

CITATION: *Guttin. v. Creber et al.*, 2026 ONSC 3460

COURT FILE NO.: CV-19-82291 and CV-23-91904

DATE: 2026/06/11

SUPERIOR COURT OF JUSTICE – ONTARIO

BETWEEN: Kirk Guttin, Applicant

And

Brian W. Creber, B-Con Engineering Inc., Pufferfish Inc. and BCE Realty Ltd., Respondents

AND

1259086 Ontario Inc. and 1230320 Ontario Inc., Applicants

And

Brian W. Creber, B-Con Engineering Inc., Pufferfish Inc. and BCE Realty Ltd., Respondents

BEFORE: Justice A. Doyle

COUNSEL: Patrick Snelling and Jackson Kohne, Counsel for the Applicant
Pierre Champagne and Emmanuelle Champagne, Counsel for the Respondents, B-Con Engineering Inc., Pufferfish Inc. and BCE Realty Ltd.

Kevin Caron, Counsel for the Respondent Brian W. Creber

HEARD: April 27, 2026 at Ottawa

REASONS FOR JUDGMENT

Overview

[1] These Reasons for Judgment concern two related oppression applications arising from a prolonged business dispute between the principals and corporate stakeholders of B-Con Engineering Inc. (“B-Con”) and BCE Realty Ltd. (“BCE”). The dispute spans nearly a decade and has generated extensive evidentiary records, multiple interlocutory proceedings, and allegations of financial impropriety and oppressive conduct.

[2] This case engages the well-established inquiry into the applicants’ reasonable expectations and whether the exercise of the respondent, Brian Creber’s business judgment was oppressive within the meaning of the *Ontario Business Corporations Act*, R.S.O. 1990, c. B.16 (“OBCA”).

[3] In Court File No. CV-19-82291, (the 2019 application), the applicant is Kirk Guttin, a former director of B-Con and BCE. The respondents are Brian W. Creber, B-Con, Pufferfish Inc., and BCE.

[4] Mr. Creber is the sole director of the respondent corporations.

[5] Mr. Guttin's holding company 1259086 Ontario Inc. owns 22.8% of the voting shares and Mr. Creber's holding company 1230320 Ontario Inc. holds 77.2% of the voting shares in B-Con.

[6] Mr. Guttin's holding company 2047458 Ontario Inc. holds 41.2% of the voting shares and Mr. Creber's holding company in 2047023 ("204") holds 58.8% of the voting shares in BCE.

[7] Mr. Guttin alleges breach of fiduciary duty and oppression pursuant to s. 248 of the *OBCA*. Mr. Guttin also claims damages for constructive dismissal in the amount of \$167,455.67, representing dividends issued by BCE in 2018 and 2019 that he alleges were intended to compensate him for his labour performed for B-Con.

[8] In Court File No. CV-23-91904, the applicants, Mr. Guttin's holding companies, have brought an oppression claim on behalf of the shareholders, seeking similar relief as in the 2019 application and, among other things, an independent review of the corporate books and records by their accountant for the purpose of identifying alleged improprieties and valuing the corporations in anticipation of a potential buyout. Mr. Guttin asserts the records provided were insufficient and merely "transcribed" for his review.

[9] As a remedy, the applicants seek the appointment of a receiver to oversee the winding up of B-Con and BCE.

[10] Mr. Creber and the respondent corporations oppose the applications seeking dismissals on the basis the claims are statute-barred and the applicants have failed to establish oppressive conduct.

[11] In the alternative, the respondents submit if oppressive conduct is established, the appointment of a receiver-manager would constitute a disproportionate and draconian remedy, and less intrusive remedies should instead be ordered.

Issues

[12] The issues for determination are:

- Are the claims barred by limitation periods?
- Was Mr. Guttin constructively wrongfully dismissed?
- Did the conduct of Mr. Creber amount to oppression, unfair prejudice, or unfair disregard under s. 248 of the *OBCA*?
- If oppression is established, what remedy is just and appropriate?

[13] For the reasons articulated below, the court finds Mr. Creber unfairly disregarded Mr. Guttin's rights regarding timely disclosure of financial information.

[14] The appropriate remedy addresses the specific concerns raised by the applicants, not the appointment of a receiver-manager.

Facts not in Dispute

[15] In 1988, Mr. Creber, an engineer and inventor, founded B-Con as a sole proprietorship. In 1997, he incorporated the company. At the time of incorporation, Mr. Creber contributed assets of his sole proprietorship valued at \$405,748, while Mr. Guttin contributed \$15,000.

[16] The shareholders entered into a B-Con unanimous shareholder agreement dated December 31, 1997. Among other things, the shareholder agreement includes the following:

- Article 2.05: if the corporation required additional funds, the shareholders would lend money to the corporation in proportion to their respective shareholdings.
- Article 2.06: any money lent pursuant to Article 2.05 would be repayable without interest.
- Article 2.08: sets out the order of repayment of shareholders' loans which will first be paid to reduce any excess advance (plus interest); reduction of the amount owing to the shareholder by the corporation and finally reduction of the shareholders' loan in proportion to their respective shareholdings;
- Article 3.03: if either Mr. Creber or Mr. Guttin ceased to be an employee of the corporation, voluntarily or otherwise, the remaining shareholders would have the right to purchase all of that shareholder's shares at a price and on terms determined in accordance with Article 4.00.

- Article 5.00: rights of first refusal in the event a shareholder wished to sell his shares.
- Article 6.00: buy-sell provisions.
- Article 7.00: general sale provisions.

[17] In 2004, BCE was incorporated as a holding company and owner of the property located at 14 Capella Court, Ottawa (Capella property). The purpose of BCE was to create a retirement fund for the shareholders and to act as landlord to B-Con which occupied the Capella property.

[18] In 2004, Mr. Creber's holding company advanced \$73,500 to BCE, while Mr. Guttin's holding company advanced \$51,500.

[19] The balance of the purchase price for the Capella property was financed through a mortgage loan from the Business Development Bank of Canada ("BDBC").

[20] The lease dated June 4, 2004 required B-Con to pay rent to BCE for the Capella property at an annual base rent, together with the municipal realty taxes payable to the City of Ottawa on behalf of BCE, property improvements, utility expenses, and HVAC costs.

[21] BCE's sole source of income was the rent received from B-Con.

[22] In 2007, Mr. Guttin and Mr. Creber incorporated Alternative Energy Ottawa Inc. ("Alternative Energy"), a bio-diesel instrument manufacturing company that operated for several years. The company was later renamed Pufferfish Inc., but the venture ultimately failed. Pufferfish played no role in the present hearing.

[23] B-Con's principal business involves the manufacturing of optics, and its largest customer was an American military contractor. Much of B-Con's success leading up to 2015 was attributable to a substantial United States military contract secured in 2008.

[24] In 2016, B-Con lost this significant contract as a result of changes in United States policy following the enactment of the *Buy American Act*, 41 U.S.C. §§ 8301–8305 (2018) which requires U.S. federal agencies to give preference to domestic contracts. Consequently, B-Con experienced financial difficulties in 2016.

[25] B-Con was also working through the International Organization Standardization (“ISO”) certification process which would provide B-Con with international recognition, allowing B-Con to apply for international contracts directly rather than through the Canadian Space Agency’s recommendation.

[26] More recently, B-Con has become involved in engineering work related to nuclear waste management and has secured several lucrative contracts. A press release issued by Quantum Leap Energy confirmed that B-Con was awarded a contract to develop a water-soluble nuclear waste decontamination solution based on acquired technology designed to process water-soluble nuclear waste by accelerating the decay of radioactive material.

[27] As financial pressures intensified in 2016/2017, tensions developed between Mr. Guttin and Mr. Creber. Mr. Guttin alleges Mr. Creber excluded him from the financial management of the company.

[28] Mr. Guttin remained a director of BCE until his removal from the board on August 16, 2022 after refusing to sign an authorizing directors’ resolution requested by RBC in connection with a Forbearance Agreement that had already been executed by both Mr. Guttin and Mr. Creber. Acting as majority shareholder, Mr. Creber removed Mr. Guttin from the Board of Directors (the “Board”) for the purpose of enabling BCE Realty to comply with its obligations under the Forbearance Agreement.

[29] Once the matter was resolved, Mr. Creber asked Mr. Guttin whether he wished to return to the Board. Mr. Guttin indicated he was no longer interested in doing so.

Legal Framework

[30] An oppression remedy set out in section 248 of the *OBCA* is a powerful, flexible tool aimed at protecting stakeholders from unfair conduct. It reads:

(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 on 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.

[31] There is no dispute that Mr. Guttin, as a former director and his holding companies (as shareholders), are complainants within the meaning of s. 245 of the *OBCA* and have standing to bring this oppression remedy.

[32] The oppression remedy is an equitable remedy and the court has a broad equitable jurisdiction to enforce what is legal and fair and must consider the commercial reality. As stated in *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69, [2008] 3 S.C.R. 560, at para. 59, it is a fact-specific inquiry.

[33] Para. 95 of *BCE Inc.* sets out a two-part test:

- Does the evidence support the reasonable expectation asserted by the applicants arising from the corporate structure, agreements, past practice and relationships?
- Does the evidence establish that their reasonable expectations were violated by conduct falling within the terms “oppression”, “unfair prejudice” or “unfair disregard” of a relevant interests?

[34] Not all failures to meet a reasonable expectation can be a ground for an oppression application. The conduct must be oppressive (burdensome, harsh, wrongful), unfairly prejudicial, or unfairly disregards the complainant’s interests.

[35] Justice Weiler in *Maple Leaf Foods Inc. v. Schneider Corp.* (1998), 42 O.R. (3d) 177 (C.A.) held that directors and officers need only make a reasonable decision and not a perfect decision.

Analysis

Issue #1 Was Mr. Guttin constructively dismissed?

[36] This question raises a number of issues:

- Was there was constructive dismissal?
- Is the claim barred from a limitation period?
- Did this conduct amount to oppression?

Introduction

[37] For the reasons that follow, I find that Mr. Guttin was last an employee in 2016 and hence his 2019 application is prescribed by the *Limitations Act*.

[38] Second, the practice to receiving dividends from B-Con in 2017 was a return to the previous method of remuneration was not a substantial breach of any essential term of his employment.

[39] Further, it was not a substantial breach of any essential term of his employment when in 2018 and 2019, those dividends were issued by BCE, a related company, based on the accountant's advice. By that time, Mr. Guttin was not an employee but rather a director who worked at the pleasure of the corporation.

Was there constructive dismissal?

[40] For the reasons that follow, this court finds Mr. Guttin has failed to establish Mr. Creber or B-Con committed a unilateral conduct or substantial breach of any essential term of an agreement dealing with his employment.

[41] By way of background, Mr. Guttin took mechanical engineering at Algonquin College but did not complete his degree/diploma. He does not hold any professional designations or certifications. He is not an engineer. He has not worked at B-Con since March 2020.

[42] His tasks at B-Con included operating machinery for the fabrication of optics and managing staff, IT and building maintenance (such as seeking contractors or repairing the machinery himself).

[43] Prior to 2016, Mr. Guttin states he was involved in procurement, building maintenance, and day to day operations management.

[44] From incorporation to 2007, the shareholders through their companies, did not receive a T4 slip as they did not receive salaries.

[45] The holding companies of Mr. Guttin and Mr. Creber received a draw shown as bi-weekly shareholder loans which were offset at the end of year by a declaration of dividends from the companies. This resulted in the issuance of a T5 dividend slip to the shareholders for the amount of the loans thereby erasing the loans.

[46] From 2007 to 2016, the respondent companies took advantage of a government program named Scientific Research and Experimental Development (“SR&ED”) which is a Canadian tax incentive for businesses doing eligible research and development work. SR&ED provides companies with tax credits with the Canada Revenue Agency (“CRA”) if the criteria of scientific research and development are met. This would be structured by paying salaries to the Mr. Guttin and Mr. Creber.

[47] After 2016, SR&ED credits were no longer available and salaries were no longer paid. Mr. Creber says Mr. Guttin’s failed to document his work and expenses which were required by SR&ED.

[48] Instead, in 2017, the holding companies of Mr. Guttin and Mr. Creber resumed receiving shareholder loans during the year and dividends were issued from B-Con.

[49] In 2018 and 2019, loans were provided during the year. At the end of the year, since B-Con was not in a position to provide shareholder loans or dividends, dividends were issued from BCE Realty on the recommendation of the accountant. Mr. Guttin states he did not agree to this method of payment.

[50] Mr. Guttin did not return to work in March 2020 and says it was because he was not paid. Mr. Creber indicates that it was because of the pandemic and he was worried of being infected if he attended at the offices.

[51] There is no termination letter or letter dismissing Mr. Guttin. The court notes Mr. Guttin commenced employment at Nordion in January 2021.

[52] In January 2021, Mr. Guttin asked that he and his family be removed from B-Con’s health plan when he was asked by Mr. Creber if he wished to register for the new health benefits provider which was effective February 1, 2021.

[53] Correspondence between Mr. Creber and Mr. Guttin on January 21, 2021, confirms that the last time Mr. Guttin was in the building was in July 2020. In addition, Mr. Guttin advised he would not be returning thereby allowing the company to use his office.

[54] Mr. Guttin relies on Section 3.03 of the B-Con shareholder agreement, stating “Guttin and/or Creber shall not be terminated for convenience by the Corporation.”

[55] First, the court finds that the evidence does not meet the test for constructive dismissal as articulated in *Potter v. New Brunswick Legal Aid Services Commission*, 2015 SCC 10, [2015] 1 S.C.R. 500.

[56] At para. 34, the court began its articulation of the test: first “the employer’s unilateral change must be found to constitute a breach of the employment contract” and second, “if it does constitute such a breach, it must be found to substantially alter an essential term of the contract”.

[57] At para. 39, the court expands on the criteria of the second step: i.e. that the court must ask whether:

[a]t the time the [breach occurred], a reasonable person in the same situation as the employee would have felt that the essential terms of the employment contract were being substantially changed... [and] ...[a] breach that is minor in that it could not be perceived as having substantially changed an essential term of the contract does not amount to constructive dismissal.

[58] No employment contract was produced.

[59] Mr. Guttin alleges the changes to the way he was compensated—specifically, the cessation of salary and payment of dividends from BCE instead of B-Con—amounted to constructive dismissal.

[60] I reject this argument. The evidence establishes Mr. Guttin last received salary in 2016. From that point onward, he was compensated through shareholder loans and dividends, a practice long established between the parties and adopted on professional accounting advice before the implementation of a wage scheme to avail the company of the SR&ED credits.

[61] On the advice of the accountant, dividends were paid from BCE as B-Con was financially strapped and could not issue dividends.

[62] Even if the unilateral change of payment satisfies the first step in *Potter*, I do not find that a reasonable person in the same situation as Mr. Guttin would have perceived that the company had substantially changed an essential term of the contract.

[63] Given the financial circumstances at the time and since B-Con and BCE are related companies as indicated in the financial statements filed, the accountant recommended these dividends be paid through BCE.

[64] Accordingly, Mr. Guttin failed to show constructive dismissal.

Is the claim barred from a limitation period?

[65] In addition, I find that Mr. Guttin's claim of constructive dismissal as an "employee" of B-Con, is barred by the limitation period.

[66] Mr. Guttin was paid his last employment income in 2016 as evidenced by the 2016 T4 slip. Mr. Guttin has not produced a T4 slip or any other document that would confirm he continued to receive a salary in 2017. His application was commenced in December 2019 and therefore, Mr. Guttin's claim is barred under the *Limitation Act* 2002, S.O. 2002, c. 24 as not commenced within 2 years.

[67] In terms of general legal principles, shareholders will receive a salary if they also have a separate role (e.g., employee, officer) with a compensation or employment arrangement.

[68] Directors are not automatically paid either. Under the *OBCA*, directors may be paid, but only if authorized (by by-law, shareholder approval, or board resolution) and/or receive compensation such as "director fees" or honoraria, not salary.

[69] An employee is defined in section 1 of the *Employment Standards Act* 2000, S.O. 2000, c. 41 (*ESA*):

- i. “employee” includes,
- ii. a person, including an officer of a corporation, who performs work for an employer for wages,
- iii. a person who supplies services to an employer for wages,
- iv. a person who receives training from a person who is an employer, if the skill in which the person is being trained is a skill used by the employer’s employees, or
- v. a person who is a homeworker,
- vi. and includes a person who was an employee;

[70] Therefore in determining if and when Mr. Guttin was an employee, the court notes he worked for the company, was under their direction, and received wages from 2007 to 2016.

[71] If the person qualifies as an employee, the *ESA* sets minimum standards, including: minimum wage, overtime pay, vacation pay, public holiday pay and termination/severance rights.

[72] In summary, a shareholder has no automatic right to a salary, a director is only paid if authorized; not inherently an employee and an individual will have *ESA* protections apply—but only if the relationship actually meets the legal test.

[73] Section 4 of the *Limitations Act* provides that:

Unless this Act provides otherwise, a proceeding shall not be commenced in respect of a claim after the second anniversary of the day on which the claim was discovered.

[74] The last time Mr. Guttin received a salary was in 2016. Although in his cross-examination, he suggests he did not resume receiving dividends until 2018. In 2017, he only received a T5.

[75] In fact, the T4 and T5 found in Mr. Creber’s first affidavit dated November 4, 2022 (exhibit 13), show Mr. Guttin’s last T4 income was in 2016.

[76] On this issue, I accept Mr. Creber's evidence that due to the issue of unavailability of the tax credits, in 2017, they stopped receiving wages. His evidence on the payment schemes of the companies is detailed in his first affidavit and was more hands on than Mr. Guttin with respect to the payments of the companies to the shareholders during the relevant periods of time.

[77] Under cross-examination, Mr. Guttin admitted that from 2017-2020 he received loans offset by dividends at the end of the year. In 2020, the company could no longer pay him and consequently he decided not to come to the office. When he did return, he was told he was no longer employed.

[78] In conclusion, I find Mr. Guttin's application of constructive dismissal against the respondents is barred by the *Limitations Act* as it was commenced over two years from when he was last employed by the respondent companies in 2016. He was not an employee within the meaning of the *Employment Standards Act* after 2016.

Issue #2 Did the conduct of Mr. Creber amount to oppression, unfair prejudice, or unfair disregard under s. 248 of the OBCA?

Introduction

[79] The applicants allege there has been a pattern of oppressive conduct which specifically includes the following:

- refusing to provide financial information and corporate records;
- engaging in self-dealing with respect to shareholder loans by charging interest;
- Mr. Creber received a salary from B-Con and employed his son when B-Con was not in a position to pay rent to BCE;
- failing to sell the sole asset of BCE, the Capella property, in a timely manner in 2022, thereby causing losses to shareholders as a result of the 204 mortgage (the "204 mortgage") and Lafrance loan as set out below;
- arranging for 204 (his holding company) to assume a loan at a high rate of interest originally held by RBC, and securing it with a mortgage on the Capella property owned by BCE, thereby creating an conflict of interest;

- arranging additional financing in 2025 at an interest rate of 12.99% to pay the City of Ottawa and avoid a municipal tax sale arising from significant municipal tax arrears relating to the Capella property (the “Lafrance loan”);
- causing BCE to incur encumbrances and debt obligations that it could not service;
- serving a Notice of Sale under the *Mortgages Act* R.S.O. 1990, c. M.40 on behalf of 204 on August 21, 2025 against Mr. Guttin, the shareholders, the City of Ottawa, and B-Con, in the amount of \$343,980.20;
- causing BCE to issue dividends while B-Con was experiencing financial difficulties, thereby allegedly diminishing Mr. Guttin’s equity interest in BCE; and
- paying out interest on shareholder loans.

[80] I will discuss and review the alleged conduct and determine whether there were reasonable expectations and if so, whether there was conduct amounted to oppression, unfair prejudice or unfair disregard.

[81] As B-Con and BCE are closely held corporations, the relationship and course of conduct will need to be considered. A single act that may seem minor but repeated over time can establish oppressive conduct.

[82] As stated above, B-Con demonstrated growth in its profit and loss statements from 2009 to 2016.

[83] In 2017, Mr. Guttin was aware B-Con was facing some challenges as he suggested they sell a piece of equipment to settle the outstanding RBC line of credit. The Minutes from the meeting of May 5, 2018 between Mr. Guttin and Mr. Creber speak of the financial report from the CEO.

[84] Mr. Guttin and Mr. Creber had different views of how to deal with the financial challenges facing B-Con and, of course the effect on BCE, as B-Con was liable to pay monthly rent, municipal taxes and other carrying costs of the Capella property.

[85] As BCE’s only significant asset, any debts or encumbrances on the Capella property or declaration of dividends reduced its retained earnings thereby affecting Mr. Guttin’s holding companies’ share of the equity in BCE.

[86] While Mr. Guttin was receiving dividends, Mr. Creber was using his dividends to lend to the companies.

[87] I will discuss the business judgement rule below, but generally courts will not second guess ordinary business judgment if directors act honestly, prudently, within their authority and in good faith: see *Maple Leaf Foods Inc. v. Schneider Corp.*, at p. 192.

Are the claims in the 2023 application barred from limitation periods?

[88] First, for the reasons that follow, the court finds the oppression remedy claims in the 2023 Application are not barred by the *Limitations Act*.

[89] As with all claims in Ontario, oppression claims are subject to the general rules and statutes that govern civil claims. This includes the two-year limitation period set out in s. 4 of the *Limitations Act*.

[90] This two-year window begins when the oppressive conduct is discovered. Discovery occurs when the complainant knows or reasonably ought to know the elements of an oppression claim are reasonably made out, and a claim is the appropriate method of seeking redress.

[91] Determining whether a person has discovered a claim is a fact-based analysis: see *Lawless v. Anderson*, 2011 ONCA 102, 276 O.A.C. 75, at paras. 22-23.

[92] Courts have suggested that continuing oppression may reset a limitation period. The impugned act must be truly continuing, however, and must truly be a single act. The courts have held that a series of oppressive acts, each distinct from each other, will be treated as discrete rather than ongoing oppression, and not allow a complainant to circumvent the limitation period. Limitation periods begin when the cause of action arises, not when it is remedied: see *Fracassi v. Cascioli*, 2011 ONSC 178, at paras. 272-3.

[93] The allegations and claims set out in the 2023 application are similar to the ones stated in 2019.

[94] In this case, many acts of oppression are alleged in the 2019 application and they are within the prescribed time period.

[95] Also, Mr. Guttin alleges he only learned the BCE shareholder accounts had accrued 7% interest on shareholder loans when the ledger of payments made to and from the shareholders of BCE were provided to Mr. Guttin on September 21, 2021. This is an allegation of oppression, i.e. the reasonable expectation of the shareholder was that interest would not be charged on shareholder loans in accordance with the draft BCE shareholder agreement and the signed B-Con shareholder agreement. The first time it was paid was in 2017.

[96] As the 2023 application was commenced in April 2023, this claim for relief is not statute barred. As stated in *Zhao v. Li*, 2020 ONCA 121, 149 O.R. (3d) 353, at para. 28: “[a] later oppressive act, even if based on or in furtherance of earlier oppressive acts, gives rise to a new cause of action because it is a new oppressive conduct.”

Were the dividends payable by BCE in 2018 and 2019 oppressive?

[97] For the reasons that follow, the court finds the payment of dividends paid by BCE to the shareholders is not oppressive.

[98] As discussed above, from incorporation to 2007 and then resuming in 2017, both Mr. Guttin and Mr. Creber took regular draws from B-Con in accordance with the pro-rata share of their shareholdings, and it would be reflected as a shareholder loan. At the end of the calendar year, the loan was recorded as a dividend payment from B-Con.

[99] Mr. Guttin’s holding company received \$80,000 in dividends in 2018 and \$88,000 in 2019 from BCE.

[100] Mr. Guttin had an expectation his dividends would be issued from B-Con, the company he worked for and could be perceived as reasonable given the history of previous payments received from it. Mr. Guttin raised concerns this would result in drawing down equity in BCE which was his retirement plan.

[101] For the reasons that follow, I do not find this was a reasonable expectation.

[102] In the recent case *Pereira v. TYLT Technologies Inc. (TYLTGO)*, 2023 ONCA 682, at para. 32, the Court of Appeal reiterated the finding in *BCE* that the following factors, assisting in the determination of reasonable expectation emerge from the case law:

- i. general commercial practice;
- ii. the nature of the corporation;
- iii. the relationship between the parties;
- iv. past practice;
- v. steps the claimant could have taken to protect itself;
- vi. representations and agreements; and
- vii. the fair resolution of conflicting interests between corporate stakeholders.

[103] I have considered the previous practice of issuing dividends from B-Con and despite the financial challenges faced by B-Con, Mr. Guttin insisted on receiving income, whereas Mr. Creber reinvested some of his dividends by loaning it to the companies.

[104] I have also considered that BCE was set up as a “retirement plan” and in doing so, a property was their major asset.

[105] I have also considered the conflicting interests of the shareholders, which around this time, Mr. Guttin was looking for an exit plan from the companies and Mr. Creber was heavily invested in running the companies.

[106] Mr. Guttin indicated he would sign over the BCE shares to him and then he would stop interfering with B-Con business. He also indicated he had financial problems.

[107] In 2016/2017, Mr. Guttin was speaking to Mr. Creber about selling his shares in the companies and just working as an employee. Understanding this may be financially challenging, he suggested certain employees be dismissed to allow himself to be paid a salary.

[108] On December 22, 2017, Mr. Guttin offered to sell his shares and wanted to work as a contractor at \$2000 per week and that he was going to find a buyer.

[109] Mr. Guttin also suggested his wife replace an employee and collect a salary but would not be expected to work.

[110] Mr. Guttin wished to continue to be paid, and there were few options available in light of the financial status of B-Con.

[111] On April 6, 2018, Mr. Guttin asked that John Saikaly mediate their differences.

[112] The court infers from these suggestions that Mr. Guttin was aware B-Con was running into financial difficulties and could not easily pay salaries. The court also can infer Mr. Guttin was interested in a regular salary rather than relying on a draw from a company that fluctuated in its earnings.

[113] There were also disagreements on the management of B-Con and certain concerns regarding Mr. Guttin's failure to document processes.

[114] Mr. Guttin was the only member of the management team that did not identify performance indicators and failed to implement a measure of the group performance against these same performance indicators.

[115] When Mr. Creber had heart issues in September 2017 and would be absent for one month, he asked another individual (Janet) to handle the administration in B-Con. He had several people involved in obtaining the ISO certification and says he did not receive cooperation.

[116] Mr. Guttin was unhappy that Janet was overseeing administration in his absence and two others had signing authority.

[117] Mr. Creber argues Mr. Guttin chose to disengage given the conflict manifested in the litigation. He was not coming in to work so he is not paid for passive ownership but rather for active services. Mr. Guttin did not show collaboration and working in the best interests of the companies.

[118] Also, in December 2019, Mr. Guttin brought an application against Mr. Creber and the respondent company and obviously this was a sign of the breakdown of the relationships and in small closely-held corporations, normally shareholders depend on mutual trust and cooperation.

[119] Reasonable expectations of shareholders may conflict with the other shareholders and must be viewed in light of the comments of the Supreme Court at para. 64 of *BCE Inc.*:

The oppression remedy recognizes that a corporation is an entity that encompasses and affects various individuals and groups, some of whose interests may conflict with others. Directors or other corporate actors may

make corporate decisions or seek to resolve conflicts in a way that abusively or unfairly maximizes a particular group's interest at the expense of other stakeholders. The corporation and shareholders are entitled to maximize profit and share value, to be sure, but not by treating individual stakeholders unfairly. Fair treatment — the central theme running through the oppression jurisprudence — is most fundamentally what stakeholders are entitled to “reasonably expect”.

[120] The court also explained the “business judgment rule” at para. 40:

In considering what is in the best interests of the corporation, directors may look to the interests of, *inter alia*, shareholders, employees, creditors, consumers, governments and the environment to inform their decisions. Courts should give appropriate deference to the business judgment of directors who take into account these ancillary interests, as reflected by the business judgment rule. The “business judgment rule” accords deference to a business decision, so long as it lies within a range of reasonable alternatives. [Citations omitted].

[121] Finally, B-Con and BCE are small closely-held companies and its shareholders have expectations on their operation and governance which can result from their personal relationships. But the continuation of past practices will not always be a reasonable expectation. If there are valid commercial reasons, as here, then directors may deviate from them: *BCE*, at para. 77.

[122] Mr. Guttin does not agree with Welch's statement and conclusion that B-Con and BCE are related companies despite the fact the shareholdings as between them are not equivalent by shareholdings or shareholders. Welch indicates the companies are related despite the fact B-Con is governed by a shareholders' agreement and BCE is not.

[123] I have no evidence from any other accountant or other expert to support Mr. Guttin's position.

[124] However, in cross-examination, Mr. Guttin was referred to his first affidavit where he stated the respondent corporations were “all related companies with the same corporate address collectively referred to as the corporations” and admitted that in some aspects they are related.

[125] The term “related” has a certain legal meaning within the context of corporations and the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) and the court can glean from Welch's conclusion that it meets that definition as both companies are controlled by the same group of persons.

[126] No further evidence was led on what “related” really means, but for the purposes of these applications, the court acknowledges both B-Con and BCE have the same shareholders although in different holdings.

[127] In *BCE Inc.*, the court held the maximization of shareholder value is not the sole goal of directors and in that case, it found “[c]ontesting Debentureholders could not reasonably expect BCE to reject a transaction that maximized shareholder value, on the basis of any negative impact [on] them”: at para. 162.

[128] Accordingly, I do not find it was a reasonable expectation he would continue receiving dividends from B-Con given its financial status.

[129] In the event I am wrong and there was a reasonable expectation he would continue being paid by B-Con by way of dividends, I find this conduct does not rise to the level oppressive (burdensome, harsh, wrongful), unfairly prejudicial, or unfairly disregarding the complainant’s interests.

[130] As in *BCE*, where expectations of stakeholders are in conflict, the corporation and its directors must ensure they do not treat any stakeholder unfairly in the endeavour to maximize profits.

[131] Mr. Creber owed a duty to the corporation and the interests of the shareholder.

[132] The accountants opined that B-Con was not financially able to issue dividends and BCE, as a related company, was able to do so. Dividends had to be issued to offset shareholder loans. This is not conduct that rises to the level contemplated in s. 248 of the *OBCA*.

Access to corporate financial information

[133] I find that Mr. Guttin had a reasonable expectation he would be provided with the financial documentation pertaining to the companies. He was a director and a shareholder in both companies and was entitled to this information.

[134] B-Con and BCE are closely-held companies and it was a standard practice that the financial documents would be shared with the shareholders.

[135] For the reasons that follow, although Mr. Guttin was initially provided with full access, his ability to access up-to-date financial information such as bank statements and QuickBooks became restricted.

[136] Until 2017, Mr. Guttin admits he received the unaudited financial statements from Welch every year. He signed off, acknowledging receipt of the same and as director waived the right to audited statements.

[137] The companies' accountant, John Saikaly, confirmed in his March 6, 2026 affidavit, he has been the accountant for B-Con since 1997 and BCE since 2004 and has had regular meetings with both Mr. Guttin and Mr. Creber.

[138] In the transcript of John Saikaly dated March 16, 2026 and his answers to undertakings, he confirmed Mr. Creber never instructed him not to speak to Mr. Guttin or provide him any information. He also confirmed Mr. Guttin never contacted him to ask questions.

[139] In his memo made at the time of the meeting on December 28, 2017, Mr. Creber records a conversation with Mr. Guttin that he "knew nothing of how bad we were doing as he did not read the KPI sheets that in the management folder and said I should have continually told him".

[140] In a note written April 6, 2018, Mr. Creber writes:

[Mr. Gutting] indicated that I had to let him have access to the bank. I told him the bank statements were in the drawer and I was not preventing him from looking at them.... I have also given him the annual statements every year.... I also gave him the quarterly statements as at April 1 from QuickBooks for B-Con, BCE and Pufferfish Inc.

[141] I also note that in letters from Mr. Creber dated December 31, 2018 and December 31, 2019, he sets out the repayment of shareholder loans and interest paid from both B-Con and BCE. I note the court copy contain notes stating the ratio of the dividends issued is wrong.

[142] In a note dated September 2019, Mr. Creber admits to changing his access code on his computer to the company bank account as he noticed there was an attempt to access it that morning.

[143] However, regarding the bank statements, Mr. Guttin states he would be denied access when he went to Mr. Creber's office which led him in March/April 2022 to attend the bank where he paid the fees to obtain the bank statements.

[144] Access to the bank statements changed after the companies changed banks.

[145] I note that in 2014 when the companies changed banks to RBC, access to the bank accounts required a code generator and there is evidence from Mr. Guttin that Mr. Creber would not provide the code generator preventing Mr. Guttin's real time access to the companies' bank accounts. When Mr. Guttin tried to access the QuickBooks ledgers of the companies, he learned the passwords had changed and Mr. Creber failed to provide them.

[146] Mr. Guttin insisted on joint signing authority on a new bank account. However, the B-Con shareholder agreement provides Mr. Creber is the sole signing authority. B-Con also required an operating bank account.

[147] Under cross-examination, Mr. Guttin stated RBC closed the account, and a Bank of Montreal bank account was opened but Mr. Guttin refused to sign specific cheques, including to employees. This led Mr. Creber to only open another bank account for B-Con. When Mr. Guttin was removed from the Board of Directors, Mr. Guttin opened a bank account for BCE.

[148] Mr. Guttin states that prior to the companies switching banks from CIBC to RBC, Mr. Guttin had access to the financial information of the respondent companies.

[149] In March 2018, Mr. Guttin claims he requested uninhibited access to financial information and Mr. Creber became enraged, denied access, and pushed him.

[150] A letter from his lawyer dated July 30, 2019 addressed to corporate counsel requested the corporate records for the respondent companies. The letter also stated that he was prevented from accessing some of the financial documents and had to attend at the bank to obtain banking statements.

[151] He admits that he stopped requesting access to the bank statements as Mr. Creber refused to provide him with the password for the QuickBooks, so he assumed he would not let him access the bank statements.

[152] There were also issues for Mr. Guttin in obtaining direct access to current financial information located in the QuickBooks.

[153] Mr. Creber would not give him the QuickBooks password.

[154] At the first attendance on the motion on January 31, 2023 before me, the court ordered on consent the production of the respondent corporations' QuickBooks and the accountant's files.

[155] By that time, Mr. Guttin had been given the QuickBooks but he had issues accessing updated QuickBooks because it required the current software and the cost of \$1000 was prohibitive to him. Mr. Guttin confirmed that every time he went in to obtain the "updated QuickBooks" it was to be transportable but the software changed and it would have to go to the accountant to have them transcribed.

[156] A letter from Mr. Creber to Mr. Guttin dated January 27, 2023 enclosed a USB memory thumb drive for the QuickBooks for each of the companies with instruction of how to access them and user ID and password. Confirming he had received the back-up files each time he requested them.

[157] There was not timely or complete production of the QuickBooks and other disclosure, however, there is no dispute, Mr. Guttin had the opportunity to call the accountant at any time if he had questions.

[158] In my view, Mr. Creber was not consistent in allowing Mr. Guttin access to financial information, including not providing him the access code to the QuickBooks.

[159] Regarding general commercial practice, Mr. Guttin was receiving regular bank statements until the change of banks. He was then told they were in the drawer at the office and had issues accessing QuickBooks as he did not have the updated software.

[160] My endorsement of January 24, 2023 ordered the functional versions of the QuickBooks be provided to Mr. Guttin. It was then Mr. Guttin alleges there were irregular financial transactions and hence pressed for audited financial statements for both companies.

[161] I find there were periods of strained relations and lack of cooperation.

[162] I find the delay and the denial of records, bank statements, QuickBooks, and passcodes as requested constitutes conduct that unfairly disregarded Mr. Guttin's rights within the meaning of s. 248 of the *OBCA*.

[163] Before completing this discussion, the court will review the issue of the 2022 audited financial statements ordered by the court for B-Con and BCE.

Court order for audited financial statements

[164] On September 22, 2025, the court ordered that answers be provided to questions posed by Mr. Guttin, that Mr. Guttin sign off his shareholder account and the court set a timeline for the completion by Mr. Welch of the 2022 audited financial statements of both B-Con and BCE Realty.

[165] The accountant responded to Mr. Guttin's queries regarding the unaudited financial statement of BCE for 2022 as follows:

- The original amount owed by BCE to B-Con is reduced every month by the rental income due from B-Con;
- BCE was unable to maintain the mortgage payments with BDBC as the payments exceeded the rental payments received from B-Con. B-Con made up the difference by paying to BDBC the mortgage payments each month. Over the course of 15 years, BCE came to owe B-Con considerable debt and as of January 1, 2022 the total amount owed by BCE to B-Con was \$77,128.44;
- RBC closed the companies' bank accounts due to the litigation and Mr. Creber opened a bank account for B-Con with the Bank of Montreal but was not able to open one for BCE until 2024 when Mr. Guttin was removed from the Board of Directors. Therefore, BCE did not have a bank account from 2019 to 2024;
- Since BCE did not have a bank account from 2019-2024, B-Con paid its rent by reducing the outstanding amount it owed to BCE;
- Regarding the amount owing from B-Con for advances from BCE Realty of \$204,422, Mr. Creber explains that this is comprised of: the unsecured amount of \$200,000 originally owed to RBC on the B-Con line of credit and the \$4422.40 owing to RBC for B-Con credit cards;

- The debt owed from Pufferfish Inc. of \$521,939, was written off on the recommendation of Welch, as Pufferfish has not carried on business since the pandemic and there is no prospect of it doing so in the future; and
- B-Con can carry forward the loss and thereby reducing its tax burden.

[166] Mr. Guttin was asked under cross-examination why he did not sign off his shareholder account of \$51,500 on BCE financial statements. His answer are set out below:

- He admitted his shareholder loan to BCE earned interest at a rate of 7% that he received;
- He did approve the unauthorized transfers of balance from B-Con to BCE which he admitted had nothing to do with the balance owing on his shareholder loan to BCE; and
- When asked how an audit would assist him in assessing the validity of his shareholder loan balance which comprise of an advance in 2004 of \$51,500 and 7% interest accrued, he said “because the balances have been transferred, and I’ve told you that”.

[167] Mr. Saikaly confirmed he received this court’s endorsement of September 22, 2025, but could not complete the 2022 audited financial statements of B-Con and BCE Realty as Mr. Guttin would not approve his shareholder loan balance nor sign off on B-Con’s as he was director at the time. It is clear from both draft audited statements there are advances to related companies and shareholder loans that Mr. Guttin would not sign off.

[168] In *V.M. Koury Investments Ltd. v. Bolton Steel Tube Co. Ltd. et al.*, 2021 ONSC 3408, at para. 18, the court agreed that auditors cannot do an audit if a client “does not cooperate”. In that case, the party delayed the audit process by failing to provide necessary financial information.

[169] The draft audited financial statement for BCE shows Mr. Guttin’s holding company (204) has a balance of shareholder loan of \$46,046 with “interest at a fixed rate of 7% per annum, unsecured and have no specified terms of repayment.” Since he objects to the shareholders charging interest to BCE, he refused to approve this balance. He was not asked to approve Mr. Creber’s shareholder loan balance.

[170] The draft audited financial statement for B-Con shows a substantial net loss before taxes of \$712,617, indicating advances from BCE Realty are non-interest bearing, unsecured and have

no specified terms of repayment. The outstanding payable balance is reduced every month by the monthly rental income due to BCE Realty.

[171] The court record consists of draft audited financial statements and with no other evidence of the propriety of these “glaring errors and deficiencies” as alleged by Mr. Guttin.

[172] Mr. Guttin has not provided evidence from an accountant or other experts to support these assertions. Mr. Saikaly, who prepared the draft financial statements was not cross-examined on these alleged deficiencies. There is no evidence the shareholder loans could not be transferred between B-Con and BCE or that they were not properly documented, or not in accordance with CRA rules.

[173] Mr. Saikaly cannot finalize the BCE financial statements as he is bound by regulatory and ethical standards that prohibit him from completing and issuing audited financial statements without full and accurate information. The draft financial statements indicate that management is responsible for preparation and fair presentation of the financial statements in accordance with Canadian accounting standards for private enterprises.

[174] Nevertheless, the parties were in a deadlock because of their respective positions and the court does not have the benefit of audited financial statements.

[175] However, I do not find this oppressive conduct. The refusal to sign off his shareholder loan account which accumulated interest is one of Mr. Guttin’s many complaints of oppression. Understandably, he was not prepared to sign off on this line item in the draft *audited* financial statements and comply with my order.

[176] Given the accountants’ professional duties, my order was not complied with by the respondents.

[177] The compliance of my order became unattainable due the combination of the myriad of the above facts.

Was there a signed shareholder agreement for BCE?

[178] Before turning to my other findings of oppression, the court will deal with the issue of whether there was a signed shareholder agreement relating to BCE as this is a consideration when dealing with a shareholder's reasonable expectations.

[179] Mr. Guttin argues that interest on shareholder loans should not have been paid or ought not to be paid for both companies.

[180] He relies on the B-Con shareholder agreement that prohibits the payment of interest on shareholder loans and that the draft BCE shareholder agreement states the same thing. Even though a signed copy has not been produced, he states it was reasonable expectation the shareholders would not receive interest on their shareholder loans.

[181] The court will place reliance on any alleged agreement and its terms because:

- There is no signed shareholder agreement for BCE Realty on the record;
- The corporate information sheet in the minute book for BCE Realty at page 2, notes there is no shareholder agreement for BCE Realty; and
- Mr. Guttin's previous counsel noted that a shotgun notice could not be issued as there was no shareholder agreement for BCE.

[182] Accordingly, the court cannot rely on the BCE shareholder agreement as signed contract between the parties.

2018 amount of \$52,607 handled by Mr. Creber and Mr. Creber's shareholder loans to the companies

[183] There is a factual dispute on this issue. No evidence has been led by an accountant or expert to explain this dividend and the subsequent shareholder loans.

[184] For the reasons that follow, the court finds Mr. Guttin has not discharged his burden to demonstrate he had reasonable expectations or that it was oppressive.

[185] The records show the following:

- In 2017, B-Con issued dividends to Mr. Guttin in the amount of \$72,000 and to Mr. Creber the amount of \$102,857 and Mr. Creber, in turn, lent B-Con the amount of \$52,607 (he later transferred this amount to BCE as he believed his loan was at risk in B-Con given Mr. Guttin's litigation);
- In 2018, BCE issued Mr. Guttin \$80,000 in dividends and Mr. Creber the amount of \$117,000, of which \$91,465 he lent to BCE which he later transferred to B-Con and loaned an extra \$2500 to BCE Realty which was then lent to B-Con; and
- In 2019; BCE issued dividend of \$88,000 to Mr. Guttin and \$139,955 to Mr. Creber which he lent to the company.

[186] Mr. Guttin alleges in July 2018, BCE issued dividends in the amount of \$52,607 to Mr. Creber without issuing the proportionate dividends to him according to his shareholdings. In addition, Mr. Creber did not receive a T5 for this dividend and hence it was not declared to CRA.

[187] In the financial statement of BCE for the year ending December 31, 2018, the total amount showing of dividends is \$189,501 which is the tranche received in dividends by both shareholders of \$111,476 to Mr. Creber and \$78,030 to Mr. Guttin. The amount of \$52,607 is not included as dividends.

[188] Mr. Creber explains the \$52,607 is a transfer of a loan from B-Con to BCE. He says it was not a separate dividend but rather an unpaid portion Mr. Guttin took in cash in 2017 which he does not deny.

[189] Mr. Creber explains that in 2017, since Mr. Guttin insisted on the maximum dividend possible, he was issued \$72,000 in dividends and received his proportionate share of \$102,857. Mr. Creber wished to address the cash flow problems with B-Con, so he lent B-Con the amount of \$52,607 of his dividend back to B-Con so it would have sufficient capital to sustain its operations.

[190] Mr. Creber said under cross-examination that dividends were always issued with a T5. When he received the dividends, BCE would issue the T5 to his numbered company which would lend money back to BCE and BCE would lend the money to B-Con. There was no resolution on these loans. It was shown on QuickBooks.

[191] The amount of \$52,607 is still shown as a shareholder loan.

[192] In 2018, Mr. Creber transferred the shareholder loan of \$52,607 from B-Con to BCE Realty and told Mr. Guttin, who did not take issue with it at the time. He explained he did this to protect himself given B-Con precarious financial situation and Mr. Guttin's insistence of payments.

[193] Mr. Creber submits there is nothing improper as the companies are related and benefited both companies as B-Con had the cash infusion and could pay rent to BCE so that it benefited as well.

[194] The above transactions were all summarized in letters from Mr. Creber to Mr. Guttin in his letter in December 2019.

[195] A mere business disagreement involves strategy, management style, business risks, investments salaries, timing, expansion budgeting and operational decisions, and, as I stated above, courts will not second guess ordinary business judgment if directors act honestly, prudently, within their authority and in good faith.

[196] Oppressive conduct is where a decision unfairly abuses a shareholder's rights and reasonable expectations, there is an abuse of power, there is harmful or prejudicial conduct and unfairness.

[197] Mr. Guttin submits he had a reasonable expectation the loans to the company would be in accordance with the shareholder agreement. However, the court finds no signed BCE shareholder agreement is in evidence.

[198] Mr. Guttin was advised of these shareholder loans but states he did not approve. He insisted on receiving dividends but did not appreciate B-Con was in a financially vulnerable situation and Mr. Creber lent money to B-Con from his dividends to keep B-Con afloat.

[199] Mr. Guttin was reasonable in his expectations the companies would not be saddled with shareholder loans. However, I note that until the financial problems facing B-Con, Mr. Guttin and Mr. Creber had a working relationship.

[200] However, Mr. Guttin insisted on being paid which would have required Mr. Creber to inject capital into B-Con.

[201] As discussed above, Mr. Guttin was looking to sell his shares and just earn a salary whereas Mr. Creber was invested in keeping the companies afloat and providing revenue.

[202] In the event Mr. Guttin had a reasonable expectation, I do not find they were violated by conduct falling within the terms “oppression”, “unfair prejudice” or “unfair disregard” of a relevant interest.

[203] Mr. Guttin has provided his own interpretation of this transaction but has not discharged his onus as to why these transactions were oppressive within the meaning of s. 248 of the *OBCA*.

Interest on shareholder loans and Mr. Creber’s shareholder loans to the respondent companies

[204] The central question is whether the interest arrangement of 7% on shareholder loans was *bona fide* rescue financing or a control mechanism unfairly shifting economic value to Mr. Creber.

[205] Mr. Guttin asserts he was not aware Mr. Creber was lending monies to the companies and it was his reasonable expectation that interest would not be paid on shareholder loans.

[206] The draft audited BCE financial statement for the period ending December 31, 2022 shows a shareholder loan owing to Mr. Creber’s holding company (204) the amount of \$460,249 (which includes the original investment at the time of incorporation). The amount of \$251,407 is the balance owing on the 204 mortgage and Mr. Guttin’s holding company is owed \$46,046 from his original investment at the time of incorporation.

[207] This statement also indicates interest is payable at 7% per annum unsecured with no specified terms of repayment. Mr. Guttin says Mr. Creber’s inter-company loans to the two companies were generating approximately \$25,000 to \$30,000 in interest a year.

[208] In addition, in 2015, both Mr. Creber and Mr. Guttin’s holding companies received interest on their original investment in BCE. Mr. Creber received \$55,608.80 in interest and Mr. Guttin received \$36,021.20 in interest totalling \$91,630.00 in interest payments (representing 10 years of interest payments).

[209] Also, Mr. Guttin points to a perceived discrepancy. In a letter dated January 16, 2016, Mr. Guttin’s counsel articulates a concern of advances to BCE of \$196,681 in the BCE account is different from the draft audited financial statement under the “Advance to B-Con in the amount of \$198,783.”

[210] Mr. Creber explains that the amount in the draft audited financial statement for BCE is actually \$196,783 (which is a slight difference from \$196,681 in the B-Con financial statement and is a marginal difference of \$102). The actual RBC mortgage was \$204,422.40 which represents the unsecured amount of \$200,000 originally owed to RBC on the B-Con line of credit and \$4422.40 owed to RBC for the B-Con credit cards. This was reflected in the draft audited financial statement showing B-Con owing BCE the amount to \$204,422.

[211] B-Con also has loans to BCE on its 2022 draft audited financial statement.

[212] In determining Mr. Guttin’s reasonable expectations, I have considered the following:

- Section 2.06 of the B-Con shareholder agreement prohibits the accrual of interest on shareholder loans;
- The B-Con shareholding agreement does permit interest under certain conditions as it stipulates that if a shareholder’s loan is not commensurate with the shareholdings, it could attract interest at prime plus 5%;
- Section 2.07 labelled “default in lending money” states:

If any Shareholder (in this section called a “Defaulting Shareholder”) fails to advance the whole or any part of the money required to be advanced by him (the “Default Amount”), the other Shareholders (the “Non-Defaulting Shareholders”) shall be entitled, but shall not be obligated, to immediately advance to the Corporation all or part of the Default Amount (the aggregate of the amounts so advanced by the Non-Defaulting Shareholders is referred to in this Agreement as an “Excess Advance”). The Defaulting Shareholder shall be jointly and severally liable with the Corporation to repay any Excess Advance on demand and shall also pay interest on the amount of the Excess Advance at a rate equal to the prime rate charged by the Corporation’s banker to its most creditworthy customers, plus five percent (5%) per annum calculated daily and payable on the first business day of each month until the Excess Advance, together with interest thereon, is fully repaid, with interest on overdue interest at the same rate”;

- Even though a signed copy of the BCE Realty shareholder agreement was never produced, the terms mirror the signed B-Con shareholder agreement;
- The court can infer the fact this clause was included in the B-Con shareholder agreement and in the draft BCE shareholder agreement, that Mr. Guttin and Mr. Creber had jointly considered this issue;
- There was no interest charged or received until 2015 on Mr. Creber and Mr. Guttin's holding companies initial investment to BCE;
- However, Mr. Guttin's holding company accepted the 7% rate of interest paid on December 23, 2015 representing the years 2006-2015. Mr. Guttin says he did not really appreciate this until he saw the QuickBooks in 2021;
- Mr. Guttin's shareholder loan balance for his holding company was \$46,046 in the BCE draft audited financial statement for 2022;
- BCE was considered a "retirement fund" and any encroachment which reduced Mr. Guttin's equity would reduce the value;
- Mr. Creber was the majority shareholder and more voting shares and had more rights in the management of the companies, and
- Mr. Creber has loaned significant funds to the companies in order that they meet their ongoing financial commitments whereas Mr. Guttin wanted to sell his shares.

[213] Mr. Guttin has failed to satisfy the court it was a reasonable expectation interest would not be charged on shareholder loans to the companies.

[214] Given B-Con's financial situation after 2016, Mr. Creber exercised his business judgment by infusing capital into the companies. Mr. Guttin is not contesting these loans but the interest paid.

[215] Charging interest is commercially normal as the lender takes repayment risk.

[216] In the event that I am wrong, and there was reasonable expectation, then I find this conduct was not oppressive within the meaning of s. 248 of the *OBCA*.

[217] At paragraph 67 of *BCE Inc.*, the Supreme Court stated that;

[n]ot every unmet expectation gives rise to claim under s. 241.”Oppression” carries the sense of conduct that is coercive and abusive, and suggests bad faith. “Unfair prejudice” may admit of a less culpable state of mind, that nevertheless has unfair consequences. Finally, “unfair disregard” of interests extends the remedy to ignoring an interest as being of no importance, contrary to the stakeholders’ reasonable expectations: see Koehnen, at pp. 81-88. The phrases describe, in adjectival terms, ways in which corporate actors may fail to meet the reasonable expectations of stakeholders.

[218] Further, at paras. 90-91 and 93-94:

In most cases, proof of a reasonable expectation will be tied up with one or more of the concepts of oppression, unfair prejudice, or unfair disregard of interests set out in s. 241, and the two prongs will in fact merge. Nevertheless, it is worth stating that as in any action in equity, wrongful conduct, causation and compensable injury must be established in a claim for oppression.

The concepts of oppression, unfair prejudice and unfairly disregarding relevant interests are adjectival. They indicate the type of wrong or conduct that the oppression remedy of [s. 241](#) of the [CBCA](#) is aimed at. However, they do not represent watertight compartments, and often overlap and intermingle.

The [CBCA](#) has added “unfair prejudice” and “unfair disregard” of interests to the original common law concept, making it clear that wrongs falling short of the harsh and abusive conduct connoted by “oppression” may fall within s. 241. “Unfair prejudice” is generally seen as involving conduct less offensive than “oppression”. Examples include squeezing out a minority shareholder, failing to disclose related party transactions, changing corporate structure to drastically alter debt ratios, adopting a “poison pill” to prevent a takeover bid, paying dividends without a formal declaration, preferring some shareholders with management fees and paying directors’ fees higher than the industry norm: see Koehnen, at pp. 82-83.

“Unfair disregard” is viewed as the least serious of the three injuries, or wrongs, mentioned in s. 241. Examples include favouring a director by failing to properly prosecute claims, improperly reducing a shareholder’s dividend, or failing to deliver property belonging to the claimant: see Koehnen, at pp. 83-84.

[219] I find this conduct did not unfairly prejudiced Mr. Guttin as these shareholder loans allowed the companies to meet their financial obligations. The fact that B-Con is in a new line of business and has recuperated from its setback in 2016 is evidence Mr. Creber’s efforts were successful.

[220] Certainly, Mr. Guttin's equity in BCE has been diminished as interest will have to be paid on the approximate amount of \$400,000 owed by BCE to Mr. Guttin but BCE was not receiving rent from B-Con and had debts and operating expenses to pay. In 2018 and 2019, Mr. Guttin wanted to continue to be paid even when the companies were facing challenging financial times, and hence dividends were issued to the holding companies of Mr. Guttin and Mr. Creber, and the latter, as majority shareholder made the business decision to lend money back to the company.

[221] There is no evidence the rate of 7% is oppressive or commercially unreasonable.

[222] Once a loan becomes a formal debt, charging interest is a normal business practice.

[223] The court does have a query as to why no interest was charged for 10 years or retroactively.

[224] As the majority shareholder who was committed to the future operation of the companies, charging interest on new shareholder loans when a company is distressed is not unreasonable.

[225] Mr. Guttin does not complain about the principal amount of the loan but rather it is not reasonable for Mr. Creber to charge interest.

[226] Certainly, concerns in closely-held companies whether these related party transactions were done without independent review or consultation with other shareholders and information was withheld and as majority shareholder, he incurred debt thereby directly impacting minority equity. Majority shareholders in closely held corporations cannot behave purely as arm's-length creditors when they control the company.

[227] The court needs to balance the legitimate business necessity against the unfair extraction of value from minority owners.

[228] In this case, I do not find Mr. Guttin was oppressed, unfairly prejudiced, or his rights unfairly disregarded on the issue of interest being charged on shareholder loans.

Delay in the sale of the Capella property in 2022

Mr. Guttin's Position

[229] Mr. Guttin argues he had a reasonable expectation Mr. Creber would not prioritize BCE before his interests and agree to a sale in 2022 to avoid the enforcement proceedings brought by BCE.

[230] Mr. Creber's refusal to proceed with the sale resulted in the collapse of a commercially reasonable transaction at the price of \$3.5m and four years later the sale price is marginally higher at \$3.6 million but now there are more debts for BCE to pay.

[231] This delay exposed BCE to increased tax arrears, higher rate of interest on an insider loan and now facing power of sale proceedings. BCE was not able to make any payments on the 204 mortgage and the Lafrance loan.

[232] In April 2022 there were \$225,151 in outstanding municipal taxes and in October 2025 they were \$478,651.43 outstanding taxes.

[233] BCE received a final notice of registration of tax arrears certificate under s. 373 of the *Municipal Act*.

[234] The City of Ottawa is not obligated to obtain a fair market value if the property is sold. Mr. Creber spoke to Mr. Guttin and Mr. Allan, a representative at the city of Ottawa.

Discussion

[235] The sale of the Capella property is occurring in June 2026. The parties are unable to agree on the following:

- Whether the proceeds of sale should be used to repay the 204 mortgage and if so, what rate of interest is chargeable (it is noted that 204 is not a party);
- Mr. Guttin previously questioned the validity and valuation of the shareholder loans owed by BCE. There may be more disclosure or accounting necessary but there are documents filed that show the flow of monies to the BCE and interest paid on them. The real issue was whether interest is payable on them;
- Whether the sale proceeds ought be held pending the determination by the receiver manager or some form of accounting of the above issues;

- Whether Mr. Creber's acquisition of the RBC debt and arranging the Lafrance loan to pay the outstanding municipal tax arrears was necessary to protect BCE from enforcement proceedings and tax sales; and
- Whether Mr. Creber had no choice and was acting in the corporation's best interests as RBC was enforcing their debt and the shareholders had signed a forbearance agreement that permitted them a third mortgage on title.

[236] The parties did not sell the Capella property for \$3.5 million because Mr. Guttin would not provide the release from litigation demanded by Mr. Creber.

[237] The loan with RBC obtained in 2014 guaranteed by both Mr. Guttin and Mr. Creber went into default in 2020 as RBC called in their loan due the litigation commenced by Mr. Guttin.

[238] B-Con's financial challenges directly impacted its ability to keep up its financial obligations in its lease with BCE. On August 30, 2021, Mr. Guttin received letters from RBC counsel regarding B-Con indebtedness. Mr. Creber proposed that BCE borrow monies on BCE's equity to settle the debt. Mr. Guttin did not wish to incur further debts. Mr. Guttin was not happy with the way Mr. Creber was running the company by hiring more employees including his own children and he wished the Capella property sold and the proceeds to pay off liabilities.

[239] A letter from Soloway, RBC counsel, dated August 30, 2021, indicated they would seek summary judgment on the outstanding credit cards at 19.99% and an outstanding line of credit for \$235,101.19 at the rate of 6.2 % interest (per diem rate of \$39.92).

[240] The parties discussed a sale of the building in October 2021 to resolve issues.

[241] Mr. Guttin relies on an email from Mr. Clancy, the corporate counsel, to Mr. Diegel (Mr. Guttin's previous counsel) dated October 28, 2021 stating they should try to resolve matters or the parties will be engaged in "another couple of years of litigation". I do not find it threatening but rather as a matter of fact he is he is trying to save the company and the litigants money. If it could not be resolved, reaching a "sensible solution for the benefit of all parties", then he will turn the matter over to the litigators. This correspondence was filed by both parties and so cannot be protected by settlement privileged if they both rely on it.

[242] On January 10, 2022, there was a *bona-fide* offer of \$3.1 million and BCE counteroffered at \$3.5 million on January 31, 2022. By February 2022, an agreement of purchase and sale for the Capella property for \$3.5 million was negotiated, subject to a shareholder agreement on the terms.

[243] Mr. Guttin would not support the sale as he would not accept the liabilities of approximately \$400,000 in shareholder loans to Mr. Creber and a full release of Mr. Creber from the ongoing litigation.

[244] Mr. Guttin wished to reserve the right to pursue arbitration regarding the dispute between the shareholders, specifically regarding the value of the outstanding critical liabilities of the corporations.

[245] Given the impasse on the litigation, Mr. Creber made the commercial decision to arrange for 204 to be assigned the RBC debt to avoid the enforcement of that debt.

[246] Mr. Guttin is claiming the loss to BCE for the delay in the sale of the Capella property caused by Mr. Creber and a question remains as to whether the delay the creation of priority claims for Mr. Creber and his holding company over minority equity in fact positioned Mr. Creber for foreclosure/buyout or draining future profits.

[247] The sale did not proceed.

[248] RBC continued to pursue its rights and on April 8, 2022, Mr. Guttin and Mr. Creber signed a forbearance agreement allowing RBC to register a mortgage on 14 Capella in contemplation of a sale.

[249] In May 2022, Mr. Guttin agreed to a forbearance agreement so that the RBC loan and amounts owing from B-Con to RBC could be registered as third-ranking mortgage for the principal amount of \$275,000 on 14 Capella. Mr. Guttin required a condition of the sale of Capella but the May 3, 2022 forbearance agreement did not have that term. He would not agree to the resolution and he was removed as a director on July 12, 2022 on the basis that he refused to sign the forbearance agreement. If he signed it, he would not be removed.

[250] In October 2022, Mr. Creber's holding company, 204, purchased the RBC loan for fair market value to settle the debt and this resolved the issues with RBC. The debt bore interest at 11% per annum and was registered as a mortgage on the Capella property.

[251] This mortgage resolved RBC's enforcement proceedings but resulted in 204 becoming a secured creditor of BCE.

[252] In 2025, the City of Ottawa had served notice due to accrued unpaid taxes totaling \$465,193.79 as of August 1, 2025.

[253] Again, Mr. Guttin and Mr. Creber could not agree on the terms of the sale, as Mr. Guttin would not agree the 204 mortgage would be paid out of the sale proceeds.

[254] Mr. Creber told Mr. Guttin he had three options: i) inject capital into BCE, ii) propose another lender, or iii) let the sale proceed with payment of the 204 mortgage. There was no agreement.

[255] As a result, Mr. Creber obtained a mortgage with Mr. Lafrance in the amount of \$465,000 in August 2025 at a rate of interest at 12.99% to pay off the outstanding tax arrears.

[256] On August 21, 2025, 204 served a notice of sale under the Ontario *Mortgages Act* R.S.O. 1990, c. M.40 stating \$343,980.20 was owing and had to be paid by October 5, 2025.

[257] There is now a closing date of the sale of the Capella property in early June 2026.

[258] Mr. Guttin would not provide a release and wished to litigate the validity of the litigation issues.

How does the litigation strategy taken by the parties in 2022 inform the court regarding reasonable expectation of Mr. Guttin and then Mr. Creber's business decision to ward off the execution of the RBC loan?

[259] I find that once the parties were unable to resolve the litigation, Mr. Creber was entitled as a majority shareholder to make a business judgment call to protect the corporation from the enforcement of the RBC.

[260] The Capella property was a significant asset at play in this litigation, and Mr. Guttin argues that he had a reasonable expectation that Mr. Creber would proceed in accordance with Mr. Guttin's litigation strategy. The court must consider whether this is a reasonable expectation.

[261] *BCE Inc.* speaks of business decisions not litigation strategy and in reviewing the factors set out by the Supreme Court, I have considered:

- general commercial practice is that Mr. Creber, as the majority shareholder, played a lead role in dealing with the accountants and arranging commercial transactions;
- the nature of the corporation in that it is a closely-held corporation;
- the relationship between the parties: the shareholders who had known each other for decades;
- steps the claimant could have taken to protect itself: he did not make any efforts himself to deal with the RBC debt or the mounting tax arrears;
- representations and agreements: the parties could not agree on terms; and
- the fair resolution of conflicting interests between corporate stakeholders was unable to be achieved as the parties in litigation were not able to resolve issues.

[262] Regarding the nature of the corporation, at para. 74, the Supreme Court in *BCE Inc.*, stated:

The size, nature and structure of the corporation are relevant factors in assessing reasonable expectations: *First Edmonton Place*; G. Shapira, "Minority Shareholders' Protection — Recent Developments" (1982), 10 *N.Z. Univ. L. Rev.* 134, at pp. 138 and 145-46. Courts may accord more latitude to the directors of a small, closely held corporation to deviate from strict formalities than to the directors of a larger public company.

[263] The court in *BCE Inc.*, at paras. 81-84, goes on to discuss conflicting interests:

As discussed, conflicts may arise between the interests of corporate stakeholders *inter se* and between stakeholders and the corporation. Where the conflict involves the interests of the corporation, it falls to the directors of the corporation to resolve them in accordance with their fiduciary duty to act in the best interests of the corporation, viewed as a good corporate citizen.

The cases on oppression, taken as a whole, confirm that the duty of the directors to act in the best interests of the corporation comprehends a duty

to treat individual stakeholders affected by corporate actions equitably and fairly. There are no absolute rules. In each case, the question is whether, in all the circumstances, the directors acted in the best interests of the corporation, having regard to all relevant considerations, including, but not confined to, the need to treat affected stakeholders in a fair manner, commensurate with the corporation's duties as a responsible corporate citizen.

Directors may find themselves in a situation where it is impossible to please all stakeholders. The "fact that alternative transactions were rejected by the directors is irrelevant unless it can be shown that a particular alternative was definitely available and clearly more beneficial to the company than the chosen transaction": *Maple Leaf Foods*, per Weiler J.A., at p. 192.

There is no principle that one set of interests — for example the interests of shareholders — should prevail over another set of interests. Everything depends on the particular situation faced by the directors and whether, having regard to that situation, they exercised business judgment in a responsible way.

[264] Courts have stressed the concept of reasonable expectation and their breach is objective and contextual. The evidence indicates that during the material period of time, Mr. Creber was making decisions in the financial and corporate context for the companies.

[265] In a letter dated October 3, 2025, Mr. Creber's counsel wrote to Mr. Guttin's counsel stating the BCE shareholders were at risk of having their equity in Capella reduced and gave options for the shareholders to inject capital into BCE, for them to refinance the property, or the property is sold.

[266] Mr. Guttin's counsel's letter dated October 6, 2025 raised the issue that Mr. Creber's holding company purchasing the debt owing to RBC was oppressive and he would agree to a sale of Capella if there were no distributions to third parties on the sale pending determination of the litigation. In addition, the issue of the \$400,000 shareholder loan held by Mr. Creber's holding company would be determined by arbitration.

[267] Mr. Creber realized the deadline where the city would sell the property in November 2025 was fast approaching. He looked for financing. He obtained a six month loan in the amount of

\$512,500 from Richard Lafrance secured by a mortgage against Capella and the monies were used to pay the outstanding taxes.

[268] There is no evidence before the court to suggest that, given the interest rates prevailing in the fall of 2025, alternative financing options were available within the limited timeframe during which the outstanding municipal taxes had to be paid. The City of Ottawa provided BCE Realty with only a very short notice period to satisfy the arrears.

[269] Mr. Creber, as a majority shareholder is not automatically obligated to abandon, compromise, or sacrifice his litigation rights merely to enable the sale of BCE's only asset. The business judgment rule gives directors and controlling shareholders latitude to make decisions they honestly believe are in the corporation's best interests, even if the other shareholders disagree.

[270] There is no evidence Mr. Creber was attempting to block the sale for personal leverage, depress the value, or acted unfairly towards Mr. Guttin.

[271] Mr. Guttin's strategy was to force the sale as he "wanted out".

[272] It is not a reasonable expectation that Mr. Creber is required to surrender viable legal issues merely to maximize immediate sale proceeds. The court is not here to determine if his litigation strategy was *bona fide* or the merits of his position which lie outside the scope of the current issues.

[273] Rather, the question, is whether Mr. Guttin had a reasonable expectation?

[274] In conclusion, I find that Mr. Guttin's expectation was not reasonable.

[275] Even if he had a reasonable expectation Mr. Creber would sell the property on Mr. Guttin's terms despite a disagreement on the litigation resolution, Mr. Creber did not engage in conduct that oppressed, unfairly disregarded, or prejudiced Mr. Guttin's rights.

[276] Mr. Creber made a proper business judgment decision in light of the fact that the parties were not able to resolve the litigation.

[277] They were not able to resolve matters and hence the RBC loan had to be resolved. Again, there is no evidence the rate of 11% was commercially unreasonable. Protecting the companies would protect the shareholders.

[278] Mr. Guttin had an opportunity to deal with the tax arrears but did not take any action, leaving Mr. Creber with no choice but to find financing to retire the tax arrears debt.

[279] As well, there is no evidence that the rate of 12.99% interest on the Lafrance loan is unreasonable.

[280] These commercial decisions are not oppressive within the meaning of s. 248 of the *OBCA*.

Employment of Mr. Creber and Mr. Creber's son

[281] Mr. Guttin submits that payment of wages to Mr. Creber and his son is oppressive as B-Con was unable to pay its rent and was having financial issues.

[282] He alleges that immediately after he was no longer being paid and did not return to work in March 2020, Mr. Creber began paying himself a salary and not declaring dividends which would require the company to issue Mr. Guttin his proportionate share.

[283] Mr. Creber entered into employment with B-Con in July 2020 at a rate of \$51.68 per hour and in 2025 received a salary of \$113,674.40.

[284] Mr. Guttin is not an engineer so he could not have performed the engineering tasks Mr. Creber is performing. I also note he complains of money spent on engineers in 2022 but that was explained as repairs needed due to damage caused by a storm in 2022. This included invoices paid by BCE on June 30, October 1, and December 30, 2022 in the amounts of \$14,335.78, \$5990.45 and \$19,698.90, respectively, which includes engineer and technician hours.

[285] He disagrees with the reduction of rent for B-Con.

[286] Interest was paid on December 23, 2015 on shareholders loan to Mr. Creber for \$55,608.80 and \$36,021.20 to Mr. Guttin for years 2006 to 2015 which caused BCE account to be overdrawn

and payment was received from B-Con to offset this overdraft so BCE is indebted to B-Con for this amount of \$91,630.00 in interest payments.

[287] The company is again benefitting from SR&ED tax credits which requires he be paid a salary, permitting the company to obtain tax credits which offset his salary.

[288] The applicant failed to show the employment contract is not reasonable and the reasonable hourly rate of \$51.68 for a professional engineer with 40 years of experience.

[289] The court notes that in 2020, Mr. Guttin received \$16,000 in income after Mr. Guttin stopped working and his current reported income is over \$100,000.

[290] In 2020, Mr. Creber entered into an employment agreement with B-Con to formalize professional engineering services and his hourly rate was set at \$51.68 per hour.

[291] This permitted B-Con to receive SR&ED credits for approximately 60% of all engineering salaries.

[292] There is no evidence the remuneration is unreasonable or excessive.

[293] Mr. Creber has produced an employment contract and indicates a salary is available as the SR&ED credits are available and the proper and required paperwork is being met.

[294] BCE is now again availing themselves of the SR&ED tax credits which are eligible to offset salaries.

[295] I do not find Mr. Guttin established a reasonable expectation Mr. Creber, who continues to work for B-Con, would not be paid for his work.

[296] The history of B-Con establishes B-Con always paid both Mr. Guttin and Mr. Creber in some format for the work performed.

[297] It is not reasonable for Mr. Guttin to expect that Mr. Creber would not be remunerated for his work especially since the SR&ED tax credits were made available.

[298] Regarding, Mr. Creber's son, Bobby Creber, he has been working with B-Con for years and during the time Mr. Guttin was with the company.

[299] Bobby Creber worked part time in the summers of 2006 and 2007 and then commenced working full time in 2008. He became certified in a trade by returning to school and has improved the documentation processes at B-Con. He has worked for 12 years when Mr. Guttin was with the company.

[300] Mr. Guttin was aware of his work, was present when he worked there and at no time until this litigation did he make an issue that Mr. Creber's son was employed by B-Con.

[301] There is no evidence that Bobby Creber's remuneration is unreasonable and not in line with market rates.

[302] I find Mr. Guttin's complaint on this issue is not a reasonable expectation.

[303] In addition, this is not a reasonable expectation of a shareholder when Mr. Guttin's daughter was also working there. Mr. Guttin's daughter was employed by B-Con from 2010 to 2014.

Remedy

[304] Section 249 of the *OBCA* vests the court with broad remedial authority as follows:

(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.

[305] Recently, *FNF Enterprises Inc. v. Wag and Train*, 2023 ONCA 92, at paras. 32-34, the Court of Appeal stated that directors can be personally liable:

At issue in *Wilson* was when oppression remedy relief should be granted against an individual director personally, rather than simply against the corporation.

The Supreme Court held that personal liability may be imposed on a director for oppressive conduct if two criteria are met: (1) the director has the requisite degree of involvement in the oppressive conduct so that it is attributable to them; and (2) personal liability is fit in the circumstances. An order against a director personally will be fit where it is a fair way of dealing with the situation, the order goes no further than necessary to rectify the oppression, the order serves only to vindicate the reasonable expectations of the complainant, and other forms of statutory and common law relief are not more fitting in the circumstances: *Wilson*, at paras. [47-55](#).

In *Wilson*, the court identified the obtaining of a personal benefit by the director, or the director misusing a corporate power, as situations in which

it would typically be fair to impose personal liability on the director: at para. 49.

[306] The court has wide discretion and it should only interfere with the affairs of the affected corporations to the extent necessary to remedy the oppression in question. The reasonable expectations of the applicants “have an important bearing on the decision as to what is a just remedy in a particular case”: *Nanef v. Con -Crete Holdings Ltd.* (1955), 23 O.R. (3d) 481 (C.A.), at p. 490.

[307] In addition, the courts repeatedly emphasize: “The least intrusive remedy that addresses the oppression should be preferred.” Where the company is solvent and simply deadlocked between two shareholders, a receiver is often considered excessive.

[308] Here, the property is already being sold and there is no suggestion by Mr. Guttin that the sale itself is improper but rather he complains it should have been sold years ago.

[309] The core dispute is allocation of proceeds (shareholder loans, interest, dividends).

[310] The oppression conduct here deals with fairness not shown to the shareholder and does not require an operational collapse.

[311] This case is distinguishable from *V.M. Koury Investments Ltd. v. Bolton Steel Tube Co. Ltd. et al.*, 2021 ONSC 3408 where a receiver was appointed as the court found at para. 49 that the respondent officer and director of the company had:

shown himself incapable of managing Bolton in a trustworthy manner. He has destroyed financial records, failed to produce audited financial statements, failed to cooperate with his own auditors sufficiently to enable them to produce audited statements, has misused corporate assets for his own purposes and has failed to provide an adequate explanation for the dissipation of millions of dollars of corporate funds.

[312] As stated in *Anderson v. Hunking*, 2010 ONSC 4008, at para. 15, to justify the appointment of a receiver-manager, there must be strong evidence Mr. Guttin’s right to recovery is in serious jeopardy.

[313] In *1324789 Ontario Inc. v. Marshall*, 2019 ONSC 517, the court held it was inappropriate to appoint a receiver just because the principals had had a falling out and could no longer work together.

[314] In *Akagi v. Synergy Group (2000) Inc.*, 2015 ONCA 368, at para. 67:

It goes without saying that the root principles governing the appointment of any receiver remain in play in this context, however, and in this respect, two "bookend" considerations, are particularly germane. On the one hand, the authority of the court to appoint a receiver under [s. 101](#) of the [Courts of Justice Act](#) "where it appears . . . just or convenient to do so" is undoubtedly broad and must be shaped by the circumstances of individual cases. At the same time, however, the appointment of a receiver is an extraordinary and intrusive remedy and one that should be granted only after a careful balancing of the effect of such an order on all of the parties and others who may be affected by the order. In the case of a receivership in aid of execution, at least, the appointment requires evidence that the creditor's right to recovery is in serious jeopardy. It is the tension between these two considerations that defines the parameters of receivership orders in aid of execution.

[315] *Nanef v. Con-Crete Holdings Limited et al.* involved a family business and the father made the two sons equal owners of equity in the business while maintaining complete control himself. A family rupture occurred whereby one son was removed as officer of all companies and excluded from participation in the business or receiving income. The Court of Appeal allowed an appeal from the trial judge's decision to sell the family business publicly as the remedy went further than rectification of the oppression and did not give expression to the reasonable expectations of the son. They held the appropriate remedy was to have family purchase the son's share at fair market value.

[316] The Court of Appeal stated that the discretionary powers set out in the *OBCA* for remedies must "be exercised within two important limitations: (i) they must only rectify oppressive conduct (ii) they may protect only the person's interest as a shareholder, director or officer as such."

[317] The Court of Appeal at p. 197 said "[t]he court should not interfere with the affairs of a corporation lightly. I think that where relief is justified to correct an oppressive type of situation, the surgery should be done with a scalpel, and not with a battle axe."

[318] Mr. Guttin submits he cannot ascertain the “true financial position of the companies” and hence requests a receiver-manager. That is not enough to wind up both corporation and embark on the intrusive measure of a receiver-manager.

[319] Mr. Guttin provided a name of an accountant as part of his undertakings.

[320] He has filed a letter dated August 2022 from Doyle Salewski Inc. indicating they were ready to act but not updated this letter.

[321] He has not put forth the name of a proposed receiver confirming they are willing to act, their retainer terms and the scope of their duties and whether they would comply with the engineering requirements and B-Con’s obligations under the *Defence Production Act*, R.S.C., 1985, c. D-1.

[322] Mr. Saikaly indicates that 2024/2025 financial statement of the B-Con shows it is in financially better position.

[323] The evidence indicates that B-Con has “pivoted” and entered another area of their expertise and are dealing with waste management and processing of nuclear waste. They have a lucrative contract and it is a going concern.

[324] It has become viable, profitable and growing according to the evidence of Mr. Creber and supported by Mr. Saikaly. Its projected pre-tax profits are \$340,000 CDN for the 2025 fiscal year. B-Con has seven employees and is in the process of hiring four additional employees. A remedy should take into account the interests of the shareholders and the stability of the business and the livelihood of the employees.

[325] The appointment of a receiver manager is reserved for situations where:

- Assets are at risk of dissipation;
- There is insolvency;
- Management is incapable of carrying out a transaction honestly; or
- There is a real danger the proceeds will be misappropriated.

[326] Given the financial viability of B-Con and BCE's major asset is being sold, I do not see any risk of dissipation or insolvency.

[327] In addition, B-Con is registered as a professional company with the Professional Engineers of Ontario ("PEO") and holds a Certification of Authorization issued by PEO allowing it to exercise the profession of professional engineer in Ontario and if someone takes over the management of B-Con, the person must be a professional engineer.

[328] There is also the practical concern that the receiver-manager must be certified under the Canadian Controlled Goods Program, which allows B-Con to access sensitive components and technical data that have military or national security significance. If the receiver-manager is not certified, their entry into B-Con's premises would put B-Con in non-compliance with s. 37(2) of the *Defence Production Act*.

[329] The court has other tools and needs to remedy that will ensure that the sale proceeds. Courts are reluctant to impose that burden where other tools exist.

[330] Accordingly I order:

- Mr. Guttin will be entitled to all information regarding the sale of the Capella property and any documentation pertaining to the respondent corporations which is relevant for the execution of this order;
- Mr. Guttin can utilize the buy sell provisions in the respondent companies;
- The sale of 14 Capella Court will proceed and the proceeds from sale will be distributed as follows:
 - The real estate commissions, real estate fees, solicitor costs and any costs associated with closing the deal will be paid from the sale proceeds;
 - Payment of the first mortgage;
 - Payment of the 204 mortgage and Mr. Lafrance loan will be paid out from the sale; and
 - Balance will be held in trust by the real estate lawyer on the sale pending an accounting and determination of the respective payout to each shareholder based on the shareholder holdings.

[331] If there is a disagreement regarding the value of Mr. Guttin's shares in B-Con or BCE, then the parties are to retain independent accountants and/or certified business valuator to assist the parties.

[332] If they are unable to agree, then the matter will be referred to an Associate Justice for a reference pursuant to r. 54.02(1), *Rules of Civil Procedure*, R.R. 1990, Reg. 194 and the Associate Justice shall take all necessary steps and make all necessary inquiries relevant thereto.

[333] If the parties require directions or orders to implement this decision, they may return before me by seeking a date with the trial coordinator.

Costs

[334] There has been divided success. I encourage the parties to resolve the issue of costs.

[335] I have the parties' Bill of Costs uploaded to Case Center. If the parties are unable to agree on the issue of costs on these applications and the previous motions before me, they are to provide their 3 page costs submissions along with any offers to settle as follows: the applicants by June 30, 2026, the respondents by July 17, 2026 and the applicants may file a one page reply by August 14, 2026.

Date : June 11, 2026

Justice A. Doyle

CITATION: *Guttin. v. Creber et al.*, 2026 ONSC 3460
COURT FILE NO.: CV-19-82291 and CV-23-91904
DATE: 2026/06/11

ONTARIO

SUPERIOR COURT OF JUSTICE

RE: Kirk Guttin, Applicant

AND

Brian W. Creber, B-Con Engineering
Inc., Pufferfish Inc. and BCE Realty Ltd.,
Respondents

COUNSEL: Patrick Snelling and Jackson Kohne,
Counsel for the Applicant

Pierre Champagne and Emmanuelle
Champagne, Counsel for the
Respondents, B-Con Engineering Inc.,
Pufferfish Inc. and BCE Realty Ltd.

Kevin Caron, Counsel for the
Respondent Brian W. Creber

REASONS FOR JUDGMENT

DOYLE J.

Released: June 11, 2026