



CORPORATE · GUIDE

Should you incorporate at all?

Sole proprietorship vs. corporation, what limited liability really protects, and the practical and tax trade-offs.

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"Should I incorporate?" is one of the most common questions a small business owner asks, and a lot of the advice floating around treats incorporation as automatically the smart, grown-up choice. It often is a good move, but not always, and not for the reasons people assume. Here is a straight look at what incorporating actually does for you, what it does not, and how to think about whether it is worth it for your business right now.

The two basic options

Most people starting out are choosing between:

- Sole proprietorship (or a partnership, if there are several of you). You and the business are legally the same thing. It is simple and cheap to start, and the business income is just your income.
- Corporation. You create a separate legal entity that is distinct from you. The corporation owns the business, earns the income, and signs the contracts. You own shares in it.

The corporation being a separate legal "person" is the source of nearly every advantage and complication that follows.

What limited liability really protects

The headline reason people incorporate is limited liability. It is real, but it is narrower than many people think, so it is worth being precise.

What it does: because the corporation is a separate entity, the business's debts and obligations are generally the corporation's, not yours personally. If the corporation runs up debts or gets sued and things go badly, creditors generally look to the corporation's assets, not your house and savings. That separation is genuinely valuable, especially in a business with real liability exposure.

What it does not do, and this is where people get a false sense of security:

- It does not protect you where you personally guarantee something. Landlords, banks, and suppliers routinely ask the owner of a small corporation to personally guarantee leases, loans, and accounts. Where you sign a personal guarantee, your personal assets are back on the line, guarantee by guarantee. For many small businesses, the most significant debts are personally guaranteed anyway, which limits how much the "limited liability" is actually doing.
- It does not protect you from your own wrongful acts. If you personally do something negligent or wrongful, incorporating does not necessarily shield you.
- It does not protect you from certain legal liabilities that fall on directors personally. There are specific things, like unpaid employee wages and unremitted taxes, that the law can put on directors personally. We cover this in our article on directors' liability.

So limited liability is a real benefit, but it is a partial shield, not a force field. Whether it is worth a lot to you depends on how much of your risk is the kind it actually covers.

The other reasons people incorporate

Beyond liability, incorporation can offer:

- Tax flexibility. This is often the real driver, and it is genuinely important, but it is your accountant's area, not something to decide from a blog. Depending on your income, whether you leave profits in the business, and your overall situation, incorporating can offer tax advantages like deferral and income splitting opportunities, or it can offer nothing useful if your business does not generate enough profit to make it worthwhile. The only honest answer is that you need to run your actual numbers with an accountant.
- Credibility and continuity. A corporation can look more established to some customers, partners, and lenders, and it continues to exist independently of you, which makes it easier to sell the business later.
- Easier to bring in investors or co-owners. Shares are a clean way to divide ownership, which matters if you plan to take on partners or investment.

The costs and downsides

Incorporation is not free and not maintenance-free:

- Setup and ongoing costs. There are costs to incorporate and ongoing costs to keep the corporation in good standing, including annual filings.
- More administration. A corporation has to keep proper records, including its minute book, and file its own tax return. It is more paperwork than a sole proprietorship.
- Compliance obligations. Obligations like maintaining a transparency register for private corporations add to the upkeep.
- Losses are trapped in the corporation. As a sole proprietor, business losses can often offset your other income. In a corporation, early losses generally stay in the corporation. For a business expected to lose money in its first year or two, that can actually make a sole proprietorship more attractive at the start.

How to actually decide

There is no universal answer, but these questions get you most of the way:

- How much real liability does your business carry, and how much of it would actually be covered by limited liability rather than wiped out by personal guarantees?
- Are you making enough profit for the tax advantages to matter? If yes, this often tips the decision, but confirm it with an accountant.
- Do you plan to take on partners, investors, or eventually sell? Incorporation makes that easier.
- Are you willing to carry the extra cost and administration?
- What stage are you at? Some businesses start as a sole proprietorship and incorporate later, once profit and liability justify it. Incorporating later is a normal and reasonable path.

Bottom line

Incorporation gives you a real but partial liability shield, potential tax advantages that depend entirely on your numbers, and a cleaner structure for growth, at the cost of additional expenditures (incorporation and ongoing) and more administration. It is often the right move, but not automatically, and not on day one for every business. The two people who should weigh in before you decide are a lawyer, on the liability and structure side, and an accountant, on the tax side. Talk to us about whether and when incorporating makes sense for you.

If the reason you are considering a corporation is to hold real estate rather than to run an operating business, the analysis is a bit different. Our guide on buying commercial real estate through a holding company walks through when that structure earns its keep and when it just adds cost.

This is general information about incorporation in Ontario, not legal or tax advice for your business. The right answer depends on your numbers and your plans. Talk to us, and your accountant, before you decide.

Questions about your own situation? Book a free consultation at lucianolegal.com/contact.html, call 647-479-4585, or email info@lucianolegal.com.

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