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## ADVANCED CORPORATE AND M&A PRACTICE

Wayne D. Gray Release No. 6, September 2025

This publication provides a broad array of in-depth tools to address all matters needed by the practitioners of corporate and M&A law. It begins its coverage of corporate legal issues with the initial stages of starting a corporate or non-corporate organization, including shareholder rights and remedies, corporate governance, director liabilities, debt and equity financing to the ongoing challenges of a business such as fundamental changes, restructurings, audits and shareholder meetings, corporate records and mergers and acquisitions.

This release features updates to the commentary in Chapter 25, Oppression Actions – Standing and Grounds, Chapter 26, Oppression Actions - Remedies. This release also features the addition of Chapter 25A, Oppression – Grounds and Chapter 26A, Oppression – Proceedings (Interim Orders and Other Final Remedies). This release also features the updating to Revision 6 of Appendix TC, Appendix TC:2 Table of Concordance of Business Corporations Act and Notfor-profit Corporations Act and Appendix TC:3 Table of Concordance (STAs, CBCA, An act respecting the transfer of securities and the establishment of security entitlements).

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## **Highlights**

Oppression Actions - Standing and Grounds - Legal Representation - Retainer of Separate Counsel for the Corporation - Yen v. Ghahramani involved two major shareholders involved in oppression proceedings. Ghahramani had arranged the removal of Yen as a co-director and replaced him with a subordinate manager who reported to Ghahramani. The board in turn retained a separate law firm to act in the litigation against Yen. Yen brought a motion to amend his pleading to assert, among other things, that the directors had caused the corporation to improperly take sides in the shareholder dispute and spend corporate money opposing all relief sought by the plaintiffs. It was not a motion to remove corporate counsel. The lower court had refused to allow the amendment. However, the British Columbia Court of Appeal reversed that decision, and, in doing so, Justice Newbury extensively discussed the issue of appointing separate corporate counsel in a shareholder dispute. She held: where the corporation is facing the existential threat of dissolution, it may well be appropriate for counsel to represent it according to its best interests; however, counsel for the corporation should not be in the position of taking instructions from a board or committee that is not independent of both sides in the litigation. In this case, Ghahramani was instructing both his own counsel and counsel for the corporation; and while there were mixed views, some courts in Canada have accepted, and none have rejected, the notion that, where the corporation's litigation decisions are effectively being made by one of the warring shareholder groups, the opposing shareholder or group may well be oppressed by the circumstance that it is obliged to litigate against two adversaries instead of one: Yen v. Ghahramani, 2023 BCCA 403, 2023 CarswellBC 3273 (C.A.), per Newbury J.A., leave to appeal refused air G Inc. v. Vincent Yen and 0756383 BC Ltd., 2024 CanLII 40776, 2024 CarswellBC 1291, 2024 CarswellBC 1292 (S.C.C.).

Oppression Actions – Oppression – Proceedings (Interim Orders and Other Final Remedies) – Other Final Orders – Appointing or Replacing Directors – In still another case in which there was deadlock on a board of four directors, two equal shareholder and a finding of oppression, the court ordered that: a committee be struck to appoint a fifth director; each shareholder would appoint one member to the committee; the third member of the committee is to be an individual in whom both sides had confidence, and that member would vote only in the event of a tie vote; The committee would select the fifth director; the parties were free to agree on criteria to be used to assess potential candidates, but the court would not establish fixed criteria that might limit the pool of candidates; and the fifth director could not be removed by vote of the shareholders but only by further order of the court: H&H Holdings  $Ltd.\ v.\ Ng$ , 2021 SKQB 215, 2021 CarswellSask 499 (Q.B.), citing The Business Corporations Act, R.S.S. 1978, c. B-10.