



THE LAWRENCES[®] LETTER

News and information for clients and friends of Lawrence, Lawrence, Stevenson LLP

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SHAREHOLDER AGREEMENTS When the Honeymoon Is Over

Avi Goldstein



Beginning a new business venture is somewhat like a marriage: it's a new partnership where each partner brings something to the union. Partners in a business venture might contribute ideas, capital, hard work, skills, or assets. In return, they receive an ownership stake in the business and hope to see tangible returns for their efforts.

As with most relationships, time often changes both the situation and the people. What if the shareholder with the capital decides to spend \$100,000 on a new boat instead of investing it in new equipment for the business? What if he wants his spoiled nephew to become a 25% owner of the company, reducing the others' ownership stake? Or what if the computer whiz who wanted only to make the world a better place now wants sole control over the corporate bank accounts? Suppose the hard worker, seeing very little in the way of profit, simply wants out of the company — immediately?

Like prenuptial agreements, shareholder agreements are drafted to minimize problems like these. Such agreements should be put in place at the outset of the business venture, before problems arise. The agreement should address at least three issues:

- *Who owns the company?* The shareholder agreement specifies who holds shares in the company and how those shares can be disposed of. If unfortunate circumstances such as death, disability, or bankruptcy arise, the other owners are at risk of being left with a new business partner that they may neither know nor want. Provisions can be inserted into the shareholder agreement for disposition of shares in these situations, or when an owner simply wants to get out of the business. The best alternative is usually to permit other shareholders to purchase the shares in such circumstances.

- *Who runs the company?* Directors are legally liable for a company's actions. A shareholder agreement identifies the directors and officers of the company and their duties. It sets out the procedures for director and shareholder meetings. It specifies signing authorities, both for banking and for the execution of other documents. It identifies the company's accountants and solicitors. Finally and most importantly, it binds the owners to a duty of confidentiality to the company so that the business is protected.
- *How is the company financed?* If the company needs to borrow money to run the business, a shareholder agreement can outline the procedures to be followed if the company needs to raise debt financing. For example, if the company cannot borrow from a bank, the shareholder agreement may require shareholders to lend money to the company on certain terms and face consequences if they will not do so. A shareholder agreement can also set out provisions to prevent the position of existing shareholders from being diluted. As an incentive bonus for its employees, a company may offer shares that pay dividends while at the same time preserving the ownership structure of the company among the founders. The new shares to be issued would likely be non-voting shares with an entitlement to dividends.

Running a business involves taking risks. The relationship among owners is one risk that can be dramatically reduced by a shareholder agreement, which should be drawn up as close to the commencement of the business venture as possible, before issues arise and grow into irreconcilable differences.

Lawrences' Corporate & Commercial Group has helped many successful businesses grow and prosper, with the shareholders secure in the knowledge that their relationships with their fellow shareholders are protected and controlled.



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CLARITY IN CONTRACTS

The Million Dollar Comma or Paragraph

Kenneth G. Hood

We live in a world of contracts and contractual obligations. We sign contracts to buy a house, to lease business premises, to enter into a new job, to purchase or supply goods, or to lease a car. An agreement that might seem straightforward and easily understood may become very complex as purchaser and seller negotiate. This is especially true now that contract templates can be downloaded from the internet, documents can be easily altered, and communications take place at the speed of light. Paragraphs or changes that appear to be innocent can have dramatic impact later on.



definition of the selling price in this way. But the Court held the definition was clear, the comma was there in black and white, and the agreement should be enforced. Another costly comma!

The third case shows how even boilerplate wording should be carefully scrutinized. In 1986, Brick Furniture Warehouse Ltd. (Brick Ltd.) entered into a long-term lease with JSM Corporation (JSM) to operate a retail store on land owned by JSM. The lease allowed Brick Ltd. to sublet; the subtenant could also sublet. Brick Ltd. was structured legally to have no assets, so that there would be no point in suing Brick Ltd.

In 1987, Brick Ltd. assigned the lease to Brick Windsor, an affiliated shell company also without assets. In turn, Brick Windsor sublet the premises to Brick Warehouse, an operating company. A short time later, Brick Warehouse assigned the lease to Brick Corp., an operating company with assets. JSM was not a party to the subleases, since they were between affiliated companies, but was notified of them, signing a standard "Consent and Acknowledgement" form. In a clause in this form, Brick Corp. promised to Brick Windsor that it would "observe, comply with and perform all terms, conditions and covenants in the sublease".

In 2000, some 18 months before the expiry of the lease, JSM was notified that the store was being closed and that no more rent would be paid. JSM sued all of the Brick entities involved for the unpaid rent, which amounted to nearly \$800,000. Brick Corp., which had assets, defended on the basis that it had no direct contractual arrangement with JSM, but only with its sublandlord, Brick Windsor. At trial, the argument was successful, but was rejected on appeal. Because JSM had been a signatory along with Brick Corp. to the standard "Consent and Acknowledgement" form, Brick Corp. had made a promise, not only to Brick Windsor, but also to JSM. Brick Corp. was therefore liable for the unpaid rent.

While not every contract is worth millions, every agreement is important and can have substantial impact on your life and your finances. Having a lawyer review what you are signing gives you an objective viewpoint on what the contract really means, whether that paragraph really matters and to avoid misplacing that million dollar comma.



Ken is counsel to Lawrence's Litigation Group. A certified specialist in Civil Litigation, he has particular expertise in contractual, shareholder and partnership disputes. Ken can be reached at (905) 452-6890 or khoo@lawrences.com.

An agreement that might seem straightforward and easily understood may become very complex as purchaser and seller negotiate.

Some recent contract disputes demonstrate how important it is to pay close attention to the fine print—including the punctuation. The first is the case that made newspaper headlines: Rogers Cable Communications versus Aliant Telecom, where the placement of a comma could have cost Rogers dearly in providing Aliant an early exit from a contract. Only by examining the less ambiguous French version was Rogers able to overturn the decision on appeal.

In the second case, when a vendor decided to sell part of its business, the selling price was initially defined as being "net of taxes, rebates and discounts." The purchaser amended the agreement of purchase and sale to read "net of taxes, freight rebates and discounts," then further amended it to read "net of taxes, freight, rebates and discounts." See the difference a comma makes? The vendor didn't—and lost \$1 million on the sale price in the final agreement.

The vendor tried to argue that the agreement should be altered because it had not intended to change the

INVESTING IN REAL ESTATE: Look Before You Leap

Miel McGerrigle

Many people thinking about purchasing a residential real estate property consider the possibility of renting out a basement apartment as a great selling feature and investment opportunity.

Let's say you find what you think is an ideal property—with a basement apartment. You proceed to renovate, and when the city inspectors arrive to inspect the renovation, they tell you that the basement apartment is illegal. You have tenants lined up to move in next week.

This scenario could have been very different if on purchasing the property you had sought advice from a real estate lawyer.

In Brampton, all basement apartments or secondary dwelling units must be registered with the City, to comply with City by-laws and regulations. If the basement apartment/secondary dwelling unit was not in existence before November 16, 1995, it will be considered an illegal unit. In order to create a new basement apartment/secondary dwelling unit, or to legalize one created after November 16, 1995, the property will have to be rezoned.

If the secondary dwelling unit was in existence before November 16, 1995 but has not yet been registered with the City, in order to qualify for registration, the owner of the property must provide proof to the City that the secondary dwelling unit was occupied on or before November 16, 1995.

By-laws and regulations differ from municipality to municipality. The City of Mississauga by-laws set out the same prohibitions and restrictions when it comes to the matter of basement apartments/secondary units. The Town of Oakville has similar restrictions, but will permit accessory units in two areas: the uptown core, south of Dundas and Trafalgar, and an area located off of 6th line, south of Dundas.

In Toronto, the need for additional rental units is so great that the secondary plans have all been amended to permit second suites in residential areas; the term "second suite" has replaced the term "accessory unit" in the secondary plans for the Toronto area. The City of Toronto even has a program that allows property owners to submit a funding proposal to the City to create a new secondary suite in their home, subject to funding availability. The City gives the home owner a forgivable loan to create a secondary suite; the loan is forgiven once all the work is completed and approved. (For information on other municipalities, please contact our office directly).



If a complaint is made to the City of Brampton about the existence of an illegal secondary dwelling unit, the City may have an officer inspect the property. If the owner refuses to allow the officer to inspect the property, the City may then obtain a search warrant to conduct the required inspection.

If after the inspection, the officer determines that the apartment is an illegal unit, the City may issue an order to comply with the current by-laws and regulations, setting out what must be done to the unit to bring it into compliance. If the order to comply is not followed, the City may then impose a monetary fine or take legal action against the property owner.

An order to comply may include such orders as the removal of a second kitchen/stove or the complete removal or replacement of any alteration that was made in order to make the area a secondary dwelling unit. Complying with an order issued by the City could end up being costly to the home owner, not to mention a huge inconvenience to any possible tenant living at the property.

If you are unsure whether a secondary dwelling unit in a property you currently own or are planning to purchase is legal, or if you would like to find out more information about legalizing your existing basement apartment, Lawrences' Real Estate Group would be glad to advise you.



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Life at Lawrences®

Lawrences®' lawyers lead active lives in the profession and in the community. Here are some of their latest achievements.

Lawrences' Additions



They say good things come in threes and that's certainly true for Lawrences' newest lawyers. Joining its Estates & Trusts Group is associate **Goshia Sekhon**, formerly of a law firm in Vaughan, ON. Goshia, who obtained her LLB at Queen's

University, was called to the Ontario Bar in 2004. Goshia brings her experience in Wills and Estates, where she assists clients in preparing their Wills and Powers of Attorney. Goshia also assists Executors and Powers of Attorney in estate and trust administration matters. Goshia can be reached at (905) 452-6879 or gsekhon@lawrences.com.

Lawrences'
Additions

Councillor
Upenieks

Thanks for the
Feedback!



Joining the firm as associates after completing their articling year at Lawrences are **Robert D. Ryan** and **Tejdeep S. Chattha**, both of whom were called to the Ontario Bar in 2008. Robert, who obtained his LLB at Queen's University, is assisting Lawrences' Litigation Group. Robert likes assisting the trial lawyers: "I like being on the go, going to court, and working on different matters. Lawrences is a well established, well respected firm with a wide variety of clients. It's a terrific opportunity for



me to practise in a great atmosphere." Tejdeep, who obtained his LLB at the University of Ottawa, is assisting Lawrences' Corporate & Commercial Group. "I enjoy the solicitor side of law," he says. "I like to be proactive and help clients prevent problems before they occur." Tejdeep chose Lawrences because the firm is active in the community: "I was drawn to a firm that is as committed to Brampton as I am."

"We're delighted to have these outstanding young lawyers join us," says Lawrences' managing partner **Heather Picken**. "Our clients keep us very busy, and having bright new lawyers assisting us helps us maintain our reputation for excellent client service."

Councillor Upenieks



Fall is election time and the legal profession is no exception. Each year, the Ontario Bar Association holds elections for its governing council and this year, Lawrences' litigator **Ed Upenieks** has been elected to

represent the Central West Region, which stretches from Lake Ontario to Lake Huron. Ed will serve for two years on the Council and has also been appointed to the OBA's Nominating Committee. The OBA runs professional development courses for lawyers and recommends law reforms to government.

Thanks for the Feedback!

We've been producing the **Lawrences Letter** in its new format for two years and decided that it was time to find out what our readers thought of it. Our readership survey gave us lots of valuable information that we'll be using over the coming months. Most of the survey respondents read all of each issue and find the articles informative and interesting. We received many interesting suggestions for articles, which we appreciate. About half of our respondents have passed an issue on to other people. If you know of someone who would like to receive the Lawrences Letter, either send us their contact information or have them contact us. And why not put the latest issue in your reception area for others to read when you're finished with it?

THE LAWRENCES® LETTER

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