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Shareholder Disputes

Edmonton, Alberta

Calgary, Alberta

Chair

Paul G. Chiswell

Burnet, Duckworth & Palmer LLP

Calgary, AB

Faculty

Justice Donna L. Shelley

Court of Queen's Bench of Alberta

Edmonton, AB

Prof. Jassmine Girgis

University of Calgary

Calgary, AB

Vivian R. Stevenson QC

Duncan Craig LLP

Edmonton, AB

Prof. Shannon O'Byrne

University of Alberta

Edmonton, AB

Dean Das

MDD Forensic Accountants LLP

Calgary, AB

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Procedural Considerations in Oppression Claims and Derivative Actions

Prepared by:

Vivian R. Stevenson QC

Duncan Craig LLP

Brad Angove

Duncan Craig LLP



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INTRODUCTION

Probably the most useful advice that a lawyer can give his or her clients in relation to shareholders disputes is to try to avoid them in the first place. Well-drafted unanimous shareholder agreements are one proactive step, and when issues arise, it is usually in everybody's interests to attempt to reach a negotiated resolution before resorting to litigation or arbitration.

The purpose of this paper is to highlight some of the procedural issues that may arise in handling claims seeking the oppression remedies available under Part 19 of the *Business Corporations Act*, RSA 2000 c. B-9 (the “ABCA”) when efforts to avoid legal proceedings have failed.

The oppression remedy and the derivative action are only two mechanisms available to shareholders seeking to protect themselves against potentially harmful corporate conduct. Other common law and statutory remedies are available and should be considered when contemplating legal action, but the availability, appropriateness and nature of those remedies is beyond the scope of this discussion.¹ How to best protect your client’s interests in a shareholder dispute, regardless of which side you are on, requires you to understand your client’s ultimate objectives and which course of action will provide the clearest path to achieve those objectives.

The oppression remedy and the derivative action have different rationales and different statutory provisions. It should be noted however, that the courts do not consider them to be mutually exclusive and there are circumstances in which these remedies overlap, particularly in relation to small private corporations.²

OPPRESSION CLAIMS

The oppression remedy protects the interests of shareholders and stakeholders of a corporation. It focuses on harm to the legal and equitable interests of stakeholders affected by oppressive acts of a corporation or its directors. It is available to a wide range of stakeholders – security holders, creditors, directors and officers.³

¹ Examples include breach of fiduciary duty, conspiracy, fraudulent conveyances and preferences, piercing the corporate veil and the right to dissent under section 191 of the ABCA.

² *Rea v Wildeboer*, 2015 ONCA 373.

³ *BCE Inc. v 1976 Debentureholders*, 2008 SCC 69.