



## THE LEGAL INSIDER

of Mr. Alain P. Lecours

### CORPORATE LAW

#### Corporations: A Convenient Business Vehicle for Professionals

As with any economic activity, the practice of a profession entails important financial responsibilities. Yet, as opposed to other businesspeople, professionals were traditionally forbidden from limiting their liability by practicing carrying out their activities through a corporation.

Nowadays, this state of affairs has fortunately evolved: since 2001, the *Professional Code* allows professionals to practice their trade through a corporation, so long as a regulation of their particular professional order authorizes it. As such, as of May 2011, a total of seventeen (17) professional orders have adopted such a regulation to allow their members to practice their professions through a **corporation**\*. In the province of Québec, these corporations used by professionals are referred to as “business corporations” (whereas, in the United States, they are more commonly known as “professional corporations”).

The practice of a profession through a corporation can be quite advantageous with only slight inconveniences. In addition, a corporation must abide by certain specific rules when used as a vehicle for professional practice.

*\* As of the present time, the professions authorized to exercise through a corporation are the following: land surveyors, hearing-aid acousticians, lawyers, chartered accountants (C.A.), certified general accountants (C.G.A.), vocational counsellors, dentists, denturists, bailiffs, interpreters, physicians, veterinarians, notaries, dispensing opticians, optometrists, pharmacists, psycho-educators, terminologists and translators.*

#### 1. Advantages and Disadvantages of Professional Corporations

##### 1.1 Limited Liability

Firstly, it is essential to bear in mind that any professional who commits a fault in the course of his or her practice will incur personal professional liability. This is unavoidable regardless of the legal structure used to exercise the profession (individually, through a partnership, or through a corporation).

Nonetheless, the professional corporation offers benefits as regards obligations and liabilities other than professional. Indeed, a professional practice is also a business. In this fashion, contractual obligations of a commercial nature (such as lease, equipment purchase or leasing, accounts payable, etc.) become the responsibility of the corporation.

As such, the professional’s personal liability, when practicing through a corporation, is a limited liability as regards the corporation’s financial obligations. This entails that creditors cannot make claims against the directors and shareholders personally to recover the sums owed by the corporation.

##### 1.2 Taxation Benefits

The practice of a profession through a corporation is also favourable from a taxation angle. The tax rate imposed on corporations is quite lower than the tax rate imposed on individuals, which can easily reach 48%. One can thus expect a reduction of the professional’s tax burden.

In this respect, the accumulation of retained earnings allows the corporation to increase its capital, which can then be re-invested in the corporation. On the other hand, in a corporation, the professional has the possibility of distributing or dividing his revenue between family members, by sharing out this revenue in the form of dividends to shareholders. It is important to underline that the higher the revenue, the more advantageous it is to exercise a profession through a corporation. A professional corporation offers little taxation benefits if the revenue derived are low or average. Therefore, it is advisable to consult an accountant or legal professional prior to adopting a new corporate structure.

### 1.3 Some Inconveniences

It must be taken into account that a corporation presents some drawbacks in comparison with a sole proprietorship. Firstly, the costs of creating and maintaining a corporation are more significant: incorporation costs as well as legal fees necessary to constitute the corporation, draft a shareholder agreement and maintain the corporate registers (minute book). Secondly, the functional aspect of a professional corporation is more complex given the need to respect legal formalities. A professional should thus weigh whether, in his personal situation, the upsides of a professional corporation overcome these inconveniences.

## 2. Particularities of Professional Corporations

If a professional is convinced that practicing through a corporation is the most advantageous option for him, he or she must be careful not to use a “shelf company” (a ready-made, pre-constituted corporation) to form his or her future corporation.

Indeed, it must be noted that professional practice through a corporation is subject to conditions. Professional orders set **limitations to the powers and capacity of professional corporations**, which must be accounted for and included in the articles of incorporation (the corporation’s “charter”) during the creation of the corporation.

Furthermore, as each professional order has its own, specific regulation, each professional corporation must be conceived and tailor-made in function of the profession to be exercised. The limits set by the various professional orders are generally related to the following aspects: (a) who may hold shares; (b) who may hold voting shares; (c) who may serve as a director; and (d) limiting the corporation’s activities solely to the practice of the profession. These restrictions, which are not pertinent when creating a corporation for general business purposes, must be inserted in the articles of incorporation of a corporation offering professional services.

### 2.1 Quality Required to Hold Shares

Not all professional orders expressly require restrictions with regards to the ability of individuals to hold shares of a professional corporation. For example, the *Regulation respecting the practice of the profession of bailiff within a partnership or a joint-stock company* does not regulate the persons authorized to hold shares without the right to vote, whereas the *Regulation respecting the practice of the medical profession within a partnership or a company* only authorizes spouses or blood relatives connected with a physician, him/herself holding voting shares, to be shareholders of the corporation.

### 2.2 Quality Required to Hold Voting Rights Attached to Shares

Once more, the set of regulations governing the individuals permitted to hold this category of shares varies depending on the professional order. For example, the *Regulation respecting the practice of the medical profession within a partnership or a company* provides that only a physician can hold voting shares. This therefore requires all voting rights derived from shares to be held by members of the “Collège des médecins du Québec”. Other regulations, such as the *Regulation respecting the practice of the certified general accountancy profession within a partnership or joint-stock company* only require that the majority of the corporation’s voting shares be held by members of the order or by members of the “Association des comptables généraux accrédités du Canada”.

### 2.3 Quality Required to be a Director

The regulations again differ depending on the professional order. Whereas the *Regulation respecting the practice of the medical profession within a partnership or a company* indicates that only a physician may be a director of the corporation, a simple majority is required according to the *Regulation respecting the practice of the profession of certified translator, terminologist or interpreter within a partnership or a joint-stock company*.

### 2.4 Activities Limited to the Practice of the Profession

The articles of incorporation of the corporation must limit the corporation's activities to the exercise of the profession. As such, a corporation of professionals cannot exercise an activity completely unrelated to their craft in addition to the professional services offered. For example, a given corporation could not operate a restaurant or a grocery store in addition to its professional activity.

### Conclusion

Practicing a profession through a corporation can be a highly valuable option for professionals. This business structure offers considerable benefits, not only by limiting liability for obligations other than professional, but also from a taxation perspective. However, particular care must be taken when adopting this vehicle for a professional practice: the regulations of professional orders set specific rules that must be taken into account at the time of the corporation's creation and must be included in the articles of incorporation.

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