

Shareholder Disputes of 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 company. 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 dividends of their effort.

But all too often, 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 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.

The predicaments caused by of a lack of these agreements 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.

The good news is that there are some rules set out by the *Alberta 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 a share purchase agreement. Care must be taken, as some of the rules are designed to protect the minority shareholder.

It is absolutely vital that you retain experienced legal counsel capable of:

- interpreting the Act;
- cross-referring the Act with your Articles and Bylaws;
- cross-pollinating all of that with an experienced understanding of Employment Law and Oppression Law.

Furthermore, it is preferable that your lawyer has a network of business valuers, advisors, and occasionally, business mediators, all 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: don't despair that 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.

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

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