

PREVIOUSLY
IN LAW**Wine laws uncorked**

Christy Clark's B.C. victory may be good news for wine lovers who want to bring their own bottles into restaurants (issue 1116; March 15-21)

**Class actions**

Brad Dixon, Stephen Antle and **Stephen Warnett** comment on the **BC Court of Appeal's** decision that shareholder oppression claims can be certified as class proceedings (issue 1115; March 8-14)

**And justice for all**

DAS Canada CEO **Barbara Haynes** looking to expand market in B.C. for legal expense insurance (issue 1114; March 1-7)

**Major seizures**

Andrew Aguilar teaches commercial landlords how to seize without being sued (issue 1113; February 22-28)



SUCCESSION

DON SIHOTA

*Don't minimize
your minute book*

For years we have known that Canada is an aging society. With the largest wave of baby boomers on the brink of retirement, there are concerns that many small-business owners have neglected to adequately plan their exit strategies.

This improper management can have significant ramifications for not only the business owners but for their employees, customers, families and the economy as a whole.

One basic and preventable error that I often see with new clients in my practice is the inaccurate management of minute books. Keeping proper corporate records of a company's activities is essential to not only the success of the business, but also to ensuring the transition process is smooth when the time comes to sell.

Not only should the minute book contain documents relating to the incorporation of your company, but it should also serve as a means by which you can prove ownership of the

company. An improperly established or maintained minute book can have serious implications on the ability of a business owner to successfully transition the business to a new owner.

Throughout the succession planning process, professional advisers will review legal transactions and documents to devise a sound succession plan.

Reviewing the minute books is a key component of the process for advisers to put the necessary structure and contracts in place for the sale.

However, many business owners neglect or don't understand the significance of corporate record books. That can threaten the entire transaction when selling your business.

In one instance, a new client seeking to sell their business was adamant that the business was in good order and it would be an easy transition. When the purchaser's lawyer reviewed the minute book to confirm that my client actually owned the

business, however, a problem arose.

Twenty years earlier, upon acquiring the business, the person transferring the shares had made an error. While the prior owner had 1,000 shares, the minute book showed my client only had 100 shares.

[The minute book] should serve as a means by which you can prove ownership of the company

Naturally, the lawyer for the new purchaser needed to confirm the chain of title before going any further and pointed out that my client didn't own all of the shares. He wanted to know who owned the other 900 shares. Because there was no proof that the business was owned outright by my client, the entire transaction was threatened.

The only solution was to try to correct the record. But contacting the people

involved proved to be a challenge because of the time that had elapsed since the error had been committed. Some had passed away, one was near death and the person who helped him buy the business was avoiding any contact.

The purchaser quite rightly wouldn't accept my client's word that it was just a typographical error. The only solution was to petition the court to rectify the minute book. This was costly and time consuming but it was the only solution available. We obtained rectification and eventually the transaction proceeded successfully.

The message is clear. Keeping proper corporate records is fundamental when dealing with business succession.

Failure to establish or maintain proper corporate records could result in significant delays in proceeding with the sale, cost thousands of dollars to rectify or force the entire transaction to be shut down.

Be prepared

Every year at the same time review all major business activities and ensure that each event is recorded, dated and signed in the minute book. (Choosing the birth date of a mate or child or the date of an anniversary will make it easier to remember.)

These small steps will help guarantee the business is being operated professionally and will help eliminate potential problems when transitioning the business to a new owner.

If you take steps now to review issues in advance of a transaction, you will identify any issues up front and get them resolved before you start the business succession process.

Operating your business professionally will make the transition process smoother and ultimately will serve to benefit you in the future.

Don Sihota is a partner with Clark Wilson LLP who specializes in private business transactions. dcs@cwilson.com

Trouble

DISCIPLINE

British Columbia Securities Commission

The **British Columbia Securities Commission** (BCSC) issued a notice of hearing alleging **Adam Keller** and **Great White Capital Corp.** (GWC) perpetrated a fraud when they raised funds from four investors, the regulatory announced March 9.

The notice of hearing says that Keller, a

B.C. resident, raised approximately \$523,100 from two B.C. and two Alberta investors, claiming that he would execute trades in the foreign exchange market, or otherwise invest funds in unique investment opportunities on their behalf.

At the time, Keller was the sole director and signing authority for GWC, a company headquartered in West Vancouver, B.C.

The notice alleges,

among other things, that the respondents perpetrated a fraud when they provided investors with false account summaries, and they failed to protect, secure or return investors' funds as promised. Additionally, it alleges that Keller did not invest the funds solicited from investors, but instead used the funds for personal purposes.

These allegations have not been proven.

The BCSC issued a temporary order to cease trading in the securities of **Kunekt Corp.**, and has given a notice of hearing to ask for orders against the company and one of its directors, **Mark Bruk**, the regulator announced March 10.

Bruk, a B.C. resident, is a director and officer of Kunekt, which trades on the U.S. over-the-counter market.

The temporary order bars all B.C. trading of the securities of Kunekt Corp., a Nevada company, until a hearing is held and a decision is rendered.

Prior to issuing the temporary order, the BCSC halted trading of Kunekt Corp. securities on two occasions in March of 2011 because of unusual trading volume

and pricing in the issuer's shares.

The notice of hearing alleges that promotional material about Kunekt Corp. was disseminated on the Internet in January and February of 2011, which included claims that the company could provide profits of 5,192% by summer 2011.

Additionally, the notice of hearing states that efforts to speak to Bruk about the promotional material were unsuccessful. It also states that the BCSC has not received a response to a production order that was sent to Bruk, and two production orders sent to the company.

At the hearing, counsel for the executive director will ask a commission panel to grant an order that all persons cease trading in the securities of Kunekt Corp. until:

- the company and Bruk have complied with the BCSC production orders; and

- the company has publicly disclosed the extent to which Kunekt Corp. and its directors, officers and insiders were involved in or had knowledge of the promotional material.

These allegations have not been proven.

BUYER'S ALERT

Companies listed below, which are not members of the Better Business Bureau, have failed to respond, as of March 11, 2011, to Better Business Bureau of Mainland B.C.'s efforts to mediate complaints from February 28 to March 4, 2011. In some instances, the company may have taken care of the complaint and considered the matter closed, or may believe the complaint is unjustified; however, if the BBB has not received a response, records cannot reveal either position. Please note that BBB members must respond to customer complaints that are brought to their attention. Source: BBB.

Angelic Hair & Day Spa, Chilliwack
APK Awnings & Signs, New Westminster
ASD

Telecommunications, West Vancouver
Aslan Electrical Plumbing & Gas Fitting Services Ltd., Vernon
Baneki Privacy Computing Inc., Chilliwack
Basra Pawitter, New Westminster
Bensen, Vancouver
Berry's Mobile Marine Services, Kelowna

Integrated
Project
Management

nurture your organization ... and reap the benefits



effective & efficient project management training & tools

Continuous
Process
Improvement

traceable stakeholder requirements management



WOLF-PANY
CONSULTING
Integrity • Leadership • Teamwork

1-604-433-6660
wolfpany@isem.on.ca
www.linkedin.com/in/wolfpany