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ANNOTATED BRITISH COLUMBIA BUSINESS CORPORATIONS ACT Release No. 1, February 2025

What's New in this Update:

This release features the addition of case law annotations to Parts 2 (Incorporation), Part 3 (Finance), 5 (Management), 8 (Proceedings), and 10 (Liquidation, Dissolution, Restoration and Reinstatement) of the *Business Corporations Act*.

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Highlights:

- **Business Corporations Act – Part 8 – Court Proceedings – Division 1 – Court Proceedings – Section 227 – Complaints by Shareholder – Subsection 227(3)** – On appeal, Jahnke submitted that the remedy ordered was inadequate and the only remedy that would be appropriate was a buy-out of her shares at a valuation of \$1.9 million, based on a liquidation value of the Company’s sole asset, less the value of the preferred shares and liabilities. Justice Griffin did not consider it a valid complaint that the judge decided on a remedy of his own making as opposed to choosing a remedy that matched the submissions of one of the parties. The judge had wide discretion under the BCA to fashion an appropriate remedy. The relief ordered should go no further than necessary to rectify the oppressive conduct. In a case of this nature, a judge is not required to accept one of two proposals for a remedy as a binary choice between party A’s or party B’s proposed remedy. Nor is a judge required to run each permutation and combination of possible remedies by the parties before deciding what is appropriate. Justice Griffin explained that the overall problem with Jahnke’s position was that she never varied from seeking a remedy that would match what she asserted were her expectations, yet the judge concluded in the Liability Judgment that those expectations were not reasonable. The judge’s conclusion was based on the evidence as to the history of the Company and its structure, and those findings were open to him. The judge was fair in inviting Jahnke to make alternative submissions on remedy, upon her learning of his conclusions regarding the oppressive conduct. Having chosen to ignore the judge’s request to advance alternative positions, Jahnke did not have a reasonable basis for complaining that the judge considered alternatives on his own. Justice Griffin explained that Jahnke failed to appreciate she made arguments before the judge and the judge considered them, but in the end the judge’s conclusions as to the oppressive conduct were limited to two things: the failure to produce audited financial statements and the failure to organize and hold proper AGMs. There was no basis for interference with the judge’s refusal to conclude that other conduct was oppressive. The judge ordered a remedy that matched the oppressive conduct he found. Jahnke had not shown the judge erred in the exercise of his discretion: *Jahnke v. 436537 B.C. Ltd.*, 2024 CarswellBC 2133, 2024 BCCA 276 (B.C.C.A.).
- **Business Corporations Act – Part 8 – Court Proceedings – Division 1 – Court Proceedings – Section 229 –**

Remedying Corporate Mistakes – The Chambers judge made three exceptions to his order under s. 229, ruling that: (1) the decision to [re-]appoint MNP as the auditor for CCM should not be set aside; (2) the decision to appoint two new directors in place of their fathers as directors, should not be set aside; and (3) thirdly, that the appointment of Lawson Lundell as the registered and records office of CCM should not be set aside. Finally, the Chambers judge directed that, pursuant to s. 229(2) of the Act, CCM must hold a general meeting of shareholders by the end of March 2024. The appellants Yinghe Investment and Chen submitted that the Chambers judge erred in acting on his own motion in ordering the three Exceptions to the declaration of invalidity, as no party had sought them. In Justice Newbury’s view, it could not be said that chambers judge took from the parties their right to control the proceedings. The petition of Yinghe Investment and Chen raised questions about the validity of the AGM and directors’ meeting. It raised squarely the validity of all or some of the resolutions passed at those meetings. In any event, the petition sought relief under s. 229 of the BCA. The powers granted by s. 229(2) may be exercised by the court “either on its own motion or on the application of any interested person”. The Chambers judge could not be said to have erred by granting relief that was expressly contemplated by the wording of the Act: *Yinghe Investment (Canada) Ltd. v. CCM Investment Group Ltd.*, 2024 CarswellBC 2243, 2024 BCCA 285 (B.C.C.A.).