BUSINESS LAW · CLIENT GUIDE

Incorporating Your Business in Ontario

Should you incorporate? Provincially or federally? And what is this "minute book" your lawyer keeps talking about? A plain-language guide to the three questions every new business owner asks.

Part 1 · Should You Incorporate?

A corporation is a separate legal person. It can own property, sign contracts, borrow money, sue and be sued — all in its own name, apart from you. That separation is the source of nearly every advantage of incorporating, and of most of the extra work. Sole proprietors and partners have no such separation: the business is the owner.

THE ADVANTAGES

- **Limited liability.** If the business is sued or cannot pay its debts, your personal assets — your home, savings and investments — are generally protected. Your risk is normally limited to what you invested.
- **Lower tax rate on retained earnings.** Active business income earned by a Canadian-controlled private corporation is taxed at a low combined federal–Ontario small business rate on the first $500,000. Money you leave in the corporation is taxed at that rate, not your personal marginal rate.
- **Tax deferral and planning.** You control when and how you take money out — salary, dividends or a mix — which lets you smooth income across years and plan for retirement.
- **Lifetime capital gains exemption.** When you eventually sell qualifying small business shares, a substantial portion of the gain may be tax-free. A sole proprietor selling assets has no equivalent.
- **Perpetual existence.** The corporation continues if an owner dies, retires or sells. This simplifies succession and estate planning.
- **Credibility and access to capital.** Lenders, landlords, suppliers and larger customers often prefer to deal with a corporation, and shares can be sold to investors or family members.

THE DRAWBACKS

- **Cost.** Government fees, legal fees to set up properly, and ongoing accounting and legal costs every year.
- **Paperwork.** A separate corporate tax return (T2), annual government filings, annual resolutions and a minute book that must be kept current. Missed filings can lead to penalties or dissolution.
- **Losses stay in the corporation.** Start-up losses cannot be deducted against your personal income from other sources, as they can for a sole proprietor.
- **Personal guarantees.** Banks and landlords routinely ask new corporations for the owner's personal guarantee, which reduces the liability shield where it matters most.
- **Directors' liability.** Directors can be personally liable for unpaid employee wages, unremitted source deductions and HST, and certain statutory obligations.
- **Formality.** You must keep corporate and personal finances strictly separate. Treating the corporate account as your own is the fastest way to lose the protection you incorporated for.

A GOOD RULE OF THUMB

Incorporation usually makes sense once the business earns more than you need to live on, carries meaningful liability risk, has more than one owner, or is something you may one day sell. If none of those apply yet, a sole proprietorship may serve you well for now — you can always incorporate later.

This guide provides general information only and is not legal, tax or accounting advice. Tax rates, thresholds and filing rules change; please confirm current figures with your lawyer and accountant before acting.

PART 2

Provincial or Federal Incorporation?

Both create a real corporation with the same liability protection and the same tax treatment. The difference is which statute governs it, where its name is protected, and what you must file each year.

	ONTARIO (OBCA)	FEDERAL (CBCA)
Governing law	Business Corporations Act (Ontario). Filed through the Ontario Business Registry.	Canada Business Corporations Act. Filed through Corporations Canada.
Where you can carry on business	Anywhere in Canada, but you must register extra-provincially in each other province where you do business.	Anywhere in Canada as of right, but you must still register in each province where you carry on business — including Ontario.
Name protection	Name is protected in Ontario only. Another business could use a similar name in another province.	Name is protected across Canada. Federal name approval is stricter and a proposed name is more likely to be refused.
Name search	NUANS report required for a named corporation (not for a numbered company).	NUANS report required for a named corporation, plus federal name review.
Director residency	No Canadian residency requirement for directors.	At least 25% of directors must be resident Canadians (or one director if there are fewer than four).
Set-up cost	Government filing fee is modestly higher than federal.	Government filing fee is lower, but Ontario extra-provincial registration is also required.
Annual filings	One annual return with Ontario (currently no fee), plus your T2 tax return.	Federal annual return with fee and an Ontario annual return, plus your T2 tax return. Two sets of filings.
Ownership transparency register	Register of individuals with significant control kept in the minute book; available to authorities on request.	Same register kept in the minute book, and the information must also be filed with Corporations Canada, where much of it is publicly searchable.
Tax treatment	Identical. Both are taxed under the federal Income Tax Act and pay Ontario corporate tax on income earned in Ontario. Choice of jurisdiction does not change your tax bill.	

CHOOSE ONTARIO WHEN…

- Your customers, premises and employees are all, or almost all, in Ontario.
- You want the simplest annual compliance — one government to deal with.
- A director or shareholder is not a Canadian resident.
- You are a professional corporation (physicians, dentists, lawyers, accountants and similar) — these must be Ontario corporations.
- You are incorporating a holding company or a company to own a single property.

CHOOSE FEDERAL WHEN…

- You already operate, or plan to operate, in several provinces.
- Your brand name is a core asset and you want it protected Canada-wide.
- You market nationally or internationally and the "Canada" designation carries weight with customers or partners.
- You expect outside investors or an eventual sale to a buyer who prefers a CBCA corporation.
- You may relocate head office to another province — a federal corporation moves without re-incorporating.

COMMON MISCONCEPTIONS

- **"Federal is more prestigious."** Both are full corporations with identical legal standing. Prestige is not a reason to take on double filings.
- **"Federal protects my trademark."** It does not. Name protection only stops another corporation from registering a confusingly similar corporate name. Protecting a brand requires a separate trademark registration.
- **"I can't change later."** You can. A corporation can be continued from one jurisdiction to the other, though it costs money and time.

PART 3

The Minute Book

Incorporating is an event. Staying incorporated is a practice. The minute book is where that practice lives.

What It Is

The minute book is the official record of your corporation — its birth certificate, rulebook and diary in one place. Ontario and federal law both require every corporation to keep these records at its registered office, as a binder or an electronic file. It contains:

- ✓ **Articles of Incorporation** and any amendments — the corporation's constitution: its name, share structure and any restrictions.
- ✓ **By-laws** — the internal rules for how meetings are called, how officers are appointed and how the corporation signs documents.
- ✓ **Registers** of directors, officers, shareholders and securities, showing who holds what and every transfer since incorporation.
- ✓ **Register of individuals with significant control** — those who ultimately own or control 25% or more, updated annually and within 15 days of any change.
- ✓ **Share certificates** (or a record that shares are uncertificated) and the stubs or ledger for each issuance and transfer.
- ✓ **Minutes and resolutions** of every shareholder and director decision, including the organisational resolutions passed at incorporation.
- ✓ **Government filings** — initial return, annual returns, notices of change of directors or address, and any consents.
- ✓ **Key agreements** such as a shareholders' agreement, subscription agreements and director consents.

"If it isn't in the minute book, it didn't happen."

Why You Must Maintain It

- **It is the law.** Failure to keep the required records is an offence under both the OBCA and the CBCA, and can lead to fines.
- **It proves the liability shield is real.** If a creditor tries to reach your personal assets, a court will ask whether you treated the corporation as separate. An orderly minute book is your best evidence that you did.
- **CRA will ask for it.** On audit, the CRA routinely requests the resolutions authorising dividends, bonuses, management fees and shareholder loans. Without them, the tax treatment you claimed can be reassessed.
- **Banks, buyers and shareholders rely on it.** Every financing and sale begins with a review of the minute book, and when shareholders disagree, the registers and resolutions are the answer. Rebuilding missing records under deadline pressure is expensive.

EVERY YEAR, WITHOUT FAIL

- **Annual shareholder resolutions** receiving the financial statements, electing directors and waiving the audit.
- **Annual director resolutions** approving the financial statements, appointing officers and confirming dividends.
- **Annual return** filed with Ontario — and, for federal corporations, with Corporations Canada as well.
- **Review the transparency register** and confirm it is accurate.
- **File the T2 corporate tax return** within six months of year-end.

UPDATE WITHIN DAYS WHEN…

- A director or officer joins or resigns.
- Shares are issued, transferred or redeemed.
- The registered office address changes.
- A shareholder loan, dividend or bonus is authorised.
- The corporation borrows, gives security or signs a major lease.
- Any person with significant control changes.

THE MOST COMMON MISTAKES WE SEE

- Incorporating online and never issuing shares or passing organisational resolutions — the corporation technically has no shareholders.
- Paying dividends without a resolution declaring them.
- Letting the accountant's year-end package stand in for corporate minutes. It does not.
- Missing the annual return until the corporation is flagged for cancellation.
- Losing the minute book in a move or change of lawyers.

HOW WE CAN HELP

We prepare complete minute books at incorporation and offer annual corporate maintenance so your resolutions, registers and filings are done on time. Ask us about flat-fee options.

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Thinking about incorporating, or already incorporated and behind on your minute book? We offer flat-fee incorporation packages and annual corporate maintenance. Call either office to book a consultation.

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