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 2025

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 an update to Appendix A10, Table of Concordance of Business Corporations Acts.

THOMSON REUTERS®

Customer Support
1-416-609-3800 (Toronto & International)
1-800-387-5164 (Toll Free Canada & U.S.)
E-mail CustomerSupport.LegalTaxCanada@TR.com

Highlights:

- **Summaries of Representative Oppression Cases—Failure to Comply with Corporate Governance Requirements**—Jahnke appealed from the *Remedy Judgment* on the basis the remedy ordered was inadequate and the only remedy that would be appropriate is a buy-out of her shares at a valuation of $1.9 million based on a liquidation value of the Company's sole asset, less the value of the preferred shares and liabilities. Justice Griffin did not consider it a valid complaint that the judge decided on a remedy of his own making as opposed to choosing a remedy that matched the submissions of one of the parties. The judge had wide discretion under the *BCA* to fashion an appropriate remedy. In a case of this nature, a judge is not required to accept one of two proposals for a remedy as a binary choice between party A's or party B's proposed remedy. Nor is a judge required to run each permutation and combination of possible remedies by the parties before deciding what is appropriate. Justice Griffin explained that the overall problem with Jahnke's position was that she never varied from seeking a remedy that would match what she asserted were her expectations, yet the judge concluded in the *Liability Judgment* that those expectations were not reasonable. Justice Griffin explained that Jahnke failed to appreciate she made arguments before the judge and the judge considered them, but in the end the judge's conclusions as to the oppressive conduct were limited to two things: the failure to produce audited financial statements and the failure to organize and hold proper AGMs. There was no basis for interference with the judge's refusal to conclude that other conduct was oppressive. The judge ordered a remedy that matched the oppressive conduct he found. Jahnke had not shown the judge erred in the exercise of his discretion: *Jahnke v. 436537 B.C. Ltd.*, 2024 CarswellBC 2133, 2024 BCCA 276 (B.C.C.A.).
- **Summaries of Representative Oppression Cases—Mismanagement**—The parties separated on March 24, 2021. Both parties' incomes were principally derived from their jointly owned farming businesses. They equally owned a layer (egg) farm that they operated through a partnership. They also equally own a broiler (chicken) farm that they operated through a corporation. The Applicant and the Respondent were equal shareholders in and were the two sole directors of the Corporation. The Respondent claimed that the Applicant violated his reasonable expectations as a director and

shareholder of the broiler farm Corporation. Justice Petersen was satisfied that the Applicant had exercised her powers as a director of the Corporation in a manner that was oppressive, or unfairly prejudicial to, or that unfairly disregarded the Respondent's interests. Justice Petersen concluded that the Respondent had established his entitlement to equitable remedies for oppression and for the Applicant's breach of her fiduciary obligations to him as a business partner. However, some of the remedies sought by the Respondent went beyond what was necessary to satisfy his reasonably held expectations, protect his legitimate business interests, deter fiduciary faithlessness, and preserve the integrity of the parties' fiduciary relationship. In particular, the Respondent's request for an order that the Applicant take no step in the management of the layer farm without consulting and obtaining his prior consent for any business decision, including all payments and receipts, was impractical to the point of being unworkable. The evidence suggested that the Applicant's administrative decision-making authority should only be curtailed in respect of transactions involving her family members and payments made to herself. Similarly, the Respondent's request for an order entrusting him with the primary financial management of the broiler farm Corporation would not be practical in the current circumstances, in which money regularly flowed between the two businesses. Realistically, until the parties' interests in the two farms were disentangled, they needed to be managed by the same individual. The Applicant must be transparent in her decision-making and must not be permitted to engage in business transactions with family members without the Respondent's consent. The evidence did not suggest that she had acted contrary to the businesses' best interests in dealings with arm's length parties: *Stickney v. Stickney*, 2024 CarswellOnt 9483, 2024 ONSC 3581, 2024 A.C.W.S. 3214, 3 R.F.L. (9th) 134 (Ont. S.C.J.).