

Publisher's Note

An Update has Arrived in Your Library for:

Please circulate this notice to anyone in your office who may be interested in this publication. <i>Distribution List</i>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

ANNOTATED BRITISH COLUMBIA BUSINESS CORPORATIONS ACT

Fasken Martineau DuMoulin LLP
Release No. 26, December 2020

Publisher's Special Release Note 2020

The pages in this work were reissued in December 2020 and all the pages carry that date in the release line. Please note that we have not reviewed the content on every page of this work in this current release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

THOMSON REUTERS CANADA®

Customer Support

1-416-609-3800 (Toronto & International)

1-800-387-5164 (Toll Free Canada & U.S.)

Fax 1-416-298-5082 (Toronto)

Fax 1-877-750-9041 (Toll Free Canada Only)

E-mail CustomerSupport.LegalTaxCanada@TR.com

This publisher's note may be scanned electronically and photocopied for the purpose of circulating copies within your organization.

What's New in this Update:

This release features case law annotations to Parts 5 (Management), 8 (Proceedings) and 10 (Liquidation, Dissolution, Restoration and Reinstatement) of the *Business Corporations Act*. This release also includes legislative updates including updates to the *Business Corporations Act*, S.B.C. 2002, c. 57 – 2019, c. 14, s. 31 is now in force; 2019, c. 15 [ss. 1, 2, 5-9, 11-15 came into force October 1, 2020.]; 2019, c. 20 [Came into force June 30, 2020.]; 2019, c. 39, ss. 124-126, and updates to the *Business Corporations Regulation*, B.C. Reg. 65/2004 – Amended by 209/2019 [Repealed before coming into force by B.C. Reg. 77/2020, s. (a).]; 257/2019; 77/2020 [Came into force October 1, 2020.].

Highlights:

- ***Business Corporations Act—Section 245—Case Law — Payment for Notice Shares—*** An appeal from the order which set the fair value of a dissenting shareholder's shares in Chaparral at \$0.61 cents as of December 11, 2014 was dismissed. The appellant argued that Funt J. erred in law by failing to apply the established legal framework for determining the fair value of a dissenting shareholder's shares pursuant to s. 245(2)(a) of the BCBCA. Justice Funt did not start with a "presumption" that the deal price was fair. Rather, he correctly used the deal price as a starting point and then referred to other market-based factors to ascertain whether the price was fair to the dissenting shareholder. He also considered all relevant evidence and exercised judgment in the determination of fair value, including: the history of the acquiring and target company; the trading price of the shares in the public market; the evolution and formulation of the plan of arrangement; the value of the shares specified in the plan of arrangement; and the opinions regarding value of the expert witnesses. Justice Abrioux J. concluded that Funt J. was correct in relying on the negotiated deal price. In a functioning open market, as existed in this case, the transaction price was more probative of value than a theoretically derived value. Contrary to the appellant's assertion that Funt J. failed to conduct a *de novo* assessment of fair value, Abrioux J. was satisfied that the judge considered all of the evidence and the relevant market-based factors to conclude that the deal price was equivalent to the fair value of the shares: *Bamrah v. Waterton Precious Metals Bid Corp.*, 2020 CarswellBC 1068, 2020 BCCA 122, 317 A.C.W.S. (3d) 400, 35 B.C.L.R. (6th) 215 (B.C.C.A.).

ProView Developments

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases, Table of Statutes and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable