Oppression

Form of pleading

Oppression may be pled as an action or application, depending on the circumstance that give rise to the request for relief. The default rule is that a party launches an action before the courts. This rule is displaced in favour of launching an application where the oppression remedy is the only remedy claimed. See sub-section 248 (1) of the *Ontario Business Corporations Act*.

Note that oppression is a remedy that could be claimed pursuant to other corporations acts in jurisdictions other than Ontario. Attend to the question of jurisdiction to ensure that the correct jurisdiction is pled.

Included pleading material

A standard application contains three sections: the requested relief; the grounds for relief; and the evidence on which the application will rely. An application is almost always supported by affidavit evidence–little else is required for this section. The other sections require specific form and style.

General observation

Judges are over-worked and under-interested in particular cases. Most stressed brains look for expected and obvious markers when dealing with stressful or important situations. This tendency is part of a human factors analysis that has led to many judicial and non-judicial disasters.

To this end, pleadings need to contain the most crushingly obvious, borderline-pedantic, explanations of the criteria for oppression in the specific case.

Request relief

Requested relief always includes a series of terms for an order. Some counsel enjoy requesting a series of orders, which implies that the Court is being asked to issue individual orders. That is not the case–the Court tends to enter a single order with many terms in the order book. The formula to begin requested relief in an application for oppression should read:

`The applicant makes application for an order pursuant to insert references to relevant legislative provisions that:`

This formula is duplicative, for it repeats the grounds for relief that will be cited below.

As the individual terms of the order are rehearsed in the ensuing numbered sub-paragraphs, each section that supports a term of the order needs to be cited in the term. An example of this formula is:

`the respondent board of directions of the Association, namely insert individual names of directors comply, pursuant to section 259 of the *Canada*`

Not-for-profit Corporations Act, with the regulations, articles, and by-laws of the corporation and restrain any board member from acting in contravention of these instruments;

This formulation is again duplicative–a stressed judge is unlikely to miss the authority being pled.

Grounds for relief

The grounds for relief must again rehearse the legislative provisions that apply to the requested relief. The grounds must also set out all facts relevant to the requested relief, which facts should be separated into sub-headings while maintaining the list-like nature of a notice of application.

The grounds for relief should explicitly use words from the relevant statutory provisions. As an example, if oppression is being pled, one might draw from sub-section 248(2):

Where, upon an application under subsection (1), the court is satisfied that in respect of a corporation or any of its affiliates,

a) any act or omission of the corporation or any of its affiliates effects or threatens to effect a result;

b) the business or affairs of the corporation or any of its affiliates are, have been or are threatened to be carried or conducted in a manner; or

c) the powers of the directors of the corporation or any of its affiliates are, have been or are threatened to be exercised in a manner,

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer of the corporation, the court may make an order to rectify the matters complained of.

A claim to oppression must draw from the enumerated pre-conditions for oppression (paragraphs a, b, or c) and the result(s) of the alleged action(s) that are defined at the end of the sub-section.

The words of this section should be reproduced, as they may apply, in the same syntax and manner as they are produced in the sub-section. This method again calls judges' attention to the relevant statutory criteria for oppression.

The grounds must also rehearse the kinds of orders that the Court is being asked to make. In the *Ontario Business Corporations Act*, the kinds of orders are found at sub-section 248 (3):

In connection with an application under this section, the court may make any interim or final order it thinks fit including, without limiting the generality of the foregoing,

a) an order restraining the conduct complained of;

b) an order appointing a receiver or receiver-manager;

c) an order to regulate a corporation’s affairs by amending the articles or by-laws or creating or amending a unanimous shareholder agreement;

d) an order directing an issue or exchange of securities;

e) an order appointing directors in place of or in addition to all or any of the directors then in office;

f) an order directing a corporation, subject to subsection (6), or any other person, to purchase securities of a security holder;

g) an order directing a corporation, subject to subsection (6), or any other person, to pay to a security holder any part of the money paid by the security holder for securities;

h) an order varying or setting aside a transaction or contract to which a corporation is a party and compensating the corporation or any other party to the transaction or contract;

i) an order requiring a corporation, within a time specified by the court, to produce to the court or an interested person financial statements in the form required by section 154 or an accounting in such other form as the court may determine;

j) an order compensating an aggrieved person;

k) an order directing rectification of the registers or other records of a corporation under section 250;

l) an order winding up the corporation under section 207;

m) an order directing an investigation under Part XIII be made; and

n) an order requiring the trial of any issue.

Once again, the exact syntax and manner in which the words are produced in the statute should be reflected in the notice of application.

The grounds should also state the rule being applied to bring the application before the Court. This statement is made to convince / reassure a judge that the Court has jurisdiction to grant relief.

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