

SHAREHOLDERS' REMEDIES
UNDER BRITISH COLUMBIAN CORPORATE AND SECURITIES LEGISLATION

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1. Introduction [§0.1]

Ownership of a share entitles a shareholder to participate in the governance of a company through the “bundle of rights” that attaches to that share. Shareholders’ remedies are the means by which shareholders can enforce those rights. Some rights are personal to the shareholder, so that only the shareholder may enforce them. Other rights belong to the company, yet a shareholder may enforce them on the company’s behalf. Depending on the right affected, different remedies are provided under corporate and securities statutes.

This chapter describes the main shareholders’ rights and remedies under the *Business Corporations Act*, S.B.C. 2002, c. 54, and the *Securities Act*, R.S.B.C. 1996, c. 418. It reviews key legislative provisions and major decisions, provides resources for further information, and is intended to assist shareholders and practitioners who are facing a shareholders’ dispute for the first time or who require some assistance in determining the most appropriate course of action. However, it does not contain exhaustive commentary. It also does not discuss injunctive relief (see *Boffo Family Holdings Ltd. v. Mountainview Developments Ltd.*, 2010 BCSC 560, for a current discussion of that law). Finally, it does not discuss the most basic shareholders’ recourses when dissatisfied with a company’s affairs: calling meetings, passing of resolutions and electing new directors.

2. Remedies and Restrictions [§0.2]

2.1 Articles, Bylaws and Resolutions [§0.3]

The company’s constating articles or bylaws documents may include remedies, restrictions, or procedures that will assist resolution of a dispute. These should be considered in light of remedies provided under the governing corporate and securities legislation. Consider also whether they need to be exhausted before seeking the assistance of the court, as any dispute resolution clause (such as an arbitration clause) may affect the ability of a court to intervene.

Resolutions and proposed resolutions may be necessary evidence for a claim. Any relevant resolutions should be identified and considered in the context of the remedy sought.

2.2 Shareholders' Agreements [§0.4]

A shareholders' agreement among shareholders and the company may provide for additional remedies or restrictions on rights in the event of a dispute (for example, dispute resolution procedures). Any agreement should be reviewed, as it may contain provisions that facilitate resolution or can be used for negotiating leverage. If the business is a partnership, the same may be true of a partnership agreement. A shareholders' agreement may contain a buy/sell or "shotgun" provision. Generally speaking, such provisions enable a shareholder, on the occurrence of certain events, to deliver a notice to the company or the other shareholders requiring them to either buy the shareholder's shares or sell their shares to the shareholder on specified terms. If there is such a provision, much will depend on the contemplated triggering events and the specified procedures. If a shareholder wishes to use such a provision, the procedures must be followed precisely. Much will depend on the relative economic positions of the parties, but in many cases such a provision can provide an exit for an unhappy shareholder. A shareholders' agreement may contain a put/call provision. Such provisions, again in specific circumstances, entitle either the company to purchase a shareholder's shares (a "call") or the shareholder to require the company to purchase their shares (a "put"), according to a specified procedure. Considerations similar to those for shotgun provisions arise.

A shareholders' agreement may also contain a right of first refusal, requiring a shareholder wishing to sell shares to first offer them to the other shareholders. While such a provision is often viewed as an impediment to the exit of an unhappy shareholder, the circumstances may provide exit leverage: if an unhappy shareholder is able to negotiate an offer to purchase its shares with a third party, it will then be able to present that offer to the other shareholders. That will generally require them to either match the third party's price and purchase the shares themselves, or permit the shareholder to sell to the third party. Either way, the shareholder exits.

As discussed below, a shareholders' agreement may affect the ability to succeed in an oppression action and may be a factor to be considered in other causes of action.

2.3 Jurisdiction and Procedure [§0.5]

This chapter focuses on British Columbia legislation. When considering a shareholders' dispute, lawyers should confirm they are dealing with a British Columbia company and if not, consider the applicable legislation and case law of the other jurisdiction. When dealing with entities incorporated outside British Columbia, the governing legislation may provide that the court of the domicile shall hear particular applications. Where this is so, a British Columbia court may refuse to apply the corporate law of the other jurisdiction and may find that British Columbia is not the proper forum for determination of the remedy being sought (*Voyage Co. Industries Inc. v. Craster*, [1998] B.C.J. No. 1884 (QL)(S.C.)).

However, comparisons between corporate statutes from different jurisdictions may yield useful results as other jurisdictions may have more restrictive or broader provisions. Likewise, comparisons between corporate and non-corporate statutes may be helpful where statutory language is similar.

Certain corporate and securities provisions may apply to entities other than companies. For example, an incorporated society may be subject to corporate provisions that are incorporated into the *Society Act*, R.S.B.C. 1996, c. 433 (see, for example, *Wang v. British Columbia Medical Association*, 2010 BCCA 43).

A party may need to decide whether to bring an action (by Notice of Civil Claim) or a proceeding (by way of Petition). Lawyers should also consider whether remedies outside of the corporate statutes (such as remedies for the tort of negligent misrepresentation) should also be advanced. The choice of remedy may well decide the procedural form to take. Keep in mind that a derivative action may be combined with a claim in oppression (*Discovery Enterprises Inc. v. Ebc Industries Ltd.* (1998), 58 B.C.L.R. (3d) 105 (C.A.)). Oppression claims involving multiple shareholders may be brought as either a representative claim or as a class action in British Columbia (*Jellema v. American Bullion Minerals Ltd.*, 2010 BCCA 495, rev'ing 2009 BCSC 1605).

2.4 Standing, Costs and Limitation Periods [§0.6]

As explored in more depth below, the availability of potential remedies may be affected by one party's position *vis a vis* the other parties in the dispute. This is an issue of "standing". Any interested party has standing to claim some remedies. Only specified persons have standing to seek others. Whether a party has standing to seek the desired remedy is an important initial consideration.

A further consideration will be indemnification. For some remedies, a party may be entitled to have all of his or her costs paid by the company or by another person. In other cases, there will be no recovery of costs. This costs/indemnity issue should be considered at the outset.

Finally, it is critical to determine the applicable limitation period for bringing a claim. Under the *Securities Act*, for example, some limitation periods are as short as 180 days while other causes of action can be asserted up to six years after the event. An oppression claim must be made in a "timely" manner, while the oppression can still be remedied (*Business Corporations Act*, s. 227(3); *Orr v. Sojitz Tungsten Resources Inc.*, 2010 BCSC 66). The "discoverability" principle relating to the triggering of the limitation period has been intentionally excluded from some provisions in the *Securities Act* (*British Columbia Securities Commission Re Roger F. Bapty*, 2006 BCSC 638).

3. Court-ordered Meetings, Reviews of Shareholders' Proposals, and Appointment of Auditors [§0.7]

3.1 Overview [§0.8]

Apart from the right to pass resolutions identified earlier, shareholders in a company have two further basic rights; both require an annual general meeting to be exercised. First, shareholders elect the board of directors that manages the company. Second, they decide whether or not to have the company's financial statements audited (*Walker v. Betts*, 2006 BCSC 128).

Corporate legislation provides shareholders with the ability to apply to court to have the court set shareholders' meetings, review rejected shareholders' proposals, and appoint an auditor.

3.2 Court-ordered Shareholders' Meetings [§0.9]

The court may order a shareholders' meeting if it is impracticable for any reason for the company to call or conduct a meeting as required, if the company fails to hold a meeting as required, or for any other reason the court considers appropriate. The meeting of shareholders will be called, held and conducted in a manner the court considers appropriate. The court may also give directions it considers necessary to call, hold, and conduct the meeting.

(a) Statutory Reference [§0.10]

This remedy is set out in s. 186 of the *Business Corporations Act*.

(b) Deciding Whether to Seek a Court-ordered Shareholders' Meeting [§0.11]

(i) Standing Issues [§0.12]

The company, a director of the company, or a shareholder of the company who is entitled to vote at the meeting has standing to apply to court for this remedy. The court, of its own motion, may also impose this remedy on a company.

For this remedy, a "shareholder" is a registered shareholder only.

(ii) Costs Issues [§0.13]

Section 186 does not expressly provide for indemnity by the company or by another person for applications under this section.

(c) Key Cases and Interpretation [§0.14]

In the absence of a legitimate advantage to be gained by delaying an annual general meeting, the company should hold the meeting in accordance with the company's articles, the *Business Corporations Act*, and the wishes of the shareholders (*Rosemont Enterprises Ltd. v. Mercury Industrial*, 2005 BCSC 1619).

The court has a wide discretion to order meetings but it should be exercised reasonably in accordance with principles of corporate and securities law (*Brio Industries Inc. v. Clearly Canadian Beverage Corp.* (1995), 8 C.C.L.S. 1 (B.C.S.C.), with additional reasons at (1995), 11 B.C.L.R. (3d) 343 (S.C.)). See also *Re Morris Funeral Services Ltd.* (1957), 7 D.L.R. (2d) 642 (Ont. C.A.), for consideration of a similar provision in Ontario.

There is no need for proof of oppression or any wrongdoing on the part of the directors for the court to direct a meeting to be held (*Richards v. Westall Resources Ltd.* (1994), 96 B.C.L.R. (2d) 47 (C.A.) at para. 11).

The court may appoint an independent chair for the meeting if the facts warrant this interference (*Allied Cellular Systems Ltd. v. Bullock* (1990), 49 B.L.R. 306 (B.C.S.C.)). The court may also direct specific, detailed conduct of a meeting, where appropriate (*British Columbia (Public Trustee) v. Trianon Holdings Ltd.*, [1992] B.C.J. No. 2971 (QL)(S.C.)).

Where a proxy was improperly formulated so as to render it invalid, the court exercised its discretion under s. 186 to provide directions regarding the use of those proxies in order to avoid the inappropriate disenfranchisement of the shareholders (*Pala Investments Holdings Limited v. Bristow*, 2009 BCSC 690).

However, where a proxy is found to be invalid, it may be more appropriate to order a new election (and

meeting) than to validate the results of the meeting. This is especially so where controversy remains over the validity of another proxy, where a run-off election might otherwise be needed, and where many proxies have not yet been subject to inspection or review (*Jawandba v. Bonny's Taxi Ltd.*, 2008 BCSC 1134).

3.3 reviews of Shareholders' Proposals [§0.15]

If a company refuses to process a shareholders' proposal, a "submitter" may apply to the court for a review of the company's decision. On such an application, the court may restrain the holding of the annual general meeting and make any order it considers appropriate, including orders that the company properly process the proposal as set out in the *Business Corporations Act* and hold a separate meeting to consider it.

The company, or any person claiming to be aggrieved by a proposal, may apply to court for an order permitting or requiring the company to refrain from processing the proposal. The court may make such order as it considers appropriate.

(a) Statutory Reference [§0.16]

This remedy is set out in s. 191 of the *Business Corporations Act*.

(b) Deciding Whether to Ask the Court to Review [§0.17]

(i) Standing Issues [§0.18]

A "submitter" has standing to apply to court for a review of the company's decision to refuse to process a shareholders' proposal (s. 191(2)).

A "submitter" means a qualified shareholder who submits a proposal to the company. A "qualified shareholder" means a person who: (a) is the registered owner or beneficial owner of one or more shares that carry the right to vote at general meetings; and (b) has been a registered owner or beneficial owner of one or more such shares for an uninterrupted period of at least two years before the date of the signing of the proposal (s. 187).

Section 191(4) of the *Business Corporations Act* grants standing to the company and to any person "claiming to be aggrieved by a proposal" to apply to court for an order permitting or requiring the company to refrain from processing the proposal.

(ii) Costs Issues [§0.19]

A court may order that the company reimburse the submitter for all reasonable legal expenses, including all reasonable disbursements, incurred in the application (s. 191(3)(c)).

Presumably, as the court can make any order it considers appropriate on an application under s. 191(4), the company or "any person claiming to be aggrieved by a proposal" may also be able to recover their costs.

(c) Key Cases and Cases and Interpretation [§0.20]

At the time of publication, there are no reported decisions considering this section.

3.4 Court-appointed Auditors [§0.21]

Where a company does not have an auditor, the court may appoint an "authorized person" as auditor and set the auditor's remuneration to be paid by the company.

(a) Statutory Reference [§0.22]

This remedy is set out in s. 204 of the *Business Corporations Act*. Section 205 provides a list of persons who are authorized to act as auditors.

(b) Deciding Whether to Apply to Court for Appointment of an Auditor [§0.23]

(i) Standing Issues [§0.24]

A shareholder or a creditor of the company has standing to make this application. A “shareholder”, for this remedy, is a registered shareholder only.

(ii) Costs Issues [§0.25]

The section does not expressly provide for indemnity of the person who applies to court.

(c) Key Cases and Interpretation [§0.26]

At the time of publication, there are no reported decisions considering this provision.

(d) A Practitioner’s Viewpoint [§0.27]

Note that shareholders may require an auditor’s attendance at the company’s annual general meeting (s. 214).

4. Derivative Actions [§0.28]

4.1 Overview [§0.29]

The “derivative” action is a statutory exception to the rule in *Foss v. Harbottle* (1843), 2 Hare 461, 67 E.R. 189 (Ch.). That rule essentially provides that only a company can sue for a wrong done to it. The derivative action addresses the situation where the company will not sue – likely because its own directors are the wrongdoers.

A shareholder or director may, with leave of the court, bring a derivative action in the name, and on behalf, of the company (*Business Corporations Act*, s. 232(2)). The purpose of a derivative action is to enforce a right, duty, or obligation enforceable by the company or to recover damages for any breach of those rights, duties, or obligations (s. 232(2)). A shareholder or director of the company may also, with leave of the court, defend an action brought against the company (s. 232(2) and (4)).

No derivative action can be stayed or dismissed merely because it can be shown that the alleged breach of a right, duty, or obligation owed to the company has been or might be approved by the shareholders of that company (s. 233(6)). However, evidence of that approval or possible approval may be taken into account by the court when granting leave under s. 232.

The crucial distinction between a derivative action by the company and an oppression claim by a shareholder is that the former involves harm to the company, while the latter involves harm to one shareholder or a group of shareholders. There is substantial overlap between the actions; situations may arise where both appear to be present and it can be very difficult to determine which type to advance (for example, see *Malata Group (HK) Ltd. v. Jung*, [2007] O.J. No. 1704 (QL) (S.C.J.), affirmed 2008 ONCA 111)).

The British Columbia Court of Appeal has held that for a shareholder to have a valid cause of action in respect of loss of value of their shares, it must have both an independent relationship with the wrongdoer and a loss independent from that of the company to which the wrong has been done (*Robak Industries Ltd. v. Gardner*, 2007 BCCA 61, at para. 38).

(a) Statutory References [§0.30]

The derivative action is provided for in ss. 232 and 233 of the *Business Corporations Act*.

(b) Deciding Whether to Bring a Derivative Action [§0.31]

(i) Standing Issues [§0.32]

A “claimant” may seek leave to bring a derivative action. “Claimant” means a shareholder or director of the company in whose name the derivative action is sought to be brought.

In this context, a “shareholder” includes a beneficial owner of a share of the company and any other person the court considers an “appropriate person” to seek leave (s. 232(1)). An “appropriate person” is someone who has an interest in the company similar to that of a shareholder, and includes the shareholder of a shareholder in the company (*Ginther v. Rainbow Management Ltd.*, [1989] B.C.J. No. 636 (QL)(S.C.)).

A creditor may also be an “appropriate person” to bring a derivative action. However, caution should be exercised when considering case law from other jurisdictions as legislation there may expressly give creditors such standing (*Peoples Department Stores Inc. (Trustee of) v. Wise*, 2004 SCC 68).

(ii) Costs Issues [§0.33]

A benefit of bringing a derivative action is that the shareholder may be fully indemnified by the company. Sections 233(3) and (4) of the *Business Corporations Act* provide that a court can order a company to pay the costs, including legal fees and disbursements, of the person controlling the conduct of the derivative action. These costs may be obtained on an interim basis (s. 233(3)(b)) and at the conclusion of the action (s. 233(4)).

Despite s. 233(3)(b), the general practice in British Columbia is to order the company to pay costs only at the conclusion of the action, if the company is successful.

(iii) Obtaining Leave from the Court [§0.34]

To obtain leave of the court to bring or defend a derivative action the applicant must satisfy the court that:

- (1) they made reasonable efforts to cause the company’s directors to prosecute or defend the claim;
- (2) they notified the company, and any other person that the court may order, of the application for leave;
- (3) they are acting in good faith; and
- (4) it appears to the court that it is in the best interests of the company that the legal proceeding be prosecuted or defended.

The applicant for derivative leave bears the onus of showing the application is brought in good faith (*Primex Investments Ltd. v. Northwest Sports Enterprises Ltd.* (1996), 13 B.C.L.R. (3d) 300 (S.C.) at para. 32, varied (1997), 26 B.C.L.R. (3d) 357 (C.A.); *Tratch v. Heide* (1996), 29 B.L.R. (2d) 266 (B.C.S.C.), at para. 24).

Whether the applicant is acting in good faith is a question of fact, to be determined on all the evidence and with attention to the particular circumstances of the case. The test for good faith is whether the action is primarily for the purposes of pursuing a claim on the company’s behalf. Factors to be considered in applying this test include the applicant’s belief in the merits of the proposed claim, existing disputes between the parties, and alleged ulterior motives (*Discovery Enterprises Inc. v. Ebco Industries Ltd.* (1998), 50 B.C.L.R. (3d) 195 (C.A.), at para. 5; *Gartenberg v. Raymond*, 2005 BCCA 462, at para. 25; *Bennett v. Rudek*, 2008 BCSC 1278, at para. 46). Establishing that the proposed claim would be in the best interests of the

company will assist in establishing that the applicant is acting in good faith (*Safarik v. Hall*, 2006 BCCA 222, at paras. 9 and 10; *Bennett v. Rudek*, 2008 BCSC 1278, at para. 45).

The fact that an applicant may benefit from the success of a proposed derivative action is not necessarily indicative of bad faith. It may be that the applicant's personal interests are co-incident with the interests of the company (*Primex Investments Ltd. v. Northwest Sports Enterprises Ltd.* (1996), 13 B.C.L.R. (3d) 300 (S.C.), varied (1997), 26 B.C.L.R. (3d) 357 (C.A.)). That there is a dispute between shareholders, or that the applicant stands to benefit as a shareholder if the legal proceeding is successful, does not necessarily mean the applicant is acting in bad faith, particularly where there is an arguable case that the company has a valid claim.

The requirement that the derivative action appear to be in the best interests of the company is a new requirement of the *Business Corporations Act*. In *Carr v. Cheng*, 2005 BCSC 445, the court held that it appears to be in the interests of the company for a proceeding to be brought if the proposed claim has a reasonable prospect of success and is not frivolous, vexatious, or bound to fail. The "best interests" of the company meant the maximization of the value of the company, which could include consideration of the interests of the shareholders, employees, and others, not simply the best interests of the shareholders.

(c) Key Cases and Interpretation [§0.35]

An applicant should not ask the court to grant leave based on a hypothetical claim. Rather, the applicant should set out the proposed claim in a draft statement of claim. Each cause of action against each defendant must be vetted separately by the court before leave is granted (*Lost Lake Properties Ltd. v. Sunshine Ridge Properties Ltd.*, 2009 BCSC 938).

There may be no jurisdiction under the *Business Corporations Act* to grant leave to commence derivative proceedings in Federal Court or in any court outside British Columbia (*Nova Ban-Corp Ltd. v. Tottrup*, [1989] F.C.J. No. 828 (QL)(T.D.); *La Roche v. HARS System Inc.*, 2001 BCSC 140; and *Bennett v. Rudek*, 2008 BCSC 1278, at para. 44).

(d) A Practitioner's Viewpoint [§0.36]

If a complaining shareholder wishes to remain a shareholder, a derivative action may facilitate this objective by redressing the corporate situation giving rise to the complaint. It may also be that the shareholder has no remedy in their capacity as a shareholder because the complaint is really about a wrong to the company itself. In such cases, a derivative action may be the only available recourse.

It is also important to remember that, if leave is granted to prosecute a derivative action, the claim will be brought in the company's name. Any damages or other relief awarded in such an action will be awarded to the company, not to the shareholder or director who obtains leave and prosecutes the action. However, a person bringing a claim in the name of the company may be entitled to have some or all of her costs paid by the company, at least at the end of the day if the action is successful.

5. Shareholder "Oppression" [§0.37]

5.1 Overview [§0.38]

A shareholder may apply for a court order, under the *Business Corporations Act*, s. 227, on the following grounds:

- (1) the affairs of the company are being or have been conducted (or the powers of the directors are being or have been exercised) in an "oppressive" manner; or

- (2) some act of the company has been done (or is threatened), or some resolution of the members has been passed (or has been proposed), that is "unfairly prejudicial" to one or more of the shareholders.

This "oppression" remedy reflects the creation, originally equitable and now statutory, of a layer of obligations on top of a company's strict legal obligations. The touchstones of shareholder oppression are the shareholder's reasonable expectations of how the company will be run, and discrimination among shareholders without a legitimate business reason.

In considering whether the conduct complained of is oppressive or unfairly prejudicial, the court starts with the legal rights of the parties based on the articles and then considers their equitable rights, based on their reasonable expectations, given the nature of the company (*Cross v. Mountain High Recreation Ltd.*, 2007 BCCA 121, at paras. 23-25; *Urquhart v. Technovision Systems Inc.*, 2002 BCSC 172, aff'd 2003 BCCA 45; *Samra v. Bel-Air Taxi Ltd.*, 2009 BCSC 548, at para. 33).

Oppression proceedings are commenced by way of petition. However, the court has discretion under Rule 22-1(7)(d) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, and s. 227(3)(q) of the *Business Corporations Act* to order that the claim be tried (*Orr v. Primary Metals Inc.*, 2008 BCSC 73; *British Columbia Securities Commission v. Bapty*, 2006 BCSC 638).

Although decided under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, the Supreme Court of Canada's decision in *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69, is that court's most recent decision on the oppression remedy and provides significant discussion about the remedy's purpose. The decision should be consulted, but in light of the legislative framework in British Columbia.

(a) Statutory References [§0.39]

The oppression remedy is set out in s. 227 of the *Business Corporations Act*.

(b) Deciding Whether to Invoke the Oppression Remedy [§0.40]

(i) Standing Issues [§0.41]

Only shareholders and "appropriate persons" may invoke the oppression remedy.

For the purposes of s. 227, a shareholder includes a beneficial owner of a share of the company and any other person who, in the court's discretion, is an "appropriate person" to make an application under s. 227. An "appropriate person" is someone who has an interest similar to that of a shareholder, such as the corporate parent of a corporate shareholder (*R.B.L. Management Inc. v. Royal Island Developments Ltd.*, 2007 BCSC 960).

In other jurisdictions, an anticipated shareholder is a "proper person" to make an oppression claim (*Fedel v. Tan* (2008), 50 B.L.R. (4th) 117 (Ont. S.C.J.); *Smith v. Dangs Canada Distribution Ltd.*, 2008 SKQB 219; but see *Lee v. International Consort Industries Inc.* (1992), 4 B.L.R. (2d) 268 (B.C.C.A.)).

A creditor could also be an "appropriate person" to make an oppression claim, but exercise caution in using case law from other jurisdictions as legislation there may expressly give creditors such standing (*Peoples Department Stores Inc. (Trustee of) v. Wise*, 2004 SCC 68).

Where the shares are potentially family assets under the *Family Relations Act*, R.S.B.C. 1996, c. 128, a spouse may have a beneficial interest in the shares sufficient to give the spouse standing as an "appropriate person" to seek relief under s. 227 (*Epp v. Epp*, 2008 BCSC 1794).

It is important to note that s. 227 of the *Business Corporations Act* differs from analogous provisions in the federal, Ontario, and Alberta legislation. For example, under those Acts, shareholders, creditors, and directors can all bring oppression proceedings. Under s. 227, only shareholders and “appropriate persons” can do so.

(ii) Costs Issues [§0.42]

There are no costs provisions similar to those in the derivative action. A shareholder or appropriate person must fund the action and this could be a major consideration in deciding which remedy to pursue.

(iii) The Test for Oppression [§0.43]

In *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69, the Supreme Court of Canada created a two-step test for determining whether a shareholder had been subjected to oppressive corporate behaviour that deserved remedy. First, the court must consider what were the reasonable expectations of the shareholder and whether these expectations were breached. If a breach is established, then the court must consider whether the conduct complained of amounts to “oppression”, “unfair prejudice” or “unfair disregard” as set out in the governing corporate statute.

The determination of the existence of a reasonable expectation is itself a two-step process. First, the complaining shareholder must subjectively identify his or her expectations qua shareholders. Second, the court must determine objectively whether such expectations were reasonable.

In determining whether an identified expectation is reasonable, the court may consider several factors, including general commercial practice, the nature of the corporation, the size of the corporation, the relationship between the parties, past practice, steps the claimant could have taken in protection, representations and agreements, and the fair resolution of conflicts between the corporate shareholders (*BCE*, paras. 72-84).

To be “oppressive”, the conduct complained of must be sufficiently serious to be properly described as “burdensome, harsh and wrongful”, or lacking in probity or fair dealing (*Starcom International Optics Corp. v. Macdonald*, [1994] B.C.J. No. 548 (QL) (S.C.), varied on other grounds [1994] B.C.J. No. 842 (QL) (S.C.); *Nystad v. Harcrest Apartments Ltd.* (1986), 3 B.C.L.R. (2d) 39 (S.C.)).

A common example of shareholder oppression is when one shareholder, who has participated in the company’s management and has a reasonable expectation of continuing to do so, is for some reason excluded from management.

Breaches of the company’s articles or obligations under the *Business Corporation Act* can also be oppressive or unfairly prejudicial. For example, in *Discovery Enterprises Inc. v. I.S.E. Research Ltd.*, 2002 BCSC 1624, the court held that refusal to provide a minority shareholder with audited financial statements as required by the *Company Act* was, without more, oppression.

The case law is divided on whether the shareholder must be able to prove bad faith on the part of those conducting the company’s affairs. The more recent (and probably correct) view is that this is not necessary, at least where the oppressive act was not legally authorized (*Juno Europe LP v. PresiNet Systems Corp.*, 2008 BCSC 587). What is important is the effect of the conduct complained of, not its motive.

Allowing a shareholder to obtain compensation for oppression that occurred before he or she was a shareholder is inconsistent with the reasonable expectation requirement - the “touchstone” to entitlement to compensation for oppression. A shareholder is generally not able to claim oppression in respect of an asserted reasonable expectation if it did not exist at the time of his or her share purchase (*Ford Motor*

Company of Canada, Ltd. v. Ontario Municipal Employees Retirement Board (2006), 79 O.R. (3d) 81 (C.A.); *LSI Logic Corporation of Canada, Inc. v. Logani* (2001), 204 D.L.R. (4th) 443 (Alta. Q.B.); *Hollinger Canadian Publishing Holdings Co. v. Mostad Publications Ltd.*, 2007 BCSC 1496). On the other hand, if a shareholder discovers after becoming a shareholder a course of oppressive conduct reaching back before they become a shareholder, they can claim a remedy for it (*Orr v. Sojitz Tungsten Resources Inc.*, 2010 BCSC 66).

It is crucial that the shareholder be able to point to conduct affecting it in its capacity as a shareholder (not as a director, officer, or employee), and to harm in that capacity distinct from that to all shareholders or at least distinct from that to the oppressing shareholder (*Walker v. Betts*, 2006 BCSC 128; *Carr v. Cheng*, 2007 BCSC 1693).

(iv) The Tests for Unfairly Prejudicial Conduct
and Conduct which Unfairly Disregards an Interest [§0.44]

While “oppression” carries the sense of conduct that is coercive and abusive, and suggests bad faith, both “unfair prejudice” and “unfair disregard” import a lesser threshold. According to the Supreme Court of Canada, “unfair prejudice” may admit of a less culpable state of mind that nevertheless has unfair consequences. “Unfair disregard” of interests extends the remedy to ignoring an interest as being of no importance, contrary to the stakeholders’ reasonable expectations (*BCE*, at para. 67). These new “definitions” should be kept in mind when reading earlier case law.

The denial of a shareholder’s right to participate in the affairs of the company may constitute unfair prejudice (*Lee v. Lee’s Benevolent Association of Canada*, 2007 BCSC 794). In *Lee*, Blair J. enumerated the following non-exhaustive list of factors for use in determining whether conduct is “unfairly prejudicial”:

- (a) The standards which delineate conduct that is unfairly prejudicial are less rigorous than those which constitute oppression (*Paley v. Leduc*, *supra*, at para. 31);
- (b) The court should look beyond the legal rights which the petitioners might have and consider questions of equity, liberally interpreting unfairly prejudicial conduct in the definition of unfairly prejudicial (*Mahood v. High Country Holdings Inc.*, 2000 BCSC 1755, at paras. 198-9));
- (c) The petitioners’ reasonable expectations or expectations deserving of protection is the appropriate starting point for a consideration of whether there has been unfair prejudice (*Urquhart v. Technovision Systems Inc.*, *supra*, at paras. 39-43)). In determining whether it is just and equitable to grant relief, the reasonable expectations of the parties, as determined by their past conduct, is a relevant factor (*Paley v. Leduc*, *supra*, at para. 35);
- (d) In cases involving several acts, one “borderline act” may not necessitate a remedy. A combination of acts may, in their totality, constitute unfair prejudice (*Paley v. Leduc*, *supra*, at para. 33);
- (e) The denial of shareholders’ rights to continue to participate in the direction of a company’s affairs, or a member’s right to participate in the direction of a society’s affairs may be unfairly prejudicial (*Buckley v. B.C.T.F.* (1994), 86 B.C.L.R. (2d) 303 (C.A.), at para. 22 and *Diligenti v. RWMD Operations Kelowna Ltd.*, *supra*, at para. 35); and
- (f) The focus with respect to unfair prejudice is on its effect on the petitioners more than on the character of the conduct about which they complain (*Nystad v. Harcrest Apartments Ltd.* (1986), 3 B.C.L.R. (2d) 39 (S.C.), at para. 24); Malice or intent need not be established when determining whether conduct is unfairly prejudicial (*Paley v. Leduc*, 2002 BCSC 1757, at para. 30)).

The courts have held that “unfairly prejudicial conduct” means corporate conduct that is unjustly or inequitably detrimental to the legitimate interests of a shareholder in its capacity as shareholder, given the

shareholder's reasonable expectations of how the company will be run (*Diligenti v. RWMD Operations Kelowna Ltd.* (1976), 1 B.C.L.R. 36 (S.C.) at 45-46). It is clear from the case law that the threshold for unfairly prejudicial conduct is lower than that for oppression. Conduct that is not oppressive may still be unfairly prejudicial (see *Elliott v. Opticom Technologies Inc.*, 2005 BCSC 529).

Under the other federal and provincial corporate statutes, complainants can also bring proceedings where corporate conduct "unfairly disregards" their interests. No relief is available in these circumstances under s. 227. Conduct that unfairly disregards a complainant's interests has not been clearly defined by the courts. However, it is clear that the threshold for establishing it is even lower than that for establishing unfairly prejudicial conduct.

(v) Effect of a Shareholders' Agreement [§0.45]

The case law is divided on the effect of a shareholders' agreement on a shareholder's ability to seek remedies under s. 227 of the *Business Corporations Act*. The courts have generally held that where the shareholder agreement contains remedies for the conduct complained of similar to those sought under s. 227, the shareholder should pursue its rights under the agreement. However, breaches of a shareholder agreement can be evidence of oppression or unfairly prejudicial conduct.

(vi) Remedies [§0.46]

If the court is satisfied there has been oppression or unfairly prejudicial conduct, it "may make any interim or final order it considers appropriate". It is important to understand that the court's very broad discretion to order relief is tempered by the statutory requirement that it must act "with a view to remedying or bringing to an end the matters complained of" and the judicially created requirement to respect the shareholder's reasonable expectations (see *Naneff v. Con-Crete Holdings Ltd.* (1995), 23 O.R. (3d) 481 (C.A.)).

The court must be satisfied that the claim has been made in a timely manner (s. 227(4); *Samra v. Bel-Air Taxi Ltd.*, 2009 BCSC 548, at para. 39; *Orr v. Sojitz Tungsten Resources Inc.*, 2010 BCSC 66, at paras. 38-55). The conduct complained of must still be occurring or be threatened, or at least be affecting the complainant's shareholder interest (*Samra v. Bel-Air Taxi Ltd.*, *supra*, at para. 40; *Carr v. Cheng*, 2007 BCSC 1693, at para. 46).

Examples of available remedies are listed in the *Business Corporations Act*, s. 227(3)). The most common are:

- (1) orders that remedy the specific conduct complained of, for example, repayment of management fees or payment of dividends;
- (2) orders requiring the company or other shareholders to purchase the wronged shareholder's shares;
- (3) orders appointing a receiver or receiver-manager; and
- (4) orders for liquidation and dissolution.

If the court makes a payment order and the company is insolvent or payment would make it insolvent, the company must pay as much as it possibly can without becoming insolvent (s. 227(5) and (6)).

Where an applicant seeks an interim restraining order, he or she need not establish conclusively that oppression or unfair prejudice has occurred. The applicant must demonstrate: (i) a strong prima facie case of oppression or unfair prejudice; and (ii) that the balance of convenience favours the granting of the order (*Brio Industries Inc. v. Clearly Canadian Beverage Corp.*, [1995] B.C.J. No. 1441 (QL)(S.C.); *Hollinger Canadian Publishing Holdings Co. v. Mostad Publications Ltd.*, 2007 BCSC 1496).

(vii) Personal Liability of Directors or Officers [§0.47]

A shareholder may seek to hold a company's directors or officers personally liable for oppression or unfairly prejudicial conduct. To succeed, the shareholder will have to establish that specific directors or officers did specific things that amounted to oppression. The shareholder will also have to show that the circumstances support those oppressive actions being remedied by requiring the directors or officers to personally compensate the shareholder. This may be possible in cases where the directors or officers personally benefitted from the oppressive conduct or furthered their control over the company through it (*Budd v. Gentra* (1998), 43 B.L.R. (2d) 27 (Ont. C.A.)).

(viii) Wrongful Dismissal Actions [§0.48]

It is not uncommon for business disputes to include, or result in, one party being terminated from an employment position with a company.

Generally, disputes about the validity of employment terminations must be resolved separately in actions for damages for wrongful dismissal. For example, the law is clear that the wrongful dismissal of an employee who also happens to be a shareholder, without more, gives rise only to a claim for damages for wrongful dismissal and not to a claim for a remedy for shareholder oppression or unfairly prejudicial conduct (*Ruffo v. IPCBC Contractors Canada Inc.* (1988), 33 B.C.L.R. (2d) 74 (S.C.), aff'd (1990), 44 B.C.L.R. (2d) 293 (C.A.)), as the dismissal affects the shareholder as employee, not shareholder. It is therefore not uncommon for an aggrieved shareholder/employee to begin two proceedings: one seeking relief for oppression and unfairly prejudicial conduct, and a second action seeking damages for wrongful dismissal.

However, there have been cases in which the courts have considered the termination of an employee/shareholder to be one item in a course of corporate conduct that amounted to oppression or unfairly prejudicial conduct. In such cases courts have permitted the shareholder/employee to claim damages for wrongful dismissal in an oppression and unfairly prejudicial conduct proceeding (see, for example, *Furry Creek Timber Corp. v. Laad Ventures Ltd.* (1992), 75 B.C.L.R. (2d) 246 (S.C.)).

When advising an unhappy shareholder, it is appropriate to consider whether he or she is also an employee and, if so, whether he or she has a wrongful dismissal claim that could be made either separately or as part of an oppression or unfairly prejudicial conduct proceeding.

(c) Key Cases and Interpretation [§0.49]

Oppression and unfairly prejudicial conduct are broad concepts. However, it is possible to identify more specific categories of conduct that the courts are, and are not, likely to consider to fall within them.

Because oppression is based on the reasonable expectations of shareholders, it is important to remember that whether a specific act is or is not oppressive will depend largely on the factual circumstances in which it takes place. Conduct that is oppressive in one situation may not be in another.

A shareholder's expectation is a question of fact, to be determined subjectively. Whether that expectation is reasonable must be determined objectively. A corporation's legal obligations, public statements and other representations are relevant in determining whether a shareholder's expectations are reasonable (*Greenlight Capital Inc. v. Stronach* (2006), 22 B.L.R. (4th) 11 (Ont. S.C.J.), aff'd [2008] O.J. No. 2749 (QL) (S.C.J. Div. Ct.)).

(i) Examples of Oppressive Behaviour [§0.50]

The following types of conduct have been held to be oppressive or unfairly prejudicial.

(A) Shareholder Status [§0.51]

- (1) A company refusing to register share purchases or transfers (*Heslop v. Heslop, Kerruish & Co.*, [1986] B.C.J. No. 3018 (QL) (S.C.)).
- (2) Directors cancelling a share certificate for non-payment of the purchase price, without first demanding that payment (*Re Lajoie Lake Holdings Ltd.*, [1991] B.C.J. No. 137 (QL) (S.C.)).
- (3) Directors issuing shares without regard for shareholders' preemptive rights, or in a way that reduces a majority shareholder to a minority shareholder or gives a majority shareholder voting control of the company (*Otawara Co. v. Masuda*, [1992] B.C.J. No. 427 (QL) (S.C.); *Starcom International Optics Corp. v. Macdonald*, [1994] B.C.J. No. 548 (QL) (S.C.), varied on other grounds [1994] B.C.J. No. 842 (QL) (S.C.); *Re Peterson and Kanata Investments Ltd.* (1975), 60 D.L.R. (3d) 527 (B.C.S.C.)).
- (4) A director denying a shareholder his rights as a shareholder and treating him as a creditor only, even where that was the result of an honest mistake (*Westmore v. Old MacDonald's Farms Ltd.* (1986), 70 B.C.L.R. 332 (S.C.)).
- (5) A shareholder, relying on technical non-compliance with the terms of a share purchase offer, refusing to complete the transaction and diluting another shareholder's position, where that shareholder had a reasonable expectation of maintaining equal holdings (*Cross v. Mountain High Recreation Ltd.*, 2007 BCCA 121).

(B) Financial Information [§0.52]

- (1) A company denying a shareholder access to financial information to which he or she is entitled under the governing legislation, the company's constitution, or historical practice (*Re Van-Tel T.V. Ltd.* (1974), 44 D.L.R. (3d) 146 (B.C.S.C.); *Wilkinson v. Today's Carpets Ltd.*, 2000 BCSC 1509, varied on other grounds 2002 BCCA 41; *Jackman v. Jackets Enterprises Ltd.* (1977), 4 B.C.L.R. 358 (S.C.); *Heslop v. Heslop, Kerruish & Co.*, *supra*; *Burdeny v. K & D Gourmet Baked Foods and Investments Inc.* (1999), 48 B.L.R. (2d) 16 (B.C.S.C.); *Grizzly Ropes Ltd. v. Hymax Engineering Ltd.*, [1992] B.C.J. No. 1406 (QL) (S.C.)).
- (2) A company preparing false financial statements (*Re National Building Maintenance Ltd.*, [1971] 1 W.W.R. 8 (B.C.S.C.), affirmed [1972] 5 W.W.R. 410 (B.C.C.A.)).
- (3) A company not providing shareholders with the audited financial statements required by legislation (*Discovery Enterprises Inc. v. I.S.E. Research Ltd.*, 2002 BCSC 1624).
- (4) A company not complying with the legislation or the requirements in its articles for financial information or record-keeping (*Mahood v. High Country Holdings Inc.*, 2000 BCSC 1755).

(C) Shareholders' Meetings [§0.53]

- (1) A company refusing to hold an annual general meeting (*Mahood v. High Country Holdings Inc.*, *supra*; *Jackman v. Jackets Enterprises Ltd.*, *supra*; *Burdeny v. K & D Gourmet Baked Foods and Investments Inc.*, *supra*).
- (2) A company calling an annual general meeting before preparing the audited financial statements required to be placed before shareholders at that meeting (*Ludlow v. McMillan*, [1990] B.C.J. No. 1817 (QL) (S.C.)).
- (3) A company postponing its annual general meeting to avoid having to face its shareholders (*Starcom International Optics Corp. v. Macdonald*, *supra*).
- (4) A shareholder refusing to postpone a company's annual general meeting, where he knew the only other shareholder was mistaken about the meeting time and intended to use the meeting to remove him as a director and pass a resolution to sell the company's assets (*Bradley v. Bradley*, 2001 BCSC 815).
- (5) The chair of an annual general meeting disallowing proxies because of allegations that the holder was involved in an improper takeover bid (*Pressello v. Venture Pacific Development Corp.*, 2001 BCSC 1733).
- (6) A company refusing to hold requested shareholders' meetings (*Re Van-Tel T.V.*, *supra*).
- (7) A company not complying with legislative or constating document requirements for meetings or resolutions (*Burdeny v. K & D Gourmet Baked Foods and Investments Inc.*, *supra*; *Mahood v. High Country Holdings Inc.*, *supra*).

- (8) A company failing to give a shareholder the opportunity to seek redress for the shareholder's complaints through the corporate governance procedure set out in the *Business Corporations Act* (*Walker v. Betts*, 2006 BCSC 128).

(D) Directors [§0.54]

- (1) Majority shareholders appointing their nominees as directors, without holding an election (*Starcom International Optics Corp. v. Macdonald*, *supra*).
- (2) Directors removing a director at a directors' meeting, rather than shareholders doing so at a shareholders' meeting (*Re Lajoie Lake Holdings Ltd.*, *supra*).
- (3) One shareholder trying to remove another as a director because of an unrelated commercial dispute between them (*Lafaille v. Amorous Oyster Restaurant Ltd.*, [1991] B.C.J. No. 1091 (QL) (S.C.)).
- (4) A majority shareholder proposing to remove minority shareholder nominees as directors (*Cathay Development Inc. v. 328243 B.C. Ltd.*, [1995] B.C.J. No. 829 (QL) (S.C.)).

(E) Exclusion from Management [§0.55]

- (1) Excluding a shareholder from corporate management where the shareholder had a reasonable expectation of continued involvement, even where that removal was permitted by the company's articles (*Saarnok-Vuus v. Teng*, 2003 BCSC 235; *Diligenti v. RWMD Operations Kelowna Ltd.* (1976), 1 B.C.L.R. 36 (S.C.); *Grizzly Ropes Ltd. v. Hymax Engineering Ltd.*, *supra*).

(F) Improper Business Dealings [§0.56]

- (1) Discrimination between shareholders in dividend or salary payments (*Low v. Ascot Jockey Club Ltd.* (1986), 1 B.C.L.R. (2d) 123 (S.C.)).
- (2) A company paying secret management fees to some shareholders (*Wilkinson v. Today's Carpets Ltd.*, *supra*; *Re National Building Maintenance Ltd.*, *supra*).
- (3) A majority shareholder taking a substantial salary without directors' or shareholders' approval or the minority shareholder's consent (*Chan v. GMS Datalink International Corp.*, [1996] B.C.J. No. 2015 (QL) (S.C.)).
- (4) A company making, or shareholders or directors authorizing, payments to or contracts with entities related to those shareholders or directors (*Re Peterson and Kanata Investments Ltd.* (1975), 60 D.L.R. (3d) 527 (B.C.S.C.); *Re Little Billy's Restaurant (1977) Ltd.* (*sub nom. Faltakas v. Paskalidis*) (1983), 45 B.C.L.R. 388 (S.C.); *Redekop v. Robco Construction Ltd.* (1978), 7 B.C.L.R. 268 (S.C.)).
- (5) A company loaning money to a company related to the majority shareholder but not to one related to the minority shareholder (*Jackman v. Jackets Enterprises Ltd.*, *supra*; *Kenco Land Management Co. v. 375035 B.C. Ltd.*, [1996] B.C.J. No. 3096 (QL) (S.C.)).
- (6) A company not charging interest on a loan to members of the majority shareholder's family (*Low v. Ascot Jockey Club Ltd.*, *supra*).
- (7) A shareholder or director diverting corporate business opportunities to entities related to them (*Vukusic v. Sign-O-Lite Signs Ltd.*, [1983] B.C.J. No. 727 (QL) (S.C.); *Grizzly Ropes Ltd. v. Hymax Engineering Ltd.*, *supra*).
- (8) A shareholder using corporate cash and other assets for non-corporate purposes (*Mananquil v. Philippine Chronicle Newspaper Ltd.*, 2001 BCSC 1257; *Re Little Billy's Restaurant (1977) Ltd.*, *supra*; *Mahood v. High Country Holdings Inc.*, *supra*; *De Cotiis v. De Cotiis*, [1995] B.C.J. No. 1423 (QL) (S.C.); *Redekop v. Robco Const. Ltd.*, *supra*; *Drove v. Mansvelt* (1999), 48 B.L.R. (2d) 72 (B.C.S.C.), leave to appeal dismissed 1999 BCCA 540).
- (9) Shareholders discriminating amongst themselves in the distribution of proceeds of the sale of the company's business (*Re Romana Inn Ltd.*, *Manarus v. Apostol* (1982), 48 B.C.L.R. 65 (S.C.); *Pasnak v. Chura*, 1999 BCSC 1934; *Yen v. Yu*, 2000 BCSC 212).

(G) Improper Internal Business Decisions [§0.57]

- (1) A majority shareholder stripping the company of cash and then electing to sell his shares under a “shotgun” provision (*Ludlow v. MacMillan* (1995), 6 B.C.L.R. (3d) 163 (S.C.)).
- (2) A company making cash calls on shareholders without providing sufficient information for them to make informed decisions about how to respond (*Act Enterprises Ltd. v. Cliger Construction Ltd.*, 2001 BCSC 1110).
- (3) A company charging the legal costs of defending a minority shareholder’s lawsuit solely to the company’s division whose performance would determine the minority shareholder’s return on his investment in the company (*Discovery Enterprises Inc. v. Ebco Industries Ltd.*, 2002 BCSC 1236).
- (4) Minority shareholders threatening to quit the company and take its largest customer with them if not given corporate control (*MacMillan v. Progressive Mill Supplies Ltd.* (1986), 6 B.C.L.R. (2d) 129 (C.A.)).
- (5) A shareholder opening an unauthorized bank account, to which he was the sole signatory (*Wilkinson v. Today’s Carpets Ltd.*, *supra*).
- (6) A company keeping corporate transactions secret to prevent shareholders from blocking them (*Kuo v. Phoenix Technologies Inc.*, 2007 BCSC 106).

(H) Employment of Shareholder [§0.58]

- (1) Where a shareholder’s investment is inextricably bound together with his employment, the conduct of another shareholder who controls the company may well amount to oppression or unfairly prejudicial conduct so as to entitle the employee to a remedy, even where the shareholder/employee has not been terminated (*Elliot v. Opticom Technologies*, 2005 BCSC 529; *Suri v. Radio India Broadcasting Inc.*, 2008 BCSC 1399).

(ii) Examples of Behaviour Which is Not Oppressive [§0.59]

The following types of conduct have been held not to be oppressive or unfairly prejudicial.

(A) Shareholder Meetings [§0.60]

- (1) A company not postponing a validly requisitioned annual general meeting to permit the requisitioning shareholder more time to contact beneficial shareholders in preparation for the meeting (*Nalcap Holdings Inc. v. Equity Preservation Corp.*, [1989] B.C.J. No. 1842 (QL) (S.C.)).
- (2) The chairman of an annual general meeting rejecting proxies not supported by proper documentation until part-way through the meeting (*Financial Network Guaranty Ltd. v. Terra Nova Energy Inc.*, [1987] B.C.J. No. 2646 (QL) (S.C.)).
- (3) A company calling an extraordinary general meeting at which warrant-holders were not entitled to vote, where the complaining shareholder was not a warrant-holder (*Goldbelt Mines Inc. (N.P.L.) v. New Beginnings Resources Inc.* (1984), 59 B.C.L.R. 82 (C.A.)).

(B) Exclusion from Management [§0.61]

- (1) Directors barring a minority shareholder from management and suspending his accounting services to the company pending an audit, after discovering accounting irregularities (*Tessman v. Brown*, [1990] B.C.J. No. 1954 (QL) (S.C.)).
- (2) A company removing as a director a shareholder who left the company to work for a competitor, not voluntarily purchasing his shares, and investigating his possible breach of a non-competition agreement (*Broken Circle Resources Inc. v. Underhill Geographic Systems Ltd.*, [1991] B.C.J. No. 3249 (QL) (S.C.)).
- (3) A company excluding a minority shareholder from management, where permitted by the company’s articles and where his personal relationship with the majority shareholder and president had deteriorated so they could not work together (*Safarik v. Ocean Fisheries Ltd.* (1995), 12 B.C.L.R. (3d) 342 (C.A.)).

- (4) A president terminating a minority shareholder as an employee and removing him as director, where permitted by employment agreements (*Grant v. A.W. Sessions Ltd.* (1998), 39 C.C.E.L. (2d) 112 (B.C.S.C.)).
 - (5) A company not giving a minority shareholder power equal to that of the company's president (*Bosman v. Doric Holdings Ltd.* (1978), 6 B.C.L.R. 189 (S.C.)).
 - (6) Shareholders appointing a third director where the majority and minority shareholders had previously been the only two directors (*McMurchie v. Locke*, [1990] B.C.J. No. 664 (QL) (C.A.)).
- (C) Breach of Shareholders' Agreement [§0.62]
- (1) Breaches of shareholders' agreements are generally held to be breaches of contract rather than oppression or unfairly prejudicial conduct (*Johnston v. West Fraser Timber Co.* (1981), 29 B.C.L.R. 379 (S.C.), further proceedings (1982), 35 B.C.L.R. 154 and 37 B.C.L.R. 142 (S.C.), rev'd in part (1982), 37 B.C.L.R. 360 (C.A.), leave to appeal dismissed (1982), 45 N.R. 538 (S.C.C.); *Hague v. Safeguard Insurance Agencies Ltd.*, [1988] B.C.J. No. 638 (QL) (S.C.)).
- (D) Differential Payments to Shareholders [§0.63]
- (1) A company making payments to one of two shareholders in return for his running the company, after the other shareholder left it (*Jarman v. Brown* (1979), 13 B.C.L.R. 152 (S.C.)).
 - (2) A company ceasing to pay dividends to one shareholder and effectively blocking the redemption of his shares, where permitted by its articles (*Saunders v. Tidewater Development Corp.*, [1998] B.C.J. No. 1871 (QL) (S.C.)).
- (E) Business Decisions [§0.64]
- (1) A company's preferential treatment of its majority shareholder, who was also its main customer (*Sentinel Estates Ltd. v. Island Fibre Specialties Ltd.*, [1987] B.C.J. No. 1073 (QL) (S.C.)).
 - (2) Shareholders making decisions to improve the company's financial performance, which also made it more difficult for a minority shareholder to sell his shares (*Tkatch v. Heide* (1996), 29 B.L.R. (2d) 266 (B.C.S.C.), aff'd (1998), 60 B.C.L.R. (3d) 238 (C.A.)).
 - (3) Shareholders passing resolutions prohibiting condominium lessees from renting their units (*Pettit v. 449879 B.C. Ltd.* (1999), 50 B.L.R. (2d) 108 (B.C.S.C.)).
 - (4) Shareholders not accepting a minority shareholder's business views (*Bosman v. Doric Holdings Ltd.*, *supra*).
 - (5) One director refusing to sign monthly shareholder loan cheques to any shareholders (*Bianco v. Apple Valley Trailer Park Ltd.* (5 December 1984), Kamloops Registry, File No. 9730 (B.C.S.C.)).
 - (6) A company not issuing to a minority shareholder shares for which he could not pay (*McMurchie v. Locke*, *supra*).
 - (7) Shareholders of a closely held company passing a special resolution allowing the directors to redeem shares issued to the majority shareholder's family without consideration (*De La Giroday v. Giroday Sawmills Ltd.* (1983), 49 B.C.L.R. 378 (S.C.)).
 - (8) Directors arranging a private placement diluting the majority shareholders' shares and resulting in the undervaluing of their shares, where issuing shares was in the discretion of the directors (*Dicore Resources Ltd. v. Goldstream Resources Ltd.* (1986), 2 B.C.L.R. (2d) 244 (S.C.)).
 - (9) Shareholders suspending share dividend payments to finance management salaries and repairs to the company's premises (*Lafaille v. Amorous Oyster Restaurant Ltd.*, [1991] B.C.J. No. 1091 (QL) (S.C.)).
 - (10) Shareholders passing a special resolution that did not comply with the *Securities Act*, approving the directors receiving security for their loans to the company (*PII Photovision International Inc. v. Thayer* (1996), 30 B.L.R. (2d) 286 (B.C.S.C.)).

- (11) A directors' disagreement on how to vote at a partnership meeting, causing the company not to receive a partnership distribution (*Pok v. 474078 B.C. Ltd.*, [1997] B.C.J. No. 293 (QL) (S.C.)).
- (12) A company not acquiring assets it had intended to acquire but did not commit to acquiring, when its financial performance had deteriorated and it could not borrow the purchase price (*Urquhart v. Technovision Systems Inc.*, 2002 BCSC 172, aff'd 2003 BCCA 45).
- (13) A company buying property, gambling that it could be rezoned to permit the desired use (*Bially v. Churchill Electric & Associates* (1987) Ltd. (1993), 78 B.C.L.R. (2d) 305 (S.C.)).
- (14) Shareholders not re-electing a representative of a corporate competitor as a director and terminating payments to that competitor, while paying management fees to themselves (*Chiu v. Aero Heat Exchanger Inc.*, [1990] B.C.J. No. 1217 (QL) (S.C.)).
- (15) A company refusing to assist some shareholders to challenge a municipal bylaw (*Schicchi v. Orveas Bay Estates Ltd.* (1994), 98 B.C.L.R. (2d) 391 (S.C.)).
- (16) The directors of a company deciding not to begin a doubtful lawsuit against a contractor (*H.J. Rai Ltd. v. Reed Point Marina Ltd.*, [1981] B.C.J. No. 786 (QL) (S.C.)).
- (17) A director negotiating a share exchange that excluded an American minority shareholder, where American law prevented his inclusion without additional cost or significant prejudice to the transaction (*O'Connor v. Winchester Oil & Gas Inc.* (1986), 69 B.C.L.R. 330 (S.C.)).
- (18) A company not bringing a mine into production, where the investing shareholders knew their investment was speculative and that the mine might never come into production (*Stablke v. Stanfield*, 2010 BCSC 142).

(F) Dismissal as Employee [§0.65]

Dismissing a shareholder as an employee is generally held to be a breach of his or her employment contract rather than oppression or unfairly prejudicial conduct, so long as the dismissal is not part of a pattern of exclusion of the shareholder from management where he or she has a reasonable expectation of continued involvement (*Woloshuk v. Woloshuk* (1998), 113 B.C.A.C. 77 (C.A.); *McMurchie v. Locke*, *supra*; *Ruffo v. IPCBC Contractors Canada Inc.* (1988), 33 B.C.L.R. (2d) 74, aff'd (1990), 44 B.C.L.R. (2d) 293 (C.A.); *Burdeny v. K & D Gourmet Baked Foods and Investments Inc.* (1999), 48 B.L.R. (2d) 16 (B.C.S.C.)).

(G) Arbitration [§0.66]

Where disputes about corporate conduct are required to be arbitrated by a shareholders' agreement, that conduct is generally not oppressive or unfairly prejudicial if it arises out of the agreement (*Seel v. Seel* (1995), 6 B.C.L.R. (3d) 97 (S.C.)).

(H) Miscellaneous [§0.67]

- (1) Shareholders' deadlock (*Cariboo Western Lumber Ltd. v. Mochizuki*, 2001 BCSC 1035).
- (2) Directors breaching the governing legislation (*Bruneau v. Irvin Industries (1978) Ltd.*, 2002 BCSC 757).
- (3) Directors being in a conflict of interest (*Bruneau*, *supra*).
- (4) The company not remaining in good standing with the Registrar of Companies (*Burdeny v. K & D Gourmet Baked Foods and Investments Inc.*, *supra*).
- (5) Articles providing that only a senior shareholder may vote in the case of a jointly-held share (*Samra v. Bel-Air Taxi Ltd.*, 2009 BCSC 548).

(d) A Practitioner's Viewpoint [§0.68]

Whether a specific act or a course of conduct is or is not oppressive or unfairly prejudicial will depend largely on the specific factual context in which the act at issue was done, on the complaining shareholder's reasonable expectations, and on any business justification for the act. The categories and

cases set out above provide some assistance in determining in advance whether a particular act is or is not likely to be considered oppressive or unfairly prejudicial, but context is key.

When advising a shareholder about bringing an oppression or unfairly prejudicial conduct claim, lawyers should consider carefully the nature of the complaint, the objective in pursuing the claim, and what interim or final orders could remedy that complaint. Much will depend on the shareholder's fundamental decision about whether to try to remedy some aspect of the conduct of the company's affairs and remain a shareholder, or try to end involvement in the business. Much will also depend on the shareholder's and the company's economic positions. Is the company viable? What is the relative value of shareholders' interests? What ability do the parties involved have to raise financing for the purchase of each other's interests?

It is also appropriate to consider the legal costs and time required to resolve an oppression or unfairly prejudicial conduct claim. These claims often arise out of complex factual situations with a long history. While they must be started by petition supported by affidavit evidence, it is common that they cannot be summarily resolved on that evidence alone. Significant cross-examination on affidavits may be required. The proceeding may be converted to an action with rights of discovery of documents, examinations for discovery, and a conventional trial with viva voce witnesses. The legal and expert costs and the time required to resolve such an action will likely be significant. Lawyers should consider how cost-effective an oppression or unfairly prejudicial conduct claim would be as a dispute resolution method. (This is yet another reason for advising clients to enter into shareholders' agreements with exit provisions.)

6. Compliance and Remedial Applications [§0.69]

6.1 Overview [§0.70]

The *Business Corporations Act* provides other remedies that may be useful in resolving corporate disputes. They may also provide a remedy for shareholder concerns.

6.2 Compelling Compliance [§0.71]

This remedy provides a "complainant", meaning a shareholder or "any other person the court considers appropriate" with the ability to apply to the court for an order that a director, officer, shareholder, employee, agent, auditor, trustee, receiver, receiver-manager, or liquidator of the company comply with, or refrain from contravening, a provision of the *Business Corporations Act*, the regulations, or the memorandum, notice of articles, or articles of the company. The court may make any order it considers appropriate, including an order:

- (1) directing a person to comply with, or to refrain from contravening, a provision;
- (2) prohibiting the company from selling or otherwise disposing of or receiving property, rights, or interests; or
- (3) requiring, in respect of a contract made contrary to s. 33(1) of the *Business Corporations Act* (restricted businesses and powers), that compensation be paid to the company or to any other party to the contract.

(a) Statutory Reference [§0.72]

The power to compel compliance is provided in s. 228 of the *Business Corporations Act*.

(b) Deciding Whether to Seek to Compel Compliance [§0.73]

(i) Standing Issues [§0.74]

A “complainant”, meaning a shareholder or “any other person the court considers appropriate”, may seek an order to compel compliance. A “shareholder”, for this remedy, is a registered shareholder only.

(ii) Costs Issues [§0.75]

The section does not expressly provide for indemnity of the person who applies to court.

(c) Key Cases and Interpretation [§0.76]

The object of s. 228 is remedial. It gives to complainants the ability to question the contravention, or possible contravention, of the rights that shareholders enjoy by virtue of the contract between them and the other shareholders of the corporation. Where such a contravention is established, the rights afforded by s. 228 ought to be recognized even if what is sought to be constrained by court order is a matter within the discretion of the directors of the company (*D&G Dev. Ltd. v. Crystal Cove Beach Resorts Inc.*, 2006 BCSC 1432, at para. 37).

In *Davidson v. FinancialCAD Corp. (sub nom. Park v. FinancialCAD Corp.)*, 2008 BCSC 353, aff'd 2009 BCCA 7, leave to appeal to S.C.C. dismissed May 21, 2009, the court declined to rescind an amendment to a company's articles under the *CBCA* equivalent of s. 228.

6.3 Remediating Corporate Mistakes [§0.77]

This remedy allows the court to rectify breaches of the *Business Corporations Act* or of the memorandum or articles of the company. Also, the court can correct any error that has rendered ineffective meetings of shareholders or directors, or consent resolutions. The court can only do so after considering the effect of such an order on the company and on its directors, officers, creditors, and shareholders, including its beneficial shareholders. The order must be for the benefit of all.

This provision is very similar to s. 230 of the predecessor *Company Act*. The courts interpreted that provision broadly, recognizing that due to innocent and unintentional errors there would be mistakes in the affairs of companies that the courts should not be reluctant to correct. The courts did not consider their jurisdiction to be limited to technical mistakes. They considered both the gravity of the defect and the equities of the situation in deciding whether to grant relief (*U.S. Gold Corp. v. Atlanta Gold Corp.* (1989), 43 B.C.L.R. (2d) 71 (C.A.); *Ambassador Industries Ltd. v. Camfrey Resources Ltd.*, [1991] B.C.J. No. 1073 (QL) (S.C.); *G. Elmitt Construction Ltd. v. Kaplan* (1992), 1 C.L.R. (2d) 219 (B.C.S.C.)).

(a) Statutory Reference [§0.78]

The power to remedy corporate mistakes is provided in s. 229 of the *Business Corporations Act*.

(b) Deciding Whether to Apply to Remedy Corporate Mistakes [§0.79]

(i) Standing Issues [§0.80]

An application to remedy a corporate mistake may be made by the court, on its own motion, or by “any interested person”.

(ii) Costs Issues [§0.81]

The section does not expressly provide for indemnity of the person who applies to court.

(c) Key Cases and Interpretation [§0.82]

Following the *Company Act* s. 230 jurisprudence, the court in *Jawandha v. Bonny's Taxi Ltd.*, 2008 BCSC 1134, held that the term “corporate mistake”, is broad enough to include mistakes or irregularities made by shareholders in the course of participating in “the conduct of business or affairs of a company”. These

mistakes or irregularities are within the scope of the curative provisions of s. 229 of the *Business Corporations Act*.

However, in *Tolko Industries Ltd. v. Riverside Forest Products Ltd.*, 2004 BCSC 1752, aff'd 2004 BCCA 599, the courts declined to use s. 229 to remedy a company's failure to put before its shareholders an increase in its authorized share capital that required their approval. In *Western Canadian Coal Corp. v. Fawcett*, 2006 BCSC 463, the court held it did not have the discretion to correct a director's non-compliance with the corporate statute's requirements to disclose a conflict of interest.

In some circumstances where a proxy is found to be invalid, it may be more appropriate to order a new election rather than validating the results of a meeting. This is especially so if controversy remains over the validity of another proxy, a run-off election might otherwise be needed, and many proxies have not yet been subject to inspection or review (*Jawandha v. Bonny's Taxi Ltd.*, 2008 BCSC 1134).

Section 229, used in combination with s. 230 (discussed below), may be relied upon to obtain a wide range of remedies, including declarations as to the validity of appointments of directors and trustee shareholders, declarations as to shares held in trust, and orders rescinding share certificates issued (*Gitga'at Development Corp v. Hill*, 2006 BCSC 686, rev'd in part, 2007 BCCA 158).

Section 229 does not apply to societies incorporated under the *Society Act* (*Taek Ky Hong v. Young Kwang Presbyterian Church*, 2008 BCSC 800).

(d) A Practitioner's Viewpoint [§0.83]

Where a matter can be resolved on undisputed facts or by reference to documents alone, the issues may be decided summarily (*Douglas Lake Cattle Company v. Smith* (1991), 54 B.C.L.R. (2d) 52 (C.A.)). However, where there are disputed issues of facts, a summary resolution may not be appropriate (*Chambers v. Hamersley Holdings Ltd.*, 2009 BCSC 558).

6.4 Correction of Basic Records [§0.84]

Under the former *Company Act*, the court had only the power to correct the register of shareholders. The *Business Corporations Act* broadens the scope of records that may be rectified, and now provides a mechanism to force the correction of the company's "basic records". These records include the articles, notice of articles or memorandum, minutes of any meeting of shareholders or directors, any resolution passed by shareholders or directors, the register of directors, the central securities register, the branch securities register, and any other register created by the company under any predecessor to the *Business Corporations Act*.

The court has the power to order the company to correct information alleged to be wrongly entered or retained in, or wrongly deleted or omitted from, a company's basic records. As well, the court has the power to compensate anyone who has suffered a loss due to the existence of incorrect information or the omission of information.

(a) Statutory Reference [§0.85]

This remedy is set out in s. 230 of the *Business Corporations Act*.

(b) Deciding Whether to Apply to Correct Basic Records [§0.86]

(i) Standing Issues [§0.87]

The company, a shareholder, or an "aggrieved person" may apply to the court for an order to correct the company's basic records.

A “shareholder”, for this remedy, is a registered shareholder only.

(ii) Costs Issues [§0.88]

The section does not expressly provide for indemnity of the person who applies to court.

(c) Key Cases and Interpretation [§0.89]

In *Jorgensen v. San Jose Mines Ltd.*, 2004 BCSC 869, the court used this power to implement a referee’s report on the identity of a company’s shareholders by ordering the company to “correct” its central securities register.

This power may be used to confirm the accuracy of records, not merely to correct them (*Trident Foresore Lands Ltd. v. Brown*, 2004 BCSC 1365).

Section 230, when used in conjunction with s. 229, may be relied upon to obtain a wide range of remedies, including declarations as to the validity of appointments of directors and trustee shareholders, declarations as to shares held in trust, and orders rescinding share certificates issued (*Gitga’at Development Corp v. Hill*, 2006 BCSC 686, rev’d in part, 2007 BCCA 158). See §1.77–1.83 for a discussion of s. 229.

6.5 Requiring Submission of Records for Filing [§0.90]

This remedy forces a company to submit a record to the Corporate Registry for filing.

(a) Statutory Reference [§0.91]

This remedy is set out in s. 231 of the *Business Corporations Act*.

(b) Deciding Whether to Apply to Require Submitting Records for Filing [§0.92]

(i) Standing Issues [§0.93]

Any director, shareholder or creditor of the company can apply to court for an order requiring the company to submit a record for filing.

A “shareholder”, for this remedy, is a registered shareholder only.

(ii) Costs Issues [§0.94]

The court may order that the costs of the application be paid by the company, by any director or officer of the company, or by any other person the court considers appropriate.

(c) Key Cases and Interpretation [§0.95]

As of the date of publication of this chapter, there are no reported cases interpreting this section.

7. Investigations and Inspections [§0.96]

7.1 Overview [§0.97]

Shareholders holding at least 1/5 of the issued shares of a company may apply to have the court appoint an inspector to conduct an investigation of the company. The manner and extent of the investigation is determined by the court. Under s. 248(3), the court may make an order for appointment of an inspector only where there are reasonable grounds for believing that:

- (a) the affairs of the company are being or have been conducted or the powers of the directors are being or have been exercised in a manner that is oppressive or unfairly prejudicial to one or more shareholders;

- (b) the business of the company is being or has been carried on with intent to defraud any person;
- (c) the company was formed for a fraudulent or unlawful purpose; or
- (d) persons concerned with the formation, business or affairs of the company have, in connection with it, acted fraudulently or dishonestly.

(a) Statutory References [§0.98]

The power to order an investigation of a company is found in s. 248 of the *Business Corporations Act*.

(b) Deciding Whether to Apply for an Inspection or Investigation [§0.99]

(i) Standing Issues [§0.100]

To have standing to apply for an investigation or inspection, the applicant must be a registered shareholder of the company.

Where the applicant relies on the ground of oppression or unfairly prejudicial conduct (s. 248(3)(a)) to justify the inspection, the applicant must be or have been a victim of that behaviour.

(ii) Costs Issues [§0.101]

The court may, before appointing an inspector, require the applicant to give security for the payment of costs and expenses of the investigation, and may, at any time, set the amount of the costs and expenses and order by whom and in what proportion those costs and expenses are to be paid (s. 249(3)).

(c) Key Cases and Interpretation [§0.102]

Section 248 confers a discretionary power on the court to appoint an inspector, but this discretion should be exercised with extreme caution, as this remedy is extraordinary (*Re Automatic Phone Recorder Company Ltd* (1955), 15 W.W.R. 666 (B.C.S.C.); *Bassett-Smith v. Protech Consultants (1989) Ltd.*, 2005 BCSC 1101). A court must be satisfied that there appear to be reasonable grounds for believing that one of the enumerated grounds in s. 248(3) exist (*Bassett-Smith v. Protech Consultants (1989) Ltd.*, 2005 BCSC 1101; *Rosemont Enterprises Ltd. v. Mercury Industrial Inc.*, 2005 BCSC 1339, at para. 16). Even if that burden is satisfied, the court retains a discretion not to appoint an inspector (*Rosemont Enterprises Ltd. v. Mercury Industrial Inc.*, 2005 BCSC 1339 at para. 17).

A court may be hesitant to appoint an inspector unless other avenues to resolve the issues between the parties have been or are likely to be ineffective. This may include consideration of whether it is appropriate to convert the petition to an action and use various pre-trial discovery procedures, or whether the applicant can obtain the same information or accomplish the same goal privately (*Bassett-Smith v. Protech Consultants (1989) Ltd.*, 2005 BCSC 1101, at paras. 51-52; and *Rosemont Enterprises Ltd. v. Mercury Industrial Inc.*, 2005 BCSC 1339 at para. 64). As well, an inspector should not be appointed when the documents to be inspected do not exist (*Walek v. Guardian Storage Inc.*, 2010 BCSC 365).

For consideration of the equivalent provision under the former *Company Act*, see *Grebelly v. Seven Mile High Group Inc.* (1990), 46 B.C.L.R. (2d) 240 (S.C.).

(d) A Practitioner's Viewpoint [§0.103]

A company may, by special resolution, appoint an inspector to investigate its affairs and management (s. 250, *Business Corporations Act*). However, to take advantage of s. 250 the shareholders will have to pass a special resolution and this will require a higher percentage of shareholder approval than that required under s. 248.

8. Dissent Proceedings [§0.104]

8.1 Overview [§0.105]

In certain circumstances, a registered shareholder who disagrees with a proposed corporate action can require the company to purchase their shares for “fair value”. The actions giving rise to this right of dissent are:

- (1) an alteration of the restrictions in the memorandum of a company on the business to be carried on by the company or on its powers (s. 260);
- (2) a proposed amalgamation (ss. 272 and 287);
- (3) a proposed disposition of all, or substantially all, of the company’s undertaking (s. 301(5));
- (4) a proposed continuance outside British Columbia (s. 309); and
- (5) a resolution or court order permitting dissent (it is common for resolutions proposing plans of arrangement, and court orders entitling shareholders to vote on them, to permit dissent).

(a) Statutory References [§0.106]

The dissent remedy is set out in s. 237 of the *Business Corporations Act*.

(b) Deciding Whether to Dissent [§0.107]

(i) Standing Issues [§0.108]

Under the *Business Corporations Act*, only registered shareholders can exercise dissent rights.

However, it is possible for a company to act so as to effectively estop itself from denying that right to beneficial shareholders as well. For example, in *Lay v. Genevest Inc.*, 2005 ABQB 140, a beneficial shareholder gave the company notice of his intent to dissent, making it clear that he was a beneficial shareholder and asking the company for any further information necessary to exercise his dissent rights. The company did not respond and later tried to take the position he could not dissent because he was not a registered shareholder. The court held that the company was estopped from taking this position.

Likewise, a shareholder may be estopped from asserting dissent rights by silence and acceptance of the benefits of the corporate action from which he or she seeks to dissent (see *Lake & Co. v. Calex Resources Ltd.*, 2004 ABQB 71).

(ii) Costs Issues [§0.109]

The section does not expressly provide for indemnity of the person who applies to court.

(iii) Waiver [§0.110]

A shareholder may waive the right to dissent with respect to a particular corporate action (*Business Corporations Act*, s. 239(1)) by providing to the company a waiver which sets out specified information (s. 239(2)). In that event, the shareholders’ right of dissent terminates (s. 239(3) and (4)). A shareholder may not waive its right to dissent generally (s. 239(1)).

(iv) Notice of Corporate Action [§0.111]

The company must notify its shareholders of corporate actions from which they have a right to dissent. If shareholders are entitled to dissent from a resolution that is to be considered at a shareholders’ meeting, the company must notify them in advance of the meeting, the resolution, and their right of dissent (s. 240(1)). The notice period depends on the situation. If the shareholders are entitled to dissent from a consent resolution or resolution of directors, the company may, at least 21 days before the specified date,

notify them of the resolution and their right to dissent (s. 240(2)). If the company does not and the resolution is passed, or if a court order provides for a right of dissent, the company must notify the shareholders of the resolution or order and their right to dissent within 14 days after the passing of the resolution (ss. 240(3) and 241)).

(v) Notice of Dissent [§0.112]

A shareholder who intends to dissent from corporate action must send the company a written notice of dissent within a time frame of two or 14 days, depending on the circumstances (see s. 242(1)). The notice must specify the shares in respect of which the shareholder is dissenting and whether the shareholder is a registered or beneficial owner of the shares or both (s. 242(1) to (4)). If the notice does not comply with s. 242, the shareholders' right of dissent terminates (s. 242(5)).

(vi) Notice of Intention to Proceed [§0.113]

If a company that receives a notice of dissent intends to continue with the contentious action, it must send the dissenting shareholder a notice of intention to proceed stating that and advising the shareholder how to complete its dissent (s. 243)).

(vii) Completion of Dissent [§0.114]

If dissenting shareholders who receive a notice of intention to proceed still want to dissent, they must send the company or its transfer agent, within one month, their share certificates and a written statement that they require the company to purchase their shares (s. 244(1)). The shareholder is then deemed to have sold the shares, and the company to have purchased them (s. 244(3)). Once the shareholder has done this, the shareholder may not vote or exercise any shareholder rights in respect of the shares (s. 244(6)). Again, if the shareholder fails to comply with this requirement, its right to dissent terminates (s. 244(4)).

(viii) Payment and Valuation [§0.115]

The dissenting shareholder and the company can agree on the fair value of the shares (*Business Corporations Act*, s. 245(1)). If they do not, either may apply to the court to determine the value or apply for an order that the value be established by arbitration or by reference to a registrar or referee (s. 245(2)). The company must then promptly pay that agreed or determined amount to the shareholder (s. 245(1) and (3)) unless the company is insolvent or payment of the amount would make it insolvent. In those circumstances the company must notify the shareholder and not pay the amount (s. 245(5)). The dissenting shareholder may then either withdraw its notice of dissent within 30 days, or claim against the company for the unpaid amount (s. 245(4)).

(ix) Loss of Right to Dissent [§0.116]

In addition to losing dissent rights for failure to comply with the requirements set out above, a shareholder loses the right of dissent if:

- (1) the company abandons the corporate action that has given rise to the right of dissent;
- (2) a court permanently enjoins the action; or
- (3) the shareholder votes in favour of the action or withdraws the notice of dissent with the company's consent (s. 246).

When these events occur, the company must return the share certificates to the shareholder and the shareholder regains the ability to vote the shares and exercise shareholders' rights (s. 247)).

(c) A Practitioner's Viewpoint [§0.117]

If a shareholder dispute arises out of the company's decision to pursue an action which gives rise to dissent rights, shareholder clients will seek advice on whether to exercise those rights. Clients should weigh the effect of the proposed transaction on their shareholding against the likely fair value of their shares and the costs of obtaining payment of that amount. A client will likely have the choice of

remaining a shareholder of a fundamentally different kind of company, or cashing in its shareholding for its current value.

If shareholder clients and the company cannot agree on the fair value of the shares, litigation or arbitration, almost certainly requiring expert opinion evidence about the share value, will be required to determine that value (*Grandison v. NovaGold Resources Inc.*, 2007 BCSC 1780). Any such proceeding will likely involve significant legal and expert costs. It is generally not appropriate to apply a “minority discount” in such a determination (*Monachese v. Tri Phi Holdings Ltd.*, 2007 BCSC 846).

Because of the “insolvency” limitation on the company’s obligation to pay the fair value of the dissenting shareholders’ shares (see above), an important factor in this consideration should be whether the company is insolvent or payment of the shares’ fair value would make it insolvent.

9. Liquidation and Dissolution [§0.118]

9.1 Overview [§0.119]

Liquidation and dissolution of a company is available under s. 324 of the *Business Corporations Act* and as a remedy for oppression under s. 227(3)(o).

Even if the conduct complained of falls short of oppressive or unfairly prejudicial conduct, a company may be liquidated and dissolved by court order if the court thinks it “just and equitable” to do so (*Safarik v. Ocean Fisheries Ltd.* (1995), 12 B.C.L.R. (3d) 342 (C.A.), at paras. 87-93, 103-104, 118-122; *Samra v. Bel-Air Taxi Ltd.*, 2009 BCSC 548, at para. 89).

As this is a drastic remedy, a heavy onus rests on the applicant to persuade the court that it is warranted. However, the requirement that it is just and equitable for the company to be liquidated may be easier to meet than for the court to find oppression.

It is important to note that, even if the court is satisfied it would be just and equitable to liquidate the company, it need not make such an order. Under the *Business Corporations Act*, s. 324(3), the court may also make any of the orders available under the oppression remedy (s. 227)).

(a) Statutory References [§0.120]

The remedy of liquidation and dissolution is provided in ss. 324 and 227(3)(o) of the *Business Corporations Act*.

(b) Deciding Whether to Apply to Liquidate and Dissolve [§0.121]

(i) Standing Issues [§0.122]

Under s. 324, the company, a shareholder of the company, a beneficial shareholder, a director of the company or any other appropriate person (including a creditor of the company), can bring an application to liquidate and dissolve the company.

(ii) Costs Issues [§0.123]

The section does not expressly provide for indemnity of the person who applies to court.

(c) Key Cases and Interpretation [§0.124]

The most common situations in which the court may conclude that it is “just and equitable” to liquidate a company are as follows (see *Coutu v. San Jose Mines Ltd.*, 2005 BCSC 453):

- (1) a deadlock exists among the company's board of directors that prevents them from managing the company (see, for example, *Kang v. Sachdev*, 2008 BCSC 1032);
- (2) the "substratum" (basis) of the company's business, or the purpose for which it was formed, has disappeared;
- (3) a shareholder has justifiably lost trust and confidence in the directors' ability to manage the company's affairs because of their conduct of the business (not their personal affairs), including their dishonesty. It is not sufficient that a shareholder is dissatisfied at being outvoted on corporate policy or that managers are negligent; or
- (4) where the company was formed on the basis of a close personal relationship among the shareholders or can otherwise be said to be an "incorporated partnership", in any of the circumstances in which a partnership could be dissolved. One of those circumstances is the collapse of the relationship among the "partners", making it impossible for them to continue to work together.

Less common situations include the following:

- (1) "breach of a settled practice" (for example, *Safarik v. Ocean Fisheries Ltd.* (1995), 12 B.C.L.R. (3d) 342 (C.A.));
- (2) contravention of the articles of the company; or
- (3) dishonesty of one of the shareholders.

In the case of a family company, courts have held that it is appropriate to take a liberal approach to liquidation. For example, it would be just and equitable to liquidate a family company where one family member, after working in the business for many years, was excluded from management even though he was never a director and there was no wrongdoing by the other family members (*Safarik v. Ocean Fisheries Ltd.*) Even when a petitioner was never actively involved in the management of the company, the petitioner may be entitled to the remedy if they had a reasonable expectation that their shares would ultimately allow them to benefit from the family wealth and provide them with financial security, and the dealings and relationships between the shareholders can not be entirely separated from the family dynamics (*Runnalls v. Regent Holdings Ltd.*, 2008 BCSC 1073).

However, Ontario courts have also held that, even in a closely held family company, it cannot be "just and equitable" to liquidate the company unless the shareholders had a reasonable expectation of that result in those circumstances (*Animal House Investments Inc. v. Lisgar Development Ltd.* (2007), 87 O.R. (3d) 529 (S.C.J.), aff'd [2008] O.J. No. 2240 (QL) (S.C.J. Div. Ct.)). British Columbia courts have not gone so far, although they have held that the shareholders' reasonable expectations are relevant to the "just and equitable" analysis (*Walker v. Betts*, 2006 BCSC 128).

An inquiry into what is just and equitable extends beyond an examination of the narrow legal or proprietary rights to a shareholder's equitable rights (*Walker v. Betts*, 2006 BCSC 128, at para. 82; *Safarik, supra*, *Pasnak v. Chura*, 2004 BCCA 221, *Goodyear v. H.A.B.I.T. Research Ltd.*, 2008 BCSC 167).

(d) A Practitioner's Viewpoint [§0.125]

The utility of a liquidation petition as a dispute resolution mechanism should be considered carefully. Because liquidation claims must be commenced by petition supported by affidavit evidence and (unlike oppression and unfairly prejudicial conduct claims) are often resolved summarily on that evidence, this remedy may be not only the most useful, but also the quickest and most cost-effective route to resolution. A liquidation claim may also provide sufficient leverage to enable a shareholder to negotiate an exit from the company or another acceptable solution to the dispute. A majority shareholder faced with a complaining minority shareholder may, in the absence of a shareholders' agreement containing some provision to deal with the situation, simply stonewall, thinking there is little the minority shareholder can do. If the minority shareholder begins a liquidation proceeding, the majority shareholder is then faced with the potential choice between negotiating a settlement and having "their" business liquidated (or at

least being ordered to buy out the minority shareholder on terms imposed by the court rather than agreed to by the parties).

However, it may seem daunting to try to persuade a court to liquidate a company (particularly one that is actively carrying on business) and courts are reluctant to do so. It should be kept in mind that if the court is persuaded that it would be just and equitable to liquidate the company for one of the reasons set out above, less drastic and more useful orders may still be available under s. 227(3).

10. Securities Law Remedies [§0.126]

10.1 Overview [§0.127]

In addition to remedies under the *Business Corporations Act*, other remedies may be available under the *Securities Act* if the company is subject to its provisions. Under this legislation, shares are called “securities”. Securities, however, are broader instruments than shares, and the word is defined in the *Securities Act* (s. 1). For a recent discussion of the meaning of “security” see *Holmes v. United Furniture Warehouse LP*, 2009 BCSC 1805, at paras. 44-53.

10.2 Take Over Bids and Issuer Bids: Disclosure Requirements [§0.128]

Part 13 of the *Securities Act* provides a comprehensive “code of conduct” for all parties involved in take over bids and issuer bids. The purpose of this part is to protect the *bona fide* interests of shareholders of target companies by establishing regulatory requirements for disclosure of information which would reasonably be expected to affect the shareholders’ decision to accept or reject a bid (*Re Beringer Properties Inc.*, [1993] 18 B.C.S.C. Weekly Summary 18 (B.C. Sec. Comm.)).

An “interested person”, discussed below, may apply to the Securities Commission (s. 114) or to court (s. 115), for orders to remedy a failure to comply with the disclosure requirements in the bidding process. Applications to the Securities Commission may result in orders which restrain distribution of records used or issued in connection with a bid, require amendment or variation of such records, and direct persons to comply with the disclosure obligations in Part 13 (s. 144(1)). The Securities Commission may also exempt persons from the requirements of Part 13 if to do so would not be prejudicial to the public interest (s. 144(2)).

(a) Statutory Reference [§0.129]

Applications to the Securities Commission or to court for disclosure of information in a take over bid or issuer bid are governed by ss. 114 and 115 of the *Securities Act*.

(b) Deciding Whether a Court Application is Necessary [§0.130]

(i) Standing Issues [§0.131]

Section 92(2) governs standing for the remedies in ss. 114 and 115 of the *Securities Act*, and sets out an exhaustive list of “interested persons” who may apply for a court order. This definition includes the company whose securities are subject to the bid (the “subject company”) and a security holder, director, or officer of the subject company. “Security holder” is not a defined term.

Under this section, the court and the Securities Commission also retain the discretion to allow a “proper person”, i.e., a person not enumerated in the section, to make an application.

(ii) Costs Issues [§0.132]

Sections 114 and 115 do not expressly provide for indemnity of the person who applies to court.

(c) Key Cases and Interpretation [§0.133]

The court may make any order it thinks fit (s. 115(2)). Without limiting the generality of the discretion of the court, the court may make an order:

- (a) compensating any interested person who is a party to the application for damage as a result of the contravention of Part 13;
- (b) rescinding a transaction with any interested person;
- (c) requiring any person to dispose of any securities acquired pursuant to or in connection with a bid;
- (d) prohibiting any person from exercising any or all of the voting rights attaching to any securities; and
- (e) requiring a trial of an issue.

Although the powers of the court under s. 115 are broad, the court may decline to remedy a petitioner's concerns when the Securities Commission is a better forum in which to seek a remedy, for example when the parties are dealing with short deadlines before a bid completes and the allowance of discovery rights could open an avenue for both sides to complicate or frustrate the bid process (*Cross Creek Finance Group Ltd. v. International Cetec Investments Inc.*, [1997] 14 B.C.S.C. Weekly Summary 45 (B.C.S.C.)).

10.3 Misrepresentation [§0.134]

Misrepresentations in a prospectus, circular, notice or prescribed disclosure document can result in a plaintiff suing for damages or for rescission of the securities purchase contract. Remedies for misrepresentation exist at common law (in tort) and may be relied upon by a security holder. The *Securities Act* provides a statutory remedy for misrepresentation which modifies the required components of proof for misrepresentation (the *Act* deems reliance upon the misrepresentation, so that a purchaser does not need to prove that element (unlike at common law)).

“Misrepresentation” is defined in s. 1 of the *Securities Act* to mean “an untrue statement of material fact or an omission to state a material fact that is required to be stated or that is necessary to prevent a statement that is made from being misleading in the circumstances in which it was made”. A “material fact”, also defined in s. 1, means “when used in relation to securities issued or proposed to be issued, a fact that would reasonably be expected to have a significant effect on the market price or value of the securities”.

A plaintiff asserting this statutory cause of action must elect between damages and rescission. Depending on the remedy sought, only certain parties can be sued within different limitation periods.

Statutory defences are also provided. Generally speaking, there is no liability if

- (1) the purchaser had knowledge of the misrepresentation when purchasing;
- (2) the document containing the misrepresentation was filed or sent without the knowledge or consent of the company or person authoring it;
- (3) consent for sending the document had been withdrawn with notice of, and reasons for, the withdrawal made before the purchase of securities;
- (4) the person accused of the misrepresentation did not make the misrepresentation or their statement was not fairly represented in the ultimate document; or
- (5) the person accused of the misrepresentation could not have identified the misrepresentation by the exercise of due diligence.

(a) Statutory Reference [§0.135]

The *Security Act* sets out this remedy in s. 131 (misrepresentations in prospectus), s. 132 (misrepresentations in circular or notice), and s. 132.1 (misrepresentations in prescribed disclosure documents)).

(b) Deciding Whether a Court Application is Necessary [§0.136]

(i) Standing and Limitation Issues [§0.137]

A person who purchases a security offered by a prospectus during the period of distribution has standing to bring an action for damages or rescission. If a take over bid circular, issuer bid circular, notice of change or notice of variation sent under Part 13 of the Securities Act contains a misrepresentation, a person to whom the circular or notice was sent has standing to bring an action for damages or rescission. A person who purchases a security offered by a prescribed disclosure document has standing to bring an action for damages or rescission.

The *Securities Act* also provides a limitation period for bringing a claim in misrepresentation. A rescission action must be commenced within 180 days after the date of the transaction giving rise to the cause of action. A damages action must be commenced no more than the earlier of (i) 180 days after the plaintiff first had knowledge of the facts giving rise to the cause of action, or (ii) three years after the date of the transaction that gave rise to the cause of action (s. 140). Section 159 provides for an ultimate limitation period of six years, except for actions referred to in s. 140 (relating to misrepresentations)).

(ii) Costs Issues [§0.138]

The *Securities Act* does not provide indemnity for an application for misrepresentation. The usual costs rules applicable in the British Columbia Supreme Court apply.

(c) Key Cases and Interpretation [§0.139]

Considering analogous Ontario securities legislation, the Supreme Court of Canada has held that where a prospectus is accurate at the time of filing, the legislation limits the obligation of post-filing disclosure to notice of a “material change”. A change in intra-quarterly results is not itself a change falling within the “material change” definition. Where there is no obligation to disclose, an issuer cannot be liable for civil damages (*Kerr v. Danier Leather Inc.*, 2007 SCC 44).

Once a misrepresentation is shown, the *Securities Act* deems detrimental reliance (*JTI-Macdonald v. Attorney General (British Columbia)*, 2000 BCSC 0312).

Simply making an untrue statement in the statutory filing does not constitute an offence under the *Securities Act*. Rather, the incorrect statement must amount to a misrepresentation (*R. v. Coglon*, 1998 CanLII 4932 (B.C.S.C.)).

The failure to plead causation for the cause of action created in s. 132.1 does not necessarily result in a successful “strike-out” application (under Rule 19 of the *Rules of Court*), as the absence of that pleading does not make the cause of action “bound to fail”. In order to obtain judgment under s. 132.1, a plaintiff must prove that (a) he purchased securities offered under a prescribed disclosure document, (b) that document contained a misrepresentation, and (c) he suffered damages. The court should be satisfied the cause of this loss was the purchase of shares under the document that contained misrepresentations deemed to be relied upon (*Roberts v. Horizon FX Limited Partnership*, 2009 BCSC 304 at paras. 21 and 28). Statutory misrepresentation claims are not available to those persons buying securities on the secondary market, as opposed to under one of the documents discussed above (*Pearson v. Boliden Ltd.*, 2002 BCCA 624). Note, however, that the legislature has now enacted separate secondary market disclosure liability provisions, discussed below.

A plaintiff alleging a negligent misrepresentation *at common law* need not prove their decision or action would not have been made but for the misrepresentation. It is sufficient, rather, for the plaintiff to prove that the misrepresentation was at least one factor which induced the plaintiff to act to his or her detriment (*Kripps v. Touche Ross & Co.* (1997), 33 B.C.L.R. (3d) 254 (C.A.)). Also, under common law if a plaintiff

establishes a misrepresentation which might reasonably lead to a claimed loss, the onus shifts to the defendant to prove the misrepresentation was not in fact relied upon (*Sidhu Estate v. Bains* (1996), 25 B.C.L.R. (3d) 41 (C.A.)).

(d) A Practitioner's Viewpoint [§0.140]

When examining cases regarding materiality, consider the statutory provision at issue. Some definitions have undergone significant legislative reform which may impact whether or not a "material" fact has been misrepresented or omitted.

Limitation periods for statutory causes of action should also be carefully considered. If the period has expired, determine whether it is possible to bring a common law misrepresentation claim, but note that reliance will have to be proved. Common law misrepresentation claims may have different "trigger dates" for limitation periods than securities legislation (*LMS 3851 v. Homer Street Developments*, 2004 BCSC 1654).

10.4 Secondary Market Disclosure Liability [§0.141]

The *Securities Act* now imposes liability for misrepresentations in relation to securities bought on the secondary market in the following circumstances:

- (1) Where a responsible issuer or person with authority to act on behalf of that issuer releases a document that contains a misrepresentation (s. 140.3(1));
- (2) Where a person with authority to speak on behalf of a responsible issuer makes a public oral statement that relates to the business or affairs of the responsible issuer and that contains a misrepresentation (s. 140.3(2));
- (3) Where an "influential person" makes a public oral statement that relates to the responsible issuer and that contains a misrepresentation (s. 140.3(3)); or
- (4) Where a responsible issuer fails to make a timely disclosure (*i.e.* fails to disclose a material change in the manner and at the time required, s. 140.3(4)).

"Responsible issuer" means (1) a reporting issuer or (2) any other issuer with a real and substantial connection to British Columbia, any securities of which are publicly traded (s. 140.1).

An "influential person" means, in respect of a responsible issuer, (a) a control person, (b) a promoter, (c) an insider who is not a director or officer of the responsible issuer, or (d) an investment fund manager, if the responsible issuer is an investment fund (s. 140.1).

The court requires that a person obtain leave of the court before commencing an action for damages under s. 140.3. To grant leave, the court must be satisfied that the action is being brought in good faith and that there is a reasonable possibility that the action will be resolved at trial in favour of the plaintiff. Actions cannot be discontinued, abandoned or settled without approval of the court and on terms the court thinks fit (s. 140.91).

The Securities Commission may intervene in either the leave to proceed application or in a damages action (s. 140.92).

Part 16.1, which governs actions for secondary market disclosure misrepresentation, provides a limitation period of three years beginning when the misrepresentation was first released in a document or made orally, or when a material change was required to be disclosed but was not. Alternatively, there is a six month limitation period where a news release has been issued which discloses that leave has been granted to commence an action under s. 140.3 (or under comparable legislation in other provinces) in respect of the same misrepresentation or failure to make timely disclosure.

(a) Statutory Reference [§0.142]

Secondary market disclosure liability is created in and governed by Part 16.1 of the *Securities Act*.

(b) Deciding Whether a Court Application is Necessary [§0.143]

(i) Standing Issues [§0.144]

A person who acquires or disposes of the issuer's securities during the period between (a) the time when the misrepresentation was first released in a document or made orally, or when a material change was required to be made (but was not), and (b) the time the misrepresentation was publicly corrected or the material change was disclosed, has standing to bring an action. Note, however, that the plaintiff must be granted leave to commence an action.

(ii) Costs Issues [§0.145]

The *Securities Act* does not provide indemnity for an application for misrepresentation. The court, upon a discontinuance, abandonment, or settlement, may make orders about costs.

(c) Key Cases and Interpretation [§0.146]

As at the time of publication, there have not yet been any reported cases.

(d) A Practitioner's Viewpoint [§0.147]

A person who has standing to bring a secondary market disclosure misrepresentation claim has a right of action for damages against certain persons described in Part 16.1 of the *Securities Act*. Note also that a person with standing has a right of action for damages without regard to whether the person relied on the misrepresentation or whether the person relied on the responsible issuer having complied with its disclosure requirements. These provisions are different than the deeming provisions contained in the other actions for misrepresentation discussed above. Without case law considering this difference, it is difficult to predict whether a court would determine that reliance is deemed. Close consideration of s. 140.4, which provides for burden of proof and defences, will be necessary. Damage awards are governed by s. 140.5, but are capped at certain amounts by s. 140.7.

10.5 Enforcement Provisions [§0.148]

The *Securities Act* provides for a wide range of penalties for contravention of its provisions which can be employed for the benefit of the public interest and to serve as a specific and general deterrent. Although these provisions are not strictly "shareholders' remedies", they are of interest to security holders.

Some penalties are quasi-criminal in nature, and can result in substantial fines (up to \$3 million), imprisonment for up to three years, or both. Where a company commits an offence, an employee, officer, director or agent of that company who authorizes, permits or acquiesces in the offence commits the same offence whether or not the company is convicted of the offence. Quasi-criminal penalties are provided in s. 155 of the *Securities Act*.

If the court finds that a person has committed a quasi-criminal offence, the court may make an order that the person pay certain enumerated monies to the Securities Commission or that the person compensate or make restitution to another person (s. 155.1). If a shareholder was particularly aggrieved, the court may provide him or her with a remedy under s. 155.1.

The Securities Commission also has a broad power to issue compliance and cease trade orders. This power allows them to cause a person to comply with or cease contravening a provision of the *Securities Act* or its regulations, a decision of the Securities Commission, or a by-law, rule or other regulatory instrument, policy, or direction. The Securities Commission can also order that a person cease trading in,

or be prohibited from purchasing, any (specified or not) securities or exchange contracts. Also, it can force a person to resign as a director or officer, prohibit a person from acting as a director or officer, and prohibit a person from acting or engaging in certain kinds of market or management activities. All of these powers can be collectively referred to as “enforcement remedies”, and are found in s. 161.

Finally, the Securities Commission can also order a person to pay administrative penalties of up to \$1 million for each contravention of a provision of the *Securities Act* or a decision of the Securities Commission, where it is in the public interest to make the order. Administrative penalties are set out in s. 162.

The Securities Commission must be guided in the exercise of its public interest jurisdiction by the overarching purposes of the *Securities Act*, which includes protecting investors, fostering of fair and efficient capital markets, and promoting public confidence in the system (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37; *Re Cartaway Resource Corporation*, 2004 SCC 26).

11. Additional Resources [§0.149]

The purpose of this chapter is to outline general considerations and leading principles in shareholders’ disputes. Additional research will likely be necessary, and the following sources may be helpful. This list of sources is by no means exhaustive.

Looseleaf research sources include:

- CLEBC, *British Columbia Company Law Practice Manual*, looseleaf edition
- CLEBC, *Advising British Columbian Businesses*, looseleaf edition
- Paul Martel, *Business Corporations in Canada (Legal and Practical Aspects)*, looseleaf edition
- David S. Morritt, Sonia L. Bjorkquist, and Allan D. Coleman, *The Oppression Remedy*, looseleaf edition
- Dennis H. Peterson, *Shareholder Remedies in Canada*, looseleaf edition

Textbook sources include:

- Markus Koehnen, *Oppression and Related Remedies* (Toronto (Thomson Carswell, 2004)
- Kevin McGuinness, *Canadian Business Corporations Law*, 2nd ed. (Markham, Ont. (LexisNexis Butterworths, 2007)
- Henry J. Knowles, *So You Want A Fight! Shareholder Rights and Remedies in Canada* (Don Mills, Ont. (CCH Canadian, 1986)

Research articles include:

- Stephen Antle, “Oppression, Just and Equitable Winding Up and the Family Company (*Safarik v. Ocean Fisheries Ltd.*” (Canada Bar Review – September-December 1997)), available online at <http://blgmtlws02.blgcanada.com/BLGWebservice/resources?id=c373e915ccac2c81546a001438ba6cc7>
- Stephen J. Mulhall, Stephen Antle, and Stephen T.C. Warnett, “Securities Litigation and the Oppression Remedy” (2002), available online at: <http://blgmtlws02.blgcanada.com/BLGWebservice/resources?id=c373e915ccac2c9ae0a1001438ba6cc7>

- Stephen Antle, “Shareholders’ Rights and Remedies” (2003), available online at: <http://blgmtlws02.blgcanada.com/BLGWebservice/resources?id=c373e915ccac2c1b0b94001438ba6cc7>
- Stephen Antle, “Shareholder Oppression – What Is, What Isn’t” (2003), available online at <http://blgmtlws02.blgcanada.com/BLGWebservice/resources?id=c373e915ccac2a1a6f35001438ba6cc7>
- Stephen Antle and Stephen T.C. Warnett, “Court Proceedings under the New British Columbia *Business Corporations Act*” (2004), available online at: <http://blgmtlws02.blgcanada.com/BLGWebservice/resources?id=c373e915ccac355a200c001438ba6cc7>
- Stephen Antle, Stephen T.C. Warnett, and J. Tracy Li, “And Now For Something Slightly Different (The British Columbia Oppression Remedy)” (2006), available online at (<http://blgmtlws02.blgcanada.com/BLGWebservice/resources?id=c373e915ccac491efff8001438ba6cc7>)

Consult also the annotated collections of the *Business Corporations Act*, *Company Act*, and *Securities Act*, as well as online sources such as CanLII.org and the British Columbia Courts Website. The British Columbia Securities Commission website also contains much useful information.