



Choosing a Name in New Brunswick

Guidelines for Corporate, Business & Partnership Names

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TABLE OF CONTENTS

Introduction.....	3
General Guidelines for Choosing a Proposed Name	4
Criteria	4
Elements in a Name	4
Distinctive	4
Descriptive	4
Legal	4
English and French Names	5
General Policies.....	5
Nova Scotia Names.....	7
Further Review of A Descriptive Element.....	7
Coined	7
General Words	7
Family Names	8
Geographical Names	8
Descriptive Name.....	8
General Words	8
Weak Words.....	8
Prohibitions or Restrictions.....	8
Use of the Words “New Brunswick”, “N.B.” and “NB” as the First Words in a Name	9
Numbered Name Corporations	10
Internet Names	10
Extra-Provincial Corporations	10
Protection of Dissolved/Cancelled names	11
Trademarks	11
Obtaining a Proposed Name	11
Electronic Filing of the Report and Application.....	11
Paper Filing of the Report and Application	12
Frequently Occurring Terms in Corporate Names	13

INTRODUCTION

These guidelines are to inform and facilitate clients who are wishing to register a corporate, business or partnership name in New Brunswick. The guidelines are designed to help you select an acceptable name and have it approved.

To ensure one's proposed name is not identical or deceptively similar to another on record, prior to incorporating a company/corporation or registering a partnership and/or business name in New Brunswick, you should ensure that the proposed name is suitable for incorporation and/or registration. This reduces potential confusion regarding names and uniquely identifies the name of the business in the marketplace. In determining whether a proposed name is suitable, you, as a businessperson, will take many factors into account in selecting a proposed name. (Does it describe the product or service offered? Is the name distinctive? Can customers identify and remember the name?) One major factor to take into account is the provisions in various Acts and Regulations of the Province of New Brunswick, which deal with the suitability of a name for incorporation and/or registration. (See Business Corporations Act, Limited Partnership Act, and Partnerships and Business Names Registration Act.) Copies of the Acts and Regulations are available from the Queen's Printer section of the Office of the Attorney General or online at www.snb.ca.

A major emphasis of these legislative provisions is to prohibit the incorporation or registration of a name that is either identical or deceptively similar to a name already on record in New Brunswick with the Registry. These provisions attempt to alleviate the public confusion and inconvenience which would likely result with having identical or deceptively similar names on record. We, as well, note that these legislative provisions also prohibit the incorporation or registration of a name that is identical or deceptively similar to a Nova Scotia corporation or business name.

It should be noted that in circumstances where it is determined a name has been incorporated and/or registered and is identical or deceptively similar to an existing name on record, provisions exist under the Acts to order a change in the name of the more recently "recorded" name.

GENERAL GUIDELINES FOR CHOOSING A PROPOSED NAME

The following guidelines refer to corporate names. If you are choosing a business name (sole proprietorship) or a partnership name the guidelines would still apply except that there is no requirement to have a legal element in the proposed name. Business names or partnership names do not have a legal element in their name as they are not at law corporations.

CRITERIA

The overall goals in choosing corporate names acceptable for registration at Corporate Registry are:

- (a) ensure the proposed name is not identical or deceptively similar to a name on record
- (b) ensure the proposed name meets your overall business objectives of what you want the name to reflect as to the nature of activities of your business and its uniqueness as a name.

ELEMENTS IN A NAME

Nearly all corporate names are composed of three elements

1. The **DISTINCTIVE** element is the main identifier of the corporate name;
2. The **DESCRIPTIVE** element describes the nature and the principle business of the company and should be used when a distinctive element is weak thereby making the combined name distinctive, and
3. The **LEGAL** element indicates the status of the company as an incorporated body

Examples:

<u>Distinctive Element</u>	<u>Descriptive Element</u>	<u>Legal Element</u>
Black's	Clothing Store	Limited
Reprox	Reproductions	Limited
Fredericton	Boys Club	Inc.

There are varying degrees of distinctiveness in corporate names, some being highly distinctive and others very weak. The more distinctive the name is, the more memorable and commercially useful it will be. Some words are very weak either by the word itself or because of frequent use. (See the attached list.) These words should be avoided or used in conjunction with a distinctive word.

- e.g. Black's Clothing Store Limited (distinctive name)
Clothing Store Ltd. (weak non-distinctive name)

ENGLISH AND FRENCH NAMES

A company may have an English or a French name or an English and French name. If a company has both an English and French name it may use either one at any time, or it may use both versions.

e.g. Sunshine Bakeries Limited
Au Soleil Boulangerie Limitee

It should be noted that there is no requirement that the French or English version of a company name be an exact translation, but they must have the same general meaning.

If the company's name is the name of a person, there is no necessity of repeating the name. This would also be the case if the company is a coined word.

e.g. François J. LeBlanc Ltd./Ltee
Exxon Ltee/Ltd

If the name in both English and French is unduly cumbersome to use, it is suggested that such company register a shorter business French and English name under the Partnerships and Business Names Registration Act.

GENERAL POLICIES

1. A proposed corporate name may not be that of another company operating in New Brunswick whether incorporated or unincorporated, nor should it so resemble the name of another company as to be confounded therewith.
2. A corporate name *may* not consist of initials only. Some word, indicative of the business of the corporation together with the initials is necessary in order to make the name distinctive.
3. A coined word made up of a combination of letters or syllables, and not found in a dictionary, may be granted if combined only with the legal element.
4. A person may incorporate a company under his own name providing an identical name has not already been used. In many cases, the Registry requires that the person's name which is being used give his consent to the use of the name, unless the person whose name is used is one of the original applicants.

Examples

- (a) A corporate name which has as its distinctive feature a surname, *e.g.* John R. Craig's Plumbing Ltd., requires a consent unless said person's name appears as an applicant.

(b) A corporate name which has as its distinctive feature a given name, e.g. Pauline's Hairstyling Ltd., does not require a consent.

(c) If the surname is distinctive by itself or is distinctive when used with a descriptive element, it may be allowed; in which case consent would not be required.

e.g. Bandertine Limited or Briggs' Arrowspace Ltd.

Family names require a descriptive element. A person can usually use his family name as long as the name is not being used to benefit from the goodwill of an established well-known name which would confuse the public.

e.g. Smith Construction Inc.

5. In the normal case, a corporate name which has as its distinctive feature a number or numbers may use same in written form, e.g. Four In One Clothing Ltd.

e.g. One two three Step Day Care – allowed
1 2 3 Step Day Care – may be allowed

A company may have a number (ex. Information 2000 Ltd.) within the name.

Exception: Companies using street names are allowed.

e.g. 1155 Regent St. Ltd.
telephone # names not allowed

If choosing a name with a number as the first words of the name you may want to contact Corporate Registry first.

6. A current calendar year can form part of the corporate name provided it is the year of the company's Incorporation and is enclosed in brackets and precedes the legal element.

e.g. Ward Construction (2009) Inc.

7. A geographic term is a free word to which no one can ordinarily claim exclusive use and it must be accompanied by a descriptive term.

e.g. Keswick Plumbing & Heating

8. A descriptive term is, by definition, a free word used to describe a business and therefore should be accompanied by another descriptive term. e.g. Smart Delivery Ltd.

9. The exact name of an existing company may not be used for the incorporation of a new company. Some distinguishing word or words must be added to its name, e.g. Brown's Construction Ltd., could not be used for incorporating a new company if a company of such a name is already in existence. However Brown's Construction (2009) Ltd., could be used provided the existing company gives its consent to the use of the name and its undertaking to either dissolve its articles of incorporation or change its name to a dissimilar name normally within six months from date of incorporation of the new company. Corporate Registry will review any such undertaking and determine whether it is acceptable, in this particular instance, to permit the registration/incorporation and to proceed with the proposed name. The year indicated

must be the year of incorporation. If such an undertaking is given and nothing is done, the Director, under section 10(4) of the Business Corporations Act, will change the name of the company which has given such undertaking.

10. When two or more corporations amalgamate, the name of the amalgamated corporation may be the same as one of the amalgamating corporations, or it may be a distinctive new name.
11. Similar descriptive elements should be avoided when there is already an existing corporation/business with the same distinctive element.

Forward Trucking Ltd.
Forward Transport Ltd.

Bigjohn Lumber Corp.
Bigjohn Logging Corp.

Eatall Restaurant Inc.
Eatall Dining Room Inc.

NOVA SCOTIA NAMES

The Province of New Brunswick has Legislative and Regulatory provisions that prohibit the incorporation/registration of names that are identical or similar to deceptively similar to

1. Nova Scotia corporations
2. Nova Scotia based business names and partnerships

Likewise, the Province of Nova Scotia has reciprocal provisions in respect to New Brunswick corporations, business names and partnerships.

FURTHER REVIEW OF A DESCRIPTIVE ELEMENT

(A) COINED – e.g. Reprox

Such words would be allowed and in most cases because they are distinctive may not require another word. One of the best recent examples would be EXXON. Many such coined words need not be translated. They can be used in either the French or English name. e.g. Exxon Ltee/Ltd. However, it must be distinctive and cannot be accepted if the word has or could have general use.

Eg. Carport

Patsan Ltd. – on record
Patsan Construction – consent required

(B) GENERAL WORDS – e.g. Sunshine

Words used with a meaning other than their ordinary meaning will require a descriptive element. e.g. Sunshine Ladies Wear Limited. There may be an exception if the word alone has acquired a

secondary meaning, e.g. Carpark Limited.

(C) FAMILY NAMES – e.g. Black

A family name in order to be distinctive may require a descriptive element or another word or words, e.g. Black's Clothing Store Limited. A person has the right to use his own name as long as the name is not being used to benefit from the good will of an established name which would confuse the public. Some family names acquire a secondary meaning and do not require a distinctive meaning, e.g. The Moore Corporation. Many people in the Province have the same last name. e.g. White. Such persons may be required to also use their given name or names, e.g. John W. White Construction Limited

(D) GEOGRAPHICAL NAMES – e.g. Miramichi, St. Stephen

These words are general words and cannot be retained for the exclusive use of any company except where a secondary meaning has been acquired. e.g. Hudson Bay. In all other cases a geographical name must be accompanied by a descriptive element or another word or words.

(E) DESCRIPTIVE NAME

Many words used by companies could be deceptive unless they have a descriptive element or another word or words. In order that the name be distinctive, it is strongly recommended that at least another word be used. e.g. Instead of calling a bakery "High Tide Limited" the applicants would be advised to use "High Tide Pastries Limited".

(F) GENERAL WORDS

These words should be avoided. However, if used they should be used with a distinctive word or a descriptive element. e.g. Industrial. - Industrial Marnox Ltd. or Industrial Building Supplies Limited. (See list attached).

(G) WEAK WORDS

Many words should likely not be used because of their overuse. If they are used in a name they must have a very descriptive or distinctive element. e.g. tire - this would require a distinctive element. e.g. F. W. Kessenger Tires Ltd. Another example would be Central - this would require a descriptive element - Central Eel Canneries Limited. A sample list of weak words, because of frequent use, is attached. This is not an all inclusive list.

(H) PROHIBITIONS OR RESTRICTIONS

1. Such words as co-operative, credit union or municipal; should not be used without contacting the Credit Unions, Co-operatives & Trust Companies and Examinations Branch of the Department of Justice and Consumer Affairs.
2. Certain other words which would indicate that the company is backed or associated with by a known government body e.g. R.C.M.P. Limited or U.N. Consultant Ltd.
3. The name of National recognized clubs or associations without the consent of the parent organization. The consent must accompany the application.

4. The word "Engineering" without the consent of the Association of Professional Engineers and Geoscientist of New-Brunswick.
5. The use of "Insurance" in a name should be verified with the Insurance Branch of the Department of Justice and Consumer Affairs.
6. The words "Nursing Home" are allowed only with written approval of Minister or Deputy Minister of Health which must accompany application.
7. N.B. or (N.B.) may be used at the end of a corporate name, however, if there is a parent company, consent is required.
8. The use of "School" will be rejected if it appears, from the proposed name, that the corporation is an educational institute, without authorization from the relevant provincial authority (Department of Education).
 - Eg. Exact Driving School Inc. – acceptable
 - Eg. Southern Middle School Inc. – not acceptable without authorization
9. Where the name of a proposed corporation uses the term "University" or "College" in a fashion that the corporation is a degree-granting institution, the name will be rejected as being misleading unless it can be established that the corporation has been authorized by the relevant provincial authority to grant degrees.
 - Eg. University Painters Inc. – acceptable
 - Eg. College Painters Inc. – acceptable
10. The use of "Professional Corporation", "Corporation professionnelle", "P.C." and "C.P." are allowed if the corporation has the capacity to practise a profession in accordance with paragraph 13(3)(d) of the Business Corporations Act and the Act governing the profession permits such words or abbreviations to be in the name of the corporation.
11. If your corporation will have activities of a financial nature, make sure the name does not connote carrying on the business of a bank, loan company, insurance company, trust company, other financial intermediary, or stock exchange unless the appropriate federal or provincial regulator consents in writing to the use of the name.

(I) USE OF THE WORDS "NEW BRUNSWICK" AND "N.B." AS THE FIRST WORDS IN A NAME

1. For incorporations and registrations under the Business Corporations Act, Limited Partnership Act and Partnerships and Business Names Registration Act, the consent of the Minister for Service New Brunswick is required. Historically, consent has only been given on an exception basis for profit oriented businesses.

The written request for consent should be forwarded to Corporate Registry, which will then deal with the request with the Minister's office.

The request should set out reasons for wanting "New Brunswick" or "N.B." as the first words in the name. A NUANS report is also required.

2. For non profit incorporations under the Companies Act, one is normally able to use “New Brunswick” and “N.B.” as the first words in the name. No consent of the Minister for Service New Brunswick is required.

The basic requirement is to ensure that any proposed name is not deceptively similar to an existing name and that the name does not indicate connection, support, authority from or any function of government.

(J) NUMBERED NAME CORPORATIONS

In certain special cases, incorporators/owners choose to go strictly with a numbered name corporation. You may want to consult your business or legal advisor to see whether this is a suitable alternative for you.

The legal name of a numbered corporation, in New Brunswick, is made up of the following components: a six-digit number assigned by Corporate Registry, the province name and a legal ending. Numbered corporations may be in a bilingual format or unilingual format.

Examples:

(Bilingual format)

123456 N.-B. Ltd./Ltée **or**
123456 New Brunswick Corp. 123456 Nouveau-Brunswick Corp.

(English format)

123456 N.B. Ltd. **or**
123456 New Brunswick Inc.

(French format)

123456 N.-B. Ltée **or**
123456 Nouveau-Brunswick Incorporée

(K) INTERNET NAMES

Suffixes like “.ca” or “.com” are not considered a distinctive or descriptive element in a name. If the name is distinctive without the suffix it may be approved subject to the results of the name search. If the name is to be incorporated it must have a legal ending.

(L) EXTRA-PROVINCIAL CORPORATIONS

Extra-provincial corporations are required to obtain an Atlantic based NUANS name search when registering in New Brunswick. The Registry will review the name to determine the suitability of the name of the extra-provincial corporation for registration purposes. In circumstances where the name of the extra-provincial corporation is viewed as unsuitable, provisions exist to require the corporation to register a business name under which it will carry on business in New Brunswick.

(M) PROTECTION OF DISSOLVED/CANCELLED NAMES

Business names and Partnership names, once cancelled, are immediately available to anyone wishing to register the same or similar name. Caution should be used however if you decide to use a well know name that has been cancelled as there may be confusion with who the owner of the name is. The owner of the cancelled business name or partnership name may still have “common law” rights to the use of the name and could take legal action against you for use of their name.

In the normal case, corporation names, once dissolved, amalgamated or changed, are not available for three years from the date of the dissolution, amalgamation or name change. Within the three year period you may be able to incorporate a corporation with a somewhat similar name. If you intend to do so it is recommended that you contact Corporate Registry first.

(N) TRADEMARKS

If your name is similar to or the same as a registered trademark the Corporate Registry branch would encourage you to select a dissimilar name. The owner of a trademark could launch a court action to compel you to stop using your name and perhaps even to pay damages. The last 2 pages of the NUANS report indicates trademarks that are the same or similar to your proposed name (see the Section relating to “Obtaining a Proposed Name” for information regarding obtaining a NUANS report).

If you want to register your company name as a trademark you may wish to discuss with your legal and/or business advisor as to the advantages of registering a trademark. You may also access the website of the Canadian Intellectual Property Office at www.cipo.gc.ca.

OBTAINING A PROPOSED NAME

- 1) Select a proposed name.
- 2) Obtain a name search report from a private sector name search firm. This report must be an Atlantic New Brunswick based NUANS search report. Review the report and the firm's covering letter to determine whether the proposed name continues to seem to be suitable from your perspective.

ELECTRONIC FILING OF THE REPORT and APPLICATION

- 1) You are able to file your incorporation or business name registration (sole proprietor only) documents electronically with Corporate Registry. Check our web site at www.snb.ca. During this process you will be asked to attach the NUANS search report. You must first save the NUANS report to your electronic files in order to attach the report.

Note: The name search report must be a current report, i.e. one done within 90 days of receipt by the Registry.

2) The Corporate Registry will review the NUANS report to determine whether the proposed name is suitable for incorporation/registration. It will also review the incorporation/registration documents submitted online to ensure they are acceptable for filing. If the proposed name and the other documents are suitable, the Registry will file the incorporation/registration documents.

PAPER FILING OF THE REPORT and APPLICATION

1) Send in the name search report, covering letter and the incorporating/registration documents to the Corporate Registry.

Note: The name search report must be a current report, i.e. one done within 90 days of receipt by the Registry.

2) The Corporate Registry will review the NUANS report to determine whether the proposed name is suitable for incorporation/registration. It will also review the incorporation/registration documents to ensure they are acceptable for filing. If the proposed name and the other documents are suitable, the Registry will file the incorporation/registration documents.

FREQUENTLY OCCURRING TERMS IN CORPORATE NAMES

AGENCIES	GAS	PACIFIC
AGENCY	GENERAL	PARK
AIR	GEORGE	PAUL
ALBERTA	GOLF	PHARMACY
AMERICAN	HARDWARE	PLACEMENTS
ASSOCIATES	HEATING	PRINTING
ASSOCIATION	HOLDING(S)	PRODUCTION
AUTO	HOME(S)	PRODUCTS
BAY	HOSPITAL	PROPERTIES
BROTHERS	HOTEL	PLUMBING
BUILDERS	HOUSE	QUEBEC
BUILDING	HOUSING	UNION
CAISSE	IMPERIAL	UNITED
CANADA	IMMEUBLES	RANCH
CANADIAN	INDUSTRIAL	REAL
CAR	INDUSTRIES	REALTIES
CENTRAL	INSURANCE	REALTY
CENTRE	INTERNATIONALI	RENTALS
CHURCH	NVESTMENT	RESTAURANT
CITY	JOHN	RIVER
CLEANERS	LAKE	ROYAL
CLUB	LAND	SALES
COMMUNITY	LEAF	SCHOOL
COMPAGNIE	LEASING	SECURITIES
CONSULTANT	LIFE	SERVICE(S)
CONSTRUCTION	LOGGING	SHOP
CO-OPERATIVE	LOISIRS	SOCIETE
CORPORATION	LUMBER	SOCIETY
CONTRACTING	MACHINE	SON(S)
CONTRACTOR	MANAGEMENT	SPORTS
COUNTY	MANUFACTURING	STEEL
CREDIT	MAPLE	STORE(S)
DEVELOPMENT	MARINE	SUPPLIES
DISTRIBUTOR	MARKET	SUPPLY
DISTRICT	METAL	SYNDICATE
ELECTRIC	MINES	SYSTEMS
ENGINEERING	MINING	TELEPHONE
ENTERPRISE(S)	MONTREAL	TIRE
ESTATE(S)	MOTEL	TORONTO
EQUIPMENT	MOTOR(S)	TRADING
EXPLORATION	MUTUAL	TRANSPORT
FARM(S)	NATIONAL	TRUCKING
FILS	NEW	VALLEY
FOOD(S)	NORTH	VANCOUVER
FOUNDATION	NORTHERN	WEST
FURNITURE	OIL	WESTERN
GARAGE	ONTARIO	WORK