

Federal or Provincial Incorporation:

Which jurisdiction to choose? (Part 2)

In the last issue, we discussed key factors that may influence your choice on the jurisdiction under which to incorporate a company. You can read Part 1 of this article as well as consult the comparative table by clicking «What's New» on our web site (www.crac.com).

PART 2

Continuance

A federal corporation may, under the *Canada Business Corporations Act* ("CBCA"), continue its existence under another jurisdiction (except Quebec) as if it had been incorporated under that other jurisdiction. Quebec law does not allow such a continuance. There have been, however, exceptional cases where the legislator has allowed, by special act, the continuance of certain federal corporations under Part 1A of the *Companies Act*¹.

Revival

When a company wishes to dissolve, the directors must ensure that all conditions set out in the corporate statutes are met. Among some of the things that have to be taken care of before the dissolution are the distribution of assets, payment of debts and recovery of accounts receivables. It does happen sometimes that property belonging to the company

surfaces after it has already been dissolved. Under Part 1A of the *Companies Act*, a Quebec company that asks the Inspector General of Financial Institutions to be dissolved cannot be revived to recuperate its unclaimed property². It is important not to confuse revival of a company with revocation of striking-off, the latter being the procedure to follow in the event the company is struck from the register for failure to file its annual declarations with the Inspector General of Financial Institutions.

By contrast, a federal corporation that has been dissolved can be revived under the CBCA. Any interested person is entitled to apply for the revival by filing articles of revival in conformity with the Act and Regulations.

Loans to Shareholders

In general, a Quebec company cannot make any loans to its shareholders. There are, however, exceptions to the rule in that under certain circumstances, a company may grant a loan to a shareholder. On the federal side, there is no statutory prohibition so that a corporation can provide financial aid to a shareholder.

Remedies of Shareholders

The federal statute provides shareholders with very specific remedies. For example,

section 241 of the CBCA gives a shareholder the right to bring a court action where conduct by a corporation or its affiliates, or their directors or officers, has occurred which is oppressive, unfairly prejudicial or which unfairly disregards the interests of the shareholder. Quebec's *Companies Act* has no such remedy in favour of shareholders. We have to refer to case law. In a recent decision, the

> cont'd on page 2

New Look for Info-CRAC®!

Did you notice our newsletter's new look? Here is a sneak preview of what is to become part of our new corporate image. While our motto "Let us take you under our wing" is new, CRAC continues to set very high standards in the quality of services rendered and expertise offered in corporate matters. Call us to get your latest brochure. Please note that the price list has not changed and is always available on our web site: www.crac.com

Federal or Provincial Incorporation (cont'd)

Superior Court³ held that a remedy against abuse is allowed under Quebec law based on the directors' duty of loyalty and good faith. It will be interesting to follow the evolution of the case law in Quebec on that point.

In conclusion, the choice of one jurisdiction over another depends primarily on the strategy proposed by the directors with respect to the activities and objects of the business.

For more information, please do not hesitate to call us!

- 1 P. Martel, *La Compagnie au Québec, Les aspects juridiques*, Volume 1, Édition sur feuilles volantes, Montréal, Wilson & Lafleur, Martel Ltée, pages 6-7.
- 2 The courts may order the cancellation of a certificate of dissolution.
- 3 *Laurent c. Buanderie Villeray Limitée*, J.E. 2002-3 (C.S.)

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

SERVICES	PROVINCIAL	FEDERAL
TaxExpress™ (GST / QST / QDAS)	2 - 3 days	3 - 5 days
Name search with reservation	*24 hours	2 - 6 hours
Name search without reservation	3 hours	—
Certificate of incorporation (paper filing)	*2 - 3 days	2 days
Certificate of incorporation (IncoWeb™ electronic filing)	*2 - 3 days	6 - 8 hours 2 hrs if numeric
Certificate of amendment	*3 - 4 days	2 days
Certificate of continuation, of continuance or of amalgamation	*1 - 2 weeks	3 - 6 days
Certificate of dissolution	7 - 8 weeks	7 - 8 days
Notice of change (federal) or amending declaration (Quebec)	7 - 8 weeks	4 - 5 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	*3 - 4 weeks	—
Annual declaration	*4 - 5 weeks	—
Revocation of striking-off (s. 54 L.P. Act)	*2 - 3 weeks	—

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

FOOD FOR THOUGHT

"It is our choices...that show what we truly are, far more than our abilities."

J.K. Rowling

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News from CLARA®

Remember CLARA®, the mobile clinic for breast cancer detection? You will recall that this great cause was initiated by the Jean Marc Paquette Foundation along with the support of several sponsors, and is administered by the *Institut national de santé publique du Québec (INSPQ)*. CRAC and its president are proud supporters of CLARA®. In Quebec, one woman in 8 is

affected by breast cancer and CLARA® has proven to be a successful program in the battle against this disease. Officially launched in May 2001, the CLARA® bus has traveled many miles throughout the province while 2,983 mammographies were performed during the last 8 months. How does it work? Women between the ages of 50 and



69, who are encouraged to have a mammography every 2 years, are advised in writing when and where the CLARA® bus will be passing through in their area. The response has been

great so far! Over 90% of women contacted have accepted the invitation. A program like CLARA® helps reduce the overcrowding of large medical facilities, and as a result, the waiting period for an examination, and more importantly, allows women in remote areas of the province to have access to this type of medical care, which they otherwise would not have. In the next few months, the bus will be on the road again and make its way to Abitibi-Témiscamingue, Lanaudière, Gaspésie and the northern part of the province. Continued success CLARA®!



< Back left to right: Mr. Leonardo Iacono, Mr. Gilles Boisvert, Mr. Louis Parayre, Mr. Daniel Ménard, Ms. Suzanne Paquin, Mr. Jean Marc Paquette, Mr. Pierre Gauthier.
Front: Ms. Thérèse Fredette, Mr. François Robillard, Ms. Diane Maillé, Mr. Charles Paquette.

Cancer J'écoute

In pursuit of its mission, the Jean Marc Paquette Foundation created a new project this year called "Cancer J'écoute". In collaboration with the Cancer Society of Canada, the phone help-line, which is free and confidential, allows cancer patients and their loved ones to call for assistance or support. On June 17, the Classique Juri Golf, which was organized by the Foundation and for which CRAC is very active as a sponsor, raised \$67,000.00 for this well-deserved cause. Thanks to all the golfers and we hope to see you again on the greens next year.



^ Many prizes were up for grabs at the golf tournament dinner. Our own Denis Livernoche, supervisor of the search department, was one of the lucky ones who won a gift certificate for a vacation worth \$2,000.00. He and his family will certainly take full advantage of this fabulous prize. Congratulations Denis!
From left to right on photo: Mr. Daniel Ménard from the Journal de Montréal, Mr. Denis Livernoche of CRAC Ltd. and Mr. Gilles Malo Sr., senior partner of Paquette & Associés.