IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *AtlasHub Holdings Ltd. v. Acel Power Inc.,* 2026 BCSC 1112

Date: 20260618
Docket: S256769
Registry: Vancouver

Between:

AtlasHub Holdings Ltd.

Petitioner

And

Acel Power Inc. and Yu-Chen Liu also known as Anthony Liu

Respondents

Before: The Honourable Justice Wilson

Reasons for Judgment

Counsel for the Petitioner:	S.T.C. Warnett C. Fawcett M. Xin
Counsel for the Respondent, Acel Power Inc.:	M.J. Braidwood O. Stoklosa J. Desantis, Articled Student
Counsel for the Respondent, Yu-Chen Liu	J.J. Weisman S. Vorbrodt
Place and Date of Hearing:	Vancouver, B.C. April 20 – 24, 2026
Place and Date of Judgment:	Vancouver, B.C. June 18, 2026

[1] There are two petitions relating to a British Columbia company, Acel Power Inc. ("Acel" and/or the "Company"). Acel is a start-up business that is trying to develop and market electric powered motors for boats.

[2] When Acel was incorporated in 2021, the petitioner, AtlasHub Holdings Ltd. ("AtlasHub"), was the sole shareholder. The principal of AtlasHub is Mr. Michael Liu. Both Mr. Anthony Liu and Mr. John Liu, who are two of Michael Liu's three sons, were involved with Acel from inception.

[3] After an initial prototype was built and tested, Acel determined that it required outside investors. A venture capital company, Tau Capital ("Tau"), invested $9 million USD in Acel. Tau became a preferred shareholder and, as part of its investment, Tau required certain agreements be entered into, including with AtlasHub. Tau also had the right to appoint one of five directors to Acel's board of directors.

[4] This dispute is ostensibly one between family members, and the primary protagonists are Michael and Anthony. John Liu is no longer involved. I will refer to the parties by first names for ease of reference.

[5] Anthony and Michael disagreed as to how Acel should be managed and operated following Tau's investment. Michael and his wife Loretta were the only signatories on Acel's bank accounts. Anthony's view was that Michael was using his control over the bank accounts to interfere with Acel's operations. In the spring of 2025, at the instance of Anthony and with the support of the other directors, but in the absence of Michael, a number of directors resolutions were passed, including one that had the effect of substantially diluting AtlasHub's shareholdings and terminating Michael from his position as the Company's chairman.

[6] Michael filed this petition in response to these various actions. Anthony also filed a petition.

<u>Background</u>

The parties

[7] Michael and his wife, Loretta Fung, have three sons, including Anthony and John. Over the past 40 years, Michael and Loretta have engaged in various business ventures in China and Canada. Michael also had previously owned manufacturing facilities in Taiwan. Michael holds or held a number of patents related to some of his prior businesses. Loretta was also involved in the businesses; her background was as an accountant.

[8] In the early 2000’s, Michael and Loretta settled in Canada. In or around February 2006, Michael and Loretta founded Milo Enterprises Inc. (“Milo”).

[9] In 2010, Anthony was studying electrical engineering with a minor in business at McMaster University in Hamilton. While there, he began to sell products on eBay and began to develop software to maximize his eBay store’s online presence and connection with shoppers. Milo’s e-commerce operations began when Anthony suggested to Michael that he sell products online.

[10] Michael and Loretta looked after the administrative side of Milo’s business. Michael handled finance and payments, incorporation and corporate structure. Loretta processed invoices, and John was also involved in Milo’s online operations. Neither Anthony nor John completed their university degrees, choosing instead to focus their efforts on Milo’s business.

[11] As a matter of estate planning, Michael and Loretta made the decision to create a family trust to hold some of their assets, including corporate assets. In 2015, Michael and Loretta formed and were appointed as the trustees of the M&L Family Trust (the “Liu Family Trust”). The Liu Family Trust is a discretionary trust of which Michael and Loretta are the only trustees. Their three children are all beneficiaries of the Liu Family Trust.

[12] AtlasHub was incorporated on May 8, 2015, and Michael and Loretta are the only directors of AtlasHub. AtlasHub is wholly owned by the Liu Family Trust.

Acel

[13] Acel was incorporated in June 2021, and AtlasHub was the sole shareholder. AtlasHub invested $200,000 and received 67 million common shares of Acel. At the time, there were no other shareholders of Acel. Michael was the chairman, John was the president and Anthony was appointed as CEO of Acel. All three were elected as directors.

[14] Between incorporation in 2021 and the Tau investment of May 2024, AtlasHub had invested an additional approximately $1,700,000. There were also other investors in Acel, generally contacts or associates of either Anthony or John, who had invested approximately $4,300,000 between them. These other investors have common shares, the same class of shares as AtlasHub.

[15] Acel developed a prototype electric boat motor and then set about trying to promote interest. Anthony attended trade shows for that purpose, and he was successful in attracting some potential customers. More funding was required. Acel needed to put into place a source of production and to increase its sales and marketing.

Tau investment

[16] In 2023, Anthony and John had connected with Mr. Brad Allen, a venture capital investor. Shortly thereafter, Mr. Allen became the managing partner for Tau and believed that Acel represented a good potential investment. He invited Anthony and John to present to Tau's partnership.

[17] After conducting its due diligence, Tau agreed to invest US$9 million into Acel, but required a number of agreements to be entered into as a condition of their investment. These agreements included the following:

a) A "Preferred Share Purchase Agreement", which provided, amongst other things, that:

    i. The use of Tau's invested funds was to be directed by Acel's board of directors;

ii. Acel would have employment agreements including salaries for each of Michael, John and Anthony, all of whom are referred to in the agreement as ‘founders’;

b) an investors’ rights agreement, which provided, amongst other things, that:

i. Tau would appoint one of the five directors to the board of directors;

ii. The majority of the common shareholders (at that time, AtlasHub) would appoint four directors to the board of directors; and

iii. Approval by Tau’s board appointee was required for significant transactions (as set out in the agreement);

c) A reverse vesting agreement, under which Acel could compel repurchase of any of the founders’ shares (the “Reverse Vesting Agreement”); and

d) A voting agreement, which provided that the chairman of Acel’s board was to be determined by its directors, as opposed to by shareholder vote.

[18] Tau’s investment was a purchase of preferred shares in Acel, and Mr. Allen became Tau’s board appointee. Michael, John, Anthony and Mr. Phil Rothenberg were AtlasHub’s appointees. By this time, AtlasHub was owed approximately $1.7 million by Acel, and this debt was converted to common shares. At that point, AtlasHub owned 70,874,587 out of 81,853,584 common shares in the capital of Acel, or 86.59% of the outstanding common shares.

[19] In May 2024, Acel issued amended and restated articles (the “Articles”), which included the following terms germane to the matter before the court:

a) The directors in their discretion could issue shares and may determine the manner, terms and conditions, and issue price of the shares (s. 3.1); and

b) The accidental omission to give notice of any meeting of directors to any director, or the non-receipt of any notice by any director, does not invalidate any proceedings at that meeting (s. 17.8).

[20] Acel began to execute on the plans outlined in the business proposal they had been promoting to investors. Candidates were interviewed for Acel's management and sales team. Acel bought demo boats and attended trade shows.

[21] When Tau's investment was received by Acel, it was deposited into Acel's bank account at CIBC. Michael, along with Loretta, was the signing authority on the account. It was his use of this signing authority that gave rise to the disputes that followed. From Anthony's perspective, Michael's refusal to use the Tau funds for their intended purposes, instead directing the funds elsewhere, served to frustrate the remainder of the directors as they tried to advance Acel's business.

The disputes

[22] In February 2025, Anthony and the other directors expressed their wish to have Michael relinquish control over the bank account. Michael requested that Mr. Jon Conlin, legal counsel to Acel, schedule an annual general meeting.

[23] On or about March 8, 2025, Michael received notice from Mr. Conlin of a directors' meeting to be held on March 11, 2025. Michael requested a copy of the agenda for the March 11 meeting. Subsequently, Michael sent an email to Anthony, Mr. Conlin, and other members of the board requesting a copy of the agenda, but none was provided.

[24] Michael did not attend the March 11 Meeting. At that meeting, the other directors resolved to do the following:

a) Revoke Michael and Loretta's signing authority over Acel's bank accounts;

b) Authorize legal counsel for Acel to terminate Michael's employment agreement dated January 1, 2023; and

c) Remove Michael as a director of each of Acel's subsidiaries in China.

[25] A board meeting was held on April 23, 2025. During the April 23, 2025 meeting, the board resolved to terminate Michael from his position as executive chairman (the “April 23 Resolution”). On the same day, the board scheduled another meeting for the following day, April 24, 2025.

[26] On April 24, 2025, the board resolved to issue to Anthony approximately 106 million common shares in Acel at $0.00000001 per share for aggregate gross proceeds of $1.06. (the “April 24 Resolution” and together with the April 23 Resolution, the “Impugned Resolutions”).

[27] As of April 24, 2025, Michael remained a director of Acel, and AtlasHub continued to be the majority shareholder of Acel’s common shares. Following the issuance of the common shares to Anthony on April 24, 2025, AtlasHub was no longer the majority shareholder, and therefore Anthony had the ability to appoint four of the five directors to Acel’s board.

[28] It is common ground that Michael did not receive notice of the directors’ meetings of April 23 or 24, 2025.

[29] On April 25, Anthony delivered on behalf of Acel a notice of repurchase of 19,444,444 of AtlasHub’s shares under the Reverse Vesting Agreement at the total price of $58,333. The repurchase was authorized at the April 24, 2025 board meeting referenced above.

[30] Finally, on May 3, 2025, a special general meeting was called for May 14, 2025, to have the shareholders remove Michael as a director. Michael received the notice for the special general meeting, and the resolution to remove Michael as a director was passed, with Michael having voted AtlasHub’s shares against the resolution.

<u>Litigation background</u>

[31] At issue in AtlasHub’s petition is the legal effect of the business of the directors that was conducted without notice to Michael. AtlasHub says the Impugned Resolutions

are of no force and effect and that the various transactions resulting therefrom should be declared a nullity. In the alternative, AtlasHub says the various actions constitute oppressive conduct pursuant to s. 227 of the *Business Corporations Act*, S.B.C. 2002, c. 57 [*BCA*].

[32] Anthony has filed his own petition, alleging unjust enrichment. Anthony's lawyer advised the purpose of his petition is if the court is concerned about the lack of consideration for the 106 million shares issued to Anthony on April 24, 2025, compensation for unjust enrichment would provide adequate justification for their issuance.

[33] The process followed by the parties at the hearing of the petition was that after a brief introduction of the case, there was time-limited cross-examination of the main affiants, followed by submissions. Although the intention had been to limit cross-examination to two hours, the time for cross-examination of Michael was extended because he testified through an interpreter.

Legal framework

[34] Corporations are creatures of statute and are subject to both the provisions of the enabling legislation and the common law. Corporations are managed by their directors who are elected by the shareholders based on rules set out in the *BCA* and in some cases by agreements made between the shareholders. The directors are required to comply with the *BCA*, its regulations, and the memorandum and articles of the company (*BCA*, s. 136(1)).

[35] Shareholders have statutory remedies if the affairs of the company have been conducted in a manner that is oppressive to one or more of the shareholders, or some action has been taken that is unfairly prejudicial to the shareholder. The primary section that creates these rights is s. 227 of the *BCA* which provides as follows:

> **Complaints by shareholder**
>
> 227 (1) For the purposes of this section, "shareholder" has the same meaning as in section 1 (1) and includes a beneficial owner of a share of the company and any other person whom the court considers to be an appropriate person to make an application under this section.

(2) A shareholder may apply to the court for an order under this section on the ground

(a) that the affairs of the company are being or have been conducted, or that the powers of the directors are being or have been exercised, in a manner oppressive to one or more of the shareholders, including the applicant, or

(b) that some act of the company has been done or is threatened, or that some resolution of the shareholders or of the shareholders holding shares of a class or series of shares has been passed or is proposed, that is unfairly prejudicial to one or more of the shareholders, including the applicant.

(3) On an application under this section, the court may, with a view to remedying or bringing to an end the matters complained of and subject to subsection (4) of this section, make any interim or final order it considers appropriate, including an order

(a) directing or prohibiting any act,

(b) regulating the conduct of the company's affairs,

(c) appointing a receiver or receiver manager,

(d) directing an issue or conversion or exchange of shares,

(e) appointing directors in place of or in addition to all or any of the directors then in office,

(f) removing any director,

(g) directing the company, subject to subsections (5) and (6), to purchase some or all of the shares of a shareholder and, if required, to reduce its capital in the manner specified by the court,

(h) directing a shareholder to purchase some or all of the shares of any other shareholder,

(i) directing the company, subject to subsections (5) and (6), or any other person, to pay to a shareholder all or any part of the money paid by that shareholder for shares of the company,

(j) varying or setting aside a transaction to which the company is a party and directing any party to the transaction to compensate any other party to the transaction,

(k) varying or setting aside a resolution,

(l) requiring the company, within a time specified by the court, to produce to the court or to an interested person financial statements or an accounting in any form the court may determine,

(m) directing the company, subject to subsections (5) and (6), to compensate an aggrieved person,

(n) directing correction of the registers or other records of the company,

(o) directing that the company be liquidated and dissolved, and appointing one or more liquidators, with or without security,

(p) directing that an investigation be made under Division 3 of this Part,

> (q) requiring the trial of any issue, or
>
> (r) authorizing or directing that legal proceedings be commenced in the name of the company against any person on the terms the court directs.
>
> (4) The court may make an order under subsection (3) if it is satisfied that the application was brought by the shareholder in a timely manner.
>
> (5) If an order is made under subsection (3) (g), (i) or (m), the company must pay to a person the full amount payable under that order unless there are reasonable grounds for believing that
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> (a) the company is insolvent, or
>
> (b) the payment would render the company insolvent.
>
> (6) If reasonable grounds exist for believing that subsection (5) (a) or (b) applies,
>
> (a) the company is prohibited from paying the person the full amount of money to which the person is entitled,
>
> (b) the company must pay to the person as much of the amount as is possible without causing a circumstance set out in subsection (5) to occur, and
>
> (c) the company must pay the balance of the amount as soon as the company is able to do so without causing a circumstance set out in subsection (5) to occur.
>
> (7) If an order is made under subsection (3) (o), Part 10 applies.

[36] There is no question that AtlasHub is a shareholder and therefore entitled to rely on s. 227.

[37] Not every act that has a negative effect on a shareholder will give rise to a remedy. Actions are measured with reference to a shareholder’s reasonable expectations of how the company will be run, and that there should be legitimate business reasons for decisions made. What might be oppressive conduct in the context of one company may not be in another.

[38] The *BCA* allows the court to remedy what are referred to as ‘corporate mistakes’ under s. 229. The section is significant here because AtlasHub argues that the court cannot provide the respondents with a remedy because the actions of Anthony were deliberate. Section 229 provides as follows:

> **Remedying corporate mistakes**
>
> 229 (1) In this section, "corporate mistake" means an omission, defect, error or irregularity that has occurred in the conduct of the business or affairs of a company as a result of which

> (a) a breach of a provision of this Act, a former Companies Act or the regulations under any of them has occurred,
>
> (b) there has been default in compliance with the memorandum, notice of articles or articles of the company,
>
> (c) proceedings at or in connection with any of the following have been rendered ineffective:
>
> (i) a meeting of shareholders;
>
> (ii) a meeting of the directors or of a committee of directors;
>
> (iii) any assembly purporting to be a meeting referred to in subparagraph (i) or (ii), or
>
> (d) a consent resolution or records purporting to be a consent resolution have been rendered ineffective.
>
> (2) Despite any other provision of this Act, the court, either on its own motion or on the application of any interested person, may make an order to correct or cause to be corrected, to negative or to modify or cause to be modified the consequences in law of a corporate mistake or to validate any act, matter or thing rendered or alleged to have been rendered invalid by or as a result of the corporate mistake, and may give ancillary or consequential directions it considers necessary.
>
> (3) The court must, before making an order under this section, consider the effect that the order might have on the company and on its directors, officers, creditors and shareholders and on the beneficial owners of its shares.
>
> (4) Unless the court orders otherwise, an order made under subsection (2) does not prejudice the rights of any third party who acquired those rights
>
> (a) for valuable consideration, and
>
> (b) without notice of the corporate mistake that is the subject of the order.

[39] AtlasHub relies on both the common law and s. 228 of the *BCA* as authority for the relief it seeks. In terms of the common law, AtlasHub argues that a resolution passed by the directors without notice having been provided to all of the directors is invalid, referring to *Cholakis v. Cholakis,* 2006 MBQB 91, *Anderson Lumber Co. v. Cdn. Conifer Ltd*., 1977 CanLII 1665 (A.B.C.A.), that each cite with approval the following from *The Annotated Business Corporations Act*, 2nd edition, by Wayne Gray (the "*Gray Annotation*"):

> There is no force to the argument that, where a majority of the directors authorize a transaction it would make no difference whether one further director also attends that meeting. That may or may not have been the result. A meeting is required so that the directors can make a decision after having the benefit of hearing the views of all directors who choose to attend that meeting. A resolution

> purported to be passed at a directors meeting of which a single director has no notice is invalid.

[40] AtlasHub says s. 228 of the *BCA* provides the court with the authority to set aside what it says are invalid transactions. Section 228 provides as follows:

> **Compliance or restraining orders**
>
> 228 (1) In this section, "complainant" means, in relation to a company referred to in subsection (2), a shareholder of the company or any other person whom the court considers to be an appropriate person to make an application under this section.
>
> (2) If a company or any director, officer, shareholder, employee, agent, auditor, trustee, receiver, receiver manager or liquidator of a company contravenes or is about to contravene a provision of this Act or the regulations or of the memorandum, notice of articles or articles of the company, a complainant may, in addition to any other rights that that person might have, apply to the court for an order that the person who has contravened or is about to contravene the provision comply with or refrain from contravening the provision.
>
> (3) On an application under this section, the court may make any order it considers appropriate, including an order
>
> > (a)directing a person referred to in subsection (2) to comply with or to refrain from contravening a provision referred to in that subsection,
> >
> > (b)enjoining the company from selling or otherwise disposing of property, rights or interests, or from receiving property, rights or interests, or
> >
> > (c)requiring, in respect of a contract made contrary to section 33 (1), that compensation be paid to the company or to any other party to the contract.

[41] The parties disagree as to whether s. 228 gives the court the authority to grant the relief sought by AtlasHub, or whether it is limited, as Anthony says, to preventative or injunctive type of relief in circumstances where a contravention of either the *BCA* or the company's constating documents is threatened.

<u>Positions of the parties</u>

Petitioner's position

[42] AtlasHub's primary argument is that the various directors' meetings that took place without notice to Michael were invalid, and the resolutions that resulted from those meetings must be set aside. AtlasHub was the majority shareholder of Acel and had the right to elect the common directors.

[43] AtlasHub says the suggestion by Anthony that Michael attempted to seize control of Acel following Tau's investment is untenable because Michael, as a director of AtlasHub, always had control over Acel since its inception, and nothing changed with Tau's investment.

[44] AtlasHub says the respondents chose to ignore the obligation to provide notice, which was required both under the Articles and at common law.

[45] AtlasHub further argues that had Michael been provided with a copy of the March 11 meeting minutes or provided notice of any of the board meetings that followed, Michael would have had the opportunity to exercise AtlasHub's voting rights and remove Anthony, John, and Mr. Rothenberg from the board.

[46] AtlasHub says it is apparent on the evidence that the exclusion of Michael was deliberate and, as such, the provisions of the Articles and the *BCA* that allow the court to cure mistakes are unavailable.

[47] In the alternative, AtlasHub relies on the same facts to ground a claim in oppression. The claims of oppression are derived from AtlasHub's reasonable expectations, which are that all shareholders are entitled to expect that the company's constating documents will be complied with and will not be circumvented to further the objectives of others.

[48] AtlasHub relies on the *Firebird Global Master Fund II, Ltd. v. Energem Resources Inc.*, 2011 BCSC 622 [*Firebird*] decision of Justice Fitzpatrick in support of this proposition.

Respondents' position

[49] Anthony argues that it does not automatically follow from the provisions of the *BCA* that the various acts of the directors are invalidated by the failure to give notice. Acel had appointed four of the five directors, and the three other than Michael were present at each of the impugned meetings, and supported the actions taken. The

respondents argue that the lack of notice is simply to be taken into account in the mix and the question focuses on oppression.

[50] Anthony argues that all the actions taken by him and his fellow directors were necessary and were taken with the best interests of Acel in mind, with a view to the long-term sustainability and success of Acel. Michael was obstructing Acel’s business. He used his control of the Company accounts to defy the wishes of the directors by refusing to allow Acel to use the money from Tau for its intended purpose, which was to increase Acel’s sales, marketing and production capacity. Anthony argues that Michael frustrated the other directors and employees at every step, all of which was contrary to Acel’s best interests, and that he used the signing authority to take over control of Acel from Anthony and the other directors.

[51] Anthony argues that remedies for oppression are equitable remedies, and any consideration of the equities in this case lead to the conclusion that Anthony and the other directors represent the best opportunity for Acel to be successful. He says that any defects in process or procedure can and should be forgiven or cured after the fact.

Acel’s position

[52] Acel was represented at the hearing through counsel appointed by the directors’ and officers’ insurer.

[53] Acel’s position at the hearing was largely aligned with Anthony's position. Counsel reviewed the evidence surrounding Michael's use of signing authority over the CIBC accounts to frustrate the objectives and wishes of the other directors.

[54] Acel received US$9 million from Tau in the spring of 2024 and Michael, without discussing it with the other directors, put significant portions of that money into GICs.

[55] Anthony and other employees and directors, upon receipt of Tau’s investment, set about to try to promote and develop Acel’s business. In October 2024, Anthony and Mr. Ken Wu met with representatives of Vivic Corp. (“Vivic”) and Fujian Kha Shing Enterprises Co. Ltd. (“Kha Shing”). Kha Shing is a yacht manufacturer based in Taiwan.

Vivic is a publicly listed company in the United States and has common owners with Kha Shing.

[56] In January 2025, Acel, Kha Shing and Vivic entered into a co-development agreement where they agreed to work on what would be the world's first electric propulsion yacht. The co-development agreement included that Acel would pay a down payment of US$540,748 to fund the manufacture of an electric yacht, and that Kha Shing and Vivic would purchase 460 units of Acel's electric propulsion system, equivalent to US$18 million, over five years.

[57] Although Michael was not involved in the negotiations and discussions with Kha Shing and Vivic, he was aware of them and, ultimately, agreed with them, acknowledging that it represented a significant step forward for Acel. However, when the time came for Acel to pay the down payment towards the construction costs, Michael would not transfer the funds and provided various and inconsistent reasons for declining to do so. Ultimately, the deposit was never paid and the opportunity was lost.

[58] The second example, and perhaps more significant in terms of Acel's legal obligations, was Michael's refusal to allow Company funds to be used to pay employees and suppliers. Numerous payroll periods were missed, and the employees remain unpaid to this day. Counsel for Acel took the court through numerous email communications with Michael, and later with Michael's then lawyer, outlining the importance of ensuring that the employees were paid, but without success.

[59] Acel says that it has not been able to fulfil its obligations to its shareholders, employees, suppliers, vendors and landlord because Michael has exercised his control over the Company's bank account to veto any use of Company funds with which he does not agree. This has resulted in a breach of Acel's obligations to Tau. This includes committing the Company to spend $2.5 million in a Chinese research academy, which has already resulted in Tau making a $500,000 deposit to that entity.

Factual findings and disputes in the evidence

[60] Numerous affidavits were provided by each of the parties. Three of the deponents, Michael, Anthony, and Mr. Wu, who was for a time the chief financial officer and chief investment officer of Acel, were cross-examined.

[61] Although Michael and Anthony's evidence differed greatly, it is not necessary to resolve each and every factual discrepancy in their evidence.

[62] There is a fundamental disagreement between Michael and Anthony as to which of them was responsible for the development of Acel’s technology, which is where its value lies. Neither was prepared to acknowledge that the other made any meaningful contribution to Acel’s technology.

[63] Michael's evidence is that he has been involved in technological innovation for over 30 years and points to patents issued to him during that timeframe, many of which were when Anthony was an infant. In many cases, he directed or supervised the research engineers, as opposed to doing the work himself.

[64] For his part, Anthony says that while Michael was involved in technological innovation for which patents had been issued, those are wholly unrelated to electric boat propulsion systems and that the technology that Acel has developed and intends to monetize are his exclusively. He says that reference in marketing materials to patents of Michael's and 30 plus years of innovation was for marketing purposes, and nothing more.

[65] Michael disagrees that Anthony was the inventor for any of the patents. He says that he may have been listed as such, but the actual inventing work was done by engineers. Anthony's work was more in the nature of market research which informed the research and development department as to what needed to be developed. It is apparent that there are fundamental and irreconcilable differences between Michael and Anthony as to how Acel should be managed. I am satisfied that the two protagonists are so entrenched in their positions in this litigation that neither is prepared to acknowledge

any contributions from the other, even though I expect that both have in fact made contributions to the technology that is the foundation of Acel’s business.

[66] It is not necessary for me to decide whether credit for the development of Acel’s technology was solely due to the actions of one of the parties to the exclusion of the other. However, I do note that a reference on a patent to being the inventor is not necessarily determinative. For example, John is shown as an inventor on more than one patent, and there is no suggestion of any such involvement on his part.

[67] Although both parties suggest that their witnesses were credible and the other party’s were not, I had difficulty accepting portions of each of their evidence. Generally speaking, I accept Mr. Wu's evidence. However, his evidence was largely limited to matters that are not central to the underlying issues to be decided.

[68] I do accept that Anthony, and also John, was much more involved in the business side of Acel than Michael, but I also accept that Michael has a history of manufacturing businesses in Taiwan and that he is not a neophyte in business matters.

[69] I found Michael's evidence to be evasive at times. I acknowledge that it is often difficult to determine whether an answer was unresponsive due to potential issues with translation.

[70] It was apparent that before proceedings commenced, Michael caused Acel to put $5 million of the Tau investment into GICs. Michael acknowledged during cross-examination that the purpose of Tau’s investment was to increase production and sales, and he acknowledged having had conversations with Mr. Allen, Tau’s representative on the board of directors, regarding the use of the funds.

[71] Towards the conclusion of his cross-examination, Michael suggested that his wife Loretta had spoken to someone at Tau who had approved putting the investment funds into a GIC. Michael has sworn three affidavits in this proceeding, and there was never any mention or suggestion of approval on the part of Tau. If that were true, it would have been important information. I do not accept that Tau agreed that its investment be placed in a one-year GIC.

[72] I found it difficult to accept a lot of Anthony's evidence, particularly as it pertained to anything to do with Michael. Anthony was most keen to claim credit for all of Acel's successes and refused to acknowledge any positive contributions by Michael. Overall, I found Anthony to be keen to claim personal credit for successes, and to blame others for any errors or mistakes as they were pointed out to him during cross-examination.

[73] Despite Anthony's evidence that he and he alone is responsible for Acel's technological successes, he made presentations to potential investors that made extensive reference to Michael, and to patents owned by Michael. Although Anthony deposed that he is the inventor of <u>all</u> of the patents, when it was put to him that this was not the case on the face of the documents, he attempted to draw a distinction between patents generally and patents of value, and suggests he is the sole inventor of any of the patents that may have value.

[74] In some instances, Anthony suggested that Michael's inclusion in presentation materials was for marketing purposes only, and in other instances, he attempted to distance himself from the various presentations, referred to as slide decks, by seeking to blame others, saying that he did not review them and that he relied on "his team" to prepare them.

[75] Anthony also gave conflicting or confusing evidence about when he first discovered that he did not own shares in Acel.

[76] In the Preferred Share Purchase Agreement between Acel and Tau, there is reference to the 'founders' of Acel. The term 'founders' is defined and it lists Michael, Anthony and John. The Agreement goes on to require reverse vesting agreements for all three, although Anthony does not appear to have executed one.

[77] According to Anthony, he was not aware until much later that he did not actually hold any shares in either Acel or in AtlasHub. In his amended response to petition, he says that he only became aware that he held no shares as part of the due diligence conducted by Tau. In his affidavit, however, he refers to only finding out as a result of a

question or inquiry from CIBC in November 2024. The Tau due diligence was prior to May 2024 because that is when the Tau investment was funded.

[78] Although Anthony said he believed he had shares in AtlasHub, he acknowledges that he did not actually pay for any shares. He agreed that he was not involved in the $1.7 million in loans from AtlasHub to Acel prior to Tau's investment.

[79] There were other aspects of Anthony's evidence that caused concern, and I will address those below in my discussion of specific topics.

[80] However, I generally accept Anthony's evidence about Acel's operations, and the negative impact Michael had as the remainder of the directors tried vainly to persuade him to follow their lead. I accept that the investment from Tau was predicated on increasing sales, marketing and production. The forecasts provided to Tau assumed a significant increase in demand that would require ramping up of production, resulting in lofty sales forecasts.

[81] When Tau's money went into Acel's bank account, Michael immediately placed a significant portion of the money into GICs, as opposed to investing it in Acel's company operations. This was a cause of significant frustration, not only for Anthony but also for the other directors.

[82] There were numerous examples where Michael and the other directors diverged, but the most significant one involved Vivic. All of the other directors considered the agreement with Vivic as representing a significant breakthrough for Acel, only to have it squandered when Michael would not permit payment of Acel's initial contractual obligation.

[83] I accept that Michael used his control of the bank account at CIBC to ensure that Acel was operated as he and he alone deemed appropriate. Michael's conduct regarding Acel's funds initially led the other directors to encourage him to relinquish control. Those efforts were unsuccessful, and subsequently resulted in the various board meetings, directors' resolutions and shareholder resolutions that are the subject of this dispute.

[84] Viewing the evidence at its most favourable from Michael's perspective, Michael was not in favour of spending money to increase production until there were sales to be fulfilled, whereas Anthony and the other board members wanted to increase production capacity right away. Whether capacity and inventory should be increased first with the expectation that sales will follow, or whether sales should come in first before production and inventory are increased are, of course, decisions for the Company, and not the court.

[85] The other directors had additional concerns regarding Michael's role. Michael committed Acel to ongoing payment obligations to the Chinese Academy of Sciences, and to Wuhan University, neither of which could have been expected to result in any deliverable outcomes that would benefit Acel. There were also a couple of instances of apparent conflict of interest – first, Michael directed that Acel pay him approximately $416,000 in back salary, even though the timeframe backdated the Tau deal when Acel said that no monies were owed on account of employees, and he also directed the pre-payment of lease obligations between Acel and Milo that the directors were never told about.

[86] I accept that Anthony was working hard to try to advance Acel's interests, and that he found Michael's actions to be obstructive. I also accept that Anthony's views as to how best to move Acel forward accorded with those of the other directors.

[87] I do not accept that the placing of the Tau investment funds in GICs necessarily tied up the funds such that Acel could not access them. The GICs could be liquidated at any time, and indeed they were, albeit with the loss of any accrued interest. Even Mr. Wu, Acel's CFO, thought that it was a good idea to put some of the funds in GICs, although he would have selected a shorter term.

[88] However, I accept that not only Anthony, but also the other board members, were extremely concerned and frustrated by Michael's control of Acel's funds via his signing authority on the CIBC accounts. His unwillingness to pay the deposit to Vivic was of particular concern, as it represented, at least to the other directors, a huge opportunity for Acel. I also find that the other directors had tried to persuade Michael to initially

make the various payments that the remainder of the board wished to make, and subsequently to relinquish signing authority, without success. While I do not ascribe a sinister motivation to Michael's conduct as urged by Anthony, I do find that he was acting alone and that his actions were inconsistent with the views of the remainder of the board of directors.

March 11 board meeting

[89] I find that Michael had notice of the March 11 board meeting, which was sent by email in the normal course. Michael requested an agenda from Mr. Conlin, the Company's solicitor. Mr. Conlin did not respond, and Michael subsequently followed up with an email to Anthony and other members of the board requesting a copy of the agenda. According to Michael, he assumed the meeting was adjourned or cancelled, consistent with a prior time when no agenda was circulated in advance.

[90] There is an issue as to whether an agenda was in fact circulated but not provided to Michael. The minutes of the meeting reflect that the agenda was approved “as circulated", and Michael argues that there must have been an agenda. By contrast, Anthony points to other minutes from other meetings where the reference in the minutes is to an agenda “circulated in advance" and says that one can infer that the agenda was likely circulated at the meeting due to the absence of a reference to it having been done “in advance”.

[91] I find that there was an agenda prepared in advance and that it was circulated to the directors to the exclusion of Michael. When asked about whether there was an agenda in advance, Anthony said that sometimes agendas were circulated in advance and sometimes they were not, and that it is hard to remember one specific meeting when there were so many meetings.

[92] I do not accept that Anthony would not remember. This meeting was a significant event. Three significant resolutions were passed in a meeting that took only 15 minutes. No one deposed to the fact that no agenda was circulated in advance.

[93] The minutes were prepared shortly after the meeting. Michael deposed that he did not receive a copy of the minutes from the March 11 meeting. In his affidavit, Anthony deposed that a copy of the minutes was sent to Michael by Mr. Conlin. Anthony confirmed that he received a copy, and he assumed that Mr. Conlin had sent the minutes to Michael. When asked, his answer was that he trusted Mr. Conlin to do his job and that it was Mr. Conlin's duty, and not his to forward them to Michael.

[94] I find that not providing Michael with a copy of the minutes of the March 11 meeting was deliberate and not something that was done inadvertently or was omitted in error by Mr. Conlin. Anthony was well aware that AtlasHub had the right to appoint four of the five directors to Acel’s board, and Anthony was concerned that if Michael found out what was going on, he might exercise that right and replace him on the board.

[95] Although the March 11 directors’ meeting was intended to change the signing authority on Acel’s bank accounts, it proved to be ineffective. CIBC had some concerns and advised Acel that it required a 75 percent shareholders resolution to change the signing authorities.

[96] As such, more steps were required, and more steps were taken.

Directors’ meetings of April 23 and 24, 2025

[97] It is acknowledged that the subsequent directors’ meetings of April 23 and 24, 2025, were conducted without notice to Michael, even though he continued to be a director.

[98] During the April 23, 2025 meeting, the board resolved to terminate Michael from his position as executive chairman (April 23 Resolution). At that same meeting, Acel resolved to repurchase 19,444,444 of AtlasHub's shares in Acel pursuant to the Reverse Vesting Agreement. Another meeting was scheduled for the following day, April 24, 2025.

[99] On April 24, 2025, the board resolved to issue to Anthony approximately 106 million common shares in Acel at $0.00000001 per share for aggregate gross proceeds of $1.06 (April 24 Resolution).

[100] The effect of the April 24 Resolution to issue approximately 106 million common shares to Anthony was to provide Anthony with majority control of Acel. Anthony acknowledged during cross-examination that $1.06 would not be the fair market value of the shares he received.

[101] On May 2, the board of directors passed a resolution to hold a special general meeting of the shareholders on May 14, 2025. The purpose of the meeting was to remove Michael as a common director as that term is used in the Articles. Michael did not receive notice of the May 2 board meeting, but he attended at the May 14 shareholders meeting. He voted AtlasHub's shares against the resolution to remove him as a director, but it was passed by virtue of Anthony's shares that had been issued to him on April 24.

[102] The respondents concede that the various actions they took were intended to assume control of Acel. Anthony acknowledges both in his affidavit and during cross-examination that the 100 million shares that were issued to him were done on a "temporary basis", because that was a requirement of Tau.

[103] Anthony's evidence on cross-examination was that the decision to not provide notice to Michael of any of the directors' meetings following the March 11 meeting was based on legal advice. However, there is no evidence from a lawyer indicating this advice was provided, notwithstanding what amounts to a clear waiver of privilege, and I find it improbable that a lawyer would advise that directors meetings could be scheduled without notice to all directors. I am not persuaded that any such advice was ever provided.

[104] I find that Anthony and the other directors wished to make changes and pass resolutions at directors' meetings before Michael became aware of what was happening, because they knew that Michael had the power to replace the majority of the

directors. As such, the respondents' objectives, no matter how well-meaning they might have been as it relates to the success of Acel, were best accomplished by ensuring that Michael remained unaware of what was actually transpiring.

Discussion

[105] I have already concluded that Michael was not provided with a copy of the agenda for the March 11 board meeting, although he had notice of the meeting itself. I have also concluded that the other directors deliberately did not provide notice to Michael of the subsequent board meetings, including the directors' meeting when Anthony was issued the 106 million common shares that gave him the ability to appoint four of the five directors and thus take control of the board from Michael.

[106] It is no answer to say that AtlasHub somehow had notice of the meetings because three of its four appointed directors were present. The directors of Acel, once appointed, were obligated to act in Acel's best interests. Not only is there no authority for the proposition that notice to the other three AtlasHub directors constitutes notice to AtlasHub, but this also conflates the roles of the parties. It was Michael, not AtlasHub that required notice of the directors meeting, because it was he who was the director.

[107] AtlasHub is a shareholder of Acel, and it is not disputed that AtlasHub is entitled to require that Acel and its directors comply with the *BCA*. Section 136(1) of the *BCA* provides:

> **Powers and functions of directors**
>
> **136** (1)The directors of a company must, subject to this Act, the regulations and the memorandum and articles of the company, manage or supervise the management of the business and affairs of the company.

[108] The Articles require that all directors be provided notice of board meetings. Section 17.6 of the Articles provides the following:

> 17.6 **Notice of Meetings**. Other than for meetings held at regular intervals as determined by the directors pursuant to Section 17.1, reasonable notice of each meeting of the directors, specifying the place, day and time of that meeting must be given to each of the directors by any method set out in Section 23.1 or orally or by telephone.

[109] Although Michael did not receive a copy of the agenda prior to the March 11 meeting, he nonetheless had notice of the meeting and assumed that it would not proceed. His assumption was incorrect, but I find that the meeting was validly held. The practical difficulty for Acel, however, was that the primary purpose of the meeting, which was to change the signing authority over the CIBC accounts, was ineffective because CIBC did not accept the resolution as sufficient to have its desired effect.

[110] Thereafter, the directors' meetings were not validly called because both as a matter of common law and a plain reading of the Articles, notice must be provided to all directors.

[111] The question is what outcome should flow from those findings. The court has broad discretion to validate or decline to validate corporate acts done in contravention of the *BCA* or a company's articles through s. 229 of the *BCA.* AtlasHub also submits that it is entitled to an order under s. 228 of the *BCA* to invalidate the business conducted at the invalidly called meetings.

[112] If the Impugned Resolutions, in particular the one that issued shares to Anthony are invalid either by operation of common law or under s. 228 of the *BCA*, the analysis would be at an end and all that would be required is determining the appropriate remedy.

[113] Alternatively, if the Impugned Resolutions and the corresponding share issuance are not set aside as a matter of law, the analysis then turns to one of whether there has been oppression. Oppression requires consideration of equitable principles, which will require an assessment of the conduct of not only Anthony and the other directors but also the conduct of Michael when he frustrated the intentions of the other directors to move Acel forward.

Common law

[114] It is clear that, per *Cholakis, Anderson Lumber* and the *Gray Annotation*, the Impugned Resolutions are invalid at common law because they were made at meetings

where a director was not given notice. They are invalid unless I cure them under s. 229 of the *BCA.*

Section 229

[115] Section 229 gives the court discretion to validate corporate mistakes or declare that business conducted through a mistake is ineffective. Section 229 is a "broad remedial provision": see *Phaneuf v. 0896459 B.C. Ltd*., 2022 BCSC 1706 at para. 34. Anthony argues that such orders are discretionary, and that any consideration of the court's discretion necessarily requires the court to look at the equities as a whole and, in particular, Michael's conduct.

[116] Section 229 establishes a two-step analytical framework. First, the court must determine whether there is a "corporate mistake" within the meaning of s. 229(1). If such a mistake is established, the court must then decide whether to exercise its discretion to grant corrective relief. In doing so, the court will consider both the gravity of the defect and the equities of the situation. Section 229(3) requires the court to consider the effect that any such rectification may have on the company's directors, officers, creditors, and shareholders: *Phaneuf* at para. 36.

[117] As the Court of Appeal concluded in *Yinghe Investment (Canada) Ltd. v. CCM Investment Group Ltd.*, 2024 BCCA 285 [*Yinghe*], the court may validate some, none or all of the resolutions passed at an invalidly called meeting. The chambers judge in *Yinghe* concluded that the AGM was invalidly called and held that the business conducted at that meeting was ineffective. However, he made three exceptions on what could be described as innocuous matters and allowed those resolutions to stand. The Court of Appeal dismissed the appeal.

[118] A corporate mistake under s. 229 means "an omission, defect, error or irregularity that has occurred in the conduct of the business or affairs of a company". Anthony's argument is that s. 229 of the *BCA* should be read more broadly and should not be limited to circumstances of inadvertence where the future of the company's business operations is at stake.

[119] I do not accept this argument. On Anthony's interpretation, the curative provisions of s. 229 would not only be available in the circumstances of a mistake, error or omission, but also when the noncompliant act was deliberate, provided it is otherwise considered justified. The interpretation advanced is not consistent with the language of the section.

[120] Even if the above conduct constituted a "mistake", I would decline to cure the Impugned Resolutions under the second part of the test under s. 229. In reaching this conclusion, under s. 229(3) of the *BCA,* I am required to consider the "effect that the order might have on the company and on its directors, officers, creditors and shareholders and on the beneficial owners of its shares."

[121] AtlasHub was the majority shareholder, and it was entitled to appoint four of the five directors to Acel's board. While AtlasHub could not necessarily assume it was guaranteed to be the majority shareholder forever, it was nonetheless entitled to expect that the Company would be operated in accordance with its constating documents and corporate law principles: *Firebird* at para. 90.

[122] While I accept that the approach pursued by the majority of the directors may well have been in Acel's best interests and while it was also likely that Michael's actions were hindering it, it cannot follow that Anthony and the other directors were entitled to disregard AtlasHub's rights as the majority shareholder. Put differently, the other four directors may have had a remedy, but the method they chose was not appropriate.

[123] In the present case, the "defect" as contemplated in *Phaneuf* was grave. Anthony and the other directors flagrantly ignored the requirements of the Articles to covertly remove Michael and AtlasHub's influence in Acel. This is not an error or irregularity that should simply be corrected as a matter of course, but an impermissible attempt to circumvent the rules.

[124] I must also consider the interests of the other directors and shareholders. The other directors still have the option of bringing an oppression claim against Micheal and AtlasHub under s. 227 of the *BCA* if they believe that his conduct is prejudicial to them.

Regarding the other shareholders, I accept that Acel may be more successful if it goes in the direction that Anthony and the other directors wish to take it, which could correspondingly increase the value of the shareholder's investments. Still, that benefit, which at this stage is speculative, cannot justify a wholesale cancellation of the rights of AtlasHub, the majority shareholder.

Section 228

[125] I have already concluded that the Impugned Resolutions are invalid through operation of the common law, and I declined to cure them under s. 229. AtlasHub submits that I can make orders under s. 228 of the *BCA* to grant it the relief it seeks.

[126] Justice Stephens briefly discussed the interplay between ss. 228 and 229 in the chambers decision of *Yinghe* indexed at 2023 BCSC 2608 at paras. 12-19. Stephens J. similarly found conduct to be in contravention of corporate articles. He then used ss. 228 and 229 to invalidate the consequences of that conduct. He addressed the breach under s. 229 and then used s. 228 to create a remedy.

[127] Anthony argues that s. 228 is intended to prevent anticipated wrongs and is intended to restrain noncompliance: *Dosanjh v. Binpal*, 2021 BCSC 1523 at para. 43. He argues that the section does not authorize the court to invalidate past actions as suggested by AtlasHub. In support of this argument, Anthony refers to *Park v. FinancialCAD Corporation*, 2008 BCSC 353, a case under the *Canada Business Corporations Act* RSC 1985, c. C-44 [*CBCA*], that interprets the equivalent provision, which is s. 247. Section 247 of the *CBCA* provides as follows:

> Restraining or Compliance Order
>
> 247. If a corporation or any director, officer, employee, agent, auditor, trustee, receiver, receiver-manager or liquidator of a corporation does not comply with this Act, the regulations, articles, by-laws, or a unanimous shareholder agreement, a complainant or a creditor of the corporation may, in addition to any other right they have, apply to a court for an order directing any such person to comply with, or restraining any such person from acting in breach of, any provisions thereof, and on such application the court may so order and make any further order it thinks fit.

[128] In *Park*, the shareholders had passed a special resolution that required the board of directors' consent for any share transfers. The notice sent to all shareholders failed to advise that dissent rights would be triggered if the resolution passed, something that was required by the legislation. At para. 30, the Court stated as follows:

> [30] Section 247 contemplates the restraint of action by any of the named persons, or an order requiring a named person to comply with the *CBCA* or the regulations, or with a company's articles and by-laws. It does not expressly confer jurisdiction on the court to exercise discretion to rescind or nullify the special resolution adopted by the shareholders in this case. There is no provision in the *CBCA* which stipulates that any resolution of shareholders adopted without strict compliance with all of the provisions of the statute and the regulations, or the articles and by-laws of the company is a nullity and void *ab initio.* Likewise, there is no provision in the *CBCA* which empowers the court to ratify resolutions of shareholders which appear to have been adopted other than in strict compliance with the statutory and regulatory requirements. In that respect, the *CBCA* differs from some of its provincial counterparts: see, for example s. 229 of the *Business Corporations* Act, S.B.C. 2002, c. 57.

[129] The Court concluded that the remedy sought by the petitioner in *Park*, which would have rendered the impugned resolution void, strained the proper interpretation that could be read into s. 247. At paras. 31 to 33, the Court held:

> [31] In my opinion, s. 247 can only be construed to confer a discretion on the court to nullify or rescind a resolution by reading the word "and" in the last line disjunctively so that it means "or", and by reading the word "further" to mean "other". Construed in that manner, the discretion conferred on the court would be the following:
>
> > …on such application the court may so order [or] make any [other] order it thinks fit.
>
> [32] In my opinion, because of the grant of the power in the context of restraining and compliance orders, the reading or modification that is required to provide the result urged by the Park Petitioners exceeds the reasonable limits of statutory interpretation. If follows that s. 247 must be construed to permit the court to restrain action or order compliance with some aspect of corporate governance, ***and*** to make any complementary order that is reasonably required in relation to the restraining or compliance order. Section 247 cannot provide the remedy which the Park Petitioners seek.
>
> [33] At the same time, the court should not be deprived of the ability to rescind or nullify, in appropriate circumstances, corporate acts that result from a contravention of, or failure to comply with, the *CBCA* or the Regulation; or a contravention of, or failure to comply with, the articles or the by-laws; as was the case with the amendment to the FinCAD articles. In my opinion, the court must rely upon its inherent jurisdiction, rather than jurisdiction derived from a statutory

> discretion, to nullify an amendment to the articles resulting from the adoption of a special resolution by a company's shareholders.

[130] At paras. 35 to 39 of *Park*, the Court considered an Alberta decision, *Caleron Properties Ltd. v. 510207 Alberta Ltd.*, 2000 ABQB 720, where a shareholder sought an order that certain bylaws should be invalidated because changes to the bylaws did not comply with the company's articles. In the result, the Court relied on its inherent jurisdiction to declare that certain bylaw amendments were *ultra vires* the articles of the company and the *Act* and declared them to be of no force and effect. In the result, the Court ordered the directors to comply with those bylaws found to be lawful.

[131] Anthony relies on the principles in *Park* in support of his argument that because the court cannot invalidate the Impugned Resolutions under s. 228, the source of the court's authority to make such a determination can only be the court's inherent jurisdiction, which invokes consideration of equitable principles. Anthony argues any consideration of those equitable principles necessarily involves consideration of Michael's conduct, both in terms of obstruction of Acel's progress and development, and acting in a clear conflict of interest such as directing staff to pay back-salary to him when none, or at least less, was owed, should result in the court declining to make the orders sought. Anthony argues that once the court considers the equities, Michael's conduct is such that he ought not be granted a remedy.

[132] In *Park*, at para. 44, the Court concluded as follows:

> [44] In this case, the Park Petitioners do not seek a restraining or compliance order. Rather, they seek nullification of a special resolution in order to restore articles that contain no restriction on the transfer of shares. I find the reasoning in *Caleron* to be persuasive. In my opinion, s. 247 of the *CBCA* cannot be relied upon to achieve the result urged by the Park Petitioners. If the amendment to the articles is to be rescinded or annulled, the result must flow from the exercise of the court's exercise of its inherent power as a superior court of general jurisdiction.

[133] There are a couple of points to note as it relates to the Court's decision in *Park*.

[134] First, in *Park*, the shareholders passed the resolution that restricted the transfers of shares in accordance with the articles and the legislation, even if they were not aware

of the unintended consequences, which included the triggering of dissent rights. The lack of information about unintended consequences did not necessarily render the resolution void *ab initio* because the resolution was properly passed. By contrast, in this case, the absence of notice of directors' meetings to a director were clear, obvious and deliberate breaches.

[135] Second, *Park* was under the *CBCA.* The *BCA* at s. 228 includes in subsection (3) a broader discretion in terms of remedies. There is no question that AtlasHub is within the definition of a complainant with ss. (1), and that there has been a contravention of the Articles of the company as contemplated in ss. (2). Section 228 provides as follows:

> **Compliance or restraining orders**
>
> **228** (1) In this section, **"complainant"** means, in relation to a company referred to in subsection (2), a shareholder of the company or any other person whom the court considers to be an appropriate person to make an application under this section.
>
> (2) If a company or any director, officer, shareholder, employee, agent, auditor, trustee, receiver, receiver manager or liquidator of a company contravenes or is about to contravene a provision of this Act or the regulations or of the memorandum, notice of articles or articles of the company, a complainant may, in addition to any other rights that that person might have, apply to the court for an order that the person who has contravened or is about to contravene the provision comply with or refrain from contravening the provision.
>
> (3)On an application under this section, the court <u>may make any order it considers appropriate</u>, including an order
>
>> (a)directing a person referred to in subsection (2) to comply with or to refrain from contravening a provision referred to in that subsection,
>>
>> (b)enjoining the company from selling or otherwise disposing of property, rights or interests, or from receiving property, rights or interests, or
>>
>> (c)requiring, in respect of a contract made contrary to section 33 (1), that compensation be paid to the company or to any other party to the contract.
>>
>> [Emphasis added.]

[136] In *Park*, the Court concluded that any remedy would require the Court's inherent jurisdiction, based on the wording of s. 247, coupled with the fact that the *CBCA* did not have an equivalent of s. 229 of the *BCA* that allows the court to cure technical defects or mistakes. I consider *Park* to be distinguishable, and I find that s. 228 gives the court the authority to grant the relief sought.

[137] Subsection 228(2) specifically refers to contraventions both threatened and in the past tense, and ss. 228(3) permits the court a broad remedial discretion. The question then turns to whether the court should do so.

[138] Section 228 has received limited judicial consideration, mostly in the context of parties seeking injunctive relief. Still, there are a few out-of-province decisions which provide guidance on the scope and application of s. 228.

[139] In *Jeffery v. London Life Insurance Company*, 2011 ONCA 683, at para 142, in considering the *Insurance Companies Act,* SC 1991, c 47 equivalent of s. 228 of the *BCA*, the Ontario Court of Appeal held that in making an order, the broader context must be considered:

> [142] As we will explain, we view the purpose of s. 1031 as remedial rather than compensatory or punitive. It is remedial in the sense that it provides a mechanism for those who at common law would have little recourse with respect to the internal affairs of a corporation, to compel corporations governed by the *ICA*, and their actors, to comply with the requirements of the ICA, the regulations and the internal governing documents of the corporation. The added power to "make any further order [the court] thinks fit" must be construed in that context. While this added power affords considerable discretion to the judge fashioning a remedy, that discretion is tempered by the principle of minimal interference in corporate affairs and should be exercised in a way that is tailored to the non-compliance in issue and that is proportional to the character of the breach. It is a complementary power, not a stand-alone power.
>
> [Emphasis added.]

[140] In distinguishing relief under Alberta's version of s. 228 from other equitable forms of relief, Justice Manderscheid said, in *Sumner v. PCL Constructors Inc.*, 2010 ABQB 536, at paras. 227, 250:

> [227] The element of "fairness" is not echoed in *BCA*, s. 248, and I agree with Welling that s. 248's chief role is to allow a court to order strict compliance with a corporation's constitution. That is not to say that a court order under *BCA*, s. 248 should disregard equitable principles, rather a remedy under *BCA*, s. 248 need not strictly parallel the principles applied when ordering a remedy for oppressive conduct.
>
> …

> [250] … s. 248 has a broader potential application than the oppression remedy; a complainant need not demonstrate “unfairness”, rather simply that an unauthorized action occurred, and the complainant was affected.
>
> [Emphasis added.]

[141] This is reflected in the BC legislation. While s. 229(3) explicitly requires the court to consider the interests of the various stakeholders, there is no corresponding subsection in s. 228. Section 228 simply provides a mechanism to enforce and correct contraventions of the *BCA* and company articles. If a party can prove on a balance of probabilities that conduct occurred in contravention of company articles or the *BCA*, then this Court has jurisdiction to make an order that invalidates that conduct.

[142] In choosing whether to exercise this Court’s broad remedial discretion under these sections, I must take into account the broader legislative and corporate landscape. Any relief should be tailored to the breach in question and reflect the reasonable interests and expectations of the shareholders.

[143] In the circumstances, I find that the orders sought by AtlasHub are an appropriate exercise of the Court’s discretion under s. 228. There has been a clear contravention of the Articles which has led to the Impugned Resolutions being passed improperly. As stated above, AtlasHub, as the majority shareholder, would have had an expectation that the Articles and by extension the *BCA* would be complied with. In considering the broader context, I necessarily consider that the Impugned Resolutions are invalid at common law, and that I have already declined to cure them under s. 229. Bearing this in mind, I find that the orders sought under s. 228 are appropriate complimentary enforcement measures which serve to correct the consequences of the conduct that contravened the Articles.

Remedy

[144] I conclude that AtlasHub is entitled to declarations as sought that the affairs of Acel were conducted in a manner that was not compliant with the requirements of the *BCA* and the Articles.

[145] Anthony submits that if AtlasHub establishes an entitlement to a remedy, the appropriate remedy would be a shotgun clause. However, the difficulty with such a remedy is that Anthony has nothing to sell because his 100 million shares were never validly issued.

[146] Counsel for Anthony suggested that perhaps the shotgun clause could involve Tau and the other smaller shareholders on the one hand and AtlasHub on the other. The problem with that suggestion is those other parties, being four small shareholders in addition to Tau as a preferred shareholder, are not involved in the litigation. It is not apparent that they would be interested in such a remedy and it is also not apparent that the court could compel any of them to buy or sell absent an opportunity to have participated in this proceeding.

[147] As such, while there may be good reason to expect that Acel would be more likely to succeed under the guidance of Anthony and the other directors, as opposed to under Michael's leadership, a shotgun arrangement is simply not available.

[148] In the result, AtlasHub is entitled to the following orders:

a) A declaration that the resolution passed by the board of directors of Acel on or about April 23, 2025, wherein the board resolved to terminate Michael Liu from his position as executive chairman is not a valid resolution and is of no force and effect;

b) An order requiring Acel to return the 19,444,444 shares that were acquired from AtlasHub through the Reverse Vesting Agreement upon termination of Michael following the April 23 Resolution, and correcting Acel's corporate records in respect of same;

c) A declaration that the resolution passed by the board of directors of Acel on or about April 24, 2025, wherein the board resolved to issue Anthony Liu 106 million common shares in Acel is not a valid resolution and is of no force and effect;

d) An order requiring Acel cancel the shares issued to Anthony Liu pursuant to the April 24 Resolution;

e) An order setting aside the resolution passed by the board of directors of Acel on or about May 3, 2025, wherein the board resolved to hold a special shareholders' meeting on May 14, 2025, and declaring that it is not a valid resolution and is of no force and effect;

f) A declaration that the resolution by the shareholders of Acel on or about May 14, 2025, removing Michael Liu as a director of the Company is not a valid resolution and is of no force and effect; and

g) An order directing that Acel hold an annual general meeting pursuant to s. 186 of the *BCA*, with the condition that until the meeting is held, Acel is restrained from issuing any further shares in the Company without the consent of AtlasHub or with further leave of the Court.

[149] It follows that since I have not found that Anthony is entitled to the 106 million common shares issued to him on April 24, 2025, Anthony's petition is necessarily dismissed.

[150] The petitioner is entitled to its costs.

"Wilson J."