

# SHAREHOLDER LITIGATION AND THE CLOSELY-HELD COMPANY



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

- *Bhasin*, good faith and honesty: how will the SCC's new standards impact the interpretation of shareholders' agreements by the Courts?
- How are the courts assessing "reasonable expectations" in relation to the oppression remedy?
- Conflict of interest issues in closely-held companies
- Assessing claims and remedies in closely-held company disputes
- Accounting and valuation issues in private company litigation
- Keys to effective written advocacy in presenting the case
- Preserving corporate value and stability while the dispute is ongoing
- Ethical and professional issues that may arise in shareholder disputes and litigation

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## Chairs

**Lisa C. Munro**, *Lerners LLP*

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

## Date and Time

April 7, 2015

9:00 a.m. - 4:45 p.m. EDT

## Location

Osgoode Professional Development  
1 Dundas St. W., 26th Floor  
Toronto, ON

Webcast Available

## SHAREHOLDER LITIGATION AND THE CLOSELY-HELD COMPANY

Shareholder disputes are among the most common and complex disputes faced by commercial litigators and in-house litigation counsel. 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.

This *OsgoodePD* program brings together some of the country's top commercial litigators and other experts to provide insight into key aspects of litigating these cases. You'll get practical advice on language to use in an application or action for an oppression remedy, as well as strategies for litigating the case most effectively, illustrated by means of realistic scenarios. This program will provide you with a current update on:

- the scope and use of the oppression remedy
- exactly how and to what extent duties (including fiduciary duties) may arise on the part of those dealing with shareholder interests
- the degree to which such duties extend to other stakeholders, including creditors

At the same time, you need to be able to react quickly with the right strategies and manoeuvres to position your clients and protect their interests and assets.

Take advantage of this rare opportunity to learn from a faculty of this caliber.

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### Chairs

**Lisa C. Munro**  
*Lerners LLP*

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

### Faculty

**David K. Alderson**  
*Gilbertson Davis LLP*

**Adrian C. Lang**  
*Associate General Counsel  
Canadian Personal and  
Commercial Banking;  
Legal, Corporate and  
Compliance Group  
BMO Financial Group*

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

**Paul N. Feldman**  
*Feldman Lawyers*

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

**Neil Finkelstein**  
*McCarthy Tétrault LLP*

**Catherine Francis**  
*Minden Gross LLP*

**Domenic Marino**  
*Partner, Consulting  
and Deals  
PricewaterhouseCoopers  
LLP*

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

**Monique Jilesen**  
*Lenczner Slaght Royce  
Smith Griffin LLP*

**James C. Tory**  
*Torys LLP*

**Marc Kestenber**  
*Norton Rose Fulbright  
Canada LLP*

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

**Cynthia B. Kuehl**  
*Lerners LLP*

## WHO SHOULD ATTEND

- Commercial litigators
- Corporate-commercial lawyers involved in managing/resolving shareholder disputes in closely-held companies
- In-house counsel in closely-held companies
- Paralegals and law clerks



Get practical and tactical advice from some of the country's top commercial litigators



## AGENDA

**8:30-9:00**

### Registration and Continental Breakfast

**9:00-9:05**

### Welcome and Introduction from the Chairs

**9:05-9:35**

### What *Bhasin v. Hrynew* Means for Shareholders' Agreements and Shareholder Litigation

**Neil Finkelstein**, *McCarthy Tétrault LLP*

The Supreme Court of Canada's unanimous decision establishes a duty to demonstrate good faith and to act honestly in performing contractual obligations - including those embodied in shareholders' agreements. How will the new standard affect the way in which courts interpret these agreements, in the context of the typically close relations and correspondingly intense conflicts that arise within closely-held corporations? One of the counsel who successfully argued *Bhasin* will address these questions with emphasis on the practical lessons for counsel.

**9:35-10:30**

### Oppression Remedy Update

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

**Catherine Francis**, *Minden Gross 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

**10:30-10:45**

### Refreshment Break

**10:45-11:25**

### 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

### Divorce for Shareholders:

### Managing the Closely-Held Company Breakdown

In four sessions, a distinguished faculty will review the practical and substantive points to keep in mind when shareholder relations sour.

**11:25-12:15**

### Claims and Interim Remedies

**Jonathan Lisus**, *Lax O'Sullivan Scott Lisus 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

**12:15-1:15**

### Luncheon Discussion: Resolving Shareholder Disputes Outside Court to Preserve Enterprise Value

**Marc Kestenberg**, *Norton Rose Fulbright Canada LLP*

- Cost-benefit assessment in choosing the DR mechanism
  - arbitration, Commercial List etc.
- Is arbitration suited to deal with these highly-charged disputes?
- Jurisdictional fights, arbitrator appointment fights, procedural fights
- "Switching horses" to arbitration following injunction proceedings

**1:15-2:30**

### Strategies and Tactics During the Course of Litigation

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

**Cynthia B. Kuehl**, *Lerners LLP*

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

### Moderator

**Adrian C. Lang**, *Associate General Counsel, Canadian Personal and Commercial Banking; Legal, Corporate and Compliance Group, BMO Financial Group*

- 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 trial

## Shareholder Litigation and the Closely-Held Company

I will attend:  On site  Via webcast (single viewer)

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### Fee Per Delegate

\$795 plus 13% HST

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

### Date & Time

April 7, 2015  
 9:00 a.m. – 4:45 p.m. EDT  
 Please arrive a half hour early for sign-in and material pick-up.  
 Dress is business casual.

### Location

Osgoode Professional Development  
 Downtown Toronto Conference Centre  
 1 Dundas St. W., 26th Floor  
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### 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.

### Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute, a full refund (less \$75 administration fee) is available if a cancellation request is received in writing 5 days prior to the program date. No other refund is available.

**2:30-2:45**

## Refreshment Break

**2:45-3:45**

## Accounting and Valuation Issues and Solutions

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

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

- When should you bring in a financial expert?
- Roles for the financial expert
- 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

**3:45-4:45**

## Ethical and Professional Issues in Shareholder Disputes and Litigation

David K. Alderson, *Gilbertson Davis LLP*

Paul N. Feldman, *Feldman Lawyers*

Monique Jilesen, *Lenczner Slaght Royce Smith Griffin LLP*

### Moderator

Lisa C. Munro, *Lerners LLP*

A discussion of realistic fact scenarios illustrating how these issues arise in the context of shareholder disputes and what counsel can do to address them both as effective advocates and as responsible professionals.

**4:45**

## Program Concludes



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3. **FAX** your registration to 416.597.9736
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