

PART I

Business Organizations

Chapters 1, 2, and 3 discuss three different methods of carrying on a business in Ontario—sole proprietorships, partnerships, and corporations. If you are involved in any matter dealing with a business organization, it is important to understand the advantages and disadvantages of each type of business organization.

Sole Proprietorships

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After reading this chapter, you should be able to:

- Understand how sole proprietorships are created.
- Understand how a business operating as a sole proprietorship is controlled.
- Know when the name of a sole proprietorship must be registered.
- Understand the advantages and disadvantages of sole proprietorships.

Introduction

sole proprietorship

a business that is owned and operated by one person

sole proprietor

the owner of a sole proprietorship

unincorporated business

a business that has not been incorporated

legal entity

an individual or a business that is responsible for its actions and has the right to enter into contracts, assume and enforce obligations, and sue or be sued

A **sole proprietorship** consists of only one person, known as the **sole proprietor**, who runs the business by themselves. A sole proprietorship is an **unincorporated business** and is the simplest, fastest, and least expensive way to set up a new business. Many small business owners who want to keep their costs down will operate their business as a sole proprietorship, with few or no employees. A sole proprietorship is not considered a **legal entity** separate from its owner. In other words, the law treats the sole proprietor and the sole proprietorship as one entity; there is no distinction between the sole proprietor and their business. For example, assume that Jake Buddison is the sole proprietor of a small business. Even if Jake hires employees, the business will still be considered a sole proprietorship as long as Jake is the sole owner. It should be noted that if a sole proprietor has any employees, the sole proprietor must abide by any applicable laws governing employer–employee relationships, such as the relevant *Employment Standards Act* and *Human Rights Code*, as in any employment situation.

Name of a Sole Proprietorship

A sole proprietor can carry on business either using their own name or using a business name. For example, Bryce Aleem may want to call the handyman business he is starting “Bryce Aleem, Handyman.” Alternatively, Bryce Aleem may not want to use his own full name for the business. He may want to call it “Helping Hands” or “Bryce’s Helping Hands.” Regardless of the name Bryce chooses, his business will be a sole proprietorship and he will be the sole proprietor.

If a sole proprietor uses a business name that does not include their own full name, then they must register the business name. This is required pursuant to s. 2(2) of Ontario’s *Business Names Act*,¹ which states the following:

No individual shall carry on business or identify his or her business to the public under a name other than his or her own name unless the name is registered by that individual.

A sole proprietor who does not comply with this section is guilty of an offence and can face a fine of up to \$2,000.² The purpose of this requirement is to ensure that anyone dealing with the sole proprietorship can determine who is responsible for the business. For example, someone who hires Bryce’s Helping Hands to renovate a kitchen may, if a problem arises with the renovation, want to discuss it with the owner of the company. Or maybe Bryce’s Helping Hands has not paid its bills, and a **creditor** is trying to collect money from the business. In either situation, the person dealing with the business has a right to know the identity of the individual responsible for it. Although the name Bryce’s Helping Hands includes the owner’s first name, it does not indicate that Bryce Aleem is the sole proprietor. Therefore, the

creditor

a party to whom money is owed

¹ RSO 1990, c B.17.

² *Ibid.*, s. 10(1).

name Bryce's Helping Hands must be registered. With the name registered, a person who needs to identify the sole proprietor can do so by searching the business name. A search would reveal Bryce Aleem's full legal name and address.

Anyone can search and/or register a business name online using the "Access the registry" link on the ServiceOntario website, at <https://www.ontario.ca/page/ontario-business-registry>.

Once a business name is registered, it remains valid for five years, at which point it must be renewed. It is an offence under the *Business Names Act* to carry on a business using a name (other than the sole proprietor's own name) that has not been registered. A proprietor who wants to use a specific business name that has not been registered can obtain a certificate of non-registration. This will confirm that the name is not being used and the proprietor will be able to use it.

A sole proprietor can use any name they want, subject to the limitations set out in the *Business Names Act* and in the regulation made under that Act.³ Section 4(3) of the *Business Names Act* provides the following:

Only letters from the Roman alphabet, Arabic numerals or a combination of letters from the Roman alphabet and Arabic numerals together with punctuation marks and such other marks as are prescribed may form part of a registered name.

O Reg 399/21 (General) sets out the requirements, prohibitions, and restrictions for a valid business name. For example, the regulation requires that the first character of the name must be a letter or a number or one of the following three marks permitted under s. 2(1): ! # @. It also prohibits the registration of a name that is primarily or only a combination of punctuation or other marks or that uses any words or expressions that are obscene or contrary to public policy.

When choosing a business name, it is a good idea, although not mandatory, to conduct a **NUANS (Newly Upgraded Automated Name Search)** to see whether or not that name, or a very similar name, already exists as a business name or **trademark**. While it is permissible to register a name that is already being used, it is not advisable to do so. The original name holder might have a cause of action for damages if they can prove that another person's use of the same or a similar name resulted in a loss to them of business and/or reputation.

As noted above, if the full name of the sole proprietor is included in the name of the sole proprietorship, then the name does not have to be registered. In this instance, the identity of the sole proprietor is obvious from the name of the sole proprietorship.

Control of a Sole Proprietorship

Because a sole proprietorship is not considered to be a legal entity separate from its owner, the law does not distinguish between the sole proprietor and their business. The sole proprietor is entitled to 100 percent of the profits of the sole proprietorship and is 100 percent responsible for the debts and liabilities of the business. For

NUANS (Newly Upgraded Automated Name Search)

a computerized search that is conducted to find existing business names and trademarks

trademark

a symbol or logo (such as a word or words, design, colour, name, number, shape, moving image, mode of packaging goods, sound, scent, taste, texture, or a combination of these) that identifies and distinguishes a person's goods or services from those of all others

³ O Reg 399/21, General, under the *Business Names Act*.

goodwill

the intangible component of the value of a business, such as the business's reputation

example, Bryce Aleem, as the sole proprietor of Bryce's Helping Hands, owns the assets, profits, and **goodwill** of Bryce's Helping Hands, but is also personally responsible for the business's debts, taxes, and lease payments, as well as for any other obligations or liabilities the business may incur.

Bryce would also be liable for any actions brought against Bryce's Helping Hands, such as an action for damages resulting from an improperly completed job. A lawsuit against a sole proprietorship may use the sole proprietor's name alone, the sole proprietor's name followed by the business name, or the business name alone. For example, if a customer started a claim against Bryce's Helping Hands, the defendant would be named as either

- Bryce Aleem,
- Bryce Aleem carrying on business (cob) or operating as (o/a) Bryce's Helping Hands, or
- Bryce's Helping Hands.

Regardless of what name the plaintiff uses, the judgment would be enforceable against Bryce Aleem. It is always easier to enforce a judgment when the action uses the owner's full name. In other words, if the sole proprietor's name is different from the name of the sole proprietorship (that is, the business), a person starting an action against the business should use both names.

Someone who obtains a judgment against a sole proprietorship can enforce it by going after both the personal and business assets of the sole proprietor. Income earned by a sole proprietorship is treated as income of the sole proprietor. For example, income earned by Bryce's Helping Hands will be treated as Bryce's income, and he will have to pay taxes on this business income at the same rate as his personal income tax rate.

Advantages of a Sole Proprietorship

The main advantage of a sole proprietorship is that it is an easy and inexpensive way to start and run a business. Other than the requirement described above—that is, the requirement to register the name of the sole proprietorship if it is different from the owner's name—there are no legal formalities involved in setting up and operating this form of business organization. Establishing a sole proprietorship using the business owner's legal name can be as easy as printing up business cards and letterhead and starting the business. Other advantages of a sole proprietorship include the following:

- There is very little regulation from the government.
- The sole proprietor has complete control of the business and can make all the decisions themselves.
- All profits belong to the sole proprietor; they do not have to be shared with anyone.
- A sole proprietor files only one income tax return and can therefore deduct any business losses or expenses from their personal income.

The sole proprietor's position with respect to taxes can be a significant advantage if the business suffers a financial loss. For example, assume that Bryce Aleem has a total income of \$100,000 from all sources (including non-business income, such as dividends and interest) and has business losses of \$25,000. As a sole proprietor, Bryce can deduct these losses and thereby reduce his taxable income from \$100,000 to \$75,000.

Disadvantages of a Sole Proprietorship

The main disadvantage of a sole proprietorship is that there is unlimited liability. In other words, the sole proprietor is personally liable for all the debts and obligations of the business. This is because the law does not treat the sole proprietor and the sole proprietorship as separate legal entities. For example, assume that while installing a counter in a client's kitchen, Bryce or one of Bryce's Helping Hands' employees accidentally damages the hardwood floors. In this situation, Bryce will be personally liable for the damage caused. This means that if the business cannot afford to pay for the damage, the homeowner can go after Bryce's personal assets, such as his bank account, his equipment, his house, or his car. One way that a sole proprietor can limit their **personal liability** is by obtaining insurance to cover potential losses.

Other disadvantages of a sole proprietorship include the following:

- It may be difficult for a sole proprietor to raise **capital** on their own.
- The business may be jeopardized if the sole proprietor becomes ill and there is no one else to run the business.
- The sole proprietor may be taxed at a higher personal tax rate if the business is profitable.
- A sole proprietor is not considered an employee and will, therefore, not be entitled to employee benefits such as employment insurance, vacation pay, or salary.
- The business ends if the sole proprietor dies.

personal liability

a business owner's personal responsibility for the debts and obligations of the business

capital

the financial investment contributed to a business

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REVIEW QUESTIONS

1. Greg has a printing business that he operates as a sole proprietorship. Will a lawsuit against the business have any impact on Greg? Does the law treat a sole proprietorship and its sole proprietor as one legal entity?
2. Rashid Dilab wants to start a deck cleaning business on his own. Can he name his business “Rashid Dilab’s Deck Cleaning”?
3. Nyla runs a small business and hires three employees to assist her. Is Nyla a sole proprietor?
4. Roger Rovinka wants to call his new business “Roger’s Racquets and Sports.” Does Roger have to register this name? Explain your answer.
5. How can someone determine the registered business name of a sole proprietorship?
6. Davinder Sharma is starting a new dry-cleaning business and is considering using one of the following names:
 - *****#1 Dry Clean!!!!
 - #1Davinder Dry Cleaner!
 - Davinder Sharma’s Dry Cleaning
 - Davinder’s Damn-Good Dry CleaningFor each of the four names set out above, state whether or not the name is a valid and registrable name for Davinder’s business.
7. Navine wants to start a cleaning business as a sole proprietorship and wants to know the advantages and disadvantages of this type of business organization. State two advantages and two disadvantages of a sole proprietorship.