



Tech Futures:
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By [Michael Volker](#)

New Corporations Act Explained (Cont'd), Financings Updates, etc.

Last month's column was mainly about the legal and regulatory environment in which B.C. companies operate. We shed some light on the major changes relating to two Acts: the **Securities Act** and the new **Business Corporations Act**. With the increased emphasis on proper corporate governance, it is necessary for company directors and executives to be familiar with these changes.

To help us better understand the new corporate regime, I posed a number of questions to **Herb Ono**, a partner with the Corporate Finance/Securities Department at the Vancouver law firm of **Clark, Wilson**.

Although we covered a lot of ground, there were still some questions in my mind. This month, we'll wrap up the subject with a few more questions for Herb who was kind enough to shed more light on this important subject.

Mike: I take it that the interchangeability of the words corporate and company; shareholder and member; and memorandum and "notice of articles" are just that, and they're completely synonymous terms, right?

Herb: "Shareholder", as it appears in the new BC Business Corporations Act, and "member", as it appears in the existing BC Company Act, are generally synonymous. So are "notice of articles", as contained in the new BC Business Corporations Act, and "memorandum" under the BC Company Act.

It may also be convenient – and perfectly acceptable for most purposes - to think of "corporation" and "company" as synonymous and interchangeable terms, but there are in fact some technical differences. Under both the existing BC Company Act and the new BC Business Corporations Act, "company" is a somewhat narrower concept than "corporation". Generally, "company" refers to a company that has been formed or continued under the BC Company Act or "recognized" under the BC Business Corporations Act. (A company will be recognized under the BC Business Corporations Act if it is incorporated, amalgamated or continued under that Act, or, if it was incorporated under a special Act, it is converted into a company under the BC Corporations Act.) "Corporation," on the other hand, is defined much more expansively under both the BC Company Act and the BC Business Corporations Act to mean any incorporated entity, including a "company", an incorporated association or an incorporated society, but excluding a municipality or corporation sole. (A "corporation sole" is a natural person who is granted corporate status by law, the prime example being the Crown.)

Under the CBCA, a corporation is simply defined as a body corporate incorporated or continued under the CBCA, and not discontinued thereunder.

Once we get beyond the confines of BC companies legislation and the CBCA, the word "company" can take on a variety of other meanings, a prime example being limited liability companies (LLCs) created, for example, under the laws of many US states. In 1999, the BC Company Act was amended to permit registration of foreign LLCs, which would not otherwise have qualified for extra-provincial registration in British Columbia as they are not corporations. The new BC Business Corporations Act also makes provision for registration of foreign LLCs.

Mike: As for articles, companies incorporated under the CBCA don't have articles. They operate under statutes. What's the difference between articles and statutes and why not just go with statutes - seems

simpler and uniform rather than different rules for each company.

Herb: For the benefit of your readers, Mike, it may be helpful to first comment on a confusing shift in terminology that occurs when we move between the CBCA (and many other corporate statutes) and BC company legislation. As you are aware, the CBCA does in fact provide for "Articles of Incorporation", "Articles of Continuance", "Articles of Amalgamation" and the like. Generally, these refer to particular filings under the CBCA, in prescribed form. The Articles of Incorporation are somewhat analogous to the memorandum under the BC Company Act and the Notice of Articles under the BC Business Corporations Act, although there are some differences from a technical/legal perspective due to the different corporate models reflected under the CBCA on the one hand and BC company legislation on the other.

The CBCA also provides power to a corporation's board of directors to adopt bylaws that regulate the business or affairs of the corporation, subject to confirmation (or rejection) by the shareholders. The bylaws are somewhat analogous to the articles of a BC company.

As I mentioned in your last T-Net column, the CBCA is based in large part on a US statutory model of incorporation, and both the existing BC Company Act and the new BC Business Corporations Act are based on the English "contractarian" model. The CBCA is therefore premised on a statutory division of powers between directors, officers and shareholders. Conversely, BC company law essentially treats the corporate constitution as a statutory contract among the Company and each of the shareholders, although it is generally subject to amendment by a special resolution of the shareholders.

Your point about "just going with a statute" is well taken. In fact, most Canadian legislators appear to be in agreement: I believe that British Columbia and Nova Scotia are the only Canadian jurisdictions that still favour the contractarian model of corporate legislation. I have some familiarity with both models, having practised law in both Vancouver and Toronto (the Ontario Business Corporations Act is a statutory division of powers statute which I believe predates the CBCA by a couple of years), and having studied English companies law whilst reading for my Master of Laws degree at the University of London. I do favour the statutory division of powers approach for its simplicity and uniformity, but am cognisant that both models have their respective limitations.

I understand that a conscious decision was made in British Columbia not to adopt corporate legislation modeled on the CBCA, as the contractarian model was seen to afford greater flexibility. This decision was made in consultation with a distinguished panel of legal practitioners, literally over a period of years, so I am hardly in a position to second-guess this decision.

Also, such flexibility will not necessarily result in a loose patchwork of different rules among BC companies. Overall there tends to be some uniformity in the articles of BC companies, since a model form of articles is attached as Table A to the First Schedule to the BC Company Act. The BC Business Corporations Act, like the existing BC Company Act, will require a company to have articles, and will have annexed thereto as Table 1 a model form of articles which could be adopted by a company with or without alterations.

In the final analysis, I don't believe that it is necessary to focus too much on corporate theory when it comes down to making the business decision of where to incorporate your company. As I mentioned to you last month, both the CBCA and the new BC Business Corporations Act should prove to be very good platforms for modern businesses. I believe that in most cases, the choice between incorporation under the CBCA or the BC Business Corporations Act will be driven by where the company will be carrying on business. Since a CBCA corporation will have to become extra-provincially registered in BC if it wishes to carry on business here, it may well make sense for a truly local business to incorporate under the BC Business Corporations Act.

From a practical perspective, regardless of which statute the company is subject to, good corporate governance dictates that directors and senior officers not only familiarise themselves with the corporate constitution, but also periodically review it from time to time in consultation with the company's professional advisers to determine if it should be updated by way of amendment. The transition requirements under the new BC Business Corporations Act (which will require every "pre-existing company" to bring itself into compliance with the new Act within two years) will force such a review, with the added complexity of dealing with new statutory requirements, but this should help set the stage for ongoing

periodic reviews in the future.

Mike: Where do shareholder agreements fit in? Should many shareholder matters be in the articles rather than in a shareholders agreement? It'd be nice to eliminate one of these. What's you're thinking on this.

Herb: *Shareholder agreements are useful in helping to facilitate a business relationship among the shareholders of a closely-held company or, less commonly, between major shareholders of a public company. They tend to pick up where the corporate statute and the corporations constitution leave off. The objects of a shareholder agreement can be varied, addressing such things as control and management of the company, protection of minority interests (even though corporate statutes contain specific provisions relating to shareholder protection), or the eventual exit of one or more shareholders from the company.*

Thus, it is common for shareholders agreements to contemplate participation of a shareholder in the management or control of a company. For example, the agreement can require the election or appointment of the shareholder, or his or her nominee, to the board or an office, or it may require that certain fundamental decisions with respect to the company or its affairs be unanimously approved by all of the parties to the agreement.

A shareholders agreement may also provide for restrictions on transfers of shares, as well as rights of first refusal which will be triggered when a shareholder proposes to sell his or her shares.

So-called "piggy-back" or "tag-along" rights are useful in protecting minority shareholders when a majority shareholder proposes to sell his or her shares, ensuring that they, too, can participate in a sale of the control position in the company to a third party at the same price. Conversely, "drag-along" rights can help to ensure that a proposed sale of a control position by the majority shareholder will not be held up by a minority shareholder where it is critical for the purchaser to acquire all of the issued and outstanding shares of the company.

Other mechanisms can be incorporated into a shareholders agreement to deal with potential deadlocks between more or less equal shareholders. For example, so-called "shot-gun" or "buy-sell" provisions can be included which permit one shareholder specify a price at which he or she is prepared to sell his or her shares to another, and requiring the other shareholder to either purchase those shares or to sell his or her shares to the first shareholder at the specified price.

It may not be practicable to include many of these sorts of provisions in the company's constitution which, subject to certain limited exceptions, can be amended by special resolution of the shareholders rather than by unanimous agreement of all of the shareholders concerned. For the same reason, it may simply be unwieldy to include certain provisions in the corporate constitution, since it may be desirable for the provisions to be in place for a limited period of time or until the occurrence of a specified event; the agreement could be easily terminated by mutual agreement of the parties without having to follow all of the corporate steps necessary to effect an amendment to the corporate constitution.

Unlike BC companies legislation, the CBCA specifically provides for a statutory concept of a "unanimous shareholders agreement". As the name implies, all of the shareholders of a CBCA corporation must be parties to such an agreement, and it is possible for the parties to include non-shareholders (such as major creditors). The unanimous shareholders agreement, by definition, must restrict the powers of the directors to manage, or supervise the management of, the business and affairs of the corporation; each of the parties to the agreement who are given that power have all of the rights, powers, duties and liabilities of a director.

Section 136 of the BC Business Corporations Act provides that the directors of a company must, subject to the Act, the regulations and the memorandum and articles of the company, manage or supervise the management of the business and affairs of the company. As I mentioned during our last interview, section 137 of the BC Business Corporations Act specifically provides that the articles of a company may transfer the powers of the directors to manage, or to supervise the management of, the business and affairs of the company to one or more other persons. This was implied in the existing BC Company Act, which made the managerial powers of the directors subject not only to the Act, but also to the articles of the company. In light of these statutory provisions, it is open to question whether a provision in a shareholders agreement purporting to transfer such powers to one or more shareholders will be valid and enforceable, unless the

articles of the company contain a parallel provision.

Mike: As far as legal entities are concerned, the other common entity is a non-profit corporation under the Society Act. Are there any changes contemplated there?

Herb: *The enactment of the BC Business Corporations Act will trigger some consequential changes to the BC Society Act, since the latter statute currently contains a number of cross-references to the existing BC Company Act. However, I don't believe that such changes will be particularly significant.*

One proposed amendment to the BC Society Act, if enacted, will require a society to keep a register disclosing the particulars of its indebtedness in excess of \$5,000 to each director or officer of the society, or to any of their respective associates. Another proposed amendment will create a statutory preference for up to \$2,000 in wages or salary for each employee of a society in the event that a receiver, receiver manager or any other person takes possession of society property on behalf of the society's secured debenture holders. Such wages or salary will be payable out of the property in priority to any principal or interest in respect of the debentures.

Mike: Back to the definitions of public company. Under the new Act is there a difference between a reporting company and a public company. And is there anything in the Act that applies to a listed public company that does not apply to a non-listed (traded)pubco?

Herb: *The definition of a "reporting company" under the existing BC Company Act generally covers a corporation incorporated under any Act of the BC Legislature that: (a) has any of its securities listed on any stock exchange; (b) is ordered by the Registrar of Companies to be a reporting company; (c) files, and obtains a receipt for, a prospectus in British Columbia; or (d) is an amalgamated company resulting from the amalgamation of two or more companies, at least one of which was a reporting company at the time of the amalgamation.*

As I mentioned in our last chat, "public company" is specifically defined in the new Business Corporations Act to mean a reporting issuer (as defined in the BC Securities Act), a "reporting issuer equivalent" (that is, a corporation that is a reporting issuer or the equivalent of a reporting issuer in any other Canadian jurisdiction), a company that has registered its securities in the United States under the Securities Exchange Act of 1934, or a company that has any of its securities traded on a securities exchange or quotation system.

As so defined, "public company" is a more expansive term than "reporting company". For example, a BC company whose shares trade on a quotation system, such as the OTC Bulletin Board or the new Canadian Trading and Quotation System Inc. (CNO), would be considered a public company for the purposes of the BC Business Corporations Act, but would not necessarily be a reporting company under the existing BC Company Act (absent a BC prospectus filing or an order of the Registrar of Companies designating it as a reporting company) since its shares are not listed for trading on a "stock exchange". As you have noted, it is also possible for a corporation to be a public company without necessarily having any trading market for its securities, perhaps as a result of having been delisted from a foreign stock exchange.

Thus, under the BC Business Corporations Act, a company could be subject to various provisions applicable to public companies without having any public trading market for its securities. These would include the requirement for a public company to have a minimum of three directors, and an audit committee constituted by at least three directors (a majority of whom must not be officers or employees of the company or of an affiliate of the company).

Mike: The term reporting "issuer" is often used instead of "company"? Is this just legalese or why not just use company rather than issuer?

Herb: *As I have mentioned, the term "issuer" has been imported into the BC Business Corporation Act in the form of a reference to the BC Securities Act concept of "reporting issuer" in the definition of "public company".*

Under the BC Securities Act, a "reporting issuer" is generally an issuer that has become subject to the

continuous disclosure requirements of BC securities legislation, generally by having had a prospectus receipted by the British Columbia Securities Commission. The use of the word "issuer" is premised on the fact that the BC Securities Act applies not only to corporations, but also to a broad range of entities that can effect a distribution of securities (such as limited partnerships, unit trusts, limited liability companies and the like).

Mike: Does the elimination of a residency requirement mean there might be more scams and the fact that non-residence addresses can be used mean that directors are harder to nail down and hold accountable. In this day and age of a move toward better governance, what's in the new Act to be able to get a hold of directors?

Herb: I am not aware of any specific provisions in the BC Business Corporations Act that could be used by a shareholder to enhance his or her chances of seeking redress against a fraudulent non-resident director. In fact, the BC Business Corporations Act arguably makes it a little harder to pin down a director in the sense that the Notice of Articles and the register of directors need only identify the "prescribed address" of a director in addition to his or her full name. Although the prescribed address for directors of pre-existing companies will be their respective residential addresses, the prescribed address for directors of new companies need not necessarily be a residential address.

I suppose that the risk of a scam could be increased if a potential perpetrator feels that he or she is beyond the reach of those he or she would otherwise be held accountable to. However, I do not think that the potential increase in any such risk would be material.

The high profile corporate scandals that triggered the enactment of the Sarbanes-Oxley Act of 2002 in the United States were, for the most part I believe, the result of frauds committed by persons who were resident in the United States. So I am not convinced that a residence requirement would in fact materially decrease the risk of fraud.

Directors are elected by the shareholders. The best protection against a potential scam is due diligence. Shareholders must exercise their voting powers carefully. While it is impossible to know every conceivable thing about nominees for election as directors, it is possible to do some research in advance of a vote, particularly with the resources that are now available. If someone is dishonest, chances are that he or she would have run afoul of regulators before. There may, for example, be an outstanding regulatory enforcement order against that person in his or her home jurisdiction, which perhaps could be confirmed by a telephone call to the securities regulators there.

It stands to reason that it is much easier for someone to perpetrate a fraud if he or she is the sole director and officer of a company, so consider having a board comprised of more than one director— at least once the company proceeds beyond that of being a very tightly-knit, family-run operation. As the company and its shareholder base grows, it would be advisable to build a varied and experienced board comprised of both "inside" directors, who also hold senior management positions with the company, as well as "outside" or "independent" directors who are not employed by or affiliated with the company. Once a company goes public, this would be an absolute necessity. In the United States, the New York Stock Exchange and Nasdaq have recently proposed stringent rules regarding independent directors.

Mike: You refer to pre-existing companies in many cases. After the 2-year transition, will that adjective disappear and will all current firms have to comply 100% with the new Act? Are there any issues which a company may have a lot of trouble conforming to or will it be easy to comply?

Herb: You are correct that pre-existing companies will have to bring themselves into compliance with the new BC Business Corporations Act within the two-year transitional period. The process will include the filing of a transition application with the Registrar of Companies, which will have to be authorized by a directors' resolution or an ordinary resolution of the shareholders.

A pre-existing company that has filed a transition application will continue to be a "pre-existing company." Such status will have implications beyond the transitional period. For example, the BC Business Corporations Act will permit all companies to specify in their articles the "special majority" of votes required to pass a special resolution at a general meeting of shareholders, provided that the specified majority will

have to be at least 2/3 and not more than 3/4 of the votes cast on the resolution. If the articles are silent on this point, the new Act will provide for a default rule which defines a "special majority" as 2/3 of the votes cast on the resolution or, if the company is a pre-existing company, 3/4 of the votes cast on the resolution.

I expect that the transition will be relatively straightforward. However, the transition process will inevitably require some time, attention and expense for pre-existing companies, as management will have to familiarize themselves with some of the key provisions of the new Act.

Note also that the BC Business Corporations Act has certain provisions which will apply to "pre-existing reporting companies" and "pre-existing extraprovincial companies." For example, a pre-existing company that, by definition, is a "pre-existing reporting company" will have to alter its articles to include certain "Statutory Reporting Company Provisions," which remain to be prescribed by regulation.

Mike: What can you say about the 2/3vs 3/4 special resolution vote? What will most companies do? Why does this matter?

The BC Business Corporations Act will provide that certain fundamental matters be approved by a special resolution of the shareholders, which will have to be passed by a "special majority" of votes. Some of the matters requiring approval by special resolution include: changes to the company's share capital; creating, varying or deleting special rights and restrictions attached to shares; removal of a director prior to the expiration of the director's term of office; an amalgamation; the sale, lease or other disposition of all or substantially all of the undertaking of the company; the continuance of the company under the laws of another jurisdiction; and a voluntary liquidation. Special resolutions may also be required to approve of certain matters under a company's articles, or under the memorandum of a pre-existing company that has not filed a transition application.

It is difficult for me to predict whether companies will take advantage of the flexibility to specify the majority required to pass a special resolution at a general meeting of shareholders. A decision to adopt a 2/3 special majority may well have consequences to a shareholder of a pre-existing company who holds, say, 26% of the issued and outstanding voting shares, since he or she will thereafter lose the power to block a special resolution taken on a poll. By the same token, a shareholder (or control group of shareholders) holding 70% of the issued and outstanding voting shares of a company would be in a position to approve a special resolution on a poll if the special majority was fixed at 2/3 of the votes cast, but not if the special majority was fixed at 3/4 of the votes cast.

In circumstances where I have assisted public companies in continuing from BC (where special resolutions currently must be approved by a 3/4 majority) to a jurisdiction where special resolutions must be approved by a 2/3 majority, this has never been an issue which has caused concern for management or, to my knowledge, any shareholders.

Mike: Since all companies have to go through a transition, does this mean an extra cost burden? Must they use a law firm (estimated cost for a young start-up company)?

Herb: As one of the prerequisites to the filing of a transition application, a pre-existing company's articles will have to be altered to the extent necessary to comply with the new Act. It is expected that the articles of the majority of pre-existing companies will require minimal alterations. Certain alterations to the articles of pre-existing companies to bring them into compliance with the new Act could be authorized by directors' resolution or by an ordinary resolution of the shareholders, and certain minor alterations will not require any authorizing resolution at all. However, given the technical nature of the transitional and other rules contained in the new BC Business Corporations Act, I expect that most companies will wish to consult their legal counsel.

My firm has formed a task force to tackle the transitional issues that will face our clients once the new Act comes into force. One of the issues we will be addressing in the coming weeks is the anticipated cost burden. At this point in time, the cost burden is very difficult to quantify.

Mike: Will there be such a thing as standardized articles that 90% of all companies will simply adopt as boiler-plate?

As I mentioned earlier, Table 1 to the BC Business Corporations Act will consist of a model form of articles. It is intended that the model articles could be adopted by a company with or without alterations, and may be deemed to have been adopted by a new company by default in certain circumstances. However, the BC Business Corporations Act will provide for considerable flexibility in tailoring a company's articles to suit its particular needs. While the model articles may meet the needs of many smaller companies, they might not be suitable for adoption without alternations by larger companies.

Mike: Can you think of a case where a company is based solely in BC that does NOT need to register extra-provincially (and what does extra-provincial registration cost?)?

Herb: A BC company which conducts business solely in BC will not have to be registered as an extra-provincial company in any jurisdiction.

Any non-BC corporation or limited liability company (referred to in the new Act as a "foreign entity") will have to register as an extraprovincial company within two months of commencing to carry on business here. It should be noted that a foreign entity will be deemed to carry on business in BC if, among other things, its name is listed in a BC telephone directory or in any advertisement along with an address or telephone number for the foreign entity in BC, or if it maintains a resident agent, warehouse, office or place of business in BC. The extraprovincial registration fee is anticipated to remain at the current level of \$350 (\$375 if a certified copy of the registration is desired), and the related legal costs typically range from \$240 to \$340 (including the cost of a name reservation, if required). There will be annual filings thereafter, which are currently subject to a \$35 filing fee, and approximately \$200 in associated legal costs.

Under the existing BC Company Act a foreign entity that fails to register as an extraprovincial company when it is required to do so is precluded from acquiring or holding any interest in real property in BC, and from maintaining any legal proceedings in a BC court in respect of a business contract concluded either in whole or in part in BC. These provisions have not been carried over into the BC Business Corporations Act. However, I believe that failure to register may result in fines (as is the case under the BC Company Act).

Mike: Can you explain what par value and without par value means? Why does it matter?

Herb: In Canada, the trend has been away from corporate legislation which permit companies to issue par value shares. I understand that par value has its roots in English companies law, where the aggregate par value of a company's outstanding shares was intended to represent or reflect the amount of money actually invested in the company by its shareholders (and therefore theoretically available to pay the company's creditors). Unfortunately, the aggregate par value of a company's shares could very easily become a misleading measure of a company's financial resources or worth, since invested capital could soon be depleted.

Today, par value shares are primarily used to facilitate tax planning structures, and most companies tend to be incorporated with at least one class of common shares having no par value. I will leave it to **Bill Ruskin** of our tax department to explain the intricacies of the tax planning opportunities that are made possible by par value shares.

However, I understand that the use of par value shares has many traps for the unwary. For example, the par value of a share represents the minimum amount for which the share can be issued by a company from its treasury, which limits the flexibility to issue the share at a lower price. In addition, the par value represents the maximum "paid up capital" of the share. Generally, on a repurchase or redemption of a share by the company, a shareholder can receive up to the paid up capital of the share as a tax-free return of capital. If, however, a shareholder acquired the share from the Company's treasury for a price which exceeded its par value, the amount of the purchase price in excess of par value is recorded as "contributed surplus" for accounting purposes. Any distribution of contributed surplus to a shareholder is treated for Canadian income tax purposes as a taxable dividend.

Herb Ono is a partner with **Clark, Wilson's** Corporate Finance/Securities Law Group (website: www.cwilson.com). The Group assists companies listed on Canadian and U.S. stock exchanges and over-the-counter trading markets, including NASDAQ, Amex, TSX and the OTC Bulletin Board. With lawyers

qualified to practice in various Canadian and United States jurisdictions, the Group has experience in Canadian, U.S. and cross-border transactions; U.S. and Canadian regulatory filing and SEC registrations; reverse takeovers; and mergers and acquisitions. If you have any questions about this article or any securities matter, please feel free to contact Herb at 604.643.3140; email: hio@cwilson.com.

Financings Update

In the good news department, it's wonderful to see a lot of action in the financing arena. Lots of deals are getting done. A number of ventures are being acquired (as an alternative to an IPO). As an aside, the next VEF event (see below) will focus on getting one's company acquired.

Considering the popularity of acquisitions, how can the average investor "play" in the technology game if private companies are getting swallowed up rather than giving the public a chance to become stockholders? I thought you'd never ask. Now, for the first time in B.C., investors can bet on early stage companies - where the risks are very high, but the rewards are even higher - through two diversified startup "mutual" funds. These funds are the [BC Advantage Funds](#) and the [Western Universities Technology Innovation Fund \(WUTIF\)](#). Both offer substantial tax breaks to investors which greatly mitigates most of the risk. The reader is referred to their respective websites for details.

Here's a sampling of some of the past month's financing action:

ActiveState Corp, acquired for \$23 million in a cash deal, is the big winner in the private company category with **Silent Witness** (TSX: SWE) leading in the public company marketplace in its takeout by **Honeywell** of approximately \$87 million.

ActiveState., a 104-employee company that specializes in anti-spam software was acquired earlier this month by **Sophos Plc**. Since its founding in 1997, the company has raised about US\$3.4 million in angel financing. Some of the angels included **Don Mattrick** and **Paul Lee**, the president and chief operating officer, respectively, of **Electronic Arts Worldwide Studios** **Greg Aasen**, chief operating officer and chief technology officer at **PMC-Sierra Inc**; **Amos Michelson**, CEO of **Creo Inc.**; and **Haig Farris**, president of **Fractal Capital Corp**.

Silent Witness, founded in 1986, is a designer and manufacturer of high-performance CCTV cameras and network-based remote video surveillance. Silent Witness has annual worldwide sales of approximately \$56 million CDN and employs approximately 165 people. Honeywell's purchase price of \$11.27 per share represents a substantial premium to the company's recent trading value - recently in the \$7 area. This is amusing: I clearly remember calling **Rob Bakshi**, back in 1996, shortly after he listed on the Vancouver Stock Exchange. His share price was only 2 cents (yes, that's not a typo - I really do mean 2/100 of a dollar!). I asked him why he wouldn't do more promotion since his company sounded like it had potential. His response was simple. He said that he didn't want to sound like a Howe Street promoter and that he'd rather focus on building the company and if he did a good job on doing that, then investors will ultimately be rewarded. And, indeed they have!!! Good for you, RobBakshi!

Biotech is hot. Two recent deals involve Vancouver's **Forbes Medi-Tech Inc.** (TSX: FMI; Nasdaq: FMT1) and **Cardiome Pharma Corp.** (TSX: COM), whose share prices have performed beautifully.

On September 5, Forbes announced it had raised US\$4.8 million via a private placement via lead investor **BioAsia Investments LLC** of Palo Alto, Calif. Forbes produces pharmaceuticals and nutraceuticals to treat cardiovascular and related diseases.

Cardiome, which also develops cardiovascular drugs, recently entered into a bought deal agreement for \$20 million with a group of underwriters led by **Orion Securities Inc.** and **Sprott Securities Inc.**

This is pretty good considering that just \$212 million was invested by the entire Canadian Venture Capital industry in the second quarter, down from \$458 million in the same period last year, according to Toronto's **Macdonald & Associates Ltd.** It shows that VC's certainly aren't the main financiers in town.

One biotech firm that did get its funding from the VC pool is **OncoGenex Technologies Inc.**, a cancer treatment firm, announced it had secured a second round worth US\$11.5 million led by local investors **Ventures West Capital Ltd.**, and **GrowthWorks Ltd.** and followed by the **Business Development Bank of Canada**, Toronto's **Milestone Medica Corp.** and U.S.-based **H.I.G. Ventures**.

The OncoGenex financing was one of the two biggest life sciences VC deals in 2003. OncoGenex was spun off from the Prostate Centre at **Vancouver General Hospital** in May 2000.

In September, **ID Biomedical Corp.** (TSX: IDB, Nasdaq: IDBE) announced an offering of five million common shares and **VSM MedTech Ltd.** (TSX: VSM) also announced a share offering to raise about \$30 million. VSM completed the sale of 4.7 million common shares at a price of \$6.50 per share for gross proceeds of \$30.55-million.

This month, **Angiotech Pharmaceuticals Inc.** (TSX: ANP; Nasdaq: ANPI) completed a public offering of nearly US\$219 million.

Here are more snippets of interest:

Response Biomedical announced that it is undertaking a non-brokered private placement of 3,500,000 units at a price of \$0.43 per unit, each unit consisting of one common share and one-half of one common share purchase warrant.

Serebra Learning has disclosed that it has closed a private placement financing for net proceeds of \$300,000.

Radiant Communications has reached an agreement in principal to issue up to 10 million units at a price of 40 cents per unit for gross proceeds of up to \$4-million on a private placement basis.

Cardiocomm Solutions intends to carry out a private placement of 3,603,570 units at a price of \$0.14 per unit for gross proceeds of C\$504,500.

Contec Innovations has completed a partial close on a non-brokered private placement offering of 1.4 million units at 25 cents per unit for a total amount of \$350,000.

Xillix Technologies announced that it has closed its previously announced private placement issuing 15,189,046 common shares at a price of \$0.60 for gross proceeds of \$9,113,428. **Blouhy Merchant Group**, **Harris Partners Ltd**, and **Orion Securities** acted as agents

Bioteq Environmental Technologies has negotiated a brokered private placement with **Canaccord Capital** to raise up to \$2.5-million on a commercially reasonable efforts basis.

Cardiome Pharma announced the closing of its public offering of 3,810,000 Common Shares at \$5.25 per share, in connection with its agreement with a syndicate of underwriters led by **Orion Securities Inc** and **Sprott Securities Inc**.

Vigil Health Solutions has closed a private placement financing for gross proceeds of \$3,751,825.

Medical Ventures has completed two non-brokered private placements, for gross proceeds of approximately \$1.05-million.

Photochannel Networks Inc. has announced that it has received completed subscriptions agreements for \$2,765,000. Closing is subject to TSX Venture Exchange approval.

Also in recent news: A deal with **Microsoft** has sent **Sierra Wireless's** (TSX: SW) stock up 270% to new highs in 2003. Sierra, a maker of wireless access cards for laptop computers said earlier this week that it would release a high-end wireless handset for business users, the Voq, in the first half of 2004. It'll be based on software giant Microsoft Corp.'s Windows Mobile operating system for handheld devices. Microsoft is

partnering with companies like Sierra to compete with **Nokia** for market share.

Meanwhile, the tech bellwether **Nasdaq** composite index has risen 38% this year and will (hope, hope) soon break 2000.

Finally, **T-Net** just announced its annual Top 100 companies ranking. For more information, please visit BC's Top 100 on the 2003 T-Net 100 website:www.bctechnology.com/frameset_tnet100.html

VEF UPDATE

The [Vancouver Enterprise Forum](#) is back in action this Fall. The September event focused on early stage financing. Two seasoned technology entrepreneurs and financiers, **Michael Brown** and **Glenn Ballman**, talked frankly about how to finance and build an early-stage technology venture. In the sound-bytes portion of the evening, **Basil Peters** and yours truly espoused the virtues of their new early stage funds - the [BC Advantage Fund](#) and the [WUTIF Fund](#).

This month's event - on Tuesday, October 28th will focus on the acquisitions game - which appears to be the liquidation event of choice these days. Indeed, being acquired by a U.S. company is one of the key exit routes for B.C. technology entrepreneurs and investors.

A complete calendar of local technology events can be found on [T-Net's Events page](#).

Footnotes

If you're an entrepreneur looking for a place to get your company started; there's some great space available at Harbour Centre downtown. The **New Media Innovation Centre** (NewMIC) and **SFU's TIME Centre** have teamed up to provide not only office space but also access to various resources, e.g. tech advisors, access to capital, mentors, etc. Worried about the high cost of being downtown? Well, not to worry - they'll even reduce the fees and take some payment in the form of equity. Check www.sfu.ca/time for contact info.

A reminder: SFU's TIME Centre is open for business - business folks, that is. TIME is an acronym for **Technology, Innovation, Management, and Entrepreneurship**. TIME supports the growth and development of the tech industry in B.C. TIME features a "BusinessCentre" (looks like an airport business lounge) which is open to technology entrepreneurs and business people to use as a drop-in downtown office facility. Need to plug-in? Make some calls? Do some work? Hold a meeting? There are some great facilities for holding your company's AGM. Why hang out at MacDonald's when you can work productively at the TIME Centre? Drop by and check it out! It is located at SFU's downtown campus at 515 West Hastings St.

Michael Volker, a technology entrepreneur, is Director of the University/Industry [Liaison Office](#) at Simon Fraser University, Chair of the B.C. Advanced Systems Institute, Chair of the [Vancouver Angel Network](#) and past Chair of the [Vancouver Enterprise Forum](#). He owns shares in many of the companies he writes about. Copyright, 2003.

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Tech Futures is a bi-weekly column that focuses attention on new and emerging BC publicly listed technology companies.

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