



# SHAREHOLDER DISPUTES AND THE CLOSELY-HELD COMPANY 2021

## *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
- Good faith and shareholders' agreements; the law since *Bhasin*
- 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](https://osgoodepd.ca/shareholder-disputes)

### Program Chairs

Lisa C. Munro, Q.Arb  
Lerners LLP

Allan Coleman  
Osler, Hoskin & Harcourt LLP

### Date and Time

March 31, 2021

9:00 a.m. – 4:45 p.m. EDT

Online – Live, Interactive

Online Replay: May 7, 2021

***Can't make a date?***

*You will have online access  
to the program for 120 days.*

# Shareholder Disputes and the Closely-Held Company 2021

## *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
- *Bhasin* and the contractual duty of good faith: an update
- The extent to which fiduciary or other duties may be imposed on principals of the company, creditors or other stakeholders
- 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

9:00 a.m.

### Chairs' Introductory Remarks

9:10 a.m.

### Oppression Remedy Update

#### Cynthia Spry

Babin Bessner Spry LLP

#### Michael Bookman

Babin Bessner Spry 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

9:50 a.m.

### Corporate Governance Considerations in Shareholder Disputes

#### Andrew Gray

Torys LLP

#### Eric Morgan

Kushneryk Morgan 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

10:40 a.m.

### Refreshment Break

10:55 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

**Chris Polson**

Forensics and Disputes,  
PriceWaterhouseCoopers Canada

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

12:30 p.m.

Lunch

1:15 p.m.

## *Bhasin* and the Contractual Duty of Good Faith: An Update on Implications for Shareholder Disputes.

**Lisa C. Munro, Q.Arb**

Lerners LLP

The Supreme Court of Canada's 2014 decision in *Bhasin v. Hrynew* established a duty to demonstrate good faith and act honestly in performing contractual obligations. How has the doctrine fared since then, with specific reference to shareholders' agreements? How should corporate-commercial and in-house counsel advise their clients in light of the current understanding of *Bhasin*, and how should this understanding enter into the strategic thinking of litigation counsel in framing their cases?

1:45 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

2:30 p.m.

Break

2:45 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

3:45 p.m.

## Ethical and Professional Issues in Shareholder Disputes and Litigation

**Paul Neil Feldman**

Feldman Lawyers

**Jacqueline L. King**

Shibley Righton LLP

**Deborah Templer**

McCarthy Tétrault LLP

**Tanya C. Walker**

Walker Law

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.

4:45 p.m.

Program ends

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## Chairs

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## Faculty Includes:

Hilary Book  
Book Law

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Lax O'Sullivan Lisus Gottlieb LLP

Michael Bookman  
Babin Bessner Spry LLP

Eric Morgan  
Kushneryk Morgan LLP

Kenneth A. Dekker  
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Linda Plumpton  
Torys LLP

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## Registration Details

### Fee per Delegate

**\$695 plus HST**

**Newly licensed (2018 – 2021): \$347.50 plus HST**

Fees include attendance and electronic program materials.

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