

1984

c 14 Extra-Provincial Corporations Act, 1984

Ontario

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CHAPTER 14

An Act in respect of Extra-Provincial Corporations

Assented to May 29th, 1984

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Interpretation

- (a) “business” includes undertaking and non-profit activities;
- (b) “court” means the High Court of Justice;
- (c) “Director” means the Director appointed under section 3;
- (d) “endorse” includes imprinting a stamp, in accordance with section 5, on the face of an application sent to the Director;
- (e) “extra-provincial corporation” means a corporation, with or without share capital, incorporated or continued otherwise than by or under the authority of an Act of the Legislative Assembly;
- (f) “Minister” means the Minister of Consumer and Commercial Relations or such other member of the Executive Council to whom the administration of this Act may be assigned;
- (g) “Ministry” means the Ministry of the Minister;
- (h) “prescribed” means prescribed by the regulations;
- (i) “send” includes deliver or mail;
- (j) “regulations” means the regulations made under this Act.

(2) For the purposes of this Act, an extra-provincial corporation carries on its business in Ontario if,

Carrying on
business in
Ontario

- (a) it has a resident agent, representative, warehouse, office or place where it carries on its business in Ontario;
- (b) it holds an interest, otherwise than by way of security, in real property situate in Ontario; or
- (c) it otherwise carries on its business in Ontario.

Idem

(3) An extra-provincial corporation does not carry on its business in Ontario by reason only that,

- (a) it takes orders for or buys or sells goods, wares and merchandise; or
- (b) offers or sells services of any type,

by use of travellers or through advertising or correspondence.

Classes of
extra-
provincial
corporations

2.—(1) Extra-provincial corporations shall be classified into the following classes:

Class 1. Corporations incorporated or continued by or under the authority of an Act of a legislature of a province of Canada.

Class 2. Corporations incorporated or continued by or under the authority of an Act of the Parliament of Canada including corporations incorporated under an ordinance of the Yukon or Northwest Territories.

Class 3. Corporations incorporated or continued under the laws of a jurisdiction outside of Canada.

Idem

(2) Corporations incorporated under an ordinance of the Northwest Territories but governed by the corporation laws of a province are corporations within class 1.

Director

3. There shall be a Director appointed by the Minister who shall perform such duties and have such powers as are assigned to him by this Act.

Where
licence
not required
R.S.O. 1980,
c. 96

4.—(1) Subject to this Act, the *Corporations Information Act* and any other Act, an extra-provincial corporation within class 1 or 2 may carry on any of its business in Ontario without obtaining a licence under this Act.

Carrying on
business
without
licence
prohibited

(2) No extra-provincial corporation within class 3 shall carry on any of its business in Ontario without a licence under

this Act to do so, and no person acting as representative for or agent for any such extra-provincial corporation shall carry on any of its business in Ontario unless the corporation has a licence under this Act.

5.—(1) An extra-provincial corporation may make an application for a licence, an amended licence or a termination of licence by sending to the Director two originals of the application signed by a director or officer of the corporation, all other required documents and the prescribed fee.

Application
for licence,
etc.

(2) Where the Director receives an application in accordance with subsection (1) he may endorse on each original a licence, amended licence or a termination of the licence, setting out the day, month and year of endorsement and a corporation number and, where he so endorses, he shall,

Where
Director
endorses

- (a) file one original of the application with the endorsement;
- (b) send to the corporation or its representative one original of the application with the endorsement thereon; and
- (c) publish notice of the endorsement in *The Ontario Gazette*.

(3) An endorsement under subsection (2) may be dated as of the date the Director receives the originals of any application together with all other required documents executed in accordance with this Act and the prescribed fees or as of any later date acceptable to the Director specified by the person who submitted the application.

Date of
endorsement

(4) An endorsement under subsection (2) is effective on the date shown thereon notwithstanding that any action required to be taken by the Director under this Act with respect to the endorsement of the application and filing by him is taken at a later date.

When
endorsement
effective

(5) The Director may make a licence or an amended licence subject to restrictions on the business of a corporation and to such other limitations or conditions as are specified in the licence or amended licence.

Restrictions
on licence

6.—(1) Where the Director refuses to endorse any application required by this Act to be endorsed by him before it becomes effective, he shall give written notice to the person who delivered the application of his refusal, specifying the reasons therefor.

Where
endorsement
refused

Idem

(2) Where, within six months after an application referred to in subsection 5 (1) has been sent to the Director, the Director has not endorsed the application, he shall be deemed for the purposes of section 8 to have refused to endorse it.

Director may
cancel
licence

7.—(1) Where sufficient cause is shown, the Director, after giving an extra-provincial corporation within class 3 an opportunity to be heard, may by order cancel the licence of the corporation upon such date as is fixed in the order.

Review by
Director

(2) If no proceedings have been taken under section 8, the Director may at any time review an order made under subsection (1) and may affirm, revoke or vary any such order if in his opinion it is appropriate to do so.

Interpretation

(3) In this section, “sufficient cause” includes,

(a) failure to pay any prescribed fee;

(b) failure to comply with section 19;

R.S.O. 1980,
c. 96

(c) failure to comply with a request under section 5 or a notice under section 8 of the *Corporations Information Act*; and

R.S.C. 1970,
c. C-34
R.S.O. 1980,
c. 400

(d) a conviction of the extra-provincial corporation for an offence under the *Criminal Code* (Canada) or an offence as defined in the *Provincial Offences Act* in circumstances where cancellation of the licence is in the public interest.

Appeal

8.—(1) A person aggrieved by a decision of the Director,

(a) to refuse to endorse an application;

(b) to make or refuse to make an order under section 11;

(c) to cancel a licence under section 7 or subsection 12 (2);

(d) to require that a corrected licence be endorsed under section 13; or

(e) to impose conditions on a licence or amended licence,

may appeal to the Divisional Court.

(2) The Director shall certify to the registrar of the Divisional Court, Certification by Director

- (a) the decision of the Director together with a statement of the reasons therefor;
- (b) the record of any hearing; and
- (c) other material that is relevant to the appeal.

(3) The Director is entitled to be heard by counsel or otherwise upon the argument of an appeal under this section. Director may be heard

(4) Where an appeal is taken under this section, the court may direct the Director to make such decision or do such other act that the Director is empowered to do under this Act, as the court thinks proper, having regard to the material and submissions before it. Court order

(5) Notwithstanding an order of the court under subsection (4), the Director has power to make any further decision where he is presented with new material or where there is a material change in the circumstances and every such decision is subject to this section. Further orders by Director

9. An extra-provincial corporation may, subject to its incorporating instrument, the *Corporations Information Act* and any other Act, use and identify itself in Ontario by a name other than its corporate name and, in the case of an extra-provincial corporation within class 3, may be licensed to use such name. Use of other name
R.S.O. 1980, c. 96

10.—(1) Notwithstanding section 9 and subject to subsection (2), an extra-provincial corporation within class 1 or 3 shall not use or identify itself in Ontario by a name, Where name, etc., likely to deceive

- (a) that contains a word or expression prohibited by the regulations;
- (b) that is the same as or, except where a number name is used, similar to,
 - (i) the name of a known,
 - (A) body corporate,
 - (B) trust,
 - (C) association,

(D) partnership,

(E) sole proprietorship, or

(F) individual,

whether in existence or not, or

(ii) the known name under which any body corporate, trust, association, partnership, sole proprietorship or individual carries on its business or identifies itself,

if the use of that name would be likely to deceive;
or

(c) that does not meet the requirements prescribed by the regulations.

Exception

(2) An extra-provincial corporation within class 1 or 3 may use or identify itself in Ontario by a name described in clause (1) (b) upon compliance with such conditions as may be prescribed.

Filing
material

(3) An extra-provincial corporation to which this section applies shall file with the Director such documents relating to the name or proposed name as may be prescribed.

Where
contravention

11.—(1) If an extra-provincial corporation within class 1 or 3, through inadvertence or otherwise, uses or identifies itself by a name contrary to section 10, the Director may, after giving the extra-provincial corporation an opportunity to be heard, order it to cease using the name in Ontario and, where the name is contained in a licence, the Director may order that the corporation apply for an amended licence under a different name within the time specified in the order.

Director
may apply
for order
under s. 14

(2) Where an extra-provincial corporation within class 1 fails to comply with an order made under subsection (1), the Director may apply to the Court for an order under section 14.

Director may
cancel licence

(3) Where an extra-provincial corporation within class 3 fails to apply for an amended licence pursuant to an order under subsection (1), the Director may cancel the licence.

Where
change
of name or
jurisdiction

12.—(1) An extra-provincial corporation within class 3 shall make application for an amended licence where,

- (a) it has changed its name or has been ordered to change its name under section 11; or
- (b) it has continued under the laws of another jurisdiction.

(2) Where an extra-provincial corporation within class 3 has not carried on any of its business in Ontario for any two consecutive years, the extra-provincial corporation shall make application for termination of its licence or, if it does not do so, the Director, upon giving the corporation an opportunity to be heard, may by order cancel the licence.

Where corporation ceases to carry on business

13.—(1) Where a licence contains an error,

Endorsement in error

- (a) the corporation shall, upon the request of the Director and after being given an opportunity to be heard, return the licence; or
- (b) the corporation may apply to the Director for a corrected licence and upon such resolutions being passed and other steps taken as the Director may require,

the Director may endorse a corrected licence.

(2) A corrected licence endorsed under subsection (1) may bear the date of the licence it replaces.

Date on corrected licence

(3) Where a correction made under subsection (1) is material, the Director shall forthwith give notice of the correction in *The Ontario Gazette*.

Notice of correction

14.—(1) The Director may apply to the court for an order prohibiting an extra-provincial corporation within class 1 from carrying on its business in Ontario or such other order as he may think fit and, where sufficient cause exists, the court may make an order under subsection (2).

Court order

(2) Upon an application under this section the court may make any interim or final order it thinks fit.

Idem

(3) In subsection (1), “sufficient cause” includes,

Interpretation

- (a) failure to comply with a request under section 5 or a notice under section 8 of the *Corporations Information Act*;

R.S.O. 1980, c. 96

R.S.C. 1970,
c. C-34
R.S.O. 1980,
c. 400

(b) a conviction of the extra-provincial corporation for an offence under the *Criminal Code* (Canada) or an offence as defined in the *Provincial Offences Act*, in circumstances where an order of prohibition is in the public interest; and

(c) failure to comply with an order made under section 11.

Notice not
deemed

15. No person is affected by or is deemed to have knowledge of the contents of a document concerning an extra-provincial corporation by reason only that the document has been filed with the Director.

Certificate

16. The Director shall, upon payment of the prescribed fee, issue a certificate certifying,

(a) as to the endorsement or non-endorsement of a licence for any corporation;

(b) as to the filing or non-filing of any document or material required or permitted to be filed under this Act; or

(c) that a person named in the certificate on the date or during the period specified in the certificate is shown on the records of the Ministry as an officer or agent for service of the corporation named in the certificate.

Delegation
by Director

17.—(1) The Director may delegate in writing any of his duties or powers under this Act to any public servant in the Ministry.

Signing

(2) Where this Act requires or authorizes the Director to endorse a licence or to certify any fact, the licence or certificate shall be signed by the Director or any other person designated for the purpose by the regulations.

Evidence

(3) A licence or certificate referred to in subsection (2) or a certified copy thereof when introduced as evidence in any civil, criminal or administrative action or proceeding is *prima facie* proof of the facts so certified without personal appearance to prove the signature or official position of the person appearing to have signed the endorsed licence or certificate.

Reproducing
signature

(4) For the purposes of subsections (2) and (3), any signature authorized under this section may be printed or otherwise mechanically reproduced.

18.—(1) The Director may require any fact relevant to the performance of his duties under this Act or the regulations to be verified by affidavit or otherwise. Verification by affidavit

(2) For the purpose of holding a hearing under this Act, the Director may administer oaths to witnesses and require them to give evidence under oath. Evidence under oath

19.—(1) Every extra-provincial corporation within class 3 that carries on its business in Ontario shall ensure the continuing appointment, at all times, of an individual, of the age of eighteen years or older, who is resident in Ontario or a corporation having its head office or registered office in Ontario as its agent for service in Ontario on whom service of process, notices or other proceedings may be made and service on the agent shall be deemed to be service on the corporation. Agent for service

(2) The appointment shall be in the prescribed form and shall accompany the application for a licence. Appointment form

(3) Where the name, address or any other particular set out in the appointment of an agent changes or where an agent is substituted, the extra-provincial corporation shall forthwith file a revised appointment in the prescribed form with the Director. Revised appointment

(4) Any matter sent by the Director by prepaid post, Service by Director

- (a) to an agent referred to in subsection (1) addressed to him at the latest address shown on the records of the Director; or
- (b) to the head or registered office of the extra-provincial corporation at the latest address shown on the records of the Director,

shall be deemed to have been served on the extra-provincial corporation on the fifth business day after the day of mailing.

20.—(1) Every person who, without reasonable cause, Penalty

- (a) contravenes this Act or the regulations;
- (b) contravenes a condition of a licence; or
- (c) fails to observe or comply with an order, direction or other requirement made under this Act or the regulations,

is guilty of an offence and on conviction is liable to a fine of not more than \$2,000 or if such person is a corporation to a fine of not more than \$25,000.

Idem

(2) Where an extra-provincial corporation is guilty of an offence under subsection (1), every director or officer of the corporation and every person acting as its representative in Ontario who authorized, permitted or acquiesced to such offence is also guilty of an offence and on conviction is liable to a fine of not more than \$2,000.

Ability to
maintain
action

21.—(1) An extra-provincial corporation within class 3 that is not in compliance with section 19 or has not obtained a licence when required by this Act, is not capable of maintaining any action or any other proceeding in any court or tribunal in Ontario in respect of any contract made by it.

Correcting
default

(2) Where a default referred to in subsection (1) has been corrected, an action or other proceeding may be maintained as if the default had been corrected before the institution of the action or other proceeding.

Power to
hold land

22. Every corporation,

- (a) within class 1 or 2;
- (b) within class 3 that has a licence under this Act; or
- (c) that is exempt from the licensing requirement under this Act,

has power to acquire, hold and convey any land or interest therein in Ontario necessary for its actual use and occupation or for carrying on its undertaking.

Effect of
licence under
R.S.O. 1980,
c. 95

23.—(1) Where a licence has been issued to an extra-provincial corporation within class 3 under Part VIII of the *Corporations Act* or a predecessor thereof,

- (a) the licence remains in effect and shall be deemed to have been endorsed under this Act;
- (b) the powers of the extra-provincial corporation shall be deemed to be restricted as set out in the existing licence; and
- (c) the attorney for service previously appointed continues in office and the provisions of this Act with respect to agents for service apply.

(2) All extra-provincial licences issued under Part VIII of the *Corporations Act* or a predecessor thereof except licences referred to in subsection (1) are cancelled on the day this section comes into force.

Licences
cancelled
R.S.O. 1980,
c. 95

24.—(1) In any other Act, unless the context otherwise requires,

References in
other Acts

- (a) a reference to an extra-provincial corporation is deemed to be a reference to an extra-provincial corporation under this Act; and
- (b) a reference to an extra-provincial corporation that is licensed or required to be licensed under Part VIII of the *Corporations Act* means an extra-provincial corporation within class 1 or 3.

(2) Where a corporation within class 1 or 2 would enjoy an exemption or a benefit under another Act if it had an extra-provincial licence, the corporation shall be deemed to have a licence for the purpose of the other Act.

Where
corporation
deemed to
have licence

25. The Lieutenant Governor in Council may make regulations respecting any matter he considers necessary for the purposes of this Act, including, without limiting the generality of the foregoing, regulations,

Regulations

- (a) requiring the payment of fees for any matter that the Director is required or authorized to do under this Act and prescribing the amounts thereof;
- (b) prescribing forms for use under this Act and providing for their use;
- (c) designating officers of the Ministry for the purposes of endorsing licences and issuing certificates as to any fact or certifying true copies of documents required or authorized under this Act;
- (d) respecting names of extra-provincial corporations or classes thereof;
- (e) prohibiting the use of any words or expressions in a corporate name;
- (f) defining any word or expression used in clause 10 (1) (b);
- (g) prescribing requirements for the purposes of clause 10 (1) (c);

- (h) prescribing conditions for the purposes of subsection 10 (2);
- (i) prescribing the documents relating to names to be filed with the Director under subsection 10 (3);
- (j) respecting the evidence required upon the application for a licence under this Act including evidence as to the incorporation of the extra-provincial corporation, its powers, objects and existence as a valid and subsisting corporation;
- (k) respecting the appointment and continuance by extra-provincial corporations of an agent for service on whom service or process notices or other proceedings may be made and the powers to be conferred on such agent;
- (l) prescribing the conditions and limitations that may be specified in licences;
- (m) prescribing classes of extra-provincial corporations and exempting any class of extra-provincial corporation from all or any part of the provisions of this Act upon such terms and conditions, if any, as may be prescribed;
- (n) prescribing any matter required by this Act to be prescribed.

Revocation

26. Part VIII of the *Corporations Act*, being chapter 95 of the Revised Statutes of Ontario, 1980, is repealed.

Commence-
ment

27. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

28. The short title of this Act is the *Extra-Provincial Corporations Act, 1984*.