

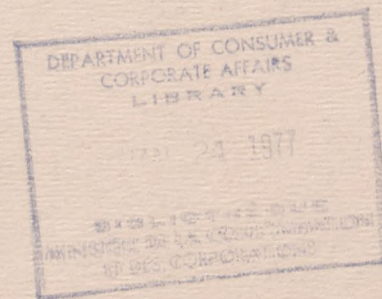
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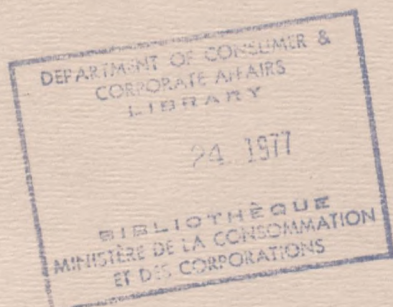
Consommation et
Corporations
Corporations

OTTAWA/HULL
K1A 0C9

SELECTING REGISTERING AND PROTECTING



CORPORATE NAMES



Corporate Name Regulations under the Canada
Corporations and Canada Business Corporations
Acts

and
Federal Corporate Name Policies

May/76 Edition

ABOUT THIS PUBLICATION . . .

Corporate names are increasing in number and value daily and selecting, registering and protecting them is a subject of growing emphasis on the part of corporations, legal practitioners and government policy makers.

The Regulations to the Canada Corporations Act and the new Canada Business Corporations Act set out some explicit thinking on this topic in a definitive, organized fashion and represent a codification of the current trend in judicial and administrative decision-making.

Naturally, decision-making and new interpretations of law are continuing. This publication is intended to keep practitioners, new incorporators, and interested corporations abreast of the latest developments by publishing periodically a comprehensive statement of federal corporate name regulations and the policies which supplement them. The practitioner or incorporator who is familiar with this publication will have little trouble in selecting and registering a corporate name.

Naturally, the continuing refinement of a workable and sensible system of corporate name policy is a vital concern to me but it can be a complex and highly judgmental area. Should you wish to comment on any name regulation or policy you can write to me at the address below:

Frederick H. Sparling,
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Corporations Branch,
Department of Consumer and
Corporate Affairs,
Place du Portage,
OTTAWA/HULL
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1.0 AIM OF CORPORATE NAME REGULATIONS AND POLICIES

1.1 MAIN GOALS

The overall goals of the corporate name law and administration are

- a) to minimize litigation with respect to similar trade names by ensuring that NEW federal corporate names are not confusing with EXISTING trade names or trade marks, and
- b) to ensure, as far as is practical, that new federal corporate names do not MISLEAD or CONFUSE the public as to the nature or relationship of companies.

1.2 "DISTINCTIVENESS"

Basically, new corporate names must be "distinctive" — a term defined in the Regulations (Section 12) — and this distinctiveness must survive certain media distortion as the corporation identifies itself to the various publics with which it interacts — publics which include other businesses, shareholders, creditors, consumers and government regulatory agencies.

1.3 LESS ADMINISTRATIVE DISCRETION

Historically, administrators found themselves forced to develop a host of incremental policies because of the absence of an encompassing and definitive set of corporate name rules. The new Regulations aim largely at removing, not embodying, many outdated policies, often by describing circumstances under which a proposed name may not be refused to an applicant.

2.0 SELECTING A CORPORATE NAME

2.1 WEAK NAMES

The number of active trade names and trade marks in Canada is now so large that confusion among businesses and products could easily result if new names were not “distinctive”. There is therefore little point in adopting a corporate name which contains terms that have become so overused that their distinctiveness is weakened.

2.2 ENSURING DISTINCTIVENESS

There are literally thousands of companies using weak terms, such as ‘MAPLE LEAF’, ‘IMPERIAL’, ‘NATIONAL’, ‘UNITED’, ‘GENERAL’, ‘CANADIAN’, ‘ASSOCIATED’, and many others which you no doubt hear of frequently. These kinds of terms no longer contribute anything to distinguishing one name from another unless used in conjunction with a very distinctive term — a coined word such as EXXON for example or one or more descriptive terms that render the whole name distinctive. A highly distinctive name has the best chance of registration and of remaining a memorable corporate label in a commercial world already full of many general and similar names. Exhibit “C” at the back of this brochure gives a listing of the most common terms used in existing names. In general, you should not rely on any of those terms either as the main element in making a proposed name distinctive or as terms which can be added to a proposed name to overcome confusion with an existing registered name.

2.3 EXAMPLES

The table in Part 4.2 of this booklet categorizes and gives examples of the range of weak and highly distinctive corporate names.

3.0 OBTAINING A CORPORATE NAME — THE PROCESS

3.1 APPLICATION

To register a corporate name it is necessary to apply to the Corporations Branch to request and "reserve" the name. This can be done by phoning (819) 997-3747 or by completing and mailing to the Corporations Branch a Name Request and Reservation form illustrated in Exhibit "A". If you telephone, make sure you are ready to give the receptionist the information required in this form.

3.2 NAME SEARCH

The Corporations Branch will search the proposed name against the corporate name data base and, where required, the trade mark data base to ensure that it is not confusing with a registered name or trade mark. These data bases comprise a register of all trade marks and Canadian corporate names and include some unincorporated business names as well. Thus, a name "cleared" against this data base is normally available for use anywhere in Canada without risk of confusion with existing corporate names or trade marks registered at the time of the search.

3.3 NAME RESERVATION

When a name is cleared, it is automatically reserved federally for the name applicant for 90 days during which time the applicant must file the appropriate Articles or application for Supplementary Letters Patent or else forfeit protection of the name.

3.4 NAME FEE

3.4.1 Under the Canada Corporations Act and New Canada Business Corporations Act

A fee of \$10.00 is applicable for every request of 3 proposed names or less made under either the C.C.A. or C.B.C.A. except as follows.

3.4.2 Exemptions

As provided by Section 261(7) of the CANADA BUSINESS CORPORATIONS ACT, there is no name fee for a FEDERAL corporation Continuing under the Act, even if, upon Continuance, it alters its corporate name or adds an English or French, or combined version.

There is no name fee for a corporation of ANOTHER JURISDICTION CONTINUING FEDERALLY with its same name. However, if it alters its name or adds an alternate form of its name upon Continuance, the name fee is applicable.

Under the CANADA CORPORATIONS ACT there is no charge for a request to add an English or French form to an existing name.

3.4.3 Payment Procedures

Generally, payment must either accompany a name request or, if the applicant has a deposit account with the Department, his account will automatically be charged the amount of the name fee (provided he gives his account number).

If an applicant has NOT sent payment with a name request and does NOT have a deposit account, the name request will be accepted but payment must be made to the Department immediately after the name request has been made.

3.5 THE NAME DECISION PROCESS — AN OVERVIEW

When the proposed name is searched against the name data base, a "search report" is generated. This is a short list of any existing names similar to the proposed name. A copy of this report will be mailed to the corporate name applicant along with a written decision on the registrability of the name.

In deciding whether the proposed name is registrable, several considerations may be made. These considerations and the name decision process are outlined in the flow chart on the next page. Essentially, there are six main considerations:

1. Is the proposed name **ABSOLUTELY PROHIBITED** by the Regulations?
2. Is it **QUALIFIEDLY PROHIBITED** by the Regulations?
3. Is it **OBSCENE**?
4. Is it **DISTINCTIVE**?
5. Is it **CONFUSINGLY SIMILAR** to an existing name or trade mark?
6. Is it **DECEPTIVELY MISDESCRIPTIVE**?

A more exhaustive description of each consideration is contained in Part 5.0 of this booklet under **SPECIFIC REGULATIONS AND POLICIES**.

3.6 NOTICE OF DECISION

Once a search report has been prepared and a name decision made, the Director advises the applicant of his decision by means of the Name Decision Letter illustrated in Exhibit "B". If necessary, the applicant can obtain the decision by phone by calling (819) 997-3747 and asking the receptionist.

3.7 CONTESTING A NAME DECISION

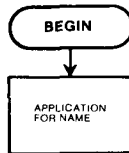
A Name Decision will be reconsidered if the corporate name applicant submits **IN WRITING** the reasons why he thinks the Name Decision was not in accordance with the provisions of the Act and the Regulations. This should be sent either to the Chief Examiner, Corporations Branch or to the Examiner whose name appears at the bottom of the Name Decision Letter.

CORPORATE NAME DECISION PROCESS

CONSIDERATIONS

AUTHORITY REFERENCE IN C.B.C.A. REGULATIONS

1. IS NAME ABSOLUTELY PROHIBITED
BY REGULATIONS?



Sections 16, 22

2. QUALIFIEDLY PROHIBITED?
Government sponsorship implied, etc.?



Sections 17, 21, 25, 26, 27

3. OBSCENE?



Section 18

4. DISTINCTIVE?
(a) Too general?



Section 14
Section 19(a)

(b) Only descriptive?



Section 19(b)

(c) Primarily or only a name or surname?



Sections 19(c), 21

(d) Primarily or only a geographic name?



Section 19(d)

5. CONFUSING?
Confusing Aspects:



Sections 13, 20, 25, 26, 27

- (a) Inherent distinctiveness
- (b) Length of time in use
- (c) Nature of goods or services or
nature of business; including
audience
- (d) Nature of trade
- (e) Degree of resemblance
 - appearance
 - sound
 - meaning
- (f) Territorial area of use

Section 20(a)
Section 20(b)
Section 20(c)

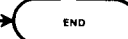
Section 20(d)
Section 20(e)

Section 20(f)

6. DECEPTIVELY MISDESCRIPTIVE?



Section 23



4.0 ELEMENTS OF A CORPORATE NAME & DEGREES OF DISTINCTIVENESS — SOME EXAMPLES

4.1 DISTINCTIVE, DESCRIPTIVE AND LEGAL ELEMENTS.

TELFAX	COMMERCIAL COMMUNICATIONS	LIMITED
Distinctive Element	Descriptive Element	Legal Element

Nearly all corporate names are composed of these three elements. The **DISTINCTIVE** element is the main identifier of the corporate name. The **DESCRIPTIVE** element describes the nature of the main company business, and the **LEGAL** element indicates the status of the company as an incorporated body. These are useful terms to be familiar with since they are used frequently by the Corporations Branch Staff in discussing corporate names with clients.

4.2 THE CONTINUUM OF DISTINCTIVENESS

There are varying degrees of distinctiveness in corporate names, some being highly distinctive and others very weak. The more distinctive the name is, the more memorable and commercially useful it is and the more worthy it is of protection against similar names. The table on the next page illustrates the range of distinctiveness in corporate names as viewed by the Corporations Branch. Although it is difficult to precisely define "categories" of names, this table is a useful guide to practitioners and Corporations Branch staff who make name decisions.

CORPORATE NAMES

Type of Name	Group	Distinctive Element	Descriptive Element	Legal Element
Coined, fanciful or suggestive name	I	Xerox		Ltd.
		Cominco		Ltd
		Slack Shack		Ltd
		Telfax	Communications	Ltd
Arbitrary use of dictionary words (free words)	II	Inspiration		Inc.
		Husky	Oil	Ltd
		Dome	Mines	Ltd
		Rainbow	Oil & Gas	Ltd
Family name	III	Moore		Corp. Ltd.
		Honeywell		Inc.
		Molson	Industries	Ltd
Geographic name	IV	Hudson's Bay		Company
		Falconbridge	Nickel Mines	Ltd
		Montreal	Engineering	Ltd
Descriptive name	V	Volkswagen		Ltd
		Playboy	Clubs	Inc.
		Blindcraft	Products	Ltd
General name	VI	General	Motors	Inc.
		Canadian	Industries	Ltd

Group	General Policy
I Coined, fanciful, suggestive name	Whether made up of a distinctive element alone or a combination of a distinctive element and a descriptive element, if the name has great inherent distinctiveness it will be given strong protection from confusion (of origin of goods or services or implied affiliation) and even from dilution of its distinctiveness.
II Arbitrary use of free word	If the dictionary word is used in a fanciful sense quite different from its ordinary meaning, the name is a borderline Class I name and is protected accordingly. If a dictionary word in a name is not used in a fanciful sense, then because it is a free word available to all, it must be accompanied by a descriptive word that creates a distinctive phrase, unless the name containing the dictionary word alone has acquired secondary meaning.
III Family name	Unless he is acting in bad faith to achieve confusion of goods or services or of businesses in order to ride on the coattails of an established firm, an individual is entitled to use his own name in a corporate name if he has a material interest in the business. Unless the family name has acquired secondary meaning, it must be accompanied by a descriptive term to render it distinctive.
IV Geographic name	A geographic term is a free word to which no one can ordinarily claim exclusive use. Unless a geographic term used alone in a name has, through use, acquired secondary meaning, it must be accompanied by a descriptive term. But where the geographic location is not famous, if a name using the geographic name alone has become famous and therefore has acquired great distinctiveness as denominating the corporation or its products, that is, has secondary meaning, it will be given strong protection (e.g., Falconbridge).
V Descriptive name	A descriptive term is by definition a free word used to describe a business, therefore, in the absence of secondary meaning, it must always be accompanied by another descriptive term. If it connotes an origin or a nature of business that is not in fact true, for example, Eskimo Handicrafts, it is liable to be refused or impeached as deceptively misdescriptive.
VI General name	A name that is so general that it could apply to any products or services anywhere will be refused as being totally non-distinctive, unless the name has acquired secondary meaning.

5.0 SPECIFIC REGULATIONS AND POLICIES

NOTE: None of the following applies to existing corporations Continuing under the Canada Business Corporations Act as Section 12(3) of that Act permits them to Continue with their present corporate name.

5.1 DEFINITION OF TERMS

... WHAT THE REGULATIONS SAY (Section 12)

12. In this Part,

“confusing”, in relation to a corporate name, means a corporate name the use of which causes confusion with a trade mark or trade name in the manner described in section 13; (*prête à confusion*)

“distinctive”, in relation to a trade name, means a trade name that actually distinguishes the business in association with which it is used by its owner from the business of others or that is adapted so as to distinguish them; (*distinctif*)

“secondary meaning”, in relation to a trade name, means a trade name that has been used in Canada or elsewhere by any applicant or his predecessors so as to have become distinctive in Canada as at the date of filing an application for a corporate name; (*sens dérivé*)

“trade mark” means a trade mark as defined by the *Trade Marks Act*; (*marque de commerce*)

“trade name” means the name under which any business is carried on, whether it is the name of a body corporate, a trust, a partnership, a proprietorship or an individual; (*nom commercial*)

“use” means actual use by a person that carries on business in Canada or elsewhere. (*emploi*)

5.2 ABSOLUTE PROHIBITIONS

... THE REGULATIONS

16. For the purposes of paragraph 12(1)(a) of the Act, a corporate name is prohibited where the name contains any of the following:

(a) “Air Canada”,

(b) “Trans Canada Airlines” or “Lignes aériennes Trans Canada”;

(c) “Canada Standard” or “CS”

(d) “Cooperative”, “Coopérative”, “co-op” or “pool” when it connotes a cooperative venture;

(e) “Parliament Hill” or “Colline du Parlement”;

(f) “Royal Canadian Mounted Police”, “Gendarmerie Royale du Canada”, “RCMP” or “GRC”; or

(g) “United Nations”, “Nations Unies”, “UN” or “ONU”.

22. For the purposes of paragraph 12(1)(a) of the Act,

(a) a corporate name is prohibited where its use is likely to lead to the inference that the business carried on or intended to be carried on under it and the business of a body corporate that is dissolved are one business, whether or not the nature of their businesses is generally the same; and

(b) the name of a revived corporation is prohibited where it is confusing with a name acquired by another corporation between the date of dissolution and revival of the revived corporation.

5.3 QUALIFIED PROHIBITIONS

... THE REGULATIONS

25. A corporate name that is confusing with the name of a body corporate that has not carried on business in the 2 years immediately preceding the date of a request for that corporate name shall not for that reason alone be prohibited if the body corporate that has that name

(a) consents in writing to the use of the name; and

(b) undertakes in writing to dissolve forthwith or to change its name before the corporation proposing to use the name commences to use it.

26. A corporate name containing a word that is the same as or similar to the distinctive element of an existing trade mark or trade name shall not for that reason alone be prohibited if

(a) the person who has the trade mark or trade name consents in writing to the use of the corporate name; and

(b) the corporate name is not confusing.

27. (1) A corporate name that is confusing with the name of a body corporate shall not for that reason alone be prohibited if

(a) the request for that corporate name relates to a proposed corporation that is the successor to the business of the body corporate and the body corporate has ceased or will cease to carry on business;

(b) the body corporate undertakes in writing to dissolve forthwith or to change its name before the corporation proposing to use the name commences to carry on business; and

(c) subject to subsection (2), the corporate name sets out in numerals the year of incorporation in parentheses immediately before the word "limited", "limitée", "incorporated", "incorporée", "corporation" or the abbreviation thereof.

(2) A corporate name referred to in paragraph (1)(c) after two years of use may be changed to delete the reference to the year of incorporation if the corporate name so changed is not confusing.

17. For the purposes of paragraph 12(1)(a) of the Act, a corporate name is prohibited where the name connotes that the corporation

(a) carries on business under royal, vice-regal or governmental patronage, approval or authority, unless the appropriate government department or agency requests the name in writing;

(b) is sponsored or controlled by or is affiliated with the Government of Canada, the government of a province, the government of a country other than Canada or a political subdivision or agency of any such government, unless the appropriate government, political subdivision or agency consents in writing to the use of the name;

(c) is sponsored or controlled by or is affiliated with a university or an association of accountants, architects, engineers, lawyers, physicians, surgeons or any other professional association recognized by the laws of Canada or a province unless the appropriate university or professional association consents in writing to the use of the name; or

(d) carries on the business of a bank, loan company, insurance company, trust company, other financial intermediary or a stock exchange that is regulated by a law of Canada or a province unless the appropriate government department or agency consents in writing to the use of the name.

21. For the purposes of paragraph 12(1)(a) of the Act, a corporate name is prohibited where an element of the name is the family name of an individual, whether or not preceded by his given name or initials, unless the individual or his heir or legal representative consents in writing to the use of his name and the individual has or had a material interest in the corporation.

5.3 QUALIFIED PROHIBITIONS (cont'd)

... RELATED POLICIES

5.3.1 Chamber of Commerce/Board of Trade

Section 3(2) of the BOARD OF TRADE ACT states "no persons shall within any district in which there is a board of trade that is registered under this Act, use the words "Board of Trade" or "Chamber of Commerce" . . . unless they are incorporated as a body corporate and politic under this act or UNDER A SPECIAL OR GENERAL ACT OF THE PARLIAMENT OF CANADA".

5.3.2 Use of "Institute"

This word traditionally connotes corporate purposes of a professional research or education-oriented nature, whether charitable or for profit, and may not be used haphazardly for unprofessional purposes.

5.3.3 Trustee, Bankruptcy/Insolvency Trustee, etc.

The Bankruptcy Branch of this Department prefers that insolvency or bankruptcy trustees use only the names of the principal partners in their corporate name. A descriptive term such as "Trustees" alone may not be used since it connotes a trust company, however, descriptive terms such as "Bankruptcy Trustees" or "Insolvency Trustees" may be used.

5.3.4 Successor Corporations

- a) The incorporation of an existing, unincorporated business does not constitute a "successor" situation.
- b) Section 27 of the Regulations which refers to successor CORPORATIONS also applies to UNINCORPORATED businesses.

5.3.5 Given Names and Surnames

- a) When a proposed corporate name has, as its distinctive feature, a word which is both a surname and a dictionary word, e.g. "Black's Manufacturing Ltd", the individual's consent and undertaking to have a substantial interest in the company is NOT required.
- b) A proposed corporate name which has as its distinctive feature a given name, or a given name and initial (s), e.g. "Pierre's Coiffures Inc.", does not require a consent and undertaking to have a substantial interest in the company by the person named.

5.4 OBSCENITY

... THE REGULATIONS

18. For the purposes of paragraph 12(1)(a) of the Act, a corporate name is prohibited where the name contains a word or phrase that is obscene or connotes a business that is scandalous, obscene or immoral.

... RELATED POLICIES

- 5.4.1 Even highly imaginative names such as "Booby Trap Ltd" for brassiere manufacturers or "The Little Brick Shirt House" for shirt retailers might be rejected, particularly if the name contains or connotes any scatological term.

5.5 DISTINCTIVENESS

... THE REGULATIONS

Consideration of Whole Name

14. Subject to section 19, when determining whether a trade name is distinctive, the name as a whole and not only its separate elements shall be considered.

19. For the purposes of paragraph 12(1)(a) of the Act, a corporate name is prohibited where the name is not distinctive because

(a) it is too general,

(b) it is only descriptive, in any language, of the quality, function or other characteristic of the goods or services in which the corporation deals or intends to deal,

(c) it is primarily or only the name or surname used alone of an individual who is living or has died within 30 years preceding the date of the request to the Director for that name, or

(d) it is primarily or only a geographic name used alone, unless the person requesting the name establishes that it has, through use, acquired and continues to have secondary meaning at the time of the request.

... RELATED POLICIES

5.5.1 Given Names and Surnames

Two surnames e.g. "BLACK AND LEBLANC LTD" produce a highly distinctive form of a corporate name and may be used without a descriptive feature.

5.6 DETERMINING CONFUSION — DETAILED CONSIDERATIONS

... THE REGULATIONS

Confusion of Names

13. A corporate name is confusing with

(a) a trade mark if the use of both the corporate name and the trade mark is likely to lead to the inference that the business carried on or intended to be carried on under the corporate name and the business connected with the trade mark are one business, whether or not the nature of the business of each is generally the same; or

(b) a trade name if the use of both names is likely to lead to the inference that the business carried on or intended to be carried on under the corporate name and the business carried on under the trade name are one business, whether or not the nature of the business of each is generally the same.

20. For the purposes of paragraph 12(1)(a) of the Act, a corporate name is prohibited where the name is confusing having regard to all the circumstances, including

(a) the inherent distinctiveness of the whole or any elements of any trade mark or trade name and the extent to which it has become known;

(b) the length of time the trade mark or trade name has been in use;

(c) the nature of the goods or services associated with a trade mark or the nature of the business carried on under or associated with a trade name, including the likelihood of any competition among businesses using such a trade mark or trade name;

(d) the nature of the trade with which a trade mark or trade name is associated, including the nature of the products or services and the means by which they are offered or distributed;

(e) the degree of resemblance between the proposed corporate name and any trade mark or trade name in appearance or sound or in the ideas suggested by them; and

(f) the territorial areas in Canada in which the proposed corporate name or an existing trade name is likely to be used.

5.6 DETERMINING CONFUSION — DETAILED CONSIDERATIONS (cont'd)

... RELATED POLICIES

5.6.1 Overcoming Confusion with an Existing Name

- a) Often, a proposed name may contain a distinctive element already in use that is not HIGHLY distinctive and have, in addition, a descriptive term to distinguish a different line of business. Thus,

“Maple Leaf Mining Co. Ltd”

would not be confusing with

“Maple Leaf Construction Ltd”

- b) However, where corporations would be likely to be in a similar line of business within the same province, confusion cannot be overcome simply by adding very general terms or terms that have become weak through overuse. Therefore, a name like

“Union Telecommunications Ltd”

would be confusing with

“The Union International Communications Group of Canada Ltd”

whether the companies were affiliated or not.

- c) Affiliated companies may use the names of provinces, cities, city districts or even shopping centres, with or without parentheses, to distinguish between their companies even if they are in a similar line of business. For example,

“Cortina Ski Boutiques (Toronto) Ltd”

would not be confusing with

“Cortina Ski Boutiques (Montreal) Ltd”

5.6.2 Implied Relationship Between Companies

If a proposed name of a company contains a well-known or highly distinctive element of an existing trade name, then the financial relationship between the businesses must be given in writing e.g., “KODAK OF CANADA LTD” and “KODAK BICYCLES LTD”. The proposed name will be refused IF IT FALSELY IMPLIES A RELATIONSHIP BETWEEN TWO BUSINESSES since that could confuse the public by inferring that one company has access to the resources of the other.

5.6.3 Similarity Between Foreign Parent Companies and Affiliates

Greater similarity is permitted here. For example, a general term such as “Canada”, “of Canada”, “Canadian”, etc. can be used to distinguish the name of a Canadian company from its foreign parent. Foreign companies and their affiliates are not required to signify their foreign-owned or controlled status by adding “Canada”, “of Canada”, etc.

5.6.4 Financial Intermediaries

Affiliated financial intermediaries may, if the Department of Finance concurs, use similar names that would be considered confusing in the absence of close regulation of the group's various activities.

5.6 DETERMINING CONFUSION — DETAILED CONSIDERATIONS (cont'd)

... RELATED POLICIES

5.6.5 Conflicting Trade Marks and Corporate Names

- a) If a proposed corporate name is confusing with a trade mark for similar wares or services, the name is refused unless the corporate name applicant
 - i) is the owner of the trade mark, or
 - ii) has the written consent of the trade mark owner and the use of the trade mark in the corporate name would not FALSELY imply a relationship between the corporation and the goods or services associated with the trade mark.

However, if the wares or services of the trade mark and the proposed line of business of the corporation are sufficiently dissimilar, and if the trade mark is not highly distinctive or well known, then the proposed name is not confusing with the trade mark.

- b) Because proposed trade marks are not searched for confusion against existing corporate names, it occasionally happens that a trade mark is registered which is confusing with the distinctive element of an existing corporate name. If the CORPORATE NAME OWNER subsequently wants to use the distinctive element of his corporate name for a new corporation or in a name change, he may do so despite the conflicting trade mark, but should the TRADE MARK OWNER apply for a corporate name using a similar distinctive element, it will be refused because of confusion with the existing corporate name.
- c) Occasionally a proposed corporate name is confusing with a pending trade mark application. Where such a case occurs the Director will send notice in writing to both the trade mark and corporate name applicants, advising them of the conflict, requesting from each an affidavit attesting to date of first use of the name as a trade mark or trade name, and offering each a separate hearing before the Director of the Corporations Branch to present oral arguments in support of alleged prior rights to the name.

After considering the affidavits filed and, if either so requests, after hearing the parties, the Director will decide whether to grant the requested corporate name on the basis of first use. In the event the Director grants the requested corporate name and the Registrar of Trade Marks later decides that the proposed trade mark is entitled to registration under the Trade Marks Act with priority over the corporate name, the Director of the Corporations Branch will require the corporation to change its name under ss. 12(2) of the Canada Business Corporations Act, unless the corporation appeals the decision of the Registrar of Trade Marks and obtains a judgment reversing that decision. Therefore, where a corporation obtains a corporate name in such circumstances, it should oppose registration of the proposed trade mark under s.37 of the Trade Marks Act.

5.7 DECEPTIVE MISDESCRIPTION

... THE REGULATIONS

23. For the purposes of paragraph 12(1)(a) of the Act, a corporate name is deceptively misdescriptive if it misdescribes, in any language,

- (a) the business, goods or services in association with which it is proposed to be used;
- (b) the conditions under which the goods or services will be produced or supplied or the persons to be employed in the production or supply of those goods or services; or
- (c) the place of origin of those goods or services.

... RELATED POLICIES

5.7.1 Use of "Club"

This word may not be used to FALSELY imply a charitable or non-profit business.

5.8 AMALGAMATIONS

... THE REGULATIONS

28. (1) When two or more corporations amalgamate, the name of the amalgamated corporation shall not be prohibited if

- (a) it is the same as one of the amalgamating corporations;
- (b) it is a distinctive combination of the names of the amalgamating corporations and is not otherwise confusing or prohibited; or
- (c) it is a distinctive new name that is not confusing.

(2) Where a corporation acquires all or substantially all the property of an affiliated body corporate, the use by the corporation of the name of the affiliated body corporate will not be prohibited if the body corporate undertakes in writing to dissolve forthwith or to change its name before the corporation adopts the name.

5.9 NUMERIC NAMES

... THE ACT

Section 11 (2) Designating number — If requested to do so by the incorporators or a corporation, the Director shall assign to the corporation as its name a designating number determined by him.

Section 12 (4) Idem. — 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 167.

... THE REGULATIONS

24. A corporate name is not prohibited only because it contains alphabetic or numeric characters, initials, punctuation marks or any combination thereof.

... RELATED POLICIES

5.9.1 Permitted Numbers & "Canada" Required

- a) A corporate name may contain only numeric characters subject to the following conditions:
 - (i) The numeric characters will be in the series 80,000 - 89,999 and will be assigned consecutively;
 - (ii) In addition to the numeric characters, the word "Canada" must be included to ensure that there is a distinction between provincial and federal corporations having numeric names.
- b) A subsequent request for a change of name from numeric to alphabetical characters will require supplementary letters patent or Articles of Amendment including the prescribed fee.

5.10 ENGLISH & FRENCH FORM OF NAME

... THE ACT

Section 10 (3) Alternative name. — Subject to subsection 12(1), a corporation may set out its name in its articles in an English form, a French form, an English form and a French form or in a combined English and French form and it may be legally designated by any such form.

... RELATED POLICIES

5.10.1 Translated Versions of Names

- a) There is no requirement that the French or English version of a corporate name be a translation of the version in the other official language, correct or otherwise, but they must have the same general meaning.
- b) There is also no requirement that the French or the English name be grammatically correct.
- c) Where the corporate name is identical in the English and the French versions, letters patent or the certificate of incorporation can record the corporate name as illustrated in the example below:

NALOR DISTRIBUTION LTEE/LTD

5.10.2 Coined Words

- a) A coined word in a corporate name that has no meaning is obviously acceptable in both the English and French forms, e.g. Kodak Ltd/Kodak Ltee.
- b) A coined word that is formed from the combination of two or more words of English or French derivation is also acceptable as a corporate name in both forms, e.g. Techniglas Ltd/Techniglas Ltée or Techniverre Ltd/Techniverre Ltée.

5.10.3 Quebec Official Language Act

Applicants are warned that they are subject to provincial and local laws regulating corporate names. A cautionary statement to this effect is contained in the Name Reservation Form under the Canada Business Corporations Act (Form 23). Quebec applicants should note especially the provisions of the Quebec Official Language Act.

5.10.4 Names in Combined English & French form

The minimum requirement for a corporate name to be considered to be in a combined English and French form is the legal element of the name expressed in English and French. Thus, names such as

Wilson's Office Supplies Ltd/Ltée,
Metropolitan Ballet Métropolitain Ltd/Ltée,
Aliments A.B.C. Foods Ltd/Ltée, and
Immeubles François Ltd/Ltée

would all be perfectly acceptable forms of a combined English and French name.

5.11 LANGUAGES OTHER THAN ENGLISH OR FRENCH

... THE ACT

Section 10 (4) Alternative name outside Canada — Subject to subsection 12(1), a corporation may, for use outside Canada, set out its name in its articles in any language form and it may be legally designated by any such form outside Canada.

... RELATED POLICIES

5.11.1 Use of Foreign Terms Inside Canada

In Canada, the use of a foreign term in a corporate name is limited to the distinctive element only. The descriptive and legal elements must be in one or both of the official languages. For example

“ZWEI BRÜDER Sound Systems Ltd.”

would be acceptable.

5.12 CONSENTS — WHEN REQUIRED

... THE REGULATIONS

See Regulations 17, 21 and 26 in part 5.3 of this brochure. These are the only instances in which consents are required.

6.0 PROTECTION OF CORPORATE NAMES

6.1 PROTECTION BY THESE REGULATIONS & POLICIES

ANY business name (incorporated or not*) that is registered with the Corporations Branch receives the protection of these Name Regulations and Policies. Naturally though, highly distinctive names will receive greater protection than weaker names (see part 4.2 for a description of distinctive and weak names). If someone else attempts to obtain a federal CORPORATE NAME similar to your business name (incorporated or not) you can apply to the Director, Corporations Branch to prevent the granting of the name. If, through inadvertence, a federal corporate name similar to your business name IS granted to someone, you can apply to the Director to order that the name be changed.

6.2 PROTECTION UNDER THE TRADE MARKS ACT

If someone else attempts to obtain a TRADE MARK for the distinctive element of your corporate name you can oppose the granting of it in accordance with section 37 of the Trade Marks Act. (Incidentally, it is a good safety precaution under present law to trade mark the distinctive element of your business name if you plan to use it as such on products or for services etc.)

6.3 PROTECTION UNDER COMMON LAW

As a last resort, you can always rely on the common law protection of your business name. If someone else is using a business name (incorporated or not) confusingly similar to your business name — and you were the first user — you can bring a "passing off" action against the other business.

6.4 CAUTIONS

6.4.1 Continuance Under the C.B.C.A. With English and French Form of Name

A Continuing company that already has an English and French form of its name should take care to ensure that BOTH are entered in the Articles of Continuance otherwise only the form of the name appearing in the Articles will be protected.

6.4.2 Mere Reservation of Name — No Protection Against Provincial Incorporations

The 90 day reservation of a name for an intended federal company does not prevent the incorporation of a PROVINCIAL company with a similar name during that 90 days. Full protection is not legally obtained until the proposed federal company actually becomes incorporated and commences business.

***NOTE:** Unincorporated business names may be registered with the Corporations Branch free of charge upon completion of the "Unincorporated Trade Name Registration Form" available from the Enquiries Section of the Branch.

CANADA BUSINESS CORPORATIONS ACT
REQUEST FOR NAME RESERVATION
FORM 23
INSTRUCTIONS

Items 1, 2 and 3

Set out the name of any legal firm, the name of the lawyer or employee responsible to process the Request and the address and phone number of the firm (indicate area code and any extension number).

Item 4

Set out the proposed names in the order of your preference. If more than one Request is sent to the Director a separate fee must be paid in respect of each Request. If more than 3 names are required to be searched, one or more additional Requests must be sent to the Director and a fee paid in respect of each Request.

Item 5

If this replaces a name previously requested indicate whether the previous name was submitted as a name reservation only or with articles and state the previous name.

Item 6

State details of the nature of the business, describing the industrial sector, the actual functions and the products and services of the corporation. Indicate the industrial sector as specifically as possible by reference to the S.I.C. Code or to the Statistics Canada Standard Industrial Classification Manual.

Item 7

Show the derivation of the distinctive element of the name; e.g., "Q.E.D." derived from Quéneau, Edwards and Dorion.

Items 8, 9 and 10

Indicate proposed use of name and name of any holding body corporate of a new corporation.

Item 11

Set out the name of any individual, body corporate or firm required to consent to the name under s. 21, s. 24 or s. 25 of the Regulations.

Item 12

Give details of any similar trade names or trade marks used by the applicant body corporate.

Other Documents

The Request must be accompanied by any consent referred to in Item 11.

Caution

An indication that a name appears to be available at this time is not to be construed as an undertaking that the said name will be granted if and when a formal application is made. It is only a tentative indication that the name might be available at the time of the issue of the certificate of incorporation. If any printing or other use of the name is made in advance, it will be done entirely at the risk of the applicants.

Where applicants are to accept full responsibility for risk of confusion with other names, acceptance of such responsibility will comprise an obligation to change the name to a dissimilar one in the event that representations are made and establish that confusion occurs, errors and omissions excepted.

The use of any name granted is subject to any laws of the jurisdiction where the company carries on business.

Completed document in duplicate and applicable fee for each Request form, payable to the Receiver General of Canada, are to be sent to:

The Director, Corporations Branch
 Consumer and Corporate Affairs Consommation et Corporations
 Place du Portage
 Ottawa/Hull, Canada,
 K1A 0C9.

LOI SUR LES CORPORATIONS
COMMERCIALES CANADIENNES
DEMANDE DE RÉSERVATION D'UN NOM
FORMULE 23
INSTRUCTIONS

Rubriques 1, 2 et 3

Indiquer le nom de l'étude légale, le nom de l'avocat ou de l'employé responsable de la demande de réservation du nom, et l'adresse et le numéro de téléphone de l'étude (indiquer le code régional et le numéro du poste).

Rubrique 4

Indiquer les noms proposés par ordre de préférence. Si plus d'une demande est envoyée au Directeur, le droit doit être payé en regard de chaque demande. Si une recherche doit être faite pour plus de trois (3) noms, une ou plusieurs demandes de réservation additionnelles doivent être envoyées au Directeur et un droit payé à l'égard de chaque demande.

Rubrique 5

S'il s'agit d'une demande pour un nom précédemment demandé, indiquer si le nom précédent a été soumis lors d'une réservation de nom seulement ou avec des statuts et donner le nom précédent.

Rubrique 6

Donner les détails de la nature des entreprises en décrivant le secteur industriel, les opérations actuelles et les produits et services vendus par la corporation. Indiquer le secteur industriel le plus spécifiquement possible en référant au Code S.I.C. ou au Manuel de classification des activités économiques de Statistique Canada.

Rubrique 7

Montrer la dérivation de l'élément distinctif du nom; par exemple, "T.C.M." dérivé de Tanguay, Côté et Masson.

Rubriques 8, 9 et 10

Indiquer l'utilisation projetée du nom et le nom de toute personne morale mère de la nouvelle corporation.

Rubrique 11

Indiquer le nom de tout individu, personne morale ou firme dont le consentement est requis pour l'octroi du nom en vertu des articles 21, 24 ou 25 des Règlements.

Rubrique 12

Donner les détails de tout nom commercial ou marque de commerce semblable utilisé par la personne morale demanderesse.

Autres documents

La demande doit être accompagnée de tout consentement mentionné à la Rubrique 11.

Attention

Toute indication qu'un nom corporatif semble en ce moment disponible ne doit pas être considérée comme un engagement de notre part à accorder ledit nom si une demande formelle devait par la suite nous être présentée. Un tel avis ne sert qu'à établir la disponibilité probable du nom suggéré à la date de l'émission du certificat d'incorporation. Si les promoteurs de la compagnie projetée ou les requérants font des dépenses d'imprimerie ou autres avant confirmation officielle, ils le font à leur propre risque.

Quand un nom est accordé à la condition que les requérants soient prêts à assumer toute responsabilité pour risque de confusion avec les noms d'autres compagnies, cette acceptation de responsabilité comprend l'obligation de changer le nom de la compagnie en un nom différent advenant le cas où des représentations sont faites établissant qu'il y a confusion, sauf erreurs et omissions.

L'utilisation de tout nom octroyé est sujette à toute loi de la juridiction où la corporation exploite son entreprise.

Les documents complétés en duplicata et le droit applicable pour chaque formule de demande, payable au Receveur général du Canada, doivent être envoyés à:

Le Directeur, Direction des Corporations
 Consommation et Corporations Consumer and Corporate Affairs
 Place du Portage
 Ottawa/Hull, Canada
 K1A 0C9

**CANADA BUSINESS
CORPORATIONS ACT
FORM 23**

**REQUEST FOR NAME RESERVATION
(SECTION 11)**

Name and Address of Legal Firm — Nom et adresse de l'étude légale

**LOI SUR LES CORPORATIONS
COMMERCIALES CANADIENNES
FORMULE 23**

**DEMANDE DE RÉSERVATION D'UN NOM
(ARTICLE 11)**

4 — Proposed name or names in order of preference Nom(s) proposé(s) par ordre de préférence <div style="border: 1px solid black; height: 40px; margin-top: 10px;"></div>	2. <div style="border: 1px solid black; height: 40px; margin-top: 10px;"></div>
1. <div style="border: 1px solid black; height: 40px; margin-top: 10px;"></div>	3. <div style="border: 1px solid black; height: 40px; margin-top: 10px;"></div>

5 — In lieu of . . . Au lieu de . . . <div style="display: inline-block; vertical-align: middle;"> <input type="checkbox"/> Name previously submitted Nom soumis précédemment <input type="checkbox"/> Name submitted with Articles Nom soumis avec les status </div>	Previous Name — Nom précédent <div style="border: 1px solid black; height: 40px; margin-top: 10px;"></div>
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6 — Nature of business (details of functions, products, services) — Nature des entreprises (détails des fonctions, produits, services)

7 — Derivation of Name (Origin of distinctive feature in name such as initials, coined word, etc. . . .)
 Dérivation du nom (Origine de l'élément distinctif du nom tel qu'initiales, mot fabriqué, etc. . . .)

8 — New Corporation nouvelle	9 — If change of name of existing federal Corporation give present name S'il s'agit d'une modification du nom d'une corporation fédérale existante donner le nom actuel	10 — Name and address of holding body corporate (if applicable) Lorsqu'applicable, les nom et adresse de la personne morale mère
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11 — Consent of other individual, body corporate or firm. Give name and address of consenting person
 Consentement d'une autre personne, personne morale ou firme. Donner les nom et adresse de la personne consentante.

12 — Similar trade names and trade marks used by applicant Noms commerciaux et marques de commerce semblables utilisés par le demandeur	Date of Registration Date d'enregistrement	Length of time in use Période d'utilisation
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FOR DEPARTMENTAL USE ONLY

À L'USAGE DU MINISTÈRE SEULEMENT

Names reserved until . . . (specify date) Noms réservés jusqu'au . . . (spécifier la date)	For Director — Pour le directeur
1 — 2 — 3 —	See attached letter if name not reserved. Voir lettre attachée si le nom n'est pas réservé.
Date received Date de réception	Request received by Demande reçue par

Caution
 Name Reservations are granted in accordance with the
 conditions on the reverse side hereto.

Attention
 Les réservations de nom sont accordées conformément
 aux conditions énoncées au verso.



OTTAWA, HULL
K1A 0C9

EXHIBIT "B"

Date

Dear Sir

This is in reply to your recent enquiry concerning the availability of the following name(s):

Cher Monsieur

Ces lignes répondent à votre récente demande d'information concernant la disponibilité du (des) nom(s) ci-après:

1

2

3

The name appears to be available for use as a corporate name subject to and conditional upon the applicants assuming full responsibility for any risk of confusion with existing business names and trade marks (including those set out in our search report dated _____).

The name appears to be available for use as a corporate name subject to and conditional upon the applicants assuming full responsibility for any risk of confusion with existing business names and trade marks (including those set out in our search report dated _____), and provided that the conditions set forth in paragraph(s) _____ which follow are met.

(A) It will be necessary for the applicants to provide the Department with an explanation as to the derivation of _____ in the proposed corporate name and if the circumstances so warrant, produce any relevant consent.

(B) _____ appears to be the name of an individual. When the name of a person forms part of a corporate name, the application for incorporation must be accompanied by the consent of the individual concerned together with his averment of substantial interest in the proposed company, unless he is an applicant, in which case such consent and undertaking is not necessary.

(C) It will be necessary for the applicants to file with the Department the written consent of _____ for the use of the name in the proposed incorporation.

(D) It will be necessary for the applicants to file with this Department the written consent of _____ for the use of the name in the proposed incorporation along with an undertaking by that firm to (i) change its name before the proposed corporation commences business or (ii) commence dissolution proceedings within 30 days.

Name
Nom #

1	2	3

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Le nom corporatif nous semble être disponible en autant que les requérants assument toute responsabilité de risque de confusion avec tous noms d'affaires et toutes marques de commerce existants (y compris ceux et celles qui sont cités dans notre rapport de recherches du _____).

Le nom corporatif nous semble être disponible en autant que les requérants assument toute responsabilité de risque de confusion avec tous noms d'affaires et toutes marques de commerce existants (y compris ceux et celles qui sont cités dans notre rapport de recherches du _____), et qu'ils se conformer aux conditions du (des) paragraphe(s) _____ ci-après:

(A) Les requérants sont priés de fournir au Ministère une explication quant à la dérivation de _____ et, si le cas l'impose, de soumettre tout consentement qui en découle.

(B) _____ semble être le nom d'un particulier. Lorsque le nom d'une personne fait partie du nom corporatif, la demande en incorporation doit être accompagnée du consentement de la personne répondant à ce nom et de sa déclaration attestant qu'elle possède un intérêt substantiel dans la compagnie proposée. Ces documents ne sont pas requis si ladite personne se trouve être un des requérants.

(C) Les requérants sont priés de soumettre au Ministère le consentement écrit de _____ à l'usage du nom dans l'incorporation projetée.

(D) Les requérants sont priés de soumettre au Ministère le consentement écrit de _____ à l'usage du nom dans l'incorporation projetée ainsi que son engagement à changer de nom avant que la corporation projetée ne commence ses opérations, ou à procéder à sa dissolution dans les 30 jours qui suivront la date d'incorporation de la compagnie projetée.

	NAME NOM #			
	1	2	3	
The name is not available for use as a corporate name because	<input type="text"/>	<input type="text"/>	<input type="text"/>	Le nom n'est pas disponible comme nom corporatif vu
a) it is too general	<input type="text"/>	<input type="text"/>	<input type="text"/>	a) qu'il est trop général;
b) it is only descriptive of the nature of the company business, goods or services.	<input type="text"/>	<input type="text"/>	<input type="text"/>	b) qu'il décrit uniquement le genre d'entreprise de la compagnie, ses marchandises ou services;
c) it is primarily or only a surname	<input type="text"/>	<input type="text"/>	<input type="text"/>	c) qu'il est principalement ou uniquement un nom de famille;
d) it is primarily or only a geographic name	<input type="text"/>	<input type="text"/>	<input type="text"/>	d) qu'il est principalement ou uniquement un nom géographique;
e) it is confusing with the trade names or trade marks highlighted on the attached search report	<input type="text"/>	<input type="text"/>	<input type="text"/>	e) qu'il crée de la confusion avec les noms d'affaires et marques de commerce figurant sur le rapport de recherches ci-joint;
f) it is deceptively misdescriptive of the proposed company business, goods or services, or place of origin of those goods or services.	<input type="text"/>	<input type="text"/>	<input type="text"/>	f) qu'il décrit faussement l'entreprise, les marchandises ou services de la compagnie projetée, ou le lieu d'origine de ses marchandises ou services.
In order to determine whether the proposed name is confusing the nature of the proposed company business, must be stated	<input type="text"/>	<input type="text"/>	<input type="text"/>	Pour que l'on puisse se prononcer sur le risque de confusion, il faudrait décrire le genre d'entreprise à être exploitée par la compagnie projetée.
Other	<input type="text"/>	<input type="text"/>	<input type="text"/>	Autres

Examiner
Examineur(trice)

Caution

An indication that a name appears to be available at this time is not to be construed as an undertaking that the said name will be granted if and when a formal application is made. It is only a tentative indication that the name might be available at the time of the incorporation of a new company or of the change of a corporate name. If any printing or other use of the name is made in advance, it will be done entirely at the risk of the applicants.

Where applicants are to accept full responsibility for risk of confusion with other names, acceptance of such responsibility will comprise an obligation to change the name to a dissimilar one in the event that representations are made and establish that confusion occurs, errors and omissions excepted.

The use of any name granted is subject to any laws of the jurisdiction where the company carries on business.

Mise en Garde

Toute indication qu'un nom corporatif semble en ce moment disponible ne doit pas être considérée comme un engagement de notre part à accorder ledit nom si une demande formelle devait par la suite nous être présentée. Un tel avis ne sert qu'à établir la disponibilité probable du nom suggéré pour fins de constitution en corporation d'une nouvelle compagnie ou d'un changement de nom corporatif. Si des imprimés ou autre usage du nom sont préalablement faits, les requérants assumeront entièrement ce risque.

Quand un nom est accordé à la condition que les requérants soient prêts à assumer toute responsabilité pour risque de confusion avec les noms d'autres compagnies, cette acceptation de responsabilité comprend l'obligation de changer le nom de la compagnie en un nom différent advenant le cas où des représentations sont faites établissant qu'il y a confusion, sauf erreurs et omissions.

L'utilisation de tout nom octroyé est sujette à toute loi de la juridiction où la corporation exploite son entreprise.

EXHIBIT "C"**WEAK (i.e. FREQUENTLY OCCURRING) TERMS IN CORPORATE NAMES**

AGENCIES	GAS	PACIFIC
AGENCY	GENERAL	PARK
AIR	GEORGE	PAUL
ALBERTA	GOLF	PHARMACY
AMERICAN	HARDWARE	PLACEMENTS
ASSOCIATES	HEATING	PRINTING
ASSOCIATION	HOLDING(S)	PRODUCTION
AUTO	HOME(S)	PRODUCTS
BAY	HOSPITAL	PROPERTIES
BROTHERS	HOTEL	PLUMBING
BUILDERS	HOUSE	QUEBEC
BUILDING	HOUSING	UNION
CAISSE	IMPERIAL	UNITED
CANADA	IMMEUBLES	RANCH
CANADIAN	INDUSTRIAL	REAL
CAR	INDUSTRIES	REALTIES
CENTRAL	INSURANCE	REALTY
CENTRE	INTERNATIONAL	RENTALS
CHURCH	INVESTMENT	RESTAURANT
CITY	JOHN	RIVER
CLEANERS	LAKE	ROYAL
CLUB	LAND	SALES
COMMUNITY	LEAF	SCHOOL
COMPAGNIE	LEASING	SECURITIES
CONSULTANT	LIFE	SERVICE(S)
CONSTRUCTION	LOGGING	SHOP
CO-OPERATIVE	LOISIRS	SOCIETE
CORPORATION	LUMBER	SOCIETY
CONTRACTING	MACHINE	SON(S)
CONTRACTOR	MANAGEMENT	SPORTS
COUNTY	MANUFACTURING	ST
CREDIT	MAPLE	STEEL
DEVELOPMENT	MARINE	STORE(S)
DISTRIBUTOR	MARKET	SUPPLIES
DISTRICT	METAL	SUPPLY
ELECTRIC	MINES	SYNDICATE
ENGINEERING	MINING	SYSTEMS
ENTERPRISE(S)	MONTREAL	TELEPHONE
ESTATE(S)	MOTEL	TIRE
EQUIPMENT	MOTOR(S)	TORONTO
EXPLORATION	MUTUAL	TRADING
FARM(S)	NATIONAL	TRANSPORT
FILS	NEW	TRUCKING
FOOD(S)	NORTH	VALLEY
FOUNDATION	NORTHERN	VANCOUVER
FURNITURE	OIL	WEST
GARAGE	ONTARIO	WESTERN
		WORK