

Strange bedfellows: When oppression, dismissal claims overlap in executive employment litigation

By **Frank Portman**

Law360 Canada (October 28, 2025, 11:20 AM EDT) -- Most executives in the private sector enjoy significant equity in their companies. In fact, many executive employment lawyers will tell you that the equity component of an executive's compensation may significantly exceed their salary.

As shareholders, these executives are entitled to legal protections associated with their rights of ownership, independent of their protections as employees under the *Employment Standards Act* (ESA). This is particularly true in smaller, private organizations where share ownership is closely tied to the executive's performance and the bottom line.

When an executive's rights as an employee and a shareholder are engaged through the same course of conduct, there are unique and important legal consequences that can shape remedy and legal strategy.



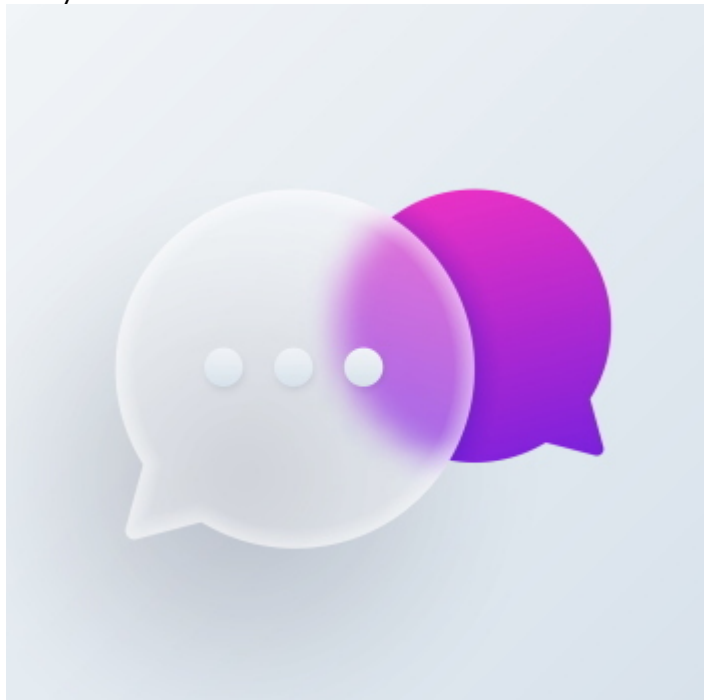
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The two remedies: Oppression and wrongful dismissal

The oppression remedy protects shareholders and others in their corporate dealings, emphasizing governance and fair exercise of power.

Employment rights are generally handled separately through breach of contract claims for wrongful dismissal.

Many Canadian executives are familiar with the idea of a wrongful dismissal. In most cases where an



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employer dismisses an employee, that employee is entitled to notice of termination. That notice of termination can be established through an executive employment contract or, absent such a contract, a legal inference of reasonable notice. A failure by the employer to pay such notice grounds a wrongful dismissal lawsuit. Such a lawsuit is premised on a breach of the employment contract by a failure to provide sufficient notice. This legal remedy is designed to give a degree of protection to executives and give them time to find new employment.

Conversely, the oppression remedy under the Ontario *Business Corporations Act* (BCA) is designed to protect shareholders, directors and other stakeholders from conduct that is oppressive, unfairly prejudicial or unfairly disregards their interests in their role as stakeholders in the company proper. The court has broad discretion to grant remedies that it considers appropriate, including orders to compensate the executive, rectify the conduct or even change corporate actions or agreements.

This remedy is especially significant in situations where majority shareholders or those in control use their powers in a manner that unjustly disadvantages minority shareholders or other stakeholders.

A recent case from the Ontario Superior Court of Justice is helpful to those practising in executive employment law because it dealt with both oppression and wrongful dismissal. Although that decision was a preliminary one, the fact pattern provides a unique opportunity to analyze where these rights can overlap.

When wrongful dismissal claim and oppression claim overlap: Daniels v. Ivey

In *Daniels v. Ivey*, 2025 ONSC 5507, an unusual scenario arose in a dispute between an employer and an executive shareholder who had been dismissed in the context of ownership of a tech startup.

The parties' shareholder agreement specified that only shareholders actively working for the company could vote. Those not "providing services" to the business were considered non-voting, or silent, shareholders. Additionally, the agreement ensured each shareholder held just one vote, all equal in weight, regardless of how many shares they owned.

Although the plaintiff was the majority shareholder, two other individuals — who were contributing services to the company — also held shares. Due to the unusual terms of their shareholders' agreement, these two minority shareholders had enough voting power to override the plaintiff executive, even though they owned considerably fewer shares.

They followed through with these actions: first, they ended his employment. Afterward, all eligible shareholders except him unanimously approved selling company assets to a new business owned solely by the two remaining shareholders, allegedly setting the price much lower than the true value.

The plaintiff executive asserted that his termination was executed to enable the remaining shareholders to transfer the assets to a company wholly owned by themselves, thereby excluding the plaintiff from appropriate compensation.

Although the decision itself dealt with the inclusion, in the oppression claim, of a tech startup "incubator," which was also a silent shareholder and did not have the right to vote, and therefore did not conduct a factual or legal analysis of the legal claims, the facts seem to support an overlap of the wrongful dismissal claim and the oppression claim.

If the plaintiff's employment was terminated solely to remove him as a voting shareholder and to permit a below-fair-market deal to go through to effectively "cut him out" of the defendant's business, then that would likely constitute a breach of both his executive employment contract and his expectations as a shareholder, triggering the oppression remedy. Given the allegation that the assets of the company were worth US\$8.5 million but were purportedly sold for only CAD\$400,000, the damages involved if that were found to be the case could be substantial.

Using the oppression remedy to protect executives

There has been a long history of attempts to bring oppression claims as part of wrongful dismissal actions, particularly where the employee is an executive and a shareholder. There are various

strategic reasons for doing this, including the broad range of remedies available for oppression, as well as the opportunity to hold directors and officers personally liable for such wrongs. However, many such cases flounder in that they are simply attempts to use the oppression remedy to expand the scope of liability for wrongful dismissals (*Abbasbayli v. Fiera Foods Co.*, 2021 ONCA 95 at paras. 36-46).

There are, however, cases in which there are legitimate connections between a wrongful dismissal and an oppression claim. These cases often involve situations where an executive's employment is targeted or terminated by other shareholders and directors to impact their rights as shareholders. The *Daniels* case is an example of such an allegation.

From an executive employment lawyer's perspective, there are unique factors that arise out of such a termination:

1. Dismissing an employee in a way that is part of a wider pattern of oppression may violate the duty of good faith and honesty, potentially resulting in additional damages beyond the standard notice requirements in respect of a wrongful dismissal.
2. Damages caused by oppression and those from wrongful dismissal are distinct; claims related to oppression can be significantly greater and are not subject to the nominal 24-month cap on notice periods in non-exceptional circumstance (*Lowndes v. Summit Ford Sales Ltd.*, [2006] O.J. No. 13 at para. 11).
3. The remedies available through an oppression application are more extensive than those granted in typical wrongful dismissal cases and may include reinstatement or compensation that goes further than usual.
4. Company directors might also face personal responsibility for paying damages or other remedies.

While these advantages are substantial, employment-related oppression claims should only be asserted when they are credible and well-supported. Careless pleading may lead to parts of a claim being struck and increased costs. When justified, oppression claims can strengthen employment law cases and broaden possible remedies. Where employment and shareholder issues overlap, consult an executive employment lawyer experienced in both areas to ensure the best outcome.

Frank Portman is an employment lawyer at Massey LLP. His specialty is executive employment law where he assists presidents, vice-presidents and other C-level executives and the organization seeking to hire their talents to complete the deal through effective executive employment contracts.

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