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BC Minister Introduces New Law On Wills, Estate & Succession

VICTORIA – New legislation re-introduced on September 14th by **Attorney General Michael de Jong, QC**, will modernize and streamline the making of wills and administering of estates.

Bill 4, the Wills, Estates and Succession Act, reduces the number of separate acts that involve estate law from seven to one, making the law in this area easier to use. Among refinements, the legislation provides a simplified procedure for administering smaller estates.

“The public, and lawyers and notaries working with estate laws, will greatly benefit from the improvements,” said de Jong. “Among many changes, the legislation removes outdated provisions and will be easier for the general public to understand.”

Extensive work and consultations have gone into development of the legislation. Many of the changes came as a result of a British Columbia Law Institute (BCLI) three-year review of succession law by over 30 lawyers, notaries and legal academics specializing in the area.

“Some of British Columbia’s top wills and estate practitioners, as well as other experts, made valu-

able contributions to the project,” said **Jim Emmerton**, BCLI executive director. “Twenty-nine volunteer project members attended over 100 committee meetings dedicated to modernizing this important area of law.”

Further changes were made based on consultations and feedback from the public, Canadian Bar Association, estate and financial

“...the legislation removes outdated provisions and will be easier for the general public to understand.”

planners, bankers, legal advisors and the public guardian and trustee.

As this is a substantial change, the law will come into force after the public and legal community have had an opportunity to review and prepare for the new legislation, expected to be in 2011.

- Legislation governing succession law was last comprehensively reviewed in 1920. Many existing provisions trace their roots to the Wills Act of 1837.
- The British Columbia Law Institute began the succession law

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A NEW ESTATE & SUCCESSION LAW

BC Attorney General **Mike de Jong** has introduced new legislation aimed at streamlining the estate settling process.

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RULE OF LAW

Kelowna Lawyer, **Stanley Rule** reviews **Wilson vs. Heathcote** - What can happen when executors don't get along?

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PRESIDENT OBAMA ON THE FUTURE AMERICAN ECONOMY

U.S. President **Barak Obama** spoke at Georgetown University earlier in Spring and outlined his prescription for a revitalized American Economy.

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TRUST & THE FAMILY BUSINESS

Tom Fellhauer - one of BC's top legal authorities on Trusts, Tax & Estate Planning is interviewed (first of two parts). Tom shares his experience & insight on how to protect family businesses.

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GORDO'S CAPITAL COMMENT

Grace Under Pressure: How One Business Owner Saved His Business & His Community

A FIRE IGNITED IN THE FOREST above West Kelowna's Glenrosa Avenue in the middle of the afternoon on July 18th.

Conditions were hot, dry and strong winds quickly spread the fire.

A few homes stood in the fire's path and further afield stood the Gorman Brothers mill - West Kelowna's largest employer. One of those homes belonged to **Ron Gorman** - a part owner of the mill.

As the first fire crew arrived, the wall of fire proved difficult to contain. Ron and his wife, **Jennifer**, had minutes to rescue family treasures before fleeing for their safety. Time was critical and moments later, their house was engulfed by the inferno.

Having lost his home, Ron's attention turned to the lumber mill owned by his family for over 55 years. If it burned, it would take at least a couple of years to rebuild and to get it up and running.

There was also the issue of his workers. If the fire destroyed the mill, hundreds of employees would be laid off, forced to look for work elsewhere or forced to move. The entire area would be affected.

Ron was resolute. He went to the mill prepared to do whatever necessary to save the mill from the fire.

Meanwhile, one of his supervisors, **Al Springer** was laying sod and saw the smoke. He made his way to the mill before road blocks were set up and traffic became an issue. He prepared the crew and the yard for the pending wall of fire.

As evening approached, the winds increased and the fire was

relentless. Spot fires ignited around the yard, but none took hold. Gorman employees would not retreat. They risked their lives rather than see their livelihoods go up in smoke.

Their efforts paid off. Notwithstanding some lumber and some other items, the mill was spared and back in operation shortly thereafter.

It was an amazing effort by staff, fire fighters and volunteers and it was a miracle no one was injured.

Gorman Brothers have long been a pillar of the West side community. Had their mill been lost to the fire, tax revenues generated by their operation would have been lost to the new West Kelowna municipality. Property taxes would have increased, perhaps drastically. Local property owners can sleep better knowing that won't happen - thanks to those who helped save the mill.

Also owing a debt of gratitude are the community organizations and programs which Gorman Bros. fund year over year. A viable mill means their funding can continue.

In the end, the fire consumed three homes including the homes of **Ron and Jennifer Gorman** and his sister and brother in law, **Mary and Doug Tracey**. It's regrettable, there is little anyone can do or say to replace their losses.

Mr. Gorman's actions warrant a place on the Honor Roll of Business. Not only was he able to put aside his personal loss and save his business but, his family and managers have obviously created a work place employees and staff value enough to risk their own lives.

That's grace under pressure. ○

the Capital Partner

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E. & O.E.

New Succession Act Introduced

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reform project in 2003, with support from the Ministry of Attorney General.

- Succession law refers to the transmission of property to others, usually after death, through a will or testament. It includes legal matters related to distribution of property of people who die without a will or with an invalid will, as well as the law by which a will can be challenged or claims made against an estate.

“...the law will come into force after the public & legal community have had an opportunity to review.”

- Several important principles in succession law are found in case law only. The new legislation enshrines many of those principles in legislation, making the law more predictable and accessible.
- Four acts will be completely repealed when the legislation comes into force. Legal provisions have been relocated from three other acts, consolidating seven acts in total into a single act.

Key changes include:

- The court is given power to ensure a deceased person's last wishes will be respected, even if contained in a document that does not meet the necessary requirements to be considered a will.
- It will be faster and easier to administer small estates (less than \$50,000).
- Land is applied to pay off estate debts equally with personal property. Currently, if debts are

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owing and the estate does not cover them, bequeaths of personal property are used first to pay the debts, followed by gifts of land.

- Removed or changed are a number of presumptions most people did not know about, such as a gift given during the will maker's life is presumed to be given in place of a gift in a will.
- The new legislation will not invalidate wills made before it comes into force, but will apply to the interpretation of existing wills.

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BC Budget Update

- Effective January 1, 2010, the threshold for small business corporate income tax will increase to \$500,000 from \$400,000.
- In 2008, the small business corporate income tax rate was reduced from 4.5 per cent to 2.5 per cent — a reduction of 44 per cent. The government intends to reduce the rate to zero by April 1, 2012.
- On January 1, 2010, the basic personal income tax credit will increase for BC residents to \$11,000.⁰⁰ from \$9,373.⁰⁰.

The RULE of LAW by Stanley Rule

Feuding Executors: Wilson vs. Heathcote

What happens when the persons you trust to handle your affairs after your gone can't work together?

IF YOU APPOINT TWO EXECUTORS of your will to act together, it is important that you choose people who can work well together.

If they don't work well with one another, the likely result will be frustration and delay in the administration of your estate.

What can be done about executors who won't work well with each other?

Rudolf Martin had appointed **Rick Wilson** and **John Heathcote** as his executors and trustees.

He appointed his accountant **Ken Lee** as his alternate executor and trustee in case either Mr. Wilson or Mr. Heathcote became unwilling or unable to act.

After Mr. Martin's death on November 24, 2007, Mr. Wilson and Mr. Heathcote did agree to act as executors. They applied for received a grant of probate of his will.

Irreconcilable Differences

Unfortunately, there were a number of disagreements between them. Perhaps the most significant disagreements revolved around the handling of the sale of Mr. Martin's apartment building.

Mr. Heathcote wanted to deal early on with an offer to purchase the building. Mr. Wilson, on the other hand, wanted the building appraised and listed with a real estate agent to expose the apartment to the market.

There were further disagreements on how to handle the estate funds.

Mr. Wilson favoured handling funds through the executors' lawyer's trust account, and Mr. Heathcote favoured setting up an estate account managed directly by the executors.

"...there were a number of disagreements between them.

Perhaps the most significant disagreement revolved around the handling of the sale of Mr. Martin's apartment building."

The relationship between the executors was dysfunctional.

Mr. Wilson applied to the Supreme Court of British Columbia to remove Mr. Heathcote as a trustee.

The Court's Conclusion

Mr. Justice Cohen granted an order removing Mr. Heathcote and appointing Mr. Lee in his place in his decision in *Wilson v. Heathcote*, 2009 BCSC 554.

STANLEY T. RULE

is a lawyer with the Kelowna firm

TINKER CHURCHILL RULE.

His areas of practice include: Dispute Resolution, Estate Planning, Probate & Estate Administration.

He encourages discussion about the law and reform on his blog at:

www.rulelaw.blogspot.com

Although the court did not make any finding of misconduct, Mr. Justice Cohen held that:

"the Court may intervene to remove a trustee in circumstances where the relationship between trustees has deteriorated to such an extent that the proper and efficient administration of the trust is improbable, thus making removal necessary and expedient to protect the interests of the beneficiaries."

He found that Mr. Heathcote's manner and conduct, including making unsupported allegations that Mr. Wilson had acted improperly, were the major cause of the breakdown.

Accordingly, Justice Cohen found that it was appropriate to remove Mr. Heathcote. ○

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President Obama Outlines His Economic Vision

Much is expected of **President Obama**. Last fall, **Colin Powell** suggested he would become a “a transformational president.” The “transformation” may have stalled this summer, as public healthcare was debated in town hall meetings. Still, healthcare is just one part of his vision for America and leaders ought to be judged by the goals they establish and achieve. His vision is printed here because it indicates where and how the world’s most powerful nation will be allocating resources over the next few years. It’s from a speech given at Georgetown University on April 14.

“**T**HERE IS A PARABLE at the end of the Sermon on the Mount that tells the story of two men.

The first built his house on a pile of sand, and it was destroyed as soon as the storm hit.

But the second is known as the wise man, for when “...the rain descended, and the floods came, and the winds blew, and beat upon that house...it fell not: for it was founded upon a rock.”

We cannot rebuild this economy on the same pile of sand. We must build our house upon a rock. We must lay a new foundation for growth and prosperity – a foundation that will move us from an era of borrow and spend to one where we save and invest; where we consume less at home and send more exports abroad.

It’s a foundation built upon five pillars that will grow our economy and make this new century another American century: new rules for Wall Street that will reward drive and innovation; new investments in education that will make our workforce more skilled and competitive; new investments in renewable energy and technology that will create new jobs and industries; new investments in health care that will cut costs for families and businesses; and new savings in our federal budget that will bring down the debt for future generations. That is the new foundation we must build. That must be our future – and my Administration’s policies are designed to achieve that future.

I.

The first step we will take to build this foundation is to reform the outdated rules and regulations that allowed this crisis to happen in the first place.

It is time to lay down tough new rules of the road for Wall Street to ensure that we never find our-

selves here again. Rules that punish short-cuts and abuse. Rules that tie someone’s pay to their actual job performance. Rules that protect typical American families when they buy a home, get a credit

card or invest in a 401k. We have already begun to work with Congress to shape this new regulatory framework – and I expect a bill to arrive on my desk for signature before the year is out.

II.

The second pillar of this new foundation is an education system that finally prepares our workers for a 21st century economy. In the 20th century, the GI Bill sent a generation to college, and for decades, we led the world in education and economic growth.

But in this new economy, we trail the world’s leaders in graduation rates and achievement. That is why we have set a goal that will greatly enhance our ability to compete for the high-wage, high-tech

jobs of the 21st century: by 2020, America will once more have the highest proportion of college graduates in the world.

To meet that goal, we have already dramatically expanded early childhood education. We are investing in innovative programs that have proven to help schools meet high

“Fixing our health care system will certainly require resources, but in my budget, we’ve made a commitment to fully pay for reform... without increasing the deficit.”

standards and close achievement gaps. We are creating new rewards tied to teacher performance and new pathways for advancement. I have asked every American to commit to at least one year or more of higher education or

career training, and we have provided tax credits to make a college education more affordable for every American.

III.

The third pillar of this new foundation is to harness the renewable energy that can create millions of new jobs and new industries. We all know that the country that harnesses this energy will lead the 21st century. Yet we have allowed other countries to outpace us on this race to the future.

Well, I do not accept a future where the jobs and industries of tomorrow take root beyond our borders. It is time for America to lead again.

The investments we made in the Recovery Act will double this na-

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tion's supply of renewable energy in the next three years. And we are putting Americans to work making our homes and buildings more efficient so that we can save billions on our energy bills and grow our economy at the same time.

But the only way to truly spark this transformation is through a gradual, market-based cap on carbon pollution, so that clean energy is the profitable kind of energy. Some have argued that we shouldn't attempt such a transition until the economy recovers, and they are right that we have to take the costs of transition into account. But we can no longer delay putting a framework for a clean energy economy in place.

If businesses and entrepreneurs know today that we are closing this carbon pollution loophole, they will start investing in clean energy now. And pretty soon, we'll see more companies constructing solar panels, and workers building wind turbines, and car companies manufacturing fuel-efficient cars.

Investors will put some money into a new energy technology, and a small business will open to start selling it. That's how we can grow this economy, enhance our security, and protect our planet at the same time.

IV.

The fourth pillar of the new foundation is a 21st century health care system where families, businesses, and government budgets aren't dragged down by skyrocketing insurance premiums.

One and a half million Americans could lose their homes this year just because of a medical crisis. Major American corporations are struggling to compete with their foreign counterparts, and small businesses are closing their doors. We cannot allow the cost of health care to strangle our economy any longer.

That's why our Recovery Act will invest in electronic health records with strict privacy standards that will save money and lives. We've also made the largest investment ever in

preventive care, because that is one of the best ways to keep costs under control. And included in the budgets that just passed Congress is an historic commitment to reform that will finally make quality health care affordable for every American. So I look forward to working with both parties in Congress to make this reform a reality in the coming months.

Fixing our health care system will certainly require resources, but in my budget, we've made a commitment to fully pay for reform without increasing the deficit, and we've identified specific savings that will make the health care system more efficient and reduce costs for us all.

In fact, we have undertaken an unprecedented effort to find this kind of savings in every corner of the budget, because the final pillar in building our new foundation is restoring fiscal discipline once this economy recovers.

Already, we have identified two trillion dollars in deficit-reductions over the next decade. We have an-

nounced procurement reform that will greatly reduce no-bid contracts and save the government \$40 billion.

Secretary Gates recently announced a courageous set of reforms that go right at the hundreds of billions of dollars in waste and cost overruns that have bloated our defense budget without making America safer.

We will end education programs that don't work, and root out waste, fraud, and abuse in our Medicare program.

Altogether, this budget will reduce discretionary spending for domestic programs as share of the economy by more than 10% over the next decade to the lowest level since we began keeping records nearly half a century ago.

And as we continue to go through the federal budget line by line, we will be announcing additional savings, secured by eliminating and consolidating programs we don't need so that we can make room for the things we do need.

Now, I realize that for some, this



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isn't enough. I know there is a criticism out there that my administration has somehow been spending with reckless abandon, pushing a liberal social agenda while mortgaging our children's future.

Well let me make three points.

First, as I said earlier, the worst thing that we could do in a recession this severe is to try to cut government spending at the same time as families and businesses around the world are cutting back on their spending. So as serious as our deficit and debt problems are – and they are very serious – major efforts to deal with them have to focus on the medium and long-term budget picture.

Second, in tackling the deficit issue, we simply cannot sacrifice the long-term investments that we so desperately need to generate long-term prosperity. Just as a cash-strapped family may cut back on luxuries but will insist on spending money to get their children through college, so we as a country have to make current choices with an eye on the future.

If we don't invest now in renewable energy or a skilled workforce or a more affordable health care system, this economy simply won't grow at the pace it needs to in two or five or ten years down the road.

If we don't lay this new foundation, it won't be long before we are right back where we are today. And I can assure you that chronically slow growth will not help our long-term budget situation.

Third, the problem with our defi-

cit and debt is not new. It has been building dramatically over the past eight years, largely because big tax cuts combined with increased spending on two wars and the increased costs of government health care programs. This structural gap in our budget, between the amount of money coming in and the amount going out, will only get worse as Baby Boomers age, and will in fact lead us down an unsustainable path.

But let's not kid ourselves and suggest that we can do it by trimming a few earmarks or cutting the budget for the National Endowment for the Arts. Along with defense and interest on the national debt, the biggest costs in our budget are entitlement programs like Medicare, Medicaid, and Social Security that get more and more expensive every year. So if we want to get serious about fiscal discipline – and I do – then we are going to not only have to trim waste out of our discretionary budget, a process we have already begun – but we will also have to get serious about entitlement reform.

Nothing will be more important to this goal than passing health care reform that brings down costs across the system, including in Medicare and Medicaid. Make no mistake: health care reform is entitlement reform. That's not just my opinion – that was the conclusion of a wide range of participants at the Fiscal Responsibility Summit we held at the White House in February, and that's one of the reasons why I firmly believe we need to get health care re-

form done this year.

Once we tackle rising health care costs, we must also work to put Social Security on firmer footing. It is time for both parties to come together and find a way to keep the promise of a sound retirement for future generations. And we should restore a sense of fairness and balance to our tax code by shutting down corporate loopholes and ensuring that everyone pays what they owe.

All of these efforts will require tough choices and compromises. But the difficulties can't serve as an excuse for inaction. Not anymore.

V.

This brings up one final point I'd like to make today. I've talked a lot about the fundamental weakness in our economy that led us to this day of reckoning. But we also arrived here because of a fundamental weakness in our political system.

For too long, too many in Washington put off hard decisions for some other time on some other day. There's been a tendency to score political points instead of rolling up sleeves to solve real problems. There is also an impatience that characterizes this town – an attention span that has only grown shorter with the twenty-four hour news cycle, and insists on instant gratification in the form of immediate results or higher poll numbers.

When a crisis hits, there's all too

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often a lurch from shock to trance, with everyone responding to the tempest of the moment until the furor has died away and the media coverage has moved on, instead of confronting the major challenges that will shape our future in a sustained and focused way.

This can't be one of those times. The challenges are too great. The stakes are too high.

I know how difficult it is for Members of Congress in both parties to grapple with some of the big decisions we face right now. It's more than most congresses and most presidents have to deal with in a lifetime.

But we have been called to govern in extraordinary times. And that requires an extraordinary sense of responsibility – to ourselves, to the men and women who sent us here, and to the many generations whose lives will be affected for good or for ill because of what we do here.

There is no doubt that times are still tough. By no means are we out of the woods just yet. But from where we stand, for the very first time, we are beginning to see glimmers of hope.

And beyond that, way off in the distance, we can see a vision of an America's future that is far different than our troubled economic past.

It's an America teeming with new industry and commerce; humming with new energy and discoveries that light the world once more.

A place where anyone from anywhere with a good idea or the will to work can live the dream they've heard so much about.

It is that house upon the rock. Proud, sturdy, and unwavering in the face of the greatest storm.

We will not finish it in one year or even many, but if we use this moment to lay that new foundation; if we come together and begin the hard work of rebuilding; if we persist and persevere against the disappointments and setbacks that will surely lie ahead, then I have no doubt that this house will stand and the dream of our founders will live on in our time... ○



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Bank of Montreal	0.40%	1.30%	1.60%	1.70%	2.10%	n/a
TD Bank	0.40%	1.30%	1.60%	1.70%	2.10%	n/a
Scotiabank	0.40%	1.30%	1.60%	1.70%	2.10%	n/a

Rates are based on contracts for \$25,000.⁰⁰ and are subject to change. Better rates typically apply for deposits of \$100,000.⁰⁰ or more. For a quote or to receive a rate sheet (updated every Monday morning), send your request by e-mail to: abettergic@gmail.com E & E.O.

THE CAPITAL PARTNER INTERVIEW...

Just call him TRUST-worthy Tom Fellhauer

On Monday, August 24, I met with **Tom Fellhauer** - Tax & Trust Lawyer from Kelowna Law Firm Pushor Mitchell. When meeting Tom, you're struck by several things: his easy going manner; his focus when you ask a question and his passion for the legal work he does with clients. He knows his stuff, but he's also mindful of the law's broader implications on society. Raise the issues of family, the community where he resides or the Central Okanagan Foundation - which he chairs and it's obvious his concerns run deep. Space did not allow the full text of our conversation (and editing his insights was unthinkable), so part one of a two part interview is presented here. Part two will appear in the December issue of the Capital Partner.

Tom, looking over your background, there's been little downtime in your career. You graduated from SFU and UBC law during the same year. You've completed the Tax Program through the Canadian Institute of Chartered Accountants and the Advanced CICA courses in Corporate Reorganizations, Wealth Preservation & International Law.

You've co-authored books on BC Corporate Law, you're an advisor to CCH on legal publications and you're active on several charitable boards like CAFÉ and the Central Okanagan Foundation... you have not been resting on your laurels. How did you arrive at this place?

T.F. Well, it's tough to make a long story short. I really liked the workings of business. Not really sure why.

My dad was an engineer and I thought he was doing really good stuff, but the business side of things appealed to me.

I went to BCIT and they warned us. They said some of you will find after a few years, you're going to want something else and sure enough it happened to me. I think it was after about 5 years I just craved more... more complexity... more challenges.

So, I went to UBC and Simon Fraser University. They impressed me with their attitudes and I already had some credits from BCIT so I got to take a variety of courses like Criminology, Computer Science, English Literature, Philosophy, etc..

C.P. Did you go in as a mature student?

T.F. I was not classified as a mature student, but I was 25 and because I was older I was really focused on education more than anything else. So I went to school year around. They had a great system for accommodating year around students with their three semesters.

I was quite interested in tax all the time. When we would take finance courses at SFU, they would always talk about tax as just a deduction, you know, from profits.

We'd be working on case studies and things trying to improve profits by 2-3% and then they'd take off 50% for tax and I thought, "Wait! What's wrong with this formula?"

You were working on very small numbers and it seems nobody cared about the big numbers. But that's an example about what intrigued me about the tax side.

I was on an accounting stream but decided I would prefer to go through as a lawyer and applied at UBC law school and then finished SFU in summer.

C.P. Were you married at the time?

T.F. I got married after my last exam in law school - that was more stressful than all the education.

I love learning about things. I'm a lifelong learner anyways but, I was always pretty true to what I wanted to

do. I just didn't know how I wanted to do it.

I thought I would end up working for a corporation and not be a practicing lawyer at all. It was just the discipline I would bring to management.

It turned out, I really liked what I was doing in practice. So, that was a bit of difference from my initial intent or the main deviation from what my plan was in the beginning.

C.P. But out of law school you went to work for a law firm in Vancouver, is that correct? Working on taxes and estate planning then already?

T.F. That's right. They were looking for someone to be a bridge between tax and estate planning. Traditionally, if you did estate work, you did wills and trusts and estates. If you did tax you did tax.

Then, they had an idea that they needed people to do both - because estate planning, they felt was going to be a growth area.

That suited me because my whole passion is marrying different disciplines, so I jumped at the chance for that and, they were very supportive.

C.P. You were already taking an interdisciplinary approach at university, studying Literature, Criminology....

T.F. Computer Science too... and, I learned a lot from Computer Science and Philosophy.

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C.P. Did Philosophy help you on the legal process side as well?

T.F. Absolutely. One of the best courses ever taken, and I would encourage everybody to take was something called Critical Thinking.

It's an introductory philosophy course. I'm not sure everyone had to take at SFU or not, but what a great course.

It was exactly where I wanted to be. What I wanted courses to be about and a lot of the you know, schooling that I came through like public schooling just missed that. So I was really excited to take a course like that. That's a great tie in to law. I'm surprised they don't make that a pre-requisite for law school.

What was the firm in Vancouver?

T.F. It was a firm called **Douglas Hines & Brissenden**. They were one of the oldest firms in Vancouver.

When I was looking for a job I didn't want to go to a large firm.

Part of the reason was I had this career plan to work for a corporation and I didn't want to be in a large firm environment. You learn these things about the firms in law school.

I wanted a medium sized firm that gave me good training. And, I got that they were a great firm. Because they were so old, they had a lot of old clients so that's when I got the real love of acting for family busi-

nesses. Once you're bitten by it, you can't turn to anything else.

So family businesses became your focus? Is that fair?

T.F. Yeah.

In the media, you sometimes read or hear about family feuds erupting like the McCains, the Eaton's or the Asper family out of Winnipeg. Do you see at those types of patterns emerging?

T.F. It's pretty hard to put everything in a neat little package. I like acting for family owned businesses.

Courses are written. There's sort of a paradigm that the family owned business will be some patriarch and kids and there's a succession.

The reality is there's every colour in the rainbow from other family members who are heavily involved to a single owner with limited involvement by other family members.

I use the term family owned business to differentiate from public companies. I did a short stint of securities work when I was in Vancouver and I found that I really preferred the private business environment.

And so, most of my clients are business owners some/many with family involvement at some level... even with supportive spouses. But, not necessarily, I haven't narrowed it down to that idea of the founding patriarch and the dysfunctional children and all that. I look at it as private, small and medium enterprises are typically owned and controlled by one person.

Of course in our community it's usually the founder. There isn't a lot of multigenerational stuff. But, it's getting there. It's starting.

C.P. As long as businesses are planning...

T.F. But, when you're providing legal advice, it ranges from purchasing new assets, deciding how they should be owned, selling assets, reorganizing, and restructuring share capital. Succession planning is sort

of an overarching goal in the whole process, but it's not the only thing that's going on.

C.P. Do you find most of the family businesses wanting to transfer to the next generation? Do you find the second generation wanting to give a pass to running and operating the business? Is that common in your experience the first generation that knows how to create it, has the talent set, the discipline and the know how. Do you see that transferring to the next generation?

T.F. At CAFÉ - that's the Canadian Association of Family Enterprise, one of the wonderful things they do is bring in guest speakers.

Lou Allen Smith, one of the possible heirs of to ED Smith - successful business... jams, pie fillings, that sort of thing, gave a speech which was hilarious.

He called himself the "lucky sperm," and he said the only reason he had any connection with this successful business was the lucky sperm theory.

I think a lot of people want the idea of succession to work. But if you look at probability theory, the probability of having two people who sort of get the incredible timing and opportunity and circumstances to have a successful business. "Oh and your son has that too?" The probability of having both those events happening in the same family are probably very small. Statistically, the odds are stacked against a successful succession of a business. Many business founders will tell you that.

You say, "how did you become successful?" and they'll admit, "I was the right guy at the right time." "It wouldn't happen again." "And, if I started out now, I couldn't do it."

So you realize how difficult it is to expect that your son or daughter could just be the same sort of person in that same environment.

C.P. I think the Royal Family

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BOOK REVIEW

Book on Warren Buffett Shows Berkshire Hathaway's Competitive Business Advantages

Reviewed by **Bill Freehling**

How to Build a Business Warren Buffett Would Buy: The R.C. Willey Story

By **Jeff Benedict**. Published by Shadow Mountain Publishing Inc.

\$19.95 US hardcover

WARREN BUFFETT'S Berkshire Hathaway has a number of competitive advantages when it comes to buying family-owned businesses, an interesting new book shows.

Jeff Benedict's *"How to Build a Business Warren Buffett Would Buy"* tells the story of R.C. Willey Home Furnishings, a Utah-based chain of furniture and electronics stores that Berkshire bought for \$175 million in stock in May 1995.

The book, which was published this year by Shadow Mountain, describes the business methods that company chairman **Bill Child** used to build R.C. Willey from a well-regarded but debt-ridden appliance store into one of the leading furniture and electronics businesses in the American west with stores in Utah, Nevada, California and Idaho.

The business lessons are worth studying, but the book also sheds light on the advantages that Buffett has over competing bidders for family-owned businesses.

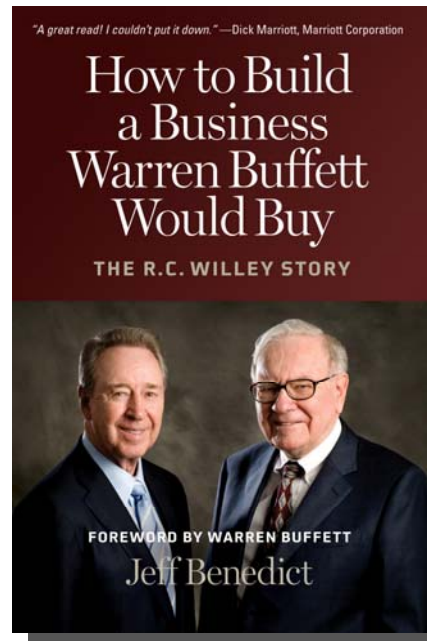
When Child, the company's CEO between 1954 and 2003, accepted Buffett's offer of \$175 million for R.C. Willey, he had previously rejected a competing bid for \$200 million. Child wanted to sell the company to avoid the chance of his

heirs having to accept a low price for the business in order to pay his estate taxes. But he also wanted the company to continue operating for decades to come.

In Buffett, Child saw a buyer who wouldn't get involved with the operations of the business other than on major capital expenditures. Child was assured by friend and Nebraska Furniture Mart CEO **Irv Blumkin**, whose company Berkshire had purchased for \$60 million, that Buffett was true to his reputation.

As is his reputation, Buffett made an offer for R.C. Willey before even touring the facilities. When Child did meet Buffett, he was struck by the Berkshire chief's unpretentious ways and honesty. So Child decided to sell Buffett the company for a discount to the other bids.

The transaction seems to have worked well for both sides, as Benedict writes. Child received Berkshire A shares valued at \$22,000 each, and the stock now trades for close to five times that. R.C. Willey's value topped \$1 billion in 2007, so Berkshire shareholders have also gotten a nice bang for their buck. Child and Buffett's friendship and mutual admiration have continued to grow since the sale.



Benedict's excellent work, which is far more original than most books on Buffett, illustrates that dollars and cents aren't all that matter to family-owned businesses seeking to sell the work of a lifetime.

The future success of the business and stability of their employees' jobs is equally important. Buffett's hands-off approach gives Berkshire a strong edge in bidding for these types of companies.

Child says it best himself in the book's Afterword: "When I have spoken to students and business people, I have told them that if they ever have a chance to associate with Warren Buffett, to do it and do it fast. It will be the best decision of your life."

That's durable competitive advantage.

For more **Bill Freehling** articles on **Warren Buffett & Berkshire**, visit: www.examiner.com/x-7944-Warren-Buffett-Examiner

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serves as a useful example of what can happen when you try building instilling managers by virtue of the bloodlines. It doesn't work so well. Even today, they've still got issues around succession planning.

T.F. I think that if there is a common denominator, I think that most moms and dads in their dreams would love to have their kids take over their business. I think there are ways to facilitate the process. You can't make the impossible happen, but if there is a way of making it happen, I like getting involved in that. I like helping people avoid pitfalls that they might not have been aware of.

C.P. What are some of the pitfalls that they are not aware of typically?

T.F. Well, the first thing I thought I'd point out is it helps if you do this a lot because you get to see a whole variety of situations and by no means are there any that are the same.

I don't think generalizing is very helpful. Families are unique.

But, one family might only have one or two experiences with succession planning and I might have one or two hundred. So chances are I'm going to be exposed to more trial and

error than they are. That's what I try and pass on. But, again, I cannot take the Smith situation and apply it to the Jones. It's not going to work.

But there are some things, some misconceptions and there are some pitfalls... I'd say if there are strategies (depending on which side of the coin you're looking at).

I think that there's an opportunity for parents to prepare their kids differently. Some of them are only applicable in certain circumstances but some of the things that I've seen...

If kids feel a sense of entitlement, it generally is a roadblock to good succession and a good healthy operation of a business.

If people feel no need to work because they're financially rewarded for being a member of the lucky sperm again, there's nothing necessarily wrong with that per se, but it does impede the process.

Lack of communication is sort of the root of many problems. I think there's so many I could probably list 50, but there are some that are particularly influential.

A parent, without saying, will often see in their children or even grandchildren, someone that they think has the special stuff, but are or

would be unwilling to share that in the family for fear of upsetting other family members.

C.P. Showing favouritism...

I see that as a real roadblock to succession planning. And it manifests itself in people postponing their wills because we'd like them to think about things like control and they don't want to reveal it. Or, maybe preparing family members for particular roles, giving them more responsibility, you end up often seeing shared control even though there is someone who is obviously not good at it.

I think honest discussion with an outsider to try and get some of the family baggage out of the way would really help.

TO BE CONTINUED...

Editor's Note: In Part Two, Tom discusses why the tax man may become even more thorough during the audit process, how to protect you and your business and how charities and service organizations might receive funding in the future.

SAMPLE ANNUITY RATES

As of **Sept. 14, 2009**. Based on a \$100,000 premium deposit. Payments are **Guaranteed for LIFE** and include a 10 year guarantee payment stream (i.e. balance paid to beneficiaries). Rates change daily. Please request a custom quote. Source: Empire Life. E & O.E.

Age & Sex	Standard Life	Effective Annual Payment	Empire Life	Effective Annual Payment	Manulife Financial	Effective Annual Payment
60 Yr Male	\$ 537.86	6.454 %	\$ 586.42	7.037 %	\$ 606.38	7.276 %
60 Yr Female	\$ 503.33	6.039 %	\$ 544.21	6.531 %	\$ 553.97	6.647 %
60 Yr Joint	\$ 465.50	5.586 %	\$ 498.60	5.983 %	\$ 513.38	6.161 %
65 Yr Male	\$ 597.03	7.164 %	\$ 653.78	7.845 %	\$ 664.58	7.975 %
65 Yr Female	\$ 555.24	6.663 %	\$ 600.30	7.203 %	\$ 610.36	7.324 %
65 Yr Joint	\$ 508.47	6.102 %	\$ 544.00	6.528 %	\$ 559.03	6.708 %
70 Year Male	\$ 669.95	8.039 %	\$ 724.48	8.694 %	\$ 723.21	8.678 %
70 Yr Female	\$ 624.43	7.493 %	\$ 665.82	7.990 %	\$ 676.81	8.122 %
70 Year Joint	\$ 567.34	6.808 %	\$ 600.92	7.211 %	\$ 602.08	7.225 %
75 Yr Male	\$ 755.58	9.067 %	\$ 793.26	9.519 %	\$ 788.97	9.467 %
75 Yr Female	\$ 712.09	8.545 %	\$ 740.67	8.888 %	\$ 747.54	8.970 %
75 Yr Joint	\$ 646.96	7.763 %	\$ 671.92	8.063 %	\$ 664.61	7.975 %