



A Message to Ontario Counsellors/Psychotherapists about Professional Corporations

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Why do Professional Corporations matter to me?

Many counselling- and psychotherapy-related professionals in Ontario work in private practice and in other settings. After the new *Ontario Psychotherapy Act* is enacted and the new College of Registered Psychotherapists of Ontario (the “College”) is established, if a Registered Psychotherapist (“licensed therapist”) wishes to carry on his or her practice through a corporation, he or she must do so as a “**professional corporation**” incorporated under the provisions of the **Ontario Business Corporations Act (“OBCA”)**. The ability for a regulated health professional to incorporate his or her practice must be permitted under the *OBCA* and the *Regulated Health Professions Act (“RHPA”)*. Currently, the *OBCA* provides that members of the following professions are eligible to carry on their practice using a professional corporation:

1. Chartered accountants
2. Certified general accountants
3. Lawyers
4. *Health professionals regulated under the Regulated Health Professions Act (“RHPA”)*
5. Social workers and social service workers
6. Veterinarians
7. Architects
8. Engineers

Members of the College of Registered Psychotherapists of Ontario will be included in category 4 as they will come under the definition of “health professionals regulated under the Regulated Health Professions Act” once the *Psychotherapy Act* is proclaimed.

What are the rules for establishing a Professional Corporation?

A professional corporation is a specific type of corporation and subject to a number of requirements. It is important to note that corporations created under federal legislation or in a province other than Ontario will not qualify as a professional corporation in Ontario.

Regulated professionals who wish to incorporate their practices should consult the Transitional Council of the College of Registered Psychotherapists of Ontario for specific conditions of incorporation. Once proclamation of *The Psychotherapy Act* occurs, it is the College of Registered Psychotherapists of Ontario that **must** be consulted for accurate, specific information.

Generally speaking, a professional corporation is formed in the same manner as a business corporation, except that professional corporations have important additional limitations:



- i. all of the issued and outstanding shares of the corporation must be legally and beneficially owned, directly or indirectly, by one or more professionals governed by the College who hold a certificate of registration issued by the College;
- ii. all of the officers and directors of the professional corporation must be shareholders of the professional corporation;
- iii. the articles of the professional corporation may not carry on a business other than the practice of the psychotherapy governed by the College and activities related to or ancillary to the practice of the profession; and
- iv. the name of the corporation must comply with the rules respecting the names of professional corporations set out in the regulations and with the rules respecting names set in the regulations or by-laws under the Act governing the profession.

Why are there limitations on professional corporations?

The rationale for these limitations is clear. It is important that business decisions align with professional ethics and standards of practice. When the shareholders are licensed members, the likelihood of the maintenance of professional standards of practice in making business decisions is enhanced. If a majority of shareholders were not required to be licensed members of the profession, there would be an increased possibility of undue pressure from non-professionals for the licensed professionals to act in ways that may make business sense, but would not be ethically acceptable or in the best interest of the client. For instance, it may make business sense that all clients be accepted for professional services and that all clients receive a standard service at a standard fee for a standard period of time. In psychotherapy however, the multiple contextual components of the needs of the client and the ethical requirements to work only within the boundaries of one's professional competence would make such a business decision unpalatable and professionally unethical.

What is the role of the College of Registered Psychotherapists of Ontario?

The College of Registered Psychotherapists of Ontario will be responsible for licensing Registered Psychotherapists. Also, the College will be responsible for the certification and licensing of professional corporations that fall under their jurisdiction. The College will have the right to check on professional corporations and hold the professional shareholders accountable for their actions.

Are there rules about naming a Professional Corporation?

Under the OBCA, the name of any professional corporation must comply with the following requirements:

- (i) the professional corporation shall not have a number name;
- (ii) the professional corporation name must include the words "Professional Corporation" or "Société professionnelle";
- (iii) the professional corporation name must include the surname of one or more licensed therapists holding shares in the professional corporation as the surname is set out in the College register;



- (iv) the professional corporation name may also include the shareholder's given name, one or more of the shareholder's initials or a combination of his or her given name and initials;
- (v) the professional corporation name must indicate the health profession practiced by the shareholders; and
- (vi) the professional corporation name must not include any information other than that permitted under the OBCA.

What are the rules related business activities?

The professional corporation may not carry on a business other than the practice of psychotherapy and carry on activities that are related to, or ancillary to, the practice of the profession, including the investment of surplus funds earned by the professional corporation.

Is there anything else I should think about before deciding whether to incorporate my business?

After the new *Ontario Psychotherapy Act* is enacted, the licensed therapist will only be permitted to carry on his or her practice in their personal capacity or through a professional corporation. If the licensed therapist is currently carrying on his or her practice in their personal capacity and wishes to practice through a professional corporation, the assets used in the practice will need to be transferred to the new professional corporation. There are a number of potential tax implications in carrying out this transfer which is usually carried out under the provisions of subsection 85(1) of the Income Tax Act. The licensed therapist will also need to enter into an Employment Agreement with her or her professional corporation.

Where the licensed therapist is currently carrying on his or her practice through a corporation the therapist will need to decide whether he/she wishes to continue as a corporation. There are two options. The licensed therapist can decide whether they want to "convert" their existing corporation into a professional corporation or create a new professional corporation. This decision should be made in **consultation with their financial and legal advisors** as there are a number of factors that will have to be looked at most, but not all, of which relate to **taxation**.

For example, if the current corporation is not incorporated under the OBCA, it will be necessary to "continue" the corporation as an OBCA corporation. If, or once, the current corporation is under the OBCA, it will also be necessary to change the name, include a restriction prohibiting the corporation from carrying on any the activities other than the practice of the profession and ensure that the only shareholder is the licensed therapist. This may require the corporation, or the licensed therapist, to acquire shares from non-qualifying shareholders.

Alternatively, if a new professional corporation is to be established, the assets used in the practice and currently held by the current corporation will need to be transferred to the new professional



corporation in the same manner as discussed above in connection with an individual who wishes to use a professional corporation.

Where the licensed therapist is carrying on a practice in association with other counsellors, whether licensed therapists or others, the use of a professional corporation will likely involve some restructuring. If the arrangement is an unincorporated association or some form of cost sharing arrangement, the contractual obligations of the individual licensed therapist will need to be assigned and assumed by their professional corporation.

Where the arrangement between the licensed therapist and other counsellors constitutes a general partnership, restructuring will be necessary in order for each of the licensed therapist's professional corporation to get the full advantage of the reduced corporate tax rate resulting from their eligibility to claim the small business deduction.

It should be noted that where the licensed therapist is an employee, the provisions of the *Income Tax Act* dealing with personal service businesses will essentially eliminate any potential tax benefits from incorporating.

How does incorporation affect professional liability?

In general, under the OBCA, incorporation protects individual shareholders from corporate liability. However, the professional corporation provisions under the OBCA ensure that personal professional liability of the licensed therapists who choose to operate their practices through a professional corporation will not be limited and they will be jointly and severally liable with the professional corporation for all professional liability claims.

What are some other liability concerns?

Other than for claims relating to professional liability, shareholders will have the same protection from claims relating to corporate liability as afforded shareholders of other OBCA corporations. Consequently, if the practice poses a threat of personal injury or property damage to patients or others while on premises occupied by the licensed therapist the limited liability resulting from incorporating may be of some benefit.

Generally however, you'll still want to have adequate business insurance in place to protect you against overwhelming legal liabilities resulting from personal injury or property damage and this would be in addition to professional liability coverage.

Officers, directors, employees, and agents of the corporation may be held personally responsible for liabilities arising out of their services to the professional corporation.



What are the legal requirements of a professional corporation?

Certificate of authorization

In order for the professional corporation to legally carry on the practice, it must obtain a Certificate of Authorization from the College. The application for the Certificate of Authorization must be accompanied by a notarial copy of the certificate of incorporation, a certificate of status, and a statutory declaration.

Ongoing obligations of the professional corporation

The professional corporation has an ongoing obligation to notify the College of Registered Psychotherapists of Ontario of fundamental changes such as the death of a shareholder or any change in shareholders. The professional corporation is also required to renew its Certificate of Authorization each year. If not renewed by the renewal date, the College will give the professional corporation 60 days notice and if the certificate is not renewed by the end of the 60 day period, the Certificate is revoked and the professional corporation will no longer be eligible to continue to carry on the practice.

As the Transitional Council of the College of Registered Psychotherapists of Ontario continues its work in preparation for the proclamation of the Psychotherapy Act, further information will be provided. In the interim, this brief synopsis has been **created in consultation with legal advisors** to provide preliminary information to you as a member of the psychotherapy community.