



"Why Should Corporate Minute Books Be Maintained ?"

Many individuals choose to incorporate their businesses to enjoy many advantages (for example, limited liability) but often choose not to (or are not aware of the need to) keep their corporate minute book current.

The minute book is the "book" which holds the key corporate documents together. These documents include the articles of incorporation, by-laws, minutes of meetings, written resolutions, various ledgers/registers and the actual issued share certificates. This "book" should be assembled and delivered to you (with a full report on same) by your lawyer as part of the process of legally organizing your new company.

"Maintaining" minute books is the process of recording in your corporate minute book at least annually (or in some cases more frequently) the following events:

- appointment of the directors and officers for the ensuing year;
- appointment of the accountants for the ensuing year;
- approval of the financial statements for the prior year;
- recording all shareholder loans made to/paid by the corporation for the prior year;
- recording all declared dividends (either taxable or capital dividends) for the prior year;
- recording all management bonuses paid by the corporation during the prior year; and
- recording all share transfers, changes in fiscal year end or other key circumstances which did not get recorded at the appropriate time during the prior year.

There are at least three (3) good reasons to maintain your company's minute books.

Firstly, it's the law. The governing Canadian corporate statutes do impose legal obligations to maintain minute books in the manner described above. Although rare, statutory penalties may be assessed for failure to attend to these matters.

Secondly, various third parties may want or need to examine your corporate minute books from time to time including your accountants, bankers or Canada

Customs and Revenue Agency (“CCRA”) or other federal/provincial taxation authorities.

Thirdly, if you ever sell your business, the purchaser may want legal opinions relating to various corporate matters so having up-to-date minute books will make the entire selling process easier (and likely less expensive).

Here is two (2) examples of how properly maintained minute books can save you money, time and headaches.

EXAMPLE A: You advance a \$20,000 loan of your after-tax dollars to your corporation to fund various start-up expenses. Three (3) years later, the company is profitable and you take \$20,000 out of the business to fully repay your personal shareholder loan. As the repayment was merely a return of your original loan capital and not salary, bonus or other income, you did not declare this amount on your personal income tax return for that year. In the following year, CCRA is conducting an audit of your corporation’s tax affairs and discovers that a \$20,000 payment was made to you in the prior year and that you did not record this \$20,000 as income in your personal tax return. You explain to the CCRA auditor that this was merely a loan repayment and not income but you cannot provide CCRA with any written evidence of this in the minute book (e.g., no promissory note, no board resolutions – nothing). Since you have no written evidence that the \$20,000 was properly characterized as a loan repayment, CCRA takes the position that it was income and re-assesses you for personal income taxes on this \$20,000 leading to a large tax bill which you did not plan for. To make matters worse, the corporation may not be able to deduct this \$20,000 as an expense (which would have been the case had this \$20,000 been paid to you as a reasonable bonus or salary amount). All of this may have been avoided with proper advance planning and minute book documentation.

EXAMPLE B: You received \$20,000 from the corporation as a dividend of current net income. As you know, the rate of taxation on dividends is lower than the rate on ordinary salary or bonus income. However, again, if there is no evidence in the minute book that this \$20,000 was received by you specifically “as a dividend”, CCRA may challenge any dividend characterization and take the position that the \$20,000 was merely salary or bonus and taxable as ordinary income NOT dividends.

As you can see, minute books should be maintained and the fixed annual cost is quite minimal in light of the benefits discussed above.

THE ABOVE INFORMATION IS INTENDED AS GENERAL BACKGROUND INFORMATION ONLY AND NOT AS SPECIFIC LEGAL OR TAX ADVICE TO ANY PARTICULAR READER.

PLEASE CONSULT WITH YOUR OWN LEGAL OR TAX ADVISORS REGARDING YOUR OWN PARTICULAR CIRCUMSTANCES.