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**THE OPPRESSION REMEDY**

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**Release No. 23, November 2018**

**What's New in this Update:**

This release includes updates to the case law and commentary in Chapters 2 (Who Can Claim Relief), 3 (The Goal of the Oppression Remedy: Protecting Reasonable Expectations), 5 (Conduct to Which the Oppression Remedy Applies), 6 (Remedies: General Principles and Practical Applications), 7 (The Oppression Remedy and Other Statutory Remedies) and 8 (Litigating an Oppression Claim).

- **Who Can Claim Relief — Claims Brought in a Representative Capacity — Monitors** — It is not uncommon for monitors to be appointed in insolvency proceedings. In considering issues regarding a monitor's standing as a complainant in an oppression action, the Court of

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Appeal noted that there is some difference in academic opinion on the suitability of the oppression remedy in insolvency proceedings generally: *Lord v. Clearspring*, 2017 ONCA 1016 (Ont. C.A.).

- **Who Can Claim Relief — Claims Brought in a Representative Capacity — Monitors** — The Court of Appeal for Ontario dismissed an appeal from a successful oppression action launched by the monitor appointed under the *Companies' Creditors Arrangement Act* to continue oppression proceedings against the parent company. The court noted that the court has broad discretion to determine who may be a complainant and concluded that a monitor can be a complainant under the *CBCA* — albeit in exceptional circumstances. The court concluded that it was appropriate for the monitor to be a complainant and that the monitor could effectively advance an oppression claim in this case: *Ernst & Young v. Essar Global Fund*, 2017 ONCA 1014 (Ont. C.A.).
- **Litigating an Oppression Claim - Asserting Oppression Remedy Claims as Class Actions** — Reasonable expectations have both subjective and objective components concerning market integrity and the information disseminated in the market. The court considered the objective component to be something every shareholder would reasonably expect and referenced prior authority that a representative plaintiff can prove the expectations of those it represents by “leading evidence establishing an inference as to those stakeholders’ subjective and reasonable expectations”. As such, the court concluded that the plaintiffs had met the requirements for certification: *Rooney v. ArcelorMittal et al.*, 2018 ONSC 1878 (Ont. S.C. J.).