

## STEP-PARENTS AND CHILD SUPPORT OBLIGATIONS

STEPFAMILIES NOW MAKE UP 1 IN 8 COUPLE FAMILIES WITH CHILDREN IN CANADA

✍️ Carolyn Seitz

The Brady Bunch was ahead of its time. The blended family sitcom of the early 1970s is increasingly common. According to the 2011 census, 12% of families in Canada are in a blended or stepfamily. So, what would have happened if Mike had left Carol? Would he have had child-support obligations for Cindy, Janet and Marsha?

There are no clear-cut, easy answers to these cases as the circumstances vary from family to family. However, two important elements of the *Divorce Act* make it clear that in many circumstances, some form of support for stepchildren may be required.

One of the goals of the Act is to ensure that a child will have a fair standard of support that ensures they continue to benefit from the financial means of both spouses after separation. The *Divorce Act* also makes it clear that a step parent who “stands in the place of a parent” can be obligated to pay child support in “such amount as the court considers appropriate, having regard to the other biological parent’s legal duty to support the child”. This means that a stepparent who has an active role in the raising of the children can be required to continue to support those children in the event of a relationship breakup.

The Courts will consider several factors to determine the level of financial support the stepparent is required to provide. These include the age of the children and the length of the relationship and is based to some degree on the level of the integration of the step-parent into the role of a parent. A stepparent who lives with very young children for 10 years will be more

“**THE DIVORCE ACT MAKES IT CLEAR THAT A STEP PARENT WHO “STANDS IN THE PLACE OF A PARENT” CAN BE OBLIGATED TO PAY CHILD SUPPORT IN “SUCH AMOUNT AS THE COURT CONSIDERS APPROPRIATE, HAVING REGARD TO THE OTHER BIOLOGICAL PARENT’S LEGAL DUTY TO SUPPORT THE CHILD”.**”

likely to face support obligations than someone who spends two years living with teenage stepchildren. Whether and to what extent the children maintain contact with their other biological parent is relevant and the amount

of financial support that the other biological parent is able to contribute will also be a factor, as is the standard of living the biological parent(s) will be able to maintain on their own without the step-parent.

A pre or post nuptial or co-habitation agreement can be used to try to limit future child support obligations, but may not eliminate them. Child support is the right of the child and cannot be bargained away in a pre-nuptial agreement. However, child support payable by a step-parent is discretionary in the opinion of a Judge, not mandatory, as support for biological children is, and agreements can try to set some form of limit on the level of support based on the length of the relationship.

To be more likely upheld by the Courts, both parties must have independent legal representation at the time of signing the agreement, the agreement cannot be signed under duress and the agreed support obligations must be within reason and satisfy the goals of the *Divorce Act*.

If you are entering, or in a blended family, and want to understand your potential child and spousal support obligations, please contact us for an initial consultation.



# THE LINK

CONNECTING YOUR BUSINESS AND PERSONAL LEGAL NEEDS



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## INCORPORATING A NOT-FOR-PROFIT ORGANIZATION

IS THE COMPANIES ACT RIGHT FOR YOU?

✍️ Ross Swanson

Organizations that are looking to incorporate as a not-for-profit in Alberta have two options: the *Societies Act* or the *Companies Act*. While many choose to incorporate under the *Societies Act*, the decision about which Act is right is not always clear.

In this article, we explore some of the advantages and disadvantages of incorporating under the *Companies Act*. We also discuss one option of organizing that might be attractive to some organizations looking to benefit from the advantages of the *Companies Act* while minimizing the disadvantages. We conclude with some of the steps involved in filing for incorporation under the *Companies Act*.

### Advantages of the Companies Act

If you are one of the many not-for-profits that are looking to establish a social enterprise that is primarily intended to further your fundraising efforts, you can only do so under the *Companies Act*. The *Societies Act* does not permit incorporation for the purpose of carrying on a trade or business. Fundraising efforts may be classified as a business purpose.

Another advantage to incorporating under the *Companies Act* is that you have more flexibility when naming your organization.

### Disadvantages of incorporating under the Companies Act

The *Companies Act* is more complex than the *Societies Act*. One example, is that not-for-profit under this Act must decide if they will file as private or public company. A private company must satisfy these three criteria:

1. Has less than 50 members;
2. Prohibits a general invitation to the public to become members; and
3. Prohibits any transfer of the interest of a member in the company.

Unless your not-for-profit follows these rules, the company will be classified as public. This entails much more stringent filing and reporting requirements. For example, before its annual meeting, a public company is required to mail a copy of the financial statements of the company to every shareholder. Public companies are also required to file a certified copy of their financial statements to the Alberta Corporate Registry annually. Private companies do not have these requirements.

### The Best of Both Options?

If you operate a substantial social enterprise, you can consider splitting off that portion of the business

and incorporating it under the *Companies Act*. The primary corporation remains under the *Societies Act* and can be structured to control the split off Company. Using this method gives you access to some of the benefits found in both Acts. Another advantage is that, should the social enterprise fail, the whole society would not be in jeopardy.

### Filing for incorporation under the Companies Act involves some key considerations:

- A private company must have a minimum of two Directors upon incorporation; a public one requires a minimum of three.
- You will need to file a Search Report, a Memorandum of Association and Articles of Association.
- A company can be limited by shares or limited by guarantee. In a company limited by shares, the liability of the Members is limited to the amount, if any, unpaid on the shares respectively held by them.

In a company limited by guarantee, the liability of the Members if the company is dissolved, is limited by the Memorandum of Association to the amount that the Members may respectively undertake to contribute to the assets of the company.



### EDMONTON OFFICES

SUITE 2800, 10060 JASPER AVENUE  
EDMONTON, ALBERTA  
T5J 3V9

Phone: 780.428.6036  
Toll Free: 1.800.782.9409  
Website: www.dcllp.com  
Email: edmonton@dcllp.com  
Twitter: @dcllp

## BUCK HUNTING

### FINDING THE RIGHT ALTERNATIVE SOURCE OF CAPITAL FOR YOUR BUSINESS

Jeff Fixsen



THE LINK BUSINESS

When it comes to finding sources of capital to fund a business, small business owners in Alberta have more options than ever. Over the past few years, just over half of small & mid-sized businesses have borrowed money at some point to fund the business. A bit surprisingly, fewer than a one-third of those business owners ever considered one of the many alternative lending options, according to the *ATB Business Beat, 2016*. Taking a loan from a traditional bank is still the most common source of capital, but it is not always the best option for every company – see [‘Commercial Loans: What to Know Before You Sign’](#).

Here’s a rundown of some of the alternative sources of capital for your business, along with some of the pros and cons for each.

#### Grants

Depending on the size and nature of your business, there may be a provincial or federal government grant that is right for you. The grants cover a wide variety of programs from aboriginal enterprises, tourism, research & development to agriculture, the arts, media and exporting.

#### Crowdfunding

Thanks to websites like *Kickstarter* and *Indiegogo*, crowdfunding has become a popular way for small and new businesses to test market their offering and raise funds. Crowdfunding works by raising small amounts of money from lots of people in exchange for a reward, such as first access to a new product. Crowdfunding is a low-cost way to access capital without having to

relinquish any equity or control in the company. Many crowdfunding campaigns do require that a minimum amount of money be raised. This minimum is often needed to fund the initial production of a prototype.

#### Factoring

Companies in need of cash flow can consider raising funds by selling their accounts receivable to a factoring company. There are numerous factoring lenders in Alberta. But factoring may be an expensive source of capital, so it is worth speaking with several companies to get a sense of the different rates and terms on offer.

#### Angel Investor

Angel investors are high-net-worth individuals who provide financing in exchange for convertible debt or equity. Angel investors are typically experienced and successful business people who can provide mentorship and guidance to the company’s leadership team.

#### Venture Capital

Companies that are showing good promise but are still developing a track record of success can look to venture capital firms for potential revenue. The jump to taking in VC cash is a big one as it typically requires relinquishing some control of the company and coming up with an exit plan for the business. More information on venture capital opportunities can be found on the [Venture Capital Association of Alberta website](#).

#### Private Equity

Established companies looking to scale often turn to private equity firms for large injections of capital. But accessing the capital usually requires giving up ownership control of the company. Like venture capital firms, private equity companies are also looking to the future and planning their exit strategy. An often-overlooked advantage of private equity financing is tax planning as private equity firms may be more flexible in how they structure the deal with the current owners which may allow them to use their capital gains exemptions by buying shares rather than assets.

#### Initial Public Offering (IPO)

One exit strategy for Private Equity and Venture Capital firms is taking the companies they have invested in public through an Initial Public Offering (IPO). An IPO is the first sale of a company’s stock on a public exchange and it can raise significant amounts of money from Canadian and international investors. Taking a company public takes a lot of time and money and there are many regulatory requirements that must be met during the listing process and afterwards.

There are many different sources of finance, each with their own pros and cons. The one that is most suitable will in large part depend on the stage in the life-cycle a company has reached. Before accepting any financing, be sure to consider all the options to figure out which is best for your short-term and long-term business goals. Your legal and accounting team can provide valuable counsel during this phase.

## FOUR INCENTIVES TO START YOUR FAMILY BUSINESS SUCCESSION PLANNING

Rhonda Johnson



THE LINK PERSONAL

We all know that death and taxes are the two certainties in life. It is also safe to say that putting off dealing with the topic of death and taxes is the next closest thing to a certainty. For family business owners, avoiding the topic can cause some significant problems.

Whether it is through planned retirement or an unexpected death, there are many interconnected issues when it comes to family business succession. These issues include tax, legal, insurance and, perhaps most significantly, change to the family dynamic. With planning, the impact of all these changes can be turned in the family’s favour. While it may be tempting to avoid the topic, the potential benefits are substantial. The hardest part is taking that first step in the planning process.

Often, starting the succession planning process is motivated by a particular incentive. Four common objectives we help business owners achieve are:

1. Ensuring the long term stability of the business
2. Helping minimize the potential for family discord
3. Planning for retirement income
4. Reducing the tax bill when assets change hands

There are a variety of legal, accounting and financial tools at your disposal to help you achieve these objectives. They include:

#### Will, Enduring Power Of Attorney And Personal Directive

The first and most essential piece of the puzzle for any family business owner is to ensure the fundamentals of an estate plan are in place. This

is particularly important should the business owner become incapacitated.

#### Corporate Structure

A corporate restructuring can be used for effective tax planning at any time. As one generation looks to transition out of the business it can also be used to transfer assets in order to provide a tax efficient retirement income.

#### Shareholders’ Agreement

A family business shareholders’ agreement is a critical part of succession planning and can be used to address a wide range of common scenarios including disability or death of a shareholder, restrictions on transfer of shares, and the timetable for the orderly transfer of control of the business.

#### Estate Freeze

This tax planning tool locks in the current value and tax liability of an asset for one person and assigns the future growth in capital value to other family members.

#### Family Trust

There are many uses of trusts for family business owners. The most common function of a trust is to ensure the equitable and orderly distribution of wealth to younger generations. This can be particularly useful if there are family members who are not actively involved in the business.

#### Marriage & Co-Habitation Agreements

Shareholder agreements often contain a provision stipulating that any family member with shares in the business must have a marriage or co-habitation agreement in place that removes the shares from

their household assets. This is to prevent any of the shares from going to a non-family member should the relationship end. The marriage or co-habitation agreement formalizes this understanding between the two parties. See *‘Protecting the Family Business from Marital Breakdown’* for more details.

#### Life Insurance

Used effectively, life insurance can be an effective tool in estate planning. Common reasons for having life insurance include paying estate taxes on death, thereby leaving the original estate assets in place. It can also be used to fund the purchase of the deceased’s shares in the business by another family member.

#### Family Council / Meetings / Mediations / Collaboration

Effective estate planning and business succession does not happen in isolation or haphazardly. Creating a formal, professionally run family council will allow the family to participate in the planning and offer a forum for issues of concern to be expressed and resolved. All family members should be involved in the council and a team of trusted accounting, legal, investment and insurance professionals should be brought in to advise and implement the family’s chosen plan.

It is never too early to start thinking about estate planning and business succession issues. Where the business and owner are at in their life cycle will help determine what aspects of the planning should be prioritized.

Interested in learning more? The experienced lawyers at Duncan Craig LLP are here to help and we’d be pleased to meet with you for a complimentary discussion to answer any questions you may have.