

Just and equitable liquidation and dissolution: a remedy for shareholder disputes

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Shareholder disputes can destabilize a company. They often paralyze the decision-making process and impair governance. When shareholder disputes arise, the courts are often asked to intervene. While many parties turn to the oppression remedy under s. 227 of the *Business Corporations Act* (BCA), which was discussed in our December 2024 article on the [oppression remedy](#), British Columbia courts have another powerful tool at their disposal: the “just and equitable” liquidation and dissolution remedy under section 324 of the BCA. This remedy plays a central role in resolving shareholder deadlock, loss of substratum, and breakdowns in closely held companies.

The just and equitable test: a lower threshold

The “just and equitable” test under s. 324 represents a lower threshold compared to the oppression remedy under s. 227.¹ Under s. 324 there is no requirement of a finding of oppression, unfairly prejudicial conduct or even wrongdoing. Thus, in many cases, this makes it relatively easier for a complainant to obtain a remedy.

Flexibility of the just and equitable test and the court’s discretion

The just and equitable test itself is a flexible standard, designed to adapt to a wide range of circumstances.² This flexibility allows the court to make decisions that reflect the unique nature of each case, while still respecting necessary safeguards against overly liberal applications of the remedy. For example, what is considered “just and equitable” in the context of a family business may differ from a conventional commercial business. In the family business context, the court may interpret the “just and equitable” standard more liberally to reflect the personal relationships involved.³

When determining whether a declaration of liquidation and dissolution is “just and equitable”, the court focuses primarily on the reasonable expectations of the parties involved. It does not require that the company’s affairs be impeded or that the parties involved have acted improperly. Instead, the court considers whether the continuation of the company is consistent with the original intentions of the parties and what is fair in the context of the dispute.⁴

The court has broad discretion to determine whether the liquidation and dissolution is just and equitable.⁵ However, this discretion is not boundless. The remedy cannot be applied so liberally as to render the corporate structure meaningless.⁶ For example, courts may refuse to order liquidation and dissolution if the proceeding appears to be aimed at merely monetizing an individual's interest in the company, without a legitimate business or fairness concern at its core.⁷ In addition, actual liquidation and dissolution is considered a "drastic remedy"⁸ or one of "last resort."⁹

Recognized grounds for relief under section 324

There are four recognized grounds that courts have relied on to justify the use of section 324: (a) loss of substratum; (b) justifiable lack of confidence; (c) deadlock; and (d) the partnership analogy.¹⁰ However, the courts have made clear that their discretion under s. 324 is not limited to these categories. The words "just and equitable" have been described as words of the widest significance that confer a broad discretion on the court to make a liquidation order in any circumstances it considers appropriate. Nevertheless, most successful cases fit in one or more of the four categories.

a) Loss of substratum

Loss of substratum happens when the company's original purpose or core business no longer exists or there is a failure of the fundamental objectives of a corporation.¹¹ For example, if a company was set up to develop a product, but that product is no longer possible to create or sell such that it is impossible for the company to carry on the business, the company may no longer serve a useful purpose and accordingly a winding up order may be just and equitable.¹²

b) Justifiable lack of confidence

Justifiable lack of confidence is a situation where the members of a company lose trust in one another, making it difficult for the company to run effectively. For example, the following situation may lead to finding justifiable lack of confidence amongst the members of a company whose liquidation and dissolution is sought:

- Each member believes that the other
 - is acting against the best interests of the company to appropriate corporate opportunities for themselves or their relatives.
 - is conspiring with family members and outsiders; or
 - is involved in some secret deals.¹³

c) Deadlock

Deadlock occurs where the parties are unable to make decisions due to irreconcilable disagreements, effectively paralyzing the company.¹⁴ For example, the court may find deadlock where, notwithstanding their extended efforts to reach an agreement and resolve their dispute through means other than liquidation and dissolution, the members of the company cannot agree on matters such as the value of the underlying properties that were owned by the company, the mechanism they should use to separate their interests, or how to address the tax consequences of certain options.¹⁵

Some of the circumstances that would normally lead to a finding that it is just and equitable to wind up a company because of deadlock are as follows:

- there are no other effective and appropriate remedies to resolve the issue between the parties;
- there is an equal split or nearly equal split of shares and control;
- there is a serious and persistent disagreement as to some important questions respecting the management or functioning of the corporation;
- there is a resulting deadlock; and
- the deadlock paralyzes and seriously interferes with the normal operations of the corporation.¹⁶

In the same vein, the court may find that it is just and equitable to grant relief under s. 324 because of a deadlock where the directors simply could not agree on anything.¹⁷

d) Partnership analogy

Where the relationship between the parties resembles a partnership more than arm's length shareholders, courts have been prepared to liquidate and dissolve a company on the same grounds on which the court would wind up a partnership. The equitable intervention of the court on this ground requires the satisfaction of two conditions: (i) the existence of an undertaking that is in substance a partnership in the guise of a private company, and (ii) a breakdown of the mutual trust and confidence upon which the original undertaking was founded.¹⁸

For example, if family members involved in an "incorporated partnership" can no longer get along such that working together in the business is impossible, the court may find it appropriate to order that the company be liquidated and dissolved.¹⁹

A back door to s. 227 remedies

One of the most important features of s. 324 is the ability of the court to make an order under s. 227 instead of ordering that the company be liquidated and dissolved. As discussed in our December 2024 article on the [oppression remedy](#), s. 227 remedies include the following:

- directing an issue or exchange of shares;
- ordering the company or any other person to purchase part or all the shares of a complainant;
- ordering compensation for an aggrieved person;

For example, on an application under s. 324, the court could order that the company or another shareholder purchase the complainant shareholder's shares, instead of making a winding up order. For that reason, s. 324 may be described as a "back door" to the oppression remedy.

Key takeaways

The just and equitable liquidation and dissolution remedy under section 324 of the British Columbia *Business Corporations Act* is an important tool for resolving shareholder disputes. Courts are guided by fairness principles and the reasonable expectations of the parties, with the court exercising broad discretion to ensure that the remedy is only applied when truly necessary, often when there is a loss of substratum, justifiable lack of confidence and deadlock.

Footnotes

- ¹ *Baker v Hanlon*, [2019 BCSC 1185](#) at para. 11.
- ² *Weisstock v Weisstock*, [2022 BCSC 1886](#) at para 56 aff'd [2023 BCCA 352](#).
- ³ *Safarik v. Ocean Fisheries Ltd.*, [1995 CanLII 6269 \(BC CA\)](#) at para. 100-102.
- ⁴ *Weisstock v Weisstock*, [2022 BCSC 1886](#) at para 48 aff'd [2023 BCCA 352](#).
- ⁵ *Esposito v 304768 B.C. Ltd.*, [2021 BCSC 961](#) at para. 9.
- ⁶ *Weisstock v Weisstock*, [2022 BCSC 1886](#) at para 61 aff'd [2023 BCCA 352](#).
- ⁷ *Boffo Family Holdings Ltd. v. Garden Construction Ltd.*, [2011 BCSC 1246](#) at para. 156
- ⁸ *Talwerdi v. Infonet*, [2001 BCSC 1304](#) at paras. 43-45.
- ⁹ *Hull Limited v. Bean Services Inc.* [2013 BCSC 1208](#) at para. 78.
- ¹⁰ *Vivian v. Firth*, [2012 BCSC 517](#) at para. 68.
- ¹¹ *Spookw v. Gitxsan Treaty Society*, [2014 BCSC 1100](#) at para. 31.
- ¹² *Elliot v. Sidney and Zella Clark Holdings Ltd.*, [2022 BCSC 2077](#) at para. 108.
- ¹³ *Allard v Allard*, [2023 BCSC 1823](#) at para. 122.
- ¹⁴ *Allard v Allard*, [2023 BCSC 1823](#) at para. 128.
- ¹⁵ *Esposito v. Esposito*, [2022 BCCA 51](#) at para. 32-35.
- ¹⁶ *Kinzie v. The Dells Holdings Ltd.*, [2010 BCSC 1360](#) at para. 10.
- ¹⁷ *No. 20 CR Ventures Ltd. v. Andrex Developments (1985)*, [2019 BCSC 405](#) at paras. 91-94.
- ¹⁸ *Vivian v. Firth*, [2012 BCSC 517](#) at para. 80.
- ¹⁹ *Rajani v. Wescana Properties Inc.*, [2024 BCSC 916](#) at para. 133.

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