

LOOK BEFORE YOU LEAP

Many people will negotiate contracts, settle terms and sign on the dotted line before they ever go to see their professional advisors about their rights and obligations. This is just about as sensible as peeing on a high voltage power line to see if it is live. Once you have signed on the dotted line, there is very little a lawyer can do to change the agreement.

Lawyers have a number of words they use to describe these sorts of business people. "Poor", "dumb", "unsophisticated" and, eventually, "bankrupt" are but a few. Rich people know this, of course, and use professionals regularly to keep them out of trouble.

Wealthy people also know that it is not some sort of admission of weakness to say that you don't know all the legal ins and outs. After all, it is a lot faster and easier for a rich person to hire the brains they need for short periods than it is for them to go to law school for eight or so years.

Seldom is this more evident than when negotiating the purchase or sale of a business. Even if the vendor and the purchaser have agreed on the price, there are still a lot of things left to sort out. Allocation of the price to assets, goodwill, or leasehold improvements will have considerable impact upon the taxes that are paid or saved. It is incredibly annoying to learn later that five minutes with an accountant or a lawyer could have saved you hundreds or thousands of dollars.

Many people look on the purchase or sale of a business as being little more complicated than the purchase or sale of a house or a car. Actually, even the purchase and sale of a "ma and pa" business is a fairly complicated transaction.

A big part of the reason for this is because there are a number of government agencies that can make claims on the assets of the business (usually for the vendor's unpaid accounts) even after the purchaser has paid the vendor the full purchase price. If appropriate holdbacks or undertakings aren't arranged, a purchaser may find himself paying for the same assets more than once.

The purchase and sale of a business will almost always involve searching the various government claimants such as WCB, GST, PST, Employment Standards, Bank of Canada and other government agencies. These agencies can trace the assets and seize and sell them in the hands of the purchaser if the seller has not had the good sense to "render unto Caesar that which is Caesar's".

For this reason alone, it is a good idea to consult with accounting and legal advisors on such matters as the timing of the closing, holdbacks to ensure clear title and other adjustments. Even a

fairly simple matter such as non-competition clause can be devastating if omitted. If the vendor can set up shop across the street next week, how long do you think you'll survive?

In addition to the government, the sale of the business may involve a transfer of assets, a transfer of shares or even an amalgamation of companies. It may also involve obtaining government approval or licensing. In short, it's not as simple as you might think.

Commercial transactions will usually involve the client, the lawyer and the accountant. It is important for them to work closely together to ensure that the interests of the client are protected, that tax consequences are minimized and that the transaction is completed efficiently.

Lawyers and accountants are trained to consider all of the horrible things that can go wrong in all of the various scenarios. They then determine the least risky course of action and advise accordingly. Businessmen and entrepreneurs are often, by nature, optimistic. After all, they wouldn't consider buying a business if they thought the future was gloomy. However, if decisions are made without the benefit of knowing the potential "down-side" then the end result can often be disappointing, if not financially crippling.

Hard work, enthusiasm and an optimistic outlook aren't always enough. Prudence, caution and planning for unpleasant contingencies are also required if you expect to navigate your business venture through the shoals and reefs of the modern marketplace. If you don't know what you're doing, the world of business can be a very expensive place to find out.