

Patricia Lane

Lawyer / Chartered Mediator

Making it easier to manage the transition of a family business to the next generation

Family businesses are a powerful part of our personal and cultural heritage. It's my hope that the observations that follow can serve people in family businesses as a starting point to preserve the relationships and build the futures that family business leaders so often dream of creating for themselves, their loved ones, and their communities.

Let me start with two stories – both about families, but not specifically about family business transition to the next generation. There is a significant lesson in each of them.

First, there is a family now working with me to negotiate their divorce. The man and woman have two children, one a bright, intelligent seven-year-old, doing well in school. The other is severely developmentally challenged and now at age twenty, after years of being cared for at home, is living in permanent institutional care.

This family had built their own home – designed it from the ground up, picked the lot together – but had designed it so the husband and wife could lead separate lives in separate wings, while appearing to the outside world to be a functional family. They have not had intercourse for fifteen years, have separate bank accounts – the lot.

She does not want the relationship to end. He is desperate for a new start in life. Her whole identity was wrapped up in caregiving. He felt tied to her for the sake of the child. Now that the child is in permanent care he insists on formalizing the separation so he can, as he says, "get on with his life". She is in shock and grieving. While the separation process is painful for them both, she feels betrayed all over again that it is not painful for him in the same way it is painful for her. She regards the introduction of a new potential life partner for him as a double betrayal and worries about the impact on their seven-year-old.

This story is partly about a shared life journey and an identity, her fear and pain of losing what she has always known, and his hunger for a new life of his own.

My second story is about a young man who leaves an abusive home at fourteen and ends up on the street in a big city. He lives the life of a street child with all its ugliness for a while and then is helped off the street by a mentor. Eventually he discovers a talent for mechanical design and a passion for inventing new machines. He marries and together they run an automotive parts company. They give it a name. She wants to go to law school but puts this on hold while they establish a clientele and make a go of the business – which they do.

Along comes a big franchise outfit which wants to use their name. The franchise sues for the trademark right. The big company invites the couple into mediation to settle the issue.

The young man and his wife attend – reluctantly. They arrive in a souped-up 4x4, are dressed in black leather and sowl. They refuse to eat the sandwiches provided by the hotel at the big company's expense. They indicate they are 'only here to listen.'

The big franchise reps wear suits and ties and arrive in sedans. They smile heartily. There is so much hostility in the room you could cut it with a knife.

The mediation results in settlement because we get the young couple talking about what their business and its name mean to them. It is a powerful symbol of their success – out of the street and into a stable, fulfilling relationship. For him it is also a symbol of his independence and ability to pursue his passion, innovative mechanical design.

Once the big company reps figure this out, they are able to offer the couple a clearly enforceable deal, to allow him

Making it easier to manage the transition of a family business to the next generation

even more independence to do innovative design – for the franchise company – and enough money to allow him to start building a better mousetrap and developing a customer base independently of the franchise.

This case was not "just" about a name. It was about a story – an identity – a journey.

So what makes transitions to the next generation difficult? What makes them hard?

Like the two stories I've told you, which are both about hard transitions inside families, next-generation business transitions are about stories and histories and journeys and symbols and developmentally challenged children and dysfunctional family systems and unhappy marriages.

Here is what I have seen that make them difficult:

The first and most complicated issue is that the incentive of the family business (like the incentive of a disabled child) helps everyone to either mask or cope with the dysfunctional relationships within the family.

Perhaps the entrepreneur is a dominant controlling patriarch and there is the appearance of acquiescence by his wife. In reality, her acquiescence is passive aggression with roots in her unhappiness about the marriage and/or her place in the business. There is usually an enormous lack of recognition for her role (except as titular head). She has not been included in the decision-making and she resents it, but has never said anything – in one case I've known for the past fifty years!

Often this entrepreneur's marriage only works because of his spouse's forbearance. She's used to having him out of the house twelve to fifteen hours a day. Now he is there more often than not and often has few if any outside interests – the business having very often been his sole passion. This creates a very significant strain as two older people attempt to redesign their marriage as well as find new meaning in their individual lives. I find I get more inflexible as I get older – I don't think it's uncommon. So, at a time which calls for enormous flexibility, these people have few skills and fewer helpful attitudes and generally come from a generation and a culture which does not allow them to ask for help.

Another issue in family business transition is that very often the spouse's main interest is the children and grandchildren. This can be helpful or it can be divisive. Any tendencies to favour various grandchildren or to provide unequal support for the children in terms of financial gifts or babysitting or company is deeply resented and will lead to tensions elsewhere in the transition.

A third issue which is perhaps more familiar to many people is that there are often strong tensions between the "heir apparent" and the entrepreneur – and perhaps also between the heir and the rest of the siblings.

In family businesses there is often perceived or real inequality amongst siblings – usually a favoured son. The entrepreneur will of course vigorously deny this, using terms like equality of opportunity, balancing the scales among his children, treating everyone equally. He may even believe he's doing this. In reality, the perception of the rest of the family about this is very different, and it can be quite literally crazy-making for the family.

There can also be sexism or discrimination with roots in personal family history. For instance, the entrepreneur (and his spouse) may love their daughter and hate the son-in-law; so they will not be too keen on her (and thus, him) succeeding to the business. Or they may not be too keen on having their son inherit the business, but they are very attached to HIS son, and see their grandson as being in line for succession. Or it may be the reverse – the entrepreneur (or the spouse) may oppose some of the grandchildren as successors.

Perhaps rocky marriages amongst siblings create difficulties. This huge change forces people into conversations that have long been avoided because no one had the skills for them.

These patterns may have existed for ten or fifteen or twenty years.

Now comes the need to pass on the business to the next generation. Beginning the transition marks an end to the system as we know it. And with change comes resistance and confusion.

Human beings often find change difficult to absorb, no matter how dysfunctional the situation is, or has been. Therapists tell us that past behaviours have worked sufficiently in some way for all members of the system or they

Making it easier to manage the transition of a family business to the next generation

would not have put up with it. Even those most in favour of change realize at some point in the process that they will also have to change. Resistance from all quarters is normal.

A second major difficulty arises from the fact that people get attached to their business. It's a sort of person, with characteristics and a personality of its own and therefore worth protecting at the expense of relationships with others. People get hurt by one another when this happens. So when it comes to the transition the result is payback time. Family members (and sometimes deeply attached employees) are now unable to relate to each other about anything other than the day-to-day operations. As they are called upon to negotiate each other's future, they find themselves in very deep water indeed.

Many people derive their identity from their relationships with other people, especially family. All too often a significant number of people in family businesses derive their identity from their relationship to the company. So an often-hidden difficulty in family business transition is that, while the negotiations are disguised as price negotiations, they are almost never about price. They are about identity.

Spouses who are sick of the business and want out of the family system altogether see this as an opportunity for a complete break, a chance to build a genuine relationship with their spouse that has been mostly held in abeyance to this point. Often the spouse did not understand what marrying into a family business meant, and were not prepared for the lifelong care and feeding of the business, which requires the same intensive care as a disabled child. These spouses – not always women by any means – are not prepared to be treated as outsiders forever. They may harbour profound resentment at the time taken away from their nuclear family, the need to place their own values second, and their isolation and loneliness. They usually have to live where the business is, which may feel romantic at first but when it means they are separated for long periods with no expectation of regular vacations from their first family and, if they do not feel accepted by the second one, this becomes disorienting and debilitating.

As you can imagine, the tension around these factors builds up over time in siblings' families. Some wives have even told me that, like Princess Diana, they always had a third presence in their marriage bed. They didn't know when they married that they would be in bed with a business as well as their spouse. Now they see an opportunity to be alone with their spouse in the marriage bed for the first time.

Thirdly, to add to the challenges of family business transitions, there are worries about privacy and the possible airing of dirty laundry. The entrepreneur has to this point managed to keep any conflict inside the family. He feels successful as a result and this is an important measure of his worth.

Now, because of the complexity of the interpersonal disputes, the dominance of the personality and the financial stakes involved, it's necessary to involve lawyers, accountants, business valuers, outside sales personnel, facilitators, therapists and spouses. The entrepreneur feels exposed, and will sometimes blame the mediator.

To complicate things, all too often the experts tell their clients more or less what they want to hear. Sometimes people will pick the wrong advisors, who don't really believe that family business transitions work or who have survived them in their own past and "are just fine, thanks."

The fourth difficulty in family business transition is timing. Let's review some of the characteristics of the entrepreneur. They have made a financial success from their self-reliance, working long hours, trusting their own judgment, prioritizing family financial stability over familial relationships. They have poor communication skills, an inability to take advice or to accept influence, especially in business matters. They have a lack of trust in lawyers, accountants and other professionals who could have helped with tax planning and legal restructuring much earlier if they had been asked and presented with a clear plan – even if that plan was to let the children sort it out for themselves in fifteen years' time.

This results in no decision-making until the last minute. Someone within the system precipitates the move to transition by saying the present situation is not acceptable. They are usually ignored until they precipitate a crisis. Now the change must be managed in very tight time frames and this creates a lot of pressure which closes off some creative opportunities and heightens tensions.

A fifth challenge is the fact of a change in culture between the generations. Some of the new generation will have different values. One sibling may want more family time, more opportunity to travel, and freedom from the constant care of the family business, which the entrepreneur often sees as less-than-total commitment. Other siblings may share the entrepreneur's concern, viewing this sibling as irresponsible.

Making it easier to manage the transition of a family business to the next generation

Different values also create tension within siblings' families and with the parents. Communication skills continue to be poor although there is often one person in the system who is an effective communicator and is often resented for this ability, particularly by the entrepreneur, as very often he fears being manipulated above all else.

So what can make family business transition easier?

First, entrepreneurs can plan ahead. Few do. I often feel I'm wasting my time to advise this because, as I've mentioned, most entrepreneurs mistrust other people's advice unless it reflects what they've already decided.

So let's assume that this kind of planning has not happened. What else can help make a transition more successful?

1. There needs to be a demonstrated determination on the part of the entrepreneur to let go and let the kids work it out.
2. People need to detach from the requirement that the family business must continue to operate. This can be very divisive if the family's money is all tied up in it and the option to sell does not exist.
3. There should be a reasonable time frame which takes into account the shattering impact such a transition is likely to have on all members of the family system.
4. People need to value relationships over money. Easy to say; hard to do! Relationships with whom? The entrepreneur's spouse may have been unhappy with family for years and is now advocating tougher negotiation as a result. (Payback time!) A dependent sibling who wants out may not know what they are going to do once they are free – they never were able to ask that question before and this may be a terrifying period for them. The heir apparent may not want it on "Dad's terms" and may need to rebel to gain Dad's respect and be allowed to do things their own way. This destabilizes the relationship between father and child and once again upsets the family system.
5. It is also important to get expert advice from lawyers and accountants who know their clients are prepared to do whatever it takes to ensure relationships are protected. The best advice I have heard from a lawyer came when he told the family who wanted to buy, "Develop a range of what you can pay and negotiate at the upper end of the range. Give them more than they ask for if at all possible." This was a comment that clearly valued relationships over "getting a bargain."
6. Use an outsider as an interpreter and mediator. This non-anxious presence helps to avoid reactive devaluation and can be a calming influence. The outsider will also be the lightning rod, drawing the heat from the entrepreneur and those who are angry away from the family onto themselves. Yes, the mediator will be blamed, and seen as the one at fault, even if a deal is reached – but this is better than negative stuff sticking to the family members.
7. Work together with your own nuclear family, especially your spouse, to identify what negotiators call your BATNA (Best Alternative to a Negotiated Agreement) – and make it a good one. These negotiations are so high-stakes anyway that the more you can do as the leader within your own family system to identify and begin to plan for a future outside the family business, the lower those stakes will be for you – which means you will be more of a calming influence in the whole process. Diversify your investments – of all kinds, whether in money, time and relationships, or the ways you work in the business – so that the family business does not represent the be-all and end-all of your world, whether it's your income, your community and, most important of all, your contribution.
8. Develop strategies now within your own families for managing transitions. Learn to celebrate and acknowledge the good parts of the past, even if you are happier with the future. Learn to identify your goals clearly. Learn to appreciate one another's contribution to difficult conversations. Develop conflict resolution skills. Build your own marriages. Make sure you have a firm personal foundation. Make sure your spouse does not feel second place to the family system and, if they do, take steps to change that now.

If you have your own house in order and take care of your family's real business — its interpersonal relationships — you will find it much easier to take the kind of leadership in negotiations which will allow the business to fulfill its original purpose — to serve and enhance the family rather than the other way round.