# Recent Legislation Changes for Professional Corporations

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# New Alberta Professional Corporation Rules[1]

## I. MARCH 1, 2010 STATUTORY CHANGES

Following the lead of its neighbours in British Columbia and Saskatchewan, Alberta has moved to relax the shareholding rules for professional corporations governed by the *Health Professions Act*,[2] the *Legal Profession Act*,[3] the *Regulated Accounting Profession Act*,[4] and the *Medical Profession Act*.[5] Bill 53, the *Professional Corporations Amendment Act, 2009*, received Royal Assent on November 26, 2009 and was proclaimed into force effective March 1, 2010.

The changes to the professional corporation shareholding rules will be welcomed by Alberta professionals, whose colleagues in British Columbia and Saskatchewan have been able to engage in tax and estate planning with family members since 1998 and 2001, respectively. However, Alberta professionals will be disappointed that the amendments do not allow for the same breadth of planning opportunities as in British Columbia and Saskatchewan. The Alberta changes are more in line with what is currently permitted in Ontario for doctors and dentists. The chart below summarizes the rules for Alberta, British Columbia, Saskatchewan and Ontario.

| | **British Columbia** | **Alberta** | **Saskatchewan** | **Ontario Doctors and Dentists[6]** | **Ontario Accountants and Lawyers** |
|---|---|---|---|---|---|
| Issue shares to spouse? | Yes | Yes | Yes | Yes | No |
| Issue shares to children? | Yes | Yes | Yes | Yes | No |
| Issue shares to corporation? | Yes | No | Yes | No | No |
| Issue shares to trust? | Yes | Only to age 18 + 90 days | Yes | Only to age 18 + 90 days | No |
| | | | | | |
| Issue shares to parents? | Yes | No | Yes | No | No |
| Issue shares to grandchildren? | Yes | No | No | No | No |

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2 R.S.A. 2000, c. H-7

3 R.S.A. 2000, c. L-8

4 R.S.A. 2000, c. R-12

5 R.S.A. 2000, c. M-11

6 See the *Business Corporations Act*, R.S.O. 1990, c. B.16, subsection 3.2(2). See also the *Law Society Act*, R.S.O. 1990 c. L.8, subsection 61.0.1(4) and Institute of Chartered Accountants of Ontario, *Bylaws of the Institute*, Rule 308(1)(b), which are in place for greater certainty.

## II. ALBERTA BROADENS THE CLASS OF PERMITTED SHAREHOLDERS FOR NON-VOTING SHARES OF PROFESSIONAL CORPORATIONS

The prohibition against issuing voting shares of a professional corporation to anyone other than a regulated member of the profession remains. However, effective March 1, 2010, a professional corporation may issue non-voting shares (common or preferred) to the spouse or common-law partner[7] of a regulated professional, as well as to the children (minor or adult) of a regulated professional. Where a person ceases to be a spouse of the professional, the professional or the professional corporation must cause that person to cease to be a shareholder within 90 days or the professional corporation's permit will be terminated by its governing body.

The Bill 53 amendments are very narrow on the ability of the professional corporation to issue shares to anyone other than individuals. The amendments do not allow for shares of a professional corporation to be issued to another corporation under any circumstances. Moreover, although the amendments allow for shares of the professional corporation to be issued to a trust, the conditions are so restrictive that it is unlikely that the trust shareholder rules will be used very much.

## III. TRUST SHAREHOLDING RULES ARE VERY RESTRICTIVE AND INCOME SPLITTING RULES WITH ADULT CHILDREN PRESENT UNIQUE ISSUES

In order for shares to be issued to a trust, all of the beneficiaries of the trust must be minor children of the professional. Once the beneficiary reaches 18 years of age, the shares must either be distributed from the trust to the particular adult child or that child's entitlement to receive income or capital out of the trust must be terminated. It is unclear why Alberta chose to adopt these very narrow trust rules which are the same as the Ontario rules for dentists and doctors. This effectively prevents the use of a trust for income splitting purposes since an allocation to the beneficiaries (other than during the 90 day post age 18 period) will trigger "kiddie tax" under section 120.4 of the *Income Tax Act* (Canada),[8] so any dividends paid to the trust will be taxed at the highest marginal rate either in the trust or under the kiddie tax rules. As a consequence of these restrictive trust rules, the estate planning and income splitting opportunities for Alberta professionals involving trusts are very limited. While a professional can certainly split income with his spouse with the appropriate share structure, he or she cannot do so with children unless the shares are issued directly to adult children. Professionals will be able to realize significant income tax savings by paying dividends to adult children who are not already at the top income tax bracket but this will require the direct issuance of shares to the adult children.

Professionals who wish to engage in income splitting with children have to decide whether to:

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[7] Oddly, the Bill 53 amendments introduce the concept of "common-law partner" rather than using an "adult interdependent partner" (under the *Adult Interdependent Relationship Act*, S.A. 2002, c. A-4.5, which is generally the Alberta family law concept) as the standard. A "common-law partner" is defined in Bill 53 as a person who cohabits in a conjugal relationship with the member, and has done so for a period of one year or would be considered a parent of the professional's child. Normally, Albertans must cohabit in a conjugal relationship for a period of three years before becoming "adult interdependent partners". There is no discernable policy reason why this standard should be relaxed or why a new phrase or concept which is generally not found in Alberta legislation would be used.

[8] R.S.C. 1985, c. 1 (5th Supplement), as amended (the "Act")