

PROFESSIONAL CORPORATIONS IN ONTARIO

The proclamation of the professional incorporation provisions allowing a number of regulated professionals to incorporate their practices in Ontario, occurred on November 1, 2001. The Business Corporations Act provides that members of the following professions are eligible to operate a professional corporation:

1. Chartered Accountants
2. Certified General Accountants
3. Lawyers
4. Health professionals regulated under the Regulated Health Professions Act
5. Social workers and social service workers
6. Veterinarians
7. Architects
8. Engineers

Key Features of Professional Corporations

Professional liability is not limited by incorporation

In general, the corporate form insulates shareholders in their personal capacity from corporate liability. The professional corporation provisions ensure that personal professional liability of those who choose to operate their practices through a professional corporation will not be limited.

A professional corporation offers its shareholders limited liability in certain areas. A shareholder is generally liable for the debts of the corporation to the extent of his or her investment. Personal assets usually are not at risk.

Exceptions include

- The shareholder personally guarantees a business debt.
- Piercing of the corporate veil.
- Professional malpractice.

Officers, directors, employees, and agents of the corporation may be held personally responsible for liabilities arising out of their services to the corporation. The corporation may indemnify its officers, directors, employees, and agents for costs and expenses incurred as a result of such liabilities. Also, the corporation may buy insurance covering its officers, directors, employees, and agents for liabilities arising out of their services to the corporation.

If the business poses a threat of personal injury or property damage, limited liability may be important. However, adequate business insurance is essential to protect the business from overwhelming legal liabilities resulting from personal injury or property damage.

Role of professional governing bodies

The governing bodies of regulated professions are responsible for the certification or licensing of professional corporations that fall under their jurisdiction. In addition, the governing bodies will be able to "look through" professional corporations and hold the professional shareholders accountable for their actions.

Naming a professional corporation

The name of the professional corporation must include the words "Professional Corporation" or "Société Professionnelle" and cannot be a number name.

Ownership restrictions for professional corporations

The professional incorporation legislation allows one or more members of the same profession to be shareholders in a professional corporation. All officers and directors of the professional corporation are required to be shareholders of the corporation.

Business activities which can be undertaken

The professional corporation may not carry on a business other than the practice of the profession; however, this shall not be construed to prevent the corporation from carrying on activities that are related to, or ancillary to, the practice of the profession, including the temporary investment of surplus funds earned by the corporation.

Professions Affected by Professional Corporation Provisions

Members of the following professions are eligible to operate a professional corporation:

- Chartered accountants under the Chartered Accountants Act.
- Certified general accountants under the Certified General Accountants Association of Ontario Act.
- Lawyers under the Law Society Act (responsibility of the Ministry of the Attorney General).
- Audiologists, chiropodists including podiatrists, chiropractors, dental hygienists, dental surgeons, dental technologists, denturists, dietitians, massage therapists, medical laboratory technologists, medical radiation technologists, midwives, nurses, occupational therapists, opticians, optometrists, pharmacists, physicians and surgeons.
- Physiotherapists, psychologists, speech language pathologists, and respiratory therapists under the Regulated Health Professions Act (responsibility of the Ministry of Health and Long-Term Care).
- Social workers and social service workers under the Social Work and Social Service Work Act (responsibility of the Ministry of Community and Social Services).
- Veterinarians under the Veterinarians Act (responsibility of the Ministry of Agriculture, Food and Rural Affairs).

Prior to the enactment of this legislation, professionals were prohibited from incorporating their practices except as specifically permitted by the statute regulating the particular profession. The status of corporations that were in compliance with the law before the coming in force of the professional corporation amendments would, therefore, be unchanged.

Establishing a Professional Corporation

Regulated professionals who wish to incorporate their practices should consult their governing body for conditions of incorporation specific to their profession.

A professional corporation is formed in the same manner as a business corporation, except that it typically has one or several of the following additional limitations, depending on the jurisdiction:

- All shares of stock of the corporation (or a minimum percentage) must be owned and held by individuals licensed in the profession of the corporation.
- At least one incorporator must be licensed in the profession.
- At least one director (or a majority, or even exclusively) must be licensed in the profession.
- The articles of incorporation, in addition to all other requirements, must limit the activities of the corporation to the profession.

Professional corporations may be subject to additional limitations and regulations imposed by their respective professional bodies.

Period of Existence

A professional corporation has a shorter business life than a business corporation due to the dependence on its members.

For example:

- The death or disqualification of a shareholder or employee may result in the dissolution of the corporation.
- If a licensed officer, shareholder, agent, or employee of a professional corporation becomes disqualified to provide professional services, he or she must sever all employment with and financial interest in the corporation. Failure to comply may be grounds for forfeiture of the corporation's certificate of incorporation and its dissolution.
- A professional corporation must report the death of a shareholder to the appropriate professional body within 30 days of the date of death. Within one year, all shares owned by the deceased shareholder must be acquired by the professional corporation or by persons qualified to own them.
- A professional body may suspend or revoke the certificate of registration of the professional corporation if:
 - The corporation fails to remove or discharge an officer, director, shareholder, or employee whose license to practice is suspended or revoked.
 - The professional corporation has failed to comply with provisions of the Professional Corporation Act or the regulations of the professional body.
- If the certificate of registration is suspended or revoked, the corporation must stop providing professional services, and the government officials will remove the corporation from active status.

Although registering a Professional Corporation may sound complicated, it does not have to be. As long as you obtain the necessary documents from your governing body, the rest is a fairly straightforward process.

If you have any questions or would like to proceed with the incorporation of a professional corporation, please call us.