CITATION: Petersen v. Petersen et al., 2026 ONSC 2468
COURT FILE NO.: CV-24-87390
DATE: 2026/04/27

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:	)	
	)	
MICHELLE PETERSEN	)	A. Assuras, for the Applicant
	)	
Applicant	)	
	)	
- and -	)	
	)	
LEON PETERSEN, YOUR NEIGHBOURHOOD PIZZA LEASING INC. and 1884178 ONTARIO INC.	)	S. Nash, for the Respondents
	)	
Respondents	)	
	)	
	)	**HEARD:** March 13, 2026

A. J. GOODMAN J.:

REASONS FOR RULING ON MOTION FOR INTERIM COSTS

INTRODUCTION:

[1] The applicant, Michelle Petersen, ("Michelle") seeks an order for interim costs under s. 249(4) of the *Ontario Business Corporations Act,* R.S.O. 1990, c. B.16 ("*OBCA*"). The applicant had commenced an oppression application on October 4, 2024 against the respondents, Leon Petersen ("Leon"), Your Neighbourhood Pizza Leasing Inc. ("Leasing Inc.) and 1884178 Ontario Inc. ("1884178").

[2] Michelle and Leon are 50% shareholders in both respondent corporations. 1884178 operates a pizzeria under the name Your Neighbourhood Pizza Company, which is located at 5008 King Street, Beamsville, Ontario, ("the Property"). Leasing Inc, as title holder of the Property, leases the land and building to 1884178.

[3] In the underlying Application, the applicant alleges that she has been denied participation in the management and participation of the respondent corporations, that funds have been diverted for Leon's personal benefit, and that Leon has conducted the business affairs of 1884178 and Leasing Inc. in a manner that is oppressive, unfairly prejudicial and unfairly disregards her valid interests.

[4] The applicant says that she has a meritorious oppression case and that she is impecunious. As such, she seeks interim legal costs to be paid by the corporate respondents. Additionally, the applicant seeks interim costs paid by Leon, pursuant to the court's inherent jurisdiction. The applicant also pursues an order for the respondents to make certain disclosures and productions, as well as to provide interim fees for the applicant's experts to inspect and valuate the Property and the corporations.

[5] For the reasons that follow, the applicant has not met the appropriate tests in order to obtain an interim cost order under the *OBCA*.

Background:

[6] Michelle and Leon are former spouses. They married in June 1998, separated in September 2015, and were granted a divorce order on June 21, 2022.

[7] As mentioned, 1884178 is a corporation that operates a pizzeria. Leasing Inc. is the title holder of the property.

[8] Leasing Inc was incorporated in 1997. From December 31, 2009, until June 19, 2016, Michelle was the sole officer, director and shareholder of Leasing Inc. On June 19, 2016, Michelle transferred half of her shares of Leasing Inc. to Leon and he took over as a sole officer and director of Leasing Inc. from that date to present.

[9] Michelle incorporated 1884178 on or about January 8, 2013. From that date until June 19, 2016, Michelle was a sole officer director and shareholder of 1884178. On June 19, 2016, Michelle transferred half of her shares of 1884178 to Leon and he took over a sole officer and director of 1884178 from that date to present. Since June 19, 2016, Michelle and Leon have each owned 50% of the shares in 1884178.

[10] Both Michelle and Leon retained legal counsel following their separation. The parties dealt with the division of property. The 50% share transfer for each corporation was for the purpose of equalization of the Net Family Property.

[11] The matrimonial home sold on August 25, 2016, for $578,000, with both Leon and Michelle each receiving $96,860.18. Michelle purchased another home in Binbrook and later sold that property on June 24, 2021. Michelle acknowledged that she received the sum of $361,743.61 from the sale.

[12] In September 2016, Leon began paying Michelle child and spousal support, which also included $2,750 as advance payments towards Leon’s planned purchase of Michelle’s shares in 1884178 and Leasing Inc. Handwritten Minutes of Settlement were intended to resolve all issues arising from their separation,

which included reference to Michelle and Leon sharing the proceeds of sale equally, subject to adjustments as set out in the agreement. The minutes were formalized into a formal separation agreement by Leon's divorce lawyer but the agreement was never signed by Michelle.

[13] Leon continued to pay $4,000 per month to Michelle, which included an apportionment for spousal and child support, along with the sum of $1,888 as an advance to Michelle to be credited to Leon upon the eventual intended sale of the business.

[14] However, attempts to sell Leasing Inc. and 1884178 were unsuccessful. Through their lawyers, the parties discussed Leon purchasing Michelle's share in Leasing Inc. and 1884178. Leon's final payment to Michelle was in February 2021.

[15] 1884178 is a small business that operates on a very tight margins and employs 10 persons. Michelle has not worked in the restaurant or otherwise contributed to the business since their separation. Leon has solely run the business and their two adult children have both worked for the pizzeria. Leon has received the same salary for managing the overall business

[16] Leon obtained an appraisal to the Property as well as an independent estimate of the *en bloc* fair market value of all issued and outstanding common shares of the corporations at his own personal expense. As of September 6, 2025, the market value of the property was valued at $695,000. The *en bloc* fair market value the shares of 1884178 has been calculated to be in the range of $26,315 to $39,514. The *en bloc* fair market value of shares of Leasing Inc. is between $370,000 to $395,000.

Interim Costs under s.249(4) of the *OBCA:*

[17] Section 249(4) of the *OBCA* states as follows:

> In an application made or an action brought or intervened in under this Part, the court may at any time order the corporation or its affiliate to pay to the complainant interim costs, including reasonable legal fees and disbursements, for which interim costs the complainant may be held accountable to the corporation or its affiliate upon final disposition of the application or action.

[18] Notably, a s. 249(4) order is only available against "the corporation or its affiliate". Accordingly, the section does not grant jurisdiction to make such an order against an individual: *Stefaniak et al v. Perry Murphy et al,* 2010 ONSC 971 (Div Ct.), at para. 15.

[19] In order to obtain an interim costs order under s.249(4), the applicant must meet the two-part test as set out by Blair J. (as he then was) in *Alles v. Maurice,* 1992 CarswellOnt 132 (Ont. Gen. Div.), at para. 19:

> i. There is a case of sufficient merit to warrant pursuit; and
>
> ii. The complainant shareholder is genuinely in financial circumstances which, but for an order under s.249(4), would preclude the claim from being pursued.

[20] The respondents disagree that this is the appropriate test and argue that a party seeking interim costs must also demonstrate that the financial difficulty arose out of the alleged oppressive acts of the respondent. I am disinclined to endorse that interpretation.

[21] The question of whether s.249(4) requires a connection between the allegedly oppressive acts and the financial circumstances of the claimant was thoroughly canvassed and rejected by Brown J. (as he then was) in *Hames v. Greenberg,* 2014 ONSC 245, at paras. 5 to 8:

> [5] Both before and after the *Alles* decision some cases required an applicant seeking interim costs to demonstrate that its financial difficulty arose out of the

alleged oppressive acts of the respondents. My reasons in [*Longo v. Zang,* 2012 ONSC 7144, at para. 27] summarized the conflicting jurisprudence:

> Some dispute still exists in the case law about the extent of the link which a complainant must establish between the alleged oppressive conduct and its financial difficulty. In *Wilson v. Conley*, Rosenberg J. thought that the complainant needed to demonstrate that the financial difficulty arose out of the alleged oppressive actions of the respondents. In *Alles v. Maurice*, Blair J. disagreed, observing that nothing in the language of the statute or in its purpose required the complainant to demonstrate a cause and effect relationship between the conduct of the respondents and the need for funding. Back in 1999 Lamek J. attempted to reconcile the two approaches in *Perretta v. Telecaribe Inc.* by stating that "it is enough…if the alleged oppression has affected the plaintiff's ability to finance an otherwise meritorious lawsuit. But there must be some connection between the conduct complained of and the plaintiff's financial inability." More recently, in *Stefaniak v. Murphy*, the Divisional Court stated that the applicant's financial difficulty must be connected to the alleged oppressive conduct and the complainant's difficulties must have arisen from the pursuit of the lawsuit.

[6] I would observe that in *Stefaniak v. Murphy* the Divisional Court simply noted that the parties had agreed the motions judge had applied the correct test, including the connection between the applicant's financial difficulty and the alleged oppressive conduct. As a result, it was not necessary for the Divisional Court to conduct any review of the case law. In that case the Divisional Court did not refer specifically to the decision in *Alles v. Maurice*. The applicants submitted that one could read the leave to appeal decision of a single judge of the Divisional Court made a few months later in [*Morden v. Morden Construction Inc.* 2010 ONSC 4244 (Div. Ct.), at para. 27] as following the analysis in *Alles* on the issue of whether a complainant need establish a causal link, but on my reading the Divisional Court judge accepted that evidence existed of a causal link between the alleged oppressive conduct and financial difficulties without attempting to reconcile the two lines of cases.

[7] In any event, in the *Alles* case Blair J. considered in some detail whether a proper interpretation of *OBCA* s. 249(4) required the imposition of such a causal link gloss. In [*Wilson v. Conley* (1990), 1 B.L.R. (2d) 220], Rosenberg J. had required such a causal link; Blair. J. disagreed [in *Alles,* at paras. 16 and 17]:

> *Wilson v. Conley*, itself, was a case where there was a direct relationship between the majority's allegedly oppressive conduct and the financial situation of the applicant minority shareholder. In fact, the applicant was being deprived

> of his livelihood by the conduct. It was therefore a case where the cause and effect criteria laid down by Rosenberg J was of ready application.
>
> > Here, however, Mrs. Alles cannot meet this criteria. Nevertheless, I do not believe -- other things being equal -- that she should be deprived of the benefit of the Court's discretion under s. 248(4) just because of that. The allegedly oppressive conduct of the Respondents may not have created her financial circumstances by itself, but her inability to finance the lawsuit is every bit as real, just the same. In my view it is this inability to fund an otherwise meritorious lawsuit and the advantage which such a situation gives to an "oppressive" majority that the power given under s. 248(4) to order costs is directed. There is nothing in the language of the statute or in its purpose which, to my mind, requires that the applicant demonstrate a cause and effect relationship between the conduct of the respondents and the need for funding.
>
> [8] I adopt and follow this analysis of Blair J. It strikes me as more consistent with a purposive interpretation of *OBCA* s. 249(4) and the equitable nature of the oppression remedy than the line of cases which imposed the gloss of a necessary causal link between the alleged oppressive conduct and the applicant's financial difficulties.

[22] Since *Hames*, this court has affirmed the two-part *Alles* test in *Pezo v. Pezo et al*, 2021 ONSC 5406, at para. 82 and *John v. John,* 2020 ONSC 5337, at para. 80.

[23] I note briefly that the two-part *Alles* test governs, notwithstanding *Kuang v. Young et al*., 2025 ONSC 17. In *Kuang*, at para. 5, the motion judge appeared to adopt a test for awarding interim costs as requiring a connection between financial difficulty and the oppressive acts. However, the issue in *Kuang* was whether to grant a motion for *further* interim costs and the motion judge found that the terms of the original interim cost order "resolved the question of whether the applicant has met the governing test(s) for entitlement to interim costs": at para. 16. Accordingly, the motion judge did not need to consider *Alles* or *Hames* which provide complete answers on the appropriate test.

The two-pronged *Alles* test:

Step one of the Alles test: Is there sufficient merit to warrant pursuit?

[24] The first prong of the *Alles* test requires the applicant to show that there is a case of “sufficient merit to warrant pursuit”.

[25] This evidentiary threshold does not require the applicant to establish a claim on a balance of probabilities or to show a “strong *prima facie*” case, but a judge must be satisfied that the claims are “well over” the “frivolous and vexatious” mark: *Hames,* at paras. 21 and 22; *Alles*, at paras. 18 and 19. “Well over” frivolous and vexatious is a “low bar” to meet: *Peza,* at para. 83.

[26] I note that a frivolous action has been defined as one which, on its face, is so unreal that no reasonable or sensible person could bring it, and a frivolous and vexatious pleading can be defined as one which is “hopeless factually”, and which it is “plain and obvious… cannot succeed”: *876502 Ontario Inc. v. I.F. Propco Holdings (Ontario) 10 Ltd.* (1997), 37 O.R. (3d) 70 (S.C.J.), at para. 17.

[27] In my view, the applicant must show that there is an arguable case with a path to success in order to establish that her case has sufficient merit to warrant pursuit.

Analysis:

[28] This motion for interim costs is in the context of an application brought by the applicant seeking certain relief under s. 248 of the *OBCA*. Conduct will be in breach of section 248 if: (a) that conduct breaches the reasonable expectations of the complainant shareholder; and (b) this breach amounts to oppression, unfair prejudice, or an unfair disregard of a relevant interest: *Pezo,* at para. 89; *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 at para. 68.

[29] The question at this stage is whether the applicant has demonstrated an arguable case with a path to success considering both elements of the oppression test, as well as any defences.

[30] The respondents argue that significant allegations made by the applicant are barred by the *Limitations Act, 2002,* S.O. 2002, c. 24, Sched. B, or do not provide any evidence of discrete acts of oppression within the limitations period and are thus incapable of supporting an oppression claim. According to the respondents, significant allegations made by the applicant were discoverable more than two years prior to the commencement of the Application, on October 4, 2024.

[31] Specifically, Michelle was aware that she may have an oppression remedy claim based on unpaid dividends since at least January 8, 2022, when her divorce lawyer wrote to Leon's lawyer as follows: "[P]lease explain on what basis your client is relying to support the fact that he has paid himself dividends over the years, which dividends have essentially eliminated any profit of My Neighbourhood Pizza while same dividends were not paid to my client. My client is an equal shareholder and did not approve the dividends paid to your client. As our clients are equal shareholders, holding the same class of shares, it is improper for our clients not to be treated equally. This alone is sufficient to support an oppression remedy application."

[32] Accordingly, any claim for an oppression remedy based on unpaid dividends referred to in the January 8, 2022 letter appears to be statute barred and lacking sufficient merit to warrant pursuit. Despite the applicant's assertions, the fact that she was attempting to resolve ongoing family law issues with Leon at the time this letter was sent does not affect the date the claim was discovered. As the Supreme Court of Canada explained in *Novak v. Bond,* [1999] 1 S.C.R. 808, at

para. 81, “[p]urely tactical considerations have no place” in determining the date of discoverability. Instead, the relevant question is “in light of his or her own circumstances and interests, at what point could the plaintiff reasonably have brought an action?”: *Novak,* at para. 81 [emphasis added]. Evidently, by January 8, 2022, the applicant could have brought an oppression claim for unpaid dividends.

[33] Nevertheless, the *Limitations Act* does not dispense with the applicant’s claim in its entirety.

[34] As the applicant points out, several allegedly “oppressive acts” occurred within the two-year limitations period. It does not appear to be in dispute that certain acts or omissions occurred between October 3, 2022 and October 4, 2024, including that: (i) the applicant was not provided with financial statements for either corporate defendant for 2022 and 2023; (ii) the applicant did not consent to unaudited financial statements to be prepared for the defendant corporations; and (iii) there were no shareholder annual general meetings called for the defendant corporations.

[35] I observe that, even if reasonable, not every unmet expectation gives rise to an oppression claim: *B.C.E.,* at para. 67. Rather, the conduct complained of must amount to “oppression”, “unfair prejudice” or “unfair disregard” of relevant interests. Whether or not the respondents’ conduct has met this threshold will have to be determined on the merits of the application.

[36] This case does not purport to open the door to satisfy the first prong of the *Alles* test every time a corporation fails to provide financial statements. As stated

in *Alles*, at para 49: “Courts must be careful not to convert singular oppressive acts into ongoing oppression claims in an effort to extend limitation periods.”

[37] Indeed, without deciding where this application falls on the imprecise spectrum to bring a similar claim within the limitations period, in this case, it is sufficient to make two observations that satisfy me that the claim is “well over” the frivolous and vexatious mark, as delineated in the prevailing jurisprudence.

[38] First, the failure to provide financial statements and call annual general meetings limits the applicant’s window into the financial status of the defendant corporations and her ability to oversee their management and operations. These allegedly oppressive acts which occurred within the limitations period create a sense of ambiguity about the financial health of the corporations, and accordingly, whether the applicant has been treated in a manner that falls within the terms of oppression, unfair prejudice, or unfair disregard.

[39] Second, the failure to provide financial statements is, in and of itself, significant. “It is a core obligation of a corporation to its shareholders to provide them with an annual report card of the corporation's financial position in the form of audited financial statements”: *Packaging Inc. v. Ciszewski*, 2016 ONCA 6 (CanLII) at para. 28. A failure to do so involves a “loss” to the shareholder who is entitled to have this information, irrespective of whether the report card ultimately reveals other losses or damages that are actionable: *Lagana v 2324965 Ontario Inc.*, 2024 ONSC 953, at para. 16, aff’d 2025 ONCA 607.

[40] The applicant had a reasonable expectation to receive financial statements and notices of annual general meetings, as required by the *OBCA*. She has an arguable case that at least some of these acts and omissions breached her

reasonable expectations in a manner that was oppressive or unfairly disregarded her rights as a shareholder.

[41] Based on the above, the applicant has established a case of sufficient merit to warrant pursuit.

Step two of the Alles test: Is the applicant genuinely in financial circumstances which, but for an order under OBCA s. 249(4), would preclude their claims from being pursued?

[42] The second prong of the test requires the applicant to show that she is "genuinely in financial circumstances which, but for an order under s.249(4), would preclude the claim from being pursued." In *Musicrypt Com. Inc. v. Stark*, 2001 CarswellOnt 1624 (S.C.J.), Cullity J. suggested that this "but for" test is assessed on a balance of probabilities: at para. 9.

[43] An applicant for interim costs is expected to make "all reasonable efforts" to fund the litigation: *Griffin v. Soontiens*, 2010 NSSC 438, at para. 58. However, "impecuniosity is not a pre-condition to obtaining an order" and an applicant is "not required to unreasonably reduce [their] standard of living in order to fund the litigation": *Pezo,* at para. 85.

[44] Together, these authorities show that the applicant seeking interim costs under s.249(4) must satisfy the court on a balance of probabilities, that, but for an order under s.249(4), pursuing the claim would unreasonably reduce the applicant's standard of living.

[45] A fulsome record of the financial circumstances of the applicant is often required to meet the second prong of the *Alles* test. In *Longo v. Zhang,* 2012 ONSC 7144, Brown J. explained the evidence that an applicant must adduce, at para. 34:

> If a complainant asserts that it is in financial difficulty, it must adduce independent evidence of its financial circumstances so that the court can examine the income, expenses, assets and liabilities of the complainant. Mere assertions in an affidavit unsupported by independent documentary evidence are insufficient. … The state of the financial affairs of a complainant is a material issue on this type of interim motion, and the evidence adduced should be direct, not hearsay, evidence.

[46] In several cases, applicants have provided the court with a statement or estimate of net worth: *Griffin v. Soontiens,* at para. 50; *Hames,* at paras. 50 and 52. Courts also consider evidence regarding the complainants' ability to borrow funds to cover legal expenses. For example, in *Griffin v. Soontiens*, the applicant for interim costs satisfied the court that he lacked the financial means to pay for the litigation himself and that "at the present time he is unable to reasonably borrow further funds to finance the litigation": at para. 63.

Analysis:

[47] Has the applicant established, on a balance of probabilities, that, but for an order for interim costs, pursuing this claim will unreasonably reduce her standard of living?

[48] Despite filing three affidavits in support of this motion, the applicant has not provided the court with a fulsome record of her financial circumstances. Specifically, the applicant acknowledges that she received the sum of $361,743.61 in proceeds from the sale of her home on or about June 24, 2021, but offers no explanation for what has happened to that money. This is proximate in time to when the applicant was aware that she may have an oppression remedy claim since her lawyer had sent a letter on January 8, 2022. In my opinion, this is significant in her failure to provide relevant and complete financial information satisfactory to obtain the relief being sought.

[49] Moreover, the applicant asserts that she has “depleted” her savings and is unable to pay and unable to borrow money to pay the deposits and the fees required by the experts retained for her application in order for their expert reports to be prepared. As evidence of her financial circumstances, the applicant provides copies of bank statements, credit card statements, line of credit statements, and loan statements from June 2025 until January 2026. As of January 2026, the applicant shows $486.21 in a personal banking account, $40,336.31 outstanding on an RBC credit card, $9,373.54 outstanding on an RBC line of credit, and $1,272.04 outstanding on her “Fairstone loan”. Additionally, the applicant provided a tax return and notice of assessment for 2024, showing a taxable income of $16,154.48.

[50] While these documents represent a partial snapshot of her current financial status, they do not meet the standard set out in *Longo*. It is true that impecuniosity is not a bar to relief. However, the assertion that the applicant has “depleted” her savings, without explaining what happened to the proceeds of her home sale in 2021, is insufficient. I find that the records provided for this motion are highly selective. Moreover, the applicant does not affirm that the bank statements represent the entirety of her assets, nor does she provide any evidence as to her income or other sources of funds in any year besides 2024.

[51] The applicant has demonstrated that she has some debt, but this alone does not establish, on a balance of probabilities, that pursuing the oppression claim would unreasonably reduce her standard of living.

[52] Accordingly, the applicant has not met the second prong of the *Alles* test as required to succeed on a motion for interim costs pursuant to s.249(4) of the *OBCA*.

Interim costs under the court's inherent jurisdiction:

[53] The applicant also seeks interim costs pursuant to the court's inherent jurisdiction to award interim costs in appropriate cases: *British Columbia (Minister of Forests) v. Okanagan Indian Band*, 2003 SCC 71, [2003] 3 S.C.R. 371, at paras. 31 to 37. Unlike the statutory power under s.249(4) of the *OBCA*, which only permits awarding interim costs against the corporation or its affiliate that is the subject of the oppression claim, the inherent discretion provides the court with authority to order costs against the individual respondent, Leon.

[54] Compared to the two prongs in the *Alles* test, the applicant faces a higher burden to be awarded interim costs under the court's inherent jurisdiction.

[55] First, the party seeking the order must be impecunious to that extent that, without such an order, that party would be deprived of the opportunity to proceed with the case. Second, the claimant must establish a *prima facie* case of sufficient merit to warrant pursuit: *Okanagan,* at para. 36.

[56] Since the applicant has not met the lower bar of the *Alles* test, it would not be appropriate to award interim costs under the court's inherent jurisdiction.

Disclosures and Expert Access

[57] During the course of submissions, the parties had agreed to a partial settlement of outstanding disclosures and answers to questions. Prior to the motion being heard, the respondents provided the applicant with certain documents, including corporate tax returns and financial statements for 1884178 and Leasing Inc. for the period 2020 through 2024, as well as various T-4's and other financial records.

[58] The respondents are not opposed to provide some of the additional requested documents or providing relevant answers, which are necessary for the valuations of the various corporations.

[59] However, it seems that not all of these outstanding issues have been satisfactorily resolved. If the parties still require further directions on this point, I will remain seized of the motion to the extent that the litigants may file brief written submissions for or against any request for further relevant productions.

[60] Finally, if I may be permitted to opine: This appears to be a relatively modest business with limited resources. As there has been a recent, independent valuation conducted, the remaining capital or equity in the corporation ought not be diminished by further valuations from the corporations' resources.

[61] Notwithstanding, I am disinclined to order that the applicant be provided with any interim fees or related costs to facilitate her own expert conducting a corporate or Property valuation.

CONCLUSION:

[62] For all of the aforementioned reasons, the applicant has not met the requisite tests for an order for interim costs. The application is dismissed.

[63] If the parties cannot agree on the issue of costs for this motion, I will consider brief written submissions. These cost memoranda shall not exceed three pages in length, (not including any Bill of Costs or Offers to Settle). The respondents shall file their costs submissions within 15 days of the date of this ruling. The applicant shall file her costs submissions within 15 days of the receipt of the respondents' materials. The respondents may file a brief reply within five days thereafter. If

submissions are not received by June 9, 2026, the file will be closed and the issue of costs considered settled.

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A. J. Goodman J.

Date: April 27, 2026

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B E T W E E N:

MICHELLE PETERSEN

Applicant

- and -

LEON PETERSEN, YOUR NEIGHBOURHOOD PIZZA LEASING INC. and 1884178 ONTARIO INC.

Respondents

REASONS FOR RULING ON MOTION FOR INTERIM COSTS

A.J. Goodman J.

Released: April 27, 2026