SHAREHOLDERS' RIGHTS

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IT USED to be that the majority owner of a corporation could run it according to his or her wishes and minority owners were compelled to rely on the good will and honesty of those in control. A minority owner's protection was basically limited to that which could be incorporated into a contract.

Much has changed! Now both federal and provincial statutes enhance the position of minority owners and give them significant protection. They may seek Court protection if they disagree with the management, administration or financing of the corporation, so long as they allege that the majority is exercising its power in a manner that is "oppressive, unfairly prejudicial to or in unfair disregard" of their rights. It does not matter that the minority owner has not taken substantial risks or does not participate in the day-to-day management of the company.

Anyone becoming a shareholder, officer or director of a corporation should know about this far reaching protection, commonly called the "oppression remedy". It is not confined to minority shareholders.

Whether it is employed with good faith or bad, the oppression remedy will involve the company and its shareholders in significant legal proceedings. Furthermore, if the applicant can demonstrate "oppression", the powers of the Court are literally without limit. It can appoint inspectors or receivers, order the payment of money by the company or a shareholder, or require shares to be purchased. Its powers extend to rewriting a contract or permitting one party to disregard it, even if it is valid.

The case of *Re: Bury and Bell* contains an interesting example of this. The shareholders had entered into an agreement that if one of them left, the company would buy his shares but pay for them over an extended period of time.

One shareholder did leave. The company, standing by the contract, decided to pay him out over time. The shareholder thought this was unfair and convinced the Court that, although the company was merely following the contract, it was doing so to punish him.

In the result, although none of the parties alleged that the contract was invalid, the Court prevented the company from adhering to it. It found that the company's exercise of its rights was "oppressive, unfairly prejudicial, or in unfair disregard" of the departing shareholder's rights. It compelled the company to pay the ex-shareholder his money right away.

This does not always mean, however, that the Court will not hold parties to their bargain.

In another case, our firm represented two of the three directors of a very prosperous operating company. They were being sued by the third director who wanted to reduce the number of directors to two so she could exercise a veto and effectively control the company. Her complaint was that she intended it to be a partnership of two, not a company with three directors. Since two out of three directors could outvote her on the board, she alleged that this was oppressive and unfair.

Months earlier, the applicant had signed a memorandum with one of the directors expressing the intention to enter into a partnership, not a corporation. The partnership never materialized. A third person was needed to make the business successful and as things ultimately developed, a company was incorporated in which all three were active.

Despite the applicant's protestations that she did not know what she was doing when she signed the corporate documentation, the Court refused to upset the corporation or to reduce its board of three directors. The Court was greatly influenced by the fact that the applicant, who was now complaining, had previously relied on the three man board to induce the public to invest in the corporation. The Court was apparently not impressed by the applicant's attempt to inhale and exhale simultaneously.

Who ever said business and morality were mutually exclusive? Those who think so should beware for they will make themselves prime candidates for the oppression remedy! ●