

CITATION: E. Automotive Inc. v. Autocorp, 2026 ONSC 3132
DIVISIONAL COURT FILE NO.: 3044/25
DATE: 20260616

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

D.L. CORBETT, MATHESON & MEW JJ.

BETWEEN:

E. AUTOMOTIVE INC.

Appellant

)
)
) *Jeffrey Larry and Daniel Rosenbluth*, for the
) Appellant
)
)

– and –

AUTOCORP AI. INC. and ANDREW
LEMOINE

Respondents

)
) *Katie Black and Sarah Lag*, for the
) Respondents
)
)

) **HEARD at Toronto:** May 28, 2026
)
)

REASONS FOR DECISION

Matheson J.:

[1] E. Automotive Inc. appeals from the decision of I. Carter J. dated June 18, 2025 (the Decision) dismissing its oppression application brought under s. 248 of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16 (the *OBCA*). I conclude that the application judge erred in law in relation to the appellant shareholder’s reasonable expectations and, in turn, in not finding oppression in this case of vote rigging. For the reasons set out below, I would grant the appeal.

Background

[2] The respondent Autocorp AI. Inc. is a software company that initially had two shareholders when incorporated in 2019. The appellant and the respondent Andrew Lemoine each held 50,000 of Autocorp’s 100,000 common shares. Lemoine was also the CEO and one of the two directors.

[3] In 2023, the appellant and Lemoine were negotiating about various issues regarding Autocorp, including a written shareholders' agreement and an employee share ownership plan. Autocorp was already in financial difficulty.

[4] In July 2023, the Canadian Revenue Agency (CRA) took steps to enforce a tax debt of about \$1.6 million arising from Autocorp's unpaid payroll remittances. The CRA took the position that the then two directors were personally liable. The other director resigned, leaving Lemoine as the sole director, and the appellant agreed to reduce the number of directors to one.

[5] Lemoine told the appellant that he had started seeking additional financing and was concerned about his personal exposure for the tax liability.

[6] In August, Lemoine came forward with the only deal available at that time – a proposed transaction with Blossom Street Ventures. Blossom would make a \$5 million investment in exchange for preferred shares at \$7.21 a share. Blossom would have a liquidity preference, among other attractive terms. The repayment of the \$5 million loan and the preferred shares would have stood ahead of the existing shareholders. Blossom would also have the right to convert the preferred shares to common shares, on a 1:1 basis, diluting the proportion of shareholdings of the appellant and Lemoine. The proposed amount of \$5 million was more than Autocorp needed to address its immediate liabilities.

[7] The proposed preferred shares were not contemplated by Autocorp's articles of incorporation. Autocorp had to amend its articles of incorporation to proceed. Under s. 168(5) of the *OBCA*, the amendment had to be authorized by a special resolution of the shareholders, not a director's resolution. Section 168 required the approval of Autocorp shareholders accounting for at least two thirds of the shares.

[8] The appellant considered the proposed transaction and saw three potential options: accept the proposal, Lemoine/Autocorp could buy out the appellant for about \$1.5 million, or they could partially buy out the appellant to obtain the needed shareholder votes. Ultimately, the appellant opposed the proposed transaction but was open to a buyout.

[9] Since the *OBCA* requires two-thirds shareholder approval to amend the articles of incorporation, the proposed transaction could not proceed. The appellant and the respondents continued to negotiate.

[10] During the negotiations, without notice to the appellant, Lemoine made a new arrangement with Blossom. As director, he arranged for Autocorp to issue warrants to Blossom to acquire 80,000 common shares for one cent per share, which did not require a special resolution. Blossom then promptly exercised the warrants. The resulting dilution pushed the appellant's shareholdings just below one third. Together, Lemoine and Blossom now had the two-thirds interest needed for the special resolution.

[11] The appellant was not notified of the newly structured Blossom transaction until Autocorp had to give notice of a shareholders meeting to get approval of the otherwise secret transaction.

Lemoine and Blossom, with a two-thirds shareholding, passed the impugned resolutions for the new Blossom transaction in January 2024, over the appellant's objection.

[12] It also came to light that this newly structured Blossom transaction allowed Autocorp to repurchase the 80,000 common shares for the same nominal consideration once the \$5 million was repaid or Blossom exercised its conversion rights. Blossom was not entitled to keep them.

[13] The appellant's position was and is that the purported grant of equity to Blossom was designed to dilute the appellant's interest to pass the needed special resolution, which was deliberate, unlawful, improper and highly prejudicial to the appellant.

[14] The appellant brought its oppression application. The appellant put forward a voluminous record in support of its application, including affidavits from its CEO, Jason McClenahan, a detailed account of the history, the negotiations, the proposed transaction that it objected to, and the secret transaction that went forward without its knowledge. Lemoine also put forward affidavit and other evidence and the parties conducted cross-examinations. There was voluminous evidence before the application judge.

[15] Among the extensive evidence, the evidence showed that the secret transaction between Autocorp and Blossom was structured to protect Blossom if the transaction was successfully challenged in litigation.

The Decision

[16] As set out in the Decision, the application judge focused on "the precise nature of the [appellant's] expectation and whether there is any evidentiary basis for it." The application judge held that the appellant had not established any reasonable expectation that might ground an oppression claim.

[17] The application judge narrowly focused on different points in time and excerpts from the record. The respondent invites this Court to do so as well.

[18] The application judge indicated that the appellant began with the position that it reasonably expected no dilution at all without its approval and progressively shifted its position. That shift, which the judge called a tactical change, was to the position that the appellant expected as follows: that the respondents would not trample on the appellant's statutory shareholder rights by diluting its shareholder interest to nullify its voting power on the needed special resolution.

[19] The application judge said that the difficulty that arose from the tactical change was that there was "no evidence" that the appellant had that expectation. The application judge characterized the CEO's evidence regarding the impact of the secret transaction as a description of what happened that said nothing about the appellant's expectations. The application judge said: "In the absence of direct evidence, I am left to infer whether such an expectation existed. But from what?" The application judge further held that s. 168 of the *OBICA*, requiring a two-thirds shareholder vote to approve the amendment needed for the Blossom transaction, could not ground such an expectation. He therefore dismissed the application.

[20] Despite the above, the application judge recognized that the dilution of shares below a certain threshold, especially where the purpose is to block opposition on a vote, may constitute oppression. Further, he found that there was no question that the respondents were attempting to dilute the number of shares held by the appellant to ensure it could not block a deal with Blossom.

[21] The application judge acknowledged that vote rigging could be contrary to the expectation of any shareholder. However, he required very specific direct testimony to support that expectation in this case.

[22] The application judge accepted that “it may be possible in some circumstances to infer that the issuance of shares for far below market value solely for the purposes of rigging a vote is contrary to the expectation of any shareholder”. He held that “if there had been evidence that the [appellant] had a reasonably held expectation that shares would not be issued for below market value and its percentage would not be diluted below 1/3 then it could be a different story... No such evidence exists however, and I am unable to infer such expectations merely based on the transaction itself.” With respect to the transaction itself, the application judge found that the purpose of the transaction was to save Autocorp from insolvency and, as the sole director, that was a business decision that Lemoine was entitled to make.

[23] The application was dismissed. On consent of the parties, costs of the application were fixed at \$208,548.22.

[24] This appeal was commenced.

Issues and Standard of Review

[25] The appellate standard of review applies to this appeal, brought under s. 255 of the *OBCA*. As set out in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, the standard of review is correctness for questions of law, palpable and overriding error for questions of fact and questions of mixed fact and law except that extricable questions of law are reviewed for correctness.

[26] The main issue is whether the application judge erred in law in holding that direct evidence of reasonable expectations was required in this case. The related issues are whether the application judge erred in holding that he could not infer reasonable expectations based on s. 168 of the *OBCA* and because the transaction was justified to save the company.

[27] If the application judge erred, the appellant invites this Court to complete the oppression analysis. The respondents did not take a position on this issue. The requested approach is appropriate here, given the complete record. There is then an issue of what the appropriate remedy should be if this appeal is granted.

Analysis

[28] There is no issue that there is a two-part test to establish oppression under s. 248 of the *OBCA*. As set out in *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69, [2008] 3 S.C.R. 560, at paras. 68, 70 and applied here:

- (1) the claimant must identify the expectations that they claim have been violated by the conduct at issue and establish that the expectations were reasonably held; and,
- (2) the claimant must then show that the reasonable expectations were violated by conduct that was oppressive or unfairly prejudicial to, or that unfairly disregarded the interests of, here, a shareholder.

[29] The application judge dismissed the application on the first part of the test. Despite a voluminous record with considerable relevant evidence, the application judge erred in law in finding there was “no evidence” regarding the asserted reasonable expectations of the appellant.

[30] Whether conduct is oppressive or unfairly prejudicial is a fact-based inquiry. However, evidence of an expectation may take many forms depending on the facts of the case: *BCE*, at para. 70. Relevant factors include the following: the nature of the corporation; the relationship between the parties; representations and agreements; and the fair resolution of conflicting interests between corporate stakeholders: *BCE*, at para. 72.

[31] Although the inquiry into what a party’s reasonable expectations were is a fact-based inquiry, it is well-established that there need not be evidence in the form of testimony from a claimant as to their expectations: *Ford Motor Company of Canada, Ltd. v. Ontario Municipal Employees Retirement Board* (2006), 79 O.R. (3d) 81 (C.A.), at para. 65.

[32] As the Court of Appeal stated in *Ernst & Young Inc. v. Essar Global Fund Limited*, 2017 ONCA 1014, at para. 154, summarizing statements from *BCE*, “[e]vidence of an expectation may take many forms depending on the facts of the case. The actual expectation of a particular stakeholder is not conclusive. Furthermore, a stakeholder's reasonable expectation of fair treatment may be readily inferred, because fundamentally all stakeholders are entitled to expect fair treatment” (emphasis added) (references to *BCE* omitted).

[33] Here, the appellant’s record had ample evidence recounting the relevant factual context, including the relationship between the parties as it unfolded, the proposed Blossom transaction, the dialogue showing both that Lemoine knew that he needed the appellant’s agreement and did not have it, followed by the secret Blossom transaction and the position of the appellant as these events unfolded.

[34] This evidence is more than enough to establish the appellant’s reasonable expectations: the structure of the proposed Blossom transaction, the shareholders in Autocorp and the need for a special resolution, the communications between the parties about the proposed transaction, the appellant’s objections to the proposed transaction and its resulting position to vote against it, the secret steps taken to reduce the appellant’s shareholdings to just below one-third, and giving Blossom shares for a nominal consideration.

[35] As the application judge found, there was no question that the respondents were attempting to dilute the number of shares held by the appellant to ensure it could not block a deal with Blossom. The application judge erred in law by requiring subjective testimony that precisely

matched the appellant's expectation at the relevant time. As *Ernst & Young* holds, it can be reasonably inferred that all stakeholders expect to be treated fairly.

[36] In addition to wrongly saying there was no evidence of this shareholder's expectations, let alone whether they were reasonable, the application judge erred in holding that the statutory requirement for a special resolution under s. 168 could not ground a shareholder's reasonable expectation. Section 168 forms part of Part XIV of the *OBCA*, titled Fundamental Changes. That Part contains statutory requirements for the protection of non-majority shareholders, which do ground the appellant's reasonable expectations in this case.

[37] The respondents continue to assert that there were numerous changes in the appellant's expectations as the events unfolded, submitting that changes over time undermine the finding of a reasonable expectation. The respondents begin with a submission about what the appellant's expectations were at the time of incorporation in 2019, years before the transaction at issue, and then submit that they changed from time to time, based on excerpts from the evidence and documents at different times and in different contexts. The respondents then turn to the criminal law, submitting that consistency is a means to assess the credibility and reliability of evidence, as set out in *R. v. M.G.* (1994), 93 C.C.C. (3d) 347 (Ont. C.A.) and *R. v. R.C.*, 2021 ONCA 419, leave to appeal refused, 2022 CanLII 14377 (S.C.C.), both of which are sexual assault cases. These cases do not assist the respondents.

[38] The respondent's position, accepted by the application judge, wrongly suggests that a stakeholder's expectations need to be static or become questionable. On the contrary, the broad array of relevant factors, as set out above in *BCE*, show that a stakeholder's reasonable expectations should be assessed at the relevant time and in view of the allegedly oppressive conduct, in this case the impugned transaction. Nor did the appellant's expectations, in the relevant time period, materially change.

[39] Oppression is about fairness, not technicalities such as submissions based on excerpts of words from different points in time in different contexts. To the extent that the application judge's finding of no reasonable expectation was a factual error, it was a palpable and overriding error because, as discussed above, there was ample evidence on the factual context that gave rise to the appellant's reasonable expectations contrary to the application judge's finding there was "no evidence".

[40] The respondents then submit that the application judge did not err in refusing to infer a reasonable expectation because of Lemoine's view that the transaction was needed to keep Autocorp afloat. The respondents rely on a director's powers under the *OBCA*, such as s. 108, which gives the directors the right to manage the business and affairs of the corporation. Further, Autocorp's articles did not forbid the issuance of the warrants by Lemoine and the resulting dilution, nor was there a unanimous shareholder agreement to that effect.

[41] The business interests of Autocorp are relevant to the oppression analysis, as discussed further below, but they are not a barrier to drawing inferences from the evidence. Nor are they considered in isolation. This dilution happened in direct response to the respondents learning that

the appellant would not vote in support of the proposed Blossom transaction. It was done to do an end-run around that objection.

[42] As acknowledged by the application judge, there is no question that in certain circumstances the dilution of shares below a certain threshold, especially where the purpose is to block opposition on a vote, may constitute oppression: Decision, at para. 23, citing Markus Koehnen (as he then was), *Oppression and Related Remedies* (Toronto: Thompson Canada Ltd: 2004) (*Oppression*), p. 137.

[43] The application judge did not proceed to determine whether this was such a case because he found that it was a business decision that Lemoine was entitled to make. However, *Oppression* correctly notes, at p. 137, a share issuance may be oppressive even where the directors honestly believe that they are acting in the best interests of the corporation.

[44] The respondents rely on the application judge's finding that the issuance of the common shares for a penny a share was part of the consideration for the \$5 million loan to Autocorp. In doing so, the respondents are focusing on only part of the secret transaction, sidestepping the timing and the right to repurchase those shares at the same nominal amount. Another example is the application judge's finding that without the warrants, the transaction would not make commercial sense for Blossom. Blossom had already agreed to the proposed transaction, without those warrants.

[45] Looking at both the proposed Blossom transaction and the secret transaction on all their terms and the communication between Lemoine and Blossom, the purpose of the warrants was to prevent the appellant from blocking the transaction. As found by the application judge, there was no question that the respondents were attempting to dilute the number of shares held by the appellant to ensure they could not block a deal with Blossom. The other reasons relied upon by the respondents conflict with this finding, which is well-supported on the record.

[46] Several oppression cases involving share dilution have been put forward. The application judge cited *Darvish-Kazem v. Pazkaz Enterprises Inc.*, 2022 ONSC 1667, which is an oppression case where the judge held that except for the desire for audited financial statements, the judge did not know where the expectations advanced in that case came from. That conclusion was properly based on the record in *Darvish-Kazem* and is not analogous to the case before us. Further, in that case, the judge went on to consider the circumstances and found oppression. The judge also noted at para. 34 that the "oppression remedy is designed to ensure that shareholders at least receive their mandatory statutory entitlements."

[47] The respondents rely on *McEwen v. Goldcorp Inc.* (2006), 21 B.L.R. (4th) 306 (Ont. Div. Ct.) to dispute the proposition that dilution is always prejudicial. The appellant does not submit that dilution is always prejudicial. Further, *McEwen* was about whether shareholder approval was required to approve a plan of arrangement, not oppression.

[48] The respondents also seek to distinguish other vote-rigging and dilution cases the appellant relies on including *Concept Capital Management Ltd. v. Oremex Silver Inc.*, 2013 ONSC 7820, where the directors wrongly attempted to manipulate the voting process, *Keho Holdings Ltd. v.*

Noble, 1987 ABCA 84, 78 A.R. 131, where a share option at below book and market value would dilute the value of other outstanding shares and was oppressive, *Bernard et al. v. Valentini et al.* (1978), (Ont. H.C.), a case where shares had been issued for the sole purpose of maintaining control of the company, and *Starcom International Optics Corp. v. MacDonald*, 1994 CanLII 1956 (B.C. S.C.), in which certain acts that resulted in the consolidating of a control position were found oppressive.

[49] I agree that the above cases turn on their facts. They are relevant to show examples of situations that have been found improper, but no more. They are not needed to support the appellant's case for oppression.

[50] The applicable law and the record amply demonstrate the reasonable expectation asserted by the appellant both to the application judge and on this appeal. The *OBCA* itself provides the basis for a shareholder with more than a one-third interest to reasonably expect that it could block a transaction that requires a special resolution. Here, the extensive record also shows that the appellant had a reasonable expectation that it could block the proposed Blossom transaction. It is readily inferred that this includes an expectation that steps will not be taken to rig the vote.

[51] A claimant must then show that the reasonable expectations were violated by conduct that was oppressive or unfairly prejudicial to, or that unfairly disregarded the interests of, here, a shareholder. This is also readily shown based on undisputed facts about the events including the proposed and secret Blossom transactions. I need not repeat the facts as summarized above. Knowing that the appellant shareholder would block a needed special resolution, and had the right to do so under s. 168 of the *OBCA*, the respondents secretly took steps to rig that vote by issuing warrants for nominal consideration, which left Lemoine and Blossom with just enough common shares for the two-thirds shareholding needed to pass a special resolution.

[52] I recognize that "oppression" generally relates to conduct that is coercive and abusive, where "unfair prejudice" may admit of a less culpable state of mind, but both still lead to unfair consequences: *BCE*, at para. Here there is a specific finding, unchallenged on appeal, that the respondents were attempting to dilute the number of shares held by the appellant to ensure it could not block a deal with Blossom. In my view, this is oppression. At the very least it shows an unfair disregard of the appellant's shareholder interests.

[53] The respondents submit that where the reasonable expectations of an individual shareholder conflict with the company's interests, the company's interests prevail, relying on *BCE*. However, *BCE* holds, at para. 82, 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."

[54] "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": *BCE*, at para. 84.

[55] Here, we have a single director who has a personal interest in getting the loan, because of his potential tax liability. And instead of proposing the newly structured transaction to the appellant, as he did with the initial Blossom proposal, Lemoine secretly rigged the vote together

with the third party lender. This falls well short of the duty on a director “to resolve conflicts between the interests of corporate stakeholders in a fair manner that reflects the best interests of the corporation”: *BCE*, at para. 111. It is insufficient to say that Autocorp needed the money and there was no other deal. This would mean that vote-rigging is fine so long as the company needs the money, regardless of the fairness principles that apply here.

[56] I find this was an oppressive transaction. The only remaining issue is remedy.

Appeal Decision

[57] I would therefore grant this appeal. The Court has the parties’ agreement on the quantum of costs of the appeal, which shall be addressed together with remedy.

[58] Written submissions on remedy and the costs below shall be provided within 30 days from today and limited to fifteen pages for each side. Blossom is also permitted to make written submissions, with the same terms. After service, the submissions shall be promptly uploaded to Case Center.

Justice Matheson

I agree

Justice D.L. Corbett

I agree

Justice Mew

Date: June 16, 2026