

COMPANY NAMES

This memo is divided into eight sections which will raise most of the problems associated with selecting a corporate name.

In my opinion the three outstanding difficulties are:

1. determining which names are prohibited; by statute and the internal rules established by the local registrars;
2. the indexing or recording of names already in use;
3. procedures to be followed when an applicant has been denied a name of his choice, or when a name has been granted to which a member of the public objects.

I. PROHIBITED NAMES

All of the corporation statutes have a provision prohibiting the use of certain names. The provisions of Alberta, Ontario, and the proposed Federal Act are as follows:

A. Statutory Provisions

i. Alberta s. 11

11. (1) A company shall not be incorporated and an extra-provincial company shall not be registered under a name,

- (a) that is known by the Registrar to be the same as the name of an existing corporation, or
- (b) that suggests or implies a connection with the Crown or any member of the Royal family or the Government of Canada or the government of any province or territory of Canada or any department, branch, bureau, service, agency or activity of any such government without the consent in writing of the appropriate authority, or

(c) that includes the word "co-operative" or any abbreviation or derivation thereof, or

(d) that in the opinion of the Registrar is objectionable.

(2) A company shall not be incorporated under this Act under a name that is known by the Registrar to be the same as that of a dissolved corporation.

(3) A company shall not be incorporated or registered under this Act under a name that is known to the Registrar to be similar to the name of any other corporation if the use of that name by the company would be likely to deceive, unless the corporation consents in writing to its name being given in whole or in part to the company and, if required by the Registrar, undertakes to dissolve or to change its name within six months after the incorporation of the company.

(4) A company shall not be incorporated or registered under this Act under a name that is known to the Registrar to be the same as or similar to the name of a business or association if the use of that name by the company would be likely to deceive, unless the business or association consents in writing to its name being given in whole or in part to the company and, if required by the Registrar, undertakes to cease to carry on its business or activities or to change its name within six months after the incorporation of the company.

ii. Canada Bill C-29 s. 12

Prohibited names

12. (1) A corporation shall not be incorporated with, have, carry on business under or identify itself by a name

(a) that is, as prescribed, prohibited or deceptively misdescriptive; or

(b) that is reserved for another corporation or intended corporation under section 11.

I have no copy of the regulations intended to accompany the Act but include the prohibition sections from the proposed bill prepared by Dickerson.

- (1) A corporation shall not be incorporated with or have a name
- (a) that is the same as a name under which an existing proprietorship, partnership, association or body corporate is, to the knowledge of the Registrar, carrying on or commencing to carry on business in Canada, or is so similar thereto as is likely to mislead or confuse, except where the existing proprietorship, partnership, association or body corporate is in the course of being dissolved or changing its name and signifies its consent in the manner that the Registrar may require,
 - (b) that is in the opinion of the Registrar objectionable, or
 - (c) the exclusive right to which is reserved in the manner provided in section 2.07.

iii. Ontario Business Corporation Act s. 8

8.—(1) The name of a corporation shall not,

- (a) be the same as or similar to the name of a known body corporate, association, partnership or individual whether in existence or not if its use would be likely to deceive, except where the body corporate, association, partnership or individual signifies its or his consent in writing to the use of the name in whole or in part, and, if required by the Minister,
 - (i) in the case of a body corporate, undertakes to dissolve or change its name to a dissimilar name within six months after the filing of the articles or amendment by which the name is acquired, or
 - (ii) in the case of an association, partnership or individual, undertakes to cease to carry on its or his business or activities, or change its or his name to a dissimilar name, within six months after the filing of the articles or amendment by which the name is acquired;
- (b) suggest or imply a connection with the Crown or the Government of Canada or the government of a municipality or any province or territory of Canada or any department, branch, bureau, service, agency or activity of any such government or municipality without the consent in writing of the appropriate authority;
- (c) where the objects applied for are of a political nature, suggest or imply a connection with a political party or a leader of a political party;
- (d) include the word "co-operative" or any abbreviation or derivation thereof;
- (e) contain any word or phrase that indicates or implies that it is incorporated for any object other than one or more of the objects set out in its articles;

- (f) contain any word or phrase or any abbreviation or derivation thereof, the use of which is prohibited or restricted under any other Act unless in the latter case the restrictions are complied with; or
- (g) in the opinion of the Minister, be objectionable on any public grounds.

It is readily apparent that a number of the prohibitions are outright; for example, the name may not include the word "co-operative". All three statutes allow a certain amount of discretion to the Registrar or Minister; for example, "if in the opinion of the Registrar the name is objectionable". [The procedure and appeal provisions, if any, from an unsatisfactory decision of the Registrar are discussed below.]

The Alberta and proposed Federal Act both provide an outright prohibition on names which are the same. Alberta goes so far as to exclude the name of a dissolved corporation. The Ontario approach is substantially different. The consideration is not whether the name is the same but whether the public will be confused. The same standard is applied therefore, as in those cases where the name is only similar. The wording in Ontario and Alberta is the same "likely to deceive", the Federal Act proposes the wording "mislead or confuse".

Dickerson's discussion is as follows:

64. Section 2.08(1) reproduces the substance of s. 25(1) of the present Act; with two important changes. Under the present law a corporation may not be incorporated with a name that so nearly resembles an existing name "as to be calculated to deceive," which makes the question one of the intention of the incorporators rather than one of fact. The present Act was not always in this form—the current wording was introduced in 1934—though recent decisions have indicated that the courts interpret the phrase "calculated to deceive" as having substantially the same meaning as "likely to deceive": *Re F. P. Chappel Co. Ltd.* [1960] OR

531; *Re C. C. Chemicals Ltd.* [1967] 63 DLR (2d) 203. Section 2.08(1)(a) brings the language of the statute into line with its probable judicial interpretation.

65. Second, whereas the present Act uses the phrase "likely to deceive" s. 2.08(1)(a) uses the phrase "likely to mislead or confuse". This phraseology is designed to make it plain that the likelihood of confusion is a sufficient ground for barring the use of a name, whatever the motive may be of the person using it.

The Lawrence Report suggested that the Provincial Secretary develop departmental guidelines as to the availability of both business and corporate names, which guidelines should take into consideration location of business, nature of business and other essential factors in determining whether or not there are reasonable grounds for a possible risk of confusion in respect of a particular name.

All these Acts provide for a reserved name but only Dickerson's proposal suggests the exclusion of such names be made a matter of statutory prohibition.

The Ontario Act provides the most elaborate rules with regard to names. Paragraph f provides for those cases where other statutory provisions are relevant. This would seem to cover the same ground as the prohibitions against use of the phrase, "co-operative". The efficacy of both of these provisions is in doubt. See for example, section 9 of the Co-operative Association Act R.S.A. 1972 c. 67 which provides:

Prohibition
of use of
"Co-
operative"
in certain
cases

9. (1) No person, association or company doing business in the Province shall use the word "Co-operative" or an abbreviation or derivative thereof, as part of his or its corporate or business name unless incorporated by or under the authority of an Act of the Parliament of Canada or this Act or an Act of the Province that expressly authorizes the use thereof.

(2) A person contravening the provisions of this section is guilty of an offence. [R.S.A. 1955, c. 59, s. 9]

B. Internal Rules

Most Registrars have provided guidelines for themselves and the public to determine on what grounds names may be termed objectionable. The Alberta practice is described in the attached memo from Mr. Warr. The discretion in Britain is exercised by the Board of Trade. The extract which follows is taken from Palmer's Company Law, 21st ed. at pp. 59, 60.

Board of Trade may refuse undesirable name

In the choice of a name there is, in theory at least, considerable freedom, but this freedom is restricted by section 17, which states that no company shall be registered by a name which in the opinion of the Board of Trade is undesirable. Thus the Board of Trade is given the widest discretion in allowing or refusing a name, a discretion which cannot be challenged in, or examined by, the courts.¹⁷

In practice the Board acts within certain principles which are defined in a Practice Note (No. C. 186) issued by the Board for the guidance of the public but which is expressly stated to be in no way exhaustive: the Note, in any case, has no statutory effect. The Note states further:

"1. A name will be refused if it is too like the name of an existing company.

2. A name will not be allowed if it is misleading; for example, if the name of a company with small resources suggests that it is trading on a great scale or over a wide field.

3. Names will not ordinarily be allowed which suggest connection with the Crown or members of the Royal Family or suggest royal patronage (including names containing such words as 'Royal,' 'King,' 'Queen,' 'Princess,' 'Crown').

4. Names will not ordinarily be allowed if they suggest connection with a government department or any municipality or other local authority or any society or body incorporated by Royal Charter or by statute or with the government of any part of the Commonwealth or of any foreign country.

5. The word 'British' is not ordinarily allowed in a name unless the undertaking is British-controlled and entirely or almost entirely British-owned and is also of substantial size and importance in its particular field of business.

6. Only in exceptional circumstances and for valid reasons will names be allowed which include any of the following words: 'Imperial,' 'Commonwealth,' 'National,' 'International,' 'Corporation,' 'Co-operative.'

7. Names must not include the words 'Building Society.'

8. Names including the following words will be allowed only where the circumstances justify it: 'Bank,' 'Bankers,' 'Banking,' 'Investment Trust,' 'Trust.'

9. Names which include a surname which is not that of a proposed director of the company will not be allowed except for valid reasons. If the papers leading to registration do not confirm that a surname included in the title of the proposed company is that of a director, written assurance should be given that such an appointment will be made. Alternatively, the following information should be furnished in advance to the Registrar of Companies to enable further consideration to be given to the proposed name:

- (a) whence the name is derived;
- (b) the surnames of the directors; and
- (c) why the name is desired in preference to an impersonal name, or a director's surname.

10. Names which include words which might be trade marks, e.g., having no direct reference to the character or quality of the goods in which the company proposes to deal, and not being according to their ordinary signification geographical names or surnames, are not allowed in the absence of a trade mark clearance.

11. A search to ascertain whether any part of the name of the proposed company is a registered trade mark, or the subject of an application for such registration, in respect of any goods in which the company proposes to deal may be made at the office of the Registrar of Trade Marks, Patent Office, 25, Southampton Buildings, London, W.C.2. If there is no such registration, or application, a letter to that effect should accompany the documents when lodged for registration. If, however, there is a relevant trade mark, the matter would be considered if the applicant produces the written consent of the owner of the trade mark to its use in the name of the proposed company, or a written assurance that the proposed company will be controlled by the owner of such trade mark.

In view of the above, applicants are warned that it is inadvisable for them to incur expenses in the advance printing of business stationery, sign-writing, etc., in which the proposed name appears. Any such expenses will be incurred entirely at their own risk."

²⁷ Under the 1929 Act, the provisions of the equivalent section were much more elaborate but these are now unnecessary since the Board of Trade is given the widest possible discretion.

In Ontario the "Internal Rules" are codified in part, by the regulations, and in part, left with the Registrar. The regulations provide as follows:

NAME

4. Where the name of a corporation to be incorporated is the same as or similar to the name of any known body corporate, association, partnership or individual, whether in existence or not, so as to be, in the opinion of the Minister, likely to deceive, the name of the corporation to be incorporated shall contain such variation from that of the known body corporate, association, partnership or individual as the Minister determines. O. Reg. 492/70, s. 4.

5. Where the authorized capital of a corporation is decreased by articles of amendment by the cancellation or consolidation of issued shares and a number of the share certificates of the corporation are in the hands of the public and may not be promptly surrendered, the name of the corporation shall be changed in such manner as the Minister determines. O. Reg. 492/70, s. 5.

6. The name of a corporation shall not be too general in character unless the name has become established by a long and continuous prior use. O. Reg. 492/70, s. 6.

7. Where a corporate name contains initials or numerals, the Minister may in his discretion require the addition of some distinctive word. O. Reg. 492/70, s. 7.

8. The word "amalgamated" shall not be included in the name of a corporation unless the corporation is an amalgamated corporation resulting from the amalgamation of two or more corporations. O. Reg. 492/70, s. 8.

9. The name of a corporation shall not include the word "housing" unless the corporation is sponsored by or connected with the Government of Canada or the Government of Ontario. O. Reg. 492/70, s. 9.

10. The name of a corporation shall not include the word "condominium" or any derivation thereof. O. Reg. 492/70, s. 10.

11. The name of a corporation shall not include the word "veteran" or any abbreviation or derivation thereof unless there has been a long and continuous prior use of the name. O. Reg. 492/70, s. 11.

12. Where a person has reserved a name and at the expiration of the period for which the name has been reserved no corporation with that name or a similar name has been incorporated, the name or a similar name shall not be reserved until the expiration of one year thereafter. O. Reg. 492/70, s. 12.

C. Actions at Law

The following brief summary of the common law remedies is taken from Palmer's Company Law at pp. 61, 62.

Admissibility of name at common law

The registration of a name under company law does not provide efficient protection against an action at common law for an injunction at the suit of anyone prejudiced by the adoption of the name.

A common law action aiming at a restraint upon the company to use the name under which it is registered and claiming, as against the company, the removal of that name from the register is normally founded on

- (1) contract; or
- (2) the tort of passing off.

A company, or individual controlling a company, may contract not to use a particular name. If this undertaking is broken and the company is registered under that name, an injunction restraining the company from using that name may be claimed.

As regards passing off, the principle on which the court interferes in such cases is that one person is not to be permitted to represent the business which is carried on by another as carried on by himself.¹ On this principle the court will even prevent the use of the name of a world-wide organisation although that organisation is not at present represented in England.²

The inadvertent omission by a limited company to publish its corporate name will not disentitle it to have the use of its trade name protected by injunction.³

²⁰ It is thought that the company has to carry out the change by special resolution although—unlike subs. (1)—this is not expressly stated in subs. (2). That subsection does not purport to deal with the procedure for change of name—a topic dealt with in subs. (1).

¹ *Tussaud v. Tussaud* (1890) 44 Ch.D. 678; *North Cheshire and Manchester Brewery Co. v. Manchester Brewery Co.* [1899] A.C. 83; *La Société Anonyme, etc., Panhard et Levassor v. Panhard Levassor, etc., Co.* [1901] 2 Ch. 513; *Ewing v. Buttercup Margarine Co.* [1917] 2 Ch. 1; *Harrods v. R. Harrod* (1924) 40 T.L.R. 195; *Standard Bank of South Africa v. Standard Bank* (1909) 25 T.L.R. 420; *Legal and General Assurance Society Ltd. v. Daniel* (1967) 111 S.J. 808.

² *Sheraton Corp'n. of America v. Sheraton Motels Ltd.*, *The Times*, July 13, 1963.

³ *Randall Ltd. v. British and American Shoe Co.* [1902] 2 Ch. 354.

A company finding out that another company has been or is about to be registered under the same name as itself may have a common law right to restrain the newcomer from the use of that name. It will certainly have this right if the name has been used with the intention of misleading third parties, or for some fraudulent purpose.⁴ It will also be able to restrain a company from using a name with which it has been registered if, owing to the fact that its name is the same as or closely similar to⁵ that of a company already existing (even if not a company regulated by the Companies Acts, *e.g.*, a firm or an unregistered company⁶), the original company can show that confusion has existed, or that persons have dealt with the second company believing it to be the old one; in that respect, the sound as well as the spelling of the name is material.⁷ In some cases the court may make the restraint purely local,⁸ and if the locality of operation, or intended operation, or of the type of business, is such that there is no real danger of confusion, the court will not grant an injunction.

But the court does not require to be convinced either that there is fraud, or a deliberate intention to confuse, or that the public has been misled. It will suffice to show that the name with which a company proposes to be registered is “calculated” to mislead, the word “calculated” carrying no hint of intention but meaning, in effect, little more than “morally certain.”⁹

D. Discussion of Issues

1. Is it fair to say that the rules surrounding the selection of a name are designed for the protection of the public?

2. Can the parties to a name dispute protect themselves by a passing-off action, or under the procedures for an appeal from the Registrar's decision?

3. How elaborate should the statutory prohibition provisions be?

4. How much discretion should be left with the Registrar?

5. Should the Registrar's "Internal Rules" be made part of the published regulations, or left in memo form for the benefit of the public and profession?

II. SEARCHES

The problem for consideration here has two aspects; one, to prevent confusion in the public mind as to with whom it is dealing, and two, to avoid delays in the incorporation process.

The Lawrence Report speaks to the first issue as follows:

3.1.2. In all cases of use by corporations of assumed names, whether bona fide or otherwise, the possibility of confusion in the minds of the public exists. Particularly is this so in that the corporation is not required to register in any office of public record notice of the fact that the business or division of the business is being conducted under a name other than that by which the enterprise is officially called. There is no doubt in Ontario law that a company is not prohibited from carrying on business in a name other than its corporate name; nor is the company required by law to register its assumed name.³⁷ Thus, the public frequently deals with a business unaware that it is in fact dealing with an incorporated company having limited liability. Non-registration of assumed names becomes particularly important if a member of the public wishes to take legal action or process against a business not being carried under its correct corporate name.

Alberta corporations have the power to carry on any businesses that may enhance their profits. Presumably there is no requirement that these businesses be carried on in their corporate name, although that is the rule in Quebec where companies must carry on their business in the name granted by the letters patent.

The Partnership Act R.S.A. 1970 c. 271 does not define the term person but provides in Part III as follows: (It should be noted that the marginal note uses the word "individual" which may mean that person does not include a corporation.)

Persons Using Trade Name, Registration

Individual
using trade
name

85. (1) Each person who

- (a) is engaged in business for trading, manufacturing, contracting or mining purposes,
- (b) is not associated in partnership with any other person or persons, and
- (c) uses as his business name
 - (i) some name or designation other than his own, or
 - (ii) his own name with the addition of "and company" or some other word or phrase indicating a plurality of members in the firm,

shall sign and cause to be filed in the Central Registry a declaration in writing of the fact.

(2) A declaration under this section shall

- (a) contain the name, surname, occupation and residence of the declarant,
- (b) contain the business name under which the declarant carries on or intends to carry on business,
- (c) state that no other person is associated with the declarant in partnership, and
- (d) be filed
 - (i) within six months of the time when the business name is first used, or
 - (ii) at any time, if a *fiat* is obtained from a judge of the Supreme Court or from a judge having jurisdiction in the district court of the district where the declarant carries on business.

[R.S.A. 1955, c. 230, s. 72; 1970, c. 87, s. 7]

Previous
filing

86. All declarations filed pursuant to Part 3 before April 15, 1970 shall be deemed to be filed in the Central Registry. [R.S.A. 1955, c. 230, s. 73; 1970, c. 87, s. 8]

Penalty

87. Every member of a partnership and every other person required to register a declaration under the provisions of this Act who fails to comply with the requirements of this Act respecting registration is guilty of an offence and liable upon summary conviction to a fine of not more than \$50. [R.S.A. 1955, c. 230, s. 76]

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"Central Registry" is defined by section 2(b) to mean the Central Registry established under The Chattel Securities Registration Act R.S.A. 1970 c. 44.

The Penalty section, providing as it does for a fine of not more than \$50.00, is not adequate to obtain widespread compliance with the Act.

S. 88 which follows, does provide a greater incentive but is limited in that you need not file until you wish to commence your action.

88. An action or other proceeding instituted in any court in the Province

(a) by an unregistered partnership, or

(b) by any other person who is required to register a declaration under the provisions of this Act but has failed to comply with the requirements respecting registration,

may be stayed on application of the defendant or party opposite in interest until the partnership becomes registered or until the declaration is filed, as the case may be.

[R.S.A. 1955, c. 230, s. 77]

The U.K. has provided for a Central Registry of business names since 1916 under the Registration of Business Names Act, 1916.

An Act respecting the Registration of Business Names and Partnerships R.S.M. 1970 c. B110 was cited as an acceptable model by the Lawrence Report. That Act is attached as an appendix to the paper.

The points to note are:

1. it applies to corporations;
2. the declaration requires a statement of the general nature of the business, and the principal place where the business will be carried on;
3. provision for expiration of the registration, and also provision for use of names of dissolved corporations;
4. conflicts over names follows the same procedure as that used in the Corporations Act.

The adoption of such a Registry would not assist with regard to trade names and trade marks: see Lampolier Mfg. Co. Ltd. v. Government of Manitoba. (1967) 62 D.L.R. (2d) 425.

The searches made by the Department in Alberta are described in Mr. Warr's memorandum.

With regard to the delays in incorporation, because of the extensive search procedures carried on, most jurisdictions have now provided for incorporation by designating number.

III. DESIGNATING NUMBERS

The proposed Federal Act provides as follows in s. 11.2

- (2) If requested to do so by the incorporators or a corporation, the Director shall assign to the corporation as its name a designating number determined by him.

A discussion of the section by Dickerson is as follows:

63. In addition, we provide in s. 2.07(2) that a corporation may become incorporated with a designating number instead of a name. Through this device incorporators will be able to get a very speedy incorporation and the corporation, using the designating number as its name, will be able to execute contracts and do anything else required to get on with its business. The corporation could then, if it wished, submit a proposed name in the usual form to the Registrar for checking and approval in the ordinary way. Once the suggested new name had been accepted, the corporation, following the usual change of name procedure, could abandon its designating number and operate thereafter under the new name. Alternatively, the corporation could if it wished, retain the designating number as its name.

A similar procedure is used in Ontario and Alberta although there is no statutory provision dealing with designating numbers.

IV. RESERVATION OF NAME

All three Acts here discussed provide for the reservation of a name.

Alberta s. 11(6)

(6) On application of any person and on payment of the prescribed fee the Registrar may reserve a company name for a period of 45 days, and the name may be held for the use of the applicant or his nominee within that period if it is otherwise acceptable under this section.

Ontario s. 11(1) (2)

11.—(1) Any person may, on application in writing and on the payment of the prescribed fee, reserve a corporate name for the use and benefit of the applicant or his nominee for a period of sixty days or such lesser period as he specifies, if the name is at the time not contrary to section 8.

(2) During the period for which a name has been reserved, no Idem corporation shall acquire the name or a similar name without the consent in writing of the person for whose use and benefit the name has been reserved. 1970, c. 25, s. 11.

Proposed Federal Act s. 11

11. (1) The Director may, upon request, reserve for ninety days a name for an intended corporation or for a corporation about to change its name.

The sole question here appears to be the length of time for which the name may originally be reserved. Alberta is low at 45 days and the Federal Act is high at 90 days.

V. NOTICE OF LIMITED LIABILITY

Dickerson discusses the notice of limited liability as follows:

57. Section 2.06 makes one important change in existing law by authorizing the use of the word "incorporated" in addition to "limited" as part of a corporate name. This alternative description is available under the

Quebec Companies Act and the new Ontario Act (s. 6) and people in those provinces (or elsewhere) who prefer this term should, we think, have the same right if they incorporate federally. Under s. 22(1) of the present Act, every corporation must include "limited" either in full or abbreviated form, as part of its name. Historically, the word "limited" was used to distinguish between those incorporated associations the members of which enjoyed limited liability and those which involved no such privilege. The word "limited" was intended to act as a red flag warning the public of the dangers which they ran if they had dealings with limited liability corporations. Today, however, the number of corporations in which members do not enjoy limited liability must be insignificant and, in any case, the corporation has become such a commonplace form of organization that the need for this warning device seems much less compelling. Accordingly, the term "incorporated", in its full or abbreviated form is authorized by s. 2.06.

The proposed Federal Act provides as follows in
s. 10(1)

10. (1) The word "Limited", "Limitée", "Incorporated", "Incorporée" or "Corporation" or the abbreviation "Ltd", "Ltée", "Inc." or "Corp." shall be the last word of the name of every corporation but a ¹⁵ corporation may use and may be legally designated by either the full or the abbreviated form.

The Ontario Act s. 6(1)(2)(3)

6.—(1) The name of a corporation shall have the word "Limited" or "Incorporated" or its corresponding abbreviation "Ltd." or "Inc." as the last word thereof.

(2) Where a corporation or a director, officer or employee ~~id~~ thereof uses the name of the corporation, the word "Limited" or "Incorporated" or its corresponding abbreviation "Ltd." or "Inc.", shall appear as the last word thereof.

(3) Stamping, writing, printing or otherwise marking on ~~Ex~~ goods, wares or merchandise of the corporation or upon packages containing the goods, wares or merchandise shall be deemed not to be a use of the name within the meaning of subsection 2. 1970, c. 25, s. 6, amended.

Alberta offers only the alternative of Limited or Ltd. in s. 18.

Both the Ontario and Alberta Acts prohibit the use of the term "limited" if the person etc. seeking to use the term is not incorporated. The Ontario Act goes further and prohibits specifically the use of the term by a corporation carrying on business in a name other than its own. Some of the consequences of this prohibition were discussed earlier in the section on Registers.

The Alberta s. 10 provides

- 10.** No person or persons shall trade or carry on business within the Province under any name or title of which "limited" or "Ltd.," "limited liability," or "limited, non-personal liability" is or are the last word or words, unless duly incorporated with limited liability and entitled to use such word or words, and every person so trading or carrying on business is guilty of an offence and liable upon summary conviction to a fine not exceeding \$25 for every day upon which that name or title has been used.

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The Ontario Act s. 10 provides

10.—(1) No person, partnership or association while not incorporated shall trade or carry on a business or undertaking under a name in which "Limited", "Incorporated" or "Corporation" or any abbreviation thereof is used.

(2) Where a corporation carries on business or identifies itself to the public in a name or style other than as provided in the articles, such name or style shall not include the word "Limited", "Incorporated" or "Corporation" or any abbreviation thereof. 1970, c. 25, s. 10.

There appears to be no such prohibition in the Federal Act. That Act does provide however, that a corporation may be exempted from the use of the term. S. 10(2) provides

(2) The Director may exempt a body corporate continued as a corporation under this Act from the provisions of subsection (1).

This section is directed at existing corporations who may not be required under their special incorporating acts to use the term "limited".

VI. FOREIGN NAMES

Both the Ontario and proposed Federal Act provide for the name to be in French or a foreign language.

Ontario s. 7 provides

7. Notwithstanding section 6, a corporation may use its name ^{Use of} in such form and in such language as the articles provide and as ^{name} the Minister approves. 1970, c. 25, s. 7.

The proposed Federal Act provides in s. 10(3)(4) as follows:

(3) Subject to subsection 12(1), a corporation may set out its name in its articles in an English form, a French form, an English form and a French form or in a combined English and French form and it may be legally designated by any such form.

(4) Subject to subsection 12(1), a corporation may, for use outside Canada, set out its name in its articles in any language form and it may be legally designated by any such form outside Canada.

Dickerson notes that the policy of the Corporation Branch has been to refuse a combined French-English form of name.

VII. DISPLAY OF NAME

S. 74 of the Alberta Act provides as follows:

74. (1) Every company

- (a)** shall paint or affix, and keep painted or affixed, its name on the outside of its registered office and every other office or place in which its business is carried on in a conspicuous position and in easily legible letters,
- (b)** shall have its name engraved in legible characters on its seal, and
- (c)** shall have its name set forth in legible characters in all notices, advertisements, and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.

(2) A company that makes default in complying with the requirements of this section is guilty of an offence.

[R.S.A. 1955, c. 53, s. 82]

Dickerson comments on the Federal Act, with a provision similar to subsection (a) as follows:

60. Section 2.06(4) reproduces the substance of s. 22(3) of the present Act, but with one change. The requirement to post a corporation's name outside every office in which the corporation carries on business is an anachronism carried over from 1845 English legislation. It is little more than a nuisance provision which has never been enforced, and which has been abandoned almost everywhere. It is therefore omitted from the Draft Act.

With regard to subsection (c) the proposed Federal Act provides in s. 10(5) as follows:

(5) A corporation shall set out its name in legible characters in all contracts, in-³voices, negotiable instruments and orders for goods or services issued or made by or on behalf of the corporation.

The Ontario Act does not appear to have a similar section.

With regard to the Corporate Seal, Dickerson makes the following observation:

96. At one point we considered abolishing the whole idea of the corporate seal, an anachronism carried over from a less literate age. The amount of money spent every year in buying and storing this redundant ironmongery must be substantial. In the end, however, we concluded that we would probably create more trouble than we would save by abolishing the seal. Many people, bank managers in particular, are devoted to the seal and would be very upset if its use was prohibited. The law need not deprive people of such simple and harmless pleasures. The Draft Act, in s. 4.05, therefore continues to recognise the seal; it even lays down a rule of evidence giving prima facie validity to a document which is impressed with a corporate seal. However, the Draft Act also makes it clear that the use of a seal is voluntary, and documents signed in the ordinary way by authorized corporate officers are completely valid.

The contract provisions of the Alberta and Ontario Acts are similar with regard to use of the Corporate Seal.

Alberta s. 149 provides:

149. (1) Contracts on behalf of a company may be made as follows, that is to say,

- (a) any contract that if made between private persons would be by law required to be in writing, and if made according to the law of the Province or of the Dominion to be under seal, may be made on behalf of the company in writing under the common seal of the company, and may in the same manner be varied or discharged,
- (b) any contract that if made between private persons would be by law required to be in writing and signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged, and
- (c) any contract that if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made

by parol on behalf of the company by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.

(2) All contracts made according to this section are effectual in law, and bind the company and its successors and all other parties thereto, their heirs, executors, or administrators, as the case may be.

(3) A bill of exchange or promissory note shall be deemed to have been made, accepted, or endorsed on behalf of a company if made, accepted, or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority. [R.S.A. 1955, c. 53, s. 134]

Ontario s. 18 provides

18.—(1) A contract that if entered into by an individual person would be by law required to be in writing and under seal may be entered into on behalf of a corporation in writing under the seal of the corporation.

(2) A contract that if entered into by an individual person would be by law required to be in writing signed by the parties to be charged therewith may be entered into on behalf of a corporation in writing signed by any person acting under its authority, express or implied.

(3) A contract that if entered into by an individual person would be by law valid although made by parol only and not reduced into writing may be entered into by parol on behalf of a corporation by any person acting under its authority, express or implied. 1970, c. 25, s. 18.

The proposed Federal Act s. 23 provides

23. An instrument or agreement executed on behalf of a corporation by a director, an officer or an agent of the corporation is not invalid merely because a corporate seal is not affixed thereto.

VIII. APPEALS FROM THE REGISTRAR

Under all three Acts we are discussing, the Registrar has authority to refuse:

1. to reserve a name;
2. to grant a name;
3. to revoke a name;
4. to change a name.

Likewise, all statutes provide an appeal from the Registrar's decision.

Alberta s. 12 provides

- 12.** (1) A person who feels aggrieved by reason of
- (a) the refusal of the Registrar to incorporate a company or to register an extra-provincial company pursuant to section 11, subsection (1), (3) or (4), or
 - (b) the refusal of the Registrar to make an order under section 11, subsection (5) to change the name of a company, or
 - (c) a notice given by the Registrar under section 11,

subsection (5) of his intention to make an order to change the name of a company, or

- (d) the refusal by the Registrar to give his approval under section 32, subsection (1) to a change of the name of a company, or
- (e) the approval by the Registrar under section 175, subsection (2) to the use by an extra-provincial company of a name or title other than that under which it is registered, or the refusal of the Registrar to give an approval under section 175, subsection (2),

may appeal the Registrar's refusal, notice or approval to the court by way of originating notice of motion and upon at least seven days' notice to the Registrar and to such other persons as the court directs.

(2) The court may dismiss the appeal or direct the Registrar to withdraw his refusal or notice or revoke his approval, as the case may be.

(3) Within 10 days after the entry of an order under subsection (2), the company or extra-provincial company concerned shall file with the Registrar a copy of the order certified by the clerk of the court.

Ontario s. 268 provides

268.—(1) Any person who feels aggrieved by a decision of the Minister to,

- (a) refuse to file articles or any other document or to issue any certificate required by this Act to be filed or issued;
- (b) issue or refuse to issue a certificate of amendment under subsection 2, 3 or 4 of section 8; or
- (c) issue an order under section 250,

may appeal the decision to the Court of Appeal.

(2) Every appeal shall be by notice of motion sent by registered mail to the Minister within thirty days after the mailing of the notice of the decision, and the practice and procedure upon and in relation to the appeal shall be the same as upon an appeal from a judgment of a judge of the Supreme Court in an action, provided that the Rules Committee may vary or amend such practice and procedure or may prescribe the practice and procedure that shall be applicable to appeals taken under this Act.

(3) The Minister shall certify to the Registrar of the Supreme Court,

- (a) the decision of the Minister, together with a statement of the reasons therefor;
- (b) the record of any hearing; and
- (c) all written submissions to the Minister or other material that is relevant to the appeal.

(4) The Minister is entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section.

(5) Where an appeal is taken under this section, the Court of Appeal may by its order direct the Minister to make such decision or to do such other act as the Minister is authorized and empowered to do under this Act and as the court thinks proper, having regard to the material and submissions before it and to this Act, and the Minister shall make such decision or do such act accordingly.

(6) Notwithstanding an order of the Court of Appeal, the Minister has power to make any further decision upon new material or where there is a material change in the circumstances, and every such decision is subject to this section. 1970, c. 25, s. 268.

Proposed Federal Act. s. 239 provides

239. A person who feels aggrieved by a decision of the Director

(a) to refuse to file in the form submitted to him any articles or other document required by this Act to be filed by him,

(b) to give a name, to change or revoke a name, or to refuse to reserve, accept, change or revoke a name under section 12,

(c) to refuse to grant an exemption under subsection 2(8), 10(2), 77(3), 122(8) or 145(1), section 150, subsection 154(3) and any regulations thereunder or subsection 165(2),

(d) to refuse to issue a certificate of discontinuance under section 182,

(e) to refuse to revive a corporation under section 202, or

(f) to dissolve a corporation under section 205,

may apply to a court for an order requiring the Director to change his decision, and upon such application the court may so order and make any further order it thinks fit.

CHAPTER B110

AN ACT RESPECTING THE REGISTRATION OF BUSINESS NAMES AND PARTNERSHIPS.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Short title.

- 1** This Act may be cited as: "The Business Names Registration Act".
S.M., 1965, c. 8, s. 1.

Definitions.

- 2** In this Act,
- (a) "business" includes every trade, occupation, profession or venture conducted or carried on with a view to profit or gain;
 - (b) "minister" means the Provincial Secretary;
 - (c) "partnership" includes a limited partnership to which reference is made in The Partnership Act;
 - (d) "proper office" means the office of The Department of the Provincial Secretary designated by the minister;
 - (e) "regulations" means the regulations made under this Act.
- S.M., 1965, c. 8, s. 2.

Declarations and registration thereof.

- 3(1)** Unless otherwise provided by this Act,
- (a) every person carrying on, or intending to carry on, business, in the case of an individual under a name or style other than his family name or surname, and in the case of a corporation under a name or style other than its corporate name;
 - (b) every person associated in partnership and carrying on or intending to carry on, business;
 - (c) every person, including a person carrying on business under his own family name or surname, who carries on or intends to carry on business under a name or description that indicates a plurality of persons in the business;

shall cause to be registered in the proper office, a declaration in writing signed by the person setting out such information as may be prescribed in the regulations.

Exemption of professional persons.

- 3(2)** Subsection (1) does not apply to a person practising a profession, either alone or in partnership, if the profession and the right to practise that profession is regulated by the governing body of that profession under an Act of the Legislature.

Am.

Erection of signs.

3(3) Unless he is registered under this Act, a person who carries on business under his family name or surname, but who uses some other word or designation in addition to his family name or surname as part of the name or style of the business shall, notwithstanding that such other word or designation does not indicate a plurality of persons in the business, erect and maintain at the place where the business is carried on, in full view of the public a sign, poster or advertisement, indicating the full name of the person carrying on the business.

S.M., 1965, c. 8, s. 3; am.

Contents of declaration.

- 4(1)** Subject to section 8, the declaration under section 3 shall contain or state
- (a) the full name and residence of the person carrying on or intending to carry on business and that no person is associated in partnership with him in the business; or
 - (b) in the case of persons associated in partnership, the full name and residence of each such person in the partnership, carrying on or intending to carry on business;
 - (c) the general nature of the business carried on or intended to be carried on;
 - (d) the name, style, or firm name under which the person or partnership carries on or intends to carry on business;
 - (e) 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
 - (f) the principal place in Manitoba, giving, where possible, the street number and name, where business is being carried on or is intended to be carried on.

Time of registering declaration.

4(2) The declaration shall be registered within one month next after the date on which a person commenced to carry on business or within one month prior to the date on which he intends to carry on business; and in the case of a partnership or association, within one month next after the formation of the partnership, or within one month next after commencing to do business in Manitoba.

Publication of declaration.

4(3) The minister shall forthwith cause a notice of the registration to be published in The Manitoba Gazette.

S.M., 1965, c. 8, s. 4; am.

Registration and publication of changes.

- 5(1)** Whenever,
- (a) a dissolution of a partnership occurs; or
 - (b) a change or alteration in the membership of a partnership occurs; or
 - (c) a person mentioned in clause (a) or clause (c) of subsection (1) of section 3 ceases to carry on business; or
 - (d) in the case of a limited partnership, there occurs an increase in the capital contributed by any limited partner;

a declaration to that effect shall be registered in the proper office within one month of the dissolution or change or alteration, as the case may be; and the minister shall cause a notice of the registration to be published in The Manitoba Gazette.

Idem.

5(2) Whenever there occurs a change in a business or firm name registered under this Act, a notice of the change shall be registered with the minister in a form prescribed and within such time as is prescribed in the regulations; and the minister shall cause a notice of the change to be published in The Manitoba Gazette.

Registering dissolution of partnership.

5(3) Upon the dissolution of a partnership, any or all of the persons who comprised the partnership may execute and register a declaration certifying the dissolution of the partnership; and the minister shall cause a notice of such dissolution to be published in The Manitoba Gazette.

S.M., 1965, c. 8, s. 5.

Expiry of new registrations.

6(1) A registration of a business name or partnership or any renewal of such registration under this Act expires at the end of five years from the date of the registration or renewal, as the case may be.

Expiry of previous registrations.

6(2) A registration or renewal made in compliance with The Partnership Act, being chapter 196 of the Revised Statutes of Manitoba, 1954, as amended by chapter 54 of the Statutes of Manitoba, 1962, and still in force on the first day of October, 1965, continued or continues in force under this Act and expired or expires at the end of five years from the date of its registration.

Am.

Renewal of registration.

6(3) The registration of a partnership or a business name under this Act may be renewed by registering before the expiry date of the registration a renewal declaration as prescribed in the regulations.

Extension of time for renewal.

6(4) Upon a written application therefor being made to the minister within three years after the expiration of a registration that was made for the first time on or after the first day of November, 1962, the minister may, in his absolute discretion, and if in the circumstances he deems it proper to do so, by his written order extend the period for a renewal of the registration that has so expired for a further period of not more than three months from the date on which his order is made.

Idem.

6(5) Where a registration is renewed under the authority of an order made under subsection (4), it shall, for the purposes of subsection (1), be deemed to be a registration to which the subsection applies and the date of the registration of the renewal shall, for the purposes of that subsection, be deemed to be the first registration thereof.

S.M., 1965, c. 8, s. 6; am.

Form of declaration.

7 Every declaration made as required under this Act shall be in such form, and shall contain such information in addition to that required under sections 4 and 8, as is prescribed in the regulations.

S.M., 1965, c. 8, s. 7; am.

Limited partnership.

8(1) In the case of a limited partnership to which reference is made in The Partnership Act, the declaration required under sections 3 and 4 shall also state

- (a) the names of all the general and limited partners interested therein, distinguishing which are general and which are limited partners, and their usual places of residence; and
- (b) the amount of capital that each limited partner has contributed.

Am.

Publication of registration.

8(2) The minister shall cause a notice of the registration under subsection (1) to be published forthwith in The Manitoba Gazette.

S.M., 1965, c. 8, s. 8; am.

Registering notice of dissolution of limited partnership.

9(1) Where a limited partnership is dissolved, any of the persons who formed the partnership shall, within one month after the dissolution, register in the proper office a declaration signed by them as to the dissolution; and the minister shall cause a notice of the dissolution to be published in The Manitoba Gazette.

Am.

Idem.

9(2) Before presenting a declaration of dissolution under subsection (1), the persons who formed the partnership shall, at least thirty days prior to the effective date of dissolution, cause to be published, once in each week for three consecutive weeks in a newspaper having circulation in the district where the partnership has its principal place of business in Manitoba, a notice of intention to dissolve the partnership.

S.M., 1965, c. 8, s. 9; am.

Recording and indexing of declaration.

10(1) Every declaration registered under this Act shall be recorded and indexed in the proper office as hereinafter provided or as prescribed in the regulations; and the record and index shall be open for inspection during the hours when the proper office is open.

Indices of registration.

10(2) The minister shall keep two alphabetical indices of all registrations and renewals filed under this Act.

Firm Index.

10(3) In one of such indices, called "The Firm Index", the minister shall cause to be entered in alphabetical order the styles of the respective partnerships and businesses with respect to which registrations and renewals have been filed as herein provided; and he shall cause to be placed, opposite to each entry, the names of the persons comprising the partnership or carrying on the business; and the date of the receipt by him of each declaration in the manner prescribed in the regulations.

Individual Index.

10(4) In the other of such indices, called "The Individual Index", the minister shall cause to be entered in alphabetical order the names of each of the members of each partnership the registration of which has been made or renewed and of each person carrying on a business the registration of which has been made or renewed under this Act; and he shall cause to be placed opposite to each entry the style of the partnership of which the persons are members or of the business so carried on, and the date of the receipt by him of each declaration in the manner prescribed in the regulations.

S.M., 1965, c. 8, s. 10.

Disposition of fees.

11 The minister shall pay to the Minister of Finance all fees received under this Act; and they shall form part of the revenue division of the Consolidated Fund.

S.M., 1965, c. 8, s. 11.

Administration of Act.

12 The minister has the administration of this Act and has supervision, direction, and control of the employees entrusted with the carrying out of the provisions thereof, who shall be employees of The Department of the Provincial Secretary.

S.M., 1965, c. 8, s. 12; am.

Similar names not to be registered.

13(1) Where a declaration is presented for registration, it shall not be registered if it contains a partnership name or business name that is the same as, or is liable to be confounded with, or closely resembles,

- (a) a name contained in any declaration previously registered and still in force; or
- (b) the name of
 - (i) any partnership or firm; or
 - (ii) any corporation; or
 - (iii) any unincorporated company, association, organization or body;that is known to the minister, whether or not it is registered under this Act or The Companies Act; or
- (c) a name that otherwise on public grounds is objectionable.

Exception

13(2) Subsection (1) does not apply where a person, firm, corporation or association consents in writing to the name being used in whole or in part, if the name is not otherwise on public grounds objectionable.

Use of name of dissolved partnership, corporation, etc.

13(3) Notwithstanding subsection (1), the minister may receive and register the declaration if he is satisfied by such evidence as he deems sufficient that the partnership or business name previously registered, or the partnership, firm, corporation, company, association, organization, or body to which reference is made in clause (b) of subsection (1) has been dissolved or is no longer carrying on business.

S.M., 1965, c. 8, s. 13.

Direction of minister for change of name.

14 Where the minister is satisfied that a declaration that has been accepted by him and registered under this Act contains a name, style, or firm or partnership name or firm that is the same as that contained in a declaration previously accepted and registered under this Act, or of a corporation registered under The Companies Act, or so similar thereto as to be liable to be confounded therewith, or is otherwise on public grounds objectionable, he may direct that the name, style, or firm or partnership name, or firm be changed as he directs, and the previous registration amended accordingly; but no fee shall be charged in respect of the amendment so made.

S.M., 1965, c. 8, s. 14.

Application to judge to review name of partnership, etc.

15(1) A person who feels aggrieved as a result of the acceptance and registration of a declaration under this Act, or by a direction made by the minister under section 14, may, upon at least seven days notice to the minister, and to such other persons as the judge may direct, apply to a judge of a County Court for a review of the matter; and the judge may make an order cancelling the registration, changing the name set out in the declaration so registered, or in the direction made by the minister, to such name as the judge deems proper, or may dismiss the application.

Registering order.

15(2) The applicant shall forthwith register in the proper office a certified copy of the order of the judge.

S.M., 1965, c. 8, s. 15.

Certified copies, searches and certificates of search.

16(1) Any person may

- (a) inspect any document kept, filed, or registered, pursuant to this Act, by the minister; or
- (b) require a copy or extract of any such document or part thereof; or
- (c) require any such copy or extract to be certified as a true copy or extract; or
- (d) search any register required to be kept under this Act; or
- (e) require a certificate of search showing the particulars of any registration or entry made under this Act and certified to be correct.

Form of certificate of search.

16(2) A certificate of search issued under clause (e) of subsection (1) shall be in such form as is prescribed in the regulations.

Admissibility of certificate in evidence.

16(3) A copy of, or extract from, any such document certified to be a true copy or extract, or a certificate of search is admissible in evidence in any court as conclusive proof of the matters therein contained or stated, and is of equal validity with the original document.

Meaning of "certified".

16(4) In this section the expression "certified" means certified by the minister or by any person duly authorized by him for the purpose under his hand and seal of office.

S.M., 1965, c. 8, s. 16.

Cancellation of registration.

17 The minister may cancel a registration or renewal made under this Act where the fee for the registration or renewal was paid by a cheque, money order, draft or other negotiable instrument and the cheque, money order, draft or other negotiable instrument was dishonoured by the person upon whom it was drawn.

S.M., 1965, c. 8, s. 17.

Regulations.

18 For the purpose of carrying out the provisions of this Act according to their intent, the Lieutenant Governor in Council may make such regulations and orders as are ancillary thereto and are not inconsistent therewith; and every regulation or order made under, and in accordance with the authority granted by this section, has the force of law; and without restricting the generality of the foregoing, the Lieutenant Governor in Council may make such regulations and orders, not inconsistent with any other provision of this Act,

- (a) prescribing and requiring fees to be paid under this Act for
 - (i) a registration or renewal thereof;
 - (ii) a certificate issued by the minister;
 - (iii) a search or inspection of any document filed or kept in the proper office;
 - (iv) a certified copy or extract from any document kept in the proper office;
- (b) prescribing the additional information, if any, that shall be included in a declaration or renewal thereof made under this Act;
- (c) prescribing the form in which declarations or renewals thereof to which reference is made in clause (b) shall be made;
- (d) prescribing the form and the manner in which entries in The Individual Index shall be made; and the form and the manner in which that index shall be kept;
- (e) prescribing the form and the manner in which entries made in The Firm Index shall be made; and the form and manner in which that index shall be kept;
- (f) prescribing the form of any other indices, declarations, certificates, applications, or other instruments or documents required to be made, registered, used, or issued under this Act;
- (g) prescribing the manner in which certificates registered under this Act shall be recorded and indexed;
- (h) specifying any service or thing given or done under this Act other than those for which specific provision is made herein, for which a fee shall be paid.

S.M., 1965, c. 8, s. 18.

D R A F T

DEPARTMENT OF CONSUMER AFFAIRS

THE COMPANIES BRANCH

The Companies Act, Ch. 60, R.S.A. 1970

GUIDE TO CHOOSING A COMPANY NAME

The Companies Branch has prepared the following guide for the assistance of persons involved in the selection of company names. The Guide should be used in conjunction with Section 11 of The Companies Act which is also attached for your convenience. The Guide was not intended to be definitive. Although it covers most of the common problems encountered in choosing new names, it does not purport to be either complete or unalterable.

Persons incorporating new companies should remember that if a company must be incorporated and time does not permit the usual "name checking" by The Companies Branch, arrangement can be made to be incorporated under a name such as 65345 Investments Ltd., 65043 Holdings Ltd., 69099 Developments Ltd., 65043 Alberta Ltd., etc.

The Companies Branch will assign the prefixing numerals and complete the documents on your behalf in that respect.

The numerals will be the number borne by the Certificate of Incorporation (which is The Companies Branch file reference number). The company can either retain that name or change to a more suitable name at a later date.

1. Many Acts regulate the use of particular words in company names, for example:

- (a) The Trust Companies Act.

- The word "Trust", "Trusts" or "Trustee" may not be used in the name of a company unless registered under The Trust Companies Act.

b. The Bank Act.

The words "Bank", "Banking", or words of similar import may not be used because of the provisions of The Bank Act.

c. The Universities Act.

The words "University", "Varsity" or other similar words may not be used without the approval of The Minister of Advanced Education or The Board of Governors of a university pursuant to The Universities Act.

d. The Engineering and Related Professions Act.

The words "Engineer", "Professional Engineer", "Geologist", "Professor Geologist", "Geophysicist" and "Professional Geophysicist" may not be used without the consent of The Association of Professional Engineers, Geologists and Geophysicists of Alberta.

As a matter of departmental policy, the word "Engineering" has been placed in the same category.

e. The Architects Act.

A company may not use the word "architect" in its name unless it is the holder of a permit granted by The Alberta Association of Architects under The Architects Act.

2. A company name cannot contain a trade name which the company does not own or have permission to use where there is a potential for confusion of two corporate entities, for example:

a. The word "Alcan" is the personal property of The Aluminum Company of Canada and therefore may not be used without the permission of that company.

b. "Realtor" is a word coined by the "National Association of Real Estate

Boards" in Minneapolis, 1916, and therefore may not be used without the permission of that association.

3. When choosing a name for a Social Club the following rules apply:
 - a. Where a person wishes to incorporate a Club or Social Club, reference should be made to sections 15(2) and 15(3) of The Companies Act.
 - b. If a company is incorporated as a branch or division of a national organization such as Lions, Kinsmen, Institute of Chartered Accountants, etc., the Companies Branch will require a written consent, under seal, from the senior organization.
4. The following guidelines apply to the use of the names of the Provinces, Territories or the Dominion of Canada in a company name.
 - a. "Canada", "Canadian", "of Canada", or any word or words which tend to associate a corporation with the Government of Canada or any department or branch thereof, are referred by the Companies Branch to the Director of Companies, Department of Consumer and Corporate Affairs, Ottawa, and therefore an additional delay may be expected.
 - b. The Companies Branch will only permit the use of the name of another province or territory in the name of an Alberta company if it is advised in writing by the other jurisdiction that it has no objection.
5. For the purpose of Section 11(1)(b) of The Companies Act, the names of Her Majesty's children are as follows:

Prince Charles Philip Arthur George

Princess Anne Elizabeth Alice Louise

Prince Andrew Albert Christian Edward

6. The use of words which encompass a whole field of endeavour or are of a very wide and comprehensive nature, will be permitted only in certain circumstances. For example:

a. The use of the word "Enterprises" in a company name will be allowed only if there is no conflict with the name of an existing company, and either:

(i) the first words are the full name of the principal, or

(ii) the first word is either a coined word or initials which are not presently in use.

b. A distinctive prefixing word will be required if a company name encompasses a whole field of endeavour, such as:

Resource Consultants Ltd.

Property Management Ltd.

Sales & Service Ltd.

Marketing Corporation Ltd.

c. A further definitive word or a distinctive prefixing word will be required if a company name is considered to be of a too wide or comprehensive nature, for example:

National Resource Development Ltd.

General Construction Ltd.

Alberta Agencies Ltd.

7. When a new company is to be incorporated with the same name or a similar name to that of an associate or parent company or companies, the following guidelines should be followed:

a. If the word "(Alberta)" or "(Alta.)" is the basic distinction between a new company name and that of its extra-provincial

associate or parent company, then the new company name will be permitted only if the extra-provincial company consents to the use of that name under its corporate seal.

- b. If a company is to be incorporated with a name that is the same as an existing company except that a year has been included, i.e. " _____ (1974) Ltd.," then the existing company must consent to such name in writing, under seal, and give its firm undertaking to either wind-up or to change its name within six months to another name acceptable to the Registrar.
- c. Identical names may not be used by Alberta companies regardless of the fact that one company has been struck off the Register, changed its name or is in the process of liquidation or has otherwise lost exclusive use of the name. A company may, however, revert to a name it had previously used.
- d. Some Canadian jurisdictions will not permit an amalgamated company to bear the same name as that of one of the parties to the amalgamation agreement. Thus, when an amalgamated company has formed in Alberta, the person incorporating the company should check with the jurisdiction where any of the parties were registered to determine whether there is any objection to the name of the amalgamated company.

8. Miscellaneous Guidelines:

- a. One-word names will be accepted if the feature word is a coined word or initials and no other company is employing that word or initials in its corporate name.

- b. Words which might tend to indicate that a company would carry on a business of executor, administrator, trustee, liquidator, or any other business mentioned in Section 13 of The Companies Act should be avoided.
- c. Names indicating that the company will be in the oil, gas or mining business or a related industry (or if this is indicated by the objects) must be cleared by The Companies Branch with the Department of Mines and Minerals.
- d. In the event that a company proposes to change its name to a name completely dissimilar, care should be taken to ensure that the objects of the company include the objects or purposes of the company as indicated by the new name.

- "11. (1) A company shall not be incorporated and an extra-provincial company shall not be registered under a name,
- (a) that is known by the Registrar to be the same as the name of an existing corporation, or
 - (b) that suggests or implies a connection with the Crown or any member of the Royal Family or the Government of Canada or the government of any province or territory of Canada or any department, branch, bureau, service, agency or activity of any such government without the consent in writing of the appropriate authority, or
 - (c) that includes the word "co-operative" or any abbreviation or derivation thereof, or
 - (d) that in the opinion of the Registrar is objectionable.
- (2) A company shall not be incorporated under this Act under a name that is known by the Registrar to be the same as that of a dissolved corporation.
- (3) A company shall not be incorporated or registered under this Act under a name that is known to the Registrar to be similar to the name of any other corporation if the use of that name by the company would be likely to deceive, unless the corporation consents in writing to its name being given in whole or in part to the company and, if required by the Registrar, undertakes to dissolve or to change its name within six months after the incorporation of the company.
- (4) A company shall not be incorporated or registered under this Act under a name that is known to the Registrar to be the same as or similar to the name of a business or association if the use of that name by the company would be likely to deceive, unless the business or association consents in writing to its name being given in whole or in part to the company and, if required by the Registrar, undertakes to cease to carry on its business or activities or to change its name within six months after the incorporation of the company.
- (5) Where a company other than an extra-provincial company, through inadvertence or otherwise, has been or is given a name that is the same as or is similar to the name of any other company, business or association that has previously been carrying on business or been incorporated or registered in the Province or that is objectionable for any reason, the Registrar, after he has given notice to the company of his intention to do so, may by order change the name of the company.

- (6) On application of any person and on payment of the prescribed fee the Registrar may reserve a company name for a period of 45 days, and the name may be held for the use of the applicant or his nominee within that period if it is otherwise acceptable under this section.
- (7) Subsections (1), (3) and (4) do not apply to a company incorporated by or under an Act of the Parliament of Canada.
- (8) In this section "business or association" means an individual carrying on business, an association or a partnership."