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c 366 Paperback and Periodical Distributors Act

Ontario

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CHAPTER 366

Paperback and Periodical Distributors Act

1.—(1) In this Act,

Interpre-
tation

- (a) “business premises” does not include a dwelling;
- (b) “Director” means the Director of the Consumer Protection Division of the Ministry of Consumer and Commercial Relations;
- (c) “distributor” means a person who engages in the business of selling or distributing paperbacks or periodicals, or both, other than by sale by retail to an ultimate consumer;
- (d) “dwelling” means any premises or any part thereof occupied as living accommodation;
- (e) “equity share” means a share of a class of shares that carries a voting right either under all circumstances or under some circumstances that have occurred and are continuing;
- (f) “Minister” means the Minister of Consumer and Commercial Relations;
- (g) “non-resident” means,
 - (i) an individual who is not a Canadian citizen or has not been lawfully admitted to Canada for permanent residence,
 - (ii) an individual who is not ordinarily resident in Canada,
 - (iii) a corporation incorporated, formed or otherwise organized elsewhere than in Canada,
 - (iv) a corporation that is controlled directly or indirectly by non-residents as defined in subclause (i), (ii) or (iii),

- (v) a trust established by a non-resident as defined in subclause (i), (ii), (iii) or (iv), or a trust in which non-residents as so defined have more than 50 per cent of the beneficial interest, or
- (vi) a corporation that is controlled directly or indirectly by a trust mentioned in subclause (v);
- (h) "paperback" means any printed matter other than a periodical that is published for general distribution to the public and that is not bound in a hard cover, and includes paperback books;
- (i) "periodical" means any printed matter that is published for general distribution to the public and that purports to be a copy of one publication in a series of publications at regular intervals, and that is not bound in a hard cover but does not include a periodic publication that is devoted primarily to conveying current news;
- (j) "person" means an individual, a partnership or a corporation or an association, syndicate or other organization of individuals;
- (k) "Registrar" means the Registrar of Paperback and Periodical Distributors of the Ministry of Consumer and Commercial Relations;
- (l) "resident" means a person, company or trust that is not a non-resident;
- (m) "Tribunal" means The Commercial Registration Appeal Tribunal under the *Ministry of Consumer and Commercial Relations Act*. 1971, c. 82, s. 1 (1); 1972, c. 1, ss. 23 (5), 50; 1974, c. 27, s. 1 (1, 2).

R.S.O. 1980,
c. 274

Control

(2) For the purposes of subclause (1) (g) (iv), a corporation shall be deemed to be controlled by another person or corporation or by two or more corporations if,

- (a) equity shares of the first-mentioned corporation carrying more than 50 per cent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of such other person or corporation or by or for the benefit of such other corporations; and

(b) the votes carried by such securities are sufficient, if exercised, to elect a majority of the board of directors of the first-mentioned corporation. 1974, c. 27, s. 1 (3).

(3) This Act does not apply to, Application of Act
(a) distributors in respect of the distribution of paperbacks or periodicals, or both, that are published, printed and distributed primarily in Canada; or
(b) persons whose principal business is the publication in Canada of books that are not paperbacks or periodicals.

(4) Nothing in this Act shall be construed to have the Idem effect of controlling, influencing or otherwise affecting the content of any paperback or periodical. 1971, c. 82, s. 1 (2, 3).

2.—(1) There shall be a Registrar of Paperback and Registrar Periodical Distributors who shall be appointed by the Lieutenant Governor in Council.

(2) The Registrar may exercise the powers and shall perform Duties of Registrar the duties conferred or imposed upon him by or under this Act under the supervision of the Director. 1971, c. 82, s. 2.

3.—(1) No person shall carry on business as a distributor Registration of distributor unless he is registered by the Registrar under this Act.

(2) Registration under this Act shall not be construed as Effect of registration approval of any matter in the conduct of the business of the registrant except those matters specifically provided for in this Act. 1971, c. 82, s. 3.

4.—(1) Subject to subsection (2), every person carrying on Existing distributors deemed registered business as a distributor immediately before the 14th day of June, 1971 shall be deemed to be registered under this Act.

(2) Every registration made under subsection (1) expires Idem on the 1st day of October, 1971 unless before that date an application for registration is made and the material required by the regulations is filed in the manner prescribed by the regulations, unless sooner revoked under section 5. 1971, c. 82, s. 4.

5.—(1) Subject to section 4, an applicant is entitled to Entitlement to registration registration by the Registrar except where,

- (a) the applicant fails to comply with section 8 or 9, as the case may be; or
- (b) the applicant fails to file the material required by the regulations.

Refusal to register

(2) Subject to section 6, the Registrar may refuse to register an applicant where in the Registrar's opinion the applicant is disentitled to registration under subsection (1).

Revocation of registration

(3) Subject to section 6, the Registrar may revoke a registration where the registrant fails to comply with any provision of this Act or the regulations. 1971, c. 82, s. 5.

Notice of proposal to refuse or revoke

6.—(1) Where the Registrar proposes to refuse to grant or proposes to revoke a registration, he shall serve notice of his proposal, together with written reasons therefor, on the applicant or registrant.

Notice requiring hearing

(2) A notice under subsection (1) shall inform the applicant or registrant that he is entitled to a hearing by the Tribunal if he mails or delivers, within fifteen days after the notice under subsection (1) is served on him, notice in writing requiring a hearing to the Registrar and the Tribunal and he may so require such a hearing.

Powers of Registrar where no hearing

(3) Where an applicant or registrant does not require a hearing by the Tribunal in accordance with subsection (2), the Registrar may carry out the proposal stated in his notice under subsection (1).

Powers of Tribunal where hearing

(4) Where an applicant or registrant requires a hearing by the Tribunal in accordance with subsection (2), the Tribunal shall appoint a time for and hold the hearing and, on the application of the Registrar at the hearing, may by order direct the Registrar to carry out his proposal, or refrain from carrying out his proposal and to take such action as the Tribunal considers the Registrar ought to take in accordance with this Act and the regulations, and for such purposes the Tribunal may substitute its opinion for that of the Registrar.

Conditions of order

(5) The Tribunal may attach such terms and conditions to its order or to the registration as it considers proper to give effect to the purposes of this Act.

Parties

(6) The Registrar, the applicant or registrant who has required the hearing and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under this section.

Voluntary cancellation

(7) Notwithstanding subsection (1), the Registrar may cancel a registration upon the request in writing of the registrant in the prescribed form surrendering his registration. 1971, c. 82, s. 6 (1-7).

Order of Tribunal effective, stay

(8) Notwithstanding that a registrant appeals from an order of the Tribunal under section 11 of the *Ministry of*

Consumer and Commercial Relations Act, the order takes effect immediately, but the Tribunal may grant a stay until disposition of the appeal. 1971, c. 82, s. 6 (8); 1972, c. 1, s. 23 (5). R.S.O. 1980,
c. 274

7.—(1) A registration authorizes the registrant to carry on business only in the area in Ontario determined by the Registrar and described in the certificate of registration issued by the Registrar and a registrant shall not carry on business outside the area so described. Business
area

(2) The Registrar may reduce the area applied for by the registrant where, in his opinion, not to do so would lessen or be likely to lessen competition unduly in respect of channels or methods of distribution, contrary to the public interest. Decision of
Registrar

(3) Where the Registrar proposes to reduce the area applied for, subsections 6 (1), (2), (3) and (6) apply with necessary modifications, in the same manner as to a proposal to revoke a registration. 1971, c. 82, s. 7 (1-3). Notice.
etc.

(4) An appeal lies from a decision of the Registrar under this section to the Minister whose decision is final and section 11 of the *Ministry of Consumer and Commercial Relations Act* does not apply. 1971, c. 82, s. 7 (4); 1972, c. 1, s. 23 (5). Appeal to
Minister

(5) Where an applicant requires a hearing under subsection 6 (2), the Tribunal shall hold a hearing and report to the Minister its finding of fact and recommendations. 1971, c. 82, s. 7 (5). Hearing by
Tribunal

8.—(1) Subject to subsection (2), no person who is not a corporation shall carry on business in Ontario as a distributor unless, Residency
requirements
for
individual

(a) he is a resident ; or

(b) in the case of a partnership or an association, syndicate or organization of individuals, every member thereof is a resident.

(2) A person who is not a corporation and who was carrying on business as a distributor immediately before the 14th day of June, 1971 and who on that day was in contravention of subsection (1) may continue to carry on business, subject to section 4, if, Idem

(a) in the case of an individual, his interest or any part thereof is not transferred to or for the benefit of a non-resident ; or

- (b) in the case of a partnership or an association, syndicate or organization of individuals, no person who is a non-resident is admitted as a member thereof. 1971, c. 82, s. 8.

Residency
requirements
re corpora-
tions

9.—(1) No corporation shall carry on business in Ontario as a distributor if,

- (a) the total number of equity shares of the corporation beneficially owned, directly or indirectly, by non-residents or over which non-residents exercise control or direction exceeds 25 per cent of the total number of issued and outstanding equity shares of the corporation;
- (b) the total number of equity shares of the corporation beneficially owned, directly or indirectly, by a non-resident or over which he exercises control or direction, together with other shareholders associated with him, if any, exceeds 10 per cent of the total number of issued and outstanding equity shares of the corporation; or
- (c) the corporation is not incorporated by or under an Act of Ontario, Canada or any province of Canada. 1971, c. 82, s. 9 (1).

Idem

(2) In calculating the total number of equity shares of the corporation beneficially owned or controlled for the purposes of this section, the total number shall be calculated as the total of all the shares actually owned or controlled, but each share that carries the right to more than one vote shall be calculated as the number of shares equalling the total number of votes it carries. 1974, c. 27, s. 2.

Idem

(3) A corporation that was carrying on business as a distributor immediately before the 14th day of June, 1971 and that on that day was in contravention of subsection (1) may continue to carry on business, subject to section 4,

- (a) in the case of a contravention of clause (1) (a) or (b), if no transfer of equity shares or beneficial interest therein including their control or direction is made to a non-resident or person associated with him excepting when the result would be in compliance with clauses (1) (a) and (b); or
- (b) in the case of a contravention of clause (1) (c), until the 14th day of June, 1972, but a corporation

incorporated on or after the 14th day of June, 1971 and before the 14th day of June, 1972 by or under an Act of Ontario, Canada or a province of Canada may, notwithstanding clauses (1) (a) and (b), be registered in the place of the first mentioned corporation if the equity shares of the new corporation or beneficial interest therein, including their control or direction, held by non-residents are held directly or indirectly in the same manner as the equity shares of the first mentioned corporation, but where the new corporation is in contravention of clause (1) (a) or (b), clause (a) of this subsection applies.

(4) For the purposes of this section, a shareholder shall ^{Associated shareholder} be deemed to be associated with another shareholder if,

- (a) one shareholder is a corporation of which the other shareholder is an officer or director;
- (b) one shareholder is a partnership of which the other shareholder is a partner;
- (c) one shareholder is a company that is controlled, directly or indirectly, by the other shareholder;
- (d) both shareholders are corporations and one shareholder is controlled, directly or indirectly, by the same individual or corporation that controls, directly or indirectly, the other shareholder;
- (e) both shareholders are members of a voting trust where the trust relates to shares of a corporation; or
- (f) both shareholders are associated within the meaning of clauses (a) to (e) with the same shareholder.

(5) For the purposes of this section, where an equity ^{Shares held jointly} share of a corporation is held jointly and one or more of the joint holders thereof is a non-resident, the share shall be deemed to be held by a non-resident. 1971, c. 82, s. 9 (2-4).

10.—(1) The Registrar or any person designated by him in ^{Inspection} writing may at any reasonable time enter upon the business premises of the registrant to make an inspection to ensure that the provisions of this Act and the regulations are being complied with.

(2) Where the Registrar has reasonable and probable ^{idem} grounds to believe that any person is acting as a distributor

while unregistered, the Registrar or any person designated by him in writing may at any reasonable time enter upon such person's business premises to make an inspection for the purpose of determining whether or not the person is in contravention of section 3 or 9.

Powers on inspection

(3) Upon an inspection under this section, the person inspecting,

- (a) is entitled to free access to all books of account, documents, bank accounts, vouchers, correspondence and records of the person being inspected that are relevant for the purposes of the inspection; and
- (b) may, upon giving a receipt therefor, remove any material referred to in clause (a) that relates to the purpose of the inspection for the purpose of making a copy thereof, provided that such copying is carried out with reasonable dispatch and the material in question is promptly thereafter returned to the person being inspected,

and no person shall obstruct the person inspecting or withhold or destroy, conceal or refuse to furnish any information or thing required by the person inspecting for the purposes of the inspection.

Admissibility of copies

(4) Any copy made as provided in subsection (3) and purporting to be certified by an inspector is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original. 1971, c. 82, s. 10.

Investigations by Director

11.—(1) Where, upon a statement made under oath, the Director believes on reasonable and probable grounds that any person has contravened any of the provisions of this Act or the regulations, the Director may by order appoint one or more persons to make an investigation to ascertain whether such a contravention of the Act or regulation or the commission of such an offence or such conduct has occurred and the person appointed shall report the result of his investigation to the Director.

Powers of investigator

(2) For purposes relevant to the subject-matter of an investigation under this section, the person appointed to make the investigation may inquire into and examine the affairs of the person in respect of whom the investigation is being made and may,

- (a) upon production of his appointment, enter at any reasonable time the business premises of such person

and examine books of account, papers, documents and things relevant to the subject-matter of the investigation; and

- (b) inquire into negotiations, transactions, loans, borrowings made by or on behalf of or in relation to such person and into property, assets or things owned, acquired or alienated in whole or in part by him or any person acting on his behalf that are relevant to the subject-matter of the investigation,

and for the purposes of the inquiry, the person making the investigation has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such inquiry as if it were an inquiry under that Act. R.S.O. 1980, c. 411

(3) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or conceal or destroy any books of account, papers, documents or things relevant to the subject-matter of the investigation. Obstruction of investigator

(4) Where a justice of the peace is satisfied, upon an *ex parte* application by the person making an investigation under this section, that the investigation has been ordered and that such person has been appointed to make it and that there is reasonable ground for believing there are, in any building, dwelling, receptacle or place any books of account, papers, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation, the justice of the peace may, whether or not an inspection has been made or attempted under clause (2) (a), issue an order authorizing the person making the investigation, together with such police officer or officers as he calls upon to assist him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books of account, papers, documents or things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the justice of the peace, by the order, authorizes the person making the investigation to make the search at night. Search warrant

(5) Any person making an investigation under this section may, upon giving a receipt therefor, remove any books of account, papers, documents or things examined under clause (2) (a) or subsection (4) relating to the person whose affairs are being investigated and to the subject-matter of the investigation for the purpose of making copies of such books of account, papers or documents, but such copying shall be carried out with Removal of books, etc.

reasonable dispatch and the books of account, papers or documents in question shall be promptly thereafter returned to the person whose affairs are being investigated.

Admissibility
of copies

(6) Any copy made as provided in subsection (5) and certified to be a true copy by the person making the investigation is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, paper or document and its contents.

Appointment
of experts

(7) The Minister or Director may appoint any expert to examine books of account, papers, documents or things examined under clause (2) (a) or under subsection (4). 1971, c. 82, s. 11.

Matters
confidential

12.—(1) Every person employed in the administration of this Act, including any person making an inquiry, inspection or an investigation under section 10 or 11, shall preserve secrecy in respect of all matters that come to his knowledge in the course of his duties, employment, inquiry, inspection or investigation and shall not communicate any such matters to any other person except,

(a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations; or

(b) to his counsel; or

(c) with the consent of the person to whom the information relates.

Testimony in
civil suit

(2) No person to whom subsection (1) applies shall be required to give testimony in any civil suit or proceedings with regard to information obtained by him in the course of his duties, employment, inquiry, inspection or investigation except in a proceeding under this Act or the regulations. 1971, c. 82, s. 12.

Service

13.—(1) Any notice or order required to be given or served under this Act or the regulations is sufficiently given or served if delivered personally or sent by registered mail addressed to the person to whom delivery or service is required to be made at the latest address for service appearing on the records of the Ministry of Consumer and Commercial Relations. 1971, c. 82, s. 13 (1); 1972, c. 1, s. 23 (5).

(2) Where service is made by registered mail, the service shall be deemed to be made on the third day after the day of mailing unless the person on whom service is being made establishes that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control receive the notice or order until a later date. Where service deemed to be made

(3) Notwithstanding subsections (1) and (2), the Tribunal may order any other method of service in respect of any matter before the Tribunal. 1971, c. 82, s. 13 (2, 3). Exception

14.—(1) Where it appears to the Director that any person does not comply with any provision of this Act or the regulations, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights he may have, the Director may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application, the judge may make such order or such other order as the judge thinks fit. Restraining orders

(2) An appeal lies to the Divisional Court from an order made under subsection (1). 1971, c. 82, s. 14. Appeal

15.—(1) Every person who, knowingly, Offences

(a) furnishes false information in any application under this Act or in any statement or return required to be furnished under this Act or the regulations; or

(b) contravenes any provision of this Act or the regulations,

and every director or officer of a corporation who knowingly concurs in such furnishing, failure or contravention is guilty of an offence and on conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both.

(2) Where a corporation is convicted of an offence under subsection (1), the maximum penalty that may be imposed upon the corporation is \$25,000 and not as provided therein. Corporations

(3) No proceedings under this section shall be instituted except with the consent of the Minister. Consent of Minister

(4) No proceeding under clause (1) (a) shall be commenced more than one year after the facts upon which the proceeding is based first came to the knowledge of the Director. Limitation

Idem

(5) No proceeding under clause (1) (b) shall be commenced more than two years after the time when the subject-matter of the proceeding arose. 1971, c. 82, s. 15

Certificate
as evidence

16. A statement as to,

- (a) the registration or non-registration of any person;
- (b) the filing or non-filing of any document or material required or permitted to be filed with the Registrar;
- (c) the time when the facts upon which proceedings are based first came to the knowledge of the Director; or
- (d) any other matter pertaining to such registration, non-registration, filing or non-filing,

purporting to be certified by the Director is, without proof of the office or signature of the Director, receivable in evidence as *prima facie* proof of the facts stated therein for all purposes in any action, proceeding or prosecution. 1971, c. 82, s. 16.

Regulations

17. The Lieutenant Governor in Council may make regulations,

- (a) providing for the registration of distributors;
- (b) requiring distributors to furnish such returns, reports or other information as is prescribed;
- (c) requiring any information required to be furnished or contained in any form or return to be verified by affidavit;
- (d) prescribing further procedures respecting the conduct of matters coming before the Tribunal;
- (e) providing for the responsibility for payment of witness fees and expenses in connection with proceedings before the Tribunal and prescribing the amounts thereof;
- (f) prescribing forms for the purposes of this Act and the regulations. 1971, c. 82, s. 17.