



Shara N. Roy  
416-865-2942  
sroy@litigate.com



Peter Griffin  
416-865-2921  
pgriffin@litigate.com

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## Multi-corporation fraud decision advances case law on knowing assistance, counsel says

Shara N. Roy is quoted in the Lawyer's Daily article *Multi-corporation fraud decision advances case law on knowing assistance, counsel says* on February 1, 2018. This article discusses the decision in *DBDC Spadina Ltd v Walton, 2018*.

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Shara Roy, a partner at Lenczner Slaght Royce Smith Griffin LLP and counsel for the DBDC applicants with Peter Griffin, said this decision helps advance the case law on knowing assistance.

"In order to establish knowing assistance, you have to show that there's a fiduciary duty. And the core area of that is the fiduciary duty must be breached. What the Court of Appeal set out here is that of course contractual duties do not necessarily give rise to a fiduciary duty, but they can," she said, adding that the court addressed the issue of what it means for someone to be "in control of a corporation."

"The lower court said these corporations are governed by shareholders agreements and, to the extent that the fraudster breached those shareholder agreements by essentially committing this fraud, then the corporation can't have actually known about it because the corporation cannot do things that it's not allowed to do," she said, noting that the Court of Appeal took into account *Galambos v. Perez* 2009 SCC 48 when addressing this issue.

Roy said the *Galambos* case noted that the fiduciary can unilaterally exercise power over the corporation.

"We know that corporations are just bricks and mortar. It's the individuals who control the corporations who are really the directing mind of the corporation. And so, what you have to do is say 'who is in control of the corporation?' And in exercising their ambit of power did they, in fact, knowingly assist in this fraud?" she said.

Roy added that the court's engagement with the *Canadian Dredge*

criteria shows that it's up to the court's discretion if the criteria are not completely met.

"The court has discretion in two ways. The first discretion is in applying those criteria, and that's what Justice Blair goes on to do," she said. "Secondly, even if you find that these criteria are not fully met, the court has the discretion in a civil case to tag a corporation with liability in any event."

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<https://www.thelawyersdaily.ca/articles/5804/multi-corporation-fraud-decision-advances-case-law-on-knowing-assistance-counsel-says>