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Legal Lessons from Season 3 of HBO's Silicon Valley

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For a comedy, Silicon Valley offers a surprising number of real life legal lessons. Startups should take note.

In Season 1, Richard Hendricks, accidental founder of data compression company Pied Piper, dealt with investors, equity splits, incorporation, and a business name dispute. In Season 2, employment contract restrictive covenants played a major role in advancing the plot. Finally, at the beginning of Season 3, Richard has been pushed out as CEO because of poor planning and a loss of control of his company at the board level. In real life, the consequences of making the same mistakes and missteps as Richard are less funny and can be dire. Richard is CEO, the majority shareholder, and a director on the board. His predicament was entirely preventable.

Richard was informed over the phone that Russ Hanneman sold his shares and his board seat to Raviga Capital. The meeting which removed Richard as CEO was likely not properly called. Two directors, Richard and Erlich, were not given proper notice. Typically, the corporation's bylaws describe what constitutes proper notice. Under Ontario and Canadian corporate law, any decisions made at an improperly constituted board meeting can be challenged. However, rectifying the deficiency in the constitution of the meeting is simple: another meeting would be called with proper notice and Richard would be removed as CEO.

Richard could have prevented his removal by maintaining greater control over who nominates board members. Board members are appointed by the shareholders. A majority shareholder can control who is appointed to the board by voting his or her shares accordingly unless there is a shareholders' agreement in place. Assuming board members are nominated by shareholders in accordance with the terms of a shareholders' agreement, Richard should have ensured that the terms of the shareholders agreement gave him more control over those nominees. He should have sought independent legal advice in season 1. Richard had leverage to dictate terms from the start. Raviga was in a bidding war with Gavin Bellson and Hooli to invest in Pied Piper. As founder and majority shareholder of Pied Piper, Richard should have ensured that he maintained control of more than one seat on the board.

Now, Richard's options are limited. He could try to dissolve Pied Piper and start a new company with his data compression platform. This would ultimately lead to litigation which in reality is less funny and more time consuming than an episode of Silicon Valley. His most practical course of action is to work with the new board appointed CEO.

With proper planning and independent legal advice, Richard would still be the CEO of Pied Piper. Founders should remember that their interests and investors' interests may not always align and each should have their own legal representation. This way, there are few if any surprises down the road as your business grows and its needs evolve.

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