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ANNOTATED BRITISH COLUMBIA BUSINESS CORPORATIONS ACT

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What's New in this Update:

This release features case law annotations to Parts 3 (Finance), 5 (Management), 8 (Proceedings), and 10 (Liquidation, Dissolution, Restoration and Reinstatement) of the *Business Corporations Act*. This release also features the addition of Bill M 216: *Business Corporations Amendment Act, 2018* under a new Current Developments tab.

Highlights:

- ***Business Corporations Act* — Section 64 — Payment of Consideration for Shares** — Section 64(2) of the *Business Corporations Act* provides that "[a] share must not be issued until it is fully paid". To similar effect, paragraph 3.4 of the Articles of Broadway Towers provided that "no share may be issued until it is fully paid and the Company shall have received the full consideration therefor in cash, property or

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past services actually performed for the Company". Marchand J. was unable to accept John's affidavit evidence that no consideration was paid for Helen's shares. John's affidavit was in direct conflict with a contemporaneous directors' resolution signed by both John and Tassia that payment for Helen's shares had, in fact, been received. In any event, even leaving aside the factual issue, there was a legal response to John's submission that Helen's shares in Broadway Towers were not validly issued. The legislation that was in force at the time of the estate freeze was the *Company Act*, R.S.B.C. 1996, c. 62. The relevant sections of the *Company Act* were addressed in the leading case of *Davidson v. Davidson Manufacturing Co. (1977) Ltd.*, [1978] B.C.J. No. 60 (B.C. S.C.), wherein the court did not agree that s. 42 was to be interpreted as meaning that the issuance of shares without full payment having been received is a null and void transaction. First, the section did not say this. Secondly, s. 43 compensated for any loss by reason of the issuance of a share in contravention of s. 42. Section 43 presupposed that shares issued without being fully paid, albeit wrongfully issued in the sense that a director may be liable to the company, were nevertheless validly issued. *Davidson* was cited with approval by the Court of Appeal in *Oakley v. McDougall* (1987), 17 B.C.L.R. (2d) 134 (B.C. C.A.). Marchand J. concluded that the principles expressed in *Davidson* governed. Helen paid consideration for her shares in Broadway Towers and, even if no consideration was paid, as a matter of law, Helen's shares remained valid: *Dais v. Virvilis*, 2018 CarswellBC 647, 2018 BCSC 459 (B.C. S.C.).

- ***Business Corporations Act* — Section 227 — Complaints by shareholder — Expulsion and/or exclusion from management or as director or termination as an employee —** Dubois had a reasonable expectation that he would have employment with Lucid as long as he was a shareholder. It was reasonable that Dubois would expect to be paid the dividends he was owed upon termination of his employment. Dubois had a reasonable expectation to be paid 45% of the net profits of Lucid, albeit after taxes. Dubois had a reasonable expectation that Milne's salary would remain at $60,000. The agreement provided for a maximum salary to Milne as a manager of $5,000 per month. The history of the operations of Lucid also did not justify the salary that Milne took after Dubois was terminated. The trial judge made the following findings with regard to Dubois' reasonable expectations (at para. 267):

    a) Dubois had a reasonable expectation that he would receive 45% of the net income after taxes from Lucid including for fiscal years ending June 30, 2010 and June 30, 2011.

b) Dubois had a reasonable expectation that not only was he a 45% owner of Lucid, but that he would have a role in Lucid's management.
c) Dubois had a reasonable expectation that he would have employment with Lucid for as long as he had shares in Lucid.
d) Dubois had a reasonable expectation that Milne's salary would be restricted to $60,000 per year based on the Agreement.

Dubois' reasonable expectations that he would participate in the management of Lucid and that he would have employment with Lucid as long as he was a shareholder were contravened by the actions of Milne in wrongfully terminating Dubois' employment. Wrongful dismissal by itself will not justify a finding of oppression. It is only where the interests of the employee are closely intertwined with his or her interest as a shareholder, and where the dismissal is part of a pattern of conduct to exclude the complainant from participation in the corporation, that the dismissal can be found to be an act of oppression. Milne wanted not only Dubois' money in purchasing the shares in Lucid, but also his ability and skills. Dubois considered himself on an equal footing to Milne and up until 2010, Milne shared the same view. Dubois' interests as an employee were closely intertwined with his interest as a shareholder. Dubois worked long hours and conducted himself as an owner would. The wrongful dismissal of Dubois established a finding of oppression on its own. Further, Milne tripled his salary after Dubois was terminated. This was contrary to the agreement and there was no precedent in the operation of Lucid to justify this. Milne increased his salary for the specific purpose of depriving Dubois of the dividends he was entitled to. Milne wrongfully withheld dividends from Dubois, again for the purpose of forcing Dubois out of Lucid. These two further grounds would establish a finding of oppression on their own. The cumulative effect of these actions by Milne clearly established oppression on his part against Dubois. The plaintiff was entitled to a declaration that the affairs of Lucid had been conducted, or the powers of the director had been exercised, in a manner oppressive or unfairly prejudicial to him: *Dubois v. Lucid Distributors Inc.*, 2018 CarswellBC 2456, 2018 BCSC 1582 (B.C. S.C.).

- **Bill M 216: Business Corporations Amendment Act, 2018 —** Bill M 216 proposes amendments to British Columbia's *Business Corporations Act* that would add a new part, enabling the incorporation of benefit companies. The bill provides that a company is a benefit company if its notice of articles contains the following statement: "This company is a benefit company and, as such, has purposes that include conducting its business in a responsible and sustainable manner and promoting one or more public benefits." The proposed legislation would enable companies to incorporate as "benefit companies",

making British Columbia the first Canadian jurisdiction to provide a legal framework for companies that want to operate in a socially and environmentally responsible and sustainable manner, and pursue public benefits in addition to profit.