

DEWARE, C.J.

INTRODUCTION

[1] In this matter, the Court is asked to consider various relief sought by both parties via motion. The defendants seek summary judgment and the dismissal of the Plaintiffs' action, as well as various declaratory orders. The Plaintiffs seek the reinstatement of the Plaintiff, Louis Bertrand's employment, leave to amend their statement of claim and the appointment of a monitor, pursuant to the **Business Corporation Act**, SNB 1981, c B-9.1 and the **Judicature Act**, RSNB 1973, c J-2. Voluminous records have been filed by all parties and multiple affidavits provided to the Court.

[2] The Court has already rendered two decisions in this matter arising out of pre-trial motions. On March 11th, 2025, the Court issued a decision denying the Plaintiffs' original request for the appointment of a monitor. On October 28th, 2025, the Court issued a decision refusing the Plaintiffs' request for an order compelling the parties selected business evaluator to commence their work with two specific valuation dates. The Court did order the evaluator, Deloitte, to begin their work on the valuation of TCI Manufacturing Inc., on the day selected by the Plaintiffs of December 31, 2024 and a second date to be identified by the Defendants.

- [3] This civil action involves two brothers and their joint ownership of the corporate defendant, TCI Manufacturing Inc (“TCI”). The parties’ relationship is extremely strained, coloured by a total lack of trust. Given the fact the personal parties have the same family name, I will refer to them by their given names, when necessary, in this decision for the purposes of clarity.

FACTS

- [4] In the March 11th, 2025 decision, I recited the facts germane to that motion in paragraphs 2 to 9 as follows:

- [2] The Plaintiff, Louis Bertrant (“Louis”), is the brother of the defendant, Paul Bertrand (“Paul”). Louis and Paul are 50/50 owners and shareholders in the corporate defendants, TCI Manufacturing Inc. (“TCI”) and 666917 N.B. Inc. The Plaintiff company, 610286 N.B. Inc., is Louis’ holding company while the Defendant company, 610287 N.B. Inc. is Paul’s holding company.
- [3] The brothers have been equal shareholders in the companies (TCI and 666917 N.B. Inc.) and co-presidents since 2005. TCI was incorporated in 1993. At that time, Louis owned 33%, Paul owned 33%, and another partner, Wayne Player, owned the remaining 33%. When Wayne Player retired, Louis and Paul purchased his shares. Louis and Paul each paid \$60,000 for their portion of Mr. Player’s shares through their holding companies. The brothers each worked full time at TCI from the early 2000’s until the summer of 2019.
- [4] In the summer of 2019, Louis was required to take a medical leave from the business as a result of stress on his doctor’s recommendation. In August of 2020, Louis was diagnosed with throat cancer and underwent chemotherapy and radiation treatment from October to December.
- [5] Louis remained on medical leave and away from the regular operations of the company from the summer of 2019 until the spring of 2023. During this time, Louis was working on an automation project for the business from his home garage.
- [6] Prior to Louis’ illness in the summer of 2019, Louis and Paul had shared the management of their jointly owned companies. They were each responsible for different aspects of the management of the business. Following Louis’ departure in the summer of 2019,

Paul assumed all the management responsibilities for the jointly owned companies.

- [7] Prior to the summer of 2019, Louis and Paul drew the same salary and financial benefits from the companies. This practice continued after Louis' absence. Louis and Paul, as well as their spouses and children, received the same benefits from the companies.
- [8] Paul made changes to how Louis and Paul withdrew funds from the companies on the advice of their accountant. In addition, Paul eliminated both his own vehicle allowance as well as Louis' vehicle allowance on the advice of their accountants that it was no longer a reasonable expense. All the changes of this nature made to Louis' remuneration were exactly the same as the changes made to Paul's remuneration. Paul did not consult Louis before proceeding with these changes.
- [9] Louis had a corporate credit card with a limit of \$5,000 which he continued to use during the period he was absent from the business. Louis did not provide receipts for the charges made to the corporate credit card. In 2023, Paul reduced the limit of Louis' corporate credit card to \$1,000. Paul did not advise Louis of the reduction in the limit on his credit card. Louis was only alerted to the credit card limit change when his credit card was declined.

[5] On July 4th, 2025, Louis' employment, salary and benefits were terminated by Paul. Paul maintains this decision was taken on the advice of TCI's accountants who were concerned they could no longer deduct Louis' salary as an expense for the company. Louis disputes this assertion and suggests it was Paul who reached out to the accountants and raised the issue.

[6] The parties started examinations for discovery in December 2025. These are not yet complete. The parties each accuse the other of delaying the matter and providing insufficient or untimely disclosure of documents.

[7] Both parties have referenced the Court's March 11, 2025 decision in support of the relief sought in the current motions. The salient paragraphs of that decision for the purposes of the present motions are as follows:

[...]

[23] In all of the circumstances I am unable to conclude Louis has established a *prima facie* case of oppression. While Louis' access to the corporate office was limited in May 2023 and there is a challenge for Louis to obtain the financial information of the companies, otherwise I cannot conclude that Paul's actions could be considered unfair or abusive. The companies have fared very well under Paul's stewardship. There is no reason to believe there is any risk to the companies or to Louis. Further, **Paul has continued to respect all of Louis' remuneration as identical to his own despite the fact that Paul alone has shouldered the responsibility for the operations and management of the companies. Paul's actions do not fall within the realm of oppression when considering all of the circumstances holistically.**

[...]

[28] Reviewing all of the evidence, the Court is left with the impression that Paul did everything to accommodate and support Louis for nearly four years from the summer of 2019 to the spring of 2023. Louis voiced no disagreement with Paul's management of the company nor concern for the fact he wasn't assisting Paul in the management of the companies until Paul raised the issue. Paul understandably wanted to discuss future plans as the two 50% shareholders of the companies were no longer sharing the work or the management of the companies and had not been for a significant period of time. **Louis' apparent expectation that the status quo could continue indefinitely was not reasonable.**

[29] In the present matter, it is clear the companies must be valued and then a sale must take place. The parties have agreed upon an experienced business evaluator who will be in a position to fully set out the financial situation of the companies and, in time, the appropriate amount to be considered for their purchase and sale. The current concerns stem mostly from Paul's change in approach following the altercation between the brothers in May. While Louis has been frustrated by the changes of the locks and the suggestion that he communicate with Paul as opposed to the employees, there is no evidence that the health or functioning of the businesses have been impacted by these measures. The brothers can clearly no longer get along and despite the fact it remains unclear as to who is to blame for the physical altercation, it is clear that such behaviours cannot occur in the workplace. In the short term, Louis' limited access is necessary to maintain the peace and not expose the employees to the turmoil. There is no evidence that in limiting Louis' access, Paul has negatively impacted the value of Louis' shares or interest in the companies.

[30] Paul's move to address the problems which then triggered the altercation between the brothers cannot be considered as oppression.

[31] This is not a case where the appointment of a monitor is necessary. The appointment of the business valuator will resolve the majority of the disputes between the parties. In addition, Louis should have direct access to the financial records of the companies and my understanding is that this can be accomplished by setting up Louis with VPN access to the companies' records. This should be done immediately, and the necessary equipment and instruction provided to Louis so he can access this information as he sees fit.

[...]

[Emphasis mine]

ISSUES

[8] The relief sought by the parties as set out in the parties Amended Notices of Motion is as follows:

1. Immediately reinstating Louis Bertrand's remuneration for his employment with TIC Manufacturing Inc. ("TIC") immediately, with backpay to July 4, 2025;
2. Granting leave to the Plaintiffs to amend their Statement of Claim in the form of the proposed Amended Statement of Claim attached at Schedule "A", pursuant to Rule 27.10(2)(c) of the *Rules of Court*;
3. Based on new, and additional evidence and the continued failure by Paul Bertrand to provide and to continue to provide financial information with respect to the affairs of TIC and 666917 to Louis Bertrand. Appointing a Monitor over all real and personal property of and to administer, manage and govern the affairs of TIC and 666917, without security, including but not limited to, pursuant to the *Business Corporations Act*, *Rules of Court* and the *Judicature Act*;
4. Under Rule 22.01(3) of the New Brunswick Rules of Court, an order for summary judgment dismissing the claims made in the Plaintiffs' claimants' statement of claim.
5. An order declaring that the authority of Louis Bertrand as director and 50% shareholder of TIC Manufacturing Inc. and 666917 N.B. Inc. has been exercised in a manner that abuses, prejudices, or disregards the rights of Paul Bertrand, TIC Manufacturing Inc., 666917 N.B. Inc., TIC affiliates, and TIC creditors, pursuant to subsection 166(2) of the Business Corporations Act, c. B-9.1, SNB 1981;

6. Pursuant to section 173, subsections 141(2) and 166(2) and paragraphs 141(1)(b)(ii) and 144(1)(a) of the Business Corporations Act, *supra*, an order:
 - a. To the plaintiffs Louis Bertrand and 610286 N.B. inc. to sell to one or more of the defendants the shares held or controlled by the plaintiffs in the defendants TCI Manufacturing inc. and 666917 N.B. inc., including those held by the Louis Bertrand Family Trust, for fair value less the total value of the compensation paid to Louis and his family since December 31, 2019.
 - b. To one or more of the defendants to purchase the shares in the defendants TCI Manufacturing Inc. and 666917 N.B. Inc. owned or controlled by Louis Bertrand, the Louis Bertrand Family Trust or 610286 N.B. Inc., for fair value less the total value of the compensation paid to Louis and his family since December 31, 2019.
 - c. To remove Louis Bertrand as administrator of TCI Manufacturing Inc. and 666917 N.B. Inc.
7. Pursuant to subsection 141(2) of the Business Corporations Act, *supra*, the valuation of the shares of TCI Manufacturing Inc. and 666917 N.B. Inc. by qualified accountants, and determining:
 - a. Whether the evaluation date is set for December 31, 2019, or another date set by the court,
 - b. That the money and benefits paid to Louis Bertrand and his family since December 31, 2019, or another date set by the court, be deducted from the amount that will be owed.
 - c. That the total value of the compensation paid to Louis and his family since December 31, 2019 be determined by the accountants.
8. Pursuant to Rule 22.01(3) and (4), *supra*, and section 173 and paragraph 166(3)(n) of the Business Corporations Act, *supra*, the holding of a trial on any matter to be determined, if necessary.
9. Pursuant to Rule 31.06 of the New Brunswick Rules of Court, the issuance of another affidavit of more complete documents.

POSITION OF THE PARTIES

[9] The Plaintiffs suggest the Defendants' actions following the issuance of the March 2025 decision have been heavy handed and have changed the landscape of the matter to such a degree the Court must reconsider their

request for the appointment of a monitor in light of the new circumstances. Louis further submits his dismissal in July of 2025 was unlawful, and done without notice, entitling him to reinstatement or, in lieu, payment of a reasonable notice period. Finally, the Plaintiffs maintain the Defendants' refusal to consent to the amendment of the Statement of Claim at this early stage in the proceedings is unreasonable as is their request for partial summary judgment on the issue of oppression.

- [10] The Defendants assert their actions are all, and have always been, exercised in the best interests of the company, TCI. The Defendants note Louis has not worked at the company since 2019, and the accountants were of the view his salary was no longer a reasonable business expense which could be deducted. The Defendants maintain the Court has already addressed the issue of the monitor and that question is now *res judicata*. Finally, the Defendants assert it is appropriate the Court grant partial summary judgment in this matter.

LAW AND ANALYSIS

- [11] There is a question on these motions as to the order in which the Court should consider the issues. The Defendants' motion for summary judgment was filed in January 2025, chronologically long before the Plaintiffs' most recent motions. The Defendants prefer the Court consider the request for partial summary judgment prior to the request to amend the Statement of

Claim; however, such an approach would not be consistent with current jurisprudence, nor the *Rules of Court*. It has long been established amendments to pleadings may be considered as late as the eve of trial if any prejudice can be accommodated by an adjournment or costs. The Court's primary preoccupation when considering a request to amend pleadings is ensuring all material issues be placed before the Court. In this case, the pre-trial procedures are not complete, and discoveries are ongoing. There is no prejudice to the Defendants at this time and the amended pleading has been available for quite some time, prior even to the commencement of discovery. This issue must be considered first.

AMENDMENT TO PLEADINGS

[12] **Rule 27.10** of the New Brunswick *Rules of Court* governs the amendment of pleadings.

27.10 Amendment of Pleadings

General Power of Court

(1) Unless prejudice will result which cannot be compensated for by costs or an adjournment, **the court may, at any stage of an action**, grant leave to amend any pleading on such terms as may be just and all such amendments shall be made which are necessary for the purpose of determining the real questions in issue.

When Amendments May Be Made

(2) A party may amend his pleading

(a) without leave, before the close of pleadings, if the amendment does not include or necessitate the addition, deletion or substitution of a party to the action,

(b) on filing the consent of all parties and, where a person is to be added or substituted as a party, the person's consent, or

(c) with leave of the court.

[Emphasis mine]

- [13] The New Brunswick Court of Appeal discussed the role of the Court in considering a request for an amendment of pleadings in ***Enbridge Gas New Brunswick Inc. v. Modern Construction (1983) Ltd.***, 2003 NBCA 78, at paragraph 15:

[15] Rule 27.10 of the Rules of Court provides that unless prejudice will result that cannot be compensated by costs or an adjournment, the court may, in its discretion, grant leave to amend any pleading on such terms as may be just. **The rule in question goes on to obligate the court to allow any amendment that is necessary for the purpose of determining the real questions in issue. The jurisprudence on point supports the view that amendments to pleadings that comply with the rules of pleadings found in Rule 27 should be only very rarely refused.** That approach is shaped by the direction articulated in Rule 1.03, namely that the rules are to be liberally construed to secure the just, least expensive and most expeditious determination of every proceeding on the merits. As well, there is ample authority for the proposition that any decision to allow an amendment to a pleading, being discretionary in nature, calls for the application of a standard of appellate review impregnated with great deference for the judgment exercised in first instance.

[Emphasis mine]

- [14] In Roman ***Catholic Archbishop of Moncton v. Co-operators General Insurance Company***, 2021 NBQB 25 (CanLII), Justice Ferguson set out a comprehensive review of the jurisprudence in New Brunswick surrounding requests to amend pleadings pursuant to ***Rule 27.10***. Justice Ferguson noted at paragraph 36 to 38 as follows:

[36] There is a rich and consistent jurisprudential history interpreting Rule 27.10 in this Province. It begins in contemporary times with the Court of Appeal's judgment in *Moore v. State Farm Fire & Casualty Company*, (1982), 1982 CanLII 4194 (NB CA), 42 N.B.R. (2d) 667 (N.B.C.A.) where at para. 10 the Court said:

While leave to amend is a discretionary right, the practice is for the court to allow adjustments to pleadings whenever it can be done without injustice to the other side and where it is necessary to determine the issues between the parties. Generally speaking, an amendment should be allowed, however, negligent or careless may

have been the first omission **and however late the proposed amendment, if it can be done without injustice to the other side; and there is no injustice to the other side, if it can be compensated by costs.**

[37] The legal bar to deny proposed amendments to the pleadings was arguably heightened in *Triathlon Leasing Inc. Inc. v. Juniberry Corp.*, (1995), 1995 CanLII 6225 (NB CA), 157 N.B.R. (2d) 217 (N.B.C.A.). The enhancement of the power to amend pleadings is found in the following passage at para. 30:

These are rules of procedure as opposed to the substantive law which defines substantial legal rights and claims. The rules are the vehicle that enables rights to be delivered and claims to be enforced. As such, a Court should interpret and apply the rules to ensure to the greatest extent possible, that there is a determination of the substantive law unless the application of the rules would result in serious prejudice or injustice. Accordingly, amendments to pleadings are generally allowed. ... **As a general principle, therefore, the rules of procedure should not be used to prevent the delivery of rights; nor should they be used to preclude the enforcement of claims which are derived from the substantive law.**

[38] Further consideration of Rule 27.10 is found in *Ouellet v. Bechard*, (1999), 1999 CanLII 32419 (NB CA), 210 N.B.R. (2d) 246 (N.B.C.A.) at para. 5:

The test set out in current case law focuses on the prejudice caused to the opposite party ... Any amendment to pleadings must be allowed unless it would cause prejudice to the other party that cannot be adequately compensated by costs and, where warranted, by setting appropriate conditions, including adjournment. **Even where a motion to amend raises a new issue, it must be granted unless it would result in prejudice that cannot be remedied...**

[Emphasis mine]

[15] Justice Walsh, late of this court, had the opportunity to consider what is meant by prejudice to a party in the context of a request to amend pleadings in *Algo Enterprises Ltd. and NBP Enterprises v. REPAP New Brunswick Inc.*, 2013 NBQB 176, at paragraphs 33 to 35 as follows:

[33] From my understanding of the Court of Appeal precedent, the only question for me to address is this: would the amendment prejudice the Defendant to an extent that it could not be remediated by, for example, an

appropriate award of costs and/or an adjournment? What then is meant by prejudice?

[34] In my respectful opinion, **prejudice cannot be equated with the other side's disappointment that the claim originally advanced** (or was perceived to be advanced) **was more readily defended in the law, or because of the expense, inconvenience and delay now caused, or,** indeed, because of this Court's frustration with the bifurcation of these proceedings and the loss of valuable court time brought on by the inexcusable timing of the Motion. These "unfairness" concerns can be addressed by costs and adjournments. **Rather, it seems to me that the concept of prejudice must mean more than that; it must in some way relate to the ability or, more accurately, the inability to fairly meet the case against them, regardless of when or why advanced.** This point is made by Carthy J.A. for the Ontario Court of Appeal in *Kings Gate Developments Inc. v. Colangelo*, interpreting a similar provision to that of New Brunswick's:

The unfairness and prejudice to the respondent is manifest. The frustration of a judge, when faced with such a last-minute application, is understandable. Yet rule 26.01 requires that amendments be permitted unless the prejudice cannot be compensated for in costs. The reasons of Chapnik J. speak eloquently as to why it is unfair to request relief, but do not address any item of non-compensable prejudice, such as death of a material witness or destruction of essential files.

(1994 CanLII 416 (ON CA), [1994] O.J. No. 633 (Ont. C.A.) at para. 5)

[35] The *raison d'être* of the modern law on amending pleadings is to procedurally facilitate, to ensure as much as possible that claims made under the substantive law are heard and decided; a fortiori, prejudice in the context of amendments sought by plaintiffs and applicants must mean serious impairment of the right and ability of defendants and respondents to defend against any such substantive law claims. I hearken back to *Triathlon Leasing Inc. v. Juniberry Corp.*, supra:

... **a Court should interpret and apply the rules to ensure, to the greatest extent possible, that there is a determination of the substantive law** unless the application of the rules would result in a serious prejudice or injustice. ...

(supra, at para. 30)

[Emphasis mine]

[16] The Plaintiffs' Amended Statement of Claim pleads the issues surrounding the termination of Louis' employment in July of 2025. The amended pleading includes additional allegations of oppression, wrongful dismissal

and violations of the **Human Rights Act**. These issues are intertwined with the questions set out in the original Statement of Claim. In the interest of efficiency and ensuring all questions arising out of this dispute are appropriately before the Court, the Plaintiffs request for leave to file their amended pleading must be granted. Any alternate conclusion would clearly contradict the established approach to the consideration of requests to amend pleadings pursuant to **Rule 27.10**.

- [17] The Defendants had requested the Court rule on its motion for partial summary judgment prior to the consideration of the Plaintiffs' request for leave to amend its pleadings. The Defendants argue should their motion for summary judgment be successful, the request for the amendment of the pleadings would become moot. On this point, the Defendants state at paragraph 23 of their Pre-Hearing Brief dated December 12th, 2025 the following:

23. La cour a présentement en délibéré une motion des défendeurs pour un jugement sommaire rejetant la poursuite des demandeurs. Si la cour accepte la motion des demandeurs, la question est caduque. Si la cour rejette la motion des défendeurs, nous concédons que les modifications peuvent être permise.

- [18] The Court is unable to consider the motions in the order as suggested by the Defendants. As noted by Justice Ferguson, the primary concern of the Court is to ensure all substantive questions are before the Court. The Defendants have identified no prejudice or injustice that would befall them by the granting of the amendment. The Defendants' suggested approach

seeks to limit the questions before the Court and thus bolster the strength of their request for partial summary judgment.

[19] In all of the circumstances of this matter, the Plaintiffs' request to amend their Statement of Claim is granted.

SUMMARY JUDGEMNT

[20] The Defendants request partial summary judgment pursuant to Rule 22.01(3) of the *Rules of Court*, which provide as follows:

(3)After the defendant has served a Statement of Defence, the defendant may move with supporting affidavit or other evidence for summary judgment dismissing all or part of the claim in the Statement of Claim.

[21] In *Estephan v. Dykeman et al.*, 2020 NBQB 65, at paragraphs 13 and 14, Justice Morrison reviewed the principles a judge must consider when reviewing a request for summary judgment:

[13] Amendments to Rule 22, which came into force in 2017, have significantly altered the legal landscape with respect to parties seeking summary judgment. These were in response to the encouraged use of summary judgment as part of a “cultural shift” toward simplified adjudication outlined in *Hryniak v Mauldin*, 2014 SCC 7. In *O’Toole v Peterson*, 2018 NBCA 8, Chief Justice Drapeau (as he then was) identified the key changes implemented by the new rule. In particular, he pointed out that a court is no longer restricted to cases where there is “no merit” to the defence. **The court clearly stated that the test for summary judgment under the new rule is simply whether there is a genuine issue requiring a trial (para. 68).**

[14] In *Russell et al v Northumberland Co-Operative Ltd.*, 2019 NBCA 70, the Court of Appeal expanded on the import of the 2017 amendments. The key points from *O’Toole* and *Russell* can be summarized as follows:

1. The only test for summary judgment is whether there is a genuine issue requiring a trial;
2. The burden of proof is on the moving party to establish there is no genuine issue requiring a trial and it is on the balance of probabilities;

3. The importance of the parties putting their best foot forward and leading trump or risk losing is more significant under the new Rule 22;
4. The rule provides for a two-step process to determine whether there is a genuine issue requiring a trial;
5. In step one the judge must determine if the evidence presented reveals a genuine issue requiring a trial. If, on the filed evidence alone, the judge can fairly and justly adjudicate the dispute there will be no genuine issue requiring a trial and the judge must grant summary judgment;
6. If the judge cannot adjudicate the dispute on the filed evidence he will proceed to step two. A judge only proceeds to step two if the assessment of the filed evidence leads to the conclusion that there may be a genuine issue requiring a trial. The judge will then determine if a trial can be avoided by resorting to the fact-finding powers of Rules 22.04(2) and (3) (the “mini-trial”);
7. The guiding principle is that it will always be in the interest of justice for a judge to make use of the mini-trial where possible.

[Emphasis mine]

[22] The Defendants submit the evidentiary record before the Court would permit me to grant partial summary judgment on the questions pled by the Plaintiffs in their Statement of Claim, particularly the question of oppression. The Defendants further suggest the evidentiary record before the Court lends itself to the mini-trial process as set out in Rule 22.04(3) of the Rules of Court:

(3) For the purposes of exercising the powers set out in this subrule, a judge may order that oral evidence be presented by one or more parties, with or without time limits on its presentation.

[23] The Defendants point the Court to the following undisputed facts in the voluminous record in support of their request for summary judgment:

- i) Louis has been absent from the operations of TCI since September 9th, 2019;

- ii) Louis has not worked for TCI since September 2019;
- iii) Louis had access to all financial information following his departure in 2019;
- iv) Louis assaulted Paul on May 2nd, 2023;
- v) Louis was paid the same salary and benefits as Paul following his departure in September 2019;
- vi) Paul ended Louis' remuneration and employment on the advice of TCI's accountants on July 4, 2025; and
- vii) TCI has only grown since Louis' departure in 2019.

[24] The Plaintiffs contest the Defendants suggestion there are undisputed facts. The Plaintiffs do not accept the dissertation of the facts as set out in the Defendants' written and oral submissions. The Plaintiffs maintain summary judgment, even partial summary judgment, is simply not available in this matter, nor should it be contemplated by the Court. The Plaintiffs set out at paragraph 23 of their Pre-Hearing Brief all of the reasons partial summary judgment is not appropriate:

- 1) The issue on which judgment is sought, namely, whether oppression occurred and by whom, is clearly not severable from the balance of the case. In fact, by the Defendants' own admission, a trial judge will have to determine the proper date for valuation of the shares of the corporation before this matter can be resolved and, prior to that occurring, Examination for Discovery is needed.
- 2) There is clearly a risk of duplicative or inconsistent findings at trial, especially given that Examination for Discovery has not occurred, a valuation has not occurred and the record at trial is likely to look very different from the record filed for the present motion.
- 3) The granting of partial summary judgment is not advisable in the context of the litigation as a whole, as it would do nothing to narrow

the issues at Discovery and would do nothing to accelerate this litigation.

- 4) Given the effect of the Defendants' motion, if wholly successful, would put an end to the Plaintiffs' claim without opportunity to discover the Defendants, one would assume that it would be more likely than not that the Plaintiffs would appeal, and by consequence, delay the main action.
- 5) Given that a trial and Discovery will still be required to fully resolve this matter, it is not worth the judicial time necessary to rule on the matter.
- 6) The Plaintiff submits, with respect, that the evidence including Louis' termination by Paul and the requirement for Louis to bring a Motion to confirm the agreement between he and Paul that Deloitte is to complete a valuation of TCI are some of the hallmarks of oppression by Paul, not Louis.

[25] In ***Babin v. C.J.M. Dieppe Investments Ltd. and TG 378 Gauvin Ltd. and Sood***, 2019 NBCA 44 (CanLII), Chief Justice Richard reviewed the principles surrounding the granting of partial summary judgment. Chief Justice Richard noted at paragraphs 39 to 41 as follows:

[39] Consideration need therefore be given to the appropriateness of a summary judgment dismissing the action against one or more of the parties in the case where other parties will nevertheless proceed to trial. This is especially so where a fact-finding exercise needs to be undertaken. This caution was considered in *Butera v. Chown, Cairns LLP*, 2017 ONCA 783, [2017] O.J. No. 5267 (QL). For the Court, Pepall J.A. considered a number of factors impacting the granting of a partial summary judgment. Some are taken from pre-Hryniak jurisprudence and others arise because they are "anathema to the stated objectives underlying Hryniak" (para. 29). I would adopt the considerations to which Pepall J.A. refers and would list these in the form of questions as follows:

- 1) Is this a case where the issue on which judgment is sought is clearly severable from the balance of the case?
- 2) Is there a risk of duplicative or inconsistent findings at trial, including if the record at trial could be different than that of the motion?
- 3) Is the granting of partial summary judgment advisable in the context of the litigation as a whole?
- 4) Would the motion for summary judgment delay the main action, considering that there is a possibility of appeal?
- 5) Are the costs of proceeding with a motion for summary judgment justifiable?

- 6) Is it worth the judicial time necessary to rule on a matter that will not wholly dispose of the action?

[40] Pepall J.A. then synthesizes the test to be applied:

When bringing a motion for partial summary judgment, the moving party should consider these factors in assessing whether the motion is advisable in the context of the litigation as a whole. **A motion for partial summary judgment should be considered to be a rare procedure that is reserved for an issue or issues that may be readily bifurcated from those in the main action and that may be dealt with expeditiously and in a cost effective manner.** Such an approach is consistent with the objectives described by the Supreme Court in Hryniak and with the direction that the Rules be liberally construed to secure the just, most expeditious, and least expensive determination of every civil proceeding on its merits. [para. 34]

[41] The caution expressed in Butera was put into context in Concord Plumbing & Heating Ltd. v. Canadian Tire Real Estate Limited, 2018 ONSC 6361, [2018] O.J. No. 5572 (QL), in which Di Luca J. explained:

The caution against partial summary judgment sounded in Buter[a] v. Chown, Cairns LLP, does not mean that partial summary judgment is never appropriate. Indeed, in cases where a discrete legal and factual issue can be readily ascertained and determined so as to avoid the risk of inconsistent findings and duplicative proceedings, partial summary judgment motions remain an appropriate vehicle; see Larizza v. Royal Bank of Canada, 2018 ONCA 632, Sirois v. Weston, 2017 ONCA 1002 [...]. **Even in cases where the issue is not entirely discrete, the courts have granted partial summary judgment where summary judgment was determined to otherwise be a fair, proportionate and just means of resolving the action;** see Kueber v. Royal Victoria Regional Health Centre, 2018 ONCA 125 [(Ont. C.A.)] [...]. [para. 22]

[Emphasis mine]

[26] This motion, like many motions for full or partial summary judgment, involves a comprehensive evidentiary record and little consensus on established facts. As I noted at paragraph 40 in ***York County Condominium Corporation No. 18 v. Oak Ridge Manufacturing Inc. et***

al, 2024 NBKB 126 (CanLII), such requests are extremely challenging for the Court:

[40] Summary judgments motions have become a linchpin of civil litigation dockets at superior courts across Canada. Summary judgment motions now appear to be as commonplace as discoveries and disclosure in the typical steps a civil lawsuit will follow leading to trial. Along with the significant increase in summary judgment motions filed since the “cultural shift” heralded by the Supreme Court of Canada in Hryniak, has been a corresponding escalation in the complexity of these motions. This motion is a prime example of this phenomena. In the present matter, we have a record which exceeds 1200 pages, nine affidavits, and three expert reports. The Court is then asked to distill this evidentiary record down to the key factual findings, consider those factual findings through the lens of the relevant law, and then issue a decision. The hearing of these motions rarely require more than a day where a trial on the same issues would likely take five to seven days. **One of the key questions for the Court to consider while analyzing the Hryniak factors is whether or not a summary synthesis of the evidence is feasible.**

[Emphasis mine]

[27] The Defendants assert the question of oppression can be resolved on a motion for partial summary judgment. The Defendants maintain the evidentiary record clearly establishes there is no oppression against the Plaintiffs in this matter. The Defendants refer to passages of my March 11, 2025 decision in support of this assertion. Similarly, the Plaintiffs rely upon certain comments in my March 11th, 2025 decision in arguing the actions of the Defendants since the decision amount to oppression. The existence or non-existence of oppression is a highly contentious issue in this matter. Much of the voluminous record constitutes the parties’ respective dissertation of facts they maintain prove beyond a doubt the existence of oppression or demonstrate categorically there is no oppression at play. To say there is a genuine issue on the existence or not, of oppression, would be an understatement.

- [28] Returning to Chief Justice Richard's guidance in *Babin*, it cannot be said the question of oppression is clearly severable from the balance of the case. There is a real risk, in my view, there could be inconsistent findings at trial should the Court grant partial summary judgment based upon the current evidentiary record and in the absence of *viva voce* testimony. It cannot be concluded in all of the circumstances granting partial summary judgment would be advisable in the context of the litigation as a whole.
- [29] Finally, the burden of proof is on the moving party. The Defendants have not satisfied the Court there is no genuine issue requiring a trial. Further, the option of holding a mini trial in the context of the summary judgment motion would not be reasonable in the circumstances of this matter. The Defendants' motion requesting summary judgment is denied.

REINSTATEMENT OF LOUIS BERTRAND

- [30] The Plaintiffs request the immediate reinstatement of Louis' employment or alternatively, that Louis be granted a reasonable notice period. This request specifically is framed in the Plaintiffs' Notice of Motion as follows:

The Plaintiffs will apply for the following order:

Immediately reinstating Louis Bertrand's remuneration for his employment with TCI Manufacturing Inc., ("TCI") immediately with backpay to July 4th, 2025.

[31] Significantly, the Plaintiffs do not set out what rule or statutory provision they rely upon in seeking an order of the Court immediately reinstating Louis' employment or remuneration. The Plaintiffs have not filed a summary judgment motion related to Louis' remuneration but have asked the Court to determine the issue on a summary basis. Admittedly, the Plaintiffs have not been in a position to file a summary judgment as their amended pleading had yet to be filed and is only now filed as a result of my rulings on these motions. However, the Court is mindful of the need to ensure any orders issued are done pursuant to a statutory or inherent authority, none of which are immediately apparent to the Court in the context of this request.

[32] The decision by Paul to terminate Louis' employment and remuneration in July of 2025 is certainly problematic. Louis is entitled to pursue Paul and TCI for wrongful dismissal, reasonable notice, and even reinstatement. However, Paul and TCI are entitled to defend these claims. The decision to terminate Louis' employment was clearly a decision taken by Paul. There are legal expectations when an employment contract is terminated, and these issues should be adjudicated upon. However, the Court is unable to determine the lawfulness of Paul's decision to terminate Louis, nor the potential damages that may flow from this decision in the context of the motion as currently framed. Louis' request for an order reinstating his employment or alternatively ordering the payment of a reasonable notice period is denied. These issues shall be remitted to trial.

APPOINTMENT OF MONITOR

[33] In the March 11, 2025 decision, I refused the Plaintiffs' request for the appointment of a monitor. Following certain events, most significantly the termination of Louis' employment in July of 2025, the Plaintiffs filed a second motion requesting the appointment of a monitor. In their oral submissions responding to the Plaintiffs' request for an appointment of a monitor, the Defendants raised the issue of *res judicata*. The Defendants maintain the Court has already ruled on the issue, and it should not be reconsidered.

[34] In ***Purdue v. Purdue***, 2014 NBQB 262 (CanLII), Justice Wooder, formerly of this Court, had the opportunity to canvass the law on *res judicata* commenting at paragraph 27 to 29 as follows:

[27.] The law with respect to *res judicata* is well established and not in dispute. In *Desrosiers c. Banque National du Canada* 1998 CanLII 28744 (NB CA), 1998 CarswellNB 188 (C.A.), Drapeau, J. (as he then was) quoted with approval from *The Doctrine of Res Judicata*, 2nd edition, London, Butterworths, 1969 at pages 1 and 2:

15. Introductory

1. In English jurisprudence a *resjudicata*, that is to say a final judicial decision pronounced by a judicial tribunal having competent jurisdiction over the cause or matter in litigation, and over the parties thereto, disposes once and for all the matters decided, so that they cannot afterwards be raised for re-litigation between the same parties or their privies.

* * *

4. Every judicial decision such as is described in paragraph 1 above operates, in a word, both as an estoppel and as a merger. It is conclusive in both capacities because on the one hand, as Coke would

put it, is of such “uncontrollable credit and verity” that no party may presume to impeach it, and, on the other, it is of such an exalted nature that it extinguishes the original cause of action, and consequently bars the successful party from afterwards attempting to resuscitate what has been so extinguished, and stir the dust which has received such honourable sepulture; or, in modern phraseology, because in both cases alike it is against public policy, and oppressive to the individual, to re-agitate disputes which have been litigated once for all to finish.

[28.] In *Fenerty v. The City of Halifax* (1920), 1920 CanLII 389 (NS CA), 50 D.L.R. 435 (N.S.C.A), quoted with approval by our Court of Appeal in *Dugas (Trustee of) v. Dugas* 2012 CarswellNB 586, the court held at paragraph 15 that:

15. The doctrine of *res judicata* is founded on public policy so that there may be an end of litigation, and also to prevent the hardship to the individual of being twice vexed from the same cause. **The rule which I deduce from the authorities is that a judgment is final and conclusive, not only as to matters dealt with, but also as to questions which the parties had an opportunity of raising.**

[29.] *Cromwell, J.A.* (as then he was) in *Hogue v. Montreal Trust Co. of Canada* 1997 CarswellNS 427 (C.A.), said at paragraph 23:

23. *Res judicata* requires that the previous court decision be final and between the same parties or their privies.

[Emphasis mine]

[35] On its face, the Defendants’ suggestion the law on *res judicata* precludes the Plaintiffs’ ability to bring a second request appointing a monitor has merit. The March 11, 2025 was a final decision as it related to the issues raised in that motion, and the parties were the same. However, the circumstances have changed since the issuance of that decision as a result of Paul’s decision to terminate Louis’ employment and employment income. The fact Paul and Louis were continuing to receive the same remuneration was a significant factor in my determination that a case of oppression

warranting the appointment of a monitor had not been made out by Louis. The factual circumstances in December of 2025 were different from those in January 2025 when the last motion was argued. The principle of *res judicata*, in my view, cannot therefore be considered as operative in the current matter. The Court will consider the Plaintiffs' request for the appointment of a monitor. The Plaintiffs did not have the opportunity to argue the actions of Paul in terminating Louis' constituted oppression when the last motion was argued. Parties must be given an opportunity of raising and addressing issues when there are significant and new developments in the evidence.

- [36] The Plaintiffs refer the Court to Justice Morrison's decision appointing a monitor in ***Chippin, et al v. Chippin, et al***, 2016 NBQB 226, at paragraphs 10 and 18 as follows:

[10] **In determining an oppression claim the Court must determine (1) the reasonable expectation of the claimant; and (2) whether that reasonable expectation was violated by conduct falling within the terms "oppression", "unfair prejudice" or "unfair disregard" of a relevant interest.** The reasonable expectation is to be judged by considering the context of, and with regard to, the specific business relationship at issue. General commercial practice, the nature of the corporation, the relationship between the parties and agreements reached are among the factors to be considered (BCE Inc., Re, 2008 SCC 69 (CanLII), [2008] 3 S.C.R. 560; see also Doucet v. Spielo Manufacturing Inc. 2011 NBCA 44 at paras. 41-42).

(...)

[18] The appointment of a receiver-manager is an invasive remedy which should be reserved for situations where the shareholder abuse is extreme. In my view, there must be unequivocal evidence of significant and substantial oppressive conduct before the court appoints a receiver-manager with the very broad and invasive mandate requested by the applicant in this case. **While I am satisfied that the conduct of Larry and Robert is oppressive, it does not rise to the level of gross abuse**

warranting the appointment of a receiver-manager. In *Shareholder Remedies in Canada*, supra, at paragraph 17.180 it states:

An alternative to the appointment of a receiver-manager which is less intrusive but still gives protection to the interested parties is the appointment of a monitor. **The monitor would only be appointed where there is a strong prima facie case of oppression, as otherwise there could be an undue interference in corporate affairs.** Monitors have been appointed in the following circumstances:

- A monitor was appointed to oversee management while the shareholders negotiated fair value on a buy-out. The court did not believe it was appropriate to take management away from the managing shareholder, but certain limits were placed on corporate activity and payments to the management shareholder.
- A monitor was ordered during proceedings regarding what might have been the oppressive use of a shotgun buy-sell clause. The monitor was restricted to providing follow-up information on files which were previously reviewed.
- The parties had agreed to a purchase and sale of securities, and a monitor was appointed to safeguard against the wasting of corporate assets during the valuation process only.

[Emphasis mine]

[37] The Defendants also refer the Court to *Chippin v. Chippin*, supra, at paragraph 17:

[17] The applicant seeks the appointment of a receiver-manager with very broad powers. In Dennis H. Peterson and Matthew J. Cumming, *Shareholder Remedies in Canada*, Second Edition (looseleaf) (Markham: LexisNexis, 2013) it states at 17.175:

Under the CBCA version of the oppression remedy, upon a finding of oppressive conduct a court may make “an order appointing a receiver or receiver-manager.” In the context of the oppression remedy, this is one of the most extreme interventions in the affairs of a corporation. Accordingly, such an order should only be used where the interests of corporate stakeholders have been so grossly abused that the very presence of existing management inexorably leads to abuse. If existing management has demonstrated that it is capable of operating the business effectively, there may be greater risk in appointing a relatively less experienced receiver-manager. The

general legal principles governing the appointment of a receiver or receiver-manager are discussed elsewhere.

[38] As both parties rely on Justice Morrison's analysis in *Chippin* in support of their respective positions, it is helpful to look at the actual conduct which was found to be oppressive. Justice Morrison lays out the factual foundation for his eventual conclusion at paragraphs 9, 11, 12, 13, 14 and 15 as follows:

[9] The grounds for Perry's request for the appointment of a receiver-manager fall broadly within three categories. First, he alleges that Robert is charging personal expenses to LPR. Second, that Robert has failed or refused to abide by resolutions and agreements to provide appropriate financial disclosure to the shareholders and the corporate accountant. Third, Perry makes general allegations of general mismanagement of LPR by Robert and Larry.

(...)

[11] LPR was established by George Chippin, father of Perry, Robert and Lawrence, in 1993 as a means of transferring property to his three sons. LPR owns and manages apartment buildings with approximately 80 units in the City of Fredericton. Each of the three brothers are equal (beneficial) shareholders of LPR and are directors and vice-presidents of the corporation (Exhibit A-1, Record, pg. 32). There is no shareholders agreement.

[12] From the outset, Robert was designated to manage the day-to-day operations of LPR and, by agreement, was paid a management fee. Initially the management fee was \$40,000.00 per year but has since been reduced as a result of a reduction in the number of rental units. The management fee currently stands at \$32,000.00 annually on a pro-rated basis. Robert also owns residential apartments which are not part of the properties owned by LPR. Over the years, issues arose among the three brothers concerning Robert's management of LPR. In particular, concerns were expressed about the unavailability of monthly financial reports, maintenance and distribution of rent rolls and personal expenses being charged by Robert to LPR. In 2010 the Board of Directors of LPR passed a resolution dated February 1, 2010 (the "Management Resolution") requiring Robert to provide to the corporate account monthly rent rolls, reports of damage deposits, categorized expense report, copies of invoices and bank statements. Complying with the reporting requirements was a pre-requisite to Robert being paid his management fee. The Management Resolution also provided that the management fee would be reduced by 50% in the event of Robert's failure to comply with the reporting requirements. Also on February 1, 2010 the Board of Directors passed a resolution amending the by-laws of the corporation to require instruments

requiring the signature of LPR, including cheques, to be signed by two vice-presidents (the "Cheque Signing Resolution").

[13] Perry resides in Nova Scotia and has had virtually no direct involvement with the management of LPR. As mentioned, Perry was content to leave the day-to-day management of the business in the hands of Robert subject to the concerns expressed above and the resolutions just referred to. In my view, the evidence does not support a conclusion that Perry has or had a reasonable expectation to participate in the day-to-day management of LPR. His complaints with respect to the details of Robert's management must therefore fall upon deaf ears. However, given the character of the corporation as a closely held family business, general commercial practice and both the Management Resolution and the Cheque Cashing Resolution Perry does have a reasonable expectation that he would be provided with complete and prompt financial disclosure, that personal expenses or related party payments would not be paid from the resources of LPR without approval and that the overall general management of the corporation would not prejudice his interests.

[14] Pursuant to the Interim Order Price Waterhouse Coopers was appointed as Inspector of LPR. David A. Boyd, CPA, CIA, CIRP, an accountant with Price Waterhouse Coopers, discharged the functions of Inspector. Mr. Boyd prepared three reports (see Exhibit A-4) dated December 16, 2014, November 23, 2015 and November 26, 2015 respectively. In its first report, the Inspector concludes that Robert continued to receive a management fee which was in excess of and contrary to that authorized by the Management Resolution. The Inspector also raised concerns with respect to payments to related parties, including payments made to Robert and Larry without the authorization of the Inspector as required by the Interim Order. The Inspector also identified unusual transactions with third party individuals. At page 12 of the report the Inspector states:

In the Inspector's opinion, the status quo is not an option. The Inspector was appointed by this Honourable Court to review the current operations of the Company given the dysfunctional shareholder group and divergent interests. The Inspector is of the view that concerns raised by certain shareholders are valid and that the status quo and/or managements view of operations has not changed since our Appointment, in fact further liberties have been taken by management without the approval of the Inspector.

[15] Finally at page 12 of the Inspector's first report he concludes as follows:

In the Inspector's opinion, LPR requires an accredited third party property management firm to assume the daily operations of the business while shareholders either voluntarily approve a dissolution strategy, and/or this Honourable Court, based on an application by one or more shareholders, confirms the appointment of a liquidator or other similar role under applicable legislation.

[Emphasis mine]

[39] In determining a monitor was necessary and appropriate in *Chippin*, Justice Morrison had the benefit of the information from the inspector who had been appointed following an earlier proceeding. The inspector provided a report advising the Court the status quo was not an option and the managing shareholders were taking actions without the approval of the court ordered inspector. That is a significant distinguishing fact from the situation currently before the Court.

[40] The Plaintiffs suggest the reasoning of the Court in *Chisholm v. Antigonish Construction Ltd.*, 2008 NSSC 12, at paragraph 45, is helpful to the current analysis:

[45] Further, with respect to the valuation of any of the companies' assets, i.e., its equipment, it would not be appropriate for John to conduct such a valuation. **In that regard, a monitor, as an independent third party, could oversee the proper valuation of the assets of the companies and any subsequent sale of the assets of the companies would require approval by the Court.** This would recognize John's legitimate interest that the remaining assets in these companies not be wasted and also protect both gentlemen with respect to the valuation and sale of assets. The choice of both the litigation guardian and the monitor, in the absence of agreement by counsel would be a decision made by the Court. These protections will in my view be fair to both John and Duncan and facilitate the resolution of this dispute that could otherwise linger in the courts for many more years, while the value in the companies continue to be depleted. I will rely on counsel to agree to the form of the order that:

1. Confirms John and Trevor as directors of the companies and validates the meeting of June 20, 2006.
2. Provides that upon agreement of counsel, a litigation guardian will be appointed to evaluate the claims the companies have against John and ACL and instruct legal counsel accordingly and failing agreement the litigation guardian will be appointed by the Court.
3. **Provides that upon agreement of counsel, a monitor will be appointed to oversee the affairs of the companies and the valuation**

of assets and failing agreement the monitor will be appointed by the Court.

[Emphasis mine]

[41] The Plaintiffs suggest the unilateral termination of Louis' employment without reasonable notice constitutes oppression. The Plaintiffs refer the Court to ***Booth v. Alliance Windsor Insurance Brokers Inc.***, 2007 ONCA 805, suggesting the termination of the Plaintiff shareholder's employment was found to constitute oppression by the Court. However, the findings of the Court related to oppression in ***Booth*** are as a result of the corporate defendant's actions after the plaintiff's termination – not the termination itself. The factual matrix of the case was described in the Court of Appeal's endorsement as follows:

[8] The trial judge found that **the conduct of the individual appellants towards the respondent after his employment was terminated was oppressive**, unfairly prejudicial, and unfairly disregarded the interests of the respondent as a shareholder.

[9] The trial judge found that the individual appellants were not justified in excluding the respondent from the management of the corporation. In addition, the trial judge concluded that the individual appellants did not call formal shareholders meetings, did not declare dividends (to ensure that the respondent would not receive income from the corporate appellant), and paid bonuses to themselves. In addition, two shareholders used corporate funds to prosecute the litigation with the respondent.

[10] The appellants do not challenge the trial judge's finding of oppression.

[Emphasis mine]

[42] The Defendants suggest guidance on the issue of oppression is found in ***Canada Snow Mountain Investments Co. Ltd. v. Miller Springs Ltd.***, 2015 BCSC 1117 (CanLII), at paragraphs 65 to 69:

[65] **The oppression remedy is an equitable one that focuses on harm to the legal and equitable interests of shareholders and other**

stakeholders caused by the oppressive or unfairly prejudicial conduct of a company or its directors. It seeks to ensure fairness and is fact specific. Importantly, it protects the interests of shareholders qua shareholders, and is not intended to be a substitute for an action in contract, tort or misrepresentation (Stahlke v. Stanfield, 2010 BCSC 142 at para. 9).

[66] **What is just and equitable is judged by the reasonable expectations of the parties.** The concept of reasonable expectations is both objective and contextual. While it is impossible to catalogue all of the situations where a reasonable expectation may arise, what is clear from the jurisprudence is not every unmet expectation gives rise to a claim.

[67] The Supreme Court of Canada's decision in BCE Inc. v. 1976 Debentureholders, 2008 SCC 69, mandates a two-step inquiry in assessing oppression claims. **The first question to be answered is: does the evidence support the reasonable expectation asserted by the claimant? If so, the second question is: does the evidence establish that the claimant's reasonable expectation was violated by conduct that was oppressive or unfairly prejudicial?**

[68] Determining reasonable expectations is also a two-step process. First, the complainant must set out his or her subjective expectations, qua shareholder. Second, the court must determine objectively whether those expectations were reasonable.

[69] In BCE the court identified several factors that may be considered in making that determination including general commercial practice, the nature of the corporation, the relationship between the parties, past practice, representations and agreements, the fair resolution of conflicts between shareholders, and the risks willingly assumed by the claimant and the steps he could have taken to protect himself, such as negotiating a better bundle of rights against the corporation (at para. 72).

[Emphasis mine]

[43] The Plaintiffs lay out the additional grounds or new allegations they rely upon in suggesting Paul's conduct has been oppressive. These are the issues which have arisen since the Court's earlier ruling denying the request for the appointment of a monitor and are appropriate for the Court to consider without running a foul of the law of *res judicata*. These allegations are set out at paragraphs 45.1 of the Plaintiffs' Amended Statement of Claim:

45.1 In addition, since the filing of the within Action, Louis has suffered continuing and additional oppressive conduct by Paul, towards Louis and TCI, including the following:

- (i) Continued failure to provide access to the financial records of TCI;
- (ii) The termination of Louis' employment
- (iii) The allowed lapse of Louis' life insurance policy;
- (iv) Authorizing illicit and/or improper payments by TCI, improperly characterized as expenses, including but not limited to the following:
 - (A) Charges for alcohol, including from JJ's Pub in Campbell River, British Columbia;
 - (B) ATM withdrawals without supporting documentation;
 - (C) Vape and cannabis purchases; and
 - (D) Personal meals and entertainment charges;
- (v) Such expenses made by Paul's son, Patrick Bernard, specifically approved by Paul, which are illicit, contrary to good business practices, damaging to the reputation of TCI and would not have been approved by Louis in his role as co-President and 50% owner of TCI;
- (vi) The payment of a \$5,000 signing bonus for Spencer McOrmond;
- (vii) The payment of bail money for an employee;
- (viii) The payment of over \$30,000 to Jay Dove, characterized as donations;
- (ix) The use of TCI funds, by Paul and Patrick Bernard, to lease new personal vehicles;
- (x) Delaying the valuation of TCI and 666917 despite earlier agreement for Deloitte to value the companies, thereby delaying resolution of this matter to the detriment of Louis; and
- (xi) The lease of a substantial commercial building.

All of which combine to demonstrate oppressive conduct by Paul towards Louis.

[44] Returning to Justice Morrison's framework in *Chippin*, the Court must now determine what was the reasonable expectations of the claimant, and secondly, was that reasonable expectation violated by conduct falling within

the terms “oppression”, “unfair practice” or “unfair disregard” of a relevant interest. As explained in the March 11, 2025 decision, it was not reasonable for Louis to expect Paul to continue to do all of the work in operating and managing “TCI”, while the brothers enjoyed the exact same revenues and benefits from the company. Similarly, Louis cannot expect to be consulted or provided the opportunity to weigh in on daily management decisions at this juncture.

[45] Louis and Paul are 50/50 shareholders in TCI. This is an undisputed fact. Despite Louis’ 50% ownership in the company, at the present time he is unable to attend at the premises, is unable to interact directly with employees, and is not consulted on major decisions such as the termination of his own employment. At this juncture, Paul clearly holds the cards and is no longer willing to accommodate Louis. The question of whether or not Paul’s decision to terminate Louis, as well as Paul’s decision Louis cannot be involved in the decision-making for the company will be resolved another day. However, Paul’s actions have been prejudicial to Louis.

[46] Paul has done a very good job managing the affairs of TCI since 2019, and his ability to continue to operate TCI should not be impeded. While Louis questions some of Paul’s decisions such as Patrick’s remuneration, the overall results and health of TCI speak for themselves. It is in both shareholders best interests that Paul continue to manage and operate TCI

as he has since 2019 as there is no evidence to suggest his actions have in any way jeopardized the financial health and growth of the business. However, at this point, Louis has no meaningful manner to monitor or observe what is happening at TCI.

[47] Justice Morrison did not determine there was gross abuse by the shareholders in *Chippin* which would account for oppression. I arrive at the same conclusion in this matter. However, similar to the situation in *Chippin*, here we have equal shareholders, and not all shareholders have equal access to information, nor the ability to participate in the operations of the company during this delicate period pending the sale of TCI or the decision of one shareholder to purchase the other. Paul is now making unilateral decisions such as the termination of Louis' employment without consulting Louis while they remain 50/50 shareholders of TCI. In my view, in order to level the playing field pending the sale of TCI or the purchase by one shareholder of the other, the situation now requires the appointment of a monitor. The Plaintiffs' request for the appointment of a monitor is granted.

[48] The role of the monitor in this case will not be to impede Paul's ability to manage or operate TCI, but truly to "monitor" the affairs of the company pending the resolution of this litigation. The monitor shall be granted full access to all of TCI's records, access to the employees of TCI if necessary, and the ability to consult with TCI's accountants, as well as Deloitte, the

business evaluator in this matter. The fees incurred in retaining the monitor shall be paid by TCI. The parties will have 14 days upon which to agree on the individual to act as monitor in this matter. In the event the parties are unable to agree on an appropriate monitor, the Court will hear the parties on their respective choice for the appointment of a monitor and will determine the issue.

DECLARATORY RELIEF SOUGHT BY PAUL

[49] On a motion, this Court cannot order the reinstatement of Louis' employment any more than it could order Louis to sell his shares to Paul. All parties are entitled to a full hearing on the issues raised in the pleadings. The Court is unable to consider the declaratory relief sought by the Defendants as set out at paragraph 8 (3-7) of this decision. The Court cannot conclude at this time, and based on this evidentiary record, that Louis' actions have abused, prejudiced or disregarded the rights of the Defendants. These are the same claims Louis launches against Paul in support of his claim of oppression. These issues must all be left to the trial where the judge will have the benefit of *viva voce* testimony of the parties, witnesses, as well as the assistance of the business valuations.

COSTS

[50] In this matter, although both parties have had some success, Louis' position has carried the day more so than Paul. Considering the nature of the

motions, the relief sought and the Court's determination of the interim issues, Louis will be entitled to costs in the amount of \$1,500.

NEXT STEPS

[51] This matter must proceed to trial and do so expeditiously as the turmoil will not abate and energies should be placed in securing the necessary expert opinions, ensuring affidavits of documents are complete and examinations for discovery are concluded. The key issues upon which both parties seek the Court's ruling require a trial given the total lack of agreement on any key facts and polar differences in the narrative that accurately describes the situation between these parties prior to 2019, between 2019 and 2023 and subsequent to 2023. A trial is necessary as everyone must be allowed to fully participate in the fact-finding process, and a trial judge must be granted the opportunity to assess this evidence and make the necessary credibility findings to resolve these issues.

CONCLUSION AND DISPOSITION

[52] For all the aforementioned reasons, the Court orders as follows:

- i) Louis Bertrand's request for an order immediately reinstating his employment, and his remuneration or alternatively ordering the payment of a reasonable notice period is denied and the questions remitted to trial;

- ii) The Plaintiffs' request to amend their Statement of Claim pursuant to Rule 27.10(2)(c) is granted;
- iii) The Plaintiffs' request for the appointment of a monitor over the affairs of TCI and 666917 is granted. The parties shall agree on the individual to be appointed as monitor within 14 days of this order, alternatively the Court will appoint a monitor after hearing submissions;
- iv) The Defendants' request for summary judgment pursuant to Rule 22.01(3) is denied;
- v) The Defendants' request for an order declaring Louis' actions as a shareholder of TCI and 666917 N.B. Inc. has been abusive is denied and the question remitted to trial;
- vi) The Defendants' request to order Louis to sell his shares in TCI and 666917 N.B. Inc., and to be removed as a shareholder of these companies is denied and the questions remitted to trial;
- vii) The Defendants' request that Deloitte prepare an analysis of monies paid to Louis as part of their work will not be ordered by the Court but may be pursued by either party;

- viii) The Defendants' request for a mini-trial pursuant to Rules 22.01(3) and (4), as well as sections 173 and 166(3)(n) of the ***Business Corporations Act*** is denied;
- ix) Both parties shall deliver to the other complete affidavits of documents no later than March 15th, 2026; and
- x) Louis is entitled to costs of \$1,500.

DATED at Moncton, New Brunswick this 30th day of January, 2026.

Tracey K. DeWare,
Chief Justice of the Court of King's Bench
of New Brunswick