



# SHAREHOLDER DISPUTES AND THE CLOSELY-HELD COMPANY 2023

## *Rights and Remedies for Litigators and Corporate Advisors*

### PROGRAM CHAIRS

Rebecca Shoom  
Lerners LLP

Lauren Tomasich  
Osler, Hoskin & Harcourt LLP

### REGISTRATION OPTIONS

May, 11, 2023:  
Online (Live)  
9:00 a.m. – 4:30 p.m. ET

OR

June 5, 2023:  
Online (Replay)

**Can't make the date?**  
*Registration includes 120-day  
unlimited, online access to the  
recorded program.*

Register today at:  
[osgoodepd.ca/  
shareholder-disputes](https://osgoodepd.ca/shareholder-disputes)

Bitter conflicts that often engulf the shareholders of closely-held corporations are a notorious fact of business life.

Resolving these conflicts, both inside and outside of the courtroom, requires legal professionals to possess a full arsenal of the latest tools and solutions, as well as fluency with the law and business realities.

Over one intensive day, leading experts will provide a practical and tactical review of the array of rights and remedies available to shareholders, along with their limitations, including:

- Drafting tips and strategies for managing relationships to prevent disputes from arising
- The full range of remedies available when there are disputes
- The latest proven litigation strategies and tactics
- Key corporate governance and valuation considerations



# Shareholder Disputes and the Closely-Held Company 2023

## *Rights and Remedies for Litigators and Corporate Advisors*

Business counsel and litigators must stay current on key developments and best practices in this tenuous area.

This unique and intensive OsgoodePD program will empower you to navigate these often complex and seemingly intractable disputes, so that you can deliver results for your clients effectively and with the highest standards of ethics and professionalism.

## Topics Include

- “An ounce of medicine is worth a pound of cure”: tips for preventing disputes from arising
- Choosing the appropriate remedy (including trends in the use of the oppression remedy)
- Fiduciary obligations, conflicts of interest, and due diligence requirements
- Ensuring that shareholder conflicts don’t erode the value of the business
- Claims and interim remedies, including injunctive-type relief
- Accounting and valuation issues
- Best approaches to developing settlement positions
- Litigation strategies and tactics
- Insolvency proceedings, windups, and derivative actions
- Navigating the unique cultural and family dynamics that can arise in closely-held companies and shareholder disputes

## 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
- Lawyers who draft or advise on shareholders agreements

Register today at:

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

## Agenda

9:00 a.m.

### Chairs’ Introductory Remarks

9:10 a.m.

### Oppression Remedy Update

#### Kim Ferreira

Speigel Nichols Fox LLP

#### Rebecca Shoom

Lerners LLP

This opening session will focus on the most common remedy sought by litigators in shareholder disputes, the oppression remedy. You will get a comprehensive review of its uses and present trends:

- Current case law and recent approaches taken by courts
- 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

#### Arieh Bloom

Tupman & Bloom LLP

#### Shane D’Souza

McCarthy Tétrault 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.

Break

10:55 a.m.

## Claims and Interim Remedies

### Jonathan Lisus

Lax O'Sullivan Lisus Gottlieb LLP

### Linda Plumpton

Torlys 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

### Enzo Carlucci

KPMG

### Jason Squire

Lerners 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. 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 for developing or reframing settlement positions

12:30 p.m.

## Lunch Break

1:15 p.m.

## Practical Considerations for Proactively Avoiding Shareholder Disputes

### Brian Gray

Osler, Hoskin & Harcourt LLP

### Lauren Tomasich

Osler, Hoskin & Harcourt LLP

As the adage goes, "An ounce of prevention is worth a pound of cure". With the cost, uncertainty, and drain on time and resources that litigation often entails, perhaps the most valuable advice you can give to a client is how to avoid disputes in the first place.

Expert lawyers from both the solicitor and litigator sides of practice will provide highly useful guidance and tips on how to stay out of the courtroom by paying attention to the structure and wording of agreements, while also effectively managing the relationships and expectations of shareholders. You will also learn dispute resolution procedures that can make any disputes that may arise more manageable.

2:00 p.m.

## Alternative Remedies Under Business Corporations Legislation: Insolvency Proceedings, Windups, Derivative Actions

### Carlo DiCarlo

Stockwoods LLP

An in-depth look at the other ways that shareholders can seek redress under business corporation legislation in Canada, including:

- Closely-held companies in financial distress and the decision to pursue insolvency proceedings or windups
- Is oppression the right thing to claim? Differences between oppression claims and derivative actions
- When to choose one remedy over the other
- Pursuing both remedies at the same time: strategies and best practices

2:45 p.m.

## Break

3:00 p.m.

## Practical Strategies and Tactics for Presenting Your Case and Evidence During Litigation

### Kenneth A. Dekker

Affleck Greene McMurtry LLP

### Robin Dodokin

Dodokin Law & Conflict Resolution

Seasoned litigators will discuss a variety of approaches and considerations, as well the techniques to use when the dispute turns to litigation, covering:

- 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.

## Navigating the Unique Cultural and Family Dynamics that can Arise in Closely-Held Companies and Shareholder Disputes

### Deborah Templer

McCarthy Tétrault LLP

### Tanya Walker

Walker Law

The panel will delve into 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.

Addressing such issues as the unique cultural and family dynamics that can arise, how to identify and address unconscious bias, understanding power and privilege dynamics in the business relationship context, and ideas toward more effective communication and advancing the values of equity, diversity and inclusion, you will discuss how to walk the line to serve as both effective advocates for your clients and as responsible professionals.

4:30 p.m.

## Program Ends

*“Great reference to cases and real life examples.”*

**Ekta Rampersad**

*“Great connection and platform.”*

**Jennifer Hand**

## Chairs

Rebecca Shoom  
Lerners LLP

Lauren Tomasich  
Osler, Hoskin & Harcourt LLP

## Faculty Includes:

Arieh Bloom  
Tupman & Bloom LLP

Brian Gray  
Osler, Hoskin & Harcourt LLP

Enzo Carlucci  
KPMG

Jonathan Lisus  
Lax O'Sullivan Lisus Gottlieb  
LLP

Kenneth A. Dekker  
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LLP

Linda Plumpton  
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Carlo DiCarlo  
Stockwoods LLP

Jason Squire  
Lerners LLP

Robin Dodokin  
Dodokin Law & Conflict  
Resolution

Deborah Templer  
McCarthy Tétrault LLP

Shane D'Souza  
McCarthy Tétrault LLP

Tanya Walker  
Walker Law

Kim Ferreira  
Speigel Nichols Fox LLP

## Registration Details

Fee per Delegate: **\$695 + TAX**

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*\*This fee applies to newly licensed regulated professionals within the past 2 years*

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