

# SHAREHOLDER DISPUTES AND THE CLOSELY-HELD COMPANY

*Rights and Remedies for Litigators and Corporate Advisors*

Get practical insights into current law, winning strategies and tactics in these notoriously contentious cases!

Topics include:

- Choosing the appropriate remedy
- Oppression: trends in the courts and creative uses of the remedy
- The menu of interim remedies including interim cost orders
- Best approaches to the value of the business while resolving the dispute out of court
- Tactics to employ (or to watch out for!) in 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**  
Lerners LLP

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

## Date and Time

**April 27, 2020**  
**9:00 a.m. – 4:30 p.m. EDT**  
**In Person or Webcast**

**Online Replay: June 3, 2020**

## Location

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

# 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
- Language to use in an application or action for the remedy
- The extent to which fiduciary or other duties may be imposed on principals of the company, creditors or other stakeholders
- How the current 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
- Corporate-commercial lawyers providing advice to shareholders, officers and directors of closely-held companies
- Paralegals and litigation law clerks

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

Lorne Sabsay, Sabsay Lawyers

“The content was superb. Great selection of presenters, useful information, no 'filler'... 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

## Agenda

8:30 a.m.

Registration

9:00 a.m.

### Chairs' Introductory Remarks

9:10 a.m.

### Oppression Remedy Update

Dena Varah

Lenczner Slaght Royce Smith Griffin LLP

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

10:00 a.m.

### Corporate Governance Considerations in Shareholder Disputes

Andrew Gray

Torys LLP

- Key recent cases on director, office 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

10:30 a.m.

Refreshment Break

**10:45 a.m.**

## Claims and Interim Remedies

### Jonathan Lisus

Lax O'Sullivan Lisus Gottlieb LLP

### Linda Plumpton

Torys 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 a.m.**

## Accounting and Valuation Issues and Solutions

### Allan Coleman

Osler, Hoskin & Harcourt LLP

### Domenic Marino

National Forensics and Disputes Leader,  
PriceWaterhouseCoopers

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. This session 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 or reframing settlement positions

**12:45 p.m.**

## Lunch

**1:30 p.m.**

## 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 p.m.**

## Refreshment Break

**2:30 p.m.**

## Strategies and Tactics During the Course of Litigation

### Kenneth A. Dekker

Affleck Greene McMurtry LLP

### Megan Keenberg

Van Kralingen & Keenberg LLP

### Hilary Book

Book Law

- Cost-benefit assessment in choosing the DR mechanism (arbitration, Commercial List, etc.)
- Is arbitration suitable 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

**3:30 p.m.**

## Ethical and Professional Issues In Shareholder Disputes and Litigation

### Paul Neil Feldman

Feldman Lawyers

### Cynthia B. Kuehl

Lerners LLP

### Jeffrey Larry

Paliare Roland Rosenberg Rothstein LLP

### Lisa C. Munro

Lerners LLP

A discussion of realistic fact situations 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.

**4:30 p.m.**

**Program ends**

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shareholder-disputes**

# Chairs

**Lisa C. Munro**  
Lerners LLP

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

# Faculty Includes:

**Hilary Book**  
Book Law

**Jeffrey Larry**  
Paliare Roland Rosenberg  
Rothstein LLP

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

**Jonathan Lisus**  
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**Paul Neil Feldman**  
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**Andrew Gray**  
Torys LLP

**Dena N. Varah**  
Lenczner Slaght Royce Smith  
Griffin LLP

**Megan Keenberg**  
Van Kralingen & Keenberg  
LLP

**Cynthia B. Kuehl**  
Lerners LLP

# Registration Details

**Fee per Delegate**  
**\$695 plus HST**

**Newly licensed (2017 – 2020): \$347.50 plus HST**

Fees include attendance, program materials, lunch and break refreshments. Group discounts are available. Visit [www.osgoodepd.ca/group-discounts](http://www.osgoodepd.ca/group-discounts) 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.

## Cancellations and Substitutions

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