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Business Law

Issues in Law You Need To Know

Details, Details: The Importance of the Minute Book

It is important for business owners, directors, officers and managers of a company to maintain accurate corporate records in their corporate minute book.

Minute books are meant to serve as the official source of all corporate records. They should contain such documents as the articles of incorporation/amendment/ amalgamation, corporate bylaws, and minutes of shareholders' and directors' meetings. Ensuring the minute book is up-to-date helps to ensure that all vital corporate documents are in one place. This way, such documents can be easily found, retrieved and consulted when and if needed.

The minute book should properly identify the shareholders of the company, and document all share issuances and transfers. The minute book must also properly identify the decision makers of the corporation (i.e. directors and officers), when such decision makers were elected/appointed and when they ceased their functions. The



corporate records should properly demonstrate that the directors and officers were granted their authority to act. The minute book share ledgers and shareholder, director and officer registers should be updated each time there is a change. These registers will often be used to quickly identify who the directors, officers and shareholders are, or were, on any given date.

A minute book that is accurate will also show the official standing of the corporation. Such information will be vital to facilitating many corporate transactions, such as a potential sale of a company. For example, shareholders are

required to approve the sale of a business. If share transfers and/or issuances were never documented, or improperly documented, it may be difficult to quickly and accurately identify the current shareholders in order to obtain their consent to the sale. If your company's minute book is out-of-date, a generally straight-forward transaction may become lengthier and much more expensive.

There may also be times when third parties will need to examine your minute book. For example, in the case of an audit by the Canada Revenue Agency ("CRA"), the minute book can help to establish

effective dates for tax purposes, and can serve as a record of bonuses and dividends the corporation has paid out. The CRA may disallow dividends if the appropriate resolutions are not prepared, signed and included in the minute book. The Workplace Safety and Insurance Board may also examine the book to assess compliance under the Workplace Safety and Insurance Act.

Having an out-of-date minute book can have both practical and legal implications. Practically speaking, and in addition to those implications already discussed, if a company is being sold, the buyer will likely require a legal opinion relating to various corporate matters. Such opinions will not be able to be drafted until all corporate documents have been properly

executed and the minute book has been updated accordingly. Having an up-to-date minute book can help avoid any such delays related to the legal opinion. An out-of-date minute book and improperly kept corporate records may also cause delays in obtaining financing.

Moreover, if the minute book is missing documents demonstrating that certain directors and officers have been properly elected or appointed, their authority to make decisions may be subject to challenge.

From a legal perspective, a corporation that fails to comply with requirements to maintain certain corporate records may be found guilty of an offence and liable to a

fine.

If your corporate minute book is not up-to-date, there are methods of rectifying such deficiencies in the corporate records. A corporate lawyer will be able to perform a proper review of your minute book to identify any deficiencies and will be able to prepare the necessary documentation to resolve any problems. Ensuring your minute book is properly updated now may help prevent any future delays and expenses associated with updating your corporate records.

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EDUCATIONAL BACKGROUND

- Carleton University, B. Arts (History), 2004
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Jennifer practices law in the areas of Corporate and Commercial Law. She helps clients with incorporations, reorganizations, shareholders' agreements, asset and share purchases and sales, corporate governance and regular corporate maintenance of business minute books.

Prior to joining Tierney Stauffer LLP, Jennifer worked as an associate in the corporate/commercial law department of a national firm, and also worked in the legal department of the Ottawa Senators Hockey Club.

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