

then subscribes for common shares at a nominal value. At this point, there are no tax implications because the parent will not have made a taxable disposition, but the parent can then be paid out over time, through dividends and/or by the company buying back the preferred shares. Selling the shares triggers a capital gain for the parent, but this can be sheltered using the LCGE.

See diagram on page 19, which illustrates the ownership structure after a basic estate freeze.

REMEMBER THE 5 Ps!

A time-honoured saying in the British Army is that 'proper planning prevents poor performance'. The key to success when stepping away from your business is clear communication with all the interested parties and professional advisors at all times. Having your business in a saleable condition long before a buyer appears is the best way to maximize value, while a sale concluded in a rush, or presented as a *fait accompli* to family, staff (or customers) is likely to end in disaster, as misunderstandings and incompatible expectations drive people apart. You worked hard to build the business; you, and it, deserve better than that. ■

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CHECKLIST FOR A SUCCESSFUL SALE

- All of the stakeholders (owners, family members and staff) understand the objective of the sale, and know that their interests are protected.
- Corporate records are up-to-date, taxes filed and no outstanding legal issues.
- Business showing at its best. Fresh decor and signage, equipment and premises clean and tidy.
- Building lease having a number of years remaining.
- Simple value-adds taken care of, website updated, client database up-to-date.

by Jacquelyn Stevens

Jail Time and Hefty Fines

DRY CLEANERS HIT HARD BY THE ENVIRONMENTAL ENFORCEMENT ACT

Environment and Climate Change Canada has used updated legislation to crack down and levy large fines on non-compliant dry cleaners. Convicted dry cleaners have faced fines ranging from \$9,500 to \$60,000 regardless of their prior history of compliance with the Canadian Environmental Protection Act, 1999 (CEPA). One dry cleaner has even been sentenced to jail time for non-compliance with the Tetrachloroethylene Regulations.

In 2012, the Environmental Enforcement Act (EEA) amended the Canadian Environmental Protection Act, 1999 (CEPA) to impose tougher punishments on certain contraventions of CEPA, including contravention under the Tetrachloroethylene Regulations. As a result, designated serious offences carry hefty fine ranges with mandatory minimum fines. (See chart.)

Second and subsequent offences can result in double fines. If convicted, directors and officers of corporations can be subject

to the same fines as the corporations themselves under CEPA.

In addition to changes to the fine scheme, the EEA also increases the limitation period for Environment and Climate Change Canada to institute summary proceedings from two to five years.

RECENT CASES

Since June 2012, several dry cleaning companies have been prosecuted for offences under CEPA that carry the elevated penalties prescribed by the EEA. For example:

- In 2013, a dry cleaning company was fined \$60,000 for multiple offences including improper storage and containment of tetrachloroethylene waste water and residue.
- In 2014, a dry cleaning company was fined \$9,500 for improper storage of tetrachloroethylene and for not having proper secondary containment present.
- In 2015, a dry cleaning company was fined \$25,000 for improper storage of tetrachloroethylene.

New Fine Scheme under the *Environmental Enforcement Act*

OFFENDER	TYPE OF OFFENCE	SUMMARY CONVICTION		INDICTMENT	
		MINIMUM FINE	MAXIMUM FINE	MINIMUM FINE	MAXIMUM FINE
Individuals	Designated offences	\$5,000	\$300,000	\$15,000	\$1 M
	Other offences	N/A	\$25,000	N/A	\$100,000
*Small Revenue Corporations & ships under 7,500 tonnes	Designated offences	\$25,000	\$2 M	\$75,000	\$4 M
	Other offences	N/A	\$50,000	N/A	\$250,000
Corporations & ships of 7,500 tonnes or more	Designated offences	\$100,000	\$4 M	\$500,000	\$6 M
	Other offences	N/A	\$250,000	N/A	\$500,000

*Small Revenue Corporations are considered to be corporations with revenues under \$5,000,000 in the 12 months preceding the offence in question.

Source: Canada, Environment Canada.

- In 2016, a dry cleaning company was fined \$36,000 for improper storage and disposal of tetrachloroethylene.

DIRECTORS IN THE HOT SEAT

Companies are not the only target for Environment and Climate Change Canada prosecutions. Directors and officers also attract liability under the new legislative framework. For example:

- In 2013, the director of a dry cleaning company was personally fined \$10,000 for his corporation's improper storage and containment of tetrachloroethylene.
- In 2015, the director of a dry cleaning company was personally fined \$15,000 for his corporation's improper storage of tetrachloroethylene and absence of tetrachloroethylene-resistant drain plugs.

JAIL SENTENCE

Fines are not the only penalties being sought by Environment and Climate Change Canada.

In February 2016, for the first time ever, the owner of a dry cleaning facility received a four-month conditional jail sentence after pleading guilty to contraventions of the Tetrachloroethylene Regulations. Dry cleaning businesses operated by the owner had been subject to two previous convictions under CEPA. Environment and Climate Change Canada investigations over the course of 14 months found improper storage and handling of tetrachloroethylene and tetrachloroethylene waste. In deciding that a jail sentence was appropriate, the Court focused on the owner's repeated non-compliance despite being made aware of the regulations

and the dangers of mishandling tetrachloroethylene.

Other dry cleaning companies, and their directors and officers, have also been charged but have negotiated out of court settlements where the charges were not pursued in exchange for negotiated terms. Negotiated terms included attendance at education seminars on dry cleaning operations, posting public notices of non-compliance and proper handling practices, and payment to the Environmental Damages Fund.

CONCLUSION

Environment and Climate Change Canada is actively prosecuting dry cleaners for contraventions of CEPA and is seeking the increased penalties prescribed by the EEA for convictions. A strong message is being sent by the Court – regulatory compliance must be taken seriously. If not, penalties can deprive you not only of your business profits, but potentially your freedom.

All dry cleaners should take the time to protect themselves and their operations by refreshing their memories about the requirements for their operations under CEPA, the Tetrachloroethylene Regulations, provincial laws and municipal bylaws, and ensuring all aspects of the dry cleaning facilities and operations are in compliance.

BIO INFO

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