

## Business Structures – Pros & Cons

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Our lawyer, Denise Robertson of Mills & Mills LLP, has contributed the following answer to one of the most common questions put forward by business owners: *“How should I structure my business and what are the advantages and disadvantages of each.”*

You can contact Denise at: [denise.robertson@millsandmills.ca](mailto:denise.robertson@millsandmills.ca) (416) 682-7139

### **Mills & Mills** LLP

Barristers & Solicitors  
Established 1884

#### **FORMS OF BUSINESS STRUCTURES ADVANTAGES AND DISADVANTAGES**

**Denise E. Robertson**

**Mills & Mills**

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There are two basic forms of business structures available in Ontario:

**(1) Unincorporated business** which may include:

**(a) Sole proprietorship** - a business owned by one person. The owner has complete control over the business, and receives all of the profits, but is personally liable for all of the debts and liabilities of that business, and this liability extends even to personal property and assets.

**(b) Partnership** – an unincorporated business where there are two or more owners/partners. A Partnership Agreement is entered into to define the management responsibilities, interests in the business, and allocation of profits for each partner. Each partner is jointly and severally liable for the debts of the partnership.

**(2) Corporation** - a separate and distinct legal entity. Ownership of a corporation is through the ownership of shares in its capital stock and shareholders are not responsible for the corporation's debts.

See next page for the Advantages and Disadvantages of each structure.

Structure	Advantages	Disadvantages
Unincorporated Business	<ul style="list-style-type: none"> <li>• Ease and low cost of start-up</li> <li>• Organizational simplicity</li> <li>• Minimal regulatory requirements</li> <li>• Direct control by the owner/partners</li> <li>• Generally, business losses are deductible from the owners/partners taxable income from other sources</li> <li>• Lower ongoing legal and accounting fees</li> </ul>	<ul style="list-style-type: none"> <li>• Unlimited personal financial liability on the part of the owners/partners in the event of bankruptcy or a judgment against the business</li> <li>• Taxation at personal income tax rates (may exceed corporate tax rates)</li> <li>• Few income tax deferral opportunities on income retained in the business</li> <li>• Income splitting opportunities with the owners/partners family members are reduced</li> </ul>
Corporation	<ul style="list-style-type: none"> <li>• Limited personal liability for shareholders</li> <li>• The ability to retain more profits in the business due to lower taxes on earnings</li> <li>• Income splitting and tax deferral opportunities</li> <li>• Continuity of management and organization</li> <li>• Easier change of ownership by the transfer of shares</li> <li>• Business name protection</li> </ul>	<ul style="list-style-type: none"> <li>• Many record keeping requirements</li> <li>• Significant government legislation and regulation</li> <li>• Inability to use operating losses to reduce personal tax liability of shareholder</li> <li>• Significantly higher cost of set up and organization</li> <li>• Higher ongoing professional costs for legal counsel and filing corporate tax returns</li> </ul>

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