
COUNTDOWN TO THE CANADA NOT-FOR-PROFIT CORPORATIONS ACT PRACTICE TIP #8: CORPORATE RECORDS

*By Jane Burke-Robertson and Theresa L.M. Man**

A. INTRODUCTION

Most corporate statutes require a corporation to retain certain records at its head office and provide rights to certain individuals to have access or inspect those records. The *Canada Corporations Act (CCA)* contains requirements for a corporation to maintain certain corporate, financial and accounting records at its head office. The CCA also provides limited rights of access to these records. Although the type of records that are required under the new *Canada Not-for-profit Corporations Act (CNCA)* to be retained are similar to those required under the CCA, the CNCA provides more extensive rights in relation to who has access to those records.

B. TYPE OF RECORDS TO BE KEPT

A corporation is required to keep certain corporate records at its registered office or some other location in Canada decided by the board of directors. These records must include the following:

- a) All articles of the corporation, (e.g., Articles of Incorporation, Articles of Continuance, Articles of Amalgamation, etc.), by-laws and their amendments and unanimous members agreement;
- b) Minutes of meetings of members and committee of members;

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- c) Resolutions of members and committee of members;
- d) Debt obligations issued by the corporation;
- e) A directors' register showing: the name and residential address of each director, an e-mail address if the director consented to receiving information or documents electronically, the date on which each person named in the register became a director, and the date on which each person named in the register ceased to be a director;
- f) An officers' register showing: the name and residential address of each officer, an e-mail address if the officer consented to receiving information or documents electronically, the date on which each person named in the register became an officer, and the date on which each person named in the register ceased to be an officer; and
- g) A members' register showing: the name and residential address of each member, an e-mail address if the member consented to receiving information or documents electronically, the date on which each person named in the register became a member, and the date on which each person named in the register ceased to be a member and the class or group of membership of each member, if any.¹

In addition, the corporation must prepare and maintain minutes of meetings and resolutions adopted by the directors and committee of directors.²

The corporation must also prepare and maintain adequate accounting records.³ The CNCA does not require that such accounting records be available for review by members, except in the case of financial statements. Under the CNCA, a corporation must keep its accounting records for six years after the end of the financial period to which the accounting records relate.⁴ There may be additional record keeping requirements under the *Income Tax Act* (Canada) or other statutes, but these requirements are not reviewed in this Bulletin.

C. FORM OF RECORDS

The CNCA provides that all registers and records that are required by the CNCA 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. It also requires a corporation and its agents and mandataries to take reasonable precautions to prevent the loss or destruction of the registers and other records required,

¹ CNCA, s. 21(1) and Regulations s. 2.

² CNCA, s. 21(3).

³ CNCA, s. 21(3).

⁴ CNCA, s. 21(4) and Regulations s.4.

in order to prevent the falsification of entries and facilitate the detection and correction of inaccuracies in them.

In this regard, at the first meeting of the directors, the directors are required to decide the form of the records to be kept.⁵ It is also prudent for the directors to determine how these records are to be retained and adopt relevant record keeping policies. For example, who has the day-to-day duty to maintain them, where to keep the records, how to maintain back-up copies of records, would electronic copies be kept in addition to hard copies, etc.

D. WHERE TO KEEP RECORDS

The corporate and accounting records are required to be kept at the registered office or some other location in Canada decided by the board of directors.⁶

However, the CNCA does permit corporate and accounting records of a corporation to be kept outside of Canada if the following requirements are met: (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). However, the ability to retain records outside of Canada is expressly stated to be subject to the requirements in the *Income Tax Act*, the *Excise Tax Act*, the *Customs Act* and any other Act administered by the Minister of National Revenue.⁷

E. ACCESS TO RECORDS BY DIRECTORS

All of the records referred to in Section B above are open for inspection at all reasonable times by the directors. As well, at the request of any director, the corporation will have to provide him or her with any extracts of the records free of charge.⁸

The CNCA provides that if accounting records are kept outside Canada, the corporation must also keep at the registered office or any other place in Canada designated by the directors accounting records that

⁵ CNCA, s. 127(1)(b).

⁶ CNCA, s. 21(1) and (6).

⁷ CNCA, s. 21(9).

⁸ CNCA, s. 21(7).

are adequate to enable the directors to ascertain the financial position of the corporation with reasonable accuracy on a quarterly basis.⁹

F. ACCESS TO RECORDS BY MEMBERS

Upon request, a member, a member's personal representative, and a creditor (such as a landlord or supplier) may examine the records referred to in (a) to (f) in Section B above during the corporation's usual business hours. As well, upon payment of a reasonable fee, such persons may also take copies of these records.¹⁰ It should be noted that any member or member's personal representative who wishes to examine a corporation's debt obligations register or wishes to obtain a debt obligations holders list must first provide a statutory declaration to the corporation as further explained below.¹¹ In addition, a member is also entitled to obtain upon request, free of charge, one copy of the articles and by-laws, amendments to these documents, and any unanimous member agreements.¹²

The CNCA contains special rules in relation to who may examine the members register (referred to in (g) in Section B above) or obtain a members list. These rules are explained below.

Members and members' personal representatives are entitled to examine the members register during the corporation's usual business hours and, on payment of any reasonable fee, obtain an extract from the register.¹³ They also have the right to obtain a list of members setting out the name, address and class/group of each member, provided that such a request can only be made once a calendar year at any time, or before any special meeting of members of which the person receives notice.¹⁴ Any member or member's personal representative who wishes to examine the members register or obtain a list of members (or to examine the debt obligations register or obtain a list of debt obligation holders referred to above) must first provide a statutory declaration to the corporation, stating the person's name and address, and confirming that the information obtained would not be used for purposes other than the following:

⁹ CNCA, s.21(8).

¹⁰ CNCA, s. 22(1).

¹¹ CNCA, s. 22(4)-(7)

¹² CNCA, s. 22(3).

¹³ CNCA, s. 23(1)

¹⁴ CNCA, s. 23(2) and (3).

- ♦ an effort to influence the voting of members;
- ♦ requisitioning a meeting of members; or
- ♦ any other matter relating to the affairs of the corporation.¹⁵

Debt obligation holders do not have the right to examine the members register. However, they have the right to obtain a list of members similar to the one that members are entitled to obtain. This request can only be made after the holder has received notice of a meeting of members at which the holder has the right to vote.¹⁶ In addition, the debt obligation holder must also first provide a statutory declaration to the corporation stating the person's name and address, and confirming that the information obtained would only be used in connection with an effort to influence the voting of members on any issue that the holder has a right to vote on.¹⁷

It is an offence if a person who uses information obtained from a register of members or debt obligation holders or a list of members or debt obligation holders for a purpose other than those specified above, without the written permission of the member or debt obligation holder about whom information is being used. In that case, the person would be 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.¹⁸

G. RIGHTS OF CORPORATIONS CANADA

Corporations Canada also has the right to examine the records referred to in (a) to (g) in Section B above and may take extracts from them free of charge. It may also obtain a list of members and debt obligation holders.¹⁹

It is possible for a corporation to apply to Corporations Canada for authorization to refuse to allow access to or furnish information from corporate records that the corporation is otherwise obligated to, as long as Corporations Canada reasonably believes that allowing the access or furnishing the information would be detrimental to any member or the corporation.²⁰ Similarly, it is also possible for any member to apply to Corporations Canada to direct a corporation to refuse to allow access to or furnish information

¹⁵ CNCA, s. 23(5)-(7).

¹⁶ CNCA, s. 23(4).

¹⁷ CNCA, s. 23(5), (6) and (8).

¹⁸ CNCA, s. 262(3).

¹⁹ CNCA, s. 24.

²⁰ CNCA, s. 25(1).

from corporate records that the corporation is otherwise obligated to, as long as Corporations Canada reasonably believes that allowing the access or furnishing the information would be detrimental to any member or the corporation.²¹