

**Canada Not-for-profit Corporations Act (S.C. (Statutes of Canada) 2009, c. 23)**

Act current to 2025-03-17 and on 2022-08-31.

# **Canada Not-for-profit Corporations Act**

## **S.C. (Statutes of Canada) 2009, c. 23**

Assented to 2009-06-23

An Act respecting not-for-profit corporations and certain other corporations

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

## **Short Title**

### **Short title**

1 This Act may be cited as the *Canada Not-for-profit Corporations Act*.

## **PART 1**

# **Interpretation and Application**

## **Interpretation**

### **Definitions**

2 (1) The following definitions apply in this Act.

**activities** includes any conduct of a corporation to further its purpose and any business carried on by a body corporate, but does not include the affairs of a body corporate. (*activité*)

**affairs** means the relationships among a corporation, its affiliates and the directors, officers, shareholders or members of those bodies corporate. (*affaires internes*)

**articles** means original or restated articles of incorporation or articles of amendment, amalgamation, continuance, reorganization, arrangement, dissolution or revival. (*statuts*)

**body corporate** includes a company or other organization with legal personality wherever or however incorporated. (*personne morale*)

**corporation** means a body corporate incorporated or continued under this Act and not discontinued under this Act. (*organisation*)

**court** means

- (a) in Newfoundland and Labrador, the Trial Division of the Supreme Court of the province;
- (b) in Ontario, the Superior Court of Justice;
- (c) in Nova Scotia, British Columbia and Prince Edward Island, the Supreme Court of the province;
- (d) in Manitoba, Saskatchewan, Alberta and New Brunswick, the Court of Queen's Bench for the province;
- (e) in Quebec, the Superior Court of the province; and
- (f) in Yukon and the Northwest Territories, the Supreme Court of the territory, and in Nunavut, the Nunavut Court of Justice. (*tribunal*)

**creditor** includes a debt obligation holder. (*créancier*)

**debt obligation** means a bond, debenture, note or other evidence of indebtedness or guarantee of a corporation, whether secured or unsecured. (*titre de créance*)

**Director** means an individual appointed under section 281. (*directeur*)

**director** means an individual occupying the position of director by whatever name called. (*administrateur*)

**entity** means a body corporate, a partnership, a trust, a joint venture or an unincorporated association or organization. (*entité*)

**incapable**, in respect of an individual, means that the individual is found, under the laws of a province, to be unable, other than by reason of minority, to manage their property or is declared to be incapable by any court in a jurisdiction outside Canada. (*incapable*)

**incorporator** means a person who signs articles of incorporation. (*fondeur*)

**issuer** means a corporation that is required by this Act to maintain a debt obligations register. (*émetteur*)

**officer** means an individual appointed as an officer under section 142, the chairperson of the board of directors, the president, a vice-president, the secretary, the treasurer, the comptroller, the general counsel, the general manager or a managing director of a corporation, or any other individual who performs functions for a corporation similar to those normally performed by an individual occupying any of those offices. (*dirigeant*)

**ordinary resolution** means a resolution passed by a majority of the votes cast on that resolution. (*ordinaire*)

**person** means an individual or entity. (*personne*)

**personal representative** means a person who stands in place of and represents another person, including a trustee, an executor, an administrator, a receiver, an agent, a mandatary, a liquidator of a succession, a guardian, a tutor, a curator or a legal counsel. (*représentant personnel*)

**prescribed** means prescribed by the regulations. (*Version anglaise seulement*)

**prior legislation** means the various Acts of Parliament that were in force prior to the coming into force of this Act and that applied to the incorporation of federal companies under those Acts, other than any *financial institution* as defined in section 2 of the *Bank Act*. (*législation antérieure*)

**public accountant**, in respect of a corporation, means the public accountant appointed for the corporation under paragraph 127(1)(e) or subsection 181(1) or 186(1) or who fills a vacancy under subsection 184(2) or 185(1). (*expert-comptable*)

**send** includes deliver. (*envoyer*)

**series** means a division of a class of debt obligations. (*série*)

**soliciting corporation** means a corporation that is referred to in subsection (5.1). (*organisation ayant recours à la sollicitation*)

**special resolution** means a resolution passed by a majority of not less than two thirds of the votes cast on that resolution. (*extraordinaire*)

**unanimous member agreement** means an agreement described in subsection 170(1) or a declaration of a member described in subsection 170(2). (*convention unanime des membres*)

## **Affiliated bodies corporate**

(2) For the purposes of this Act,

- (a) one body corporate is the affiliate of another body corporate if one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person; and
- (b) if two bodies corporate are affiliates of the same body corporate at the same time, they are deemed to be affiliates of each other.

## **Control**

**(3)** For the purposes of this Act, a body corporate is controlled by a person or by two or more bodies corporate if

**(a)** shares or memberships of the body corporate to which are attached more than 50 per cent of the votes that may be cast to elect directors of the body corporate are held, other than by way of security only, by or for the benefit of that person or by or for the benefit of those bodies corporate; and

**(b)** the votes attached to those shares or memberships are sufficient, if exercised, to elect a majority of the directors of the body corporate.

### **Holding body corporate**

**(4)** A body corporate is the holding body corporate of another if that other body corporate is its subsidiary.

### **Subsidiary body corporate**

**(5)** A body corporate is a subsidiary of another body corporate if

**(a)** it is controlled by

**(i)** that other body corporate,

**(ii)** that other body corporate and one or more bodies corporate each of which is controlled by that other body corporate, or

**(iii)** two or more bodies corporate each of which is controlled by that other body corporate; or

**(b)** it is a subsidiary of a body corporate that is itself a subsidiary of that other body corporate.

### **Soliciting corporation**

**(5.1)** A corporation becomes a soliciting corporation for a prescribed duration from the prescribed date, if it received, during the prescribed period, income in excess of the prescribed amount in the form of

**(a)** donations or gifts or, in Quebec, gifts or legacies of money or other property requested from any person who is not

**(i)** a member, director, officer or employee of the corporation at the time of the request,

**(ii)** the spouse of a person referred to in subparagraph (i) or an individual who is cohabiting with that person in a conjugal relationship, having so cohabited for a period of at least one year, or

(iii) a child, parent, brother, sister, grandparent, uncle, aunt, nephew or niece of a person referred to in subparagraph (i) or of the spouse or individual referred to in subparagraph (ii);

(b) grants or similar financial assistance received from the federal government or a provincial or municipal government, or an agency of such a government; or

(c) donations or gifts or, in Quebec, gifts or legacies of money or other property from a corporation or other entity that has, during the prescribed period, received income in excess of the prescribed amount in the form of donations, gifts or legacies referred to in paragraph (a) or grants or similar financial assistance referred to in paragraph (b).

### **Application to be deemed non-soliciting**

(6) On the application of a corporation, the Director may decide that the corporation is, for the purposes of this Act, to be considered as not being — or not having been — a soliciting corporation if the Director is satisfied that the determination would not be prejudicial to the public interest.

2009, c. 23, s. 2; 2015, c. 3, s. 23; 2018, c. 8, s. 96.

## **Application**

### **Application of Act**

**3 (1)** This Act applies to every corporation and, to the extent provided for in Part 19, to bodies corporate without share capital incorporated by a special Act of Parliament.

### **Certain Acts do not apply**

(2) The following do not apply to a corporation:

- (a) the *Canada Business Corporations Act*; and
- (b) [Repealed, 2009, c. 23, s. 341]
- (c) the *Winding-up and Restructuring Act*.

### **Limitations on business that may be carried on**

(3) No corporation shall carry on the business of

- (a) a bank;
- (b) an association to which the *Cooperative Credit Associations Act* applies;
- (c) a company or society to which the *Insurance Companies Act* applies; or
- (d) a company to which the *Trust and Loan Companies Act* applies.

### **Limitation — granting degrees or regulating activities**

**(4)** Incorporation or continuance under this Act does not confer any authority on a corporation to carry on activities as a degree-granting educational institution or to regulate any activity, including a profession or trade.

2009, c. 23, ss. 3, 341.

## Purpose

### Purpose

**4** The purpose of this Act is to allow the incorporation or continuance of bodies corporate as corporations without share capital, including certain bodies corporate incorporated or continued under various other Acts of Parliament, for the purposes of carrying on legal activities and to impose obligations on certain bodies corporate without share capital incorporated by a special Act of Parliament.

## Designation of Minister

### Power of Governor in Council

**5** The Governor in Council may designate any member of the Queen's Privy Council for Canada to be the Minister for the purposes of this Act.

## PART 2

# Incorporation

### Incorporators

**6 (1)** One or more individuals or bodies corporate may incorporate a corporation by signing articles of incorporation and complying with section 8.

### Individuals

**(2)** An individual may incorporate a corporation under subsection (1) only if that individual

- (a)** is not less than 18 years of age;
- (b)** is not incapable; or
- (c)** does not have the status of bankrupt.

2009, c. 23, s. 6; 2018, c. 8, s. 97.

### Articles of incorporation

**7 (1)** Articles of incorporation shall follow the form that the Director fixes and shall set out, in respect of the proposed corporation,

- (a)** the name of the corporation;
- (b)** the province where the registered office is to be situated;

- (c) the classes, or regional or other groups, of members that the corporation is authorized to establish and, if there are two or more classes or groups, any voting rights attaching to each of those classes or groups;
- (d) the number of directors or the minimum and maximum number of directors;
- (e) any restrictions on the activities that the corporation may carry on;
- (f) a statement of the purpose of the corporation; and
- (g) a statement concerning the distribution of property remaining on liquidation after the discharge of any liabilities of the corporation.

**Other required provisions**

(2) Articles of incorporation shall set out, in respect of the proposed corporation, any provision required by any other Act of Parliament to be set out in the articles.

**Additional provisions in articles**

(3) The articles may set out any provisions that may be set out in the by-laws.

**Equivalency**

(3.1) Any requirement under this Act to set out a provision in the by-laws is deemed met by setting out the provision in the articles.

**Special majorities**

(4) Subject to subsection (5), if the articles or a unanimous member agreement requires a greater number of votes of directors or members than that required by this Act to effect any action, the provisions of the articles or of the unanimous member agreement prevail.

**Removal of directors**

(5) The articles may not require a greater number of votes of members to remove a director than the number required by section 130.

**Delivery of articles of incorporation**

8 One of the incorporators shall send to the Director articles of incorporation and the documents required by sections 20 and 128.

**Certificate of incorporation**

9 On receipt of articles of incorporation, the Director shall issue a certificate of incorporation in accordance with section 276.

**Effect of certificate**

10 A corporation comes into existence on the date shown in the certificate of incorporation.

**Alternate name**

**11 (1)** Subject to subsection 13(1), the name of a corporation may be set out in its articles in an English form, a French form, an English form and a French form, or a combined English and French form, so long as the combined form meets any prescribed criteria. The corporation may use and may be legally designated by any such form.

**Alternate name outside Canada**

**(2)** Subject to subsection 13(1), a corporation may, for use outside Canada, set out its name in its articles in any language form and it may use and may be legally designated by any such form outside Canada.

**Publication of name**

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

**Other name**

**(4)** Subject to subsections (3) and 13(1), a corporation may carry on activities under or identify itself by a name other than its corporate name.

**Reserving name**

**12 (1)** The Director may, on request, reserve for a prescribed period a name for an intended corporation or for a corporation that intends to change its name.

**Designating number**

**(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 followed by the word “Canada” and a prescribed term.

2009, c. 23, s. 12; 2018, c. 8, s. 98.

**Prohibited names**

**13 (1)** A corporation shall not be incorporated or continued under this Act with, change its name to, or have, carry on activities under or identify itself by, a name that is prohibited by the regulations or that does not meet the prescribed requirements.

**Directing change of name**

**(2)** The Director may direct a corporation to change its name in accordance with section 197 if, through inadvertence or otherwise, the corporation acquires a name that is prohibited by the regulations or that does not meet the prescribed requirements.

**Directing change of numbered name**



**(3)** If a corporation has a designating number as its name, the Director may direct the corporation to change its name to a name other than a designating number in accordance with section 197.

#### **Undertaking to dissolve or change name**

**(4)** If a corporation acquires a name as a result of a person undertaking to dissolve or to change names, and the undertaking is not honoured, the Director may direct the corporation to change its name in accordance with section 197, unless the undertaking is honoured within the period specified in subsection (5).

#### **Revoking name**

**(5)** If a corporation has not followed a directive under subsection (2), (3) or (4) within the prescribed period, the Director may revoke the name of the corporation and assign a name to it and, until changed in accordance with section 197, the name of the corporation is the name assigned by the Director.

#### **Certificate of amendment**

**14 (1)** If the Director assigns a new name to a corporation under subsection 13(5), the Director shall issue a certificate of amendment showing the name and shall publish notice of the change of name as soon as practicable in a publication generally available to the public.

#### **Effect of certificate**

**(2)** The articles of the corporation are amended accordingly on the date shown in the certificate of amendment.

#### **Pre-incorporation and pre-amalgamation contracts**

**15 (1)** Subject to this section and unless the contract expressly provides otherwise, a person who enters into, or purports to enter into, a written contract in the name of or on behalf of a corporation before it comes into existence is personally bound by the contract and is entitled to its benefits.

#### **Adoption or ratification of contract**

**(2)** The corporation may, within a reasonable time after it comes into existence, adopt or, in Quebec, ratify the contract by any action or conduct signifying its intention to be bound by the contract, and on the adoption or ratification

**(a)** the corporation is bound by the contract and is entitled to its benefits as if the corporation had been in existence at the date of the contract and had been a party to it; and

**(b)** the person ceases to be bound by or entitled to the benefits of the contract, except as provided for in subsection (3).

**Application to court**

**(3)** Whether or not a written contract made before the coming into existence of a corporation is adopted or, in Quebec, ratified by the corporation, a party to the contract may apply to a court for an order respecting the nature and extent of the obligations and liability under the contract of the corporation and the person who is bound by the contract under subsection (1). On the application, the court may make any order that it thinks fit.

**PART 3****Capacity and Powers****Capacity of a corporation**

**16 (1)** A corporation has the capacity and, subject to this Act, the rights, powers and privileges of a natural person.

**Activities**

**(2)** A corporation may carry on activities throughout Canada.

**Extra-territorial capacity**

**(3)** A corporation has the capacity to carry on its activities, conduct its affairs and exercise its powers in a jurisdiction outside Canada to the extent that the laws of that jurisdiction permit.

**Powers of a corporation**

**17 (1)** It is not necessary for a by-law to be passed in order to confer any particular power on a corporation or its directors.

**Restricted activities or powers**

**(2)** A corporation shall not carry on any activities or exercise any power in a manner contrary to its articles.

**Rights preserved**

**(3)** No act of a corporation, including any transfer of property to or by a corporation, is invalid by reason only that the act or transfer is contrary to its articles or this Act.

**No constructive notice**

**18** No person is affected by or is deemed to have notice or knowledge of the contents of a document concerning a corporation by reason only that the person can examine it under section 279 or at an office of the corporation.

**Authority of directors, officers, agents and mandataries**

**19 (1)** No corporation, no guarantor of an obligation of a corporation and, in Quebec, no surety may assert against a person dealing with the corporation or against a person who acquired rights from the corporation that

- (a) the articles, the by-laws or any unanimous member agreement has not been complied with;
- (b) the individuals named in the last notice that was sent by the corporation in accordance with section 128 or 134 and received by the Director are not the directors of the corporation;
- (c) the place named in the last notice accepted by the Director under section 20 is not the registered office of the corporation;
- (d) a person held out by a corporation as a director, an officer, an agent or a mandatary of the corporation has not been duly appointed or has no authority to exercise the powers and perform the duties that are customary in the activities of the corporation or usual for a director, an officer, an agent or a mandatary;
- (e) a document issued by any director, officer, agent or mandatary of a corporation with actual or usual authority to issue the document is not valid or not genuine; or
- (f) a sale, a lease or an exchange of property referred to in subsection 214(1) was not authorized.

#### **Exception**

(2) Subsection (1) does not apply in respect of a person who has, or ought to have, knowledge of a situation described in that subsection by virtue of their relationship to the corporation.

## **PART 4**

# **Registered Office and Records**

#### **Registered office**

**20 (1)** A corporation shall at all times have a registered office in the province in Canada specified in its articles.

#### **Notice of registered office**

(2) A notice of registered office in the form that the Director fixes shall be sent to the Director together with any articles that designate or change the province where the registered office of the corporation is to be located.

#### **Change of address**

**(3)** The directors of a corporation may change the corporation's registered office to another place within the province specified in the articles, in which case the corporation shall send to the Director a notice of registered office in the form that the Director fixes.

#### **Notice of registered office effective on acceptance**

**(4)** A notice of registered office becomes effective when the Director accepts it.

#### **Corporate records**

**21 (1)** A corporation shall prepare and maintain, at its registered office or at any other place in Canada designated by the directors, records containing

- (a)** the articles and the by-laws, and amendments to them, and a copy of any unanimous member agreement;
- (b)** the minutes of meetings of members and any committee of members;
- (c)** the resolutions of members and any committee of members;
- (d)** if any debt obligation is issued by the corporation, a debt obligations register that complies with section 44;
- (e)** a register of directors;
- (f)** a register of officers; and
- (g)** a register of members.

#### **Register**

**(2)** The registers referred to in paragraphs (1)(e) to (g) shall contain the prescribed information.

#### **Directors' records**

**(3)** A corporation shall prepare and maintain adequate accounting records and records containing minutes of meetings of the directors and any committee of directors as well as resolutions adopted by the directors or any committee of directors.

#### **Retention of accounting records**

**(4)** Subject to any other Act of Parliament or of the legislature of a province that provides for a longer retention period, a corporation shall retain the accounting records referred to in subsection (3) for the prescribed period.

#### **Records of continued corporations**

**(5)** For the purposes of paragraphs (1)(b) and (c) and subsection (3), where a body corporate is continued under this Act, "records" includes similar records required by law to be maintained by the body corporate before it was so continued.

**Place of directors' records**

(6) The records described in subsection (3) shall be kept at the registered office of the corporation or at any other place that the directors think fit.

**Directors' access to records**

(7) The records described in subsections (1) and (3) shall at all reasonable times be open to inspection by the directors. The corporation shall, at the request of any director, provide them with any extract of the records free of charge.

**Records in Canada**

(8) If accounting records of a corporation are kept outside Canada, accounting records adequate to enable the directors to ascertain the financial position of the corporation with reasonable accuracy on a quarterly basis shall be kept at the registered office or any other place in Canada designated by the directors.

**When records or registers kept outside Canada**

(9) Despite subsections (1) and (8), but subject to the *Income Tax Act*, the *Excise Tax Act*, the *Customs Act* and any other Act administered by the Minister of National Revenue, a corporation may keep all or any of its corporate records and accounting records referred to in subsection (1) or (3) at a place outside Canada, if

(a) the records are available for inspection, by means of any technology, during regular office hours at the registered office or any other place in Canada designated by the directors; and

(b) the corporation provides the technical assistance to facilitate an inspection referred to in paragraph (a).

**Access to corporate records**

**22 (1)** A member, a member's personal representative and a creditor of a corporation may examine and, on payment of any reasonable fee, take extracts from the records referred to in paragraphs 21(1)(a) to (f) during the corporation's usual business hours.

**Requirement for statutory declaration — debt obligations register**

(2) Any person described in subsection (1) who wishes to examine the debt obligations register of a corporation shall first make a request to the corporation or its agent or mandatary accompanied by a statutory declaration referred to in subsection (5). Within the prescribed period, the corporation or its agent or mandatary shall allow the applicant access to the register during the corporation's usual business hours and, on payment of any reasonable fee, provide the applicant with an extract from the register.

**Copies of corporate records**

**(3)** A member of a corporation is entitled on request and free of charge to one copy of the articles and by-laws, any amendments to them, and any unanimous member agreement.

#### **Debt obligation holders lists**

**(4)** Any person described in subsection (1), on payment of any reasonable fee and on sending to a corporation or its agent or mandatary the statutory declaration referred to in subsection (5), may on application require the corporation or its agent or mandatary to furnish within the prescribed period a list of debt obligation holders setting out the prescribed information and updated in accordance with the regulations.

#### **Contents of statutory declaration**

**(5)** The statutory declaration required under subsection (2) or (4) shall

- (a)** state the name and address of the applicant and, if the applicant is a body corporate, its address for service; and
- (b)** state that the list of debt obligation holders or the information contained in the debt obligations register obtained under subsection (2) will not be used except as permitted under subsection (7).

#### **Person making statutory declaration**

**(6)** If the applicant is a body corporate, the statutory declaration shall be made by a director or officer of the body corporate.

#### **Use of information or list of debt obligation holders**

**(7)** A list of debt obligation holders or information from a debt obligations register obtained under this section shall not be used by any person except in connection with

- (a)** an effort to influence the voting of debt obligation holders of the corporation;
- (b)** an offer to acquire debt obligations of the corporation; or
- (c)** any other matter relating to the debt obligations or affairs of the corporation.

#### **Requirement for statutory declaration — register of members**

**23 (1)** A member or a member's personal representative who wishes to examine the register of members of a corporation shall first make a request to the corporation or its agent or mandatary accompanied by a statutory declaration referred to in subsection (5). Within the prescribed period, the corporation or its agent or mandatary shall allow the applicant access to the register during the corporation's usual business hours and, on payment of any reasonable fee, provide the applicant with an extract from the register.

#### **List of members**

**(2)** Any person described in subsection (1) and debt obligation holders, on payment of any reasonable fee and on sending to a corporation or its agent or mandatary the statutory declaration referred to in subsection (5), may on application require the corporation or its agent or mandatary to furnish within the prescribed period a list of members setting out the prescribed information and updated in accordance with the regulations.

### **Limitation**

**(3)** A person described in subsection (1) may only make an application under subsection (2) once in each calendar year. In addition, an application may be made before each special meeting of members of which the person receives notice.

### **Application of debt obligation holder**

**(4)** A debt obligation holder may make an application to obtain a list of members only after receiving notice of a meeting of members at which the holder has the right to vote.

### **Contents of statutory declaration**

**(5)** The statutory declaration required under subsection (1) or (2) shall

- (a)** state the name and address of the applicant and, if the applicant is a body corporate, its address for service; and
- (b)** state that the list of members or the information contained in the register of members obtained under subsection (1) will not be used except as permitted under subsection (7) or (8).

### **Person making statutory declaration**

**(6)** If the applicant is a body corporate, the statutory declaration shall be made by a director or officer of the body corporate.

### **Use of information or list by members**

**(7)** A member or a member's personal representative who obtains a list of members or information from a register of members under this section shall not use the list or information except in connection with

- (a)** an effort to influence the voting of members;
- (b)** requisitioning a meeting of members; or
- (c)** any other matter relating to the affairs of the corporation.

### **Use of information or list by debt obligation holders**

**(8)** A debt obligation holder who obtains a list of members under this section shall not use the list except in connection with an effort to influence the voting of members on any issue that the holder has a right to vote on.

**Examination by Director**

**24 (1)** The Director may examine the records described in subsection 21(1) during the corporation's usual business hours and may take extracts from the records free of charge.

**Requirement to provide list**

**(2)** The Director may require the corporation or its agent or mandatary to furnish to the Director within the prescribed period a list of members or debt obligation holders setting out the prescribed information and updated in accordance with the regulations.

**Application for authorization — corporation**

**25 (1)** On the application of a corporation, the Director may authorize the corporation, on any terms that the Director thinks fit, to refuse, in whole or in part, to allow access to corporate records or to furnish information that the corporation is otherwise under this Part obligated to allow or furnish, if the Director reasonably believes that allowing the access or furnishing the information would be detrimental to any member or the corporation.

**Application for direction — member**

**(2)** On the application of any member, the Director may direct the corporation, on any terms that the Director thinks fit, not to allow, in whole or in part, access to corporate records or not to furnish, in whole or in part, information that the corporation is otherwise under this Part obligated to allow or furnish, if the Director reasonably believes that allowing the access or furnishing the information would be detrimental to any member or the corporation.

**Form of records**

**26 (1)** All registers and other records required by this Act to be prepared and maintained may be in any form, provided that the records are capable of being reproduced in intelligible written form within a reasonable time.

**Precautions**

**(2)** A corporation and its agents and mandataries shall take reasonable precautions to prevent the loss or destruction of the registers and other records required under this Act, to prevent the falsification of entries in those registers and records and to facilitate the detection and correction of inaccuracies in them.

**Validity of unsealed documents**

**27** A document executed or, in Quebec, signed on behalf of a corporation is not invalid merely because a corporate seal is not affixed to it.

**PART 5**



# Corporate Finance

## Borrowing powers

**28 (1)** Unless the articles, the by-laws or a unanimous member agreement otherwise provides, the directors of a corporation may, without authorization of the members,

- (a) borrow money on the credit of the corporation;
- (b) issue, reissue, sell, pledge or hypothecate debt obligations of the corporation;
- (c) give a guarantee on behalf of the corporation to secure performance of an obligation of any person; and
- (d) mortgage, hypothecate, pledge or otherwise create a security interest in all or any property of the corporation, owned or subsequently acquired, to secure any obligation of the corporation.

## Delegation of borrowing powers

**(2)** Despite subsection 138(2) and paragraph 142(a), unless the articles, the by-laws or a unanimous member agreement otherwise provides, the directors may, by resolution, delegate the powers referred to in subsection (1) to a director, a committee of directors or an officer.

## Repayment

**29 (1)** Debt obligations issued, pledged, hypothecated or deposited by a corporation are not redeemed by reason only that the indebtedness evidenced by the debt obligations or in respect of which the debt obligations are issued, pledged, hypothecated or deposited is repaid.

## Acquisition and reissue of debt obligations

**(2)** Debt obligations issued by a corporation and purchased, redeemed or otherwise acquired by it may be cancelled or, subject to any applicable trust indenture or other agreement, may be reissued, pledged or hypothecated to secure any existing or future obligation of the corporation, and such an acquisition and reissue, pledge or hypothecation is not a cancellation of the debt obligations.

## Annual contributions or dues

**30** Subject to the articles, the by-laws and any unanimous member agreement, the directors may require members to make an annual contribution or pay annual dues and may determine the manner in which the contribution is to be made or the dues are to be paid.

## Ownership of property

**31** A corporation owns any property of any kind that is transferred to or otherwise vested in the corporation and does not hold any property in trust unless that property was transferred to the corporation expressly in trust for a specific purpose or purposes.

**Directors not trustees**

**32** Directors are not, in that capacity, trustees for any property of the corporation, including property held in trust by the corporation.

**Investments by corporation**

**33** Subject to the limitations accompanying any gift and the articles or by-laws, a corporation may invest its funds as its directors think fit.

**Distribution of property, accretions or profits**

**34 (1)** Subject to subsection (2), no part of a corporation's profits or of its property or accretions to the value of the property may be distributed, directly or indirectly, to a member, a director or an officer of the corporation except in furtherance of its activities or as otherwise permitted by this Act.

**Distribution to member**

**(2)** If a member of a corporation is an entity that is authorized to carry on activities on behalf of the corporation, the corporation may distribute any of its money or other property to the member to carry on those activities.

**Surrendered memberships**

**35** A corporation may accept a membership in the corporation surrendered to it as a gift including, in Quebec, a legacy and may extinguish or reduce a liability respecting an amount unpaid on that membership.

**Liability**

**36 (1)** The members of a corporation are not, in that capacity, liable for any liability of the corporation, including any arising under paragraph 253(3)(f) or (g), or any act or default of the corporation, except as otherwise provided by this Act.

**Lien on membership**

**(2)** Subject to subsection 42(2), the articles may provide that the corporation has a lien on a membership registered in the name of a member or the member's personal representative for a debt of that member to the corporation, including an amount unpaid in respect of a membership issued by a body corporate on the date it was continued as a corporation under this Act.

**Enforcement of lien**

**(3)** A corporation may enforce a lien referred to in subsection (2) in accordance with its by-laws.

**PART 6****Debt Obligations, Certificates, Registers and Transfers****Interpretation****Definitions**

**37 (1)** The following definitions apply in this Part.

**adverse claim**, in respect of a debt obligation, includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest or right in the debt obligation. (*opposition*)

**bearer** means the person who is in possession of a debt obligation that is payable to bearer or endorsed in blank. (*porteur*)

**broker** means a person who is engaged in whole or in part in the business of buying and selling debt obligations and who, in the transaction concerned, acts for, buys a debt obligation from or sells a debt obligation to a customer. (*courtier*)

**delivery** means voluntary transfer of possession. (*livraison ou remise*)

**fiduciary** means any person who acts in a fiduciary capacity or as the administrator of the property of others and includes a personal representative of a deceased person. (*représentant*)

**good faith** means honesty in fact in the conduct of the transaction concerned. (*bonne foi*)

**good faith purchaser** means a purchaser for value in good faith and without notice of any adverse claim who takes delivery of a debt obligation. (*acquéreur de bonne foi*)

**holder** means a person who is in possession of a debt obligation that is issued or endorsed to the person, to bearer or in blank. (*détenteur*)

**overissue** means the issue of debt obligations in excess of any maximum number of debt obligations that the issuer is authorized by a trust indenture to issue. (*émission excédentaire*)

**purchaser** means a person who takes an interest or right in a debt obligation by sale, mortgage, hypothec, pledge, issue, reissue, gift or any other voluntary transaction. (*acquéreur*)

**transfer** includes transmission by operation of law. (*transfert*)

**trust indenture** means a trust indenture as defined in subsection 104(1). (*acte de fiducie*)

**valid** means issued in accordance with the applicable law and the by-laws of the issuer, or validated under section 54. (*valide*)

### **Negotiable instruments**

(2) Except when a transfer is restricted and noted on a debt obligation in accordance with subsection 42(2), a debt obligation is a negotiable instrument.

### **Registered form**

(3) A debt obligation is in registered form if

- (a) it specifies a person who is entitled to the debt obligation or to the rights it evidences, and its transfer is capable of being recorded in a debt obligations register; or
- (b) it bears a statement that it is in registered form.

### **Order form**

(4) A debt obligation is in order form if, by its terms, it is payable to the order of a person specified with reasonable certainty in it or to a person to whom it is assigned.

### **Bearer form**

(5) A debt obligation is in bearer form if it is payable to bearer according to its terms and not by reason of an endorsement.

### **Guarantor or surety for issuer**

(6) A guarantor or, in Quebec, a surety for an issuer is deemed to be an issuer to the extent of the guarantee, whether or not the obligation is noted on the debt obligation.

## **Debt Obligation Certificates**

### **Debt obligation certificate**

38 An issuer shall provide a debt obligation holder, on request, with

- (a) a debt obligation certificate that complies with this Act; or
- (b) a non-transferable written acknowledgement of their right to obtain a debt obligation certificate.

### **Fee**

39 An issuer may charge a reasonable fee for a debt obligation certificate issued in respect of a transfer.

### **Jointly held debt obligations**

40 If debt obligations are held by more than one person,

- (a) an issuer is not required to issue more than one debt obligation certificate in respect of those debt obligations; and
- (b) delivery of a debt obligation certificate to one of the holders is sufficient delivery to them all.

### Signatures

**41 (1)** A debt obligation certificate shall be signed by at least one of the following persons, or a facsimile of the signature shall be reproduced on the certificate:

- (a) a director or officer of the issuer;
- (b) a transfer agent or branch transfer agent of the issuer, or an individual acting on their behalf; or
- (c) a trustee who certifies it in accordance with a trust indenture.

### Former director or officer

**(2)** An issuer may issue debt obligation certificates that contain the signature of a person who is no longer a director or officer and the validity of the certificate is not adversely affected.

### Contents of certificate

**42 (1)** The following information shall be stated on the face of each debt obligation certificate issued by an issuer:

- (a) the name of the issuer;
- (b) the words “Incorporated under the *Canada Not-for-profit Corporations Act*”, “constituée sous l’autorité de la *Loi canadienne sur les organisations à but non lucratif*”, “Subject to the *Canada Not-for-profit Corporations Act*” or “assujettie à la *Loi canadienne sur les organisations à but non lucratif*”;
- (c) the name of the person to whom it was issued unless it is in bearer form; and
- (d) the value represented by the certificate.

### Restrictions

**(2)** No restriction on transfer, lien or hypothec in favour of the issuer or unanimous member agreement is effective against a transferee of a debt obligation, issued by an issuer or by a body corporate before it is continued under this Act, who has no actual knowledge of the restriction, lien, hypothec or agreement unless it or a reference to it is noted conspicuously on the debt obligation certificate.

### Restrictions

**(3)** If the issued debt obligations of an issuer remain outstanding and are held by more than one person, the issuer shall not restrict the transfer or ownership of its debt obligations of any class or series.

### **Contents of certificate**

**43 (1)** Every debt obligation certificate, if the articles authorize more than one class or series of debt obligations, shall legibly

**(a)** state the rights, privileges, restrictions and conditions attached to the debt obligations of each class and series that exist when the debt obligation certificate is issued; or

**(b)** state that the class or series of debt obligations that it represents has rights, privileges, restrictions or conditions attached to it and that the issuer will provide a debt obligation holder, on demand and without charge, with a full copy of the text of the rights, privileges, restrictions and conditions attached to each class or series authorized to be issued.

### **Copy of text**

**(2)** If a debt obligation certificate contains a statement referred to in paragraph (1)(b), the issuer shall, on request, provide the debt obligation holder with the copy of the text referred to in that paragraph.

## **Registers**

### **Registers**

**44 (1)** A corporation that issues debt obligations shall maintain a debt obligations register in which it records the debt obligations issued by it in registered form, showing the prescribed information with respect to each class or series.

### **Location of register**

**(2)** The debt obligations register shall be maintained at the issuer's registered office or at any other place in Canada designated by the directors.

### **Branch registers**

**(3)** An issuer may maintain additional branch debt obligations registers in other places designated by the directors.

### **Contents of branch register**

**(4)** A branch debt obligations register shall only contain particulars of debt obligations issued or transferred at the branch. The same information shall also be recorded in the central register.

### **Production of certificates**

**(5)** An issuer, its agent or mandatary, or a trustee as defined in subsection 104(1) is not required to produce a cancelled debt obligation certificate in registered form after the prescribed period.

### **Agent or mandatary**

**45** An issuer may appoint an agent or mandatary to maintain debt obligations registers on its behalf.

### **Registration**

**46** The registration of the issue or transfer of a debt obligation in any debt obligations register is complete and valid registration for all purposes.

### **Trustee**

**47** An issuer or a trustee as defined in subsection 104(1) may treat the person whose name appears on the debt obligations register as the debt obligation's owner for all purposes.

### **Constructive registered holder**

**48** If an issuer restricts the right to transfer its debt obligations, the issuer may, despite section 47, treat a person as the registered holder of a debt obligation if the person provides the issuer with evidence that meets the requirements of the issuer that the person is

**(a)** the heir or legatee of a deceased debt obligation holder or the fiduciary of the estate or succession of a deceased debt obligation holder or of a registered debt obligation holder who is a minor, an incapable person or a missing person; or

**(b)** a liquidator of, or a trustee in bankruptcy for, a registered debt obligation holder.

### **Proof of ownership**

**49** An issuer shall treat a person, other than one described in section 48, as being entitled to exercise the rights and privileges attached to a debt obligation if the person provides proof that the person has acquired ownership of the debt obligation by operation of law or has legal authority to exercise the rights and privileges.

### **Joint holder**

**50** If satisfactory proof of the death of a joint holder of a debt obligation with a right of survivorship is provided to an issuer, the issuer may treat any surviving joint holder as the owner of the debt obligation.

### **Duties of issuer**

**51** An issuer is not required to inquire into the existence of, or see to the performance of, any duty owed to a third person by a registered holder, or a person who may be treated as a registered holder, of a debt obligation.

**Minors**

**52** If a minor exercises a right of ownership in a debt obligation of an issuer, no subsequent repudiation or avoidance or, in Quebec, nullity or reduction of obligations is effective against the issuer.

**Deceased owner**

**53 (1)** Subject to any applicable law relating to the collection of taxes, a person who is an heir or a fiduciary of an estate or succession of a deceased debt obligation holder is entitled to become the registered holder or to designate a registered holder if the person deposits the following information with the issuer or its transfer agent, together with any reasonable assurances that the issuer may require:

- (a) the debt obligation certificate or, in default of one, a document proving that the deceased was the debt obligation holder;
- (b) a document proving the death of the debt obligation holder; and
- (c) a document proving that the heir or fiduciary has the right under the law of the place in which the deceased was domiciled immediately before their death to deal with the debt obligation.

**Endorsement**

**(2)** A debt obligation certificate referred to in paragraph (1)(a) shall be endorsed

- (a) in the case of a transfer to an heir or fiduciary, by that person; and
- (b) in any other case, in a manner acceptable to the issuer.

**Right of issuer**

**(3)** Deposit of the documents required by subsection (1) empowers an issuer or its transfer agent to record in a debt obligations register the transmission of a debt obligation from the deceased holder to the heir or fiduciary or to any person that the heir or fiduciary may designate and to treat the person who becomes a registered holder as the owner of the debt obligation.

**Overissue**

**54 (1)** Subject to this section, the provisions of this Part that validate a debt obligation or compel its issue or reissue do not apply if the validation, issue or reissue of a debt obligation would result in overissue.

**Identical debt obligation**



**(2)** A person who is entitled to a validation or issue may, if there has been an overissue and if a valid debt obligation that is similar in all respects to the debt obligation involved in the overissue is reasonably available for purchase, compel the issuer to purchase and deliver that debt obligation against the surrender of the debt obligation that the person holds.

**If identical debt obligation not available**

**(3)** If a valid debt obligation that is similar in all respects to the debt obligation involved in the overissue is not reasonably available for purchase, the person who is entitled to the validation or issue may recover from the issuer an amount equal to the price the last purchaser for value paid for the invalid debt obligation.

**Increase in capital**

**(4)** The overissued debt obligations are valid from the date they were issued only if the issuer increases the number of its authorized debt obligations to a number equal to or greater than the number of debt obligations previously authorized plus the number of the debt obligations overissued.

## Proceedings

**Rules of action**

**55** The following rules apply in an action on a debt obligation:

**(a)** each signature on the debt obligation certificate or in a necessary endorsement is admitted unless specifically denied in the pleadings;

**(b)** a signature on the debt obligation is presumed to be genuine and authorized but, if the effectiveness of the signature is in issue, the burden of establishing that it is genuine and authorized is on the party claiming under the signature;

**(c)** if a signature is admitted or established, production of a debt obligation certificate entitles the holder to recover on it unless the other party establishes a defence or defect going to the validity of the debt obligation; and

**(d)** if the other party establishes the defence or defect, the plaintiff has the burden of establishing that the defence or defect is ineffective against the plaintiff or some other person under whom the claim is made.

## Delivery

**Delivery of debt obligations**

**56 (1)** A person who is required to deliver debt obligations may deliver any debt obligation of the specified issue

**(a)** in bearer form;

**(b)** in registered form in the name of the transferee; or

**(c)** endorsed to the person or in blank.

### **Limitation**

**(2)** Subsection (1) is subject to any agreement to the contrary, to any applicable Act of Parliament or of the legislature of a province, to any applicable regulation or to any applicable rule of a stock exchange or other regulatory body.

## **General**

### **Incorporation by reference**

**57 (1)** The terms of a debt obligation include those stated on the debt obligation and those incorporated by reference to another document, an Act of Parliament or of the legislature of a province, a regulation, a rule or an order to the extent that the incorporated terms do not conflict with those stated on the debt obligation.

### **Purchaser without notice**

**(2)** Subsection (1) applies to a good faith purchaser but the incorporation by reference is itself not notice of a defect to the purchaser even if the debt obligation expressly states that a person accepting it admits that notice.

### **Validity of debt obligation**

**58** A debt obligation is valid in the hands of a good faith purchaser.

### **Defence**

**59** Subject to section 62, the fact that a debt obligation is not genuine is a complete defence for the issuer even against a good faith purchaser.

### **Defences**

**60** All other defences of an issuer, including non-delivery and conditional delivery of a debt obligation, are ineffective against a good faith purchaser.

### **Deemed notice**

**61 (1)** A purchaser is deemed to have notice of any defect in the issue of a debt obligation or any defence of the issuer if the debt obligation becomes stale within the meaning of subsection (2).

### **Stale debt obligation**

**(2)** A debt obligation becomes stale if

**(a)** the purchaser takes the debt obligation later than the prescribed period that is after

(i) the date on which performance of the principal obligation evidenced by the debt obligation was due, or

(ii) the date on or after which the debt obligation is to be presented or surrendered for redemption or exchange; or

(b) the payment of money or the delivery of debt obligations is required in order to present or surrender the debt obligation, the money or debt obligations are available on the day for the payment or delivery and the purchaser takes the debt obligation later than the prescribed period that is after that day.

### **Unauthorized signature**

**62 (1)** Subject to subsection (2), an unauthorized signature on a debt obligation is ineffective.

### **Limited effectiveness**

**(2)** An unauthorized signature on a debt obligation is effective in favour of a good faith purchaser if the signature was made by

(a) an authenticating trustee, transfer agent or other person entrusted by the issuer with the duty to sign the debt obligation, or similar debt obligations, or to prepare them for signing; or

(b) an employee of the issuer or a person referred to in paragraph (a) who handles the debt obligation in the ordinary course of their duties.

### **Completion of debt obligation**

**63** If a debt obligation contains the signatures necessary for its issue or transfer but is incomplete in another respect, any person may complete it in accordance with their authority.

### **Enforceability**

**64** A debt obligation that was completed incorrectly is enforceable by a good faith purchaser.

### **Fraud**

**65** A completed debt obligation that was improperly altered, even if fraudulently altered, remains enforceable but only according to its original terms.

### **Guarantees**

**66 (1)** A person signing a debt obligation as an authenticating trustee, transfer agent or other person entrusted by the issuer with the duty to sign the debt obligation guarantees to a good faith purchaser that

(a) the debt obligation is genuine;

- (b)** the person's acts in connection with the debt obligation are within the person's authority; and
- (c)** the person has reasonable grounds for believing that the debt obligation is in the form and within the amount the issuer is authorized to issue.

### **Liability**

**(2)** Unless agreed otherwise, a person referred to in subsection (1) does not assume any further liability for the validity of the debt obligation.

### **Acquisition of rights**

**67 (1)** On delivery of a debt obligation, the purchaser of the debt obligation acquires the rights in it that the transferor had or had authority to convey.

### **Claim free**

**(2)** A good faith purchaser of a debt obligation acquires it free from any adverse claim.

### **No better position**

**(3)** A purchaser who was a party to a fraud or illegality affecting a debt obligation or who, as a prior holder, had notice of an adverse claim does not have a better position by taking from a later good faith purchaser.

### **Limitation of the purchase**

**68** A purchaser acquires rights only to the extent of the interest or right purchased.

### **Deemed notice**

**69 (1)** A purchaser of a debt obligation, or a broker for a seller or purchaser, is deemed to have notice of an adverse claim if

- (a)** the debt obligation has been endorsed "for collection" or "for surrender" or for a purpose other than transfer; or
- (b)** the debt obligation is in bearer form and has a statement on it that it belongs to a person other than the transferor.

### **Name**

**(2)** The mere writing of a name on a debt obligation is not a statement for the purposes of paragraph (1)(b).

### **No duty to inquire**

**70 (1)** A purchaser of a debt obligation, or a broker for a seller or purchaser, has no duty to inquire into the rightfulness of the transfer and, subject to sections 69 and 71, has no notice of an adverse claim.

### **Third party holding**

**(2)** Subsection (1) applies even if the purchaser or broker has notice that the debt obligation is held by a third person or is registered in the name of or endorsed by a fiduciary.

### **Deemed notice**

**71** A purchaser or broker who knows that the transaction is for the personal benefit of the fiduciary or is otherwise in breach of the fiduciary's duty is deemed to have notice of an adverse claim.

### **Staleness**

**72 (1)** The following events do not constitute notice of an adverse claim except if the debt obligation becomes stale within the meaning of subsection (2):

- (a)** an event that creates a right to performance of the principal obligation evidenced by the debt obligation; or
- (b)** an event that sets the date on or after which the debt obligation is to be presented or surrendered for redemption or exchange.

### **Staleness of debt obligation**

**(2)** A debt obligation becomes stale if

- (a)** the purchaser takes the debt obligation later than the prescribed period that is after
  - (i)** the date on which performance of the principal obligation evidenced by the debt obligation was due, or
  - (ii)** the date on or after which the debt obligation was to be presented or surrendered for redemption or exchange; or
- (b)** the payment of money or the delivery of debt obligations is required in order to present or surrender the debt obligation, the money or debt obligations are available on the day for the payment or delivery and the purchaser takes the debt obligation later than the prescribed period that is after that day.

### **Guarantee**

**73 (1)** A person who presents a debt obligation for registration of transfer or for payment or exchange guarantees to the issuer that the person is entitled to do so.

### **Limitation on guarantee**

**(2)** A good faith purchaser who receives a new, reissued or re-registered debt obligation and who registers a transfer guarantees only that the purchaser has no knowledge of any unauthorized signature in a necessary endorsement.

### **Content of guarantee**

**74** A person who transfers a debt obligation to a purchaser for value guarantees by the transfer only that

- (a)** the transfer is effective and rightful;
- (b)** the debt obligation is genuine and has not been materially altered; and
- (c)** the person knows of nothing that might impair the validity of the debt obligation.

### **Guarantee of intermediary**

**75** An intermediary delivering a debt obligation to a purchaser who knows that the intermediary is an intermediary guarantees only its good faith.

### **Guarantee of broker**

**76** A broker shall give to a customer, to the issuer and to a purchaser the guarantees provided in sections 73 to 75 and has the rights and privileges of a purchaser under those sections, and those guarantees of and in favour of the broker acting as an agent or mandatary are in addition to guarantees given by the customer and guarantees given in favour of the customer.

### **Right to compel endorsement**

**77** If a registered debt obligation is delivered to a purchaser without a necessary endorsement, the purchaser has the right to demand the endorsement. The purchaser becomes a good faith purchaser after the endorsement.

### **Definition of *appropriate***

**78 (1)** In section 79, subsections 86(1) and 94(1) and section 98, ***appropriate***, with respect to a person, means that the person is

- (a)** the person who is specified by the debt obligation or by a special endorsement to be entitled to the debt obligation;
- (b)** if the person described in paragraph (a) is described as a fiduciary but is no longer serving as one, either that person or their successor;
- (c)** if the debt obligation or endorsement mentioned in paragraph (a) specifies more than one person as fiduciaries and one or more of those persons is no longer a fiduciary, the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified;

- (d) if the person described in paragraph (a) is an individual and is without capacity to act by reason of death, minority or incapability, the person's fiduciary;
- (e) if the debt obligation or endorsement mentioned in paragraph (a) specifies more than one person with a right of survivorship and by reason of death not all of the persons can sign, the survivor or survivors;
- (f) a person who has the legal power to sign; or
- (g) to the extent that a person described in any of paragraphs (a) to (f) may act through an agent or mandatary, the person's authorized agent or mandatary.

### **Time for determination**

**(2)** The authority of a person signing is determined as of the time of signing.

2009, c. 23, s. 78; 2018, c. 8, s. 99.

### **Endorsement**

**79 (1)** An endorsement of a debt obligation in registered form for the purposes of assignment or transfer is made when an appropriate person signs either the debt obligation or a separate document, or when the signature of an appropriate person is written without more on the back of the debt obligation.

### **Blank or special**

**(2)** An endorsement may be in blank or special.

### **Blank endorsement**

**(3)** An endorsement in blank includes an endorsement to bearer.

### **Special endorsement**

**(4)** A special endorsement specifies the person to whom the debt obligation is to be transferred or who has power to transfer it.

### **Right of holder**

**(5)** A holder may convert an endorsement in blank into a special endorsement.

### **Immunity of endorser**

**80** Unless agreed otherwise, the endorser does not, by the endorsement, assume any obligation that the debt obligation will be honoured by the issuer.

### **Partial endorsement**

**81** An endorsement purporting to be an endorsement of only part of a debt obligation representing units intended by the issuer to be separately transferable is effective to the extent of the endorsement.

**Effect of failure by fiduciary to comply**

**82** Failure of a fiduciary to comply with the document that is the source of the fiduciary's power or with the law of the jurisdiction governing the fiduciary relationship does not render the fiduciary's endorsement unauthorized for the purposes of this Part.

**Effect of endorsement**

**83** An endorsement of a debt obligation does not constitute a transfer until delivery of the debt obligation on which it appears or, if the endorsement is on a separate document, until delivery of both the debt obligation and the document.

**Endorsement in bearer form**

**84** An endorsement of a debt obligation in bearer form may give notice of an adverse claim under section 69 but does not otherwise affect any of the holder's rights.

**Effect of unauthorized endorsement**

**85 (1)** The owner of a debt obligation may assert the ineffectiveness of an endorsement against the issuer or a purchaser, other than a purchaser for value without notice of an adverse claim who has in good faith received a new, reissued or re-registered debt obligation on registration of transfer, unless the owner

- (a) has ratified an unauthorized endorsement of the debt obligation; or
- (b) is otherwise precluded from impugning the effectiveness of an unauthorized endorsement.

**Liability of issuer**

**(2)** An issuer who registers the transfer of a debt obligation on an unauthorized endorsement is liable for improper registration.

**Warranties of guarantor of signature**

**86 (1)** A person who guarantees the signature of an endorser of a debt obligation warrants that, at the time of signing, the signer was an appropriate person to endorse and the signature was genuine.

**Limitation of liability**

**(2)** A person who guarantees the signature of an endorser does not otherwise warrant the rightfulness of the transfer to which the signature relates.

**Warranties of guarantor of endorsement**

**(3)** A person who guarantees the endorsement of a debt obligation warrants both the signature and the rightfulness, in all respects, of the transfer to which the signature relates, but an issuer may not require a guarantee of endorsement as a condition to registration of transfer.



**Extent of liability**

**(4)** If a guarantee referred to in subsection (1) or (3) is made to any person who, relying on the guarantee, takes or deals with the debt obligation, the guarantor is liable to the person for any loss resulting from breach of warranty.

**Presumption of delivery**

**87** Delivery of a debt obligation to a purchaser occurs when

- (a)** the purchaser or a person designated by the purchaser acquires possession of it;
- (b)** the purchaser's broker acquires possession of a debt obligation specially endorsed to or issued in the name of the purchaser;
- (c)** the purchaser's broker sends the purchaser confirmation of the purchase and the broker in the broker's records identifies a specific debt obligation as belonging to the purchaser; or
- (d)** in respect of an identified debt obligation to be delivered while still in the possession of a third person, that person acknowledges that it is held for the purchaser.

**Presumption of ownership**

**88 (1)** A purchaser is the owner of a debt obligation held for the purchaser by a broker, but a purchaser is not a holder except in the cases described in paragraphs 87(b) and (c).

**Ownership of part of fungible bulk**

**(2)** If a debt obligation is part of a fungible bulk, by nature or usage of trade, a purchaser of the debt obligation is the owner of the proportionate share in the bulk.

**Notice to debt obligations broker of adverse claim**

**(3)** Notice of an adverse claim received by a broker or by a purchaser after the broker takes delivery as a holder for value is not effective against the broker or the purchaser, except that, as between the broker and the purchaser, the purchaser may demand delivery of an equivalent debt obligation in respect of which no notice of an adverse claim has been received.

**Delivery of debt obligation**

**89 (1)** Unless agreed otherwise, if a sale of a debt obligation is made through brokers, on a stock exchange or otherwise,

- (a)** the selling customer fulfils their duty to deliver when the customer delivers the debt obligation to the selling broker or to a person designated by the selling broker or when they cause an acknowledgement to be made to the selling broker that the debt obligation is held for the selling broker; and

**(b)** the selling broker, including a correspondence broker, acting for a selling customer fulfils their duty to deliver by delivering the debt obligation or a similar debt obligation to the buying broker or to a person designated by the buying broker or by effecting clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

### **Duty to deliver**

**(2)** Except as provided otherwise in this section and unless agreed otherwise, a transferor's duty to deliver a debt obligation under a contract of purchase is not fulfilled until the transferor delivers the debt obligation in negotiable form to the purchaser or to a person designated by the purchaser, or causes an acknowledgement to be made to the purchaser that the debt obligation is held for the purchaser.

### **Delivery to debt obligations broker**

**(3)** A sale to a broker purchasing for the broker's own account is subject to subsection (2) and not subsection (1), unless the sale is made on a stock exchange.

### **Right to reclaim possession**

**90 (1)** A person against whom the transfer of a debt obligation is wrongful may, against anyone except a good faith purchaser,

**(a)** reclaim possession of the debt obligation or obtain possession of a new debt obligation evidencing all or part of the same rights; or

**(b)** claim damages.

### **Recovery when unauthorized endorsement**

**(2)** If the transfer of a debt obligation is wrongful by reason of an unauthorized endorsement, the owner may reclaim possession of the debt obligation or a new debt obligation even from a good faith purchaser if the ineffectiveness of the purported endorsement is asserted against the purchaser under section 85.

### **Right to requisites for registration**

**91 (1)** Unless agreed otherwise, a transferor shall, on demand, supply a purchaser with proof of the transferor's authority to transfer a debt obligation or with any other requisite that is necessary to obtain registration of the transfer of a debt obligation, but if the transfer is not for value, it is not necessary for the transferor to provide authority to transfer unless the purchaser pays the reasonable and necessary costs of the proof and transfer.

### **Rescission of transfer**

**(2)** If a transferor fails to comply with a demand under subsection (1) within a reasonable time, the purchaser may reject, rescind or resolve the transfer.

**Seizure of debt obligation**

**92** No seizure of a debt obligation or other interest or right evidenced by the debt obligation is effective until the person making the seizure obtains possession of the debt obligation.

**Not liable if good faith delivery**

**93** An agent or mandatary, or a bailee, who in good faith has received debt obligations and sold, pledged or delivered them according to the instructions of the principal or mandator is not in breach of their duties as a fiduciary or otherwise liable even though they have no right to dispose of the debt obligations.

**Duty to register transfer**

**94 (1)** If a debt obligation in registered form is presented for transfer, the issuer shall register the transfer if

- (a) the debt obligation is endorsed by an appropriate person;
- (b) reasonable assurance is given that the endorsement is genuine and effective;
- (c) the issuer has no duty to inquire into adverse claims or has discharged that duty;
- (d) all applicable laws relating to the collection of taxes have been complied with;
- (e) the transfer is rightful or is to a good faith purchaser; and
- (f) any transfer fee referred to in section 39 has been paid.

**Liability for delay**

**(2)** An issuer who has a duty to register a transfer of a debt obligation is liable to the person presenting it for registration for any loss resulting from an unreasonable delay in registration or from the failure or refusal to register the transfer.

**Assurance of endorsement**

**95 (1)** An issuer may require an assurance that each necessary endorsement on a debt obligation is genuine and effective by requiring a guarantee of the signature of the person endorsing the debt obligation and by requiring

- (a) if the endorsement is by an agent or mandatary, reasonable assurance of authority to sign;
- (b) if the endorsement is by a fiduciary, evidence of appointment or incumbency;
- (c) if there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and
- (d) in any other case, assurance that corresponds as closely as is feasible to the cases set out in paragraphs (a) to (c).

**Sufficiency of guarantee**

**(2)** For the purpose of subsection (1), a guarantee of the signature of a person is sufficient if it is signed by or on behalf of a person whom the issuer believes, on reasonable grounds, to be a responsible person.

**Standards**

**(3)** An issuer may adopt reasonable standards to determine responsible persons.

**Sufficiency of evidence of appointment or incumbency**

**(4)** For the purpose of paragraph (1)(b), the following constitute sufficient evidence of appointment or incumbency of a fiduciary:

**(a)** in the case of a fiduciary of a deceased debt obligation holder's estate or succession, a certified or notarial copy of the document referred to in paragraph 53(1)(c) and dated not earlier than the first day of the prescribed period before a debt obligation is presented for transfer; or

**(b)** in the case of any other fiduciary, a copy of a document showing the appointment or other evidence believed by the issuer to be appropriate.

**Standards**

**(5)** An issuer may adopt reasonable standards with respect to evidence referred to in paragraph (4)(b).

**No notice to issuer**

**(6)** An issuer is deemed not to have notice of the contents of a document referred to in subsection (4) that is obtained by the issuer except to the extent that the contents relate directly to appointment or incumbency.

**Notice from additional documentation**

**96** If an issuer, in relation to a transfer, demands assurance other than an assurance specified in subsection 95(1) and obtains a copy of a will, trust or partnership agreement or a by-law or similar document, the issuer is deemed to have notice of all matters contained in the document that affect the transfer.

**Limited duty of inquiry**

**97 (1)** An issuer to whom a debt obligation is presented for registration has a duty to inquire into adverse claims if

**(a)** the issuer receives written notice of an adverse claim at a time and in a manner that provide the issuer with a reasonable opportunity to act on it before the issue of a new, reissued or re-registered debt obligation and the notice discloses the name and address of

the claimant, the registered owner and the issue of which the debt obligation is a part; or

**(b)** the issuer is deemed to have notice of an adverse claim from a document that it obtained under section 96.

### **Discharge of duty**

**(2)** An issuer may discharge a duty of inquiry by any reasonable means, including notifying an adverse claimant by registered mail sent to the address provided by the adverse claimant or, if no such address has been provided, to the adverse claimant's residence or regular place of business, that a debt obligation has been presented for registration of transfer by a named person and that the transfer will be registered unless, no later than the prescribed period after the date of sending the notice, the issuer

**(a)** is served with a court order; or

**(b)** is provided with an indemnity bond or, in Quebec, a guarantee sufficient in the issuer's judgement to protect the issuer and any transfer agent or other agent or mandatary of the issuer from any loss that may be incurred by any of them as a result of complying with the adverse claim.

### **Inquiry into adverse claim**

**98** Unless an issuer is deemed to have notice of an adverse claim from a document that is obtained under section 96 or has received notice of an adverse claim under subsection 97(1), if a debt obligation presented for registration is endorsed by an appropriate person, the issuer has no duty to inquire into adverse claims and, in particular,

**(a)** an issuer registering a debt obligation in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent or correct description of the fiduciary relationship and the issuer may then assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such with respect to the particular debt obligation;

**(b)** an issuer registering a transfer on an endorsement by a fiduciary has no duty to inquire into whether the transfer is made in compliance with the document or with the law of the jurisdiction governing the fiduciary relationship; and

**(c)** an issuer is deemed not to have notice of the contents of a court record or a registered document even if the record or document is in the issuer's possession and the transfer is made on the endorsement of a fiduciary to the fiduciary specifically or to the fiduciary's nominee.

### **Duration of notice of adverse claim**

**99** A written notice of adverse claim received by an issuer is effective for the prescribed period unless the notice is renewed in writing.

**Limitation on issuer's liability**

**100 (1)** Except as provided otherwise in any applicable law relating to the collection of taxes, an issuer is not liable to the owner or any other person who incurs a loss as a result of the registration of a transfer of a debt obligation if

- (a) the necessary endorsements were on or with the debt obligation; and
- (b) the issuer had no duty to inquire into adverse claims or had discharged that duty.

**Duty of issuer on wrongful registration**

**(2)** If an issuer has registered a transfer of a debt obligation to a person not entitled to it, the issuer shall on demand deliver a similar debt obligation to the owner unless

- (a) the issuer is not liable by virtue of subsection (1);
- (b) the owner is precluded by subsection 101(1) from asserting a claim; or
- (c) the delivery would result in an overissue to which section 54 applies.

**Lost or stolen debt obligation**

**101 (1)** The owner of a debt obligation who fails to notify the issuer of an adverse claim, in writing, within a reasonable time after the owner knows of the loss, apparent destruction or wrongful taking of the debt obligation is precluded from asserting against the issuer a claim to a new debt obligation if the issuer has registered a transfer of the debt obligation.

**Duty to issue new debt obligation**

**(2)** If the owner of a debt obligation claims that the debt obligation has been lost, destroyed or wrongfully taken, the issuer shall issue a new debt obligation in place of the original one if the owner

- (a) so requests before the issuer has notice that the debt obligation has been acquired by a good faith purchaser;
- (b) provides the issuer with a sufficient indemnity bond or, in Quebec, a sufficient guarantee; and
- (c) satisfies any other reasonable requirements imposed by the issuer.

**Duty to register transfer**

**(3)** If, after the issue of a new debt obligation under subsection (2), a good faith purchaser of the original debt obligation presents the original one for registration of transfer, the issuer shall register the transfer unless registration would result in an overissue to which section 54 applies.

**Right of issuer to recover**

**(4)** In addition to the rights that an issuer has by reason of an indemnity bond or, in Quebec, a guarantee, the issuer may recover the new debt obligation issued under subsection (2) from the person to whom it was issued or any person taking under that person other than a good faith purchaser.

### Duty

**102** An authenticating trustee, transfer agent or other agent or mandatary of an issuer has, in respect of the issue, registration of transfer and cancellation of a debt obligation of the issuer,

**(a)** a duty to the issuer to exercise good faith and reasonable diligence; and

**(b)** the same obligations to the holder or owner of the debt obligation and the same rights, privileges and immunities as the issuer.

### Notice to agent or mandatary

**103** Notice to an authenticating trustee, transfer agent or other agent or mandatary of an issuer is notice to the issuer in respect of the functions performed by the agent or mandatary.

## PART 7

# Trust Indentures

### Definitions

**104 (1)** The following definitions apply in this Part.

**event of default** means an event specified in a trust indenture on the occurrence of which a security interest effected by the trust indenture becomes enforceable, or the principal, interest or other money payable under the trust indenture becomes or may be declared to be payable before maturity, once all conditions — such as the giving of notice or the lapse of time — provided for by the trust indenture in connection with the event have been satisfied. (*défaut*)

**trustee** means any person appointed as trustee, including the administrator of the property of others, under the terms of a trust indenture to which a corporation is a party and includes any successor trustee. (*fiduciaire*)

**trust indenture** means any deed, indenture or other instrument or act, including any supplement or amendment to one, made by a corporation after its incorporation or continuance under this Act, under which the corporation issues debt obligations and in which a person is appointed as trustee for the holders of the debt obligations issued under the deed, indenture or other instrument. (*acte de fiducie*)

### Application

**(2)** This Part applies to a trust indenture if the debt obligations issued or to be issued under the trust indenture are part of a distribution to the public.

### **Application for exemption**

**(3)** On application, the Director may exempt a trust indenture from the application of this Part if the trust indenture, the debt obligations issued under it and the security interest effected by it are subject to a law of a province or a country other than Canada that is substantially equivalent to this Part.

### **Conflict of interest**

**105 (1)** No person shall accept an appointment as trustee if there is a material conflict of interest between their role as trustee and their role in any other capacity.

### **Eliminating conflict of interest**

**(2)** A trustee shall, within the prescribed period after becoming aware that a material conflict of interest exists, eliminate the conflict of interest or resign.

### **Validity**

**(3)** A trust indenture, any debt obligations issued under it and a security interest effected by it are valid despite a material conflict of interest of the trustee.

### **Removal of trustee**

**(4)** The court may, on the application of an interested person, order, on any terms that it thinks fit, that a trustee who has contravened subsection (1) or (2) be replaced.

### **Qualification of trustee**

**106** A trustee, or at least one of the trustees if more than one is appointed, shall be a body corporate incorporated under the laws of Canada or a province and authorized to carry on the business of a trust company.

### **List of debt obligation holders**

**107 (1)** A holder of debt obligations issued under a trust indenture may, on payment to the trustee of any reasonable fee and on sending to the trustee the statutory declaration referred to in subsection (4), require the trustee to furnish, within the prescribed period, a list of debt obligation holders setting out the prescribed information and updated in accordance with the regulations.

### **Duty of issuer**

**(2)** On the demand of a trustee, the issuer of debt obligations shall furnish the trustee with the information required to enable the trustee to comply with subsection (1).



**Corporate applicant**

**(3)** If the applicant is a body corporate, the statutory declaration shall be made by a director or officer of the body corporate.

**Contents of statutory declaration**

**(4)** The statutory declaration shall

- (a)** state the name and address of the applicant and, if the applicant is a body corporate, its address for service; and
- (b)** state that the list will not be used except as permitted under subsection (5).

**Use of list**

**(5)** A list obtained under this section shall not be used by any person except in connection with

- (a)** an effort to influence the voting of the holders of debt obligations;
- (b)** an offer to acquire debt obligations; or
- (c)** any other matter relating to the debt obligations or the affairs of the issuer, the guarantor or, in Quebec, the surety of the debt obligations.

**Evidence of compliance**

**108 (1)** An issuer, a guarantor or, in Quebec, a surety of debt obligations issued or to be issued under a trust indenture shall, before taking any of the following actions, provide the trustee with evidence of compliance with the conditions, if any, in the trust indenture for taking that action:

- (a)** the issue, certification or delivery of debt obligations under the trust indenture;
- (b)** the release or release and substitution of property subject to a security interest effected by the trust indenture; or
- (c)** the satisfaction and discharge of the trust indenture.

**Duty of issuer, guarantor or surety**

**(2)** On the demand of a trustee, the issuer, the guarantor or, in Quebec, the surety of debt obligations issued or to be issued under a trust indenture shall provide the trustee with evidence of compliance with the trust indenture by the issuer, guarantor or surety in respect of any act to be done by the trustee at their request.

**Contents of declaration, etc.**

**109** Evidence of compliance as required by section 108 shall consist of a statutory declaration or certificate made by a director or an officer of the issuer, the guarantor or, in Quebec, the surety stating that the conditions referred to in that section have been complied with. If compliance with any of those conditions is subject to review by legal counsel, evidence of

compliance also includes an opinion of legal counsel that those conditions have been complied with. If compliance with any of those conditions is subject to review by an auditor or accountant, evidence of compliance also includes an opinion or report of the public accountant of the issuer, guarantor or surety, or any other accountant that the trustee selects, that those conditions have been complied with.

### **Further evidence of compliance**

**110** The evidence of compliance referred to in section 109 shall include a statement by the person giving the evidence

- (a) declaring that they have read and understand the conditions of the trust indenture referred to in section 108;
- (b) describing the nature and scope of the examination or investigation on which the statutory declaration, certificate, opinion or report is based; and
- (c) declaring that they have made the examination or investigation that they believe necessary to enable them to make their statutory declaration, certificate, opinion or report.

### **Trustee may require evidence of compliance**

**111 (1)** On the demand of a trustee, the issuer, the guarantor or, in Quebec, the surety of debt obligations issued under a trust indenture shall provide the trustee with evidence in any form that the trustee may require for compliance with any condition relating to any action required or permitted to be taken by the issuer, guarantor or surety under the trust indenture.

### **Certificate of compliance**

**(2)** At least once in each prescribed period beginning on the date of the trust indenture and at any other time on the demand of a trustee, the issuer, the guarantor or, in Quebec, the surety of debt obligations issued under a trust indenture shall provide the trustee with

- (a) a certificate that the issuer, the guarantor or, in Quebec, the surety has complied with all requirements contained in the trust indenture that, if not complied with, would, with the giving of notice, lapse of time or otherwise, constitute an event of default; or
- (b) a certificate of the particulars of any failure to comply with the requirements.

### **Notice of default**

**112** The trustee shall give notice to the holders of debt obligations issued under a trust indenture of every event of default arising under the trust indenture and continuing at the time the notice is given, unless the trustee reasonably believes that it is in the best interests of the holders of the debt obligations to withhold the notice and so informs in writing the issuer, the guarantor or, in Quebec, the surety. The notice shall be given within the prescribed period.

### **Duties of trustee**

**113** A trustee in exercising their powers and discharging their duties shall

- (a) act honestly and in good faith with a view to the best interests of the holders of the debt obligations issued under the trust indenture; and
- (b) exercise the care, diligence and skill of a reasonably prudent trustee.

#### **Reliance on statements**

**114** Despite section 113, a trustee is not liable if they rely in good faith on statements contained in a statutory declaration, certificate, opinion or report that complies with this Act or the trust indenture.

#### **No exculpation**

**115** No term of a trust indenture or of any agreement between a trustee and the holders of debt obligations issued under the trust indenture or between the trustee and the issuer, the guarantor or, in Quebec, the surety shall operate so as to relieve a trustee from the duties imposed on the trustee by section 113.

## **PART 8**

# **Receivers, Receiver-managers and Sequestrators**

#### **Functions of receiver or sequestrator**

**116** A receiver or sequestrator of any property of a corporation may, subject to the rights of secured creditors, receive the income from the property, pay the liabilities connected with the property and realize the security interest of those on behalf of whom the receiver or sequestrator is appointed, but, except to the extent permitted by a court, the receiver or sequestrator may not carry on the activities of the corporation.

#### **Functions of receiver-manager**

**117** A receiver-manager of the corporation may carry on any activities of the corporation to protect the security interest of those on behalf of whom the receiver-manager is appointed.

#### **Directors' powers cease**

**118** If a receiver-manager or sequestrator is appointed by a court or under an instrument or act, the powers of the directors of the corporation that a receiver-manager or sequestrator is authorized to exercise may not be exercised by the directors until the receiver-manager or sequestrator is discharged.

#### **Duty to act**

**119** A receiver, receiver-manager or sequestrator appointed by a court shall act in accordance with the orders of the court.

**Duty under instrument or act**

**120** A receiver, receiver-manager or sequestrator appointed under an instrument or act shall act in accordance with that instrument or act and any order of a court made under section 122.

**Duty of care**

**121** A receiver, receiver-manager or sequestrator of a corporation appointed under an instrument or act shall

- (a) act honestly and in good faith; and
- (b) deal with any property of the corporation in their possession or control in a commercially reasonable manner.

**Orders given by court**

**122** On the application of a receiver, receiver-manager or sequestrator, whether appointed by a court or under an instrument or act, or of any interested person, a court may make

- (a) an order appointing, replacing or discharging a receiver, receiver-manager or sequestrator and approving their accounts;
- (b) an order determining the notice to be given to any interested person or dispensing with notice to any person;
- (c) an order fixing the remuneration of the receiver, receiver-manager or sequestrator;
- (d) an order requiring the receiver, receiver-manager or sequestrator, or a person by or on behalf of whom the receiver, receiver-manager or sequestrator is appointed, to make good any default in connection with the receiver's, receiver-manager's or sequestrator's custody or management of the property and activities of the corporation, or relieving the receiver, receiver-manager or sequestrator, or a person by or on behalf of whom the receiver, receiver-manager or sequestrator was appointed, from any default on any terms that the court thinks fit;
- (e) an order confirming any act of the receiver, receiver-manager or sequestrator;
- (f) an order giving directions on any matter relating to the duties of the receiver, receiver-manager or sequestrator; and
- (g) any other order that it thinks fit.

**Duties of receiver and receiver-manager**

**123** A receiver or receiver-manager shall

- (a) immediately notify the Director of their appointment and discharge;
- (b) take into their custody and control the property of the corporation in accordance with the court order, instrument or act under which they are appointed;

- (c) open and maintain a bank account in their name as receiver or receiver-manager of the corporation for the money of the corporation coming under their control;
- (d) keep detailed accounts of all transactions carried out as receiver or receiver-manager;
- (e) keep accounts of their administration that shall be available during usual business hours for inspection by the directors of the corporation;
- (f) prepare at least once in every prescribed period after the date of their appointment financial statements of their administration as far as is practicable in the form required by section 172; and
- (g) on completion of their duties, render a final account of their administration in the form adopted for interim accounts under paragraph (f).

## **PART 9**

# **Directors and Officers**

### **Duty to manage or supervise management**

**124** Subject to this Act, the articles and any unanimous member agreement, the directors shall manage or supervise the management of the activities and affairs of a corporation.

### **Number of directors**

**125** A corporation shall have one or more directors, but a soliciting corporation shall not have fewer than three directors, at least two of whom are not officers or employees of the corporation or its affiliates.

### **Qualifications of directors**

**126 (1)** The following persons are disqualified from being a director of a corporation:

- (a) anyone who is less than 18 years of age;
- (b) anyone who is incapable;
- (c) a person who is not an individual; and
- (d) a person who has the status of a bankrupt.

### **Membership**

**(2)** Unless the by-laws otherwise provide, a director of a corporation is not required to be a member of the corporation.

### **No alternate directors**

**(3)** No person shall act for an absent director at a meeting of directors.

2009, c. 23, s. 126; 2018, c. 8, s. 100.

### **Organization meeting**

**127 (1)** After the issue of the certificate of incorporation, the directors of a corporation shall hold a meeting at which the directors may

- (a) make by-laws;
- (b) adopt forms of debt obligation certificates and corporate records;
- (c) authorize the issue of debt obligations;
- (d) appoint officers;
- (e) appoint a public accountant to hold office until the first annual meeting of members;
- (f) issue memberships;
- (g) make banking arrangements; and
- (h) transact any other business.

### **Exception**

**(2)** Subsection (1) does not apply to a body corporate to which a certificate of amalgamation has been issued under subsection 208(4) or to which a certificate of continuance has been issued under subsection 211(5).

### **Calling meeting**

**(3)** An incorporator or a director may call the meeting by giving notice of the time and place of the meeting to each director within the prescribed period.

### **Waiver of notice**

**(4)** A director may waive notice of the meeting, and attendance of a director at the meeting is a waiver of notice of the meeting, except if the director attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

### **Resolution in lieu of meeting**

**(5)** If all directors sign a resolution dealing with any matter referred to in paragraphs (1)(a) to (g), they are not required to hold the meeting referred to in subsection (1).

### **Filing resolution**

**(6)** A copy of the resolution shall be kept with the minutes of the meetings of directors.

### **Notice of directors**

**128 (1)** At the time of sending articles of incorporation, a notice of directors in the form that the Director fixes shall be sent to the Director.

#### **Term of office**

**(2)** Each director named in the notice holds office from the issue of the certificate of incorporation until the first meeting of members.

#### **Election of directors**

**(3)** Members shall, by ordinary resolution at each annual meeting at which an election of directors is required, elect directors to hold office for a term expiring within the prescribed period.

#### **Staggered terms**

**(4)** It is not necessary that all directors elected at a meeting of members hold office for the same term.

#### **No stated terms**

**(5)** A director not elected for an expressly stated term ceases to hold office at the close of the first annual meeting of members following the director's election.

#### **Incumbent directors**

**(6)** Despite subsections (2), (3) and (5), if directors are not elected at a meeting of members, the incumbent directors continue in office until their successors are elected.

#### **Vacancy among candidates**

**(7)** If a meeting of members fails to elect the number or the minimum number of directors required by the articles by reason of a lack of consent, a disqualification under section 126 or the death of any candidate, the directors elected at that meeting may exercise all the powers of the directors if the number of directors so elected constitutes a quorum.

#### **Appointment of directors**

**(8)** The directors may, if the articles of the corporation so provide, appoint one or more additional directors, who shall hold office for a term expiring not later than the close of the next annual meeting of members, but the total number of directors so appointed may not exceed one third of the number of directors elected at the previous annual meeting of members.

#### **Election or appointment as director**

**(9)** An individual who is elected or appointed to hold office as a director is not a director, and is deemed not to have been elected or appointed to hold office as a director, unless

(a) the individual was present at the meeting when the election or appointment took place and did not refuse to hold office as a director; or

(b) the individual was not present at the meeting when the election or appointment took place and

(i) consented to hold office as a director in writing before the election or appointment or within the prescribed period, or

(ii) has acted as a director after the election or appointment.

2009, c. 23, s. 128; 2018, c. 8, s. 101.

### **Ceasing to hold office**

**129 (1)** A director of a corporation ceases to hold office when the director dies, resigns, is removed in accordance with section 130 or becomes disqualified under section 126.

### **Effective date of resignation**

(2) A resignation of a director becomes effective at the time a written resignation is sent to the corporation or at the time specified in the resignation, whichever is later.

### **Removal of directors**

**130 (1)** The members of a corporation may by ordinary resolution at a special meeting remove any director or directors from office.

### **Exception**

(2) A director elected by a class or group of members that has an exclusive right to elect the director may only be removed by an ordinary resolution of those members.

### **Vacancy**

(3) A vacancy created by the removal of a director may be filled at the meeting of the members at which the director is removed or, if not so filled, may be filled under section 132.

### **Resignation or removal**

(4) If all of the directors have resigned or have been removed without replacement, a person who manages or supervises the management of the activities or affairs of the corporation is deemed to be a director for the purposes of this Act.

### **Exception**

(5) Subsection (4) does not apply to

(a) an officer who manages the activities or affairs of the corporation under the direction or control of a member or other person;



**(b)** a lawyer, a notary, an accountant or other professional who participates in the management of the corporation solely by providing professional services; or

**(c)** a trustee in bankruptcy, receiver, receiver-manager, sequestrator or secured creditor who participates in the management of the corporation or exercises control over its property solely for the purpose of the realization of security or, in the case of bankruptcy, the administration of a bankrupt's estate.

### **Statement of director**

**131 (1)** Subject to the by-laws, a director is entitled to submit to the corporation a written statement giving reasons for resigning or for opposing the removal or replacement of the director if a meeting is called for that purpose.

### **Circulating statement**

**(2)** A corporation shall immediately give notice to the members of the statement in the manner referred to in section 162.

### **Statement to Director**

**(3)** A corporation shall immediately send a copy of the statement to the Director.

### **Immunity**

**(4)** No corporation or person acting on its behalf incurs any liability by reason only of complying with this section.

### **Filling vacancy**

**132 (1)** Subject to subsections (4) and (5), a quorum of directors may fill a vacancy among the directors, except a vacancy resulting from an increase in the number or the minimum or maximum number of directors provided for in the articles or a failure to elect the number or minimum number of directors provided for in the articles.

### **Calling meeting**

**(2)** If there is not a quorum of directors or if there has been a failure to elect the number or minimum number of directors provided for in the articles, the directors then in office shall without delay call a special meeting of members to fill the vacancy and, if they fail to call a meeting or if there are no directors then in office, the meeting may be called by any member.

### **Order of appointment**

**(3)** If a corporation has neither directors nor members, the court may, on the application of an interested party, make an order appointing the required number or minimum number of directors provided for in the articles.

### **Director elected by class or group**

**(4)** If any class or group of members has an exclusive right to elect one or more directors and a vacancy occurs among those directors,

**(a)** subject to subsection (5), the remaining directors elected by the class or group may fill the vacancy, except a vacancy resulting from an increase in the number or the minimum or maximum number of directors provided for in the articles for that class or group or from a failure to elect the number or minimum number of directors provided for in the articles for the class or group; or

**(b)** if there are no remaining directors, any member of the class or group may call a meeting of the class or group to fill the vacancy.

### **Member filling vacancy**

**(5)** The by-laws may provide that a vacancy among the directors shall be filled only by a vote of the members, or by a vote of the members of any class or group having an exclusive right to elect one or more directors if the vacancy occurs among the directors elected by that class or group.

### **Unexpired term**

**(6)** A director appointed or elected to fill a vacancy holds office for the unexpired term of their predecessor.

### **Change in number of directors**

**133 (1)** The members of a corporation may amend the articles to increase or decrease the number of directors, or the minimum or maximum number of directors, but no decrease shall shorten the term of an incumbent director.

### **Election of directors where articles amended**

**(2)** If the members at a meeting adopt an amendment to the articles of a corporation to increase or decrease the number or minimum or maximum number of directors, the members may, at the meeting, elect the number of directors authorized by the amendment, and for that purpose, despite subsections 202(1) and 276(3), on the issue of a certificate of amendment the articles are deemed to be amended as of the date the members adopt the amendment.

### **Fixing the number of directors**

**(3)** If a minimum and maximum number of directors is provided for in the articles, the members may, from time to time by ordinary resolution, fix the number of directors of the corporation and the number of directors to be elected at annual meetings of the members or delegate those powers to the directors. No decrease in the number of directors shall shorten the term of an incumbent director.

### **Notice of change of director or director's address**

**134 (1)** A corporation shall send to the Director a notice, within the prescribed period and in the form that the Director fixes, setting out any change among its directors or of the address of a director.

#### **Director's change of address**

**(2)** A director shall, within the prescribed period, send the corporation a notice of any change in his or her address.

#### **Application to court**

**(3)** The court may, on the application of an interested person or the Director, make an order requiring a corporation to comply with subsection (1) and make any further order that it thinks fit.

#### **Attendance at meeting**

**135** A director is entitled to attend and be heard at every meeting of members.

#### **Meeting of directors**

**136 (1)** Unless the articles or by-laws otherwise provide, the directors may meet at any place and on any notice that the by-laws require.

#### **Quorum**

**(2)** Subject to the articles or by-laws, a majority of the number of directors or minimum number of directors required by the articles constitutes a quorum at any meeting of directors, and, despite any vacancy among the directors, a quorum of directors may exercise all the powers of the directors.

#### **Notice of meeting**

**(3)** A notice of a meeting of directors shall specify any matter referred to in subsection 138(2) that is to be dealt with at the meeting but, unless the by-laws otherwise provide, need not specify the purpose of or the business to be transacted at the meeting.

#### **Waiver of notice**

**(4)** A director may waive notice of a meeting of directors, and attendance of a director at a meeting of directors is a waiver of notice of the meeting, except if the director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

#### **Adjournment**

**(5)** Notice of an adjourned meeting of directors is not required to be given if the time and place of the adjourned meeting is announced at the original meeting.

**One director meeting**

**(6)** If a corporation has only one director, that director may constitute a meeting.

**Participation**

**(7)** Subject to the by-laws, a director may, in accordance with the regulations, if any, and if all the directors of the corporation consent, participate in a meeting of directors or of a committee of directors by means of a telephonic, an electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting. A director so participating in a meeting is deemed for the purposes of this Act to be present at that meeting.

**Decisions made by consensus**

**137 (1)** The by-laws may provide that the directors or members shall make any decision by consensus, including a decision required to be made by a vote, except a decision taken

- (a)** by a resolution referred to in subsection 182(1);
- (b)** by special resolution; or
- (c)** by a vote if consensus cannot be reached.

**Meaning of consensus, etc.**

**(2)** By-laws that provide for consensus decision-making shall define the meaning of consensus, provide for how to determine when consensus cannot be reached and establish the manner of referring any matter on which consensus cannot be reached to a vote.

**Voting requirements satisfied**

**(3)** A decision made by consensus in accordance with this section is deemed to satisfy any requirement under this Act for the taking of a vote.

**Delegation**

**138 (1)** Directors of a corporation may appoint from their number a managing director or a committee of directors and delegate to the managing director or committee any of the powers of the directors.

**Limits on authority**

- (2)** Despite subsection (1), no managing director and no committee of directors has authority to
- (a)** submit to the members any question or matter requiring the approval of members;
  - (b)** fill a vacancy among the directors or in the office of public accountant or appoint additional directors;
  - (c)** issue debt obligations except as authorized by the directors;

- (d) approve any financial statements referred to in section 172;
- (e) adopt, amend or repeal by-laws; or
- (f) establish contributions to be made, or dues to be paid, by members under section 30.

### **Validity of acts of directors and officers**

**139** An act of a director or an officer is valid despite an irregularity in their election or appointment or a defect in their qualification.

### **Validity of signed resolutions**

**140 (1)** A resolution in writing, signed by all the directors entitled to vote on that resolution at a meeting of directors or of a committee of directors, is as valid as if it had been passed at a meeting of directors or committee of directors.

### **Filing resolution**

**(2)** A copy of every resolution referred to in subsection (1) shall be kept with the minutes of the meetings of directors.

### **Evidence**

**(3)** Unless a ballot is demanded, an entry in the minutes of a meeting to the effect that the chairperson of the meeting declared a resolution to be carried or defeated is, in the absence of evidence to the contrary, proof of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

### **Disclosure of interest**

**141 (1)** A director or an officer of a corporation shall disclose to the corporation, in writing or by requesting to have it entered in the minutes of meetings of directors or of committees of directors, the nature and extent of any interest that the director or officer has in a material contract or material transaction, whether made or proposed, with the corporation, if the director or officer

- (a) is a party to the contract or transaction;
- (b) is a director or an officer, or an individual acting in a similar capacity, of a party to the contract or transaction; or
- (c) has a material interest in a party to the contract or transaction.

### **Time of disclosure for director**

- (2)** The disclosure required by subsection (1) shall be made, in the case of a director,
- (a) at the meeting at which a proposed contract or transaction is first considered;

- (b) if the director was not, at the time of the meeting referred to in paragraph (a), interested in the proposed contract or transaction, at the first meeting after the director becomes so interested;
- (c) if the director becomes interested after a contract or transaction is made, at the first meeting after the director becomes so interested; or
- (d) if an individual who is interested in a contract or transaction later becomes a director, at the first meeting after the individual becomes a director.

#### **Time of disclosure for officer**

(3) The disclosure required by subsection (1) shall be made, in the case of an officer who is not a director,

- (a) immediately after the officer becomes aware that the contract, transaction, proposed contract or proposed transaction is to be considered or has been considered at a meeting;
- (b) if the officer becomes interested after a contract or transaction is made, immediately after the officer becomes so interested; or
- (c) if an individual who is interested in a contract or transaction later becomes an officer, immediately after the individual becomes an officer.

#### **Time of disclosure for director or officer**

(4) If a material contract or material transaction, whether entered into or proposed, is one that, in the ordinary course of the corporation's activities, would not require approval by the directors or members, a director or an officer shall, immediately after they become aware of the contract or transaction, disclose in writing to the corporation, or request to have entered in the minutes of meetings of directors or of committees of directors, the nature and extent of their interest.

#### **Voting**

(5) A director required to make a disclosure under subsection (1) shall not vote on any resolution to approve the contract or transaction unless the contract or transaction

- (a) relates primarily to the director's remuneration as a director, an officer, an employee, an agent or a mandatary of the corporation or an affiliate;
- (b) is for indemnity or insurance under section 151; or
- (c) is with an affiliate.

#### **Continuing disclosure**

(6) For the purposes of this section, a general notice to the directors declaring that a director or an officer is to be regarded as interested, for any of the following reasons, in a contract or transaction made with a party, is a sufficient declaration of interest in relation to the contract or

transaction:

- (a) the director or officer is a director or an officer, or acting in a similar capacity, of a party referred to in paragraph (1)(b) or (c);
- (b) the director or officer has a material interest in the party; or
- (c) there has been a material change in the nature of the director's or the officer's interest in the party.

### **Access to disclosures**

(7) The members of the corporation may examine the portions of any minutes of meetings of directors or of committees of directors that contain disclosures under this section, and of any other documents that contain those disclosures, during the corporation's usual business hours.

### **Avoidance standards**

(8) A contract or transaction for which disclosure is required under subsection (1) is not invalid, and the director or officer is not accountable to the corporation or its members for any profit realized from the contract or transaction, because of the director's or officer's interest in the contract or transaction or because the director was present or was counted to determine whether a quorum existed at the meeting of directors or of the committee of directors that considered the contract or transaction, if

- (a) disclosure of the interest was made in accordance with this section;
- (b) the directors approved the contract or transaction; and
- (c) the contract or transaction was reasonable and fair to the corporation when it was approved.

### **Confirmation by members**

(9) Even if the conditions of subsection (8) are not met, a director or an officer, acting honestly and in good faith, is not accountable to the corporation or to its members for any profit realized from a contract or transaction for which disclosure is required under subsection (1), and the contract or transaction is not invalid by reason only of the interest of the director or officer in the contract or transaction, if

- (a) the contract or transaction is approved or confirmed by special resolution at a meeting of the members;
- (b) disclosure of the interest was made to the members in a manner sufficient to indicate its nature and extent before the contract or transaction was approved or confirmed; and
- (c) the contract or transaction was reasonable and fair to the corporation when it was approved or confirmed.

### **Application to court**

**(10)** If a director or an officer of a corporation fails to comply with this section, a court may, on the application of the corporation or any of its members, set aside or annul the contract or transaction on any terms that it thinks fit, require the director or officer to account to the corporation for any profit or gain realized on the contract or transaction or make any other order that the court thinks fit.

### **Officers**

**142** Subject to the articles, the by-laws and any unanimous member agreement,

- (a)** the directors may designate the offices of the corporation, appoint as officers persons of full capacity, specify their duties and delegate to them powers to manage the activities and affairs of the corporation, except powers to do anything referred to in subsection 138(2);
- (b)** a director may be appointed to any office of the corporation; and
- (c)** two or more offices of the corporation may be held by the same person.

### **Remuneration**

**143 (1)** Subject to the articles, the by-laws and any unanimous member agreement, the directors of a corporation may fix the reasonable remuneration of the directors, officers and employees of the corporation.

### **Services performed in other capacity**

**(2)** Subject to the by-laws, a director, an officer or a member may receive reasonable remuneration and expenses for any services to the corporation that are performed in any other capacity.

### **Indemnification**

**144** Unless the by-laws of the corporation otherwise provide, a director, an officer or an employee may receive indemnification for their expenses incurred on behalf of the corporation as a director, an officer or an employee.

### **Directors' liability**

**145 (1)** Directors of a corporation who vote for or consent to a resolution authorizing any of the following are jointly and severally, or solidarily, liable to restore to the corporation any money or other property so paid or distributed and not otherwise recovered by the corporation:

- (a)** a payment or distribution to a member, a director or an officer contrary to this Act; or
- (b)** a payment of an indemnity contrary to this Act.

### **Recovery of shares**



**(2)** A director who has satisfied a judgment rendered under this section is entitled to recover from the other directors who voted for or consented to the unlawful act on which the judgment was founded their respective shares.

### **Recovery**

**(3)** A director liable under subsection (1) is entitled to apply to a court for an order compelling a member or other recipient to pay or deliver to the director any money or other property that was paid or distributed to the member or other recipient contrary to this Act.

### **Order of court**

**(4)** On an application under subsection (3), a court may, if it is satisfied that it is equitable to do so, order a member or other recipient to pay or deliver to a director any money or other property that was paid or distributed to the member or other recipient contrary to this Act and make any further order that it thinks fit.

### **Limitation**

**(5)** An action to enforce a liability imposed by this section may not be commenced after two years from the date of the resolution authorizing the action complained of.

### **Liability of directors for wages**

**146 (1)** Directors of a corporation are jointly and severally, or solidarily, liable to employees of the corporation for all debts not exceeding six months' wages payable to each employee for services performed for the corporation while they are directors.

### **Conditions precedent to liability**

**(2)** A director is not liable under subsection (1) unless

**(a)** the corporation has been sued for the debt within six months after it has become due and execution has been returned unsatisfied in whole or in part;

**(b)** the corporation has commenced liquidation and dissolution proceedings or has been dissolved and a claim for the debt has been proved within six months after the earlier of the date of commencement of the liquidation and dissolution proceedings and the date of dissolution; or

**(c)** the corporation has made an assignment or a receiving order has been made against it under the *Bankruptcy and Insolvency Act* and a claim for the debt has been proved within six months after the date of the assignment or receiving order.

### **Limitation**

**(3)** A director, unless sued for a debt referred to in subsection (1) while a director or within two years after ceasing to be a director, is not liable under this section.

**Amount due after execution**

**(4)** If execution referred to in paragraph (2)(a) has issued, the amount recoverable from a director is the amount remaining unsatisfied after execution.

**Subrogation of director**

**(5)** A director who pays a debt referred to in subsection (1) that is proved in liquidation and dissolution or bankruptcy proceedings is subrogated to any priority that the employee would have been entitled to and, if a judgment has been obtained, the director is

- (a)** in Quebec, subrogated to the employee's rights as declared in the judgment; and
- (b)** elsewhere in Canada, entitled to an assignment of the judgment.

**Recovery of shares**

**(6)** A director who has satisfied a claim under this section is entitled to recover from the other directors who were liable for the claim their respective shares.

**Dissent**

**147 (1)** A director who is present at a meeting of directors or of a committee of directors is deemed to have consented to any resolution passed or action taken at the meeting unless

- (a)** the director requests a dissent to be entered in the minutes of the meeting;
- (b)** the director sends a written dissent to the secretary of the meeting before the meeting is adjourned; or
- (c)** the director sends a dissent by registered mail or delivers it to the registered office of the corporation immediately after the meeting is adjourned.

**Loss of right to dissent**

**(2)** A director who votes for or consents to a resolution is not entitled to dissent under subsection (1).

**Dissent of absent director**

**(3)** A director who was not present at a meeting at which a resolution was passed or action taken is deemed to have consented to the resolution or action unless, within the prescribed period after becoming aware of the resolution or action, the director

- (a)** causes a dissent to be placed with the minutes of the meeting; or
- (b)** sends a dissent by registered mail or delivers it to the registered office of the corporation.

**Duties of directors and officers**

**148 (1)** Every director and officer of a corporation in exercising their powers and discharging their duties shall

- (a) act honestly and in good faith with a view to the best interests of the corporation; and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

#### **Duty to comply**

**(2)** Every director and officer of a corporation shall comply with

- (a) this Act and the regulations; and
- (b) the articles, the by-laws and any unanimous member agreement.

#### **Lawfulness of articles and purpose**

**(3)** Every director of a corporation shall verify the lawfulness of the articles and the purpose of the corporation.

#### **No exculpation**

**(4)** Subject to subsection 170(5), no provision in a contract, the articles, the by-laws or a resolution relieves a director or an officer from the duty to act in accordance with this Act or the regulations or relieves them from liability for a breach of this Act or the regulations.

#### **Director — reasonable diligence**

**149 (1)** A director is not liable under section 145 or 146, and has complied with his or her duties under subsection 148(2) and (3), if the director exercised the care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances, including reliance in good faith on

- (a) financial statements of the corporation represented to the director by an officer of the corporation or in a written report of the public accountant of the corporation fairly to reflect the financial condition of the corporation; or
- (b) a report of a person whose profession lends credibility to a statement made by that person.

#### **Director — good faith**

**(2)** A director has complied with his or her duties under subsection 148(1) if the director relied in good faith on

- (a) financial statements of the corporation represented to the director by an officer of the corporation or in a written report of the public accountant of the corporation fairly to reflect the financial condition of the corporation; or

**(b)** a report of a person whose profession lends credibility to a statement made by that person.

### **Officer — reasonable diligence**

**150 (1)** An officer has complied with his or her duties under subsection 148(2) if the officer exercised the care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances, including reliance in good faith on a report of a person whose profession lends credibility to a statement made by that person.

### **Officer — good faith**

**(2)** An officer has complied with his or her duties under subsection 148(1) if the officer relied in good faith on a report of a person whose profession lends credibility to a statement made by that person.

### **Indemnification**

**151 (1)** A corporation may indemnify a present or former director or officer of the corporation, or another individual who acts or acted at the corporation's request as a director or an officer or in a similar capacity of another entity, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the individual in respect of any civil, criminal, administrative, investigative or other proceeding in which the individual is involved because of that association with the corporation or other entity.

### **Advance of costs**

**(2)** A corporation may advance money to a director, an officer or other individual for the costs, charges and expenses of a proceeding referred to in subsection (1). The individual shall repay the money if the individual does not fulfil the conditions of subsection (3).

### **Limitation**

**(3)** A corporation may not indemnify an individual under subsection (1) unless the individual

**(a)** acted honestly and in good faith with a view to the best interests of the corporation or, as the case may be, to the best interests of the other entity for which the individual acted as director or officer or in a similar capacity at the corporation's request; and

**(b)** in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, had reasonable grounds for believing that their conduct was lawful.

### **Indemnification**

**(4)** A corporation may, with the approval of a court, indemnify an individual referred to in subsection (1), or advance money under subsection (2), in respect of an action by or on behalf of the corporation or other entity to procure a judgment in its favour to which the individual is made a party because of the individual's association with the corporation or other entity as

described in subsection (1), against all costs, charges and expenses reasonably incurred by the individual in connection with the action, if the individual fulfils the conditions set out in subsection (3).

### **Right to indemnity**

**(5)** Despite subsection (1), an individual referred to in that subsection is entitled to indemnity from the corporation in respect of all costs, charges and expenses reasonably incurred by the individual in connection with the defence of any civil, criminal, administrative, investigative or other proceeding to which the individual is subject because of the individual's association with the corporation or other entity as described in that subsection, if the individual seeking indemnity

**(a)** was not judged by the court or other competent authority to have committed any fault or to have omitted to do anything that the individual ought to have done; and

**(b)** fulfils the conditions set out in subsection (3).

### **Insurance**

**(6)** A corporation may purchase and maintain insurance for the benefit of an individual referred to in subsection (1) against any liability incurred by the individual

**(a)** in the individual's capacity as a director or an officer of the corporation; or

**(b)** in the individual's capacity as a director or an officer, or in a similar capacity, of another entity, if the individual acts or acted in that capacity at the corporation's request.

### **Application to court**

**(7)** On the application of a corporation or an individual or entity referred to in subsection (1), a court may approve an indemnity under this section and make any further order that it thinks fit.

### **Other notice**

**(8)** On an application under subsection (7), the court may order notice to be given to any interested person and the person is entitled to appear and be heard in person or by counsel.

## **PART 10**

# **By-laws and Members**

### **By-laws**

**152 (1)** Unless the articles, the by-laws or a unanimous member agreement otherwise provides, the directors may, by resolution, make, amend or repeal any by-laws that regulate the activities or affairs of the corporation, except in respect of matters referred to in subsection 197(1).

**Member approval**

**(2)** The directors shall submit the by-law, amendment or repeal to the members at the next meeting of members, and the members may, by ordinary resolution, confirm, reject or amend the by-law, amendment or repeal.

**Effective date**

**(3)** Subject to subsection (5), the by-law, amendment or repeal is effective from the date of the resolution of the directors. If the by-law, amendment or repeal is confirmed, or confirmed as amended, by the members it remains effective in the form in which it was confirmed.

**Ceasing to have effect**

**(4)** The by-law, amendment or repeal ceases to have effect if it is not submitted by the directors to the members as required under subsection (2) or if it is rejected by the members.

**Subsequent resolution**

**(5)** If a by-law, an amendment or a repeal ceases to have effect, a subsequent resolution of the directors that has substantially the same purpose or effect is not effective until it is confirmed, or confirmed as amended, by the members.

**Member proposal**

**(6)** A member entitled to vote at an annual meeting of members may, in accordance with section 163, make a proposal to make, amend or repeal a by-law.

**Copies to Director**

**153** A corporation shall, within the prescribed period, send to the Director a copy of any by-law, amendment or repealed by-law, except for those that have been rejected by the members.

**Conditions of membership**

**154 (1)** The by-laws shall set out the conditions required for being a member of the corporation, including whether a corporation or other entity may be a member.

**Classes of membership**

**(2)** If the articles provide for two or more classes or groups of members, the by-laws shall provide

- (a)** the conditions for membership in each class or group;
- (b)** the manner of withdrawing from a class or group or transferring membership to another class or group and any conditions of transfer; and
- (c)** the conditions on which membership in a class or group ends.

**Voting rights — one class or group**

**(3)** The members of a corporation that has only one class or group of members have the right to vote at any meeting of the members.

**Voting rights — several classes or groups**

**(4)** If the articles provide for two or more classes or groups of members, the articles shall provide the members of at least one class or group with the right to vote at a meeting of members.

**Right to vote**

**(5)** Unless the articles otherwise provide, each member is entitled to one vote at a meeting of members.

**Representative**

**(6)** The corporation shall recognize any individual authorized by a member corporation or other entity to represent the member at meetings.

**Powers of representative**

**(7)** The individual may exercise on behalf of the member corporation or other entity all the powers of that corporation or entity.

**Transfer of membership**

**(8)** Unless the by-laws otherwise provide, a membership may be transferred only to the corporation.

**Issuance of memberships**

**155** The directors may issue memberships in accordance with the articles and any conditions set out in the by-laws.

**Termination of membership**

**156** Unless the articles or by-laws of a corporation otherwise provide, a membership is terminated when

- (a)** the member dies or resigns;
- (b)** the member is expelled or their membership is otherwise terminated in accordance with the articles or by-laws;
- (c)** the member's term of membership expires; or
- (d)** the corporation is liquidated and dissolved under Part 14.

**Termination of member's rights**

**157** Unless the articles or by-laws otherwise provide, the rights of a member, including any rights in the property of the corporation, cease to exist on termination of the membership.

#### **Power to discipline a member**

**158** The articles or by-laws may provide that the directors, the members or any committee of directors or members of a corporation have power to discipline a member or to terminate their membership. If the articles or by-laws provide for such a power, they shall set out the circumstances and the manner in which that power may be exercised.

#### **Place of meetings**

**159 (1)** Meetings of members of a corporation shall be held within Canada at the place provided in the by-laws or, in the absence of such a provision, at the place that the directors determine.

#### **Meeting outside Canada**

**(2)** Despite subsection (1), a meeting of members of a corporation may be held at a place outside Canada if the place is specified in the articles or all the members entitled to vote at the meeting agree that the meeting is to be held at that place.

#### **Exception**

**(3)** A member who attends a meeting of members held outside Canada is deemed to have agreed to it being held outside Canada except when the member attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully held.

#### **Participation in meeting by electronic means**

**(4)** Unless the by-laws otherwise provide, any person entitled to attend a meeting of members may participate in the meeting, in accordance with the regulations, if any, by means of a telephonic, an electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting, if the corporation makes available such a communication facility. A person so participating in a meeting is deemed for the purposes of this Act to be present at the meeting.

#### **Meeting held by electronic means**

**(5)** If the directors or members of a corporation call a meeting of members under this Act and if the by-laws so provide, those directors or members, as the case may be, may determine that the meeting shall be held, in accordance with the regulations, if any, entirely by means of a telephonic, an electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting.

#### **Calling annual meetings**



**160 (1)** The directors of a corporation shall call an annual meeting of members

- (a) not later than the prescribed period after the corporation comes into existence; and
- (b) subsequently, not later than the prescribed period after holding the preceding annual meeting but no later than the prescribed period after the end of the corporation's preceding financial year.

**Authorization to delay calling of annual meeting**

(2) On application of the corporation, the Director may authorize the corporation, on any terms that the Director thinks fit, to extend the time for calling an annual meeting if the Director reasonably believes that members will not be prejudiced.

**Calling special meetings**

(3) The directors of a corporation may at any time call a special meeting of members.

**Fixing record date**

**161 (1)** The directors may fix, as a record date for any of the following purposes, a date that is within the period that is prescribed in relation to that purpose, namely, record dates for

- (a) determining members entitled to receive notice of a meeting of members;
- (b) determining members entitled to vote at a meeting of members;
- (c) determining members entitled to participate in a liquidation distribution; or
- (d) determining members for any other purpose.

**No record date fixed**

(2) If no record date is fixed by the directors,

- (a) the record date for the determination of members entitled to receive notice of a meeting of members is
  - (i) at the close of business on the day immediately preceding the day on which the notice is given, or
  - (ii) if no notice is given, the day on which the meeting is held;
- (b) the record date for the determination of members entitled to vote at a meeting of members is
  - (i) if a record date has been fixed under paragraph (1)(a), the day that is the prescribed period after that date, and
  - (ii) otherwise, the date that is the record date under paragraph (a); and

(c) the record date for the determination of members for any purpose other than to establish a member's right to receive notice of a meeting or to vote shall be at the close of business on the day on which the directors pass the resolution relating to the record date.

### **Notice provided for in by-laws**

**162 (1)** The corporation shall give members entitled to vote at a meeting of members notice of the time and place of the meeting in accordance with the by-laws and the regulations. The provisions of the by-laws respecting the giving of notice shall comply with any prescribed requirements.

### **Non-compliance of by-laws**

(2) If the provisions of the by-laws do not comply with the prescribed requirements, the corporation shall send, unless the regulations provide otherwise, the notice to the members within the prescribed period.

### **Notice to public accountant and directors**

(3) The corporation shall send the public accountant and directors notice of the time and place of any meeting of members within the prescribed period.

### **Waiver of notice**

(4) Any person who is entitled to notice of a meeting of members may waive notice, and attendance of the person at the meeting is a waiver of notice of the meeting, unless the person attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

### **Application for authorization**

(5) On application of the corporation, the Director may authorize the corporation, on any terms that the Director thinks fit, to give notice of the meeting to members in any manner if the Director reasonably believes that members will not be prejudiced.

### **Exception — members not registered**

(6) The corporation is not required to give notice to members who were not registered on the records of the corporation on the record date determined under paragraph 161(1)(a) or subsection 161(2), but a member that is not given notice of the meeting is not deprived of the right to vote at that meeting.

### **Adjournment**

(7) If a meeting of members is adjourned for less than the prescribed period, it is not necessary, unless the by-laws otherwise provide, that any person be notified of the adjourned meeting, other than by announcement at the earliest meeting that is adjourned.

**Notice of adjourned meeting**

**(8)** If a meeting of members is adjourned by one or more adjournments for an aggregate of days that is more than the prescribed period, notice of the adjournment shall be given to members entitled to vote at the meeting, the directors and the public accountant in the manner referred to in subsections (1) to (4).

**Business**

**(9)** All business transacted at a special meeting of members and all business transacted at an annual meeting of members, except consideration of the financial statements, public accountant's report, election of directors and re-appointment of the incumbent public accountant, is special business.

**Notice of business**

**(10)** Notice of a meeting of members at which special business is to be transacted shall

**(a)** state the nature of that business in sufficient detail to permit a member to form a reasoned judgment on the business; and

**(b)** state the text of any special resolution to be submitted to the meeting.

**Right to submit and discuss**

**163 (1)** A member entitled to vote at an annual meeting of members may

**(a)** submit to the corporation notice of any matter that the member proposes to raise at the meeting, referred to in this section as a "proposal"; and

**(b)** discuss at the meeting any matter with respect to which the member would have been entitled to submit a proposal.

**Proposal set out in notice**

**(2)** A corporation shall include the proposal in the notice of meeting required under section 162.

**Supporting statement**

**(3)** If so requested by the member who submits a proposal, the corporation shall include in the notice of meeting a statement in support of the proposal by the member and the name and address of the member. The statement and the proposal shall together not exceed the prescribed maximum number of words.

**Payment**

**(4)** The member who submitted the proposal shall pay any cost of including the proposal and any statement in the notice of the meeting at which the proposal is to be presented, unless it is otherwise provided in the by-laws or in an ordinary resolution of the members present at the

meeting.

### **Proposal nominating directors**

**(5)** A proposal may include nominations for the election of directors if the proposal is signed by not less than the prescribed percentage of the members of a class or group of members of the corporation entitled to vote at the meeting at which the proposal is to be presented or any lesser number of members as provided in the by-laws, but this subsection does not preclude nominations made at a meeting of members.

### **Exception**

**(6)** A corporation is not required to comply with subsections (2) and (3) if

- (a)** the proposal is not submitted to the corporation within the prescribed period;
- (b)** it clearly appears that the primary purpose of the proposal is to enforce a personal claim or redress a personal grievance against the corporation or its directors, officers, members or debt obligation holders;
- (c)** it clearly appears that the proposal does not relate in a significant way to the activities or affairs of the corporation;
- (d)** not more than the prescribed period before the receipt of the proposal, the member failed to present — in person or, if authorized by the by-laws, by proxy — at a meeting of members, a proposal that at the member's request had been included in a notice of meeting;
- (e)** substantially the same proposal was submitted to members in a notice of a meeting of members held not more than the prescribed period before the receipt of the proposal and did not receive the prescribed minimum amount of support at the meeting; or
- (f)** the rights conferred by this section are being abused to secure publicity.

### **Immunity**

**(7)** No corporation or person acting on its behalf incurs any liability by reason only of complying with this section.

### **Notice of refusal**

**(8)** If a corporation refuses to include a proposal in a notice of meeting, it shall, within the prescribed period after the day on which it receives the proposal, notify in writing the member submitting the proposal of its intention to omit it from the notice of meeting and of the reasons for the refusal.

### **Member may apply to court**

**(9)** On the application of a member submitting a proposal who is aggrieved by the refusal, a court may restrain the holding of the meeting at which the proposal is sought to be presented and make any further order that it thinks fit.

#### **Corporation's application to court**

**(10)** On the application of the corporation or any other person aggrieved by a proposal, a court may, if it is satisfied that subsection (6) applies, make an order permitting the corporation to omit the proposal from the notice of meeting and may make any further order that it thinks fit.

#### **Director entitled to notice**

**(11)** An applicant under subsection (9) or (10) shall give the Director notice of the application and the Director is entitled to appear and be heard in person or by counsel.

#### **Quorum set in by-laws**

**164 (1)** The by-laws may set out the quorum for a meeting of members, but the quorum set out shall be in conformity with any prescribed requirements.

#### **Quorum in any other case**

**(2)** If the by-laws do not set out such a quorum, the quorum is a majority of members entitled to vote at the meeting.

#### **Opening quorum sufficient**

**(3)** If a quorum is present at the opening of a meeting of members, the members present may, unless the by-laws otherwise provide, proceed with the business of the meeting, even if a quorum is not present throughout the meeting.

#### **Adjournment**

**(4)** If a quorum is not present at the opening of a meeting of members, the members present may adjourn the meeting to a fixed time and place but may not transact any other business.

#### **One member meeting**

**(5)** If a corporation has only one member, or only one member in any class or group of members, the member present in person or who submits a vote that meets the requirements of section 171 constitutes a meeting.

#### **Voting**

**165 (1)** Subject to section 171 and the by-laws, voting at a meeting of members shall be by show of hands, except if a ballot is demanded by a member entitled to vote at the meeting.

#### **Ballot**

**(2)** A member may demand a ballot either before or after any vote by show of hands.

**Electronic voting**

**(3)** Despite subsection (1), unless the by-laws otherwise provide, any vote referred to in that subsection may be held, in accordance with the regulations, if any, entirely by means of a telephonic, an electronic or other communication facility, if the corporation makes available such a communication facility.

**Voting while participating electronically**

**(4)** Unless the by-laws otherwise provide, any person participating in a meeting of members under subsection 159(4) or (5) and entitled to vote at that meeting may vote, and that vote may be held, in accordance with the regulations, if any, by means of the telephonic, electronic or other communication facility that the corporation has made available for that purpose.

**Resolution in lieu of meeting**

**166 (1)** Except where a written statement is submitted by a director under subsection 131(1) or by a public accountant under subsection 187(4),

- (a)** a resolution in writing signed by all the members entitled to vote on that resolution at a meeting of members is as valid as if it had been passed at a meeting of the members; and
- (b)** a resolution in writing dealing with all matters required by this Act to be dealt with at a meeting of members, and signed by all the members entitled to vote at that meeting, satisfies all the requirements of this Act relating to meetings of members.

**Filing resolution**

**(2)** A copy of every resolution referred to in subsection (1) shall be kept with the minutes of the meetings of members.

**Evidence**

**(3)** Unless a ballot is demanded, an entry in the minutes of a meeting to the effect that the chairperson of the meeting declared a resolution to be carried or defeated is, in the absence of evidence to the contrary, proof of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

**Requisition of meeting**

**167 (1)** The members of a corporation who hold the prescribed percentage of votes that may be cast at a meeting of members sought to be held, or a lower percentage that is set out in the by-laws, may requisition the directors to call the meeting for the purposes stated in the requisition.

**Form**

**(2)** The requisition referred to in subsection (1), which may consist of several documents of similar form each signed by one or more members, shall state the business to be transacted at the meeting and shall be sent to each director and to the registered office of the corporation.

#### **Directors calling meeting**

**(3)** On receiving the requisition referred to in subsection (1), the directors shall call a meeting of members to transact the business stated in the requisition, unless

- (a)** a record date has been fixed under paragraph 161(1)(a);
- (b)** the directors have called a meeting of members and have given notice of the meeting under section 162; or
- (c)** the business of the meeting as stated in the requisition includes matters described in paragraphs 163(6)(b) to (f).

#### **Member calling meeting**

**(4)** If the directors do not call a meeting within the prescribed period after receiving the requisition referred to in subsection (1), any member who signed the requisition may call the meeting.

#### **Procedure**

**(5)** A meeting called under this section shall be called as nearly as possible in the manner in which meetings are to be called under the by-laws and this Part.

#### **Reimbursement**

**(6)** Unless the members otherwise resolve at a meeting called under subsection (4), the corporation shall reimburse the members for the expenses reasonably incurred by them in requisitioning, calling and holding the meeting.

#### **Meeting called by court**

**168 (1)** A court, on the application of a director, a member who is entitled to vote at a meeting of members or the Director, may order a meeting of a corporation to be called, held and conducted in the manner that the court directs, if

- (a)** it is not practicable to call the meeting within the time or in the manner in which it is otherwise to be called;
- (b)** it is not practicable to conduct the meeting in the manner required by this Act or the by-laws; or
- (c)** the court thinks that the meeting should be called, held and conducted within the time or in the manner that it directs for any other reason.

#### **Varying quorum**

**(2)** Without restricting the generality of subsection (1), the court may order that the quorum required by the by-laws or this Act be varied or dispensed with at a meeting called, held and conducted under this section.

### **Valid meeting**

**(3)** A meeting called, held and conducted under this section is for all purposes a meeting of members of the corporation duly called, held and conducted.

### **Court review of election**

**169 (1)** A corporation or a member or director may apply to a court to determine any controversy with respect to an election or appointment of a director or public accountant of the corporation.

### **Powers of court**

**(2)** On an application under this section, the court may make

**(a)** an order restraining a director or public accountant whose election or appointment is challenged from acting pending determination of the dispute;

**(b)** an order declaring the result of the disputed election or appointment;

**(c)** an order requiring a new election or appointment, and including in the order directions for the management of the activities and affairs of the corporation until a new election is held or appointment made;

**(d)** an order determining the voting rights of members and of persons claiming to hold memberships; and

**(e)** any other order that it thinks fit.

### **Unanimous member agreement**

**170 (1)** An otherwise lawful written agreement among all the members of a corporation that is not a soliciting corporation, or among all the members and one or more persons who are not members, that restricts, in whole or in part, the powers of the directors to manage, or supervise the management of, the activities and affairs of the corporation is valid.

### **Declaration by sole member**

**(2)** A written declaration of the sole member of a corporation that similarly restricts the directors' powers is valid.

### **Constructive party**

**(3)** A person who becomes a member of a corporation that is subject to a unanimous member agreement is deemed to be a party to the agreement.



**When no notice given**

**(4)** If notice is not given to a member of the existence of a unanimous member agreement, in the manner referred to in subsection 42(2) or otherwise, the member may, no later than the prescribed period after they become aware of the existence of the agreement, rescind the transaction by which they acquired the membership and, within that period, the member is entitled to the return of any amount paid in respect of the membership.

**Rights of member**

**(5)** To the extent that a unanimous member agreement restricts the powers of the directors to manage, or supervise the management of, the activities and affairs of the corporation, parties to the agreement who are given that power to manage or supervise the management of the activities and affairs of the corporation have all the rights, powers, duties and liabilities of a director of the corporation, whether they arise under this Act or otherwise, including any defences available to the directors, and the directors are relieved of their rights, powers, duties and liabilities, including their liabilities under section 146, to the same extent.

**Discretion of members**

**(6)** Nothing in this section prevents members from fettering their discretion when exercising the powers of directors under a unanimous member agreement.

**No absentee voting**

**(7)** Members that are party to a unanimous member agreement may not vote in accordance with section 171 when exercising the authority delegated to them under the agreement.

**Termination**

**(8)** If the unanimous member agreement does not provide for its termination, the members may terminate the agreement by a special resolution.

**Absentee voting**

**171 (1)** The by-laws of a corporation may provide for any prescribed methods of voting by members not in attendance at a meeting of members. If the by-laws so provide, they shall set out procedures for collecting, counting and reporting the results of any vote.

**Application for authorization**

**(2)** On application of the corporation, the Director may authorize the corporation, on any terms that the Director thinks fit, to permit members to vote by any method if the Director reasonably believes that the members and the corporation will not be prejudiced.

**PART 11**

# Financial Disclosure

## Annual financial statements

**172 (1)** The directors of a corporation shall place before the members at every annual meeting

(a) prescribed comparative financial statements that conform to any prescribed requirements and relate separately to

(i) the period that began on the date the corporation came into existence and ended not more than six months before the annual meeting or, if the corporation has completed a financial year, the period that began immediately after the end of the last completed financial year and ended not more than six months before the annual meeting, and

(ii) the immediately preceding financial year;

(b) the report of the public accountant, if any; and

(c) any further information respecting the financial position of the corporation and the results of its operations required by the articles, the by-laws or any unanimous member agreement.

## Exception

(2) Despite paragraph (1)(a), the financial statements referred to in subparagraph (1)(a)(ii) may be omitted if the reason for the omission is set out in the financial statements, or in a note to those statements, to be placed before the members at an annual meeting.

## Application for exemption

**173** On the application of a corporation, the Director may exempt the corporation, on any terms that the Director thinks fit, from any requirement in this Part if the Director reasonably believes that the detriment that may be caused to the corporation by the requirement outweighs its benefit to the members or, in the case of a soliciting corporation, the public.

## Consolidated statements

**174 (1)** A corporation shall keep at its registered office a copy of the financial statements of each of its subsidiaries and of each body corporate the accounts of which are consolidated in the financial statements of the corporation.

## Examination

(2) Members of a corporation and their personal representatives may on request examine the statements referred to in subsection (1) during the corporation's usual business hours and make copies or take extracts free of charge.

## Barring examination

**(3)** On the application of a corporation made within the prescribed period after a request to examine under subsection (2), a court may, if it is satisfied that the examination would be detrimental to the corporation or a subsidiary, bar the right to examine and make any further order that it thinks fit.

#### **Notice to Director**

**(4)** A corporation shall give the Director and the person asking to examine under subsection (2) notice of an application under subsection (3), and the Director and the person may appear and be heard in person or by counsel.

#### **Copies to members**

**175 (1)** A corporation, within the prescribed period, shall send a copy or summary of the documents referred to in subsection 172(1) or a copy of a publication of the corporation reproducing the information contained in the documents or summary to each member, other than a member who, in writing, declines to receive such documentation. A corporation that sends a summary to a member shall also inform that member of the procedure for obtaining a copy of the documents free of charge.

#### **Notice**

**(2)** A corporation, instead of sending the documentation referred to in subsection (1), may, if the by-laws so provide, give members notice in the manner referred to in section 162 that the documents referred to in subsection 172(1) are available at the registered office of the corporation and that any member may, on request, obtain a copy free of charge at the office or by prepaid mail.

#### **Copies to Director**

**176 (1)** A soliciting corporation shall send a copy of the documents referred to in subsection 172(1) to the Director

**(a)** not less than the prescribed period before each annual meeting of members, or without delay after a resolution referred to in paragraph 166(1)(b) is signed; and

**(b)** in any event within the prescribed period after the preceding annual meeting should have been held or a resolution in lieu of the meeting should have been signed, but no later than the prescribed period after the end of the corporation's preceding financial year.

#### **Subsidiary corporation exception**

**(2)** A subsidiary corporation is not required to comply with this section if

**(a)** the financial statements of its holding corporation are in consolidated or combined form and include the accounts of the subsidiary; and

(b) the consolidated or combined financial statements of the holding corporation are included in the documents sent to the Director by the holding corporation in compliance with this section.

### Copies to Director

**177** A corporation shall, at the request of the Director, furnish the Director with a copy of the documents referred to in subsection 172(1).

### Approval of financial statements

**178 (1)** The directors of a corporation shall approve the financial statements referred to in section 172 and the approval shall be evidenced by the manual signature of one or more directors or a facsimile of the signatures reproduced in the statements.

### Condition precedent

(2) A corporation shall not issue, publish or circulate copies of the financial statements referred to in section 172 unless the financial statements are

- (a) approved and signed in accordance with subsection (1); and
- (b) accompanied by the report of the public accountant of the corporation, if any.

## PART 12

# Public Accountant

### Definition of *designated corporation*

**179** In this Part, *designated corporation* means

- (a) a soliciting corporation that has gross annual revenues for its last completed financial year that are equal to or less than the prescribed amount or that is deemed to have such revenues under paragraph 190(a); and
- (b) a non-soliciting corporation that has gross annual revenues for its last completed financial year that are equal to or less than the prescribed amount.

### Qualification of public accountant

**180 (1)** In order to be a public accountant of a corporation, a person shall

- (a) be a member in good standing of an institute or association of accountants incorporated by or under an Act of the legislature of a province;
- (b) meet any qualifications under an enactment of a province for performing any duty that the person is required to perform under sections 188 to 191; and

(c) subject to subsection (6), be independent of the corporation, its affiliates, or the directors or officers of the corporation or its affiliates.

### **Independence**

(2) For the purposes of this section,

(a) independence is a question of fact; and

(b) a person is deemed not to be independent if that person or their business partner

(i) is a business partner, a director, an officer or an employee of the corporation or any of its affiliates, or is a business partner of any director, officer or employee of the corporation or any of its affiliates,

(ii) beneficially owns or controls, directly or indirectly, a material interest in the debt obligations of the corporation or any of its affiliates, or

(iii) has been a receiver, receiver-manager, sequestrator, liquidator or trustee in bankruptcy of the corporation or any of its affiliates within two years before the person's proposed appointment as public accountant of the corporation.

### **Business partners**

(3) For the purposes of subsection (2), a person's business partner includes a shareholder or member of that person.

### **Duty to resign**

(4) A public accountant who becomes disqualified under this section shall, subject to subsection (6), resign immediately after becoming aware of the disqualification.

### **Disqualification order**

(5) On the application of an interested person, a court may make an order declaring a public accountant to be disqualified under this section and the office of public accountant to be vacant.

### **Relieving order**

(6) On the application of an interested person, a court may, if it is satisfied that the order would not unfairly prejudice the members of the corporation, make an order on any terms that it thinks fit relieving a public accountant from meeting any requirement under subsection (1). The order may have retroactive effect.

### **Appointment of public accountant**

**181 (1)** Subject to section 182, members of a corporation shall, by ordinary resolution, at each annual meeting, appoint a public accountant to hold office until the close of the next annual meeting.

**Eligibility**

**(2)** A public accountant appointed under section 127 is eligible for appointment under subsection (1).

**Incumbent public accountant**

**(3)** If a public accountant is not appointed at a meeting of members and if no resolution is taken under section 182, the incumbent public accountant continues in office until a successor is appointed.

**Remuneration**

**(4)** The remuneration of a public accountant may be fixed by ordinary resolution of the members or, if not so fixed, shall be fixed by the directors.

**Dispensing with public accountant**

**182 (1)** Members of a designated corporation may resolve not to appoint a public accountant, but the resolution is not valid unless all the members entitled to vote at an annual meeting of members consent to the resolution.

**Validity of resolution**

**(2)** The resolution is valid until the following annual meeting of members.

**Ceasing to hold office**

**183 (1)** A public accountant of a corporation ceases to hold office when the public accountant

**(a)** dies or resigns; or

**(b)** is removed under section 184.

**Effective date of resignation**

**(2)** A resignation of a public accountant becomes effective at the time a written resignation is sent to the corporation or at the time specified in the resignation, whichever is later.

**Removal of public accountant**

**184 (1)** The members of a corporation may by ordinary resolution at a special meeting remove a public accountant from office, other than a public accountant appointed by a court under section 186.

**Vacancy**

**(2)** A vacancy created by the removal of a public accountant may be filled at the meeting at which the public accountant is removed or, if not so filled, may be filled under section 185.

**Filling vacancy**

**185 (1)** Subject to subsection (3), the directors shall immediately fill a vacancy in the office of public accountant.

#### **Calling meeting**

**(2)** If there is not a quorum of directors, the directors then in office shall, within the prescribed period after a vacancy in the office of public accountant occurs, call a special meeting of members to fill the vacancy and, if they fail to call a meeting or if there are no directors, the meeting may be called by any member.

#### **Members filling vacancy**

**(3)** The articles of a corporation may provide that a vacancy in the office of public accountant shall only be filled by vote of the members.

#### **Unexpired term**

**(4)** A public accountant appointed to fill a vacancy holds office for the unexpired term of the public accountant's predecessor.

#### **Court-appointed public accountant**

**186 (1)** If a corporation does not have a public accountant, a court may, on the application of a member or the Director, appoint and fix the remuneration of a public accountant, who holds office until a public accountant is appointed by the members.

#### **Exception**

**(2)** Subsection (1) does not apply if the members have resolved under section 182 not to appoint a public accountant.

#### **Right to attend meeting**

**187 (1)** The public accountant is entitled to attend a meeting of members at the expense of the corporation and be heard on matters relating to the public accountant's duties.

#### **Duty to attend and answer questions**

**(2)** If a director or member, whether or not the member is entitled to vote at the meeting, gives written notice not less than the prescribed period before a meeting of members to the public accountant or a former public accountant of the corporation, the public accountant or former public accountant shall attend the meeting at the expense of the corporation and answer questions relating to their duties.

#### **Notice to corporation**

**(3)** A director or member who sends the notice shall send a copy of the notice to the corporation at the same time.

**Statement of public accountant**

(4) A public accountant is entitled to submit to the corporation a written statement giving reasons for resigning or for opposing their removal or replacement if a meeting of directors or members is called at which any of those matters will be dealt with.

**Other statements**

(5) If a meeting is called to replace the public accountant, the corporation shall make a statement respecting the reasons for the replacement and the proposed replacement public accountant may make a statement respecting the reasons.

**Circulating statement**

(6) The corporation shall immediately give notice to the members of the statements referred to in subsections (4) and (5) in the manner referred to in section 162 and shall immediately send a copy of the statements to the Director.

**Replacing public accountant**

(7) No person shall accept an appointment or consent to be appointed as public accountant of a corporation to replace a public accountant who has resigned, been removed or whose term of office has expired or is about to expire until the person has requested and received from that public accountant a written statement of the circumstances and the reasons, in that public accountant's opinion, for their replacement.

**Exception**

(8) A person otherwise qualified may accept an appointment or consent to be appointed as a public accountant if, within the prescribed period after making the request, the person does not receive a reply.

**Effect of non-compliance**

(9) The appointment of a person who does not make the request is void.

**Review engagement — designated corporations**

**188 (1)** Subject to subsection (2), the public accountant of a designated corporation shall conduct a review engagement in the prescribed manner.

**Audit engagement — designated corporations**

(2) The public accountant of a designated corporation shall conduct an audit engagement in the prescribed manner if the corporation's members pass an ordinary resolution requiring an audit engagement.

**Validity of resolution**



**(3)** The resolution is valid only until the following annual meeting of members or for the period specified in the resolution.

#### **Audit engagement — other corporations**

**189 (1)** Subject to subsection (2), the public accountant of a corporation that is not a designated corporation shall conduct an audit engagement in the prescribed manner.

#### **Review engagement — other corporations**

**(2)** The public accountant of a soliciting corporation that is not a designated corporation shall conduct a review engagement in the prescribed manner if

**(a)** the corporation has gross annual revenues for its last completed financial year that are equal to or less than the prescribed amount or is deemed to have such revenues under paragraph 190(b); and

**(b)** its members pass a special resolution requiring a review engagement.

#### **Validity of resolution**

**(3)** The resolution is valid only until the following annual meeting of members.

#### **Deemed revenues**

**190** On the application of a soliciting corporation, the Director may, on any terms that the Director thinks fit and if the Director is satisfied that doing so would not be prejudicial to the public interest, deem the corporation to have

**(a)** revenues referred to in paragraph 179(a); or

**(b)** revenues referred to in paragraph 189(2)(a), if the corporation is not a designated corporation.

#### **Report on financial statements**

**191** After conducting an audit engagement or a review engagement, the public accountant shall report in the prescribed manner on the financial statements required by this Act to be placed before the members, except any financial statements or part of those statements that relate to the period referred to in subparagraph 172(1)(a)(ii).

#### **Reliance on other public accountant**

**192 (1)** Despite section 193, a public accountant of a holding corporation may reasonably rely on the report of a public accountant of a body corporate or an unincorporated business the accounts of which are included in whole or in part in the financial statements of the corporation.

#### **Reasonableness**

**(2)** For the purpose of subsection (1), reasonableness is a question of fact.

### **Application**

**(3)** Subsection (1) applies whether or not the financial statements of the holding corporation reported on by the public accountant are in consolidated form.

### **Right to information**

**193 (1)** At the request of a public accountant of a corporation, the present or former directors, officers, employees, agents or mandataries of the corporation shall furnish the following, if they are reasonably able to do so and if, in the opinion of the public accountant, it is necessary to enable the public accountant to conduct the review or audit engagement required under section 188 or 189 and to make the report required under section 191:

**(a)** any information and explanations; and

**(b)** access to records, documents, books, accounts and vouchers of the corporation or any of its subsidiaries.

### **Directors to obtain and furnish information**

**(2)** On the demand of the public accountant of a corporation, the directors of the corporation shall

**(a)** obtain from the present or former directors, officers, employees, agents or mandataries of any subsidiary of the corporation the information and explanations that they are reasonably able to furnish and that are, in the opinion of the public accountant, necessary to enable the public accountant to conduct the review or audit engagement required under section 188 or 189 and to make the report required under section 191; and

**(b)** furnish the public accountant with the information and explanations so obtained.

### **No civil liability**

**(3)** A person who in good faith makes an oral or written communication under subsection (1) or (2) is not liable in any civil proceeding arising from having made the communication.

### **Audit committee**

**194 (1)** A corporation may have an audit committee and, if it does, the committee shall be composed of not less than three directors, a majority of whom are not officers or employees of the corporation or any of its affiliates.

### **Duty of committee**

**(2)** The audit committee shall review the financial statements of the corporation before they are approved under section 178.

### **Public accountant's attendance**

**(3)** The corporation shall send the public accountant notice of the time and place of any meeting of the audit committee. The public accountant is entitled to attend the meeting at the expense of the corporation and be heard, and shall attend every meeting of the committee if requested to do so by one of its members.

#### **Calling meeting**

**(4)** The public accountant or a member of the audit committee may call a meeting of the committee.

#### **Notice of errors**

**195 (1)** A director or an officer of a corporation shall immediately notify any audit committee and the public accountant of any error or misstatement of which the director or officer becomes aware in a financial statement that the public accountant or a former public accountant has reported on.

#### **Directors to be informed**

**(2)** A public accountant or former public accountant of a corporation who is notified or becomes aware of an error or misstatement in a financial statement on which they have reported shall, if in their opinion the error or misstatement is material, inform each director accordingly.

#### **Duty of directors**

**(3)** When the public accountant or former public accountant informs the directors of an error or misstatement in a financial statement,

**(a)** the directors shall prepare and issue revised financial statements or otherwise inform the members; and

**(b)** the corporation shall send the Director a copy of the revised financial statements or a notice of the error or misstatement, if the corporation is one that is required to comply with section 176.

#### **Qualified privilege — defamation**

**196** Any oral or written statement or report made under this Act by the public accountant or former public accountant of a corporation has qualified privilege.

## **PART 13**

# **Fundamental Changes**

#### **Amendment of articles or by-laws**

**197 (1)** A special resolution of the members — or, if section 199 applies, of each applicable class or group of members — is required to make any amendment to the articles or the by-laws of a corporation to

- (a) change the corporation's name;
- (b) change the province in which the corporation's registered office is situated;
- (c) add, change or remove any restriction on the activities that the corporation may carry on;
- (d) create a new class or group of members;
- (e) change a condition required for being a member;
- (f) change the designation of any class or group of members or add, change or remove any rights and conditions of any such class or group;
- (g) divide any class or group of members into two or more classes or groups and fix the rights and conditions of each class or group;
- (h) add, change or remove a provision respecting the transfer of a membership;
- (i) subject to section 133, increase or decrease the number of — or the minimum or maximum number of — directors fixed by the articles;
- (j) change the statement of the purpose of the corporation;
- (k) change the statement concerning the distribution of property remaining on liquidation after the discharge of any liabilities of the corporation;
- (l) change the manner of giving notice to members entitled to vote at a meeting of members;
- (m) change the method of voting by members not in attendance at a meeting of members; or
- (n) add, change or remove any other provision that is permitted by this Act to be set out in the articles.

### **Revocation**

**(2)** The directors of a corporation may, if authorized by the members in the special resolution effecting an amendment under this section, revoke the resolution before it is acted on without further approval of the members.

### **Amendment of number name**

**(3)** Despite subsection (1), if a corporation has a designating number as a name, the directors may amend its articles to change that name to a verbal name.

**Proposal to amend**

**198 (1)** Subject to subsection (2), a director, or a member who is entitled to vote at an annual meeting of members, may, in accordance with section 163, propose to make an amendment referred to in subsection 197(1).

**Notice of amendment**

**(2)** Notice of a meeting of members at which a proposal to make an amendment referred to in subsection 197(1) is to be considered shall set out the proposed amendment.

**Class vote**

**199 (1)** The members of a class or group of members are, unless the articles otherwise provide in the case of an amendment referred to in paragraphs (a) and (e), entitled to vote separately as a class or group on a proposal to make an amendment referred to in subsection 197(1) to

- (a)** effect an exchange, reclassification or cancellation of all or part of the memberships of the class or group;
- (b)** add, change or remove the rights or conditions attached to the memberships of the class or group, including
  - (i)** to reduce or remove a liquidation preference, or
  - (ii)** to add, remove or change prejudicially voting or transfer rights of the class or group;
- (c)** increase the rights of any other class or group of members having rights equal or superior to those of the class or group;
- (d)** increase the rights of a class or group of members having rights inferior to those of the class or group to make them equal or superior to those of the class or group;
- (e)** create a new class or group of members having rights equal or superior to those of the class or group; or
- (f)** effect an exchange or create a right of exchange of all or part of the memberships of another class or group into the memberships of the class or group.

**Right to vote**

**(2)** Subsection (1) applies whether or not memberships of a class or group otherwise carry the right to vote.

**Separate resolutions**

**(3)** A proposal to make an amendment referred to in subsection (1) is adopted when the members of each class or group entitled to vote separately on the amendment as a class or group have approved the amendment by a special resolution.

**Delivery of articles**

**200** Subject to any revocation under subsection 197(2), after an amendment to the articles has been adopted under section 197 or 199, articles of amendment in the form that the Director fixes shall be sent to the Director.

**Certificate of amendment**

**201** On receipt of articles of amendment, the Director shall issue a certificate of amendment in accordance with section 276.

**Effect of certificate**

**202 (1)** An amendment to the articles becomes effective on the date shown in the certificate of amendment and the articles are amended accordingly.

**Rights preserved**

**(2)** No amendment to the articles affects an existing cause of action or claim or liability to prosecution in favour of or against the corporation or its directors or officers, or any civil, criminal or administrative action or proceeding to which a corporation or its directors or officers is a party.

**Restated articles**

**203 (1)** The directors may at any time, and shall when so directed by the Director, restate the articles of incorporation.

**Delivery of articles**

**(2)** Restated articles of incorporation in the form that the Director fixes shall be sent to the Director.

**Restated certificate**

**(3)** On receipt of restated articles of incorporation, the Director shall issue a restated certificate of incorporation in accordance with section 276.

**Effect of certificate**

**(4)** Restated articles of incorporation are effective on the date shown in the restated certificate of incorporation and supersede the original articles of incorporation and all amendments to those articles.

**Amalgamation**

**204** Two or more corporations may amalgamate and continue as one corporation.

**Amalgamation agreement**

**205 (1)** Each corporation proposing to amalgamate shall enter into an agreement setting out the terms and means of effecting the amalgamation and, in particular, setting out

- (a) the provisions that are required to be included in articles of incorporation under section 7 or in the by-laws under section 154;
- (b) the name and address of each proposed director of the amalgamated corporation;
- (c) the manner in which the memberships of each amalgamating corporation are to be converted into memberships of the amalgamated corporation;
- (d) whether the by-laws of the amalgamated corporation are to be those of one of the amalgamating corporations and, if not, a copy of the proposed by-laws; and
- (e) details of any arrangements necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated corporation.

### **Cancellation**

**(2)** If a membership in an amalgamating corporation is held by or on behalf of another amalgamating corporation, the amalgamation agreement shall provide for the cancellation, without any repayment of capital, of the membership when the amalgamation becomes effective. No provision shall be made in the agreement for the conversion of the membership into membership of the amalgamated corporation.

### **Member approval**

**206 (1)** The directors of each amalgamating corporation shall submit the amalgamation agreement for approval to a meeting of the members of the amalgamating corporation of which they are directors and, subject to subsection (4), to the members of each class or group of members.

### **Notice of meeting**

**(2)** Each amalgamating corporation shall give notice of a meeting of members in accordance with section 162 to its members and shall include in the notice a copy or summary of the amalgamation agreement.

### **Right to vote**

**(3)** Each membership in an amalgamating corporation carries the right to vote in respect of an amalgamation agreement whether or not it otherwise carries the right to vote.

### **Class vote**

**(4)** The members of a class or group of members of each amalgamating corporation are entitled to vote separately as a class or group in respect of an amalgamation agreement if the amalgamation agreement contains a provision that, if contained in a proposed amendment to the articles, would entitle the members to vote as a class or group under section 199.

**Member approval**

**(5)** Subject to subsection (4), an amalgamation agreement is adopted when the members of each amalgamating corporation have approved the amalgamation by special resolutions.

**Termination**

**(6)** An amalgamation agreement may provide that at any time before the issue of a certificate of amalgamation the agreement may be terminated by the directors of an amalgamating corporation, despite approval of the agreement by the members of all or any of the amalgamating corporations.

**Vertical short-form amalgamation**

**207 (1)** A holding corporation and one or more of its subsidiary corporations may amalgamate and continue as one corporation without complying with sections 205 and 206 if

- (a)** the amalgamation is approved by a resolution of the directors of each amalgamating corporation;
- (b)** all memberships in each amalgamating subsidiary corporation are held by one or more of the other amalgamating corporations; and
- (c)** the resolutions provide that
  - (i)** the memberships in each amalgamating subsidiary corporation shall be cancelled without any repayment of capital in respect of those memberships, and
  - (ii)** except as may be prescribed, the articles of amalgamation shall be the same as the articles of the amalgamating holding corporation.

**Horizontal short-form amalgamation**

**(2)** Two or more wholly-owned subsidiary corporations of the same holding body corporate may amalgamate and continue as one corporation without complying with sections 205 and 206 if

- (a)** the amalgamation is approved by a resolution of the directors of each amalgamating corporation; and
- (b)** the resolutions provide that
  - (i)** the memberships in all but one of the amalgamating subsidiary corporations shall be cancelled without any repayment of capital in respect of those memberships, and
  - (ii)** except as may be prescribed, the articles of amalgamation shall be the same as the articles of the amalgamating subsidiary corporation whose memberships are not cancelled.

**Sending of articles**



**208 (1)** Subject to subsection 206(6), after an amalgamation has been adopted under section 206 or approved under section 207, articles of amalgamation in the form that the Director fixes shall be sent to the Director together with the documents required by sections 20 and 128.

#### **Attached declarations**

**(2)** The articles of amalgamation shall have attached to them a statutory declaration of a director or an officer of each amalgamating corporation that establishes to the satisfaction of the Director that

**(a)** there are reasonable grounds for believing that

**(i)** each amalgamating corporation is, and the amalgamated corporation will be, able to pay its liabilities as they become due, and

**(ii)** the realizable value of the amalgamated corporation's assets will not be less than the aggregate of its liabilities; and

**(b)** there are reasonable grounds for believing that

**(i)** no creditor will be prejudiced by the amalgamation, or

**(ii)** adequate notice has been given to all known creditors of the amalgamating corporations and no creditor objects to the amalgamation otherwise than on grounds that are frivolous or vexatious.

#### **Adequate notice**

**(3)** For the purposes of subsection (2), adequate notice is given if

**(a)** a notice in writing is sent to each known creditor having a claim against the corporation that exceeds the prescribed amount;

**(b)** a notice is published once in a newspaper published or distributed in the place where the corporation has its registered office and reasonable notice is given in each province where the corporation carries on activities; and

**(c)** each notice states that the corporation intends to amalgamate with one or more specified corporations in accordance with this Act and that a creditor of the corporation may object to the amalgamation within the prescribed period.

#### **Certificate of amalgamation**

**(4)** On receipt of articles of amalgamation, the Director shall issue a certificate of amalgamation in accordance with section 276.

#### **Rights preserved**

**209** On the date shown in a certificate of amalgamation, the amalgamation of the amalgamating corporations and their continuance as one corporation become effective and from that date

(a) the property of each amalgamating corporation continues to be the property of the amalgamated corporation;

(a.1) for the purposes of determining whether the amalgamated corporation is a soliciting corporation or whether paragraph 235(1)(c) applies to the amalgamated corporation, the income received prior to that date by any of the amalgamating corporations is deemed to have been received by the amalgamated corporation;

(b) the amalgamated corporation continues to be liable for the obligations of each amalgamating corporation;

(c) an existing cause of action, claim or liability to prosecution is unaffected;

(d) a civil, criminal or administrative action or proceeding pending by or against an amalgamating corporation may be continued by or against the amalgamated corporation;

(e) a conviction against, or ruling, order or judgment in favour of or against, an amalgamating corporation may be enforced by or against the amalgamated corporation; and

(f) the articles of amalgamation are deemed to be the articles of incorporation of the amalgamated corporation and the certificate of amalgamation is deemed to be the certificate of incorporation of the amalgamated corporation.

### **Amalgamation under other federal Acts**

**210 (1)** Subject to subsection (2), a corporation may not amalgamate with one or more bodies corporate under the *Bank Act*, the *Cooperative Credit Associations Act*, the *Insurance Companies Act* or the *Trust and Loan Companies Act* unless the corporation is first authorized to do so by the members in accordance with section 206.

### **Short-form amalgamations**

(2) A corporation may not amalgamate with one or more bodies corporate under the provisions of one of the Acts referred to in subsection (1) respecting short-form amalgamations unless the corporation is first authorized to do so by the directors in accordance with section 207.

### **Discontinuance**

(3) On receipt of a notice that a corporation has amalgamated under one of the Acts referred to in subsection (1), the Director shall issue a certificate of discontinuance in accordance with section 276 if the Director is of the opinion that the corporation has been amalgamated in accordance with this section.

### **Notice deemed to be articles**

**(4)** For the purposes of section 276, a notice referred to in subsection (3) is deemed to be articles that are in the form that the Director fixes.

### **Act ceases to apply**

**(5)** This Act ceases to apply to the corporation on the date shown in the certificate of discontinuance.

### **Non-application**

**(6)** For greater certainty, section 208 does not apply to a corporation that amalgamates under one of the Acts referred to in subsection (1).

### **Continuance — import**

**211 (1)** A body corporate incorporated or continued otherwise than by or under an Act of Parliament may apply to the Director for a certificate of continuance if so authorized by the laws of its jurisdiction and if the body corporate satisfies, or by its articles of continuance would satisfy, the requirements for incorporation under this Act.

### **Amendments in articles of continuance**

**(2)** A body corporate that applies for a certificate under subsection (1) may, without so stating in its articles of continuance, effect by those articles any amendment to its act of incorporation, articles, letters patent or memorandum or articles of association that a corporation incorporated under this Act may make to its articles.

### **Share capital**

**(3)** If the body corporate is a body corporate with share capital, it shall establish the terms and conditions on which it is converted to a body corporate without share capital.

### **Articles of continuance**

**(4)** If a body corporate wishes to apply for a certificate under subsection (1), articles of continuance in the form that the Director fixes shall be sent to the Director together with the documents required by sections 20 and 128.

### **Certificate of continuance**

**(5)** On receipt of articles of continuance, the Director shall issue a certificate of continuance in accordance with section 276.

### **Effect of certificate**

**(6)** From the date shown in the certificate of continuance

**(a)** the body corporate becomes a corporation to which this Act applies as if it had been incorporated under this Act;

- (b) the articles of continuance are deemed to be the articles of incorporation of the continued corporation;
- (c) the certificate of continuance is deemed to be the certificate of incorporation of the continued corporation; and
- (d) any shareholders or members cease to be shareholders or members of the body corporate and become members of the continued corporation.

### **Copy of certificate**

(7) The Director shall immediately send a copy of the certificate of continuance to the appropriate official or public body in the jurisdiction in which continuance under this Act was authorized.

### **Rights preserved**

- (8) From the date of continuance of a body corporate as a corporation under this Act,
- (a) the property of the body corporate continues to be the property of the corporation;
  - (b) the corporation continues to be liable for the obligations of the body corporate;
  - (c) an existing cause of action, claim or liability to prosecution is unaffected;
  - (d) any civil, criminal or administrative action or proceeding pending by or against the body corporate may be continued by or against the corporation; and
  - (e) any conviction against, or ruling, order or judgment in favour of or against, the body corporate may be enforced by or against the corporation.

### **Deemed compliance**

(9) A membership in a body corporate issued before the body corporate was continued under this Act is deemed to have been issued in compliance with this Act and the articles of continuance.

### **Definition of *charter***

**212 (1)** In this section, ***charter*** includes

- (a) the text of an Act of incorporation and of any amendments to that Act;
- (b) any letters patent, supplementary letters patent, certificate of incorporation and certificate of amendment; and
- (c) in the case of a body corporate incorporated under the *Pension Fund Societies Act*, the text of that Act and the by-laws of the body corporate.

### **Amendment of charter**

**(2)** In connection with a continuance under this Act, the shareholders or members of a body corporate incorporated or continued by or under a special Act of Parliament who are entitled to vote at annual meetings of shareholders or members may, despite the charter of the body corporate,

**(a)** by special resolution, authorize the directors of the body corporate to apply under section 211 for a certificate of continuance; and

**(b)** by the same resolution, make any amendment to the charter of the body corporate that a corporation incorporated under this Act may make to its articles.

#### **Amendment of charter — other bodies corporate**

**(3)** In connection with a continuance under this Act, the shareholders or members of a body corporate incorporated or continued by or under an Act of Parliament, other than this Act or a special Act, who are entitled to vote at annual meetings of shareholders or members may, subject to any other Act of Parliament or the charter of the body corporate,

**(a)** by special resolution, authorize the directors of the body corporate to apply under section 211 for a certificate of continuance; and

**(b)** by the same resolution, make any amendment to the charter of the body corporate that a corporation incorporated under this Act may make to its articles.

#### **Change of class or group rights**

**(4)** Despite subsections (2) and (3), the members of a body corporate may not, by a special resolution under either of those subsections, make any amendment of the nature referred to in subsection 199(1) that affects a class or group of members, unless

**(a)** the charter of the body corporate otherwise provides in respect of an amendment of the nature referred to in paragraph 199(1)(a) or (e); or

**(b)** the members of the class or group approve the amendment in accordance with section 199.

#### **Change of class or series rights**

**(5)** Despite subsections (2) and (3), the shareholders of a body corporate with shares may not, by a special resolution under either of those subsections, make any amendment affecting a class or series of shares unless the shareholders of the class or series approve the amendment in accordance with section 199.

#### **Authorizing continuance**

**(6)** Subject to subsection (9), the directors of a body corporate incorporated or continued by or under a special Act of Parliament may, despite the charter of the body corporate, apply under section 211 for a certificate of continuance if the articles of continuance do not make any

amendment to the charter of the body corporate other than an amendment required to conform to this Act.

### **Authorizing continuance — other bodies corporate**

(7) Subject to subsection (9), the directors of a body corporate incorporated or continued by or under an Act of Parliament, other than this Act or a special Act, may, subject to any other Act of Parliament or the charter of the body corporate, apply under section 211 for a certificate of continuance if the articles of continuance do not make any amendment to the charter of the body corporate other than an amendment required to conform to this Act.

### **Financial institutions**

(8) For the purposes of this section, every body corporate that is incorporated or continued by or under an Act of Parliament and to which the *Bank Act*, the *Cooperative Credit Associations Act*, the *Insurance Companies Act* or the *Trust and Loan Companies Act* applies is deemed to be incorporated or continued by or under an Act of Parliament other than this Act or a special Act.

### **Discretionary continuance**

(9) The Governor in Council may, by order, require a body corporate without share capital incorporated by or under an Act of Parliament other than this Act to apply for a certificate of continuance under section 211 within any period that may be prescribed except for the following:

- (a) a bank;
- (b) an association to which the *Cooperative Credit Associations Act* applies;
- (c) a company or society to which the *Insurance Companies Act* applies; and
- (d) a company to which the *Trust and Loan Companies Act* applies.

### **Fees**

(10) A body corporate that obtains a certificate of continuance under this section is not required to pay any fees in respect of the continuance.

### **Special Act no longer applicable**

(11) On the continuance of a body corporate without share capital incorporated by a special Act of Parliament as a corporation under this Act, the special Act ceases to apply to the corporation.

### **Dissolution**

**(12)** A body corporate referred to in subsection (9) that does not make an application to obtain a certificate of continuance within the period prescribed is dissolved on the expiry of that period.

### **Continuance — other jurisdictions**

**213 (1)** Subject to subsection (10), a corporation may apply to the appropriate official or public body of another jurisdiction requesting that the corporation be continued as if it had been incorporated under the laws of that other jurisdiction if the corporation

**(a)** is authorized by the members in accordance with subsections (3) to (5) to make the application; and

**(b)** establishes to the satisfaction of the Director that its proposed continuance in the other jurisdiction will not adversely affect creditors or members of the corporation.

### **Continuance — other federal Acts**

**(2)** A corporation that is authorized by the members in accordance with subsections (3) to (5) may apply to the appropriate Minister or the Director for its continuance under the *Bank Act*, the *Canada Cooperatives Act*, the *Cooperative Credit Associations Act*, the *Insurance Companies Act* or the *Trust and Loan Companies Act*.

### **Notice of meeting**

**(3)** The corporation shall give members notice of a meeting of members in accordance with section 162.

### **Right to vote**

**(4)** Each membership in the corporation carries the right to vote in respect of a continuance whether or not it otherwise carries the right to vote.

### **Member approval**

**(5)** An application for continuance is authorized when the members have approved of the continuance by a special resolution.

### **Termination**

**(6)** The directors of a corporation may, if authorized by the members at the time of approving an application for continuance, abandon the application without further approval of the members.

### **Discontinuance**

**(7)** On receipt of a notice that the corporation has been continued under the laws of another jurisdiction or an Act referred to in subsection (2), the Director shall issue a certificate of discontinuance in accordance with section 276 if the Director is of the opinion that the

corporation has been continued in accordance with this section.

### **Notice deemed to be articles**

**(8)** For the purposes of section 276, a notice referred to in subsection (7) is deemed to be articles that are in the form that the Director fixes.

### **Act ceases to apply**

**(9)** This Act ceases to apply to the corporation on the date shown in the certificate of discontinuance.

### **Prohibition**

**(10)** A corporation shall not be continued as a body corporate under the laws of another jurisdiction unless those laws provide in effect that

- (a)** the property of the corporation continues to be the property of the body corporate;
- (b)** the body corporate continues to be liable for the obligations of the corporation;
- (c)** an existing cause of action, claim or liability to prosecution is unaffected;
- (d)** any civil, criminal or administrative action or proceeding pending by or against the corporation may be continued by or against the body corporate; and
- (e)** any conviction against, or ruling, order or judgment in favour of or against, the corporation may be enforced by or against the body corporate.

### **Extraordinary sale, lease or exchange**

**214 (1)** A sale, a lease or an exchange of all or substantially all of the property of a corporation other than in the ordinary course of its activities requires the authorization of the members in accordance with subsections (2) to (6).

### **Notice of meeting**

**(2)** The corporation shall give members notice of a meeting of members in accordance with section 162 and shall include a copy or summary of the proposed agreement of sale, lease or exchange.

### **Member approval**

**(3)** At the meeting of members, the members may authorize the sale, lease or exchange and may fix, or authorize the directors to fix, any of the terms and conditions of the sale, lease or exchange.

### **Right to vote**

**(4)** Each membership in the corporation carries the right to vote in respect of the sale, lease or exchange whether or not it otherwise carries the right to vote.



**Class vote**

(5) The members of a class or group of members are entitled to vote separately as a class or group in respect of the sale, lease or exchange only if the class or group is affected by the sale, lease or exchange in a manner different from the members of another class or group.

**Member approval**

(6) The sale, lease or exchange is authorized when the members of each class or group entitled to vote on it have approved it by a special resolution.

**Abandonment**

(7) The directors of a corporation may, if authorized by the members approving a proposed sale, lease or exchange, and subject to the rights of third parties, abandon the sale, lease or exchange without further approval of the members.

**Definition of *reorganization***

**215 (1)** In this section, ***reorganization*** means a reorganization pursuant to

- (a) a court order made under section 253;
- (b) a court order made under the *Bankruptcy and Insolvency Act* approving a proposal; or
- (c) a court order made under any other Act of Parliament that affects the rights among a corporation and its members and creditors.

**Powers of court**

(2) If a corporation is subject to an order referred to in subsection (1), the order may also require any amendment of the articles or by-laws to effect any change that might be made under section 197.

**Further powers**

(3) If a court makes an order referred to in subsection (1), the court may also

- (a) authorize the issue of debt obligations of the corporation and fix their terms; and
- (b) appoint directors in place of or in addition to all or any of the directors then in office.

**Articles of reorganization**

(4) After an order referred to in subsection (1) has been made, articles of reorganization in the form that the Director fixes shall be sent to the Director together with the documents required by section 20 and subsection 134(1), if applicable.

**Certificate of amendment**

(5) On receipt of articles of reorganization, the Director shall issue a certificate of amendment in accordance with section 276.

**Effect of certificate**

**(6)** A reorganization becomes effective on the date shown in the certificate of amendment and the articles are amended accordingly.

**Definition of *arrangement***

**216 (1)** In this section, ***arrangement*** includes

- (a)** an amendment to the articles of a corporation;
- (b)** an amalgamation of two or more corporations;
- (c)** an amalgamation of a body corporate with a corporation that results in an amalgamated corporation subject to this Act;
- (d)** a division of the activities carried on by a corporation;
- (e)** a transfer of all or substantially all of the property of a corporation to another body corporate in exchange for money or other property, shares, memberships or debt obligations of the body corporate;
- (f)** an exchange of debt obligations or memberships of a corporation for money or other property or other memberships or debt obligations of the corporation or money or other property, shares, memberships or debt obligations of another body corporate;
- (g)** a liquidation and dissolution of a corporation; and
- (h)** any combination of operations referred to in paragraphs (a) to (g).

**Application to court for approval of arrangement**

**(2)** If it is not practicable for a corporation to effect a fundamental change in the nature of an arrangement under any other provision of this Act, the corporation may apply to a court for an order approving an arrangement proposed by the corporation.

**Powers of court**

**(3)** On an application under this section, the court may make any interim or final order that it thinks fit, including

- (a)** an order determining the notice to be given to any interested person or dispensing with notice to any person other than the Director;
- (b)** an order appointing counsel, at the expense of the corporation, to represent the interests of the members;
- (c)** an order requiring a corporation to call, hold and conduct a meeting of members or holders of debt obligations issued by the corporation in any manner that the court directs; and

(d) an order approving an arrangement as proposed by the corporation or as amended in any manner that the court directs.

#### Notice to Director

(4) An applicant for any interim or final order under this section shall give the Director notice of the application and the Director is entitled to appear and be heard in person or by counsel.

#### Articles of arrangement

(5) After an order referred to in paragraph (3)(d) has been made, articles of arrangement in the form that the Director fixes shall be sent to the Director together with the documents required by section 20 and subsection 134(1), if applicable.

#### Certificate of arrangement

(6) On receipt of articles of arrangement, the Director shall issue a certificate of arrangement in accordance with section 276.

#### Effect of certificate

(7) An arrangement becomes effective on the date shown in the certificate of arrangement.

### PART 14

## Liquidation and Dissolution

#### Definition of *court*

**217** In this Part, ***court***, in relation to a corporation, means a court having jurisdiction in the place where the corporation has its registered office.

#### Application of Part

**218 (1)** This Part does not apply to a corporation for which there is a trustee in bankruptcy, a trustee under a proposal or an interim receiver under the *Bankruptcy and Insolvency Act*, or a receiver acting under a provincial law, until the end of the prescribed period after

- (a) the trustee or interim receiver has been discharged; or
- (b) the receiver has provided to the Superintendent of Bankruptcy the final report and statement of accounts required by subsection 246(3) of the *Bankruptcy and Insolvency Act*.

#### Staying proceedings

(2) Any proceedings under this Part to dissolve or to liquidate and dissolve a corporation that are pending when a trustee, interim receiver or receiver referred to in subsection (1) becomes entitled to act with respect to the corporation are stayed until the end of the prescribed period after

- (a) the trustee or interim receiver has been discharged; or
- (b) the receiver has provided to the Superintendent of Bankruptcy the final report and statement of accounts required by subsection 246(3) of the *Bankruptcy and Insolvency Act*.

## Revival

**219 (1)** If a corporation or other body corporate is dissolved under this Part, or if a body corporate created or continued under Part II of the *Canada Corporations Act*, chapter C-32 of the Revised Statutes of Canada, 1970 — or that is subject to Part III of that Act — is dissolved under that Act, any interested person may apply to the Director to have the dissolved corporation or other body corporate revived as a corporation under this Act.

## Articles of revival

(2) Articles of revival in the form that the Director fixes shall be sent to the Director.

## Certificate of revival

(3) On receipt of articles of revival, the Director shall issue a certificate of revival in accordance with section 276, if

- (a) the dissolved corporation or body corporate has fulfilled all conditions precedent that the Director considers reasonable; and
- (b) there is no valid reason for refusing to issue the certificate.

## Date of revival

(4) A dissolved corporation or other body corporate is revived as a corporation under this Act on the date shown on the certificate of revival.

## Special Act no longer applicable

(5) On the revival of a body corporate without share capital incorporated by a special Act of Parliament as a corporation under this Act, the special Act ceases to apply to the corporation.

## Rights preserved

(6) Subject to any reasonable terms that may be imposed by the Director, to the rights acquired by any person after its dissolution and to any changes to the internal affairs of the corporation or body corporate after its dissolution, the revived corporation is, in the same manner and to the same extent as if it had not been dissolved,

- (a) restored to its previous position in law, including the restoration of any rights and privileges whether arising before its dissolution or after its dissolution but before its revival; and
- (b) liable for the obligations that it would have had if it had not been dissolved, whether they arise before its dissolution or after its dissolution but before its revival.

**Legal actions**

(7) Any legal action respecting the affairs of a revived corporation taken between the time of its dissolution and its revival is valid and effective.

**Definition of *interested person***

(8) In this section, ***interested person*** includes

- (a) a member, a director, an officer, an employee and a creditor of a dissolved corporation or body corporate;
- (b) a person who has a contract — other than, in Quebec, a contract by gratuitous title — with the dissolved corporation or body corporate;
- (c) a person who, although at the time of dissolution of the corporation or body corporate was not a person described in paragraph (a), would be such a person if a certificate of revival were issued under this section; and
- (d) a trustee in bankruptcy or a liquidator for the dissolved corporation or body corporate.

**Dissolution before commencing activities**

**220 (1)** A corporation that has not issued any memberships may be dissolved at any time by resolution of all the directors.

**Dissolution if no property**

(2) A corporation that has no property and no liabilities may be dissolved by special resolution of the members or, if it has more than one class or group of members, by special resolution of each class or group whether or not the members are otherwise entitled to vote.

**Dissolution where property disposed of**

(3) A corporation that has property or liabilities or both may be dissolved by special resolution of the members or, if it has more than one class or group of members, by special resolution of each class or group whether or not the members are otherwise entitled to vote, if

- (a) by the special resolution or resolutions the members authorize the directors to cause the corporation to distribute any money or other property in accordance with sections 234 to 236 and discharge any liabilities; and
- (b) the corporation has distributed any money or other property and discharged any liabilities before it sends articles of dissolution to the Director under subsection (4).

**Articles of dissolution**

(4) Articles of dissolution in the form that the Director fixes shall be sent to the Director.

**Certificate of dissolution**

**(5)** On receipt of articles of dissolution, the Director shall issue a certificate of dissolution in accordance with section 276.

#### **Effect of certificate**

**(6)** The corporation ceases to exist on the date shown in the certificate of dissolution.

#### **Proposing liquidation and dissolution**

**221 (1)** The directors may propose the voluntary liquidation and dissolution of a corporation, or a member who is entitled to vote at an annual meeting of members may make such a proposal in accordance with section 163.

#### **Notice of meeting**

**(2)** Notice of any meeting of members at which voluntary liquidation and dissolution is to be proposed shall set out the terms of the proposal.

#### **Members' resolution**

**(3)** A corporation may liquidate and dissolve by special resolution of the members or, if the corporation has more than one class or group of members, by special resolution of each class or group whether or not the members are otherwise entitled to vote.

#### **Statement of intent to dissolve**

**(4)** A statement of intent to dissolve in the form that the Director fixes shall be sent to the Director.

#### **Certificate of intent to dissolve**

**(5)** On receipt of a statement of intent to dissolve, the Director shall issue a certificate of intent to dissolve in accordance with section 276.

#### **Effect of certificate**

**(6)** On the issuance of a certificate of intent to dissolve, the corporation shall cease to carry on its activities except to the extent necessary for the liquidation, but its corporate existence continues until the Director issues a certificate of dissolution.

#### **Liquidation**

**(7)** After the issuance of a certificate of intent to dissolve, the corporation shall

**(a)** immediately cause notice of the certificate to be sent to each known creditor of the corporation;

**(b)** without delay take reasonable steps to give notice of it in each province in Canada where the corporation was carrying on activities at the time it sent the statement of intent to dissolve to the Director;

(c) do all acts required to liquidate its property — including collecting its property, transferring property referred to in section 234 and converting any property not to be transferred or distributed in kind into money — and discharge all its liabilities; and

(d) after giving the notice required under paragraphs (a) and (b) and adequately providing for the discharge of all of its liabilities, distribute its remaining property, either in money or in kind, in accordance with sections 235 and 236.

### **Supervision by court**

(8) On the application of the Director or any interested person made at any time during the liquidation of a corporation, a court may order that the liquidation be continued under the supervision of the court as provided in this Part and make any further order that it thinks fit.

### **Notice to Director**

(9) An interested person who makes an application under this section shall give the Director notice of the application, and the Director is entitled to appear and be heard in person or by counsel.

### **Revocation**

(10) At any time after the issue of a certificate of intent to dissolve and before the issue of a certificate of dissolution, a certificate of intent to dissolve may be revoked by sending to the Director a statement of revocation of intent to dissolve in the form that the Director fixes, if the revocation is approved in the same manner as the resolution under subsection (3).

### **Certificate of revocation of intent to dissolve**

(11) On receipt of a statement of revocation of intent to dissolve, the Director shall issue a certificate of revocation of intent to dissolve in accordance with section 276.

### **Effect of certificate**

(12) On the date shown in the certificate of revocation of intent to dissolve, the revocation is effective and the corporation may continue to carry on its activities.

### **Right to dissolve**

(13) If a certificate of intent to dissolve has not been revoked and the corporation has complied with subsection (7), the corporation shall prepare articles of dissolution.

### **Articles of dissolution**

(14) Articles of dissolution in the form that the Director fixes shall be sent to the Director.

### **Certificate of dissolution**

**(15)** On receipt of articles of dissolution, the Director shall issue a certificate of dissolution in accordance with section 276.

#### **Effect of certificate**

**(16)** The corporation ceases to exist on the date shown in the certificate of dissolution.

#### **Dissolution by Director**

**222 (1)** Subject to subsections (2) and (3), the Director may

**(a)** dissolve a corporation by issuing a certificate of dissolution under this section if the corporation

**(i)** has not commenced its activities within the prescribed period after the date shown in its certificate of incorporation,

**(ii)** has not carried on its activities for the prescribed period,

**(iii)** is in default for a prescribed period in sending to the Director any fee, notice or other document required by this Act, or

**(iv)** does not have any directors or is in the situation described in subsection 130(4); or

**(b)** apply to a court for an order dissolving the corporation, in which case section 227 applies.

#### **Publication**

**(2)** The Director shall not dissolve a corporation under this section until the Director has

**(a)** given notice of the decision to dissolve the corporation to the corporation and to each director; and

**(b)** published notice of that decision in a publication generally available to the public.

#### **Certificate of dissolution**

**(3)** Unless cause to the contrary has been shown or an order has been made by a court under section 258, the Director may, after the expiry of the prescribed period, issue a certificate of dissolution.

#### **Exception — non-payment of incorporation fee**

**(4)** Despite anything in this section, the Director may dissolve a corporation by issuing a certificate of dissolution if the required fee for the issuance of a certificate of incorporation has not been paid.

#### **Effect of certificate**

**(5)** The corporation ceases to exist on the date shown in the certificate of dissolution.



**Grounds for dissolution**

**223 (1)** The Director or any interested person may apply to a court for an order dissolving a corporation if the corporation has

- (a) failed for the prescribed period to comply with the requirements of this Act with respect to the holding of annual meetings of members;
- (b) contravened subsection 17(2) or section 22, 23, 174 or 175; or
- (c) procured any certificate under this Act by misrepresentation.

**Notice to Director**

**(2)** An interested person who makes an application under this section shall give the Director notice of the application, and the Director is entitled to appear and be heard in person or by counsel.

**Dissolution order**

**(3)** On an application under this section or section 222, the court may order that the corporation be dissolved or that the corporation be liquidated and dissolved under the supervision of the court and may make any other order that it thinks fit.

**Certificate**

**(4)** On receipt of an order under this section or section 222 or 224, the Director shall

- (a) if the order is to dissolve the corporation, issue a certificate of dissolution; or
- (b) if the order is to liquidate and dissolve the corporation under the supervision of the court, issue a certificate of intent to dissolve and publish notice of the order in a publication generally available to the public.

**Effect of certificate**

**(5)** The corporation ceases to exist on the date shown in the certificate of dissolution.

**Further grounds**

**224 (1)** On the application of a member, a court may order the liquidation and dissolution of a corporation or any of its affiliated corporations

- (a) if the court is satisfied that in respect of the corporation or any of its affiliates, any of the following is oppressive or unfairly prejudicial to, or unfairly disregards the interests of, any shareholder, creditor, director, officer or member, or causes such a result:
  - (i) any act or omission of the corporation or any of its affiliates,
  - (ii) the conduct of the activities or affairs of the corporation or any of its affiliates, or

(iii) the exercise of the powers of the directors of the corporation or any of its affiliates;  
or

(b) if the court is satisfied that

(i) a unanimous member agreement entitles a complaining member to demand dissolution of the corporation after the occurrence of a specified event and that event has occurred, or

(ii) it is just and equitable that the corporation should be liquidated and dissolved.

#### **Faith-based defence**

(2) The court may not make an order under paragraph (1)(a) if the court is satisfied that

(a) the corporation is a religious corporation;

(b) the act or omission, the conduct or the exercise of powers is based on a tenet of faith held by the members of the corporation; and

(c) it was reasonable to base the act or omission, the conduct or the exercise of powers on the tenet of faith, having regard to the activities of the corporation.

#### **Alternative order**

(3) On an application under this section, the court may make any order under this section or section 253 that it thinks fit.

#### **Application of s. 254**

(4) Section 254 applies to an application under this section.

#### **Application for supervision**

**225 (1)** An application to a court to supervise a voluntary liquidation and dissolution under subsection 221(8) shall state the reasons, verified by an affidavit of the applicant, why the court should supervise the liquidation and dissolution.

#### **Court supervision**

(2) If a court makes an order applied for under subsection 221(8), the liquidation and dissolution of the corporation shall continue under the supervision of the court in accordance with this Act.

#### **Application to court**

**226 (1)** An application to a court under subsection 224(1) shall state the reasons, verified by an affidavit of the applicant, why the corporation should be liquidated and dissolved.

#### **Show cause order**

**(2)** On the application, the court may make an order requiring the corporation and any interested person to show cause, at a time and place specified in the order, within the prescribed period after the date of the order, why the corporation should not be liquidated and dissolved.

#### **Powers of court**

**(3)** On the application, the court may order the directors and officers of the corporation to furnish the court with all material information known to or reasonably ascertainable by them, including

- (a)** financial statements of the corporation;
- (b)** the name and address of each member of the corporation; and
- (c)** the name and address of each known creditor or claimant, including any creditor or claimant with unliquidated, future or contingent claims, and any person with whom the corporation has a contract.

#### **Publication**

**(4)** A copy of an order made under subsection (2) shall be

- (a)** published as directed in the order, at a prescribed minimum frequency, before the time appointed for the hearing, in a newspaper published or distributed in the place where the corporation has its registered office; and
- (b)** served on the Director and each person named in the order.

#### **Person responsible**

**(5)** Publication and service of an order under this section shall be effected by the corporation or by any other person, and in any manner, that the court orders.

#### **Powers of court**

**227** In connection with the dissolution or the liquidation and dissolution of a corporation, the court may, if it is satisfied that the corporation is able to pay or adequately provide for the discharge of all its liabilities, make

- (a)** an order to liquidate;
- (b)** an order appointing or replacing a liquidator, with or without security, and fixing the remuneration of the liquidator or their replacement;
- (c)** an order appointing or replacing inspectors or referees and specifying the powers and fixing the remuneration of the inspectors or referees or their replacements;
- (d)** an order determining the notice to be given to any interested person, or dispensing with notice to any person;

- (e)** an order determining the validity of any claims made against the corporation;
- (f)** an order, at any stage of the proceedings, restraining the directors and officers
  - (i)** from exercising any of their powers, or
  - (ii)** from collecting or receiving any debt or other property of the corporation and from paying out or transferring any property of the corporation, except as permitted by the court;
- (g)** an order determining and enforcing
  - (i)** the duty of any present or former director, officer or member to the corporation, or
  - (ii)** the liability of such a person for an obligation of the corporation;
- (h)** an order approving the payment, satisfaction or compromise or, in Quebec, transaction of claims against the corporation and the retention of assets for that purpose, and determining the adequacy of provisions for the payment or discharge of liabilities of the corporation, whether liquidated, unliquidated, future or contingent;
- (i)** an order determining the use of documents and records of the corporation or directing their disposition, including by destruction;
- (j)** on the application of a creditor, the inspectors or the liquidator, an order giving directions on any matter arising in the liquidation;
- (k)** an order specifying to whom the assets of the corporation will be distributed;
- (l)** after notice has been given to all interested parties, an order relieving a liquidator from any omission or default on any terms that the court thinks fit and confirming any act of the liquidator;
- (m)** subject to sections 233 to 236, an order approving any proposed interim or final distribution of money or other property;
- (n)** an order disposing of any property belonging to creditors or members who cannot be found;
- (o)** on the application of any director, officer, member or creditor or the liquidator,
  - (i)** an order staying the liquidation on any terms and conditions that the court thinks fit,
  - (ii)** an order continuing or discontinuing the liquidation proceedings, or
  - (iii)** an order to the liquidator to restore to the corporation all its remaining property;
- (p)** after the liquidator has rendered a final account to the court, an order dissolving the corporation; and
- (q)** any other order that it thinks fit.

**Effect of order**

**228** The liquidation of a corporation commences when a court makes a liquidation order.

**Cessation of activities and powers**

**229 (1)** If a court makes an order for the liquidation of a corporation,

- (a) the corporation continues in existence but shall cease to carry on activities, except activities that are, in the opinion of the liquidator, required for an orderly liquidation; and
- (b) the powers of the directors and members cease and vest in the liquidator, except as specifically authorized by the court.

**Delegation by liquidator**

**(2)** The liquidator may delegate any powers vested in the liquidator by paragraph (1)(b) to the directors or members.

**Appointment of liquidator**

**230 (1)** When making an order for the liquidation of a corporation or at any time after making the order, the court may appoint any person, including a director, an officer or a member of the corporation or any other body corporate, as liquidator of the corporation.

**Vacancy**

**(2)** If an order for the liquidation of a corporation has been made and the office of liquidator is or becomes vacant, the property of the corporation is under the control of the court until the office of liquidator is filled.

**Duties of liquidator**

**231** A liquidator shall

- (a) immediately after appointment give notice of the appointment to the Director and to each claimant and creditor known to the liquidator;
- (b) in each province where the corporation carries on activities, provide, without delay, notice in accordance with the regulations of the appointment
  - (i) requiring any person indebted to the corporation to render an account and pay to the liquidator at the time and place specified any amount owing,
  - (ii) requiring any person possessing property of the corporation to deliver it to the liquidator at the time and place specified, and
  - (iii) requiring any person having a claim against the corporation, whether liquidated, unliquidated, future or contingent, to present particulars of the claim in writing to the liquidator within the prescribed period;

- (c) take into custody and control the property of the corporation;
- (d) open and maintain a trust account for the money of the corporation;
- (e) keep accounts of the money of the corporation received and paid out by the liquidator;
- (f) maintain separate lists of the members, creditors and other persons having claims against the corporation;
- (g) if at any time the liquidator determines that the corporation is unable to pay or adequately provide for the discharge of its liabilities, apply to the court for directions;
- (h) deliver to the court and to the Director, at least once in the prescribed period after appointment or more often as the court may require, financial statements of the corporation in the form required by section 172 or in any other form that the liquidator may think proper or as the court may require; and
- (i) after the final accounts are approved by the court, distribute any remaining property of the corporation in accordance with sections 234 to 236.

### **Powers of liquidator**

#### **232 (1)** A liquidator may

- (a) retain legal counsel, accountants, engineers, appraisers and other professional advisers;
- (b) bring, defend or take part in any civil, criminal or administrative action or proceeding on behalf of the corporation;
- (c) carry on the activities of the corporation as required for an orderly liquidation;
- (d) sell by public auction or private sale any property of the corporation;
- (e) do all acts and execute or, in Quebec, sign any documents on behalf of the corporation;
- (f) borrow money on the security of the property of the corporation;
- (g) settle or compromise or, in Quebec, transact on any claims by or against the corporation; and
- (h) do all other things necessary for the liquidation of the corporation and distribution of its property.

### **Due diligence**

**(2)** A liquidator is not liable if the liquidator exercised the care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances, including reliance in good faith on

- (a) financial statements of the corporation represented to the liquidator by an officer of the corporation or in a written report of the public accountant of the corporation fairly to reflect the financial condition of the corporation; or
- (b) a report of a person whose profession lends credibility to a statement made by that person.

### **Liability for environmental matters**

(3) Despite anything in federal or provincial law, a liquidator is not liable, in that capacity, for any environmental condition or environmental damage, unless the condition arose or the damage occurred after the liquidator's appointment as a result of the liquidator's gross negligence or wilful misconduct or, in Quebec, the liquidator's gross or intentional fault.

### **Application for examination**

(4) On the application of a liquidator, the court may — if it is satisfied that there are reasonable grounds to believe that any person has in their possession or under their control, or has concealed, withheld or misappropriated, any property of the corporation — make an order requiring that person to appear before the court at the time and place designated in the order and to be examined.

### **Power of court**

(5) If the court is satisfied, on the examination, that the person has concealed, withheld or misappropriated property of the corporation, the court may order that person to restore it or pay compensation to the liquidator.

### **Costs of liquidation**

**233 (1)** A liquidator shall pay the costs of liquidation out of the property of the corporation and shall pay, or make adequate provision for, all claims against the corporation.

### **Final accounts**

(2) Within the prescribed period after appointment, and after paying, or making adequate provision for, all claims against the corporation, the liquidator shall apply to the court

- (a) for approval of the final accounts and for an order permitting the liquidator to distribute in money or in kind the remaining property of the corporation in accordance with sections 234 to 236; or
- (b) for an extension of time, setting out the reasons for the extension.

### **Member application**

(3) On the application of a member of the corporation, the court may, if a liquidator fails to make the application required by subsection (2), order the liquidator to show cause why a final accounting and distribution should not be made.

**Publication**

**(4)** A liquidator shall give notice of their intention to make an application under subsection (2) to the Director, to each inspector appointed under paragraph 227(c), to each member and to any person who provided a security or fidelity bond or fidelity insurance for the liquidation, and shall publish the notice in a newspaper published or distributed in the place where the corporation has its registered office, or as otherwise directed by the court.

**Final order**

**(5)** If the court approves the final accounts rendered by a liquidator, the court shall make an order

- (a)** directing the Director to issue a certificate of dissolution;
- (b)** giving directions regarding the custody of documents and records of the corporation or their disposition, including by destruction; and
- (c)** discharging the liquidator.

**Delivery of order**

**(6)** The liquidator discharged under subsection (5) shall immediately send a certified copy of the order referred to in that subsection to the Director.

**Certificate of dissolution**

**(7)** On receipt of a certified copy of the order referred to in subsection (5), the Director shall issue a certificate of dissolution.

**Effect of certificate**

**(8)** The corporation ceases to exist on the date shown in the certificate of dissolution.

**Transfer on condition of return**

**234** If a person has transferred property to a corporation subject to the condition that it be returned on the dissolution of the corporation, the liquidator shall transfer that property to that person.

**Application**

**235 (1)** This section applies to

- (a)** a corporation that is a registered charity within the meaning of subsection 248(1) of the *Income Tax Act*;
- (b)** a soliciting corporation; and
- (c)** a corporation that has, in the prescribed period, received income in excess of the prescribed amount in the form of



(i) donations or gifts or, in Quebec, gifts or legacies of money or other property requested from any person who is not

(A) a member, director, officer or employee of the corporation at the time of the request,

(B) a spouse of a person referred to in clause (A) or an individual who is cohabiting with that person in a conjugal relationship, having so cohabited for a period of at least one year, or

(C) a child, parent, brother, sister, grandparent, uncle, aunt, nephew or niece of a person referred to in clause (A) or of a spouse or individual referred to in clause (B),

(ii) grants or similar financial assistance received from the federal government or a provincial or municipal government, or an agency of such a government, or

(iii) donations or gifts or, in Quebec, gifts or legacies of money or other property from a corporation or other entity that has, in the prescribed period, received income in excess of the prescribed amount in the form of donations, gifts or legacies referred to in subparagraph (i) or grants or similar financial assistance referred to in subparagraph (ii).

#### **Articles to provide for distribution of property**

(2) The articles of a corporation shall provide that any property remaining on liquidation after the discharge of any liabilities of the corporation, other than property referred to in section 234, shall be distributed to one or more qualified donees, within the meaning of subsection 248(1) of the *Income Tax Act*.

#### **Distribution in accordance with order**

(3) If the articles of a corporation do not provide for distribution to one or more qualified donees, the liquidator shall apply for an order under section 227 for the distribution of the remaining property of the corporation, other than the property referred to in section 234, to one or more qualified donees.

#### **Notice of application**

(4) The liquidator shall give notice to the Director of the application, and the Director may appear and be heard in person or by counsel.

#### **Distribution in accordance with articles**

**236 (1)** If the articles of a corporation, other than a corporation referred to in subsection 235(1), provide for the distribution of property remaining on liquidation after the discharge of any liabilities of the corporation, the liquidator shall distribute the remaining property, other than the property referred to in section 234, in accordance with the articles.

#### **Distribution to members**

**(2)** If the articles do not provide for the distribution of the remaining property, the liquidator shall divide the remaining property, other than the property referred to in section 234, into as many equal shares as there are memberships in the corporation and distribute one share to the holder of each membership.

### **Right to distribution in money**

**237 (1)** If in the course of liquidation of a corporation the members resolve or the liquidator proposes to do any of the following, a member may apply to the court for an order requiring the distribution of the property of the corporation to be in money:

**(a)** exchange all or substantially all of the property of the corporation for securities, debt obligations or memberships of another body corporate that are to be distributed to the members; or

**(b)** distribute all or part of the property of the corporation to the members in kind.

### **Powers of court**

**(2)** On an application under subsection (1), the court may order all of the property of the corporation to be converted into and distributed in money.

### **Custody of documents**

**238** A person who has been granted custody of the documents and records of a dissolved corporation remains liable to produce those documents and records until the end of the prescribed period or of any shorter period fixed by an order made under subsection 233(5).

2009, c. 23, s. 238; 2018, c. 8, s. 102.

### **Definition of *member***

**239 (1)** In this section, ***member*** includes the heirs and personal representatives of a member.

### **Continuation of actions**

**(2)** Despite the dissolution of a corporation under this Act,

**(a)** any civil, criminal or administrative action or proceeding commenced by or against the dissolved corporation before its dissolution may be continued as if the corporation had not been dissolved;

**(b)** any civil, criminal or administrative action or proceeding may be brought against the dissolved corporation within two years after its dissolution as if the corporation had not been dissolved; and

**(c)** any property that would have been available to satisfy any judgment or order if the corporation had not been dissolved remains available for that purpose.

### **Service on corporation**

**(3)** Service of a document on a corporation after its dissolution may be effected by serving the document on a person whose name appears on the last notice that was sent by the corporation in accordance with section 128 or 134 and received by the Director.

#### **Service on company**

**(4)** Service of a document on a company to which the *Canada Corporations Act*, chapter C-32 of the Revised Statutes of Canada, 1970, applied and that has been dissolved under subsection 297(5) may be effected by serving the document on a person shown as a director in the last annual summary filed by the company under that Act.

#### **Reimbursement**

**(5)** Despite the dissolution of a corporation under this Act, a member to whom any of its property has been distributed is liable to any person claiming under subsection (2) to the extent of the amount received by that member on that distribution, and an action to enforce that liability may be brought within two years after the date of the dissolution of the corporation.

#### **Representative action**

**(6)** A court may order an action referred to in subsection (5) to be brought against the persons who were members as a class or group, subject to any conditions that the court thinks fit, and, if the plaintiff establishes a claim, the court may refer the proceedings to a referee or other officer of the court, who may

- (a)** add as a party to the proceedings each person who was a member found by the plaintiff;
- (b)** determine, subject to subsection (5), the amount that each person who was a member shall contribute towards satisfaction of the plaintiff's claim; and
- (c)** direct payment of the amounts so determined.

#### **Creditors or members not found**

**240 (1)** On the dissolution of a corporation under this Act, the portion of the property distributable to a creditor or member who cannot be found shall be converted into money and paid to the Receiver General.

#### **Payment to be forwarded**

**(2)** If payment is made to the Receiver General under subsection (1) with respect to a creditor or member, the corporation or liquidator shall forward to the Director with the payment all documents, records and registers in the possession of the corporation or liquidator that relate to the entitlement of the creditor or member.

#### **Constructive satisfaction**

**(3)** A payment under subsection (1) is deemed to be in satisfaction of a debt or claim of the creditor or member.

### **Recovery**

**(4)** A person who establishes an entitlement to any money paid to the Receiver General under this Act shall be paid by the Receiver General an equivalent amount out of the Consolidated Revenue Fund.

### **Vesting in Crown**

**241 (1)** Subject to subsection 239(2) and section 240, property of a dissolved corporation that has not been disposed of at the date of its dissolution under this Act vests in Her Majesty in right of Canada.

### **Return of property on revival**

**(2)** If a dissolved corporation is revived as a corporation under section 219, any property, other than money, that vested in Her Majesty under subsection (1) and that has not been disposed of shall be returned to the corporation and there shall be paid to the corporation out of the Consolidated Revenue Fund

**(a)** an amount equal to any money received by Her Majesty under subsection (1); and

**(b)** if property other than money vested in Her Majesty under subsection (1) and that property has been disposed of, an amount equal to the lesser of

**(i)** the value of that property at the date it vested in Her Majesty, and

**(ii)** the amount realized by Her Majesty from the disposition of that property.

## **PART 15**

# **Investigation**

### **Investigation**

**242 (1)** On the application of a member, a debt obligation holder or the Director, *ex parte* or on any notice that the court requires, a court having jurisdiction in the place where a corporation has its registered office may direct an investigation to be made of the corporation and any of its affiliated corporations and may

**(a)** appoint an inspector to conduct the investigation or replace an inspector and fix the remuneration of the inspector or their replacement;

**(b)** determine the notice to be given to any interested person or, subject to subsection (3), dispense with notice to any person;

- (c)** subject to section 244, authorize an inspector to enter any place if the court is satisfied that there are reasonable grounds to suspect that there is relevant information in that place and to examine any thing and make copies of any document or record found there;
- (d)** require any person to produce documents or records to an inspector;
- (e)** authorize an inspector to conduct a hearing, administer oaths and examine any person on oath, and make rules for the conduct of the hearing;
- (f)** require any person to attend a hearing conducted by an inspector and to give evidence on oath;
- (g)** give directions to an inspector or any interested person on any matter arising in the investigation;
- (h)** require an inspector to make an interim or final report to the court;
- (i)** determine whether a report of an inspector should be published and, if so, order the Director to publish the report in whole or in part or to send copies to any person whom the court designates;
- (j)** require an inspector to discontinue an investigation;
- (k)** require the corporation to pay the costs of the investigation; and
- (l)** make any other order that it thinks fit.

## Grounds

**(2)** The court may make an order on an application under subsection (1) only if it appears to the court that

- (a)** the activities of the corporation or any of its affiliates are or have been carried on with intent to defraud any person;
- (b)** the activities or affairs of the corporation or any of its affiliates are or have been carried on or conducted, or the powers of the directors are or have been exercised, in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of a member or debt obligation holder;
- (c)** the corporation or any of its affiliates was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose; or
- (d)** persons concerned with the formation, activities or affairs of the corporation or any of its affiliates have acted fraudulently or dishonestly.

## Notice to Director

**(3)** A member or debt obligation holder who makes an application under subsection (1) shall give the Director reasonable notice of the application and the Director is entitled to appear and be heard in person or by counsel.

#### **No security for costs**

**(4)** An applicant under this section is not required to give security for costs.

#### **Hearings *in camera***

**(5)** An *ex parte* application under this section shall be heard *in camera*.

#### **Consent to publish proceedings required**

**(6)** No person shall publish anything relating to *ex parte* proceedings under this section except with the authorization of the court or the written consent of the corporation being investigated.

#### **Power of inspector**

**243 (1)** An inspector under this Part has the powers set out in the order appointing the inspector.

#### **Court order**

**(2)** An inspector shall on request produce to an interested person a copy of any order made under subsection 242(1).

#### **Entering dwelling**

**244 (1)** If the place referred to in paragraph 242(1)(c) is a dwelling, the court shall not make an order under that paragraph unless it is satisfied that

**(a)** entry to the dwelling is necessary to practically obtain the information; and

**(b)** entry to the dwelling has been refused or there are reasonable grounds for believing that entry will be refused.

#### **Use of force**

**(2)** In acting under the authority of an order that authorizes entry to a dwelling, the inspector named in it shall not use force unless the inspector is accompanied by a peace officer and the use of force has been specifically authorized in the order.

#### **Hearing *in camera***

**245 (1)** On the application of an interested person, a court may make an order directing that a hearing conducted by an inspector under this Part be heard *in camera* or giving directions on any matter arising in the investigation.

#### **Right to counsel**

**(2)** A person whose conduct is being investigated or who is being examined at a hearing conducted by an inspector under this Part has a right to be represented by counsel.

### **Incriminating statements**

**246** No person is excused from attending and giving evidence and producing documents and records to an inspector under this Part by reason only that the evidence tends to incriminate that person or subject that person to any proceeding or penalty, but no such evidence shall be used or is receivable against that person in any proceeding instituted against that person under an Act of Parliament, other than a prosecution under section 132 of the *Criminal Code* for perjury in giving the evidence or a prosecution under section 136 of that Act in respect of the evidence.

### **Exchange of information**

**247 (1)** In addition to the powers set out in the order appointing the inspector, an inspector appointed to investigate a corporation may furnish information to, or exchange information and otherwise cooperate with, any public official in Canada or elsewhere who is authorized to exercise investigatory powers and who is investigating, in respect of the corporation, any allegation of improper conduct that is the same as or similar to the conduct described in subsection 242(2).

### **Restriction**

**(2)** An inspector shall not furnish information that was obtained from any person in the course of an investigation under this Part to a public official outside Canada unless the inspector is satisfied that the information will not be used against that person in any proceeding instituted against that person for an offence.

### **Absolute privilege — defamation**

**248 (1)** Any oral or written statement or report made by an inspector or any other person in an investigation under this Part has absolute privilege.

### **Copy of report**

**(2)** An inspector shall send to the Director a copy of every report made by the inspector under this Part.

### **Solicitor-client privilege or professional secrecy**

**249** Nothing in this Part shall be construed as affecting solicitor-client privilege or, in Quebec, the professional secrecy of advocates and notaries.

## **PART 16**

# Remedies, Offences and Punishment

## Definitions

**250** The following definitions apply in this Part.

**action** means an action under this Act. (*poursuite*)

**complainant** means

- (a) a former or present member or debt obligation holder of a corporation or any of its affiliates;
- (b) a present or former registered holder or beneficial owner of a share of an affiliate of a corporation;
- (c) a former or present director or officer of a corporation or any of its affiliates;
- (d) the Director; or
- (e) any other person who, in the discretion of a court, is a proper person to make an application under this Part. (*plaignant*)

## Derivative action

**251 (1)** On the application of a complainant, a court may make an order granting the complainant leave to bring an action in the name of and on behalf of a corporation or any of its subsidiaries, or intervene in an action to which such a body corporate is a party, for the purpose of prosecuting, defending or discontinuing the action on its behalf.

## Conditions precedent

**(2)** The court may not make an order under subsection (1) unless the court is satisfied that

- (a) the complainant has given notice to the directors of the corporation or its subsidiary of the complainant's intention to apply to the court under subsection (1) within the prescribed period before bringing the application, or as otherwise ordered by the court, if the directors of the corporation or its subsidiary do not bring the action, prosecute or defend it diligently or discontinue it;
- (b) the complainant is acting in good faith; and
- (c) it appears to be in the interests of the corporation or its subsidiary that the action be brought, prosecuted, defended or discontinued.

## Faith-based defence

**(3)** The court may not make an order under subsection (1) if the court is satisfied that

- (a) the corporation is a religious corporation;



(b) the decision of the directors referred to in paragraph (2)(a) is based on a tenet of faith held by the members of the corporation; and

(c) it was reasonable to base the decision on a tenet of faith, having regard to the activities of the corporation.

### **Powers of court**

**252** In connection with an action brought or intervened in as a result of an application under subsection 251(1), the court may at any time make

(a) an order authorizing the complainant or any other person to control the conduct of the action;

(b) an order giving directions for the conduct of the action;

(c) an order directing that any amount adjudged payable by a defendant in the action shall be paid, in whole or in part, directly to former or present shareholders, members and debt obligation holders of the corporation or its subsidiary instead of to the corporation or its subsidiary;

(d) an order requiring the corporation or its subsidiary to pay reasonable legal costs incurred by the complainant in connection with the action; and

(e) any other order that it thinks fit.

### **Application to court re oppression**

**253 (1)** On the application of a complainant, a court may make an order if it is satisfied that, in respect of a corporation or any of its affiliates, any of the following is oppressive or unfairly prejudicial to or unfairly disregards the interests of any shareholder, creditor, director, officer or member, or causes such a result:

(a) any act or omission of the corporation or any of its affiliates;

(b) the conduct of the activities or affairs of the corporation or any of its affiliates; or

(c) the exercise of the powers of the directors or officers of the corporation or any of its affiliates.

### **Faith-based defence**

**(2)** The court may not make an order if the court is satisfied that

(a) the corporation is a religious corporation;

(b) the act or omission, the conduct or the exercise of powers is based on a tenet of faith held by the members of the corporation; and

(c) it was reasonable to base the act or omission, the conduct or the exercise of powers on the tenet of faith, having regard to the activities of the corporation.

**Powers of court**

- (3)** The court may make any interim or final order that it thinks fit, including an order
- (a)** restraining the conduct complained of;
  - (b)** appointing a receiver or receiver-manager;
  - (c)** with respect to a corporation's affairs, requiring the amendment of the articles or by-laws or the creation or amendment of a unanimous member agreement;
  - (d)** directing an issue or exchange of memberships, debt obligations or securities;
  - (e)** appointing directors in place of or in addition to all or any of the directors then in office;
  - (f)** directing a corporation, subject to subsection (5), or any other person, to purchase the debt obligation of a debt obligation holder;
  - (g)** directing a corporation, subject to subsection (5), or any other person, to pay a member all or part of the amount that the member paid for their membership;
  - (h)** varying, setting aside or annulling a transaction or contract to which a corporation is a party and compensating the corporation or any other party to the transaction or contract;
  - (i)** requiring a corporation, within a time specified by the court, to produce to the court or an interested person financial statements in the form required by section 172 or an accounting in any other form that the court may determine;
  - (j)** compensating an aggrieved person;
  - (k)** directing rectification of the registers or other records of a corporation under section 255;
  - (l)** liquidating and dissolving a corporation;
  - (m)** directing an investigation under Part 15 to be made; and
  - (n)** requiring the trial of any issue.

**Duty of directors**

- (4)** If an order directs amendment of the articles or by-laws of a corporation,
- (a)** the directors shall immediately comply with subsection 215(4); and
  - (b)** no other amendment to the articles or by-laws shall be made without the consent of the court, until a court otherwise orders.

**Limitation**

- (5)** A corporation shall not make a payment to a member under paragraph (3)(f) or (g) if there are reasonable grounds for believing that, after that payment,

- (a) the corporation is or would be unable to pay its liabilities as they become due; or
- (b) the realizable value of the corporation's assets would be less than the aggregate of its liabilities.

### **Alternative order**

- (6) An applicant under this section may apply in the alternative for an order under section 224.

### **Evidence of members' approval not decisive**

**254 (1)** An application made or an action brought or intervened in under this Part shall not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to the corporation or its subsidiary has been or might be approved by the members of that body corporate, but evidence of approval by the members may be taken into account by the court in making an order under section 224, 252 or 253.

### **Court approval to discontinue**

(2) An application made or an action brought or intervened in under this Part shall not be stayed, discontinued, settled or dismissed for want of prosecution or, in Quebec, failure to respect the agreement between the parties as to the conduct of the proceeding without the approval of the court given on any terms that the court thinks fit and, if the court determines that the interests of any complainant may be substantially affected by the stay, discontinuance, settlement, dismissal or failure, the court may order any party to the application or action to give notice to the complainant.

### **No security for costs**

(3) A complainant is not required to give security for costs in any application made or action brought or intervened in under this Part.

### **Interim costs**

(4) In an application made or an action brought or intervened in under this Part, the court may at any time order the corporation or its subsidiary to pay to the complainant interim costs, including legal costs and disbursements, but the complainant may be held accountable for those interim costs on final disposition of the application or action.

### **Application to court to rectify records**

**255 (1)** If the name of a person is alleged to be or to have been wrongly entered or retained in, or wrongly deleted or omitted from, the registers or other records of a corporation, the corporation, a debt obligation holder, director, officer or member of the corporation or any aggrieved person may apply to a court for an order that the registers or records be rectified.

### **Director's right to appear**

**(2)** An applicant under this section shall give the Director notice of the application and the Director is entitled to appear before the court and be heard in person or by counsel.

### **Powers of court**

**(3)** On an application under this section, the court may make

- (a)** an order requiring the registers or other records of the corporation to be rectified;
- (b)** an order restraining the corporation from calling or holding a meeting of members before that rectification;
- (c)** an order determining the right of a party to the proceedings to have their name entered or retained in, or deleted or omitted from, the registers or records of the corporation;
- (d)** an order compensating a party who has incurred a loss; and
- (e)** any other order that it thinks fit.

### **Application for directions**

**256** On the application of the Director for directions in respect of any matter concerning the Director's duties under this Act, a court may give any directions and make any further order that it thinks fit.

### **Notice of refusal by Director**

**257 (1)** If the Director refuses to accept any document that takes effect under this Act on its acceptance or on the issuance of a certificate or other document, the Director shall, within the prescribed period, give written notice of the refusal to the person who sent the document, giving reasons.

### **Deemed refusal**

**(2)** If the Director does not, within the prescribed period, accept the document, issue the certificate or other document or give the notice of refusal, the Director is deemed for the purposes of section 258 to have refused the document.

### **Appeal from Director's decision**

**258** A court may, on the application of a person aggrieved by any of the following decisions of the Director, make any order that it thinks fit, including an order requiring the Director to change the decision:

- (a)** to refuse to accept in the form submitted any articles or other document required by this Act to be sent to the Director;
- (b)** to give a name, to change or revoke a name, or to refuse to reserve, accept, change or revoke a name under section 13;

- (c) not to accept a notice of registered office required by section 20;
- (d) to refuse to issue a certificate of discontinuance under section 213 or a certificate attesting that as of a certain date a corporation exists under subsection 290(2);
- (e) to issue, or to refuse to issue, a certificate of revival under section 219, or to impose terms for revival;
- (f) to dissolve a corporation under section 222;
- (g) to correct, or to refuse to correct, articles, a certificate or other document under section 288;
- (h) to cancel, or to refuse to cancel, the articles and any related certificate under section 289; or
- (i) to grant, or to refuse to grant, an application made under subsection 2(6), 25(1) or (2), 104(3), 160(2), 162(5) or 171(2) or section 173, 190 or 271.

### **Compliance or restraining order**

**259** On the application of a complainant or a creditor of a corporation, a court may make an order directing a corporation or any director, officer, employee, agent or mandatary, public accountant, trustee, receiver, receiver-manager, sequestrator or liquidator of a corporation to comply with this Act, the regulations or the articles, the by-laws or a unanimous member agreement of the corporation or restraining any such person from acting in breach of them and make any further order that it thinks fit.

### **Summary application to court**

**260** If this Act states that a person may apply to a court, the application may be made in a summary manner following applicable provincial law or as the rules of the court of competent jurisdiction provide, and subject to any order respecting notice to interested parties or costs, or any other order that the court thinks fit.

### **Appeal of final order**

**261 (1)** An appeal lies to the court of appeal of a province from any final order made by a court of that province under this Act.

### **Appeal with leave**

**(2)** An appeal lies to the court of appeal of a province from any order other than a final order made by a court of that province, only with leave of the court of appeal.

### **Offence**

**262 (1)** Every person who contravenes a provision of this Act, other than paragraph 148(2)(b), or the regulations is guilty of an offence and is liable on summary conviction to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months or to both.

#### **Offences with respect to reports**

**(2)** A person who makes, or assists in making, a false or misleading statement in a document required under this Act or the regulations to be sent to the Director or to any other person is guilty of an offence and liable on summary conviction to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months or to both.

#### **Offence — use of information**

**(3)** A person who uses information obtained from a register of members or debt obligation holders or a list of members or debt obligation holders required under this Act for a purpose other than those specified in sections 22, 23 and 107 without the written permission of the member or debt obligation holder about whom information is being used is guilty of an offence and liable on summary conviction to a fine of not more than \$25,000 or to imprisonment for a term of not more than six months or to both.

#### **Officers, etc., of bodies corporate**

**(4)** If a body corporate commits an offence under this section, any director or officer of the body corporate who authorized, permitted or acquiesced in the commission of the offence is a party to and guilty of the offence and is liable on summary conviction to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months or to both, whether or not the body corporate has been prosecuted or convicted.

#### **Due diligence**

**(5)** No person shall be convicted of an offence under this section if the person establishes that they exercised due diligence to prevent the commission of the offence.

#### **Non-application of section 126 of the *Criminal Code***

**(6)** Section 126 of the *Criminal Code* does not apply in respect of the obligation under paragraph 148(2)(b).

#### **Order to comply**

**263 (1)** Where a person is guilty of an offence under this Act or the regulations, any court in which proceedings in respect of the offence are taken may, in addition to any punishment it may impose, order that person to comply with the provisions of this Act or the regulations for the contravention of which the person has been convicted.

#### **Limitation period**

(2) A prosecution for an offence under this Act may be instituted at any time within but not later than two years after the time when the subject matter of the complaint arose.

#### **Civil remedy not affected**

(3) No civil remedy for an act or omission is suspended or affected by reason that the act or omission is an offence under this Act.

## **PART 17**

# **Documents in Electronic or Other Form**

### **Definitions**

**264** The following definitions apply in this Part.

***electronic document*** means, except in section 269, any form of representation of information or of concepts fixed in any medium in or by electronic, optical or other similar means and that can be read or perceived by a person or by any means. (*document électronique*)

***information system*** means a system used to generate, send, receive, store or otherwise process an electronic document. (*système d'information*)

### **Application**

**265** This Part does not apply to information, including information in a notice or other document, sent to or issued by the Director under this Act or prescribed for the purposes of this section.

### **Use not mandatory**

**266 (1)** Nothing in this Act or the regulations requires a person to create or provide an electronic document.

### **Consent and other requirements**

(2) Despite anything in this Part, a requirement under this Act or the regulations to provide a person with information, including information in a notice or other document, is not satisfied by the provision of an electronic document unless

(a) the addressee has consented, in the manner prescribed, and has designated an information system for the receipt of the electronic document; and

(b) either the electronic document is provided to the designated information system or any other prescribed action is taken.

### **Revocation of consent**

**(3)** An addressee may revoke the consent referred to in paragraph (2)(a) in the manner prescribed.

### **Creation and provision of information**

**267** A requirement under this Act or the regulations that information, including information in a notice or other document, be created or provided is satisfied by the creation or provision of an electronic document if

- (a)** the by-laws or the articles of the corporation do not otherwise provide; and
- (b)** the regulations, if any, have been complied with.

### **Creation of information in writing**

**268 (1)** A requirement under this Act or the regulations that information, including information in a notice or other document, be created in writing is satisfied by the creation of an electronic document if, in addition to the conditions set out in section 267,

- (a)** the information in the electronic document is accessible so as to be usable for subsequent reference; and
- (b)** the regulations pertaining to this subsection, if any, have been complied with.

### **Provision of information in writing**

**(2)** A requirement under this Act or the regulations that information, including information in a notice or other document, be provided in writing is satisfied by the provision of an electronic document if, in addition to the conditions set out in section 267,

- (a)** the information in the electronic document is accessible by the addressee and capable of being retained by the addressee, so as to be usable for subsequent reference; and
- (b)** the regulations pertaining to this subsection, if any, have been complied with.

### **Copies**

**(3)** A requirement under this Act or the regulations for one or more copies of a document to be provided to a single addressee at the same time is satisfied by the provision of a single version of an electronic document.

### **Registered mail**

**(4)** A requirement under this Act or the regulations to provide a document by registered mail cannot be satisfied by means of an electronic document unless the regulations so prescribe and, in such case, only in accordance with the prescribed requirements.

### **Statutory declarations and affidavits**



**269 (1)** A statutory declaration or an affidavit required under this Act or the regulations may be created or provided in an electronic document if

- (a) the person who makes the statutory declaration or affidavit signs it with his or her secure electronic signature;
- (b) the authorized person before whom the statutory declaration or affidavit is made signs it with his or her secure electronic signature; and
- (c) the requirements of sections 266 to 268 are complied with.

### Definitions

**(2)** For the purposes of this section, **electronic document** and **secure electronic signature** have the same meaning as in subsection 31(1) of the *Personal Information Protection and Electronic Documents Act*.

### Clarification

**(3)** For the purpose of complying with paragraph (1)(c), the references to an “electronic document” in sections 266 to 268 are to be read as references to an electronic document as defined in subsection 31(1) of the *Personal Information Protection and Electronic Documents Act*.

### Signatures

**270** Except with respect to a statutory declaration or an affidavit, a requirement under this Act or the regulations for a signature or for a document to be executed is satisfied in relation to an electronic document if the prescribed requirements, if any, pertaining to this section are met and if the signature results from the application by a person of a technology or a process that permits the following to be proven:

- (a) the signature resulting from the use by the person of the technology or process is unique to the person;
- (b) the technology or process is used by the person to incorporate, attach or associate the person’s signature to the electronic document; and
- (c) the technology or process can be used to identify its user.

### Application for dispensation

**271** On application of the corporation, the Director may, on any terms that the Director thinks fit, relieve — including retroactively — a corporation from complying with any requirements of this Part if the Director reasonably believes that the members will not be prejudiced by the dispensation.

## PART 18

# General

## Notice, Certificates and Other Documents

### Notice to directors and members

**272 (1)** A notice or other document required by this Act, the regulations, the articles or the by-laws to be sent to a member or director of a corporation may be sent by prepaid mail addressed to, or may be delivered personally to,

(a) the member at the member's latest address as shown in the records of the corporation; and

(b) the director at the director's latest address as shown in the records of the corporation or in the last notice that was sent by the corporation in accordance with section 128 or 134 and received by the Director.

### Effect of notice

(2) A director whose name appears on the last notice that was sent by a corporation in accordance with section 128 or 134 and received by the Director is presumed for the purposes of this Act to be a director of the corporation.

### Deemed receipt

(3) A notice or other document sent in accordance with subsection (1) to a member or director of a corporation is deemed to be received at the time it would be delivered in the ordinary course of mail unless there are reasonable grounds for believing that the member or director did not receive the notice or document at that time or at all.

### Undelivered notices

(4) If on two consecutive occasions a notice or other document sent to a member in accordance with subsection (1) is returned because the member cannot be found, the corporation is not required to send any further notices or documents to the member until the member informs the corporation in writing of the member's new address.

### Notice to and service on a corporation

**273** A notice or other document required to be sent to or served on a corporation may be sent by registered mail to the registered office of the corporation shown in the last accepted notice under section 20 and, if so sent, is deemed to be received or served at the time it would be delivered in the ordinary course of mail unless there are reasonable grounds for believing that the corporation did not receive the notice or document at that time or at all.

### Waiver of notice

**274** Where a notice or other document is required by this Act or the regulations to be sent, the sending of the notice or document may be waived or the time for the notice or document may be waived or abridged at any time with the consent in writing of the person entitled to the notice or document.

### **Certificate of corporation**

**275 (1)** A certificate issued on behalf of a corporation stating any fact that is set out in the articles, the by-laws, a unanimous member agreement, the minutes of the meetings of the directors, a committee of directors or the members, or in a trust indenture or other contract to which the corporation is a party, may be signed by a director or an officer of the corporation.

### **Evidence of contents of certificate, certified extract and certified copy**

**(2)** In the absence of evidence to the contrary, the following documents, when introduced as evidence in any civil, criminal or administrative action or proceeding, are proof of their contents:

- (a)** a certificate referred to in subsection (1);
- (b)** a document certified to be a true extract from the corporation's register of directors, officers, members and debt obligation holders; and
- (c)** a document certified to be a true copy of minutes, or of an extract from minutes, of a meeting of members or directors or a committee of directors of the corporation.

### **Proof of authenticity**

**(3)** A document that appears to be a certificate, certified extract or certified copy referred to in subsection (2) is presumed, in the absence of evidence to the contrary, to be authentic.

### **Proof of membership or debt obligation**

**(4)** An entry of a person's name in a register of members or debt obligation holders of a corporation, or an entry in a debt obligation certificate issued by a corporation, is, in the absence of evidence to the contrary, proof that the person holds the membership or debt obligation described in the register or in the certificate.

### **Definition of *statement***

**276 (1)** In this section, ***statement*** means a statement of intent to dissolve, or a statement of revocation of intent to dissolve, referred to in section 221.

### **Sending of articles and statements**

**(2)** If this Act requires that articles or a statement relating to a corporation be sent to the Director, on receiving the articles or statement in the form that the Director fixes, any other required documents and the required fees, the Director shall

- (a)** record the date of receipt;

**(b)** issue the appropriate certificate;

**(c)** send the certificate, or a copy, image or photographic, electronic or other reproduction of the certificate, to the corporation or its agent or mandatary; and

**(d)** publish a notice of the issuance of the certificate in a publication generally available to the public.

#### **Date of certificate**

**(3)** A certificate referred to in subsection (2) issued by the Director may be dated as of the day the Director receives the articles, statement or court order under which the certificate is issued or as of any later day specified by the court or person who signed the articles or statement.

#### **Date of certificate**

**(4)** Despite subsection (3), a certificate of discontinuance may be dated as of the day on which the corporation amalgamates, or is continued, under another Act.

#### **Exception — failure to comply with Act**

**(5)** The Director may refuse to issue the certificate if a notice that is required by section 20 or 128 or subsection 134(1) indicates that the corporation, after the issuance of the certificate, would not be in compliance with this Act.

#### **Signature**

**277 (1)** A signature required on a certificate issued by the Director under this Act may be printed or otherwise mechanically reproduced on the certificate.

#### **Execution of documents**

**(2)** Any articles, notice, resolution, requisition, statement or other document required or permitted to be executed or signed by more than one individual for the purposes of this Act may be executed or signed in several documents of similar form, each of which is executed or signed by one or more of the individuals. The documents, when duly executed or signed by all individuals required or permitted, as the case may be, to do so, are deemed to constitute one document for the purposes of this Act.

#### **Publication**

**277.1** The Director must publish, in a publication generally available to the public, a notice of any decision made by the Director granting an application made under subsection 2(6), 104(3), 160(2), 162(5) or 171(2) or section 173, 190 or 271.

2018, c. 8, s. 103.

#### **Annual return**

**278** Every corporation shall send to the Director an annual return in the form and within the period that the Director fixes.

### **Inspection**

**279 (1)** A person who has paid the required fee is entitled during usual business hours to examine and make copies of or take extracts from any document that is required to be sent to the Director under this Act, other than any of the following documents, or that was required to be sent to a person performing a similar function under prior legislation:

- (a) extracts obtained under subsection 24(1);
- (b) a members or debt obligation holders list obtained under subsection 24(2);
- (b.1) extracts or copies of corporate records or documents referred to in section 25;
- (c) a copy of the documents obtained under section 177; and
- (d) a report obtained under subsection 248(2).

### **Copies or extracts**

**(2)** The Director shall, on request, provide any person with a copy, extract, certified copy or certified extract of a document that may be examined under subsection (1).

2009, c. 23, s. 279; 2018, c. 8, s. 104.

### **Payment of fees**

**280** A fee in respect of the receipt or copying of any document shall be paid to the Director on the reception or copying, and a fee in respect of the acceptance, examination or issuance of any document or in respect of any action that the Director is required or authorized to take under this Act shall be paid to the Director before the acceptance, examination or issuance or the taking of the action.

## **Director**

### **Appointment of Director**

**281** The Minister shall appoint a Director and may appoint one or more Deputy Directors to carry out the duties and exercise the powers of the Director under this Act.

### **Content and form of documents**

**282** The Director may establish the requirements for the content and fix the form, including electronic or other forms, of notices and other documents sent to or issued by the Director under this Act and, in so doing, the Director may specify, among other things,

- (a) the notices and documents that may be transmitted in electronic or other form;
- (b) the persons or classes of persons who may sign or transmit the notices and documents;

(c) their signature in electronic or other form, or the actions that are to have the same effect for the purposes of this Act as their signature; and

(d) the time and circumstances when electronic notices and documents are to be considered to be sent or received, and the place where they are considered to have been sent or received.

(e) [Repealed, 2018, c. 8, s. 105]

2009, c. 23, s. 282; 2018, c. 8, s. 105.

### **Director's obligation to keep documents**

**283 (1)** Documents that are received and accepted by the Director under this Act or that were received and accepted by a person performing a similar function under prior legislation shall be kept by the Director, in any form.

### **Obligation to furnish**

(2) If documents are kept by the Director otherwise than in written form,

(a) the Director shall furnish any copy required to be furnished under subsection 279(2) in intelligible form; and

(b) a report respecting those documents, if it is certified by the Director, is admissible in evidence to the same extent as the original documents would have been.

### **Time period for keeping and producing documents**

(3) The Director is not required to keep or produce any document or class of documents — other than a certificate and any attached articles or statement received under section 276 and other prescribed documents or prescribed class of documents — after the end of the prescribed period for the keeping or production of the document or class of documents.

2009, c. 23, s. 283; 2018, c. 8, s. 106.

### **Proof required by Director**

**284 (1)** The Director may require that a document required by this Act or the regulations to be sent to the Director or a fact stated in such a document be verified in accordance with subsection (2).

### **Form of proof**

(2) A document or fact required by the Director or by this Act to be verified may be verified by affidavit or by statutory declaration under the *Canada Evidence Act* before any commissioner for oaths or for taking affidavits.

### **Dispensation**

**285** The Director may relieve a person or class of persons, on any conditions that the Director considers appropriate, from sending to the Director any notice or other document or class of notice or document required under this Act to be so sent if the Director is satisfied that

(a) information similar to what would be contained in the notice or other document or class of notice or document is contained in a document or a class of documents that is required to be made public under any other Act of Parliament or any Act of the legislature of a province; and

(b) doing so would be in conformity with any prescribed requirements.

### **Certificate of Director**

**286 (1)** The Director shall sign any certificate or certification of fact that the Director is, under this Act, required or authorized to issue.

### **Evidence of contents of certificate or certified copy**

(2) Except in a proceeding under section 223, a certificate issued by the Director under this Act or a copy of a document certified by the Director to be a true copy is conclusive proof in any civil, criminal or administrative action or proceeding of its contents.

### **Evidence of contents of certification of fact**

(3) A certification of fact by the Director is, in the absence of evidence to the contrary, proof in any civil, criminal or administrative action or proceeding of its contents.

### **Proof of authenticity**

(4) A document that appears to be a certificate or certified copy referred to in subsection (2) or a certification of fact referred to in subsection (3) is presumed, in the absence of evidence to the contrary, to be authentic.

### **Alteration**

**287** The Director may alter a notice or other document, other than an affidavit or statutory declaration, if authorized by the person who sent the document or by that person's representative.

### **Corrections initiated by Director**

**288 (1)** If there is an error in the articles, a certificate or other document except one required by section 20 or 128, subsection 134(1) or section 278, the directors or members of the corporation shall, on the request of the Director, pass the resolutions and send to the Director the documents required to comply with this Act and take any other steps that the Director reasonably requires so that the Director can correct the document.

### **No prejudice**

**(2)** Before proceeding under subsection (1), the Director shall be satisfied that the correction would not prejudice any of the members or creditors of the corporation.

#### **Corrections initiated by the corporation**

**(3)** The Director may, at the request of the corporation or of any other interested person, correct any of the documents referred to in subsection (1) if

- (a)** the correction is approved by the directors of the corporation, or the error is obvious on the face of the document or was made by the Director; and
- (b)** the Director is satisfied that the correction would not prejudice any of the members or creditors of the corporation and that it reflects the original intention of the corporation or the incorporators.

#### **Application to court**

**(4)** On the application of the Director, the corporation or any other interested person, a court may

- (a)** order the correction of any of the documents referred to in subsection (1);
- (b)** determine the rights of members or creditors of the corporation; and
- (c)** make any other order that the court thinks fit.

#### **Notice to Director of application**

**(5)** An applicant under subsection (4) other than the Director shall give the Director notice of the application, and the Director is entitled to appear and to be heard in person or by counsel.

#### **Director may require surrender of document**

**(6)** The Director may demand the surrender of the original document and may issue a corrected certificate.

#### **Date of corrected document**

**(7)** A corrected document shall bear the date of the document it replaces unless

- (a)** the correction is made with respect to the date of the document, in which case the document shall bear the corrected date; or
- (b)** a court decides otherwise.

#### **Notice**

**(8)** If a corrected certificate materially amends the terms of the original certificate, the Director shall without delay publish notice of the correction in a publication generally available to the public.



**Cancellation of articles by Director**

**289 (1)** In the prescribed circumstances, the Director may cancel the articles and any related certificate of a corporation.

**No prejudice**

**(2)** Before proceeding under subsection (1), the Director shall be satisfied that the cancellation would not prejudice any of the members or creditors of the corporation.

**Request to Director to cancel articles**

**(3)** In the prescribed circumstances, the Director may, at the request of a corporation or of any other interested person, cancel the articles and any related certificate of the corporation if

- (a)** the cancellation is approved by the directors of the corporation; and
- (b)** the Director is satisfied that the cancellation would not prejudice any of the members or creditors of the corporation and that the cancellation reflects the original intention of the corporation or the incorporators.

**Application to court**

**(4)** On the application of the Director, the corporation or any other interested person, a court may

- (a)** order the cancellation of the articles of a corporation and any related certificate;
- (b)** determine the rights of members or creditors of the corporation; and
- (c)** make any other order that the court thinks fit.

**Notice to Director**

**(5)** An applicant under subsection (4) other than the Director shall give the Director notice of the application, and the Director is entitled to appear and to be heard in person or by counsel.

**Return of certificate**

**(6)** The Director may demand the surrender of a cancelled certificate.

**Certificate**

**290 (1)** The Director may provide any person with a certificate stating that a corporation

- (a)** has sent to the Director a document required to be sent under this Act;
- (b)** has paid all required fees; or
- (c)** exists as of a certain date.

**Director may refuse to issue certificate of existence**

**(2)** For greater certainty, the Director may refuse to issue a certificate described in paragraph (1)(c) if the Director has knowledge that the corporation is in default of sending a document required to be sent under this Act or of paying a required fee.

### **Form of publication**

**291** Information or notices that the Director is required by this Act to publish in a publication generally available to the public may be made available to the public or published by any system of electronic data processing or other information storage device that is capable of reproducing any required information or notice in intelligible form within a reasonable time.

### **Power to make inquiries**

**292** The Director may make inquiries of any person relating to compliance with this Act.

## **Regulations**

### **Regulations**

**293 (1)** The Governor in Council may make regulations

**(a)** providing for anything that by this Act is to be prescribed or provided for by the regulations;

**(b)** defining, enlarging or restricting the meaning of any word or expression used but not defined in this Act;

**(c)** requiring the payment of a fee in respect of the receipt, acceptance, examination, issuance or copying of any document, or in respect of any action that the Director is required or authorized to take under this Act, and prescribing the amount of the fee or the manner of determining the fee;

**(d)** respecting the payment of fees, including the time when and the manner in which the fees are to be paid, the additional fees that may be charged for the late payment of fees and the circumstances in which any fees previously paid may be refunded in whole or in part;

**(e)** prescribing, for the purposes of paragraph 163(6)(e), the minimum amount of support required in relation to the number of times that a substantially similar proposal was submitted to members within the prescribed period;

**(f)** respecting applications made under subsection 2(6), 25(1) or (2), 104(3), 160(2), 162(5) or 171(2) or section 173, 190 or 271 including prescribing the form and manner of, and time for, making the applications, the information and evidence to be submitted in connection with the applications, the procedure to be followed in the consideration of the applications, the factors to be taken into account in their consideration and, if applicable, any conditions that may or must form part of decisions on the applications;

- (g) prescribing any matter necessary for the purposes of the application of Part 17, including the time and circumstances when an electronic document is to be considered to have been provided or received and the place where it is considered to have been provided or received;
- (h) prescribing the manner of, and conditions for, participating in a meeting by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting;
- (i) prescribing, for the purposes of subsections 165(3) and (4), the manner of, and conditions for, voting at a meeting of members by means of a telephonic, electronic or other communication facility;
- (j) respecting any matter relating to voting by members not in attendance at a meeting of members; and
- (k) generally, for carrying out the purposes and provisions of this Act.

#### **Incorporation by reference**

(2) The regulations may incorporate any material by reference regardless of its source and either as it exists on a particular date or as amended from time to time.

#### **Incorporated material is not a regulation**

(3) Material does not become a regulation for the purposes of the *Statutory Instruments Act* because it is incorporated by reference.

2009, c. 23, s. 293; 2018, c. 8, s. 107(E).

## **PART 19**

# **Special Act Bodies Corporate Without Share Capital**

#### **Application to special Act bodies corporate**

**294** Part 3, subsections 160(1) and 168(1), sections 212, 221 to 223 and 278 and this Part apply to any body corporate without share capital incorporated by a special Act of Parliament and not continued under any other Act — other than a departmental corporation or a parent Crown corporation, as defined in section 2 of the *Financial Administration Act* — as if it were a corporation under this Act and any reference in Part 3 or those provisions to the articles of a corporation shall be read as a reference to the body corporate's incorporating statute.

#### **Report listing Acts of continued or dissolved bodies corporate**

**295 (1)** The Minister may cause to be laid before both Houses of Parliament a report listing every special Act of Parliament that incorporated a body corporate that was later continued under section 212 or dissolved under any of sections 221 to 223.

**Referral to committee**

(2) The report shall be referred to a committee of each House, or a joint committee of both Houses, that is designated or established for the purpose of reviewing it.

**Repeal of Acts**

(3) Every Act listed in the report — unless the Act is the subject of a resolution to the contrary of any committee to which the report is referred — is repealed on the day that is one year after the later of the day on which the report is laid before the Senate and the day on which it is laid before the House of Commons.

**Publication in the *Canada Gazette***

(4) The Minister shall, within 60 days after their repeal, publish in the *Canada Gazette* a list of every Act repealed under subsection (3).

**Change of name**

**296 (1)** A body corporate may send to the Director notice of a change of its name that complies with subsections (4) and (5) and that has been approved by special resolution of the members.

**Certificate and notice**

(2) On receipt of the notice, the Director shall issue a certificate of change of name and give notice of the change as soon as practicable in a publication generally available to the public.

**Effective date**

(3) A change of name becomes effective on the date shown in the certificate.

**Alternate name**

(4) The name of a body corporate may be in an English form, a French form, an English form and a French form, or a combined English and French form, so long as the combined form meets any prescribed criteria. The body corporate may use and may be legally designated by any such form.

**Prohibited names**

(5) A body corporate shall not change its name to, or carry on activities under or identify itself by, a name that would not be permitted under subsection 13(1) if it were a corporation.

**Directing change of name**

(6) The Director may direct a body corporate to change its name in accordance with subsection (1) if, through inadvertence or otherwise, the body corporate, under this section, has acquired a name that does not comply with subsection (4) or (5).

**Undertaking to dissolve or change name**

**(7)** If a body corporate acquires a name as a result of a person undertaking to dissolve or to change names, and the undertaking is not honoured, the Director may direct the body corporate to change its name in accordance with subsection (1), unless the undertaking is honoured within the prescribed period referred to in subsection (8).

#### **Revoking name**

**(8)** If a body corporate has not followed a directive under subsection (6) or (7) within the prescribed period, the Director may revoke the name of the body corporate and assign a name to it and, until changed in accordance with subsection (1), the name of the body corporate is the name assigned by the Director.

## **PART 20**

# **Transitional Provisions, Consequential Amendments, Coordinating Amendments, Repeals and Coming into Force**

## **Transitional Provisions**

### **Continuance — Part II of *Canada Corporations Act***

**297 (1)** A body corporate to which Part II of the *Canada Corporations Act*, chapter C-32 of the Revised Statutes of Canada, 1970 (in this section and section 298 referred to as the “*Canada Corporations Act*”), applies, other than a body corporate that is subject to a winding-up order made under the *Winding-up and Restructuring Act* before this subsection comes into force, shall apply for a certificate of continuance under section 211.

### **Continuance — Part IV of *Canada Corporations Act***

**(2)** A body corporate to which Part IV of the *Canada Corporations Act* applies, other than a body corporate that is subject to a winding-up order made under the *Winding-up and Restructuring Act* before this subsection comes into force, shall apply for a certificate of continuance under section 187 of the *Canada Business Corporations Act*.

### **Ogdensburg Bridge Authority**

**(3)** Despite subsection (2), the Ogdensburg Bridge Authority, created by *An Act to incorporate Ogdensburg Bridge Authority*, chapter 57 of the Statutes of Canada, 1952, shall apply for letters patent under section 156 of the *Canada Corporations Act* as if it were a corporation without share capital.

### **Fees not payable**

**(4) A body corporate that applies for a certificate of continuance under this section is not required to pay any fees in respect of the continuance.**

**Time limit for continuance**

**(5) Despite any provision of the *Canada Corporations Act*, the Director may, in accordance with section 222, dissolve a body corporate referred to in subsection (1) that does not apply for a certificate of continuance under section 211 within three years after the day on which this subsection comes into force.**

**Time limit for continuance**

**(6) Despite any provision of the *Canada Corporations Act*, a body corporate referred to in subsection (2) that does not apply for a certificate of continuance under section 187 of the *Canada Business Corporations Act* within six months after the day on which this subsection comes into force is dissolved on the expiry of that period.**

**Time limit for continuance of the Ogdensburg Bridge Authority**

**(7) Despite any provision of the *Canada Corporations Act*, the Ogdensburg Bridge Authority is dissolved six months after the day on which this subsection comes into force if it does not apply for letters patent under section 156 of the *Canada Corporations Act* within that six-month period.**

**No incorporation or continuance**

**298 After this section comes into force, no body corporate may be incorporated or continued under Part II of the *Canada Corporations Act*.**

**Review of Act**

**299 (1) Within 10 years after the day on which this section comes into force, the Minister shall cause to be laid before both Houses of Parliament a report on the provisions and operation of this Act, including any recommendations for amendments to those provisions.**

**Reference to parliamentary committee**

**(2) The report stands referred to the committee of the Senate, the House of Commons or both Houses of Parliament that is designated or established for that purpose, which shall**

**(a) as soon as possible after the laying of the report, review the report; and**

**(b) report to the Senate, the House of Commons or both Houses of Parliament, as the case may be, within one year after the laying of the report of the Minister, or any further time authorized by the Senate, the House of Commons or both Houses of Parliament.**

## Consequential Amendments

### **An Act to incorporate St. Mary's River Bridge Company**

**300** [Amendment]

**301** [Amendment]

**302** [Amendment]

### **An Act to incorporate the Jules and Paul-Émile Léger Foundation**

**303** [Amendment]

### **An Act to incorporate the Pickering Harbour Company (Limited) and to authorize it to collect tolls**

**304** [Amendment]

### **An Act to provide for the creation by amalgamation of The Wesleyan Church of Canada**

**305** [Amendment]

### **Bank Act**

**306** [Amendment]

### **Budget Implementation Act, 1997**

**307** [Amendment]

**308** [Repealed before coming into force, 2009, c. 23, s. 360]

### **Canada Business Corporations Act**

**309** [Amendment]

**310** [Amendment]

**311** [Amendments]

### **Canada Cooperatives Act**

**312** [Amendment]

### **Canada Corporations Act**

**313** [Amendment]

### **Canada Employment Insurance Financing Board Act**

**314** [Amendment]

### **Canada Foundation for Sustainable Development Technology Act**

**315** [Amendment]

**316** [Amendment]

## **Canada Pension Plan Investment Board Act**

**317** [Amendments]

## **Canadian Food Inspection Agency Act**

**318** [Amendment]

## **Canadian Institutes of Health Research Act**

**319** [Amendment]

## **Canadian Payments Act**

**320** [Amendment]

## **Cooperative Energy Act**

**321** [Amendment]

## **Cree-Naskapi (of Quebec) Act**

**322** [Amendment]

## **Evangelical Lutheran Church in Canada Act**

**323** [Amendment]

## **Evangelical Missionary Church (Canada West District) Act**

**324** [Amendment]

**325** [Amendment]

**326** [Amendment]

## **Financial Administration Act**

**327** [Amendment]

## **First Nations Fiscal and Statistical Management Act**

**328** [Amendment]

## **Green Shield Canada Act**

**329** [Amendment]

## **Gwich'in Land Claim Settlement Act**

**330** [Amendment]

## **Insurance Companies Act**



**331** [Amendment]

## **Mackenzie Gas Project Impacts Act**

**332** [Amendment]

## **Mi'kmaq Education Act**

**333** [Amendment]

## **Physical Activity and Sport Act**

**334** [Amendment]

## **Pilotage Act**

**335** [Amendment]

## **Public Sector Pension Investment Board Act**

**336** [Amendment]

## **Sahtu Dene and Metis Land Claim Settlement Act**

**337** [Amendment]

## **United Grain Growers Act**

**338** [Amendment]

## **Yukon First Nations Land Claims Settlement Act**

**339** [Amendment]

## **Other Acts**

### **Deeming provision**

**340** Any reference to Part III of the *Canada Corporations Act*, chapter C-32 of the Revised Statutes of Canada, 1970, in any Act of Parliament is deemed to be a reference to Part 19 of the *Canada Not-for-profit Corporations Act*.

## **Coordinating Amendments**

**341** [Amendment]

**342** [Amendment]

**343** [Amendment]

**344** [Amendment]

**345** [Amendment]

**346** [Amendment]

**347** [Amendment]

**348** [Repealed, 2013, c. 40, s. 138]

**349** [Amendment]

**350** [Amendment]

**351** [Amendment]

**352** [Amendment]

**353** [Amendment]

**354** [Amendment]

**355** [Amendment]

**356** [Amendment]

**357** [Amendment]

**358** [Amendment]

**359** [Amendment]

**360** [Amendments]

## Repeals

**361** [Repeal]

**362** [Repeal]

**363** [Repeal]

**364** [Repeal]

**365** [Repeal]

**366** [Repeal]

**367** [Repeal]

**368** [Repeal]

**369** [Repeal]

**370** [Repeal]

**371** [Repeal]

## Coming into Force

### Order in council

**\*372 (1) Subject to subsection (2), the provisions of this Act, other than subsections 297(2) to (4), (6) and (7) and sections 341 to 360, come into force on a day or days to be fixed by order of the Governor in Council.**

### ***Canada Pension Plan Investment Board Act***

**(2) Subsections 317(1) and (2) come into force, in accordance with subsection 114(4) of the *Canada Pension Plan*, on days to be fixed by order of the Governor in Council.**

\*[Note: Subsections 297(2) to (4), (6) and (7) and sections 341 to 360 in force on assent June 23, 2009; sections 300 to 302, 304 and 310, subsections 311(1), (3) and (4), the portion of section 313 before paragraph (a), paragraphs 313(c), (e), (g), (i), (k), (m), (o), (q), (t), (v), (x), (z), (z.02), (z.04), (z.1), (z.5) and (z.8) and sections 361 to 371 in force March 12, 2010, see SI/2010-25; sections 1 to 296, subsections 297(1) and (5), sections 298, 299, 303, 305 to 307 and 309, subsections 311(2) and (5), section 312, paragraphs 313(z.4) and (z.6), sections 314 to 316, subsection 317(1) and sections 318 to 340 in force October 17, 2011, see SI/2011-87; paragraphs 313(a), (b), (d), (f), (h), (j), (l), (n), (p), (r), (s), (u), (w), (y), (z.01), (z.03), (z.05) to (z.09), (z.2), (z.3), (z.7) and (z.9) and subsection 317(2) in force December 31, 2017, see SI/2018-1.]

## RELATED PROVISIONS

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### **— 2011, c. 25, s. 42**

#### **Submission to Minister**

**42 (1)** The Corporation must submit an application for continuance under one of the following Acts for the Minister's approval:

- (a)** the *Canada Business Corporations Act*;
- (b)** the *Canada Cooperatives Act*; or
- (c)** the *Canada Not-for-profit Corporations Act*.

#### **Deadline**

**(2)** The application must be submitted to the Minister within four years, or any shorter period specified by the Minister, after the day on which this Part comes into force.

#### **Submission to applicable authorities**

**(3)** Once the application has been approved by the Minister, the Corporation must submit the application to the applicable authorities under the relevant Act.

#### **Application not invalid**

**(4)** The application is not invalid solely because the Corporation is incorporated by an Act of Parliament.

#### **Date modified:**

2025-04-17