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. *Distribution List*
☐
☐
☐
☐

THE OPPRESSION REMEDY
By David S. Morritt, Sonia L. Bjorkquist and Allan D. Coleman,
Release No. 1, July 2022

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.

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

Highlights:

- **Summaries of Representative Oppression Cases — Improper Payment of Salaries, Bonuses, Stock Options, Fees and Expenses —** After Koury's husband Henry stopped working at Bolton, Penny began operating the company in a manner that was oppressive to, unfairly prejudicial to and that unfairly disregarded the interests of Koury Investments. Penny operated Bolton as his private company. He violated numerous court orders. He failed to provide the most basic financial information and appeared to have used the company as his personal piggy bank from which to withdraw funds and assets at will. Both sides agreed that Koury Investments should be bought out. They disagreed on the mechanism to do so. Justice Koehnen observed that the second branch of the *BCE* test requires the applicant to demonstrate that the breach of the reasonable expectation falls within the terms oppression, unfair prejudice or unfair disregard and was satisfied that Penny's conduct fell into all three categories. Justice Koehnen explained that this was a case for personal liability against Penny. He was the sole director of Bolton. It was therefore Penny who either exercised or failed to exercise his powers to effect the oppressive conduct. Penny was the personal beneficiary of the misconduct. Penny used personal advances to himself for his own benefit. The write off of those advances was also for his own benefit. Justice Koehnen explained that any valuation of the applicant's shares must back out the effect of the oppression. The appointment of a receiver was warranted. Penny had shown himself incapable of managing Bolton in a trustworthy manner. Justice Koehnen was left in the position of making a financial calculation based on very imperfect information. The calculations would produce a buyout value for the applicant's share of $3,993,750. Justice Koehnen appreciated that the calculations were on the rough and ready side. Any imperfection relating to the calculation for shareholder advances, improper corporate expenses and excess interest were attributable solely to Penny: *V.M. Koury Investments Ltd. v. Bolton Steel Tube Co.*, 2021 ONSC 3408.
- **Summaries of Representative Oppression Cases — Course of Conduct to Squeeze Out Applicant —** Ewachniuk's conduct in purporting to end the business relationship and the lease was the quintessence of oppressive conduct. Despite the fact that Short had devoted more than 50 years to the marina, Ewachniuk purported to terminate Short's involvement with an angry email. In his first May 23 email, Ewachniuk leapt to the conclusion that he had been defrauded. He then latched onto the most draconian of self—

help remedies and terminated all relationships. Further, the emails made it abundantly clear that he was well aware of the corporate structure and how it would unravel. It was clear from his email that Ewachniuk sought to terminate the partnership (if it existed) and Short's relationship through RBYS and its daily operations. Ewachniuk was attempting to cut Short out completely. Ewachniuk's actions affected all of the inter—relationships: employment, lease, and shareholder. In addition, the May 25, 2017, email, wherein Mr. Ewachniuk alleged fraud on the part of his 50—year business partner, constituted piling—on to his prior acts. Justice Ross concluded that Ewachniuk's conduct in May 2017 constituted oppressive conduct as that term is used in *BCA*, s. 227. Short held a reasonable expectation that the business operations would continue and that his interest in the business would continue to hold value. Further, Ewachniuk's conduct set the tone for the remainder of the spiraling relationship between the parties: *Short v. Ewachniuk*, 2021 BCSC 994.

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 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