

THE RIGHT LEGAL EAGLE



ALL BUSINESSES NEED A LAWYER. HERE'S SOME ADVICE ON FINDING THE RIGHT ONE AND SAVING MONEY IN THE PROCESS.

BY BRIAN HARTZ

IT'S A FACT OF LIFE IN BUSINESS that change, for better or worse, is inevitable. Employees, shareholders, and co-owners don't always depart on the best of terms. Governments pass new laws demanding changes to your policies and practices. Illness and injury, unfortunately, can have far-reaching financial effects that none of us like to think about.

In any of these situations, your business can be threatened without adequate planning, and that means legal advice from a business law specialist. In addition to helping you start and — happily, we hope — end your career, Victoria's small business and corporate lawyers can anticipate and solve problems, contribute to strategic decisions, and help companies operate more effectively.

But whether it's reviewing a lease, negotiating a partnership, drafting

a contract, or helping in the purchase or sale of a business, lawyers do not come cheap — and that's precisely why you need to get the right one. Don't shy away from shopping around, either.

When it comes to lawyers and law firms, businesses tend not to check around like they would for other services and suppliers, says Jennifer Chilcott of Farris, Vaughn, Wills, and Murphy.

"They don't ask for quotes and they often end up going to the wrong kind of lawyer," adds Chilcott, a Victoria-based lawyer who specializes in business organization and protection of intellectual property. Farris, which was founded in Vancouver in 1903 and has offices in Victoria and Kelowna, represents major corporate interests ranging from the *Vancouver Sun* to Starbucks Canada.

"The legal profession is a valuable part of any business, a valuable part of the team," says George Hrabowych, a principal partner in Nanaimo-based Herold Engineering Ltd., which since 1994 has provided structural, civil and municipal engineering services on Vancouver Island. His firm has been using the same corporate lawyer, Chuck Blanaru of Heath and Co. in Nanaimo, for many years.

"Your lawyer will always play the devil's advocate. You may not always want to hear it, but they'll tell you, 'Look, this is what may happen in the future.'"

Hrabowych, who's been with Herold since 2000, says the company recently added a crop of new associates to the ownership team, and Blanaru was instrumental in setting up revised shareholder agreements. Their accounting team at Myers Norris Penny came up with the best way to structure the agreements, and Blanaru put it all in writing. He also looks after the annual reports and provides legal advice as needed, especially on matters concerning the long-term health of the business.

"You've got to plan for the future," Hrabowych. "You've got to have a buyer, and if you don't have that, you've got nothing."

WHY DO I NEED A BUSINESS LAWYER?

At some point during the lifespan of your business, you'll need a lawyer. The reasons are too numerous to list, but can range from matters of corporate governance to non-disclosure or non-compete agreements designed to protect your invaluable intellectual property.

If you're starting rather than buying a business, a lawyer well versed in business law can advise you on the ideal legal structure for your company (see page 24) and other basic issues. If you're buying, a lawyer can ensure you aren't surprised by issues such as zoning, public health and sanitation, insurance, and employee benefits. Even if you're only thinking of selling your business, or want to know what it's worth, a lawyer can help prepare for the due diligence process.

"I've seen so many deals fall apart because the contracts are a mess, the ownership structure is a mess, minutes have not been kept... paper records are the most important part of your business," says Chilcott, who says it's the dream of many of her clients to sell their tech startups for millions of dollars. "It's very hard to sell if you can't pass muster during due diligence. Even if you're highly successful, some people won't do business with you if your books aren't in order." (Chilcott wrote about due diligence in the September/October 2010 issue of *Douglas*.)

The lawyers we consulted say business owners also fail to plan for eventualities

such as the departure of a principal partner, government investigations, or lawsuits brought by current or former employees. Thus, as the old saying goes, they plan to fail, as being unprepared to deal with these situations could easily lead to financial ruin.

"Small businesses tend to overlook legal issues such as the proper structure for their business and succession planning," says Michael Velletta of Velletta and Company, a Fort Street law firm that represents many local small- and medium-sized businesses. Unless you're running a sole proprietorship, a small business "is like a marriage," says Velletta.

Many of the cases that come across his desk stem from "sour relationships," he adds. "Initially there's a natural high, everybody's happy. But down the road, if problems arise as lives change or the business changes, people start to fight."

He says getting partners to agree on things in the good times results in them honouring those agreements in the future because they are guided by them every step of the way.

"It really helps them smooth the way through dealing with difficulties, and that's a worthwhile exercise at the beginning of any business."



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FINDING THE RIGHT LAWYER

The Law Society of British Columbia regulates the legal profession in the province; all lawyers, practising or not, are required to be licensed by the society. At the society's website, you can look up the name of a lawyer you're interested in hiring to ensure he or she is in good standing. The society has the power to fine and/or suspend lawyers who breach its code of conduct.

"If we find a lawyer has fallen below the expected standard of competency, or breached his or her ethical obligations, the lawyer will be disciplined," says Stuart Cameron, the society's director of investigations. He was speaking in regard to the case of Angela Marie Ross, a crown lawyer in Vanderhoof, B.C., who was taken in by a con artist she was representing. Ross was suspended for one month as of Oct. 21, 2010.

B.C. has more than 10,000 practising lawyers, so if you would like help finding one, the B.C. branch of the Canadian Bar Association has a lawyer referral service you can access by calling 1-800-663-1919 between 8:30 a.m. and 4:30 p.m. weekdays. Once it matches you with a lawyer in your area who offers the expertise you seek, you are entitled to a 30-minute consultation at a cost of only \$25. However, the consultation is solely to determine whether you have a legal issue that needs to be addressed. The lawyer has the right to charge you the usual fee for any other service, but is not obligated to take the case, if one exists, nor are you under any obligation to hire the lawyer.

Members of the Greater Victoria Chamber of Commerce who are looking for legal help should check the chamber's online member directory, as some lawyers and firms offer to member-to-member discounts.

Chilcott, who handles a lot of intellectual property cases for clients in Victoria's high-tech sector, says it's worth the time and money to consult multiple lawyers before choosing one. "Consultations can even be free. For example, for my potential tech-sector clients, at no cost to them I'll go and have them demo their products for me. I need to understand their product to understand their goals."

CONTROLLING COSTS

A good lawyer for your business is someone who, rather than simply reacting to problems on an ad hoc basis, will work with you to establish and anticipate your needs. Velletta says he likes his clients to think of him and his colleagues as part of their business team. For example, a lawyer will keep you apprised of changes to federal, provincial, or local statutes that might affect your business, or help take care of ongoing regulatory compliance. This



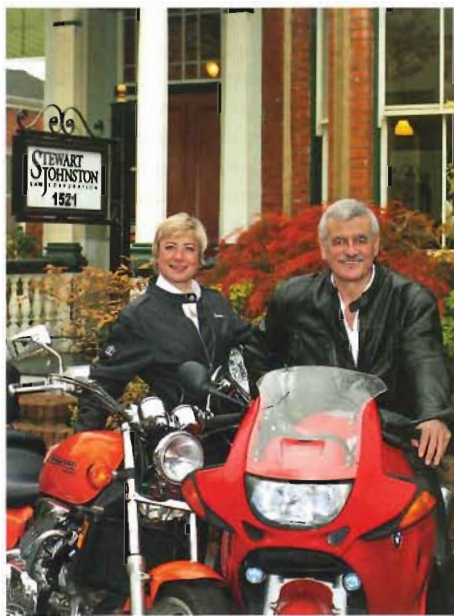
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can help control costs as fees are spread out evenly throughout the financial year rather than coming in all at once.

"Legal services have a reputation for costing a lot, but I don't think they're really that expensive," says Velletta, himself a business owner and manager for 30 years. "The vast majority of our clients are small to medium-sized businesses, [thus] we don't charge big law firm rates; we charge Victoria rates."

Hrabortych says Blarar provides "fair billing," and that thanks to his long relationship with Herold Engineering, he will work at a discounted rate for staff members who need personal services such as wills, estate planning, and home-buying and selling.

"He doesn't make it cost-prohibitive to go to him. If he can't advise or has a conflict of interest, he will provide a referral to another lawyer, someone in his firm or outside whom he knows will have the expertise."

When searching for a lawyer or firm, find out how their fees are assessed. Some offer fixed-fee arrangements as an alternative to billing by the hour. Find out if you can pay the lawyer with whom you'd like to work by the case or transaction type, as opposed to an ongoing hourly fee.

"For most standard corporate law services, a flat rate can be discussed," says Velletta.

Hrabortych says the problem is sticker shock. "A lawyer will say, 'I'm charging you X amount of dollars,' and people will look at that and say, 'Holy cow!' But if you have a long-term relationship with a good lawyer, you can get a discount."

There are other ways to manage legal expenses. As you would with any other supplier, get an estimate for the cost of all work to be done on your behalf. Find out if you can pay in installments. When payment is due, be sure to ask for a detailed statement that clearly lists what services were performed, the specific charges for each service, and a detailed account of any expenses incurred.

However, Velletta warns, price shopping can be risky business when it comes to the law, because "you rarely get value from the lowest cost." If you find a lawyer you are comfortable with, consider paying a retainer fee up front as a sort of down payment against any unforeseen litigation that might arise. This can help mitigate costs. The same can be said for a contingency fee, which is the lawyer's share of any sum awarded in litigation. Often this will be a predetermined percentage, but make sure you clarify whether the lawyer will deduct costs and expenses from the award before or after you submit payment, as this can make a huge difference in the bill.

If you are being billed on an hourly basis, a few simple habits can help keep costs down. It may seem obvious, but be completely open

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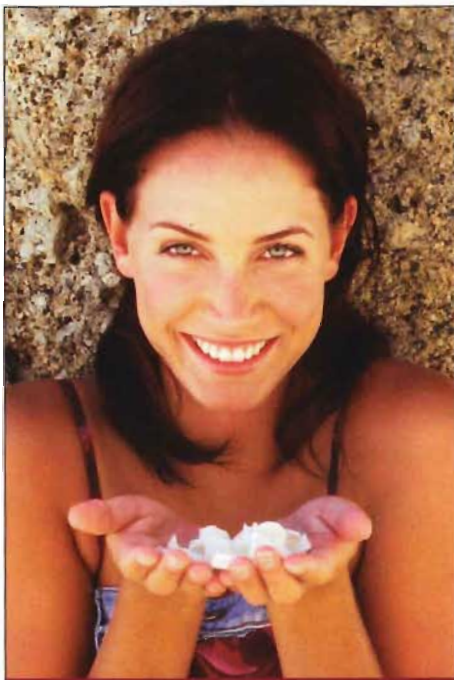
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and honest with your lawyer. The less time he or she has to spend tracking down information they could have obtained from you, the more you'll save on your legal bills. In some cases it might be difficult or embarrassing to share certain facts, but the information you provide will be kept in strict confidence.

"It's important to have an established, open, and ongoing relationship with a lawyer," says Velletta. "Your lawyer has to be able to grasp the unique nature of your business so they can do sophisticated work

that is also very effective."

You should be well prepared for any meetings with your lawyer. Be efficient but thorough — and keep the small talk to a minimum, even if you and your lawyer have a well-established rapport. Those minutes spent talking about where you went on vacation or what the kids are up to might seem harmless but can quickly amass into billable hours. The same goes for e-mail: keep it brief and to the point, because talk is certainly not cheap when it comes to the law. ■

BUSINESS ORGANIZATION MODELS

**So you want to start a new business?
What's the most appropriate legal
structure for it?**

Sole Proprietorship Simplest form a business can take. The founder conducts business in their name only. They may have employees.

Pros:

- Easy and inexpensive to set up
- No separate income tax filings
- Limited government regulation

Cons:

- Not suitable for businesses with more than one owner
- Does not offer tax advantages of a corporation
- No limited liability
- Income splitting potential with family not as great as corporation

Limited Partnership Legal entity under the Partnership Act consisting of one or more general partners and one or more limited partners. Limited partners contribute capital but no services, and enjoy limited liability. General partners can contribute capital or services, but do not have limited liability.

Pros:

- Provides a means for limited liability in situations where a corporate structure will not work
- Often used to avoid Securities Act reporting requirements

Cons:

- Not 100 per cent limited liability
- Liability protection can be lost without strict adherence to Partnership Act
- Does not allow full protection of limited partners

Source: Velletta and Company's "Starting a Small Business" guide

On the Web:
Law Society of BC Lawyer Look-Up: <http://bit.ly/cD1oz6>
Canadian Bar Association Lawyer Referral Service:
<http://bit.ly/cLPPgu>
Greater Victoria Chamber of Commerce Member
Directory: <http://bit.ly/9CYZkx>

Partnership Two or more people carrying on business together. Regulated by the Partnership Act of B.C.

Pros:

- Easy and inexpensive to organize
- No separate income tax filing. Profit and loss divided among partners and reported on personal income tax returns

Cons:

- No limited liability
- Each partner may be liable for actions of others
- Income splitting potential with family not as great as corporation
- Buying and selling interests may be more complicated and subject to more tax than corporation

Incorporation — A separate legal entity offering a flexible array of ownership, control, and profit participation share structures, with firmly established rules and governance.

Pros:

- Flexible business structure and ownership options
- Two-year provincial tax holiday for most new corporations
- Creation of a marketable entity
- Allows for different equity contributions — not all owners have to contribute the same investment
- Allows for non-controlling ownership interests for family members, key employees, etc.
- Many income-splitting options
- Lower tax rates for high-income individuals
- Limited liability in most cases
- Flexible and advantageous estate planning tool

Cons:

- Registration with government entities
- Cost to set up can be higher
- Annual fees
- Must file separate corporate tax return