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**THE ANNOTATED BRITISH COLUMBIA
BUSINESS CORPORATIONS ACT**
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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 updated case commentary for the following sections of the British Columbia *Business Corporations Act*: sections 229, 232, 233, 236, 238, 245, 291, 292, 324, 346.

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Highlights

Section 233(1)(d)—“Best Interests” Requirement in Derivative Leave Applications

With respect to “the best interests of the company”, the applicant must show there is an arguable case that the derivative action is in the interest of the corporation. “Appears” or “appears to the court” does not mean trying the case; it encompasses a determination of whether the proposed action has a reasonable prospect of success or is bound to fail, whether a defence raised is bound to be accepted, and whether the potential relief will justify the cost and inconvenience to the corporation. With respect to whether an action has a reasonable prospect of success, the court must know what the cause of action is, the facts alleged to have given rise to it, and the loss alleged to have been suffered by the corporation: “Best interests” can only be interpreted as speaking to a more rigid consideration of what is good for the corporation rather than what would be required under “interest”. “Best interests” can be defined as the maximization of the value of a corporation; in this regard, it is best for a corporation to be profitable and well-capitalized with strong prospects; the deterioration to its financial stability should be avoided: *Jordan Enterprises Ltd. v. Barker*, 2015 CarswellBC 938, 2015 BCSC 559 (B.C. S.C.).

Section 236—Variation of Security for Costs Order Based on Material Change

Changes in circumstances that might cause a prolongation of the trial process or necessitate the obtaining of expert evidence may constitute “material changes” sufficient to warrant a variation of a prior security of costs order. In this case, the plaintiff commenced an action alleging the defendants, a company and its two directors, shared confidential information and competed with the plaintiff in breach of a non-disclosure agreement and their fiduciary duties. The plaintiff’s majority shareholder injected a significant infusion of cash, \$300,000, to fund the litigation and keep the plaintiff afloat. The defendants applied for an order requiring the plaintiff to post \$100,000 as security for costs. The court found that while the plaintiff might be unable to pay costs if unsuccessful, an order for that amount might stifle the plaintiff’s claim; the court also found that the plaintiff’s financial hardship might well be attributable to the defendants’ conduct. In the result, the plaintiff was ordered to post only \$20,000 as security. After various related actions were consolidated with the fiduciary breach action, the defendants applied to increase security to \$60,000 on the basis that there had been a material change in circumstances. The order was varied so as to increase security by \$10,000. Although updated documents suggested the plaintiff’s financial condition might have improved, they were insufficient to establish the plaintiff was no longer struggling and potentially able to pay costs if unsuccessful. While the commencement and consolidation of new proceedings did not, on their own, establish an increase in complexity constituting a material change, the increases in antici-

pated length of trial and the likelihood that expert evidence would be required did: *Smartt Inc. v. Siphon Enterprises Corp.*, 2026 CarswellBC 228, 2026 BCSC 116, varying 2023 CarswellBC 4207, 2023 BCSC 2591 (B.C. S.C.).

Section 236—Order for Security of Costs against Major Shareholder of Corporate Plaintiff

The corporate plaintiff’ sued its solicitors for professional negligence. The solicitors sought an order that the plaintiff post security for costs or, alternatively, an order that the plaintiff’s majority shareholder, the driving force in the litigation, give an undertaking to pay any costs award. The court found that an award for security of costs was warranted. However, it declined to make the order sought against the major shareholder. While such an order was not necessarily outside the court’s jurisdiction, the court was not satisfied of the propriety of such an order without further clarification as to how the order ought to be implemented. The salient concern was whether the shareholder would have to be made a party to the action so that a cost judgment could be made against him directly. In the result, the court declined to make the order sought without the consent of the shareholder: *Timeless Pictures Inc. v. Chandler*, 2026 CarswellBC 795, 2026 BCSC 449 (B.C. S.C.).

Section 238—Entitlement to Pursue Right of Dissent and Oppression Remedy Simultaneously

There is no restriction on the entitlement to pursue both the right to dissent and an oppression remedy simultaneously, even if grounded on the same conduct: *Hamilton v. HCC Group of Cos.*, 2026 CarswellSask 159, 2026 SKKB 64 (decided with reference to ss. 14-21 and 18-4 of the Saskatchewan *Business Corporations Act*).

Section 245(2)(a)—Power of Court to Refer Claim to Arbitration

This section empowers the court to refer a matter to arbitration, but it does not make that reference mandatory upon a dissenter’s application. It is plausible that the parties may have come to an agreement during negotiations about the payout value to resort to arbitration if they cannot otherwise reach an agreement. Or, upon the dissenter filing an application under s. 245, all parties may agree to pursue arbitration. In either case, the section simply confirms the court’s ability to give effect to that agreement; but it would be contrary to the fundamental tenets of arbitration for the court to force the parties to arbitrate in the absence of their agreement to do so: *Vivavivo Inc. v. Signalchem Lifesciences Corporation*, 2026 CarswellBC 1251, 2026 BCSC 702 (B.C. S.C.).

Section 291(2)

At the interim order stage, the purpose of this section is simply to set the wheels in motion for the application process for the proposed arrangement and to establish the parameters for the holding of shareholder meetings to consider approval of the arrangement. The court is concerned with the approval of the mechanics for the notice and calling of the shareholder meeting to vote on the proposed

arrangement, and to ensure that shareholders are given the opportunity to express their views and exercise their rights. In this case, a threshold issue arose concerning whether one of the corporate applicants could avail itself of this section, given it was then incorporated under a foreign jurisdiction and not yet a corporation under the *Business Corporations Act* (“BCA”). The court held an interim order was appropriate continuing the applicant company, given that it would be a BCA corporation when the arrangement was done: *Re Xanadu Quantum Technologies Inc.*, 2026 CarswellOnt 2124, 2026 ONSC 945 (decided with reference to s. 182 of the Ontario *Business Corporations Act*).

Section 324(1)(b)—Winding-Up Order on Just and Equitable Grounds

It is open to question whether the equitable discretion to wind up a company on just and equitable grounds can be invoked merely to address disharmony among the shareholders in a private corporation. Quarrelling and incompatibility, even to the point of a breakdown in the personal relationships between shareholders, are not, by themselves, sufficient grounds for an equitable winding-up. Case law reflects the principle that a court will only exercise its discretion to order a “just and equitable” winding-up if the disharmony has resulted in a sufficiently serious failure of the reasonable expectations of the parties to warrant such relief. An applicant must demonstrate that the parties regarded, or would have regarded if they had turned their minds to it at the time of incorporation, that the particular circumstances resulting from the disharmony constituted the termination or repudiation of their business relationship. Accordingly, incompatibility is significant only insofar as it has resulted in a state of affairs in which the reasonable expectations of the parties are unattainable and from which it can reasonably infer that the business arrangement between the parties has been repudiated: *Animal House Investments Inc. v. Lisgar Development Ltd.*, 2007 CarswellOnt 6509, 87 O.R. (3d) 529 Ont. S.C.), affirmed 2008 CarswellOnt 3306, 237 O.A.C. 261 (decided with reference to s. 207 of the Ontario *Business Corporations Act*).

When considering the propriety of an equitable winding up, the court must use a “scalpel” and do no more than is necessary to remedy the oppressive conduct; it should not “wield a battle axe to cleave” the parties. The court must bear in mind that winding-up is a remedy of last resort, to be awarded when other less drastic remedies will not suffice. It is also an equitable remedy and should not be awarded where the applicant comes to court with unclean hands. In this case, the respondents were brothers of the applicant sisters. Each party had become a 25% shareholder of W Ltd. after their father died. The brothers were the only directors and officers of W Ltd.; they also held a minority interest in SS Ltd., a successful HVAC business the brothers had operated with their father. SS Ltd. operated out of two properties owned by W Ltd. The court found the brothers acted oppressively: they acted as directors of W Ltd. while failing to declare

conflicts of interest arising from their ownership of SS Ltd. and breached their fiduciary obligations to W Ltd. by not collecting market rent from SS Ltd. They also prevented the sisters from being involved in the affairs of W Ltd. by failing to call annual shareholders meetings and ignoring the sisters' requests to call meetings or provide information about W Ltd. The court refused the brothers' request that W Ltd. be wound up. The parties' allegedly irreconcilable conflict was caused by the brothers; the sisters reasonably expected to see W Ltd. operated in a fair and business-like manner; and the remedies sought by the sisters (removal of the brothers as directors, appointment of the sisters in the brothers' stead, and the appointment of auditors) would assist in achieving the latter goal: *Meier et al. v. Wegmart Ltd. et al.*, 2025 ONSC 5145, 2025 CarswellOnt 21669, 67 B.L.R. (6th) 319 (Ont. S.C.J.), additional reasons 2025 ONSC 7258, 2025 CarswellOnt 21677 (Ont. S.C.J.), affirmed 2026 ONSC 2012, 2026 CarswellOnt 5765, 69 B.L.R. (6th) 12 (Ont. Div. Ct.) (decided with reference to s. 248 of the Ontario *Business Corporations Act*).

