

Legal Spotlight

Professional Practices

Laying the Foundation for Your Business Success 2nd edition

Regardless of your professional skills or your success in winning and serving clients and customers, you need a firm foundation on which to grow your business.

We offer you several strategies to consider for managing a robust and profitable business – professional corporations, partnerships and cost sharing agreements.

Houser Henry & Syron LLP can simplify complex issues and guide you as you navigate your business structure options. Our goal is to help free you to practice and to serve your clients while we secure the legal and other technical foundations for your future growth.

The way professional businesses organize and manage themselves has not kept up with their increasing complexity. Eventually, this will significantly impede their success.

David Maister, Author –Strategy and the Fat Smoker

There is no ‘right’ business model and your choice will depend on your personal preference and situation. Most professionals can choose to operate as a sole proprietor, create a corporation or form a partnership or a combination of these options.

When choosing the right business structure for you, you are wise to consider your tax situation, options regarding income splitting with family members, potential personal liability and regulatory issues.

A PROFESSIONAL CORPORATION (PC)

When you incorporate, you are really creating a new taxpayer. If a business is not incorporated, matters relating to its taxation and liability rest with you as the business owner. Incorporating your business can allow you to benefit from the resulting limited liability and beneficial tax treatment. To take full advantage of the benefits of a PC, consider seeking legal advice.

Depending on your profession, you may be allowed to use a PC to split your income with your family members, which can reduce your taxes. If your PC qualifies as a Canadian-controlled private company, you may also be entitled to the small business deduction. This deduction can significantly reduce the corporate taxes paid (as low as 15.5%) on income earned.

PCs also limit a professional’s personal liability for certain business obligations that may arise within your practice such as payments under an office lease, debts, employee termination costs etc.

A PC has some disadvantages. For example, costs are incurred when creating and maintaining it. The PC must also file an additional tax return and it is subject to special restrictions on share ownership, the nature of its business and director eligibility.

PARTNERSHIPS

A partnership is a popular structure under which two or more professionals practise together. Unlike corporations, a partnership is not a separate legal entity. Its profits and losses flow through directly to its partners. Importantly, partners may be directly liable for the partnership's debts.

The most successful partnerships thrive under current and comprehensive partnership agreements. In defining their relationships, partners enjoy flexibility in deciding how they will do business together. A good partnership agreement clarifies the following:

- Division of profits and losses among partners;
- Terms under which a partner may exit the partnership;
- Responsibility for hiring and terminating employees;
- Day to day management responsibilities;
- Setting partners' performance expectations;
- Authorizations for entering into contracts on behalf of the partnership;
- Adding new partners;
- Resolving partner disputes; and
- Dissolution of the partnership

If you don't have an agreement, your rights and obligations will be decided by the *Partnerships Act (Ontario)*. Under the Act:

- all partners share equally in the profits and losses of the partnership;
- all partners take part in the management of the partnership;
- all partners can veto the addition of any new partner; and
- the partnership will automatically dissolve upon the death or insolvency of any partner.

COST SHARING AGREEMENTS

Many professionals work with other professionals, but they choose not to form a partnership. For example, a group of doctors may share staff, referrals and office space, sign a lease together and share costs and expenses while operating independent practices.

In these cases, Professionals should have a cost sharing agreement. A cost sharing agreement should address many of the issues in a partnership agreement. It should also clarify that the professionals are not carrying on business in a partnership to avoid unintended liability and tax consequences.

A party to a cost sharing agreement may be a corporation or an individual. Using a professional corporation can limit your personal liability under such an agreement.

A FINAL THOUGHT

Remember that groups of professionals practising individually may be determined to be a partnership if certain conditions exist, regardless of any written statements to the contrary. Being viewed as a partnership may involve significant liability implications. To avoid this situation, be proactive and consult legal counsel.

When we decided to update our partnership agreement to accommodate our future growth, we turned to the team at HHS. They understood our vision and our needs. They crafted a secure, smart and comprehensive agreement.

Gordon Lee, Partner –Yale & Partners LLP

Houser Henry & Syron LLP offers a personal, flexible approach and the knowledge and experience to give you the freedom to focus on what you love to do – practice your profession. We invite you to contact us and book an appointment - with no obligation - today. After gaining a clear understanding of your business goals, we will help you choose the right business structure that will evolve with your business needs.

ABOUT HOUSER HENRY & SYRON LLP

Your business grows. You expand into new markets, hire new people, move into larger facilities, launch new products or services – and face new legal issues and challenges.

Since 1934, Houser Henry & Syron LLP has provided legal services to private businesses, helping them deal with the complexity that comes with growth and success. We understand the needs of mid-sized businesses and their owners and managers and we have the breadth of expertise and the depth of experience necessary to meet those needs.

For more information, please contact one of the lawyers with our firm. You may also wish to visit our website, www.houserhenry.com, for an overview of our team and our services.

CONTACT US

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