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2011 CarswellSask 745, 2011 SKQB 405, 209 A.C.W.S. (3d) 842

Johnson v. Cava Secreta Wines & Spirits Ltd.

Nadine Francesca Johnson, Robert James Johnson, Robert Douglas Blacklock, Marjorie Jean Blacklock, John Garden, 1186792 Alberta Inc., Sharon June Scott, and Bradley Allan Birnie, Applicants and Cava Secreta Wines and Spirits Limited, 101142701 Saskatchewan Ltd., Cameron John Rizos, Director of Corporations (Saskatchewan), and Director (Corporations Canada), Respondents

Saskatchewan Court of Queen's Bench

M.D. Acton J.

Judgment: October 26, 2011
Docket: Saskatoon Q.B.G. 1191/11

Proceedings: additional reasons at *Johnson v. Cava Secreta Wines & Spirits Ltd.* (2011), 2011 SKQB 405, 2011 CarswellSask 796 (Sask. Q.B.)

Counsel: Jeffrey N. Grubb, Q.C., for Plaintiffs

Gary D. Young, Q.C., for Respondent, Cameron John Rizos

Theodore F. Koskie, for Respondent, Cava Secreta Wines and Spirits Limited

Subject: Corporate and Commercial

Business associations --- Specific matters of corporate organization — Shareholders — Shareholders' remedies — Relief from oppression — Oppressive conduct — Corporate governance

Respondent R was developer of retail wine business owned by federally incorporated C Ltd. and Saskatchewan numbered company — Both corporations were operated jointly — Applicants were shareholders in C Ltd. and were shareholders or creditors of numbered company — Shareholder agreement was put in place for C Ltd. which entitled each shareholder to designate one shareholder as director of company — Applicants had concerns about control and management by R of two corporations — Applicants brought application for oppression remedies — Application granted in part — Divergence of opinion between majority and minority shareholders was not always oppression, unfair prejudice or unfair disregard if expectations of stakeholders were not reasonable — Applicants' first area of concern was lack of information provided by R in multiple areas — Applicants had reasonable expectations that R would provide copies of by-laws and minute book of corporations, and list of all shareholders and issued shares —

Applicants had reasonable expectations that R would keep proper corporate records, issue share certificates in timely manner, have timely directors' and shareholders' meetings, and provide timely financial statements — R failed to meet many of these reasonable expectations — There was no evidence of bad faith or attempt to prejudice applicants — R unfairly disregarded interests of directors and minority shareholders in failing to meet reasonable expectations of applicants — R was ordered to rectify deficiencies in financial reports and other reporting information.

Business associations --- Specific matters of corporate organization — Shareholders — Shareholders' remedies — Access to corporate documents

Oppression application — Respondent R was developer of retail wine business owned by federally incorporated C Ltd. and Saskatchewan numbered company — Both corporations were operated jointly — Applicants were shareholders in C Ltd. and were mostly shareholders or creditors of numbered company — Shareholder agreement was put in place for C Ltd. which entitled each shareholder to designate one shareholder as director of company — Applicants had concerns about control and management by R of two corporations — Applicants brought application for oppression remedies — Application granted in part — Divergence of opinion between majority and minority shareholders was not always oppression, unfair prejudice or unfair disregard if expectations of stakeholders were not reasonable — Applicants' first area of concern was lack of information provided by R in multiple areas — Applicants did not have reasonable expectations that R would provide loan agreements, unissued share certificates, list of dates of share subscriptions, copies of financial statements and budgets, and list of compensation received by R — Applicants did not have reasonable expectation that R would allow S immediate access to all premises — However, they did have reasonable expectation of reasonable access on reasonable notice, and to have complete and accurate inventory each year — Detailed scrutiny of corporate financing was not considered to be proper purview of minority shareholders — Minority shareholders could not expect microscopic control of operation of corporations.

Business associations --- Specific matters of corporate organization --- Directors and officers — Removal and resignation

Oppression remedy — Respondent R was developer of retail wine business owned by federally incorporated C Ltd. and Saskatchewan numbered company — Both corporations were operated jointly — Applicants were shareholders in C Ltd. and were mostly shareholders or creditors of numbered company — Shareholder agreement was put in place for C Ltd. which entitled each shareholder to designate one shareholder as director of company — Applicants had concerns about control and management by R of two corporations — Applicants brought application for oppression remedies — Application granted in part — Divergence of opinion between majority and minority shareholders was not always oppression, unfair prejudice or unfair disregard if expectations of stakeholders were not reasonable — Applicants did not have reasonable expectation to request removal of R as Chief Executive Officer and signing officer of corporations — There was no evidence of bad faith on part of R — Retail wine business owned by corporations was developed by R, who was driving force and had expertise in business — Such drastic action would have significant negative effect on operation of business — Removal of R was not in best interest of corporations.

Business associations --- Specific matters of corporate organization — Shareholders — Shareholders' remedies — Relief from oppression — Oppressive conduct — Miscellaneous

Failure to file corporate records — Respondent R was developer of retail wine business owned by federally incorporated C Ltd. and Saskatchewan numbered company — Both corporations were operated jointly — Applicants were shareholders in C Ltd. and were mostly shareholders or creditors of numbered company — Shareholder agreement was put in place for C Ltd. which entitled each shareholder to designate one shareholder as director of company — Applicants were led to believe similar shareholder agreement was to be put in place for numbered company, but none ever was — Applicants had concerns about control and management by R of two corporations — Applicants brought application for oppression remedies — Application granted in part — R's failure to file forms respecting directors of C Ltd. in timely and accurate manner was unfair disregard of reasonable expectations of applicants, directors and minority shareholders, but was insufficient to constitute oppression or unfair prejudice — R was ordered to comply with request to file accurate forms with Corporations Canada within seven days — Applicants did not have reasonable expectation that R would file forms with respect to numbered company naming certain persons as directors because there was no unanimous shareholders agreement appointing such persons as directors — Special general meeting of shareholders and directors was ordered to take place to elect additional director to rectify violation of articles of incorporation.

Business associations --- Specific matters of corporate organization — Shareholders — Shareholder agreements — Miscellaneous

Oppression remedy — Respondent R was developer of retail wine business owned by federally incorporated C Ltd. and Saskatchewan numbered company — Both corporations were operated jointly — Applicants were shareholders in C Ltd. and were mostly shareholders or creditors of numbered company — Shareholder agreement was put in place for C Ltd. which entitled each shareholder to designate one shareholder as director of company — Applicants were led to believe similar shareholder agreement was to be put in place for numbered company, but none ever was — Applicants had concerns about control and management by R of two corporations — Applicants brought application for oppression remedies — Application granted in part — Divergence of opinion between majority and minority shareholders was not always oppression, unfair prejudice or unfair disregard if expectations of stakeholders were not reasonable — It was reasonable expectation of shareholders that there would be unanimous shareholders agreement respecting numbered company which would be similar to such agreement of C Ltd. — R did not act in bad faith or in oppressive manner in failing to face this issue, but his actions were prejudicial to interests of minority shareholders — Minority shareholders of numbered company had 30 days to exchange shares in numbered company for those in C Ltd. — Minority shareholders were allowed to have all their shares under C Ltd.'s unanimous shareholders agreement, if that was more important than sharing in equity of numbered company.

Cases considered by *M.D. Acton J.*:

Ayers v. Summach (2011), 2011 SKQB 360, 2011 CarswellSask 633 (Sask. Q.B.) — followed

BCE Inc., Re (2008), (sub nom. *Aegon Capital Management Inc. v. BCE Inc.*) 383 N.R. 119, 71 C.P.R. (4th) 303, 52 B.L.R. (4th) 1, (sub nom. *Aegon Capital Management Inc. v. BCE Inc.*) 301 D.L.R. (4th) 80, 2008 SCC 69, (sub nom. *BCE Inc. v. 1976 Debentureholders*) [2008] 3 S.C.R. 560, 2008 CarswellQue 12595, 2008 CarswellQue 12596 (S.C.C.) — followed

Moosomin First Nation v. 101061721 Saskatchewan Inc. (2010), [2010] 4 C.N.L.R. 114, 72 B.L.R. (4th) 159, 2010 CarswellSask 586, 2010 SKCA 110, [2011] 2 W.W.R. 193, 359 Sask. R. 292, 494 W.A.C. 292 (Sask. C.A.) — considered

Statutes considered:

Business Corporations Act, R.S.S. 1978, c. B-10

Generally — referred to

s. 117(1) — considered

s. 117(2) — considered

s. 127 — considered

s. 133(1) — considered

s. 133(2) — considered

s. 133(3) — considered

s. 137(1) — considered

s. 137(2) — considered

s. 137(3) — considered

s. 137(4) — considered

s. 137(5) — considered

s. 137(6) — considered

s. 149 — considered

s. 150(1) — considered

s. 152 — considered

s. 153 — considered

s. 155(1) — considered

s. 156(1) — considered

s. 159(1) — considered

s. 231 — considered

s. 234 — referred to

s. 234(1) — considered

s. 234(2) — considered

s. 234(3) — considered

Canada Business Corporations Act, R.S.C. 1985, c. C-44

Generally — referred to

s. 21(1) — considered

s. 155 — considered

s. 159 — considered

s. 241 — considered

s. 241(2) — considered

APPLICATION by minority shareholders for oppression remedies.

M.D. Acton J.:

1 This is an application pursuant to the Saskatchewan *Business Corporations Act*, R.S.S. 1978, c. B-10 (the "SBCA") and the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 (the "CBCA"). The relief sought is pursuant to the oppression provisions of the legislation.

Facts

2 This application involves the applicants' concerns about the control and management by Cameron Rizos of two companies in which they have equity and debt interests.

3 Cava Secreta Wines and Spirits Limited ("Cava") and 101142701 Saskatchewan Ltd. ("Numbered Company") are corporations that engage in the business, of selling wine to the public in Saskatoon, Saskatchewan. Cava is a federally incorporated company. The Numbered Company was incorporated pursuant to the laws of Saskatchewan. The Numbered Company was established as an administrative requirement to hold the liquor licence that would allow the business operations to sell wine. The operation of both companies has, however, been conducted jointly on a seamless basis.

4 The applicants are shareholders in Cava. Most of the applicants have a shareholder or creditor interest in the Numbered Company.

5 Most of the applicants became shareholders of Cava in 2009 after either approaching Mr. Rizos or being approached by Mr. Rizos respecting an opportunity to invest and become involved in the retail wine business.

6 The applicants are directors and shareholders individually or jointly with their spouse or business partner in Cava.

7 A shareholder agreement was put in place and signed for Cava. The shareholder agreement entitles each shareholder to designate one shareholder as a director of the company. Section 21 of the shareholder agreement states:

> 21. Each Shareholder will be entitled to appoint a Shareholder to the Board, and the Shareholder appointing a director will have the exclusive right to remove that director and substitute a new director in his place.

This ensures that no one shareholder can control the Board of Directors, regardless of the number of shares they might own. The shareholder agreement makes reference only to Cava. The governance of Cava and the Numbered Company has been shared and the business of both companies operated seamlessly.

8 The applicants allege that:

• Mr. Rizos has failed to adhere to the terms of the agreement;

• Mr. Rizos has failed to keep proper and current corporate records and the corporate registries current;

• Mr. Rizos has failed to cause share certificates to be issued;

• Mr. Rizos has disregarded his reporting responsibility to the directors;

• Mr. Rizos has issued himself shares improperly and for unknown values;

• Mr. Rizos has purportedly caused shares to be issued without firstly offering the shares to existing shareholders in accordance with s. 6 of the shareholder agreement;

• Mr. Rizos has not been forthcoming with information about the sale of additional and available shares in Cava;

• Mr. Rizos has failed to provide proper and timely financial statements;

• Mr. Rizos has failed to obtain budget approval from the directors. Mr. Rizos has failed to provide business plans and other documents as requested by the directors. Mr. Rizos has ignored spending restrictions set by the directors, including arranging travel to Europe for himself and other business employees;

• Mr. Rizos has increased the business debt obligations without approval of the directors;

• Mr. Rizos has entered into a lease arrangement without approval of the directors;

• Mr. Rizos has leased a corporate vehicle on credit without approval of the directors;

• Mr. Rizos has not authorized directors and shareholders access to facilities and records;

• Mr. Rizos has failed to arrange for the repayment of loans from shareholders as directed by the directors;

• Mr. Rizos has refused to participate in a meeting of the directors. With respect to meetings he has attended he has failed to submit necessary materials for properly holding a meeting of the directors. Mr. Rizos has failed to fulfil his promise to engage in better and open communications with the directors/shareholders; and

• under Mr. Rizos' management the companies are in significant arrears to Canada Revenue Agency relative to payroll deductions.

The Law

9 Relevant provisions of the SBCA are:

DIVISION IX — DIRECTORS AND OFFICERS

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Duty of care of directors and officers

117(1) Every director and officer of a corporation in exercising his powers and discharging his duties shall:

(a) act honestly and in good faith with a view to the best interests of the corporation; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Duty to comply

(2) Every director and officer of a corporation shall comply with this Act, the regulations, articles, bylaws and any unanimous shareholder agreement.

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DIVISION XI — SHAREHOLDERS

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Calling Meetings

127 The directors of a corporation:

(a) shall call an annual meeting of shareholders not later than eighteen months after the corporation comes into existence and subsequently not later than fifteen months after holding the last preceding annual meeting; and

(b) may at any time call a special meeting of shareholders.

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Quorum

133(1) Unless the bylaws otherwise provide, a quorum of shareholders is present at a meeting of shareholders, irrespective of the number of persons actually present at the meeting, if the holders of a majority of the shares entitled to vote at the meeting are present in person or represented by proxy.

Opening quorum sufficient

(2) If a quorum is present at the opening of a meeting of shareholders, the shareholders present may, unless the bylaws otherwise provide, proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting.

Adjournment

(3) If a quorum is not present at the opening of a meeting of shareholders, the shareholders present may adjourn the meeting to a fixed time and place but may not transact any other business.

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Requisition of meeting

137(1) The holders of not less than five per cent of the issued shares of a corporation that carry the right to vote at a meeting sought to be held may requisition the directors to call a meeting of shareholders for the purposes stated in the requisition.

Form

(2) The requisition referred to in subsection (1), which may consist of several documents of like form each signed by one or more shareholders, shall state the business to be transacted at the meeting and shall be sent to each director and to the registered office of the corporation.

Directors calling meeting

(3) Upon receiving the requisition referred to in subsection (1), the directors shall call a meeting of shareholders to transact the business stated in the requisition, unless:

. . .

Shareholder calling meeting

(4) If the directors do not within twenty-one days after receiving the requisition referred to in subsection (1) call a meeting, any shareholder who signed the requisition may call the meeting.

Procedure

(5) A meeting called under this section shall be called as nearly as possible in the manner in which meetings are to be called pursuant to the bylaws, this Division and Division XII.

Reimbursement

(6) Unless the shareholders otherwise resolve at a meeting called under subsection (4), the corporation shall reimburse the shareholders the expenses reasonably incurred by them in requisitioning, calling and holding the meeting.

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DIVISION XIII — FINANCIAL DISCLOSURE

Annual financial statements

149(1) Subject to section 150, the directors of a corporation shall place before the shareholders at every annual meeting:

(a) comparative financial statements as prescribed relating separately to:

(i) the period that began on the date the corporation came into existence and ended not more than six months before the annual meeting or, if the corporation has completed a financial year, the period that began immediately after the end of the last completed financial year and ended not more than six months before the annual meeting; and

(ii) the immediately preceding financial year;

(b) the report of the auditor, if any, and

(c) any further information respecting the financial position of the corporation and the results of its operations required by the articles, the bylaws or any unanimous shareholder agreement.

Exception

(2) Notwithstanding clause (a) of subsection (1), the financial statements referred to in subclause (ii) of clause (a) of subsection (1) may be omitted if the reason for the omission is set out in the financial statements, or in a note thereto, to be placed before the shareholders at an annual meeting.

Exemption by Director

150(1) Subject to subsection (2), upon the application of any interested person, the Director may, if satisfied that in the circumstances of the particular case there is adequate justification for so doing, make an order, upon any terms and conditions that seem to the Director just and expedient:

(a) exempting in whole or in part a corporation from any requirement of section 149;

(b) permitting the comparative interim financial statement of a corporation to be for any period that is specified in the order;

(c) enlarging or abridging the time for the publication, sending or filing of any financial statement.

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Approval of financial statements

152(1) The directors of a corporation shall approve the financial statements referred to in section 149 and the approval shall be evidenced by the signature of one or more directors.

Condition precedent

(2) A corporation shall not issue, publish or circulate copies of the financial statements referred to in section 149 unless the financial statements are:

(a) approved and signed in accordance with subsection (1); and

(b) accompanied by the report of the auditor of the corporation, if any.

Copies to shareholders

153(1) A corporation shall, not less than twenty-one days before each annual meeting of shareholders or before the signing of a resolution under clause (b) of subsection (1) of section 136 in lieu of the annual meeting, send a copy of the documents referred to in section 149 to each shareholder, except to a shareholder who has informed the corporation in writing that he does not want a copy of those documents.

Offence

(2) A corporation that, without reasonable cause, fails to comply with subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding $5,000.

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Qualification of auditor

155(1) Subject to subsection (5), a person is disqualified from being an auditor of a corporation if he is not independent of the corporation, any of its affiliates, or the directors or officers of any such corporation or its affiliates.

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Appointment of auditor

156(1) Subject to section 157, shareholders of a corporation shall by ordinary resolution, at the first annual meeting of shareholders and at each succeeding annual meeting, appoint an auditor to hold office until the close of the next annual meeting.

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Removal of auditor

159(1) The shareholders of a corporation may by ordinary resolution at a special meeting remove from office the auditor other than an auditor appointed by a court under section 161.

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DIVISION XVIII — REMEDIES, OFFENCES AND PENALTIES

Interpretation

231 In this Division:

(a) **"action"** means an action under this Act;

(b) **"complainant"** means:

(i) a registered holder or beneficial owner, and a former registered holder or beneficial owner, of a security of a corporation or any of its affiliates;

(ii) a director or an officer or a former director or officer of a corporation or of any of its affiliates;

(iii) the Director; or

(iv) any other person who, in the discretion of a court, is a proper person to make an application under this Division.

. . .

Application to court re oppression

234(1) A complainant may apply to a court for an order under this section.

Grounds

(2) If, upon an application under subsection (1), the court is satisfied that in respect of a corporation or any of its affiliates:

(a) any act or omission of the corporation or any of its affiliates affects a result;

(b) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner; or

(c) the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner;

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer, the court may make an order to rectify the matters complained of.

(3) In connection with an application under this section, the court may make any interim or final order it thinks fit including, without limiting the generality of the foregoing:

(a) an order restraining the conduct complained of;

(b) an order appointing a receiver or receiver-manager;

(c) an order to regulate a corporation's affairs by amending the articles or bylaws or creating or amending a unanimous shareholder agreement;

(d) an order directing an issue or exchange of securities;

(e) an order appointing directors in place of or in addition to all or any of the directors in office;

(f) an order directing a corporation, subject to subsection (6), or any other person, to purchase securities of a security holder;

(g) an order directing a corporation, subject to subsection (6), or any other person, to pay to a security holder any part of the moneys paid by him for securities;

(h) an order varying or setting aside a transaction or contract to which a corporation is a party and compensating the corporation or any other party to the transaction or contract;

(i) an order requiring a corporation, within a time specified by the court, to produce to the court or an interested person financial statements in the form required by section 149 or an accounting in such other form as the court may determine;

(j) an order compensating an aggrieved person;

(k) an order directing rectification of the registers or other records of a corporation under section 236;

(l) an order liquidating and dissolving the corporation;

(m) an order directing an investigation under Division XVII to be made;

(n) an order requiring the trial of any issue.

10 The similar and relevant sections of the CBCA are:

Access to corporate records

21.(1) Subject to subsection (1.1), shareholders and creditors of a corporation, their personal representatives and the Director may examine the records described in subsection 20(1) during the usual business hours of the corporation, and may take extracts from the records, free of charge, and, if the corporation is a distributing corporation, any other person may do so on payment of a reasonable fee.

PART XIV FINANCIAL DISCLOSURE

Annual financial statements

155. (1) Subject to section 156, the directors of a corporation shall place before the shareholders at every annual meeting

(a) comparative financial statements as prescribed relating separately to

(i) the period that began on the date the corporation came into existence and ended not more than six months before the annual meeting or, if the corporation has completed a financial year, the period that began immediately after the end of the last completed financial year and ended not more than six months before the annual meeting, and

(ii) the immediately preceding financial year;

(b) the report of the auditor, if any; and

(c) any further information respecting the financial position of the corporation and the results of its operations required by the articles, the by-laws or any unanimous shareholder agreement.

Exception

(2) Notwithstanding paragraph (1)(a), the financial statements referred to in subparagraph (1)(a)(ii) may be omitted if the reason for the omission is set out in the financial statements, or in a note thereto, to be placed before the shareholders at an annual meeting.

. . .

Copies to shareholders

159. (1) A corporation shall, not less than twenty-one days before each annual meeting of shareholders or before the signing of a resolution under paragraph 142(1)(b) in lieu of the annual meeting, send a copy of the documents referred to in section 155 to each shareholder, except to a shareholder who has informed the corporation in writing that he or she does not want a copy of those documents.

Offence

(2) A corporation that, without reasonable cause, fails to comply with subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars.

. . .

241(2) If, on an application under subsection (1), the court is satisfied that in respect of a corporation or any of its affiliates

(a) any act or omission of the corporation or any of its affiliates effects a result,

(b) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or

(c) the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer, the court may make an order to rectify the matters complained of.

11 The Supreme Court of Canada has established the guidelines to be followed by the courts in *BCE Inc., Re*, 2008 SCC 69, [2008] 3 S.C.R. 560 (S.C.C.), wherein for oppression remedy applications the Court stated at para. 56 to and including para. 68:

[56] In our view, the best approach to the interpretation of s. 241(2) is one that combines the two approaches developed in the cases. One should look first to the principles underlying the oppression remedy, and in particular the concept of reasonable expectations. If a breach of a reasonable expectation is established, one must go on to consider whether the conduct complained of amounts to "oppression", "unfair prejudice" or "unfair disregard" as set out in s. 241(2) of the *CBCA*.

[57] We preface our discussion of the twin prongs of the oppression inquiry by two preliminary observations that run throughout all the jurisprudence.

[58] First, oppression is an equitable remedy. It seeks to ensure fairness — what is "just and equitable". It gives a court broad, equitable jurisdiction to enforce not just what is legal but what is fair: ... It follows that courts considering claims for oppression should look at business realities, not merely narrow legalities: ...

[59] Second, like many equitable remedies, oppression is fact-specific. What is just and equitable is judged by the reasonable expectations of the stakeholders in the context and in regard to the relationships at play. Conduct that may be oppressive in one situation may not be in another.

[60] Against this background, we turn to the first prong of the inquiry, the principles underlying the remedy of oppression. ...

[61] Lord Wilberforce spoke of the equitable remedy in terms of the "rights, expectations and obligations" of individuals. "Rights" and "obligations" connote interests enforceable at law without recourse to special remedies, for example, through a contractual suit or a derivative action under s. 239 of the *CBCA*. It is left for the oppression remedy to deal with the "expectations" of affected stakeholders. The reasonable expectations of these stakeholders is the cornerstone of the oppression remedy.

[62] As denoted by "reasonable", the concept of reasonable expectations is objective and contextual. The actual expectation of a particular stakeholder is not conclusive. In the context of whether it would be "just and equitable" to grant a remedy, the question is whether the expectation is reasonable having regard to the facts of the specific case, the relationships at issue, and the entire context, including the fact that there may be conflicting claims and expectations.

[63] Particular circumstances give rise to particular expectations. Stakeholders enter into relationships, with and within corporations, on the basis of understandings and expectations, upon which they are entitled to rely, provided they are reasonable in the context: ... These expectations are what the remedy of oppression seeks to uphold.

[64] Determining whether a particular expectation is reasonable is complicated by the fact that the interests and expectations of different stakeholders may conflict. The oppression remedy recognizes that a corporation is an entity that encompasses and affects various individuals and groups, some of whose interests may conflict with others. Directors or other corporate actors may make corporate decisions or seek to resolve conflicts in a way that abusively or unfairly maximizes a particular group's interest at the expense of other stakeholders. The corporation and shareholders are entitled to maximize profit and share value, to be sure, but not by treating individual stakeholders unfairly. Fair treatment — the central theme running through the oppression jurisprudence — is most fundamentally what stakeholders are entitled to "reasonably expect".

[65] Section 241(2) speaks of the "act or omission" of the corporation or any of its affiliates, the conduct of "business or affairs" of the corporation and the "powers of the directors of the corporation or any of its affiliates". Often, the conduct complained of is the conduct of the corporation or of its directors, who are responsible for the governance of the corporation. However, the conduct of other actors, such as shareholders, may also support a claim for oppression: ... In the appeals before us, the claims for oppression are based on allegations that the directors of BCE and Bell Canada failed to comply with the reasonable expectations of the debentureholders, and it is unnecessary to go beyond this.

[66] The fact that the conduct of the directors is often at the centre of oppression actions might seem to suggest that directors are under a direct duty to individual stakeholders who may be affected by a corporate decision. Directors, acting in the best interests of the corporation, may be obliged to consider the impact of their decisions on corporate stakeholders, such as the debentureholders in these appeals. This is what we mean when we speak of a director being required to act in the best interests of the corporation viewed as a good corporate citizen. How-

ever, the directors owe a fiduciary duty to the corporation, and only to the corporation. People sometimes speak in terms of directors owing a duty to both the corporation and to stakeholders. Usually this is harmless, since the reasonable expectations of the stakeholder in a particular outcome often coincide with what is in the best interests of the corporation. However, cases (such as these appeals) may arise where these interests do not coincide. In such cases, it is important to be clear that the directors owe their duty to the corporation, not to stakeholders, and that the reasonable expectation of stakeholders is simply that the directors act in the best interests of the corporation.

[67] Having discussed the concept of reasonable expectations that underlies the oppression remedy, we arrive at the second prong of the s. 241 oppression remedy. Even if reasonable, not every unmet expectation gives rise to claim under s. 241. The section requires that the conduct complained of amount to "oppression", "unfair prejudice" or "unfair disregard" of relevant interests. "Oppression" carries the sense of conduct that is coercive and abusive, and suggests bad faith. "Unfair prejudice" may admit of a less culpable state of mind, that nevertheless has unfair consequences. Finally, "unfair disregard" of interests extends the remedy to ignoring an interest as being of no importance, contrary to the stakeholders' reasonable expectations: ... The phrases describe, in adjectival terms, ways in which corporate actors may fail to meet the reasonable expectations of stakeholders.

[68] In summary, the foregoing discussion suggests conducting two related inquiries in a claim for oppression: (1) Does the evidence support the reasonable expectation asserted by the claimant? and (2) Does the evidence establish that the reasonable expectation was violated by conduct falling within the terms "oppression", "unfair prejudice" or "unfair disregard" of a relevant interest?

12 The Supreme Court went on further at para. 73 to state:

[73] Commercial practice plays a significant role in forming the reasonable expectations of the parties. A departure from normal business practices that has the effect of undermining or frustrating the complainant's exercise of his or her legal rights will generally (although not inevitably) give rise to a remedy: ...

13 As well the Supreme Court provided a concise dissertation on this area of the law respecting s. 241 of the CBCA where it stated:

[89] Thus far we have discussed how a claimant establishes the first element of an action for oppression — a reasonable expectation that he or she would be treated in a certain way. However, to complete a claim for oppression, the claimant must show that the failure to meet this expectation involved unfair conduct and prejudicial consequences within s. 241 of the *CBCA*. Not every failure to meet a reasonable expectation will give rise to the equitable considerations that ground actions for oppression. The court must be satisfied that the conduct falls within the concepts of "oppression", "unfair prejudice" or "unfair disregard" of the claimant's interest, within the meaning of s. 241 of the *CBCA*. Viewed in this way, the reasonable expectations analysis that is the theoretical foundation of the oppression remedy, and the particular types of conduct described in s. 241, may be seen as complementary, rather than representing alternative approaches to the oppression remedy, as has sometimes been supposed. Together, they offer a complete picture of conduct that is unjust and inequitable, to return to the language of *Ebrahimi*.

[90] In most cases, proof of a reasonable expectation will be tied up with one or more of the concepts of oppression, unfair prejudice, or unfair disregard of interests set out in s. 241, and the two prongs will in fact merge. Nevertheless, it is worth stating that as in any action in equity, wrongful conduct, causation and compensable injury must be established in a claim for oppression.

[91] The concepts of oppression, unfair prejudice and unfairly disregarding relevant interests are adjectival. They indicate the type of wrong or conduct that the oppression remedy of s. 241 of the *CBCA* is aimed at. However, they do not represent watertight compartments, and often overlap and intermingle.

[92] The original wrong recognized in the cases was described simply as oppression, and was generally associated with conduct that has variously been described as "burdensome, harsh and wrongful", "a visible departure from standards of fair dealing", and an "abuse of power" going to the probity of how the corporation's affairs are being conducted: ... It is this wrong that gave the remedy its name, which now is generally used to cover all s. 241 claims. However, the term also operates to connote a particular type of injury within the modern rubric of oppression generally — a wrong of the most serious sort.

[93] The *CBCA* has added "unfair prejudice" and "unfair disregard" of interests to the original common law concept, making it clear that wrongs falling short of the harsh and abusive conduct connoted by "oppression" may fall within s. 241. "Unfair prejudice" is generally seen as involving conduct less offensive than "oppression". Examples include squeezing out a minority shareholder, failing to disclose related party transactions, changing corporate structure to drastically alter debt ratios, adopting a "poison pill" to prevent a takeover bid, paying dividends without a formal declaration, preferring some shareholders with management fees and paying directors' fees higher than the industry norm: ...

[94] "Unfair disregard" is viewed as the least serious of the three injuries, or wrongs, mentioned in s. 241. Examples include favouring a director by failing to properly prosecute claims, improperly reducing a shareholder's dividend, or failing to deliver property belonging to the claimant: ...

[95] As discussed above (at para. 68), in assessing a claim for oppression a court must answer two questions: (1) Does the evidence support the reasonable expectation the claimant asserts? and (2) Does the evidence establish that the reasonable expectation was violated by conduct falling within the terms "oppression", "unfair prejudice" or "unfair disregard" of a relevant interest?

14 The Saskatchewan Court of Appeal considered the parameters of s. 234 of the SBCA and the decision of the Supreme Court of Canada in *BCE Inc., Re, supra*. In *Moosomin First Nation v. 101061721 Saskatchewan Inc.*, 2010 SKCA 110, 359 Sask. R. 292 (Sask. C.A.), Richards J.A. observed at page 301, para. 26:

[26] The onus of proof in relation to oppression remedies lies with the party seeking the remedy. Section 234(2) of *The Business Corporations Act* says a court may make an order if it is "satisfied" that actions have been taken which are oppressive, or have unfairly prejudiced, or have unfairly disregarded, the interests of a security holder, creditor, director or officer. "Satisfied" has been interpreted as meaning the applicant must establish its case on a balance of probabilities. ...

He went on further to state at para. 45:

[45] As explained above, in order for an application pursuant to s. 234 of *The Business Corporations Act* to succeed, the corporate conduct in issue must (a) be oppressive, (b) be unfairly prejudicial to the interests of security holders, creditors, directors or officers, or (c) unfairly disregard the interests of security holders, creditors, directors or officers. ...

15 Richards J.A. proceeds further at paras. 54 and 55 to adopt the wording of the Supreme Court of Canada in *BCE Inc., Re, supra*, in particular para. 56 thereof.

16 This Court has dealt with oppression issues in Saskatchewan as recently as 2011. Allbright J. in *Ayers v. Summach*, 2011 SKQB 360, [2011] S.J. No. 602 (Sask. Q.B.) stated at para. 132:

[132] ... In contemplating these specific matters, I am mindful of the fact that the Saskatchewan *Business Corporations Act* [in the case of *Cava*, the CBCA] places a positive duty upon directors of a corporation to properly

call meetings either at the instigation of the directors, or under special circumstances at the initiative of a shareholder or shareholders undertaken in accordance with the Act, and a similar legislative duty requires directors to in accordance with time lines produce meaningful financial statements and financial information for consideration by shareholders of the corporation again, in a timely fashion as that is addressed in the legislation.

[133] As the Supreme Court of Canada postulated, "does the evidence support the reasonable expectation asserted by the claimant". In this instance, I am of the view that the evidence does support shareholders having a reasonable expectation in a fashion as asserted by the complainants, more particularly as it relates again to proper and adequate financial information and statements and the convening of meetings in a fashion mandated by the legislation. Here, while the respondents have provided explanations as to why for instance meetings were not called when they ought to have been called, or why financial statements were not provided when they ought to have been provided and were not provided in the form in which they were specifically required to be provided, the evidence nonetheless discloses a failure by the respondents to meet the obligations which the legislation contains. ...

17 The Court must review each of the items requested by the applicants to determine whether or not based on legal and commercial business practice, the request is a reasonable expectation of the applicants. If so, is the conduct oppressive, unfair prejudice or unfair disregard of the relevant interest? If answered in the affirmative, what is the remedy?

18 It is noted from the volumes of affidavit evidence filed with this application that there is considerable conflict and disagreement between the majority shareholder and some or all of the minority shareholders to varying degrees.

19 It is apparent from the affidavits before the Court that Cameron Rizos is the developer of the retail wine business created and the driving force behind its operation and success. The minority shareholders are all successful business people in their own right, suppliers of the majority of the capital required for the advancement of the business and desirous of obtaining financial reward from their investment.

20 In the world of corporate business, there are often divergent objectives between majority and minority shareholders, or at least divergence as to how to accomplish the common objectives. This divergence of opinion is not always oppression, unfair prejudice, or even unfair disregard if the expectations of the stakeholders are not reasonable.

21 The first area of concern of the applicants is the lack of information provided by Cameron Rizos in the following areas:

Request No. 1

1. The Respondents, Cava Secreta Wines and Spirits Limited ("Cava"), 101142701 Saskatchewan Ltd. ("Numbered Company"), and Cameron John Rizos provide forthwith, and in any event not more than three business days, the following information to Miller Thomson LLP as legal counsel for the Applicants, the following:

(a) Copies of any and all bylaws of Cava and the Numbered Company or confirmation that none exists:

(b) Copies of the Minute Book of Cava and the Numbered Company;

(c) Copies of all loan and other agreements in place with lenders of Cava and the Numbered Company together with any corporate authorizations obtaining in respect thereof;

(d) Share certificates relative to Cava and the Numbered Company for shares in either or both of those Companies that have been subscribed and paid for, but for which share certificates have yet to be issued;

(e) Copies of all applications or subscription for shares mentioned in (d) above, and any notices to existing shareholders advising them of such applications or subscriptions;

(f) A list of all shareholders of Cava and the Numbered Company and their addresses;

(g) A complete list of the number and class of shares issued and outstanding to each shareholder of Cava and the Numbered Company;

(h) A list of the dates the shares mentioned in (d) above were subscribed for and issued, and the consideration and amount paid for such shares;

(i) A copy of any and all notices that were provided to the existing shareholders and directors of Cava and the Numbered Company setting out the intention to issue any of the shares mentioned in (d) and (h) above;

(j) A copy of any approval by the shareholders and directors authorizing the issuance of the shares mentioned in (d) and

(h) above;

(k) Copies of all current financial statements, operating plans and budgets for each of Cava and the Numbered Company, including all bank statements and records for each Company; and

(l) A list of all compensation, expense reimbursement, and any and all other payments Cameron Rizos (or any person or entity related or connected to Cameron Rizos) has received from either or both Cava and the Numbered Company since January 1, 2009.

Request No. 2

2. Cameron John Rizos allow Karen Sytnick immediate access to all premises occupied by Cava and/or the Numbered Company, including specifically any and all warehouse or other areas that contain inventory of Cava and/or the Numbered Company.

Request No. 3

3. Cameron John Rizos be immediately removed as the CEO of Cava and the Numbered Company along with any other officer position he may hold with either or both of those Companies (he may remain as a director of either or both Cava and the Numbered Company), and subject to any direction of the Boards of Directors of the Companies otherwise Karen Sytnick be immediately designated as the CEO of both Cava and the Numbered Company.

Request No. 4

4. Cameron John Rizos be immediately removed as signing authority on behalf of Cava and/or the Numbered Company, including specifically any and all bank accounts held by Cava and/or the Numbered Company and in his stead Karen Sytnick shall be designated as a signing authority, subject to direction otherwise by the Board of Directors of Cava and/or the Numbered Company.

Request No. 5

5. The Director (Corporations Canada) rectify the register of the Corporations Branch's records for Cava to reflect the following:

(a) The current directors of Cava are: Sandra Svenkson, James Rayner, Robert Petersen-Wakeman, Cameron Rizos, Bradley Allan Birnie, Nadine Johnson, Karen Sytnick, Robert Blacklock, and John Garden.

Request No. 6

6. The Director of Corporations (Saskatchewan) rectify the register of the Corporations Branch's records for the Numbered Company to reflect the following:

(a) The current directors of the Numbered Company are: Sandra Svenkson, James Rayner, Robert Petersen-Wakeman, Cameron Rizos, Bradley Allan Birnie, Nadine Johnson, Karen Sytnick, Robert Blacklock, and John Garden.

Request No. 1

22 It is apparent from the affidavit evidence before the Court that Cameron Rizos has failed to keep proper and current corporate records, failed to cause share certificates to be issued in a timely manner and has disregarded his reporting responsibility to the directors including a failure to disclose any personal conflict of interest to the directors. He has failed to have annual shareholders meetings and timely directors meetings, and has been extremely poor in providing current and timely financial statements to both the Board of Directors and the shareholders. These are all reasonable expectations of the shareholders or directors of Cava as it relates to Cava.

23 The next consideration is whether or not these reasonable expectations were violated by conduct falling within the terms "oppression", "unfair prejudice" or "unfair disregard" of a relevant interest.

24 The statements of Allbright J. in *Ayers v. Summach*, *supra*, at paras. 132 and 133 are equally applicable to the within application:

> [132] ... In contemplating these specific matters, I am mindful of the fact that the Saskatchewan *Business Corporations Act* [in the case of *Cava*, the CBCA] places a positive duty upon directors of a corporation to properly call meetings either at the instigation of the directors, or under special circumstances at the initiative of a shareholder or shareholders undertaken in accordance with the Act, and a similar legislative duty requires directors to in accordance with time lines produce meaningful financial statements and financial information for consideration by shareholders of the corporation again, in a timely fashion as that is addressed in the legislation.
>
> [133] As the Supreme Court of Canada postulated, "does the evidence support the reasonable expectation asserted by the claimant". In this instance, I am of the view that the evidence does support shareholders having a reasonable expectation in a fashion as asserted by the complainants, more particularly as it relates again to proper and adequate financial information and statements and the convening of meetings in a fashion mandated by the legislation. Here, while the respondents have provided explanations as to why for instance meetings were not called when they ought to have been called, or why financial statements were not provided when they ought to have been provided and were not provided in the form in which they were specifically required to be provided, the evidence nonetheless discloses a failure by the respondents to meet the obligations which the legislation contains. ...

25 With respect to Request 1(a), this is a reasonable expectation of minority shareholders as is Request 1(b). All shareholders of the corporation should be aware of the bylaws and have a reasonable access to the minute book at the

registered office during normal business hours. If these requests have not been complied with, the Court does order that they be complied with within a period of seven days.

Request No. 1(c)

26 Request 1(c) is not a reasonable expectation of a minority shareholder. Corporate financing is not an issue which normal business practice would consider a detailed scrutiny to be the proper purview of minority shareholders. However, these are matters which may be raised at the Board of Directors level and provided to the Board of Directors if requested by resolution of the Board of Directors which has been passed at a duly authorized meeting.

Request No. 1(d)

27 Request 1(d) is not a reasonable expectation of a minority shareholder. Minority shareholders cannot expect such microscopic control of the operation of the companies. However, these are appropriate questions for a properly passed resolution of the Board of Directors.

Request No. 1(e)

28 This is not a reasonable expectation of the minority shareholders for similar reasons as stated in Request No. 1(d). It should also be noted that any requirement in the corporate structure respecting notification of current shareholders only exists in Cava after the issuance of 30,000 shares.

Request No. 1(f)

29 This is a reasonable expectation of all shareholders and if not provided by the officers and directors of the corporation should be accessible through the accessing of a copy of the most recent annual return. The respondents are ordered to provide a copy of this information to the applicants within seven days.

Request No. 1(g)

30 This is identical to the decision respecting Request No. 1(f).

Request No. 1(h)

31 Minority shareholders cannot reasonably expect to be provided with a listing of all of the dates when shares were subscribed for and the consideration paid therefore. This is especially true for shares issued prior to the date when they purchased their shares. Shares subscribed for at the inception of Cava or the Numbered Company will have a much different subscription price than shares subscribed for after a few years of successful business activity.

32 For example, Mr. Rizos incorporated Cava and was the sole shareholder. He could issue numerous shares to himself with a small nominal value, i.e., 10 cents each as the corporation was only created. By 2009 the shares would be worth substantially more. Minority shareholders cannot reasonably expect to purchase shares in an active business corporation for the same price as incorporation start-up prices.

Request No. 1(i)

33 Notices are not required to be provided to shareholders, majority or minority prior to the issuing of shares in the corporation for which consideration has been provided. However, this is information which should be provided to the Board of Directors upon the passing of a directors' resolution requesting this information and Board approval.

Request No. 1(j)

34 The answer to Request No. 1(j) is the same as Request No. 1(i).

Request No. 1(k)

35 This is not a reasonable expectation of minority shareholders nor is it a reasonable expectation of the Board of Directors except for operating plans and budgets which a board of directors is entitled to receive upon request from the officers of the company. The other matters referred to herein are issues for the auditor. If the auditor finds any major discrepancies, it is his obligation to report these to the Board of Directors or the audit committee as the case may be.

36 The respondents are ordered to provide the Board of Directors with operating plans and realistic budgets at the next scheduled meeting of the Board of Directors and shall provide a general overview of the operating plans to the shareholders at the next annual general meeting of the shareholders and directors. Communication with shareholders, especially at annual meetings, is imperative for the maintaining of support for the goals and actions of officers and directors of a corporation.

Request No. 1(l)

37 Once again this is not a reasonable expectation by the minority shareholders. As stated previously, they cannot anticipate a microscopic review of the entire business operation of Cava and the Numbered Company. However, the Board of Directors is entitled to this information respecting any conflict of interest or non-disclosure by Cameron Rizos after the date on which they became members of the Board of Directors. This information should be reported annually to the Board of Directors by the auditor in his report to the Board. This is only good business practice. The respondents are ordered to provide to the Board of Directors of Cava and the Numbered Company within a period of 14 days a listing of the information requested in Request No. 1(l) from the date of purchase of the first shares by any one of the applicants in the two respective companies.

Request No. 1, Generally

38 I am satisfied that there is no evidence before me of bad faith nor an attempt by design to prejudice the applicants, but rather an unfair disregard by Cameron Rizos of his fellow directors in Cava and the providers of what appears to be the majority of the financial capital for the operation of the business, albeit by minority shareholders. Cameron Rizos had a unanimous shareholders agreement created providing for unique and equal rights to each shareholder to a position on the Board of Directors. It is obvious that this was at least partially a consideration of each of the applicants at the time of investing in Cava and was designed to encourage minority investment. Cameron Rizos then proceeded to ignore his obligations to live up to the unanimous shareholders agreement which he had created. This appears to be more out of a total focus on the day-to-day operation of the business as CEO and his long-term goals for success rather than a conscious act of bad faith.

39 As stated previously, with respect to both Cava and the Numbered Company, each of the shareholders is entitled to expect that the minute book and corporate records as well as annual returns and notices of directors and registered office will all be filed in a timely and current manner, and that annual meetings and detailed financial statements will be provided to them on a timely basis and appropriate notices will be received respecting annual meetings.

40 This Court does hereby order that Cameron Rizos rectify all of the deficiencies stated in the times specified and shall provide current financial reports for the 2011 year end and a quarterly financial report for the first quarter of the 2011-2012 fiscal year within a period of 30 days from the date of this order.

Request No. 2

41 Request No. 2 of the applicants is that Cameron John Rizos allow Karen Sytnick immediate access to all premises occupied by Cava and/or the Numbered Company, including specifically any and all warehouse or other areas that contain inventory of Cava and/or the Numbered Company. This is not a reasonable expectation of the minority shareholders or the directors of Cava. The directors have a right to expect reasonable access on reasonable notice to view corporate premises. However, a complete and accurate inventory must be prepared at the end of each fiscal year for the providing of proper and accurate financial statements. This the directors and shareholders may reasonably expect. Directors, certainly have a reasonable expectation of reviewing the calculation of the inventory. To be allowed access to conduct their own calculation of inventory is inappropriate. If the Board of Directors does not have faith in the inventory provided, it is at liberty to pass a resolution to obtain an independent third party audit of inventory on hand. The failure to provide accurate, up-to-date and timely inventory calculations to the directors is similar to the failure of Mr. Rizos to provide the timely financial statements.

Request No. 3

42 The third request is for the immediate removal of Mr. Rizos as CEO of Cava and the Numbered Company along with any other officer position he may hold with either or both of those Companies (he may remain as a director of either or both Cava and the Numbered Company), and subject to any direction of the Boards of Directors of the companies, otherwise Karen Sytnick be immediately designated as the CEO of both Cava and the Numbered Company.

Request No. 4

43 The fourth request is that Cameron John Rizos be immediately removed as a signing authority on behalf of Cava and/or the Numbered Company, including specifically any and all bank accounts held by Cava and/or the Numbered Company and in his stead Karen Sytnick shall be designated as a signing authority, subject to direction otherwise by the Board of Directors of Cava and/or the Numbered Company.

44 Numbers 3 and 4 relate to a request for the removal of Cameron Rizos as CEO of Cava and removal of his signing authority, all of which are to be replaced by the appointment of Karen Sytnick as CEO and signing officer.

45 These requests are not reasonable expectations of the minority shareholders of Cava and the Numbered Company nor of the directors of Cava. The retail wine business owned by these companies is the brainchild of Cameron Rizos who is the driving force and the individual with the expertise in this business. There is no evidence before the Court of bad faith on the part of Cameron Rizos. Such drastic action would in all likelihood have a significant negative affect upon the operation of the business and the capital investment of both majority and minority shareholders. To comply with this request is not in the best interest of the corporation which is the responsibility and should be the primary focus of any board of directors carrying out its responsibilities.

Request No. 5

46 The fifth request is that Cava forthwith, and in any event within not more than three business days, submit a completed Corporations Canada Form 6 (Changes Regarding Directors) (and/or any other form that may be required by the Director (Corporations Canada)) to Corporations Canada to reflect that the current directors of Cava are: Sandra Svenkson, James Rayner, Robert Petersen-Wakeman, Cameron Rizos, Bradley Allan Birnie, Nadine Johnson, Karen Sytnick, Robert Blacklock, and John Garden. Upon receipt of the completed Form 6 the director (Corporations Canada) shall rectify the registrar of the Corporations Branch's records for Cava to reflect the current directors as noted above.

47 This is a reasonable expectation of the applicants. Whether one is a minority shareholder, director or other stakeholder in a corporation, they are entitled to expect that the forms which must be filed with Corporations Canada are done so in a timely and accurate manner. The failure of Cameron Rizos to file these forms in a timely and accurate manner is as stated earlier an unfair disregard of the applicants, directors and minority shareholders, but is insufficient to fall within the terms of oppression or unfair prejudice.

48 The Court does order compliance with this request within seven days.

Request No. 6

49 The sixth request is that the Numbered Company forthwith, and in any event within not more than three business days, submit to the Director of Corporations (Saskatchewan) whatever form, if any, is required to reflect that the current directors of the Numbered Company are: Sandra Svenkson, James Rayner, Robert Petersen-Wakeman, Cameron Rizos, Bradley Allan Birnie, Nadine Johnson, Karen Sytnick, Robert Blacklock, and John Garden. Upon receipt of the completed form, or if no form is required, the Director of Corporations (Saskatchewan) shall forthwith rectify the registrar of the Corporations Branch's records for the Numbered Company to reflect the current directors as noted above.

50 This is not a reasonable expectation of the minority shareholders, particularly considering the fact that there is no signed unanimous shareholders agreement appointing each of these individuals as directors of the Numbered Company.

51 However, each of the minority shareholders in the Numbered Company who is an applicant in the within action, was led to believe that there would be a unanimous shareholders agreement which was similar but not identical to the unanimous shareholders agreement of Cava. A draft copy of an agreement has been provided to the minority shareholders. This draft agreement does not give each shareholder in the Numbered Company the right to appoint a member to the Board of Directors of the Numbered Company. Otherwise, it appears similar to the Cava unanimous shareholders agreement. The articles of incorporation of the Numbered Company required a minimum of three and a maximum of nine directors. Currently, it appears that Cameron Rizos is the only director of the corporation. This is in violation of its corporate structure.

52 Therefore, the Court does hereby direct that a special general meeting of the shareholders and directors of the Numbered Company be held within 30 days. Each of the shareholders shall receive written notice thereof. One additional director (as well as Cameron Rizos) shall be chosen at the special general meeting from the shareholders of the Numbered Company.

53 As Cava is one of the major shareholders of the Numbered Company, the Board of Directors of Cava shall be represented by one individual who shall be appointed to the Board of Directors of the Numbered Company by this Court and shall remain so until otherwise ordered by this Court. The individual shall be the current chairman of the Board of Cava who is Bob Blacklock. Mr. Blacklock is a well respected businessman in the Saskatoon business district with experience in the operation of private corporations, the purposes and requirements of financial statements and the taking of inventories. In addition, Mr. Blacklock appears to be able to relate to and communicate with both the other applicants and Cameron Rizos.

54 Therefore, the Board of Directors for the ensuing year of the Numbered Company shall be Cameron Rizos, Bob Blacklock and one other shareholder of the Numbered Company chosen at the special meeting.

55 For the individuals who invested in both Cava and the Numbered Company, it was a reasonable expectation for them that there would be a unanimous shareholders agreement respecting the Numbered Company which would be

similar if not identical to the unanimous shareholders agreement of Cava. Cameron Rizos did not clarify this fact and was not totally forthright in failing to face up to this issue. Although the Court does not find bad faith on the part of Cameron Rizos in this regard, he may have had second thoughts on having each shareholder represented on the Board of Directors. As time progressed he may have realized how actively involved the minority shareholders wished to be on the Board of Directors of Cava. Such actions by him, although not oppressive, were prejudicial to the interests of the minority shareholders and his actions were less than open and forthright with them.

56 The Numbered Company was incorporated after the initial share purchases in Cava. There appears to be some confusion with some of the applicants as to why they have shares in both corporations, or why the unanimous shareholders agreement does not apply to the Numbered Company as they have come to expect. They should be allowed to have all of their shareholdings under the umbrella of the Cava unanimous shareholders agreement, if that is more important than sharing in the equity of the Numbered Company.

57 Therefore, each of the minority shareholders of the Numbered Company who are applicants in the within application shall, for a period of 30 days, have the right upon notification to the registered office of Cava to exchange their shares in the Numbered Company one for one for shares of Cava identical to the ones they currently hold in Cava. Upon receipt of such notice the officers of Cava shall arrange for the immediate exchange and issuance of new share certificates accordingly and cancellation of the previous Numbered Company share certificate by the officers of the Numbered Company. Any original share certificate held in the Numbered Company shall be returned at the time of providing the notice for exchange of shares.

58 Any minority shareholder in the Numbered Company who shall fail to exercise this right within the time specified shall be deemed to have accepted the shares on the terms and conditions as set out in the current corporate structure of the Numbered Company.

59 I make no order as to costs.

Application granted in part.

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