



FARRIS

# **BC Wine Law**

## ***A Brief Summary***

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1. Licensing of Wineries, Tasting Rooms and Sales Agents (LCLB)
2. Accessing the Direct Sale Market as a ‘land based’ winery (LDB)
3. Buying Property, Sourcing Grapes, Water Rights
4. Employment and Trademark Law
5. Labelling Requirements
6. VQA, Winery of Distinction Requirements (content & labelling)
7. Tax Considerations, including SBVCA and ‘farming’ categorization
8. Liability Considerations
9. Links to Legislation

# Winery Licensing

- Manufacturing License under s. 58 of the *Liquor Control and Licensing Act*
- + *Certificate of Appointment* – required to operate an on-site retail area
- + *Winery Licence endorsement* – to serve liquor in lounge or picnic area
- + Comply with requirements in letters issued by general manager of either the BLLB and LDB
- <http://www.pssg.gov.bc.ca/lclb/docs-forms/guide-winery.pdf>

- Manufacture wine from fruit, juice/concentrate or bulk wine
- Have enough equipment (fermentation tanks or barrels, filtering equipment and secure storage) to produce at least 4,500 litres/year

- Obtain on-site retail store appointment from LCLB
- Sell only products made under your license
- Unlimited samples if free, 5 oz/day if selling
- Additional requirements to establish picnic area or lounge or to host special events
- E.g. – Picnic Areas – max. 1,000 sq. meters, open to elements, clearly defined boundaries but no ceilings or walls; umbrellas and flooring permitted but heaters not allowed

- Required to market, promote, conduct tastings and take orders of manufacturer's products from licensed establishments and appointment stores
- Can't sell products directly to the public
- Strict rules on how you can jointly market products with restaurants and retail stores

# Benefits of a Land Based Winery

- Ability to sell direct to private wine shops and restaurants avoids delay inherent in the LDB channel – permits same day delivery and special pricing
- Classification as a “Land Based Winery” allows the winery owner to pocket the high margins that would otherwise go to the LDB
- “Commercial Wineries” can ship direct, but only receive 7% margin on sales to wholesalers and 30% margin on sales through the LDB
- Prohibition on Inter-Provincial Shipment

- 100% of grapes used to manufacture products must be grown in BC – i.e. no ‘Cellared in Canada’ product
- Must farm and use a minimum 2 of acres of grapevines at the Licensed Winery Site
- Minimum of 25% of grapes must come from acreage owned or leased by winery; and the rest must come from other Land Based Wineries
- Selling or consignment prohibited (must obtain payment before transferring product)

- A 'land-based winery' cannot share ownership or management with a 'commercial winery'
- Tied house rules prohibit a winery from having association, financial or otherwise, with another licensed establishment
  - A s. 58 Winery Licensee cannot hold a LRS or Bar license
  - A s. 58 Winery Licensee cannot hold a u-brew or u-vin license unless grandfathered
- Canadian control required for CCPC status
- Tied house restrictions will be changed; importance depends on how changes implemented in regulations

# Buying Land and Sourcing Grapes

- Zoning
- Environmental
- Water
  - Generally not an issue in the Okanagan –vineyards use about half the water of an orchard, and drip irrigation uses only 8% of water of conventional irrigation
  - But in time of shortage, water license volumes are allocated among properties on a ‘first in time, first in right’ principle (constraints in Summerland Area)
  - To date, no licensing of ground water

- Ownership - \$100,000 to \$150,000 per acre
- Lease of vineyard land – Min. 10 year term for VQA or Wines of Distinction
- Grape Supply Agreement – What is level of involvement of winery in the decision making process?
- Custom Crush Agreements
- 4 years to first full crop – planting vines added to cost base of the land; replacing vines is a current expense
- BCWBC Best Practices Guide for Grapes – <http://bcwgc.org>

# Employment and Trademark Law

- *Employment Standards Act* – minimum working conditions – wages, hours, statutory holidays, annual vacation, termination, separate rules for farm workers, e.g. minimum wage for grape pickers is \$16.58 per ½ bin, no overtime or vacation pay
- *Workers Compensation Act* – minimum working conditions
- Temporary Work Permits issued by Citizenship and Immigration Canada – requires labour market opinion from Services Canada – employer must have made reasonable efforts to hire Canadians
- Employment Insurance – seasonal workers eligible during off season
- SAWP – Seasonal Agricultural Workers Program – employer must pay round trip airfare, supply free housing and proper cooking areas, register workers with provincial health plan, pay same rate as for Canadians

- Name, logo, domain name
- Must be distinctive, not descriptive – no surnames, some geographic names permitted
- Passing off actions – must prove reputation and distinctiveness, protects only in geographic region where you are carrying on business
- Registration – registered name presumed valid, protects across Canada
- Police and enforce your trademark
- Agreement for phasing out French “appellations” in Canada by 2013

# Labelling Requirements

- *Food and Drugs Act (Alcoholic Beverages)* – prohibits false or misleading health claims
- *Consumer Packaging and Labelling Act* – wine bottle must have a “principal display surface (40% of total surface area) – must include name of product, quantity volume of alcohol, name and address of manufacturer, country of origin; wine is exempt from requirements to list ingredients
- Wine labels must be approved by the Canadian Food Inspection Agency (see CFIA Guide to Food Labelling and Advertising, Chapter 10) and Health Canada
- Agreement between Canada and EEC on Trade Wines and Spirit Drinks (2003)

- *BC Wine Act*
- *Agri-Food Choice and Quality Act* – Wines of Marked Quality Regulation (enforced by BC Wine Authority)

# VQA and Wines of Distinction

- Membership in the BC Wine Authority is voluntary – currently 75% of wineries, 95% of product
- Wine must be produced entirely from fresh grapes or grape juice derived from BC grapes
- Must be entirely fermented, processed, blended and finished in BC
- No vitis labrusca grape varieties permitted
- Must be certified according to the regulation
- Must comply with federal *Food and Drugs Act*

- Must be made from the varieties of grapes listed in Tables 1 or 2 of Schedule 5
- Must pass taste test - Schedule 3 lists taste test assessment faults – 7% rejection rate
- *Wines of Marked Quality Regulation*  
[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/11\\_79\\_2005](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/11_79_2005)

- Use of sweet reserve (grape juice sweetener)
- Chaptalization (adding sugar )
- prohibits adding water
- Acidification / de-acidification

- Single varietal (e.g., “merlot”) - at least 85% of the total wine by volume must be derived from that varietal
- Dual varietal (e.g., "cabernet merlot") - at least 90% of the total wine by volume must be derived from those varietals (and at least 15% of that percentage must be from the second varietal)
- Triple varietal (e.g., "cabernet merlot syrah") - at least 95% of the total wine by volume must be derived from those varietals (and at least 15% of that percentage must be from the second varietal and at least 10% from the third varietal)

# Geographical Content Requirements – s. 27-29

- To use the term "British Columbia", 100% of the grapes must be grown in BC
- To use the terms Fraser Valley, Okanagan Valley, Similkameen Valley, Vancouver Island, Gulf Islands, 100% of the grapes must be grapes grown in BC with at least 95% being grown in the more specific prescribed area
- For wineries established after December 31, 2006, Geographic Indicators can only be used in VQA wines (grandfathering expires on December 31, 2020)
- Regulation provide for the development and implementation of sub-appellations but none yet designated

- Vineyard must be registered with the BC Wine Authority
- 100% of the grapes must come from that vineyard
- Vineyard must be within one of the prescribed geographical areas

- 100% of the grapes must be from the same year and from land controlled by the certificate holder
- Must be within a prescribed area other than “British Columbia”
- Certificate holder must crush, process and bottle the grapes
- Wine must not leave winery after being bottled
- Winery must be in same geographic area where grapes were grown

- Schedule 1 sets out a minimum brix level for grapes
- Schedule 2 sets out permissible alcohol levels and residual sugar levels
- Special rules for ice wine, sparkling wine, liqueurs, late harvest, meritage – e.g. Imposes not only content but also harvesting and processing requirements on ice wines
- Amendments require double majority of 65% of members and 50% of grape tonnage

- VQA indicator, and the prescribed geographical area
- Either the varietals used or a proprietary name (varietal name must be immediately before or after the geographical area)
- The vintage year (except for sparkling wine, fortified wine, liqueur wine and private labelled wine)
- Prohibition against use names or descriptions which are misleading as to the wine's quality, content or origin including the use of foreign countries or geographical areas (e.g., you can't call your wine “Okanagan Chablis”)
- The only sweetness descriptions permitted are those set out in Schedules 1 and 2

- Permitted bottle sizes - listed in s. 56(4)
- Permitted closures are listed in s. 56(2) and (3)

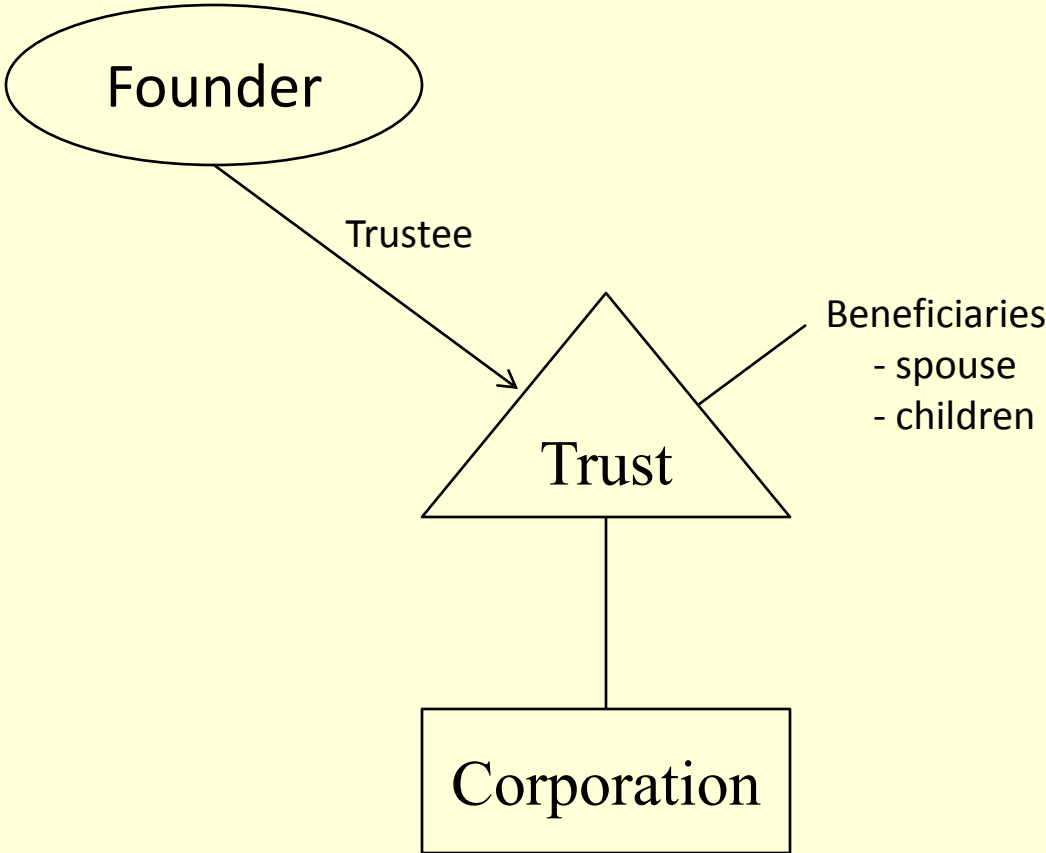
- Name of winery and brand, prices, hours of sale, any entertainment or food featured at winery
- Where products may be found – at a particular bar or restaurant, for example (you may not, however, advertise the bar or restaurant's entertainment line-up, drink specials, or menu items)
- Must comply with *Liquor Control and Licensing Regulations* and *CRTC Code for Broadcast Advertising of Alcoholic Beverages*

- Encouraging people to drink liquor or to drink irresponsibly (including price advertising that encourages or results in patrons drinking to excess)
- Showing people drinking liquor, or anyone who is either intoxicated or behaving irresponsibly or illegally
- Directing advertising at minors
- Depict liquor as one of life's necessities, as central to enjoyment of an activity or as a key to social acceptance or personal success
- Promote contests involving wet t-shirts or wet jockey shorts

# Tax Considerations

- Small business corporate tax rate - 13.5% on first \$500,000 of active business income
- On exit - \$750,000 capital gains exemption for sale of small business corporation held for 24 months
- Partnership structures permit pass-through of losses subject to at risk rules
- SHRED credits – applicable to activities that improve products or process to achieve quality and involve risk of failure – refundable to CCPC
- Investment tax credits

- Simple - issue founders shares to family members and split income via dividends – attribution rules prohibit splitting with children under age 18
- More complex – discretionary trust and holding company structures
- Establish trust with founder as trustee with absolute discretion to re-invest or to distribute to one or more beneficiaries



- 30% incentive (up to 50% of equity shares) as credit against provincial tax payable, or a cash grant if no provincial tax payable
- Five year hold, transfers to RRSP permitted
- Eligible Business – substantially engaged in ‘manufacturing and processing’ and not substantially engaged in ‘agricultural activities’
- Investment in land must be ‘incidental or ancillary’ to the permitted investment activity
- 75% of wages and salaries paid to BC employees

# Qualifying for tax treatment as a farming operation – Why does it matter?

- Ability to report income on the 'cash basis' – simple, defer income and prepay expenses, no need to value inventory,
- Qualified Farm Property – eligible for \$750,000 lifetime capital gains exemption
- Transfer farm property to lineal descendants on a tax-deferred basis

- CRA views growing grapes and making wine as two separate and distinct activities (like growing tomatoes and making tomato sauce)
- Tinhorn grew their own grapes in their own vineyard - this aspect of their operation consumed the majority of their labour costs and their invested capital (may include land value)
- If growing conditions during the year were poor, it had a direct impact on the quantity and quality of the wine produced for that year
- Held that Tinhorn Creek was engaged in only one business - “the two operations (vineyard and winemaking) are so interdependent and intermingled that it is difficult to isolate one from the other in respect to the profit aspect of the operation
- Conclusion – an estate winery can qualify as a ‘farming business’

# Liability Considerations

- Use corporation or limited partnership
- Occupational Health & Safety Worksafe BC – “Wineries Health and Safety Guide”
- Occupiers’ Liability
- Commercial Host Liability Licensed establishments owe a duty of care to patrons who are unable to look after themselves after becoming intoxicated (*SCC – Stewart v. Pettie, 1995*)
- An establishment may be required to take positive steps to prevent an intoxicated patron from driving where it is apparent that he intends to drive e.g., suggest alternative. Duty extends to third parties to whom that patron may pose some risk
- Establish a Risk Management & Motivation Program

# Links to Legislation

# Winery Licensing – Liquor Control and Licensing Act

- Wine Licensing Guide: <http://www.pssg.gov.bc.ca/lclb/docs-forms/guide-winery.pdf>
- Manufacturing License - LCLA s. 58: [http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/0096267\\_01#section58](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/0096267_01#section58)
- Agents License – s. 52: [http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/0096267\\_01#section52](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/0096267_01#section52)
- Tied Houses – s. 18: [http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/0096267\\_01#section18](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/0096267_01#section18)
- BCWBC Best Practices Guide for Grapes – <http://bcwgc.org>

- Wines of Marked Quality Regulation:  
[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/reeside/11\\_79\\_2005](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/reeside/11_79_2005)
- Wines of Distinction – s. 18:  
[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/reeside/11\\_79\\_2005#section18](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/reeside/11_79_2005#section18)
- Additional requirements - s. 18.1:  
[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/reeside/11\\_79\\_2005#section18.1](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/reeside/11_79_2005#section18.1)

- Use of sweet reserve (grape juice sweetener) – s. 21:  
[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/11\\_79\\_2005#section21](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/11_79_2005#section21)
- Chaptalization (adding sugar ) – s. 22:  
[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/11\\_79\\_2005#section22](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/11_79_2005#section22)
- prohibits adding water – s. 23:  
[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/11\\_79\\_2005#section23](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/11_79_2005#section23)
- Acidification / de-acidification – ss. 24-25:  
[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/11\\_79\\_2005#section24](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/11_79_2005#section24)
- Varietal content requirements – s. 26:  
[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/11\\_79\\_2005#section26](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/11_79_2005#section26)

- Geographical content requirements – ss. 27-29:  
[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/11\\_79\\_2005#section27](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/11_79_2005#section27)
- Use of vineyard names – s. 32:  
[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/11\\_79\\_2005#section32](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/11_79_2005#section32)
- Special rules for “Estate Bottled” labelling – s. 33:  
[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/11\\_79\\_2005#section33](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/11_79_2005#section33)
- Labelling requirements – s. 54:  
[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/11\\_79\\_2005#section54](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/11_79_2005#section54)
- Packaging requirements – s. 56:  
[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/11\\_79\\_2005#section56](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/11_79_2005#section56)
- Brix Level – Schedule 1:  
[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/11\\_79\\_2005#Schedule\\_1](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/11_79_2005#Schedule_1)
- Permissible alcohol levels and residual sugar levels: Schedule 2:  
[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/11\\_79\\_2005#Schedule\\_2](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/11_79_2005#Schedule_2)

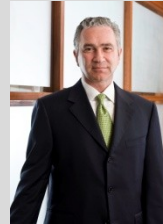
- Act:

[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/00\\_96429\\_01](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96429_01)

# Farris Contacts



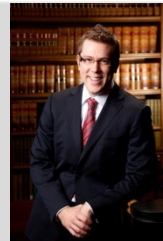
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