

Starting Your Own Business: A Corporation

By Scott T. Johnston

*“It is truly enough said that a corporation has no conscience;
but a corporation of conscientious men is a corporation with a conscience.”*

Henry David Thoreau (1817-1862)

Much ado is made these days about the nature of the structure known as a “corporation”. So, what exactly is a corporation in British Columbia?

A corporation, also known as a company, is created by incorporating under the *Business Corporations Act* of British Columbia. Once incorporated, a corporation is created as a separate and distinct legal entity. Essentially, it is as if the corporation has been born as a natural person: a life with its own name and its own rights and capabilities. Just as parents pour through baby name books to pick a name for their offspring (or alternatively, just name their child “Blue Ivy”, “Moroccan”, or “Bear Blu”), a person who incorporates a company may also choose a name for the newly created natural person. By creating an independent existence for a corporation and providing it with the powers of an individual, it becomes able to own its own property, to take out loans, to sue and be sued, and to enter into contracts on its own. As the corporation is an artificial being, it is therefore an entity that is separate and distinct from the people who own and run its business. Corporations are owned by people (or other corporations) known as shareholders who own and are issued shares in the capital of such companies. The shareholders may change from time to time, but, unlike the human beings owning such shares, a corporation is potentially immortal.

So, if you are currently carrying on business as a sole proprietorship or intend to start a new business venture, what are the advantages of incorporation? The advantages of a corporation are mainly that of the limited liability of its shareholders, the continuous existence of the corporation, and the ability to sell shares and raise capital and funds for your business.

The first advantage relates to the very nature of a corporation discussed above. Limited liability is the concept that no shareholder of a corporation is personally liable for the debts, obligations, defaults, or acts of the corporation beyond the amount paid for its shares. Generally, no shareholder is personally responsible for the wrongdoing of the corporation except for up to the dollar amount of their shares. Therefore, a shareholder has limited liability to creditors of the business and the personal assets of the shareholder are not at risk. For example, if you buy one share of your corporation for which you pay \$1, then your personal liability as a shareholder for the debts of that corporation is limited to that of a loonie.

The second advantage of incorporation is that of perpetual succession or potential immortality. Unlike a sole proprietorship operated by a single individual, a corporation is organized to be able to continue its existence forever. Shareholders may come and go, but the corporation has the ability to go on without interruption in its business.

The third advantage relates to raising capital through selling shares and acquiring loans and credit from banks and other lenders. Upon incorporation, you have the ability to conduct equity financing of your business, in that you may sell shares of the corporation to investors to obtain cash for the enterprise. If you want to sell your business in the future, it is often easier simply to transfer the shares you own to a new shareholder rather than selling assets. In addition, some investors may prefer to lend money to a business with an organized structure, such as a corporation.

Of course, there are also potential disadvantages to incorporation of a business. With respect to the first advantage of limited liability of shareholders, many banks, lenders, and other creditors (such as landlords) often attempt to undermine the protection afforded by limited liability by requiring the shareholders to provide personal guarantees of the responsibilities of the corporation.

The second disadvantage is that of cost and regulation. A corporation may be more expensive to incorporate and set up than other forms of business organizations. Incorporation fees are payable to the Provincial Government. Further, you must pay fees for annual reports and other filings of the corporation every single year in order to maintain its existence in British Columbia. You will have an ongoing responsibility to maintain certain records and to file specific information about changes to the corporation. As a corporation, the *Business Corporations Act* of British Columbia governs your business, and you must comply with its regulations.

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