

THE LAW FOR
FOUNDERS

— CANADIAN



EDITION —

A Guide to
**PROTECTING
YOUR STARTUP**

John Wires

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Published by Webhaller Inc., 1600-2300 Yonge St., Toronto, Ontario, M4P 1E4, Canada.

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DEDICATION

Dedicated to my father, David Wires, a (retired) litigation lawyer who paved the law path for me and made this book possible.

“There is, in my view, no doubt that Mr. Wires and his firm have performed heroically. Over seven years, Mr. Wires did battle with one of the most powerful American regulatory agencies [the Federal Trade Commission], an agency with virtually unlimited legal resources and ably represented by the largest law firms in Canada, first BLG and now Gowlings. He eventually succeeded “against almost insurmountable odds” in setting aside the ex parte orders, getting a damages inquiry on the plaintiffs’ undertaking, and having the 2002 action stayed – and did all of this without being paid by his clients. This is surely a testament not only to the fortitude of the senior defence counsel, David Wires, but to his commitment, indeed passion, for justice.”

- Justice Belobaba on David Wires in United States of America v. Yemec, 2009 CanLII 61418 (ON SC).

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INTRODUCTION

This book is for founders, not lawyers.

If you are a founder, or an aspiring founder, this book is to help you wade through the trenches with practical legal tips and information for building and protecting your business.

Consider this book as a legal guide to implementing your business idea and understanding the legal framework around your business. Using case examples and examples from my own practice the book covers core legal issues every start-up should consider.

Entrepreneurship is alive and well in Canada. More and more Canadians are capitalizing on their dreams of operating their own businesses. The success of organizations like Victoria Lennox's Start-up Canada are a testament to the growing popularity of becoming an entrepreneur.

Somewhere along the line, entrepreneurship not only became an option in university programs, but it actually became "cool". As college students started making money online and building business empires like Facebook and Google, fewer hockey players were born in Canada. Now more than ever, teenagers and young adults are aspiring to become founders.

In the early 2000's, as tech entrepreneurship grew, so did the support systems for founders. From educational institutions building a host of incubator and accelerator programs to crowdfunding sites like Kickstarter giving a funding boost to new ventures and products.

However, one support network that lags is the legal services industry. Start-ups are lean and lawyers are expensive. This leads to a legal knowledge gap for founders and often a failure to fully consider how the law impacts a founder's business.

Many founders fray from meeting with a lawyer until they view it as absolutely necessary or there is some existential crisis. I see it frequently, where founders wish they met with a lawyer sooner to understand the implications of decisions they made, agreements they signed or risks they took. Decisions which, unwittingly, can materially impact the success of a business.

Starting in 2011, I practiced corporate litigation. I came to realize that many businesses fail or face setbacks as a result of not having completed important legal processes early on. From not entering contracts with third parties and founder disputes tearing a business apart, to government regulators seizing assets and shutting businesses down. In some cases, it was hard to watch.

With an interest in tech, I decided I would pursue a career helping founders build businesses, rather than tear them down. So, in 2013 I started my own corporate law firm and for the last 11 years I've enjoyed working with founders. Their personalities are positive and optimistic, unlike many lawyers (especially litigation lawyers).

Yet, founders often face a blind spot for the law. I realized that part of the lawyer's role becomes not just giving advice and drafting contracts, but educating clients on the legal issues and legal framework around the decisions they make. As I found myself educating clients on common topics, I decided to sit one night and map out a table of contents with all the things a founder will wish they knew about the law when they started.

And so, my motivation in writing this book became filling the legal knowledge gap for Canadian founders. To enable founders to make more calculated decisions about their business and operate from a position of confidence and strength. With the knowledgebase from this book, you will make more informed decisions about protecting your business and stick-handling legal challenges you will undoubtedly face.

There are known risks and unknown risks that lurk in the future for every founder. This book intends to shift some of the unknown risks, the ones you might not have even contemplated, and make them known risks for you to navigate on the way to success.

Enjoy.

CHAPTER 1: LIFT OFF



We've all experienced that spark—the brilliant business idea that consumes our thoughts. Maybe it's a new app, a custom GPT, a SaaS platform or a unique online store. It's an exciting feeling. The idea becomes your passion, keeping you up at night as you envision its potential.

Maybe you are bold enough to go one step further, beyond just an idea, to forming a start-up. For many, the start-up decision is about more than a great idea. It's about exercising your creativity and taking joy in building something. It's a decision to escape the 9-5 employment grind and a path to escaping what Tim Ferriss calls the “deferred-life” where people work, slave, save and retire. It's about taking initiative and giving purpose to your day.

I understand the thrill, having launched businesses myself and witnessed my clients' enthusiasm over the years. Yet, I've also seen the sobering moments when doubt creeps in—concerns about viability, money, lawsuits and even your own perseverance.

If your business fails, whether or not you sought legal advice may seem inconsequential. But as success grows, so does the likelihood of legal challenges. Nothing attracts greater legal risk and the threat of lawsuits than a business that sees success.

I've seen it all. Co-founders who walked away popping back up claiming ownership of shares, intellectual property, domain names and other assets. Contractors claiming they were promised equity or a share of profits. Employees claiming they were wrongfully

terminated. Regulators wanting to investigate the safety of your product, or compliance with privacy laws. Customers claiming defective products. Investors demanding larger dividends. Competitors trying to cut you off from a supplier or claiming you breached their intellectual property rights. Foreign entities stealing your technology or copyrighted works. Past employees taking your client lists or trade secrets. I could go on and on.

I joke with clients that if your business fails, or you lose the passion and abandon the idea, it may not matter whether you understood the legal framework and mitigated legal risks. But if you believe you are on a path to success, you will wish you stopped for a moment and carefully thought about protecting your business and its assets from the get-go.

In a fast-paced start-up, the opportunity to mitigate legal risks, before they come to fruition, passes by quickly. This book aims to help you take a pause, look at the horizon and pre-emptively address legal issues.

Founders typically aim for one of three outcomes: a profitable exit, building retirement capital, or creating a legacy (i.e. passing a business on to the next generation). To achieve one of those aims, you must not only succeed in business, but also in protecting your start-up from legal risks.

To set your business on a solid path, we'll initially focus on choosing a business name and domain name, with examples of how things can go horribly wrong from the get-go.

From there, the book covers seven main topics:

1. Corporations, since corporations are the main vehicle used by Canadian founders.

2. Negotiating founder and shareholder agreements.
3. Raising capital from investors and issuing shares.
4. Protecting intellectual property rights.
5. Hiring contractors and employees.
6. Special considerations for web-based businesses, like SaaS and e-Commerce companies.
7. Selling your business.

Let's go.