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<p>THE OPPRESSION REMEDY By David S. Morritt, Sonia L. Bjorkquist and Allan D. Coleman, Release No. 1, July 2023</p>

What’s New in this Update:

This release features substantial updates to the case law in Appendix B (Summaries of Representative Oppression Cases). This release also features updates to the Table of Concordance of Business Corporations Acts.

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Highlights:

- **Summaries of Representative Oppression Cases – Failure to Comply with Corporate Governance Requirements**—Justice Newbury concluded that the chambers judge erred in failing to address the question of whether the expectations held by Ted as a shareholder of Shasta were objectively and contextually reasonable. The Chambers judge moved directly from Ted’s description of his expectations, which she erroneously said had been “acknowledged” by Bob, to a finding that they were “not seriously in dispute”. The issue, however, was not the sincerity of Ted’s expectations, but their reasonableness in the corporate context. Had the Chambers judge asked the question of whether Ted’s expectations were reasonable, Justice Newbury believed she would have found that after 20 years of acrimony at the expense of various Callahan family enterprises, the hope that one day the brothers would co-operate in developing the “Crown Jewel” was simply no longer plausible. It was an impossible dream, and indeed ignored what in Justice Newbury’s opinion had become a new *status quo* in the Callahan group of companies, namely, the separation of Ted’s interests from those of his brothers. Justice Newbury noted that the Chambers judge attached a great deal of importance to the “sentimental attachments” of Ted and his brothers to the property and the dream of its development. Justice Newbury was not persuaded that given the context of Shasta’s corporate structure and the parties’ history, Ted’s stated expectations regarding Shasta were reasonable. Justice Newbury did not believe that Ted could, at the time the AGM Resolutions were passed, reasonably expect he would be entitled as a shareholder to block a 75% majority from passing the liquidation resolution. He could not reasonably expect that the holders of 75% of the shares of Shasta could be forced by the holder of just under 25% of the shares to hold the property indefinitely, in the face of the certainty that its development would only open the door to more “disharmony and dysfunction”. Justice Newbury concluded that the chambers judge erred in law in *assuming* that Ted’s actual and subjective expectations were reasonable, and in failing to consider the “objective and contextual” aspects of those expectations. In Justice Newbury’s view, the Chambers judge committed a palpable and overriding error in concluding that the AGM Resolutions were “unfairly prejudicial” to Ted. The three brothers were in a position to bring the years of family squabbling to an end and they had chosen to do so in a manner that was not

unfairly prejudicial to Ted as a shareholder. The appeal was allowed, such that the AGM Resolutions again came into effect on October 11, 2022: *Callahan v. Callahan*, 2022 CarswellBC 3221, 2022 BCCA 387.

- **Summaries of Representative Oppression Cases — Contravention of Agreements**—The primary issue on appeal was whether the judge erred in concluding the oppressive conduct had not triggered the running of a limitation period because the conduct was ongoing. Justice Harris concluded the judge erred in holding that where conduct is ongoing or continuous, a limitation period does not begin to run at least until the oppressive or unfairly prejudicial conduct ceases or is rectified. On the facts the judge found, the limitation period had begun to run more than two years before the petitioners commenced the proceeding. Thus, the claim was statute-barred in respect of conduct occurring more than two years before the proceeding was started. The primary remedy the judge awarded was an order for the sale of the minority shareholder's shares according to a formula considering the effect of the full history of oppressive conduct on the value of the shares. Justice Harris concluded that the judge could not base the remedy for oppression occurring within the limitation period on oppressive conduct occurring and discovered outside of the limitation period. The latter was statute-barred and thus should have no bearing on a remedy for the former: *Brockman v. Valmont Industries Holland B.V.*, 2022 CarswellBC 452, 2022 BCCA 80, [2022] 8 W.W.R. 251, 2022 A.C.W.S. 235, 26 B.L.R. (6th) 187.

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