

## PUBLICATION

### Shareholder Disputes Amongst Owners of 'Closely Held Corporations'

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Can I fire my dad? Can I buy-out my friend? This article explains some of the most common causes of shareholder disputes amongst owners of 'closely held corporations'.

Alberta is the land of opportunity (or at least, we still think so). Historically, people have been able to start-up small businesses with minimal capital, lots of energy and a good idea.

Often these corporations begin amongst family, friends or both. Typically, the founding shareholders act as the key employees, officers and usually directors of the corporation. Saving cost inevitably seems important and that includes the regrettable decision to not hire a lawyer to properly document the corporation's rules and constitution at the outset. Very often in this great province, these start-up businesses succeed and over time, they grow into mid-sized businesses. Arms-length staff get hired and systems become necessary. In time, the founding shareholders want to reap the rewards from their efforts.

But all too often, at some point in time it becomes clear that some of the founding shareholders are not pulling their weight or that it's time for succession and for someone to move on. Worse yet, the economy hits a recession, making it even more important for founding shareholders to be accountable to one another.

We've seen all types of founding-shareholder teams, from spouses, father and sons, siblings, friends, to cousins. Because of shortcuts taken initially in the start-up, we are often brought in on a number of issues as a result of poorly written (or no) Unanimous Shareholders Agreement ("USA"), no employment contracts, poorly written bylaws, through to a lack of non-competition agreements.

A USA deals typically with three things; (i) how and by whom important decisions are made; (ii) how additional funds are raised if required to run the business; and (iii) how and when a shareholder must (or can) sell their shares back to the corporation or to the other shareholder(s). This third aspect is most relevant to this article; providing a road map for buying out disgruntled, under-performing or simply disagreeable shareholders. A USA is the most effective way, by a country mile, to avoid or manage shareholder disputes. Its like an insurance policy, with an upfront cost but no premiums.

The predicaments caused by the lack of a USA and other agreements mentioned above is almost inevitable; a son wants to buy out dad but he won't sell; a shareholder/wife wants to fire her husband as office manager but

he's a shareholder too; a best friend with 51% of the common shares (i.e. 51% ownership interest) wants to force a buyout of the other best friend with 49% common shares; etc.

Absent a USA, there are various rules set out in Alberta's *Business Corporations Act* (the "Act"). The Act contains a myriad of sections that [if followed properly (*get advice!*), and if prosecuted fairly by the majority shareholder], can bring about the termination of another shareholder/employee and possibly lead to an amicable share-purchase agreement. Care must be taken, as some of the rules are designed to protect the minority shareholder.

It is absolutely vital that your experienced legal counsel is skilled at:

- interpreting the Act
- cross-referring the Act with the corporation's Articles and Bylaws
- cross-pollinating all of the above with an experienced understanding of Employment Law and Shareholder Oppression Law

Furthermore, it is preferable that your lawyer has a network of business valuers, advisors, and occasionally, business mediators, all of whom, with the proper direction, can bring about a fair and businesslike resolution that will allow the corporation to avoid unnecessary strife, and the parties to save unnecessary litigation costs.

The moral of the story; work towards putting a USA in place before it's too late. If *it is* 'too late', don't despair thinking "there's nothing I can do", and don't act hastily (by locking people out or issuing terminations to shareholder/employees) without first getting legal advice. Acting without a *road map* can result in immense legal costs, and a significant loss of business or business-opportunities.

In our experience, a properly handled shareholder dispute will very likely resolve in a mutually satisfactory new arrangement, often with the opposing parties going their separate ways under written contracts that ought to have existed at the outset.

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