

# Corporate Minutes: Why They Matter

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The founder of a family business adds his new son-in-law to the company's board of directors. A small corporation seeks a substantial bank loan for a new acquisition. A growing company decides to pay out large, one-time bonuses, rather than large, annual raises, to its management team.

No matter the type of business or size of company, all Ontario and Canadian business corporations are legally obliged to keep and maintain records of their internal affairs and decisions, usually in a "minute book". A corporation's "annual minutes" must record the company's minimum annual internal activities. Any transaction outside of the corporation's ordinary course of business must be documented, either by minutes of a meeting or by a resolution signed by the corporation's directors or shareholders.

Such activities include:

- Declaration of dividends, bonuses or management salaries by the corporation's directors
- Directors' approval of the corporation's annual financial statements
- Presentation of these financial statements to the corporation's shareholders
- Election of directors for the next year
- Appointment of auditors or accountants for the corporation for the next year
- Appointment of officers for the corporation for the next year

The corporation must also document any changes in its shareholdings, directors, officers, registered office address or the residence address of any of its shareholders, directors or officers and file prescribed documents disclosing this information within prescribed time lines.

Why all the paperwork? What would happen if it were not completed? Let's look again at the three examples above.

What if other family members in the first example become disgruntled about the inclusion of the new son-in-law? Not having properly documented a corporation's decisions, arrangements, agreements and transactions may allow a disgruntled shareholder to claim that he or she never agreed to the course of action and the corporation was

therefore never properly authorized to undertake it.

In the second example, neglect of corporate record maintenance can cause major problems when a corporation attempts to borrow money or to sell shares or assets. Lenders and buyers usually require a legal opinion on the corporation and the authority of the individuals that purport to speak on its behalf. Without a properly maintained corporate record, the transaction may be delayed and additional expense incurred in attempting to bring current the corporation's records, if this is even possible. Sometimes, a formerly involved director or shareholder is unavailable, the paper trail cannot be repaired and the contemplated transaction founders for want of a proper legal opinion.

In the third example, not maintaining a corporation's records creates significant problems if the Canada Revenue Agency ("the CRA") audits the corporation. Such an audit will include a review of the Corporation's minute book to verify how monies have been removed from the corporation by way of dividend, bonus, management salary or otherwise, as may be disclosed in tax returns of the corporation and its shareholders filed with the CRA. Although the tax returns may reflect the occurrence of certain transactions, if they have not been documented in the minute book, as far as the CRA is concerned they have not occurred. Without proper documentation, the CRA may reassess a corporation, resulting in the corporation having to pay more tax.

And we can't ignore the fact that by not keeping complete and current records, a corporation and its directors are violating the law. They could face significant fines as a result.

To minimize the possibility of these problems arising, the ongoing maintenance of a corporation's records, including the preparation of "annual minutes", is best done by a corporate lawyer, who will advise on ongoing legal compliance and retain a copy of the corporate minute books. The directors and shareholders of the business can then focus their attention on successfully growing the enterprise.



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