

Entrepreneurship Legal Guide

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Entrepreneur v. Start-up

My project: Student Entrepreneurs

- For Entrepreneurs, legally they need to know where to start – fundamentals
 - Entrepreneurs – individual who looks specifically for business opportunities through which they will be able to generate capital. This is specifically for purpose of investing in successful/income-earning companies. These can be established ideas or new.
 - *In light of this, their concerns:* laid out and to be addressed in headings under playbook (see below)
 - NOTE - This is not a complete discussion – the line between entrepreneurs and startup founders is blurred in the article near the bottom ‘fundamentals for becoming an entrepreneur’ – this discusses how they are people who take advantage of opportunity and capitalize for their own gain – economic and otherwise- and are willing to put the work in to make an idea a reality.
 - Start-up – start-up founders are individuals who have a new business, a newly emerged idea looking to fill a market gap which currently exists in the organizations available – Today, typically new businesses solving market problems or offering unique ideas, seeking viable/scalable business models – not as financially-motivated as entrepreneurs. – tend to be new, innovative ideas, with focus on developing that idea rather than specifically earning money off a business.

Potential Headings for Legal Guide

[Assumptions/disclaimer note – for-profit organizations, operating in Ontario, non-exhaustive factors to consider...]

1. How to structure my company – basic options: incorporation [fed v. prov – steps, info online], partnership, limited partnership, joint venture [via incorporation, partnership, or contract? NZ doc], Sole Proprietorship
 - Articles of incorporation (if you have them) and the importance of those
 - Perhaps get into pros/cons of each – specifically mention: liability, easy of forming that structure, what is assumed to be the structure, options for forming each
 - Liability for directors specifically, and extent of that liability is important.
2. Intellectual Property – Fundamentals on IP and importance of protecting your IP – as well as quick steps on how to do so.
 - Key question – should the company draft an ‘IP Assignment Agreement’ and if previously operating to develop IP before incorporating or formalizing partnership, that agreement will allow the work to be signed to the company rather than that individual themselves.
3. Employment – Responsibility for your employees v. independent contractors – rough liability and responsibilities of the corporation.
 - Also, looking at responsibilities to employees for their safety etc.
 - Non-disclosure agreement (NDA)
4. Investment/fundraising – How to raise capital while still ensuring that you maintain your equity – also want to consider the way in which you want that person to be involved in this business - given the goal of earning capital for entrepreneurs and money via the corporation, you want to ensure you hold onto the equity in order to maximize profits when selling.
 - Note on if it is family or friends – will it ruin the relationship; how involved do you want them to be; do you want them to own equity or simply debt; do you need to comply with *Securities Act*; is the investment subject to an exemption to the *Securities Act*

- Also shareholders agreements, their purpose, and how they impact the corporation.
 - i. With each of these, keep in mind you want to be conservative, this info is just for basic understanding
- 5. Regulatory Requirements to consider for companies operating in Ontario – Perhaps include a list of regulated industries or sorts of organizations which operate in Ontario as well as a link to the regulation website so it is easily accessible.
- 6. General Notes/Tips – Might be useful to have a section which just includes general tips from the legal perspective, just to help entrepreneurs be informed.
 - For example –
 - i. Read all standard-form contracts they use – even if found on the internet, ensuring clarity in understanding what you are signing.
 - Knowing the limitations of said documents, know what you are protecting, and specifically what a party signing that document, based on its current structure and how it reads, may *reasonably expect* to receive/deliver based on what they sign.
 - Ex. For NDA – for evidentiary purposes, it may be helpful to, in addition to having signed NDA, qualifying the information you are providing and stating that it is subject to the NDA so it is clear.
 - ii. Seek independent legal advice if unsure what you are signing, or when you have questions which are more specific than those which can be answered by this document.

Overview of PBSC Documents Reviewed

“Starting a Corporation” pdf - Halton Small Business Centre – info included:

- Basic layout of fundamental stages of incorporating
- Includes resources/laws both provincially/federally which can be used for these purposes and must be considered [non-exhaustive]
- Topics covered: name of corp, partnership agreement, AODA, anti-spam, privacy, SOCAN(music), and hiring employees.

Social enterprise parry field start-ups legal toolkit – Perry Field Lawyers [NEW ZEALAND] –

- NOTE, this doc is from New Zealand, some info is the same but be cautious
- Valuable info on fundamentals of starting a company, including options
- Good structure for like notes on structuring company.
- Joint Ventures – Specific issues facing joint ventures to watch out for are listed.
- Intellectual Property – Good headlines on what factors to consider when an entrepreneur looks at the their company and the intangible assets which are of value.
- Pg. 29 – includes note on financing, whether getting money from family/friends will negatively impact that relationship – would be nice to put that into the guide to ensure entrepreneurs are better informed.

Starting a Sole Proprietorship or General Partnership – checklist

- Holds good info on the basics of starting a sole proprietorship or general partnership in Halton – including advantages/disadvantages.
- Mostly the same information – registering sole proprietorship/partnership, AND partnership agreement being the unique information.
- Short doc, but good and quick to the point – this and the ‘starting a corporation’ doc seem like strong precedents to go off for legal guides.

Startup Pack Belgium

- Holds great outlines for key considerations for startups – applicable for entrepreneurs for the most part
- Specifically – this document provides short, clear and strong descriptions of the particular legal aspects to be considered such as what articles of incorporation are, shareholders agreements etc.
 - Shareholders Agreement – including specifics on that.
 - Good description of IP Assignment Agreement – importance of clarity etc.
 - NDA – non-disclosure agreement – important as well and clearly defined.
 - Employment Contract – including some of the key considerations in those docs.

Fundamentals for Becoming a Successful Entrepreneur

- Lengthy discussion of the history of entrepreneurship, and how entrepreneurship impacts our lives and has grown into a major driving force of our economy today.
- Article also discusses the context important for creating entrepreneurship – specifically opportunity
- There is a false dichotomy of entrepreneurs and small business owners, both are entrepreneurs and both seek to take advantage of opportunity
- Entrepreneurs also don't simply seek profit, they are also people who are looking to get their ideas created and to take advantage of opportunity to grow their organizations.
- These people aren't just born, they are also a sort of person – you can't necessarily create an entrepreneur, but you can become one whenever via changing your mindset.

Considerations for Legal Guide

Main goal – defining the structure of the guide – looking at the concerns/what student entrepreneurs need to know (information wise), and then looking at how we want to structure the legal guide to ensure that they get that information.

- What would bring students specifically in the DUKE Heights BIA

Distinct aspects of student entrepreneurs

Note: this article defines student entrepreneurs as those who specifically use what they learned in school for the purpose of forming a business

1. They use university education to develop three capabilities: opportunity refinement, resources acquisition, venture championing.
2. They use the university network/reputation to build their venture, both people and resources
3. They are limited in resources they have (v. corporate ventures) so they view the resources as tools and focus on the application rather than attributes of resources.
4. They expect more than lectures, they want real education and professors who will help with their entrepreneurial venture.
5. They want university to help them form weak, strong, and bridging ties.

Student Entrepreneur Concerns/Considerations

1. Time management
 - a. Balancing responsibilities as a student with courses etc. while also building your own organization.
2. Networking and finding a support group/community
 - a. It is hard to know where other entrepreneurs, or student entrepreneurs specifically, are.
 - b. Building weak, strong, and bridging ties
 - i. Weak ties – provide new knowledge / info.
 - ii. Strong ties – provide resources, legitimacy, sensitive info exchange, mentorship.

- iii. [Bridging ties](#) – provide market and customer information as well as ability to expand one's current capabilities.
 - c. Perhaps building some community initiative which get people together would be helpful – or having a conference etc.
 - i. Incubators are big – LaunchYU and Innovation York
 1. A business incubator is a company/institution which provides program designed to foster/accelerate successful development of business' through capital programs followed by partnership support and guidance from others which have operated in that space in order to help make your business profitable, sustainable, and financially viable.
 - a. Internal incubators are either (i) business incubator aimed to acquire income generating enterprise (ii) business incubators aimed to help students get their own business going and help them face real business competition.
 - b. External incubators are media for SMEs usually outside of the university.
3. Money
 - a. Costs of developing your idea into a business, training, the cost of your time, marketing etc.
 - b. Fundraising – where can I get funds, and specifically where can I get funds in a way which won't compromise the equity of my company.
 - c. Leveraging your position as a student with the university to get free marketing or access to resources that others may not have?
 - i. Example, booths at university events are free marketing
 - ii. Speaking with students or professors are useful resources to bounce your idea off and hear criticisms that you can consider
 - d. Contests on campus – some contests may be sponsored and offering money to certain entrepreneurs (LaunchYU), this can also help to build your reputation in the community, and may act as solid networking opportunities.
 - e. Save money by: not paying yourself, hiring cheap freelancers online rather than employees who are expensive, don't bother with a physical office – alternatively a co-working space.
 4. Am I putting myself at legal/financial risk for what I am doing?
 - a. How can I find legal information relevant to my organization which will help me to protect myself and my company from risk?
 5. Are there any institutional or regional barriers stopping me from starting this organization?
 - a. Check regulations in province (ex. Uber)
 - b. [University Barriers](#) – being lack of social acceptance of student entrepreneurs, tension b/w academic and commercial outputs (aka school work), lack of people with business expertise/commercial skills, inefficient technology transfer offices.
 - c. [Regional barriers](#) – regulatory, legal, administrative, employment, financial, and partnership burdens.
 6. Understanding the Context in which your business operates
 - a. One must understand occupational environment (business context, market preferences) and things like product-market characteristics.
 - i. Key for determining where you ought to start your business, and whether to enter a niche or mass-market.

[Legal Guide Structure / Section Labels](#)

- [Options for company structure](#)
 - Incorporation checklist
 - Risks/benefits of different forms of different corporations.
- [Resources for Student Entrepreneurs](#)

- Funding in the BIA
- Non-financial Support in the BIA
 - i. Community initiatives available
 - ii. Incubators?
 - iii. Places to find other entrepreneurs to discuss or get together to share ideas/experiences
- Did You Know?
 - Section to include some of the big considerations or very dangerous aspects that they should consider
 - i. Such as risk of partnership (assumption and personal liability)
 - ii. Other info useful that they wouldn't consider (tax info or other things which students will look at and then realize that they likely have to look into it – essentially reminding them of a consideration)
- Best Practice Tips
 - Including info on some things that would be wise for entrepreneurs to consider in the early stages of their organization.
- Pathway to Student Entrepreneurship
 - Steps to become an entrepreneur: [from *Thoughts on being a student entrepreneur*]
 - i. *Have an Idea* – either create one on your own or use sharing sites like 'Product Hunt' to find a different idea someone else has come up with and tweak it.
 - ii. *Validate that idea* – talk to people about the idea, not the project. Do some market research and ask potential customers.
 - *You want to make sure the thing you are planning will actually be useful to customers, speaking with them directly will help you understand this.*
 - iii. *Get funding* – you can use your own money, or Family/Friends, you could go to competitions which award ideas with money, venture capitalists, or loans (but these are risky and ought to be a last resort for early stage entrepreneurs).
 - iv. *Implement It* – time to build your product, this requires your funding – perhaps you hire talent or you build it your own, you can also recruit cheap freelancers – either way you need to put it together.
 - v. *Market it* – sell your product, you want to start getting it out there – much of what is done with marketing is through online work, social media being huge, chatbots, online ads (if you can afford them)
 - vi. *Support it* – once you have customers who have purchased your product, don't leave them hanging. Your first customers are key, hold onto them and work with them to ensure that you are giving them all they need – they may also be good resources for knowing how you can build/develop your idea further.

[Table – principles to foster student entrepreneurship at a University](#)

From 'Fostering Student Entrepreneurship and University Spinoff Companies' by Tony Bailetti – Oct 2011 – *Technology Innovation Management Review*

Focus	Principles
A. Increase stock of knowledge	<ul style="list-style-type: none"> ● Attract and retain productive faculty researchers with business experience who can increase the stock of knowledge that can be commercialized. ● Provide mentors to students to help define and strengthen opportunities. ● Distinguish between knowledge that reinforces existing practices versus knowledge that destroys them.
B. Increase portion of knowledge students can exploit	<ul style="list-style-type: none"> ● Enable students to commercialize a large portion of the stock of university knowledge. ● Separate spinoff process from research and teaching.
C. Increase projected excess of profits from entrepreneurship over wages	<ul style="list-style-type: none"> ● Provide students with entrepreneurship assistantships using the same support level used to provide teaching and research assistantships. ● Fund student entrepreneurs to pay other students to work on their ventures. ● Fund students with viable opportunities. ● Differentiate product development versus opportunity development. ● Screen opportunities and provide students with constructive feedback on how to advance their opportunities. ● Insist on market orientation for opportunities. ● Provide access to potential customers, partners, and investors. ● Provide tools to define and strengthen opportunities. ● Help obtain external resources. ● Do not take equity or keep intellectual property.
D. Increase individual capabilities	<ul style="list-style-type: none"> ● Provide experiential training and mentors to develop capability to identify and refine opportunities, acquire resources, and champion ventures. ● Link students to serial entrepreneurs.
E. Decrease institutional barriers	<ul style="list-style-type: none"> ● Create university-wide awareness of benefits of student entrepreneurship to the region, university, and faculty. ● Create exemplars that motivate entrepreneurial behaviour and celebrate successes. ● Provide space for students to collaborate. ● Set clear and supportive spinoff process tailored to opportunity type. ● Stimulate creation and development of compelling opportunities. ● Define nature and duration of spinoff company ties to university. ● Greater focus on results of investments than on tracking investments in activities. ● Eliminate inequalities based on gender, age, race, health, and religion.
F. Decrease regional barriers	<ul style="list-style-type: none"> ● Encourage faculty to contribute to regional economic development organizations. ● Involve students in economic development organizations, clusters, capital suppliers, incubators, service providers, etc. ● Provide access to conferences where technology and market trends are discussed with potential customers.

LEGAL RESEARCH

Introduction

This legal guide is created for the benefit of student entrepreneurs in the DUKE Heights Business Improvement Area. The goal of this document is to provide some foundational understanding of the legal considerations which entrepreneurs face that may otherwise go unrecognized. As such, the information provided in this guide is in no way complete and in no way constitutes legal advice, but rather provides a solid foundation of certain concepts they ought to keep in mind as they develop their entrepreneurial venture. We at the DUKE Heights BIA hope that this document is helpful for you as you start your entrepreneurial venture, and whether you are a student within DUKE Heights, in other areas throughout Toronto, or in the greater community, the goal is to help you develop your company and bring your idea to life.

How to Structure Your Company

When starting a business, it is important to consider which business structure will best fulfil your organization's needs. While there are a variety of options for structuring your organization, each comes with its own unique benefits and disadvantages. This guide includes some of the options available to student entrepreneurs when considering the way in which they want to structure their organization; of course, the information is not exhaustive but should give you a solid foundational understanding from which to begin making your decision.

Sole Proprietorship

As the most common form of business enterprise, there are no formal steps require to start or dissolve a sole proprietorship; just set up your business and it will be assumed to be a sole proprietorship as long as you are starting it alone. Importantly, a sole proprietorship is not a distinct legal personality, meaning that the business owner accrues all benefits and obligations of the corporation.

If the business is in the proprietor's name, then it is fine as is, but if the business is not the proprietor's name, you must register the name as required under s.2(2) of the *Business Names Act*. Failure to do so may result in the business being subject to fines under s.10(1) of the same act. For information on registering your Sole Proprietorship, please see <https://www.canada.ca/en/services/business/start/register-with-gov/register-sole-prop-partner.html>.

Pros	Cons
<ul style="list-style-type: none"> • Simplicity • Easy to set up/terminate • Cheaper to create than corporation • No governing statute 	<ul style="list-style-type: none"> • Unlimited personal liability for sole proprietor including for contracts or other obligations • Difficulty raising money in later stages of organization • Must borrow all money in your personal capacity

Partnerships (General and Limited Liability)

General Partnerships

Partnerships are governed in Ontario by the *Partnerships Act*, which states that partnerships are found anytime there are two or more people carrying on business with a view of profit (s.2 of Ontario *Partnerships Act*). Within this definition, business is defined broadly, and you will be found to be 'in common' with others if you are operating on any sort of agreement (written or oral). Importantly, partnerships are not something you have to intentionally create, you become a partnership simply by your conduct and the intentions underlying your conduct – i.e. if your actions and intention is to be carrying on business toward profit with two or more persons, you will be found to be in a partnership.

Importantly, the Ontario *Partnerships Act* provides default rules governing the relationship between partners which can be altered via a unanimous partnership agreement. In fact, the mutual rights and duties of partners may be varied through consent of all partners, and this consent may be found expressly or may be inferred by the way the partners act with one another (s.20 of Ontario *Partnerships Act*). For more information on creating a partnership in Ontario, check out the Law Society website: <https://lso.ca/lawyers/practice-supports-and-resources/practice-area/business-law/how-to-create-a-partnership-in-ontario>.

Pros	Cons
<ul style="list-style-type: none"> • Simplicity and ease of creation/dissolution • Lack of formalities compared to a corporation • Greater flexibility in designing the management structure • No intention to create necessary for formation. • Ability to alter partner responsibility through unanimous partnership agreement. 	<ul style="list-style-type: none"> • Unlimited personal liability for sole proprietor including for contracts or other obligations • Difficulty raising money in later stages of organization • Must borrow all money in your personal capacity

Limited Partnership

As a sort of hybrid between a partnership and a corporation, a limited partnership offers unique opportunities to avoid the tax effects of partnerships and the liability to which one may be subject while operating as a general partnership. Unlike general partnerships, limited partnerships were created by the *Limited Partnership Act*. Every limited partnership must at least one general partner (who faces unlimited liability for the acts of the partnership) and one limited partner (who is not as actively involved in the company and whose liability is limited only to the amount they put into the partnership).

To create a limited partnership, you must file a declaration in accordance with the *Limited Partnership Act* s.3(1), and that declaration must be renewed every 5 years (s.3(3)). Importantly, limited partnerships do not have separate legal existence aside from the entities which form the partnership (this is why someone must be a general partner as someone, corporate entity or human, must be subject to unlimited liability for this type of organization). The rights and responsibilities of general partners vary greatly from those of limited partners, both of which are elaborated upon in detail in the statute. For more information, please visit: <https://www.bdc.ca/en/articles-tools/entrepreneur-toolkit/templates-business-guides/glossary/pages/limited-partnership.aspx>.

Pros	Cons
<ul style="list-style-type: none"> • Benefits of partnership while allowing liability protection for limited partners. • Unique tax benefits offered for limited partnerships • Clarity of statute-defined benefits and obligations which are outlined explicitly • Clearly defines roles of general partner(s) versus role of limited partner(s) 	<ul style="list-style-type: none"> • Unlimited personal liability for general partner • Potential power imbalance and disagreement with general partner and limited partner due to liability they face. • Required to renew declaration for limited partnership every 5 years.

Corporation

A corporation is a separate legal entity which allows the business of the corporation to be separate from the personal individual acting on behalf of the corporation. As such, this allows the corporation to face the potential liability associated with the business rather than the individual. This protection is also provided to any shareholders of the corporation as their liability is limited to what they are invested; yet, the structure allows for people to buy into the

corporation most easily without having to become a part of the business management team. For more information on the benefits allowed by incorporating please visit <https://www.opstart.ca/14-best-advantages-incorporating-ontario/>. For information on the incorporation process in Ontario please see <https://www.ontario.ca/page/incorporating-business-corporation>.

Pros	Cons
<ul style="list-style-type: none"> • Separate legal personality • Separates management and ownership of company • Accountability mechanism for stakeholders • Transferability of shares • Infinite life • Limited liability • Tax advantages • Ease of raising capital 	<ul style="list-style-type: none"> • Setting up corporation is complex and difficult. • Additional formalities constraining how you operate your business • Additional costs associated with incorporation • Complex to run, manage, and dissolve • Disclosure requirements • Potential tax repercussions

Note: There are certain costs associated with incorporating in Canada, and the exact fees vary depending on the legislation under which you wish to incorporate your business. If you incorporate your business federally, thereby subjecting it to the *Canadian Business Corporations Act* (CBCA), then the fee for incorporating a numbered company is around \$259.89 and a named company is \$334.87. If incorporating in Ontario, thereby subjecting your business to the *Ontario Business Corporations Act* (OBCA), then the filing fees will be \$373.45 for a numbered corporation and \$448.43 for a named corporation. Though, when deciding which statute under which you are going to incorporate your company, there are a plethora of factors to consider and we suggest researching how the different jurisdictional structures would impact your business operation. Below are some resources we believe are useful to get your started:

Federal vs. Provincial Incorporation: What’s the Difference? <https://www.opstart.ca/federal-vs-provincial-incorporation-whats-difference/>

Law Depot – Provincial and Federal incorporation <https://www.lawdepot.ca/law-library/business-articles/provincial-and-federal-incorporation/?loc=CA#.XdKID9VKiM8>

Federal vs. Provincial Incorporation in Canada: <https://www.thebalancesmb.com/provincial-versus-federal-2948230>

Joint Venture

Joint Ventures do not have a statutory definition in Ontario, there is no legislation regarding the establishment of Joint Ventures. Generally, Joint Ventures are business relationships established for the purpose of isolating the liability of both organizations in the venture to that particular job rather than the immense liability these organizations may be subject to under partnership law. Importantly, joint ventures are not a distinct legal person.

Formation: To form a joint venture, both organizations must sign a contract which expressly states that it is not a partnership and that none of the parties are acting as agents for the other (as they would be in a partnership). For more information, check out <https://www.thebalancesmb.com/what-is-a-joint-venture-and-how-does-it-work-397540>.

Pros	Cons
<ul style="list-style-type: none"> • Simplicity of forming joint venture through contract • Limits liability that organizations face to that particular project • Avoids having one part be able to bind the other as they would be able to in a partnership. 	<ul style="list-style-type: none"> • Not governed by statute nor regulation, making it harder to understand the impacts of an organization’s actions. • Not a separate legal person

Co-operative

A co-operative is a corporation that is organized and controlled by its members. Co-operatives can operate as non-profit or for-profit organizations. Generally, a co-operative is organized, operated and carries on business on a co-operative basis if: each member has only one vote and surplus funds which come from the co-operative's operations are used for specified purposes. When it comes to who can be considered part of the co-operative, it depends on which legislation the organization is operating under.

In Ontario, five or more persons (being corporations or natural persons over 18) who intend to be members of the co-operative may incorporate by signing and delivering the appropriate minister articles of incorporation and other information as may be prescribed. For more information on co-operatives in Ontario check out

<https://ontario.coop/starting-co-operative>, or see the Financial Services Commission of Ontario website at <http://www.fsco.gov.on.ca/en/coops/Pages/default.aspx>.

Pros	Cons
<ul style="list-style-type: none"> • Co-operatives limit your individual liability • Profits are distributed among members of the co-operative • Co-operatives are democratically controlled (one member, one vote) 	<ul style="list-style-type: none"> • Conflicts within the co-operative must be resolved among members • The decision-making process may be longer due to the democratic structure of the co-operative • All members of the co-operative must participate for the organization to succeed.

Non-Profit Corporations

As another available option for incorporating your organization, the *Canada Non-For-Profit Corporations Act* allows for incorporation and continuance of corporations without share capital, which can be roughly understood as the money that companies raise in exchange for issuing ownership interests in the company through things like stocks. Importantly, a company which operates without share capital may not be carried on for profit or gain to its members, and depending on whether you wish to register your organization as a charity under the *Income Tax Act*, you may need to specify which charitable activity the organization purports to further.

Additionally, federal non-profit corporations can be incorporated under the *Canadian non-profit Corporations Act*, but each jurisdiction has its own statutory requirements to incorporate a not-for-profit corporation. If you are incorporating a non-for-profit corporation under the laws of a province, you have to consult the corporate statute of that jurisdiction, but in Ontario it is likely that incorporating federally will ensure the most benefits are allotted to your non-profit organization.

There are a variety of considerations that you must take into account when incorporating a non-for-profit organization including which form of non-profit entity is best for your purposes. Generally speaking, non-for-profit corporations enjoy a formal management structure, and allow its members a predictable and recognized legal structure, limited liability, and perpetual existence. In addition to these benefits, some other considerations that individuals looking to start non-profits should consider include any requirements of the specific jurisdictions they are incorporating in, relevant tax considerations under the *Income Tax Act*, and the name of your corporation (which may require a NUANS report for enterprises in Ontario prior to filing articles of incorporation).

For further information on Non-profit corporations please visit the following links:

Ontario Not-for-Profit Corporations: <https://www.ontario.ca/page/rules-not-profit-and-charitable-corporations>

Federal Not-for-Profit Corporation: <https://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs04970.html>

Protect Your Idea – Foundations of Intellectual Property

Intellectual Property Generally

Intellectual property is a category of property which deals with what can generally be understood as intangible creations of human intellect. Intellectual Property law is the area of law which generally deals with legal rights to creative works, inventions, or other forms of intangible creation that come from one's intellect which people seek to protect in one way or another. There are a variety of types of intellectual property law, and this guide includes a short description of some foundational types which entrepreneurs ought to keep in the back of their mind. This is due, in part, to the fact that international property law often raises international issues and in today's globalized world, this is true now more than ever.

It is important to note at the outset that Intellectual Property Law is a highly nuanced area of law, especially in today's world. As technology continues to allow humans to push the boundaries of creativity and innovation, the law continues to develop in ways which can be difficult to predict. This guide is meant to provide you with a rough understanding of some foundational types of intellectual property law and is in no way exhaustive nor all the information you ought to consider when protecting your ideas.

For detailed information on the variety of ways you can protect your ideas, browse through the Canadian Intellectual Property Office's website at the following link: <http://www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/Home>.

This site provides great step-by-step information for protecting your Intellectual property and provides clear instructions on what some of your wisest IP moves may be.

Copyright

Copyright is shorthand referring to the exclusive rights conferred by the Copyright Act. Essentially, these are protections offered for literary, artistic, dramatic, or musical works and other subject-matter known as performer's performances, sound recordings and communication signals. These rights typically relate to a 'work' and there are a plethora of them. One of the primary rights conferred to the copyright owner is the sole right to produce and reproduce work in any material form. Through protections offered by registering under the *Copyright Act*, creators, and in certain instances others who derive interest from the author, also hold the right to prevent others from doing anything that they have the sole right to do under the act.

The works covered by copyright include but are not limited to print, performance, music, choreography, and movies. The main thing which copyright ensures is that if you have a copyright, other people aren't able to reproduce what you created for a profit, but in order to receive copyright, your work must be unique.

Violating the rights offered to the author/creator under the Copyright Act is referred to as an infringement, and there are limitations as to what forms of work someone is entitled to have these sorts of rights to. While narrowing down exactly what copyright is has been a difficult practice, it would be fair to consider Copyright as a group of rights provided in a statute which are expressed in the form of rights one holds over property, and they are provided on a national basis here in Canada as the federal government holds exclusive jurisdiction over Copyrights under the Canadian Constitution.

The Government of Canada guide to Copyright can be found here: www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h_wr02281.html?Open&wt_src=cipo-cpyrgh-t-main&wt_cxt=learn#understandingCopyright

Trademarks

Trademarks can generally be understood as a sign or combination of signs that is used to distinguish goods or services from one another, essentially boiling down to a certification mark for that particular good or service. In this way, each trademark is unique and it is important to consider trademark implications early on as a company because, over time, that trademark may come to represent your company's reputation and brand. To protect your product or service with a trademark, you may need to register with the Government of Canada. By doing so, you will protect it under law from misuse by others and you will gain exclusive rights to use it throughout Canada for 10 years.

While you don't need to register a trademark to have it, if you register the trademark with the Government it will provide you with a presumption that you are the owner of that particular trademark. The Trademarks Act allowed for the creation of a public registry system which provides information on pending and registered trademarks in the country.

Trademark Registry site: <https://www.ic.gc.ca/app/opic-cipo/trdmrks/srch/home?lang=eng>

Government of Canada guide to Trademarks: http://www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h_wr00002.html

Patents

Patents are legal documents granted to investors guaranteeing their exclusive legal rights for a period of 20 years. Patents are very valuable as they can help companies get a strong competitive edge on others in that space by offering companies a protection for their invention, preventions from having others use it, and the ability to sell, licence, and use the assets as the individual/company with the patent sees fit.

Unfortunately, not everything is patentable. To be eligible your invention must generally be new, useful, and inventive, i.e. it ought to be the first in the world, the creation should be functional and operative, and the creation should show ingenuity and not be obvious enough that someone else with average skill would have that same idea. Generally speaking, these sorts of inventions can be a product, composition, machine, process, or an improvement upon a pre-existing form of any of the above.

In Canada, the first applicant to file an application for a patent of that invention is entitled to obtain the patent, thus you should look into patenting any new invention your company has as soon as possible!

Here's a link to the Government of Canada website providing information on patents:
http://www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h_wr00001.html

Industrial Designs

Industrial designs are product features which appeal to the eye such as a new shape for an everyday object like a vehicle hood, an original pattern woven into a sweater, or a uniquely designed cellphone which is more aesthetic than the traditional touch phone. The visual appeal of these sorts of products is what provides them with an edge. In Canada, industrial designs are subject to the Industrial Design Act, a federal piece of legislation which allows for registering of industrial designs if they fulfil certain requirements laid out in the act.

Registration under the act is meant to protect new designs which offer some new unique design feature which is not strictly utilitarian and is demonstrably original, i.e. not already a registered design. Importantly, what is protected under this legislation is the design of the article, not necessarily how it works, nor what it's made of.

If successfully registered, that registration will provide exclusive rights in relation to the design which will end at the later of 10 years after the date on which your design is registered and the end of 15 years after you filed your application. So whichever of these dates would be later, your design would be protected until then.

For more information on Industrial Designs, check out the Government of Canada website at:

https://www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h_wr02300.html

Work Well with Others – General Responsibilities to Employees

The employment relationship has been key to our society's function and organization for years, and there are several rights and responsibilities put on those on both sides of such relationships whether employee or employer. Generally speaking, employment relationships are formed by written contracts, but the terms of these contracts are also impacted by implied terms from the law, oral terms agreed to by the parties, and the conduct of both parties included in that relationship.

In Ontario, employment relationships are governed by several interacting pieces of legislation, but is generally governed by the Ontario *Employment Standards Act*. The way in which people are treated within the employment relationship is also protected by the *Ontario Human Rights Code* and the *Occupational Health and Safety Act*. Given the complex matrix of laws which relate to the employment relationship, it is important that organizations obtain independent legal advice prior to taking on employees or signing onto contracts of employment. In the early stages, organizations will have standardized employment contracts which they will sign with employees which may vary slightly but would generally remain the same.

When it comes to health and safety, employers generally have an obligation to ensure the health and safety of every person employed by the employer while they are working. These responsibilities are outlined by the *Ontario Health and Safety Act*, which also outlines what employees can expect in this regard for their employment relationship. For more information on health and safety responsibilities, check out that piece of legislation or go to

<https://www.wsps.ca/Information-Resources/Topics/Employers.aspx>

For general information on employer employee responsibilities and expectations from the *Employment Standards Act*, check out the government of Canada's website: <https://www.ontario.ca/document/your-guide-employment-standards-act>

To begin to understand some of the several responsibilities put onto employers in an employment relationship, check out the Canadian Human Rights Commission's website on employer obligations: <https://www.chrc-ccdp.gc.ca/eng/content/employer-obligations>

Taxation

When you operate a business in Ontario, you are responsible for charging, collecting, and remitting the appropriate taxes. The taxes to which your business is subject will depend on the business type, location, and legal structure – these factors will also impact what you need to submit to comply with your tax responsibilities. The Canada Revenue Agency (CRA) is the office responsible for taxation of businesses in Ontario, and their website holds lots of great information which is easily accessible for any business owner at: <https://www.canada.ca/en/revenue-agency.html>. Importantly, there are several requirements in Ontario for businesses to consider when it comes to taxes, and detailed guides on several of these considerations are available at the following taxation guide: <http://www.cbo-eco.ca/en/index.cfm/managing/taxes/taxation-guide/>

One example of such requirements is a Business Number, which is essentially a reference numbering system used by the CRA to cover and keep track of four business accounts:

1. HST[Harmonized Sales Tax] – Businesses with annual sales of \$30,000 or more are required to charge 13% HST and remit it to the Canada Revenue Agency.
2. Importer/Exporter Account – Canadian individuals, businesses and non-residents or foreign based importers are required to obtain this number.
3. Corporate Income Tax – When you incorporate with the province of Ontario you will automatically be registered with a Business Number and a corporate income tax program account. This should be received within 45 days of registration.
4. Payroll Deductions – Employer kits are available from CRA which include payroll deductions. Deductions include the Canada Pension Plan, Unemployment Insurance Contributions, and the Employee Income Tax Deductions.

To learn more about the Canada Revenue Agency and the taxation requirements and standards put onto companies operating in Canada, check out www.cra.gc.ca

Determining Your Business Model Canvas

In order to transform your idea into an operational and profitable business, it is important to consider the way in which you are going to model your business so you are able to successfully, commercialize, monetize, and profit from your idea and what service your business provides. A business model can be roughly understood as a company's plan for making profit, and it specifically identifies what exactly it is that your business will sell (product or service), the target market you have identified, and the expenses which you anticipate in attempting to reach that target market.

Being mostly a theoretical model, the business model is essentially looking at your business from 30,000 feet up, and the most important part of your business is the **value proposition**. The value proposition of a company consists of several key components including these three questions:

1. What is it your business is offering its customers?
2. What type of benefit or value is associated with your offering, and how much of that benefit/value can the customer expect? How is this value generated?
3. To whom are you offering this value, meaning is the value for the customers themselves, for customers of your customers, etc.

It is important to take time to define the value proposition of your company well, as without it, it would be impossible to know if and how your company will make money, what the nature of your company's business will be, or how you will acquire and retain customers.

Business Model Canvas

A business model canvas is a strategic management and entrepreneurial tool which provides a layout of the key structural components of your business plan to help you get a true image of the core operations of your business. There are several questions to ask yourself in order to build a detailed business model canvas, including the following:

- **Key Partners** – Who else do you need to make your business model work? Who is able to do the work you need? Who would be a helpful partner to have as you get your business going?
- **Key activities** – What things must you do to attract customers and retain the value proposition you defined above?
- **Key Resources** – What are some of the resources you will need for your company to perform?
- **Value Proposition** – as defined above, what problem does your company solve? What are the benefits of what you provide?
- **Customer Relationships** – What sort of relationships do you have with your customers? What sort of relationships do you want to have with your customers?

- **Channels** – How do you plan to find customers? How will you deliver the product to them and how will they be purchasing it? This is an ever more important questions in today's environment, as the internet, ecommerce, and companies such as amazon have revolutionized the reach of businesses.
- **Customer segments** – Who do you serve as your customers? Who pays you and who will use your product?
- **Cost Structure** – What does it cost to operationalize your business model? What is the cost of getting your company started? How will these costs change over time? How many of these costs are cyclical or reoccurring?
- **Revenue Streams** – How will you get paid? How much? How will that amount change over time?

After answering each of these questions you will have a strong, theoretical foundation upon which you can start to build your company. Of course, what you initially write into your business model canvas may change, but we are hoping it will prove to be a valuable guiding tool as you start to build your entrepreneurial venture.

Get Money to Make Money – Options for Early-Stage Capital Raising

When it comes to making your business idea into a reality, understanding how to raise capital can be a very valuable tool. Capital is more than just money. Capital can be roughly understood as wealth in a form of money or other assets which are owned by a person or organization and are available for a particular purpose. In the case of your entrepreneurial startup, you may need to have access to capital to build, develop, market, and commercialize your idea so your company is able to start gaining income from the product/service which you offer. Fortunately for you, there are a large variety of potential sources of capital, each coming with their own benefits and risks and each being offered under one of the following categories of financing options.

Microloans – Microloans are small loans issued by individuals rather than banks or credit unions, and these can be issued by a single individual or aggregated across a number of individuals who contribute a portion to the total amount. Some organizations available for your business in Toronto include:

- **Access Community Capital Fund** – <https://accessccf.com/>
- **Futurpreneur** – <https://www.futurpreneur.ca/en/>
- **Rise Asset Development (Rise)** – <https://risehelps.ca/>
- **The Ontario Catapult Microloan fund for social enterprise** - <https://socialinnovation.org/accelerator/catapult/>
- Indigenous and Northern Affairs Canada – Aboriginal Business and Entrepreneurial Development: <https://www.waubetek.com/> OR <http://www.nadf.org/>.
- **Opportunities Fund for Persons with Disabilities Program** - <https://www.canada.ca/en/employment-social-development/programs/opportunity-fund-disability.html>

Capital Improvements – Companies which are simply looking to improve their capital are able to apply to the program below. This program has the purpose of making it easier for small businesses to get loans from financial institutions by sharing the risk with lenders, and the program is only available for small businesses with revenues of \$5million or less.

- **The Canada Small Business Financing Program** - <http://www.ic.gc.ca/eic/site/csbfp-pfpec.nsf/eng/Home>

Market Expansion – Companies looking to expand and continue their growth can look to the following two sources for potential financing.

- **Business Development Bank of Canada** – <https://www.bdc.ca/en/pages/home.aspx>
- **Government of Canada Small Business Financing Program** - <http://www.ic.gc.ca/eic/site/csbfp-pfpec.nsf/eng/home>

Angels and Venture Capital – Angel investors are affluent individuals who provide capital for business start-ups, generally in the form of convertible debt or ownership equity. Venture capital, on the other hand, is a kind of financing

that is provided by firms or funds to small, early-stage, emerging firms that are deemed to have high potential for growth. Some of the angel investor groups available in Ontario are listed below:

- **Angel Investors Ontario** - <https://www.angelinvestorsontario.ca/>
- **Angel One Investor Network** – https://angelonenetwork.ca/?afg5_page_id=8
- **Georgian Angel Network** – <https://www.georgianangelnet.ca/>
- **Maple Leaf Angels** – <https://mapleleafangels.com/>
- **Ryerson Angel Network** – <http://ryersoninstitute.org/ryerson-angel-network/>
- **Spark Angel Network** – <https://www.sparkangels.ca/home>
- **York Angel Investors** - <https://www.yorkangels.com/>

Innovation & Technology Commercialization – There are specific programs available for companies which have innovation or technology-based startup ideas and are seeking funding. Some of those programs include:

- **MaRS Investment Accelerator Fund** - <http://www.marsiaf.com/>
- **Natural Research Council of Canada – Industrial Research Assistance Program** - <https://nrc.canada.ca/en>
- **The Scientific Research and Experimental Development Program** - <https://www.canada.ca/en/revenue-agency/services/scientific-research-experimental-development-tax-incentive-program.html>
- **Ontario Centres of Excellence – Collaborative Commercialization Programs** - <https://www.oce-ontario.org/>
- **AgriInnoation Program** - <https://www.mentorworks.ca/what-we-offer/government-funding/research-development/aip-stream-b/>
- **Collaborative research and development grants** - https://www.nserc-crsng.gc.ca/Professors-Professeurs/RPP-PP/CRD-RDC_eng.asp
- **Ontario Innovation Tax Credit** - <https://www.fin.gov.on.ca/en/credit/oitc/index.html>

Crowdfunding – This is where the funding for a project or venture is done through raising small amounts of money from a large number of people, typically marketed through the internet. Some opportunities for crowdfunding your entrepreneurial venture are listed below:

- **Hot Docs Canadian International Documentary Festival** - <https://www.hotdocs.ca/>
- **Kickstarter** – <https://www.kickstarter.com/>
- **Indiegogo** – <https://www.indiegogo.com/>
- **GoFundMe** - <https://ca.gofundme.com/>

Online Directory for Funding Opportunities

- **The Funding Portal Inc** – <https://ca.fundingportal.com/>
- **Indian Agricultural Program of Ontario** – <http://indianag.on.ca/>
- **Government of Canada** - <https://www.canada.ca/en/government/grants-funding.html>
- **Women in Business Guide** - <http://www.cbo-eco.ca/en/index.cfm/starting/getting-started/women-in-business-guide/#Financing>

Know the Rules of the Game – Accessing Provincial Regulations

As a business operating in Ontario, you are responsible for abiding by several provincial and federal regulations which govern the way in which businesses operate in Canada. These regulations are various and, while there are entire pieces of legislation which you can access online, the Canadian government has provided a short description of some of the main responsibilities employers face when operating a business and abiding by the laws of Ontario. Check out the

following page for general regulations which companies must abide by: <http://www.cbo-eco.ca/en/index.cfm/managing/regulations/business-regulations-guide/>.

For more detailed information on each regulation in Ontario specifically, check out the Ontario Regulation Registry: <https://www.ontariocanada.com/registry/index.jsp;jsessionid=idsA6lOzP84tb2Ruay69bj>

Mentorship/Networking/Learning Opportunities

Be sure to look for helpful community resources or community-gathering locations near you. In Toronto, there are a number of incubators available! Check out this site for information on each so you're able to find the incubator which is best for your sort of organization.

<https://startupheretoronto.com/support-category/incubators/>

In the DUKE Heights BIA, the key incubators are located at York University, and while the eligibility requirements may be more restrict than other incubator or supportive-communities around, they are still great resources to see what the community is up to. Check it out!

Innovation York <https://iy.info.yorku.ca/>

YSpace <http://yspace.yorku.ca/>

Entrepreneurship Support <https://iy.info.yorku.ca/for-entrepreneurs/>

Privacy Considerations

Private organizations in Ontario are governed by federal legislation which provides rules for the collection, use, and disclosure of personal information in a manner that respects the privacy of individuals while recognizing the needs of some organizations to collect, use, and disclose personal information in the course of their commercial activity. Specifically, the *Personal Information Protection and Electronic Documents Act (PIPEDA)* deals exclusively with information collected, used, or disclosed by such organizations. Importantly, the *PIPEDA* provides for the use of electronic alternatives where other federal laws contemplate the use of paper to record or communicate information, making it so your company is as responsible for electronic communications under other privacy-related legislation as they are for paper or other forms of information collection.

For the purpose of PIPEDA, 'personal information' means information about an identifiable individual, and this broad conception of the phrase allows for a variety of information to be awarded protection. Importantly, consent is required for the collection of personal information and subsequent use or disclosure of that information, and before or while collecting personal information, the organization must notify that individual as to the purposes for which the information is being collected, and the name of the person who is able to answer questions on behalf of the corporation regarding the collection of this information. This notice must be in a form that the person will reasonably be expected to understand, must include information on the purpose of the collection of this information, and must give the person an reasonable opportunity to decline or object providing that information. If consent is obtained, even in part, by an organization providing false or misleading information or using false or misleading practices, any consent obtained will be negated.

In addition to the PIPEDA, the *Privacy Act* limits the collection, use, and disclosure of personal information by government and sets out roles and obligations for departments and agencies which work in the public sector. This act also gives individuals the right to access personal information about themselves held by the government. Generally, a government institution must collect personal information directly from the individual about whom it relates except

where that individual authorizes another method, though provincial legislation may set out different exceptions to this rule.

To learn more about how Privacy concerns may impact your organization check out some of the resources listed below:

Guidelines on Provincial and Federal Legislation Define:

Federal Legislation

- *The Privacy Act* – limits collection, use, and disclosure of personal information by government
 - Check it out: <https://laws-lois.justice.gc.ca/eng/acts/P-21/FullText.html>
- *The Personal Information and Electronic Documents Act* – Protects personal information held by private sector businesses.
 - Check it out: <https://laws-lois.justice.gc.ca/eng/acts/P-8.6/FullText.html>

Provincial Legislation

- *Freedom of Information and Protection of Privacy Act* – Deals with ministries and agencies of the Ontario Government.
 - Available at: <https://www.ontario.ca/laws/statute/90f31>
- *Municipal Freedom of Information and Protection of Privacy Act* – Governs municipalities and local boards throughout the province.
 - Available at: <https://www.ontario.ca/laws/statute/90m56>
- *Personal Health Information Protection Act* – sets out rules for collection, use, and disclosure of personal health information that protects confidentiality and privacy of individuals pertaining to health care
 - Available at: <https://www.ontario.ca/laws/statute/04p03>

Organizations and Reference Websites

1. The Office of the Privacy Commissioner of Canada
 - a. <https://www.priv.gc.ca/en/>
2. Government of Canada – Access to Information Act
 - a. <https://laws-lois.justice.gc.ca/eng/acts/A-1/>
3. Industry Canada – Privacy in the Digital Economy
 - a. <https://www.ic.gc.ca/eic/site/icgc.nsf/eng/home>
4. Information and Privacy Commissioner of Ontario
 - a. <https://www.ipc.on.ca/>