



1882-2007

June 2008 Bulletin
Doctors, Lawyers and Accountants...oh my!
Creating Professional Corporations
By Michael A. Mann

If you are a sole proprietor of a business, registering that business as a corporation may result in greater control over the taxation of revenues and expenses. Moreover, a business corporation will provide a level of creditor protection for the business owners who are named shareholders, directors or officers of the company.

Doctors, lawyers and accountants run businesses; but it has only been for the past 8 years or so that they have been permitted to incorporate their practices. These professions, as well as dentists, chiropractors, veterinarians and social workers are now able to create a "Professional Corporation" thanks to the *Ontario Business Corporations Act* ("OBCA"). Although the incorporation of these regulated professionals does not provide creditor-proofing in the same manner as a typical business corporation, there are income tax advantages that can be enjoyed by incorporating.

When setting up professional corporations, the OBCA imposes special rules. For instance, the name of the corporation must include the words "Professional Corporation" and the name must otherwise comply with the rules and regulations under the legislation that governs the profession. Generally speaking, only members of the profession can own shares and only shareholders can serve as directors or officers; and the company may only carry on a business that is the practice of the profession. Doctors and dentists have an added benefit in that immediate family members may be named as non-voting shareholders, which then allows the doctor to income split with his/her spouse, child or parent.

Once incorporated, an additional step for any professional corporation is to seek the approval of the regulating body that controls the profession. A Certificate of Authorization will be issued if all requirements are met. This entails additional fees and is usually subject to an annual renewal process to ensure that the professional can maintain the right to practice as a corporation.

As with any professional in the categories mentioned earlier in this article, his/her corporation must abide by all of the rules and regulations established by its regulating body. The OBCA does not create a "shield" for professionals by incorporating. Instead, it confirms that professional liability will continue to attach to shareholders and employees of the corporation.

Since it is extremely important to create the correct formal structure of a corporation in compliance with the OBCA and to abide by the rules of the governing body, it is strongly advised that any professional who wishes to incorporate should seek appropriate legal and tax advice before proceeding.

Commercial Law Group

Rodger Gordon
Harry Thorsteinson
Gary Black
David L. Edwards

rgordon@lbwlawyers.com
hthorsteinson@lbwlawyers.com
gblack@lbwlawyers.com
dedwards@lbwlawyers.com

Robert Welch
R. Bruce Smith
Michael A. Mann

rwelch@lbwlawyers.com
bsmith@lbwlawyers.com
mmann@lbwlawyers.com

Employment Law Group

Robert B. Reid rreid@lbwlawyers.com

Leanne E. Standryk

lstandryk@lbwlawyers.com

Lancaster, Brooks & Welch LLP

PO Box 790, 80 King Street, St. Catharines, Ontario L2R 6Z1 Tel. 905.641.1551, Fax 905.641.1830

PO Box 67, 247 East Main Street, Welland, Ontario L3B 5N9 Tel. 905.735.5684, Fax 905.735.3340

55 Main Street West, Grimsby, Ontario L3M 1R3 Tel. 905.594.1263, Fax 905.594.1268

www.lbwlawyers.com