

Hockey tournament dispute leads to shareholder oppression remedy

Business Corporations Act | Hockey | Litigation | Litigation & Dispute Resolution

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Individuals involved in a small business venture may view themselves as equal partners, but if they make the decision to use a corporation for their business, they should be aware that the principles of corporate law may be applied to resolve their legal disputes. In particular, the shareholder oppression remedy is available to minority shareholders who feels that their reasonable expectations as to the management of the business have been breached. Further, the operators of the business have duties of fidelity and good faith, and an obligation not to pursue business opportunities to the detriment of the corporation.

In *Marchand v. 7104383 Canada Inc.*, 2021 ONSC 734 (CanLII), the applicant sought a remedy under the oppression provisions of the *Canada Business Corporations Act*, in connection with a business that had been incorporated with two other individuals to operate an annual minor hockey tournament in Ottawa. The business was modelled on an existing tournament structure called the “Montreal Meltdown Tournament.”

In August 2008, the parties agreed to a business outline for what was to become known as the “Ottawa Meltdown Tournament,” which began in 2009. The three individuals initially contemplated using a partnership, with a partnership agreement, but this was changed to a corporate structure with each of the three individuals owning 33.3% of the capital stock of the corporate respondent. No written shareholders agreement was ever signed.

In 2012, the business declared an annual “value” based on the net income of \$24,804, which was derived from team registration fees, ticket sales, and rebate or referral fees from participating hotels for accommodation. Accordingly, each of the three shareholders received an equal share of \$8,268 of the net income for 2012.

In 2013, the business declared a reduced value of \$14,333.01, due in part to fewer teams participating. The applicant disagreed with this determination, as he claimed that the 2013 value did not include cash from unreported ticket sales. However, there was no evidence supporting his claim, particularly since cash receipts were not reported to the Canada Revenue Agency. Each shareholder received a dividend of \$4,477.67 for the 2013 “value” of the business.

The disagreement over the value and perceived lack of workload by the applicant led to a proposal by the respondents to have the company acquire the applicant’s shares for \$13,133.25, to be paid over five years. The respondents gave the applicant a deadline in August 2013, for the buy-out proposal to be accepted, failing which they said they would dissolve the company. In January 2014, a special meeting of the corporation was called, and a vote was held in the applicant’s absence to dissolve the company. The applicant claimed he did not receive sufficient notice of the meeting.

A formal dissolution of the corporation could not actually occur because the company had liabilities that were never paid. A resolution of the company dated 13 January 2014, signed by the respondents, declared that the liabilities of the corporation were \$7,203.80 and provided that “immediately upon payment of the Liabilities, the Corporation be dissolved forthwith.” In November, 2015, the corporation was finally dissolved for non-compliance with [section 212](#) of the *Canada Business Corporations Act*.

In 2014, the respondents carried on with a new hockey tournament using a new corporation and a new name, the “Ottawa Madness.” A new numbered company was incorporated by the girlfriend of one of the respondents for that purpose, and they attempted to conceal the plan from the applicant.

The applicant commenced a shareholder oppression proceeding, claiming that his reasonable expectations as an investor had been improperly frustrated by the corporation and the other shareholders. He claimed that they improperly pushed him out of the corporation and offered a below-market value for his shares under the threat of dissolution.

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In response, the shareholders took the position that they were dissatisfied with the applicant's share of the workload, and that they had offered him a reasonable amount for his shares after making the decision to terminate their business venture with him. They argued that they did not appropriate any confidential information from the company and there was no non-competition agreement between them.

The "oppression remedy" in the *Canada Business Corporations Act* focuses on harm to the legal and equitable interests of a wide range of stakeholders affected by oppressive acts of a corporation or its directors. This remedy, which is also contained in the Ontario *Business Corporations Act*, gives a court broad jurisdiction to enforce not just what is legal, but what is fair. Oppression is also fact specific: what is just and equitable is judged by the reasonable expectations of the stakeholders in the context and in regard to the relationships at play: *BCE Inc. v. 1976 Debentureholders*, [2008] 3 S.C.R. 560, 2008 SCC 69 at paras. 45, 58-59.

In assessing oppression remedy claims, the courts engage a two-step analysis: (1) was a reasonable expectation of a stakeholder breached, and; (2) if so, did the breach of the reasonable expectation amount to "oppression, unfair prejudice or unfair disregard" for the interests of the aggrieved party?

In the matter at hand, Justice Martin James noted that while the business was similar to a partnership, and the individuals referred to themselves as "partners," it was in fact a corporation that was subject to the control and management of the three principals. The three shareholders were not employees of the corporation and there was no "boss." They lacked a comprehensive shareholders agreement which structured their rights and obligations, and they had no compulsory "shot gun" mechanism to enable a buy-out of another's shares.

Like unhappy linemates on a hockey team, the three shareholders were therefore essentially stuck with each other. However, this did not obviate their respective obligations to the corporation. James J. held that the two individual respondents breached the applicant's reasonable expectations by attempting to dissolve the corporation for the sole purpose of getting rid of him. In so doing, they breached their obligation of good faith owed to the corporation.

Justice James further found that the two respondents had engaged in oppressive conduct by pursuing the new tournament venture after shutting out the applicant and their existing corporation from the business opportunity. James J. referred to the seminal case of *Can. Aero v. O'Malley* 1973 CanLII 23 (SCC), [1974] S.C.R. 592 at pages 619 and 620, as authority for the proposition that oppressive conduct is not limited to the theft of corporate secrets or proof of monetary gain.

In the result, James J. found that it was reasonable for the applicant to expect that the respondents would act in the best interests of the corporation, that they would perform their duties in good faith and that they would not place their personal interests ahead of the corporation. He found that their actions were oppressive to the applicant's interests as a minority shareholder.

As a remedy, the applicant was not seeking disgorgement of lost profits but proper compensation for the buy-out of his shares. The parties had agreed at the outset that their "deal" included an arrangement to pay a departing shareholder three years' net income based on the most recent tournament. James J. found that the parties intended that this meant a departing shareholder would receive a buy-out in the amount of three times the most recent year's "net profit" per shareholder. In the circumstances, the 2013 valuation was the best indicator of the proper valuation of the applicant's shares, which resulted in an award of one third of the declared value of \$14,333.01, multiplied by three years, less the dividend that was actually paid in 2013. The applicant was also awarded general damages of \$5,000 due to the lack of a valid reason for forcing him out of the corporation.

Given that the amount awarded by the court to the applicant was less than \$15,000, it is not clear whether pursuing litigation against the former business associates will prove to have been a profitable course of action. The decision illustrates the perils of entering into a business venture using a closely-held corporation without a detailed shareholders agreement which sets out the parties' respective roles and obligations, and a mechanism to address disputes including a compulsory buy-out when circumstances require. The decision also demonstrates that even small business ventures like a hockey tournament can be the subject of a corporate opportunity claim and individuals involved in a corporate business should be cognizant of their fiduciary duties to the corporation and each other. A PDF version is available to download [here](#).

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