



## Cancellation of CBCA Certificates

If you had the misfortune of making a mistake on articles for which a certificate was issued by Corporations Canada, you can take comfort in knowing that the correction of that certificate is possible and has been possible for some time now pursuant to section 265 of the *Canada Business Corporations Act* (CBCA).

What some of you may not know is that with the coming into force of the new section 265.1 CBCA in November 2001, you may make a request to the Director for the cancellation of a certificate. The Director must be satisfied that the cancellation of the certificate does not prejudice any of the shareholders or creditors of the corporation and that the cancellation reflects the original intention of the corporation.

### New Policy

In November 2003, Corporations Canada issued a new policy relating to s. 265.1 CBCA. In many respects, this policy is similar to the policy relating to the correction of CBCA certificates since the statutory provisions are similar.

### Initiative of the Director

The Director may take the initiative to cancel a certificate that has been incorrectly issued and the corporation shall, in such a case, send the Director the documents required as outlined in the policy (s. 265.1(1) CBCA).

### Cancellation by the Corporation

Under s. 265.1(3) CBCA, the cancellation may be asked by the corporation or any other interested person by filing a written request along with the following documents as listed in the policy:

1. a certified copy of a resolution of the directors (or a statutory declaration of the incorporator where no organizational meeting has been held) approving the cancellation and stating:
    - a) that there is no dispute among the directors or shareholders about this request;
    - b) if applicable, that the corporation did not authorize the filing of the articles that were filed;
    - c) that the cancellation reflects the original intention of the corporation or the incorporators, as the case may be;
    - d) that the articles were filed in error;
    - e) how the error was made;
    - f) if applicable, the effects of the cancellation on share ownership by the shareholders;
    - g) that removal of the error by articles of amendment would cause undue hardship;
    - h) that no shareholders or creditors would be adversely affected by the cancellation;
    - i) if applicable, who the directors and shareholders were before and after issue of the certificate and the number of shares they held before and after; and
    - j) that the certificate has not yet been used or relied upon, or if it has, a document consenting to the cancellation from anyone dealing with the corporation on the basis of the certificate;
  2. if deemed necessary by the Director, a statutory declaration of a director or officer stating that the corporation has not executed any security agreements or other documents using its incorrect name, and no filings have been made under any personal property security legislation in Canada, against the incorrect corporate name;
  3. the original certificate and articles and any certified copies of same; and
  4. if the error was made by a representative of the corporation (e.g.: attorney):
    - i) a statutory declaration of such representative stating the instructions received and the reasons why those instructions were not followed; or
    - ii) a statutory declaration of an officer explaining why it's not possible to obtain (i) above, the instructions given to the representative and why they were not reflected in the articles.
- Examiners at Corporations Canada have had to deal with many cases of cancellation. One case was where an amendment for a name change was filed for corporation A when it should have been filed for corporation B, an affiliated corporation, and for which the evidence showed that the original intention was to assign the new name to B. The error occurred due to the similarity in the numeric names of both corporations. The certificate of amendment issued to A was cancelled, thus allowing B to subsequently change its name.

## Cancellation of CBCA Certificates *(cont'd)*

On a lighter note, another case was a 17 year-old boy who got a hold of his father's credit card and went ahead with an incorporation just for the fun of it. Imagine the father's surprise when he got his credit card statement. Lucky for him, he was able to get the cancellation of the certificate.

### Conclusion

Remember that the policy serves as a practical guideline. Each case is considered on its own merit and the Director has discretion to require any documentation deemed necessary. If you feel aggrieved by the Director's decision to cancel, or refuse to

cancel, a certificate, you may apply for a court order to have the decision changed pursuant to s. 246(f.2) CBCA.

There is no government fee for a request for cancellation of a certificate. Unfortunately, the fee you paid for the cancelled certificate is not refundable by the Director.

## Turnaround Schedule for Corporate Services as of August 1st, 2004

SERVICES	PROVINCIAL	FEDERAL
TaxExpress™ (GST / QST / QDAS)	5 - 10 days	3 - 5 days
Name search with reservation	*24 hours	2 - 6 hours
Name search without reservation	3 hours	—
Certificate of incorporation (paper filing)	*5 - 6 days	2 days
Certificate of incorporation (IncoWeb™ electronic filing)	*5 - 6 days	24 hours 4 - 6 hrs if numeric
Certificate of amendment	*13 - 14 days	2 days
Certificate of continuation, of continuance or of amalgamation	*1 week	3 - 6 days
Certificate of dissolution	3 - 4 weeks	1 week
Notice of change (federal) or amending declaration (Quebec)	3 - 4 weeks	3 - 4 days
Letters patent for non-profit corporation	*2 - 3 weeks	25 days
Attestation / Certificate of good standing and certificate of compliance	*24 hours	48 hours
Revival	—	6 - 8 days
Initial declaration	4 - 5 weeks	—
Declaration of registration	*2 - 3 weeks	—
Annual declaration	*5 - 6 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

“To measure the man, measure his heart.”

*Malcolm S. Forbes*

### C.R.A.C. Corporate Research and Analysis Centre Ltd.

1080 Beaver Hall Hill, Suite 1717  
 Montreal, Quebec Canada H2Z 1S8  
 Tel: (514) 861-2722  
 Toll free: 1-800-361-5744  
 Fax: (514) 861-2751  
 E-mail: [crac@crac.com](mailto:crac@crac.com)

Notice: The information contained in INFO-CRAC® is of a general informative nature and in no way constitutes nor should it be construed as a legal opinion. INFO-CRAC® is published bi-monthly for the benefit of our clients. Please submit any comments in writing to the Editor, Richard S. Gareau ([rs gareau@crac.com](mailto:rs gareau@crac.com)).

# C.R.A.C.'s



## Silver Anniversary!

It was 25 years ago, on June 19, 1979, when C.R.A.C. first opened its doors for business. The founder of the company was a young lawyer with fiery red hair by the name of Thérèse Fredette, whose business savvy and determination to succeed over the years have paved the way for C.R.A.C. in becoming one of Quebec's leading search houses. As President of C.R.A.C. since its inception and as one of the pioneer women in the business world at the time, she inspired others to pursue their own dreams, whatever they may be.

In 1995, Richard S. Gareau, also a lawyer, and her two brothers, Robert and Louis Fredette became partners and joined Thérèse on the board of directors. Together, these 3 gentlemen amass 56 years of service with C.R.A.C., more than double C.R.A.C.'s life span. Now that is dedication!



Mr. Louis Fredette, Mr. Richard S. Gareau, Ms. Thérèse Fredette and Mr. Robert Fredette

On behalf of the entire staff, our sincerest congratulations on this Silver Anniversary go to Thérèse, Richard, Robert and Louis. Here's to another 25!



Ms. Thérèse Fredette, President of C.R.A.C. (in middle of photo) surrounded by members of the Foundation.

## Golf Tournament 2004

The 16th edition of the *Classique Juri Golf* Tournament was held on June 15, 2004 and we couldn't have asked for a more splendid day for golf! CRAC and CSRS are proud sponsors of this event and the 300 golfers in attendance this year marveled at their beautiful surroundings of the Saint-Raphaël Golf Club in Île-Bizard. The sum of \$76,000.00 was raised for the Jean Marc Paquette Foundation, which works relentlessly for the fight against cancer. The money will be allocated to fund projects such as the *Cancer J'Écoute* helpline. We hope to see you again next year for another game of golf!