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Business Smarts:

A Legal Education Guide to Small Business

This package of articles and resources was designed to complement the Legal Studies 3050 module: Law and Small Business. The information contained within this package will help introduce students to the major legal questions which must be considered when starting a small business. Topics covered include:

- the various ways in which a small business can be organized (proprietorship, partnership, corporation);
- the advantages and disadvantages of establishing a business in a leased property;
- financing options and considerations;
- contracts – what needs to be put in writing; and
- the rights and responsibilities of both employers and employees.

The two articles contained within this package, "Getting Down to Business: Things to Consider" and "Before the Work Begins: The Top Five Legal Mistakes in Starting a Small Business," as well as the "Dogged Determination" activity, were all originally published in LawNow, a legal education magazine which is published by the Legal Resource Centre of Alberta Ltd.

Online Resources

Legal Resources for Small Business	
Alberta Employment and Immigration – Employment Standards of Alberta	http://employment.alberta.ca/SFW/1224.html
Office of the Privacy Commissioner of Canada: Privacy Guide for Small Business	http://www.priv.gc.ca/information/pub/guide_sb_e.pdf
Financing your Alberta Business – Grants and Loans	http://www.grants-loans.org/alberta-loans.php
The Business Link: Legal Information for Canada's Small Businesses	http://www.canadabusiness.ab.ca/index.php/legal
Canada Revenue Agency: Guide for Canadian Small Business	http://www.cra-arc.gc.ca/E/pub/tg/rc4070/rc4070-09e.pdf
Miscellaneous Small Business Related Resources	
Service Alberta – Businesses Main Page	http://www.programs.alberta.ca/Business/IndexB.aspx?N=772
Service Alberta – Starting your own business	http://www.programs.alberta.ca/Business/11693.aspx?Ns=11653&N=772
Service Alberta – Operating a Business	http://www.programs.alberta.ca/Business/11694.aspx?Ns=11664&N=772
Alberta Learning Information Service (ALIS) – Self Employment and Small Business	http://alis.alberta.ca/ec/wo/small-bus.html
Alberta First – Small Business Guides (variety of PDFs)	http://www.albertafirst.com/businfo/guides/

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Dogged Determination

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Susan Galloway

To the Teachers

Activities in this lesson are designed for students taking Legal Studies in high schools. The activities are created to teach students about becoming entrepreneurs of small businesses, a venture they could pursue during the summer holidays.

Students will read the story about Kelly and the small business she wants to start during the summer holidays. They will then answer questions pertaining to the various legal requirements of starting a small business. Students will then use the website *BizPal* http://webproxy.edmonton.ca/external/Bizpal/default.aspx to create their own businesses in a town or city in the province or territory of their choice, and learn about the various permits needed to run their businesses.

To the Students

The government has put in place a variety of controls that small businesses must follow before they are legally able to operate. They include things like licensing, name searches, insurance, occupational health and safety laws, etc. It is important for each prospective small business owner to be aware of all these requirements before beginning their own business.

Goal: Your goal is to use the web to find the permits needed to run small businesses of various kinds in the provinces or territories of Canada. You will also have to analyze the various ways of organizing a small business to determine the best one for you. Then you can choose a place in Canada in which you'd like to create a small business to find out what permits are needed.

Procedure

Read the following story about Kelly and her adventures as a hot dog vendor in Edmonton, Alberta. Then, answer the follow up questions.

Kelly needed to earn money to buy a new snowboard for the ski trip the school was planning for the upcoming winter. She decided that rather than working for someone else, she wanted to start her own small business as a hot dog vendor for the summer. Because Kelly lived on a busy street in Edmonton, she knew there would be lots of traffic going by. If she put up a really big sign in her front yard and had her barbeque near the sidewalk, people would not only see the sign, they would smell the hot dogs and stop for sure. She would also need some lawn chairs or a blanket on the lawn, so people could sit down while they listened to music and enjoyed their hot dog. Her parents told her there were regulations for small businesses that sell food and she should check out what permits were needed before she got started.

Kelly did her research and found the website *BizPal* at http://webproxy.edmonton.ca/external/Bizpal/default.aspx. She answered a series of questions to find out what permits and licences she needed. She put all the information on a chart so she could easily see exactly what she needed to do to run her hot dog business.

Go to the same website Kelly did and select Edmonton, Alberta as your location and hot dog vendor as your type of business. Then answer the questions online about being a hot dog vendor to find out what business licences you need.

Complete the following chart as you find out the answers.

Type of Job Hot Dog Vendor	Name of licence	Name of licence	Name of licence	Name of licence	Name of licence	Name of licence	Name of licence
Cost							
Renewal period							
Inspections							
Online or download application							
Contact phone number							

Now answer the following questions

1. What would be the total cost of the permits required?

2. What original name would you call your business?

3. Which licences are you able to apply for online?

4. Go to the online application with regard to "home-based business" and scroll down to see the initial costs before you have been approved. What are they and what do they include? Be sure to add these costs to the permits required.

5. Which licences are needed for the municipal government, which for the provincial, and which for the federal government?

6. Do you think the hot dog vendor business would work better as a sole proprietorship; general partnership, or a limited partnership? Explain your answer in detail.

7. After learning about the kinds of permits and licences you would need to be hot dog vendor, what are the pros and cons of having this type of business as a summer job?

Pros of being a hot dog vendor	Cons of being a hot dog vendor

8. Now that you have learned the process and costs for starting a hot dog vendor business, what things, if any, might you change when filling out the questionnaire at the beginning on *Bizpal* to eliminate some costs and licences?

Permits and licences are needed at all levels of government and differ from town to city, and from province to territory. Go back to the *BizPal* website www.bizpal.ca/part_partners.shtml and choose a different town or city in Alberta or another province or territory to start a small business**. When choosing a business, pick one that is reasonable for a high school student to start independently.** Complete a similar chart to Kelly and then answer the following questions.

1. What business did you investigate and in what town or city, and in which province or territory?

2. What would be the total cost of the permits required?

3. Which licences are needed for the municipal government, which for the provincial government, and which for the federal government?

4. Do you think your business would work better as a trade name or sole proprietorship; general partnership or a limited partnership? Explain your answer in detail.

Examples of other sites to support small businesses

www.ontario.ca/summercompany
http://www.janorthalberta.org/about.cfm?itemid=1253&smocid=311
http://www.cybf.ca/entrepreneurs/

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Getting Down to Business:
Things to Consider

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Roberto Noce, Q.C.

Introduction

There are many issues to consider when setting up a business. This article provides an overview of some of the legal requirements and issues that should be dealt with prior to starting your business venture. This list of issues is not exhaustive; however, it will provide enough information to help a potential business operator ask the right questions.

Corporate Structure

There are three common types of business structures: sole proprietorship, partnership, and corporation. People often ask which business model is the best, but the answer will vary depending on your needs, resources, and intentions.

Sole Proprietorship

Setting up a sole proprietorship has both advantages and disadvantages. It is the simplest way to set up a business, and the start-up costs are low. However, the sole proprietor is personally responsible for all debts and obligations related to the business. In other words, the sole proprietor bears unlimited liability.

Partnership

A partnership is the relationship that exists between two or more persons carrying on a business in common with a view to profit. As with any relationship, partners should consider putting together some form of partnership agreement in the event of a disagreement or dissolution of a partnership. The partnership model has its advantages, such as the relative ease in putting it together, low start-up costs, and limited regulations. The disadvantages of a partnership include, but are not limited to, the fact that partners have unlimited liability and a partner may bind the other partners to a legal agreement, for example, without their approval or knowledge.

Corporation

A corporation, also known as a limited company, is a legal body which is separate and distinct from its shareholders. The relevant provincial legislation for corporations incorporated in Alberta is the *Business Corporations Act*. Some corporations are incorporated at the federal level; however, this article will focus on Alberta incorporated corporations.

Incorporating has many advantages, such as limiting the shareholders' personal liability in any legal dispute. For example, if a creditor had a claim against the company, the creditor would normally have no rights against the shareholders. As well, incorporating allows for income splitting and other possible tax advantages.

Any business operator must recognize the importance of minimizing claims from current and former employees. The most common issue relating to employment matters is the wrongful dismissal action.

However, as with any business model, there are disadvantages. Incorporating is costly to pursue, it has extensive record requirements such as the preparation of a minute book and corporate resolutions, and in some limited instances, shareholders may still be held personally liable.

Most lawyers are asked to assist an owner-operated company where all the shareholders are actively involved in the day-to-day operations. The corporation must decide how many shareholders will be in the business, determine the various classes of shares, and decide how involved the shareholders will be in the business' day-to-day operations. Consideration must be given to setting up the management of the business such as the election of directors and the appointment of officers. Who will be the directors, the president, and the secretary? Will there be an opportunity for new shareholders to buy into the business?

If a business operator chooses to incorporate, it is essential that the shareholders develop a method by which to define their relationship and determine how to resolve disputes. The agreement between the shareholders is usually called the Unanimous Shareholders' Agreement (USA). Spending time drafting a USA and anticipating contentious issues will enable the corporation to focus on its day-to-day operations

as opposed to spending time and expense resolving disputes and other issues between shareholders. Notwithstanding a USA, issues will undoubtedly crop up and litigation may ensue. However, an agreement between the shareholders will reduce the likelihood of costly litigation for a business. A dispute resolution mechanism is an important component of any USA and should identify a forum for resolving disputes such as mediation, arbitration, or court process. A well-drafted agreement will greatly help to ensure the long term success of the shareholder relationship, thereby contributing to the long-term success of the business.

Generally, a contract is formed when there is an offer and acceptance, consideration, an intention on the part of the parties to form an agreement, and an understanding of the terms such as price and subject matter of the agreement.

Any agreement should also address the issue of how to buy one shareholder out from the company through the use of some form of buy/sell provision or "shotgun clause". Under a shotgun clause, a shareholder (*offeror*) would be permitted to offer his/her shares for sale (*offer price*) to the other shareholders (*offerees*) and those shareholders (*offerees*) would have the opportunity to purchase the shares at the offer price or to sell their shares to the shareholder (*offeror*) at the same offer price. The benefit is that the parties would be forced to accept a fair price for the shares because the person offering to sell the shares to the other shareholders does not know whether or not his/her offer would be accepted.

In addition, shareholders should consider including non-competition and confidentiality provisions in the USA to restrict any departing shareholder from getting involved in the same type of business with a competitor or starting a similar type of business.

Finally, as with all agreements, the parties should include a provision that sets out the manner in which the agreement may be terminated.

Employment

Any business operator must recognize the importance of minimizing claims from current and former employees. The most common issue relating to employment matters is the wrongful dismissal action.

In the absence of a written employment contract, every employment relationship is governed by an unwritten employment contract with terms that are implied by law. Those implied terms include all minimum standards as set out in the *Employment Standards Code* of Alberta, as well as reasonable notice provisions found at common law. Employers are free to draft their own employment contracts provided the terms meet or exceed the minimum requirements set out in the *Employment Standards Code* of Alberta. Business operators may want to consider entering into written agreements with their

management employees and taking the time to ensure that all employees understand their responsibilities.

The law allows an employer to terminate any employee at any time – with or without cause. Any employee terminated without cause must be given reasonable notice or payment in lieu of notice. It is important that business operators consider the reasonable notice periods and understand that if they fail to provide reasonable notice, the business may expose itself to a legal action. What is reasonable notice depends on the particular facts relating to the employee's history of employment.

If an employee is terminated with cause, there is no need to provide reasonable notice or make any payment in lieu of notice. However, keep in mind that the threshold for terminating an employee with cause is high. A business operator must have written documentation to establish that the employee was properly terminated.

All small business operators must recognize that there are a number of employment law issues that will arise from time to time. It is important to manage their employees' performance and to seek legal assistance when issues arise.

Contracts

Regardless of what type of business is being operated, there will be the need to enter into contracts with third parties. Generally, a contract is formed when there is an offer and acceptance, consideration, an intention on the part of the parties to form an agreement, and an understanding of the terms such as price and subject matter of the agreement. It is important to identify the names of the parties on the written contract so that there is no doubt as to who the contracting parties are. Any contract should also address remedies upon breach, and if the business is based in Alberta, the contract should indicate that Alberta laws govern.

Prior to entering into any binding offer to lease or other lease commitment, it is essential to take the time to review the zoning of the property to ensure that the intended type of business can in fact operate on that property.

Business operators should take the time to review any contract before signing it and ask for assistance where necessary. Once they have signed an agreement, they are deemed to have read the agreement even though they may later claim that they did not read or understand it. Although there are exceptions to the rule, it would be prudent on the part of business operators to read every paragraph in any contract before signing it. If they do not understand a particular clause, they should ask their lawyer or ask the other party to make changes to the wording so that it is clearer to both parties. The signing of contracts ought not to be taken lightly.

Leases

With the exception of home-based businesses, most businesses need to have a place to operate. Often, these places of business are located in buildings owned by a third party. A signed lease agreement between the owner of the building (landlord) and the business operator (tenant) will be required.

Commercial leases generally favour the landlord. There are several types of leases that a landlord may present to a business operator. Most leases provide a landlord with a net return. A landlord may attempt to shift other costs, such as utilities, common area costs, and HVAC (heating, ventilation, air-conditioning), to the tenant. A business operator should seek legal assistance prior to signing the lease agreement.

Some of the things to consider when reviewing a commercial lease are:

- the net rent;
- the duration of the agreement;
- any additional rent or costs;
- the tenant's responsibilities under the lease agreement such as hours of operation and repairs;
- the landlord's responsibilities under the lease agreement;
- whether there are any competition restrictions in the building;
- parking and access issues;
- how to deal with a default under the lease agreement (i.e., arbitration, mediation, or court process);
- a renewal option clause; and
- the ability of the tenant to assign or sublease, and whether or not consultation and approval of the landlord is required.

Some landlords may provide a tenant with free rent for a certain period to allow the tenant to set up its business operations. If the lease agreement does not provide for this, a tenant may request this opportunity.

It is also useful to consider and review the provisions in the lease agreement that deal with the sale, demolition, or redevelopment of the building by the landlord. Some lease agreements allow a landlord to terminate a long-term lease with six months' notice if the landlord decides to demolish or redevelop the building. This may put a business operator's investment at risk.

Business operators should consult a lawyer prior to signing any commercial lease agreement to avoid expensive roadblocks in the future.

Municipal Regulations

Most municipalities in Alberta have established business regulations and fees for businesses. Accordingly, most businesses will require a business licence in order to operate legally within the municipality. If a business operates without a business licence, most municipalities have the authority to impose fines. An owner may also be required to pay a fee ranging from $150 to as much as $3000 to the municipality depending upon the nature of the business. Business licence fees can range from about $150 to as much as $3000.

In addition to a business licence, a development permit may be required from the municipality. Prior to entering into any lease commitment, it is essential to take the time to review the zoning of the property to ensure that the intended type of business can operate on that property. Even if the proposed use is permitted, it may require additional parking spaces, costly building code compliance, and safety upgrades. As part of the due diligence process, it is important to take the time to review the applicable zoning provisions and building code requirements for the proposed leased premises.

An offer to lease should be conditional, not only on the proposed use being permitted, but also on the proposed plans receiving at least tentative, preferably final, approval from municipal officials. Without the appropriate prior due diligence, a tenant could find its proposed use prohibited under applicable zoning bylaws, or find the cost of complying with applicable codes and other requirements extremely costly. Again, retaining a lawyer to assist in securing the appropriate zoning at this stage can reduce costs, uncertainties, and headaches later on.

Conclusion

Although the concept of starting a business sounds simple at first, it can be challenging in many ways. It requires a great deal of time, effort, and planning on the part of the business operator. To move forward with your business idea, take the time to retain the services of a lawyer, accountant, and other professionals to assist you with your business venture.

Corporate lawyers are trained to look at business plans, anticipate potential problem areas, and help business operators to successfully navigate around them. The money spent on legal counsel early on will go a long way in ensuring the long-term success of a business.

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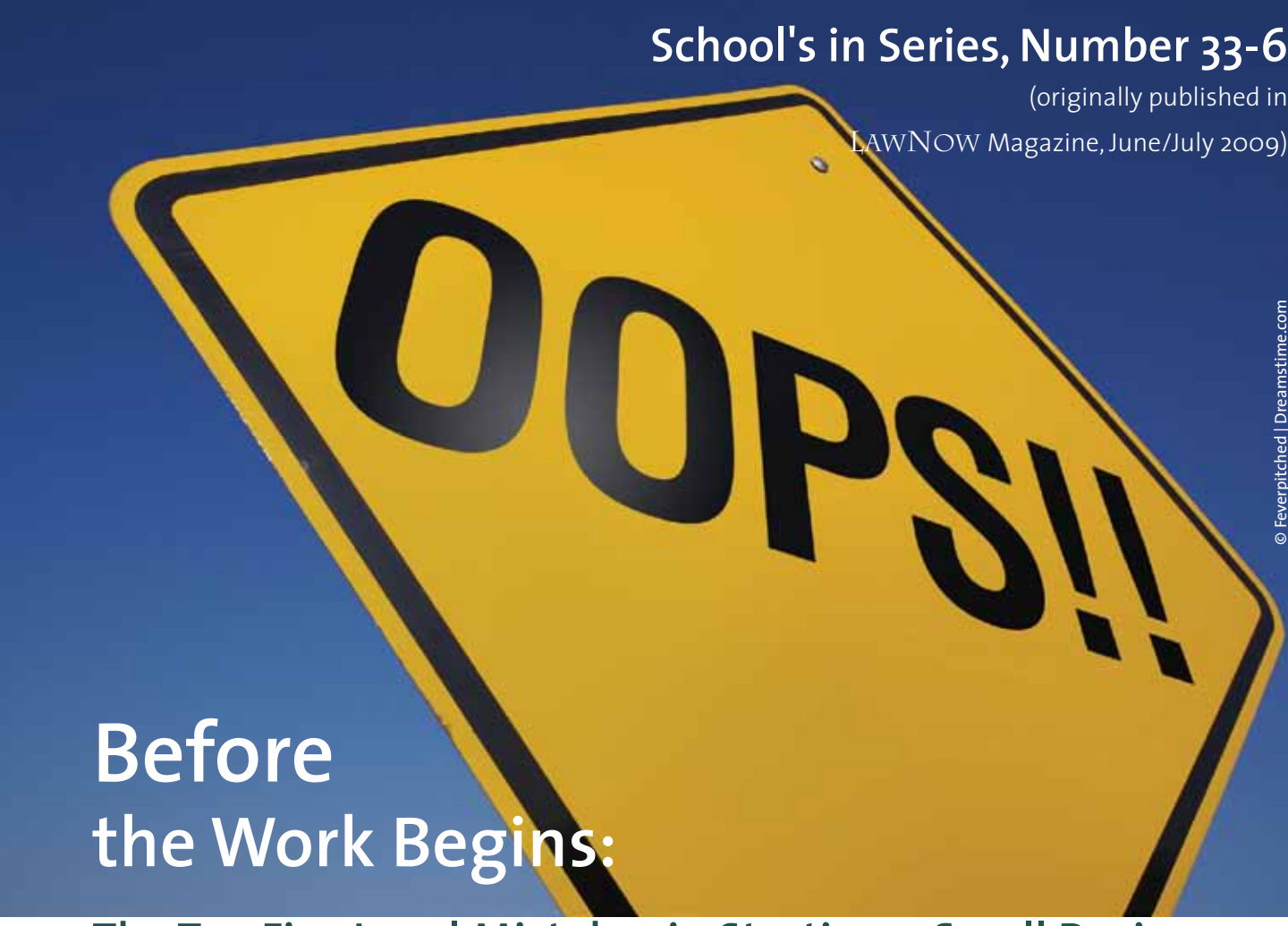

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Before the Work Begins:

The Top Five Legal Mistakes in Starting a Small Business

Carole Aippersbach

So you want to start a small business? You have your business plan at the ready, you can get a start-up loan with an interest rate that is at an all-time low, and your determination is at an all-time high. You are ready to go. Ironically, now – during this flurry of energy, excitement, and enthusiasm – is the time when you should slow down and become careful and contemplative. The decisions you make could have an enormous impact on whether your business succeeds or fails. Legal mistakes are amongst the most deadly. Knowing some of the pitfalls to avoid can make all the difference.

Mistake #1. Choosing the Wrong Ownership

Choosing an ownership structure is one of the most important decisions you will make. Your decision should be based on a careful consideration of the specific needs of both your business and yourself as well as a thorough understanding of your options and how these options relate to your needs.

There are three general business structures: sole proprietorship, partnership and corporation. Each has different and important implications for matters such as liability, risk, taxation, and succession. For a detailed description of each structure, see Roberto Noce's article at page 7. In deciding which of these options will suit you best, you should consider the following questions.

What are the risks involved in your proposed business?

Some businesses are more financially risky than others. Are you building houses or selling office supplies? In a sole proprietorship, you, the business owner, can be held personally liable for the debts and obligations of the business. This includes loans, taxes, money owed to suppliers and landlords, and any judgments against the business. This risk can even extend to liabilities resulting from acts or omissions by employees. While you can protect yourself against lawsuits by buying business liability insurance, this won't help you with business debts. You could potentially lose everything you own if the business debts are not paid. For the case of partnershps, because partners can make commitments that bind the entire business (without even consulting you first), your liability may be even greater than in a sole proprietorship.

A corporation, on the other hand, has limited liability. This means that *normally* no shareholder can be held personally liable for the debts, obligations, or acts of the corporation. However, in certain limited circumstances, a judge can look behind the corporation and hold one or more shareholders liable (this is known as "piercing the corporate veil"). For example, this may happen if a shareholder personally guarantees a debt, or if the corporation is a *sham* company used for nefarious purposes. The limited liability advantage can also be undermined if one or more of the shareholders sign any personal guarantees.

How much start-up capital do you have?

Do you have all you need or will you need investors? Sole proprietorships and partnerships have lower start-up costs as you do not incur the costs of setting up a corporation. In addition, sole proprietorships and partnerships are easy to form; there is no long list of statutory requirements as there is for a corporation.

How do you plan on obtaining any additional capital?

Investors won't usually invest in sole proprietorships. For partnerships, there are more potential sources of investment capital (for example, through the concept of the limited partnership), but many investors prefer shares in a corporation. Before accepting any additional capital from a new partner, you will want to ensure that this partner is suitable and that the addition of this new partner conforms to the partnership agreement. For a corporation, it is easier to raise capital as investors know that they will not be held personally liable for business debts. A corporation also has many avenues to raise money, such as selling current shares, or creating new types of shares, such as preferred shares, with different voting or profit rights.

What are your expected profits and losses in the first few years?

Will you need to deduct losses from other income? Sole proprietorships and partnerships offer numerous personal tax advantages, because, as an owner, you can deduct business losses from your other income. In addition, it is the owners that benefit from all of the profits. In a corporation the profits and losses belong to the company and have to be distributed accordingly.

Operating agreements are often over-looked. This is especially true in cases where the business partners are related or are friends. In such instances, the partners enter into the transaction assuming the best of one another and not anticipating the number of things that can go wrong over the life of a business.

Are you the kind of person who wants to be in full control of all decision-making?

In a sole proprietorship, you are in control of all decision-making. Any future sale, transfer, or dissolution of the business is entirely at your discretion. In partnerships and corporations there can be a broader management base. This can lead to divided authority and the potential development of conflict between partners or shareholders.

Can you adapt to many formal business requirements?

In sole proprietorships and partnerships, there are few formal business requirements. However, partnerships do require an operating agreement, and this creates slightly more record-keeping than a sole proprietorship. In contrast, corporations are very closely regulated. Corporate record-keeping is extensive and can be complex.

Do you want or need statutory name protection?

If name protection is important to you, you may wish to incorporate your business. Part of the process of incorporation is ensuring that the name you choose is not the same as, or too similar to, other corporate names in the jurisdiction. The same protection will be offered to your corporation once it is set up. In general, there is no such automatic name protection for sole proprietorships and partnerships. You can find exact details about other name protection options (such as the registration of trade names) in provincial business name legislation.

What are your plans for the business should something happen to you?

Sole proprietorships and partnerships lack continuity of business in your absence. The business has no separate existence, so you will need to make a succession plan through a Power of Attorney, a Personal Directive, and a Will. A corporation, on the other hand, as a separate legal entity, does not depend on the continued existence or membership of any of its shareholders, directors, or officers.

Mistake #2. Not Having an Operating Agreement (Partnerships and Corporations)

An "Operating Agreement" is a contract between the founders of the business. This includes people involved in the management, people who provide capital, and people who do both. This agreement sets out operative issues in advance such as who does what, when they do it, and how they do it. This ensures that everyone knows what needs to be done, and, as a result, the cost of solving problems will be kept to a minimum.

The types of issues often addressed in an operating agreement include:

- how much time and effort each person contributes;
- what each person's responsibilities are;
- how much capital each person contributes;
- what happens if the business needs more capital;
- what happens when a person leaves the business;
- what happens when a person dies; and
- any additional details imperative for, or unique to, the business.

Operating agreements are often over-looked. This is especially true in cases where the business partners are related or are friends. In such instances, the partners enter into the transaction assuming the best of one another and not anticipating the number of things that can go wrong over the life of a business. However, the consequences of not having an operating agreement usually emerge quite quickly. What happens when expected capital is not provided? What happens when a married partner gets divorced? What happens when partners disagree? These kinds of issues arise frequently and can get very messy very quickly. They can destroy both business and personal relationships.

Just as important as having an operating agreement is understanding it. It needs to be clearly drafted, and everyone who signs it needs to know what is in it. Failure to understand the terms of the operating agreement is one of the most common causes of in-house disputes and partnership conflicts. When a dispute arises, the operating agreement will be *the* decisive document in settling the dispute – its creation and comprehension are critical.

Mistake #3. The Contents of Leases

When you start a small business, you will need to consider where that business will be located. If your business is not a home-based one, this may be the first time you have had to deal with a commercial lease. Although such leases generally favour the landlord, there is some room for negotiation, and you should take advantage of that opportunity.

As a starting point, it is important to understand that business leases are *not* like residential rentals. With a residence, rent is usually restricted to a set monthly price, which may or may not include utilities. The landlord is responsible for repairs, and the terms of the *Residential Tenancies Act* help protect the rights of tenants. With business leases, on the other hand, there are often many other costs beyond the base monthly rent; for example, common area maintenance costs, the costs of certain repairs, and possible personal guarantees.

A second consideration: put everything in writing. Make certain that everything that you discussed and agreed upon (especially if they are changes to a previous draft) is included in the written agreement. No matter what the promise, if it is not included in the lease, it will likely be excluded by a clause that says something like "this lease is the entire agreement between the parties."

It is imperative that you read the lease *very* carefully, watch for errors, and ensure that you understand the terms to which you are agreeing. A thorough understanding

A good business property insurance policy should cover matters such as equipment and machinery; office furniture (including computers and accessories); inventory and supplies; company cars; and employees' personal property kept at the business site.

of the lease clauses will help you avoid surprise costs (which could sink your business). The following are a few examples of the clauses that could cause trouble if they are wrong or misunderstood.

Parties: An error in identification can have serious repercussions. For example, if you are forming a corporation and you list your personal, not corporate name, you may become personally responsible.

Premises: This includes the address, the unit number, and any additional space not included in the base units (such as access to storage rooms, conference rooms, parking, and kitchen facilities). Base charges are often calculated by the square foot – be sure to confirm all measurements.

Term: This describes the length of the lease. Some leases specify the starting and ending dates. Other leases start as of the date the landlord finishes the building adjustments that you requested, or the date the lease is signed. You may have financial responsibilities even if you have not yet taken possession. Be sure you know and agree to the date that your responsibilities will start.

Use: These provisions limit how you are allowed use the space. The limitations can be as broad as what business you will conduct or as narrow as what specific services or products you will offer. In general, the fewer such restrictions, the better for you.

Rent: In commercial leases, rent is often far more than a base monthly amount. Make sure you understand which parts of the landlord's operating costs will be passed on to you.

Non-disturbance: This clause ensures that if the landlord sells the building, your lease will be honoured by the purchaser. Without such a clause, you might find yourself without business premises. If this clause is not in the landlord's standard lease, you may want to consider negotiating for it.

Assignment: An assignment occurs when someone takes over a lease (one of the parties is replaced by a third party). Leases generally require the consent of the landlord for an assignment. Some even provide specific requirements in order for the landlord to consent. Take note of any such requirements so that you can determine if you can meet them and so that you know what you need to do when the time comes. Also note whether you will remain liable for the lease after you have assigned it.

Maintenance: Such a clause concerns your duty to care for the rented space. Some of the maintenance costs will be yours – be sure you know which ones and that you can live with the proposed arrangement.

Insurance: Insurance is available to cover the risks of leasing commercial space. Sometimes a lease requires certain kinds of insurance as well as certain minimum dollar limits. Be sure you know and understand these clauses before you arrange for insurance coverage and before you move into, and start using, the business premises.

Renewals: With any luck, your business will thrive. After the expiry of your lease, you may wish to stay in your current location. In anticipation of such a possibility, you may want to negotiate renewal options at the outset. Options include an automatic renewal (if you want it); a right of refusal (meaning the landlord must offer the space to you first); a fixing of the future rent for that renewal; and a formula for the determination of that rent.

Mistake #4. Not Being Adequately Insured

New businesses often have insufficient insurance. In deciding what kind and how much insurance to secure, a new business owner should carefully examine the needs of the business. Here is a summary of the most common forms of insurance coverage.

Property Insurance

It is always a good idea to purchase enough property insurance to cover your business' assets. Even if you form a corporation, which protects your personal assets from business liabilities, you still risk losing your business if disaster strikes. A good business property insurance policy should cover matters such as equipment and machinery; office furniture (including computers and accessories); inventory and supplies; company cars; and employees' personal property kept at the business site.

You also need to understand which types of losses are covered. The kinds of things to look for include fire, explosions, storms, smoke, riots, vandalism, theft, sprinkler leaks, floods, broken windows, falling objects, water damage, and loss of business income. If you have a lease, check for leasehold insurance. This protects you if your lease is cancelled and you have to rent elsewhere at a higher rent. Many of these things are not covered under a basic policy – a fact that surprises many business owners.

Also note that some items are specifically excluded. This, too, can be surprising. For example, in some areas where earthquakes are common, damage from earthquakes is specifically excluded from basic policies. If you want to have that kind of coverage you must obtain separate coverage. While the premiums for such additional policies are more expensive, they may be worth it if your business faces multiple or unusual risks.

Be sure you understand the limits of your policy. These include maximum coverage in certain circumstances, any deductibles or co-payments required, and how the insurance company pays claims. For example, "guaranteed replacement cost" insurance will reimburse you what it costs you to replace the property. If your

computer equipment is destroyed, this type of coverage will pay you as much as you'll need to replace it. This is very different from insurance that only provides the "actual cash value" (which is often depreciated) of the damaged property.

Lastly, keep in mind that the location of your business may affect your insurance needs. If you have a business lease, your lease may require that you obtain a specific amount or type of property coverage. Be sure to check your lease *before* you purchase a policy. If, on the other hand, you have a home-based business, your home-owner's policy may be voided entirely if you run a business from home. If that is the case, you will need to upgrade your insurance policy.

Liability Insurance

Liability insurance covers your legal liability resulting from injuries to, or property damage of, a third party.

There are several types to consider, for example:

- general liability, which covers damages that your business must pay to someone who is injured on your property;
- product liability, which protects you from lawsuits by customers who claim to be hurt by a product you produced and/or provided; and
- auto liability, which covers damage to vehicles in a business-related accident. This, however, may *not* include damage which occurs when your employee was using his or her personal vehicle for business purposes. You may need to have your employees change their personal auto insurance policies.

Not all policies cover all of these kinds of liability insurance. Be sure to consider your needs and read carefully!

Professional Liability

This kind of insurance protects you from liability arising from negligence committed while rendering professional services. This is also known as Errors & Omissions insurance. It is not available for all professional activities. As a business owner, you should ensure you know whether such insurance is available (or required) for your employees.

Workers' Compensation Board (WCB)

Most business operations are required to have workers' compensation coverage. If a worker is injured or contracts an occupational disease while on the job, the WCB covers the worker's medical and wage-loss costs. Employers who are uncertain about their need to register for compensation coverage should contact their provincial WCB for information.

Directors and Officers (D&O) Insurance

This kind of insurance is for businesses that are incorporated. In general, the recovery of any damages incurred by the corporation will be limited to corporate resources, but this is not always the case. Sometimes, courts will allow plaintiffs to receive damages directly from corporate officers or directors. In general, D&O insurance provides coverage against the wrongful acts committed by directors and officers (but it can also

include officers and senior management staff). Specifically, if such an insured person is found to have committed a wrongful act and, as a result, must pay damages to an injured party, those damages will be covered by the insurance (this is known as "indemnification").

So what is a "wrongful act"? Generally, the term "wrongful act" includes actual or alleged errors, mistakes, or omissions that occur in the discharge of duties; misleading statements; and neglect or breach of fiduciary duty. However, wrongful acts generally do not include criminal activities such as false arrest or libel, slander, and infringement of a copyright or trademark.

It is important to carefully read and understand exactly who is insured (and who is not), deductibles and exclusions, and any coverage limits. For example, there are often limits on general coverage (both per claim and the total allowed annually) and defence costs (a promise to indemnify may not be a promise to defend).

Mistake #5. Not Getting a Lawyer for your Business

As the owner of a business, you would likely never try to do all of your own accounting, computer support, and cleaning – you would probably hire someone. After all, you are there to run the *business* part of your endeavour – that is what you know, that is what you do well, and that is why you started your business. When it comes to legal matters, however, many small business owners seem to think differently (at least at the outset). Despite the complexity, intricacy, and sheer volume of detail involved in legal matters, numerous business owners try to do their own legal work.

The other four mistakes are only the tip of the iceberg when it comes to some of the legal matters faced by small business owners. Every business has its own set of issues to consider: contract law, agency law, employment law, human rights law, intellectual property, corporate & commercial law, tax law, zoning law … just to name a few.

As a business owner, you need some basic understanding of the law. There is, however, a difference between having a basic understanding of the most common issues and having a thorough knowledge of every possible legal matter that will affect your business. Lawyers have been trained to find the information for you. Let them help.

Final Words

Starting a small business is always risky. It takes significant effort and forethought. As part of this process, small businesses may make mistakes about legal matters. This happens all the time and can never be completely avoided. That said, some mistakes can be disastrous. Your business may end up incurring substantial expenses that could have been avoided with good legal planning. Dare to be prudent!

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