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5-Year Retrospective: The Oppression Remedy in Shareholder Disputes

Few remedies in Canadian corporate law are as powerful, or as unpredictable, as the oppression remedy. It can force buyouts, impose personal liability on directors, and unwind years of corporate decisions. Between 2021 and 2025, the Commercial List has seen a steady stream of shareholder disputes that have refined the contours of this flexible remedy and challenged litigators to adapt their strategies accordingly. This retrospective distils the key trends, landmark decisions, and practical lessons from five years of oppression remedy jurisprudence on the Commercial List.

Key Trends & Judicial Developments

The period from 2021 to 2025 has revealed several trends in oppression remedy disputes before the Commercial List. These trends reflect broader economic conditions, evolving judicial approaches, and the unique characteristics of the corporations most frequently embroiled in shareholder conflict. Understanding these patterns provides essential context for practitioners advising clients on the likelihood of success in oppression proceedings and the strategies most likely to resonate with Commercial List judges.

Dominance of Closely Held Corporation Disputes

Closely held corporation disputes have dominated the Commercial List's oppression docket for good reason: these enterprises are uniquely vulnerable to shareholder conflict. Relationships built on trust rather than formal agreements leave parties exposed when that trust erodes. In family businesses, which feature prominently in the case law, expectations of loyalty often go unwritten, making them difficult to enforce yet deeply felt when violated.

Alexander v DHA Holdings Inc illustrates this dynamic. Penny J. found that a daughter's longstanding pattern of support from the family enterprise despite no formal entitlement to dividends was enough to ground her oppression claim against her deceased father's wife. The Court set aside the debt conversion and emphasized that, in closely held family companies with no employees or active business, the sole director is "clearly required to consider the best interests of all

shareholders," not merely those of the controlling shareholder.

Increased Focus on Interim Relief

The Commercial List has demonstrated an increasing willingness to act swiftly in oppression proceedings, granting interim relief to preserve the status quo where delay might render the ultimate remedy ineffective.

Courts will scrutinize transactions that alter the parties' relative positions to gain tactical advantage. In *The Morgan Investments Groups v ADI Development Group Inc*, Steele J. held that one partner incorporated a new entity to assume the project's senior debt from the existing lender without the co-shareholder's knowledge or consent. The Court found this appeared "to have been done for the purpose of changing the status quo" and circumventing the unanimous shareholders' agreement and imposed comprehensive standstill terms preventing enforcement of the loan pending a full hearing on the merits.

The pragmatic approach — tailoring relief to the circumstances rather than applying rigid categories — has become a hallmark of Commercial List practice in oppression matters. *Sherif Gerges Pharmacy Professional Corporation v Niam Pharmaceuticals Inc* confirms that even where extraordinary remedies like *Mareva* injunctions are not warranted, the Commercial List will fashion protective orders to preserve the ability to grant meaningful relief at trial. The appointment of inspectors has emerged as another important interim tool, with a relatively low threshold requiring only "an index of suspicion" that reasonable shareholder expectations have not been met. As *Zhou v Chen* illustrates, this remedy is particularly appropriate where the alleged wrongdoer controls the information necessary to understand the business's financial condition.

Economic Pressures & Pandemic-Related Disputes

The COVID-19 pandemic created conditions uniquely conducive to shareholder conflict. Disagreements over business strategy, dividend distribution, capital calls, and cost-cutting measures gave rise to oppression claims as some shareholders felt corporate responses to the crisis unfairly disregarded their interests.

Commercial List judges have not been willing to ground every pandemic-related hardship in an oppression claim. As seen in *Corber v Henry*, decisions made in good faith to preserve the business during a crisis — even those that may disadvantage some shareholders — may fall within the legitimate exercise of business judgment. Similarly, the courts have treated technical

breaches of shareholder agreements made in good faith during the pandemic with understanding, including in *2724050 Inc v BAS Sports Group Inc*.

The pandemic also transformed the mechanics of Commercial List practice. Virtual hearings became the norm, and the hybrid model that emerged has made the Commercial List more accessible for urgent oppression matters.

Key Takeaways for Businesses

The decisions and trends of the past five years offer important lessons for business owners, directors, and officers seeking to avoid oppression claims or position themselves favourably should a dispute arise. The best protection is to ensure your business has robust governance and carefully drafted shareholder agreements in place before a dispute arises; the second-best protection is to seek early input from experienced outside advisors when disputes prove unavoidable.

Invest in Comprehensive Shareholder Agreements

Courts frequently defer to the terms of shareholder agreements when assessing reasonable expectations, making these documents essential tools for managing shareholder relationships and preventing disputes.

A well-drafted shareholder agreement should clearly address:

- The roles and responsibilities of shareholders and directors
- Decision-making processes and voting thresholds for material corporate actions
- Dividend policies and expectations regarding distributions
- Share transfer restrictions including rights of first refusal and tag-along provisions
- Buy-sell mechanisms and exit strategies that provide liquidity in the event of disagreement
- Dispute resolution procedures including mediation or arbitration requirements

The absence of such an agreement leaves parties vulnerable to disputes about informal expectations and understandings that may be difficult to prove or disprove. Businesses should review their shareholder agreements regularly and update them to reflect changes in the shareholder base, corporate structure, or business operations.

Prioritize Transparency & Strong Corporate Governance

Transparency and good corporate governance practices serve as a defence against oppression claims. Regular shareholder

meetings, clear financial reporting, and documented decision-making processes all contribute to demonstrating that directors acted honestly, in good faith, and in the best interests of the corporation.

The business judgment rule protects directors who make good-faith decisions within a range of reasonable business choices, but directors lose this protection when they violate stakeholder expectations or engage in self-dealing. Corporations should maintain accurate and complete corporate records, including meeting minutes, resolutions, and financial statements, as these documents serve as critical evidence in any future dispute. Directors should contemporaneously document the rationale for significant decisions.

Recognize & Address Warning Signs Early

Business owners and directors should watch for warning signs of potential oppression disputes. These include:

- Excluding minority shareholders from decision-making or access to information
- Withholding financial information or refusing inspection requests
- Issuing shares that dilute minority interests without proper notice or opportunity to participate
- Diverting corporate opportunities to related parties or for personal benefit
- Denying dividends while controlling shareholders draw excessive compensation
- Making unexplained changes in corporate practices that disadvantage particular shareholders.

Intervening early when these issues arise can prevent escalation into formal legal proceedings. Directors who recognize emerging conflicts should address them through open communication and, where necessary, propose fair resolution mechanisms such as buyouts at independently determined values.

Seek Legal Advice Without Delay

Courts have emphasized that potential complainants should pursue claims as soon as they become reasonably aware of potential oppression. Delay can be fatal not only because of limitation period issues (the general two-year limitation period applies to oppression claims) but because it may suggest a shareholder has acquiesced to the impugned conduct.

From the respondent’s perspective, early legal advice is equally important. Directors and officers who receive notice of

shareholder dissatisfaction should immediately consult counsel to assess their exposure and avoid conduct that may exacerbate the situation. Complainants may seek interim relief, including injunctions and preservation orders, on short notice to prevent further harm, and respondents must be prepared to respond quickly. The Commercial List's efficient procedures make it possible for the Court to hear urgent matters within days, and unprepared parties may find themselves subject to orders that significantly constrain their freedom of action pending trial.

Practical Implications for Litigators

Litigators who practice on the Commercial List must approach oppression remedy matters with a distinct set of skills and strategies. The flexible and fact-intensive nature of the remedy means that success depends on thorough preparation, careful attention to the governing legal framework, and an appreciation for the practical concerns that animate Commercial List judges.

Pleading & Proving Reasonable Expectations

The fundamental challenge in any oppression case is pleading and proving reasonable expectations. Litigators must devote careful attention to identifying what expectations the complainant held and establishing why those expectations were objectively reasonable. This is not merely a matter of reciting the complainant's subjective beliefs. The Court will assess reasonableness by reference to contextual factors including:

- General commercial practices
- The nature of the corporation
- The relationship between the parties
- Past practice
- Preventive steps the complainant could have taken for protection
- Representations and agreements
- The fair resolution of conflicting interests between corporate stakeholders

Counsel should build the evidentiary foundation for reasonable expectations early, advising clients to preserve emails, meeting minutes, share certificates, financial records, and any other documents that shed light on the expectations that existed at the time of the relevant transactions or conduct. Oral evidence alone may be insufficient to establish expectations that depart significantly from the formal corporate documentation. Counsel should therefore prepare to provide detailed evidence about how the business relationship was formed and how it evolved.

Understand the Commercial List Procedural Toolkit

Oppression remedy matters often require urgent attention, and counsel must be familiar with the procedures for obtaining interim relief.

The 9:30 appointment provides a mechanism for seeking urgent directions, while case conferences allow for more substantive discussions about case management and interim issues. Understanding when each procedure is appropriate and how to present matters efficiently within the time constraints of each format is essential for effective advocacy.

Achievable & Appropriate Remedies

Counsel must know how to frame a request for relief that is both appropriate and achievable. The oppression remedy provisions grant the Court extraordinarily broad discretion to fashion relief, but the Court must exercise that discretion to rectify the oppression and protect only the complainant's legitimate interests.

Counsel should be prepared to propose specific remedies tailored to the circumstances of the case that the Court can practically implement. Where a buyout is sought, counsel should have a clear proposal for how to structure the transaction, determine the purchase price, and set an appropriate timeline. Where injunctive relief is sought, counsel should be precise about what conduct should be enjoined and for how long.

Commercial List judges appreciate counsel who present practical solutions rather than leaving the Court to devise remedies from first principles.

Read our Commercial List Year in Review: 5-Year Retrospective for more.