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THE HUMAN SIDE OF CORPORATE BUSINESS

Federal or Provincial Incorporation: Which Jurisdiction to Choose? (Part 1)

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It's amazing how often the simplest of questions can prove to be baffling. For example, one as banal as "Which jurisdiction is the most advantageous in which to incorporate my company?" can often raise many questions.

Within the framework of this column, we will show the main highlights for choosing by comparing the companies governed by the *Companies Act Part IA* (Quebec)¹ and the companies governed by the *Canada Business Corporations Act*² of the federal system.

There is a widespread myth in the business community whereby it is believed that a company incorporated under the federal system can conduct business anywhere in Canada without requiring other formalities. In our opinion, this assertion is erroneous. A company that intends to conduct business in either the Canadian provinces or territories, whether it is under the federal or provincial system, must necessarily be registered with the company register of the province or territory concerned. This registration is made by registering with the province or territory in which the company conducts business (subject to legislative provisions regarding legal publicity in each province and territory).

We have brought together in a table a summary of the main elements of comparison, which can influence the incorporator or incorporators of a legal entity to choose

either system. Understandably, the table is not exhaustive, but it can be helpful in determining which system is applicable when incorporating. We will do a summary study of some of the key elements. You will find this table on the "What's New?" page on our web site (www.crac.com/english/whatsnew.htm).

Corporate Name

Although a company in either a provincial or a federal jurisdiction can be incorporated with a number by way of a name, one tends to want to identify one's company under a corporate name. At the federal level, the choice of a corporate name can prove to be complex. Given that federal

regulations regarding the granting of corporate names are strict, the choice of a corporate name requires careful consideration beforehand in order to ensure compliance. It is important to note however that as a result of authorities' stringent control in the matter of granting corporate

**To help you to
better advise
your clients in
the choice
of jurisdiction,
consult our
comparative table
on our Internet site:
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on the "What's
New?" page.**

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Federal or Provincial Incorporation... (cont'd)

names, the latter benefits from better protection. Moreover, a search report and a corporate name reservation are mandatory. At the provincial level, the corporate name must respect the requirements of the rules and regulations in effect. Although reservation of a corporate name is not mandatory, a name search report must accompany the documents of incorporation.

Residence of Directors

An element that could affect the choice of a jurisdiction over another is the notion of the residence of the directors. Subject to certain exceptions, federal corporations are legally bound to maintain a board of directors composed of at least 25% of Canadian residents. Quebec legislation does not contain such a requirement.

Registration

Although a company incorporated in Quebec is automatically registered, such is not the case for a company governed by the federal system. The latter must be registered on the *Registre des entreprises individuelles, des sociétés et des personnes morales* (CIDREQ). When a corporation incorporated in a given jurisdiction wishes to conduct business in another province or territory, the company must ensure that the rules and regulations in effect regarding legal publicity are respected in this province or territory in order to determine if the company is subject to the obligation to register.

Continued in the next issue...

1. R.S.Q., c. C-38

2. R.C.S., 1985, c. C-44

Turnaround Schedule for Corporate Services as of June 1st, 2003

SERVICES	PROVINCIAL	FEDERAL
TaxExpress™ (GST / QST / QDAS)	2 - 3 days	3 - 5 days
Name Search <u>with</u> Reservation	*24 hours	24 hours
Name Search <u>without</u> Reservation	3 hours	—
Certificate of Incorporation (Paper Filing)	*3 - 4 days	2 days
Certificate of Incorporation (Incoweb™ Electronic Filing)	*3 - 4 days	6 - 8 hours <i>2 hrs if numeric</i>
Certificate of Amendment	*9 - 10 days	2 days
Certificate of Continuation, of Continuance or of Amalgamation	*1 - 2 weeks	3 - 6 days
Certificate of Dissolution	5 - 6 weeks	5 - 6 days
Notice of Change (Federal) or Amending Declaration (Quebec)	5 - 6 weeks	5 - 6 days
Letters Patent for Non-Profit Corporation	*1 - 2 weeks	25 days
Attestation / Certificate of Good Standing and Certificate of Compliance	*24 hours	48 hours
Revival	—	8 - 10 days
Initial Declaration	4 - 5 weeks	—
Declaration of Registration	*2 - 3 weeks	—
Annual Declaration	*2 - 3 weeks	—
Revocation of Striking-Off (s. 54 L.P. Act)	*1 - 2 weeks	—

The turnaround times may vary slightly according to each file () = Priority service available.*

Food for Thought

*From what we get, we can make a living;
what we give, however, makes a life.*

Arthur Ashe

The Institute of Law Clerks of Ontario (ILCO): A Successful Conference!



C.R.A.C. Corporate Research and Analysis Centre Ltd. is pleased to mention its participation at the annual congress of "The Institute of Law Clerks of Ontario" on May 8th and 9th, 2003 at Ottawa.

This conference brought together a very large number of participants and this year's theme was "Knowledge is Wealth – Wealth is Success".

We were able to greet several clients and to establish new contacts. The presentation of our on-line incorporation service *IncoWeb*® (www.incoweb.com) aroused a great deal of interest.

We congratulate all the members of the organization for this most successful of conferences!

In All Honesty, with Ms. Julie Paquette



Dear clients, in this issue, we introduce you to an important member of our corporate team. She has now been with our firm for five years. She is known for her minutiae and her professionalism. She also distinguishes herself by the certain ease with which she expresses her opinions... In brief, a colorful and very engaging person this Julie Paquette.

When asked about her work, her spontaneous reply is: "I adore what I do. Yet, when I was in school I detested corporate law! In fact, she would have liked to be a drama professor, but if she had followed the advice of her guidance counsellor, she would have become a lawyer!

In her leisure time, Julie enjoys going to the cinema as well as reading, particularly detective stories. "The more twisted the story, such as in the Fortier program for example or the novels of Mary Higgins Clark, the more I like them", she tells us.

Julie is the mother a two-year-old daughter, Camille and shares her life in a new house with her fiancé Daniel and his four-year-old daughter, Daphné. When asked "When is the wedding?", she replies: "The date has not been set yet, but I have known for a long time what I would like: a big Italian wedding!"