

# Common disputes among family business owners



BY CAROLINE E. ABELA

Those involved in a family business face a unique set of obstacles and responsibilities not encountered in other areas of the business world. Addressing those obstacles, while maintaining and nurturing familial relationships, can be a challenge. This article highlights some frequent disputes or obstacles encountered in family businesses which can result in litigation.

## Unfair compensation in relation to contributions made

Unfair compensation or no compensation is a common complaint in family business disputes. It is also not uncommon for a family business to be used like a bank account for family members' expenses. In order to avoid disputes regarding compensation, it is important to keep salaries and job qualifications separate from monies received as a shareholder.

## Shareholder wanting out of the family business

Everyone has special talents and qualities; however, not everyone can, or should be, the president of the family

business. Dividing ownership in a business equally among family members regardless of their interest in the company or their competencies often results in unhappiness and litigation. Such shareholders are owners in the business not by choice or hard work but by obligation. Conversely, it is unfair for those who make contributions and dedicate themselves to the business to receive amounts equal to their siblings. Control of the business should be given to those desiring involvement in, and who are committed to, the continuation of the family business. Although an even split will prevent your children from thinking you favour one child over the other, there are other ways to provide equal distribution of worth without jeopardizing familial peace.

## Favouritism of the matriarch or patriarch towards an adult child

Power and money are key motivators in family disputes; however, years of perceived preferential treatment of one child over another is a recurring issue underlying litigation. A shareholders agreement can provide a mechanism for a resolution when there are disagreements. A provision for alternative dispute resolution, such as mediation, can help facilitate a settlement while preserving the ongoing relationship of the family. Although the mediation will not necessarily solve the underlying issue in the litigation, it does provide a forum for family members to be heard, which is ultimately what is needed.

## Not receiving financial or other information in the family business

Shareholders commonly complain that they do not receive financial or other information regarding the family busi-

ness. This can lead to feelings of resentment. However, typically, the business was run in such a manner for years. It could also be that certain classes of shareholders are not entitled to receive certain information. A shareholders agreement can provide a list of the types of documents and information that are required to be disclosed to shareholders.

## Spousal Disputes

Another source of disputes is when a spouse or ex-spouse becomes an unwanted partner in a family business. A solution is for a shareholders agreement to contain a limitation on share transfers. Alternatively, a marriage contract that focuses on the family business shares is important in order to avoid disputes.

The above disputes can result in litigation. The available court remedy ranges from the wind down of the family business, a shareholder being bought out, the removal of a director or the sale of the business. In order to avoid the significant costs of such disputes and to help preserve family relationships, a number of steps should be taken. For advice on what steps to take or when disputes are imminent, please contact WeirFoulds LLP. **AITF**

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