

MICHAEL, EVRENSEL & PAWAR LLP

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# Building Blocks

Structuring and Organizing Your Company

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JANUARY 21, 2016

ANDREW HENNIGAR & EMMANUELLE FREDERIC-POPA – MEP BUSINESS COUNSEL

# Agenda

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- Basic Business Forms**
- Capital Structure**
- Shareholders – Rights and Risks**
- Boards of Directors – Duties**
- Shareholders' Agreements**
- Questions**

# Basic Business Forms – Sole Proprietorship

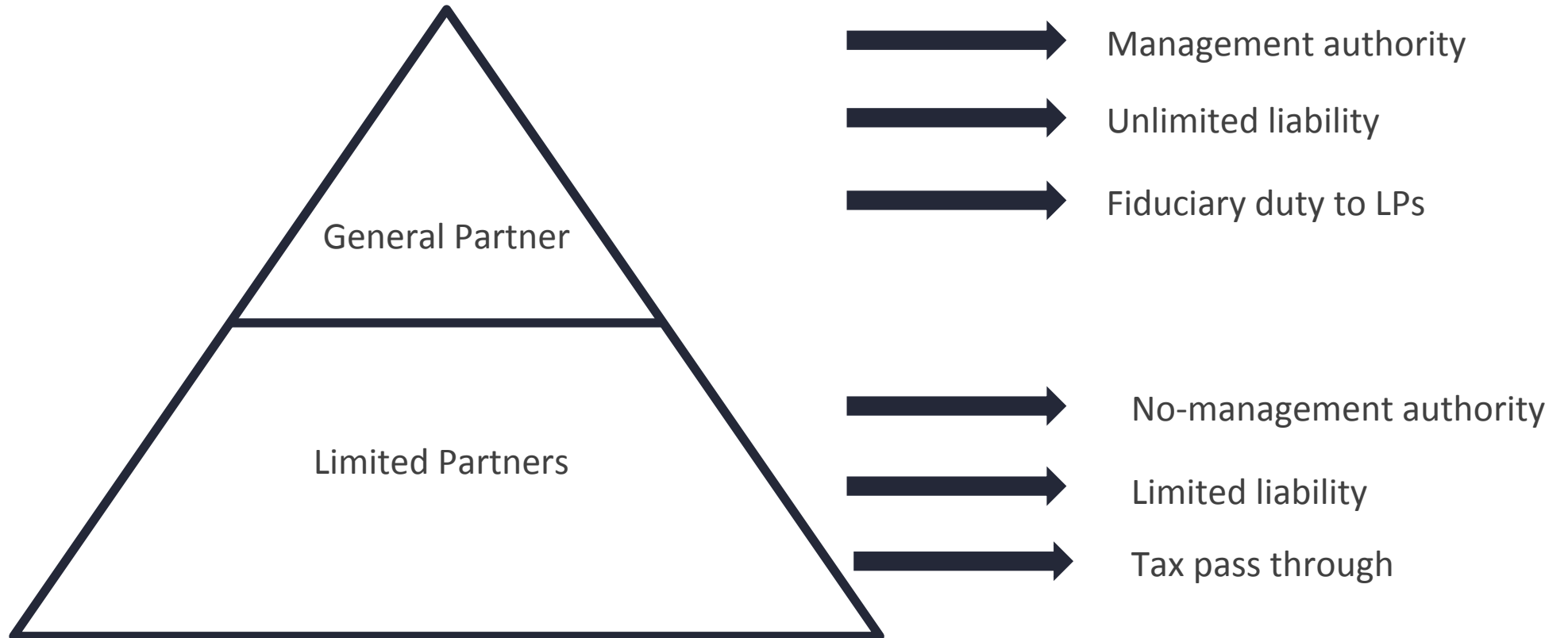


You

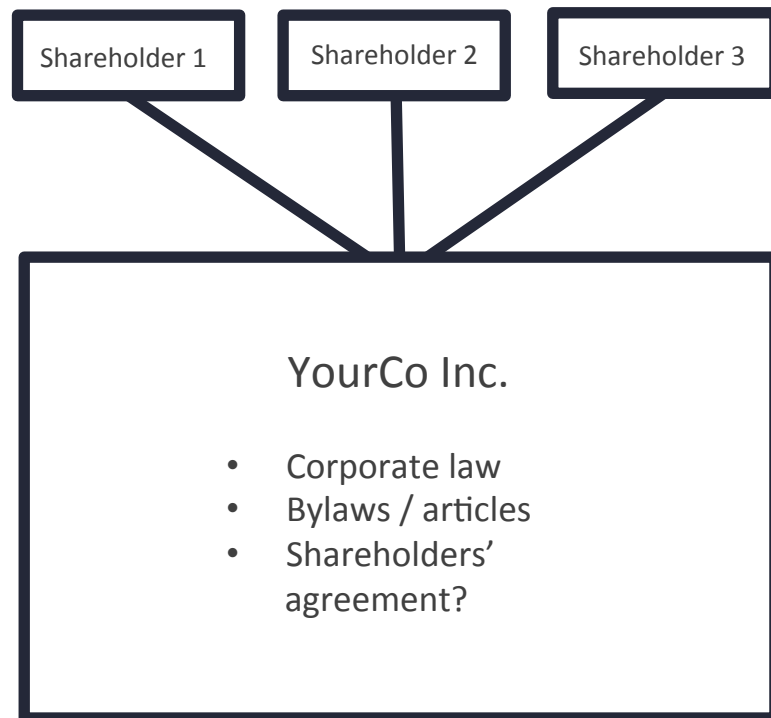


Income  
Expenses  
Liabilities  
Risk  
Tax Rate

# Basic Business Forms – Limited Partnership



# Basic Business Forms – Corporations



No limits on management authority / exercised through



director election



No fiduciary duty as shareholder



Managed by board of directors



D&O fiduciary duties to the company



Separate taxpayer

# Corporations – Federal or Provincial?

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## Federal Jurisdiction

Canada Business Corporations Act

25% of directors must be Canadian residents

Automatic nation-wide name protection

Ability to carry on business anywhere in Canada (separate registration may be required)



## BC Jurisdiction

BC Business Corporations Act

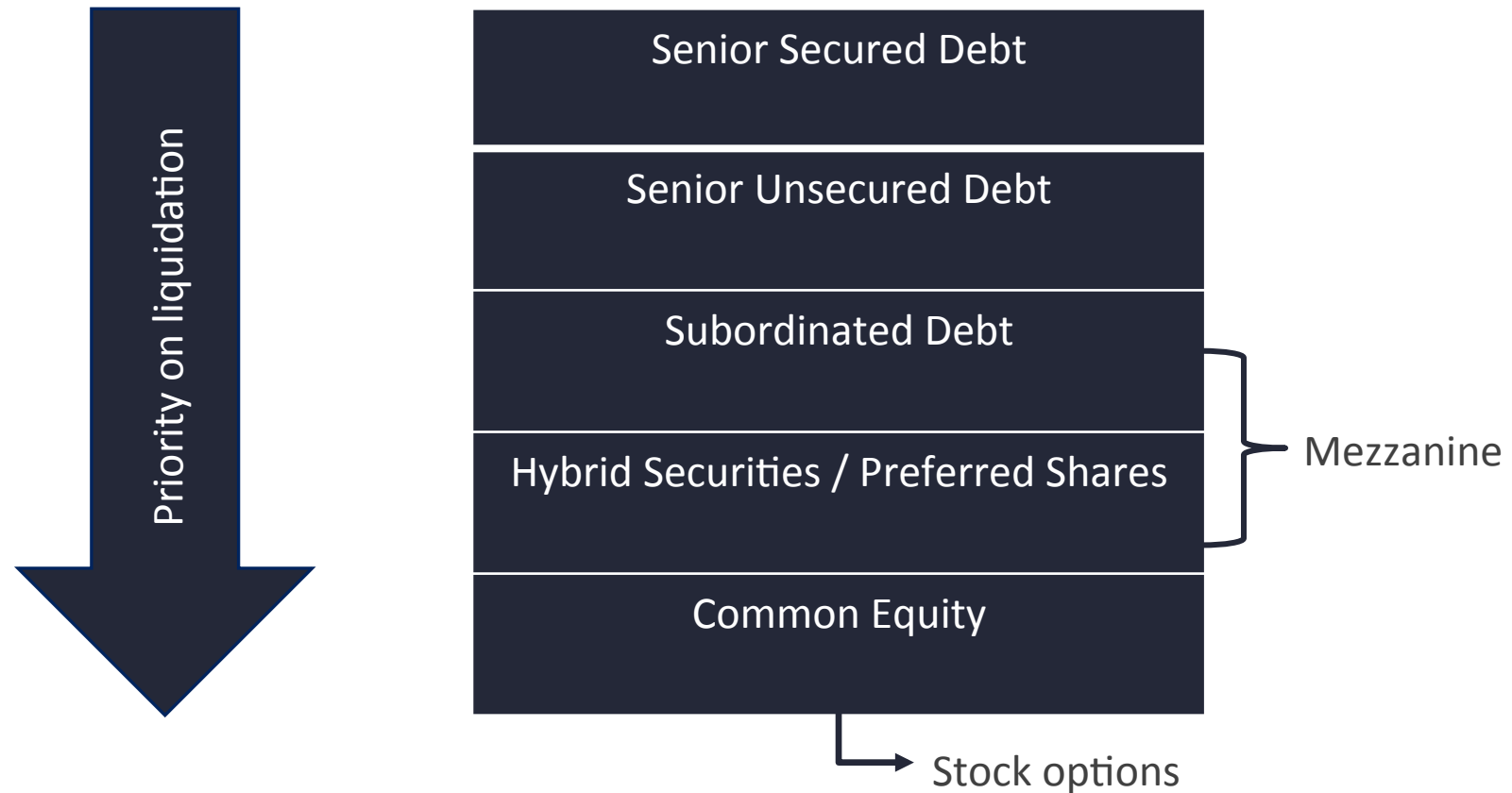
No director residence requirement

Waiver of AGM and production of financial statements permitted

Increased flexibility special resolution approval threshold (66 2/3% to 75%)

Slightly cheaper to incorporate

# Capital Structure



# Capital Structure: Share Classes

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More share classes = more complexity – carefully consider what is necessary

Shares with no voting rights may have class voting rights under law for certain transactions

Share structure can be modified over time

Commercial / regulatory considerations may dictate class requirements

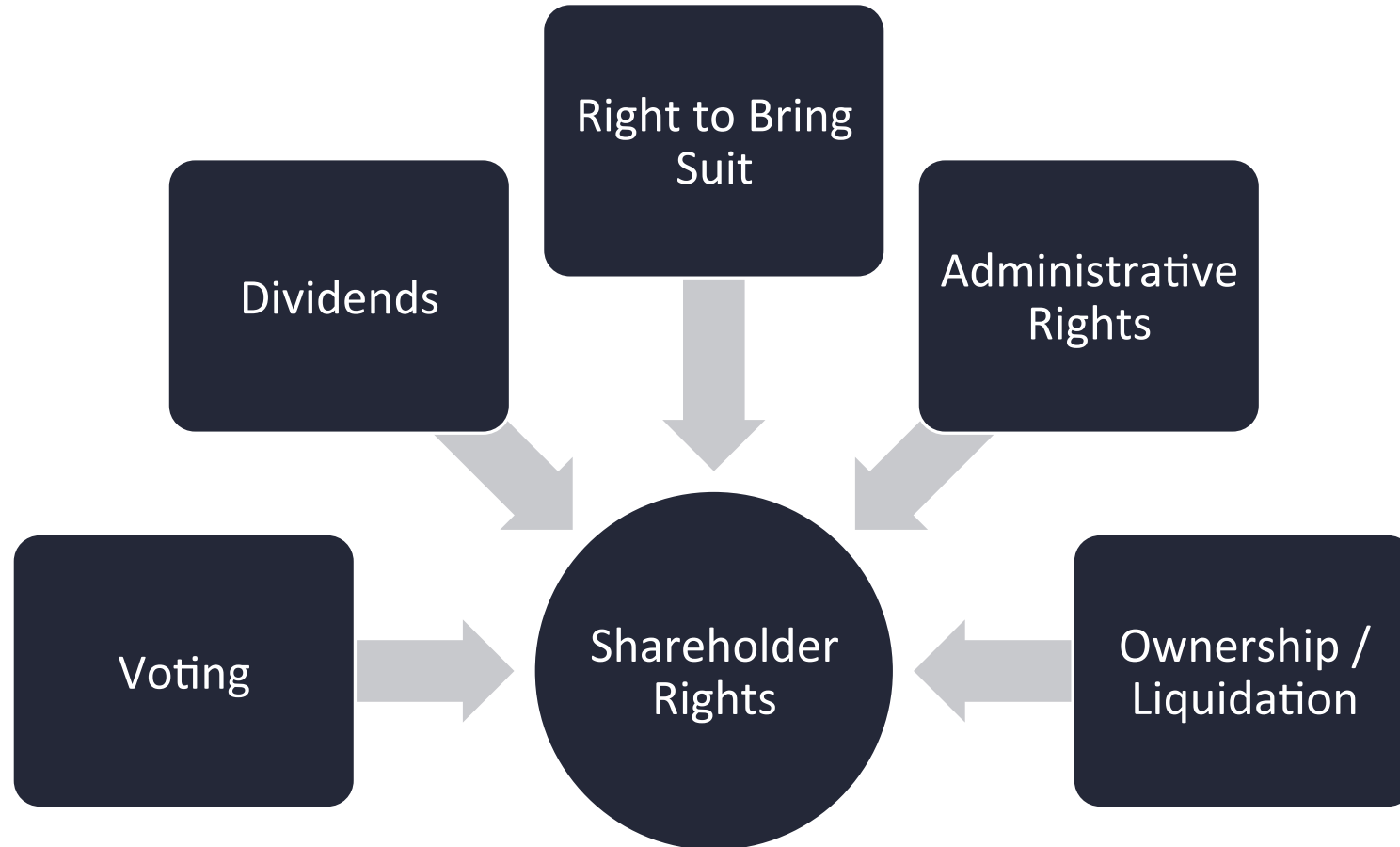


# Capital Structure: Share Classes

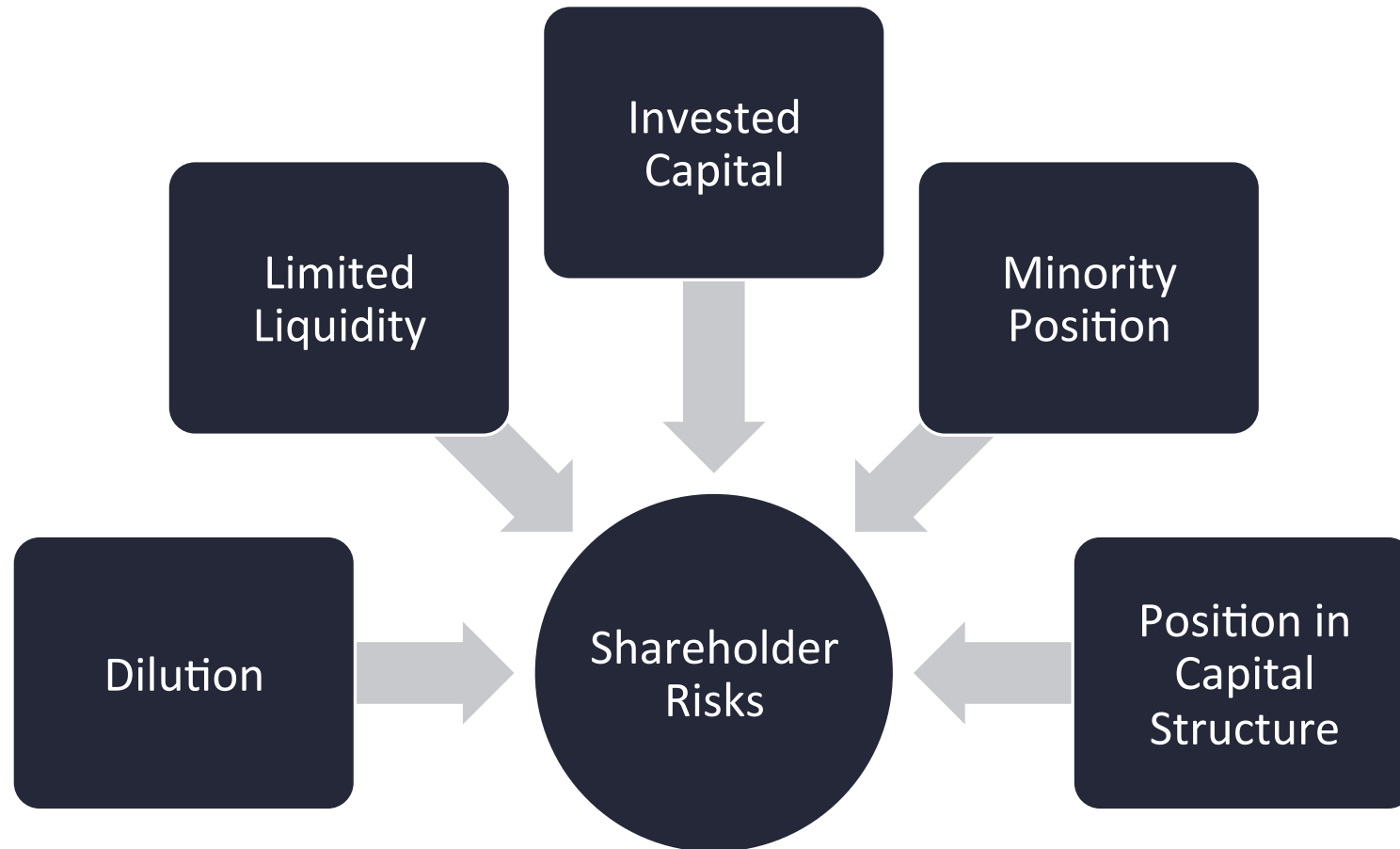
Start-Up					
Class	Voting	Dividends	Liq. Pref.	Vesting	Purpose
A Common	Yes	Yes	None	<u>Yes</u>	Founder shares / common equity
B Common	<u>No</u>	Yes	None	No	Employee option plan

Angel / Venture Stage					
Class	Voting	Dividends	Liq. Pref.	Vesting	Purpose
A Common	Yes	Yes	None	Yes	Founder shares / common equity
B Common	No	Yes	None	No	Employee option plan
C Common	Yes	Yes	2x	No	Angel investor round
A Preferred	Yes	<u>Yes – fixed %</u>	<u>2x</u>	No	Venture Capital round

# Shareholders – Rights

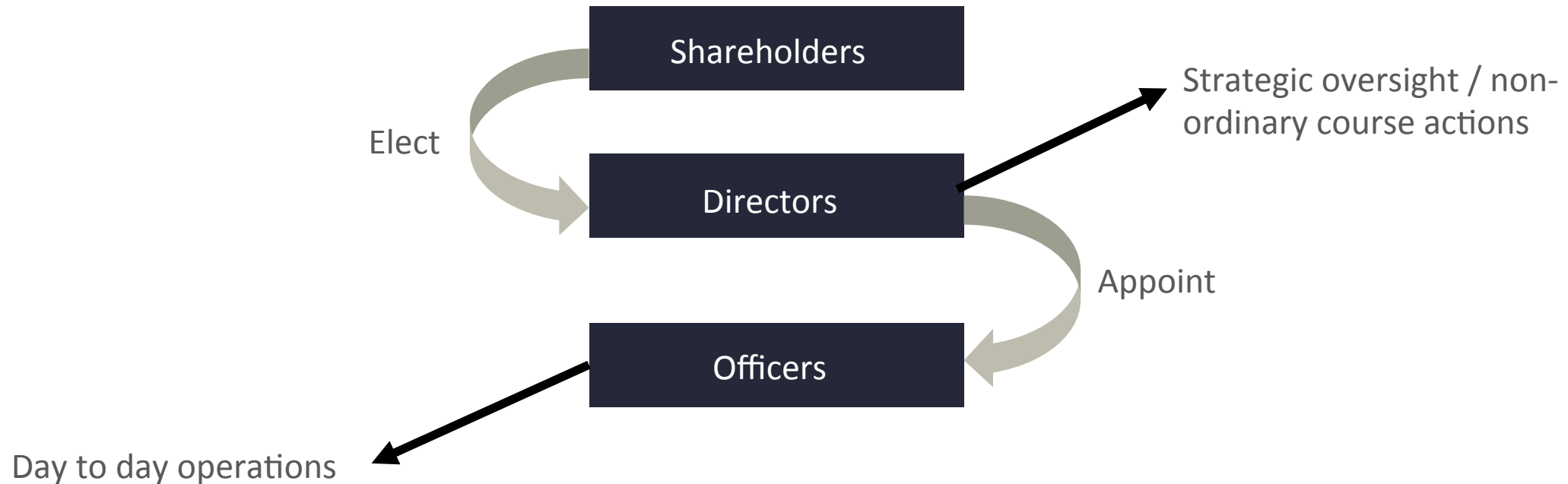


# Shareholders – Risks



# Board of Directors

Responsible for managing or supervising the management of the business and affairs of the company



# Board of Directors – Roles and Obligations

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Maximize shareholder value

Appoint and monitor performance of officers

Determine strategic direction and goals for the company (with input from management)

Develop and implement controls over financial reporting

Develop and implement policies for compensation, corporate governance, external communications, and auditing (if a reporting issuer)

Approve financial statements

Approve fundamental corporation actions

# Officers – Roles and Obligations

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Specific roles set out in job descriptions approved by board and/or employment agreements.

CEO: day to day operational control; goal setting; fund raising; oversight of all other officers.

CFO: financial reporting; financial controls; budgeting; A/R, A/P.

VPs: principal responsibility for given functional area.

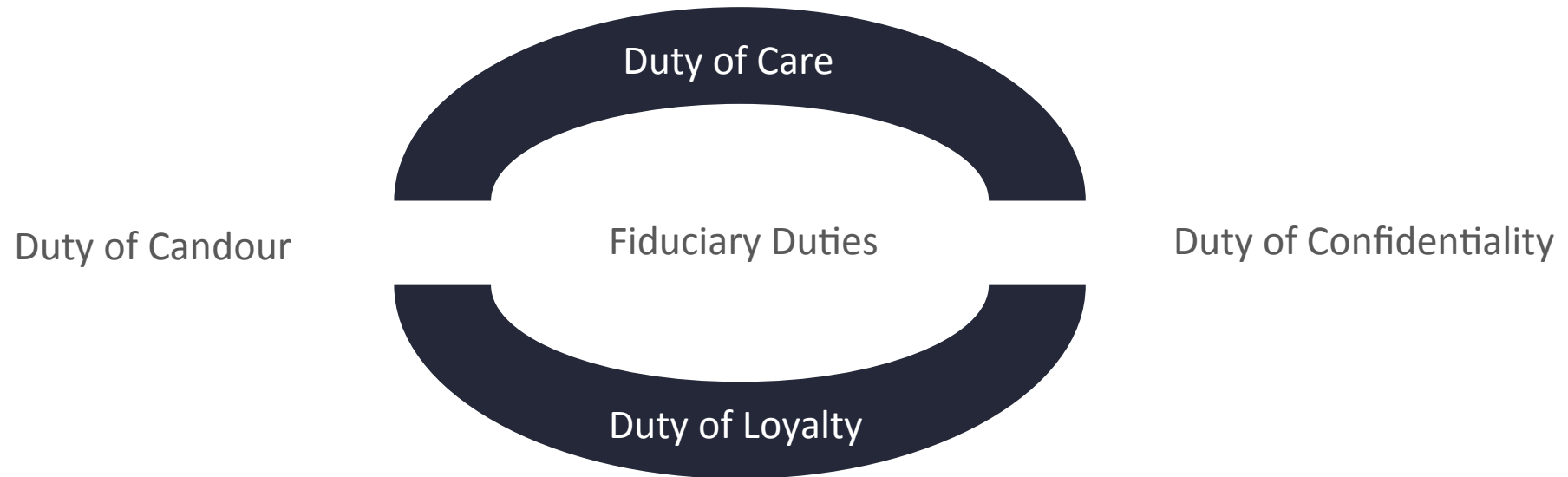
Secretary: corporate governance compliance; assist the board of directors.

Note: Corporate law does not specify particular officer requirements.

# Board of Directors and Officers - Duties

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Directors are fiduciaries: they have the legal duty to act primarily for another person's benefit in managing the assets and operations of the company.



# Board of Directors and Officers – Duty of Care

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## Duty of Care

Exercise the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances.

Act on an informed basis after due consideration of the relevant materials, appropriate deliberation and input, as required, from expert advisors.



# Board of Directors and Officers – Duty of Loyalty

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Act honestly and in good faith.

Act with a view to the best interests of the company.



Duty of Loyalty

# Board of Directors – Personal Liability

Unpaid wages.

Improper dividend payments.

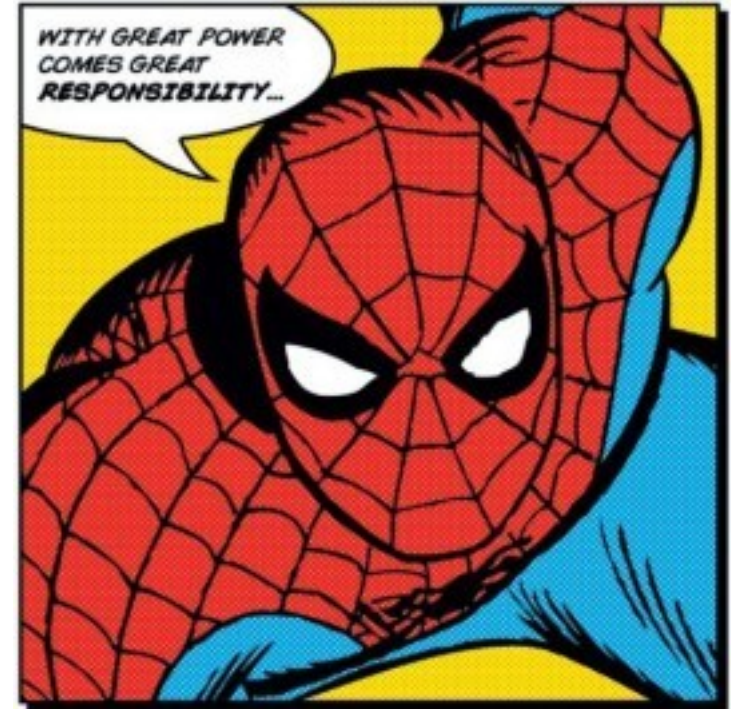
Issuance of shares for inadequate consideration.

Repurchase of shares resulting when insolvent.

Improper payment of indemnity to a director or officer.

Payment of an unreasonable commission to purchaser of shares.

Withholding under the Income Tax Act and Excise Tax Act (GST).



# Board of Directors – Practical Considerations

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Articles / bylaws set out minimum requirements (number, meeting frequency, record keeping).

Business judgment rule.

Due diligence defense / reliance on experts.

Indemnification.



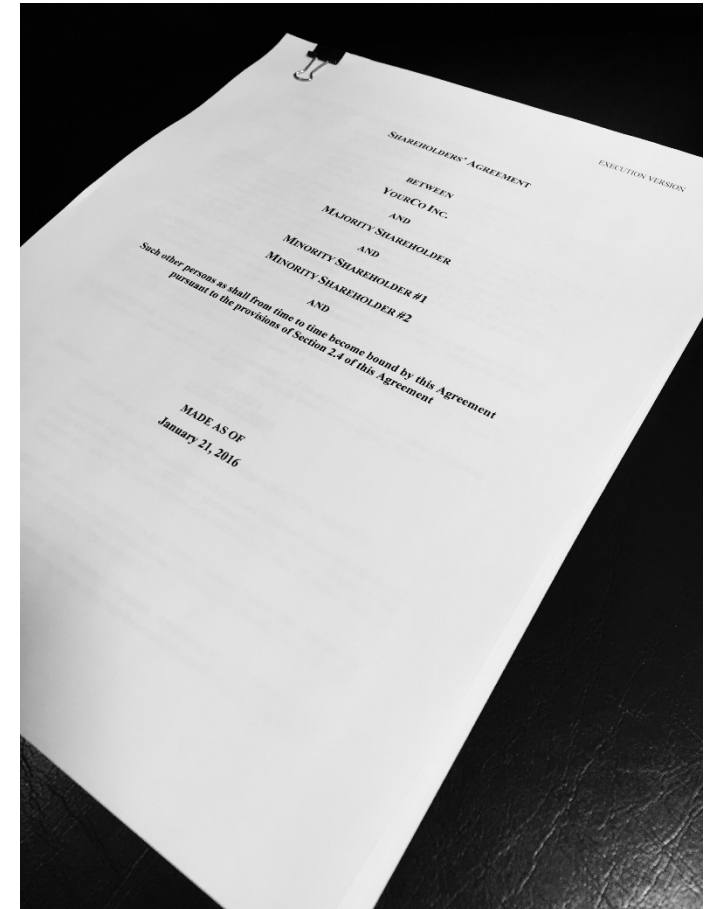
# Shareholders' Agreements

Set shareholder rights beyond minimums provided by corporate law.

Usually, not always, all shareholders are parties.

Minority shareholder protections.

Majority shareholder rights and limitations.



# Shareholders Agreements - Terms



# MEP Business Counsel



At Michael, Evrensel & Pawar LLP (MEP Business Counsel), we approach the practice of business law differently. We are on a mission to challenge the inherent inefficiencies typically found in conventional “Big Law” firms, pushing to reject the inflexible and expensive service models found at those firms.

As a guiding principle, we are committed to provide the same high-quality expertise of a top-tier national law firm, but deliver it with the innovation, cost-efficiencies and personal attentiveness you’d expect from dedicated in-house counsel.

As a Canadian corporate and entertainment law firm with extensive international experience, our contemporary model is simple but far from common:

**World-Class Experience** – Our team of highly experienced and award-winning lawyers – with training and experience from internationally recognized firms in London, New York, Toronto, Montreal, Beijing and Vancouver – provide world-class business and entertainment legal services to some of North America’s most notable companies.

**Client-Centred Approach** – Clients now demand more of their legal advisors, which is driving a change in the legal services landscape in Canada, and rightly so. Businesses expect greater value at sensible prices, which is achieved by receiving practical legal advice tailored to advance their goals. At MEP Business Counsel, we have an unwavering commitment to your business, with a goal to provide you with bespoke legal services that put your real needs first.

**Business-First Thinking** – We have a unique combination of established legal expertise and commercial understanding. Effective business counsel should help drive your commercial success by crafting solutions, not by simply identifying constraints. At MEP Business Counsel, we pride ourselves on aligning our advice with your core business objectives, offering solutions to overcome obstacles. After all, we are entrepreneurs in our own right.

**Flexible Value-Based Pricing and Alternative Fee Arrangements** – Your business needs are unique. That’s why MEP Business Counsel is flexible when it comes to pricing and fee arrangements. Unhindered by the rigidity of the conventional “big law” firm model, MEP Business Counsel is able to work with you to respond to those unique demands. Regardless of the fee arrangement, at the core of each of our mandates is a commitment to provide exceptional value and build lasting business relationships.

[www.meplaw.ca](http://www.meplaw.ca)  [www.facebook.com/mepbusinesscounsel](https://www.facebook.com/mepbusinesscounsel)  @meplaw  MEP Business Counsel (604) 669-1110



# SR&ED

*Presented by Jeff Christie, Partner, Boast Capital*



# OUTLINE

- I. Overview of the SR&ED Program
- II. Benefits of Claiming SR&ED
- III. CRA's Requirements
- IV. Do's and Don'ts
- V. Q&A





# I. OVERVIEW OF THE SR&ED PROGRAM



# WHAT IS SR&ED?

SR&ED

=

SCIENTIFIC RESEARCH AND  
EXPERIMENTAL DEVELOPMENT



S-H-R-E-D

Commonly pronounced  
"SHRED"

\$3.4  
BILLION



# APPLICABLE INDUSTRIES



**Software  
Development & ICT**



**Manufacturing**



**Bio Technology**



**Oil & Gas and  
Energy**



**Agriculture**



**and more**



# QUALIFYING CRITERIA

Must meet three criteria to qualify for SR&ED:



1. Technological Challenges
2. Technological Uncertainty
3. Technical Content or Iterations



# ELIGIBILITY

The CRA's 5 questions:

1. Was there a scientific or a technological uncertainty that could not be removed by standard practice/engineering?
2. Did the effort involve formulating a hypothesis specifically aimed at reducing or eliminating the uncertainty?

*Continued...*



# ELIGIBILITY

3. Was the adopted procedure consistent with the total discipline of the scientific method, including formulating, testing, and modifying the hypothesis?
4. Did the process result in a scientific or technological advancement?
5. Was a record of the hypothesis tested and results kept as the work progressed?





## II. SR&ED BENEFITS



# WHO CAN CLAIM?

## CCPC

**Canadian Controlled  
Private Corporation**

## NON-CCPC

**Foreign and/or Publicly  
Owned Corporation**

SMEs = defined as generating less than \$500K taxable net income in the prior fiscal year.



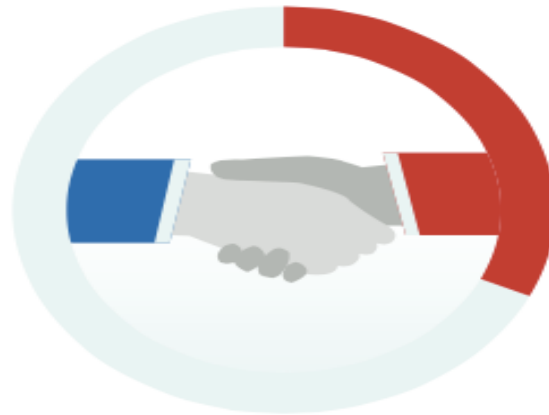


# SR&ED BENEFITS

Return rates for SME CCPCs:



**SALARIES**  
**~64%**



**SUB-CONTRACTORS**  
**~32%**



**MATERIALS**  
**~42%**



**REFUNDABLE ITCs**

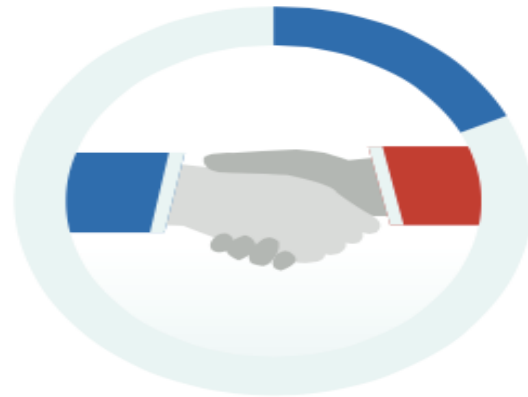


# SR&ED BENEFITS

Return rates for non-CCPCs:



**SALARIES**  
**~36%**



**SUB-CONTRACTORS**  
**~18%**



**MATERIALS**  
**~24%**



**NON-REFUNDABLE ITCs**



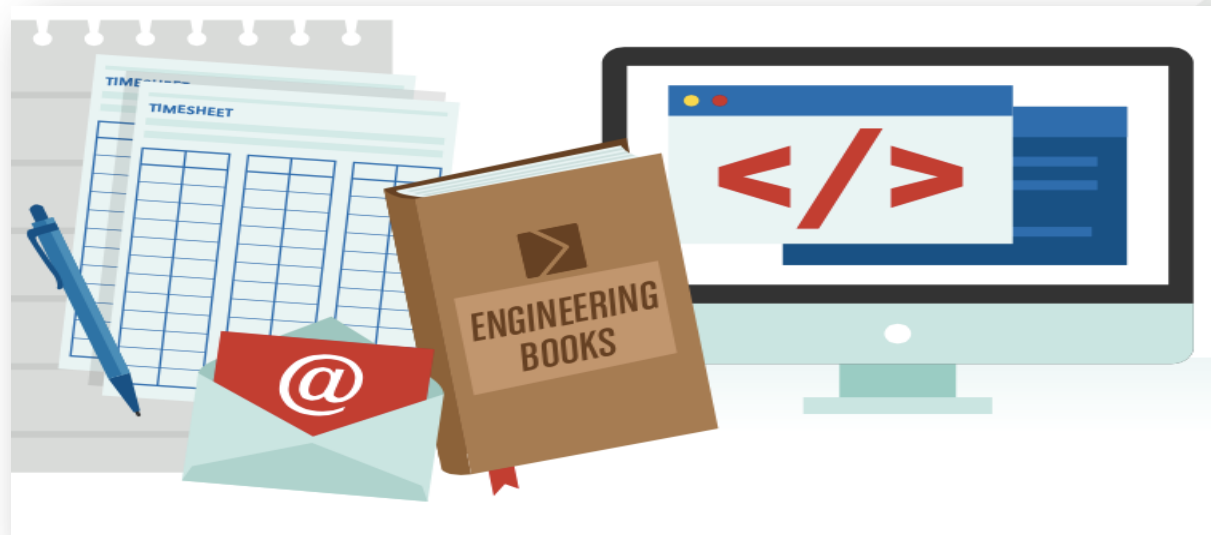
## IV. CRA REQUIREMENTS



# TECHNICAL DOCUMENTATION

CRA requires that SR&ED documentation must:

- Have been documented at the time the work was completed
- Highlight technical obstacles or challenges
- Be dated



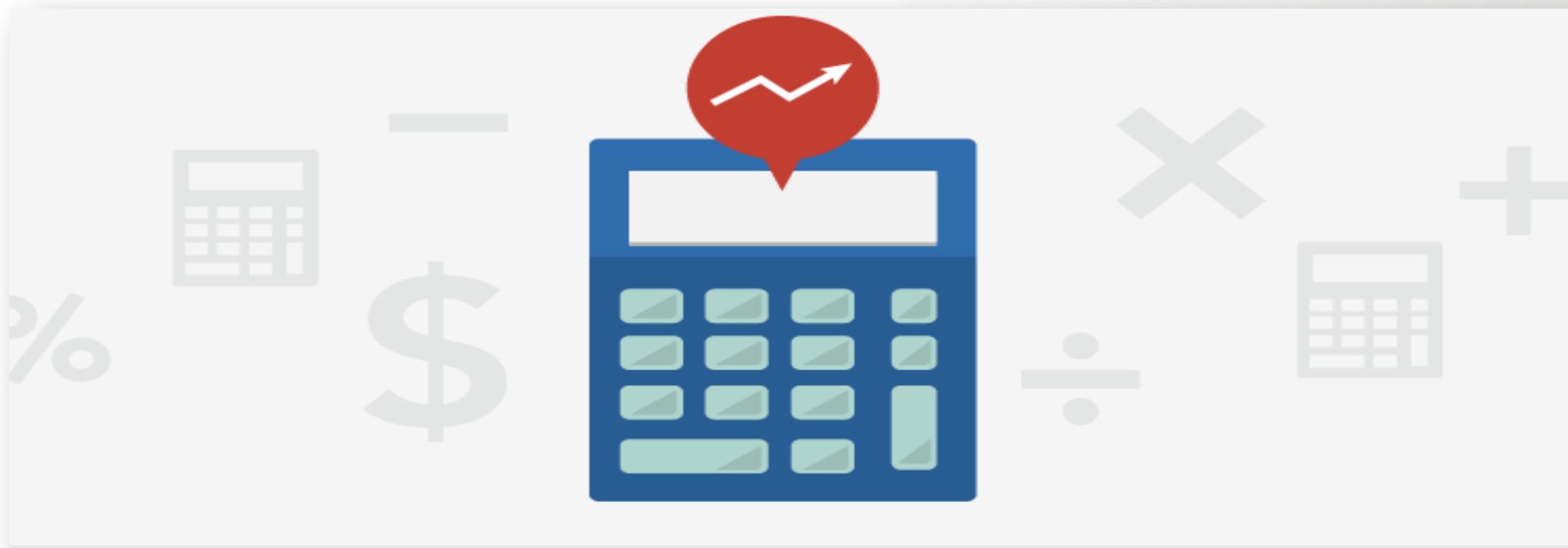


# TIME TRACKING



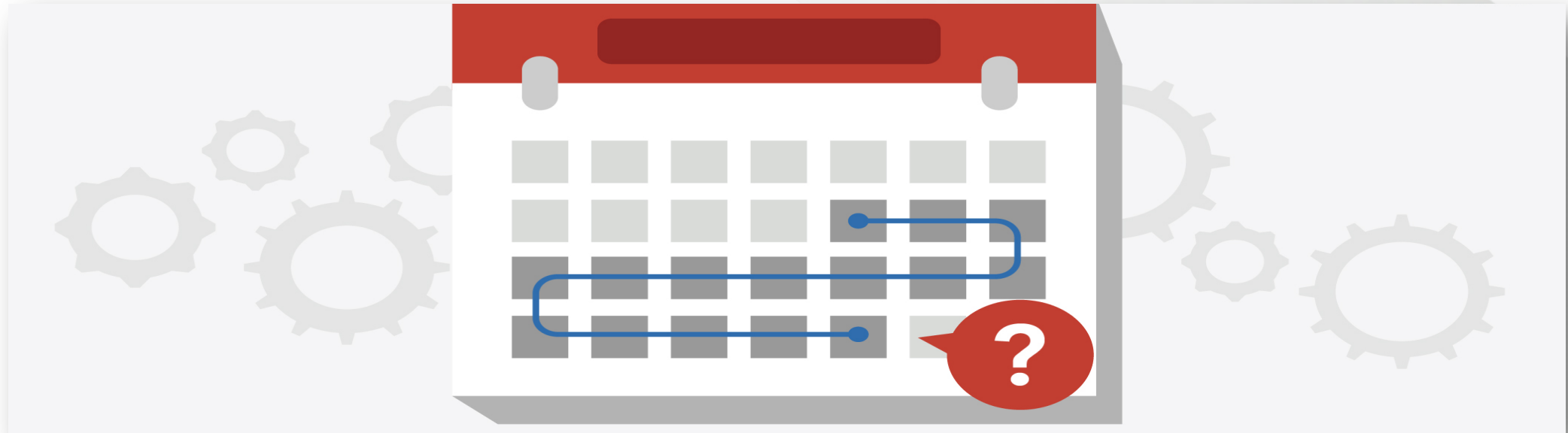


# FINANCIAL STATEMENTS





# WHEN TO CLAIM?



18 Months Past Fiscal Year End

- Current Claim = Within 6 mo
- Amended Claim = Within 7 to 18 mo





# TURNAROUND TIMES

From receipt of a *complete claim*:

- CCPC Current Claim – 4 months
- CCPC Amended Claim – 8 months
- Non-CCPC Claim – 12 months



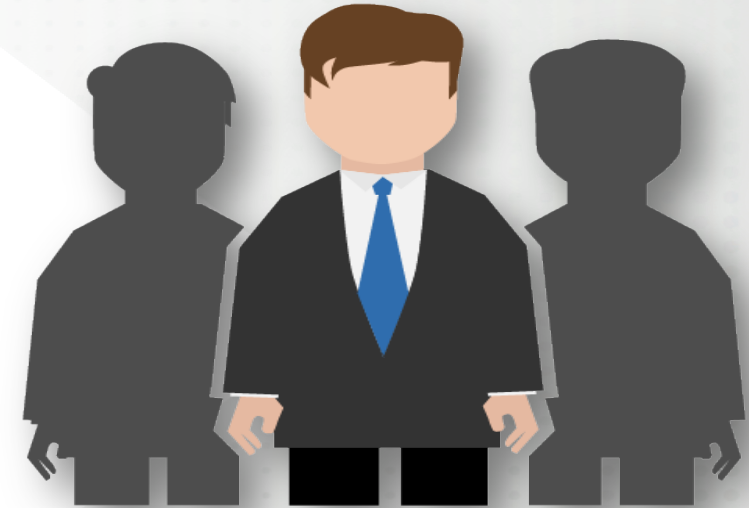


# CRA REVIEWS

CRA Review ≠ Tax Audit

Multiple types of Reviews:

- Desktop
- Financial
- Technical & Financial
- First Time Claimant Advisory Service (FTCAS)





## IV. THE DO'S AND DON'TS



# THE DO's

Do:

- Pay yourself and staff
- Start time tracking and proper documentation now
- Incorporate your company





# THE DON'T'S

Don't:

- Underestimate the importance of documentation
- Focus on the business opportunity
- Leave SR&ED claims until the last minute



YOUR ULTIMATE GUIDE

**TO CLAIMING**  
**SR&ED**  
**TAX CREDITS**





**JEFF CHRISTIE**

**PARTNER**

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# Presenter Bios



## Call to the Bar

New York, 2007  
British Columbia, 2012

## Areas of Expertise

Mergers and Acquisitions  
Corporate Finance  
Corporate and Commercial  
Technology  
Start-up Companies  
Venture Capital / Private Equity

## Education

B. Comm, McGill University, 2003  
J.D., University of Toronto, 2006



@meplaw



Andrew Hennigar

## Andrew Hennigar ([ahennigar@meplaw.ca](mailto:ahennigar@meplaw.ca); (604) 891-1184)

### Senior Associate

Andrew's practice focuses on mergers & acquisitions, private equity and venture capital transactions, corporate finance (both public and private) and general corporate and commercial matters. Andrew represents a broad range of clients, including start-ups, growth stage companies and mature private and public companies. Andrew has experience in share and asset purchases, divestitures, equity offerings, spin-outs, restructuring transactions, shareholder matters, securities law and TSX/TSX-V compliance and corporate governance. Andrew has also represented purchasers of assets through both Canadian and US bankruptcy proceedings.

Prior to joining MEP Business Counsel, Andrew practiced in the securities group of the Vancouver office of Blake, Cassels & Graydon LLP and in the mergers & acquisitions group of the New York office of Paul, Weiss, Rifkind, Wharton & Garrison LLP.

### Selected Representative Work

- Represented Shoes.com Technologies Inc. in its acquisitions of all of the outstanding shares of Shoes.com, Inc. from a subsidiary of Calares Inc., and Richer Poorer, Inc. from its founders.
- Represented an Alberta-based construction management company in its acquisition of all of the outstanding shares of a Vancouver-based, family owned construction management company.
- Represented Thunderbird Films Inc. in its acquisition of all of the shares of Atomic Cartoons Inc.
- Represented Viable Healthworks (Canada) Corp. in its acquisition of the AIM Health Group.
- Represented Cardiome Pharma Corp. in its cross border acquisition of Correvio LLC.
- Represented Webtech Wireless Inc. in the sale of its NextBus division to Cubic Transportation Services Inc.
- Represented LM Ericsson and the "Rockstar Consortium" in its acquisition of Nortel Networks' patent portfolio.
- Represented LM Ericsson in its acquisition of the assets of Nortel's CDMA and GSM businesses.
- Represented Webloyalty Holdings, Inc. in connection with the share for share merger with and into a subsidiary of Affinion Group Holdings, Inc.
- Represented Shoes.com Technologies Inc. in its non-brokered private placement of common shares for gross proceeds of \$45 million.
- Represented General Atlantic LLC in connection with its preferred equity investments in Peixe Urbano, Inc., Gilt Groupe, Inc., Red Ventures LLC and others.

# Presenter Bios



## Call to the Bar

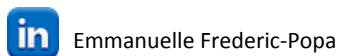
Alberta, 2012  
British Columbia, 2014

## Areas of Expertise

Mergers and Acquisitions  
Corporate Finance  
Corporate and Commercial  
Technology  
Start-up Companies  
Venture Capital / Private Equity

## Education

B. Comm, Concordia University, 2003  
J.D., University of British Columbia, 2011



## Emmanuelle Frederic-Popa ([epopa@meplaw.ca](mailto:epopa@meplaw.ca); (778) 331-0286)

### Associate

Emmanuelle Frederic-Popa is an Associate at MEP Business Counsel. Emmanuelle's practice encompasses a wide variety of corporate and commercial law transactions, with a focus on mergers & acquisitions, corporate governance and financings. Emmanuelle advises public and private companies in Canadian and cross-border mergers & acquisitions, financings, securities offerings, technology-related transactions and regulatory compliance. She also regularly assists clients on general corporate matters and corporate governance issues.

Prior to joining MEP Business Counsel, Emmanuelle worked in the Calgary office of Blake Cassels & Graydon LLP representing both private and publicly traded issuers and acting on behalf of underwriters and dealers in a wide variety of private and public offerings of debt and equity securities as well as mergers & acquisitions.

Prior to practising law, Emmanuelle was an Information Technology project manager at Johnson & Johnson and has experience in the consumer, medical devices and pharmaceutical industries.

### Selected Representative Work

- Represented Shoes.com Technologies Inc. in its acquisitions of all of the shares of Seattle based Onlineshoes.com, St. Louis based Shoes.com and California based Richer Poorer, Inc.
- Represented a British Columbia based online retailer in connection with the issuance of \$10 million secured convertible debentures.
- Represented Thunderbird Films Inc., a Vancouver based film and television production company, in connection with its acquisition of all of the shares of Great Pacific Media Inc. and Soda Pictures Limited.
- Represented a British Columbia based food and beverages distribution company in the sale of its assets to a New York based private equity fund.
- Represented a publicly traded company on its \$69-million acquisition, through a Canadian subsidiary, of a private Alberta-based Engineering, Procurement and Construction Management company.
- Represented the target in connection with its \$15.1-billion acquisition by a foreign company and subsequent restructuring.
- Represented a major publicly traded energy company in connection with its offerings of senior notes of an aggregate of US\$2.25-billion under a shelf prospectus.
- Represented a publicly traded Alberta based company on numerous cross-border private equity commitments in private technology companies.
- Represented numerous junior oil and gas companies on approximately \$220 million of aggregate private equity commitments.



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# Questions?

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