

**WHEN THE WHOLE IS GREATER THAN THE SUM
OF ITS PARTS**

**An Analysis of Trends in the Application and
Quantum of Minority Discounts in Canadian Court
Judgments, 1986-2015**

DECEMBER 27, 2017

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When the Whole is Greater than the Sum of Its Parts:

An Analysis of Trends in the Application and Quantum of Minority Discounts in Canadian Court Judgments, 1986-2015

Prepared for the 2016 Ian R. Campbell Research Initiative of The Canadian Institute of Chartered Business Valuators

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“Every time you go away you take a piece of me with you”
Paul Young, *Every Time You Go Away* (1985)

*“I want to be the minority
I don’t need your authority”*
Green Day, *Minority* (2000)

*“There’s such a difference between us
and a million miles”*
Adele, *Hello* (2015)

1.0 INTRODUCTION

The term “minority discount” in business valuations refers to a reduction of the pro-rata en bloc (i.e. 100%) value of a business’ equity to reflect that a less-than-controlling equity interest has a comparative lack of ability to direct business operations. The quantum of a minority discount is a function of various factors including the size of the shareholding in question and the operational context of a business.

Minority discounts are a quintessential topic in the canon of valuation literature. With respect to the **theory** behind minority discounts, virtually every valuation text book and course addresses, in some fashion, if and when a minority discount may be appropriate when valuing a less-than-controlling interest in a business, and the qualitative factors that should be considered to arrive at the appropriate quantum of discount.

¹ This paper is dedicated to Tami, Tricia and Tyler, who prove every day that the whole is indeed greater than the sum of its parts.

With respect to **empirical data** on the quantum of minority discounts, most such data is US-focused and is derived from premiums paid to acquire controlling interests in public market merger and acquisition transactions. That is, most such data is derived from publicly traded companies and comparatively “larger” companies.

There is, unfortunately, no similar empirically derived Canadian data on the quantum of minority discounts which focuses on the shares of private companies and comparatively “smaller” companies.

The purpose of this research paper is to address, to some degree, this dearth of relevant Canadian-based data. Specifically, this research paper analyzes Canadian legal judgments over the 30-year period from 1986 to 2015 in order to summarize the quantum of minority discounts over time, to identify any trends in the application and quantum of minority discounts over this period, and to understand how courts have interpreted and applied the concept of minority discounts.

Part I of this paper sets out the research questions, methodology and summary of findings. **Part II** sets out a brief overview of the valuation literature and theory with respect to minority discounts. **Part III** sets out details of the empirical analysis and findings.

Part I: Research Questions, Methodology, Summary of Findings

2.0 RESEARCH QUESTIONS & RELEVANCE

This research paper analyzes Canadian legal judgments for the overall period 1986 to 2015, and for each of the ten-year blocks 1986-1995, 1996-2005 and 2006-2015 respectively, in order to:

- 1) Summarize, from a **specific analysis** of relevant legal judgements, the **quantums** of minority discounts determined by Canadian lower and appeals courts (“Courts”) over time for specific sizes of business interests, and the **factors** considered by the Courts in arriving at such quantums.
- 2) Identify if there have been any **trends** in the application and quantum of minority discounts over time. In particular, have minority discounts for specific sizes of business interests been increasing or decreasing over time?

- 3) Summarize, in an **overall** manner, how courts have **understood and applied** the concept of minority discounts. For instance, what is the current “state of the art” with respect to Canadian case law on minority discounts? In which contexts do Courts apply discounts for minority business interests and in which contexts do they not? What overall criteria do Courts consider in deciding on a particular quantum of discount?
- 4) Identify if there are any **opportunities** for the valuation community to better educate the legal community and the court with respect to minority discounts.

2.1 Relevance

Research findings in respect of the above-noted areas of inquiry will be useful for Canadian Chartered Business Valuators (“CBVs”) who, during the course of their practice, may need to determine the appropriate quantum of minority discount for a less-than-controlling business interest. Moreover, an appreciation of any trends in the quantum of discounts applied by the Courts will provide for a more holistic appreciation of the context in which minority discounts are determined, and, hopefully, a more thoughtfully considered determination of the quantum of minority discounts by CBVs. In addition, the identification of opportunities to educate the legal community and judiciary with respect to minority discounts will hopefully enhance the robustness of legal decision making and adjudication in this area.

3.0 RESEARCH METHODOLOGY

In order to address the above-noted research questions, Canadian case law for the period 1986 to 2015 was analyzed to identify legal judgments dealing with minority discounts. Specifically:

- 1) A key word search using different permutations of the words “minority discount” was run against the legal judgments archived online at the Canadian Legal Information Institute (“CanLII”) website. This resulted in the identification of **204** legal judgments over this time period which had some mention of the term.

- 2) Each of these judgments was then reviewed in order to exclude those legal judgments where minority discounts were only mentioned peripherally or where the legal judgments did not address issues associated with the application and quantum of minority discounts in a substantive manner. **122** legal judgments were identified for detailed analysis in this manner (the “relevant judgments”). These represented **7,023** pages of text.
- 3) The relevant judgments were analyzed in detail to identify the type of case (matrimonial, commercial litigation etc.), the description of the business interest being valued, the size of the business interest being valued, whether a minority discount was deemed relevant by the judge in question, the quantum of such minority discount and the factors considered by the judge in arriving at the quantum. Some judgments dealt with the valuation of multiple minority interests, and therefore provided additional data points. These details were summarized into schedules. Overall, the **122** relevant legal judgments provided **133** data points (the “relevant data points”).
- 4) Some of the relevant judgments dealt with situations of alleged shareholder oppression. Where oppression was proven, the judge usually did not apply a minority discount to value the respective minority interests. While these shareholder oppression cases did not provide conclusive data with respect to the quantum of minority discounts, the judgments in question still provided useful information. For example, various such judgments set out the possible minority discounts that would have applied if a finding of oppression had not been proven and the criteria for doing so, insights into the judge’s overall acceptance of the concept of minority discounts and the underlying case law upon which such acceptance was founded, criteria for proving or disproving oppression, and the criteria (i.e. exceptions) that would allow for a minority discount to be applied even in a situation of shareholder oppression. In short, oppression cases were helpful, were analyzed and summarized.
- 5) Where judgments did conclude on the quantum of minority discounts, the summarized data was then input into various matrices and charts, and observations were formulated as set out further herein.

Based on the nature of the relevant cases identified, legal judgments were categorized as matrimonial, commercial litigation (primarily shareholder and post-purchase price disputes), other litigation cases (including income tax and insolvency matters) and oppression cases (including minority oppression and shareholder dissent matters).

A 30-year period was chosen in order to focus on more recent (and, therefore, more relevant judgments) and provide a long-enough time period from which to identify a sufficient number of relevant judgments, while limiting the total number of judgments to a number that was manageable for analysis.

In a few instances, the judgment of the court of first instance was subsequently appealed, and the appeal dealt with minority discounts. As we were interested in the rationale and thought process of both the initial court and appeal court, we have considered, included and summarized data with respect to both the initial judgment and the subsequent appeal.

The number and types of relevant data points that were analyzed were as follows:

Table 1

Number and Type of Relevant Data Points					
	Matrimonial Cases	Commercial Litigation Cases	Oppression Cases	Other Litigation Cases	Total Relevant Data Points
	a	b	c	d	a+b+c+d
1986 to 1995	8	2	10	1	21
1996 to 2005	15	13	25	1	54
2006 to 2015	25	14	16	3	58
Total	<u>48</u>	<u>29</u>	<u>51</u>	<u>5</u>	<u>133</u>

3.1 Caveats

The research methodology set out above has several inherent limitations.

Although every attempt was made, through word searches, to identify relevant judgments, this is not a perfect exercise, and there is no guarantee that every relevant judgment was identified. Moreover, we referred to one legal database, CanLII. Other legal databases exist, and, as such, may have provided additional/different relevant judgments in response to our word searches.

Some judgments were rather voluminous and discussed a number of complex legal and factual issues in addition to minority discounts. While a good faith attempt was made to accurately summarize the salient data points as they related to minority discounts (as detailed below), there is no guarantee that every nuance was perfectly captured.

The probative value of the judgments themselves varied. Some judgments were shorter while others were longer, and some judgments discussed minority discounts in more detail while others in less detail. The data, in short, varied in consistency.

Finally, this research focuses on legal judgments. While the results of the research, in the author's view, are relevant and useful, this research does not replace the need for a broader study of minority discounts using Canadian public or private market merger and acquisition transactions or other sources.

4.0 SCOPE OF REVIEW

The documents and information reviewed and relied upon in preparing this paper are set out in Appendix A.

5.0 SUMMARY OF SIGNIFICANT FINDINGS

Pursuant to the research methodology, scope of review, caveats and limitations as set out herein, significant research findings were as follows:

- 1) With respect to the average size of minority discounts between 1986 and 2015, matrimonial and commercial cases provided numerous relevant data points for analysis, while oppression and other litigation cases provided fewer. When all cases were considered as a whole, out of the data points analyzed, the average size of minority interest valued was

27%, and the corresponding average size of minority discount percentage applied was 24% as set out in Table 2a below.

The average size of minority discount applied in matrimonial cases was lower than in commercial litigation cases. Overall, in many matrimonial situations, the companies being valued were closely held family companies or companies with a two or so owners who had worked together for many years as compared to commercial litigation contexts which tended not to be closely held family companies, and in which a larger number of shareholders were involved.

Table 2a

Size of Minority Discount Over Time - All Cases					
	Total Relevant Data Points	Minority Discount Not Applied	Minority Discount Applied	Average Size of Minority Interest %	Average Size of Minority Discount %
	a = b + c	b	c	Subset of c	Subset of c
1986 to 1995	21	12	9	20%	20%
1996 to 2005	54	46	8	41%	17%
2006 to 2015	58	24	34	29%	24%
Total	133	82	51	27%	24%

- 2) With respect to the size of minority discounts in relation to the size of business interests, between 1986 and 2015, the sizes of minority discounts did not increase as the sizes of business interests decreased.

A review of the comments made by judges in the relevant cases suggests that while the size of a particular business interest does influence the quantum of minority discount, there are various other contextual factors that are also considered.

A summary of the average size of minority discount for different sizes of business interests between 1986 and 2015, without segregation by type of case or decade, is as follows:

Table 2b

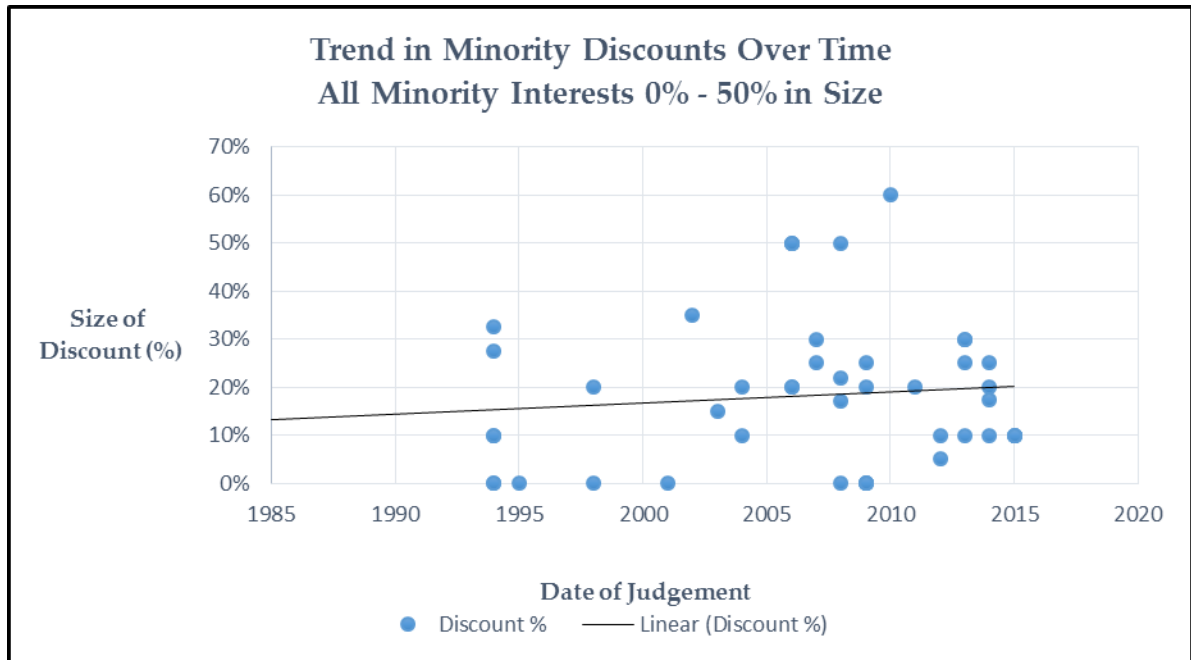
	All Years, All Types of Cases		
	Total Relevant Data Points	Minority Discount Applied	Average Size of Minority Discount %
Size of Interest			
0-10%	13	4	20%
11-20%	19	7	18%
21-30%	32	18	21%
31-40%	16	9	25%
41-50%	36	13	9%
50% +	2	0	n/a
Various	3	0	n/a
Not specified	12	0	n/a
Total	133	51	19%

- 3) With respect to the trend in the quantum of minority discounts over time, the trend line for all size categories demonstrates a gradual increasing trend over time.

Individual relevant judgments suggest that some part of this apparent increase is certainly due to the specific contextual facts of each case.

A summary of the average size of minority discount for different sizes of business interests between 1986 and 2015, without segregation by type of case or decade, is as follows:

Table 2c



- 4) Overall, during the period 1986 to 2015, Canadian courts have accepted the concept of minority discounts and have applied these in circumstances where they have deemed these relevant.

It is interesting to note that, based on fact circumstances, judges may make exceptions and apply minority discounts even in oppression cases, particularly when the plaintiff/applicant's own "misconduct" led to their exclusion from the company in question.

- 5) Many court judgments aggregate minority and marketability discounts together. There is an opportunity for the valuation community to better educate the legal community and the court with respect to the differences between minority discounts and marketability discounts, particularly where marketability discounts should be separate and apart from minority discounts.

Part II: Literature and Theory

6.0 MINORITY DISCOUNTS – THE LITERATURE AND THEORY

The primary purpose of this paper is to carry out empirical research with respect to Canadian judgments for the period 1986 to 2015 as described above. Therefore, the paper does not delve into a detailed discussion of theory as set out in valuation literature. As such, the below represents a **brief** overview of the theory, to establish context.

6.1 Minority Shareholders and Minority Discounts

A minority interest is defined as an ownership interest that is less than 50% of the voting interest in a business enterprise.² Relative to a controlling shareholder, among other things, a minority shareholder cannot usually (i.e. unilaterally):

- 1) Control the operations and strategic direction of a business;
- 2) Sell, liquidate, dissolve or recapitalize the business;
- 3) Declare dividends;
- 4) Change the articles of incorporation or by laws;
- 5) Hire or fire management and establish management compensation; and,
- 6) Have the business purchase or divest assets.

A minority shareholder is not generally able to control his or her own destiny.³ Given the lack of control, an arm's length purchaser will usually require a reduction to the pro-rata en bloc value of a company's equity in order to purchase a minority interest.

The size of a minority discount generally varies with the ability of minority shareholders to be able to defend against majority oppression or exert influence on the company and with the extent to which minority shareholders are economically disadvantaged.⁴

² Practice Bulletin No. 2: International Glossary of Business Valuation Terms. Canadian Institute of Chartered Business Valuators, 2001.

³ Control Premiums, Minority Discounts and Marketability Discounts. Philip Saunders. 2006. Pg. 3.

⁴ Control Premiums, Minority Discounts and Marketability Discounts. Philip Saunders. 2006. Pg. 3.

Specifically, the size of a minority discount may be impacted by one or more of the following, among others:

- 1) The size of the minority shareholding, and the number and relative sizes of the other shareholdings in a company;
- 2) The existence of a shareholders' agreement;
- 3) The relationship of shareholders with each other;
- 4) Whether group or family control exists;
- 5) The ability of a minority shareholder to influence management policy;
- 6) Dividend history of the company; and,
- 7) The "nuisance ability" of the minority shareholding to block, alter or delay corporate actions initiated by the controlling shareholder.

6.2 Existing Data on the Quantum of Minority Discounts

Most data available to quantify minority discounts is US-based and is derived from "the premiums for control" paid to acquire controlling interests in public market merger and acquisition transactions. Publicly traded shares tend to be minority interests and, therefore, are inherently priced as such. Control premiums are observed in the public securities markets with regularity as publicly traded companies are acquired by or merge with other (generally public) companies.⁵ Historical studies have suggested that when takeovers of companies whose shares are publicly traded occur, average takeover prices are often in the order of 30% greater than the trading prices prior to a takeover announcement, although the range of premiums varies significantly.⁶ The percentage difference between the takeover price and the previous market trading price may be

⁵ A Brief Review of Control Premiums and Minority Interest Discounts. Z. Christopher Mercer. Pg. 368.

⁶ The Valuation of Business Interests. Ian R. Campbell and Howard E. Johnson. Canadian Institute of Chartered Accountants. 2001. Pg. 488.

viewed as a proxy for minority discounts.⁷ That is, the quantum of a minority discount is the inverse of the “premium for control”.^{8 9}

For example, if an average control premium of 40% is observed, then the implied minority discount is $[1 - 1 / [1 + 40\%]]$, which is 28.6%.

The Factset Mergerstat/BVR Control Premium Study (“the Mergerstat Study”), a database/publication which is updated quarterly, is widely regarded as one of the most comprehensive sources of empirical data with respect to control premiums.¹⁰ The Mergerstat Study captures transactions whereby 50.01 percent or more of a company was acquired, and where the target company was publicly traded.¹¹ Acquisition data and the calculated control premiums are provided for each transaction included in the data set, and are summarized by industry. For example, for the 12-months ended December 31, 2014, the median control premium for all transactions was 27.2%, and for the 12-months ended December 31, 2015, the median control premium for all transactions was 31.8%.¹² These imply minority discount percentages of approximately 21.4% for 2014 and 24.1% for 2015.

Other sources of empirical data exist with respect to historical control premiums and implied minority discounts. However, given that the empirical findings of such studies are not the primary focus of this paper, they will not be further discussed henceforth.

⁷ The Lawyer’s Business Valuation Handbook. Shannon Pratt. American Bar Association. Pg. 201.

⁸ See for example, A Brief Review of Control Premiums and Minority Interest Discounts. Z. Christopher Mercer. Pg. 368; Business Valuation: A Primer for the Legal Profession. Jeffrey M. Risius. American Bar Association. 2007. Pg. 155; and, The Value of Control: Control Premiums, Minority Interest Discounts, and the Fair Market Value Standard. Kevin Kreitzman. April 15, 2008. Pg. 3.

⁹ The minority discount is usually calculated as follows:
Minority Discount Percentage = $[1 - 1 / [1 + \text{Control Premium Percentage}]]$.

¹⁰ For example, see Business Valuation Discounts and Premiums Second Edition, Chapter 3. Shannon Pratt. John Wiley & Sons. 2009. Pg. 41.

¹¹ Factset Mergerstat/BVR Control Premium Study, 3rd Quarter 2016. About the Control Premium Study.

¹² Factset Mergerstat/BVR Control Premium Study, 3rd Quarter 2016. Page 3.

Overall, the empirical data on control premiums and the calculations of minority discounts derived from such sources is primarily US-focused and tends to focus on larger, publicly traded companies. Moreover, the data thus obtained has inherent challenges such as, among various others:¹³

- 1) Where the shares of the acquired public company were actively traded with widely disseminated corporate information prior to the bid, the control premium may relate to purchaser perceived synergies, not exclusively to a premium for control.
- 2) It is not always the case that the daily trading prices of publicly traded shares incorporate a minority discount, and are freely traded. Where shares are not widely traded, the premium may reflect an elimination of illiquidity. Moreover, sometimes, news of an acquisition may have already been incorporated into share prices even before an official announcement.
- 3) Takeover premiums reflect completed transactions. The data does not reflect transactions that were considered but not pursued.

Notwithstanding the existence of the above data, there is a considerable degree of professional judgment that is required when determining the quantum of minority discounts, depending on the context of each particular situation.^{14 15}

Moreover, there is no Canadian empirical data on the quantum of minority discounts which focuses on the shares of private companies and comparatively smaller companies.

¹³ The Valuation of Business Interests. Ian R. Campbell and Howard E. Johnson. Canadian Institute of Chartered Accountants. 2001. Pg. 488-489.

¹⁴ The Lawyer's Business Valuation Handbook. Shannon Pratt. American Bar Association. Pg. 201

¹⁵ The Valuation of Business Interests. Ian R. Campbell and Howard E. Johnson. Canadian Institute of Chartered Accountants. 2001. Pg. 479-480.

6.3 Minority Discounts and Marketability Discounts

Marketability discounts relate to the inability of a shareholder to deliver to a purchaser an investment that is immediately liquid. A marketability discount relates to an amount or percentage deducted from the value of an ownership interest to reflect the relative absence of marketability.¹⁶

Although the concepts of a minority discount and a marketability discount are distinct, the line between them is blurred and the factors giving rise to each are frequently common to both.¹⁷

The focus of this paper is on minority discounts. The relevant judgments were specifically identified because they deal with minority discounts. In some cases, where the judgments separately identify marketability discounts, these have been identified and noted.

6.4 Fair Market Value and Fair Value

In a valuation, the term fair market value refers to the price, expressed in terms of cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arms-length in an open and unrestricted market, when neither is under compulsion to buy or sell and when both have reasonable knowledge of the relevant facts.¹⁸

Meanwhile, fair value has generally been interpreted by Canadian Courts to mean fair market value without the application of a minority discount.¹⁹ As discussed subsequently, in oppression cases Canadian Courts usually employ the concept of fair value.

¹⁶ Practice Bulletin No. 2: International Glossary of Business Valuation Terms. Canadian Institute of Chartered Business Valuators, 2001.

¹⁷ The Valuation of Business Interests. Ian R. Campbell and Howard E. Johnson. Canadian Institute of Chartered Accountants. 2001. Pg. 476.

¹⁸ Practice Bulletin No. 2: International Glossary of Business Valuation Terms. Canadian Institute of Chartered Business Valuators, 2001.

¹⁹ Canada Valuation Service, 2012 Student Edition. Carswell. 4-13.

Part III: Empirical Analysis

7.0 OVERALL SUMMARY OF LEGAL JUDGMENTS REVIEWED, 1986 TO 2015

7.1 Summary

Based on the methodology outlined above, the following represents a summary of the average size of minority discount and the average size of business interest valued, by the type of case (matrimonial, commercial litigation etc.).²⁰

Table 3a

	I: Matrimonial Cases				
	Total Relevant Data Points	Minority Discount Not Applied	Minority Discount Applied	Average Size of Minority Interest %	Average Size of Minority Discount %
	a = b + c	b	c	Subset of c	Subset of c
1986 to 1995	8	1	7	27%	7%
1996 to 2005	15	11	4	37%	10%
2006 to 2015	25	5	20	32%	19%
Total	48	17	31	32%	12%

²⁰ Note that the "average" figures presented in the tables are for summary purposes only. The determination of a minority discount in any case requires a consideration of the specific contextual facts of that case and the exercise of prudent professional judgment.

Table 3b

II: Commercial Litigation Cases					
	Total Relevant Data Points	Minority Discount Not Applied	Minority Discount Applied	Average Size of Minority Interest %	Average Size of Minority Discount %
	a = b + c	b	c	Subset of c	Subset of c
1986 to 1995	2	1	1	13.50%	Not specified
1996 to 2005	13	9	4	45%	23%
2006 to 2015	14	6	8	21.84%	25%
Total	29	16	13	27%	24%

Table 3c

III: Oppression Cases					
	Total Relevant Data Points	Minority Discount Not Applied	Minority Discount Applied	Average Size of Minority Interest %	Average Size of Minority Discount %
	a = b + c	b	c	Subset of c	Subset of c
1986 to 1995	10	10	0	n/a	n/a
1996 to 2005	25	25	0	n/a	n/a
2006 to 2015	16	12	4	20%	31.67%
Total	51	47	4	20%	32%

Table 3d

IV: Other Litigation Cases					
	Total Relevant Data Points	Minority Discount Not Applied	Minority Discount Applied	Average Size of Minority Interest %	Average Size of Minority Discount %
	a = b + c	b	c	Subset of c	Subset of c
1986 to 1995	1	0	1	18%	33%
1996 to 2005	1	1	0	n/a	n/a
2006 to 2015	3	1	2	42%	20%
Total	5	2	3	30%	27%

Table 3e

V: Total - All Cases					
	Total Relevant Data Points	Minority Discount Not Applied	Minority Discount Applied	Average Size of Minority Interest %	Average Size of Minority Discount %
	a = b + c	b	c	Subset of c	Subset of c
1986 to 1995	21	12	9	20%	20%
1996 to 2005	54	46	8	41%	17%
2006 to 2015	58	24	34	29%	24%
Total	133	82	51	27%	24%

7.2 Commentary

Matrimonial and Commercial Litigation Cases

Matrimonial cases provided the largest number of relevant data points with respect to minority discounts. Out of the 31 data points analyzed, the average size of minority interest valued was 32%, and the average size of minority discount percentage applied was 12% between 1986 and 2015.

Commercial litigation cases provided the second largest number of relevant data points. Out of the 13 data points analyzed, the average size of minority interest valued was 27%, and the average size of minority discount percentage applied was 24% between 1986 and 2015.

The average size of minority discount applied in matrimonial cases was lower than in commercial litigation cases. Overall, in many matrimonial situations, the companies being valued were closely held family companies or companies with a two or so owners who had worked together for many years. Therefore, lower minority discounts were deemed appropriate (or no minority discounts in the case of some closely held family companies) relative to commercial litigation cases, which tended not to be closely held family companies, and in which a larger number of shareholders were involved.

For example, in a matrimonial case, *A.A. v. Z.G.*²¹, one of the issues was the valuation of a 24% interest in a family-owned business, 808276 Ontario Inc. ("808"), which was involved in the real estate/construction industry. The valuator for the husband applied a 30% reduction for the minority interest 808 had in several joint real estate ventures. He applied a further 10% discount to the husband's minority shareholdings in 808. The valuator for the wife "accepted that it is a generally customary practice to discount minority interests in the public market. [She] opined that 808 was closely held and there was no evidence of any disagreement within the family members, who together owned 100% of 808, to warrant a minority discount. While the percentage interests of the shareholders are different, there was no evidence that the shares of the various family members were treated differently."²² The judge accepted that a minority discount was not appropriate in this privately held "family" corporation.

²¹ 2015 ONSC 4397.

²² 2015 ONSC 4397 at Par. 234.

Similarly in another matrimonial case, *Blatherwick v Blatherwick*²³ a number of minority business interests needed to be valued including shares of Seasons Capital Limited, shares of Blatherwick Holdings Inc., shares of Capitalrich Group Limited, and shares of Seasons Limited – Macao Commercial Offshore, all directly or indirectly involved in the Halloween costumes and related products business. The judge noted that the husband’s valuator “applied a minority and illiquidity discount of 5% to 35% depending on the particular company. For Seasons HK she applied a discount of 27.45% to 31.80% and for Seasons Macao of 30.27% to 35.16%.”²⁴ Meanwhile, the wife’s valuator applied “a minority and illiquidity discount of 0% to 20% depending on what he considered to be the “unique factors in each corporation”.”²⁵ The judge concluded that due to the closely held nature of the various ownership interests, “a minority discount is appropriate and I accept the lower minority discounts calculated by [the wife’s valuator] in his reports.”²⁶

Meanwhile in commercial litigation cases, interests tended not to be closely held or family owned, and other criteria were examined in arriving at a decision as to the quantum of minority discount.

For example, in *Farwell v. Integrated Management & Investments Inc.*²⁷, one of the issues was the valuation of a number of minority interests of a group of plaintiffs, ranging in size from 0.69% to 17.97%, or an average of 2.6%, owning interests in Ol’Grandad’s Snacks Inc., distributor of potato chips. An expert testified that “a typical minority/marketability discount was in the range of 10 to 40%”²⁸ The judge concluded on a 25% “minority/marketability discount”.²⁹

In addition, in *Ishani v. Kulasingham*³⁰, the issue was the valuation of a partnership interest in Joint Therapy, a medical/physiotherapy services company. In arriving at a 20% to 30% minority discount, the judge cited that the lack of a partnership agreement

²³ 2015 ONSC 2606.

²⁴ 2015 ONSC 2606 at Par. 376.

²⁵ 2015 ONSC 2606 at Par. 377.

²⁶ 2015 ONSC 2606 at Par. 380.

²⁷ 2007 ONSC 13512.

²⁸ 2007 ONSC 13512 at Par. 70.

²⁹ 2007 ONSC 13512 at Par. 71.

³⁰ 2014 ONSC 6957.

made it hard to get money out of the business and that there was no evidence that the other two partners would bid for the remaining third partner's interest.

Oppression and Other Litigation Cases

It is interesting that minority discounts were applied in some oppression cases. Normally, in most oppression cases no minority discounts are applied.

For example, in an oppression case involving the “squeeze out” of dissenting minority shareholders, *Ford Motor Company of Canada, Ltd. v. Ontario Municipal Employees Retirement Board*³¹, the judge noted that “although the jurisdiction may be broad and flexible, the section does not confer on the court an unfettered discretion to do whatever the judge feels would be fair. The determination of fair value must be anchored in the principle that gives rise to the jurisdiction. Here, where the triggering event is a squeeze out of minority shareholders, the notion of fair value involves an exercise in appraisal of the present market value of the shares but taking into account that this is a forced sale that deprives the shareholders of the opportunity to share in the fortunes of the corporation. Thus, as was conceded in this case, the fair value should not be reduced for a minority discount.”³²

Similarly, in *Brant Investments Ltd. v. KeepRite Inc.*³³ the judge noted that “it has been accepted by counsel for both parties, correctly I think, that there should be no minority discount in the determination of “fair value”. To do so would be unfair to the minority. By parity of reasoning it seems to me that the majority, forced against its inclination to acquire the shares of the minority, ought not to be obliged to pay a premium for those shares. It seems to me therefore that the determination of “fair value” by a court under s. 184(3) should seek to avoid both and to give to the minority the value of its investment without either discount or premium.”

However, based on fact circumstances, judges may make exceptions and apply minority discounts in oppression cases. In these cases, the judge in question saw fit to include a minority discount when valuing the shares because the plaintiff/applicant’s own “misconduct” led to their exclusion from the company in question. In many of these

³¹ 2006 ONCA 15.

³² 2006 ONCA 15 at Par. 132.

³³ 1991 ONCA 2705.

cases, the judge cited the criteria in *Re Bird Precision Bellows Ltd.*³⁴, affirmed by the Court of Appeal, in which the judge held that there might be circumstances where a minority shareholder whose interests had been unfairly prejudiced by the conduct of the majority but who had nevertheless so acted as to deserve his exclusion from the company, would be entitled to relief. However, he would be not entitled to have the majority purchase the shares at their full fair value but at a minority discount.

For example, in *Derdall Irrigation Farms Ltd. v. Derdall*³⁵, the issue was the valuation of a 33.3% interest in Derdall Irrigation Farms Ltd. The court of first instance applied a minority discount of 20%. Upon appeal, the court called for a significantly deeper 60% discount, citing four factors that justified such a discount. These were:

- 1) Boyd, the minority shareholder was seeking to share in the increase in the value of the business assets, without having fulfilled his part of the bargain towards the company.³⁶
- 2) Boyd's reasonable expectations when he left the company were adjudged to be "nothing more than minimal".³⁷
- 3) Boyd left to work for his brother and ultimately to establish his own business, which was a competitor.³⁸
- 4) Boyd delayed for many years before he brought an action for redress.³⁹

Overall

Matrimonial and commercial cases provided numerous relevant data points, while oppression and other litigation cases provided fewer.

When all cases were considered as a whole, out of the 51 data points analyzed, the average size of minority interest valued was 27%, and the corresponding average size of minority discount percentage applied was 24% between 1986 and 2015 as set out in Table 3e above.

³⁴ 1984 3 All E.R. 444.

³⁵ 2010 SKCA 104.

³⁶ 2010 SKCA 104 at Par. 42.

³⁷ 2010 SKCA 104 at Par. 43 and 44.

³⁸ 2010 SKCA 104 at Par. 45.

³⁹ 2010 SKCA 104 at Par. 46.

8.0 MINORITY DISCOUNTS BY SIZE OF BUSINESS INTEREST

8.1 Summary

A further analysis was made of the minority discounts ascribed to different sizes of business interests. Business interests were segregated into size categories 0-10%, 11-20%, 21-30%, 31-40% and 41-50%. Using the relevant data points, a summary was made of the average size of minority discount for different sizes of business interests between 1986 and 2015, without segregation by type of case or decade, as follows:⁴⁰

Table 4

	All Years, All Types of Cases		
Size of Interest	Total Relevant Data Points	Minority Discount Applied	Average Size of Minority Discount %
0-10%	13	4	20%
11-20%	19	7	18%
21-30%	32	18	21%
31-40%	16	9	25%
41-50%	36	13	9%
50% +	2	0	n/a
Various	3	0	n/a
Not specified	12	0	n/a
Total	133	51	19%

⁴⁰ Note that the "average" figures presented in the tables are for summary purposes only. The determination of a minority discount in any case requires a consideration of the specific contextual facts of that case and the exercise of prudent professional judgment.

8.2 Commentary

It is interesting to note from the above that the sizes of minority discounts did not increase as the sizes of business interests decreased.

A review of the comments made by judges in the relevant cases suggests that while the size of a particular business interest does influence the quantum of minority discount, there are various other contextual factors that are also considered.

For example, in *Matthews v. Accent Lines (1988) Ltd.*⁴¹, a 50% interest in a bus transportation company received a 20% minority discount to reflect lack of control. Counsel for the Defendant argued that a minority discount of 35% should be applied, which the judge believed was too high. The judge noted that “because Counsel for Matthews [the plaintiff] did not argue against [the application of a minority discount], and presumably Counsel for the Defendants relied on this concession, I have nevertheless, left the minority discount in the calculations.”

Meanwhile, in *Grant v. Grant*⁴², a 12.5% interest in C.W. Farms Limited Partnership, a farming business, received a 0% minority discount. The judge noted that “it is true that Mr. Grant owns a minority interest in C.W. Farms, but in addition to controlling 12.5% of the shares, Mr. Grant is one of three members of the management team. Mr. Grant is also the spokesman for a group of other partners, which gives him an additional element of control.”⁴³ The judge also noted that the history of the partnership and the provisions of the partnership agreement also demonstrate that if Mr. Grant sold his partnership units, the likely buyers were the other partners. The judge noted that “taking all of these factors into account, I cannot accept that a minority discount of the magnitude suggested by Mr. B is warranted”⁴⁴ and ascribed a 0% minority discount.

In short, the specific contextual facts of each case determined the quantum of minority discount that was applied.

⁴¹ 1998 ABQB 180.

⁴² 1994 CanLII 974.

⁴³ 1994 CanLII 974.

⁴⁴ 1994 CanLII 974.

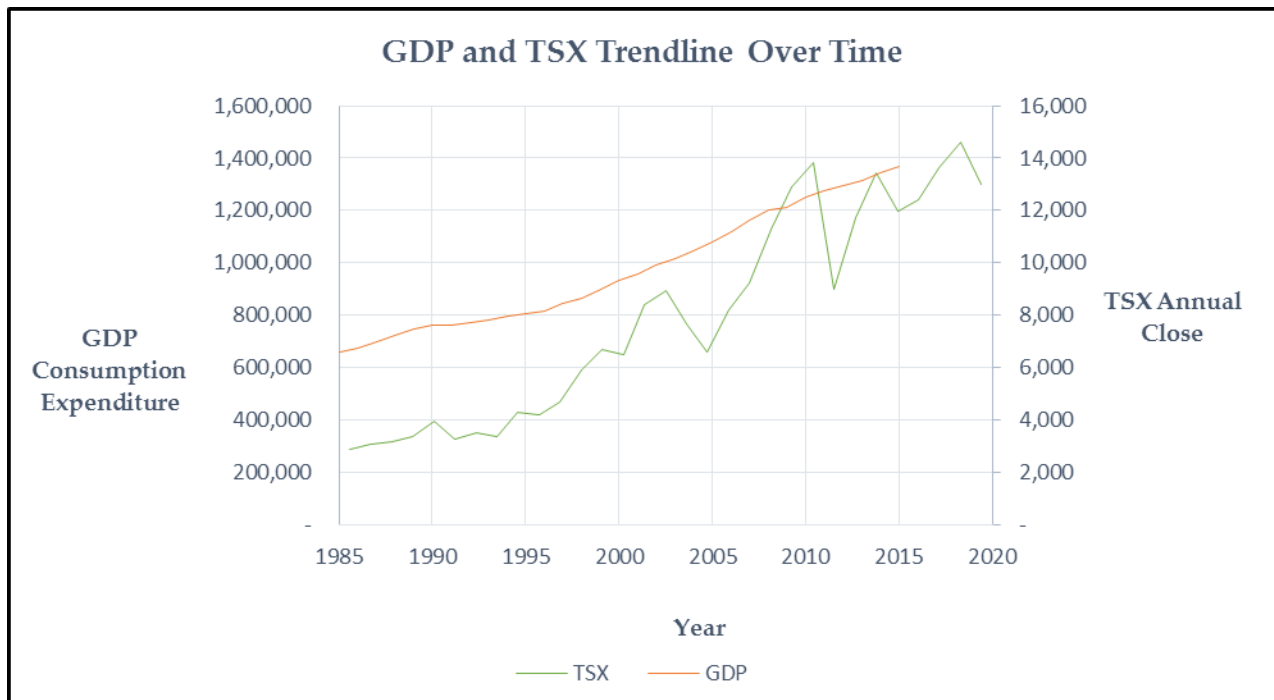
9.0 TRENDS IN MINORITY DISCOUNTS 1986 TO 2015

This focus of this paper now turns to trends in minority discounts over time, if any. The paper attempts to identify if minority discounts for specific sizes of business interests have demonstrated any perceptible increasing or decreasing trend over time.

9.1 Economic Context, 1986 to 2015

By way of a broad economic context, between 1986 and 2015, the S&P/TSX Composite Index (formerly the TSE 300) and the Canadian gross domestic product (as measured based on consumption expenditure) (“GDP”) trended as follows:⁴⁵

Table 5



The S&P/TSX Composite Index and the Canadian GDP both demonstrate an increasing trend over time, albeit the S&P/TSX Composite Index in rather more exciting fashion.

⁴⁵ For context only. We do not suggest that any of the trends in Canadian GDP, the S&P/TSX Composite Index or the overall economy may have impacted the quantum of minority discounts at particular points in time.

9.2 Trend in Minority Discounts

With the larger economic context having been examined, the question that arises is whether minority discounts demonstrated any discernable trend during the time period 1986 to 2015.

Using the relevant data points, a summary of minority discounts over time based on size categories 0-10%, 11-20%, 21-30%, 31-40%, 41-50% and all categories 0-50% is set out in the charts below. A trend line based on the available relevant data points has been plotted on each chart.

Table 6a

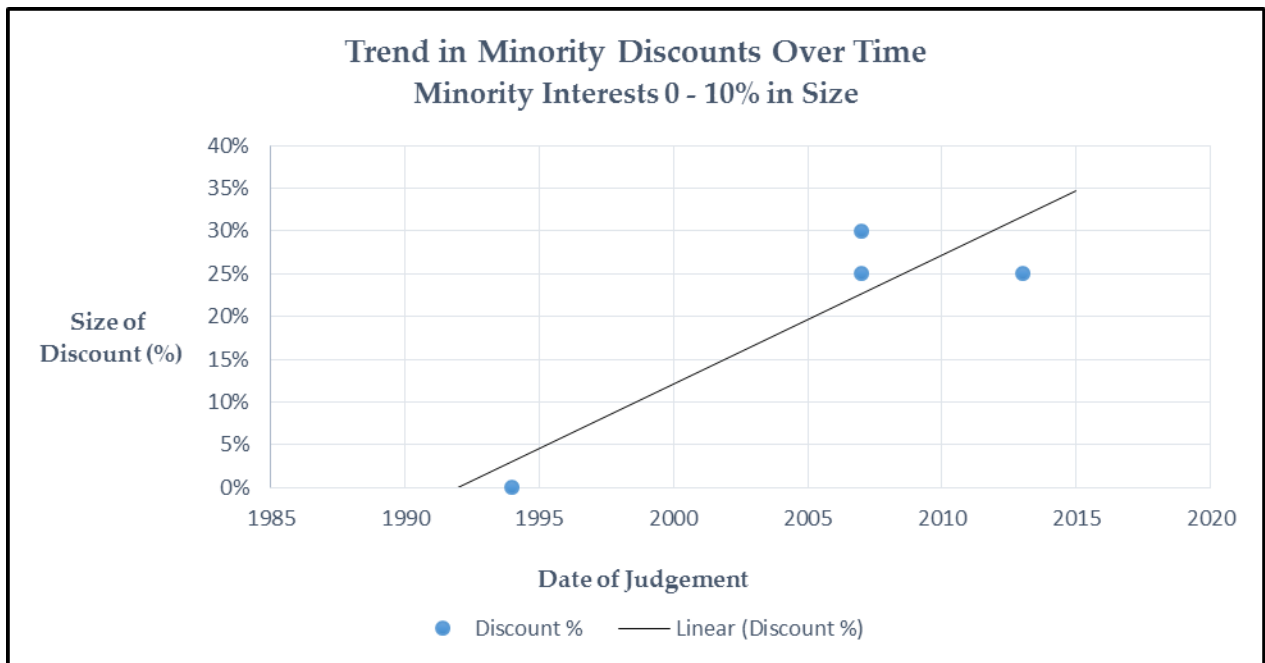


Table 6b

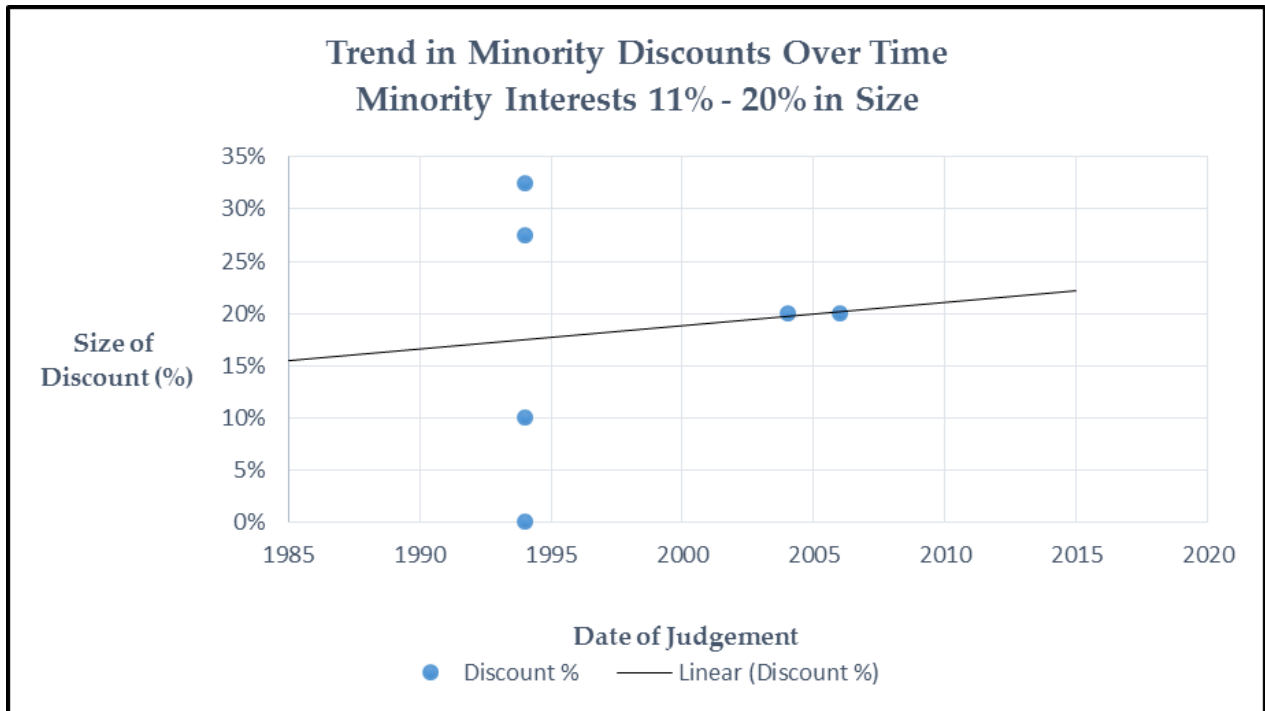


Table 6c

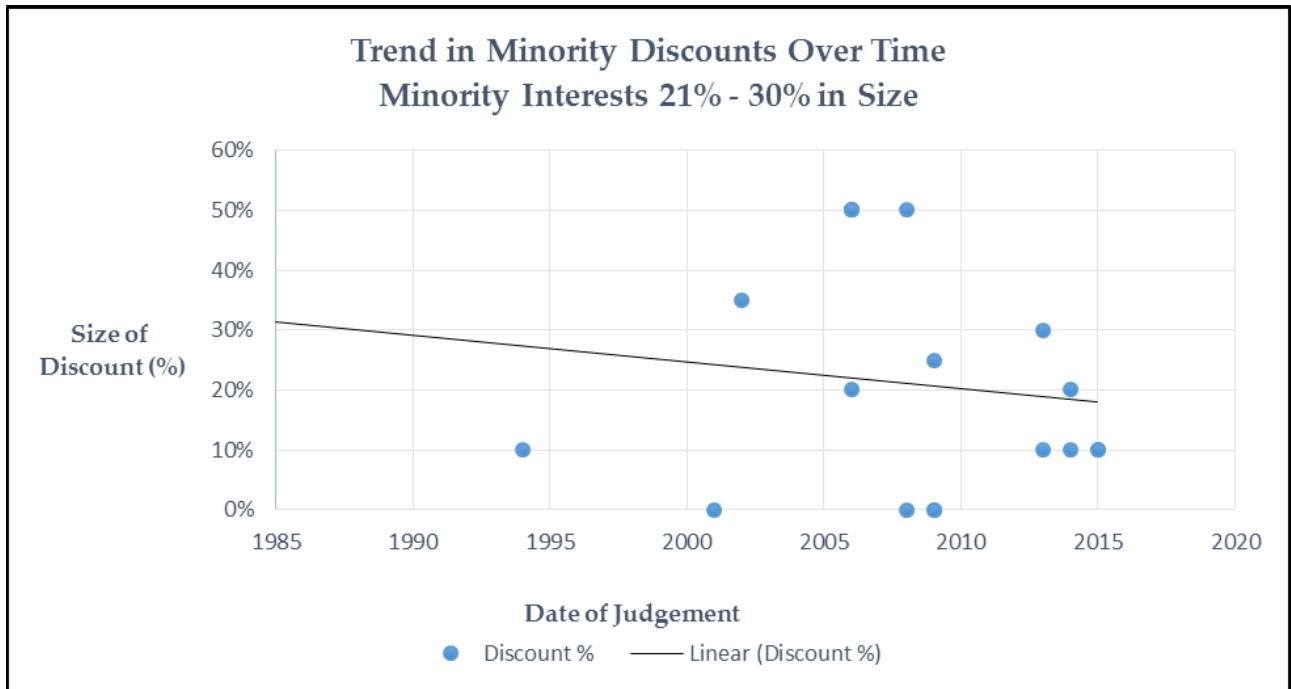


Table 6d

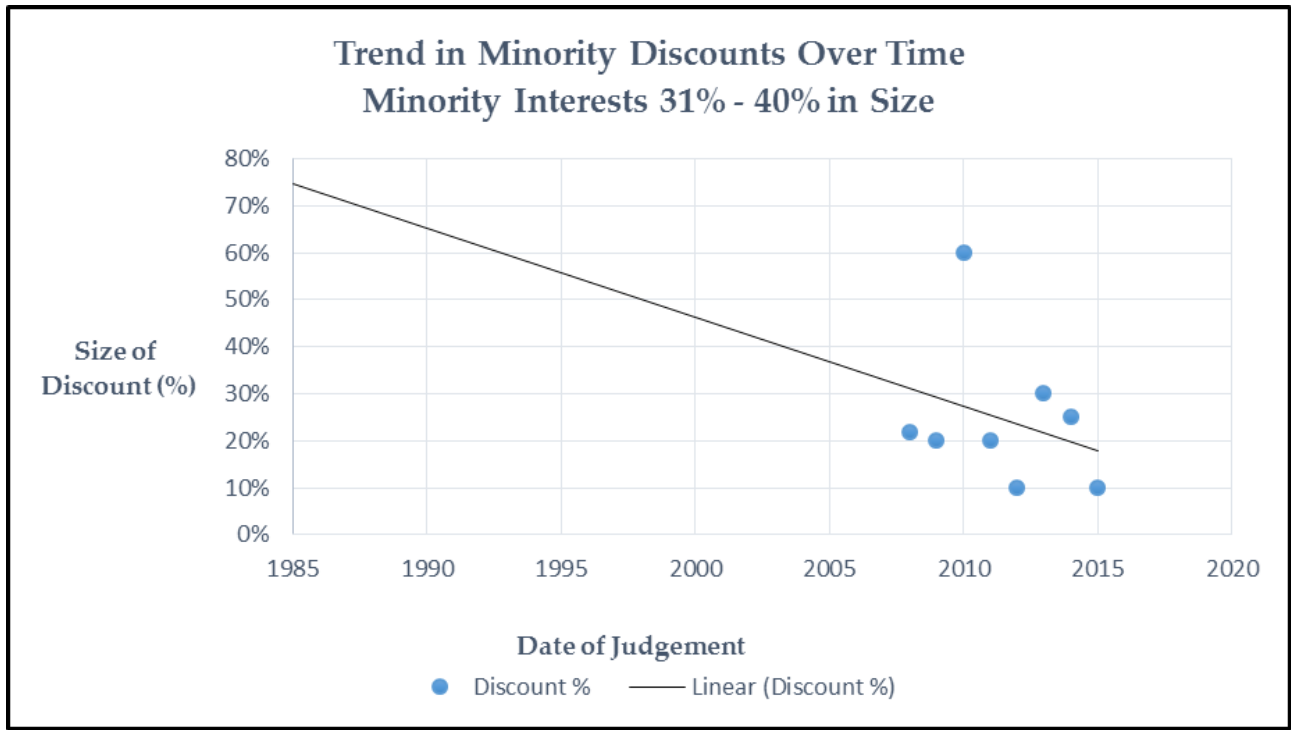


Table 6e

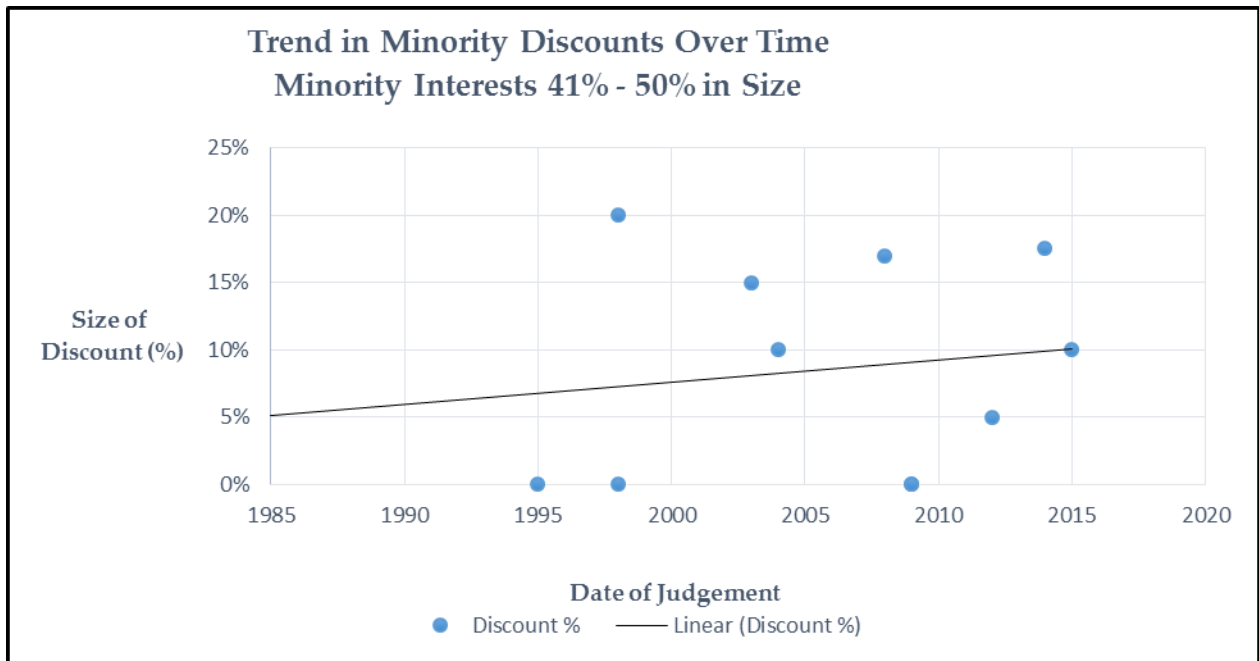
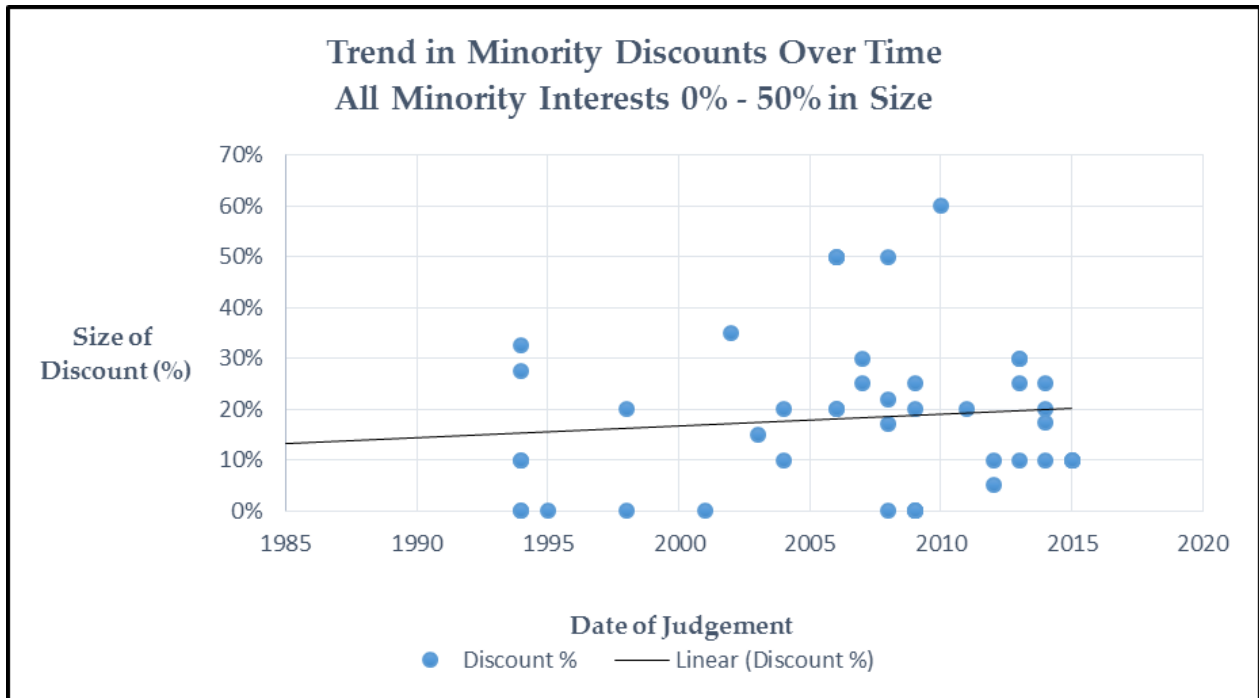


Table 6f



9.3 Commentary

0-10% and 11-20% Size Categories

The trend lines for the 0-10% and 11-20% size categories demonstrate an increasing trend over time. However, given the relatively more limited number of data points, it is difficult to establish a firm trend these size categories.

21-30% and 31-40% Size Categories

The trend lines for the 21-30% and 31-40% size categories demonstrate a decreasing trend over time. While the data points for the 21-30% size category are spread over a larger time period, the data points for the 31-40% size category are concentrated in the 2006 to 2015 time period, making it relatively more difficult to infer a trend over a longer time period for this latter size category.

41-50% Size Category

The trend line for the 41-50% size category demonstrates an increasing trend over time.

All Size Categories

Given the rather differing trends in minority discounts noted for the various size categories, perhaps it is helpful to look at the overall trend in minority discounts for all size categories over time.

Overall, the trend line for all size categories demonstrates a gradual increasing trend over time.

A review of the individual relevant judgments suggests that some part of this apparent increase is certainly due to the specific contextual facts of each case. However, the data nevertheless does demonstrate that there is an overall increasing trend in the quantum of minority discounts over time.

10.0 HOW CANADIAN COURTS HAVE UNDERSTOOD AND APPLIED THE CONCEPT OF MINORITY DISCOUNTS OVER TIME

All things considered, during the period 1986 to 2015, Canadian courts have accepted the concept of minority discounts and have applied these in circumstances where they have deemed relevant.

Matrimonial, Commercial Litigation and Other Litigation (Other than Oppression) Contexts

In matrimonial, commercial litigation and other litigation contexts, courts have referred to the specific contextual facts of each case to establish the quantum of applicable minority discount.

The case of *Blatherwick v Blatherwick*⁴⁶ summarizes the overall approach to specific contextual facts, wherein the court indicated that the setting of a minority discount “is a very subjective area relying upon the valuator’s understanding of the nature of the business, the industry and other specific factors associated with the particular shareholder’s circumstances and then, exercising judgment in a variety of areas to build

⁴⁶ 2015 ONSC 2606.

up or calculate a minority discount.”⁴⁷ Similarly, in *A.A. v Z.G.*⁴⁸, the court noted that “Discounting for a minority shareholder interest is a subjective exercise”.⁴⁹

Various judgments made reference to various contextual factors such as whether (among other things):

- 1) The minority interest was in a closely held family company and whether the family members had worked together for many years, and were likely to continue to do so in the future.⁵⁰
- 2) The minority shareholder had the largest shareholding relative to other shareholders in a particular business.⁵¹
- 3) Any potential buyer of a minority interest would need the assistance of the minority shareholder to transition customers which he or she had dealt with directly for many years.⁵²
- 4) A minority shareholder was part of a group of shareholders who had historically acted in concert to their mutual benefit, and would likely continue to do so, including eventually selling their collective interests together.⁵³
- 5) A minority shareholder was in a leadership role in a company.⁵⁴
- 6) Whether a potential buyer would be available and whether a sale was imminent.⁵⁵
- 7) The financial position of a particular company was robust so as to facilitate a purchase.⁵⁶

⁴⁷ 2015 ONSC 2606 at Par. 375.

⁴⁸ 2015 ONSC 4397

⁴⁹ 2015 ONSC 4397 at Par. 236.

⁵⁰ *A.A. v Z.G.*, 2015 ONSC 4397 at Par. 234.

⁵¹ *Blatherwick v Blatherwick*, 2015 ONSC 2606 at Par. 379.

⁵² *Blatherwick v Blatherwick*, 2015 ONSC 2606 at Par. 379.

⁵³ *JAC v VRC*, 2015 YKSC 15 at Par. 167 and 168.

⁵⁴ *JAC v VRC*, 2015 YKSC 15 at Par. 167, 168 and 198.

⁵⁵ *Reid v. Reid*, 2014 BCSC 1691 at Par. 195.

⁵⁶ *Reid v. Reid*, 2014 BCSC 1691 at Par. 195.

- 8) There would have been an “inside” purchaser (i.e. another shareholder of the company) of the minority interest.⁵⁷
- 9) Relative to a controlling or 50% interest, a minority interest would have an ability to deadlock corporate decisions.⁵⁸
- 10) A shareholders’ agreement exists to offer some protection to a minority shareholder,⁵⁹ and the specific terms of such shareholders’ agreement.
- 11) Prior purchases of minority interests were acquired at a premium as opposed to a discount.⁶⁰
- 12) There was historically evidence of a distribution of any excess cash to its shareholders.⁶¹
- 13) Any prospective purchaser of a minority interest would achieve control, and consequently could compel a company to make any distributions of earnings.⁶²
- 14) There were any special purchasers for the minority interest in question.⁶³
- 15) The size of a specific minority holding relative to other shareholder holdings.⁶⁴
- 16) The actual prices that were paid to acquire minority shareholding interests between shareholders.⁶⁵

⁵⁷ Linn v Frank, 2014 SKCA 87 at Par. 44, 48 and 49.

⁵⁸ Boreta Estate v McRory, 2014 ABQB 498 at Par. 102.

⁵⁹ Brown v. Silvera, 2009 ABQB 523 at Par. 548.

⁶⁰ 2082825 Ontario Inc. v. Platinum Wood Finishing Inc., 2009 CanLII 14394 ON SCDC at Par. 62.

⁶¹ McKinney v. McKinney, 2008 BCSC 709 at Par. 99.

⁶² McKinney v. McKinney, 2008 BCSC 709 at Par. 99.

⁶³ McKinney v. McKinney, 2008 BCSC 709 at Par. 99.

⁶⁴ Rendle v. Stanhope Dairy Farm Ltd. et al., 2003 BCSC 1894 at Par. 75.

⁶⁵ Black v. Black (H.C.J.), 1988 ON SC 4756.

What is interesting from the various relevant judgments is that while Canadian courts are generally accepting of the concept of minority discounts, many times courts do not distinguish between minority discounts and marketability discounts, and instead tend to aggregate minority and marketability discounts together.

For example in *Farwell v. Integrated Management & Investments Inc.* the court did not distinguish between a minority and marketability discount.⁶⁶

In many cases, minority interests are inherently less marketable as well. However, the valuation literature suggests that minority and marketability discounts are generally separate and distinct concepts⁶⁷. While in some minority valuation contexts both may apply, in others it may be necessary to separate the two.

This does suggest an opportunity for the valuation community to better educate the legal community and the court with respect to the differences between minority discounts and marketability discounts, particularly where marketability discounts should be separate and apart from minority discounts.

Oppression Contexts

In oppression contexts, Canadian courts generally do not apply a minority discount. In such circumstances, courts cite *Diligenti v. RWMD Operations Kelowna Ltd.*⁶⁸

For instance, in *1043325 Ontario Ltd. v. CSA Building Sciences Western Ltd.*,⁶⁹ the court noted that “In determining the price to be paid for the shares in circumstances where oppression or unfairly prejudicial conduct has been found, the question is not necessarily what is the market value of the shares but rather what is a fair price or value in the circumstances”.⁷⁰ The court noted that “with regard to whether a minority discount should be applied to the valuation, the authorities I was referred to tend not to take a minority discount into account in oppression proceedings. That seems to accord with the fact that the majority shareholder or the company is acquiring the shares, and

⁶⁶ 2007 ON SC 13512 at Par. 70 and 71.

⁶⁷ The Lawyers Business Valuation Handbook. Shannon Pratt. 2000. Pg. 197.

⁶⁸ 1977 B.C.J. No. 1331 (S.C.).

⁶⁹ 2015 BCSC 1160.

⁷⁰ 2015 BCSC 1160 at Par. 14.

as such the question is not what the shares would have fetched in the marketplace on a sale to a third party who would receive only a minority stake in the company.”⁷¹

However, it is interesting to note that, based on fact circumstances, judges may make exceptions and apply minority discounts even in oppression cases, particularly when the plaintiff/applicant’s own “misconduct” led to their exclusion from the company in question.

In many of these cases, the judge cited the criteria in *Re Bird Precision Bellows Ltd.*⁷², in which the judge held that there might be circumstances where a minority shareholder whose interests had been unfairly prejudiced by the conduct of the majority but who had nevertheless so acted as to deserve his exclusion from the company, would be entitled to relief. However, he would be not entitled to have the majority purchase the shares at their full fair value but at a minority discount.

As previously noted, in the oppression case *Derdall Irrigation Farms Ltd. v. Derdall*⁷³, the court called for a 60% minority discount for a 33.3% minority interest, citing four factors that justified such a discount, all dealing with the behavior of the minority shareholder in question.

It is also interesting to note that even in oppression contexts, it is the position of the majority party or parties that a minority discount inevitably *should* apply, and evidence is led with respect to the quantum of discount that is appropriate.

11.0 SIGNIFICANT FINDINGS AND CONCLUSION

Pursuant to the research methodology, scope of review, caveats and limitations as set out herein, significant research findings were as follows:

- 1) With respect to the average size of minority discounts between 1986 and 2015, matrimonial and commercial cases provided numerous relevant data points for analysis, while oppression and other litigation cases provided fewer. When all cases were considered as a whole, out of the data points analyzed, the average size of minority interest valued was

⁷¹ 2015 BCSC 1160 at Par. 18.

⁷² 1984 3 All E.R. 444.

⁷³ 2010 SKCA 104.

27%, and the corresponding average size of minority discount percentage applied was 24% as set out in Table 2a below.

The average size of minority discount applied in matrimonial cases was lower than in commercial litigation cases. Overall, in many matrimonial situations, the companies being valued were closely held family companies or companies with a two or so owners who had worked together for many years as compared to commercial litigation contexts which tended not to be closely held family companies, and in which a larger number of shareholders were involved.

Table 7a

Size of Minority Discount Over Time - All Cases					
	Total Relevant Data Points	Minority Discount Not Applied	Minority Discount Applied	Average Size of Minority Interest %	Average Size of Minority Discount %
	a = b + c	b	c	Subset of c	Subset of c
1986 to 1995	21	12	9	20%	20%
1996 to 2005	54	46	8	41%	17%
2006 to 2015	58	24	34	29%	24%
Total	133	82	51	27%	24%

- 2) With respect to the size of minority discounts in relation to the size of business interests, between 1986 and 2015, the sizes of minority discounts did not increase as the sizes of business interests decreased.

A review of the comments made by judges in the relevant cases suggests that while the size of a particular business interest does influence the quantum of minority discount, there are various other contextual factors that are also considered.

A summary of the average size of minority discount for different sizes of business interests between 1986 and 2015, without segregation by type of case or decade, is as follows:

Table 7b

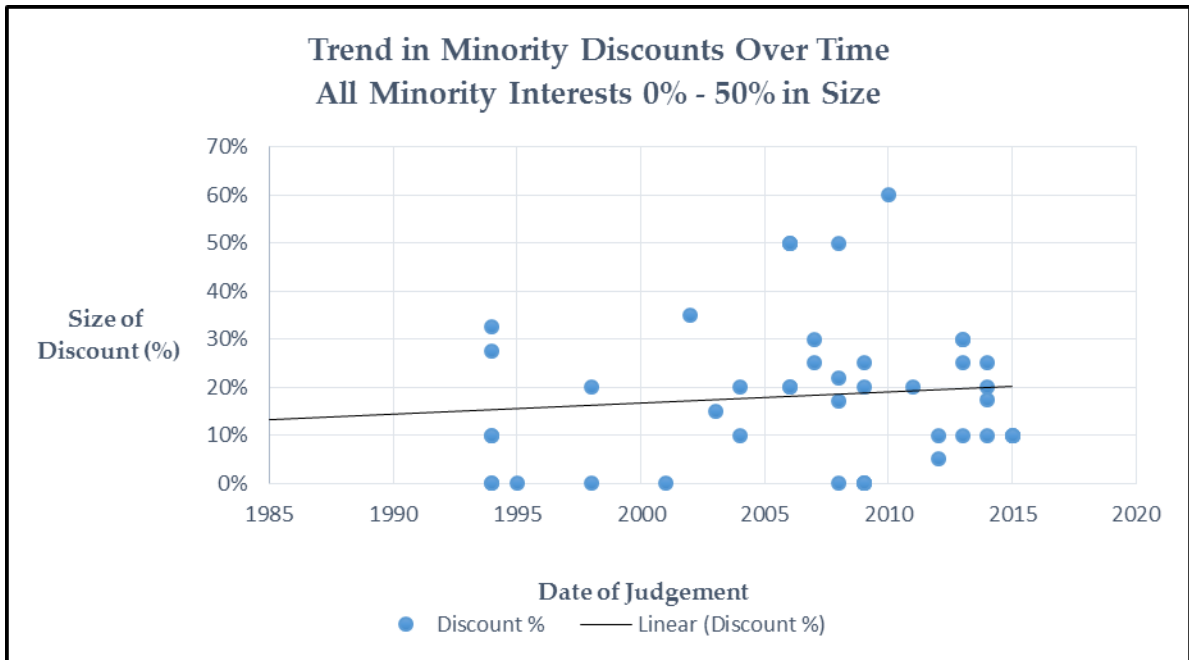
	All Years, All Types of Cases		
Size of Interest	Total Relevant Data Points	Minority Discount Applied	Average Size of Minority Discount %
0-10%	13	4	20%
11-20%	19	7	18%
21-30%	32	18	21%
31-40%	16	9	25%
41-50%	36	13	9%
50% +	2	0	n/a
Various	3	0	n/a
Not specified	12	0	n/a
Total	133	51	19%

- 3) With respect to the trend in the quantum of minority discounts over time, the trend line for all size categories demonstrates a gradual increasing trend over time.

Individual relevant judgments suggest that some part of this apparent increase is certainly due to the specific contextual facts of each case.

A summary of the average size of minority discount for different sizes of business interests between 1986 and 2015, without segregation by type of case or decade, is as follows:

Table 7c



- 4) Overall, during the period 1986 to 2015, Canadian courts have accepted the concept of minority discounts and have applied these in circumstances where they have deemed these relevant.

It is interesting to note that, based on fact circumstances, judges may make exceptions and apply minority discounts even in oppression cases, particularly when the plaintiff/applicant's own "misconduct" led to their exclusion from the company in question.

- 5) Many court judgments aggregate minority and marketability discounts together. There certainly is an opportunity for the valuation community to better educate the legal community and the court with respect to the differences between minority discounts and marketability discounts, particularly where marketability discounts should be separate and apart from minority discounts.

12.0 CONCLUSION

The purpose of this research paper was to address, to some degree, the dearth of relevant Canadian-based data on minority discounts. It is the intention of the paper that the information obtained from the empirical analysis will be found relevant, useful and contribute in some fashion to filling in the lack of Canadian data in this important area of valuations.

This paper is by no means the “be all and end all” of Canadian empirical research on minority discounts. The focus was on legal judgments as one source of empirical data. There are certainly other areas to obtain additional Canadian empirical data, and this paper does not replace the need for a broader study of minority discounts using Canadian public or private market merger and acquisition transactions or other such sources.

The great Detroit rock artist and philosopher, Kid Rock, once said “you get what you put in and people get what they deserve”.⁷⁴ Minority shareholders, too, ought to “get what they deserve” in a valuation of their shares. Following on from the findings of this research paper, valuers can better accomplish this by ensuring that minority discounts are reflective of the specific contextual facts of each case.

⁷⁴ Only God Knows Why. 1998 Lava/Atlantic Records at Stanza 25.

APPENDIX A

WHEN THE WHOLE IS GREATER THAN THE SUM OF ITS PARTS - SCOPE OF REVIEW

In preparing this research paper we have reviewed and relied upon the following information:

LITERATURE

1. Control Premiums, Minority Discounts and Marketability Discounts. Philip Saunders. 2006.
2. The Valuation of Business Interests. Ian R. Campbell and Howard E. Johnson. Canadian Institute of Chartered Accountants. 2001.
3. The Lawyer's Business Valuation Handbook. Shannon Pratt. American Bar Association. 2000.
4. Practice Bulletin No. 2: International Glossary of Business Valuation Terms. Canadian Institute of Chartered Business Valuators, 2001.
5. Business Valuation Discounts and Premiums, second edition. Shannon Pratt. 2009.
6. Valuing a Business, The Analysis and Appraisal of Closely Held Companies, fifth edition. Shannon Pratt. 2007.
7. Valuation Issues Relation to Shares of Private Corporations. Richard M. Wise. 2004.
8. Control and Minority Protection: Canada: International Joint Ventures. Phillip Mohtadi and Sue-Anne Fox. 2010.
9. The Valuation Law Review, Family Law Decisions. The Canadian Institute of Chartered Business Valuators and McCarthy Tetrault. 2002.
10. The Implications of Minority Interest and Stock Restrictions in Valuing Closely-Held Shares. Alan L. Feld. 1974.
11. Family Law Value Handbook. Delbridge Forensic Accounting. 2014.
12. A Brief Review of Control Premiums and Minority Interest Discounts. Z. Christopher Mercer.
13. Business Valuation: A Primer for the Legal Profession. Jeffrey M. Risius.
14. American Bar Association. 2007.

WHEN THE WHOLE IS GREATER THAN THE SUM OF ITS PARTS - SCOPE OF REVIEW

15. The Value of Control: Control Premiums, Minority Interest Discounts, and the Fair Market Value Standard. Kevin Kreitzman. April 15, 2008.
16. Business Valuation Discounts and Premiums Second Edition, Chapter 3. Shannon Pratt. John Wiley & Sons. 2009.
17. Factset Mergerstat/BVR Control Premium Study, 3rd Quarter 2016.

OTHER SOURCES

18. CanLII (Canadian Legal Information Institute) website. See Schedules 4a-c for specific case listing.
19. Bank of Canada website.
20. Statistics Canada website.

SCHEDULES

When the Whole is Greater than the Sum of Its Parts:

An Analysis of Trends in the Application and Quantum of Minority and Marketability Discounts in Canadian Court Judgments Over Time

Overall Summary of Legal Judgments Reviewed, 1986 to 2015 [1] [2]

Schedule 1

I: Matrimonial Cases

	Total Relevant Data Points	Minority Discount Not Applied	Minority Discount Applied	Average Size of Minority Interest %	Average Size of Minority Discount %
	a = b + c	b	c	Subset of c	Subset of c
1986 to 1995	8	1	7	27%	7%
1996 to 2005	15	11	4	37%	10%
2006 to 2015	25	5	20	32%	19%
Total	48	17	31	32%	12%

II: Commercial Litigation Cases

	Total Relevant Data Points	Minority Discount Not Applied	Minority Discount Applied	Average Size of Minority Interest %	Average Size of Minority Discount %
	a = b + c	b	c	Subset of c	Subset of c
	2	1	1	13.50%	Not specified
	13	9	4	45%	23%
	14	6	8	21.84%	25%
Total	29	16	13	27%	24%

III: Oppression Cases

	Total Relevant Data Points	Minority Discount Not Applied	Minority Discount Applied	Average Size of Minority Interest %	Average Size of Minority Discount %
	a = b + c	b	c	Subset of c	Subset of c
1986 to 1995	10	10	0	n/a	n/a
1996 to 2005	25	25	0	n/a	n/a
2006 to 2015	16	12	4	20%	31.67%
Total	51	47	4	20%	32%

IV: Other Litigation Cases

	Total Relevant Data Points	Minority Discount Not Applied	Minority Discount Applied	Average Size of Minority Interest %	Average Size of Minority Discount %
	a = b + c	b	c	Subset of c	Subset of c
	1	0	1	18%	33%
	1	1	0	n/a	n/a
	3	1	2	42%	20%
Total	5	2	3	30%	27%

When the Whole is Greater than the Sum of Its Parts:

An Analysis of Trends in the Application and Quantum of Minority and Marketability Discounts in Canadian Court Judgments Over Time

Overall Summary of Legal Judgments Reviewed, 1986 to 2015 [1] [2]

Schedule 1

V: Total - All Cases					
	Total Relevant Data Points	Minority Discount Not Applied	Minority Discount Applied	Average Size of Minority Interest % Subset of c	Average Size of Minority Discount % Subset of c
	a = b + c	b	c		
1986 to 1995	21	12	9	20%	20%
1996 to 2005	54	46	8	41%	17%
2006 to 2015	58	24	34	29%	24%
Total	133	82	51	27%	24%

Notes:

[1] Source: Relevant Legal Judgments as set out in Schedule 2.

[2] Note that the "average" figures presented in the tables are for summary purposes only. The determination of a minority discount in any case requires a consideration of the specific contextual facts of that case and the exercise of prudent professional judgment.

When the Whole is Greater than the Sum of Its Parts:

An Analysis of Trends in the Application and Quantum of Minority and Marketability Discounts in Canadian Court Judgments Over Time

Overall Summary of Legal Judgments Reviewed, 1986 to 2015 [1] [2] - Discounts by Size of Business Interest

Schedule 2

	All Years, All Types of Cases		
Size of Interest	Total Relevant Data Points	Minority Discount Applied	Average Size of Minority Discount %
0-10%	13	4	20%
11-20%	19	7	18%
21-30%	32	18	21%
31-40%	16	9	25%
41-50%	36	13	9%
50% +	2	0	n/a
Various	3	0	n/a
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Total	133	51	19%

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[1] Source: Relevant Legal Judgments as set out in Schedule 2.

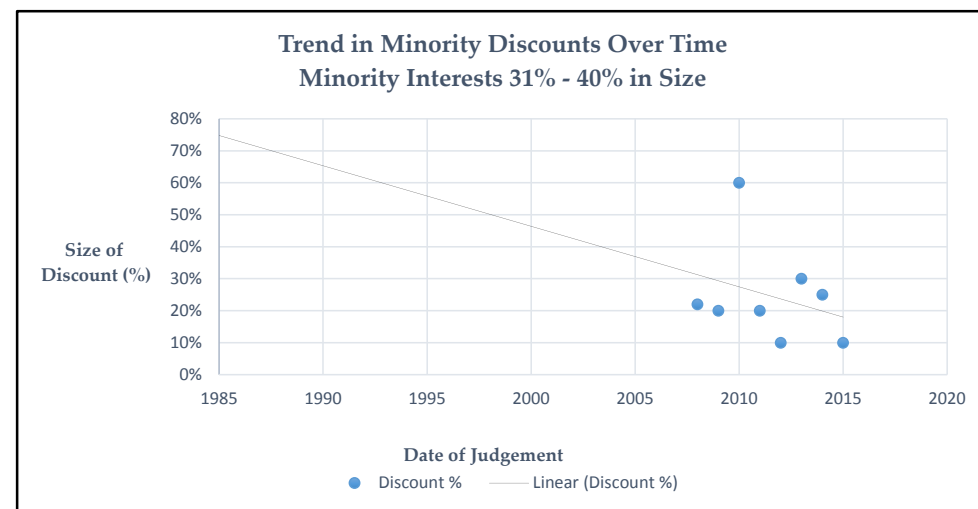
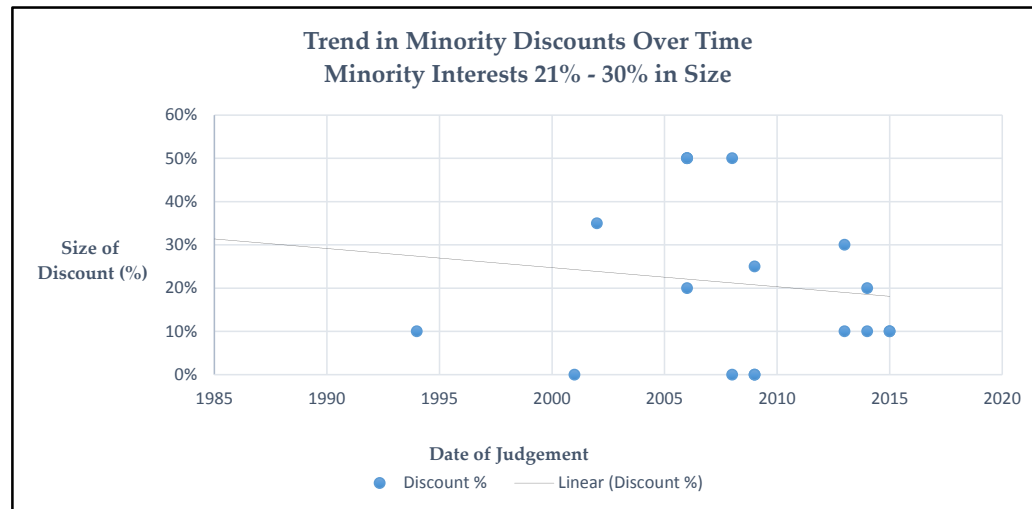
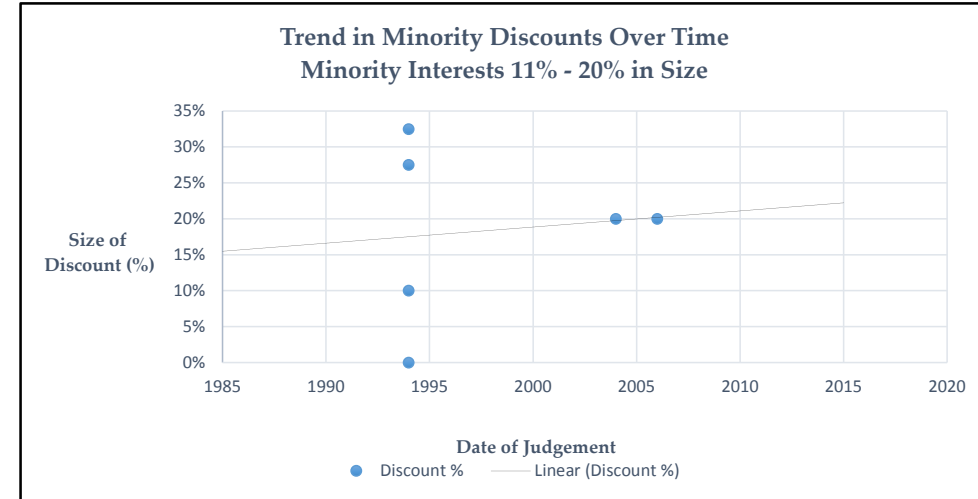
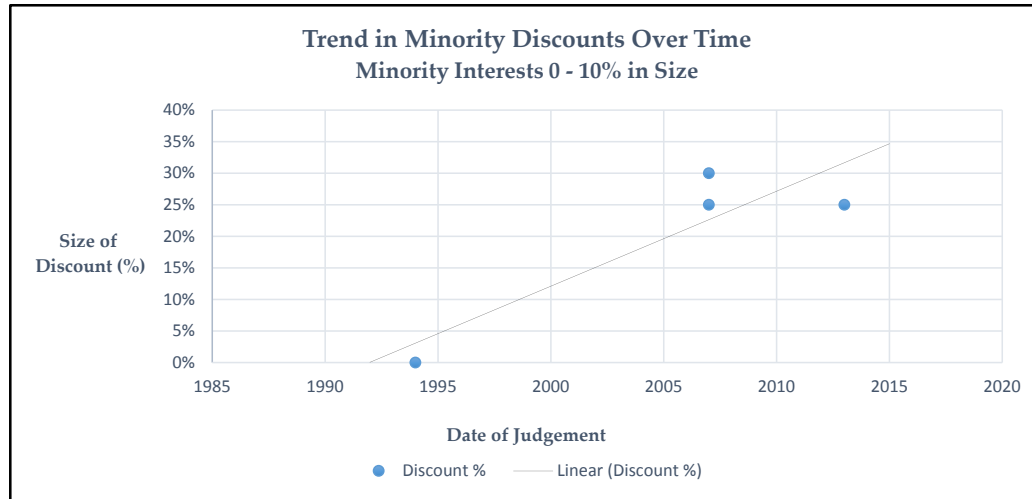
[2] Note that the "average" figures presented in the tables are for summary purposes only. The determination of a minority discount in any case requires a consideration of the specific contextual facts of that case and the exercise of prudent professional judgment.

When the Whole is Greater than the Sum of Its Parts:

An Analysis of Trends in the Application and Quantum of Minority and Marketability Discounts in Canadian Court Judgments Over Time

Graphs of Minority Discounts Over Time by Size of Interest

Schedule 3

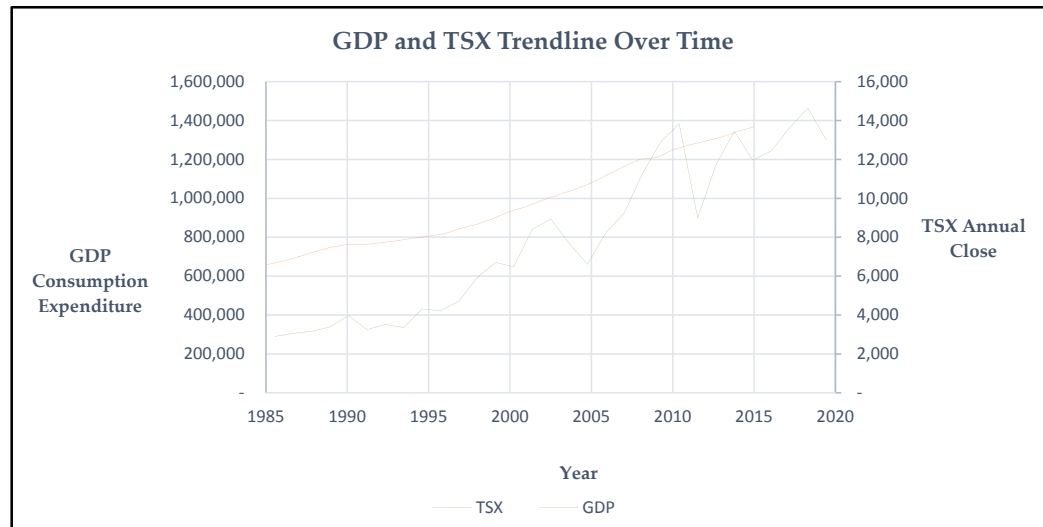
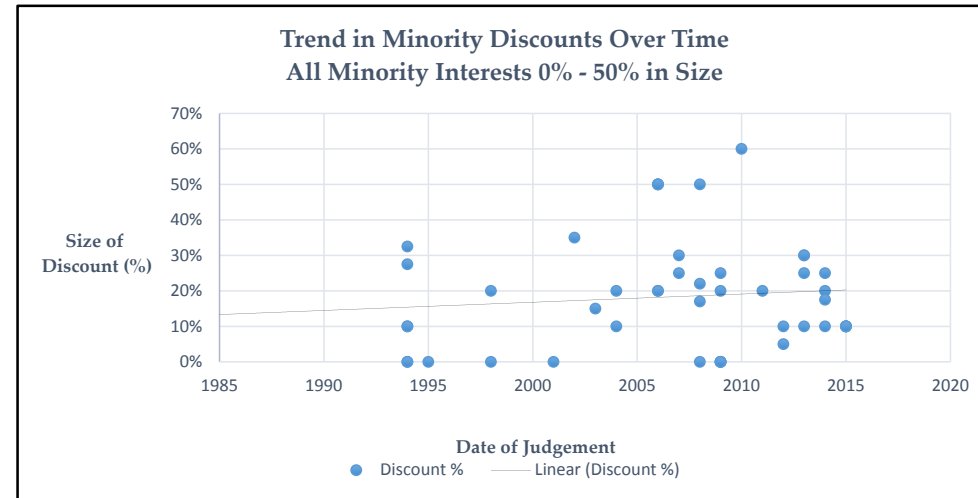
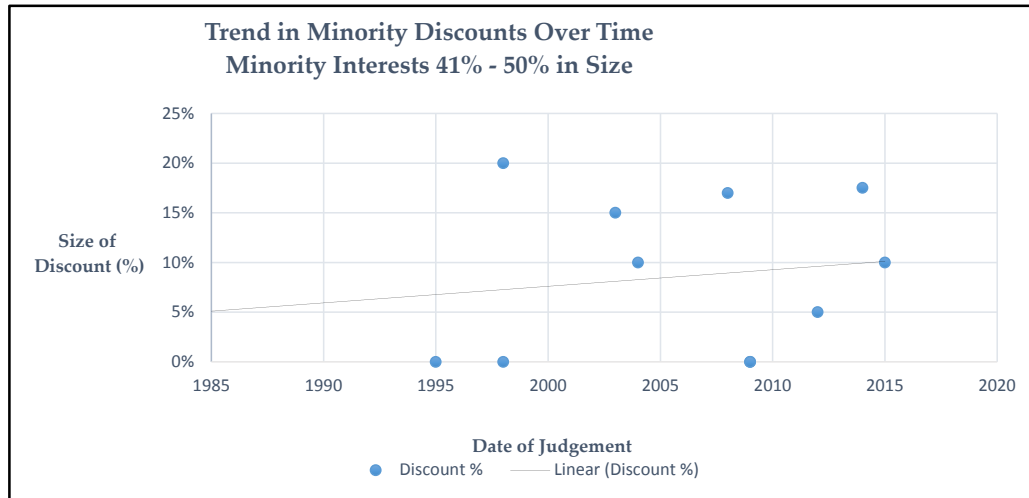


When the Whole is Greater than the Sum of Its Parts:

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Graphs of Minority Discounts Over Time by Size of Interest

Schedule 3



When the Whole is Greater than the Sum of Its Parts:

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Listing of Relevant Legal Judgments from 2006 to 2015

Schedule 4a

Case #	Case Citation	Date	Type of Case
3	Margarita Castillo v Xela Enterprises Ltd. et al, 2015 ONSC 6671 (CanLII)	2015-10-28	Oppression
6	A.A. v Z.G., 2015 ONSC 4397 (CanLII)	2015-07-14	Matrimonial
7	1043325 Ontario Ltd. v. CSA Building Sciences Western Ltd., 2015 BCSC 1160 (CanLII)	2015-07-06	Oppression
8	Blatherwick v Blatherwick, 2015 ONSC 2606 (CanLII)	2015-04-27	Matrimonial
9	JAC v VRC, 2015 YKSC 15 (CanLII)	2015-03-27	Matrimonial
10	Peregrym v Peregrym, 2015 ABQB 176 (CanLII)	2015-03-19	Matrimonial
13	Ishani v. Kulasingham, 2014 ONSC 6957 (CanLII)	2014-12-19	Commercial Litigation
15	Pilch v. TemboSocial Inc., 2014 ONSC 5590 (CanLII)	2014-09-25	Oppression
17	Reid v. Reid, 2014 BCSC 1691 (CanLII)	2014-09-05	Matrimonial
18	Linn v Frank, 2014 SKCA 87 (CanLII)	2014-08-22	Matrimonial
19	Boreta Estate v McRory, 2014 ABQB 498 (CanLII)	2014-08-13	Commercial Litigation
27	Paul v. 1433295 Ontario Limited, 2013 ONSC 7002 (CanLII)	2013-12-13	Oppression
29	Guang v. WEX Pharmaceuticals Inc., 2013 BCSC 1949 (CanLII)	2013-10-28	Oppression - Dissent
32	Aly v. Halal Meat Inc. et al, 2013 ONSC 1313 (CanLII)	2013-03-25	Matrimonial
33	Moon v. Golden Bear Mining Ltd., 2013 BCSC 364 (CanLII)	2013-03-06	Commercial Litigation
36	Frank v Linn, 2013 SKQB 28	2013-01-28	Matrimonial
38	Buccilli et al v. Pillitteri et al, 2012 ONSC 6624 (CanLII)	2012-11-23	Commercial Litigation
39	Saputo Inc. et al v. Dare Holdings Ltd. et al, 2012 ONSC 4981 (CanLII) – 2012-09-04	2012-09-04	Commercial Litigation
40	Harvey v. 5505 Yukon Ltd. et al., 2012 YKSC 69 (CanLII)	2012-08-29	Commercial Litigation
41	Earle-Barron v. Barron, 2012 ONSC 2837 (CanLII)	2012-07-31	Matrimonial
42	Biehl v. Strang, 2012 BCSC 1016 (CanLII)	2012-07-10	Commercial Litigation
44	Seabrook v. Seabrook, 2012 BCSC 606 (CanLII)	2012-04-26	Matrimonial
47	Roopchand v. Chau, 2012 ONSC 1461 (CanLII)	2012-03-05	Commercial Litigation
48	Rehman v. Qureshi, 2012 ONSC 710 (CanLII)	2012-02-01	Oppression
52	Penner v. Uptown Gourmet Catering Ltd., et. al., 2011 ONSC 6172 (CanLII)	2011-11-15	Oppression
55	AbitibiBowater inc. (Arrangement relatif à), 2011 QCCS 4284 (CanLII)	2011-08-23	Other - Insolvency
56	P.M. v. S.M., 2011 SKQB 126 (CanLII)	2011-03-25	Matrimonial
58	Derdall Irrigation Farms Ltd. v. Derdall, 2010 SKCA 104 (CanLII) (Court of Appeal)	2010-09-02	Oppression
61	Cholakis v. Cholakis et al., 2010 MBQB 116 (CanLII)	2010-05-07	Oppression
65	Derdall v. Derdall Irrigation Farms Ltd., 2009 SKQB 494 (CanLII) (Court of First Instance)	2009-12-17	Oppression

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Listing of Relevant Legal Judgments from 2006 to 2015

Schedule 4a

<u>Case #</u>	<u>Case Citation</u>	<u>Date</u>	<u>Type of Case</u>
66	Guckert v. Koncrete Construction Ltd., 2009 SKQB 484 (CanLII)	2009-12-14	Matrimonial
69	Brown v. Silvera, 2009 ABQB 523 (CanLII)	2009-09-15	Matrimonial
70	Muscillo v. Bulk Transfer Systems Inc., 2009 CanLII 38508 (ON SC)	2009-07-16	Commercial Litigation
73	2082825 Ontario Inc. v. Platinum Wood Finishing Inc., 2009 CanLII 14394 (ON SCDC) (Appeal)	2009-03-30	Oppression
78	Trevison v. Hellekson, 2008 BCSC 1560 (CanLII)	2009-11-17	Matrimonial
80	2082825 Ontario Inc. v. Platinum Wood Finishing Inc., 2008 CanLII 48125 (ON SC) (Court of First Instance)	2008-09-25	Oppression
83	Zeller v. The Queen, 2008 TCC 426 (CanLII)	2008-07-30	Other - Income Tax Appeal
85	B.J.A. v. W.A.A., 2008 BCSC 1319 (CanLII)	2008-07-04	Matrimonial
88	McKinney v. McKinney, 2008 BCSC 709 (CanLII)	2008-06-06	Matrimonial
90	Desjardins c. Desjardins, 2008 QCCS 4577 (CanLII)	2008-03-11	Oppression
92	Grandison v. NovaGold Resources Inc., 2007 BCSC 1780 (CanLII)	2007-12-11	Oppression - Dissent
94	Garcia c. Autorité des marchés financiers, 2007 QCBDRVM 32 (CanLII)	2007-07-24	Commercial Litigation
96	Monachese v. Tri Phi Holdings Ltd., 2007 BCSC 846 (CanLII) — 2007-06-12	2007-06-12	Oppression - Dissent
97	Farwell v. Integrated Management & Investments Inc., 2007 CanLII 13512 (ON SC)	2007-01-10	Commercial Litigation
98	LeVan v. LeVan, 2006 CanLII 31020 (ON SC)	2006-08-24	Matrimonial
100	Stel-Van Homes Ltd. v. Fortini, 2006 CanLII 20085 (ON SC)	2006-06-05	Commercial Litigation
197	Gill v. Gill, 2006 BCSC 498 (CanLII)	2006-03-28	Matrimonial
105	Ford Motor Company of Canada, Ltd. v. Ontario Municipal Employees Retirement Board, 2006 CanLII 15 (ON CA) (Court of Appeal)	2006-01-06	Oppression

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Listing of Relevant Legal Judgments from 1996 to 2005

Schedule 4b

Case #	Case Citation	Date	Type of Case
106	Hall v. Atto, 2005 CanLII 44388 (ON SCDC)	2005-11-21	Oppression
107	Proulx v. 2006550 Ontario Inc., 2005 CanLII 44400 (ON SC)	2005-09-27	Oppression
108	Buttarazzi Estate v. Bertolo, 2005 CanLII 18859 (ON SCDC)	2005-05-25	Oppression
109	R.E.M. v. C.A.M., 2005 MBQB 67 (CanLII)	2005-03-17	Matrimonial
110	R.R.1 and D.R.1 v. S.[...] Ltd. et al., 2005 BCSC 257 (CanLII)	2005-02-24	Oppression
111	Burmington Holdings Ltd. v. IQ Properties Inc., 2004 CanLII 33804 (ON SC)	2004-10-14	Oppression
112	Ryan v. Hudson Bay Transport Co. Ltd., 2004 SKQB 397 (CanLII)	2004-10-04	Oppression
113	Huck v. Huck, 2004 CanLII 22079 (ON SC)	2004-05-25	Matrimonial
114	Moore v. Moore, 2004 MBQB 202 (CanLII)	2004-10-05	Matrimonial
115	Fitzpatrick v. Fitzpatrick, 2004 CanLII 13318 (ON SC)	2004-03-01	Matrimonial
116	Rosenau v. Rosenau, 2004 SKQB 275 (CanLII)	2004-06-17	Matrimonial
117	Technology Supply House Inc. v. 686545 Alberta Inc., 2004 CanLII 18813 (ON SC)	2004-04-16	Commercial Litigation
118	Hall v. Atto, 2004 CanLII 26800 (ON SC)	2003-11-17	Oppression
119	Ford Motor Co. Of Canada Ltd v. Ontario (Municipal Employees Retirement Board), 2004 CanLII 34322 (ON SC)	2003-04-29	Oppression
121	Buttarazzi Estate v. Bertolo, 2004 CanLII 19856 (ON SC)	2003-12-15	Oppression
122	Rendle v. Stanhope Dairy Farm Ltd. et al., 2003 BCSC 1894 (CanLII)	2003-12-16	Commercial Litigation
198	Viner v. Poplaw, 2003 CanLII 9363 (ON SC)	2003-10-08	Oppression
123	Cina v. Hilborn, 2003 CanLII 34455 (ON SC)	2003-10-21	Commercial Litigation
125	Hargreaves v. P., 2003 CanLII 8814 (ON SC)	2003-08-21	Commercial Litigation
126	Marizor Enterprises Inc. v. Geren Enterprises Inc., 2003 CanLII 31227 (ON SC)	2003-10-08	Commercial Litigation
127	Kreitzman Estate v. Kreitzman, 2003 CanLII 43638 (ON SC)	2003-09-09	Commercial Litigation
128	Harding v. First Associates Investments Inc., 2003 CanLII 48404 (ON SC)	2013-04-30	Commercial Litigation
130	Sutherland v. Birks, 2003 CanLII 39961 (ON CA)	2003-07-14	Oppression
132	Krynen v. Bugg, 2003 CanLII 20428 (ON SC)	2003-04-01	Oppression
133	Joffre c. A.V.I. Financial Corp. (1985) Inc., 2003 CanLII 33210 (QC CS)	2003-03-14	Oppression
134	Virani v. Dhami, 2003 BCSC 239 (CanLII)	2003-02-12	Oppression
136	Stewart v. Eureka tool steel welding products Ltd., 2002 CanLII 20154 (ON SC)	2002-07-17	Oppression
137	Dhalla v. Dhalla, 2002 BCSC 984 (CanLII)	2002-07-02	Matrimonial
138	Beairsto v. Michaud, 2002 NBQB 210 (CanLII)	2002-06-19	Commercial Litigation
141	Gartree Investments Ltd. v. Cartree Enterprises Ltd., 2002 CanLII 49640 (ON SC)	2002-02-27	Commercial Litigation

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Listing of Relevant Legal Judgments from 1996 to 2005

Schedule 4b

<u>Case #</u>	<u>Case Citation</u>	<u>Date</u>	<u>Type of Case</u>
142	S.B. v. N.B., 2002 MBQB 34 (CanLII)	2002-01-25	Matrimonial
143	Incorporated Broadcasters Ltd. v. Canwest Global Communications Corp., 2001 CanLII 28395 (ON SC)	2001-11-27	Oppression
199	Grant v. Grant, 2001 CanLII 28159 (ON SC)	2001-11-15	Matrimonial
144	McAteer v. Devoncroft Developments Ltd., 2001 ABQB 917 (CanLII)	2001-11-07	Oppression
145	M.E.M. v. L.M.C., 2001 MBQB 286 (CanLII)	2001-10-31	Matrimonial
147	R.R.A.G. v. S.N.G., 2000 MBQB 207 (CanLII)	2000-11-24	Matrimonial
148	Flatley v. Algy Corp., 2000 CanLII 22783 (ON SC)	2000-10-11	Oppression
150	Wark v. Kozicki, 2000 SKQB 169 (CanLII)	2000-04-14	Oppression
151	Gleddie v. Gleddie, 2000 ABQB 1019 (CanLII)	2000-02-17	Oppression
152	Alexander v. Bar SP Ranches Ltd., 1999 SKQB 280 (CanLII)	1999-12-16	Oppression
153	Lanosh-Medad Family Trust (Trustees of) v. Versatech Industries Inc., 1999 CanLII 14950 (ON SC)	1999-10-07	Commercial Litigation
154	Kabutey v. New-Form Manufacturing Co., 1999 CanLII 14849 (ON SC)	1999-08-28	Oppression
156	Lepage v. Lepage, 1999 CanLII 12569 (SK QB)	1999-04-18	Matrimonial
157	Shepp v. The Queen, 1999 CanLII 284 (TCC)	1999-01-25	Other - Income Tax Appeal
160	Waller v. Waller, 1998 CanLII 14038 (SK QB)	1998-02-24	Matrimonial
161	Ledrew v. Elizabeth Drugs Ltd., 1998 CanLII 18678 (NL SCTD)	1998-02-03	Commercial Litigation
162	Matthews v. Accent Lines (1988) Ltd., 1998 ABQB 180 (CanLII)	1998-02-03	Commercial Litigation
163	Payne v. Memex Software Inc., 1998 CanLII 3146 (BC SC)	1998-01-21	Commercial Litigation
164	Wright v. Donald S. Montgomery Holdings Ltd., 1998 CanLII 14805 (ON SC)	1998-01-20	Oppression
165	Meyers v. Meyers, 1997 CanLII 3391 (BC SC)	1997-06-19	Matrimonial
166	Halpin v. Halpin, 1996 CanLII 3370 (BC CA)	1996-11-08	Matrimonial
167	Mroz v. Shuttleworth, 1996 CanLII 8034 (ON SC)	1996-07-17	Oppression
168	Calmont Leasing Ltd. v. Kredl, 1996 CanLII 10368 (AB QB)	1996-03-22	Commercial Litigation
203	Allegretto v. Allegretto, 1996 CanLII 1352 (BC SC)	1996-10-22	Matrimonial
204	Chiaromonte v. World Wide Importing Ltd., 1996 CanLII 7987 (ON SC)	1996-04-19	Oppression

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Listing of Relevant Legal Judgments from 1986 to 1995

Schedule 4c

<u>Case #</u>	<u>Case Citation</u>	<u>Date</u>	<u>Type of Case</u>
170	Belman v. Belman, 1995 CanLII 7220 (ON SC) — 1995-10-23	1995-10-23	Matrimonial
172	Nanef v. Con-Crete Holdings Ltd., 1995 CanLII 959 (ON CA) (Court of Appeal)	1995-05-16	Oppression
173	Grant v. Grant, 1994 CanLII 974 (BC SC)	1994-10-24	Matrimonial
174	Halpin v. Halpin, 1994 CanLII 816 (BC SC)	1994-08-29	Matrimonial
175	Nanef v. Con-Crete Holdings Ltd., 1994 CanLII 7542 (ON SC) (Court of First Instance)	1994-08-22	Oppression
176	Med Finance Co. S.A. v. Bank of Montreal, 1994 CanLII 1562 (BC SC)	1994-07-21	Other - Insolvency
177	Ritchie v. Ritchie, 1994 CanLII 5101 (SK QB)	1994-05-26	Matrimonial
179	Jackson v. Trimac Industries Ltd., 1992 CanLII 6223 (AB QB)	1992-12-16	Commercial Litigation
181	Brant Investments Ltd. v. KeepRite Inc., 1991 CanLII 2705 (ON CA) (Court of Appeal)	1991-05-03	Oppression - Dissent
182	Hamilton v. Sartorio, 1991 CanLII 5816 (AB QB)	1991-01-03	Commercial Litigation
183	Baniuk v Carpenter, 1990 CanLII 6537 (NB QB)	1990-12-06	Oppression
184	Ultramar Canada Inc. v. Montreal Pipe Line Ltd. (H.C.J.), 1990 CanLII 6765 (ON SC)	1990-07-09	Oppression - Dissent
185	Black v. Black (H.C.J.), 1988 CanLII 4756 (ON SC)	1988-12-12	Matrimonial
188	Daniels v. Fielder (H.C.J.), 1988 CanLII 4535 (ON SC)	1988-10-11	Oppression
191	Re Brant Investments Ltd. et al. and KeepRite Inc. et al., 1987 CanLII 4366 (ON SC) (Court of First Instance)	1987-06-11	Oppression - Dissent
192	Mason and Intercity Properties Ltd, Re, 1987 CanLII 173 (ON CA) (Court of Appeal)	1987-05-12	Oppression
193	Kelvin Energy Ltd. v. Bahan, 1987 CanLII 3388 (AB QB)	1987-04-29	Oppression - Dissent
194	Re Abraham and Inter Wide Investments Ltd. et al., 1985 CanLII 2120 (ON SC)	1985-07-05	Oppression