

# Unanimous shareholder agreements: no signature left behind

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On March 26, 2025, the Superior Court of Québec (the Court) released a rare decision on unanimous shareholder agreements. A unanimous shareholder agreement (USA) is a Canadian corporate law tool commonly used by business owners and investors to safeguard their investments and retain a certain degree of control over the underlying business. Business owners and investors are likely all too familiar with key provisions found in USAs, such as those governing board composition, investor vetoes, shareholder approval thresholds, information rights, and transfer restrictions. Whether in the context of family-owned businesses, private equity and VC-backed portfolio companies, or joint ventures, USAs play a critical role in shaping governance and oversight.

The Court's decision in [Cossette c. 9049-9468 Québec Inc.](#) serves as an important reminder of two fundamental aspects of USAs: the specific criteria that distinguishes USAs from other shareholder agreements, and the effects that USAs have on the allocation of powers between the shareholders and the board of directors.

The decision underscores that, for a shareholder agreement to qualify as a USA and restrict the powers of the board of directors, it must bear the signatures of all the shareholders. The ruling suggests that it will be difficult to rely on mere conduct, implicit expressions of consent, or subsequent board-level discussions and resolutions, to qualify a shareholder agreement as a USA if the shareholder agreement is missing a signature of any shareholder. While the decision concerns a shareholder agreement of a corporation governed by the *Business Corporations Act* (Québec) (the Act), the takeaway is also relevant for corporations formed in other Canadian jurisdictions that recognize the concept of "unanimous shareholder agreement."

## Context

Forex Inc. (Forex) is a corporation incorporated under the Act and operates in the forestry industry. The corporation is family-owned, and its shareholders are also members of its board of directors.

In 2020, the shareholders of Forex negotiated a shareholder agreement which included provisions governing how Forex would distribute its available annual surplus. The shareholder agreement specified that Forex would distribute its annual surplus as follows: up to 50% of the available surplus to be paid to an affiliate corporation as a repayment of a loan;

up to 25% of the available surplus to holders of preferred shares as a redemption of the preferred shares or as a dividend; and up to 25% of the available surplus to the holders of common shares as a dividend.

By March 2021, all shareholders, except one (Mr. X), had signed the shareholder agreement. Mr. X, who also served as a member of Forex's board of directors, declined to sign the shareholder agreement due to concerns about a non-solicitation clause included in the shareholder agreement.

Some time later, the plaintiffs claimed that Forex made certain distributions of available surplus to the affiliate corporation in violation of the shareholder agreement. Namely, the plaintiffs claimed that a portion of the distributions to the affiliate corporation should have been distributed to the shareholders in accordance with the provisions in the shareholder agreement governing available surplus distributions.

The plaintiffs argued that, despite Mr. X's refusal to sign, the shareholder agreement restricted the powers of the board of directors of Forex to distribute available surplus. The plaintiffs further argued that, following March 2021, the actions and conduct of the shareholders and the board of directors demonstrated a tacit acceptance or ratification of the shareholder agreement as a unanimous shareholder agreement, despite Mr. X's missing signature. According to the plaintiffs, if the shareholder agreement qualified as a unanimous shareholder agreement, the board of Forex was bound to distribute available surplus in accordance with the shareholder agreement.

To support their argument, the plaintiffs pointed to Mr. X's participation in board-level discussions in May 2022 which ultimately led to the board of Forex approving certain distributions of available surplus. The plaintiffs claimed that Mr. X's participation in such board-level discussions demonstrated Mr. X's tacit acceptance of the shareholder agreement and therefore the shareholder agreement's qualification as a unanimous shareholder agreement.

#### Analysis

The issue before the Court was whether the shareholders of Forex could, by virtue of a non-unanimous shareholder agreement, bind the board of directors of Forex with respect to the distribution of surpluses.

The Court's analysis was rooted in three provisions of the Act:

**103. Unless otherwise provided** in the articles or **in a unanimous shareholder agreement**, the board of directors may declare and the corporation may pay a dividend either in money or property or by issuing fully paid shares or options or rights to acquire fully paid shares of the corporation.

[...]

**112. Subject to a unanimous shareholder agreement**, the board of directors exercises all the powers necessary to manage, or supervise the management of, the business and affairs of the corporation.

[...]

**213. All the shareholders** of a corporation, whether or not their shares carry voting rights, may agree in writing among themselves or among themselves and one or more third persons to restrict the powers of the board of directors to manage, or supervise the

management of, the business and affairs of the corporation, or to withdraw all such powers from the board.

A sole shareholder may make a written declaration that restricts the powers of the board of directors or withdraws all powers from the board. The declaration is equivalent to a unanimous shareholder agreement.

Based on these sections of the Act, the Court considered that the board of Forex can exercise its discretion to declare and pay dividends, unless otherwise provided by a USA or in Forex's articles. Therefore, the provisions concerning the distribution of available surplus in the Forex shareholder agreement restricted the powers of the board only if the shareholder agreement qualified as a USA.

The Court found that the Forex shareholder agreement, while valid among its signatories, did not qualify as a USA. This determination was based on two key factors. First, one of the shareholders did not sign the shareholder agreement. Second, after the shareholder agreement was partially executed, the board continued to discuss and make decisions regarding surplus allocation, indicating that the board considered that the authority with respect to distribution of available surplus continued to sit with the board.

Furthermore, the Court noted that the May 2022 board resolution (which ultimately led to the board of Forex approving certain distributions of available surplus) expressly acknowledged that the shareholder agreement was not fully signed. Specifically, the May 2022 board resolution explicitly mentioned that Mr. X was asked to sign the board resolution because he had never signed the shareholder agreement. This acknowledgment further reinforced the Court's conclusion that the shareholder agreement was not a USA and therefore could not bind the board of directors of Forex with respect to the distribution of available surplus.

#### Key takeaway

This decision serves as a clear reminder that a USA must truly be unanimous. Shareholders who intend for their shareholder agreement to have the effect of a USA under the Act should ensure that every shareholder signs. One missing signature is all it takes to undermine an investor's reliance that rights negotiated in the shareholder agreements are respected and enforced as intended.

For any questions concerning shareholder agreements and unanimous shareholder agreements, please contact the members of our corporate law teams at our Montréal office.