

## ***One Is The Loneliest Number: A Sole Proprietorship***

By Scott T. Johnston

I often receive phone calls and emails from potential clients who want to start a “new” business. Upon asking what kind of venture the person is carrying on, it is usually the case that they have already started the “business”, it is just not yet formally organized in a legal sense. Many do not appreciate that when you are providing goods or services for a chance of profit and risk of loss, you *are* in business. The enterprise could be any activity from electrical contracting to designing websites to hairstyling to publishing free monthly newspapers. When you carry on business by yourself, without any partners and without the aid of the distinct legal entity known as a corporation, you already have a form of business structure known as a “sole proprietorship”.

A sole proprietorship is the most basic form of business organization. In fact, one might argue that it is not really an “organization” at all, as, by definition, an organization is a group of people who work together, while a sole proprietorship is simply what the name suggests: *you* are the business. You are all by yourself. You and the business are one and the same. As a sole proprietor you are fully responsible for all debts and obligations related to your venture. Any creditor or concerned citizen with a legal claim against your business will usually have the right to sue you, as the sole proprietor, and collect against and seize your own personal and business assets. In effect, you have unlimited liability to disgruntled customers and malcontent suppliers of the sole proprietorship. So, yes, the stainless steel appliances in your polished new condo, your assemble-at-home Swedish furniture, and your beloved F-150 are all up on the block.

The advantages of a sole proprietorship are mainly that it is cheap to set up and maintain, it provides you with the greatest degree of freedom from government and other regulation (in that there is no legal distinction between you and the business), and that it may provide you with certain tax advantages.

With respect to the first advantage, since you do not actually incorporate a sole proprietorship, the government fees are relatively inexpensive. Essentially, you first apply to reserve an appropriate business or trade name that is acceptable to the Registrar of Companies and then file a Statement of Registration. The proposed name cannot be confusing or misleading, nor can the name create a likelihood of confusion with any existing business names in British Columbia. For example, you are not allowed the trade name “Universal Imports” if “Universal Exports” is already registered due to the likelihood of confusion to a reasonable consumer. A helpful exercise is to scan through your local telephone directory (should you still use one) or to run your proposed business name through a few Internet search engines. That brilliant business name you came up with in the moment of lucidity after a few lagers may already be in use.

The second advantage of a sole proprietorship is that (for better or for worse) you are in direct control of the decision-making process for your business. You own the profits and run the enterprise. Unless you have employees or individuals acting as your agent, only you may enter into contracts and incur expenses and liabilities on behalf of the sole proprietorship. You are captain of your own ship.

Although you should first consult a properly qualified chartered accountant or certified general accountant before choosing any form of business organization, often the third advantage of a sole proprietorship is the possible tax advantage of writing off business losses directly against personal income derived from employment or other sources. That being said, it is imperative that you discuss the appropriate business structure for you with your accountant, as tax circumstances are as unique as the people filing the tax returns. Simply put, one size does not fit all.

With the good also comes the bad. There are also considerable disadvantages to a sole proprietorship. As discussed above, you have unlimited liability to creditors of the business and your personal assets are possibly at risk. As you are the “whole show”, in your absence there is lack of continuity in a sole proprietorship. By contrast, as a corporation is a distinct legal person and its own artificial being, it is potentially immortal, whether you are around to sign the cheques or not. A sole proprietorship may have difficulty in raising capital and acquiring loans and credit facilities from banks and other lenders. Investors tend to prefer order and structure and the unincorporated business of a sole proprietorship may limit the funds available to you. With an incorporated corporation, you have the ability to raise funds by selling shares (a registered ownership interest in the business), known as “equity financing”. While your accountant may determine that there are tax advantages to a sole proprietorship, there is also the potential for a determination that there will be tax disadvantages to you, such as including the profits of the business in your personal taxable income. In addition, even with a business name registration for a sole proprietorship, you are afforded no protection of your business name.

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