



Fleury, Comery LLP
Barristers & Solicitors

SHOULD I INCORPORATE MY BUSINESS?

Most small business people contemplate at some point incorporating their business. The following are some of the factors to take into account in making this important decision.

1. LIMITED LIABILITY

When you operate under your own name or under a registered business name, you are personally liable for everything that happens in your business. If someone gets hurt at your establishment, if your service causes some damage, if you lose a contract lawsuit, if the bank calls your loans, all your assets are available to satisfy the claims. Insurance can cover some but not all situations. If you operate as a corporation, then the corporation, not you personally, is the target of such claims. Limited liability is the biggest advantage of incorporating your business.

2. INCOME TAX CONSIDERATIONS

Expenses allowed as deductions from corporate income generally exceed the allowable expenses of an individual business proprietor. The tax rate on the first \$200,000.00 of "active business income" is only 23%. Another tax benefit is the flexibility in apportioning income. Shares can be distributed among family members to reduce the income tax of the family as a whole. Income can stay in the corporation and its distribution can be spread out over time.

A negative factor that must be considered is the corporate tax rate, which for actual corporate profits exceeds the tax rate for most individuals, who have a personal deduction and a graduated rate based on the level of income.

We usually take instructions from the client's accountant when tax advantage is the main reason to incorporate.

3. ESTATE PLANNING

Another significant tax advantage to incorporating the larger types of small business is the "estate freeze", whereby at a chosen point, the increasing value of the business is moved to the owner's heirs, to prevent a capital gains catastrophe on the owner's death.

4. SHAREHOLDER AGREEMENTS, ETC.

The corporate form of organization requires clear record keeping and documentation. A well-ordered minute book holds in one place all important corporate organizational documents such as the articles of incorporation, minutes of shareholder meetings, special resolutions, a share ownership register, etc.. It is usually required by lending institutions. For tax purposes, detailed financial statements must be available, too. There is a real benefit to your bottom line in this kind of discipline.

5. PERSONAL GUARANTEES

Banks and landlords frequently require personal guarantees from the corporate owners, which partially negates the limited liability which is one of the major benefits of incorporation.

6. COSTS TO INCORPORATE

The following are the typical fees and disbursements for incorporation:

Ontario incorporation fee	\$330.00
Minute book, etc. (est.)	\$150.00
Legal fee (see below)	\$850.00
Name search (optional)	\$55.00
Misc. & GST	\$100.00
Total	\$1,485.00

7. LEGAL FEE

The legal fee includes meaningful advice on all aspects of incorporation and a guarantee of error-free procedures. Time is taken in discussions regarding the corporate name; in discussions with the client's accountant; in drafting and registering appropriate and long-lasting articles of incorporation; in preparing the opening minutes and banking documentation, and issuing the share certificates; and setting up a well-ordered corporate minute book.

The lawyers at Fleury, Comery have extensive experience in advising our clients with respect to incorporations. If your business has reached the point where incorporation makes good sense, we can offer the benefit of that experience not only to complete the necessary legal steps, but to provide some valuable input on all aspects of running your new corporation.

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