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THE ANNOTATED BRITISH COLUMBIA BUSINESS CORPORATIONS ACT Deborah Cumberford Release No. 6, December 2025

This looseleaf service provides complete coverage of British Columbia corporations law including: the full text of the *Business Corporations Act* and Regulations, clear and concise summaries of key reported and unreported decisions interpreting the Act, and a detailed legislative table of concordance.

What's New in this Update

This release features updates to Sections 54, 128(1)(b), 186, 227, 227(1), 227(3)(c), 227(3)(f), 232 and 233(1)(c).

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Highlights

Sections 54 and 227: Change in authorized share structure and oppression: This section does not grant a shareholder an expectation to avoid dilution below a 1/3 equity. Rather, all it grants is the right to vote on amendments to corporate articles, regardless of whether a shareholder has a 1% or a 100% interest. In this case, the respondent, Autocorp, was a software company that assisted car dealerships convert their website traffic into qualified car buyers. Autocorp ran into great financial difficulty and reached a “lifeline” agreement with another business entity, BSV, under which BSV would invest \$5 million in Autocorp in exchange for 50% of preferred shares. E Inc., a 50% shareholder, opposed the deal; therefore, in order to have the necessary special resolution passed, Autocorp amended its articles, diluting E Inc.’s interest to less than 1/3. E Inc. commenced an oppression action seeking to unwind the resolution, claiming Autocorp did a blatant end-run around its rights as a shareholder and its reasonable expectations. It grounded its purported reasonable expectation on this section. The court conceded that in certain circumstances, the dilution of shares below a certain threshold, especially where the purpose is to block opposition on a vote, might constitute oppression but that the present case did not fall within that category. E Inc. did not lose its right to vote. The purpose of the BSV transaction as a whole was to save Autocorp from insolvency. It was a business decision that Autocorp’s sole director was entitled to make and appeared to be a sound business decision. There was no evidence E Inc. had a reasonably held expectation that its share interest would not be diluted and the court was not prepared to infer such an expectation merely on the basis of the BSV transaction itself.

E. Automotive Inc. v. Autocorp. AI. Inc., 2025 ONSC 3629, 2025 CarswellOnt 9967 (decided with reference to ss. 168 and 248 of the Ontario *Business Corporations Act*)

Section 128(1)(b): Resignation of Director and Liability under Income Tax Act: Under the *Income Tax Act*, the MNR may find a director liable for a company’s failure to remit source deductions. Such assessment must be made within two years after the director last ceased to be a director (ITA, s. 227.1(4)). However, a director is not liable if they exercised the degree of care, diligence and skill to prevent the failure to remit that a reasonable prudent person would have exercised in comparable circumstances (ITA, s. 227.1(3)). The director’s efforts must be aimed at preventing the failure to remit rather than curing the failure after the fact. The standard is an objective one and means that the director is not to be judged based on their own skill set, knowledge, abilities, and capacities. Such a standard discourages the appointment of inactive/outside directors who, for one reason or other, leave decision-making to the active/inside directors; in other words, a director must actively carry out

their duties to be considered duly diligent. In this case, the taxpayer invested in a B.S. venture to open a craft brewery and restaurant, agreeing to become an “outside” director, instead trusting his associate and fellow director, who already ran a successful pub, to oversee the business. The company ran into financial difficulties and the taxpayer, wanting to “be done” with his investment venture, provided a signed resignation as director to the company’s lawyer in June 2018. The taxpayer was not then aware that the company had not remitted source deductions. The MNR assessed the taxpayer for the company’s unremitted source deductions in December 2019. The court held the taxpayer resigned as director in June of 2018, was properly assessed within two years of that date, and that the due diligence defence did not apply, as the taxpayer never turned his attention to the required remittances.

Astle v. The King, 2025 TCC 105, 2025 CarswellNat 3088

Section 186: Powers of Court in respect of Shareholders

Meetings: A court has the jurisdiction to appoint an independent chair of a shareholders meeting. However, the governance of meetings is essentially a private contractual matter; if the shareholders are concerned about the maintenance of *prima facie* impartiality, they can specify through the by-laws or otherwise that the corporate meetings are to be chaired by a neutral third party. In the absence of demonstrated impropriety, a court ought not to interfere in advance with the operation of an AGM or enter into the fray and take sides. In this case, before the respondent, a publicly traded company, called an AGM, its special litigation counsel sent correspondence to the applicant shareholders making allusions to breaches of securities laws, market manipulation, and improper proxy solicitation and warning the applicants that proxies or voting agreements obtained in breach would be tainted and could be invalidated by the respondent. The applicants sought an order appointing an independent chair to preside over the AGM with authority to make objective determinations on the validity of proxies and voting materials. The application was dismissed. There was no evidence that the intended chair would act unfairly or would favour the respondent over the applicants. Rather, the evidence was that the evidence was that the respondent would not seek to disallow the applicants’ proxies at the AGM, such that the chair would not be asked to rule on that matter. There had been no additional shares issued in an effort to dilute the vote nor had management previously brought unsuccessful legal proceedings seeking the disqualification of proxy votes. In the circumstances, the appropriate course of action was for the applicants or the respondent to await the results of the AGM and then, if there was some impropriety or illegality, apply to the court.

Apollo Technology Capital Corporation et al v. MediPharm Labs Corp et al, 2025 ONSC 3496, 2025 CarswellOnt 12003 (decided with reference to ss. 106 and 107 of the Ontario *Business Corporations Act*)

Section 227: A person who commits significant breaches of the fiduciary duty they owe to a corporation cannot reasonably expect to

remain as an officer and director of that corporation, even if their ouster somehow failed to meet the corporate formalities. This is particularly so where the person is a minority shareholder of the corporation. In this case, the parties, SM and AK, were cousins and business partners. Respectively, they were 30% and 70% shareholders and directors of 841 Inc. and 910 Ltd., which companies owned a small commercial property (“the property”), the units of which were once rented out exclusively to jewelers. SM was responsible for the day-to-day operations; the defendant was a silent partner. AK later discovered SM had been allowing the property to be used as “overflow” space by a neighbouring strip club (“Bliss”), and permitting paid sex work parties and unlicensed alcohol service to take place there. Unbeknownst to AK at the time, M was a 50% owner of Bliss. AK took immediate steps to lock SM out of the property and took steps to end SM’s roles in 841 Inc. and 910 Ltd. In the ensuing weeks, AK discovered other misdoings by SM (failure to notify AK about rental shortfalls; using \$120,000 of 841’s money to rezone Bliss; allowing some units in the property to be used for sex parties and illegal marijuana dispensaries). AK later wound up 841 after he received legal advice that 841 faced significant regulatory and customs risks because its primary source of revenue was the importation and resale of unlabeled Botox; until then, AK was aware of the possible illegality, but not the gravity, of the practice. SM brought an action, claiming his reasonable expectations as a director and 30% shareholder of 841 and 910 were violated by his wrongful dismissal and oppression, unfair prejudice, and disregard of his interests by AK. His claim was dismissed. The allegation of wrongful dismissal was misconceived, as he never was an employee of either numbered company. In light of his significant breaches of fiduciary duty, SM could not reasonably have expected to remain an officer and director of the companies. *Majidi v. Khoshbin*, 2025 ONSC 3644, 2025 CarswellOnt 14392 (decided with reference to ss. 120 and 241 of the *Canada Business Corporations Act*)

Section 227: Jurisdiction of Court to award Oppression Remedy under provincial legislation where Company has been amalgamated, discontinued in original province and incorporated in Other Provincial Jurisdiction: In this case, it was determined that the Yukon *Business Corporations Act* did not confer jurisdiction on the Yukon court to hear an oppression claim by minority shareholders of a company that was incorporated in the Yukon but subsequently amalgamated with another company (Newco), which entity was then discontinued and incorporated in another jurisdiction. *Cheng v. Glencore plc*, 2024 YKSC 61, 2024 CarswellYukon 85, affirmed 2025 CarswellYukon 50, 2025 YKCA 8 (decided with reference to ss. 191, 241 and 242 of the Yukon *Business Corporations Act*)

Section 227(1): Standing to Advance Oppression Claim: In 1985, the parties, two brothers, incorporated a door and window manufac-

turing company; from the start, the parties were employees, shareholders and directors of the company. The company was restructured in 2001, the intent then being to insulate the company from anyone outside the family having ownership or control, the parties' shares were transferred to various trusts. The parties' relationship later deteriorated to the point the respondent terminated the petitioner's employment and ceased paying his monthly draws. The parties entered into a settlement agreement for redemption of the petitioner's shares for \$588,188. The petitioner also agreed to a non-compete clause prohibiting him from working in the door and window business in any capacity for five years. It took almost two years for the respondent to pay the settlement amount and then not in full. Desperate for money and then age 60, the petitioner took a job with a building supply company. The respondent advised that he would not pay the petitioner in full until he resigned from his current employment. The court held the respondent's conduct was oppressive and directed he purchase the petitioner's share interest for \$2,323,290. The petitioner appealed, claiming the court erred in failing to award him 13 months salary/compensation for the termination of his employment. The appeal was dismissed on the basis the salary claim was advanced in the petitioner's capacity as an employee and not as a shareholder; and a successful claim for wrongful dismissal as part of a pattern of oppressive conduct is required before it can be remedied.

Giere Jr. v. Wescon Cedar Products Ltd., 2025 BCCA 239, 2025 CarswellBC 1970 (dismissing petitioner's appeal and affirming 2023 BCSC 272, 2023 CarswellBC 488)

Section 227(3)(c): Appointment of Receiver Manager: A receivership order is extraordinary relief to be granted only cautiously and sparingly. It is an intrusive interference with the affairs of a company, reputationally harmful, and expensive. Further, the imposition of a receiver is a form of a mandatory injunction, in that it requires a defendant to take costly and burdensome positive action, as opposed to refraining from doing something. Accordingly, the appropriate merits test for such an order in an oppression proceeding is a strong *prima facie* case. In this case, the parties managed their co-owned company until their relationship deteriorated, engendering multiple lawsuits. The respondent took over sole control of the company's day-to-day management. The applicant remained a director and sought a winding-up order. It applied for the appointment of an interim receiver manager on an urgent basis, claiming such an order was necessary based on the respondent's attempts to sell company products to Russian businesses, contrary to Canadian sanctions, and he respondent's resistance to paying CRA more than \$800,000 from the company's cash reserves. The application was dismissed. The circumstances did not come even close to warrant the order sought: there was no strong *prima facie* case of oppression and no apparent risk of irreparable harm. The respondent acknowledged he had solic-

ited Russian companies as potential customers but had terminated such negotiations due to concerns about sanctions and had offered a consent injunction restraining any such further transactions. Furthermore, the company could not currently pay the entirety of the amount it owed CRA without putting its operations and solvency at risk and the uncontested evidence was that the applicant herself had caused the tax liability in question by filing false income tax returns. *Li v. Frost*, 2025 BCSC 1514, 2025 CarswellBC 2374

Section 227(3)(f): Oppression and Removal of Director: A director owes a fiduciary duty to the corporation and must act in its best interests. That is not the same thing as acting in the best interests of an individual shareholder. In this case, the petitioner’s parents, RM and the respondent, ZM, founded a luggage storage company in 1983. The parents were each 50% shareholders; the petitioner’s brother and parents were the company’s directors. Starting in 2022, the petitioner became more involved in the company and discovered financial irregularities by her brother (failure to make statutory remittances, using company property for personal use, making loans to employees for non-business purposes). In 2023, the parents resigned as directors and appointed the petitioner as sole director. The petitioner attempted to end these irregularities by firing her brother. The father was diagnosed with a terminal illness a year before his death in 2024. Under his will, the father directed that his 50% share interest in the company be vested in a trust and that the petitioner be appointed as trustee. The petitioner was also appointed as estate executor. After her husband’s death, ZM reconciled with the son and sought to remove the petitioner as director. The petitioner used her block of company shares to block this attempt. ZM now sought an order removing the petitioner as trustee and executor; she also sought an order under the oppression remedy removing the petitioner as director. The court ordered the petitioner’s removal as trustee/estate executor on the basis of conflict of interest but disallowed the oppression application. ZM had indicated she was willing to endorse her son’s previous practices; while this approach might serve the best interests of family harmony, it was hardly in the best interests of the company. The brother’s practices posed an existential threat to the company. The steps taken by the petitioner to bring the business into compliance with its legal and financial obligations were neither unfair to ZM or a breach of any responsibility assumed by the petitioner. It is the duty of directors, and not shareholders, to manage or supervise the business of a corporation. *Moghadam v. Moghadam*, 2025 ONSC 4695, 2025 CarswellOnt 13236 (decided with reference to s. 241 of the Canada Business Corporations Act)

Sections 232, 233(1)(c): Good Faith Requirement in Application for Leave to Commence Derivative Action: The “good faith test” under s. 233(1)(c) requires that the petitioner establish the ac-

tion is brought for the primary purpose of pursuing the claim for the company's benefit. It is not enough that there is some belief on the part of the petitioner in the merits of the proposed action. That said, a court is entitled to consider the applicant's stated belief the action is in the best interests of the company, together with all of the circumstances, and draw reasonable inferences from the whole of the evidence. In this case, MB was the sole director and 50% shareholder of Holdco. The petitioner, 107 Ltd, a company solely owned by SG, was the other 50% shareholder. Holdco's only asset of value was a property valued at \$1.3 8 million and its sole purpose was to hold and manage that property. The property was subject to a 2018 five-year mortgage in favour of TD Bank; TD bank did not demand payment at the end of the five-year terms, instead automatically renewing the mortgage pursuant to bank policies. In the meantime, MB had arranged for financing ("RB financing agreement") from a company run by her father, on terms significantly more onerous and costly than the TD mortgage. Between 2014 and 2020, MB and SG had a romantic relationship, as well as a business relationship, and for a period of time were engaged to be married. In 2022, SG commenced a family law action against MB, an action in which he claimed, inter alia, an interest in the Holdco property. The latter action was subsequently discontinued by consent. SG now sought leave for 107 Ltd. to commence a derivative action on behalf of Holdco against MB for breach of fiduciary duty and negligence; the claim related to the alleged improvidence of the RB financing agreement. MB claimed the proposed action was not brought in good faith. The court disagreed. There was no evidence tendered to suggest SG had ulterior motives. He had discontinued the family law action, which in any event never overlapped with the relief sought in the derivative claim. Furthermore, if ultimately successful, the proposed claim would benefit both shareholders of Holdco equally. Their interest was aligned, and both would have an equal interest in either selling the Holdco property or finding alternative financing, given the onerous terms of the Berar Mortgage.

1076897 BC Ltd. v. 1142191 BC Ltd., 2025 BCSC 1725, 2025 CarswellBC 2624 (B.C. S.C.)