



## Canada-Ontario Business Service Centre

### Legal Issues in Starting a Business

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#### Summary

The use of professional services is essential to the success of a small business, whether you are buying an existing business or franchise, starting from scratch on your own, or expanding a business you presently operate.

Professionals can provide the knowledge and expertise in the areas that you are limited, and they can round out your management team to ensure your business operates efficiently.

One of the professionals you will want to consult with as an entrepreneur is a lawyer.

Lawyers are highly trained professionals who deal with a full range of personal and business legal matters. Most lawyers tend to specialize in one or more areas of practice.

If your legal concerns are restricted to one specialty area, it may be best for you to deal with a lawyer who specializes directly in that area. Many business transactions have legal implications, so you should try to select a lawyer whom you can treat as a trusted business advisor.

When searching for a lawyer, ask your business associates, friends, and family for references of law firms they have used and received satisfactory services from in the past. Before your initial meeting with a lawyer, prepare yourself to be able to explain your particular legal requirements.

You should ask the law firm what services it can provide to you, and at what cost. Hourly fees may vary widely from lawyer to lawyer, depending on the complexity of the issues, the services required, and the degree of experience of the lawyer. Once a lawyer has determined your needs and is familiar with your situation, an estimate of legal costs can usually be provided.

Some examples of legal issues that may require the services of a lawyer for your business are listed below:

#### 1. Selection of a Business Structure

Whether you plan to operate a home-based business or are involved in a large commercial operation, you will need to decide on which type of business structure best suits your needs. Your options will range from sole proprietorships, partnerships, limited or incorporated companies, to co-operatives. A lawyer can help you choose the correct form of business structure, based on factors such as the number of people involved, the type of business, tax issues, liability concerns, and financial requirements of the firm. An accountant should also be consulted regarding the tax implications of the form of business structure chosen.

## 2. Review of Lease

Most businesses initially start out from leased premises rather than incurring the major capital investment of buying or constructing a new building. However, leases still constitute one of your largest expenses, and usually represent a long-term commitment. As such, your signed lease agreement is a very important legal document.

Leases can vary from a simple one-page agreement to a lengthy complex document, depending on the space you are renting (e.g. mall space vs. separate building).

While your realtor can assist you in understanding the costs and basic terms of a lease, it is advisable to have a lawyer explain the legal ramifications before you sign on the dotted line.

## 3. Buying an Existing Business

When buying an existing business, you may have to decide whether to buy only the assets of the business, or in the case of an incorporated company, the shares of that company. In the case of the latter, you will also be assuming the liabilities of that company. Before completing such a transaction, a lawyer should be utilized to conduct various searches in order to protect your investment (e.g. outstanding liens against the company assets).

With any business purchase, you should have a buy and sell agreement signed by both parties which spells out the demands and obligations of each, as well as the terms of the deal (e.g. non-competition provision).

You should also be checking with your accountant on the different tax implications, if purchasing the assets or shares of an existing corporation.

## 4. Contracts

If you are buying an existing business, you will want to protect yourself from any prior breach of contract or law, and have your lawyer review any contracts still in effect after your buy-in.

There is a number of other legal issues you must ensure the business complies with such as licensing, registrations, consents, notices, environmental concerns, and employee issues.

Other forms of contracts that require the services of a lawyer, which you may encounter, include the preparation of a partnership or shareholder agreement, a lease agreement, employment contract, mortgage, purchase agreement, or possibly a franchise agreement.

Above all, make sure you contact a lawyer **before** you sign anything!

### Related Reading

- Federation of Law Societies of Canada (<http://www.flsc.ca/en/whatsnew/whatsnew.asp>)