

**SUPREME COURT OF CANADA**

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| **Citation:** Mennillo *v.* Intramodal inc., 2016 SCC 51, [2016] 2 S.C.R. 438 | **Appeal heard:** December 8, 2015  **Judgment rendered:** November 18, 2016  **Docket:** 36124 |

Between:

Johnny Mennillo

Appellant

and

Intramodal inc.

Respondent

**Official English Translation:** Reasons of Côté J.

**Coram:** McLachlin C.J. and Abella, Cromwell, Moldaver, Karakatsanis, Wagner, Gascon, Côté and Brown JJ.

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| **Reasons for Judgment:**  (paras. 1 to 81)  **Concurring Reasons:**  (paras. 82 to 89)  **Dissenting Reasons:**  (paras. 90 to 263) | Cromwell J. (Abella, Karakatsanis, Wagner, Gascon and Brown JJ. concurring)  McLachlin C.J. (Moldaver J. concurring)  Côté J. |

Mennillo *v.* Intramodal inc., 2016 SCC 51, [2016] 2 S.C.R. 438

Johnny Mennillo Appellant

v.

Intramodal inc. Respondent

**Indexed as:** Mennillo ***v.*** Intramodal inc.

2016 SCC 51

File No.: 36124.

2015: December 8; 2016: November 18.

Present: McLachlin C.J. and Abella, Cromwell, Moldaver, Karakatsanis, Wagner, Gascon, Côté and Brown JJ.

on appeal from the court of appeal for quebec

*Commercial law — Corporations — Oppression — Reasonable expectations of shareholder — Shareholder resigning as officer and director of corporation — Whether resignation extended to shareholder status and shares transferred accordingly — Whether evidence supported reasonable expectation asserted by shareholder of being treated as such and, if so, whether reasonable expectation was violated — Whether shareholder unlawfully deprived of shareholder status as a result of corporation’s conduct — Canada Business Corporations Act, R.S.C. 1985, c. C‑44, s. 241.*

In 2004, M and R, two friends, discussed the possibility of creating a road transportation company. M would contribute the money to start up the business while R would bring skills to ensure its success. R had the company incorporated on July 13, 2004, and that same day, the company’s board of directors passed a resolution to accept notices of subscription to securities by R and M and to issue 51 shares to R and 49 shares to M. Both the notices of subscription and the resolution were signed by R alone. Thereafter, R and M rarely complied with the requirements of the *Canada Business Corporations Act* (“*CBCA*”) and almost never put anything in writing. They had neither a partnership nor a shareholders’ agreement, and there was no written contract or any other legal formality relating to M’s advances of substantial amounts of money to R.

On May 25, 2005, M sent a letter to the corporation in which he indicated that he was resigning as an officer and director of the company. M asserts that he never intended to stop being a shareholder, but the corporation contends that M also resigned as a shareholder and accordingly transferred his shares to R. Claiming that the corporation and R unduly and wrongfully stripped him of his status as a shareholder, M applied for an oppression remedy pursuant to s. 241 of the *CBCA*.

The trial judge dismissed M’s oppression claim based on the factual finding that M had undertaken to remain a shareholder only so long as he was willing to guarantee the corporation’s debts and later was no longer willing to do so. A majority of the Court of Appeal dismissed the appeal.

Held (Côté J. dissenting): The appeal should be dismissed.

*Per* Abella, Cromwell, Karakatsanis, Wagner, Gascon and Brown JJ.: The trial judge’s factual findings are not reviewable on appeal because no palpable and overriding error is present here. M’s oppression claim must accordingly be approached on the basis of the trial judge’s factual findings to the effect that from May 25, 2005 onwards, M did not want to be a shareholder, did not want to be treated as such and, as a result, transferred his shares to R.

There are two elements of an oppression claim. The claimant must first identify the expectations that he or she claims have been violated and establish that the expectations were reasonably held. Then the claimant must show that those reasonable expectations were violated by conduct falling within the statutory terms, that is, conduct that was oppressive, unfairly prejudicial to or unfairly disregarding of the interests of any security holder.

In the present case, M’s oppression claim is groundless. M could have no reasonable expectation of being treated as a shareholder: he no longer was and expressly demanded not to be so treated. As against the corporation, the most that can be said is that it failed to carry out M’s wishes as a result of not observing certain necessary corporate formalities. But in light of these findings, it cannot be said that the corporation acted oppressively or that it illegally stripped him of his status as a shareholder. What happened is that the corporation failed to make sure that all the legal formalities were complied with before registering the transfer of shares to R. The acts of the corporation which M claims to constitute oppression were in fact taken, albeit imperfectly, in accordance with his express wishes.

The fact that a corporation fails to comply with the requirements of the *CBCA* does not, on its own, constitute oppression. What may trigger the remedy is conduct that frustrates reasonable expectations, not simply conduct that is contrary to the *CBCA*. In the present case, the failure to observe the corporate formalities in removing M as a shareholder in accordance with his express wishes to be so removed cannot be characterized as an act unfairly prejudicial to the extent that this omission deprived him of his status as a shareholder. The corporation failed to observe the formalities of carrying out his wish not to be a shareholder. Nor can the failure to properly remove him as a shareholder in accordance with his express wishes make it just and equitable for him to regain his status as a shareholder.

Regarding the issue of whether the share transfer could have been retroactively cancelled, it is not possible to do so by way of simple oral consent. An issuance of shares can be cancelled only if (a) the corporation’s articles are amended or (b) the corporation reaches an agreement to purchase the shares, which requires that the directors pass a resolution, that the shareholder in question gives his or her express consent and that the tests of solvency and liquidity be met. Meeting the requirements with respect to the maintenance of share capital cannot be optional, given that it is the share capital that is the common pledge of the creditors and is the basis for their acceptance of doing business with the corporation.

It is common ground that the shares that were transferred were not endorsed by M. Therefore it is true that the corporation proceeded to register a transfer that did not meet all of the criteria stated in the *CBCA*. Since this was an important formality required by law, it was to be observed on pain of nullity of the transfer. But there is no doubt about the fact that M knew that this formality was not complied with when the company proceeded to register the transfer in the corporate books, and that he was aware that he had not endorsed his share certificate when the shares were transferred to R as the trial judge found. As he was aware of the situation of which he now complains more than three years prior, his claim in that regard was and is still prescribed. Even if the transfer was subject to nullity, it did not mean that it was inexistent.

Finally, regarding the possibility of a conditional issuance of the shares, the condition at issue was a result of an agreement between M and R that the former would be a shareholder only if he guaranteed the corporation’s debts. This agreement was reached by M and R; the corporation was not a party to this agreement. Accordingly, it does not attract the corporate formalities applicable to a conditional issuance of shares.

*Per* McLachlin C.J. and Moldaver J.: It is not necessary to determine whether there was an effective transfer of M’s shares to R. This appeal can be disposed of on the basis that M has failed to show a reasonable expectation that he would not be removed as a shareholder from the corporation’s books given that he asked to be removed as a shareholder. This is confirmed by the fact that subsequently M ceased to conduct himself as an equity shareholder and advanced money as loans. The trial judge’s finding of fact is supported by the evidence. Consequently, the trial judge did not err in denying M’s oppression claim.

*Per* Côté J. (dissenting): Two key principles are deeply rooted in Canadian corporate law and cannot simply be disregarded or ignored: the principle that a corporation’s legal personality is distinct from that of its shareholder or shareholders, and the principle or rule of the maintenance of capital. The formalities provided for in corporate legislation are imposed to give effect to these principles, and they are necessary to protect the corporation’s patrimony, the common pledge of its creditors.

These principles cannot be variable. The principle that a corporation has a distinct legal personality and the maintenance of capital principle are just as important in the case of a small company as in that of a large one, if not more so. Although expectations may vary from one shareholder to another in the case of a closely held corporation, this does not diminish the importance of these principles. The same is true of the formalities provided for by law to ensure that they are adhered to.

It follows that the conclusion that shares were issued conditionally in this case or that the agreement between the two shareholders regarding M’s shares was cancelled retroactively, simply by their consenting to its being cancelled, and that this cancellation had some effect on the corporation even though the necessary formalities were not observed, jeopardizes important pillars of Canadian corporate law.

Along the same lines, the fact that one shareholder claims he and his fellow shareholder entered into an agreement for the transfer of shares does not relieve the corporation of its legal duty to make the necessary inquiries before passing a resolution approving that transfer of shares and registering the transfer in its registers. The *CBCA* imposes some very strict requirements to be met before a transfer of shares is registered, including that the security be endorsed and that the transfer be rightful. The corporation’s failure to make such inquiries in this case was in itself a form of oppression.

M did not, by expressing an intention to withdraw from the corporation as a shareholder, extinguish any reasonable expectations he may have had as regards his remaining on the company’s books as a shareholder. To conclude the opposite would amount to saying that the mere expression of an intention to withdraw from a corporation as a shareholder would also extinguish the reasonable expectation that the corporation in question will act in accordance with the law and with its articles and by‑laws and will make the necessary inquiries before depriving a person of his or her shareholder status, and would thereby defeat the oppression remedy. However, the *CBCA* itself does not limit access to the oppression remedy in such a manner and, what is more, shareholders are entitled to expect a corporation to act in accordance with its articles and by‑laws and, more generally, with the law. These are, so to speak, presumed expectations.

The question of reasonable expectations is of greater relevance to the determination of a shareholder’s rights that are not specifically provided for in the legislation and in the corporation’s articles and by‑laws. Where, as in this case, a corporation is alleged to have acted unlawfully, the focus of the analysis is not so much on the question of reasonable expectations as on that of whether the corporation’s conduct was in fact unlawful and, therefore, oppressive. Mere irregularities that are not oppressive or unfairly prejudicial will not be sufficient to justify granting the remedy to the complainant. On the other hand, a failure to comply with a mandatory legislative provision or with the requirements set out in the corporation’s articles and by‑laws that relate to the very recognition of shareholder status may justify granting the oppression remedy.

In this case, several aspects of the corporation’s conduct are problematic. The evidence shows that the share certificate in question was not endorsed. It also shows that the corporation made no inquiries before passing the resolution to transfer M’s shares, and that the resolution was passed retroactively and was signed by a single shareholder (namely the majority shareholder). The corporation’s conduct in this regard, which violated express provisions of the legislation and of its own articles and by‑laws, was prejudicial to M: that conduct unlawfully stripped him of his status as a shareholder. It is difficult to imagine how a business corporation could act more oppressively toward a shareholder than by depriving him or her of that status.

The conduct of a corporation that approves a transfer of shares without making any inquiries and that confuses its interests with those of its majority shareholder, as if it were a mere puppet, is not less oppressive simply because another shareholder at some point expressed an intention to withdraw from the corporation without there being any agreement on the terms of such a withdrawal.

Furthermore, the trial judge did not find that the corporation’s shareholders had agreed on a transfer of shares. The interpretation to the effect that he did so find denotes a fragmented reading of the trial judge’s reasons and distorts his conclusions. The trial judge instead concluded that, given that M’s shares had been issued on condition that he guarantee the corporation’s debts, the intention he expressed of withdrawing from the corporation was sufficient for him to be stripped of his status as a shareholder. It is inaccurate to say that the trial judge’s finding that the shares had been transferred was independent of their having been issued conditionally.

The parties characterized the agreement that was alleged to have been entered into by the corporation’s shareholders in several different ways, at times as a conditional issuance of shares, at times as a retroactive cancellation and at times as a contract of sale or a contract of gift. This reflects a more fundamental problem, namely that, without some speculation, no intention in this regard can be found in the evidence. Indeed, the difficulty the courts below had in characterizing the alleged agreement resulted from the fact that there was no evidence of the juridical operation contemplated by the corporation’s shareholders on May 25, 2005 that allegedly resulted in the transfer of M’s shares.

Moreover, it is impossible to find, as a matter of law, that M transferred his shares on May 25, 2005. Whatever conclusion might be reached about the credibility of the witnesses in this regard, the intention expressed by M of withdrawing from the corporation had no effect on his rights as a shareholder. In this case, the intention expressed by M was at most an invitation to contract.

The analysis that is required in the circumstances cannot disregard the interplay between Quebec civil law and the *CBCA*. It is contrary to basic principles of Quebec civil law to argue that the intention expressed by M in this case resulted in an agreement of wills even though there was no agreement on the juridical operation being contemplated. To conclude that the expression of such an intention bars M’s claim for oppression — thereby approving after the fact the transfer registered by the corporation in its registers — is contrary to the law, to fairness and to common sense.

In addition to having no basis in law, the finding that M had expressed his intention of withdrawing as a shareholder and had transferred his shares in May 2005 is not supported by the evidence and is thus based on palpable and overriding errors. The trial judge erred in rejecting M’s testimony in this regard, since he did so on the basis of an unreasonable interpretation of several pieces of evidence in the record. At most, the evidence shows that M expressed an intention to divest himself of his shares, but no agreement was reached on how he would dispose of them.

Finally, the prescription period applicable to a claim under s. 241 of the *CBCA* will depend on the basis for the claim. Where — as in this case — the complainant has been acknowledged to be a shareholder at some point and is claiming to have been unlawfully stripped of shareholder status by the corporation, the claim is therefore imprescriptible.

**Cases Cited**

By Cromwell J.

**Applied:** *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69, [2008] 3 S.C.R. 560; **referred to:** *Premier Tech ltée v. Dollo*, 2015 QCCA 1159, leave to appeal refused, 2016 CanLII 21792; *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235; *Stein v. The Ship “Kathy K”*, [1976] 2 S.C.R. 802; *Ingles v. Tutkaluk Construction Ltd.*, 2000 SCC 12, [2000] 1 S.C.R. 298; *Martin v. Dupont*, 2016 QCCA 475; *Inspecteur général des institutions financières v. Assurances funéraires Rousseau et frère Ltée*, [1990] R.R.A. 473.

By McLachlin C.J.

**Applied:** *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69, [2008] 3 S.C.R. 560.

By Côté J. (dissenting)

*Smith v. Gow‑Ganda Mines, Ltd.* (1911), 44 S.C.R. 621; *Budd v. Gentra Inc.* (1998), 111 O.A.C. 288; *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69, [2008] 3 S.C.R. 560; *Journet v. Superchef Food Industries Ltd.*, [1984] C.S. 916; *Martin v. Dupont*, 2016 QCCA 475; *Paré v. Paré (Succession de)*, 2014 QCCA 1138; *Grusk v. Sparling* (1992), 44 Q.A.C. 219; *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235; *Bénard v. Gagnon*, 2002 CanLII 23768, aff’d 2004 CanLII 73057; *Regroupement des marchands actionnaires inc. v. Métro Inc.*, 2011 QCCS 2389; *Greenberg v. Gruber*, 2004 CanLII 14882.

**Statutes and Regulations Cited**

*Act respecting the legal publicity of enterprises*, CQLR, c. P‑44.1.

*Canada Business Corporations Act*, R.S.C. 1985, c. C‑44, ss. 24(4), 25(3), 34, 39(6), 49(4)(a), (13), 50(1)(c), 53(d), 60(1), 64, 65(3), 76, 79(1)(a), 115(3), 117(1), 118(7), 119(3), 121(a), 146, 238, 241, 243, 247.

*Civil Code of Québec*, arts. 1378, 1381, 1414, 1416, 1422, 1824, 1825, 2922, 2925, 2927.

**Authors Cited**

Baudouin, Jean‑Louis, et Pierre‑Gabriel Jobin. *Les obligations*, 7e éd., par Pierre‑Gabriel Jobin et Nathalie Vézina. Cowansville, Qué.: Yvon Blais, 2013.

Campion, John A., Stephanie A. Brown and Alistair M. Crawley. “The Oppression Remedy: Reasonable Expectations of Shareholders”, in *Law of Remedies: Principles and Proofs*, Special Lectures of the Law Society of Upper Canada. Scarborough, Ont.: Carswell, 1995, 229.

Crête, Raymonde, et Stéphane Rousseau. *Droit des sociétés par actions*, 3e éd. Montréal: Thémis, 2011.

Gaudet, Serge. “Inexistence, nullité et annulabilité du contrat: essai de synthèse” (1995), 40 *McGill L.J.* 291.

Hansmann, Henry, Reinier Kraakman and Richard Squire. “The New Business Entities in Evolutionary Perspective”, [2005] *U. Ill. L. Rev.* 5.

Karim, Vincent. *Les obligations*, 4e éd. Montréal: Wilson & Lafleur, 2015.

Koehnen, Markus. *Oppression and Related Remedies*. Toronto: Thomson/Carswell, 2004.

Lafond, Pierre‑Claude. *Précis de droit des biens*, 2e éd. Montréal: Thémis, 2007.

Lamontagne, Denys‑Claude. *Biens et propriété*, 7e éd. Cowansville, Que.: Yvon Blais, 2013.

Lluelles, Didier, et Benoît Moore. *Droit des obligations*, 2e éd. Montréal: Thémis, 2012.

Martel, Paul. *Business Corporations in Canada: Legal and Practical Aspects*. Toronto: Thomson Reuters, 2005 (loose‑leaf updated 2016, release 6).

Morritt, David S., Sonia L. Bjorkquist and Allan D. Coleman. *The Oppression Remedy*. Toronto: Canada Law Book, 2004 (loose‑leaf updated December 2015, release 17).

Peterson, Dennis H., and Matthew J. Cumming. *Shareholder Remedies in Canada*, 2nd ed. Markham, Ont.: LexisNexis, 2009 (loose‑leaf updated August 2016, release 39).

Wegenast, F. W. *The Law of Canadian Companies*. Toronto: Carswell, 1979 (reissue of 1931 ed.).

APPEAL from a judgment of the Quebec Court of Appeal (Vézina, Gagnon and St‑Pierre JJ.A.), 2014 QCCA 1515, [2014] AZ‑51101093, [2014] J.Q. no 8429 (QL), 2014 CarswellQue 10625 (WL Can.), affirming a decision of Poirier J., 2012 QCCS 1640, [2012] AZ‑50849648, [2012] J.Q. no 3574 (QL), 2012 CarswellQue 3855 (WL Can.). Appeal dismissed, Côté J. dissenting.

Claude Marseille, Paul Martel and Caroline Dion, for the appellant.

Hubert Camirand and Marie‑Geneviève Masson, for the respondent.

The judgment of Abella, Cromwell, Karakatsanis, Wagner, Gascon and Brown JJ. was delivered by

Cromwell J. —

1. Introduction
2. In this oppression proceeding under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 (“*CBCA*”), the underlying question is whether, as the appellant, Johnny Mennillo, alleges, the business or affairs of Intramodal inc. were carried on or conducted in a manner that was oppressive or unfairly prejudicial to or unfairly disregarded Mr. Mennillo’s interests: s. 241(2) *CBCA*.
3. The informal manner in which the parties dealt with each other and their lack of attention to proper documentation gave rise to some technical points of corporate law including how a share transfer can be properly registered and how a share transfer may be cancelled. However, the answer to the fundamental question of whether Mr. Mennillo was oppressed in the corporate law sense turns on which of two sharply different versions of the facts — one supported by Mr. Mennillo and the other by Intramodal’s controlling shareholder, Mario Rosati — ought to be accepted.
4. Mr. Mennillo claims that he was oppressed because he was an investor in Intramodal who was frozen out of equity participation by Mr. Rosati. Intramodal denies this and says that Mr. Mennillo, far from having been frozen out of the corporation, wanted to be removed as a director and shareholder and transferred his shares to Mr. Rosati.
5. The trial judge completely rejected Mr. Mennillo’s version of events and substantially accepted Intramodal’s. The judge found that Mr. Mennillo agreed that he would remain a shareholder only so long as he was willing to guarantee the corporation’s debts. He ultimately decided that he did not wish to do so and transferred his shares to Mr. Rosati. The failure to observe the formalities necessary to complete the transfer of the shares, the judge found, resulted from an error or oversight on the part of Mr. Rosati’s lawyer.
6. If the trial judge’s findings of fact are accepted, as in my view they ought to be, Mr. Mennillo’s oppression claim is groundless. The critical finding is that Mr. Mennillo did not wish to remain a shareholder and told Mr. Rosati to have him removed as such. On those findings, all the corporation can be accused of is sloppy paperwork. But sloppy paperwork on its own does not constitute oppression. Neither does the corporation and its controlling shareholder treating Mr. Mennillo exactly as he wanted to be treated. While some errors were made in the courts below on some points of corporate law, Mr. Mennillo’s oppression claim was properly dismissed and I would dismiss his appeal.
7. Overview of the Legal Context, Parties’ Positions and Issues
   1. Legal Context
8. To understand the facts and issues, it is important to understand the legal framework in which they must be considered.
9. All of the relief requested by Mr. Mennillo is based solely on his claim of oppression under s. 241 of the *CBCA*. Other claims that he might have made, but did not make, are irrelevant to this appeal and cannot be considered. That section provides:

241 **(1)** A complainant may apply to a court for an order under this section.

**(2)** If, on an application under subsection (1), the court is satisfied that in respect of a corporation or any of its affiliates

* + - * 1. any act or omission of the corporation or any of its affiliates effects a result,
        2. the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or
        3. the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer, the court may make an order to rectify the matters complained of.

1. The Court set out the nature and constituent elements of an oppression claim in *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69, [2008] 3 S.C.R. 560, at paras. 53-94. The oppression remedy is inspired by the principles of equity: it gives courts a broad jurisdiction to enforce “not just what is legal but what is fair” (para. 58; see also *Premier Tech ltée v. Dollo*, 2015 QCCA 1159, leave to appeal refused, 2016 CanLII 21792 (S.C.C.)). Whether there has been oppression is judged according to “business realities” not “narrow legalities”: *BCE*, at para. 58. Furthermore, “[w]hat is just and equitable is judged by the reasonable expectations of the stakeholders in the context and in regard to the relationships at play”: para. 59.
2. There are two elements of an oppression claim. The claimant must first “identify the expectations that he or she claims have been violated . . . and establish that the expectations were reasonably held”: *BCE*, at para. 70. Then the claimant must show that those reasonable expectations were violated by conduct falling within the statutory terms, that is, conduct that was oppressive, unfairly prejudicial to or unfairly disregarding of the interests of any security holder: para. 68; s. 241(2) *CBCA*.
3. According to the trial judge’s findings of fact, Mr. Mennillo agreed that he would remain a shareholder of the corporation on the condition that he guarantee its debts. He decided that he no longer wished to guarantee those debts and transferred his shares to Mr. Rosati. He could, therefore, have no reasonable expectation of being treated as a shareholder thereafter. He also could be thought to reasonably expect the corporation to ensure that the corporate formalities to register this arrangement would be observed. But the failure to do so (i.e. the conduct that “violated” those expectations) cannot be characterized as “oppressive, unfairly prejudicial or unfairly disregarding” of his interests. This was a two-person, private company in which the dealings between the parties were marked by extreme informality. As this Court said in *BCE*, “[c]ourts may accord more latitude to the directors of a small, closely held corporation to deviate from strict formalities than to the directors of a larger public company”: para. 74. In substance, Mr. Mennillo was not oppressed but treated as he wanted the corporation to treat him. The failure of the company’s lawyer to comply with the corporate law requirements to give effect to that intention is not oppression.
4. Contrary to what my colleague Justice Côté concludes, the fact that a corporation fails to comply with the requirements of the *CBCA* does not, on its own, constitute oppression: paras. 166 and 195. The oppression remedy is a discretionary one that is equitable in nature: D. S. Morritt, S. L. Bjorkquist and A. D. Coleman, *The Oppression Remedy* (loose-leaf), at p. 5-10.4; D. H. Peterson and M. J. Cumming, *Shareholder Remedies in Canada* (2nd ed. (loose-leaf)), at p. 17-14. What may trigger the remedy is conduct that frustrates reasonable expectations, not simply conduct that is contrary to the *CBCA*. As I see it, my colleague’s approach not only represents a significant departure from our jurisprudence, but as applied here permits Mr. Mennillo to use oppression proceedings as an instrument of oppression rather than as a remedy for it.
   1. Parties’ Positions
5. Mr. Mennillo submits that he was unlawfully removed from the list of shareholders of the corporation through an amended declaration filed with the Registraire des entreprises of Quebec (“REQ”) on July 18, 2005. He also argues that as a shareholder, he had the right to access the corporate records of the company during the usual business hours, a right which was denied to him until the fourth day of the trial in the Superior Court. Simply put, his oppression claim is that he is a shareholder and investor who was frozen out of the corporation.
6. For its part, Intramodal says that Mr. Mennillo resigned as a director, asked not to be a shareholder and transferred his shares to Mr. Rosati. His advances of funds were fully repaid with a healthy bonus. Putting the corporation’s position in its simplest terms, Mr. Mennillo did not want to be an equity shareholder and, as we shall see, he is no longer one.
   1. Issues
7. Putting aside questions of prescription and remedy, Mr. Mennillo raises two legal points and one factual point on appeal.
8. In relation to the law, he maintains:
   * + 1. The trial judge erred in finding that he had transferred his shares to Mr. Rosati when no such transfer was validly effected in law (2012 QCCS 1640); and
       2. The majority of the Court of Appeal erred in concluding that a share subscription could be retroactively cancelled by simple verbal agreement and without complying with the required legal formalities (2014 QCCA 1515).
9. In relation to the facts, Mr. Mennillo relies on the conclusions of the dissenting judge in the Court of Appeal and says that the trial judge erred in rejecting his claim that he is a shareholder of the corporation.
10. I agree with Mr. Mennillo in relation to the second legal point relating to corporate law. However, this point has no impact on the result of the oppression proceedings. The trial judge found that in May 2005, Mr. Mennillo did not want to remain a shareholder because he no longer wanted to be guarantor of all Intramodal’s debts. Some corporate formalities of the transfer of shares from Mr. Mennillo to Mr. Rosati were not completed as a result of an error or oversight on the part of Mr. Rosati’s lawyer. From that date, Mr. Mennillo agreed to be simply a lender to his friend Mr. Rosati. As of May 25, 2005, Mr. Mennillo ceased to be a shareholder in the corporation. That is exactly how the corporation treated him. In my view, the dissenting justice in the Court of Appeal was wrong to overturn these findings of fact. There was, to be sure, some very sloppy paperwork. But in light of the key findings of fact, the corporation in substance simply treated Mr. Mennillo as he wanted to be treated and he was repaid all of the money he had loaned with a substantial bonus.
11. Analysis
    1. The Factual Issue
       1. Preliminary Observations
12. The main question on which the outcome of the appeal depends is whether the trial judge made a reviewable error in finding that in May 2005, Mr. Mennillo did not wish to remain a shareholder because he no longer wanted to be the guarantor of all of Intramodal’s debts and transferred his shares to Mr. Rosati. If these factual findings stand, Mr. Mennillo’s oppression action is groundless: it was not oppressive, unfairly prejudicial to, or unfairly disregarding of his interests for the corporation to treat Mr. Mennillo as he himself asked to be treated. I recall that, as the Court said in *BCE*, in considering a claim in oppression, the courts should look at business realities not merely narrow legalities: para. 58.
13. The appeal also raises some points of corporate law and of the law of prescription. These legal points, however, have no bearing on the ultimate disposition of the appeal. I will briefly address them after I set out my reasons for affirming the trial judge’s fundamental conclusions.
    * 1. Overview of the Basic Facts
14. In the winter of 2004, Messrs. Johnny Mennillo and Mario Rosati, two friends, discussed the possibility of creating a company. Mr. Mennillo would contribute the money to start up the business while Mr. Rosati would bring skills to ensure the success of a road transportation company. Mr. Rosati reserved the name “Intramodal” in April 2004.
15. Mr. Rosati had the company incorporated on July 13, 2004. That same day, Intramodal’s board of directors passed a resolution to accept notices of subscription to securities by Mr. Rosati and Mr. Mennillo and to issue 51 class “A” shares to Mr. Rosati and 49 shares of the same class to Mr. Mennillo. Both the notices of subscription and the resolution were signed by Mr. Rosati alone.
16. It is worth mentioning at this point that many of the legal difficulties in this case have arisen as a result of the virtually complete lack of formality that accompanied the parties’ business dealings. They rarely complied with the requirements of the *CBCA* and in fact almost never put anything in writing. They had neither a partnership nor a shareholders’ agreement. They rarely or never exchanged emails or letters. Before Intramodal was incorporated, the roles that Messrs. Mennillo and Rosati respectively intended to fulfill in the company were agreed upon by a simple handshake. Once Intramodal was incorporated (on July 13, 2004), they became its directors and shareholders, but neither of them paid for their shares, contrary to the requirements of s. 25(3) *CBCA* and Mr. Mennillo’s share certificate was never signed as required by s. 49(4)(a) *CBCA.*
17. There was no written contract or indeed any other legal formality relating to Mr. Mennillo’s advances of substantial amounts of money to Mr. Rosati. As evidence of the money provided for Intramodal by Mr. Mennillo, there are only two sheets of a Rolodex, marked up by Mr. Mennillo and initialed by Mr. Rosati.
18. On May 25, 2005, Mr. Mennillo sent a letter to Intramodal in which he indicated that he was resigning as an officer and director of the company. He and Mr. Rosati give different accounts as to the reasons for and extent of his resignation. Whereas Intramodal argues that Mr. Mennillo transferred his shares to Mr. Rosati, Mr. Mennillo asserts that he never intended to stop being a shareholder of the company. On July 18, 2005, Daniel Ovadia, Intramodal’s lawyer, filed an amending declaration with the REQ to indicate that Mr. Mennillo had been removed as a director and shareholder of the company.
19. Between September 2005 and December 5, 2005, Mr. Mennillo advanced $145,000 to Mr. Rosati. Intramodal began operating in December 2005, and Mr. Mennillo continued to advance money to Mr. Rosati. The amounts he advanced totalled $440,000, which included the $145,000 that had been paid in 2005. The two men met on two occasions in July 2007, and they do not agree about what took place at those meetings.
20. According to Mr. Mennillo, he was with Mr. Rosati and another friend at the Rib’N Reef restaurant on July 14, 2007 when he noted that Intramodal was thriving and Mr. Rosati was now living very well. Upset about this, Mr. Mennillo complained that he was not sharing in the company’s success. At a second meeting, on July 21, 2007, Mr. Mennillo asked that the amounts of his loans be repaid and that he receive his share of the profits generated by Intramodal. He rejected at that time an offer to transfer his shares to Mr. Rosati.
21. According to Mr. Rosati, following the July 14 meeting, Mr. Mennillo was quite unhappy about having received no return on his $440,000 investment that had resulted in the start-up of a lucrative business. Mr. Rosati suggested that they meet a week later to resolve their differences. At that meeting, Mr. Rosati asked Mr. Mennillo what amount might satisfy him in order to put an end to their dispute. Mr. Mennillo fixed the amount at $150,000, which meant that the total debt amounted to $690,000, including interest at the annual rate of 10 percent and a bonus of $100,000.
22. In October 2007, Mr. Rosati and Mr. Mennillo met several times together with Antoine Papadimitriou, Mr. Mennillo’s accountant. According to Mr. Mennillo, the purpose of these meetings was to fix a price for the redemption of his shares. He claimed that it was at these meetings that his advisers had suggested that his advances ($440,000) be repaid using false invoices. Mr. Papadimitriou had also suggested that the $440,000 principal amount be increased by approximately 35 percent because the tax owing on it would be paid by Mr. Mennillo’s management company, 147488 Canada Inc. This would raise the amount of the repayment to $690,000.
23. As for Mr. Rosati, he claims to have attended these meetings alone. He also claims that the purpose of the negotiations was instead to increase the amount of the repayment that had previously been agreed upon in July 2007. He maintains that Paolo Carzoli, a tax specialist, suggested that, to enable Mr. Mennillo to claim the capital gains exemption, the company’s books be corrected such that Mr. Mennillo would receive 49 common shares, which he would then sell to Mr. Rosati. Mr. Rosati rejected this.
24. The money Mr. Mennillo had advanced to Mr. Rosati was repaid in its entirety between July 2006 and December 7, 2009. This was done by means of cheques issued by Intramodal for the payment of false invoices issued by 147488 Canada Inc. for “consultation fees” or “management fees”. The total amount paid by Intramodal to Mr. Mennillo’s management company was $690,000.
25. On December 7, 2009, at a meeting in a restaurant, Mr. Rosati gave Mr. Mennillo a cheque for $40,000 marked “Full and Final Payment”. A few days later, Mr. Mennillo consulted his lawyer, Israel Kaufman, about this note. According to Mr. Mennillo, that was when he first understood that he was no longer a shareholder of Intramodal.
26. On February 25, 2010, Mr. Kaufman sent Intramodal a demand letter. Claiming that Intramodal and Mr. Rosati had unduly and wrongfully stripped him of his status as a shareholder, Mr. Mennillo applied for an oppression remedy against Intramodal on September 7, 2010.
    * 1. Findings of Fact at First Instance
27. Poirier J. began by stating that the case before him essentially turned on the credibility of the witnesses. He then rejected Mr. Mennillo’s version of the facts in its entirety. He concluded that as of May 25, 2005, Mr. Mennillo

[translation] refused to participate in this venture [that is, to be an equity shareholder in Intramodal] and asked to be removed from the company as a shareholder and a director effective May 25, 2005. As of that date, Mennillo agreed only to be a lender of $440,000 to his friend Rosati. The failure to complete the transfer of Mennillo’s shares to Rosati resulted from an error or oversight on the part of Rosati’s lawyer.

Since May 25, 2005, Mennillo has no longer been a shareholder or director of Intramodal. [paras. 74-75 (CanLII)]

1. It is clear from a careful reading of the trial judge’s reasons that he understood that Mr. Mennillo would cease to be a shareholder as a result of transferring his shares to Mr. Rosati. In the judge’s view, Mr. Mennillo had more than a mere intention of being removed from the company; he found that Mr. Mennillo transferred his shares to Mr. Rosati and ceased to hold any shares in Intramodal. There was a basis for this conclusion in the evidence notwithstanding that the evidence was admittedly confused and confusing. However, the critical finding for the purposes of the substance of the oppression claim was that as of May 25, 2005, Mr. Mennillo did not wish to be a shareholder and asked to be removed. On that point, Mr. Rosati’s evidence was unshaken and accepted by the trial judge.
2. The judge’s conclusions and his rejection of Mr. Menillo’s version of events were based on the following findings of fact:

The reason given by Mr. Mennillo for his resignation as a director of Intramodal (i.e. that Mr. Rosati didn’t want a potential client, namely Labatt Breweries (“Labatt”), to know that Mr. Mennillo was involved in the corporation) was false.

The funds advanced by Mr. Mennillo, starting before Intramodal had been incorporated, were loans and were not advanced as investments in the corporation.

The figure 250,000 appearing on the “Rolodex record”, which also showed all the amounts advanced by Mr. Mennillo, corresponded to the amount that Mr. Mennillo and Mr. Rosati had agreed on in July 2007 and that had served to establish the amount of the final payment ($440,000 + $250,000 = $690,000).

Two documents relating to an insurance policy taken out on the lives of Mr. Mennillo and Mr. Rosati, the beneficiary of which was Intramodal, proved, first, that Mr. Rosati believed as of August 15, 2006 that he was the sole shareholder and director of Intramodal and, second, that Mr. Mennillo was only a creditor of the company.

In a letter from Mr. Kaufman, Mr. Mennillo’s lawyer, dated October 31, 2007, no mention was made of financing for the purchase of shares, as what was referred to was instead the acknowledgment of a debt.

In a memorandum dated November 26, 2007, Mr. Carzoli, a tax adviser retained by Mr. Papadimitriou (Mr. Mennillo’s accountant), described the ownership of shares in Intramodal as of the fall of 2007 and concluded from it that Mr. Mennillo was no longer a shareholder of the company at that time.

The demand letter sent to Intramodal by Mr. Kaufman on February 25, 2010 showed that Mr. Mennillo knew he was no longer a shareholder and that this had been the case since May 2005, when he had resigned as a director and transferred his shares.

As could be seen in Intramodal’s books, there was a common shares certificate in Mr. Mennillo’s name. However, it was not signed, and the same was true on the share transfer form on the back, which contained only the nominative information. These books also contained a resolution dated May 25, 2005 concerning the transfer of the shares from Mr. Mennillo to Mr. Rosati. If the transfer was not completed, this was the result of an error or oversight on the part of Mr. Rosati’s lawyer.

An out-of-court examination of Mr. Mennillo on October 28, 2010 supported the view that he had acknowledged that he no longer wanted to be a shareholder of Intramodal as of May 2005. He mentioned several times in the course of that examination that he had removed himself as a shareholder of Intramodal, but then corrected himself to say that he had only resigned as a director. Moreover, the date he gave as the one at which he had learned he was no longer a shareholder was not the one specified in his motion to institute proceedings and also differed from the one specified in his affidavit of July 29, 2010. The trial judge found that a revelation as important as that should have made an impression on Mr. Mennillo.

* + 1. Mr. Mennillo’s Position With Respect to These Findings

1. Mr. Mennillo relies on the conclusions of the dissenting judge who found a number of errors in the reasoning of the trial judge which justified setting aside his findings of fact. I will consider each in turn.
   * + 1. The Reason Mr. Mennillo Gave for Resigning as a Director
2. The trial judge found that Mr. Mennillo’s explanation of why he had resigned as a director in May 2005 was false.
3. Mr. Mennillo’s version was that Labatt wished to review Intramodal’s books and to visit its premises. He said that his involvement with the company would not be favourable in Labatt’s eyes because of his activities in hydroponic greenhouses and the sale of tobacco products. Mr. Mennillo placed this visit by Labatt at a time when Intramodal was acquiring important transportation equipment and he referred repeatedly in his testimony to the fact that Labatt would come to visit the premises.
4. The trial judge found, however, that Mr. Mennillo’s resignation could not have been linked to the examination of Intramodal’s books by representatives of Labatt because at the time, Intramodal had no equipment or premises. In any case, Mr. Mennillo’s explanation made no sense because his resignation as a director would not make him disappear from the corporation’s books if, as he claimed, he was a shareholder. The judge also referred to the inconsistencies in Mr. Mennillo’s evidence in relation to this resignation.
5. The dissenting judge in the Court of Appeal found that the trial judge had erred by setting aside Mr. Mennillo’s version of events. He reasoned that although Intramodal did not have any equipment, it was engaging in some public relations activities at the time of the proposed visit. He also thought that Mr. Mennillo’s explanation made sense in light of the fact that Labatt would not likely be concerned if Mr. Mennillo’s involvement was only as a minority shareholder and, in any event, the problem could have been resolved by Mr. Mennillo transferring his shares to his management company.
6. Respectfully, there was no basis for the dissenting judge to set aside the trial judge’s rejection of Mr. Mennillo’s explanation of why he had resigned as a director. As the majority of the Court of Appeal pointed out, Mr. Mennillo linked Labatt’s visit to a time when Intramodal was acquiring transportation equipment. But it was clear that Intramodal was not doing so in the time leading up to Mr. Mennillo’s resignation in May 2005. I would add that Mr. Mennillo also linked the visit to a time when Labatt could visit the premises. But this made no sense because Intramodal had no premises as of the date of Mr. Mennillo’s resignation as a director. Moreover, the trial judge made no error in concluding that if Mr. Mennillo stayed on as a shareholder, his involvement would be obvious not only from the books of the corporation but also from the public register.
7. There was no clear and determinative error on the part of the trial judge with respect to this point.
   * + 1. The Life Insurance Documents
8. The dissenting judge took issue with the trial judge’s reliance on documents relating to a life insurance in which Mr. Rosati indicated that he was the sole shareholder of the corporation. The dissenting judge thought that these statements needed to be treated with caution as they originated with Mr. Rosati and, in addition, it was hard to understand why, if Mr. Mennillo was simply a creditor, Intramodal would insure his life. However, as the majority of the Court of Appeal pointed out, Mr. Rosati was dealing with a broker who had done business with Mr. Mennillo for more than 20 years. The trial judge was entitled to take into account that in September 2006, Mr. Rosati was openly claiming, in dealings with Mr. Mennillo’s insurance broker, that Mr. Mennillo was not a shareholder in the corporation. The trial judge could well conclude that such behaviour on Mr. Rosati’s part enhanced the credibility of his theory. There was certainly no basis to interfere with the trial judge’s findings in this regard.
   * + 1. The Carzoli Memorandum
9. The dissenting judge was also of the view that the trial judge had misinterpreted a memo prepared by Mr. Carzoli, a tax specialist retained by Mr. Mennillo’s accountant, Mr. Papadimitriou.
10. The trial judge noted that, in a memo prepared after a meeting with Mr. Mennillo’s accountant, Mr. Carzoli wrote that “[t]he minute book of the company indicates that the shares are owned by only one shareholder . . . . The other shareholder . . . was only an investor in the company”: para. 50. The judge took this as some evidence that Mr. Mennillo did not believe himself to be a shareholder as of the date of the memorandum (i.e. November 26, 2007).
11. The dissenting judge thought that this was an erroneous inference because Mr. Carzoli explained in the rest of the memorandum that the register needed correction in order to reflect the reality that Mr. Mennillo was in fact a shareholder. The dissenting judge was also of the view that the memorandum showed that Mr. Carzoli’s strategy was based on the premise that Mr. Mennillo was a shareholder.
12. However, as the majority in the Court of Appeal pointed out, the statement that there was only one shareholder was made to Mr. Mennillo’s accountant and yet passed in silence. Moreover, as the trial judge and the majority further noted, the memorandum was inconsistent with Mr. Mennillo’s testimony that he had only learned that he was not a shareholder in winter of 2009 given that the memorandum was dated roughly two years before.
13. Once again, the trial judge’s reliance on the Carzoli memorandum did not provide an appropriate basis for appellate intervention in relation to the trial judge’s rejection of Mr. Mennillo’s evidence.
    * + 1. The October 31, 2007 Letter
14. The dissenting judge also took issue with the trial judge’s reliance on an October 31, 2007 letter from Mr. Mennillo’s lawyer, Mr. Kaufman. In the dissenting judge’s view, a careful reading of that letter showed that it was not contrary to Mr. Mennillo’s position.
15. The trial judge noted that while Messrs. Kaufman and Mennillo took the position that this letter was directed at putting in place financing to permit Mr. Rosati to buy Mr. Mennillo’s shares, the letter itself said nothing about a share purchase but rather was drafted in terms of an acknowledgment of debt. The majority of the Court of Appeal saw nothing wrong with the trial judge’s treatment of this letter and nor do I. It was open to the judge to infer from the letter, and particularly the absence of any mention of share purchase in it, that it would be unlikely to omit mention of that element in light of Mr. Mennillo’s contention that he had never withdrawn as a shareholder.
    * + 1. The February 25, 2010 Letter
16. Finally, the dissenting judge was of the view that the trial judge had drawn erroneous inferences from the demand letter dated February 25, 2010 sent to Intramodal by Mr. Mennillo’s lawyer, Mr. Kaufman. This letter referred to the alleged request that Mr. Mennillo “resign from the company” because of the interest on the part of Labatt and alleged that his share of the company had not been remitted to him following his resignation as promised.
17. The trial judge used this letter to support the inference that, as of May 2005 when he submitted his resignation as a director, Mr. Mennillo knew that he was no longer a shareholder and, as well, to infer the date at which Mr. Mennillo stopped being a shareholder.
18. The dissenting judge in the Court of Appeal was of the view that this letter did not support these inferences. In his opinion, the use by a lawyer (Mr. Kaufman) of the phrase “resign from the company” could not refer to anything but Mr. Mennillo’s resignation as a director; it could not be understood to encompass Mr. Mennillo’s shareholder status. Moreover, the letter insisted that Mr. Mennillo was a 50 percent partner in the corporation. The dissenting judge saw in this letter a clear expression that [translation] “Mennillo still considered himself a shareholder of (partner in) Intramodal, holding almost 50% of the shares, and as such he was entitled to a share of the profits in the same proportion”: para. 110 (CanLII).
19. Once again, however, there was no basis for appellate intervention with respect to the trial judge’s reliance on this letter. I agree with the reasons of the majority of the Court of Appeal for rejecting the dissenting judge’s contention:

[translation] It may be possible to disagree about how to interpret this letter, but the Judge’s interpretation does not seem to me to be “clearly wrong”; indeed, it is easy to defend. Mennillo is claiming $1M, *inter alia*, “for failing to remit to him his share of the company”. One cannot claim something one already owns. His claim implies that he is not a shareholder of Intramodal, given that he wants to become one. [para. 184]

* + - 1. Conclusion Concerning the Trial Judge’s Findings of Fact

1. The trial judge’s factual findings are only reviewable on appeal if they constitute an error that is both palpable and overriding: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 10; *Stein v. The Ship “Kathy K”*, [1976] 2 S.C.R. 802, at p. 808; *Ingles v*. *Tutkaluk Construction Ltd.*, 2000 SCC 12, [2000] 1 S.C.R. 298, at para. 42. I agree with the majority of the Court of Appeal that no such error is present here. While the dissenting judge preferred a different interpretation of some of the evidence than that adopted by the trial judge, he was not entitled to substitute his view absent a palpable and overriding error. When we examine the trial judge’s conclusions in light of the record, we find that there was no such error.
2. We must, therefore, approach the case on the basis that, from May 25, 2005 onwards, Mr. Menillo did not want to be a shareholder, did not want to be treated as such and, as a result, transferred his shares to Mr. Rosati.
3. On these findings of fact, Mr. Mennillo’s oppression claim is groundless. He could have no reasonable expectation of being treated as a shareholder: he no longer was and expressly demanded not to be so treated. As against Intramodal, the most that can be said is that the corporation failed to carry out his wishes as a result of not observing certain necessary corporate formalities. But in light of these findings, it cannot be said that the corporation acted oppressively or that it illegally stripped him of his status as a shareholder as Justice Côté concludes: para. 198. What happened is that the corporation failed to make sure that all the legal formalities were complied with before registering the transfer. The acts of the corporation which Mr. Mennillo claims to constitute oppression were in fact taken, albeit imperfectly, in accordance with his express wishes. But it cannot be unfairly prejudicial to Mr. Mennillo for the corporation to register a transfer of shares that he wished to happen, and that, as I will discuss later, he can no longer attack. As a consequence, all of Mr. Mennillo’s claims must fail.
4. The failure to observe the corporate formalities in removing Mr. Mennillo as a shareholder in accordance with his express wishes to be so removed cannot, in my respectful view, be characterized as an act unfairly prejudicial to the extent that this omission deprived him of his status as a shareholder: Côté J., at para. 207. The corporation failed to observe the formalities of carrying out his wish *not* to be a shareholder. Nor can the failure to properly remove him as a shareholder in accordance with his express wishes make it just and equitable for him to regain his status as a shareholder: para. 204.
   1. Corporate Law Points
5. Although it is not strictly speaking necessary to do so, I will address three points of corporate law because some clarification of them will be useful: whether the share transfer could have been retroactively cancelled as the majority of the Court of Appeal thought; the consequence of the failure to observe the formalities prescribed by the *CBCA*; and whether the shares could have been issued conditionally.
   * 1. The Possible Retroactive Cancellation of the Share Transfer
6. Before the trial judge and the Court of Appeal, Mr. Mennillo argued that he has been a shareholder of Intramodal from its incorporation and remained as such. Before the trial judge, Intramodal presented two different theories in response to Mr. Mennillo’s argument. The first one is that Mr. Mennillo would have become a shareholder had he accepted to financially support the corporation and to be the guarantor of the entirety of its debts, but he declined or neglected to do so and consequently never became a shareholder. The second one is that Mr. Mennillo resigned as a director of Intramodal and transferred his shares to Mr. Rosati. Intramodal focused on its second theory before the Court of Appeal and argued that the shares were transferred from Mr. Mennillo to Mr. Rosati on May 25, 2005.
7. The trial judge concluded that Mr. Mennillo agreed that he would remain a shareholder only so long as he was willing to guarantee the corporation’s debts and that Mr. Mennillo ultimately decided that he did not wish to do so and transferred his shares to Mr. Rosati. In the Court of Appeal, the majority concluded as follows on this issue:

[translation]     . . . Can it be concluded that there was a genuine transfer of the shares from Mennillo to Rosati? It seems to me, rather, that they quite simply agreed on May 25, 2005 to retroactively cancel their agreement to associate with one another that they had originally entered into in 2004. The agreement had been reached informally, as was the cancellation thereof. [para. 225]

1. It is worth highlighting that this theory of the retroactive cancellation of the agreement was neither adopted by the trial judge nor pleaded by the parties.
2. Contrary to what the majority of the Court of Appeal suggested, I am of the opinion that it is not possible to retroactively cancel an issuance of shares by way of simple oral consent. As Mr. Mennillo points out, an issuance of shares can be cancelled only if (a) the corporation’s articles are amended or (b) the corporation reaches an agreement to purchase the shares, which requires that the directors pass a resolution, that the shareholder in question gives his or her express consent and that the tests of solvency and liquidity be met. Can such an act by the corporation be valid even though these requirements of the *CBCA* have not been met? I do not think so.
3. The commentators agree that meeting the requirements with respect to the maintenance of share capital cannot be optional, given that it is the share capital that is the common pledge of the creditors and is the basis for their acceptance of doing business with the corporation: P. Martel, *Business Corporations in Canada: Legal and Practical Aspects* (loose-leaf), at pp. 12-17, 12-18 and 14-31; R. Crête and S. Rousseau, *Droit des sociétés par actions* (3rd ed. 2011), at pp. 550-52; F. W. Wegenast, *The Law of Canadian Companies* (1979 (reissue of 1931 ed.)), at p. 313.
4. Furthermore, certain American commentators point out that strict protection of a corporation’s capital stock is necessary in a context in which the liability of shareholders is, for its part, limited:

Strong entity shielding and limited liability are highly complementary; the presence of one generally calls for the other. . . .

. . . limited liability generally requires strong entity shielding, largely because limited liability increases the incentive for owners to withdraw from the firm when its prospects are doubtful. That incentive, in turn, creates the threat of a run on the firm’s assets, which would destroy going-concern value to the detriment of both the firm’s creditors and its owners. By denying owners the power to withdraw unilaterally, strong entity shielding prevents such runs. [Footnote omitted.]

(H. Hansmann, R. Kraakman and R. Squire, “The New Business Entities in Evolutionary Perspective”, [2005] *U. Ill. L. Rev.* 5, at pp. 11-12)

1. More concretely, why would the law establish strict requirements primarily to protect creditors’ interests if such requirements could validly be ignored? I am unable to find a satisfactory answer to this question, and it is my opinion that the respondent has also failed to provide one.
   * 1. The Consequence of Non-Compliance With the Formalities of the *CBCA*
2. The trial judge held that Mr. Mennillo was no longer a shareholder of Intramodal as of May 25, 2005 and that [translation] “[t]he failure to complete the transfer of Mennillo’s shares to Rosati resulted from an error or oversight on the part of Rosati’s lawyer”: para. 74.
3. Needless to say, there is no evidence in writing of such transfer between Mr. Mennillo and Mr. Rosati. But for the reasons I set out at length above, the trial judge made no palpable and overriding error when he rejected Mr. Mennillo’s version of events and substantially accepted Intramodal’s. For this reason, I accept his finding that Mr. Mennillo refused to take on the role of Intramodal’s guarantor and transferred his shares to Mr. Rosati. The evidence on the transfer point is conflicting and inconsistent. The judge adopted a view of the evidence that was open to him given the extreme informality of the parties’ dealings and their virtually complete inattention to corporate formalities. As I read his reasons, there was an onerous contract between Mr. Mennillo and Mr. Rosati for the transfer of the shares, a view supported by the evidence: *Martin v. Dupont*,2016 QCCA 475; art. 1381 *Civil Code of Québec* (“*C.C.Q*”).
4. It is uncontested that Intramodal did not ascertain whether some of the corporate formalities of the *CBCA* were complied with by Mr. Mennillo and Mr. Rosati when it registered the transfer of shares, but that cannot in and of itself invalidate any transfer between them: *Inspecteur général des institutions financières v. Assurances funéraires Rousseau et frère Ltée*, [1990] R.R.A. 473 (C.A.); Martel, at pp. 16-28 to 16-30.
5. On this point, s. 76 *CBCA* states:

**76 (1)** Where a security in registered form is presented for transfer, the issuer shall register the transfer if

**(a)** the security is endorsed by an appropriate person as defined in section 65;

**(b)** reasonable assurance is given that that endorsement is genuine and effective;

**(c)** the issuer has no duty to inquire into adverse claims or has discharged any such duty;

**(d)** any applicable law relating to the collection of taxes has been complied with;

**(e)** the transfer is rightful or is to a *bona fide* purchaser; and

**(f)** any fee referred to in subsection 49(2) has been paid.

**(2)** Where an issuer has a duty to register a transfer of a security, the issuer is liable to the person presenting it for registration for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer.

1. In this case, the requirements of s. 76(1)(a) *CBCA* are not fulfilled. It is common ground that the shares that were transferred were not endorsed by Mr. Mennillo. Therefore it is true that Intramodal proceeded to register a transfer that did not meet all of the criteria stated in the *CBCA*. But this is of no assistance to Mr. Mennillo under the circumstances. It is not as a result of an improper registration of this share transfer that Mr. Mennillo is no longer the holder of any shares in Intramodal. It is rather as a result of his transfer of these shares to Mr. Rosati, as found by the trial judge.
2. In that regard, the endorsement of the shares was required to complete the transfer itself between Mr. Mennillo and Mr. Rosati. It was required for the shares to be delivered, which, in turn, was necessary to complete the share transfer: ss. 60(1) and 65(3) *CBCA*. Since this was an important formality required by law, it was to be observed on pain of nullity of the transfer: arts. 1414 and 1416 *C.C.Q.*; Martel, at pp. 16-26 et seq.
3. With that being said, there is no doubt about the fact that Mr. Mennillo knew that this formality was not complied with when the company proceeded to register the transfer in the corporate books, some time in 2007. There is also no doubt that he was aware that he had not endorsed his share certificate when the shares were transferred to Mr. Rosati as the trial judge found.
4. While it might have been possible for Mr. Mennillo to attack the transfer on the basis of the non-compliance with this required formality of the *CBCA*, no such claim was or could have been advanced when he instituted his proceedings in September 2010. As he was aware of the situation of which he now complains more than three years prior, his claim in that regard was and is still prescribed: art. 2925 *C.C.Q.* Even if the transfer was subject to nullity, it did not mean that it was inexistent. In Quebec civil law, the sanction of nullity needs to be pronounced by a tribunal: S. Gaudet, “Inexistence, nullité et annulabilité du contrat: essai de synthèse” (1995), 40 *McGill L.J.* 291, at pp. 331-35; J.-L. Baudoin and P.-G. Jobin, *Les obligations* (7th ed. 2013), by P.-G. Jobin and N. Vézina, at para. 386; D. Lluelles and B. Moore, *Droit des obligations* (2nd ed. 2012), at para. 1101. Only once nullity is judicially pronounced is a purported contract “deemed never to have existed”: art. 1422 *C.C.Q.* Indeed, a “contract which does not meet the necessary conditions of its formation may be [as opposed to is] annulled”: art. 1416 *C.C.Q.* This judicial intervention must be sought within three years of becoming aware of the cause of nullity: arts. 2925 and 2927 *C.C.Q.*
   * 1. The Conditional Issuance of the Shares
5. In the Court of Appeal, the dissenting judge read the trial judge’s reasons as holding that the issuance of the shares to Mr. Mennillo had been conditional on his remaining a guarantor. The dissenting judge went on to say that this conditional status is not set out in the *CBCA* and in any event, even if it were, such status would also have needed to be specified in the books of the company. The dissenting judge also expressed the view that this sort of conditional shareholder status could not depend on an informal agreement between two individuals.
6. I am in substantial agreement with the dissenting judge about the law on this point. Conditions attaching to the shares need to be specified in the articles of the corporation and in the securities register. Also, the resolution authorizing the issuance of the shares to Mr. Mennillo would have needed to specify their conditional status: ss. 24(4), 49(13) and 50(1)(c) *CBCA*. These formalities were not fulfilled.
7. But in my respectful view, the dissenting judge misread the trial judge’s reasons. None of the parties argued that they intended the shares to be issued conditionally and in my view the trial judge did not intend to and did not say that any condition was attached to the shares themselves. Rather, when we read his reasons in light of the evidence, we see that he was of the view that the condition to which the trial judge referred was a result of an agreement between Messrs. Mennillo and Rosati that the former would be a shareholder only if he guaranteed Intramodal’s debts. This agreement was reached by Messrs. Mennillo and Rosati; Intramodal was not a party to this agreement. Accordingly, it does not attract the corporate formalities applicable to a conditional issuance of shares. Understood in this way, there is no legal error in the trial judge’s approach to this issue.
   1. Prescription and Remedy
8. The trial judge found that Mr. Mennillo’s oppression claim was prescribed. He reasoned that the three-year period in art. 2925 *C.C.Q.* applied and that time began to run in May 2005 when, in his view, Mr. Mennillo knew that he would not be treated as a shareholder. The majority of the Court of Appeal did not deal with this issue. But the dissenting judge found that time had not started to run until December 2009 and in any event that the acts of oppression were continuing. Before this Court, Mr. Mennillo adopts, in a single paragraph of his factum, the reasoning of the dissenting judge on this point. Intramodal adopts the position of the trial judge.
9. Given the limited judicial consideration of these points in the reasons of the Superior Court and the Court of Appeal, and the conclusion that Mr. Mennillo’s oppression claim is groundless on its merits, I prefer not to venture a final opinion on this precise point in the context of this appeal.
10. As a result of my proposed disposition of the appeal in relation to the dismissal of the oppression claim, it is not necessary for me to address what remedies would be appropriate in the event oppression had been established.
11. Disposition
12. I would dismiss the appeal with costs and affirm the costs orders made by the Superior Court and the Court of Appeal.

The reasons of McLachlin C.J. and Moldaver J. were delivered by

1. The Chief Justice — I would dismiss the appeal for the following reasons.
2. This is an action for oppression. Mr. Mennillo complains that Intramodal inc. acted oppressively in removing him as shareholder from the books of the company.
3. To establish oppression, the shareholder must show: (1) a reasonable expectation that the corporation would treat him in a certain way; and (2) that the corporation breached that reasonable expectation (*BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69, [2008] 3 S.C.R. 560, at para. 68). The action is an equitable action to protect reasonable and legitimate shareholder expectations — the “cornerstone of the oppression remedy”(*BCE*, at para. 61). Evidence of shareholder expectations is essential to whether conduct has been oppressive in a particular case (*BCE*, at para. 59; P. Martel, *Business Corporations in Canada: Legal and Practical Aspects* (loose-leaf), at p. 31-67; D. H. Peterson and M. J. Cumming, *Shareholder Remedies in Canada* (2nd ed. (loose-leaf)), at §§ 17.41 to 17.43; D. S. Morritt, S. L. Bjorkquist and A. D. Coleman, *The Oppression Remedy* (loose-leaf), at p. 3-2).
4. I do not find it necessary to determine whether there was an effective transfer of Mr. Mennillo’s shares in Intramodal inc. to Mr. Rosati. Suffice it to say that among other things, assessing the nature of the prestations that the parties decided to provide each other under an “onerous contract” — Mr. Rosati gets Mr. Mennillo’s shares in exchange of Intramodal inc. relieving Mr. Mennillo of his obligation to guarantee Intramodal inc.’s debts — is an issue that leaves me somewhat perplexed (a point made by Côté J. at para. 229 of her dissenting reasons).
5. Be that as it may, in my view, this appeal can be disposed of on the basis that Mr. Mennillo has failed to show a reasonable expectation that he would not be removed as a shareholder from Intramodal Inc.’s books. The trial judge found that Mr. Mennillo agreed that his shares should be transferred to Mr. Rosati: [translation] “Mennillo refused to participate in this venture [that is, to be an equity shareholder in Intramodal] and asked to be removed from the company as a shareholder and director as of May 25, 2005” (2012 QCCS 1640, at para. 74 (CanLII)).
6. Having asked to be removed as a shareholder, Mr. Mennillo had no reasonable expectation that he would remain on the books as a shareholder. This is confirmed by the fact that subsequently Mr. Mennillo ceased to conduct himself as an equity shareholder and advanced money as loans. The trial judge’s finding of fact is supported by the evidence.
7. Mr. Mennillo has failed to establish a reasonable expectation that he would remain a shareholder in Intramodal inc. It follows that his action for oppression must fail. Consequently, the trial judge did not err in denying Mr. Mennillo’s claim.
8. I would dismiss the appeal.

English version of the reasons delivered by

Côté J. (dissenting) —

1. Introduction
2. It is sometimes essential to go back to the basics of the law to render the decision that is appropriate in the circumstances. It is just as essential to recall some of those basics.
3. Two key principles are deeply rooted in Canadian corporate law and cannot simply be disregarded or ignored: the principle that a corporation’s legal personality is distinct from that of its shareholder or shareholders, and the principle or rule of the maintenance of capital.
4. In my view, both the trial judge and the majority of the Court of Appeal completely disregarded these two principles in their analysis.
5. With respect, the analysis that is required in the circumstances cannot disregard the interplay between Quebec civil law and the *Canada Business Corporations Act*, R.S.C. 1985, c. C‑44 (“*CBCA*”), and must neither weaken the strict formal requirements of corporate law — in this area, *forma dat esse rei* — nor confuse the business corporation with the partnership. Care must be taken not to assume that the registration of a transfer of shares means that there was a contract for the transfer of shares. Like the trial judge’s assertion that shares can be issued conditionally without the corporation approving the issuance and that of the majority of the Court of Appeal that a share issuance may be cancelled retroactively without any formalities, the solution proposed by the majority cannot, in my view, be reconciled with the basic principles of corporate law and the civil law.
6. I therefore cannot agree with the majority’s opinion.
7. The appellant, Johnny Mennillo, objects to a resolution passed by the respondent corporation, Intramodal Inc., and to its registration in its registers of a transfer of his shares to its majority shareholder, Mario Rosati. Although Intramodal initially argued, with a supporting affidavit, that the appellant had never been one of its shareholders, it now acknowledges that he was indeed a shareholder, but it refuses, contrary to the law and to its own articles and by‑laws, to recognize that he now has that status and is entitled to the advantages associated therewith.
8. It is also important to be clear that this is a proceeding brought by the appellant against Intramodal under s. 241 *CBCA*. Contrary to what my colleague seems to be suggesting, this is not a case in which one shareholder sues another over the ownership of his or her shares in a company. Mr. Rosati is not a party to this litigation.
9. In his claim, the appellant asked that the resolution passed by the respondent company be revoked and that its registers be rectified. This means that, although he brought this claim under s. 241 *CBCA*, he could also have done so under s. 243 *CBCA* (rectification of registers) or s. 247 *CBCA* (failure by a corporation to comply with the legislation or with its articles or by‑laws). The appellant submitted that Intramodal had breached its legal duties by passing the resolution in question and registering the transfer of his shares although none of the formalities required by law had been observed. He argued that the respondent company’s conduct in refusing to recognize his status as a shareholder was oppressive and that a remedy was appropriate under s. 241 *CBCA*. In addition to a declaration that he had always remained a shareholder of the company, the appellant asked, as a consequence, that the resolution approving the transfer of his shares be revoked and that the company’s registers be rectified accordingly.
10. The trial judge and the majority of the Court of Appeal found that the appellant’s claim was without merit on the ground that he had, in their view, expressed an intention in May 2005 to withdraw from the respondent company both as a director and officer and as a shareholder. It was therefore open to Intramodal to register the transfer of the appellant’s shares to Mr. Rosati despite the fact that there had been no exchange of wills with regard to the terms of the appellant’s withdrawal and even though the principal formalities required by law for the transfer of shares had not been observed. The dissenting judge found that his colleagues were disregarding the formal requirements of corporate law.
11. According to the trial judge, the majority of the Court of Appeal and my colleagues, the fact that a shareholder expresses an intention to withdraw from a business corporation bars the shareholder from bringing any oppression proceeding for the express purpose of seeking recognition of his or her status as a shareholder. My colleague Cromwell J. finds that, in the civil law of Quebec, the expression of such an intention is equivalent to a transfer of shares. In other words, it is sufficient to cause a person to lose his or her status as a shareholder.
12. With respect, I am of the view that the fact that one shareholder claims he and his fellow shareholder entered into an agreement for the transfer of shares does not relieve the corporation of its legal duty to make the necessary inquiries before passing a resolution approving that transfer of shares and registering the transfer in its registers. It is clear from the evidence that Intramodal did not discharge any of its legal duties in this regard. If the respondent company had made the proper inquiries, it would have discovered that the appellant’s share certificate (Intramodal share certificate No. 2) had not been endorsed, contrary to the requirements of the *CBCA* and to the transfer restrictions set out on the share certificate itself and in the company’s articles. It should then have refrained from registering the transfer in its registers. As well, the impugned resolution should not have been passed.
13. In my opinion, Intramodal instead confused its interests with those of its majority shareholder, took a disturbingly lax approach in preparing its corporate documents and displayed wilful blindness as regards its legal duties. That confusion was particularly obvious — to say the least — in each of the courts below, and in this Court, where Intramodal vigorously defended the interests of its majority shareholder, who did not even see fit to intervene in the case but instead used Intramodal as his puppet. Intramodal could of course have defended itself on the allegations made against it, but it chose instead to expend its energy on defending an alleged agreement to which it was not even a party without even bothering to determine its scope or verify that it was genuine.
14. By focusing solely on the scope of the alleged agreement between the appellant and Mr. Rosati without considering the respondent company’s conduct, its failure to discharge its legal duties and the consequences of that failure, the trial judge and the majority of the Court of Appeal disregarded the company’s distinct legal personality as well as the basic requirements of corporate law. Rather than punishing the respondent company’s unlawful conduct, they chose to endorse its actions.
15. In addition, the trial judge made palpable and overriding errors and disregarded key evidence in arriving at the conclusion that Mr. Mennillo had transferred his shares to Mr. Rosati in May 2005.
16. Finally, I find that the trial judge and the majority of the Court of Appeal also erred in concluding that the appellant’s claim was prescribed. In this Court, the parties agreed that the appellant was, at least at some point, a shareholder of Intramodal. By challenging the respondent company’s decision for unlawfully depriving him of his status, the appellant is exercising a remedy that, by its very nature, relates to his right of ownership in his shares. Neither the *CBCA* nor the *Civil Code of Québec* (“*C.C.Q.*”) provides that extinctive prescription applies in such a case. As I will explain below, the ownership of shares, as opposed to the rights conferred by them, is not subject to extinctive prescription in Quebec. As a result, the three‑year prescription period provided for in art. 2925 *C.C.Q.* cannot be set up against the appellant’s claim for oppression.
17. For these reasons, I am of the opinion that the appeal should be allowed.
18. Facts
19. In 2004, the appellant and his long‑time friend, Mr. Rosati — who worked for Canvec Logistics at the time — discussed the possibility of forming a road transportation company. They agreed that the appellant would provide the start‑up financing and that Mr. Rosati would contribute his skills and contacts.
20. In April 2004, the name “Intramodal” was reserved with Quebec’s Enterprise Registrar (“REQ”). The respondent company was incorporated on July 13, 2004. Its certificate of incorporation and its registers confirm that Mr. Rosati and Mr. Mennillo were appointed directors and officers and that Mr. Rosati held 51 and Mr. Mennillo 49 (share certificates No. 1 and No. 2) of the 100 Class “A” common shares that were issued for $1 each.
21. On May 25, 2005, Mr. Mennillo resigned as a director and officer of Intramodal. A notice of resignation prepared by Daniel Ovadia, acting as Intramodal’s lawyer, was sent to Mr. Mennillo, who signed it and faxed it back to Mr. Ovadia. The notice in question did not mention Mr. Mennillo’s status as a shareholder but referred only to his removal as a director and officer. The reasons for the resignation were in dispute at trial, as Mr. Mennillo and Mr. Rosati offered conflicting interpretations of the events.
22. Intramodal remained inactive for several months. The evidence shows that on July 18, 2005, Mr. Ovadia filed an amending declaration with the REQ that specified that the appellant had been removed as a director and officer, and as a shareholder. The declaration in question was signed by Mr. Ovadia, but not by the appellant.
23. On August 5, 2005, Mr. Rosati ceased working for Canvec Logistics. He then dedicated himself full time to getting Intramodal off the ground. In the fall of 2005, money was advanced by Mr. Mennillo. Intramodal officially began operating in December. Mr. Mennillo continued advancing money, which was used to finance the company’s operations. As advances were made by Mr. Mennillo, the loaned amounts were recorded on cards of a Rolodex initialled by Mr. Rosati. A total of $440,000 was advanced in that way between June 2004 and October 2006.
24. That amount was repaid in full by Intramodal between July 3, 2006 and December 7, 2009 by means of cheques marked “consultation fees” or “management fees”. During that period, Mr. Mennillo was thus paid $690,000, which included interest and a premium, plus the applicable taxes.
25. By 2006, the company founded by Mr. Mennillo and Mr. Rosati had become very successful.
26. On March 24, 2006, Mr. Rosati filed with the REQ an annual declaration dated February 8, 2006 in which Mr. Mennillo was still listed as a shareholder of the company.
27. In July 2007, at a dinner among friends, an argument broke out when Mr. Mennillo learned of the company’s success. That same year (the exact date is not in evidence), Intramodal passed a retroactive resolution acknowledging Mr. Mennillo’s resignation as a director and officer and approving the transfer of his shares to Mr. Rosati. That resolution, which is at the heart of this litigation and which shows that Mr. Mennillo was a shareholder of the company, at least before the transfer, was not signed by Mr. Mennillo. Nor did he ever endorse his share certificate, which remained in Intramodal’s possession at all times and was never delivered to the purported transferee.
28. In the fall of 2007, there were discussions involving the following persons: Antoine Papadimitriou, an accountant who was retained by several of the appellant’s businesses, Paolo Carzoli, a tax lawyer who had been consulted by Mr. Papadimitriou for the occasion, and Israel Kaufman, a commercial lawyer consulted by the appellant to structure the proposed transaction. The appellant and Mr. Rosati also gave different accounts of the purpose of those discussions: according to the appellant, the purpose of the discussions was to determine a price for the redemption of his shares, while Mr. Rosati claimed that their purpose was to increase the amount of the repayment to be made to the appellant. The appellant’s version was corroborated in this regard by Mr. Papadimitriou, Mr. Carzoli and Mr. Kaufman.
29. On December 22, 2008, Intramodal amended its articles by removing any rights and privileges associated with the Class “A” to “G” shares of its capital stock and replacing them with new rights and privileges associated with Class “A” to “I” shares. New shares were issued to Fiducie Intra 4 (a trust created by Mr. Rosati) and to Mr. Rosati himself.
30. On December 7, 2009, the appellant met Mr. Rosati at a restaurant and Mr. Rosati gave him a $40,000 cheque from Intramodal marked “Full and Final Payment”. A few days after that payment, the appellant consulted his lawyer, who then checked the “CIDREQ” reports available online and obtained copies of the declarations filed with the REQ by Intramodal. Noting that the appellant was no longer listed as a shareholder, the lawyer told him about this discovery.
31. On February 25, 2010, Mr. Kaufman sent Intramodal a formal notice. The appellant filed a claim for oppression against the respondent company on September 7, 2010.
32. The appellant’s version of the events that led to the dispute differs from Mr. Rosati’s.
33. Mr. Rosati maintains that in the initial agreement, the appellant undertook to finance the respondent company and guarantee its debts. At trial, he testified that his relationship with the appellant had begun to deteriorate in July 2004. According to Mr. Rosati, the appellant expressed serious doubts at that time about his ability to successfully implement their plan. Mr. Mennillo discussed this with Mr. Rosati and told him that he intended to withdraw from the company. Mr. Rosati acknowledges that he and Mr. Mennillo at no time formally established the terms of such a withdrawal. According to Mr. Rosati, the company had not yet started operating at the time of their discussion on this subject. Mr. Rosati insisted that the appellant continue financing him, and the appellant agreed to provide him with $300,000.
34. The appellant categorically denies that he ever expressed an intention to withdraw from the company as a shareholder. He also denies that there was an agreement on his withdrawal as a shareholder. He admits withdrawing solely as a director and an officer, as is confirmed by his notice of resignation, and says that he did so at his friend’s request. According to the appellant, a few weeks before May 25, 2005, Mr. Rosati told him that people from the Labatt Brewing Company Ltd. — a potential client — wanted to look at Intramodal’s registers. Mr. Mennillo testified that Mr. Rosati told him at that time that it would be better that he withdraw while the necessary verifications were being carried out. According to Mr. Mennillo’s own testimony, he resigned as a director and officer only after being promised that he would be reinstated. It was Mr. Rosati, through his lawyer, who sent the appellant a letter of resignation, which the appellant signed immediately.
35. More specifically, the appellant’s and Mr. Rosati’s versions of the following events are diametrically opposed:

* With regard to a meeting at a restaurant on July 14, 2007, Mr. Rosati maintains that the appellant told him he was dissatisfied with the return on his loan. The two of them then decided to schedule a meeting to determine the amount to which the appellant was entitled in order to settle their dispute. According to Mr. Rosati, the purpose of the subsequent meetings in 2007 was to increase the amount on which they had already agreed.
* The appellant maintains that it was on July 14, 2007 that he realized Intramodal was doing very well. A meeting was scheduled not only to agree on the repayment of the loans, but also to determine a price for the redemption of his shares. Discussions on this subject took place on several occasions in 2007, but they were unsuccessful. It was not until December 2009, as a result of Mr. Kaufman’s inquiries, that the appellant learned he was no longer a shareholder of Intramodal.

1. However, Mr. Rosati and Mr. Mennillo agree on one point. There was no mention whatsoever on May 25, 2005 of the sale, exchange or gift of shares. At most, according to Mr. Rosati, because the appellant expressed an intention to withdraw from Intramodal whereas his shares had been issued to him on condition that he finance the company and guarantee its debts, he lost his status as a shareholder at that time. This is the version of the facts that was accepted by the trial judge.
2. Decisions of the Courts Below
   1. Quebec Superior Court, 2012 QCCS 1640 (Poirier J.)
3. The trial judge was of the view that the outcome of this case depended entirely on the credibility of the witnesses. He stated that the appellant’s testimony and that of Mr. Rosati were contradictory with respect to three events in particular, namely:

* the appellant’s resignation as a director and an officer of Intramodal on May 25, 2005;
* the meeting of July 14, 2007 at the restaurant and the meeting between the appellant and Mr. Rosati on July 21, 2007; and
* the series of meetings with the appellant’s accountant between October and December 2007.

1. On the first of those events, the trial judge found that the reason for the appellant’s withdrawal as a director and an officer [translation] “cannot be linked to the visit to Intramodal’s premises and the examination of the company’s books by representatives of Labatt”, thus rejecting the appellant’s claim that Mr. Rosati had asked him to resign to reassure that potential client (para. 29 (CanLII)). The trial judge rejected the appellant’s version with respect to the other events as well.
2. The trial judge also analyzed the exhibits filed by the parties in detail. In his opinion, several of them directly contradicted the appellant’s version.
3. He concluded from the evidence as a whole that the appellant had held 49 common shares *on condition that he finance Intramodal’s operations and guarantee all of its debts once it began operating as a business.*He also found that the shares had been distributed as follows when the respondent company was incorporated: 51 percent to Mr. Rosati and 49 percent to the appellant.
4. More importantly, the trial judge found that it was the appellant who had asked to be removed from the company (both as a director and officer and as a shareholder) effective May 25, 2005. As of that date, in the trial judge’s view, the appellant became merely a lender of $440,000 to Intramodal’s sole shareholder, namely Mr. Rosati. In other words, because the appellant’s shares had been issued on condition that he finance Intramodal’s operations and guarantee its debts, those shares were transferred to Mr. Rosati when the appellant expressed a wish to be relieved of his obligations to Intramodal. The appellant nevertheless continued financing Intramodal’s operations after May 25, 2005. The trial judge added that [translation] “[t]he failure to complete the transfer of [the appellant’s] shares to Rosati resulted from an error or oversight on the part of Rosati’s lawyer” (para. 74). In short, in his opinion, the appellant was no longer a shareholder, director or officer of Intramodal, which meant that his claim had to be dismissed.
   1. Quebec Court of Appeal, 2014 QCCA 1515
      1. Reasons of the Majority (Vézina and St‑Pierre JJ.A.)
5. The majority of the Court of Appeal, per Vézina J.A., agreed with the trial judge that the outcome of this case depended on the credibility of the witnesses. In the majority’s view, the trial judge had not made any palpable and overriding error that warranted the intervention of the Court of Appeal. Moreover, his assessment of the facts, including the finding that the appellant had been excluded from Intramodal as a shareholder at his own request, necessarily led to the conclusion that the claim had to be dismissed.
6. Furthermore, the majority found that little weight should be given to the business records in this case, because the relevant documents had been prepared in a sloppy manner. They gave some examples of this, noting that, [translation] “[c]learly, neither the parties nor their professional advisers were concerned about paperwork and formalities” and that it was therefore not surprising that the appellant’s removal as a shareholder had not been properly registered (para. 216 (CanLII)). The majority added that [translation] “[t]his lack of duly completed and reliable documents means that it will be necessary to look to the evidence as a whole, including the depositions, in order to determine what really happened in this case and what the parties actually agreed to” (para. 219).
7. After considering the evidence relating to the three events analyzed by the trial judge, the majority of the Court of Appeal concluded as follows:

[translation] Counsel for Mennillo argues that Mennillo cannot have both been a shareholder and not been a shareholder. Rosati admits that he was one, so it is up to him to prove that he ceased to be one. Hence the issue of the $49 discussed above.

In my opinion, and this is the only point on which I have any doubt with respect to the judgment: Can it be concluded that there was a genuine transfer of the shares from Mennillo to Rosati? It seems to me, rather, that they quite simply agreed on May 25, 2005 to retroactively cancel their agreement to associate with one another that they had originally entered into in 2004. The agreement had been reached informally, as was the cancellation thereof.

In this sense, it can be said that Mennillo was a shareholder of Intramodal and that he never was one. This is the case for any contract that is annulled *ab initio* (from the start). The owner of an immovable who applies for annulment remains the owner until the judgment, but the next day is deemed never to have been the owner. If a marriage contract is annulled, the marriage is nonetheless a putative marriage. The spouse in good faith was never married, but it is as if he or she were, as that spouse benefits from the effects of marriage.

Ultimately, it does not matter how Mennillo’s removal from the company on May 25, 2005 occurred, since the parties themselves did not see fit to clarify this and observe the formalities. Whether their initial agreement was cancelled or the shares were redeemed, the fact is that only Rosati remained in the company, and he subsequently developed his business for himself and his family. [Emphasis added; paras. 224‑27.]

1. In short, although the majority did not intervene with respect to the trial judge’s findings of fact, they did express doubts about his conclusion that the appellant’s shares had been transferred to Mr. Rosati. There was no evidence that the terms of the appellant’s removal as a shareholder had been discussed. In the majority’s view, even though the two men had in fact agreed on the appellant’s removal, they had not seen fit to specify how this was to occur. Vézina and St‑Pierre JJ.A. held that insofar as the initial agreement had been entered into without any formalities, it could be cancelled in the same way.
   * 1. Reasons of the Dissenting Judge (Gagnon J.A.)
2. Gagnon J.A. would have allowed the appeal on the basis that the trial judge’s reasons contained errors of law and palpable and overriding errors of fact. Among other things, he faulted the trial judge, and the majority, for disregarding the law and the respondent company’s articles and by‑laws by reducing the case to no more than one of credibility.
3. In Gagnon J.A.’s view, the trial judge was wrong to find that the appellant’s ownership of 49 common shares of Intramodal was [translation] “conditional” (para. 32). The legislation does not provide for conditional shareholder status, he said. Moreover, there was nothing in the respondent company’s registers to support such a position.
4. Gagnon J.A. added that [translation] “status as a shareholder cannot depend on an informal agreement between individuals and on whether one of them chooses to resiliate it or not to resiliate it” (para. 32). He expressed the opinion that the evidence adduced at trial concerning the appellant’s status as a shareholder for the period from July 13, 2004 to May 25, 2005 was indisputable. In his view, there was no doubt that the appellant was one of Intramodal’s two founding shareholders. The only issue was therefore whether he ceased to be a shareholder at some point and, if so, how.
5. On the question of a possible transfer of the appellant’s shares to Mr. Rosati, Gagnon J.A. found that the onus was on Mr. Rosati to show that he was the duly registered transferee of the appellant’s shares pursuant to s. 53(d) *CBCA*.
6. In response to the respondent company’s argument that the appellant’s failure to make good on his undertaking to guarantee the company’s debts amounted to the price paid by Mr. Rosati to acquire his shares, Gagnon J.A. observed that this confused the company’s interests with those of its majority shareholder and also disregarded their distinct legal personalities.
7. Gagnon J.A. also rejected the respondent company’s alternative theory that the appellant had “given” his shares to Mr. Rosati. He relied on art. 1824 *C.C.Q.*, which provides that a gift of movable property must be made by notarial act *en minute*, with one exception: where consent to a gift of such property is accompanied by delivery and immediate possession of the property. Gagnon J.A. noted that, in the instant case, Intramodal had not received any notarial contract in which Mr. Mennillo transferred his shares to Mr. Rosati. He added that the evidence did not show a manual gift from the appellant to Mr. Rosati accompanied by delivery of the instrument.
8. Gagnon J.A. ended his reasons on this point by noting that, to have the claim dismissed, the respondent company had to show that Mr. Rosati was the actual transferee of the shares in question, which required that his share certificate be endorsed in accordance with s. 64 *CBCA*. Moreover, Intramodal’s articles provided that no share could be transferred unless the board of directors passed a resolution consenting to the transfer. In the circumstances, it was quite simply not open to Intramodal to disregard these requirements and approve a transfer of shares to Mr. Rosati.
9. Gagnon J.A. was also of the view that the trial judge should not have rejected the appellant’s version of the facts and that there were palpable and overriding errors in his analysis in this regard.
10. Finally, Gagnon J.A. also rejected the argument that the claim was prescribed.
11. Issues
12. The main issues are as follows:

‑ Did the respondent company, by passing the resolution approving the transfer of the appellant’s shares to its majority shareholder and registering that transfer in its registers, contrary to the applicable legislation and to its own articles and by‑laws, create an oppressive situation that satisfies the conditions for making a claim for oppression under s. 241 *CBCA*?

‑ Can the fact that the appellant expressed an intention to withdraw from the respondent company be raised against him as a bar to such a claim?

‑ Did the trial judge make palpable and overriding errors in assessing the evidence?

‑ Is the appellant’s claim prescribed?

1. Analysis
   1. Importance of Formalism in Corporate Law
2. As I mentioned above, the analysis of the issues requires a review of some basic principles. While it is true that the appellant and Mr. Rosati did not make the effort to prepare complete documents setting out the exact terms of their business relationship and that they took a rather lax approach in preparing their corporate documents, there is no question that a corporation was indeed formed under the *CBCA* on July 13, 2004 and that the appellant was a shareholder from that date until at least May 25, 2005.
3. A number of arguments have been advanced in this case with respect to the appellant’s shares and, more specifically, to his status as a shareholder, including that the appellant was never a shareholder of the respondent company, that he agreed to transfer the shares to Mr. Rosati, that his ownership of the shares was conditional, and that the shares in question were cancelled retroactively.
4. With regard to the cancellation of the shares, counsel for the appellant correctly noted at the hearing, in response to the reasons of the majority of the Court of Appeal, that such a cancellation can be effected only in accordance with the law, that is, by amending the corporation’s articles or, if the shares have already been paid for, by redeeming them.
5. The *CBCA* regulates the cancellation of a corporation’s shares in order to ensure the integrity of the corporation’s share capital and to preserve the common pledge of its creditors. It does so in accordance with the maintenance of capital rule, which is of particular importance in corporate law:

Although the trust fund doctrine does not completely apply to our corporate law, it nonetheless constitutes the basis of a rule which appears in the law today: the maintenance of capital rule.

This rule is inferred from statutory provisions prohibiting or submitting to solvency (federally) or accounting tests various transactions directly or indirectly having an effect on the paid‑up capital of a corporation, such as the reduction of issued capital, declaration of dividends, acquisition by a corporation of its shares, issue of shares at a discount, transfer of shares not fully paid, etc. In the Quebec *Business Corporations Act*, it is telling that most of these provisions are found in a section entitled “Maintenance of share capital”.

The paid‑up capital of a corporation must be maintained and safeguarded in the interest of the creditors: to this extent we can say that the trust fund doctrine is present, especially when we consider that all the above‑mentioned transactions can lead to the personal liability of the directors.

The principle, which essentially comes from doctrine and case law respecting paid‑up capital, is the following: a corporation is not allowed to “traffic in” its capital. The statutory provisions we have referred to merely define the limits of this principle by creating certain exceptions to the prohibition against a corporation drawing on its paid‑up capital. Any action which does not fall within the scope of these exceptions infringes the maintenance of capital rule and is therefore unlawful. [Emphasis added; footnotes omitted.]

(P. Martel, *Business Corporations in Canada: Legal and Practical Aspects* (loose‑leaf), at pp. 12‑17 and 12‑18)

1. It should be borne in mind that, although a business corporation is similar to a partnership in some respects, as is true, for example, of relationships between the shareholders of a closely held corporation, it differs from a partnership in several ways, including the fact that it requires a stricter adherence to formalities to ensure its independent existence.
2. A business corporation is not merely the product of an agreement between associates. As Martel notes, “[a] corporation is a ‘joint stock corporation’ incorporated through the intervention of the State, not by contract, and as such it is not subject to the partnership rules in the *Civil Code*” (p. 27‑32 (footnote omitted)).
3. By choosing a business corporation as their legal vehicle for carrying on business, a company’s founders and shareholders voluntarily decide to be subject to a scheme that, although it does involve numerous formalities, also has a number of advantages, including the limited liability of directors for the corporation’s debts, which is an advantage that flows directly from the corporation’s distinct legal personality.
4. In the case at bar, if Mr. Mennillo and Mr. Rosati had wanted consensualism to take precedence over formalism in the conduct of their affairs, they could easily have opted for a partnership, but they did not do so. Since they instead chose to create a business corporation, they cannot enjoy the advantages of such a corporation without complying with the stricter rules that apply to it.
5. A business corporation is a legal person established for a private interest that has a distinct legal personality and patrimony: R. Crête and S. Rousseau, *Droit des sociétés par actions* (3rd ed. 2011), at para. 51. In principle, it expresses itself through the resolutions of its board of directors. Decisions of the board of directors must be made at meetings that are lawfully called, although it is also possible for all the directors to sign a given resolution in writing, in which case the resolution is as valid as if it had been passed at a meeting: s. 117(1) *CBCA*.
6. The shareholders may exercise the management powers of the board of directors only if they enter into a unanimous shareholder agreement pursuant to s. 146 *CBCA*. Moreover, several of the many powers conferred on the board of directors may not be delegated and require authorization from the board itself: ss. 121(a) and 115(3) *CBCA*. In the instant case, no unanimous shareholder agreement was entered into.
7. Once the shareholders have in fact subscribed for shares, the invested amounts belong to the corporation. That capital is locked in in such a way that shareholders cannot recover their investments unilaterally or liquidate some or all of the corporation’s assets at the expense of its creditors. This is the maintenance of capital principle.
8. This principle also implies that the shareholders cannot agree among themselves to authorize one of them to require the corporation to redeem his or her shares and thus to withdraw from the corporation without its intervening.
9. Various statutes place considerable value on corporate documents as a way to protect third parties (including creditors) that rely on them to assess the corporation’s situation. One such statute is Quebec’s *Act respecting the legal publicity of enterprises*, CQLR, c. P‑44.1.
10. The formalities provided for in corporate legislation are not merely a matter of “form” as suggested by the trial judge, the majority of the Court of Appeal and my colleague Cromwell J. Rather, the observance of such formalities must be viewed as conditions for the validity of the acts of the corporation, its directors and its shareholders. They are imposed to give effect to the principle that a corporation has a distinct legal personality and to the maintenance of capital principle, and they are necessary to protect the corporation’s patrimony, the common pledge of its creditors.
11. Furthermore, these principles cannot be variable. The principle that a corporation has a distinct legal personality and the maintenance of capital principle are just as important in the case of a small company as in that of a large one, if not more so. Although expectations may vary from one shareholder to another in the case of a closely held corporation, this does not diminish the importance of these principles. The same is true of the formalities provided for by law to ensure that they are adhered to.
12. In light of the above, the conclusion of the majority of the Court of Appeal that the agreement between the two shareholders regarding the appellant’s shares was cancelled retroactively, simply by their consenting to its being cancelled, and that this cancellation had some effect on the company even though the necessary formalities were not observed, jeopardizes important pillars of Canadian corporate law.
13. Assuming that Mr. Mennillo and Mr. Rosati did in fact enter into an agreement concerning a specific juridical operation in order to terminate or change the terms of their business association — which the evidence in no way shows — that agreement could not be set up against the respondent company in respect of the shares in question unless the necessary formalities were performed.
14. The appellant argues, as did the dissenting Court of Appeal judge, that the majority of the Court of Appeal erred in completely disregarding the *CBCA*’s mandatory formalities for redeeming and transferring shares. In my view, the appellant is right. The reasoning of the majority of the Court of Appeal amounts to equating a business corporation with a partnership and seriously undermines the principle that a corporation has a distinct legal personality and the maintenance of capital principle, thereby creating uncertainty with respect to transactions involving the share capital of corporations.
15. With respect, the fact that the appellant and Mr. Rosati themselves disregarded the necessary formalities in the way they conducted their affairs did not authorize the Superior Court and the majority of the Court of Appeal to do the same.
16. As Idington J. of this Court noted in *Smith v. Gow‑Ganda Mines, Ltd.* (1911), 44 S.C.R. 621, at p. 624, it is true that shareholders can enter into various agreements as part of their business relationship, but for such agreements to be binding on the corporation, it is imperative that the statutory formalities be observed.
    1. Significance of Formalism in Corporate Law
17. In their respective reasons, the trial judge and the majority of the Court of Appeal relied heavily, to justify dismissing the appellant’s claim for oppression, on his having expressed an intention to withdraw from the respondent company as a director, officer and shareholder. They were of the view that the only issue in this case was one of credibility.
18. With respect, this conclusion completely disregards the formalism that is required in corporate law. It also completely disregards the respondent company’s distinct legal personality. By focusing solely on whether the appellant had expressed an intention to withdraw from the respondent company, the trial judge and the majority of the Court of Appeal sidestepped the main issue: whether the respondent company’s conduct was oppressive.
19. Section 76 *CBCA* could not be any clearer. A corporation may not register a transfer of shares in its registers without first making certain inquiries. The legislation imposes some very strict requirements to be met before a transfer of shares is registered, including that the security be endorsed and that the transfer be rightful:

**76 (1)** Where a security in registered form is presented for transfer, the issuer shall register the transfer if

**(a)** the security is endorsed by an appropriate person as defined in section 65;

**(b)**reasonable assurance is given that that endorsement is genuine and effective;

**(c)** the issuer has no duty to inquire into adverse claims or has discharged any such duty;

**(d)** any applicable law relating to the collection of taxes has been complied with;

**(e)** the transfer is rightful or is to a *bona fide* purchaser; and

**(f)** any fee referred to in subsection 49(2) has been paid.

**(2)** Where an issuer has a duty to register a transfer of a security, the issuer is liable to the person presenting it for registration for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer.

1. The *CBCA* and the respondent company’s articles and by‑laws required the company to make certain minimal inquiries before registering the transfer, one of which involved ensuring that the appellant’s share certificate had been endorsed. The respondent company’s failure to make such inquiries in this case was in itself a form of oppression. This conclusion is even more valid where, as here, this requirement is set out in black and white on the share certificate.
2. It is contrary to basic principles of Quebec civil law to argue, as the respondent company does, that the intention expressed by the appellant in this case resulted in an agreement of wills even though there was no agreement on the juridical operation being contemplated. If the appellant and Mr. Rosati did not actually agree, on May 25, 2005, on the terms of the appellant’s withdrawal from the respondent company as a shareholder, the intention the appellant expressed in this regard was at most an offer to contract. To conclude that the expression of such an intention bars the appellant’s claim for oppression — thereby approving after the fact the transfer registered by the respondent company in its registers — is contrary to the law, to fairness and to common sense.

C. Oppression Remedy

1. For the purposes of my analysis on the oppression remedy, I will deal in turn with: (1) the conditions for making a claim for oppression, (2) the duties owed by the respondent company in registering a transfer of shares and the oppression that resulted from its failure to discharge them, (3) the alleged agreement between the appellant and Mr. Rosati regarding the shares in question and, finally, (4) the question whether the claim is prescribed.
   * 1. Conditions for Making a Claim for Oppression
2. Section 241(2) *CBCA* provides that a complainant may apply to a court to rectify matters resulting from a corporation’s conduct where

**(a)** any act or omission of the corporation . . . effects a result,

**(b)** the business or affairs of the corporation . . . are or have been carried on or conducted in a manner, or

**(c)** the powers of the directors of the corporation . . . are or have been exercised in a manner

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer . . . .

1. In *Budd* *v.* *Gentra Inc.* (1998), 111 O.A.C. 288, the Ontario Court of Appeal described the purpose of the oppression remedy and the nature of the relevant conduct as follows:

Section 241 provides a statutory means whereby corporate stakeholders may gain redress for corporate conduct which has one of the effects described in s. 241(2). The section serves as a judicial brake against abuse of corporate powers, particularly, but not exclusively, by those in control of a corporation and in a position to force the will of the majority on the minority. Section 241 enables the court to intercede in the affairs and operation of a corporation and to effectively override the decisions of those charged with the responsibility of corporate governance. [para. 32]

1. The oppression remedy introduced by the reform of corporate law that began in the 1970s gives the courts significant powers in respect of the internal affairs of the corporation in question. It is an equitable remedy that, *inter alia*, allows a corporation’s directors, officers and shareholders to resolve their disputes in a case involving oppression.
2. Shareholders of a closely held corporation sometimes find it unnecessary to enter into a detailed agreement to govern their internal relationships. However, a shareholder may have legitimate expectations that go beyond what is specifically provided for in the corporation’s articles and by‑laws; an oppression remedy such as the one provided for in s. 241 *CBCA* is therefore all the more justified.
3. As this Court noted in *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69, [2008] 3 S.C.R. 560, s. 241 *CBCA* is extremely broad in scope. The broad powers this section confers on a court enable the court, *inter alia*, to prevent a corporation from arguing that, because its actions were lawful, the oppression remedy is not available to a complainant: Crête and Rousseau, at paras. 1576‑77.
4. In some circumstances, where an alleged illegality is also oppressive or unfairly prejudicial, the oppression remedy will also make it possible to sanction a corporation for failure to discharge its legal duties, although proof of such a failure is not a prerequisite under s. 241 *CBCA*:

. . . the oppression remedy does not turn on legal rights as much as on concepts of fairness and equity. Conduct may be oppressive even if it is “legal” in the sense that it is based on the exercise of a legal right. The remedy gives the court broad, equitable jurisdiction to enforce not just what is legal but what is fair. Although some courts have tied oppression relief to the establishment of some type of common legal claim, the oppression remedy is not simply a codification of the common law. The weight of jurisprudence holds that, although a breach of a legal duty will constitute oppression, it is not a prerequisite to a finding of oppression. As a result, a finding of oppression does not require the applicant to establish conduct that is subject to redress at law. When determining whether conduct is oppressive, courts have been admonished to look at business realities and not narrow legalities. [Emphasis added; footnotes omitted.]

(M. Koehnen, *Oppression and Related Remedies* (2004), at pp. 78‑79)

1. According to the analytical approach set out in *BCE*, a court must proceed in two stages in considering a claim under s. 241 *CBCA*. First, the court must determine whether the evidence shows that the complainant had a reasonable expectation having regard to the facts of the case before it. Then, it must determine whether the conduct contrary to that expectation was oppressive or unfairly prejudicial within the meaning of s. 241 *CBCA*: *BCE*,atpara. 68.
2. If the court concludes that there was oppressive conduct on the corporation’s part, it then has a broad discretion to decide what remedial order to make. Section 241 *CBCA* contains a non‑exhaustive list of orders that can be made; the contemplated order must take the parties’ mutual interests into account.
3. At the first stage, that of the reasonable expectation, the court can consider various factors, as this Court noted in *BCE* (at para. 72):

Factors that emerge from the case law that are useful in determining whether a reasonable expectation exists include: general commercial practice; the nature of the corporation; the relationship between the parties; past practice; steps the claimant could have taken to protect itself; representations and agreements; and the fair resolution of conflicting interests between corporate stakeholders.

1. I cannot subscribe to the view that, by expressing an intention to withdraw from the respondent company as a shareholder, Mr. Mennillo extinguished any reasonable expectations he may have had as regards his remaining on the company’s books as a shareholder, or that the expression of that intention barred his claim for oppression. By that logic, the mere expression of an intention to withdraw from a corporation as a shareholder would also extinguish the reasonable expectation that the corporation in question will act in accordance with the law and with its articles and by‑laws and will make the necessary inquiries before depriving a person of his or her shareholder status, thereby defeating the oppression remedy. I cannot accept this reasoning for the reasons that follow.
2. First, the *CBCA* itself does not limit access to the oppression remedy in such a manner. Section 238 provides that a complainant (including one who makes a claim for oppression) may be a registered holder of a security but may also be a former registered holder of a security of a corporation. The s. 241 remedy is therefore available to a former shareholder, not only one who has allegedly expressed an intention to cease to be a shareholder, but also one who has allegedly completed a specific juridical operation by which he or she effectively transferred his or her shares.
3. Next, where the complainant’s expectations are based on strict legal rules and the corporation’s impugned conduct is alleged to have been unlawful, it is my view that the question of reasonable expectations plays an extremely limited role, or even no role at all. This is readily understandable, since shareholders are entitled to expect a corporation to act in accordance with its articles and by‑laws and, more generally, with the law. These are, so to speak, presumed expectations:

It is submitted that the shareholders’ reasonable expectations analysis is the most appropriate theory to determine whether the interests of a shareholder have been unfairly prejudiced or unfairly disregarded in the context of a closely‑held corporation. The analysis goes to the heart of the unfairness on an intuitive level. It also defines the standard of unfairness in a manner that is conducive to a principled application at law.

Of course other circumstances can attract the remedial scope of the oppression remedy. Corporate action which is contrary to the constitution of the corporation, or which constitutes a breach by the directors of their duties to the corporation, may be considered to be oppressive, or to unfairly prejudice or unfairly disregard the interests of the shareholders. In these situations, an analysis of shareholders’ reasonable expectations is arguably of little substantive importance. To say that shareholders have a reasonable expectation that corporate action will be taken lawfully, or that directors will act in accordance with their duties, is a rather banal statement. The conclusion that unlawful conduct should give rise to relief under the oppression remedy could be reached on the basis of an alternative theory. [Emphasis added.]

(J. A. Campion, S. A. Brown and A. M. Crawley, “The Oppression Remedy: Reasonable Expectations of Shareholders”, in *Law of Remedies: Principles and Proofs* (1995), 229, at p. 249)

1. In my view, the question of reasonable expectations is of greater relevance to the determination of a shareholder’s rights that are not specifically provided for in the legislation and in the corporation’s articles and by‑laws. Indeed, this Court observed in *BCE* that “[the] oppression [remedy] gives a court broad, equitable jurisdiction to enforce not just what is legal but what is fair” (para. 58).
2. As a result, where, as in the instant case, a corporation is alleged to have acted unlawfully, the focus of the analysis is not so much on the question of reasonable expectations as on that of whether the corporation’s conduct was in fact unlawful and, therefore, oppressive: Martel, at p. 31‑80.
3. While it is true, as the Court noted in *BCE*, that “[t]he size, nature and structure of the corporation are relevant factors in assessing reasonable expectations” and that “[c]ourts may accord more latitude to the directors of a small, closely held corporation to deviate from strict formalities than to the directors of a larger public company” (para. 74), that latitude depends, of course, on the nature of the alleged violation.
4. In sum, mere irregularities that are not oppressive or unfairly prejudicial will not be sufficient to justify granting the remedy to the complainant. On the other hand, a failure to comply with a mandatory legislative provision or with the requirements set out in the corporation’s articles and by‑laws that relate to the very recognition of shareholder status may justify granting the oppression remedy. In my view, this is particularly important for the protection of a minority shareholder in a closely held corporation like Intramodal. Otherwise, what remedy would be available to a shareholder who claims to have been unlawfully dispossessed?
   * 1. Oppressive Conduct on the Respondent Company’s Part
5. In this case, several aspects of the respondent company’s conduct are problematic.
6. First of all, there is the impugned resolution, which was passed in 2007, retroactive to 2005. There is nothing more specific in the evidence as regards the date it was passed. The resolution, of which the appellant learned only after he had brought his claim, reads as follows:

**IT WAS RESOLVED THAT:**

. . .

1. The Corporation also hereby approves and accepts the transfer by **Johnny MENNILLO** of the Forty‑Nine (49) Class “A” Shares registered in his name, represented by Certificate number 2 unto **Mario ROSATI**.
2. In view of said transfer of Shares, it is hereby confirmed that effective this day **Mario ROSATI** is the Sole Shareholder of the Corporation, having One Hundred (100) Class “A” Shares registered in his name.

Each and every of the foregoing six (6) Resolutions is hereby consented to by the Sole Director and Sole Shareholder of the Corporation entitled to vote on such Resolutions pursuant to the Canada Business Corporations Act as evidenced by his signature hereto this 25th day of May, 2005 10.00 a.m. [Underlining added; bold in original.]

(A.R., vol. VIII (“Minutes Book of Intramodal”), at p. 118)

1. Next, the evidence shows that the respondent company registered the transfer referred to in the resolution in its registers. Under the *CBCA*, the company could not register such a transfer unless the security was endorsed, which was not the case here.
2. Section 60(1) *CBCA* provides that it is only on “delivery” of a security, that is, at the time of the voluntary transfer of possession, that the purchaser acquires the rights in the security that the transferor had or had authority to convey:

(1) On delivery of a security the purchaser acquires the rights in the security that the transferor had or had authority to convey, except that a purchaser who has been a party to any fraud or illegality affecting the security or who as a prior holder had notice of an adverse claim does not improve their position by taking from a later *bona fide* purchaser.

1. Furthermore, the purchaser of a security may become a *bona fide* purchaser only as of the time of its endorsement: s. 64 *CBCA*. It is worth nothing that s. 65(3) *CBCA* says the following about an endorsement for the purposes of the assignment or transfer of a security:

**(3)**An endorsement of a security in registered form is made when an appropriate person signs, either on the security or on a separate document, an assignment or transfer of the security or a power to assign or transfer it, or when the signature of an appropriate person is written without more on the back of the security.

1. Endorsement is a condition that must be met for a contract entered into by two shareholders with respect to the purchase of a security to have any legal effect on the corporation. Moreover, if the necessary endorsements are not on or with the security and the corporation registers the transfer of the security anyway, it is liable for any loss incurred as a result of the registration: s. 79(1)(a) *CBCA*. And as I mentioned above, s. 76 *CBCA* expressly provides that a corporation may not register a transfer in its records and registers without first making certain inquiries, one of which relates to the required endorsements.
2. In the instant case, the company’s articles expressly imposed other restrictions, including that the company *could not* register a transfer of shares in its registers unless the share certificate had been duly endorsed and all requirements with respect to transfers had been met:

**C. TRANSFER OF SECURITIES**

. . .

1. **Registration of transfers.** Subject to the Act and to the provisions of paragraph 135 below, no transfer of securities or of warrants shall be registered in the securities’ register of the Corporation unless:
   * + - 1. the security certificate has been duly endorsed by the proper person;
         2. a reasonable assurance has been given to the effect that the endorsement is genuine;
         3. every act or statute in Canada or in a province or territory of Canada with respect to the collection of income tax, sales taxes or charges, duties or fees has been complied with;
         4. any restriction on its issue, on its transfer or on the holding thereof as authorized by the articles has been complied with; and
         5. any lien on the securities as provided for in paragraph 131 above has been reimbursed. [Bold in original.]

(Minutes Book of Intramodal, at pp. 94‑95)

1. Clearly, endorsement of the share certificate, as a precondition to the registration of a transfer of shares, was important enough for the respondent company’s founders to consider it appropriate to include an express provision to this effect in their articles, in addition to mentioning it on the share certificates.
2. The following note appears on the appellant’s certificate: “Only the person whose name appears on the front of this certificate or his duly authorized agent or representative may validly transfer the shares represented by this certificate” (Minutes Book of Intramodal, at p. 170).
3. The very existence of a legal duty that the respondent company make the necessary inquiries before registering a transfer of shares created a reasonable expectation for the company’s shareholders. It is clear that the respondent company failed to discharge this duty and that its failure to do so was more than a mere irregularity.
4. The appellant had a reasonable expectation that the respondent company would act in accordance with the law and with its articles and by‑laws. He had a reasonable expectation that the respondent company would make the necessary inquiries before depriving him of his status as a shareholder. The failure to do so was unfairly prejudicial to the appellant insofar as it deprived him of that status.
5. The evidence shows that the share certificate in question was not endorsed. It also shows that the respondent company made no inquiries before passing the resolution to transfer the appellant’s shares, and that the resolution was passed retroactively and was signed by a single shareholder (namely Mr. Rosati). The respondent company’s lawyer admitted on cross‑examination that his job was to do what Intramodal’s majority shareholder, Mr. Rosati, asked and nothing more:

Q. So, if you’re told by a client to remove a shareholder without a signed document, will you do it?

A. If I have instructions, I will do what the instructions are.

1. Despite all the emphasis placed on the appellant’s expressed intention to withdraw from Intramodal, the fact is that Intramodal had no way of knowing that such an intention had actually been expressed, since, by its own admission, it did not make the required inquiries in this regard, which it considered unnecessary.
2. To conclude that there was oppression in the circumstances is not to allow Mr. Mennillo to use the oppression remedy provided for in s. 241 *CBCA* as an instrument of oppression, but simply to recognize the obvious: Mr. Rosati used his position as majority shareholder to strip Mr. Mennillo of his status as a shareholder. To paraphrase the Ontario Court of Appeal in *Budd*, it was to put a brake on this very type of conduct that Parliament thought it necessary to introduce the oppression remedy provided for in s. 241 *CBCA*.
3. If the respondent company had made the necessary inquiries, it would not have registered the transfer of shares. Assuming that there was in fact an agreement between the appellant and Mr. Rosati in this regard, the parties to the agreement would therefore have had to meet again to take the necessary steps to record the agreement and ensure that the legislated conditions were met. If Mr. Mennillo had in fact agreed to transfer his shares, it would have been a simple matter to ask him to sign Intramodal’s resolution in 2007. In the event of a disagreement, Intramodal’s majority shareholder could then have taken the necessary action to require the appellant to endorse his share certificate and sign the relevant corporate documents:

The law requires that the transferor provide the purchaser with any “requisite necessary to obtain registration” of the transfer, and states that if he does not comply with the demand within a reasonable time, the purchaser may reject the transfer or consider the transfer contract to be rescinded. [Footnote omitted.]

(Martel, at p. 16‑30)

1. A conclusion that Intramodal’s conduct in this regard was prejudicial to the appellant does not require a lengthy explanation: that conduct unlawfully stripped him of his status as a shareholder. It is difficult to imagine how a business corporation could act more oppressively toward a shareholder than by depriving him or her of that status.
2. The conduct of a corporation that approves a transfer of shares without making any inquiries and that confuses its interests with those of its majority shareholder, as if it were a mere puppet, is not less oppressive simply because another shareholder at some point expressed an intention to withdraw from the corporation without there being any agreement on the terms of such a withdrawal. To suggest otherwise would amount to encouraging a corporation’s shareholders to refrain from participating in any kind of discussions or negotiations about a possible transfer of shares.
3. The instant case concerns a complainant who was originally recognized as a shareholder, who alleges that the corporation has committed clear violations of the law and of its articles and by‑laws, and who has applied for an oppression remedy under s. 241 *CBCA*. The oppressive situation created by the corporation can indeed be remedied by means of a claim for oppression, or of an application to rectify registers under s. 243 *CBCA* or an application under s. 247 *CBCA* to compel the corporation to discharge its duties, provided that the conditions for the chosen remedy are met, which is the case here. It should be noted that, independently of ss. 243 and 247 *CBCA*,s. 241(3)(k) gives the courts the power to order the rectification of registers and to sanction unlawful conduct on the corporation’s part.
4. The classic example of this situation can be found in *Journet v. Superchef Food Industries Ltd.*, [1984] C.S. 916, at p. 925, in which the Superior Court found the conduct of the corporation in question to be oppressive on the basis of several unlawful and fraudulent acts it had committed. The evidence that the acts were unlawful was considered sufficient to meet the conditions for the oppression remedy, and no additional evidence was required.
5. In my view, the same reasoning applies in the case at bar. With respect for those who disagree, I find that the appellant has discharged his burden of proving the validity of his claim for oppression. The evidence shows that the company’s actions, namely passing the resolution to transfer the appellant’s shares, registering that transfer in its registers and subsequently filing declarations to the same effect, constituted violations of express provisions of the legislation and the company’s articles and by‑laws. This evidence was sufficient to justify a finding that the company’s conduct was oppressive and prejudicial and that it warranted revocation of the company’s resolution and the rectification of its registers.
6. The purpose of the appellant’s application is to obtain a conclusion that the company failed to discharge its legal duties and an order that its registers be rectified accordingly. As I mentioned above, the appellant could very well have brought an application under s. 243 or 247 *CBCA*. Had he done so, he would have been successful. In view of the liberal interpretation that has been given to s. 241 *CBCA* and the nature of the remedy being sought, it would not be very pragmatic to dismiss his claim simply because it was made under s. 241 rather than s. 243 or 247 *CBCA.* Raymonde Crête and Stéphane Rousseau comment as follows in this regard:

[translation] A review of the case law shows that, in some cases, claimants apply for the oppression remedy even where the alleged acts are in fact clear violations of the rules that could easily give rise to alternative recourses under the legislation. Despite those alternatives, judges take a pragmatic approach in this regard and agree to intervene on the basis of the oppression remedy even though, in this context, proof of the unlawful acts limits the usefulness of interventions based on fairness involving the oppression remedy. We note, however, that there is nothing to prevent a claimant from joining to his or her claim other recourses provided for in the legislation with respect to business corporations or flowing from general law principles, such as a derivative action or an application for an investigation, a mandatory or negatory order, the rectification of registers or even liquidation of the corporation. [Emphasis added; footnote omitted; para. 1629.]

1. Section 241 *CBCA* is extremely broad in scope and gives a court broad powers: *BCE*, at para. 58. This extremely broad scope of the oppression remedy means that it is appropriate in the instant case to consider the recourse relating to rectification of registers (s. 243 *CBCA*) or the one relating to failure by the corporation to comply with the legislation or with its articles or by‑laws (s. 247 *CBCA*).
2. In any event, the conclusion that the respondent company unlawfully deprived the appellant of his status as a shareholder leads inescapably to the conclusion that its conduct in this case was oppressive. Indeed, what could be more oppressive than being unlawfully stripped of one’s status as a shareholder?
3. In my view, this conclusion is sufficient to dispose of the merits of the case. Nonetheless, in light of the importance attached by the parties to the agreement that is alleged to have been entered into by Mr. Mennillo and Mr. Rosati on May 25, 2005, and of my colleague’s remarks in this regard, which could have serious consequences going beyond the scope of this case, I think it is important to discuss that issue.
   * 1. Alleged Agreement Between the Appellant and Mr. Rosati
        1. Nature of the Alleged Agreement
4. My reading of the trial judge’s reasons differs from that of the majority. In my view, the trial judge did not find that the appellant and Mr. Rosati had agreed on a transfer of shares. That interpretation, advanced by the respondent company, denotes a fragmented reading of the trial judge’s reasons and distorts his conclusions. The trial judge instead concluded that, *given that the appellant’s shares had been issued on condition that he guarantee the respondent company’s debts*, the intention he expressed of withdrawing from the company was sufficient for him to be stripped of his status as a shareholder:

[translation] The Court concludes that Mennillo held 49 common shares issued by Intramodal on condition that he guarantee all of Intramodal’s debts once it began operating. Mennillo refused to participate in this venture and asked to be removed from the company as a shareholder and a director effective May 25, 2005. As of that date, Mennillo agreed only to be a lender of $440,000 to his friend Rosati. The failure to complete the transfer of Mennillo’s shares to Rosati resulted from an error or oversight on the part of Rosati’s lawyer.

Since May 25, 2005, Mennillo has no longer been a shareholder or director of Intramodal. [Emphasis added; paras. 74‑75.]

1. These remarks are not open to differing interpretations. There is no doubt that deference is owed to the trial judge’s findings of fact in the absence of a palpable and overriding error, and an appellate court does not have *carte blanche* to take isolated passages from the trial judge’s reasons and give them a meaning they do not have. The trial judge’s findings of fact must be considered as they are, and as a whole. In short, it is, in my respectful opinion, inaccurate to say that the trial judge’s finding that the shares had been transferred was independent of their having been issued conditionally.
2. My colleague’s reasoning strikes me as contradictory. He is of the view that the trial judge accepted as a finding of fact that “Mr. Mennillo agreed that he would remain a shareholder only so long as he was willing to guarantee the corporation’s debts” (reasons of Cromwell J., at paras. 4 and 61 (emphasis added)) and that “Mr. Mennillo agreed that he would remain a shareholder of the corporation on the condition that he guarantee its debts” (para. 10 (emphasis added)). Yet the rest of the trial judge’s statement to the effect that the occurrence of the suspensive condition *resulted in a transfer of shares* cannot be considered in isolation. Moreover, my colleague Cromwell J. finds that the evidence supports the trial judge’s conclusion even though, in his view, that evidence is “confused and confusing” (para. 34), and “conflicting and inconsistent” (para. 68). I will return to the trial judge’s assessment of the evidence below. For now, I note that my colleague acknowledges that there was no condition attached to the issuance of the shares in the case at bar and that it is wrong in law to say the opposite (para. 76), but he nevertheless finds that “the condition to which the trial judge referred was a result of an agreement between Messrs. Mennillo and Rosati that the former would be a shareholder only if he guaranteed Intramodal’s debts” (para. 77). With respect, I do not see how it is possible both to accept the trial judge’s conclusion that Mr. Mennillo held 49 common shares issued by Intramodal on condition that he guarantee all of its debts and to postulate that, in law, Mr. Mennillo could not be a conditional shareholder in this case.
3. The majority of the Court of Appeal also concluded that the appellant no longer had the status of a shareholder, but for another reason, namely that the intention he had expressed of withdrawing from the respondent company had resulted in the retroactive cancellation of his shares.
4. The parties characterized the agreement that was alleged to have been entered into by Mr. Mennillo and Mr. Rosati in several different ways, at times as a conditional issuance of shares, at times as a retroactive cancellation and at times as a contract of sale or a contract of gift. This reflects a more fundamental problem, namely that, without some speculation, no intention in this regard can be found in the evidence. Indeed, the difficulty the courts below had in characterizing the alleged agreement resulted from the fact that there was no evidence of the juridical operation contemplated by Mr. Rosati and Mr. Mennillo on May 25, 2005 that allegedly resulted in the transfer of Mr. Mennillo’s shares. The same is true in this Court.
5. The *CBCA* provides, as a general rule, that the cancellation of shares held by a shareholder can happen in only two ways: by an amendment to the corporation’s articles or by redemption of the shares by the corporation. In the case of redemption, two types are possible: unilateral redemption by the corporation and redemption by mutual agreement.
6. In the instant case, the respondent company did not amend its articles at any time before May 25, 2005. Regarding the possibility that it redeemed the appellant’s shares unilaterally, such a redemption would have had to be provided for in the company’s articles, which was not the case for the Class “A” shares held by the appellant. The company’s articles did give it a right of unilateral redemption, but only for Class “G” shares.
7. As for a redemption by mutual agreement, it is subject to a number of formalities, including the passage of a directors’ resolution to that effect and, under s. 34 *CBCA*, tests of solvency and liquidity.
8. Even more importantly, the *CBCA* provides that such a redemption, whether unilateral or by mutual agreement, results in cancellation of the acquired shares:

**39** . . .

. . .

**(6)**Shares or fractions thereof of any class or series of shares issued by a corporation and purchased, redeemed or otherwise acquired by it shall be cancelled or, if the articles limit the number of authorized shares, may be restored to the status of authorized but unissued shares of the class.

1. In the case at bar, even assuming that the appellant did in fact consent to the redemption of his shares — which he disputes — it must be acknowledged that none of the formalities applicable to such a redemption were performed, which means that it cannot be said that the appellant’s shares were cancelled by way of redemption.
2. Indeed, the respondent company indicates in its factum that the stated capital was never reduced. Nor was any resolution passed to approve the company’s redemption of the shares. As I will explain below, the only resolution at issue apparently concerned a transfer of shares between the appellant and Intramodal’s majority shareholder, Mr. Rosati.
3. What is more, it is difficult to see how the tests of liquidity and solvency could have been met given that, by the respondent company’s own admission, it had no assets at the time.
4. In short, the argument that the appellant’s shares were cancelled retroactively by way of redemption fails not because of mere technical irregularities in the corporate documents, but on the basis of the legal requirements applicable to the redemption of shares and, hence, to their cancellation.
5. The trial judge’s conclusion — which the majority of the Court of Appeal rejected — that the appellant’s shares were issued on condition that he would guarantee the respondent company’s debts, and that the desire he expressed to cease guaranteeing those debts had the effect of depriving him of his status as a shareholder, is also contrary to the provisions of the *CBCA*.
6. As I mentioned above, the trial judge referred to this possibility at para. 74 in writing that [translation] “Mennillo held 49 common shares issued by Intramodal on condition that he guarantee all of Intramodal’s debts once it began operating” (emphasis added).
7. Finally, it can be seen from the respondent company’s registers that no suspensive condition related to the issuance of the appellant’s shares was set out in the resolution of the board of directors that authorized their issuance. For such a suspensive condition to have any effect, it would also have had to appear in the respondent company’s registers. Otherwise, there would be no way for creditors to know that the company’s share capital could be affected at any time.
   * + 1. Effect of the Alleged Agreement
8. I also agree with the appellant and the dissenting judge of the Court of Appeal that it is impossible to find, as a matter of law, that the appellant transferred his shares to Mr. Rosati on May 25, 2005. Whatever conclusion might be reached about the credibility of the witnesses in this regard, the intention expressed by the appellant of withdrawing from the respondent company had no effect on his rights as a shareholder.
9. Though governed by the *CBCA*, a transfer of shares remains subject to the conditions of formation of a contract.
10. My colleague Cromwell J. states that the appellant transferred his shares to Mr. Rosati by means of an onerous contract, but he does not specify the nature of that contract, its essential elements and what prestation Mr. Mennillo received in return from Mr. Rosati. However, [translation] “[t]he fact that a contract is innominate does not mean that it is subject to no legislative scheme”: D. Lluelles and B. Moore, *Droit des obligations* (2nd ed. 2012), at para. 136.
11. The *Civil Code of Québec* defines a contract as “an agreement of wills by which one or several persons obligate themselves to one or several other persons to perform a prestation” (art. 1378). Where there is no meeting of the minds between the parties — unlike where the conditions of formation of a contract are not met, which results in the nullity of the contract — it cannot be found that a contract even exists: V. Karim, *Les obligations* (4th ed. 2015), at para. 507; see also para. 642. The proposal must be firmly directed toward the completion of a specific juridical operation: Lluelles and Moore, at para. 275.
12. The respondent company submits that the appellant transferred his shares to Mr. Rosati and that, in return, he was relieved of his obligation to finance Intramodal’s operations and guarantee its debts. In my view, this is not a valid prestation. This submission by the respondent company, once again, confuses the company’s distinct legal personality with that of its shareholder or shareholders.
13. The intention expressed by the appellant in this case was at most an invitation to contract. The fact that a transfer of shares was registered by the respondent company where Mr. Rosati had spent no money to acquire the appellant’s shares certainly does not prove that the appellant transferred his shares. To conclude from the respondent company’s registration of a transfer of shares that a contract was formed is to engage in circular reasoning: because a transfer was registered, a contract was formed, and because the contract was formed, the transfer is necessarily valid.
14. The parties also referred to the possibility that the alleged agreement of May 2005 was a contract of gift, but it is clear that there was no gift in the case at bar. There is a presumption in the civil law that acts are normally by onerous title. Two things must thus be proved before a gift can be found to exist: an absence of consideration and [translation] “a deliberate intent to impoverish oneself” (*Martin v. Dupont*, 2016 QCCA 475, at paras. 26‑31 (CanLII)). In its factum, the respondent company states that [translation] “[the appellant] wants just one thing: to receive ‘. . . *money for the rest of [his] life, till [he dies]*’” (para. 30). On the face of it, this seems to me to be the exact opposite of an intent to impoverish oneself. Moreover, and this is not insignificant, neither the respondent company nor the appellant is arguing that the shares were given to Mr. Rosati on May 25, 2005. The former states in its factum that the alleged contract between the parties was [translation] “anything but a gratuitous contract” (para. 77), while the latter denies the very existence of an exchange of wills but, in an alternative argument, responds to the fact that no valid consideration was received by reiterating the requirements for a gift under the *Civil Code of Québec* and the legal consequences of a failure to satisfy those requirements.
15. Article 1824 *C.C.Q.* reads as follows:

**1824.** The gift of movable or immovable property is made, on pain of absolute nullity, by notarial act *en minute*, and shall be published.

These rules do not apply where, in the case of the gift of movable property, the consent of the parties is accompanied by delivery and immediate possession of the property.

1. In the absence of a published notarial act *en minute*, a gratuitous contract must be consistent with the definition of a manual gift, according to which either the donee must be put in immediate possession of the property or all hindrances must be removed so that the donee can take possession of the property (art. 1825 *C.C.Q.*). If the contract does not meet the conditions for a manual gift, it is absolutely null: *Paré v. Paré (Succession de)*, 2014 QCCA 1138.
2. Furthermore, s. 65(3) of the *CBCA* imposes a second requirement for possession in the case of a manual gift: the share certificate for the transferred shares must, at a minimum, be endorsed by the transferor (*Grusk v. Sparling* (1992), 44 C.A.Q. 219).
3. In the instant case, not only did the appellant never express an intention to make a gift of his shares, but it is clear that these conditions were not met.
4. In short, I cannot accept the proposition that the onus was on the appellant to seek a conclusion that the alleged agreement of May 25, 2005 was null after inferring that a contract existed from the fact that a transfer had been registered even though there had been no exchange of wills on that date concerning a specific juridical operation and even though the appellant did not know that the transfer had been registered in the respondent company’s registers until he had instituted this proceeding.

(4) Trial Judge’s Assessment of the Evidence

1. In his claim, the appellant alleges wrongful conduct on the respondent company’s part, that is, that it failed to discharge its legal duties and that it registered a transfer of shares without having observed the necessary formalities.
2. However, insofar as my colleague Cromwell J. accepts the trial judge’s finding of fact that the appellant had expressed his intention of withdrawing from Intramodal as a shareholder and had transferred his shares to Mr. Rosati in May 2005, and given that my colleague bases his analysis on that finding, I believe it is important to point out the errors the trial judge made in assessing the evidence. In addition to having no basis in law, that finding by the trial judge is not supported by the evidence and is thus based on palpable and overriding errors. I therefore agree with the dissenting judge of the Court of Appeal that the trial judge’s analysis on this point contained errors warranting appellate intervention: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235.
3. The finding that the appellant told Mr. Rosati he wanted to withdraw from Intramodal as a shareholder on May 25, 2005 is based solely on Mr. Rosati’s testimony. The trial judge erred in rejecting the appellant’s testimony, since, as the dissenting judge of the Court of Appeal rightly noted, he did so on the basis of an unreasonable interpretation of several pieces of evidence in the record.
4. First, there is the letter of resignation signed by the appellant on May 25, 2005, which speaks for itself. The appellant withdrew from the company as a director and officer at that time. That letter prepared by the respondent company’s lawyer — who, according to the evidence, was following the majority shareholder’s instructions — could easily have provided for more if that had been the parties’ intention. But it did not.
5. Next, there are various documents relating to life insurance taken out on the appellant and Mr. Rosati, of which the respondent was the beneficiary. One of those documents stated that Mr. Rosati was the respondent company’s sole shareholder. Yet the policy in question was on the lives of both the appellant and Mr. Rosati. What insurable interest did Intramodal have in the appellant’s life if he was no longer a shareholder? To ask the question is to answer it.
6. As for the letter written by Mr. Kaufman on October 31, 2007 that was sent to the appellant, I also agree with the dissenting judge of the Court of Appeal that it could not reasonably lead to an inference that the appellant was, by insisting on being repaid his investment, relinquishing his shares.
7. Nor could the formal notice of February 25, 2010 prepared by Mr. Kaufman lead to any negative inference. In it, the appellant claimed to be entitled to receive 50 percent of the respondent company’s profits and to continue his partnership with Rosati. But by February 25, 2010, it had become clear that the appellant was no longer a shareholder *in the respondent company’s registers*. According to his testimony and that of his professional advisers, the purpose of the letter was to have the situation remedied, failing which $1,000,000 would be claimed from Mr. Rosati.
8. Finally, another ground advanced by the trial judge for rejecting the appellant’s version was that, in his opinion, the reason the appellant gave for his withdrawal as a director and officer, namely the visit to Intramodal’s premises and the examination of the company’s books by representatives of Labatt, was false. Yet the dissenting judge of the Court of Appeal noted that, even though the company had not been active at the time, the appellant’s assertion that meetings had taken place with representatives of Labatt had not been contradicted. Moreover, amounts were advanced before December 2005 and continued to be advanced until October 2006.
9. In short, in my view, the evidence does not support the conclusion that the two shareholders entered into an agreement under which the appellant withdrew from the company as a shareholder. In arriving at that conclusion, the trial judge made palpable and overriding errors and disregarded key aspects of the evidence. At most, the evidence shows that the appellant expressed an intention to divest himself of his shares, but no agreement was reached on how he would dispose of them.

(5) Prescription of the Claim

1. In the alternative, the respondent company argues that the appellant’s claim must be dismissed on the ground that it is prescribed. The trial judge and the majority of the Court of Appeal agreed with that argument.
2. The *CBCA* does not specify the prescription period that applies to the oppression remedy, although it does provide for a two‑year prescription period for other remedies, two examples of which can be found in ss. 118(7) and 119(3) *CBCA*. It can therefore be assumed, at least where this remedy is concerned, that Parliament intended to defer to general civil law principles where a claim for oppression is made in Quebec: Martel, at pp. 31‑191 to 31‑192.
3. In this regard, art. 2925 *C.C.Q.* provides as follows:

**2925.** An action to enforce a personal right or movable real right is prescribed by three years, if the prescriptive period is not otherwise determined.

1. A claim under s. 241 *CBCA* is normally brought to enforce a personal right. This is the case, for example, where the complainant alleges that a corporation’s majority shareholder has acted in disregard of minority shareholders’ interests (*Bénard v. Gagnon*, 2002 CanLII 23768 (Que. Sup. Ct.), aff’d by 2004 CanLII 73057 (Que. C.A.)) or where what is described as oppression consists of acts committed by the directors, who are alleged to have misled and unfairly treated certain shareholders in the same class (*Regroupement des marchands actionnaires inc. v.* *Métro Inc.*, 2011 QCCS 2389). An oppression claim can also be made to enforce a real right where, for example, the corporation in question refuses to pay dividends owed to the complainant despite acknowledging the complainant’s status as a shareholder.
2. Sometimes, as in the case at bar, the claim is instead premised on the complainant’s ownership of shares and on the corporation’s refusal to acknowledge the complainant’s status as a shareholder. In such cases, a claim under s. 241 *CBCA* is brought not to *enforce* a real right but to have it *acknowledged*.
3. In the civil law, the right of ownership (in this case the right of ownership of a security) is perpetual, which means that it is not lost either by non‑use or by the mere passage of time:

[translation] The right of ownership is *perpetual.* This does not mean that the right remains forever attached to the same patrimony or that it can be transmitted perpetually; it means that it is not lost through non‑use (*supra*, at No. 18). However, an owner can destroy (corporeal) property, in which case the right will disappear with the property, which explains why the right is identified with the property. The owner can also renounce the right (the abandoned property then becomes a thing without an owner — arts. 934 et seq. C.C.Q.) or transfer the property to a trust patrimony without an owner (art. 1261 C.C.Q.), or the right may be acquired by a third party possessor through acquisitive prescription . . . . [Emphasis in original; footnote omitted.]

(D.‑C. Lamontagne, *Biens et propriété* (7th ed. 2013), at para. 207)

1. Professor Pierre‑Claude Lafond states the following on this same subject:

[translation] One characteristic of the right of ownership is that it is not lost by way of extinctive prescription (see *supra*, at 3.1.2.4). Since an action in revendication sanctions the right of ownership, it too is therefore *imprescriptible*, unlike other types of actions to enforce a real right, which are prescribed by ten years (art. 2923 C.C.Q.) or by three years (art. 2925 C.C.Q.), depending on whether the right is immovable or movable. In our view, those two provisions cannot apply, given that the purpose of a petitory action is not to *enforce* a right but to *have it acknowledged* (art. 912 C.C.Q.).

In practice, this imprescriptibility may be defeated where acquisitive prescription is claimed by a possessor (arts. 2917 to 2919 C.C.Q.) (see *infra*, at 6.3.3.3.2), although this does not change the principle that the right of ownership cannot be lost by reason of the passage of time. [Emphasis added; citations omitted.]

(*Précis de droit des biens* (2nd ed. 2007), at para. 1205)

1. Thus, extinctive prescription cannot be set up against a person seeking to have his or her ownership of property *acknowledged*.
2. A share of a company is a real right in respect of which a shareholder can seek recognition of a right of ownership: “For a shareholder, ownership of shares is a real right, not a personal right, which can render inadmissible in Quebec an action taken to be declared owner of shares of which the *situs* is outside Quebec” (Martel, at p. 12‑11 (emphasis added; footnotes omitted)).
3. As a result, the prescription period applicable to a claim under s. 241 *CBCA* will depend on the basis for the claim. Where — as in this case — the complainant has been acknowledged to be a shareholder at some point and is claiming to have been unlawfully stripped of shareholder status by the corporation, the claim is therefore imprescriptible.
4. This was the conclusion reached by the Quebec Court of Appeal in *Greenberg v. Gruber*, 2004 CanLII 14882 (Que. C.A.).
5. In that case, the complainant submitted that shares in several corporations were being held for him by the respondents as *prête‑noms* (nominees). He argued that he actually owned a third of the shares of those corporations, and he requested, *inter alia*, that the registers be rectified and that a share certificate be delivered to him.
6. The respondents sought to set up extinctive prescription against the claim. The trial judge held that prescription was applicable but that the claim was not prescribed, and the respondents appealed that decision. The issue before the Quebec Court of Appeal was whether, in such a case, extinctive prescription can be relied on [translation] “in order to argue that a shareholder has lost the right of ownership in his shares because of his failure to act in a timely manner” (*Greenberg*, at para. 6). If the answer was yes, the Court of Appeal also had to determine which prescription period was applicable, that of 10 years under art. 2922 *C.C.Q.* or that of three years under art. 2925 *C.C.Q.*
7. The Court of Appeal accepted the complainant’s argument that extinctive prescription cannot be raised where, in the case of a claim under s. 241 *CBCA*, the complainant seeks to assert a right of ownership or seeks acknowledgment of his or her status as a shareholder in connection with that right.
8. More specifically, the Court of Appeal reached the conclusion that [translation] “the fact that [the complainant] failed to contest the ‘denial’ of his status as a shareholder within three years (or any other period) does not mean that he can no longer assert his right of ownership in the shares” (*Greenberg*, at para. 43). To terminate the complainant’s right of ownership, the respondents would have had to show that they had acquired the shares by way of acquisitive prescription, but they were not making that argument. The Court of Appeal added that, “[a]s an owner, the [complainant] certainly cannot be prevented from asserting his right of ownership by someone who simply refuses to acknowledge that right” (*Greenberg*, at para. 44).
9. I am in complete agreement with that reasoning.
10. Like the respondents in *Greenberg*, the respondent company in the case at bar is not arguing that it became the owner of the appellant’s shares by way of acquisitive prescription. It is simply refusing to acknowledge the appellant’s status as a shareholder, and its argument is that its majority shareholder, Mr. Rosati, now owns his shares as a result of an alleged informal verbal agreement between the appellant and Mr. Rosati. However, I would stress once again that the situation in this case differs from the one in *Greenberg*, as Mr. Rosati is not a party to the litigation and therefore cannot claim acquisitive prescription in relation to the shares. Nor can the respondent company do so on his behalf.
11. Conclusion
12. For all these reasons, I would allow the appeal, revoke the resolution to transfer the appellant’s shares and order that the respondent company’s registers be rectified to reflect the appellant’s status as a shareholder, with costs throughout.

*Appeal dismissed with costs,* Côté J. *dissenting.*

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Solicitors for the respondent: Langlois lawyers, Montréal.