



WIKLOW
proactive corporate services

NEWS

WIKLOW CORPORATE SERVICES INC.

EXPERIENCE & EXPERTISE

JULY 2015

THE IMPORTANCE OF MINUTES

***"A board meeting is an event where minutes are taken and hours are wasted."*⁽¹⁾**

In Canada, corporations are required to prepare and maintain minutes of meetings. Minutes are not a transcript of a meeting nor are they cursory notes. Minutes must convey an appropriate level of responsible review and informed deliberation.

"...the "bare bones" approach is not appropriate for public companies as minutes of that type do nothing to satisfy third parties that the board members are properly entitled to rely on the "business judgement rule" to protect themselves from potential liability. Minutes are prima facie evidence of what transpired and while preferably not voluminous, should succinctly and accurately reflect the material aspects of the board's deliberations. The formal record should be a self-serving record of discussions and decisions on material issues. Merely recording formal resolutions is no longer sufficient or advisable."⁽²⁾

The "business judgement rule" is an accepted principle whereby "Canadian courts will not second-guess business decisions made:

- *Independently, without conflict of interest;*
- *In good faith;*
- *On a reasonably informed basis;*
- *Based on information available at the time, where*
- *The decision falls within a range of reasonable options available at the time."*⁽³⁾

In order to establish the acceptable level of care, board meetings should be scheduled in advance to ensure the board members can arrange participation. Additionally, the agenda and materials, including any previous minutes, should be circulated prior to the meeting allowing for a sufficient review of topics and materials prior to the meeting.

Minutes, if done correctly, will ensure "that the directors fulfilled their duties to (1) manage or supervise the management of the business and affairs of the corporation, (2) act in the best interests of the corporation, and (3) exercise due care. Under the "business judgement rule" courts are inclined to be deferential to business decisions of directors. Minutes should be able to demonstrate that these decisions have been made honestly, prudently, in good faith and on reasonable grounds."⁽⁵⁾

(1) The Directors College, April 27, 2012, "Minutes of Board Meetings" by Hartley R. Nathan, Q.C.

(2) "The Efficient Corporate Secretary in Strategies for Success: Management Techniques for Small and New In-House Law Departments" by J.B. Colburn.

(3) "Business Judgement Rule – Fiduciary Duties Arising from Administration of Assets and for Approving Transactions" by Gowling Lafleur Henderson LLP, R. Bruce Smith, Jason Zibarras and Michael Herman.

(4)(5) "Writing Board Minutes for Peace of Mind" by Tim Banks.



10 Tips for Effective Minute Taking:

1. At the start of the meeting record the names of the directors present and absent; names of guests; date and time; appointment of Chair and Secretary and determination of quorum.
2. Follow the agenda of the meeting as a template to organize the minutes.
3. Under each agenda item of business note the key points discussed but DO NOT record all questions and answers or identify which director asked a particular question. Use the "Front Page of the Newspaper" test. In other words, assume that the minutes will be read by an adversary and could be read by the public.⁽⁴⁾
4. After discussion, note the resolutions approved and whether it was "unanimous" or "passed". Make note of abstaining or dissenting directors but do not record name of directors who move and second resolutions.
5. If further action is required, postponing a resolution, record the action required, who is responsible, and when the action will be completed and reported to the board.
6. Record the date for the next meeting.
7. As soon as possible after the meeting, transcribe your notes and write the minutes.
8. Send the minutes to the Chair and once you receive any comments, circulate the draft minutes to the board for review.
9. Ensure that the minutes of the last board meeting are included in the agenda for the next board meeting for approval and once approved, are signed by the Chair and Secretary. If changes are required, be sure to make changes as soon as possible and circulate the revised minutes for signature.
10. Destroy previous drafts and notes or recordings.

Part of the broad range of services that Wiklow provides is attendance as recording secretary at board and committee meetings. Wiklow's professional expertise ensures discreet and strictly confidential minute taking with prompt circulation of minutes to the Board. Wiklow can also assist with the preparation of notices and agendas and prepare and monitor an ongoing calendar for future meetings.

Preparing Reports of Exempt Distribution

On June 25, 2015, The Canadian Securities Administrators issued guidance on the preparation of Report of Exempt Distributions based problems that have been observed with reports filed. Following is a summary. For the complete report click [here](#).

1. The Form 45-106F6 *British Columbia Report of Exempt Distribution* must be filed in British Columbia while the Form 45-106F1 *Report of Exempt Distribution* must be filed on all other jurisdictions. **If an issuer distributes securities in BC and elsewhere, the issuer must file the F6 in BC and the F1 in the other jurisdictions.**
2. Generally, filing deadline is 10 days after the distribution.
3. Ensure the applicable filing fee is paid in each jurisdiction.
4. Provide a complete list of purchasers which identifies all purchasers in all jurisdictions and file the report in each jurisdiction.
5. Ensure that the number of securities, the total dollar value raised, the number of purchasers and exemptions used is the same as those reported in the Schedule I.
6. Ensure that the number of purchasers is actually the number of investors not the number of securities purchased.
7. Not all exemptions are available in all jurisdictions. Therefore, ensure that the exemption applies in the purchaser's specific jurisdiction.
8. Disclose ALL commissions and finder's fees including all payments, discounts or other fees that relate to a fee of this kind.
9. Describe convertible or exchangeable securities including the description of the underlying security, the terms of conversion or exercise and the expiry date.
10. The minimum amount exemption is provided for a purchase price of at least \$150,000 by one purchaser; it cannot be provided for a "syndicate" to pool purchases.
11. Ensure the form is signed and dated.

Should you have any questions regarding the filing of a Report of Exempt Distribution please do not hesitate to contact us for assistance.

Economical, efficient and effective corporate compliance services including:

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