



## **COMMERCIAL LAW**

### **Sale of a Business: Rising to the Challenge & Grasping Opportunities at the Dawn of the 21st Century**

Over the next ten years, the Canadian economy will undergo a social and economic transition of a scope unseen since the period following the Second World War. Indeed, the majority of Canadian small- and medium-size businesses ("S.M.B.") will be offered for sale within the next ten years.

S.M.B. are the heart of the Canadian economy and constitute its driving force. However, most Canadian business owners belong to the same generation: they are baby-boomers. All of these entrepreneurs will thus reach the age of retirement at approximately the same time. Comprehensively wanting, and sometimes needing, to take time for themselves, they will retire from business within 5 to 10 years.

In this context, liquidating one's capitals through the sale of one's enterprise shall not be easy. Indeed, it will be difficult to find a buyer that has on hand the capacities and the capitals necessary to acquire an enterprise, especially since there will be a larger number of enterprises offered for sale than of available buyers. Hence, a large number of interesting S.M.B., even though profitable, shall not find any buyers.

### **The S.M.B.: Driving the Economy**

The Canadian economy is mainly formed by S.M.B. In the province of Québec only, they constitute 90% of all operating enterprises. S.M.B. are the principle actors driving economical development, innovation, and creation of employment within the province. Notably, 85% of the new employment created each year in Québec is created within an S.M.B. In general, a S.M.B. is owned by a single person (a unique or majority shareholder), usually its founder.

### **Portrait of the Québec Entrepreneur**

Demographically, the majority of Québec entrepreneurs are white men between 40 and 64 years of age. They are part of the baby-boom generation. They habitually have a high school level of formal education.

In short, Québec entrepreneurs are self-made-men that worked hard throughout their life so as to develop their business. Essentially, their enterprise is their main or only asset. As the age of retirement (typically 65 years old for their generation) approaches, many of these entrepreneurs naturally want to reap the fruits of their labours by selling their enterprise.

### **New Blood and Potential Buyers**

The next generation of entrepreneurs will be very different from that of today. Firstly, its level of formal education will be higher (college or university). Moreover, due to the changes in society, this generation will

present a greater socio-cultural diversity. We can already foresee the increased presence of women and of members of cultural minorities (including a good proportion of first- and second-generation Neo-Canadians).

However, it will be far from evident for entrepreneurs to find an acquirer for their business. Broadly speaking, three main possibilities are available to them: (1) their family (most Québec S.M.B. being family enterprises); (2) their employees (a management buy-out in most cases); or yet (3) purchase by a third party (including competitors, etc.).

## The Stakes for the Entrepreneur

As he contemplates the sale of the enterprise he created, the entrepreneur surely has certain expectations as to its value. However, entrepreneurs must realise that possibly they will not be able to sell at their own price. Indeed, buyers will be hard to find, while other entrepreneurs will also be looking to sell at the same time. As a consequence, the prognosis for the coming years is as follows: many sellers for few buyers will make it a buyer's market.

Moreover, finding an interested acquirer shall not be the sole challenge; above all, the challenge will be to insure that said buyer has access to the financial resources necessary to acquire the business. Most new entrepreneurs do not, on their own, possess the necessary capitals for the acquisition of a pre-established business. On the other hand, a retiring entrepreneur does not wish for an outstanding balance on the sale price to remain, due to the inherent risks. It is thus essential that the enterprise be in a situation where the buyer can obtain financing.

## Conclusion

For retiring entrepreneurs, the coming years must be devoted to the preparation, both financial and legal, of their enterprise if they wish to obtain a good price in an unfavorable market. Reversely, there shall be numerous opportunities in the next ten years for those who desire to acquire a business. There will indeed be a market in which many enterprises will be offered for sale to a restricted number of potential acquirers.

To make their enterprise more interesting to potential buyers, entrepreneurs will have to, notably, straighten up their financial statements in prevision of the due diligence verification by the eventual buyer, or also, so that said buyer may easily obtain the financing required for the enterprise's acquisition. Moreover, entrepreneurs will have to organize the enterprise's legal relationships (work contracts with key employees, agreements with suppliers, etc.) as well as the registration of intellectual property (trade-marks, etc.).

Such a preparation does not happen overnight. It requires a thorough effort, which must be accomplished in parallel with the business' day-to-day operation. Completing such a task often requires a 3 to 5 years period. Optimally, the entrepreneur should take on the services of well-versed advisors—professionals in the accounting, fiscal, and legal fields—in order to draft up a detailed plan and to accompany him in its execution.

To read more about this subject, follow the *Legal Insider* over the coming months, as the authors develop first the financial aspects and, secondly, the legal aspects of the preparation leading up to an enterprise's sale by the retiring entrepreneur.

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The **Legal Insider** is brought to you by **Mr. Alain P. Lecours**, in collaboration with **Mrs. Marie-Eve Brassard** (redaction) and **Mr. Louis-René Hébert** (translation). It is freely distributed by email to the clients and business partners of Lecours, Hébert Lawyers Inc. This article is meant solely to inform, and might not reflect the most recent legal developments; it is not intended as legal advice. Thus, clients and other readers should not act or refrain to act based upon this article without first obtaining legal advice from a professional who will provide analysis and counsel on specific matters.

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