta; or
- it is the holder of a vehicle registration certificate as per s. 130 of the Alberta *Traffic Safety Act*, unless it neither picks up or delivers goods in Alberta.

If the corporation is run without view of profit, the Registrar may exempt the corporation from fees associated with registration.²⁸

Once the application is complete, applicants should submit it to an authorized service provider who will examine the application and confer upon the organization a Certificate of Registration. Authorized service providers are private sector firms that have levels of accreditation for the number of services they provide.²⁹ Service fees are not regulated by the government and so there may be price differentials between authorized service providers. Government fees are listed in the Corporate Registry Product Catalogue. To register an extra-provincial corporation, the Government fee is \$100.00.³⁰

Contravening the requirements of the ABCA carries a general penalty of \$5,000.³¹

²⁶ *Business Corporations Act* R.S.A. 2000, c. B-9 at s. 279(1).

²⁷ *Ibid.* at s. 277(1).

²⁸ *Ibid.* at s. 277(2).

²⁹ For help finding one, consult: <http://www.servicealberta.gov.ab.ca/719.cfm> and <http://www.servicealberta.gov.ab.ca/617.cfm>

³⁰ Available online at: http://www.servicealberta.gov.ab.ca/pdf/registries/Product_Catalogue.pdf

³¹ ABCA s. 296.

Application documents

The Corporation may apply to the Registrar by submitting certified copies, in English of the following documents:³²

- a Statement of Registration;
- a certified copy of the charter (letter of incorporation, and any supplementary letters patent);
- the name or operating name and the NUANS Alberta Search Report;
- the address of the head office of the extra-provincial corporation; and
- the appointment of an attorney for service and if applicable, the alternative attorney for service; their name and address

Name

The corporation's name must conform to the requirements of a corporate name under the ABCA regulations. The name also:³³

- must not be prohibited;
- must not be identical or similar (confusing or misleading) to another corporation incorporated in Alberta or federally, or another extra-provincial corporation continued in Alberta.

The Registrar may approve of the use of an operating name should there be a conflict, and this operating name may be cancelled at any time. Under the operating name the corporation may incur the rights, debts and liabilities as if it were registered under its real name. The corporation may be sued under its own name, its operating name, or both.

With the application, the corporation should include an Alberta NUANS Search Report (in French and English as applicable) no older than 90 days from the application and any licensing agreements relating to the name.³⁴

Any new names must conform to the same standards and be submitted with the same requirements as the first.

Attorney

Every extra-provincial corporation must appoint for itself an attorney for service to represent the corporation in Alberta. The attorney need not be a lawyer and can be, for example, the Alberta manager of the extra-provincial corporation. Upon death or resignation of an appointed attorney, the extra-provincial corporation must appoint

³² ABCA at s. 280.

All forms available online at: <http://www.servicealberta.gov.ab.ca/842.cfm>

³³ ABCA at s. 282

³⁴ ABCA Regulations s. 17(1)(h-i)

another and register the appointment. An attorney who intends to resign must give no less than 60 days notice in writing and submit a copy of that notice to the Registrar.

Maintaining the Registration

Amalgamation

An extra-provincial corporation may amalgamate with another corporation and must file with the Registrar a copy of any instrument of amalgamation within one month of the amalgamation (if it is still strictly an extra-provincial corporation after the merger).

Amendments

A registered corporation must send to the Register through an authorized service provider:

- certified copies of all amendments filed in the home jurisdiction within one month of their taking effect; and
- within one month, changes of name or in attorneys for service.

Annual Returns

The corporation must render annual returns to the Registrar no later than the last day of the month of the anniversary month of its incorporation in the other jurisdiction. The form is available online.³⁵

No act of the extra-provincial corporation will be invalid only by reason of the corporation not being registered or the act being contrary or unauthorized by the charter of the corporation or laws of the incorporating jurisdiction.³⁶

Cancellation and Revocation of Registration

An extra-provincial corporation may voluntarily cancel their registration by submitting a request to dissolve their legal entity to the Companies Registrar (i.e. an authorized service provider). This includes a statement that the corporation has ceased to conduct business in Alberta. If liquidation proceedings have begun, the corporation should give notice to the Registrar and a notice of completion.

The registrar may revoke the extra-provincial registration:³⁷

- for non-compliance with the ABCA;
- the Registrar reasonably suspects the corporation has stopped operating in Alberta;
- the corporation is dissolved; or
- the corporation does not comply with any directives the Registrar issues.

³⁵ <http://www.servicealberta.gov.ab.ca/pdf/Forms/REG3062.pdf>

³⁶ ABCA at s. 294.

³⁷ ABCA at s. 285(1).

The cancellation of registration does not affect the liabilities of the corporation.

Fundraising

Charitable fundraising – conducted by professional fundraisers and also charities themselves - is regulated by the *Charitable Fund-raising Act*³⁸. Charities are those that are formed for a charitable purpose. “Charitable purpose” includes a philanthropic, benevolent, educational, health, humane, religious, cultural, artistic or recreational purpose (note that this is far broader than the four heads of charity under common law). Registration by the Minister is discretionary and the Minister can impose conditions on the registration.³⁹

Charities whether incorporated or not must register if they make solicitations for contributions or hire someone to do conduct solicitations on their behalf. Any agent of the charity engaged in these activities must also register. There is no limit on the items solicited and include goods, services, cash, near cash and pledges or promises for contributions. In particular, charities must register if:⁴⁰

- it uses a fund-raising business to solicit contributions;
- it intends to raise more than \$25,000 in gross contributions in its financial year from solicitations of individuals in Alberta; or
- It raised more than \$25,000 in gross contributions in its financial year in which case it must register within 45 days of receiving \$25,000 in gross contributions.

Depending on the organizational and operational structure of the extra-provincial charity, it may be exempt from the above restrictions. For example, no registration is required by an unincorporated group that is affiliated with another organization and the affiliate controls the distributions of the contributions the charity receives during the financial year.⁴¹

Only charities registered under the ACFA can employ a fund-raising business to solicit contributions on its behalf.⁴²

A charity **must** register if their solicitations are:

- direct or indirect requests for contribution where it is stated or implied that it will be used by a charitable organization or purpose (keeping in mind the broad definition of such under the ACFA), or

³⁸ *Charitable Fund-raising Act* R.S.A. 2000, c. C-9 (the “ACFA”).

³⁹ *Ibid.* at s. 15.

⁴⁰ Registration form is available online at: <http://www.servicealberta.gov.ab.ca/pdf/Forms/SA0030.pdf>

It should be mailed to Service Alberta either in Edmonton or Calgary. For questions, call Service Alberta at 780-427-4088 or toll-free at 1-877-427-4088.

⁴¹ ACFA s. 12.

⁴² ACFA s. 13.

- requests for contribution through a direct or indirect request to buy goods or services through which it is stated or implied that some or the entire purchase price will be used by a charitable organization or purpose.

A charity **does not need** to register if their solicitations only are:

- made by a member of a charity to their family members;
- for goods or services used by the charity for a non-charitable (ex: administrative) purposes; or
- through a licensed gaming activity such as raffles, bingos or casinos.

Steps to register a charity for fundraising purposes

1. Fill out the Application for Charitable Organization⁴³ and fee (\$60.00)
2. If registering for the first time, submit copies of solicitation materials and telemarketing scripts that will be used for fundraising.

Registration is for one year. Further information is available through Service Alberta online.⁴⁴

Standards and Rules

Charities should consult the comprehensive set of standards and rules available online through Service Alberta.⁴⁵ Charities must be aware of donors' rights, receipting and recordkeeping practices, and the requirements for using a fundraising business, if applicable.

The law regulates the manner and form of solicitations and records (for example, the hours of solicitation are between 8 and 21h).

Donors' Rights

If a charity conducts solicitations with intent to gross more than \$25,000 in a financial year, it is required to provide, upon request by donors, copies of recently audited financial statements, the portion of gross contributions received that were used directly for the charitable purposes of the charity, and reasonable detail about where and how the contributions it solicits will be spent and other information required by the regulations. All contributions made in the course of solicitations must be receipted if requested except for the direct or indirect requests to buy goods.

Receipting and record-keeping

Charities must keep complete financial records for fundraising activities going back at least three years.

⁴³ Available online at: <http://www.servicealberta.gov.ab.ca/pdf/Forms/SA0030.pdf>

⁴⁴ Available online at: <http://www.servicealberta.gov.ab.ca/661.cfm>

⁴⁵ Available online at: <http://www.servicealberta.gov.ab.ca/1011.cfm>

These include:

- original financial statements;
- records of all solicitations;
- records of the bank account (if any) used for deposits and any payments from that account;
- names of the signing officers for the bank account;
- samples of the information given to potential donors, including publications and phone scripts;
- copies of the fund-raising agreement and any amendments; and
- copies of cash receipts.

Hiring Professional Fundraisers or Fundraising Businesses

All professional fundraisers must be licensed and provide security. If a charity chooses to hire fundraisers to conduct solicitations on its behalf, the charity may find a licensed fundraiser in the database compiled by Service Alberta.⁴⁶ The relationship must be under a written agreement that meets the formalities set out by the government.⁴⁷

Fund-raising businesses hired by charities hold the contributions it receives on behalf of the charity in trust. The *Trustee Act* does not apply but the responsibilities of the fundraiser are laid out in the ACFA: the trustee may not invest the contribution but must, within three days of receiving it, deposit the money in a bank, trust corporation, credit union or treasury branch in Canada.⁴⁸

⁴⁶ Available online at: <http://www.servicealberta.gov.ab.ca/183.cfm>

⁴⁷ Available online at: <http://www.servicealberta.gov.ab.ca/1011.cfm>

⁴⁸ ACFA ss.11(1)-(5).

Saskatchewan

Extra-Provincial Registration

Extra-provincial corporations wishing to operate in Saskatchewan must apply to register through the Corporations Branch. The *Business Corporations Act* (the “SBCA”)⁴⁹ requires registration of an extra-provincial corporation without share capital if it is “carrying on business” in Saskatchewan.⁵⁰ This is defined as:

- holding title, estate or interest in land registered under the corporation’s name as per the *Land Titles Act*;
- having a resident agent or maintaining an office, warehouse, or place of business in Saskatchewan;
- being licensed or registered – or required to be so – under any Saskatchewan law relating to business or securities;
- otherwise carrying on business in Saskatchewan;
- having a telephone listing in a Saskatchewan directory; or
- having a corporate name on the Register

Saskatchewan may refuse registration of an extra-provincial corporation where:

- (a) pursuant to the laws of the jurisdiction where it is incorporated, the extra-provincial corporation may pay dividends to its members;
- (b) the activities of the corporation are not of a benevolent, religious, charitable, philanthropic, educational, agricultural, scientific, artistic, social, professional, fraternal, sporting, athletic or similar purpose; or
- (c) the name of the corporation is for any reason objectionable.⁵¹

On the other hand, registration can be achieved using the “Registration Kit: Extra Provincial Business Corporations.”⁵²

The application should include:

- the fee;
- copy of the articles of incorporation; and
- a power of attorney.

The Director will also require a Request for Name Availability Search and Reservation.⁵³

⁴⁹ R.S.S. c.B-10. 1978

⁵⁰ *Ibid.* at s. 262.

⁵¹ *Non-Profit Organization Act* R.S.S. c. N-4 at s. 253 (the “NPOA”).

⁵² Available online at: <http://www.justice.gov.sk.ca/Default.aspx?DN=8a05de19-b383-4de5-89f7-a4bc50fe3d0a>

⁵³ Available online at: <http://www.publications.gov.sk.ca/details.cfm?p=9207&cl=2>

Power of Attorney

The corporation is required to name and register an individual residing in Saskatchewan in a power of attorney unless the corporation has a director or officer resident in Saskatchewan.⁵⁴

Name

A corporation should apply to reserve its name or alternate name through the Request for Name Availability Search and Reservation form.⁵⁵ Any alternative trade name must be registered under the *Business Names Registration Act*.

Changes

The corporation must notify the Director within fifteen days of any changes in address of head office, attorney, and directors.⁵⁶ Copies of any articles of amendment must also be sent to the Director.⁵⁷

Annual Return

The corporation must file an annual return with the Director⁵⁸.

Penalty

Failure to file a return or notice (or filing one with misrepresentations) exposes an individual to liability for a fine of up to \$5,000 and/or imprisonment of up to six months or a corporation.

Cancellation, revocation and restoration of registration

Under the NPOA, the Director can strike a name from the registrar in cases where the corporation:

- failed to file its return or other notice required;
- gave notice that it has ceased to carry on business in Saskatchewan;
- is not entitled to carry on business in its incorporating jurisdiction;
- is dissolved, discontinued, amalgamated;
- does not comply with a direction from the Director or does not fulfil its undertakings; or
- becomes bankrupt.

Fundraising

Charities should be aware of the rules and form regarding solicitations for contributions whether by phone, telephone, door-to-door or another form. The latter may include operating a Web site that solicits or receives contributions from Saskatchewan residents.

⁵⁴ SBCA at s. 268(1).

⁵⁵ Available online at: <http://www.publications.gov.sk.ca/details.cfm?p=9207&cl=2>

⁵⁶ Supra at s. 270(1).

⁵⁷ Ibid. at s. 271(1).

⁵⁸ <http://www.publications.gov.sk.ca/details.cfm?p=8611&cl=2>

Telephone and door to door solicitations are allowed between 8 and 21h. Contributions may be for money, services or goods, or any pledge or promise for contributions.

If a charity hires a fundraising business to solicit on its behalf, the business must be licensed under the *Charitable Fund-raising Businesses Act* (the “CFBA”). The fundraising agreement must be in writing and in the manner and form prescribed in the Act⁵⁹. Section 26(2) of the Act says:

[The Agreement]

- (a) *must be in writing;*
 - (b) *must include:*
 - (i) *all the terms and conditions between the parties respecting the fund-raising, including:*
 - (A) *the duties and responsibilities of both parties; and*
 - (B) *the manner in which the fund-raising agreement may be terminated;*
 - (ii) *an estimate of the amount of contributions to be received and an estimate of the expenses and costs of the fund-raising;*
 - (iii) *if the solicitations will involve selling goods or services, a description of the goods or services and the specific price for which the goods or services will be sold;*
 - (iv) *the address of:*
 - (A) *the charitable organization; and*
 - (B) *the licensee;*
 - (v) *the name and telephone number of the contact person for:*
 - (A) *the charitable organization; and*
 - (B) *the licensee; and*
 - (vi) *any other prescribed matter; and*
 - (c) *must set out:*
 - (i) *the solicitation method or methods to be used;*
 - (ii) *the remuneration of the licensee, being either or a combination of the following:*
 - (A) *a specified amount of money;*
 - (B) *a specified percentage of gross contributions; and*
 - (iii) *the method by which the remuneration is to be paid.*
- (3) *Every licensee that enters into a fund-raising agreement pursuant to subsection (1) shall provide a copy of that agreement to the registrar within the prescribed period prior to commencing a campaign of solicitation.*

A “fund-raising business” is one which for remuneration, is licensed to manage or be responsible for a solicitation by or on behalf of a charitable organization; and is not an employee of the charitable organization. It does not include an entity that consults or advises on soliciting but is not responsible for or manages the solicitation. A solicitation is a charity’s request made to general public residing in Saskatchewan for a contribution

⁵⁹ Saskatchewan Charitable Fund-raising Businesses Act, S.S. 2002, c. C-6.2 at s. 26(1).

or through the purchase of goods or services, where it is stated or implied that the contribution will be used for a charitable purposes.

A soliciting charity must provide, to any person of whom they are requesting a contribution, amongst other things the remuneration being paid to the third party fundraiser, the organization on whose behalf of the donations are being solicited, the charitable purpose for which the donations are being used, and the jurisdiction in which the funds will be spent. They must also provide, to anyone who requests it, copies of recent financial statements, the portion of gross revenues that were used on charitable purposes in the last year and an estimate of the amount that will be used on charitable purposes in the current year, information about where and how the revenues are spent, and information regarding any fundraising businesses used.⁶⁰

⁶⁰ *Ibid.* at s. 42(1).

Manitoba

Extra-Provincial Registration

Philanthropic non-share capital corporations (i.e. charities) must register under the *Corporations Act*⁶¹ of Manitoba in order to conduct business in Manitoba. Their activities must be without pecuniary gain to members. Registration with the Companies Office accords the entity with legal personality. Registration is valid for three years and may be renewed by the registrant; otherwise, the business name will be cancelled.⁶² There is a fee of \$45.00 to renew.

All the necessary forms for registration, renewal and changes are available online.⁶³

Name

Charities may reserve a name online at a fee of \$40.00 and payment is by credit card only.⁶⁴

- The name should consist of a distinctive element, a descriptive element, and end with a legal element (for corporate name only).
- The name should not be confusingly similar to an existing name or trademark.
- The name must not be objectionable.

The charity must provide the reason for the reservation, the name, the nature of the business and the location of the business and all other relevant information.⁶⁵ For extra-provincial and federal registrations, if the name is in both French and English there is only need for one registration.

With every document submitted, whether to register, renew or change, a Request for Service form must be submitted as well.⁶⁶

Maintaining registration

Changes

Change of Business Name⁶⁷ (\$45.00 fee applies), Change of Address⁶⁸ (no fee), and Change of directors⁶⁹ (no fee) declaration must be given to the Companies Office as applicable.

⁶¹ C.C.S.M. c. C225

⁶² Business Names Registration Act Renewal form available online at: http://companiesoffice.gov.mb.ca/forms/bnrenewal_e.pdf

⁶³ For forms and further details, please consult: <http://companiesoffice.gov.mb.ca/forms.html#business>

⁶⁴ Available online at: <https://direct.gov.mb.ca/bsi/coo/actions/displayNameReservationForm>

⁶⁵ For further information, please consult: <https://direct.gov.mb.ca/coohtml/html/internet/en/coo.html>

⁶⁶ Available online at: http://companiesoffice.gov.mb.ca/forms/request_for_service_e.pdf

Amalgamation

Manitoba corporations may amalgamate by filing Articles of Amalgamation with the Companies Office. If an extra-provincial or federally registered corporation amalgamates in another jurisdiction, it should file an Application for Supplementary Certificate of Registration with The Companies Office.

Annual Return

An extra-provincial or federally registered charity must file Annual Returns in Manitoba, at a cost of \$20.00 for non-share capital corporations. It should be filed as of the last day of the anniversary month every year.

Cancellation, revocation and restoration

Cancellation

An extra-provincial or federally incorporated charity can voluntarily cancel its Manitoba registration.⁷⁰ A fee of \$50.00 applies. The Director also may cancel a registration or renewal if the payment of the fees was dishonoured, or for non-compliance with the Act and its regulations.

Restoration of registration

If an extra-provincial or federal non-share capital corporation registration is cancelled, it may restore its registration in Manitoba. A fee of \$50.00 applies.

Business name registration

The Business Name Registration Act requires an individual, sole proprietorship, partnership, unincorporated association, syndicate or organization, trust, body corporate or a person in the capacity of trustee, executor, administrator or other legal representative to register the name under which they intend to conduct business by submitting a Registration of a Business Name Under the Business Names Registration Act form.⁷¹ The declaration must stipulate, in relation to business being carried on or intended to be carried on:⁷²

- the name and residence of the person and that no person is associated in partnership in the business;
- (in the case of persons associated in partnership), the full name and residence of each such person in the partnership;
- the general nature of the business;
- the name, style, or firm name of the business;

⁶⁷ Available online at: http://companiesoffice.gov.mb.ca/forms/change_of_business_name.pdf

⁶⁸ Available online at: http://companiesoffice.gov.mb.ca/forms/change_of_registered_office_e.pdf

⁶⁹ Available online at: http://companiesoffice.gov.mb.ca/forms/change_of_directors_e.pdf

⁷⁰ Available online at: http://companiesoffice.gov.mb.ca/forms/app_canc_registration.pdf

⁷¹ Business Name Registration Act C.C.S.M. c. B110 at s. 2(1) (BNA). Form available online at: http://companiesoffice.gov.mb.ca/forms/blr_e.pdf

⁷² BNA at s. 3(1).

- (in the case of persons associated in partnership), the time during which the partnership has existed and that the persons named in the declaration are the only members of the partnership or association; and
- the principal place in Manitoba, giving, where possible, the street number and name, of the business / charity.

The declaration must be submitted to the Director within one month of commencing or intending to commence carrying on business in Manitoba. The registration is good for three years but is renewable. The business name registration cost \$45.00. A Power of Attorney form⁷³ will be required where the registration form indicates that all the people registering the business name live outside of Manitoba. The fee is \$30.00.

A change to the name of the business requires a filed declaration within thirty days. A corporation must be registered under the *Corporations Act* in order to register a business name.

Registration of Unincorporated Associations

An unincorporated organization may submit a request for Name Notation⁷⁴ in order to establish a presence in the Companies Office records for three years and can be changed or renewed⁷⁵ or dissolved⁷⁶ thereafter. The unincorporated association still must reserve and register its business name.

Fundraising

Under the *Charities Endorsement Act* (the “CEA”)⁷⁷, non-profit organizations must obtain authorization from the Manitoba Consumers’ Bureau in order to fundraise in Manitoba (if the fundraising is only taking place in one municipality then only the municipality needs to consent).⁷⁸ Fundraising includes, directly or indirectly, and on one’s behalf or another’s:

- canvassing for, soliciting, or collecting money, goods or financial assistance;
- selling or providing or offering to sell or provide goods, services, anything valuable, tags, tickets or emblems;
- instructing or causing any person to any of the above

A charity does not need authorization to conduct these activities among its own members except among those members who are only members by virtue of their contributions.

⁷³ Available online at: http://companiesoffice.gov.mb.ca/forms/power_of_attorney_bnr.pdf

⁷⁴ Available online at: <http://companiesoffice.gov.mb.ca/forms/notation.pdf>

⁷⁵ Available online at: <http://companiesoffice.gov.mb.ca/forms/nnotren.pdf>

⁷⁶ Available online at: <http://companiesoffice.gov.mb.ca/forms/nnotdiss.pdf>

⁷⁷ *Charities Endorsement Act* C.C.S.M. c. C60

⁷⁸ *Ibid.* at s. 2(1).

If a charity hires a third party fundraiser, the charity must submit to the Executive Council the terms of the contract; the remuneration to be paid; the approval of the remuneration by someone authorized to give it; and the promotional agency's confirmation in writing that, upon completion, it will furnish complete accounts of the fundraising activity.

The penalty for non-compliance with the Act is an offence, punishable on summary conviction for each contravention by an individual, of a fine of \$50.00 and imprisonment of ten days or both, and for each contravention by a corporation, a fine up to \$500.00.

For more information about engage in fundraising activity within the Province, call the Consumers' Bureau at 204-945-3800 or 1-800-782-0067 (toll free within Manitoba).

Retail Sales Tax

Charities and non-profit organizations are not required to collect the Retail Sales Tax on goods or services sold (unless tobacco or alcohol is sold) if the transaction meets the following conditions:⁷⁹

- the sale is not advertised (bulletins and newsletters of the charity are not considered advertisements);
- the sale is not in competition with market retailers; or
- the sale is not commercial (ways to show this, for example, are if the activity is run by volunteers or the sale is of donated items).

However, a charity may have to pay the RST on the goods and services it uses in preparing its sale activities.

⁷⁹ Further information is available at: <http://www.gov.mb.ca/finance/taxation/bulletins/024.pdf>

Ontario

Extra-Provincial Registration

Registration is required of an extra-provincial corporation to allow the corporation to exercise the powers of the natural person (ex: commencing legal action) in that province. Non-share capital corporations that begin to carry on activities in Ontario must register with the Ministry of Government Services.⁸⁰ Carrying on business activities in Ontario refers to:⁸¹

- having a resident agent, representative, warehouse, office or place where it carries on its business in Ontario;
- holding an interest, otherwise than by way of security, in real property in Ontario; or
- otherwise carries on its business in Ontario

Taking orders for buying or selling goods or offering services for sale do not amount to carrying on business.⁸² Corporations incorporated in other provinces, territories or federally do not need to obtain a license in order to operate in Ontario, however, foreign corporations do require licenses.⁸³

Registration is completed by filing an Initial Return (Form 2) with the Companies and Personal Security Branch within sixty days of carrying on the activities in Ontario.⁸⁴ There is no cost to mail in the Initial Return and it should take 25 business days to process.⁸⁵ Non-share capital corporations must include in the Initial Return:⁸⁶

- the name of the corporation;
- the Ontario corporation number;
- the date of the incorporation/amalgamation, whichever is more recent;
- the name of the jurisdiction of incorporation/amalgamation referred to above;
- address of the corporation's head or registered office;
- the date the corporation commenced activities in Ontario and/or ceased (if any);
- name and office address of the chief officer or manager in Ontario, if any; the date they assumed the role, and/or when it ceased;
- address of the principle office in Ontario;

⁸⁰ *Corporations Information Act* R.S.O. 1990 c. C. 39 at s. 3.(1) (the "CIA").

⁸¹ *Extra-provincial Corporations Act* R.S.O. 1990 c. E-27 at s. 2 (the "ECA").

⁸² *Ibid.* at s. 3.

⁸³ *Ibid.* at s. 4(1) and 4(2).

⁸⁴ CIA at s.3.(2).

⁸⁵ Available at:

[http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/GetAttachDocs/007-07201~2/\\$File/07201E.pdf](http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/GetAttachDocs/007-07201~2/$File/07201E.pdf)

⁸⁶ *Corporate Information Act Regulations*, R.R.O 1990, 182 at s. 2 (CIA Reg.).

- if the corporation is required to have an agent for service in Ontario, the contact information for the agent and the Ontario corporation number if the agent is a corporation;
- preferred language of communication; or
- the immediate former name of the corporation

An extra provincial corporation must file annual information returns.⁸⁷ Registration, renewal and changes of name or ownership type require an online filing with the Integrated Business Services Application.⁸⁸ Extra-provincial corporations that are registered charities can meet the annual return filing requirement by filing the T3010 form with the CRA.⁸⁹

An extra-provincial corporation can use any name other than its corporate name, except if that name in Ontario is prohibited by the regulations, is the same or similar to an existing organization or individual in Ontario, or would be likely to deceive the public.⁹⁰ To ensure that there is no confusion with existing names, corporations should conduct an Enhanced Business Name Search, available through the Integrated Business Service Applications. The costs are as follows:⁹¹

- | | |
|--|------|
| - Detailed Business Names Report | \$8 |
| - Statement of No Match Found | \$8 |
| - Certified Detailed Business Names Report | \$16 |
| - Certificate of Non-Registration | \$26 |

However, this search is only of unincorporated organizations so it is recommended that the corporation contact a search house to conduct an Ontario NUANS name search report as well. Any name changes require registration with the Ministry of Government Services.⁹²

The corporation can acquire and convey land or interest therein in Ontario for actual use in the course of their activities.⁹³

The general penalty for non-compliance is a fine of up to \$25,000 for a corporation and \$2,000 for an individual.⁹⁴ Further, defaulting on the requirements of the Act preclude an individual and corporation from maintaining court actions in respect of their contracts.⁹⁵

⁸⁷ CIA s. 3.1(1).

⁸⁸ Available at:

<https://www.ibsa.serviceontario.ca/ibsa/servlet/com.visionmax.servlet.CommandServlet?command=screenf&lownoscript&screenid=26>

⁸⁹ *Corporate Information Act Regulations*, s. 3.

⁹⁰ *Extra-provincial Corporations Act* at s. 10.(1).

⁹¹ http://www.ontario.ca/en/services_for_business/STEL02_039975

⁹² *Business Names Act* s. 2(1)

[http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/GetAttachDocs/007-07197~1/\\$File/07197E.pdf](http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/GetAttachDocs/007-07197~1/$File/07197E.pdf)

⁹³ ECA s. 22.

⁹⁴ CIA s.14(1); ECA s. 20.(1).

⁹⁵ CIA s. 18(1); EPA s. 21.(1).

Directors and officers of the corporation may be liable individually for offences of the corporation and fined up to \$2,000 under the EPA.⁹⁶ As an aside, it is helpful to register also because certificates of registration and certified copies of filings can be used as evidence in any proceedings against a corporation in that province.⁹⁷

⁹⁶ EPA s. 20.(2).

⁹⁷ CIA s. 20.(2).

Quebec

Extra-Provincial Registration

Extra-provincial corporations operating in Quebec must register with the enterprise registrar, under the Ministry of Revenue.⁹⁸ Registration is required within 60 days of being active in Quebec. Being “active in Quebec” is defined by:

- having an address in Quebec;
- possessing land or other property rights in Quebec;
- having a telephone number in Quebec; or
- engaging in any profit-making activity in Quebec.

The extra-provincial enterprise must designate an attorney residing in Quebec.⁹⁹ Unincorporated non-profit associations do not have to register. However, they may choose to register voluntarily. Voluntary registration gives the association the same rights and requirements as any other registered enterprise.¹⁰⁰

Steps to Registering

Submit in duplicate, by mail or in person:¹⁰¹

1. Declaration of Registration¹⁰²
 - a. There is a fee of \$32.00 or a priority fee of \$48.00.
 - b. There is an Annual Registration fee of \$32.00 to maintain the registration.
2. Notice of Establishing the Address of the Head Office and List of Directors¹⁰³
3. Name Research Report Application and Name Reservation Application¹⁰⁴

The corporate name:

- must conform to the Charter of the French languages;
- must be reserved;
- cannot be prohibited; and

⁹⁸ *An Act respecting the legal publicity of sole proprietorships, partnerships and legal persons*, R.S.Q., chapter P-45 at s. – (the “ARP”)

⁹⁹ *Ibid.* at s. 4.

¹⁰⁰ *Ibid.* at s. 2.

¹⁰¹ Forms should be sent to the Ministère du Revenu, Direction du registraire des entreprises C.P. 1364 Quebec, Quebec G1K9B3

¹⁰² Available online at: [http://www.registreentrEPRises.gouv.qc.ca/documents/formulaires/loi_publicite/le-50.1.11.01-t\(2009-06\).pdf](http://www.registreentrEPRises.gouv.qc.ca/documents/formulaires/loi_publicite/le-50.1.11.01-t(2009-06).pdf).

¹⁰³ Available online at:

[http://www.registreentrEPRises.gouv.qc.ca/documents/formulaires/loi_compagnies/le-50.0.11.03-t\(2009-05\).pdf](http://www.registreentrEPRises.gouv.qc.ca/documents/formulaires/loi_compagnies/le-50.0.11.03-t(2009-05).pdf)

¹⁰⁴ Available online at:

[http://www.registreentrEPRises.gouv.qc.ca/documents/formulaires/loi_compagnies/le-50.0.11.01-t\(2009-05\).pdf](http://www.registreentrEPRises.gouv.qc.ca/documents/formulaires/loi_compagnies/le-50.0.11.01-t(2009-05).pdf)

- cannot be misleading.

In addition, the corporation must declare a French version of the name used in Quebec and use the name in association with the activities unless it is only a surname and given name.

Maintaining the Registration

Registrants must file an Annual Declaration.¹⁰⁵ This form is not available online, and to obtain one, registrants should contact the Ministry of Revenue by phone, mail, e-mail or in person.¹⁰⁶ The Annual Declaration should be filed between May 15 and November 15. To file the Annual Declaration a \$16.00 fee applies.

Registrants must also notify the enterprises registrar of any amendments.¹⁰⁷ Amending Declarations are at no cost unless a registrant opts for a priority processing, in which case a \$16.00 fee applies.

Deregistering

Registrants can voluntarily request to be struck from the register by filing a Declaration of Striking Off.¹⁰⁸ There is no fee for this declaration. The enterprise registrar can also remove a registration from the registrar for failing to submit two consecutive annual returns or amending declarations.

Charitable Registration

Charities registered federally must nevertheless register with the province of Quebec to issue receipts valid in that province for provincial income tax purposes.¹⁰⁹ This applies whether the organization is incorporated, unincorporated or a trust. The charity should file the form TP-985.5, “Demande d'enregistrement – Organismes de bienfaisance, institutions muséales, organismes culturels ou de communication et associations québécoises ou canadiennes de sport amateur.”¹¹⁰ If a charity received federal registration after 2006, applicants must submit their federal registration certificate as well using form TP-985.22.¹¹¹ Normally, registration in Quebec will be automatic once the organization is registered federally.

¹⁰⁵ ARP at s. 26.

¹⁰⁶ Contact information is available

at:http://www.registreentrEPRises.gouv.qc.ca/en/modifier/mettre_a_jour/declaration_annuelle.aspx

¹⁰⁷ ARP at s. 34.

¹⁰⁸ Available online at: [http://www.registreentrEPRises.gouv.qc.ca/documents/formulaires/loi_publicite/le-50.3.99.01-t\(2009-06\).pdf](http://www.registreentrEPRises.gouv.qc.ca/documents/formulaires/loi_publicite/le-50.3.99.01-t(2009-06).pdf)

¹⁰⁹ Taxation Act R.S.Q. c.I-3 at s. 985.5

¹¹⁰ Available online at: http://www.revenu.gouv.qc.ca/fr/sepf/formulaires/tp/tp-985_5.aspx

¹¹¹ Available online at: http://www.revenu.gouv.qc.ca/fr/sepf/formulaires/tp/tp-985_22.aspx

New Brunswick

Extra-Provincial Registration

Where an extra provincial corporation carries on business in New Brunswick without a purpose of profit, the Director at Service New Brunswick may exempt the corporation from corporate registration requirements under the Business Corporations Act.¹¹² If an extra-provincial corporation chooses to register, it must do so within thirty days of carrying on business in NB. Registration gives the corporation the power to commence or maintain any proceedings or actions in a NB court. A proceeding may be maintained if the corporation becomes registered during the proceedings.¹¹³

An extra-provincial corporation carries on business in NB if the corporation:¹¹⁴

- advertises its name or affiliated name and a NB address in NB;
- has a resident agent, representative or warehouse in NB;
- solicits business in NB;
- owns any estate or interest in land in NB;
- is licensed to do business in NB;
- has a registration under the NB *Motor Vehicle Act*;
- has a listing in a NB telephone directory; or
- otherwise carries on business in NB.

In order to apply for the exemption a corporation should take the following steps:¹¹⁵

1. Submit an appointment of attorney for service,¹¹⁶ and the attorney for service should submit the Consent to Act as Attorney for Service.¹¹⁷
2. Submit a statement indicating that the corporation wishes to be exempt from registration.
3. The payment of the \$50 fee¹¹⁸.

In order to register a corporation must:¹¹⁹

1. Submit the Form 26, Statement of Registration Extra-Provincial Corporation.¹²⁰
2. Appoint an attorney for service within ninety days of coming into force.¹²¹

¹¹² *Business Corporations Act*, 1981 c. B-9.1 at s. 194(3) (the “NBBCA”).

¹¹³ *Ibid.* at s. 212.

¹¹⁴ *Ibid.* at s. 194(1).

¹¹⁵ *Ibid.* at s. 194(3).

¹¹⁶ Available online at: <https://www.pwx1.snb.ca/snb7001/b/1000/CSS-FOL-45-3652B.pdf>

¹¹⁷ Available online at: <https://www.pwx1.snb.ca/snb7001/b/1000/CSS-FOL-45-3907B.pdf>

¹¹⁸ The regulations to the NBBCA list the various fees see General Regulation, N.B. Reg. 81-147.

¹¹⁹ NBBCA at s. 197(2).

¹²⁰ Available online at: <https://www.pwx1.snb.ca/snb7001/e/1000/CSS-FOL-45-3653E.pdf>

¹²¹ Available online at: <https://www.pwx1.snb.ca/snb7001/b/1000/CSS-FOL-45-3652B.pdf>

3. Notify the Director of the anniversary month (the date of incorporation or otherwise became subject to the NBBCA).
4. Send the registration form, signed by the director or officer
5. Fee: \$212.00 or \$312.00 for expedited service

Name

An extra-provincial corporation cannot be registered under a name that is:¹²²

- deceptively similar to an existing business name without license;
- prohibited; or
- reserved for another business.

If it must change its name, the extra-provincial corporation may submit the form “Certificate of Business Name or Renewal of Business Name”¹²³ and the “Additional Information Form”¹²⁴ pursuant to the *Partnerships and Business Names-Registration Act*.¹²⁵ Applicants should conduct a NUANS name search report no more than 90 days prior to filing for a name. A Certificate of Business Name costs \$112.00 and the Renewal of Business Name costs \$62.00.

The government should be notified of any change of name through Form 32.1 “Notice of Change of Name” to the Director to reserve a name for an extra-provincial corporation for ninety days.¹²⁶

Maintaining the Registration

Attorney for service

The attorney must notify the corporation and Director within sixty days if he or she intends to resign.¹²⁷ The new appointment must be sent to the Director. A \$50.00 fee applies to appoint or change an attorney for service.

Changes

The registered extra-provincial corporation must notify the Director of any change in its name and the concomitant amendment of its constituting documents. A \$112.00 fee applies to change the name, or \$212.00 or expedited service. As well, within one month of any changes, the Director must be notified of any changes in: the address in NB and

¹²² NBBCA at s. 199(1).

¹²³ Available online; <https://www.pwx1.snb.ca/snb7001/e/1000/CSS-FOL-45-3502E.pdf>

¹²⁴ Available online at: <https://www.pwx1.snb.ca/snb7001/e/1000/CSS-FOL-SNB-45-0015E.pdf>

¹²⁵ At s. 9.3(1).

¹²⁶ NBBCA s. 198. Available online at: <https://www.pwx1.snb.ca/snb7001/b/1000/CSS-FOL-45-3908B.pdf>

¹²⁷ Ibid. at s. 203(1).

the membership of the charity's board of directors or governing body.¹²⁸ A nominal fee applies for online processing. Also, the charity must inform the Director with a Statement of Amalgamation if it is the subject of an amalgamation and a \$212.00 fee applies, or \$312.00 for expedited service.¹²⁹

Annual Returns

The registered extra-provincial corporation must file annual returns with the Director.¹³⁰ The charity should use the appropriate form or may also file with it its annual return from the incorporating jurisdiction.¹³¹ The charity may elect to make its anniversary month the same as its incorporating month. A \$25.00 fee applies to select an anniversary month. To file online an annual fee of \$200.00 applies or \$220.00 for a paper filing by mail.

Winding up

A registered extra-provincial corporation that ceases to conduct business in NB should notify the Director that it wants to cancel the registration. The charity should also notify the Director that it has ceased carrying on activities under the name and file a "Certificate of Cessation of Business or Use of Business Name."¹³² The winding up proceedings may begin with a petition to the Court by a member, shareholder or Minister.¹³³ If an extra-provincial corporation is the subject of liquidation proceedings, the Director should be notified after the commencement and termination of the proceedings.¹³⁴

Cancellation of registration

The Director can cancel a registration if the extra-provincial corporation:

- is in default of any required fee or filing;
- has ceased to carry on business in NB;
- has dissolved; or
- has otherwise contravened the requirements.

The Director will notify the extra-provincial corporation of the intention to cancel the registration.

Reinstatement

¹²⁸ NBBCA at s. 205. Change of directors form available online at:
<https://www.pwx2.snb.ca/brstoolkit/docroot/jsp/ChangeOfDirectors/LandingPage.jsp>

Change of address form available online at:
<https://www.pwx2.snb.ca/brstoolkit/docroot/jsp/ChangeOfRegisteredOffice/LandingPage.jsp>

¹²⁹ Available online at: <https://www.pwx1.snb.ca/snb7001/e/1000/CSS-FOL-45-5038E.pdf>

¹³⁰ Available online at: https://www.pwx2.snb.ca/brstoolkit/docroot/jsp/EPC/LandingPage.jsp?lang_id=1

¹³¹ NBBCA at s. 209.

¹³² Available online at: <https://www.pwx1.snb.ca/snb7001/b/1000/CSS-FOL-45-3514B.pdf>

¹³³ *Winding-Up Act*, c. W-10 at s. 6(1).

¹³⁴ NBBCA at s. 208.

The Director may reinstate the registration where an extra-provincial corporation submits the missing fees or documents along with a reinstatement fee. A \$112.00 fee applies to apply for reinstatement.

Nova Scotia

Extra-Provincial Registration

There is no legislation specifically requiring an extra-provincial charity to register as an entity in Nova Scotia in order to acquire legal status. In conversation with Representatives of the Registry of Joint Stock Companies, it was advised that an extra-provincial charity incorporate in Nova Scotia if it wants to acquire property, open a bank account or obtain insurance etc. Information about incorporating as a society is available online or by contacting the Registry of Joint Stock Companies at (902) 424-7770.¹³⁵

¹³⁵ <http://www.gov.ns.ca/snsmr/access/permits/forms/registry-joint-stock-companies.asp#3590>

Prince Edward Island

Extra-Provincial Registration

Extra-provincial Corporations should register with the Consumer, Corporate and Insurance Division within thirty days of carrying on business in Prince Edward Island.¹³⁶

This is defined as:

- having a business name listed in a PEI telephone directory;
- where a business name appears or is announced in any advertisement along with a PEI address;
- having a resident agent, Representative, warehouse or other place of business in PEI;
- soliciting business in the province;
- being licensed or registered or required to be so under any PEI Act relating to business; or
- otherwise carrying on business in PEI.

Registration is valid for one year from the date of the certificate. Except for bodies incorporated federally, the effect of registration is to allow the extra-provincial corporation to maintain an action in court with respect to its contracts made while carrying on business in PEI. A corporation may register during a proceeding.

Name

Extra-provincial corporations may request a business name by contacting the Consumer, Corporate and Insurance Services Division. The cost of the NUANS name search and registration for three years is \$105.00 payable to the Provincial Treasurer of PEI. The cost of renewal is \$50.00 for each subsequent three-year period.

Steps to registration

- Request a NUANS name search to reserve a business name
- Submit the Application for Registration.¹³⁷ This can be mailed to the Office of the Attorney General, Consumer, Corporate and Insurance Services, PO Box 2000, Charlottetown, PE CIA 7N8. It can also be submitted in person at 95 Rochford Street, 4th floor, Charlottetown, PE C1A 3T6.

¹³⁶ *Extra-provincial Corporations Registration Act*, R.S.P.E.I. 1988, c. E-14 at s. 2 (the “PEIECRA”).

¹³⁷ Online form available at: <http://www.gov.pe.ca/forms/pdf/913.pdf>

Maintaining the registration

Registrants may renew their certificate within six months of the expiration of the most recent certificate by:

- filing a notice of renewal of registration to the Director;
- notify the Director of any changes within 30 days of a change in name, or amalgamation

Cancellation of registration and winding up

If a corporation ceases to carry on a business in PEI, it must notify the Director within thirty days of ceasing business operations in PEI. If a corporation is winding up, it must notify the Director of Corporations of its resolution to voluntarily wind up.¹³⁸ This does not apply for corporations proceeding under the federal *Winding-Up Act* R.S.C. 1985, c. W-11 or another PEI act relating to bankruptcy.

Revocation

The Director may cancel or refuse to renew a registration if the corporation is:¹³⁹

- in default of any filing or fee required by the Director or non-compliant with the Act or other requirements and conditions of registration;
- has applied to cancel the registration;
- dissolved; or
- contravening the PEIECRA or regulations.

The penalty for contravening the act is liability for a fine of up to \$50,000.

Reinstatement

The Director may reinstate the registration by issuing a new certificate of registration.¹⁴⁰

Acquiring property

The Charities Act regulates charitable fundraising in PEI, and exempts religious organizations seeking funds from its members in support of its religious purposes and charities registered federally under the *Income Tax Act*.¹⁴¹ Charities must register in order to conduct any means of fundraising, including: making public appeals for donations or subscriptions for money or in kind; promoting or conducting a bazaar, entertainment or sale of some sort; and soliciting for advertising. Registration is discretionary: the Minister can refuse any application and terminate a registration where it is in the public interest.¹⁴²

¹³⁸ *Winding Up Act* s. 7.

¹³⁹ PEIECRA at s. 10.

¹⁴⁰ Ibid.

¹⁴¹ *Charities Act*, R.S.P.E.I. 1988, c. C-4 at s. 2 and 4 (the “PEICA”).

¹⁴² Ibid. at s. 7.

Charities also must be first be authorized by the Minister to use a “promotional agency” in any fundraising activity. Authorization will only be granted if the Minister is notified of the terms of the contract, the remuneration paid to the promotional agency, and confirmation by the promotional agency that it will furnish the Minister with a full audited financial statement of the undertaking. The Minister may also require the promotional agency to put up a surety in case the agency fails to comply with the terms of the Minister’s authorization.¹⁴³

Steps to registering

There is no fee for registering as a charity. Charities must submit to the Office of the Attorney General a statement containing the:¹⁴⁴

- name of the applicant;
- name of the charity;
- address of the charity in PEI;
- name of the authorizing officer;
- a brief summary of the proposed charitable activities; and
- the number and location of the charity’s branches in PEI.

Maintaining the Registration

In order to maintain the registration, charities must:

- keep minutes of each meeting, and record the names of attendees;
- keep accurate books and records of all fundraising events;
- all funds raised should be kept in separate accounts at a bank or savings institution; and
- copies of the books and records must be sent to the Minister and otherwise always be available for inspection.

Revocation

The Minister may revoke the charitable registration on the grounds that the charity:

- is not conducting its activities in good faith;
- is not complying with any of the conditions of registration or the act and regulations; and
- is not being administered.

The consequences of revocation are that the assets of the charity become vested in the Minister and administered as the Lieutenant Governor in Council directs¹⁴⁵. Interestingly

¹⁴³ *Charities Act Promotional Agency Regulations* R.R.P.E.I. 1998, c. C-4.

¹⁴⁴ Template is available online at: <http://www.gov.pe.ca/law/regulations/pdf/C&04-1.pdf>

¹⁴⁵ PEICA s. 7.

this sets up the potential for a conflict where a PEI charity is registered both provincially and federally. Where the charity is revoked by both levels of government the provincial government would not be considered an *eligible donee* for purposes of the revocation provisions of the Income Tax Act.

Newfoundland and Labrador

Extra-Provincial Registration

Extra-provincial companies must register with the Registrar of Companies if they are carrying on a business undertaking in Newfoundland and Labrador.¹⁴⁶ Registration is at the discretion of the registrar and may be referred to the provincial cabinet, which may refuse the application or may make it conditional. The registrant must execute a power of attorney in an individual residing in the province for the purpose of receiving all proceedings with respect to the registrant. Registration gives companies, except for companies incorporated federally, the legal power to begin court proceedings with respect to its business in NL. Carrying on a business is defined as:

- holding title to or other interest in land in NL;
- maintaining an office, warehouse or place of business in NL;
- being licensed or registered, or required to be so, under a law of NL that entitles it to business;
- holding a registration under the *Highway Traffic Act* with respect to a public service vehicle; or
- being listed in an NL telephone registry.

In order to register a corporation must:

- file Statement for Registration – Extra-Provincial Company Form 24;¹⁴⁷
- file a Power of Attorney Form 26;¹⁴⁸
- file a Statutory Declaration Form 25, attesting to truth of registration; and ¹⁴⁹
- include in the application two certified copies of the statute, certificate or other constituting document of the corporation.¹⁵⁰

Maintaining the Registration

To maintain the registration the corporation must:

- file the Annual Return – Extra-Provincial Company Form 28 with the \$200 fee;¹⁵¹
- notify the Commercial Registrations Division of any changes in head office by filing the Notice of Change of Chief Place of Business Form 32;¹⁵²

¹⁴⁶ *Corporations Act*, R.S.N.L.1990, c. C-36 at s. 435(1) (the “NLCA”).

¹⁴⁷ Available online at: <http://www.gs.gov.nl.ca/cca/cr/pdf/corp/corp24-statement-reg-ext.pdf>

¹⁴⁸ Available online at: <http://www.gs.gov.nl.ca/cca/cr/pdf/corp/corp26-poa.pdf>

¹⁴⁹ Available online at: <http://www.gs.gov.nl.ca/cca/cr/pdf/corp/corp25-stat-decl.pdf>

¹⁵⁰ NLCA, at s. 434(1)(c).

¹⁵¹ Available online at: <http://www.gs.gov.nl.ca/cca/cr/pdf/corp/corp28-ann-ret-ext.pdf>

¹⁵² Available online at: <http://www.gs.gov.nl.ca/cca/cr/pdf/corp/corp32-note-chg-loc.pdf>

- notify of any change in the registered office in NL by filing the Notice of Change of Registered Office in Newfoundland and Labrador;¹⁵³
- notify of any changes in the power of attorney should the attorney change;
- within one month, notify of any changes in the name of the registrant, in the constituting documents or in the objects of the company; and
- if two extra-provincial associations amalgamate, the new entity must reapply for registration.

Cancellation, revocation and reinstatement

The provincial cabinet can suspend and/or revoke a registration for non-compliance with the Act or regulations. The Lieutenant-Governor in Council also can cancel the suspension or reinstate the registration.¹⁵⁴ The extra-provincial company can also cancel the registration by notifying the registrar that it has ceased carrying on business in NL.¹⁵⁵ If this is the case, the extra-provincial corporation can also reapply for registration should circumstances change. Reinstatement counts as if the corporation had been registered all along, except for the purposes of proceedings against the registrant.¹⁵⁶

Name

The name of the extra-provincial corporation must be displayed or affixed outside the head office in NL. There is no independent business name registration in Newfoundland.

¹⁵³ Available online at: <http://www.gs.gov.nl.ca/cca/cr/pdf/corp/corp33-note-chg-off.pdf>

¹⁵⁴ NLCA at s. 446.

¹⁵⁵ Ibid. at s. 447.

¹⁵⁶ Ibid. at s. 449.

Yukon

Extra-territorial registration

Extra-provincial corporations should register with the Corporate Affairs registrar to operate in the Yukon under the Business Corporations Act¹⁵⁷. A corporation is deemed to be carrying on business in the Yukon, whether or not the corporation has a representative, warehouse or office in the Yukon, if it transacts normally as a business.¹⁵⁸ Taking orders for import of goods into Yukon to fill those orders is not considered carrying on a business for the purposes of extra-territorial registration. But it seems to be an open question as to whether this same principle applies to taking donations. All the necessary forms¹⁵⁹ and fees¹⁶⁰ are available online from the Department of Community Services. The advantage of registration is that it gives the corporation standing to begin or maintain proceedings in court in Yukon.

Steps to registering

Within thirty days of carrying on business in the Yukon the corporation must:

- appoint an attorney for service;¹⁶¹
- notify the registrar of the address of the head office in the incorporating jurisdiction;
- file a Statement of Registration with the \$300 fee; and¹⁶²
- reserve a business name¹⁶³ or assumed name if the business name is prohibited.¹⁶⁴

The NUANS name search costs \$40.00 and the reservation of an assumed name costs \$75.00

Name

The name should be distinctive, i.e.: not the same or similar to a business name already registered with Corporate Affairs in the Yukon. It should also indicate a legal element. Once registered, applicants should file the Declaration of Business Name Form.¹⁶⁵

Maintaining the Registration

In order to maintain the registration the corporation must:

¹⁵⁷ Business Corporations Act R.S.Y. 2002 (the “YBCA”).

¹⁵⁸ Ibid. at s. 275(2).

¹⁵⁹ <http://www.community.gov.yk.ca/corp/corpforms.html>

¹⁶⁰ Available online at: <http://www.community.gov.yk.ca/corp/fees.html#business>

¹⁶¹ Available online at: http://www.gov.yk.ca/forms/forms/3000/yg3049_b.pdf

¹⁶² Available online at: http://www.gov.yk.ca/forms/forms/3000/yg3048_b.pdf

¹⁶³ Available online at http://www.gov.yk.ca/forms/forms/4500/yg4726_b.pdf

¹⁶⁴ Available online at: http://www.gov.yk.ca/forms/forms/3000/yg3053_b.pdf

¹⁶⁵ *Supra*, note 6.

- keep up to date records by notifying the registrar of any changes, amendments have a fee of \$75.00;
- if necessary, amend the Registration for an additional (\$75.00); and
- file an Annual Return on or before the last day of the anniversary month (the month in which the corporation became subject to the YBCA).¹⁶⁶ (\$15.00).

Cancellation of registration

The registrar can cancel the registration if the extra-provincial corporation:

- is in default for a year of an obligation under the *Business Corporations Act*;
- has sent a notice that it has ceased to carry on business in the Yukon or is dissolved;¹⁶⁷
- file a Declaration of Cessation of Business Name; or¹⁶⁸
- has contravened the *Business Corporations Act*.

There is no cost to dissolve the corporation

Reinstatement

The registrar may reinstate the registration that was cancelled for defaulting if the registrant submits all missing fees and filings and fills out an Application to Reinstate An Extra-territorial Corporation the fee to do so is \$300.¹⁶⁹

¹⁶⁶ Available online at: http://www.gov.yk.ca/forms/forms/3000/yg3038_b.pdf

¹⁶⁷ Available online at: http://www.gov.yk.ca/forms/forms/3000/yg3046_b.pdf

¹⁶⁸ Available online at: http://www.gov.yk.ca/forms/forms/4500/yg4728_b.pdf

¹⁶⁹ Available online at: http://www.gov.yk.ca/forms/forms/3000/yg3052_b.pdf

Northwest Territories

Extra-Territorial Registration

Extra-territorial corporations must register their business with the Corporate Registry within thirty days of carrying on a business in the Northwest Territories.¹⁷⁰ The advantage of registration is that the corporation can acquire property and rights under NWT law and has standing in judicial proceedings begun by, or against the corporation. Carrying on business is defined as:¹⁷¹

- having a business name listed in a NWT telephone directory;
- advertising for a business name along with a NWT address;
- having a resident agent, representative, warehouse, office or other place of business in the NWT;
- soliciting business in the NWT;
- owning an interest in any estate or land in the NWT;
- being licensed, registered or required to be so under any NWT Act relating to carrying on business; or
- otherwise carrying on business in the NWT.

Steps to registering

In order to register a corporation must:

- conduct a name search and reserve request if the corporation is not federally incorporated for a \$25.00 fee;¹⁷²
- send to the Registrar a certified copy of the constituting documents of the corporation and any amendments;
- certificate of no more than thirty days old of the good standing of the corporation in the incorporating jurisdiction;
- register the address of the corporation by filing, in duplicate, Form 21 Notice of Registered Office or Notice of Change of Registered Office Extra-Territorial Corporation;¹⁷³
- submit Form 18 Statement of Registration Extra-Territorial Corporation; and¹⁷⁴
- pay the filing fee of \$100.00.

The Department of Justice, Corporate Registry has informational booklets on filling out the required forms available online.¹⁷⁵

¹⁷⁰ *Business Corporations Act*, S.N.W.T. 1996, c.19 at s. 281 (the “NWTBCA”).

¹⁷¹ *Ibid.* at s. 279.

¹⁷² Form is available online at: <http://www.justice.gov.nt.ca/pdf/CorpReg/BCA/NameSrform.pdf>

Information booklet on filling out name search form is available online at:

<http://www.justice.gov.nt.ca/pdf/CorpReg/BCA/NameSr.pdf>

¹⁷³ Available online at: <http://www.justice.gov.nt.ca/pdf/CorpReg/BCA/frm21.pdf>

¹⁷⁴ Available online at: <http://www.justice.gov.nt.ca/pdf/CorpReg/BCA/frm18.pdf>

¹⁷⁵ Available online at: http://www.justice.gov.nt.ca/CorporateRegistry/CR_BCA_ETReg.shtml#0

Registration of Extra-Territorial Corporate Name

Except for a federally incorporated corporation, there are restrictions on the name of the business. It must not contain prohibited words as per the NWTBCA Regulations, is not the same or misleadingly similar to an existing registered corporation in the NWT, and is not a reserved name.¹⁷⁶ If a problem with the name is revealed, the corporation should register an assumed name within 90 days of receiving notice of the problem from the Registrar. If there is no problem with the name, the Registry will reserve the name for 90 days.

Maintaining the Registration

In order to maintain the registration:

- the corporation must maintain a registered office in the NWT at all times, that is accessible to the public during normal business hours;
- within thirty days, the Registrar should be informed of any changes in the address, name, constituting documents and be provided with certified copies;
- in the case of an amalgamation, within thirty days, the registrant must file an application for a new registration; and
- file an annual return with the Registrar in the anniversary month of the incorporation or amalgamations.

Revocation of Registration

The registrar can revoke the registration where the registrant:¹⁷⁷

- ceases to carry on business in the NWT;
- does not have a registered address;
- fails to file a required document;
- does not comply with a Direction from the Registrar;
- has failed to file its fees with the Registrar;
- has not fulfilled an undertaking;
- does not comply with the laws of any Canadian jurisdiction for carrying on a trust company;¹⁷⁸
- dissolves voluntarily (but must notify the Registrar); or
- any other contravention of the NWTBCA.

Reinstatement

An extra-territorial corporation may apply for reinstatement by submitting to the Registrar:

¹⁷⁶ BCA at s. 283.

¹⁷⁷ BCA at s. 294(1).

¹⁷⁸ BCA at s. 280(3)(c).

- any notices or fees that were in default before the cancellation of the registration;
- a certified copy of any changes in the constituting documents of the corporation;
and
- documents relating to the name of the registrant.

The Registrar may make the reinstatement conditional on first fulfilling any undertaking previously defaulted.

Nunavut

Extra - Territorial registration

The legislation and requirements are the same as those under the Northwest Territories *Business Corporations Act*. Registrations are filed with the Department of Justice, Legal Registries Division (Corporate Registry).¹⁷⁹

¹⁷⁹Department of Justice
Legal Registries Division
P.O. Box 1000, Station 570
1st Floor, Brown Building
Iqaluit NU X0A 0H0