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## 52nd Annual Refresher: Family Law

Lake Louise, Alberta

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# **The Corporate Divorce: Where Corporate Law and Family Law Collide**

Prepared for: Legal Education Society of Alberta  
*52<sup>nd</sup> Annual Refresher: Family Law*

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## INTRODUCTION

Advising clients of their rights and remedies under family law is a challenging field due to, amongst other things, the following factors: the emergence of non-traditional forms of personal ('marriage-like') relationships; changes in federal and provincial family law (and real property law) legislation; and, an ever-growing body of family law jurisprudence. However, a family law practitioner must also broaden their practice knowledge to be aware of non-family law areas that greatly impact upon their clients and, potentially, the preservation or division of family assets. This paper is presented as part of a multi-disciplinary session advising family law practitioners on other tangential areas of law: corporate, tax, immigration, criminal, and bankruptcy. These other legal areas can and often apply in many family law files. Therefore, a basic understanding and appreciation for how these other legal areas impact a client's rights and responsibilities, as part of separation and divorce, should enable a family law practitioner to better advise clients and, hopefully, positively impact a client's outcome of a file.

This paper will address corporate law and, in particular, the concept of 'corporate divorce' – where one (or both) of the separating parties is either a shareholder or director of a private corporation.<sup>1</sup> Often, a client (or their separating counterpart) may own business assets, such as shares in a private corporation, as part of their divisible matrimonial property. This is usually the case where separating parties own, or are part of the ownership group of, a closely-held family business. Separating parties must weigh the need for continuing an on-going business, for one party to be able pay future ongoing support (child or spousal) obligations, against the need to liquidate part or all of the business, to equitably divide matrimonial property as between the parties.

In the circumstances of a closely-held family business, where one or both of the separating parties have ownership (shares) and/or managerial roles (directors/officers), relationship discord or breakdown necessarily amplifies the potential for shareholder or director conflicts. There is a nuanced inter-play in that case: the separating parties are seeking to dissolve their formal relationship under family law; and, simultaneously, seeking to either dissolve or maintain their corporate relationship (as shareholders, directors, etc.). The separating parties' personal actions and decisions as

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<sup>1</sup> The discussion herein is based on the premise that separating parties are shareholders or directors/officers of a private corporation incorporated and governed pursuant to the *Business Corporation Act*, R.S.A. 2000, c. B-9 (as amended) (herein "BCA").

directors/officers of a corporation prior to their formal separation or divorce, can greatly impact their personal liability in relation to the corporation, to the separating party, to other shareholders and the corporation's creditors.

The first part of this paper will address director's liability, as it is important to identify a client's potential exposure to personal liability for acting as a director/officer of a corporation. Corresponding Appendices "A" and "B" will include checklists and materials that can be used by family law practitioners to identify a client's personal liability in respect of acting as a director/officer during their formal relationship, and potentially mitigate same following their formal separation.

The second part of this paper will address the concept of shareholder conflicts – more particularly, contractual and corporate law mechanisms available for resolving these disputes. Dispute resolution may be through the use of a unanimous shareholder's agreement, or by corporate law remedies through dissenting shareholder actions or oppression remedy claims. Each of these mechanisms will be examined further, as they can assist a family law practitioner and their clients in resolving disputes related to the division of corporate assets.

It should be noted that the areas of director's liability and corporate shareholder remedies are broad, and an in-depth discussion of each area is well beyond the scope and purpose of this paper. This paper is meant to deliver a high-level discussion of these areas so that family law practitioners may better identify potential areas of personal liability for clients, incorporate appropriate liability mitigating language and agreements as part of their clients' formal family law agreements, and also understand areas of corporate law remedies which may be available to their clients as well.

## **IDENTIFYING POTENTIAL LIABILITY**

In order to better address the various areas discussed herein, a hypothetical case study example will be used for discussion purposes.

William and Kate have been married for 20 years and are the owners of a trucking business in Alberta, Royal Trailers (AB) Inc., which has 7 full time employees. Upon corporate set-up 18 years ago, it was decided that William would hold 100 Class A voting Common shares and Kate would hold 1 Class B non-voting Common share, for income tax strategies, and both consented to act as directors/officers of the company. No unanimous shareholder agreement<sup>2</sup> was ever put in place.

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<sup>2</sup> Herein a "USA".