

# SHAREHOLDER DISPUTES AND THE CLOSELY-HELD COMPANY

## *RIGHTS AND REMEDIES FOR LITIGATORS AND CORPORATE ADVISORS*

Get practical insights into the latest legal developments and winning strategies and tactics. Topics include:

- Choosing the appropriate remedy
- Oppression: trends in the courts and creative uses of the remedy
- The menu of interim remedies including interim orders for the payment of costs
- Best approaches to resolving shareholder disputes outside court to preserve the value of the business
- Tactics to employ (or watch out for!) during the course of mediation or litigation
- Business valuation issues and the potential contribution of financial experts
- Ethical and professional challenges facing counsel in these often highly-charged and emotional disputes

Register today at:

[osgoodepd.ca/shareholder-disputes](http://osgoodepd.ca/shareholder-disputes)

### Program Chairs

Lisa C. Munro, Leners LLP

David Morritt, Osler,  
Hoskin & Harcourt LLP

### Program Details

#### DATE AND TIME

April 20, 2017

9:00 a.m. – 5:00 p.m. EST

In Person or Webcast

#### LOCATION

**Osgoode Professional  
Development**

1 Dundas St. West, 26th Floor  
Toronto, ON

#### ONLINE REPLAY

May 29, 2017

# Shareholder Disputes and the Closely-Held Company

## *Rights And Remedies For Litigators And Corporate Advisors*

Shareholder disputes are among the most common and complex disputes faced by commercial litigators, in-house counsel and corporate advisors. To achieve the best results for your clients, you must have a comprehensive and up-to-date understanding of the panoply of rights and remedies available to shareholders.

## Topics Include

- The scope and use of the oppression remedy
- The language to use in an application or action for the remedy
- To what extent fiduciary and other duties may be imposed on principals of the company, creditors or other stakeholders
- How the post-*Hrynew* understanding of good faith operates in the interpretation of shareholders' agreements
- Laying the evidentiary foundations for your financial expert's valuation case

## Who Should Attend?

- Civil litigators
- In-house counsel in closely-held companies
- Corporate-commercial lawyers providing advice to shareholders, officers and directors of closely-held companies
- Paralegals and litigation law clerks

### What previous attendees said:

“The content was superb. Great selection of presenters, useful information, no ‘filler’. Great job! Very practical advice on the tough choices that have to be made in dealing with these situations..Superb, knowledgeable panel.”

James Thorlakson, Miller Thomson LLP

“Very helpful program on all relevant aspects of this area.”

Lorne Sabsay, Sabsay Lawyers

# Agenda

8:30

Registration and Continental Breakfast

9:00

Chairs' Introductory Remarks

9:05

Oppression Remedy Update

**David Morritt** and **Sonia Bjorkquist**, Osler, Hoskin & Harcourt LLP

- Influential oppression cases and trends in the courts' approach
- The key elements in proving oppression
- The present status of the business judgment rule
- Creative uses of the oppression remedy
- The value of the oppression remedy to creditors
- Obtaining interim orders for the payment of costs by the corporation

10:00

Corporate Governance Considerations in Shareholder Disputes

**James C. Tory**, Torys LLP

- Key recent cases on director, officer and employee duties
- Tracing the obligations: who owes duties to whom, and in what capacity?
- Fiduciary obligations among principals of closely-held companies
- Interaction of fiduciary claims with oppression claims
- Assessing the conduct of directors and officers
- Conflicts of interest and due diligence requirements

10:35

Refreshment Break

10:50

## Claims and Interim Remedies

**Jonathan Lisus**, Lax O'Sullivan Lisus Gottlieb LLP

- Assessing your claims and remedies: Oppression? Fiduciary duty? Breach of the shareholders agreement? Derivative actions?
- Assessing reasonable expectations
- Types of conduct likely to be found oppressive
- Managing interim relief
  - Interim management
  - Use of a monitor or inspector
  - Access to books and records
  - Restraining conduct, excluding parties, and other injunctive-type relief
- Non-competition and confidentiality obligations
- Interim orders for the payment of costs

11:45

## Accounting and Valuation Issues and Solutions

**Allan D. Coleman**, Osler, Hoskin & Harcourt LLP

**Domenic Marino**, CBV, CPA, CA, Partner, Consulting and Deals, PriceWaterhouseCoopers LLP

Shareholder disputes are often focused on financial matters, either because there has been an allegation of impropriety that necessitates a forensic investigation or other form of accounting or because the value of the business is at issue. Our speakers will address the role of the financial expert in shareholder litigation, including:

- When should you bring in a financial expert?
- Scope of the expert's role
- Analysis and methods for valuing the business
- Categories of documents you should seek from opposing parties to assist your expert in preparing a valuation
- Best approaches to developing settlement positions

12:45

Lunch

1:30

## Alternative Remedies Under the *Business Corporations Act*: Insolvency Proceedings, Windups, Derivative Actions

**Matthew P. Gottlieb**, Lax O'Sullivan Lisus Gottlieb LLP

- Closely-held companies in financial distress and the decision to pursue insolvency proceedings or windups
- Differences between oppression claims and derivative actions
- When to choose one remedy over the other
- Pursuing both remedies at the same time: strategy and procedural nuts and bolts

2:15

Refreshment Break

2:30

## Good Faith Since *Bhasin*: An Update on Implications For Shareholder Disputes

**Eric S. Block** and **Shane D'Souza**, McCarthy Tétrault LLP

The Supreme Court of Canada's unanimous decision in *Bhasin v. Hrynew* established a duty to demonstrate good faith and to act honestly in performing contractual obligations. This session will consider how courts are likely to interpret the new standard in relation to shareholders' agreements, in the context of the typically close relations and correspondingly intense conflicts that arise within closely-held corporations. What can realistically be expected of parties involved in shareholder disputes and how should corporate advisors and those involved in resolving them advise their respective clients at the various stages of the dispute?

3:00

## Strategies and Tactics During the Course of Litigation

**Kenneth A. Dekker**, Affleck Greene McMurtry LLP

**Aaron Hershtal**, Kestenberg Siegal Lipkus LLP

**Adrian C. Lang**, Head of Business Management, Canadian Personal and Commercial Banking and Channels, BMO Financial Group

**Peter Wardle**, Wardle Daley Bernstein Bieber LLP

- Cost-benefit assessment in choosing the DR mechanism (arbitration, Commercial List, etc.)
- Is arbitration suited to deal with these highly-charged disputes?
- Practical tips and strategies for bringing or responding to an application or action for an oppression remedy
- Developing supportive evidence and responding to damaging evidence
- What to do if a competitive business is launched
- Effective presentation of the case at mediation or at trial

4:00

## Ethical and Professional Issues in Shareholder Disputes and Litigation

**Paul Neil Feldman**, Feldman Lawyers

**Ari A. Lokshin**, Lokshin Law Office

**Lisa C. Munro**, Lerner LLP

A discussion of realistic fact scenarios illustrating how ethical and professional challenges arise in the context of shareholder disputes in closely-held companies, and what counsel can do to address them both as effective advocates for their clients and as responsible professionals.

5:00

Program Ends

## Chairs

**Lisa C. Munro**  
Lerners LLP

**David Morritt**  
Osler, Hoskin & Harcourt LLP

## Faculty Includes

**Sonia Bjorkquist**  
Osler, Hoskin & Harcourt LLP

**Adrian C. Lang**  
Head of Business  
Management, Canadian  
Personal and Commercial  
Banking and Channels, BMO  
Financial Group

**Eric S. Block**  
McCarthy Tétrault LLP

**Allan D. Coleman**  
Osler, Hoskin & Harcourt LLP

**Jonathan Lisus**  
Lax O'Sullivan Lisus Gottlieb  
LLP

**Kenneth A. Dekker**  
Affleck Greene  
McMurtry LLP

**Ari A. Lokshin**  
Lokshin Law Office

**Shane C. D'Souza**  
McCarthy Tétrault LLP

**Domenic Marino**  
CBV, CPA, CA  
Partner, Consulting & Deals,  
PricewaterhouseCoopers LLP

**Paul N. Feldman**  
Feldman Lawyers

**Matthew P. Gottlieb**  
Lax O'Sullivan Lisus  
Gottlieb LLP

**James C. Tory**  
Torys LLP

**Aaron Hershtal**  
Kestenberg Siegal Lipkus LLP

**Peter Wardle**  
Wardle Daley Bernstein  
Bieber LLP

## Registration Details

### Fee per Delegate

**\$695 + HST**

Fees include attendance, program materials, continental breakfast, lunch and break refreshments. Group discounts are available. Visit [www.osgoodepd.ca/groupdiscounts](http://www.osgoodepd.ca/groupdiscounts) for details. Please inquire about financial assistance.

### Program Changes

We will make every effort to present the program as advertised, but it may be necessary to change the date, location, speakers or content with little or no notice. In the event of program cancellation, York University's and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.

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