

LEGAL BASICS FOR YOU & YOUR BUSINESS

A short talk on basic legal issues for entrepreneurs.

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BUSINESS BUILDERS

International LONDON

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Introduction & Disclaimer

This presentation is designed to be a very short briefing on legal issues regarding small businesses, including an introduction to ADR. It is not meant to provide a complete or comprehensive review of the law in these areas.

If you require further information, more specific guidance or have questions or concerns regarding your own business' legal position(s), kindly retain a lawyer who will be glad to provide the information, advice and documents that you require.

“Who are you?” Names

Have you chosen a name? Have you *checked* the name?

[Ontario Government's Business Gateway](#)

Search businesses, check business names, register a business. (Some services require online credit card payment.) Note: Business name registration is for 5 years.

[Trademark check](#) (Canadian government)

Searches available on names and symbols. (Caution: time-intensive, detail-heavy and in a highly specialized area of the law. You may want to retain a professional.)

[CIRA](#)

Web domain check for Canada's “.ca”. For all other domains, multiple sources.

“Who are you?” - *Continued*

Licensing, registration and related issues.

What do you *do*?

- › Are there licensing requirements?
- › Are there environmental restrictions?
- › Are there municipal restrictions on what you do or where you do it?
- › Home-based businesses: are you in compliance with local bylaws?

“What are you?”: Sole Proprietorship, partnership or incorporation.

Sole proprietorship:

You are your business and your business is you; there is no intervening identity. Can be done under your own name or under a registered “name and style”.

Partnership:

When two or more persons, whether individuals or corporations, carry on business together with a view to profit. Types: General / ordinary / common (or just “partnership”); Limited partnership.

Corporation:

A legal entity separate in law from its owners; can contract, sue or be sued, and even commit crimes.

The big question: Which is best for you and your business?

“Can you write that down?” 101: The basics of contract law.

What is a contract?

An agreement between two or more people to do or not do a certain things. The term is also used to describe the written document embodying the agreement.

What is necessary to create a contract?

- An offer, an acceptance and the parties agree on the essential terms.
- There must be an exchange of value or "consideration". No consideration, no contract; otherwise it's a gift or merely a non-binding agreement.
- The value exchanged must be legal; the acts must be legal.
- The parties must be "legally competent" and have authority.
- No duress or undue influence.
- Mistakes must be innocent.

“Can you write that down?” 102: Making contracts work for you.

Crafting it from the beginning allows you to determine what your obligations will and won't be. This can operate in two ways.

1. **Standard form contracts** can allow you to unilaterally determine what's in and what's out. Advantages include:

- Permits up-front investment in legal advice and drafting that can produce benefits for a long period of time.
- Allows you to unilaterally fix the terms to your objective and subjective advantage. Objective advantages: clarity of terms, certainty of wording, establishment of a DR process. Subjective advantages: Fixing terms that favour or protect you. Examples: limitation of liability clauses, exclusion / exemption clauses, fixed time frames and exclusion of oral representations.

“Can you write that down?” 102: Making contracts work for you. *Continued.*

2. Contracts drafted for specific situations and specific clients.

Some advantages:

- Can be crafted to meet specific situations with specific terms.
- Shared negotiation process with other party enhances buy-in.

Some disadvantages:

- Other party may object to clauses which they may deem onerous but which protect you, (eg: limitation of liability, ADR).
- Raises expense if lawyer involvement necessary more often.
- Every change increases uncertainty risk.

“Can you write that down?” 102: Making contracts work for you. (*Continued*)

Beware of *contra proferentum* rule: any ambiguity or uncertainty will be interpreted in favour of the person who wrote the contract.

Beware of the *Tilden v. Clendenning* situation: people are only bound if it they can reasonably be said to have consented to the terms, specifically and especially regarding onerous or important clauses.

You aren't protected from bad bargains.

You aren't protected from your own negligence or inattention: *non est factum* only applies to situations where the contract is completely different from what you intended.

Beware the parol evidence rule: absent specific circumstances you can't introduce evidence explaining or clarifying a contract.

“Documenting your integrity”: Records maintenance and organization.

Keep your records, keep your records, keep your records!

You may need to produce documents for a court or government agency.

Different situations will require different documents and will apply differing standards. What the tax authorities may care about may be different from what a court interpreting a contract will care about.

It is not necessary that you have an immaculate filing system. It is only necessary that you have it and be able to find it. Bonus: documentary discipline helps business discipline.

Keep a “miscellaneous” log, like a diary, for odd, important facts.

Confirm things in writing. It doesn't have to be formal, it does have to be accurate and complete.

“Documenting your integrity” - *Continued*

“Dos and Don'ts”

Don't be afraid of the photocopier. If you don't know which file to put a document in, please put it in both.

Don't be afraid of a dump box. It's better to have it when you need it than have it lost. Hours sorting through the paper is better than having no idea as to where a given document is.

Do maintain professionalism and calm, even privately. Abusive language or comments may come back to haunt you.

Remember: Absence of a document is often interpreted against you, either legally or at a gut-check level.

Dispute Prevention 101: What is ADR and how does it work?

Alternative dispute resolution (ADR) can be defined as resolving disputes through means other than direct negotiation or the intervention of the court system or administrative law tribunals. It is well established as a cheaper, faster means of resolving disputes.

The cost and delay of the court system is, by now, notorious. ADR, unlike the court system, allows the parties to a problem to play a role in designing how their dispute will be resolved, and by whom: one is not fixed into a preset, one-size-fits-all box and told "that's how the system works". And, if the parties choose, their settlement can take a form that is instantly enforceable by a court.

It's fast. It's effective. It is far less expensive than court.

Dispute Prevention 101 ... *Continued*

Mediation

"Mediation is one way for people to settle disputes", potential disputes "or lawsuits outside of court. In mediation, a neutral third party - the mediator - helps the disputing parties look for a solution that works for them." Mediators, unlike judges, do not decide cases or impose settlements. The mediator's role is to help the people involved in a dispute to communicate and negotiate with each other in a constructive manner, to gain a better understanding of the interests of all parties, and to find a resolution based on common understanding and mutual agreement." The purpose of mediation is not to determine who wins and who loses, but to develop creative solutions to disputes in a way that is not possible at a trial."

Mediation can be applied to any form of dispute or potential dispute, and can be utilized by individuals, organizations, communities, or other people or entities who have an interest in the outcome. There are many styles of and approaches to mediation and many ways of defining those.

Dispute Prevention 101 ... *Continued*

Arbitration

Arbitration is where parties to a dispute agree to resolve it outside the court system by referring it to an agreed-upon person (the "arbitrator" or "adjudicator") by whose decision they agree to be bound. The parties can agree that an arbitrator's decisions can be enforced through the court system as if they were a court judgment.

Arbitration has a number of very great advantages over the court system, including: speed; less expense; it can be scheduled outside of standard court hours or days; the parties to the dispute play a role in designing how the arbitration will be conducted (including how complex or simple it will be, what types of evidence will or won't be admissible or used, and whether the matter will be done face-to-face or only through documents).

An arbitrator's decision cannot be appealed as easily as a judge's decision can, so it is harder for one party to drag things out if they do not like the result.

Dispute Prevention 102: What can ADR do for you? (Hint: a lot.)

It keeps you out of the court system.

It cuts your costs.

It allows you to design the system by which your disputes will be resolved.

It is tailored towards maintaining ongoing relationships, and so can preserve profitable situations in a way that the adversarial nature of courts cannot.

Can serve to enable your customers and suppliers to understand each other better and thus solve the current problem and avoid others in the future.

Dispute Resolution: ADR, the court system and you.

You can use ADR at any time:

- When designing your contract (which is the best time). “System design” sounds imposing but it can be as simple as a sentence in a contract that keeps you out of the court system.
- As disputes arise: better to solve things at the early stage, before positions -- and emotions -- get set in stone.
- After disputes go to court. There's nothing like a large legal bill with no end in sight to convince you that there has to be a better way of doing this! It's not too late to try, but one must be aware that it is difficult once matters have reached this stage.

“Nothing Beautiful Lasts” 101: Love, marriage, kids and your business.

Your business does not exist in a vacuum:

It is the key component of your life.

It provides funds - and sometimes employment - for family members.

If something goes wrong (death, disability, divorce, support proceedings) it *can and will be right in the crosshairs*.

It is integrated with those other parts of your life, either informally (paying the bills) or formally (other family members involved in the business as partners, employees, fellow directors, *etc.*). You must plan for what happens if one of those goes wrong, or if the overlap itself causes the problem.

“Nothing Beautiful Lasts” 101 - *Continued*

Examples of problem areas:

- Death: Who gets the business? Who runs the business?
- Availability: Who runs things if you are not available due to absence, injury, illness or other reason.
- Separation or Divorce: Have you planned for what happens?
- Family disputes on family businesses: buyouts, forced sales, sustainability in the fact of radical change.

The Solution?

- Clarity and planning: Wills; Powers of Attorney; business contracts (including shotgun clauses); domestic contracts.
- Make sure that they “fit together” and are not contradictory or confusing.

“Nothing Beautiful Lasts” 102: Death & disability planning.

Wills: A document which governs distribution of your property after you die.

Powers of Attorney for Property: A document which gives another person authority over our property, either generally or in specified circumstances. Can be limited in time and scope.

Powers of Attorney for Personal Care: A document which gives another person authority over our health and care decisions when we are not able to do so ourselves. Not *strictly* business related, but useful to have in general.

Domestic contract: An agreement between romantic partners or spouses which will govern how property and support issues are handled during the relationship and after it ends.

David Sanders - A Short Bio

David Sanders was born in Toronto and raised in Thornhill. He started his undergraduate studies at Glendon College (York University's bilingual campus) and graduated from Osgoode Hall Law School in 1989. He articulated in Toronto, and was called to the Bar of Ontario in 1991. His first position as a lawyer was with Rural Legal Services, handling legal aid cases including duty counsel for provincial offences court, unofficial mediator for the small claims court, and in his very first call as a lawyer, the legal implications of a too-amorous bull.

With that contract complete he returned to the GTA where he worked with a number of boutique and specialist firms, moving into his own practice with friends in 1997, where he remained until 2002. His practice with Sanders, Lyn & Ragonetti centred on small and medium sized enterprises, (including and especially their corporate and litigation problems), estate planning, (including wills, powers of attorney and estate litigation), and property and real estate property disputes and lawsuits.

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David Sanders - A Short Bio - Continued

During this period he became convinced of the need not only for dispute resolution methods superior to the court system but also for the even better choice of dispute *prevention* through effective personal and business planning and systems design. To that end he obtained a Certificate in Dispute Resolution from the University of Toronto's demanding program and qualified as a Level II arbitrator with the Arbitration and Mediation Institute, both in 1996-1997.

Leaving the law when he moved to London in 2002, David Sanders went into private research work. He then handled administrative, research and writing work with the London Homeless Coalition, followed by a spell as the Strategic Planner for the London Employment Help Centre.

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David Sanders - A Short Bio - Continued

David Sanders founded Camberwell House Solutions (a full service alternative dispute resolution (“ADR”) firm) in 2007. He returned to the law in 2008, founding Camberwell House Litigation which provides legal services with specific emphases: small and medium-sized business, estates work and condominiums. Full details on the practice areas of Camberwell House are available on the reverse side of this short biography.

David Sanders has two daughters, age 20 and 10. He is active with several charities and nonprofits and struggles with his longstanding addiction: buying and reading far too many history books.



Camberwell House *Solutions*: Services

Mediation (General, Civil & Estates)
Arbitration (General, Civil & Estates)
Condominium Mediations
Condominium D.R. System Design & Bylaws
Condominium Arbitrations
Ombudsman Services
Small Business Dispute Resolution
Small Business D.R. System Design
Collaborative Law
Facilitated Negotiations (all fields)



Camberwell House *Litigation*: Services

Estate Planning & Wills
Powers of Attorney
Small & Medium Enterprises Legal Counselling
Small & Medium Enterprises Litigation
Personal Legal Counselling
Personal Litigation
Condominium Law & Litigation (as counsel)
Arbitration & Mediations (as counsel)
Small Claims, Superior Courts & Courts of Appeal
Tribunals, Boards and Panels
Civil Litigation: Plaintiffs & Defendants
Motions, Trials and Appeals

Camberwell House: Practice Areas

Powers of Attorney for Property
Powers of Attorney for Personal Care
Estate Planning: Wills and Conflict Prevention
Estate Disputes & Litigation
Small & Medium Enterprises Legal Counselling
Small & Medium Enterprises Disputes & Litigation
Contracts: Drafting & Interpretation
Contracts: Disputes & Litigation
Condominium Law & Litigation
Real Estate Litigation
Non-Profit Law
Non-Profits: Dispute Prevention & Resolution
Research & Reports
Collaborative Law

(Any other areas: kindly inquire.)

