



# KEY LEGAL ISSUES TO CONSIDER WHEN STARTING A BUSINESS

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Society (QVLS)



## **About Queen's Venture Law Society (QVLS)**

The QVLS is a student run club that was created to expose law students at Queen's University to the legal dimensions of entrepreneurship, facilitate innovative thinking in the law, and to connect students to emerging ventures and professionals in the field.

The QVLS will provide a balanced exposure to everything the field has to offer- from a big-firm perspective to a community-centered style of social entrepreneurship.

## **About Queen's Business Law Clinic (QBLC)**

At the Queen's Business Law Clinic (QBLC), students can explore the dynamic field of business and intellectual property law by providing legal assistance to business start-ups, not-for-profits and charities in southeastern Ontario.



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# Legal Issues to Consider When Starting a Business



## Overview

There are many legal issues that may arise when starting a business. These issues include, but are not limited to, choosing the right business structure, protecting intellectual property (where applicable), borrowing money and hiring employees - to name a few!

## Business Structure

A business founder must first identify an optimal business structure. Four common business structures include sole proprietorships, partnerships, and corporations. Each structure has advantages and disadvantages, so it is important to see a lawyer or business professional to determine which type of structure best suits your vision.

## Trademarks and Intellectual Property (IP)

Pursuant to the Trademarks Act a trademark is:

- (a) a mark that is used by a person for the purpose of distinguishing or so as to distinguish goods and services manufactured, sold, leased, hired, or performed by him from those manufactured, sold, leased, hired or performed by others,
- (b) a certification mark,
- (c) a distinguishing guise
- (d) a proposed trade-mark

Intellectual property (IP) is the right to ideas, inventions and creations that allows a business to prevent competitors from copying the business's products and services. It is important to ensure that all trademarks and intellectual property owned by a new business are legally registered, especially where a business wants to scale globally. You will need to determine the right name for your business, and whether your business ideas may have already been patented by third parties. An IP lawyer can advise on determining the right options for a young business's needs .

## Borrowing Money

Most businesses will need to borrow money to get their ideas off the ground. Borrowing money is a contract in law, whether it is from a bank or another financial institution. As a founder, you will need to determine what kind of loan your business needs, what interest rate you can obtain, whether you will need a guarantor, whether collateral required, etc. Borrowing money is often done at the beginning of a business, but it can translate into a long-term commitment.



## Equity Financing

If your business is thinking of selling shares to raise capital, it is extremely important to see a lawyer to structure the transaction.. This can include selling shares privately and selling shares on a stock exchange when your business is further established. A lawyer will help you to draft the necessary documents reflecting the terms that you and your investors agree on.

## Employees v Independent Contractors

A founder must also consider the issue of hiring employees. Ontario and other provinces each have their own legislation that must be followed, and which set out requirements like minimum wage, vacation pay etc.

One common area of confusion for founders is deciding whether to hire employees or independent contractors. An employee is someone that only works for the businesses The business decides what the job of the employee is, what to pay the employee, when and how the work must be completed. An independent contractor is usually in business themselves. They are responsible for completing a portion of work allocated from another venture. Both employees and independent contractors have different legal obligations, so it is important to know which ne will suit your business needs.

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# Business Models



## A) Sole Proprietorship

### What Is A Sole Proprietorship?

A sole proprietorship is the most basic business model whereby a sole proprietor (exclusive owner of a business) enters into agreements under their own name. Under this business model, the exclusive owner of a business undertakes the full economic and legal responsibility of the business. The business is not a separate legal entity from the individual owner and therefore the owner is fully responsible for all actions of the business.

Unlike the more complex business model of partnerships and corporations, the simplicity of a sole proprietorship is an attractive feature as no formal filings or registration events are required. A sole proprietorship is a status that automatically arises out of one's business activities.

### General Advantages to Sole Proprietorships

Sole proprietorships provide a business vehicle that is established instantly, easily and inexpensively in comparison to the other business vehicles. There is no requirement for registration filings making sole proprietorships very attractive business models. There are minimal legal costs incurred when forming a sole proprietorship, unlike partnerships and corporations that can involve initial fees.

Along with its simplicity and inexpensive setup, sole proprietorships give complete control and freedom to the owner. Its loose structure allows the owner to have complete control over the decision-making process. Along with this complete autonomy, the owner also has the right to receive all profits that the business may make, after the business' creditors have been paid.

Perhaps the most attractive feature of sole proprietorships is the taxation structure. Profits earned by the sole proprietorship are taxed as the personal income of the owner. Therefore, any losses incurred by the business can be deducted at a personal level. Overall, sole proprietorships provide freedom, autonomy and taxation benefits to owners looking to start a business.

### General Disadvantages to Sole Proprietorships

Since the sole proprietorship is not recognized as a separate legal entity different from its owner, there is a great deal of risk when carrying on business under the sole proprietorship business model. The sole proprietor can be held personally liable for all debts and obligations of the business. This risk extends to any liability incurred by any of its employees. Thus, the owner may be held personally responsible for things such as unpaid debts or legal actions that arise against the business.



For example, if a sole proprietor takes out a loan to operate, but then subsequently goes out of business, the sole proprietor will be liable for the amount of the loan and the creditor can come their personal assets in order to collect payment upon default. By comparison, corporations are separate legal entities that affords shareholders liability up to the amount of the investment. Therefore, where a corporation defaults on a loan, its shareholders are not legally responsible to repay such loan beyond the sum of their investment in the company.

Personal liability for an unpaid loan just scratches the surface of the potential liability of sole proprietorships. Another scenario that may arise is where a sole proprietor distributed a defective product resulting in some form of injury to the customer. The sole proprietor can be named personally in the action and liable for all damage caused by the actions of the business.

It is for these reasons that sole proprietors have such a difficult time finding investors. Investors are generally hesitant to invest in sole proprietorships because of the unlimited potential liability. With the sole proprietor not being able to raise capital through selling interests in the business, it is not an ideal model for a founder whose business may have financing needs.

### **Is A Sole Proprietorship Right For Me?**

While the financial freedom, normality and autonomy offered by this business model are great advantages, the risks may sometimes outweigh the advantages. This is why it is extremely important, when choosing a business model for your business, to carry out a case-by-case analysis as every industry/business is different. Every business must be assessed on its own merits in order to effectively decide the best business model to be used. Businesses that operate in areas where the liability can potentially be exponential should likely opt into a safer business vehicle such as a corporation for maximum protection. Smaller industries that carry less inherent risks may be suitable to reap the benefits of the informal and free nature of sole proprietorships.

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## **B) General Partnerships**

### **What is a General Partnership?**

A General Partnership (GP) is a legal relationship between two or more persons, conducting business with a common goal to profit financially. In Ontario, GPs are governed primarily by the Partnerships Act (PA).

### **No Separate Legal Personality**

A partnership is not considered a separate legal entity. In a general partnership, the liability of each partner is unlimited and each partner is liable to the full extent of the GP's debts. Liability extends to each partner's personal assets.

### **Partnership Agreement: Opting out of the Partnership Act's (PA) Default Provisions**

If partners wish to opt out of default partnership provisions under the PA, they can enter into a partnership agreement to memorialize their specific commercial intentions. However, some rules cannot be altered, including any dealings with third parties.

### **Agency**

A partner is an agent of the firm and all of the other partners for the purposes of the firm's business. In the absence of an internal restriction to the contrary, a partner has wide powers to contract on behalf of the firm, and the firm and all of its partners will generally be bound by contracts that are made on its behalf by the partner acting within its authority.

### **Capital**

Where there is no partnership agreement, the default rules governing the contribution of partners to capital are that all partners are entitled to share equally in the capital. If the partners want a share in proportion to their capital contributions, they must stipulate that in their partnership agreement.

Subject to any agreement to the contrary, all the partners are entitled to share equally in the profits of the business and must contribute equally towards the losses, whether of capital or income. This default rule applies irrespective of the time that partners devote to the firm's business or the amount of capital that they contribute. Therefore, the default rule is rarely appropriate, and most partnership agreements carefully set out how profits and losses are to be divided, as well as the process for making changes to the partners' split.



## Property

The PA defines partnership property as all property, rights and interests in property originally brought into the partnership or acquired, whether by purchase or otherwise, on account of the firm or for the purposes and in the course of the partnership business. As a default rule, partnership property must be held and applied by the firm exclusively for the purposes of the partnership and in accordance with the partnership agreement. Also, property purchased with partnership money is presumed to have been bought on the firm account.

## Management

Every partner has the right (in the absence of an agreement to the contrary) to take part in the management of the partnership business. A partner owes fiduciary duties as a partner of a GP.

## General Advantages

- ease of set up
- direct accountability of those involved in the business
- strong principles of equality and consensualism may be attractive in some contexts
- flexibility to deviate from many default rules (i.e. creation of partnership agreement)
- non-taxable

## General Disadvantages

- absence of distinct legal entity with perpetual existence
- unlimited liability of partners
- organizationally, it has its limits absent a detailed partnership agreement: equality principle hampers hierarchy

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## C) Corporation

### What Is a Corporation?

A corporation is one of the most common ways of structuring a business in Canada. Incorporating a business can be done at the federal or provincial/territorial level through the filing of the articles of incorporation (documents that outline the type of business, its shareholders, directors, and bylaws). A business can be a private or public corporation. The distinction between the two is that the former cannot sell shares to the general public while the latter can. Once a business is incorporated, it is considered a distinct legal entity that is separate from its shareholders.

The benefits of incorporating a business are many, including: the creation of a legal entity, limited liability for corporate founders, lower tax rates, a more conducive vehicle for raising capital, and perpetual existence.

### Pros of incorporation

#### 1) *Creation of a legal entity separate personality*

Through incorporation, a business develops a 'separate personality', which essentially means that it has almost all of the same rights as a person. The business can acquire assets, obtain loans, enter into contracts, and can even sue.

#### 2) *Limited liability*

Incorporating a business effectively limits the liability of its shareholders to the amount of their investment in the company. A corporation's shareholders are not liable for any debts it may have. Creditors are barred from suing shareholders for the corporation's liabilities. The exception to this rule is when shareholders have made personal guarantees for the corporation's debts.

#### 3) *Lower Tax Rates*

Generally, the corporate tax rate is much lower than the individual tax rate, which means that by incorporating a business, one can reap advantages of this lower tax rate. However, unlike sole proprietorships and partnerships, business losses cannot be deducted at a personal level.

#### 4) *Access to Capital Financial*

Institutions often offer corporations a lower rate to borrow capital than they do to other types of businesses. Additionally, corporations can offer bonds or shares to raise capital for the business where other types of businesses must rely on the capital they possess and any loans they can secure.



### 5) *Perpetual existence*

A major benefit of incorporating a business is its continued existence even if its directors/shareholders were to die. Unlike sole proprietorships or partnerships, which ceases to exist once their owners are dead, a corporation's ownership transfers to the heirs of its shareholders. This stability is advantageous in two ways; first, it allows for more favourable financing and second, it allows for long term planning of the business.

### **Cons of incorporation**

#### 1) *Higher start-up/continued costs*

There are federal administrative requirements for federally incorporated business that can add to the costs. For example, a federally/provincially incorporated business is required to maintain corporate records, including but not limited to annual returns, notices of any changes in the board of directors, and any articles of amendments. These tasks are usually carried out by lawyers and auditing firms that charge for their services. Additionally, there are added costs with electing/hiring directors and officers to manage the company.

#### 2) *Complex Structure*

As previously mentioned, a corporation is and separate legal entity. The activities of the business must be carried out by persons with an interest in the business who are elected to act on behalf of the corporation. There are three categories of people that can act on behalf of the corporation; shareholders (depending on how many shares of the company one owns), directors, and officers. The shareholders of the corporation use their voting powers to make decisions about the business. Directors are voted in by the shareholders and they supervise the management of the corporation. They also elect the officers. Officers are responsible for managing the business and ensuring its success. Amongst the officers are the CEO, CFO, and President.

#### 3) *Difficult to secure capital*

Sometimes it can be difficult for a corporation to secure loans. Because a corporation's shareholders cannot be held liable for its debts, financial institutions hesitate to provide loans to corporations that are not well established and/or do not have assets. Shareholder(s) may be required to provide personal guarantees for the corporation's debts, which would allow the creditors to sue the shareholder(s) for the liabilities of the business upon default of a loan.

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# Incorporation: Provincial versus Federal.

Incorporators can choose to incorporate in one of 13 provincial and territorial jurisdictions or the federal jurisdiction of incorporation.

Federal (Canada) corporations are incorporated pursuant to the Canada Business Corporations Act and have the ability to carry on business anywhere in Canada under their registered corporate name, subject to extra-provincial registration requirements in each province or territory.

Provincial corporations are incorporated pursuant to the applicable provincial corporate statute (i.e. in Ontario, the relevant legislation is the Business Corporations Act), and only have the right to carry on business within the province or territory of incorporation (i.e. an Ontario corporation can only carry on business within the province of Ontario). Provincial corporations can however make an extra-provincial registration to carry on business in another province or provinces. Therefore, if an Ontario corporation wants to set up an office in Alberta, the corporation could apply to the Province of Alberta for registration as an extra-provincial corporation in Alberta

## **Key considerations:**

### *1) Corporate Name*

Provincial incorporation provides corporate name protection only within the province or territory of incorporation. As a result, if an individual incorporates "123 Corporation" in Ontario, another person could incorporate "123 Corporation" in British Columbia at a later date. If you are only intending to operate your corporation within one province or territory, this should not be an issue for you to worry about. If you intend to incorporate provincially and then register the corporation extra-provincially in another province or territory at a later date, you may be disappointed to find out that your corporate name, or a similar one, has already been registered in the other province and you will have to choose a new name for the other province. In this circumstance, federal incorporation may be a better option.

### *2) Costs*

Another difference between federal and provincial corporations is the cost of incorporation. Federally incorporated companies must be incorporated at the federal level and then be registered extra-provincially in one or more Provinces. Because of this, the overall cost of incorporation is usually higher for a federally incorporated company, as both federal and provincial filing fees will apply. The only exceptions are for federal corporations which are located in the Provinces of Ontario and Prince Edward Island. Neither Province charges any extra-provincial filing fees for federally incorporated companies, and therefore, the cost to incorporate federally is the same or lower than the equivalent Provincial incorporation.



# How to Incorporate

## Forms

- Articles of Incorporation, Form 1
- Consent to Act as First Director, Form 2

## Methods of incorporation

There are three service delivery choices available to clients who wish to incorporate a business corporation in Ontario:

1. online;
2. in person; and
3. by mail

## Supporting Documents

### *Name Search*

Unless the corporation will be operating under a corporate number, an original Ontario-biased NUANS name search report must be obtained and submitted with the Articles of incorporation ("Articles"). The NUANS report cannot be dated more than 90 days prior to the submission of the Articles.

### *Articles of Incorporation*

- Article 1: Set out the name of the corporation in block capital letters starting from the first box of the first line on the left with one letter per box and one empty box for a space. Punctuation marks are entered in separate boxes. Complete one line before starting in the first box of the next line. The name entered must be exactly the same as that on the name search report.
- Article 2: The address (where multi-office building, include room or suite number) of the registered office of the corporation must be set out in full including the street name, street number or R.R. #, municipality, province, country and the postal code. A post office box alone is not an acceptable address. If there is no street and number, set out the lot and concession or lot and plan numbers. The registered office must be in Ontario.
- Article 3: Set out the number of directors. This can be a fixed number of directors (e.g. 1) or a minimum and maximum number (e.g. minimum 1, maximum 10). Do not complete both.
- Article 4: The name(s) (including first name, middle names and surname) and the address for service for each of the first directors must be set out. The address should include the street name, street number, suite (or R.R. #) municipality, province, country and postal code. Directors must be individuals, not corporations. State if the director(s) is/are Resident Canadian(s). At least 25% of the directors must be resident Canadians.



Where a corporation has less than four directors, at least one must be a resident Canadian

- Article 5: Set out restrictions, if any, on the business the corporation may carry on or on the powers that the corporation may exercise. If none, state so.
- Article 6 Set out the classes and any maximum number of shares that the corporation is authorized to issue. This item should be completed (e.g., unlimited common shares).
- Article 7 Set out the rights, privileges, restrictions and conditions (if any) attached to each class of shares and director's authority with respect to any class of shares that may be issued in series.
- Article 8 Set out restrictions on issue, transfer or ownership of shares (if any).
- Article 9 Set out other provisions (if any).
- Article 10 Set out name and address for service of each of the incorporators. If the incorporator is a corporation set out the address of the registered or head office. The address should include the street name, street number and suite (if applicable) or R.R. # and the municipality, province, country and postal code.
- Execution: Both copies of the articles must be signed by each of the incorporators. Print the full name of the incorporator beside his/her signature or if the incorporator is a corporation print the name of the corporation and the name and office of the individual signing for the corporation (e.g., President).

### **Provincial and territorial registration**

You will likely have to register your corporation in any province or territory where you carry on business. Registration is different from incorporation. A corporation may incorporate only once, but it may register to carry on business in any number of jurisdictions. Provinces and territories often require corporations to register within a few weeks after incorporation. You can register your federal corporation with certain provinces when you incorporate your business.

### **Sources**

#### LEGISLATION

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# Important Forms of Intellectual Property (IP)

## A) Trademarks

### What is a Trademark?

A trademark is a form of intellectual property (IP). It can be a combination of words, sounds or designs specific to a company's goods or services. A trademark distinguishes the goods or services of one company from those of other companies in the marketplace. Three types of trademarks are available:

1. Ordinary mark: words, sounds or designs, or a combination of the three (e.g. the name of a service);
2. Certification mark: demonstrates that goods or services meet a standard; can be licensed to many people or companies who wish to comply (e.g. the Woolmark design is used on clothing and is owned by Woolmark Americas Ltd); and
3. Distinguishing guise: applies to the shape of goods or containers, or a method of packaging that is unique to one company (e.g. the shape of a candy)

Trademarks can arise automatically – without registration – if a business uses the mark for a period of time. Alternatively, trademarks can officially be registered with the Registrar of Trademarks so that there is a record of the use and ownership of the mark.

### What can you register as a trademark?

A trademark can be registered as long as it does not fall under one of the unregistrable categories listed below. A trademark generally CANNOT apply to the following:

- names or surnames
- clearly descriptive marks (e.g. sweet or juicy)
- deceptive marks
- geographic locations
- other languages' words
- marks too similar to an existing registered or pending trademark
- marks too similar to prohibited marks
- Plant variety denomination

Trade names (e.g. the name of a business) can be registered only if it is also used as a trademark to identify the company's goods or services.

Some examples of well-known trademarks include the Nike swoosh and Coca-Cola's bottle shape.



## **Why Acquire a Trademark?**

Trademarks make it easy for consumers to identify brands, which is important for companies when trying to build and protect their reputations.

When a company registers its trademark, it is able to protect its distinguishing words, letters, etc. from misuse by other companies. A registered trademark allows a company to have exclusive rights over that trademark for 15 years, or longer if the company renews the trademark. A company can renew the mark every 15 years if they so choose. Registering a trademark protects the mark from being wrongfully used by other companies in an attempt to derive value from the strength of the rightful owner's brand. The trademark also protects the owner of the mark from having its established brand tarnished by other companies who might want to use the mark to promote poor-quality goods or services.

For example, Nike is a company that has built a reputation for providing quality exercise clothing and accessories. The Nike swoosh is trademarked so that no other company can put the Nike swoosh on its products. If other companies could use Nike's symbol, these companies would be taking advantage of the strong brand loyalty that Nike has built. The wrongful use of the swoosh could also tarnish the brand image if the alternative companies produced poor-quality running shoes, or exercise clothing that was not visually appealing.

Furthermore, registering a trademark officially with the Registrar of Trademarks is beneficial because it provides clear evidence that a company owns the mark. The official evidence that registration provides can help companies avoid lawsuits in the event that multiple companies are trying to claim the mark as their own.

Registering a trademark is also an effective way to ensure that the mark is not already in use. If a company uses a mark, not knowing that some other company has already trademarked it, then the company in the wrong will have to stop using the mark. If the company in the wrong had been using that mark for a significant period of time to build a brand, then the discontinued use of the trademark would mean that company has to build its brand all over again with a new distinguishing mark, effectively undoing the brand-building progress up until that point.

## **When to Consider Trademarking**

A company should consider trademarking before actually using the marks it wants to protect. Trademarking should occur before use so that a company does not accidentally use a mark that is already trademarked by another company.

A company should begin the process with a search of existing trademarks in the Canadian Trademarks Database before filing a trademark application. Companies could benefit from hiring a registered trademark agent to assist them in the process, although it is not necessary to do so.



Currently, the fees associated with registering and managing a trademark with the Registrar of Trademarks include the following:

- Application Fee = \$330 for the first class of goods or service and an additional \$100 for each additional class
- Renewal Fee = \$400 for the first class of goods or service and an additional \$125 for watch additional class.
- Statement of Opposition = \$750
- Transfer of Ownership = \$100

An additional \$100 fee is required when submitting the application by any means other than electronically to the Office of the Registrar of Trademarks.

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## **B) Patents**

### **What is a Patent?**

A patent is a legal document granted to you that confirms your legal right to your invention for up to 20 years. The invention can be a:

- Product (a door lock);
- Composition (chemical composition used in lubricant for a door lock);
- Machine (machine for making door locks);
- Process (method of making door locks); or
- An improvement to any of the above.

### **What do Patents Apply To?**

To be eligible for patent protection, your invention must be:

- new—first in the world;
- useful—functional and operative; and
- inventive—showing ingenuity and not obvious to someone of average skill who works in the field of your invention



## **Why Would a Business Need a Patent?**

A registered patent provides the owner of the invention with the exclusive right to exploit it commercially for the life of the patent. The owner also has the right to license others to make, use or sell the invention or products made using the invention. This means that others cannot use your invention for commercial gain without your permission. Perhaps most importantly, patented technology is more attractive to potential investors.

## **When to Consider Acquiring a Patent**

In Canada, the first applicant to file a patent application is entitled to obtain the patent. You should file as soon as possible after you complete an invention in case someone else is on a similar track. Any public disclosure of an invention before filing may make impossible to obtain a patent.

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### ONLINE SOURCES

<https://www.business.qld.gov.au/running-business/ip/types/patents/definition>

<https://www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/wr03716.html>

## **C) Copy Right**

### **What is a copyright?**

Copyright is the name given to the exclusive author of a work. A work that is copyright protected affords the author of the work the sole right to produce or reproduce, perform, or publish the whole or any substantial part of a work. This right also extends to translating and converting literary works to dramatic works (and vice versa) as well as the recording of music and songs.

### **Why copyright?**

Perhaps of more use to entrepreneurs and small businesses is the ability to copyright computer programs, software code, and emails. It is often possible for employment contracts to stipulate that the copyrights of employees become the intellectual property of their employer. This is common in institutional settings such as universities. A useful way to think about copyright protection is to view it as a mechanism which protects creative ideas, but only if they are written, recorded, or otherwise fixed. The time at which copyright protection begins is when the work is first fixed to some tangible thing.



The term of a copyright is the life of the author, plus the remainder of the calendar year in which the author dies, plus an additional 50 years after that. A business would need a copyright to protect a creative work, with the main goal of vesting exclusive rights to that work in the author. This is important for businesses because it allows owners the sole right to profit from the work. This in turn means that no other companies can use a copyrighted work in their products or for profit unless such use is licensed by the owner. As an example, a video game design company operating a copyrighted design software engine that they have created will acquire new legal rights against other companies who try to use their software. Copyright can be fundamental to the protection of business interests.

Any business involved in developing and selling creative works such as music, painting, and literature must consider copyright protection. Without copyright, creators would be vulnerable to others who seek to copy and profit from their creation. The ability to sue for the infringement of a copyright allows those business to prevent the theft and exploitation of creative and sensitive material that is essential to the operation of their business.

## **Sources**

### LEGISLATION

Copyright Act RSC 1985, c. C-42 s.3(1).

### ONLINE SOURCES

<https://readwrite.com/2018/09/10/why-your-business-needs-copyrights/>

<https://www.forbes.com/sites/artneill/2017/06/08/intellectual-property-101-what-your-business-needs-to-know-about-copyright-law/#1fd104d711dd>



# Hiring Options: Employee v. Independent Contractor

## A) Employee

A person may be considered an employee, under the *Employment Standards Act* ("ESA") when at least some of the following describes their work:

- The business provides the individual with tools, equipment or materials to perform work
- Pay is not affected by the way the work is done or the time it takes to do the work
- The individual cannot subcontract their work to another person
- The business has the right to suspend, dismiss, or discipline the individual
- The business decides:
  - o What work the individual will do
  - o How much they will be paid
  - o Work deadlines
  - o How and where the work will be completed

Employees are entitled to rights under the ESA such as; minimum wage, overtime pay, public holidays, vacation pay, etc.

## B) Independent Contractor

Someone independent contractor when at least some of the following describes their work:

- individual is responsible for some or all of the tools or equipment used to do the job
- individual is in business for themselves and responsible for their own profits or losses from the work contracted
- individual determines how and/or where the work is completed
- can subcontract out some of the work
- the business can end the contract for services but cannot discipline the individual

### Important Matters to Consider

Employers can run into issues when they misclassify employees as independent contractors. A worker can be classified as an employee regardless of how the employer has characterized your relationship and regardless of what the worker has agreed to.

Employers are prohibited from misclassifying employees as independent contractors. If this occurs, an employment standards officer can order the employer to comply with the ESA, issue a notice of contravention and/or prosecute the employer.

To help identify what the legal reality of the relationship is, employers should talk to a lawyer!