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THE ANNOTATED BRITISH COLUMBIA BUSINESS CORPORATIONS ACT

Deborah Cumberford Release No. 5, October 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 Appendix PS. Procedural Summaries I. Summaries of Major Corporate Events under British Columbia's *Business Corporations Act* including updates to B. Meetings of Shareholders, D. Meetings of Directors, H. Dissolution and Liquidation, K. Financial Records, and L. Court Proceedings.

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Highlights

Summaries of Major Corporate Events under British Columbia's Business Corporations Act—Dissolution and Liquidation—Voluntary Liquidation—Powers and Duties of the Court—Section 325—Court orders respecting liquidations—An application was made for an order identifying the successful bid arising from a sealed bid process, in relation to the sale of the lands and assets of the company subject to the liquidation proceeding. Justice Loo accepted and agreed with the liquidator's opinion: "The most important feature of [SPL's] bid in my view is the Purchaser's Condition in Section 8.1 and the relatively lengthy (154 day) Purchaser's Condition Waiver period. [The SPL subject conditions] are so subjective as to incapable of objective assessment or enforcement by the Liquidator, such that this bid essentially amounts to an option to buy, rather than an offer capable of acceptance and enforcement." Justice Loo noted that the Bid Factors required the Court to consider "conditions precedent in favour of the bidder attached to the bid and the likelihood of waiver or satisfaction of such conditions," as well as factors affecting the "certainty" of the transaction. If the SPL bid were accepted, there would be significant risk that SPL would decide not to waive the subject conditions or declare them satisfied, and that the Company would be required in October 2025 to start or continue the sealed bid process anew. In Justice Loo's view, given the potential prejudice to the Company of accepting an uncertain bid that essentially amounted to an option, approval of the SPL bid would not be in the best interests of the Company. Although the price in 519 bid #2 was \$2.4 million lower than the price in the SPL bid, 519 bid #2 was both subject free and compliant with the December orders, and approval of that bid was in the best interests of the Company. Justice Loo approved the sale of the Property to 519 on the basis of 519 bid #2 in the amount of \$42,621,112: In the Matter of 0081092 B.C. Ltd., In Liquidation, 2025 BCSC 913, 2025 CarswellBC 1462 (B.C. S.C.).

Summaries of Major Corporate Events under British Columbia's Business Corporations Act—Court Proceedings—Derivative Actions—The shareholder appealed the judge's refusal to backdate the leave order so as to avoid a potential limitation defence that had arisen while the judge's decision on the leave application was under reserve. Hougen contended that the judge was wrong to refuse a nunc pro tunc order. Hougen raised the following grounds of appeal, contending the judge erred by: a) interpreting s. 232 of the BCA as requiring leave to commence a derivative action, when the section requires only leave to continue such an action; and b) assuming that a nunc pro tunc order is not available where a statute imposes a leave requirement. As the appellant acknowledged, the plain meaning of the word "prosecute" in the context of civil litigation is broad enough to include all stages of a proceeding, including its commencement. As there may be cases in which a shareholder or

other complainant will apply to assume conduct of litigation already started by the company, use of the word "commence" would not be apt. The Court noted that "prosecute" is used in s. 232(2) in contradistinction to an application for leave "to defend" a proceeding in s. 232(3). Those are broad and inclusive terms that in no way suggest steps may be taken on behalf of a company without first obtaining leave from the court. Hougen submitted that the judge did not appreciate that leave can be granted nunc pro tunc to a date before the leave application was heard where necessary to avoid a limitation defence, as long as the application was heard before the limitation period expired. It contends the judge made this error because she misapprehended the decision of the Supreme Court of Canada in Canadian Imperial Bank of Commerce v. Green, 2015 SCC 60, 2015 CarswellOnt 18336, 2015 CarswellOnt 18335 (S.C.C.) [Green]. Justice Fenlon disagree with the premise of this submission. The judge did not misapprehend Green but, to the contrary, recognized that Green confirmed the authority of a judge to backdate an order granting leave to commence an action where the application for leave was filed before the limitation period expired. The judge applied the important caveat identified in Green that a court should not exercise its inherent jurisdiction to backdate a grant of leave if to do so would undermine the legislation in issue. Here, the legislation required that the court act as a gatekeeper before a shareholder, director, or other complainant files an action in a corporation's name. In the judge's view, granting a nunc pro tunc order to "validate" a notice of civil claim filed without first obtaining leave would "effectively circumvent or defeat the express will of the legislature". There was, in Justice Fenlon's view, nothing contradictory in the judge coming to this conclusion after recognizing that the Supreme Court of Canada in Green had backdated leave orders for some plaintiffs in that case: Su v. Hougen Co. Ltd., 2025 BCCA 164, 2025 CarswellBC 1479 (B.C. C.A.).