

Are you having difficulty dealing with a limited corporation? Help is available.

The Courts have generally been reluctant to interfere with the normal operation of a limited corporation, large or small. However, there is one separate remedy that may be available to a number of people, including minority shareholders, security holders, creditors or officers of the corporation.

The Ontario Business Corporations Act (OBCA) allows for an "Oppression Remedy", (as does the Federal Canada Business Corporations Act (CBCA)).

The "Oppression Remedy" would allow, for example, minority shareholders in a corporation a cause of action if the corporation is acting in a manner that in the opinion of the court is "oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder (shareholder), creditor, or officer" of that corporation.

This is a wide and vague definition that would allow many different types of claims against the corporation. The courts are constantly attempting to balance the rights of directors to make reasonable (not necessarily perfect) choices in the operation of the business against the rights of parties dealing with the corporation to obtain relief if the conduct of the corporation is found to be oppressive.

This remedy is a powerful tool for the courts to achieve an equitable result for those being treated unfairly by the corporation.

One very interesting aspect is the potential right of a creditor to claim relief under this legislation.

Whereas often creditors of a corporation seem to be left on the outside when trying to receive payments owed it by the corporation, the "Oppression Remedy" has been successfully used in Ontario by such parties as a former employee attempting to be paid his termination pay from a corporation that had transferred its assets to affiliated corporations, leaving the former employer corporation insolvent and unable to pay the termination amount.

The remedy has also been used where normal creditors of a corporation attempted to stop the transfer of the corporation's assets to another corporation for less than fair market value.

The underlying theme in these, and many other decisions is that the courts will not allow unfair conduct such as "asset stripping" or corporate manipulations to avoid the payments of its obligations. The courts consider "whether an individual can reasonably expect his interests to be considered by the corporation".

However, the courts will not allow this remedy to be used as a means by which commercial contracts negotiated fairly by competent parties can be revisited after the fact on the basis what is "just and equitable". The courts will not rewrite contracts to relieve parties if they have simply made a bad deal.

This article is not legal advice. You should retain a lawyer.