Trapped in an impasse: Is deadlock enough to wind up a closely-held private company?

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1. INTRODUCTION

The "easy" oppression cases are where one of a few shareholders in a private company misappropriate assets, or otherwise act in a manner that substantially harms the other shareholder(s) for their own benefit. But what about those cases where there has been no nefarious conduct, but the founders simply no longer agree on how the business should be run — or where there are only two founders and shareholders, each with 50% of the shares and half of the board seats, and disagreement means the company cannot do anything?[1]

This is the situation of "deadlock" or "impasse". Where the parties' shareholder agreement does not deal with a situation (or where there is no shareholders agreement at all), the courts have intervened and granted remedies. In such cases, remedies granted by the courts could range from a forced buyout of either party's shares, to the "remedy of near or last resort", a full liquidation.

The test the courts have applied varies depending on the parties in the private corporations:

a. For companies with equal (50-50) shareholders, remedies have been granted where: (a) there is a lack of confidence and trust between the parties; (b) there is a true deadlock on fundamental points between equal shareholders; (c) the company was intended to run like a partnership, which is no longer possible given a breakdown in the relationship; (d) one of the founders "reasonable expectations" have been defeated; and (e) there is major animosity between the parties.

b. For companies with few shareholders but where one minority shareholder is complaining about the conduct of the majority, the courts will typically only grant remedies with proof of wrongful conduct by the majority. A minority shareholder who wants to exit from a company that has no exit provisions in a shareholders agreement will usually have to show more than that desire to get a remedy from the courts.

While deadlock *could* be enough to get a remedy from the court in an equal shareholder situation, those prospects increase significantly with proof of wrongful conduct. And in a minority shareholder situation, such proof is almost invariably required. The result is that, until the governments legislate a default exit mechanism for private companies, this type of litigation will usually include allegations of corporate wrongdoing and a parade of horribles against the defendants.

2. THE PROBLEM OF PLANNING FOR DIVORCE DURING YOUR ENGAGEMENT

Few engaged couples spend much time planning for their divorce. It is not in the nature of the relationship, at the time. This is why we see so few prenuptial agreements. It is awkward and uncomfortable. It would raise doubts about the union — why is my partner already planning our failing?

It is no different with corporations with only a few shareholders, usually consisting of co-founders. They are about to embark on a new business, to conquer the market and leave competitors in their wake. Who in their right mind would talk about walking away from each other and effectively planning for a divorce?

And so this is why we so often see shareholders agreements signed in Canada, with no "exit" mechanism, other than to sell shares to third parties (which is often not practicable for private companies). But even that exit procedure — selling to a third party — is often circumscribed (whether through rights of first refusal, or through the corporation's consent rights for any transfer).

What the parties often need is a mechanism that fairly allows one party to exit. There are plenty of ways to deal with that at the outset of the relationship, most commonly through a "shotgun clause" in the shareholders agreement. These kinds of clauses have a tendency to keep the parties honest, by requiring the party who is offering to buy, to also require them to sell their shares at that same price. Shotgun clauses are not perfect, and are particularly challenging where there are wealth disparities between the shareholders. But at least they are something.

3. THE STATUTORY REMEDY

Absent such a liquidity exit clause, shareholders become dependent on the courts. But no province in Canada has a default mechanism that says that, unless the parties have agreed otherwise, there is a set statutory default exit procedure. Instead, shareholders are left to rely on the “oppression” or the “dissolution” provisions of the corporate statutes.

The oppression remedy is drafted very similarly in the federal *Canada Business Corporations Act* (the “*CBCA*”) and all of the provincial *Business Corporations Acts*. The oppression remedy in the *CBCA* reads like this:

> 241.(2) If, on an application under subsection (1), the court is satisfied that in respect of a corporation or any of its affiliates
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> (a) any act or omission of the corporation or any of its affiliates effects a result,
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> (b) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or
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> (c) the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner
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> that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer, the court may make an order to rectify the matters complained of.

“Oppression” is often considered to be *wrongful* conduct. At the very highest level, oppression can be considered to be acts conducted that are unfairly prejudicial to a stakeholder’s “reasonable expectations". The reality is that, in constructing such an oppression case, litigators tend to construct such oppressive conduct as ones that would arguably be actionable in their own right elsewhere — such as directors lining their pockets through related party transactions, taking unreasonable fees, diverting assets, etc. Where such facts are present, they provide easy opportunities to seek a wind up of the company or other remedy based on those wrongful acts alone.

The other statutory provision that could be utilized is the dissolution section of the corporate statute. Oppressive conduct is one ground for dissolution of a company, but not the only one. The other basis is in section 214(1)(b) of the *CBCA* and the provincial counterparts (section 207 of the *OBCA*, for example). Those sections say that, in addition to cases of oppression, courts may dissolve a corporation:

> (b) if the court is satisfied that
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> > (i) a unanimous shareholder agreement entitles a complaining shareholder to demand dissolution of the corporation after the occurrence of a specified event and that event has occurred, or
> >
> > (ii) it is just and equitable that the corporation should be liquidated and dissolved.

It may well be "just and equitable" to wind up a corporation, even in circumstances where there is no oppressive conduct. Is "impasse" one such "just and equitable" circumstance? The answer, we shall see, is "it depends."

4. POLICY CONSIDERATIONS

Before exploring the caselaw on this subject, it is worth understanding some of the underlying policy considerations at play. While these policies are not always cited by the courts, they are often there. We have identified ten.

First, courts believe in freedom of contract. If parties want to agree to an exit mechanism, then a court will surely enforce it. But if the parties choose not to negotiate such a mechanism, then this *too* reflects a choice made by the parties. Enforcing a contract has a flip side: giving the parties no more than they bargained for. Contracts, particularly unanimous shareholder agreements, are a bundle of rights, and when courts enter into the fray of adding clauses, or giving effect to only some but not other clauses, the court is in effect rewriting the contract. In general, they dislike doing that.

Second, courts understand, and give effect, to implied terms in every bargain. They understand that the written document can only foresee a finite number of possibilities, and not everything needs to be reduced to writing. In Canada, every contract has an implied term of good faith, by judicial fiat.

Third, courts across Canada are equitable courts. They are there not just to enforce the contractual rights, but also to ensure that Canadians enjoy the benefits of the law of equity. Is it equitable to force someone to be a shareholder until their death? Is it equitable to require the corporation to continue in a manner that is totally different from what was originally envisioned by its founders, and to trap one such founder in the corporation, forever? The law of equity has a role, even when simply applying the statute.

Fourth, courts are keenly aware of scarce judicial resources. Accused persons face lengthy waiting periods, sometimes while incarcerated pending trial, and there are only so many judges in the country. There are many competing demands on scarce judicial resources. How much time should be given to parties who could have, but chose not to, draft a clause in their contract that would have avoided this very circumstance? Should a child custody case be put on hold for months to resolve such a dispute among shareholders?

Fifth, the courts are aware of the separation of powers in Canada, and understand that their role is not to legislate. If Parliament or the legislatures wanted to create a statutory default mechanism for the dissolution of corporations that have no exit mechanism, they could have drafted one. It is not up to the judiciary to draft such a statute for the legislators.

Sixth, courts understand that litigation is often used as a bargaining tool to effect a result that prefers the party bringing the litigation. Judges do not like being used in that way. Liquidating a corporation might be the only statutory remedy available, but is that really serving the reasonable expectations of the parties? Where the corporation is a going concern, is it just and equitable to effect a dissolution, or is that really just the nuclear option being used by one party in seeking a buy-out?

Seventh, and often related to the sixth point, courts are aware of the "tyranny of the minority". Minority shareholders are not expected to be able to run the corporation. They are not expected to be able to control the destiny of all the other shareholders. By becoming a minority shareholder, particularly without liquidity rights, they assumed the risks of being perpetually trapped as a passive shareholder. Granting elevated rights to such minority shareholders run the danger of turning corporate governance on its head: allowing the tail to wag the dog, so to speak.

Eighth, courts are aware that their decisions can have real-world consequences for future agreements. If courts are there to always bail out shareholders who fail, or choose not to, draft exit mechanisms, shareholders have little reason to draft such a mechanism. By contrast, if remedies in these circumstances are unavailable, or at the minimum unpredictable, this would encourage shareholders to draft such remedies themselves, because who knows what one might get in the courts.

Ninth, courts employ deference to business judgment decisions. Business judgment deference finds its roots in two related concepts. First, courts do not want to get involved in running businesses: they do not believe that they have the expertise in so-doing, and are not in the proper position to tell businesses what they are doing makes good business sense, or bad business sense. Second, by the very structure of businesses, the parties themselves have decided who should be running the corporation, and deference is required in order to give effect to those expectations of the parties. The issue of business judgment comes up in this context when the courts ask whether a loss of confidence or a deadlocked issue is "reasonable" or not: business judgment deference puts the court in an uncomfortable position of having to adjudicate the reasonableness of a dispute over business strategy.

Finally, courts often dislike tying their hands into the future. Bright-line tests lead to conclusions that may appear inequitable in the circumstances of a future case. Those inequitable circumstances give courts pause for concern that the earlier decision was wrongly decided.

These competing values drive some of the decision-making we see in cases of "impasse", even if they are not expressly stated in the judgment.

There is a solution available to the courts, which is for an appellate court to create baseline expectations that, absent unusual circumstances, would apply in every case. This would reduce litigation because the parties would know what to expect from the court system. This could be achieved simply by giving judicial interpretation to what is "just and equitable" in the case of a deadlock, or what would be *per se* "oppressive", absent special circumstances. Having a carve-out for "special circumstances" means that litigation would not end, but a default rule would at the minimum reduce the amount of litigation in cases of deadlock.

5. THE DIFFERENCE BETWEEN DEADLOCKS, AND MINORITY SHAREHOLDERS BEING TRAPPED

In considering this issue, a distinction can be drawn between true cases of *deadlock*, and cases where a minority shareholder is simply trapped in a corporation without a liquidity provision. In cases of true deadlock, like where there are two 50% shareholders, or to a lesser degree, four 25% shareholders with equal factions, there is a real risk that the corporation will be trapped in a state of perpetual status quo, incapable of making any decisions of any kind that require a majority shareholder vote (such as changing the board of directors). Deadlock can also be found in circumstances where a 2/3 shareholder vote is required, and no individual shareholder (or group of shareholders) hold that 2/3 majority, thus giving rise to the "tyranny of the minority" problem.

These situations are distinguished from a situation where there are several shareholders, and there does exist a majority of shareholders who are capable of running the corporation, but there are one or more minority shareholders that want out, but have no contractual exit rights (and there is no market to purchase the shares). Such a distinction does not lead to the conclusion that minority shareholders should be left without a remedy, but it demonstrates that there could be real-world differences to the corporation, perhaps engaging legitimate expectations of all shareholders, in the case of a true "deadlock".

6. HOW THE COURTS HAVE DEALT WITH IMPASSE TO DATE

From bad faith to (justifiable) loss of confidence

Early Ontario decisions gave very little room for shareholders to exit in circumstances of deadlock. The decision of Rose J. in *Re James Lumbers Co.* was characteristic:

> [A]t the foundation of applications for winding-up on the "just and equitable" rule there must be a justifiable lack of confidence, grounded on conduct of the directors in regard to the company's business, and not springing from dissatisfaction at being outvoted on business affairs or on what is called the domestic policy of the company.

Still, even back then, the courts recognized that there might be a difference where there is a true state of deadlock. Justice Rose referred to an early decision (*Re Yenidje Tobacco Co., Ltd.*) that stood for the proposition that a dissolution was appropriate where there was a true state of deadlock, with neither of the two parties having confidence in the other, and such impossibility was not caused by the person relying on it to dissolve the corporation.

But the House of Lords broadened the basis for dissolution beyond grounds of only "deadlock" in 1972, in the *Ebrahimi v Westbourne Galleries Ltd.* decision. In that case, Lord Wilberforce explained:

> The "just and equitable" provision does not, as the respondents suggest, entitle one party to disregard the obligation he assumes by entering a company, nor the court to dispense him from it. It does, as equity always does, enable the court to subject the exercise of legal rights to equitable considerations; considerations, that is, of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way. It would be

> impossible, and wholly undesirable, to define the circumstances in which these considerations may arise.

Drawing on this case and others, the Ontario Court of Appeal weighed in on the topic in the 1976 case, *Rogers v. Agincourt*, where the Court opined:

> It is quite proper, of course, to draw upon previous cases for general guidance but counsel and the Court must be careful not to construe the authorities as setting out a series of restrictive principles which would confine the phrase "just and equitable" to rigid categories, for each case depends to a large extent on its own facts.

As discussed above, one of the factors driving some courts is a concern over hamstringing themselves in the future, and it is exactly that kind of a quote that leads to litigation. Each case turning on its facts means that each case will be different, and it may well be that *this* present case has sufficient facts to warrant litigation being launched.

In 1995, the Ontario Court (General Division) characterized the issue as follows:

> I think it would be wrong to say that loss of confidence can be justified only by lack of good faith, want of probity or other improper conduct. In the case of two equal partners, whether the loss of confidence by one of them can be said to be justified will depend in large part on the nature of the event or circumstance which is alleged to have brought about the loss of confidence.

In that case, shares in the corporation were originally jointly held by a married couple, who subsequently got divorced. The wife claimed that she had lost confidence in the husband, but the husband claimed that he had not lost confidence in her: the loss of confidence was therefore not “mutual”. The court found that a “mutual” loss of confidence in each other was not required: it was sufficient that one of the partners had lost confidence in the other, and that such loss of confidence was “justifiable”. Such justifiable loss of confidence was not within the reasonable contemplation of the parties.

Business disagreements not enough

Throughout the 1990s, it became clear that mere disagreements over business strategy were not enough to warrant winding up a corporation. In *McKeough v. McKeough*, the Court said:

> A legitimate disagreement over the manner in which the business of the corporation is to be conducted is not sufficient to warrant the corporation being wound up. This remedy is available where the court is satisfied that it is just and equitable. It is not a tool to be used to resolve legitimate, if bitter, disputes over the management of a corporation. It may be that a winding-up would be in Stewart's best interests but that does not make it just and equitable. A determining of what is just and equitable necessarily requires the consideration and balancing of all competing interests, not just those of the applicant.

The Court in *Animal House Investments v. Lisgar* massaged this line of authority as follows:

> I think the proper interpretation of the authorities upon which the respondents rely is that the court will not order a winding-up to address a dispute over business policy unless it is demonstrated that the reasonable expectations of the parties contemplated a winding-up in such circumstances.

But at the same time, the Court was clear that mere business disagreements alone are not enough:

> I am not persuaded that the court's equitable discretion under s. 207(1)(b)(iv) of the Act can be invoked merely to address disharmony among the shareholders in a private corporation. Quarrelling and incompatibility, even to the point of a breakdown in the personal relationships between shareholders of a private company, are not, by themselves, sufficient grounds for an equitable winding-up of the corporation.
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> […]
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> In order to satisfy this test of a serious failure of expectations, an applicant must demonstrate that the parties regarded, or would have regarded if they had turned their minds to it at the time of formation of the business association, the particular circumstances resulting from the disharmony to constitute the termination or repudiation of the business relationship among them. Accordingly, incompatibility is significant only insofar as it has resulted in a state of affairs in which the reasonable expectations of the parties are unattainable and from which the court can reasonably infer that the business arrangement between the parties has been repudiated or terminated.

We see here a merging of sorts between oppression concepts ("reasonable expectations") and dissolution concepts ("just and equitable"), with the Court getting dangerously close to rendering section 207 of the *OBCA* (section 214 of the *CBCA*) superfluous, given that actions or circumstances that defeat reasonable expectations could already give rise to a remedy under the oppression remedy. What is the point of also having a "just and equitable" test if it means nothing more than what the oppression remedy already provides for?

This formulation also leads to certain impossibilities of proof. Often, corporate relationships break down in circumstances that had never been contemplated by the parties. Disputes could emerge decades after the corporation was founded, in very different times. Requiring resort to earlier 'reasonable expectations' results in the manufacture of ostensible reasonable expectations from decades earlier, which some would describe as nothing more than historical revisionism.[2]This impossibility of proof of antecedent reasonable expectations leads courts to make conclusions on *objectively* reasonable expectations — the kind that any shareholder in the circumstances might have.

But such pronouncements from the judiciary as to what are objectively reasonable expectations of any shareholder in any business sit uncomfortably with that same judiciary claiming that business judgment deference is necessary, in part because of its lack of business expertise. Which is it? Can the court reasonably say that a shareholder would have an objectively reasonable expectation to remain in a corporation for 25 years without a single dividend being paid? Would it be objectively reasonable to be that minority shareholder with management never planning for succession, as the founder advances in age? Would it be different in different industries? The circumstances are so multi-varied, that resort to objective standards has the potential to lead to the idiosyncratic views held by an individual judge, than any objective test could possibly contemplate.

Ultimately in *Animal House,* the Court found that the mere presence of irreconcilable differences was insufficient to warrant a winding up, absent evidence that such differences defeated the reasonable expectations of the applicant. The Divisional Court dismissed the appeal, stating:

> Although there are case where the equitable remedy of winding up has been granted where irreconcilable differences exist, in no case cited to us was the remedy granted in the absence of a finding that the reasonable expectations of the applicant had been breached. Whether a reasonable expectation existed is a question of fact.

The outcome in *Animal House* just led to more litigation. The shareholder brought an application for repayment of a shareholder loan. The case, as originally framed as an application, was converted to an action and put on for trial in 2008. An appeal from that order was dismissed by the Court of Appeal. At trial, the Court sided with the shareholder, ordering the loan to be repaid. The Court of Appeal dismissed an appeal from that decision in 2010. There were multiple fights about costs orders throughout. It is not known what ultimately happened to the corporation and whether the shareholder is still a shareholder today, but if so, it is fair to say that this is not a healthy situation.

Subsequent to *Animal House,* the courts in Ontario and elsewhere continued to refine the test and characteristics, all of which were reviewed in a 2020 decision that is discussed below.

Oppression caselaw

The discussion above has tended to focus on section 207 (section 214 of the *CBCA*), the “fair and equitable” dissolution remedy. But it is equally possible to seek relief under the oppression remedy. And as we have seen (and will see again below), many courts tend to conflate the two remedies, such that a section 207/214 resolution effectively requires proof of oppression, insofar as some have required proof that the “impasse” has led to a situation in which the shareholder’s reasonable expectations would be a dissolution.

There is much caselaw on oppression, and it is outside the bounds of this article to fully explore it. In short, reasonable expectations can be established by general commercial practice, the nature of the corporation, the relationship between the parties, past practice, steps the claimant could have taken to protect itself, representations and agreements, and the fair resolution of conflicting interests between corporate stakeholders. Reasonable expectations are not the same thing as “legal rights”, such that oppression is just a synonym for “breach of contract”. In any particular case, the specific facts could lead to a conclusion that the shareholder had certain reasonable expectations, which had been defeated, leading to a broad range of remedies available to the Court, including in some cases, a forced buy-out or a dissolution.

Most recent pronouncement in 2020

This leads us to the Court's recent decision in *Macreanu v. Godino*. This decision provides an excellent synthesis of the various strands of caselaw. The Court begins with the general propositions of law as follows:

> The just and equitable ground under ss. 207(1)(b)(iv) of the Act for winding-up a company is remedial and intended to prevent a party from disregarding the obligations it assumed by participating in the company. To invoke the court's equitable winding-up power under ss. 207(1)(b)(iv), an applicant must show: 1) rights, expectations and obligations that are not submerged in the corporate structure, 2) such rights, expectations and obligations must not have been satisfied, 3) the resulting circumstances result in an unfairness or prejudice to one or more shareholders, and 4) such unfairness or prejudice is sufficiently serious that it can only be rectified by a winding-up or other oppression relief under ss.248(3) of the Act. [citations omitted]

The Court then goes on to give examples of how section 207 might be invoked. Paraphrasing, the Court said the following all may give rise to a section 207 remedy:

- *Loss of Confidence:* When a lack of confidence and trust arises between the parties;
- *Deadlock:* "[W]hen parties have reached a deadlock or where the business relationship has broken down because of incompatibility or quarreling that precludes all reasonable hope of reconciliation and friendly co-operation". There may be a further refinement here, requiring "a deadlocked company that resembles a partnership for which a breakdown of trust or confidence makes it impossible for two 50% shareholders to continue the business as equal partners, in circumstances where the corporation's value likely will deteriorate in the foreseeable future".
- *Akin to a Partnership:* Where a closely held corporation resembles a partnership, and there has been a breakdown in the relationship making it impossible to work together;
- *Defeat of Reasonable Expectations:* Where acrimony between the parties leads to one of the shareholders' reasonable expectations being defeated; and
- *Major Animosity:* In a two-person corporation, where shareholders are not even on speaking terms and there is no hope of reconciliation, section 207 relief might issue.

The Court then considered the remedy, facing the issue that will always exist in the case of a going concern: should the Court effectively kill the company through a dissolution? Section 207 contemplates dissolution. But it is drafted interestingly, by giving the court the power to issue a section 248 (oppression) remedy even where oppression is not invoked, let alone proved:

> (2) Upon an application under this section, the court may make such order under this section or section 248 as it thinks fit.

This means that, even though you are applying under the dissolution remedy section of the statute, you can seek a remedy that is entirely different than a dissolution, such as a forced buy-out.

The Court found that neither party would benefit from a dissolution. Whether the facts would lead to a conclusion that any other remedy is warranted was put over to a trial.

The right may not lead to the remedy chosen

It should also be noted that, even where a court is presented with facts establishing deadlock along the lines set out above, the plaintiff may not get the remedy it seeks. In general terms, of all the available remedies, the courts appear to be the *least* willing to grant a full dissolution or liquidation of the company. As a liquidation has inevitable consequences on employees, creditors and other third parties, this makes sense. As one Saskatchewan court explained:

> The [liquidation] remedy has been described as a bludgeon, for good reason. The destruction of a company may have far-reaching consequences for the individuals or entities dependent upon its continued existence. The remedy will only be available in circumstances where it is, in the last resort, the sole and exclusive means of affording relief.

Other “lesser” remedies are likely be preferred by a court, such as a forced buy-out of the plaintiff (or the defendant). Forced buy-outs can be problematic in certain cases and inevitably will lead to valuation fights, which we will discuss in another article. Courts have entertained buy-sell/shotgun-transaction remedies, under the theory that there is “no better way to have a man put a fair value on what he owns, he knowing all the facts about its worth, than to say what he will sell it for”. Another less-frequently sought remedy that can be attractive to a court is a “butterfly” transaction (there are many variants) where the assets of the corporation are divided in two and returned to the shareholders in a tax-efficient manner. Other remedies include the appointment of a receiver-manager.

7. CONCLUSIONS

We can see from the caselaw that the jurisprudence, undoubtedly animated by many of the policy considerations reviewed earlier, will ultimately lead to litigation as being a viable option in cases of deadlock. A shareholder can maximize its success on a section 207 application (section 214 of the *CBCA*), by showing:

- Deadlock on fundamental points, which deadlock is not created by the shareholders’ own actions;
- Reasonable expectations that in these circumstances, the shareholders would not continue together in the business;

- A demonstrable loss of confidence in the other shareholder, which loss of confidence might be evidenced in part through animosity between the parties; and
- A relationship that was "akin to a partnership", such that the reasonable expectations would be that the parties would always be working together in furtherance of the enterprise, which is no longer possible.

But for the minority shareholder that is incapable of achieving even a stalemate, little comfort can be drawn from this caselaw. Minority shareholders will likely be driven to the oppression remedy discussed above, as we have seen few examples of the Court using section 207 (section 214 of the *CBCA*) as a tool to draft minority shareholder exit rights that shareholders themselves saw fit to not adopt.

The resulting situation is not particularly satisfactory. The cases that ask the Court to evaluate whether the shareholder has a "justifiable" loss of confidence in the other party requires the Court to wade into business judgment matters that, in other cases, the Court has said in other circumstances that it is ill-equipped to decide. The cases that blur the lines between "just and equitable" and "reasonable expectations" could arguably be interpreted as essentially reading the "just and equitable" provision out of the statute, as mere surplusage.

And still, these kinds of cases will continue to clog the courts until there is either a breakthrough in the judiciary establishing bright-line tests, or the legislature stepping in to establish default rules.

In terms of a legislative solution, they do exist in other jurisdictions. California, for example, has an interesting provision for dealing with disputes like this. Under Cal. Corp. Code § 1800, shareholders holding 1/3 of the shares or more can seek an involuntary dissolution on various grounds, including that there is "internal dissension" and "deadlock", and in the case of small corporations with fewer than 35 shareholders, where liquidation is "reasonably necessary for the protection of the rights or interests of the complaining shareholder." Where it gets interesting is that another section, Cal. Corp. Code § 2000, allows the corporation or 50% or more of the voting shareholders to avoid dissolution by buying out those minority shareholders at fair value. Elsewhere in the U.S., there have been other proposals made for default rules, such as statutory shotgun rights.

The appetite for legislative changes in this area does not seem strong in Canada, and any changes would presumably be prospective only (otherwise it could fundamentally alter the nature and expectations of existing corporations). As such, until this legislative appetite changes, we will be left with a solution where the only remedy for shareholders, absent a shareholder agreement, will be (a) negotiation or (b) litigation.

In the latter case, the courts are refining the test for trapped shareholders to get out of unhappy relationships, but there is still a lot of flexibility, and a lot turning on the "specific circumstances". So long as that continues, these kinds of cases will continue to occupy a fair amount of the courts' resources. And where the courts do not rule on a breakup, even more litigation can follow, as we saw in *Animal House*.

[1]The author is grateful to Stephanie Kolla for comments on an earlier draft of this article.

[2]That said, at least in the oppression context, the courts have been clear that reasonable expectations can change over time. Still, the specific situation at issue may never have been reasonably contemplated, but the impasse still remains.