

THE LINK

CONNECTING YOUR BUSINESS
AND PERSONAL LEGAL NEEDS

DUNCAN CRAIG LLP
LAWYERS MEDIATORS

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THE WIN / WIN STRATEGY: CHARITABLE GIVING AND TAX SAVINGS

 Rhonda Johnson

Over 80% of Canadians give to charity each year. And starting in 2016, Canada Revenue Agency (CRA) sweetened the pot by providing further tax incentives. Yet many of us are under using these tax incentives. If we do some planning, we can end up with more of a legacy to give now and through our estates.

Begin with the Desire to Give

Begin your planning with reflecting on your interests, concerns and values. Where would you like to lend a hand or create a legacy? Sometimes that might mean benefiting a specific charity, but often it might be a contribution to a charitable cause. Casting a wider net might give more flexibility to the organizations you care about to carry out your wishes. Consider Community Foundations or Donor Advised Funds. They are both well equipped to pool Donor resources to support charitable causes and will work with you to direct funds to causes dear to you.

Then Supplement with Tax Savings

For charitable gifts made during your lifetime, you will receive a tax credit to reduce your tax payable by up to 54%. For Albertans, after your first \$200 of donations, you receive a 50% tax

credit on all donations. If your income is greater than \$200,000, you get a 54% tax credit on all gifts you make from income over \$200,000. These tax credits can be applied to a maximum of 75% of your income per year.

If you leave charitable donations in your will, your estate gets the same 50% tax credit for donations over \$200, and 54% on gifts from income over \$200,000. The estate gets the tax credit when it makes the gift. And if the gift is made within 5 years of date of death, your estate can apply the tax credit to any of the following: the year when the gift was actually made, any prior estate year, or the last 2 taxation years of deceased's life, to a maximum of 100% of the deceased's income.

A Few Cautions

Every benefit does come with its cautions. Four common areas of concern are:

1. **The gift exceeds the maximum allowable tax credit.** Stretch the gift out over a few years, perhaps even between life time gifts, and gifts made in the will.
2. **For estates, the gifts must be given to the charity within 5 years of date of death, or you**

lose the tax benefit. Five years might seem like plenty of time, but where a business must be sold, or there is estate litigation, 5 years can go by very quickly. Pick your personal representatives wisely and give them plenty of discretion and flexibility to maximize the tax savings.

3. **Naming a charity directly as the beneficiary of your RRSP or RRIF.** Instead, name your spouse, and then leave the charity 'an amount equivalent to' your RRSP or RRIF. In this way your Personal Representative will have the flexibility to maximize the charitable giving benefits and the spousal rollover.
4. **The name of the charity.** For example, there are at least ten St Mary's Churches in Edmonton. Find out their exact name and consider giving your Personal Representatives the flexibility to give to similar causes of their choosing if the charity doesn't exist.

Conclusion

Molière said that a man's true wealth is the good that he does in this world. With some self reflection, good planning, and CRA's incentives, we can enhance that 'true wealth', do a little tax dance, and see the pleasure and benefit it brings our world.



10 THINGS YOU SHOULD KNOW ABOUT COHABITATION AND PRE-NUPTIAL AGREEMENTS

 Diane C. Ferrante



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You are in love. That's great. Maybe you are planning a splashy wedding. Or looking for the perfect condo in a hot downtown neighbourhood. Either way, if you decide on mapping out an agreement before you jump in with both feet (and bank accounts) here are some things to consider.

1. Cohabitation Agreements and Pre-Nuptial Agreements are not the same thing.

Married couples are governed by the Divorce Act and the *Matrimonial Property Act* while common-law relationships are governed by the *Family Law Act* and, to some extent, the *Adult Interdependent Relationships Act*. Why does this matter? Property. For example, the family home, bank accounts (joint or separate), the business, investments and pensions, furniture or jewellery.

The *Family Law Act* does not deal specifically with the division of property upon separation; it covers things like guardianship, child support, and partner support. While the *Matrimonial Property Act* sets out specifics on how property is to be divided between separated spouses (and what property may be exempt from division); currently, it is only applicable to married parties who can in a pre-nuptial agreement decide that they do not want to follow the *Matrimonial Property Act*. Couples who have separated and are not married must rely on the common law and the equitable principles of unjust enrichment and constructive trusts.

2. You need to share detailed financial information

In both types of agreements, the disclosure requirements are onerous but necessary. Full disclosure includes things such as income tax returns, pay stubs, bank account and credit card statements, RRSP/investment statements

and a statutory declaration of all income, assets and debts, among others. It is critical for parties entering into these agreements to exchange these documents because inadequate disclosure may render an agreement unenforceable.

3. It is necessary for each party to obtain independent legal advice

Having independent legal advice for both parties ensures that everyone is informed and understands what they are agreeing to when they sign. This means that each party needs to meet with their own lawyer to review the agreement and sign it after receiving legal advice on the effect the agreement has on their legal rights.

4. Relationships can end in different ways – and this might matter to you

Most couples agree that they would treat things differently if one partner was to pass away during the relationship, as opposed to the couple deciding to go their separate ways. You can include different eventualities in your agreement.

5. Keep the kids out of the agreement...

It is very difficult to ensure that an agreement relating to the children, were a couple to separate in the future, will be enforceable because of something called *Parens patriae*. Essentially, courts have the power to make decisions concerning people who are not able to take care of themselves (i.e., children) and their best interests will supersede any agreement.

6. ...Unless you should keep the kids in the agreement

If one of you have children from a previous relationship, it may make sense to include

those children in your agreement as to what the expectations are of the party who is not the biological parent. In cases of step children, a party might be viewed to have stepped into the place of a parent and, may, as a result, have obligations to the child(ren) after the relationship ends.

7. Spousal/Partner support waivers are not iron clad

Although you may include a clause releasing each other from spousal or partner support obligations, you can't count on this to be the case. There is a two-part test for spousal/partner support: entitlement (whether you or your partner is entitled to support under the Divorce Act or the *Family Law Act*); and, quantum and duration (how much support and for how long that support should be provided).

8. Yes, you can include the dog

Because if your relationship ends, you are going to need the support of your best friend.

9. Can we change it?

It is a good idea to include a review clause in your agreements allowing for changes to be made if both parties agree and each have independent legal advice; actually reviewing your agreement is even better.

10. Things change, including the law

There are changes afoot that may see common law couples covered by the *Matrimonial Property Act*. Stay informed and be sure to seek legal advice on how this might affect an agreement you have in place.

As we mentioned, this is some top-line information, to get you started. Please contact us if you have any questions or would like to discuss your situation. We would be happy to help.

BUYING AND SELLING BUSINESSES IN THE HEALTH CARE SPACE

 Ross Swanson



Every business transaction is unique and strategies surrounding the acquisition or divestiture of a business do not take place in a vacuum. We frequently act for professionals in the health care space (medical doctors, dentists, pharmacists and veterinarians) and in some cases, for business enterprises whose business model involves the acquisition of professional health care practices to integrate into a broader network of similar practices.

Typical Components That Should be Considered by Aggregators

While the following is not an exhaustive list, it will give you some idea of the issues that you need consider as part of planning your deal (whether you are being acquired by an aggregator or you are part of a group who is pursuing an aggregation strategy).

Valuation

Consider the following formula: *expectations (what a seller believes the value of the business to be) less observations (what an arm's length buyer is willing and able to pay) equals frustration*. Similarly, working capital requirements, earn-outs or other price adjustment mechanisms can be confusing and lead to misunderstandings between the parties in a transaction. Resolving gaps in valuation and addressing the details surrounding purchase price adjustment mechanisms calls for lawyers, accountants/valuators, and bankers experienced in buying and selling practices who can assist with aligning the expectations of the buyer and seller and ensure that the parties are able to settle the financial terms of the proposed transaction.

Business Financing and Corresponding Security Agreements

Most third-party purchasers will be working with a third party lender to finance their expansion

plans. That might be a traditional lender, a niche (specialized lender) and/or equity partners. Loan terms and related security will need to be integrated to meet with the expectations/requirements of the various parties providing financing for the transaction.

Commercial Leasing and Real Estate

Where the practice being transitioned includes a leased office, laboratory or other space, you will need to negotiate lease terms and conditions with third party landlords as well as others who may have an interest in such lease (for example, third party lenders). Where the real estate assets of the practice are owned by the professional (directly or indirectly), additional considerations factor into play including appropriate levels of due diligence in respect of the property (for example, the condition of the building, zoning, environmental considerations, financial and non-financial encumbrances on title or otherwise).

Employees

If you are transitioning an existing practice, there is a people component to your transaction. Naturally, the transition of a practice may involve the retention of key members or possibly, some level of employee attrition and obligations that follow such considerations (for example, severance exposure). There may also be issues associated with non-competition and non-solicitation restrictions surrounding the proposed transaction.

Third-Party Approvals

Depending on your specific circumstances, third party consents may be required before a transaction can be completed. For example, if the sale or expansion is taking place in a highly regulated environment such as health care,

consider whether there are Provincial regulatory approvals that need to be sought and granted.

Corporate Structure

Aside from issues of succession planning, a key consideration from both the perspective of a buyer or seller is the way the transaction will be structured. From a seller's point of view, a corporate reorganization which precedes the sale transaction may be required to remove certain redundant assets from the practice and to ensure that the health care professionals are able to plan the sale in a tax efficient matter. From the perspective of a purchaser/aggregator, regard will need to be given to the manner in which the assets of the practice are held following the completion of the acquisition in order to accommodate regulatory requirements as well as the overall business model of the aggregator.

Relationship Agreements

Anytime that you are transitioning a practice, you will need to develop appropriate relationship agreements for managing employees and contractors of the practice as well as for defining the rights and obligations of the practice owners. Such agreements may cover topics like employment, practice management, profit sharing as well as documents for defining the rights and obligations of owners (for example, a unanimous shareholders' agreement).

Strategic Business Development and Future Planning

As is apparent, there are a number of moving parts involved with the transition of any business including those in the health care space. Having a lawyer who understands the variables impacting the transaction is encouraged.

SEXUAL HARASSMENT POLICIES IN THE ERA OF #METOO

WHY HOLLYWOOD, POLITICIANS AND YOUR BUSINESS
HAVE MORE IN COMMON THAN YOU THINK

 Ron Smith and Tara Matheson



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BUSINESS

Right now, the daily news is filled with the latest allegations of sexual harassment by well-known people. And, while the #MeToo movement has certainly shed the light on just how pervasive this behaviour is in the entertainment and political spheres, it can also strike a lot closer to us, in workplaces of all sizes right here in Alberta.

Sexual harassment in the workplace can be very costly, and not just as a number on a spreadsheet. A toxic work culture lowers morale, reducing productivity and increasing turnover. And, should it become public knowledge that your company has dealt poorly with a complaint, you can lose in the court of public opinion too, driving customers away and damaging your brand.

In a 2017 Government of Canada online survey, 30% of respondents reported experiencing sexual harassment at work. You can reduce your risk by promoting a positive work culture, educating employees on harassment, communicating the policies you have in place and clearly outlining the procedures for dealing with complaints.

The Alberta Human Rights Commission defines sexual harassment as:

“any unwelcome sexual behaviour that adversely affects, or threatens to affect, directly or indirectly, a person's job security, working conditions or prospects for promotion or earnings; or prevents a person from getting a job, living accommodations or any kind of public service.

Sexual harassment is unwanted, often coercive, sexual behaviour directed by one

person toward another. It is emotionally abusive and creates an unhealthy, unproductive atmosphere in the workplace. Sexual harassment is usually an attempt by one person to exert power over another person. It can be perpetrated by a supervisor, a co-worker, a landlord or a service provider.”

The Commission goes on to state that sexual harassment can range from leering or suggestive remarks to unwanted physical contact to demands for sexual favours and physical assault.

Alberta employers have an obligation to keep employees, customers and clients safe from harassment. They are also required to follow up on a complaint of sexual harassment. And finally, when investigating, they have a duty to conduct a fair investigation and not rush to judgement.

Proactive Strategies to Prevent Sexual Harassment in your Workplace

Start by **educating your staff**. Make sure they understand what constitutes sexual harassment, not just with a definition, but by providing concrete examples. You can find these online at the *Alberta Human Rights Commission*. Include this training for all new hires, re-train employees on a regular basis and post information about sexual harassment in places where it is easily seen by everyone on staff. This will help employees identify the behaviour and encourage them to report and support their colleagues if they witness an issue.

Lead by example. Ensure that company leadership takes sexual harassment and abuse

of power issues seriously and communicate this to the staff. Your leadership sets the tone. Make sure that it is clear that your company does not tolerate harassment of any kind.

Have a policy in place. Clearly explain the behaviour that is inappropriate—at the office, at work related events, such as holiday parties, and off-site while performing work related tasks. Outline the steps that you will take if someone makes a complaint, and the consequences for employees that break the rules. Finally, make sure that people know who to speak to if they encounter sexual harassment.

Managing Complaints: A Compassionate, Fair and Balanced Response

Take all complaints seriously. Know that it is difficult for an employee to come forward with a complaint and they may fear negative repercussions. Notify the alleged harasser about the complaint as soon as possible and give him/her the opportunity to respond to the complaint. As you investigate allegations, document the meetings and conversations you have with the complainant and the alleged harasser.

You may also consider conducting an independent investigation. Few managers are experienced at investigating complaints, and both employees may feel more comfortable with this process. This approach may also reduce your risk should the issue or the response to it wind up in court.

Needless to say, sexual harassment in the workplace is a complicated subject and you'll want to take positive steps to approach it appropriately for your business and your staff.

¹ Harassment and sexual violence in the workplace consultations – what we heard 2017 Government of Canada

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