The Profiling Oppression Proceedings Study: Final Report

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Abstract

This report presents findings from empirical analysis of oppression actions filed in the Supreme Court of Victoria over a five-year period (2009-14). It draws on data from the court's files and electronic case management system to construct a profile of oppression actions. In doing so, it sheds new light on the characteristics of these matters and provides a baseline for the future evaluation and optimisation of their management by the Supreme Court.

Contents

1. Background and overview

The Profiling Oppression Proceedings (POP) Study is a collaboration between the Australian Centre for Justice Innovation (ACJI) at Monash University and the Commercial Court of the Supreme Court of Victoria. ACJI is a research centre in the Monash Faculty of Law with a focus on high-quality empirical and evaluation research to support effective civil justice innovation.

The study investigates the prevalence and characteristics of oppression proceedings under the *Corporations Act 2001* (Cth) in the Supreme Court of Victoria. It draws on administrative data obtained from the Court's electronic case management system and hard copy review of court files. Through this analysis, the study seeks to provide an evidence base for the Court to consider in the future management of these matters.

This report consists of the following parts:

Part 1 (this part) provides a brief overview of the study background and approach.

Part 2 presents a profile of the characteristics of oppression proceedings in the period 2009-14 (n=148 cases), the period **before** the Court commenced its program of case management initiatives.

Part 3 makes suggestions about future evaluation of the Court's management of oppression proceedings.

Part 4 summarises the key messages of the report, identifies the limitations of the research and proposes next steps.

1.1 Case management initiatives relevant to oppression proceedings

In recent years the Supreme Court has undertaken an iterative program of case management initiatives to facilitate the just, efficient, timely and cost effective resolution of the real issues in dispute in oppression proceedings.

On 1 October 2014, the Court began a six-month case management pilot program,[1] with the aim of exploring resolution of disputes at an early stage, 'before significant costs have been incurred'.[2] The pilot elements included:

- new prescriptions as to the format and content the affidavit in support of the originating process (no more than 3 pages, with a summary of the facts alleged to constitute the oppression and exhibiting a current ASIC search);
- applicants being made returnable for an initial conference before an Associate Judge, which parties and practitioners were to attend, and for the associate judge to make subsequent directions;
- the option of immediate referral to a Judge for management in instances

[1] Supreme Court of Victoria, *Practice Note No 5 of 2014 – Applications under s 233 of the Corporations Act 2001 (Cth) – oppressive conduct of the affairs of a company* (2014).
[2] PN 5 of 2014, 2.

where the pilot procedure was inappropriate; and
- where the dispute had not resolved, for the Associate judge to provide further management or refer the proceeding to a Judge.[3]

The initial pilot ceased on 1 April 2015.[4] The streamlined case management approach explored in the pilot was subsequently re-introduced, with some changes, on 1 September 2015 ('the Revised Pilot'). The changes included requirements that:

- applications be made via RedCrest;
- supporting affidavits provide a preliminary estimate of the value of the shares in the company, where practicable, and that practitioners have regard to authorities providing examples of relevant conduct in preparing supporting affidavits;
- upon initiation, matters be entered into the Judge-managed Corporations List;
- the Corporations List Managing Judge review proceedings upon initiation to determine whether management under the Pilot or by a Judge is more appropriate;
- consent orders not be made in advance of the initial conference in a proceeding; and
- Pilot matters be mediated by an Associate Judge or Judicial Registrar.

The Revised Pilot was extended to 1 August 2017[5] and then 30 April 2018.[6] On 18 May 2018, the case management program developed and refined through the pilot was implemented as the Court's ongoing approach.[7]

The POP Study was developed to enable the Court to have access to an empirical profile of the prevalence and characteristics of oppression proceedings for future evaluation and optimisation of its management of these cases.

1.2 What is administrative data?

The POP Study draws on the rich resource that is the Court's administrative data. Administrative data refers to information and records routinely collected in the course of the administration of programs or services, rather than for a specific research purpose.[8] Often this data is collected for reporting purposes, or even simply to facilitate the functions of an organisation.

The benefits of using administrative data for research flow from the fact that it is an existing data source. Accordingly, analyses using this data is are often low cost, particularly compared with primary data collection (such as using interviews or

[3] PN 5 of 2014, 2-3.
[4] Supreme Court of Victoria, *Practice Note No 14 of 2015 – Applications under s 233 of the Corporations Act 2001 (Cth) – oppressive conduct of the affairs of a company* (2015), 1.
[5] Supreme Court of Victoria, *Practice Note SC CC 8 – Oppressive conduct of the affairs of a company* (2017).
[6] Supreme Court of Victoria, *Practice Note SC CC 8 – Oppressive conduct of the affairs of a company (First revision)* (2017).
[7] Supreme Court of Victoria, *Practice Note SC CC 8 – Oppressive conduct of the affairs of a company (Second revision)* (2018).
[8] David McLennan (2018), *Data quality issues in administrative data*, Administrative Data Research Network (UK) (available from https://www.adrn.ac.uk/media/174594/dataquality_final.pdf).

surveys).[9] Service user or participant burden is commonly minimal or non-existent.[10] Additionally, administrative datasets are commonly collected over an extended period of time, and readily allow changes in service provision and outcomes to be monitored.

Nonetheless, there are challenges associated with research using this kind of data. Firstly, because data has been collected for non-research purposes, it may not fit research questions of interest. Data is limited to the scope of the routinely-collected information, and it may not be possible to supplement it. There may also be costs associated with cleaning administrative data to make it suitable for analysis. A range of data quality issues may compromise effective use of administrative data. These include:

- constraints on quality control;
- inaccuracy in data entry;
- incomplete data; and
- inconsistency in the meaning of data collected over time or by different data contributors.[11]

1.3 Study cases

The cases studied are oppression remedy applications pursuant the *Corporations Act 2001* (Cth) lodged in the Supreme Court of Victoria between 1 September 2009 and 30 September 2014 (a five-year period). This timeframe was selected as it represented the beginning of the period in which the Court regarded its electronic data system as capable of reliably identifying oppression proceedings, and the end-point preceding the pilot commencement. Further information about the strategy for identifying study cases is provided in **Appendix A**.

1.4 Overview of study variables

A range of variables were collected or derived for analysis in the study. These included case characteristics, claim characteristics, applicant characteristics and company characteristics. The variables are summarised below.

(i) Case characteristics

- date proceeding commenced and concluded;
- whether affidavit in support filed with originating process;
- whether company extract filed with originating process;
- case duration (months);
- whether mediation ordered;
- time from case commencement to first mediation;
- number of directions hearings;

[9] Ibid.
[10] Statistics Canada (2017), *Use of administrative data* (available from http://www.statcan.gc.ca/pub/12-539-x/2009001/administrative-administratives-eng.htm).
[11] McLennan, above n 8; Statistics Canada, above n 10.

- number of affidavits filed by the applicant;
- total length of affidavits filed by the applicant; and
- mechanism of case disposition (settled or judgment).

(ii) Claim characteristics

- time span of alleged oppressive conduct (years);
- family context for dispute; and
- nature of relief sought (provisions of *Corporations Act 2001* (Cth) s 233(1)).

(iii) Applicant characteristics

- applicant age;
- shareholder type (minority shareholder, 50% shareholder, majority shareholder, unknown, other (eg liquidator))
- whether applicant a current or previous director of company;
- whether legally represented; and
- identity of solicitor firm.

(iv) Company characteristics

- company type;
- nature of company business;
- number of directors;
- number of members; and
- time from company registration to commencement of proceedings (years).

1.5 Data collection and analytical approach

The study uses quantitative content analysis to explore administrative data. Data collection was undertaken by three trained coders at the Supreme Court of Victoria Commercial Court Registry, using data from the Court's electronic case management system and hard-copy court files (including such court documents as originating processes, affidavits and court orders).

We used frequency counts and percentages to describe the characteristics of the cases, and chi-square and t-tests as well as linear and logistic regression, as appropriate, to explore differences between variables of interest across sub-groups. We used a survival plot to present case duration. All analyses were conducted using Stata SE software, Version 14,[12] with significance set at $p \leq 0.05$.

We implemented a range of steps to ensure accuracy and completeness in the data collection.[13] These included:

- working closely with the Court on identifying cases for the study, and checking

[12] StataCorp, *Stata Statistical Software: Release 14* (StataCorp LP, College Station, 2015).
[13] See further Mark A Hall and Ronald F Wright, 'Systematic Content Analysis of Judicial Opinions' (2008) 96 *California Law Review* 63.

the robustness of the sample;

- training of coders and repeated piloting of the data collection materials (coding handbook and coding sheet); and
- testing the inter-coder agreement of the collected data.

To test the level of intercoder agreement, a random sample of 20 cases was reviewed on six key variables by a coder blinded to the outcome of the initial review. The level of intercoder agreement was assessed by calculating estimates and 95 per cent confidence intervals for the interclass correlation coefficient (ICC) for continous variables (using an absolute-agreement, 2-way mixed-effects model) and Cohen's kappa for dichotomous variables (*K* score). Where there was complete agreement between raters it was not possible to calculate a *K* score so we have presented this as percent agreement. These measures of inter-rater reliability are presented in Table 1 below. They demonstrate excellent levels of agreement.

Table 1. Inter-rater reliability tests

Variable	**Percent agreement**	***K* score**	**ICC**	**95% CI**
Case start date	100%			
Affidavit filed with originating process	100%			
Mediation date		0.89		0.89-0.94
Case end date		0.95		0.94-1.00
Number of applicant affidavits			0.86	0.68-0.94
Number of directions hearings			0.96	0.91-0.99

2. A profile of oppression cases in the Supreme Court of Victoria, 2009-14

The purpose of the analysis presented in this Part is to establish a baseline profile of oppression proceedings in the Supreme Court of Victoria **before** the introduction of the case management initiatives described above. Identifying the characteristics of these proceedings will make it possible to compare the characteristics of cases dealt with under the streamlined case approach. Accordingly, the research provides valuable information for future evaluation of the Court's approach.

First, we present the profile of the typical oppression claim (based on the characteristics of cases and parties involved). We then present a series of more detailed analyses of key characteristics.

2.1 The typical oppression claim

One useful way to understand the profile of oppression actions is to consider their typical or most common characteristics. The profile below does this, by presenting a profile of the typical case commenced in the period 1 September 2009 to 30 September 2014.[14]

Case characteristics:

- the median case **duration** was **7 months** (mean 10.6 months) from commencement to conclusion;
- the case was resolved by **settlement** rather than judgment;
- the median time from commencement to first **mediation order** was **4 weeks** (mean 10.6 weeks);
- there were **two directions hearings** scheduled (mean 3.6 hearings); and
- the applicant filed **two affidavits** (mean 3.4 affidavits) of a median total length of **19 pages** (mean 30 pages).

Claim characteristics:

- the alleged **oppressive conduct** spanned **18 months** (mean 30.6 months)
- there was not an explicit **family context** to the dispute (this characteristic was present in 33 per cent of cases), and
- the application sought orders for the **purchase of shares** (CA ss 233(1)(d) and (e)).

Party characteristics:

- the applicant was **male** and **legally represented by a firm** who was not acting in another oppression action in the relevant timeframe (2009-14)
- the company was a **proprietary company**, in the business of **financial or insurance services** or **construction**

[14] This profile presents the median values (unless otherwise specified) for continuous variables, such as case duration, and the most common characteristic for categorical variables, such as gender.

- the company had **two directors** (mean 2.5 directors)
- the applicant was a **minority shareholder** (as opposed to a 50 per cent or majority shareholders), and one of **three members** of the company (mean 3.4 members), and
- the median **age of the company** (that is, time from company registration to commencement of proceedings) was **7.4 years** (mean 10.4 years)**.**

2.2 Case characteristics

We obtained data in relation to n=148 oppression remedy cases commenced between 1 September 2009 and 30 September 2014. Only one of these cases was ongoing as at the data of completion of data collection (April 2019).

i. Case disposition and duration

The vast majority of concluded study cases were settled (133/147 or 90.5 per cent). The remaining 9.5 per cent (14/177) were disposed of by judgment.

Case duration data was available for 145 concluded cases. Amongst these, case duration ranged from 1 day to 4 years and 3 months, with an average duration of 11 months. Table 1 presents the average case duration by commencement year.

Table 1: Case duration

Year commenced	n	Average duration (mths)	Median duration (mths)	Range (mths)
2009	4	12.0	9.5	5-26
2010	22	12.0	6.5	1-51
2011	31	8.3	5.0	0-34
2012	39	13.1	8.0	0-50
2013	20	9.1	8.0	0-26
2014	29	9.6	8.0	1-41
All years	**145**	**10.6**	**7.0**	**0-51**

In a univariate linear regression, **there was not a statistically significant association between case year and case duration (p=0.549)**.

Another way of understanding case duration is to consider the proportion of cases remaining open over time. We calculated the proportion of study cases remaining open over time and present this information as a survival plot (Figure 1). This plot illustrates that:

- 50 per cent of cases were concluded within 30 weeks;
- 73 per cent of cases were concluded within one year (52 weeks); and
- 90 per cent of cases were concluded within two years (104 weeks).

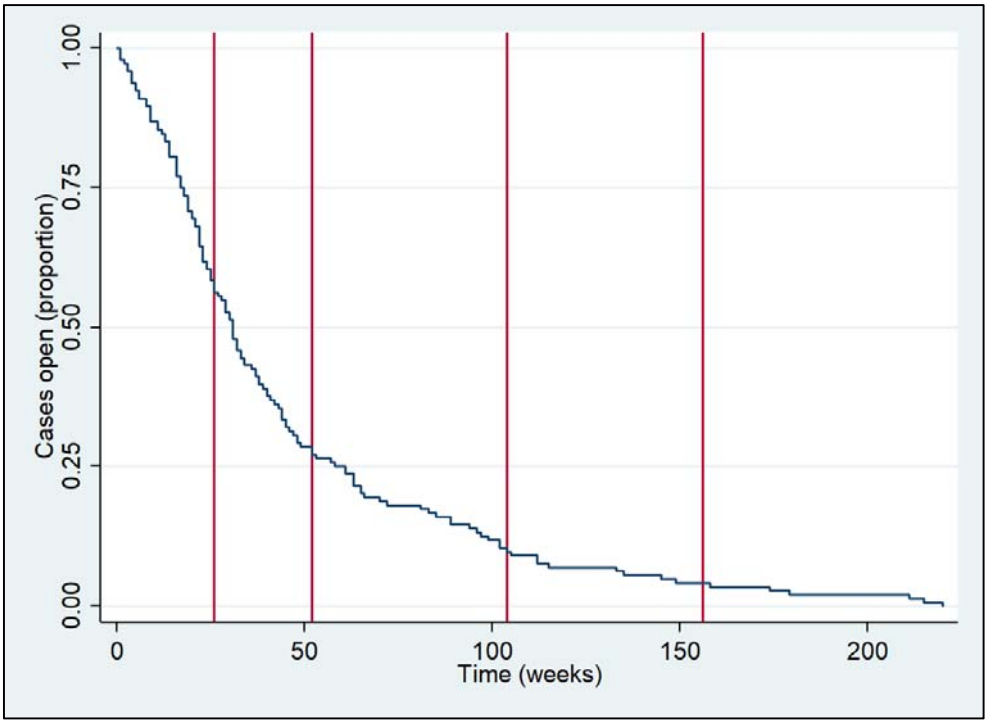

Figure 1: Survival plot of case duration (n=145)

ii. Presence and timing of mediation orders

Data was collected from the first mediation order in each case. The date of the first order was noted, and the length of time between the filing of the originating process and the mediation order was calculated.

Mediation orders were present in 108 of 148 cases (73 per cent). The median time between case commencement and the first order for mediation was 5 weeks (mean 10.4 weeks; range 0-208 weeks). In a univariate linear regression model, **there was not a statistically significant association between case year and time to mediation and case year (p=0.318).**

iii. Number of directions hearings

Data on the number of directions hearings scheduled was collected for almost all cases (n=147). In total, there were 530 directions hearings scheduled across the cases. The mean number of directions hearings per case was 3.6, with a range from 0 to 30. In almost one fifth of cases (n=27, 18 per cent of cases), no directions hearings were scheduled. In 80 per cent of cases, there were 5 or fewer directions hearings scheduled; conversely, the top 10 cases accounted for 30 per cent of directions hearings (n=160). As would be expected, there was a linear relationship between case duration and number of directions hearings (that is, the longer a case's duration, the more directions hearings occurred) (Figure 2).

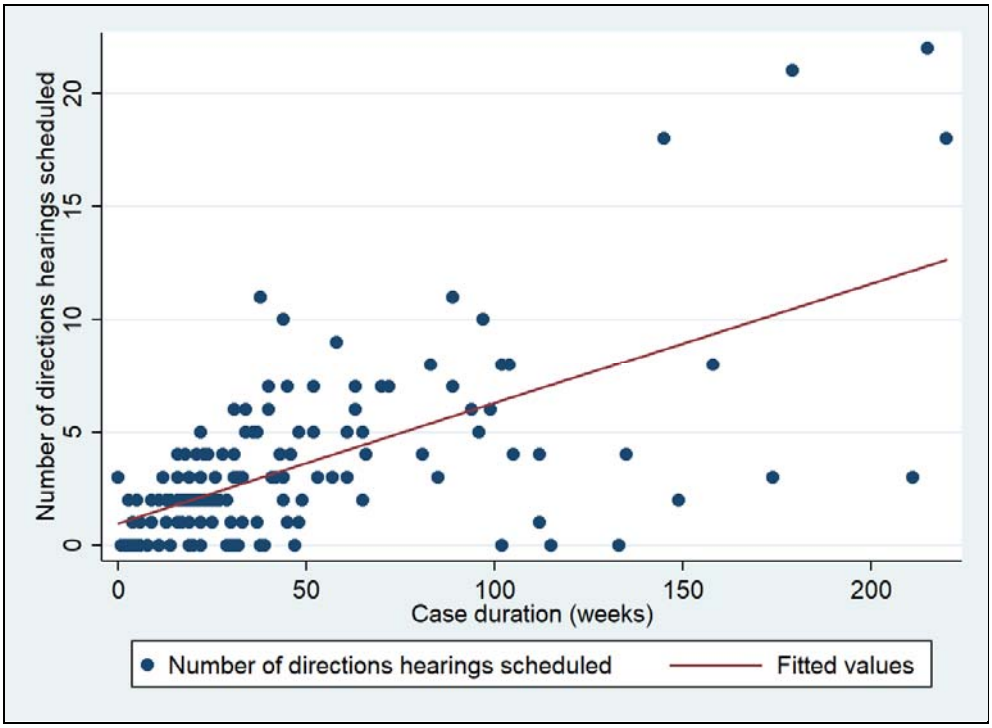

Figure 2: Number of directions hearing by case duration (n=145)

We examined the odds of a large number of directions hearings occurring (n=6 or more) using binary logistic regression. In particular, we examined whether cases involving small companies (defined as having 2 or fewer directors **and** 2 or fewer members) were more or less likely to have a large number of directions hearings than other cases.

We found that **the odds of having a large number of directions hearings (6 or more) were 72 per cent lower for cases involving small companies than for those involving larger companies** (OR 0.28, 95% CI 0.11-0.71, p<0.01).

iv. Applicant affidavit material

Data on the number of affidavits filed by applicants was available for 144 cases (97 per cent of study cases). The average number of applicant affidavits across the cases was 3.4. The average length of applicant affidavit material was **29 pages** across all study cases.

2.3 Party characteristics

i. Applicant gender and legal representation

The gender of the applicant was ascertainable in 93 per cent of cases (137/148). The applicant was male in more than four out of every five cases where gender was apparent (84 per cent), while the applicant was female in 22 cases (16 per cent).

Law firm data were obtained for 146 cases. There was one self-represented applicant in the study cases. There were 119 individual law firms who acted for a plaintiff in at least one of the study cases. Fifteen firms acted in more than one case; collectively, these repeat-appearance firms acted in 41 cases (28 per cent of study cases). The greatest number of cases in which a single firm acted was six, with another firm having acted in five cases.

ii. Company characteristics (type, age, membership and director profile)

Almost all company respondents in oppression proceedings in the study were **proprietary companies limited by shares** (n=145). There was one unlisted public companies limited by guarantee and data were missing for the remaining two companies.

We derived the age of the respondent companies by calculating the number of years that had elapsed from the date of company registration to the date proceedings were issued. We obtained the registration date by searching the company's Australian Company Number on the public ASIC search website. The average duration between company registration and commencement of the oppression proceeding was 10.4 years (range 5 months to 79 years). These data are summarised below in Table 2.

Table 2: Company age

Years from company registration to start of proceeding	Cases n (%)
0- 5	63 (43.5)
6-10	28 (19.3)
11-15	29 (20.0)
16-20	9 (6.2)
21-25	4 (2.8)
26 or more	12 (8.3)

Data on the number of members in the company in dispute was available for 75 per cent of cases (111/148). Companies had an **average of 3.4 members** (range 1-27). More than a third of cases (37 per cent) involved companies with only one or two members. Data on the number of directors in the company central to the application was available in 74 per cent of cases (110/148). Companies had an **average of 2.5 directors** (range 1-12). Nearly two thirds of cases for which data was available (71/110, 65 per cent) had two directors.

iii. Nature of company business activity

The nature of the business of companies involved in study proceedings was classified according to the Australian Bureau of Statistics *Australian and New Zealand Standard Industry Classification* (ANZSIC). This classification system enables business activities to be grouped in standard ways. There was sufficient data to undertake this analysis for 130 cases (88 per cent of the study cases).

There was a great deal of diversity in the nature of the business types in the study cases (Figure 3).

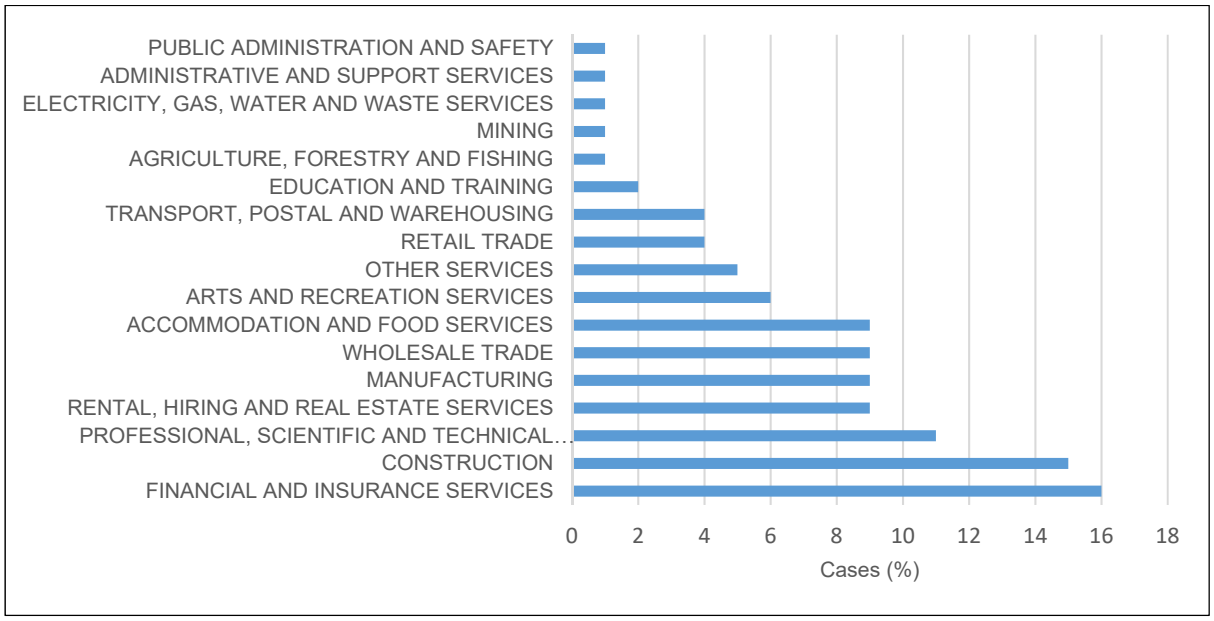

Figure 3. Business activity of respondent company (n=130)

The most common business activity was **financial and insurance services** (16 per cent of cases), including trustee services, real estate and financial planning, followed by **construction** (15 per cent).

2.4 Dispute attributes

i. Time span of allegations

The affidavit filed in support of the originating process (or earliest applicant affidavit) was examined in each matter to identify how long the alleged oppressive conduct had been occurring.

Data on allegation timespan was available for 126 cases (85 per cent of cases). The timespan of allegations ranged from less than one month to fifteen years. The average **timespan of allegations was 2.6 years**, with a median of 18 months.

ii. Family dimension

Applicant affidavits in support of the originating process were examined to determine whether any of the parties in dispute were family members. There were 131 matters (89 per cent) with sufficient information to undertake the analysis of the family dimension: **33 per cent (43/131) of cases involved disputing family members**, and 67 per cent (88/131) did involve a family dimension.

We examined the odds of having a family dimension to the dispute based on

different business types using binary logistic regression. In particular, we examined whether cases involving companies in financial and insurance services and construction were more or less likely to have a family dimension to their disputes than other cases.

We found that **the odds of having a family dimension to the dispute were 2.3 times greater for cases involving finance and insurance or construction companies than other cases** (OR 2.29, 95% CI 1.05-5.01, *p*=0.036).

We examined whether there was an association between the age of the company in dispute and the presence of a family dimension using univariate linear regression. This analysis showed that **cases with a family dispute involved companies 4.2 years older than those in cases without a family dimension** (95% CI 0.40-8.07, *p*=0.031).

We also explored the association between the duration of the alleged oppressive conduct and whether there was a family dimension to the dispute. Though the average duration of alleged wrongdoing was 26.7 months in disputes without a family dimension and 39.6 months in disputes with a family dimension, a t-test suggested that the difference was not statistically significant (*p*=0.057).

iii. Relief sought

Data on the nature of the relief sought at the outset of the claim was obtained from the originating process for 141 cases (95 per cent). Data was collected for the potential orders the Court can make listed in s 233(1) of the *Corporations Act 2001* (Cth). The number and proportion of cases seeking each kind of order is set out in Table 3 below.

Table 3: Relief sought (n=141)

Order sought (*CA* s 233(1))	Cases n (%)
(a) winding up	74 (53%)
(b) company constitution be modified or repealed	2 (1%)
(c) regulating the conduct of the company's affairs	14 (10%)
(d) purchase of shares by any member	99 (70%)
(e) purchase of shares with reduction of capital	98 (70%)
(f) for the company to engage in/discontinue proceedings	11 (8%)
(g) authorising a member to engage in/discontinue proceedings in the name of or on behalf of the company	13 (9%)
(h) appointing a receiver or receiver and manager	16 (11%)
(i) restraining a person from specified conduct or acts	30 (21%)
(j) requiring a person to do a specified act	49 (35%)

Orders for the purchase of shares (s 233(1)(d) and (e)) were the most common, followed by s 233(1)(a). There was near total overlap in the cases in which relief under CA s 233(1)(d) and (e) was sought (98 cases, or 70 per cent). Additionally, in

54 cases (39 per cent), the applicant sought an order under s 233(1)(d) or (e) **and** (a).

We explored associations between the type of relief sought and other case characteristics using bivariate logistic regression. In particular, we examined whether applicants in cases involving small companies (defined as having 2 or fewer directors **and** 2 or fewer members) were more or less likely to seek relief under s 233(1)(i) (restraining a person from specified conduct or acts) than in other cases.

We found that **the odds of seeking relief under s 233(1)(i) were 71 per cent lower in cases involving small companies than in those involving larger companies** (OR 0.29, 95% CI 0.11-0.82, *p*=0.02).

3. A proposal for evaluating case management of oppression proceedings

The POP Study has demonstrated the feasibility of using the Court's administrative data resources to build a baseline profile of case characteristics in a specific type of litigation, namely oppression remedy proceedings. High-quality information about the operation and success of case management initiatives may provide valuable evidence for the purposes of business planning and the development of new programs. It also adds to cross-institutional and jurisdictional understanding of good practice. As the Productivity Commission has noted, there is a dearth of high quality research and evaluation about what works in case management.[15] It is beneficial for case management interventions to be evaluated to inform improved practice within a court and also to facilitate learning across jurisdictions.[16]

The development of the pre-pilot profile of oppression remedy proceedings in this research makes it an opportune time to consider an evaluation of the case management program. The design of an evaluation would be shaped by the Court's needs and preferences, together with the appropriate timeline and available resources. Below we provide an indication of the potential objectives, tangible outputs and methods that could be used in this work.

The objectives of this research could include:

- assessing the impacts of the oppression proceedings program on outcomes of interest (for example, case duration, key case events such as directions hearings, the volume of materials filed, use of court resources and stakeholder experiences);
- identifying key stakeholder perceptions of the facilitators of, and barriers to, the success of the program;
- establishing how the program has been implemented;
- exploring opportunities for further improvement; and
- developing a framework for conducting similar evaluations of other initiatives to improve the evidence base for business planning and other purposes.

The tangible outputs of this research could include:

- a decision tool to identify suitable cases for referral to different modes of case management and intervention practices, combining the Court's accumulated expertise, user experience and perspectives and quantitative analysis of administrative data resources;
- clear guidance on the way the Court's vast administrative data resources could be operationalised for evaluation research, both internally and externally;
- a rigorous and tested evaluation framework for this and related case management projects and programs at the Court; and

[15] Productivity Commission *Access to Justice Arrangements: Inquiry Report* (2014), Chapters 11 and 25.
[16] Ibid, Recommendation 25.4.

- reliable evidence of the impacts of the oppression proceeding case management initiatives for the Court to use.

The evaluation design could include a combination of the following data collection methods:

- interviews or focus groups with key stakeholders (eg Judges and Judicial Registrars, key Registry personnel, litigants and legal practitioners (barristers and solicitors, for example, participants in the program and representatives of user groups));
- review of administrative data resources (including assessing the extent to which the more extensive use of e-filing creates new opportunities and efficiencies for empirical research end evaluation);
- quantitative analyses using administrative data, including the development of predictive models for outcomes of interest, and a profile of ‘red flags’ for consideration in determining the appropriate case management pathway for matters; and
- a literature review and environmental scan to identify good practices in comparable settings and jurisdictions.

4. Conclusions

This report has presented a range of findings based on the POP Study's empirical analysis of oppression remedy proceedings commenced in the Supreme Court of Victoria from 2009-14. Data for the study was obtained through physical inspection of court files, together with review of information held on the CourtView system.

The POP Study provides the evidence base necessary to evaluate the Supreme Court's case management strategies for oppression proceedings. Understanding the attributes of claims that pre-date the Court's initial 2014 pilot program is important in order to measure the impact and effectiveness of the case management approach. The research could also provide a template for building baselines for evaluating other case management initiatives in the Commercial Court.

4.1 Key findings

The POP Study has established a baseline profile of OR proceedings commenced in the Supreme Court. Additionally, the POP Study has demonstrated that it is feasible to establish such a profile through the application of content analysis techniques to the Court's administrative data.

The POP Study has shed light on the key features of OR proceedings, including the characteristics of the parties, their claims and the course of the matters. Some of these findings confirm the practice-based evidence and observations of Court personnel, for example, that the proceedings often involve small companies with few shareholders and directors. Other findings are perhaps more challenging to the perceived profile of OR matters: for example, just over a third of the companies involved in study cases were engaged in a within-family dispute.

Importantly, the findings make it possible for future work to assess the effectiveness of the Court's post-2015 case management strategies.

4.2 Study limitations

A number of limitations to the research should be considered. Missing cases or data may have an impact on the accuracy of the study findings. A larger sample size in future work would enable more sophisticated analyses to be conducted. Finally while we took a number of steps to facilitate accurate data collection (as detailed in Part 1.5 above), we cannot exclude the possibility of errors. In particular, the use of administrative data for this research necessarily relies upon the quality and consistency of data that was collected for operational (non-research) purposes.

4.3 Next steps

We look forward to the opportunity to discuss this Report with the Court and to receiving any feedback on how the research might be used or improved.

4.4 Acknowledgments

A number of people made a significant contribution to this research through their work and support. I am sincerely grateful to the following people, without whom the research would not have been possible:

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- Victoria Hurley, Deputy Registrar (Legal), Commercial Court, Supreme Court of Victoria;
- Vicki Libesson, Assistant Registrar (Legal), Commercial Court, Supreme Court of Victoria; and
- The Honourable Justice Michael Sifris, Supreme Court of Victoria.

Appendix 1: Identifying cases for inclusion in the study

The identification of relevant cases for the study proceeded in stages.

In October 2015, Commercial Court Registry staff identified a list of proceedings classified as oppression remedy matters that had commenced in the period 1 September 2009 to 31 August 2015. These matters comprised the initial study dataset (n=104).

The research team collected data on study cases from hard-copy court files (in particular, originating processes, affidavits in support and Australian Securities and Investments Commission (ASIC) company search records, where available) and the Court's electronic case management system (CourtView).

In March 2017, the Court was presented with preliminary findings from analysis of the initial dataset, and a revised strategy for identifying cases for the research was implemented. The Court identified an opportunity to review a broader category of corporations law cases to identify additional OR matters that had not been classified using the specific OR code. In July 2017 the Court ran a Registry report on the 'Corporations Law – Other' category to identify whether there were any additional OR matters in the period 1 Sept 2009 – 31 Aug 2015. This report identified 991 potentially relevant files.

This list of proceedings was reviewed by the research team. The following case types were excluded on the basis of Registry staff advice and emerging findings that they were unlikely to be oppression proceedings:

- cases in which the plaintiff company was in liquidation or under administration;
- cases in which the plaintiff was a liquidator;
- cases in which the defendant was the Australian Tax Office (ATO) or the Australian Securities and Investments Commission (ASIC);
- cases in which the plaintiff was the ATO or a bank, and
- cases in which there was no respondent or defendant.

The remaining cases were examined through initial searches of the CourtView system. A number of further cases were excluded on the basis that the legislation cited in judgments and orders recorded on CourtView indicated they were not oppression remedy matters.

The remaining files were requested from the Court Registry and manually reviewed to identify whether they were in fact OR proceedings. Through this process of review, a further 96 relevant matters were identified that had not been included in the earlier analysis, bringing the total number of cases for analysis to 200. Through discussion with key Court stakeholders it was decided to focus this report on the pre-pilot cases in order to first establish the baseline characteristics of the pre-pilot sample (n=148 cases).