

Summary

Part 4 - Registered Office and Records (Sections 20 - 27)

Part 4 establishes that a corporation must have a registered office and must inform the Director appointed under the Act of the location of that office. The directors may move the registered office within the province specified in the articles but the Director must be notified of that move. (Section 20)

The corporation must also maintain records containing the articles and by-laws of the corporation, minutes of meetings of members or committees of members, resolutions of meetings of members or committees of members, a debt obligations register, if any have been issued, a register of directors, a register of officers and a register of members. (Section 21)

The corporation is required to maintain adequate accounting records as well as a record of minutes of meetings and of resolutions of the directors or committees of directors. Record keeping requirements in other acts are also addressed. (Section 21)

The records must be available for the inspection of the directors. Accounting records may be kept outside Canada if the criteria in the Act are met, subject to the requirements of other acts. (Section 21)

Some or all of the records maintained by a corporation are to be available, subject to the conditions established in the Act, to members or their personal representatives, a creditor of the corporation or a debt obligation holder. A corporation may apply to the Director for the right to refuse access to the records to certain individuals. (Sections 22, 23, 25)

The Director will be able to examine all records of the corporations, except directors' minutes and accounting records, during regular business hours without payment of a fee. The Director may also require the corporation to submit registers of members or debt obligation holders within the prescribed period and in the prescribed form. (Section 24)

This Part is largely technical. It sets out the records that must be maintained and who has access to those records and under what circumstances. Access allows the designated persons to obtain a proper and accurate view of the corporation's state. The requirements regarding the ability of various parties to view the documents are in place to ensure that the right to view the records is not abused, that members' privacy is protected and does not place the corporation at a disadvantage.

BRIEFING BOOK
An Act Respecting Not-for-Profit Corporations and
Other Corporations Without Share Capital

Bill Clause No.	Section No.	Topic
20	20	Registered Office and Records

Proposed Wording

20. (1) A corporation shall at all times have a registered office in the province in Canada specified in its articles.

(2) A notice of registered office in the form that the Director fixes shall be sent to the Director together with any articles that designate or change the province where the registered office of the corporation is to be located.

(3) The directors of a corporation may change its registered office to another place within the province specified in the articles, in which case the corporation shall send to the Director a notice of registered office in the form that the Director fixes

(4) A notice of registered office becomes effective when the Director accepts it.

Rationale

This section requires that the registered office of the corporation be situated in a Canadian province or territory that is specified in the corporation's articles. It also requires the corporation to inform the Director of the address of the registered office and any changes made to the location of the corporation's registered office.

Subsection 20(1) requires that the registered office of the corporation be in Canada.

Subsection 20(2) requires the corporation to send to the Director the location of its registered office. The corporation must also send to the Director any articles or amendments to the articles dealing with the location of its registered office.

Subsection 20(3) allows the directors of the corporation to change the location of the registered office within the province specified in its articles. The corporation must also send the Director a notification of the change in location of its registered office. It should be noted that for a corporation to change the province of its registered office, members must pass a special resolution (2/3 majority).

Subsection 20(4) states that any change of address of the corporation's registered office becomes effective when the Director files the notice sent by the corporation.

Present Law

Canada Corporations Act:

24. (1) The company shall at all times have a head office in the place within Canada where the head office is to be situated in accordance with the letters patent or the provisions of this Part, which head office is the domicile of the company in Canada; and the company may establish such other offices and agencies elsewhere within or outside Canada, as it deems expedient.

(2) The company may, by by-law, change the place where the head office of the company is to be situated.

(3) No by-law for the purpose of changing the place where the head office is to be situated is valid or shall be acted upon until it is sanctioned by at least two-thirds of the votes cast at a special general meeting of the shareholders duly called for considering the by-law.

(4) A copy of the by-law certified under the seal of the company shall be forthwith filed with the Minister and shall be available for inspection at the office thereof during normal business hours.

(5) A notice of the by-law shall be forthwith published in the Canada Gazette.

BRIEFING BOOK
An Act Respecting Not-for-Profit Corporations and
Other Corporations Without Share Capital

Bill Clause No.	Section No.	Topic
21	21	Registered Office and Records

Proposed Wording

21. (1) A corporation shall prepare and maintain, at its registered office or at any other place in Canada designated by the directors, records containing

- (a) the articles and the by-laws, and amendments to them, and a copy of any unanimous member agreement;
- (b) the minutes of meetings of members and any committee of members;
- (c) the resolutions of members and any committee of members;
- (d) if any debt obligation is issued by the corporation, a debt obligations register that complies with section 45;
- (e) a register of directors;
- (f) a register of officers; and
- (g) a register of members.

(2) The registers referred to in paragraphs (1)(e) to (g) shall contain the information prescribed by regulation.

(3) A corporation shall prepare and maintain adequate accounting records and records containing minutes of meetings of the directors and any committee of directors as well as resolutions adopted by the directors or any committee of directors.

(4) Subject to any other Act of Parliament or of the legislature of a province that provides for a longer retention period, a corporation shall retain the accounting records referred to in subsection (3) for the prescribed period.

(5) For the purposes of paragraph (1)(b) and (c) and subsection (3), where a body corporate is continued under this Act, “records” includes similar records required by law to be maintained by the body corporate before it was so continued.

(6) The records described in subsection (3) shall be kept at the registered office of the corporation or at any other place as the directors think fit.

(7) The records described in subsections (1) and (3) shall at all reasonable times be open to inspection by the directors. The corporation shall, at the request of any director, provide them with any extract of the records free of charge.

(8) If accounting records of a corporation are kept outside Canada, accounting records adequate

to enable the directors to ascertain the financial position of the corporation with reasonable accuracy on a quarterly basis shall be kept at the registered office or any other place in Canada designated by the directors.

(9) Despite subsections (1) and (8), but subject to the *Income Tax Act*, the *Excise Tax Act*, the *Customs Act* and any other Act administered by the Minister of National Revenue, a corporation may keep all or any of its corporate records and accounting records referred to in subsection (1) or (3) at a place outside Canada, if

(a) the records are available for inspection, by means of any technology, during regular office hours at the registered office or any other place in Canada designated by the directors; and

(b) the corporation provides the technical assistance to facilitate an inspection referred to in paragraph (a).

Rationale

This section clearly sets out what kinds of records are required to be kept by the corporation as well as where they must be kept.

Subsection 21(1) lists the records the corporation must keep at its registered office or some other designated place in Canada.

Subsection 21(2) states that the list of directors, officers and members must contain the information required by the regulations. This is proposed as: the name of each director (officer, member); the address of each director (officer, member or the member's business address); the email address of each director (officer, member) if the director (officer, member) consented to receiving information by electronic means; the date the director (officer, member) became a director (officer, member); and the date the director (officer, member) ceased to be a director (officer, member).

Subsection 21(3) is self-explanatory and mandates that accounting records, records containing the minutes of meetings of directors and resolutions passed by the directors must be kept by the corporation.

Subsection 21(4) provides the regulatory authority to specify how long the records of the corporation referred to in subsection 21(3) must be held. This is proposed as six years after the end of the financial year to which the records relate.

Subsection 21(5) deals with the records that must be kept by a corporation which is continuing (moving from another jurisdiction) into this Act.

Subsection 21(6) requires a corporation to keep its records at its registered office or at some other place designated by the directors and that they must be available for the directors to inspect.

Subsection 21(7) provides that the corporation is obliged to allow directors reasonable access to inspect the corporation's corporate records and to provide directors, without charge, with any extract of the records they request.

Subsection 21(8) requires a corporation, if it keeps its records outside of Canada, to make them available by means of computer terminal or other technology and to provide technical assistance to facilitate their inspection. This section is, however, subject to the *Income Tax Act* and any other Act administered by the Minister of National Revenue regarding where corporate records are to be kept.

Present Law

Canada Corporations Act:

109. (1) The company shall cause a book or books to be kept by the secretary, or some other officer specially charged with that duty, wherein shall be kept recorded

(a) a copy of the letters patent, all by-laws of the company and any supplementary letters patent issued to the company and a copy of the memorandum of agreement of the company, if any;

(b) the names, alphabetically arranged of all persons who are and have been shareholders of the company;

(c) the address and calling of every such person, while such shareholder, as far as can be ascertained;

(d) the names, addresses and callings of all persons who are or have been directors of the company, with the several dates at which each became or ceased to be such director;

[...]

112. (1) Every company shall cause minutes of all proceedings at meetings of the shareholders and of the directors and of any executive committee to be entered in books kept for that purpose.

[...]

117. (1) Every company shall cause to be kept proper accounting records with respect to all financial and other transactions of the company, and, without limiting the generality of the foregoing, shall cause records to be kept of

[...]

(2) The accounting records shall be kept at the head office of the company or at such other place in Canada as the directors think fit, and shall at all times be open to inspection by the directors.

(3) In case the operating accounts of the company are kept at some place outside Canada, there shall be kept at the head office of the company such comprehensive records as will enable the directors to ascertain with reasonable accuracy the financial position of the company at the end of each three months period.

**An Act Respecting Not-for-Profit Corporations and
Other Corporations Without Share Capital**

Bill Clause No.	Section No.	Topic
22	22	Registered Office and Records

Proposed Wording

22. (1) A member, a member's personal representative and a creditor of a corporation may examine and, on payment of any reasonable fee, take extracts from the records referred to in paragraphs 21(1)(a) to (f) during the usual business hours of the corporation.

(2) Any person described in subsection (1) who wishes to examine the debt obligations register of a corporation shall first make a request to the corporation or its agent or mandatory accompanied by a statutory declaration referred to in subsection (5). On receipt of the statutory declaration, the corporation or its agent or mandatory shall allow the applicant access to the register during the corporation's usual business hours and, on payment of any reasonable fee, provide the applicant with an extract from the register.

(3) A member of a corporation is entitled on request and free of charge to one copy of the articles and by-laws, any amendments to them, and any unanimous member agreement.

(4) Any person described in subsection (1), on payment of any reasonable fee and on sending to a corporation or its agent or mandatory the statutory declaration referred to in subsection (5), may on application require the corporation or its agent or mandatory to furnish within the prescribed period a list of debt obligation holders setting out the prescribed information. The list shall be updated to a prescribed day.

(5) The statutory declaration required under subsection (2) or (4) shall

- (a) state the name and address of the applicant and, if the applicant is a body corporate, its address for service; and
- (b) state that the list of debt obligation holders or the information contained in the debt obligations register obtained under subsection (2) will not be used except as permitted under subsection (7).

(6) If the applicant is a body corporate, the statutory declaration shall be made by a director or officer of the body corporate.

(7) A list of debt obligation holders or information from a debt obligations register obtained under this section shall not be used by any person except in connection with

- (a) an effort to influence the voting of debt obligation holders of the corporation;
- (b) an offer to acquire debt obligations of the corporation; or
- (c) any other matter relating to the debt obligations or affairs of the corporation.

Rationale

This section sets out the rights of members and creditors with regard to access to certain corporate records and information pertaining to holders of debt obligation of the corporation. It is analogous to similar provisions in the *Canada Business Corporation Act*. This section protects information contained in a list of debt obligation holders by requiring those interested in obtaining the list to sign a statutory declaration stating that the list will only be used to in connection with influencing the voting of debt obligation holders, an offer to acquire a debt obligation or any other matter relating to the debt obligations or affairs of the corporation.

Subsection 22(1) states that members, their representatives and creditors of the corporation can access, on the payment of a reasonable fee and sending a statutory declaration to the corporation, certain corporate records. These include the corporation's articles, by-laws, and any amendments to them, as well as a copy of any unanimous member agreement; the minutes of meetings of members and any committee of members; the resolutions of members and any committee of members; if any debt obligation is issued by the corporation, the debt obligations register; and the registers of directors, officers and members.

Subsection 22(2) states the conditions under which members, their representatives and creditors can have access to the corporation's debt obligations register.

Subsection 22(3) provides members the right to one free copy of the corporation's articles, by-laws and any unanimous member agreement. Should a member request an additional copy, the corporation may require the member to pay a reasonable fee.

Subsection 22(4) states that members, their representatives and creditors of the corporation can access the entire list of debt obligation holders of the corporation, on the payment of a reasonable fee and sending a statutory declaration to the corporation. The list would include the names, in alphabetical order, and addresses of the holders of the outstanding debt obligations; the principal amount of their outstanding debt obligations; and the aggregate principal amount of the debt obligations.

Subsection 22(5) lists the requirements of the statutory declaration that must be sent to the corporation by members and creditors wishing to obtain information regarding debt obligation holders under subsections 22(2) and (4).

Subsection 22(6) indicates that the statutory declaration required under subsections 22(2) and (4) must be made by a director or officer of the corporation, if the applicant is a body corporate

Subsection 22(7) places limitations on the use of the list or information on the debt obligation holders of the corporation obtained under subsections 22(2) and (4).

Present Law

Canada Corporations Act:

73. (1) Every register of holders of debentures of a company shall, except when closed in accordance with the by-laws of the company or the provisions of the debentures or the covering deed, if any, during such period or periods, not exceeding in the whole thirty days in any year, as may be specified in the said by-laws or provisions, be open to the inspection of the registered holder of any such debentures, and of any shareholder, but subject to such reasonable restrictions as the company may impose, so that at least two hours in each day are appointed for inspection, and every such holder may require a copy of the register or any part thereof on payment of ten cents for every hundred words required to be copied.

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BRIEFING BOOK
An Act Respecting Not-for-Profit Corporations and
Other Corporations Without Share Capital

Bill Clause No.	Section No.	Topic
23	23	Registered Office and Records

Proposed Wording

23. (1) A member or a member's personal representative who wishes to examine the register of members of a corporation shall first make a request to the corporation or its agent or mandatory accompanied by a statutory declaration referred to in subsection (5). On receipt of the statutory declaration, the corporation or its agent or mandatory shall allow the applicant access to the register during the corporation's usual business hours and, on payment of any reasonable fee, provide the applicant with an extract from the register.

(2) Any person described in subsection (1) and debt obligation holders, on payment of any reasonable fee and on sending to a corporation or its agent or mandatory the statutory declaration referred to in subsection (5), may on application require the corporation or its agent or mandatory to furnish within the prescribed period a list of members setting out the prescribed information. The list shall be made updated to a prescribed day.

(3) A person described in subsection (1) may only make an application under subsection (2) once in each calendar year. In addition, an application may be made before each special meeting of members of which the person receives notice.

(4) A debt obligation holder may make an application to obtain a list of members only after receiving notice of a meeting of members at which the holder has the right to vote.

(5) The statutory declaration required under subsection (1) or (2) shall

- (a) state the name and address of the applicant and, if the applicant is a body corporate, its address for service; and
- (b) state that the list of members or the information contained in the register of members obtained under subsection (1) will not be used except as permitted under subsection (7) or (8).

(6) If the applicant is a body corporate, the statutory declaration shall be made by a director or officer of the body corporate.

(7) A member or a member's personal representative who obtains a list of members or information from a register of members under this section shall not use the list or information except in connection with

- (a) an effort to influence the voting of members;

- (b) requisitioning a meeting of members; or
- (c) any other matter relating to the affairs of the corporation.

(8) A debt obligation holder who obtains a list of members under this section shall not use the list except in connection with an effort to influence the voting of members on any issue that the holder has a right to vote on.

Rationale

This section sets out the requirements under which members and the corporation's debt obligation holders can be granted access to the corporation's membership information. Making this information available enhances communication among members regarding the affairs of the corporation. It also protects members' privacy with respect to personal information by requiring those interested in obtaining the organization's membership list to sign a statutory declaration stating that the list will only be used to influence voting, request a meeting of members or other matters related to the affairs of the corporation. Limiting access to members and other listed individuals protects the privacy and interests of members.

Subsection 23(1) states that only members or their representatives can access the register of members, during regular business hours, if they provide the corporation with a statutory declaration. Upon the payment of a reasonable fee, the member can obtain extracts from the registry of members.

Subsection 23(2) states that members, their representatives or debt holders of the corporation can obtain a list of members if they send to the corporation a statutory declaration and upon the payment of a reasonable fee.

Subsection 23(3) provides that members have the right to the corporation's membership list once a calendar year or before a meeting of members if they receive notice of the meeting.

Subsection 23(4) states that debt holders can only obtain a list of members if they receive a notice of a meeting at which they are entitled to vote.

Subsection 23(5) lists the requirements of the statutory declaration that must be sent to the corporation by members and the corporation's debt holders if they wish to obtain information regarding the corporation's membership under subsections 23(1) and (2).

Subsection 23(6) states that, if a body corporate is applying for access to membership information, the statutory declaration required under subsections 23(1) and (2) must be made by a director or officer of that body corporate.

Subsection 23(7) restricts the use of the membership information obtained by members under subsection 23(1) to the influencing of voting, requesting a meeting of members or other matters related to the affairs of the corporation.

Subsection 23(8) restricts the use of the membership information obtained by the corporation's debt holders under subsection 23(2) to the influencing of voting of members on issues upon which debt holders have a right to vote.

Present Law

Canada Corporations Act:

111.1 (1) Any person, upon payment of the costs thereof and upon filing with the company or its transfer agent such declaration as may be prescribed by regulation, is entitled to obtain from a company, other than a private company, or its transfer agent within ten days from the filing of such declaration a list setting out the names of all persons who are shareholders of the company, the number of shares owned by each such person and the address of each such person as shown on the books of the company made up to a date not more than ten days prior to the date of filing the declaration.

(2) Where the applicant is a corporation, the prescribed declaration shall be made by the president or other officer authorized by resolution of the board of directors thereof.

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BRIEFING BOOK
An Act Respecting Not-for-Profit Corporations and
Other Corporations Without Share Capital

Bill Clause No.	Section No.	Topic
24	24	Registered Office and Records

Proposed Wording

24. (1) The Director may examine the records described in subsection 21(1) during the usual business hours of the corporation and may take extracts from the records free of charge.

(2) The Director may require the corporation or its agent or mandatary to furnish to the Director within the prescribed period a list of members or debt obligation holders setting out the prescribed information. The list shall be updated to a prescribed day.

Rationale

This section provides the Director Appointed Under the Act with access to the corporation's records as well as access to the lists of members and debt obligation holders of the corporation. The Director is provided this access to investigate, for example, a complaint against a corporation. This discretionary power is not expected to be used as a matter of course but only in situations where it is warranted. It should be noted that information obtained by the Director under this section will not be publically available.

Subsection 24(1) states that the Director can access and may obtain extracts of the corporation's records free of charge.

Subsection 24(2) states that the Director may request from a corporation its lists of members and debt holders.

Present Law

None.

BRIEFING BOOK
An Act Respecting Not-for-Profit Corporations and
Other Corporations Without Share Capital

Bill Clause No.	Section No.	Topic
25	25	Registered Office and Records

Proposed Wording

25. (1) On the application of a corporation, the Director may authorize the corporation, on any terms that the Director thinks fit, to refuse, in whole or in part, to allow access to corporate records or to furnish information that the corporation is otherwise under this Part obligated to allow or furnish, if the Director reasonably believes that allowing the access or furnishing the information would be detrimental to any member or the corporation.

(2) On the application of any member, the Director may direct the corporation, on any terms that the Director thinks fit, not to allow, in whole or in part, access to corporate records or not to furnish, in whole or in part, information that the corporation is otherwise under this Part obligated to allow or furnish, if the Director reasonably believes that allowing the access or furnishing the information would be detrimental to any member or the corporation.

Rationale

This section allows a corporation to apply to the Director Appointed Under the Act for an exemption with respect to providing access or copies of its corporate records and its lists of members and debt obligations holders. Corporate records and membership and debt obligation holders lists are essential for the efficient functioning and governance of not-for-profit corporations. Limiting access to members and other listed individuals protects the privacy and interests of members and debt obligation holders. However, in certain circumstances, even limited access and release of this information may be detrimental to the corporation or its members. The Director will exercise this discretionary power on a case-by-case basis and his/her determination will be based on the corporation's circumstances. It should be noted that the Director's decision can be appealed.

Subsection 25(1) allows the Director, upon an application from a corporation, to provide an exemption so that the corporation does not have to provide access to or copies of its records and membership and debt obligation holders lists. The exemption may be granted when the Director is convinced that the release of this information would be detrimental to any member or to the corporation.

Subsection 25(2) allows the Director, upon an application from a member, to provide an exemption so that the corporation does not have to provide access or copies of its records and membership and debt obligation holders lists. The exemption may be granted when the Director

is convinced that the release of this information would be detrimental to any member or to the corporation.

Present Law

None.

BRIEFING BOOK
An Act Respecting Not-for-Profit Corporations and
Other Corporations Without Share Capital

Bill Clause No.	Section No.	Topic
26	26	Registered Office and Records

Proposed Wording

26. (1) All registers and other records required by this Act to be prepared and maintained may be in any form, provided that the records are capable of being reproduced in intelligible written form within a reasonable time.

(2) A corporation and its agents and mandataries shall take reasonable precautions to prevent the loss or destruction of the registers and other records required under this Act, to prevent the falsification of entries in those registers and records and to facilitate the detection and correction of inaccuracies in them.

Rationale

This section recognizes, subject to the protections required under subsection 26(2), the use of modern techniques for data storage and retrieval as they relate to the registers and records which are required to be kept by the corporation.

Subsection 26(1) permits all corporate records to be kept in any form (i.e., paper form or through electronic methods). However, the corporation must also be able to reproduce its recorded information in an intelligible written form within a reasonable time frame.

Subsection 26(2) directs the corporation or its agent to take reasonable precautions to prevent the loss, destruction or falsification of the information that the corporation is required to prepare and maintain.

Present Law

None.

BRIEFING BOOK
An Act Respecting Not-for-Profit Corporations and
Other Corporations Without Share Capital

Bill Clause No.	Section No.	Topic
27	27	Registered Office and Records

Proposed Wording

27. A document executed on behalf of a corporation is not invalid merely because a corporate seal is not affixed to it.

Rationale

This section makes it clear that a corporation is permitted but is not required to use a corporate seal. Documents signed by authorized corporate directors, officers or agents are valid, even if the corporation's seal is not affixed to the documents.

Present Law

Canada Corporations Act:

21. [...]

(2) In no case is it necessary to have the seal of the company affixed to any such contract, agreement, engagement, bargain, bill of exchange, promissory note or cheque, or to prove that the same was made, drawn, accepted or endorsed, as the case may be, in pursuance of any by-law or special vote or order.

[...]