



**Michael Carabash**  
BA LLB MBA



**Michael James Moeller**  
BSc MA



**Nicholas Dunn**  
BSc MBA

# Policy Brief:

## Dental Professional Corporation Laws in Canada

Historically, Canadian dentists delivered patient care through various legal entities and business arrangements – be it as sole proprietors or in partnership, association or through cost-sharing with other dentists. Dentists could not, however, practise through a corporation due to a general prohibition; this was meant to protect the public by making it impossible for non-dentists to control dental practices owned by corporations. This remained the status

quo in Canada for many years until dentists, seeking the same tax benefits enjoyed by non-professionals who owned and operated corporations, successfully lobbied the provincial governments to enact legislation to allow them to practise through a dentistry professional corporation<sup>1</sup> (DPC). What follows is a brief legal overview regarding who can own a DPC in Canada.

**Table 1.**

Laws Governing Ownership of DPCs in Canada

Province	Who Can Own Voting Shares?	Who Can Own Non-Voting Shares?
<b>British Columbia<sup>2</sup></b>	Dentists, <sup>3</sup> their legal representative (e.g. executor/administer of their estate or trustee in bankruptcy), or a holding company whose voting shares are owned only by a dentist and whose non-voting shares are owned by a Permitted Shareholder (see right).	A dentist or his or her spouse, child, parent, sibling or other relative, or someone who resides with the dentist (each a Permitted Shareholder), <sup>4</sup> or a holding company whose shares are entirely owned only by a Permitted Shareholder or are held in trust by a Canadian resident on behalf of a Permitted Shareholder.
<b>Alberta<sup>5</sup></b>	Dentists.	A dentist who also owns voting shares (a Voting Dentist) or his or her spouse, common-law partner or child, or a trust, the beneficiaries of which are a Voting Dentist's minor children.
<b>Saskatchewan<sup>6</sup></b>	Dentists or their legal representative (e.g. executor/administer of their estate or trustee in bankruptcy).	A Voting Dentist or his or her spouse, child or parent, a holding corporation whose shares are owned by an aforementioned individual, or a trust, the beneficiaries of which are aforementioned individuals.
<b>Manitoba<sup>7</sup></b>	Dentists or a Manitoba DPC.	A Voting Dentist or his or her spouse, common-law partner or child, or a holding corporation whose shares are owned by an aforementioned individual.
<b>Ontario<sup>8</sup></b>	Dentists.	A dentist or a Voting Dentist's family member (i.e. spouse, child or parent) or one or more individuals, as trustees, in trust for a Voting Dentist's minor children.
<b>Quebec<sup>9</sup></b>	At least one (1) dentist or a legal person, trust or other enterprise, the voting shares of which are owned by a dentist.	At least one (1) dentist, a relative (either by direct or indirect line of descent) or spouse of a Voting Dentist, or a legal person, trust or other enterprise whose voting shares are owned by an aforementioned individual.
<b>Nova Scotia<sup>10</sup></b>	A majority of the voting shares must be owned by a dentist.	There is no restriction on who can own non-voting shares.
<b>New Brunswick<sup>11</sup></b>	A majority of the voting shares must be owned by one or more dentists.	A dentist or a member of his or her extended family, a trust, all of the beneficiaries of which are a dentist or a member of his or her extended family, or a holding company whose shares are owned by an aforementioned person.
<b>Newfoundland and Labrador<sup>12</sup></b>	Dentists.	Natural persons (i.e. individual human beings), including a dentist providing dental services through the DPC, or someone with an apparently familial or personal (i.e. non-commercial) relationship with a dentist providing dental services through the DPC. <sup>13</sup>
<b>Prince Edward Island<sup>14</sup></b>	Dentists.	There is no restriction on who can own non-voting shares.



**Kester Ng**  
BHSc



**Carlos Quiñonez**  
DMD MSc PhD FRCD(C)

### Who Can Legally Own a DPC?

The laws governing ownership of DPCs are presented in Table 1. Importantly, they differ (sometimes widely) throughout Canada.

#### Policy Rationale

These laws attempt to strike a balance between two objectives. The first objective, and that which has always been paramount, is to protect the public. That is why, although corporations generally limit the personal liability of shareholders, a DPC will not shield a dentist personally from claims of professional negligence. Furthermore, since only dentists can own voting shares and act as directors and officers, they alone control the DPC.<sup>15</sup> This authority gives dentists unfettered professional independence when it comes to treating patients; it also allows them to avoid (actual or perceived) conflicts of interest which could have existed had they been accountable to, or in business with, commercially driven non-dentist investors.

The second objective of the law is to allow dentists to defer or avoid paying taxes by practising through a DPC. In this regard, commonly used techniques include:

- leaving money in the DPC to be taxed at a lower rate, resulting in less tax being paid than if the dentist had earned the income personally;
- income-splitting by paying discretionary dividends to family members taxed in lower income-tax brackets;
- using the lifetime capital gains exemption on the sale of shares of a DPC to avoid paying capital gains taxes (and perhaps even multiplying the lifetime capital gains exemption by using family members);
- having a shareholder borrow and repay a loan from the DPC without paying taxes;
- having a corporate will and a non-corporate will to save on estate administration taxes; and
- having an employment agreement between the DPC and the dentist that includes \$10,000 tax-free death benefits.<sup>16</sup>

#### Are DPC Laws Becoming Less Relevant?

Notwithstanding these worthy objectives, the laws governing who can own shares in a DPC may be becoming less relevant. The lure of above-average returns has led sophisticated and resourceful non-dentists to effectively own and operate a dental practice without needing to own shares in a DPC. In Ontario, for example, this first came to public light in the 2012 case of *Smilecorp Inc. v. Pesin*.<sup>17</sup> That case

involved a contractual dispute between Smilecorp Inc. (non-dentist) and Dr. Daniel Pesin (dentist). Of note is how they had structured their business relationship. Pursuant to a management agreement, Smilecorp Inc. had licensed Dr. Pesin to provide dental services to patients at its dental practice. The history of that practice was such that, when a dentist left, he or she left the patient charts behind for the next incoming dentist. Although the management agreement stipulated that Dr. Pesin was supposed to pay fixed amounts to Smilecorp Inc. for renting premises and using equipment, 55 percent of Dr. Pesin's billings were going to Smilecorp Inc. In essence, Smilecorp Inc. owned and operated the dental practice.

All of this raises important questions, such as: What does it mean to practise dentistry? Who can legally own the assets that make up a dental practice (and specifically dental records)? How do non-dentists get paid if dentists are prohibited from fee-splitting with them? Stay tuned. These issues will be discussed in a future *Ontario Dentist* article. 

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*Michael Carabash is an Ontario dental lawyer with his own law firm DMC Law. His websites are [www.DentistLawyers.ca](http://www.DentistLawyers.ca), [www.DentistLegalForms.com](http://www.DentistLegalForms.com), and [www.DentalPlace.ca](http://www.DentalPlace.ca). He can be reached at [michael@dentistlawyers.ca](mailto:michael@dentistlawyers.ca) or 647-680-9530.*

*Michael James Moeller holds an MA in public administration and is a DDS candidate at the Faculty of Dentistry, University of Toronto.*

*Nicholas Dunn holds an MBA and is a DDS candidate at the Faculty of Dentistry, University of Toronto.*

*Kester Ng is a DDS candidate at the Faculty of Dentistry, University of Toronto, with interests in dental economics and dental technology.*

*Dr. Carlos Quiñonez is an Associate Professor at the Faculty of Dentistry, University of Toronto, and Editor of Ontario Dentist. He may be reached at [cquinonez@oda.ca](mailto:cquinonez@oda.ca) or 416-979-4908.*

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### Sources

- 1 And similarly named corporations.
- 2 *Health Professions Act*, R.S.B.C., 1996, c. 183, Part 4.
- 3 References to a “dentist” in this article shall mean an individual who is licensed to practise dentistry in that particular province.
- 4 Note: these individuals must be related to, or reside with, a dentist who is also a shareholder.
- 5 *Health Professions Act*, R.S.A., 2000, c. H-7, s. 109(1).
- 6 *The Professional Corporations Act*, c. P-27.1, s. 6(1).
- 7 *The Dental Association Act*, C.C.S.M., c. D30, s. 23.3(1).
- 8 *Regulated Health Professions Act*, 1991, S.O. 1991, c. 18 and Certificates of Authorization, O. Reg. 39/02, s. 1(1)2.2.
- 9 *Regulation respecting the practice of the dental profession within a limited liability partnership or a joint-stock company*, c. D-3, r.9, Division II.
- 10 *Dental Act*, S.N.S. 1992, S. 40 and Professional Corporations Regulations (Regulation 5), N.S. Reg. 186/93, s. 4(e).
- 11 *An Act Respecting The New Brunswick Dental Society*, Part IV, s. 21(2) and By-Law No. 22 of The New Brunswick Dental Society.
- 12 *Dental Act*, 2008, S.N.L., c. D-6.1.
- 13 Newfoundland and Labrador Dental Board Advisory, Professional Dental Corporations, point #11.
- 14 As per an email from Dr. Ray Wenn, Registrar of the Dental Council of PEI, to Michael Carabash dated February 4, 2014.
- 15 More specifically: only dentists can vote in the board of directors (who must also be dentists), who in turn appoint the officers (who must also be dentists), who in turn hire or engage others (e.g. employees, associates, suppliers, etc.) to operate the dental practice on a day-to-day basis.
- 16 Note: this is a deduction to the DPC and a windfall to the beneficiaries.
- 17 [2012] ONCA 853.

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