

Application Guide: Certificate of Authorization for A Professional Corporation - Social Work



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Social Service Workers

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As a result of amendments to the *Social Work and Social Service Work Act* (the "SWSSW Act") and the *Ontario Business Corporations Act* (BCA), and the by-laws made under the Act, social workers and social service workers are now permitted to incorporate for the purpose of practising social work or social service work, provided that they obtain Certificates of Authorization from the Ontario College of Social Workers and Social Service Workers (the "College"). The new provisions outline the conditions and requirements that must be met in order to obtain a Certificate of Authorization from the College, and include:

- all of the issued and outstanding shares of the corporation must be legally and beneficially owned by one or more social workers, who hold a certificate of registration issued by the College, in the case of a corporation that proposes to practise social work or by one or more social service workers who hold a certificate of registration issued by the College, in the case of a corporation that proposes to practise social service work
- all officers and directors of the corporation must be shareholders of the corporation
- the articles of the professional corporation must provide that the corporation cannot carry on a business other than the practise of social work, in the case of a corporation that proposes to practise social work, or social service work in the case of a corporation that proposes to practise social service work, and activities related to, or ancillary to, the practise of such profession
- the name of the corporation must include the words "Professional Corporation" or "Société professionnelle" and comply with the rules respecting the names of professional corporations set out in the regulations made under the BCA and with the rules respecting names set in the by-laws made under the SWSSW Act
- the name of the corporation must include the surname of one or more of the shareholders of the corporation as the surname is set out in the College register, and also may include the shareholder's given name, one or more of the shareholder's initials or a combination of given name and initials
- the name of the corporation must include either "Social Work" or "travail social" in the case of a corporation, which proposes to practise social work, or "Social Service Work" or "techniques de travail social" in the case of a corporation, which proposes to practise social service work
- the name of the corporation must not include any information other than the information permitted or required by the above, except that the College may require the addition of a word or words indicating the geographic area in which the corporation proposes to practise
- in the case of a corporation, which proposes to practise the profession of social work, each of the shareholders of the corporation must hold a certificate of registration for social work issued by the Registrar and be a member in good standing and
- in the case of a corporation, which proposes to practise the profession of social service work, each of the shareholders of the corporation must hold a certificate of registration for social service work issued by the Registrar and be a member in good standing.

In order to obtain a Certificate of Authorization from the College, a corporation must complete and submit to the College an application for a certificate of authorization, in a form approved by the College, along with certain information and documents as required by the by-laws made under the SWSSW Act. If a member of the College wishes to do so, a member may apply to the College for a certification regarding the proposal name of the intended corporation. You may wish to refer to section 3.2 of the BCA and by-law No. 46 of the College, which are attached to this guide.

APPLICATION FOR A CERTIFICATE REGARDING PROPOSED CORPORATE NAME

A member of the College may apply to the College for a certificate regarding the proposed name of the intended corporation by completing the Application for a Certificate regarding Proposed Corporation Name and paying \$100 fee. The College will consider the application. If the College is satisfied that the proposed name meets the requirements regarding a corporate name (see below under "Corporate Name"), the College will issue a certificate that the College does not object to the establishment of a professional corporation under the name proposed by the member. A certificate issued in response to the application does not reserve the name and does not mean that the Director appointed under the *Business Corporations Act* has approved the name. A member of the College is not required to apply to the College for a certificate regarding the proposed corporate name.

APPLICATION FOR CERTIFICATE OF AUTHORIZATION FOR A PROFESSIONAL CORPORATION

There are four sections of the Application for a Certificate of Authorization, which must be completed. If the corporation proposes to practise social work, complete the application and accompanying documents that relate to social work. If the corporation proposes to practise social service work, complete all sections of the application and accompanying documents that relate to social service work.

SECTION A - NAME AND ADDRESS OF CORPORATION

Corporate Name

The name of the corporation must meet the requirements set out in section 3.2 of the *Business Corporations Act* and the by-laws made under the SWSSW Act, which include the following:

- the corporation must not have a number name
- the corporate name must include the words "Professional Corporation" or "Société professionnelle"
- the corporate name must include the surname of one or more shareholders of the corporation as the surname is set out in the College register
- the corporate name also may include the shareholder's given name, one or more of the shareholder's initials or a combination of his or her given name and initials
- the corporate name must include either "Social Work" or "travail social" in the case of a corporation which proposes to practise social work, or "Social Service Work" or "techniques de travail social" in the case of a corporation, which proposes to practise social service work
- the corporate name must not include any information other than that permitted or required under the *Business Corporations Act* or the by-laws made under the SWSSW Act as outlined above, except that the College may require the addition of a word or words indicating the geographic area in which the corporation proposes to practise; and
- the corporate name must not violate the provisions of any other Act.

Practice Name

If the practice name is different from the corporate name, provide the name under which the corporation proposes to practise.

Business Address

This must be the actual business address of the corporation and not the address of the corporation's legal counsel.

SECTION B - COMPLETION OF APPLICATION

Complete each statement in this section and provide the required information as directed on the form, noting the following:

- a. The individual applying for a Certificate of Authorization on behalf of the corporation must hold a current certificate of registration with the College and be a director of the corporation.
- b. Each shareholder of the corporation must hold a certificate of registration issued by the College and be a member in good standing. In the case of a corporation proposing to practise social work, each shareholder must be a member of the College in the category of social work. In the case of a corporation proposing to practise social service work, each shareholder must be a member of the College in the category of social service work.
- c. Each director and officer must be a shareholder of the corporation.
- d. The director applying on behalf of the corporation must sign and date the application.
- e. The following documentation must accompany the application for a Certificate of Authorization:
 - i. The fee for the Certificate of Authorization of \$500, less the amount(s) (to a maximum of \$200) paid to the College in connection with a related application to the College for a corporate name certificate.
 - ii. An Undertaking dated and signed by each shareholder of the corporation, in the form attached as Section C.
 - iii. The statutory declaration of a director of the corporation executed not more than 15 days before the application is submitted, in the form attached as Section D.
 - iv. Original Certificate of Status of the corporation issued by the Ministry of Consumer and Business Services not more than 30 days before the application is submitted to the Registrar, which indicates that the corporation is active.
 - v. A certified copy of the Certificate of Incorporation of the corporation.
 - vi. A certified copy of every certificate of the corporation that has been endorsed under the *Business Corporations Act* as of the day the application is submitted.

SECTION C - UNDERTAKING

Each shareholder of the corporation must sign and date the Undertaking, before a witness, which is to be submitted with the application for a Certificate of Authorization. Each shareholder **must** be listed in the application and **must** hold a certificate of registration issued by the College and be a member in good standing. A breach of the undertaking given to the College may result in a referral of specified allegations of professional misconduct against the member to the Discipline Committee of the College. It is recommended that, prior to signing the undertaking, the shareholder obtain independent legal advice.

SECTION D - STATUTORY DECLARATION

The statutory declaration must be completed by the same director of the corporation, who signed the application form, and must be sworn before a commissioner for taking affidavits in Ontario. The statutory declaration cannot be executed more than 15 days before the application is submitted to the Registrar. The statutory declaration must be submitted with the application for a Certificate of Authorization.

SUBMISSION OF THE APPLICATION

The application for a Certificate of Authorization must be submitted to the Registrar of the College, along with the required supporting documentation and fee to the following address:

Ontario College of Social Workers and Social Service Workers
250 Bloor Street East
Suite 1000
Toronto ON M4W 1E6

Incomplete applications will be returned.

RENEWAL

The Certificate of Authorization must be renewed annually prior to the anniversary of the date of issue. If you are renewing a Certificate of Authorization, please contact the College for an application for renewal of a Certificate of Authorization at least 90 days prior to the anniversary date.

GENERAL

If members of the College have questions about incorporation, they can contact Lynda Belouin, Office Manager, at 416-972-9882 or 1-877-828-9380, ext. 212. E-mail: lbelouin@ocswssw.org

It is recommended that members of the College consult with their own advisors to decide whether or not to practise social work or social service work through a professional corporation. The College is not in a position to provide any legal, accounting, tax or financial advice in this regard.

APPENDIX 1

Section 3.2 of the Business Corporations Act (Ontario)

(Current as of July 1, 2003)

Application of Act to Professional Corporations

3.2 (1) This Act and the regulations apply with respect to a professional corporation except as otherwise set out in this section and sections 3.1, 3.3 and 3.4 and the regulations. 2000, c. 42, Sched., s. 2.

Conditions for professional corporations

(2) Despite any other provision of this Act, a professional corporation shall satisfy all of the following conditions:

1. All of the issued and outstanding shares of the corporation shall be legally and beneficially owned, directly or indirectly, by one or more members of the same profession.
2. All officers and directors of the corporation shall be shareholders of the corporation.
3. The name of the corporation shall include the words "Professional Corporation" or "Société professionnelle" and shall comply with the rules respecting the names of professional corporations set out in the regulations and with the rules respecting names set out in the regulations or by-laws made under the Act governing the profession.
4. The corporation shall not have a number name.
5. The articles of incorporation of a professional corporation shall provide that the corporation may not carry on a business other than the practise of the profession but this paragraph shall not be construed to prevent the corporation from carrying on activities related to or ancillary to the practise of the profession, including the investment of surplus funds earned by the corporation. 2000, c. 42, Sched., s. 2; 2002,c.22, s.8.

Corporate acts not invalid

(3) No act done by or on behalf of a professional corporation is invalid merely because it contravenes this Act. 2000, c. 42, Sched., s. 2.

Voting agreements void

(4) An agreement or proxy that vests in a person other than a shareholder of a professional corporation the right to vote the rights attached to a share of the corporation is void. 2000, c. 42, Sched., s. 2.

Unanimous shareholder agreements void

(5) A unanimous shareholder agreement in respect of a professional corporation is void unless each shareholder of the corporation is a member of the professional corporation. 2000,c.42, Sched., s.2.