

RECTIFYING SHAREHOLDER GRIEVANCES: OPPRESSION REMEDIES

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As a fundamental principle, company law treats companies and their shareholders as separate legal identities, creating two consequences—limited liability and limited rights. Shareholders take advantage of limited liability through incorporation while accepting limitations on their rights to personally seek redress for a wrong done to their company.

Historically, however, it was difficult for shareholders—particularly minority shareholders—to seek redress for wrongs done to them or their company. A shareholder’s ability to influence a company’s management and direction may have been limited by the way a company’s ownership was structured. Many forces that affected a company—including majority shareholders, directors and officers as well as third parties such as creditors and contractors— may have been outside an individual shareholder’s control. Consequently, while the actions of any one of these may have adversely impacted a company’s direction and value, there was often little a shareholder, particularly one holding a minority position, could do to address the situation.

Now, however, there are steps that shareholders can take to protect their interests. In British Columbia (and in most of the rest of Canada), there are two statutory remedies that give shareholders the ability to overcome historic constraints—the “oppression remedy” and a “derivative action”. The first remedy relates to conduct within a company that affects shareholders *in their personal capacities as shareholders*. A “derivative action” (which we will discuss more fully in a later issue of *Letter of the Law*), by contrast, is a situation where a wrong has been directed at the company itself by external forces and a court grants leave to a shareholder to bring an action in the company’s name to seek redress for that wrong.

In British Columbia, a court will grant relief to shareholders under the *British Columbia Business Corporations Act* (BCA) if it is satisfied that a shareholder has been subject to “oppressive” or “unfairly prejudicial” conduct. A shareholder can only obtain relief where the conduct complained of affects them in their capacity as a shareholder. The general principle that a court examines is whether the shareholder has been a victim of oppressive or unfairly prejudicial conduct, which is defined as conduct that violates reasonable expectations. When such expectations are abused, without justifiable reason, the courts will generally find that oppression has occurred. This concern

is particularly important for closely held corporations, which often have a high degree of personal expectations between the involved parties. The courts will also consider whether there has been an advantage to one group of shareholders to the detriment of another group of shareholders without any legitimate business reason.

Conduct that the courts have held is oppressive or unfairly prejudicial includes:

- directors issuing shares in a way that affects voting control among shareholders
- a company preparing false financial statements
- a company refusing to hold an annual general meeting
- majority shareholders appointing their nominees as directors, without holding elections
- majority shareholders taking salaries without approval of directors or other shareholders
- directors authorizing payments to entities related to them.

The courts will not automatically interfere in the business affairs of a company simply because a shareholder brings an action. The courts have developed a “business judgment rule” under which deference is shown to the expertise and business judgment of a company’s directors and officers. If the directors and officers act honestly and reasonably and for legitimate business reasons, the courts will often hesitate to interfere in the management of the company.

The BCA’s provisions to remedy oppression give the courts wide discretion to grant appropriate relief. However, a court may only exercise this discretion to remedy the specific conduct that it has found to be oppressive. Such remedies include:

- restraining or prohibiting certain actions or conduct
- regulating the company’s Affairs
- appointing new directors
- directing an issue or exchange of shares
- varying or setting aside a transaction or contract to which the company is a party
- requiring the company to produce financial statements or hold meetings of shareholders
- ordering compensation for an aggrieved person.

The oppression remedy is an important means of counteracting abuses in a company’s management and operation: its aim is to ensure a fair result tailored appropriately at the particular mischief at issue. Where circumstances warrant its use, this redress is a powerful tool for protecting

shareholders' interests in a company. If management has oppressed the interests of shareholders—or acted against them in an unduly oppressive manner—the courts will not hesitate to intervene and make an order that protects a shareholder against the actions of the wrongdoer.