

Regulatory and Legal Issues When Starting Up

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After completing this chapter, you should be able to:

- Understand different available methods for conducting business as a paralegal in Ontario, including in the form of a sole proprietorship, a general partnership, a limited liability partnership, and a professional corporation.
- Explain the advantages and disadvantages of operating a sole proprietorship, and of conducting business in partnership.
- Describe the difference between a limited liability partnership and a general partnership, and a partnership and an association.
- Explain the advantages and disadvantages of conducting business as part of a professional corporation.
- Identify when registration of a business name is necessary.
- Identify the various licences a business may require.
- Explain the advantages and disadvantages of home offices.
- Understand the importance of insurance for paralegals and know what type of insurance is mandatory.

Business Forms

When starting a business, you will need to decide what form your business will take. You may decide to operate as a sole proprietorship, a partnership, or a professional corporation. It is important to recognize that not all methods of organizing businesses are open to paralegals practising in Ontario. A common form of business organization that is not available to those paralegals is the corporation, although paralegals may organize their businesses as professional corporations. The distinction between corporate forms that matters here will be explained in this chapter. As you will see, each business form has unique advantages and disadvantages. It is also possible to change the form of your business over time. A business that begins as a sole proprietorship may later become a partnership and, still later, could become a professional corporation.

Sole Proprietorship

A sole proprietorship is the simplest form that a business can take. Just as the name suggests, a sole proprietorship is owned and managed by one person. This means that the sole proprietor has the freedom to make decisions that directly affect the business and to manage risks associated with the business. Sole proprietorships are relatively easy to set up and to terminate. The only legal rules for setting up a sole proprietorship involve business name registration and business licensing.

Despite the relatively simple and informal set-up procedures involved, sole proprietorships have their disadvantages—primarily, unlimited personal liability. This is because there is no legal separation between the owner of the business and the business itself. A sole proprietor is personally liable for any debts incurred by the business. This means that paralegals operating as sole proprietors can lose personal assets, such as their cars or homes, and be forced into personal **bankruptcy** if sued successfully or if unable to pay their business debts.¹ The paralegal's inability to pay those debts as they become due is called **insolvency**.²

In addition, since there is no legal separation between the business and its owner, events such as the sole proprietor's incapacity or death will result in the dissolution of the sole proprietorship. The personal bankruptcy of a sole proprietor is also likely to result in the dissolution of the sole proprietorship.

Sole proprietors are personally responsible for performing all obligations incurred in the course of the operation of their businesses. In addition, they bear exclusive responsibility for any and all civil or criminal wrongs they commit in the course of operating their businesses, and can be held personally responsible for acts committed by their employees in the course of their work. In addition to the law concerning vicarious liability of employers for the acts of their employees committed in the ordinary course of their work, Rules 8.01(1) and (3) of the *Paralegal Rules of Conduct* ("the Rules")³ provide that the paralegal is responsible for the business entrusted to him or her by clients and for supervising employees to whom particular tasks have

bankruptcy

a legal process governed by the *Bankruptcy and Insolvency Act* for a person who can no longer pay back debt; the person who owes the debt assigns all assets—with some exceptions—to a Licensed Insolvency Trustee who sells it or uses it to help pay the debt to the creditors

insolvency

the inability of a debtor to pay debt as it is due

1 Office of the Superintendent of Bankruptcy Canada, "Definitions," online: <<https://ic.gc.ca/eic/site/bsf-osb.nsf/eng/br01467.html>>.

2 Jan D Weir & Fran Smyth. *Critical Concepts of Canadian Business Law*, 6th ed (Toronto: Pearson Learning Solutions, 2015).

3 Law Society of Upper Canada, *Paralegal Rules of Conduct* (1 October 2014; amendments current to 2017), online: <<https://www.lsuc.on.ca/paralegal-conduct-rules>>.

been delegated. Guideline 18 provides more detailed information concerning supervision of staff, and By-Law 7.1 also deals with supervision of staff, as well as students, by licensees. These obligations will be discussed in more detail in Chapter 7. The liabilities of paralegal sole proprietors include (but are not limited to) occupier's liability with respect to any injuries that occur on the premises, such as slip and fall, and professional liability for any harm caused to a client as a result of errors or omissions made by the paralegal or his or her employees.

Consider the issues raised in the following scenario.

PLANNING FOR PRACTICE

Sole Proprietorship

Hank Nolan obtained his paralegal licence in March 2014. He was eager to begin his practice, but with student debt and little start-up funding available, he wanted to do so in the simplest, most economic fashion. He chose to set up shop as a sole proprietorship specializing in landlord and tenant matters. Eventually, as the practice grew, took on additional staff and perhaps more paralegals, he would explore other business structures, such as a professional corporation. But that was down the road.

Rather than choose a business name, which would require registration through a Master Business Licence, he chose to initially operate under his own name.

Nolan opened up a separate chequing account at his bank under his name, registered for a GST number under his name and Social Insurance Number, and signed up for a new telephone and fax line under his name. Everything was under his own name. At tax time, he was required to report all income from his practice on his personal income taxes (though he would also be reporting all of his business expenses).

He knew he would be at risk, but he was quickly up and running and taking on clients, all with little money out of his pocket.

Finding clients and managing cases wasn't as easy as Nolan first anticipated—particularly collecting from clients. Several months passed, and with student loan and car payments to make, he wasn't able to remit the three quarterly HST payments he reported to Canada Revenue Agency. He received a letter from CRA threatening action against him, including placing a lien on his car or garnishment of wages if he did not pay the amounts due.

As a sole proprietor, his assets are not protected in the event CRA or any other creditor obtains judgment against him related to the business.

Knowing the personal risks his business presented to him, Nolan took a number of steps to safeguard his interests as he tried to build his business.

Instead of taking up-front retainers, he opted to bill clients in stages of a matter, invoicing them after each stage was completed. This saved him setting up trust accounts and running the risk of "mixing" his bank accounts. He also chose only to represent landlords in disputes as his previous experience with landlord and tenant matters was that tenants were more difficult to collect from after billing.

Still, these safeguards didn't shield him from what could have been a significant run in with CRA had he not found money to pay the HST he collected from clients to the government.

Knowing your property, your investments, or even your home could potentially be at risk, do you think you would go into business as a sole proprietor?

Partnership

partnership

a form of business in which two or more persons carry on business together with a reasonable expectation of a profit; also called a general partnership

A **partnership** (also called a general partnership) is a form of business practice in which two or more persons carry on business together with a reasonable expectation of making a profit. Generally, the partners in a partnership all share in the profits or losses of their endeavour. Like sole proprietorships, partnerships are relatively easy to create and terminate.

Section 2 of the *Partnerships Act*⁴ makes it clear that a partnership is considered to exist whenever two or more persons or entities find themselves in a business relationship like the one described above. In many cases, courts have found partnerships to exist even where this was not the intention of the parties involved, or where the parties characterized their relationship as something other than a partnership. Section 3 of the *Partnerships Act* sets out some rules that are to be applied when determining whether a partnership exists. Section 3(3) provides:

3. The receipt by a person of a share of the profits of a business is proof, in the absence of evidence to the contrary, that the person is a partner in the business, but the receipt of such a share or payment, contingent on or varying with the profits of a business, does not of itself make him or her a partner in the business.

The sharing of profits, then, is a key factor in determining whether a partnership exists.

The *Partnerships Act* provides rules that, by default, govern the relationship between partners—for example, that all partners are equal. However, partners may create partnership agreements, overriding these rules by making their own agreements about how to carry on their businesses. A partnership agreement might, for example, specify that profits and losses will be distributed among partners unequally (and describe how), or that only some partners have a role in managing the partnership. Changes to a partnership agreement generally require the partners' unanimous consent.

Anna Baker and Lucas Walker graduated from their paralegal training program the same year. They decided to share office space and bank accounts, and carry on business together. The firm name is Baker and Walker. Anna and Lucas are carrying on business as a partnership.

Like a sole proprietorship, a partnership is a *method* of conducting business but it is not legally a business *entity*—meaning that it has no legal existence apart from the existence of the individual partners. In general, and like sole proprietors, partners in a business bear personal liability for all obligations entered into on behalf of the partnership. Any contracts signed or debts owed by the partnership become *personal obligations* of each partner. Lawsuits may be commenced against the partnership, and any court judgment may be collected from each and all partners personally. This kind of liability, known as **joint and several liability**, is one of the main risks and potential disadvantages of the partnership business form.

Like sole proprietors, partners can be held personally responsible for acts committed by their employees in the course of their work. Individual partners bear the same supervisory responsibilities as sole proprietors with respect to delegation of tasks to employees and supervision of those employees.

⁴ RSO 1990, c P.5.

joint and several liability

shared liability, such that all parties are equally liable for the full amount of the debt or obligation

Owing to the lack of legal separation between individual partners and the partnership, partnerships will be dissolved in the event of the death or insolvency of a partner unless the partnership agreement provides for the continuation of the partnership in these circumstances (s 33 of the *Partnerships Act*).

Because of joint and several liability, trust between the partners in a partnership is very important. Partners have a **fiduciary duty** to one another, which requires them to act with honesty and in good faith, protecting each other's interests very carefully.

Some additional advantages of forming partnerships are the access to additional funding or capital as partners “buy in” to the practice, the ability to share responsibility for decision-making and management of the firm, and the ability to consult others before making decisions that will affect the future growth of the firm. The prospect of being able to become a partner in time (often five to seven years) may also attract paralegals to become employees of particular firms.

In addition to the kind of partnership described above, two other types of partnerships exist: limited partnerships and limited liability partnerships. **Limited partnerships**, which are governed by the *Limited Partnerships Act*,⁵ allow the partners to limit or restrict liability to only some of the partners. In Ontario, this method of business organization is not available to paralegals who provide legal services to members of the public.

In provinces or territories other than Ontario this form of business may be utilized by paralegals. This may be useful if a partnership is seeking investment by a “silent partner” who will not take an active role in the business.

In order to take advantage of the special rules that apply to limited partners, you must file specific forms and information with the government. Limited partnerships must also be identified as such to the public. Finally, limited partners can forfeit the limits on their liability if they participate in the management of their firms.

The third type of partnership, known as a **limited liability partnership**, is governed by the *Partnerships Act*. Sections 44.1 to 44.4 of that Act specifically address limited liability partnerships. Sections 61.1(1)(b),(c), and (d) of the *Law Society Act*⁶ and By-Law 7 operate together to permit paralegals to organize their businesses in this manner. Used by many professionals, the main advantage of these partnerships is that they offer limited liability with respect to the professional negligence of other partners. This means that if one partner is successfully sued for professional negligence, the other partners are *not* jointly and severally liable for the amount of the judgment; only with respect to other types of business debts and obligations, such as non-payment of rent or occupier's liability, are the partners jointly and severally liable. The name of a limited liability partnership must include the words “limited liability partnership” or the abbreviation “LLP.” This is to notify members of the public that the partners are not jointly and severally liable for professional negligence. In addition, pursuant to section 44.1 of the *Partnerships Act*, limited liability partnerships must have partnership agreements specifying that the partnership is a limited liability partnership and stating that the *Partnerships Act* governs the agreement.

The Law Society of Upper Canada (LSUC) permits paralegals to operate in limited liability partnerships, and such partnerships are common in the legal services

fiduciary duty

an obligation, with respect to financial matters, to put the interests of the person owed the duty above one's own interests

limited partnership

a type of partnership that restricts liability to only one or some of the partners, as set out in a partnership agreement

limited liability partnership

a partnership of professionals where not all of the partners are liable for the professional negligence of one or some of the partners

⁵ RSO 1990, c L.16.

⁶ RSO 1990, c L.8, as amended.

industry. By-Law 7 requires that all partners in a limited liability partnership maintain their own professional liability insurance coverage in accordance with By-Law 6.

Each form of business entity has advantages and disadvantages, but liability for others' actions is a key consideration for the paralegals in the following scenario.

PLANNING FOR PRACTICE

Limited Liability Partnership

Carlos Wilson, Angela Watson, and Stanley Clarke graduated together from a paralegal training program in 2010. Each started their paralegal careers in individual practice as sole practitioners. Carlos is highly skilled in small claims litigation and he built up a strong client base in a relatively short time. Angela's strengths are in the accident benefits field and she had built a solid reputation and was receiving a notable increase in referrals. Stanley had worked in-house for a corporation managing provincial offences matters, workplace safety, and employment standards, and was looking to move on to providing legal services to the public.

Two years later the three met for coffee to discuss jointly forming a new paralegal law firm. During their time in school, they found they worked well together and had a strong personal and professional rapport. By combining their individual strengths, they were convinced they had the makings of a successful legal practice.

Joining forces would also be financially beneficial to each paralegal, they determined. Instead of maintaining individual practices and each incurring expenses for office space, bank fees, equipment costs, and office expenses, they would be able to share these resources and be in a position to hire staff to assist them with handling their caseloads effectively and, in turn, provide better service to clients.

Once they agreed on taking the plunge and starting their own firm, the first order of business was determining the form this new firm would take. They briefly explored the possibility of forming a general partnership, where each would be entitled to share equally the profits of the business, but would also jointly take on full liability for each other's negligence. They were not prepared to go that route, particularly since both Carlos and Angela had had previous clients threaten to sue them when those clients did not like the outcome of their matters. Instead, Angela, Carlos, and Stanley opted to form a limited liability partnership.

The three paralegals drafted their partnership agreement spelling out the specific details of their business. This included establishing how profits would be allocated among them, what percentage of expenses would be paid by each, what resources would be required and how they would be shared, the financial structure of the business, who would have signing authority on cheques, and rules concerning any borrowing for the business. They also adopted specific protocols about taking on clients, maintaining confidentiality, avoiding conflicts, and ensuring clients they take on fit with their individual strengths.

Each paralegal would maintain his or her own professional liability insurance in compliance with By-Law 7 under the *Law Society Act*. They would also jointly maintain content insurance for the office.

The agreement states that the new firm is governed by the *Partnerships Act* and will be known as Wilson, Watson and Clarke LLP. The firm's name was registered and appears on all of its letterhead, correspondence, marketing, and documentation.

Corporation

A **corporation** is a business organization that has a legal existence separate and apart from that of the individuals who created it or who operate it.

Corporations are characterized by a specific and required division of powers. They are owned collectively by shareholders, who are entitled to a share of corporate assets. Shareholders elect directors to manage the corporation, appointing and hiring officers. Officers are the employees of a corporation; they are responsible for its operation on a day-to-day basis. The same individual(s) can act in all three capacities (shareholder, director, and officer), but the titles and roles of each position remain distinct.

The primary advantages of corporations are flexibility and limited liability. Flexibility results from the fact that the owners of the business can change without altering the business itself; contracts and staffing, among other things, remain in place through changes in ownership. Regarding limited liability, in general the owners (shareholders) of a corporation are not personally liable for the debts and liabilities of the corporation. This means that only the assets owned by the corporation may be used to satisfy its liabilities, not the owners' personal assets.

Although advantageous to entrepreneurs because of the limited liability they provide, corporations are more complex to set up and maintain than partnerships or sole proprietorships. Those who own, direct, or operate corporations must file annual reports, and shareholders must hold periodic meetings to elect directors. As a result of the different individuals and procedures involved, entrepreneurs generally have less control over a corporation than over a sole proprietorship.

Professional Corporations

Paralegals and lawyers who wish to provide legal services in Ontario and who have decided to incorporate for that purpose may only do so through a particular kind of corporation called a **professional corporation**. Sections 61.0.1(1)(b) and (c) of the *Law Society Act* specifically permit paralegals to provide legal services through professional corporations. The name of the professional corporation must include the words "Professional Corporation." A professional corporation must hold a valid **certificate of authorization** as outlined in section 61.0.7 of the *Law Society Act* and By-Law 7, part II, sections 5 and 6, and is governed by certain rules. The professional corporation must apply for, and obtain, the certificate of authorization from the LSUC (By-Law 7, part II, s 5). There are certain conditions of receiving the certificate, including a requirement that the corporation is in compliance with the *Business Corporations Act*⁷ and that all individuals who will be providing legal services on behalf of the corporation are properly licensed with the LSUC.

Paralegals whose businesses do not comply with the LSUC certificate and other requirements risk losing their licences.

Most significantly, the *Business Corporations Act* imposes personal liability in certain circumstances on individuals who practise within professional corporations. Sections 3.1 to 3.4 of that Act set out a framework under which professionals are

corporation

a business entity that has a legal existence separate and apart from that of the individuals who created it or who operate it

professional corporation

a corporation that protects shareholder-owners against personal liability but not against professional liability; must be authorized by the LSUC

certificate of authorization

a certificate issued by the LSUC that permits a corporation to provide legal services

⁷ RSO 1990, c B.16.

required to perform tasks diligently and may be personally liable for failing to meet the appropriate standard. In this way, professional corporations are similar to limited liability partnerships—while professional corporations will protect the shareholder-owners against liability for general debts or liability, such as a slip and fall on the premises, they will not protect them against liability for professional negligence, such as missing a limitation period. This exception preserves accountability and protects clients.

Unlike a partnership or sole proprietorship, a corporation does not automatically come into being but must be “incorporated”—that is, created by a prescribed legal process set out in statute and in regulations. Corporations may be created under the federal corporate law statute, the *Canada Business Corporations Act*,⁸ or under provincial statutes. As previously mentioned, in Ontario, the relevant statute is the *Business Corporations Act*.

articles of incorporation

a document filed with the appropriate government authority that provides for incorporation as of right, provided that the required steps are followed

The LSUC requires the corporation to be incorporated prior to the application for the certificate of authorization. A copy of the business’s **articles of incorporation** must be submitted with that application. That certificate of authorization must be obtained before the legal services are provided by shareholders and/or employees of the professional corporation. In addition, shareholders in paralegals’ professional corporations must be persons licensed to provide legal services in Ontario. Licensees who are applying for certificates of authorization to form professional corporations must be in good standing with the LSUC.

It is not as easy to “wind up” or terminate a professional corporation as it is to dissolve a partnership or sole proprietorship. Sections 10 and 14 of By-Law 7 require the professional corporation to apply to the LSUC for permission to surrender the certificate of authorization and to receive that permission prior to winding up that professional corporation.

Darlene Royal and Kyle Morton are licensed paralegals who have decided to carry on business together, sharing office space, equipment, clients, and bank accounts. They have also obtained articles of incorporation and have applied for a certificate of authorization from the LSUC. If the certificate is issued, Darlene and Kyle will have formed a professional corporation.

multi-discipline practice (MDP)

Lawyers and licensed paralegals may form a Multi-Discipline Practice with professionals who practise a profession, trade, or occupation that supports or supplements their practise of law or provision of legal service (e.g., accountants, tax consultants, trademark and patent agents, etc.)

Multi-Discipline Practices

Part III of By-Law 7 permits licensees (including partnerships and professional corporations) to form associations or partnerships with non-licensees who practise professions that support or supplement the provision of legal services—for example, accountants. These are known as **multi-discipline practices (MDPs)**. An application for approval of the MDP is submitted to the LSUC (at the time of writing, no fee) and once approved, the licensees who formed the MDP must submit a Report on Multi-Discipline Partnership by January 31 of each year. The non-licensees in the MDP must agree to be bound by the LSUC *Paralegal Rules of Conduct, Paralegal*

⁸ RSC 1985, c C-44.

Professional Conduct Guidelines (“the Guidelines”),⁹ and By-Laws,¹⁰ and the *Law Society Act* and its regulations in the same way that paralegals are bound. Rule 8.01(5) specifically requires paralegals to

ensure that non-licensee partners and associates comply with these rules and all ethical principles that govern a paralegal in the discharge of his or her professional obligations.

Finally, Rule 3.04(14) requires paralegals to ensure that the rules concerning conflicts of interest are complied with by those non-licensee partners and associates.

Associations

An association is two or more paralegals who typically share office and meeting space, reception, support staff, office equipment, and administrative facilities but who do not enter into a partnership agreement or form a professional corporation. Rule 8.02(2), which sets out restrictions concerning the provision of legal services, must be respected and the paralegal must be careful not to mislead clients into believing that the paralegals are members of the same firm. Paralegals operating in association will share costs, but do not share profits (a key factor in the determination of whether a business is a partnership rather than an association).

Operating in association with one or more paralegals offers several advantages:

- it may lead to referrals from those paralegals,
- it reduces expenses, and
- it provides access to other paralegals who may have expertise in areas in which the paralegal does not practise.

Additional LSUC Requirements

In addition to ensuring compliance with the laws and regulations that apply to all Canadian and Ontario businesses, paralegals must comply with the LSUC rules for choosing a business form and starting their businesses outlined in By-Law 7. For example, paralegals who operate limited liability partnerships must identify their partnerships as such, and each partner must carry professional liability insurance in accordance with By-Law 6, part II, section 12(1). With regard to name requirements, corporations that provide legal services are regulated, “professional” corporations whose names are governed by section 3 of By-Law 7. For example, only companies that include several licensed professionals may use the term “and associates.” Paralegals may apply to the LSUC for a certificate stating that the Society does not object to a particular proposed corporate name (ss 4(1) and (2)). At the time of writing, there is no fee for this application.

⁹ Law Society of Upper Canada, *Paralegal Professional Conduct Guidelines* (1 October 2014; amendments current to 2016), online: <<http://www.lsuc.on.ca/paralegal-conduct-guidelines>>.

¹⁰ Law Society of Upper Canada, *By-Laws*, online: <<https://www.lsuc.on.ca/by-laws>>.

The Rules also apply to the naming of paralegal businesses. Rule 8.03(1) specifically states that the word “marketing” includes the name of the business. Rule 8.03(2) then sets out the restrictions on marketing:

- (2) A paralegal may market legal services only if the marketing
 - (a) is demonstrably true, accurate and verifiable;
 - (b) is neither misleading, confusing, or deceptive, nor likely to mislead, confuse or deceive; and
 - (c) is in the best interests of the public and is consistent with a high standard of professionalism.

By-Law 7, part II, section 3 essentially replicates the above provision in the context of professional corporations.

In addition, the LSUC has prepared a document entitled “Paralegal Firm Name Guidelines” that it will consult as it determines whether a firm name is acceptable (see Box 3.1).

Finding Information

As a paralegal, you must be familiar with the Rules, the Guidelines, the LSUC By-Laws, and all other regulations that apply to your business. Continuing education through legal education seminars is recommended to keep your professional knowledge in these areas current. You can also find information regarding incorporation, corporate filings, tax matters, and so on online. Use only official websites, such as government websites or the LSUC’s website. The LSUC’s Resources for Paralegals page (<<https://www.lsuc.on.ca/for-paralegals/resources-for-paralegals>>) contains information on practice management topics such as business structures.

Business Name Registration

Section 2(2) of Ontario’s *Business Names Act* requires the names of sole proprietorships to be registered with the Ministry of Government and Consumer Services only where these differ from the legal name of the sole proprietor.¹¹ For example, if your name is Frank Oz and you operate under the name “Frank Oz, Paralegal,” no registration is required. However, if you wish to operate as “Frank’s Legal Services,” you must register this name with the Central Production and Verification Services Branch. The same is true of partnerships (ss 2(3) and (4)). There is an application form designated for sole proprietorships and partnerships (Form 1).¹²

11 ServiceOntario, “Registering Your Business Name” (22 August 2016), online: <<https://www.ontario.ca/page/registering-your-business-name>>.

12 Registration Form 1 under the Business Names Act—Sole Proprietorship/Partnership, available on the Ontario Central Forms Repository website at <<http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf?opendatabase&ENV=WWE>>.

Box 3.1 Paralegal Firm Name Guidelines

The following guidelines are used by staff to assist in determining whether a firm name, or a proposed firm name, complies with the *Law Society Act*, the Law Society's By-Laws, and the *Paralegal Rules of Conduct*. Each firm name, or proposed firm name, is considered on its own merits on a case-by-case basis.

1. A firm name may not include language that would imply a connection to a specific geographic location. Legal clinics under the *Legal Aid Service Act, 1998* may continue to use names that indicate a connection with the communities they serve, in keeping with the purpose of the clinic structure.
2. A firm name may not include language that would imply a connection with a government agency or with a public or charitable legal services organization (i.e. legal clinic).
3. A firm name may not include language that would imply a connection with a cultural, racial, ethnic, or religious group or organization. Legal clinics under the *Legal Aid Service Act, 1998* may continue to use names that indicate a connection with the communities they serve, in keeping with the purpose of the clinic structure.
4. A firm name may not contain language that would imply a connection with any other entity or organization not already enumerated (e.g., University Legal Services Clinic, Osgoode Hall Paralegal Office, etc.).
5. A firm name may not include language that would imply that the firm was the only or the best firm (e.g., "The" Paralegal Firm).
6. A firm name may not include language that would imply a comparison between the services performed by that firm and other firms (e.g., Best Legal Services Firm, Greatest Paralegal Firm, etc.).
7. A firm name may not contain language that would be misleading as to the number of paralegals practising with the firm, or their status in the firm.
8. A firm name may not include language that would imply the existence of a partnership, association, or affiliation between paralegals when no such relationship exists (i.e., two sole practitioners who share office space carrying on business under a common firm name).
9. A firm name may not include language that is specifically prohibited by statute (e.g., *Business Names Act, Business Corporations Act, Ontario Human Rights Code, Partnerships Act, Patent Act, Trade-marks Act, Copyright Act*).
10. A firm name may not include language that is demeaning, degrading, or derogatory.
11. A firm name should not be too general or only descriptive (e.g., Landlord and Tenant Paralegal Firm, Traffic Tickets Legal Services Firm, etc.).
12. The name of a professional corporation must include the words "Professional Corporation" or "Société professionnelle" and may not include the word "Limited," "Limitée," "Incorporated," or "Incorporée," or the corresponding abbreviations "Ltd.," "Ltée," or "Inc."

Source: Law Society of Upper Canada, "Paralegal Firm Name Guidelines," online: <<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147491158>>.

NUANS (Newly Upgraded Automated Name Search)

a type of search that checks the name of the proposed business against business names that are already being used; trademarks are also checked

Before registering a business name (other than the name of the sole proprietor or partners in a partnership or a numbered name if a corporation), a **NUANS (Newly Upgraded Automated Name Search)** is conducted. This checks the name of the proposed business against business names that are already being used. Trademarks are also checked. This is done so that the registered name will not duplicate an existing business's name. For corporations, the NUANS must be dated within 90 days of the submission of the articles of incorporation. NUANS are obtained from private search companies such as Dye & Durham. The fee for electronic registration of a business name is lower than the fee for registering the business name in person or by mail. If you fail to register a business name (other than your own name) as a sole proprietor, you may face a fine of \$2,000 (*Business Names Act*, s 10(1)).

Partnerships must register their business's name with the Ministry of Government and Consumer Services, Central Production and Verification Services Branch, where these are not simply a list of the partners' names. As mentioned above, there is an application form designated for partnerships and sole proprietorships (Form 1). Section 44.3 of the *Partnerships Act* requires limited liability partnerships to register their firm names under the *Business Names Act*. Because the names of corporations are registered at the time of incorporation, corporations are not required to do a separate name registration.

Taxes and Federal Business Registrations

When choosing a form for your business, you should consider the treatment of each form by the income tax laws of Canada. Tax issues can significantly affect the profitability of a business.

As noted, in a sole proprietorship there is no legal distinction between the owner of the business and the business itself. Therefore, on their personal income tax returns, sole proprietors include the profits or losses of their business along with their income from any other sources. Similarly, because a partnership has no separate legal existence from that of the partners, each partner reports his or her share of the partnership's profits on his or her personal income tax return. For sole proprietors acting in association with other paralegals, net professional income, which amounts to fees billed less expenses incurred to earn those fees, is included in their income for tax purposes. The individual's income tax filing deadline applies to sole proprietors. In general, the corporate tax rate is lower than that applied to individuals, which means that when a sole proprietor or partner's business is making a profit, this can be a real disadvantage. However, if the business is operating at a loss (as many businesses do during the first two to three years), this can be an advantage because the business losses can be offset against other income earned by the sole proprietor or partner, reducing the amount of income tax payable.

Incorporating a business entails tax advantages. As noted above, corporations are taxed separately from their owners, and in general the corporate tax rate is significantly lower than the individual tax rate. However, there are costs associated with obtaining this lower tax rate. The Canada Revenue Agency (CRA) can provide information and assistance regarding tax issues with respect to corporations, but it

is advisable for the owners of a corporation to enlist the services of an accountant to ensure that income taxes are filed properly and that the appropriate financial records are maintained. The accountant can also assist the corporation to determine when the corporation's year-end will be for tax purposes. Finally, moneys paid to shareholders as dividends or to officers or directors in remuneration—for example, in the form of salaries or bonuses—are taxable as income to the individuals who receive them.

A paralegal business that has employees or that has provided more than \$30,000 worth of legal services in a year will require a business number (BN). A BN is obtained from the Canada Revenue Agency. That BN is required to open a program account such as a payroll account. If your business will have employees, then before you hire those employees, you will need to open a payroll account to file any source deduction remittances, such as employment insurance, income tax, and Canada Pension Plan remittances on behalf of those employees. A BN is required in order to collect and remit GST/HST. The BN is also required to apply for an income tax number (professional corporations only). As a separate legal entity, the professional corporation is taxed separately from its shareholders.

In addition, pursuant to section 125(7) of the *Income Tax Act*,¹³ Canadian-controlled small businesses, known as “Canadian-controlled private corporations” or CCPCs, may qualify for lower tax rates. For CCPCs claiming the small business deduction, the net tax rate is currently 10 percent. On January 1, 2018 it will decrease to 9.5 percent, and on January 1, 2019 it will decrease to 9 percent. Because Ontario has entered into an agreement with the CRA with respect to corporate tax collection, the provincial income tax rate for income eligible for the federal small business deduction is 4.5 percent. There is generally a limit imposed on the reduced tax rate, but this can be a significant advantage. Detailed information on the tax rates can be found on the Canada Revenue Agency website. A professional corporation that qualifies as a CCPC may choose to pay salaries or bonuses to its shareholders to reduce the professional corporation's income in order to qualify for the lower tax rate.

Annual Filing with the LSUC

By-Law 8, part II, section 5 requires all licensed paralegals to submit an annual report to the LSUC each year before March 31. The report asks paralegals to provide details regarding their provision of legal services, as well as financial activities, during the relevant year. There is no fee for filing. However, failure to file in a timely manner will result in a \$100 late fee and may result in the paralegal's administrative suspension by the LSUC.¹⁴

¹³ RSC 1985, c 1 (5th Supp).

¹⁴ See Law Society of Upper Canada, “File the Paralegal Annual Report,” online: <<http://www.lsuc.on.ca/For-Paralegals/About-Your-Licence/File-the-Paralegal-Annual-Report>>.

Licences

In addition to the LSUC's licensing requirements for paralegals, additional business licensing requirements may apply to businesses in particular provinces or municipalities. All businesses in Ontario are subject to licensing laws, and each municipal government has the authority to issue business licences within its geographic area or jurisdiction.

If you wish to operate a business, you are responsible for determining which local by-laws, regulations, and other rules will affect your business. The best way to find out is by contacting the clerk of the municipality in which your business will operate. You can find telephone numbers on the appropriate municipal government's website or in the telephone directory's blue pages.

Licences—Sole Proprietorships and Partnerships

In Ontario, at the time of registration of the business name, sole proprietors and partnerships will be issued a Master Business Licence, which is valid for five years. The Central Production and Verification Services Branch of the Ministry of Government and Consumer Services also assigns a Business Identification Number to the business once the business name has been registered. In the event of a dissolution of the sole proprietorship or partnership, the business name registration should be cancelled. This can be done online and there is currently no fee to cancel that registration. Professional corporations do not require this because they are assigned corporation numbers upon incorporation.

Licences—Franchises

A **franchise** is not technically a separate business structure, but a licence given by a **franchisor** to a **franchisee**. A franchise is a licence granting the franchisee the right to use trademarks, trade names, and business systems while delivering products or services—here, legal services. In return for granting this right, the franchisor (the one who grants the licence) is given the right to receive royalties from the franchisee (the one who receives the licence). There are some special considerations related to franchises, but a detailed discussion of those special considerations is beyond the scope of this textbook. Several paralegal businesses in Ontario operate as franchises.

franchise

a licence granting the right to use trademarks, trade names, business methods, and systems for products and services

franchisor

the one who grants the licence

franchisee

the one to whom the licence is granted

Zoning and Building

Zoning refers to the legal use of property. Zoning laws can limit where legal services businesses may operate and set conditions for their operation. Canada Business Ontario provides useful information regarding the municipal requirements for starting a business, including the applicability of zoning laws. Prospective paralegal entrepreneurs in Ontario should consult with their local municipal governments to determine what zoning laws may apply to them. There may also be by-laws that apply to signage and parking.

In addition to zoning laws, Ontario's municipalities administer laws and regulations with regard to buildings. The *Building Code*¹⁵ governs both the construction of new buildings and the maintenance and renovation of existing ones, including office premises.

The Home Office

The increasing use of technology in the provision of legal services has made law-related professions more portable, and home-based businesses are viable options for more legal services providers. Operating a business from home has many appealing aspects. You will save significantly on overhead costs, especially at the outset, and will not have to spend time commuting. In addition, you can claim a portion of your household expenses—such as heating and mortgage payments—against your business income for income tax purposes.

However, home offices have their disadvantages, such as encroachment on personal time and space; the fact that it may be more difficult to “leave” work may increase stress levels. There may also be safety issues with respect to clients visiting you at home. It may be possible to rent boardroom space for this purpose on an as-needed basis in a local office building, your condominium corporation, or a public library.

Before setting up a home office, you may wish to confirm that small home businesses are allowed by the zoning by-laws in your neighbourhood and, if you live in a condominium corporation, by the condominium's by-laws. You should also update your home insurance policy to ensure coverage of your business assets. Additional issues concerning maintaining client confidentiality will be discussed in Chapter 6.

Insurance

The LSUC requires paralegals who practise in Ontario to carry errors and omissions insurance, also known as professional liability insurance (By-Law 6, part II, s 12(1)). At the time of writing, paralegals must carry \$1 million in liability insurance and \$2 million in aggregate liability insurance (where there are multiple claims). In addition, the maximum deductible amount must be reasonable as it pertains to the financial resources of the practising paralegal. Visit the Frequently Asked Questions section of the LSUC's website for a list of providers who meet the LSUC requirements. The LSUC also requires that it be added to the policy as an additional insured and that it be given written notice a minimum of 60 days before the policy is cancelled or amended.

You will also need to insure your premises and the contents of your office, and obtain occupier's liability insurance to protect you in the event that anyone is injured while at your office. If you are renting office space, your lease agreement will set out the insurance coverage required by your landlord. Your insurer will likely ask for a copy of your lease in order to ensure that you are purchasing appropriate coverage.

15 O Reg 332/12.

You may wish to consider purchasing business interruption insurance, which will provide you with compensation in the event that you are unable to operate for a period of time as a result of a fire or other calamity. Finally, as a self-employed person, you should consider purchasing health and dental, life, and—most importantly—disability insurance, for both yourself and any employees.

Conclusion

Paralegals in Ontario may conduct their business in the form of a sole proprietorship, as either general partnerships or limited liability partnerships, or in the form of a professional corporation. Each business form carries advantages and disadvantages, and each is governed by different legislation, including federal and provincial laws and regulations. By-Law 7 outlines LSUC requirements for different business entities.

Although relatively simple to set up and wind down, sole proprietorships have, among other disadvantages, unlimited personal liability, meaning that sole proprietors can lose personal assets if unable to pay their business debts.

In partnerships, two or more persons carry on business together with a reasonable expectation of making a profit. Sharing marketing, premises, and staff allows them to conduct their business with greater efficiency. Like sole proprietors, partners bear personal liability for all obligations entered into on behalf of the partnership. They may be held jointly and severally liable in any court judgments, including claims of professional negligence.

Limited liability partnerships offer limited liability with respect to the professional negligence of partners, meaning that if one partner is successfully sued, the other partners are not jointly and severally liable for the amount of the judgment.

Paralegals may also provide legal services in association with other paralegals, sharing the costs of leasing office space, renting or buying office equipment and supplies, and employing support staff. In an association those paralegals do not share profits earned by the business. Paralegals may also join other professionals to form multi-discipline practices.

Paralegals and lawyers who wish to operate professional corporations must obtain a valid certificate of authorization from the LSUC. The *Law Society Act* imposes personal liability in certain circumstances on individuals who practise within professional corporations—they must perform tasks diligently and may be personally liable for failing to meet the appropriate standard.

Operating your business from home will save you money and time in overhead costs and commuting, but a home office may encroach on your personal time and space, and raise safety concerns with respect to client visits. Regardless of the type of business you operate or where you operate from, you will require errors and omissions insurance and should consider what additional types of insurance—such as occupier's liability, life, health and dental, and disability insurance—you may require or may wish to obtain.

KEY TERMS

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 multi-discipline practice (MDP), 28
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USEFUL URLS

Building Code, O Reg 332/12. <<http://canlii.ca/t/52vfv>>.

Business Corporations Act, RSO 1990, c B.16. <<http://canlii.ca/t/52vtz>>.

Canada Business Corporations Act, RSC 1985, c C-44. <<http://canlii.ca/t/52f1j>>.

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Canada Revenue Agency. "Corporation Tax Rates." <<http://www.cra-arc.gc.ca/tx/bsnss/tpcs/crprtns/rtse-eng.html>>.

Canada Revenue Agency. "Do You Need a Business Number or a Program Account?" <<http://www.cra-arc.gc.ca/tx/bsnss/tpcs/bn-ne/wrks-eng.html>>.

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Law Society of Upper Canada. *Paralegal Rules of Conduct* (2007, as amended). <<http://www.lsuc.on.ca/paralegal-conduct-rules>>.

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Ministry of Municipal Affairs and Ministry of Housing. "Ontario Building Code." <<http://www.mah.gov.on.ca/Page7393.aspx>>.

REVIEW QUESTIONS

1. What is a sole proprietorship?
2. What is a partnership?
3. What is a professional corporation?
4. What is a franchise? Can you identify three Ontario paralegal firms that are franchised?
5. What is the difference between a partnership and an association?
6. What is the chief advantage of a limited liability partnership?
7. What is an advantage available to small businesses that are Canadian-controlled private corporations?
8. In a limited liability partnership, are partners responsible for contractual debts incurred by the partnership?
9. What is the amount of professional liability insurance that practising paralegals in Ontario are currently required to carry?
10. If a partnership's name consists only of the names of the partners, must it register the firm name pursuant to the *Business Names Act*?

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SCENARIO-BASED QUESTIONS

1. Name That Business

Samantha Brooks has decided to open a paralegal firm and to organize it as a sole proprietorship. For the first two years she is going to work alone. She is trying to come up with a name for the business. These are her top five choices:

1. Ottawa Legal Services
2. Top Ranked Legal Services
3. Samantha Brooks and Associates
4. Samantha Brooks LLP
5. Small Claims Paralegals

Consult the Paralegal Firm Name Guidelines to determine which, if any, of these names is likely to be acceptable to the LSUC.

2. Bringing in the Business

Maxwell Lake is a newly licensed paralegal. He has hired a receptionist for his brand new office but has no other employees. Maxwell thinks he will get more business if he puts "Maxwell Lake & Associates" on his letterhead. Should Maxwell do this? Why or why not?

3. Partner Problem

Monique Lachance is a licensed paralegal. For the first two years after opening her practice Monique ran it out of her home. Monique's cousin, Pierre Moran, has just obtained his paralegal licence. Before he was licensed, Pierre did his placement hours under Monique's supervision. Monique has decided that it is time to expand her business and that she will do this by giving Pierre a job. She feels that he needs further training before he accepts clients of his own and initially plans to employ him as a receptionist and file clerk, and to gradually give him more responsibility. If Pierre proves himself to her, she will entrust him with his own clients. Does this mean that Pierre is Monique's partner? Why or why not? Does your answer change if, 18 months later, Pierre is entrusted with his own clients? Why or why not?

4. Identification Please

John Jones and Lucy Lee are licensed paralegals. They share an office, receptionist, telephone number, photocopier, and all office equipment. Retainers received from new and existing clients are paid into one trust account. John and Lucy use letterhead and business cards that say "Jones and Lee licensed paralegals." What type of business entity is "Jones and Lee"? Why did you reach that conclusion?

5. Expense Arrangements

Priyah Kaur and Leon Noble are licensed paralegals. Priyah has been licensed for five years while Leon has been licensed for three years. Priyah's practice deals mainly with administrative law while Leon's largely deals with provincial offences matters. For three years their offices were across the hall from each other in a busy office building. Priyah, whose practice is very busy, sometimes refers clients to Leon when her clients consult her about matters outside her area of expertise. Leon and Priyah have become friendly and recently decided that they can save a great deal of money by leasing one suite in their building. They will be sharing meeting rooms and a receptionist, and they have agreed that Priyah will pay for 60 percent of the office equipment expenses from her business's general account while Leon will pay for 40 percent of those expenses. What type of arrangement is this? Explain your conclusion.