

Failure to Keep Accurate, Up-To-Date Corporate Records Can Produce Major Aggravation for Owners, Managers

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Keeping accurate, up-to-date corporate records is probably not at the top of the to-do lists of business owners, directors, officers, managers and advisors.

Failure to be disciplined about corporate record-keeping, however, can cause massive headaches in all manner of situations including Canada Revenue Agency audits, challenges to proposed executive action, or efforts to buy or sell a business.

One of the best-known examples of what the failure to keep good corporate records can mean comes from a story involving Canada's former Prime Minister, Jean Chretien.

In 1999, controversy erupted when Prime Minister Chretien was listed as having been a corporate shareholder of the Golf Club at Grand-Mere in the mid-1990s, a period in which the then Prime Minister had actively lobbied the Federal Business Development Bank for a loan to the Auberge Grand-Mere, the hotel next to the golf club. There were immediate conflict-of-interest of accusations. The Prime Minister claimed he had sold his shares many years earlier - well before he had ever contacted the Federal Business Development Bank. Unfortunately, the minute books and share register of the company that owned the golf club did not contain a record of the alleged transfer of shares. One can only imagine the time and resources that were expended containing the fallout.

While the kinds of things that can happen in day-to-day business as a result of inaccurate and incomplete record keeping might not be quite so dramatic, they can be considerable for the people involved.

THE IMPORTANCE OF ACCURATE MINUTE BOOKS

The corporate minute book serves as an official corporate record for Ontario and federal companies.

1. The minute book is the **official source of documents** that demonstrate share ownership of the corporation. The minute book should reflect exactly who owns the corporation -- when and to whom shares of stock have been transferred. It should also contain the original stock certificates or share register of the owners.
2. A proper minute book **shows the chain of decision makers of the corporation** (and those responsible at law for certain types of transactions), such as directors, officers and members of management committees. Equally important, a regularly updated minute book **records when these individuals ceased their functions**. It speaks to the question of who is, or was, responsible for what, and when.
3. The minute book **leaves a trail of the decisions and transactions of a corporation** and is an important audit backup. With a regularly updated minute book one can determine effective dates for tax purposes if ever approached by the Canada Revenue Agency.
4. As corporate records **grant corporate directors and officers the authority to act**, up-to-date records can help avoid challenges to the corporation's authority to take certain actions. These challenges might come from a number of sources including minority shareholders, directors, employees or even the Canada Revenue Agency.
5. The minute book **details the official standing of the corporation and establishes the background record** needed to facilitate corporate transactions including the issuance of shares and sale of the corporation. Having an inaccurate minute book can turn even the simplest of corporate transactions into a lengthy, costly and unnecessarily complicated experience.
6. The minute book is **the official recording of the compensation and dividends** that the corporation has paid/distributed. A regularly updated minute book is also effective at creating a paper trail to demonstrate to the Canada Revenue Agency (or any other government authority) many of the payments the corporation has made.

It should be kept in mind that the failure to maintain an up-to-date minute book may be subsequently more serious (and costly) in the event that parties become unwilling or unable to execute documents requiring their signature.

THE IMPORTANCE OF COMPLETING ANNUAL RESOLUTIONS

Annual meetings of the shareholders of a corporation are another important source of corporate record keeping that should not be overlooked. Shareholder meetings may be required in various situations (such as matters requiring a special resolution of the shareholders, or upon requisition by the court, etc.) **Annual shareholder meetings are prescribed by law.**

According to the *Ontario Business Corporations Act*, directors are required to call an annual meeting of shareholders not later than 18 months after the corporation comes into existence and, subsequently, not later than 15 months after the last preceding annual meeting.

As prescribed by law, the requirements of an annual shareholders meeting include:

- Approval of financial statements
- Election/appointment of directors
- Appointment of the corporation's auditor/Dispensing of the appointment (unanimous shareholder consent required)

With appropriate documentation, the law provides that shareholders may merely sign written resolutions to see to the above-noted tasks rather than attending actual meetings. In either case, it is strongly recommended that these shareholder duties be duly implemented.

CONCLUSION

1. Maintaining accurate and up-to-date minute books and corporate records avoids problems, costs, aggravation and embarrassment. For example, without a properly-maintained corporate minute book, decisions made by the officers and/or directors of a corporation will be barren of legal substance and, therefore, vulnerable to scrutiny from possible third party investors/purchasers, the CRA and the courts.
1. Complying with Ontario laws as they pertain to the maintenance of corporate minute books will avoid a variety of problems, including both practical implications and legally-imposed penalties. For example, according to Ontario corporate laws, a corporation that, without reasonable cause, fails to comply with the requirements to keep current and accurate corporate records is guilty of an offence and may be liable to a fine not exceeding \$25,000. In addition, every director or officer of a subject corporation who, without reasonable cause, authorized, permitted or acquiesced in such offence may be guilty of an offence and, on conviction, may be liable to a fine of not more than \$2,000 (and, in extreme circumstances, imprisonment for a term of not more than one year, or to both).

Ever-changing Ontario corporate laws stress the importance of meticulous record keeping. It is imperative that corporate minute books and annual resolutions be maintained thoroughly and regularly to ensure compliance. As we suggest above, there are many beneficial reasons for this which undoubtedly make the ounce of prevention well worth the resulting pound of cure.

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