**Securities**

* To sell shares/offers shares to the public, must comply with every Securities Act in each province where you’ll be offering shares. Doesn’t matter if it’s a foreign corporation.
* S.64: must be adequate consideration for shares – cash, property, or past services. Price and issuance of shares is within board’s discretion under business judgment rule. It’s up to them to decide when to issue shares and at what price, but there must be consideration

**Debenture**

* S.90: you can take an acknowledgement of debt from a company secured over its assets and register that charge with the registrar of companies in place of incorporation.
* Floating charge: company can buy and sell property as part of its business, do transactions, without triggering obligation to automatically repay the debenture.
* Debenture will list in agreement the events that trigger obligation to repay. Usually it’ll be sales outside the ordinary course of business.

**Insider Trading**

* If a director shares confidential info, that person is accountable for profits made to the corporation – must turn over profits they only made due to their fiduciary position in the company giving them that information
* S.192: insiders are not just members of the board, but also large shareholders or people who got tips based on inside info from people who knew it was confidential. 3 elements: insider, insider trades on inside info, makes money.
* It’s a breach of fiduciary duty, so directors are already caught by common law for that – company can get them for that breach.
* S.192 allows them to also be sued by the person who they traded with, who sold them their shares cheap and missed making money. Creates a fiduciary duty to them too. Only applies for public companies.

**Legal Personhood – Salomon**

* Company or corporation is a separate legal person, separate from its shareholders, directors, and employees.
* Clarkson: transferred assets to his company to distance them from his creditors. It was fine, it’s a separate legal person.

**Company’s Constitution**

* S.120: private companies need at least one director, widely-held need three
* S.19: constitution contractually binds shareholders with each other and each of them with the company. Provisions of the constating documents have contractual force.

**Piercing the Veil**

* When the company is construed as agent of its principal, that being the sole majority shareholder. This was tried and failed in both Salomon and Clarkson. In Clarkson, key was that that the incorporation wasn’t pre-determined and occurred after the legal obligation was incurred. So because the scheme of having the company h old assets for him to avoid creditors did not exist prior to incorporation, the company was not his agent.
* Second way: to apply a regulatory public statute, the court will consider a corporations relations to its holding companies, subsidiaries, or affiliates.
* De Salaberry: needed to determine purpose of real estate acquisition by a company. Company was part of a network of affiliated company. Court decided to look at the activities of all these affiliated corporations to determine the purpose. Did so by assessing the REAL independence of this company: it had low capitalization, got the money it needed from affiliates, it only ever dealt with affiliates that controlled it and never did business with other affiliates, the intent of the holding companies determined their intent, and none of them carried on business on a continuing basis, and their directors were nominees of the parent companies.
* Third way: fraudulent purpose. If a corporation is incorporated just to allow you to do something that you could do yourself – like can’t break restraint of trade, so incorporate a company to do it (Gilford). Again, was the establishment of this corpoyration part of a preconceived plan to avoid a pre-existing legal liability?
* De Juris control = ownership of >50% of shares. De Facto control = less than that percentage, but enough to give you the ability to determine the board of directors.

**Extra-Provincial Licensing**

* s.375(2): lists things that count as “carrying on business in BC.” Common law definition also counts.
* If a foreign entity meets definition of carrying on business in BC, it must register under s.376: identify an attorney/agent in BC with a maling address, give name of business, name must be displayed, and if not, directors can be personally liable for company’s obligations under s.384.
* If no registration, penalty of $50 a day after the first two months of carrying on business. Foreign corporations must register if carrying on business in BC.

**Continuation**

* S.302-311: process for a corp immigrating to another province. No need to dissolve in old province, just go to new province and ask them to recognize this BC corp as a corporation under their statute if at same time BC registrar strikes it off their register.
* There must be a continuation process in both provinces’ statutes, otherwise must dissolve in province 1 and incorporate in province 2.
* Mergers require two BC corporations. Continuation allows a non-BC corp to become one so it can merge with a BC corp.

**Disclosure Requirement for Public Companies**

* Ralston Purina test: are there potential purchasers of shares who really need the information disclosure would provide? If so, prospectus requirement is mandatory. (ie, are the shares available to people who aren’t top management and don’t have necessary info to make an intelligent decision about whether to buy shares or not?)
* Continuous disclosure: if facts are material to your purchase, the company must disclose whenever those facts change.

**Auditors**

* S.210: only public companies need audited financial statements
* For non-public companies, they can waive this requirement with a unanimous formal resolution of the shareholders. Financial statements still must be filed, just not audited.

**Name Approval Process**

* Concerns about offensive language.
* Main concern is whether your name is confusing similar to another company’s name such that it would mislead consumers into thinking there’s an association between the two.
* S.22(5): “is it a name that the registrar for any good or valid reason disapproves of?” Largely based on whether it’s confusing. Registrar’s decision is on his discretion.
* Prefers detailed and/or descriptive names. Words BC or Canada can’t be used unless you’re the BC/Canadian subsidiary of another company.
* Don’t use anything too general.
* Must include abbreviation “comp, corp, or ltd”
* S.406: you can appeal decision of the registrar to the BCSC, either challenging his refusal to register your name (discretionary, so very hard to win) or argue that he incorporated a company with a name too similar to yours.

**Business Judgment Rule**

* The board is free to exercise its discretion for its business objectives. Shareholders can’t interfere with them or challenge those powers and court won’t second-guess. Shareholders can’t go to court based on a bad business decision by the board. Day-to-day management is up to them.

**Notice of Articles, Issuing Shares**

* Contains the company’s pre-approved name, the names and addresses of the first directors of the company (deemed elected by virtue of being named), address of the registered office of the company, address of its records office, and s.56: authorized share structure of the company with total shares issued and owned by persons they’re issued to.
* Don’t need to issue all the shares authorized by the notice of articles. Directors have total control over issuance of those shares – don’t need to issue all, just some.
* Authorized capitals can be changed at any time by amending the notice of articles.
* “Table 1” is the template, which is then tailored for the particular company
* S.19(3): notice of articles has contractual effect between the shareholders and each other and the shareholders and the company and to be amended in anyway, it requires a special resolution of the shareholders. That’s a “fundamental change.” Special resolutions = 2/3 of the present and voting shareholders, up to ¾ depending on articles, 21 days notice.

**Restrictions**

* S.30: gives all BC corporations the rights and capacities of individuals of full capacity. This wide range of powers can be restricted through putting restriction sin the articles via s.33.
* S.421: abolishes constructive notice: No one is deemed to know what these restrictions are simply by their being in the notice of articles.
* S.260: special resolution is required to include, amend, or delete a restriction. Counts as a fundamental change.
* A fundamental change, including restriction, triggers the appraisal remedy: shareholders who disagree with the change voted on and approved by special resolution and who cast a dissenting vote have a right to demand the company buy their shares.
* S.378: if an extra-provincial company from a province that has ultra vires in full effect (can only do what their Charter says it can, no broad s.30 grant of power), any acts it does in BC that would be ultra vires are deemed valid. S.30 trumps for what they do in BC.

**Remedies against Breaking Restrictions**

* S.228: shareholders as of right or “appropriate persons” granted leave to apply (creditors, the third party who entered into the restricted, now void contract) can apply for a compliance order
* S.228: go to judge, tell them what’s happening, get an order for an injunction preventing the company, or making it cease/desist, from committing the restricted act/entering the contract.
* S.228(3)©: an order for compensation can be made against the company in favour of the third party/creditor to compensate him for any losses incurred due to deal’s being set aside.
* S.154: directors who voted in favour of entering into this restricted agreement can be personally liable to pay that compensation.
* S.228: compliance order is available whenever the directors/company violates the act, regulations, or its Charter. Here, s.33, restrictions was violated.
* Voting in favour of committing a restricted act is likely also a breach of fiduciary duty to the company, which can bring about shareholders getting leave to sue in the company’s name in a derivative action.

**Pre-incorporation contracts.**

* S.20(2): the agent is deemed to warrant that the new company will be incorporated and, within a reasonable time, will adopt the contract that the agent entered into with the third party. The agent is liable for breach of warranty if the company never comes into existence or doesn’t adopt the contract.
* S.20(3): if the company comes into existence and does anything to indicate expressly or impliedly that it’s adopting the terms of the contract and is bound by its obligations, it is liable – statutory novation – contract is now between company and third party with agent no longer liable for breach of warranty.
* S.20(8): the agent and the third party, when entering into their pre-incorporation contract, can contract out of s.20(2) such that the agent is not liable for breach of warranty.
* Agent’s liability disappears if things go as planned: incorporation and adoption by company.
* S.20(5): if company is formed but doesn’t adopt the contract, or doesn’t adopt in reasonable time, there may be a restitutionary remedy: if the company took advantage of what the third party gave to the agent and now isn’t paying, the court can order it to pay the third party for the value of the services it received.
* Agent can also seek compensation if out of pocket for the company’s failure to adopt.
* S.20(6): regardless of whether adoption occurs, the company, agent, or the third party can apply for to court for order “re-arranging obligations” where court rewrites contract to address equities – may make liability joint between company and agent to better protect the third party.

**Directors**

* Directors cannot elect themselves – must be elected at AGM. Directors control when the meetings will be held, what’s on agenda, and the nominees.
* S.135: if no directors, like all die, individual may be appointed by shareholders to call a meeting to elect new ones and appoint directors to fill vacancies until the vote happens.
* S.138: a person who performs the function s of board members is subject to the responsibilities/fiduciary duties of a board member, even if not elected.

**Board Management Power – s.136**

* S.136 vests power not in the board’s individual members, but in the board collectively. A board member can’t deal with a third party on basis he enjoys the power in personal capacity, but in the sense that the board has delegated its power to you to act on its behalf.
* S.136 vests in the board what the company could do innately if it were a natural person. Has the power to manage the company’s affairs and supervise its management/business.
* Delegation is permissible.
* Automatic Self-Cleansing: s.136 invests managerial powerse in the board and not the shareholders. As a result, resolutions passed by the shareholders ordering the board to exercise their management powers in certain ways (like ordering them to sell assets) will be ineffective and non-binding unless the shareholders first pass a special resolution amending the articles to re-arrange the balance of power.
* Residual Powers theory: if the board just can’t function, power reverts to the shareholders in general meeting.

**Does the Agent have Authority to Enter into that Transaction?**

* Actual authority: he really does have the authority
* Implied authority: a guy in upper management or a director has the power that person can be assumed to have.
* Ostensible authority: if company knows agent is entering into a deal that he doesn’t have authority to do, company is estopped from saying contract is void – knowing let A enter into it.

**“Best Interests of the Company”**

* Dodge: originally, directors were required to focus on shareholder profit maximization – it must be their primary purpose.
* That said, pYing dividends is up to board’s discretion, then can elect to put money back in the company.
* Business judgment rule means theywon’t be told how to make money, but their primary purpose must be profit maximiation
* Parke: is what the directors doing within ordinary scope of the company’s business and is it reasonably incidental to carrying out that business?
* Peoples: it is now legitimate to, as part of business judgment, consider the interests of other stakeholders (employees, consumers, creditors).
* Best interests of the company now encompasses not just shareholders and profits, but also these other stakeholder interests. That said, Peoples doesn’t make it mandatory that they consider other stakeholders, just that it’s legitimate to do so. If stakeholder interests clash with shareholders, shareholders prevail.
* Cannot be attacked for considering other stakeholders, protected by business judgment rule Bell

**Audit Committees**

* At least 3 members, the majority of whom must be outside directors – not day-to-day employees.
* Only applies to public companies/reporting issuers incorporated under the act.
* Must be elected at the first board meeting. Primary responsibility is to report on financial statements, look for fraudulent problem deep in the company as well as general problems relating to financial affairs.

**Sale of the Undertaking (exception s.136 management power)**

* Counts as a fundamental change justifying special resolution.
* Undertaking = all of the companies assets, tangible or intangible, that have monetary value.
* S.301: Board muist get special resolution with 21 days notice of the meeting where there’s a sale of all or substantially all of the company’s assets and this isn’t the ordinary course of business. Shareholder approval is mandatory for this.
* If vote doesn’t go through, directors can’t go through with sale. If vote does go through, directors are not obliged to go through with it (business judgment), they just can.
* “Substantially all” is via quantitative/qualitative test: quantative means it’s >50% of its assets. Qualitative means the sale strikes at the heart of the company’s business, is tantamount to winding up its affairs, or redefines the company’s business. Need a bit of both – if a sale is >50% but will be immediately replaced by similar asset, that’s not qualitative. That said, the higher it is over 50%, the harder it is to argue it’s qualitatively insignificant. It’s also not enough to argue that even though it’s over 50%, it’s a minority of the company’s income generation (Cats).
* Giving security or leases < 3 years don’t count as a sale.
* Also not sale of an undertaking if it’s a holding company selling assets to a subsidiary.

**Remedies for Sale of the Undertaking**

* S.237: if shareholder dissents in the special resolution, they can get appraisal remedy.
* S.301(1): if company sells all or substantially all of its assets without a special resolution, shareholders can get relief under s.301(2): get court to issue order that sale be halted until special resolution is done, set aside the sale entirely, or make any other appropriate orders.
* Court will likely order company to pay compensation to third parties for transaction costs due to halted deal. This cannot be shifted to personal liability to the directors.
* Board doesn’t need the special resolution if it’s in the “ordinary course of business,” but in meeting the “qualitative” test, that’s unlikely.

**Directors’ Duty of Care (s.142(1)(b))**

* Both duties are owed not collectively, but by each individual director. Suing director for breach of either duty requires derivative action – it’s owed to company, not directors.
* S.142(3): cannot contract out of either duty, not even via the company’s articles.
* No formal qualifications or professional standards for directors, so largely protected by business judgment rule, but must exercise powers in a careful manner.
* City Equitable: high level, “gross negligence” is necessary.
* Director is only obliged to show the care and skill of a person of his or her knowledge and experience. That said, you have whatever knowledge/experience you brought to the job.
* Director isn’t bound to give continuous attention to corporate affairs, can act intermittedly
* Directors can rely on management and are not required to second guess their recommendations unless put on inquiry.
* Peoples: contextual element – look at the actual circumstances where the person exercised his powers in determining if he breached. Evaluate in context decision was made whether director met the standard mentioned in City Equitable.
* Business judgment rule permits social and economic considerations to be taken into account.
* A breach of rules of good governance, voluntary standards, is evidence of a breach (Peoples).
* With business judgment rule, s.157 defences, and gross negligence standard, hard to find.

**Directors’ Fiduciary Duty (s.142(1)(a))**

* Refer to first few rules above. Includes things like self-dealing, corporate opportunity, etc.

**Directors’ PERSONAL Liability**

* S.154: a list of provisions, including s.33 (breaking restrictions) and s.70 (declaring dividends when company is insolvent) where if directors break them, they are personally liable.
* S.154(8): if you were present at the meeting that authorizes a breach of anything on s.154, including breaching a restriction, you are personally liable unless you voted in dissent. Also liable if not at the meeting if you didn’t send in notice of your intent to dissent

**Reliance on Information – Director Escaping Liability under s.142 duties AND s.154 Violations**

* S.157: basically City Equitable, if they got info from a qualified insider in the company and acted based on that, they didn’t breach
* Three sources they can rely on: financial statements of officers of the company or auditors, the written report of an expert, and any info court considers it reasonable for director to rely on.
* Tremont: to be an expert, you probably have to belong to a professional association. Also wouldn’t work if you were put on inquiry – you knew there were problems (Barter).

**Business Judgment Rule**

* Can use an INDEPENDENT committee to advise management about decision, like whether or not to accept the bid. This bolsters their reliance on business judgment decision.
* Decision just has to be within a range of reasonable options (BCE).

**Self-Dealing**

* Allegations that director has an interest in a contract between company and an outsider (either the director himself or an entity he has ownership interest/personal interest in).
* S.142 doesn’t apply for self-dealing, these sections are exhaustive. (s.152)
* S.153: if director holds office or owns property, like shares, that could give rise to a conflict with their duties to the company, they must disclose the nature and extent of that interest. Actual conflict isn’t needed, potential conflict as a result of this office or ownership is enough. Multiple directorships = tell each company of the fact you’re director of the other.
* S.147(1): Materiality test for what must be disclosed: the director’s interest is material and the contract/transaction itself is material to the ompany.
* S.147(2): no disclosure requirement if contract is between affiliates, remuneration of director, indemnification or insurance, or granting of loans/security.
* S.148: director is liable to account to company for any profits that accrues to him personally as a result of transaction in which he has disclosable interest. Way to avoid this is to get the board to affirm via resolution that you can keep the money (shareholders must be told though) or if they won’t do it, get it affirmed by a special resolution of shareholders under s.148(2)©. A director who is also a shareholder cannot vote at the board meeting but CAN at the special res. Director can also use s.150, as below.

**Remedies for Self-Dealing (other than s.148 accounting)**

* S.150: shareholders have standing, even if also directors. Can get a judge to give an order for compensation if they can prove direct harm, or get percentage of the profit.
* S.150 is a personal remedy shareholders have as of right. Under s.150(2), if court determines the contract not to be fair and reasonable to the company, they can make other orders or prevent the transaction from going through.
* S.150 can thus be used by a shareholder attaking a self-dealing transaction as unfair or unreasonable for director to keep the money.
* S.150 can also be used by director to argue that while board and shareholders won’t give approval, court should let him keep the money due to deal being fair and reasonable to the company.
* Third parties have no standing under s.150.

**Corporate Opportunity (Breach of Fiduciary Duty)**

* Regal Hays rule: if a director obtains shares or a corporate opportunity only by reason of his position in the execution of his office, he’s accountable for any profits made. If you stood in a close enough relationship to the company and made a profit, you’ll be accountable.
* Peso Mines exception: conflict disappears once the board made a bona fide decision not to exploit the opportunity on its behalf. Until then, there is a conflict between the personal intersts of the board members in going after it themselves and going after it as agents of the corp.
* Canaero lists factors to find liability in corporate opportunity cases: what was their position, what were they doing, nature of corporate opportunity, how developed was it, how specific was the info they got, what was director’s relationship to it, how much knowledge did they have.
* Canaero: the more senior their position or the more their job engaged this opportunity, the more likely liability will be found.
* The more private and circumscribed/confidential the info, the more likely liable.
* Length of time between leaving the company and exploiting the opportunity. Also, circumstances of their leaving the company.
* First decide if person is fiduciary, then if client has standing to sue, then if there’s a breach (use the Regal Hays rule with Peso Mines exception), then Canaero factors to find liability.

**Directors Disclosure – Competition**

* S.153 disclosure is not just triggered in self-dealing.
* S.153 is also trigged if you’re operating a business in competition with the company you’re director of OR if you h ave a material interest in a contract between the two companies
* Can lead to breach of fiduciary duty: you compromised interest of one by pursing best interest of the other.

**Fettering of Discretion**

* Directors can’t take instructions on how to vote at board meetings. If they are agreeing ahead of time on how to vote, t hat’s a prima facie breach of fiduciary duty

**Takeover Bids**

* Conflict of interest: directors have trouble advising shareholders to oppose the bid or deploying defensive measures, since it’s also in the interest of keeping their jobs (offeror would just replace encumbent board through s.128(3) special resolution).
* There is some protection from business judgment rule, especially if they set up an independent sub-committee to determine if the bid is in best interest of the company (BCE). As long as they’ve done things in a justifiable, plausible way, no breach of fiduciary duty.
* Offerors are required by Securities Act to issue a takeover bid circular so shareholders can make informed decision. If directors are giving their opinion to shareholders,need director’s circular.
* Poison Pill: having a class of shares that are one vote each, but instantly triple when someone acquires a certain percentage of shares.

**Offeror Expropriation**

* S.300: if someone buys 90% of the shares, he can force the other 10% to sell to him.
* Also, if someone buys 90% and stops, the remainder can FORCE him to buy the rest.

**Issuing Shares to Defeat a Takeover Bid**

* Issuing shares is a managerial decision with no special resolution, managemnt power (s.62)
* Bonisteel: proper purpose – it’s objectively improper and a breach of fiduciary duty to issue them for the purpose of staving off a takeover bid.
* Miller: primary purpose test (new one): look at the facts and determine the primary purpose of directors in issuing the shares. If it defeated the bid but the purpose wasn’t to defeat the bid and was otherwise a legitimate purpose (needed money), no breach of fiduciary duty.
* If the primary purpose WAS to defeat the takeover bid, there have to be “reasonable grounds” for trying to defeat it. If there wer, no breach of fiduciary duty. Fairness considerations are likely tied to reasonable grounds, as are concerns about the offeror’s finances or reputation.

**Ratification**

* Northwest: a simple interest in a contract (self-dealing) without proof of harm to the company is ratifiable. As long as the individual acted honest and no evidence of harm to company, breaches can be excused by approval by simple majority at AGM. Leaves open possibility that if the breach is heinous or oppressive enough, it may be unratifiable, like if there’s fraud.
* Regal Hays did say that corporate opportunity breaches could be ratified.
* S.233(6)L ratification no longer kills an application for derivative action or that cause of action, it’s just something court will consider in the application for leave and subsequent trial.
* Vote will only be given weight if it was by truly independent shareholders and not passed by virtue of the votes of the defendant director in his capacity as a shareholder (majority of the minority). That said, it is ultimately discretionary how much weight to give to indie vote.
* Northwest: directors can vote in their capacity as shareholders to ratify their own conduct.

**Special Facts Doctrine – Fiduciary Duty in Insider Trading**

* Insider trading is the one situation where director will owe a fiduciary duty to the shareholder and not just the company – where director, on unequal bargaiing power and relationship to shareholder, gets the shareholder to sell shares to him offering “cheap price,” there’s a fiduciary relationship owed to that shareholder.

**Excusing a Breach of s.142 duties**

* S.157 applies: if director only does what they did due to relying on experts, if it was reasonable for them to rely on reports from those persons in doing what they did, they’re excused.
* S.234: court may relieve a person in whole or in party of liability on terms that are appropriate if the court finds the person acted honestly and reasonably and ought fairly to be excused. This is usually only used for non-professional laypeople.

**Primary Rights of Shareholders**

* Unless they’re non-voting shares, you have right to vote your shares at any meeting of the shareholders. Default is one vote per share, unless articles say differently (classes).
* Vote binds you even if you dissented.
* Second right: entitlement to shares of profits. Companies that make profits must file an annual report showing how much they made. S.136 management power determines whether they’ll issue dividends, but shareholders can only be paid different amounts for shares if the articles give preferred entitlement to some classes.
* It is possible to get an order under oppression to pay dividends.
* Third right: right of repayment of capital – if company is dissolved/bankrupt and there’s money left after creditors, buyers get back what they paid for their shares.
* Preferred shares: get paid dividends first and capital is repaid according to pre-arranged scheme, not just when the creditors are through.
* Shareholders can vote by proxy: management sends notice of AGM and a power of attorney shareholder can sign authorizing management to vote on your behalf.

**Court Ordered Meetings (s.186)**

* If management is avoiding addressing your concerns by ignoring statutory requirements to hold an AGM, you can apply for court order forcing board to convene a meeting to hear your concern
* Often used in tandem with oppression. Personal remedy with no need for leave.

**Shareholder Proposals**

* Applies only to public companies. Can have standalone proposal heard at AGM.
* Standing: person or group of persons must own at least 1% of voting shares for at least 2 yrs.
* Must share the proposal three months before the AGM (s.133) and present a detailed submission, declaration, with a supportive statement of up to 1000 words, with company paying for its distribution.
* S.189(5)(d): shareholder proposal can’t be brought if it doesn’t relate in a significant way to the business affairs of the company.
* S.189(5)(e): can’t be brought if its primary purpose is to secure publicity or enforce personal grievance.
* S.191: management has the onus of showing that a proposal falls in one of these exceptions.
* Varity: proposal can’t be too general (“don’t do business there”) or sweeping – easier to fall within one of the two exceptions if it is
* S.189(5)(c): company is excused from having a proposal at AGM if a proposal along similar lines was recently considered at an AGM. Simply watering down or toning down an earlier proposal won’t be enough to avoid this exception (Green Peace).
* Main problem is that shareholder proposals will often fall within the s.136 management power and be non-binding on the directors (Automatic) unless they put in another motion to amend the articles and re-allocate the division of powers.

**Requisitioned Meetings (s.167)**

* Applies to public or private companies. Shareholders with at least 5% of the votes can requisition a general meeting for any business that may be transacted at a general meeting.
* Requisition, “the record,” must state in less than 1000 words the business to be transacted, signed by all requisitioning shraeholders, and delivered to company’s registered office.
* Directors must call the GM to be held not more than 4 months after receiving the record and provide date, time, location (notice) at least the prescribed number of days before the meeting but not more than 4 months before it.
* Directors don’t have to call the meeting if they’ve already called a GM to be held after the date of that requisition’s being received. This exception only applies if it can “reasonably be predicted” that the matter the requisitioning shareholders want to discuss will be a matter the directors would call at that meeting (Airline Industry).
* S.167(7): can reject the requisition if they can prove it doesn’t significantly relate to the business affairs of the company or is an attempt to secure publicity/pursue public grievance.
* If directors don’t call meeting/send notice within 21 days of getting the requisition and the shareholders are at least 2.5%, they can send notice themselves with company paying costs.
* Can try to amend the articles at these meetings (Airline Industry)
* S.167(8): because of this section, requisitions can hold the meetings themselves even if they fall within an exception, no application to court is needed. S.186 court-ordered meetings are where the shareholders wanting the meeting are <5%.

**Removal of Directors**

* S.128(3): company can remove a director at any time by special resolution or, if articles allow, a resolution at GM passed at less than special resolution requires.
* S.128(4): if election was reserved for a class of shares, you’ll need a special separate resolution by those shareholders to remove the director.

**Derivative Action (s.232)**

* Court will grant leave if applicant establishes four grounds via affidavit: the complainant made reasonable efforts to cause the directors to prosecute the proceeding, notice of application for leave is given to the company, the complainant is acting in good faith, and it is in the best interests of the company.
* S.233(6): no application can be dismissed just because of ratification by majority.
* Not a personal remedy: shareholder is seeking leave to sue in the company’s name for breach of s.142 duty owed to the company.
* S.233(5): the proceeding cannot be settled without the judge’s permission – court must see the terms of any settlement entered into and likely won’t approve of it where other minority shareholders are excluded or it’s a cover-up.
* S.233 gives standing to directors, shareholders, and appropriate persons to sue derivatvely. Appropriate persons likely covers creditors, though maybe not secured creditors.
* Is it a corporate action? Does the person have standing? Establish the four grounds.
* The claim you put before the board doesn’t need to be overly specific/each point need not be argued in the application.
* Notice of Application: discrepancies between what you told the company you’d like it to sue for and what’s in your notice of application is generally inconsequential – don’t have to specify every ground you might later seek leave to sue deriviatvely on, it’s the intent to sue that matters. (Bellman)
* Good faith: it is not vexatious to pursue oppression remedy AND leave to sue derivatively (same)
* Best interest: show it’s an at best arguable case that it would not be in company’s best interest to not pursue if what you allege is assumed to be true.
* Costs: s.233(3) allows control person to apply for interim awards of costs for dispersements and legal fees paid in proceedings. S.236 may require security for costs. If you’re unsuccessful, you’ll have to repay these interim awards.

**Board Using Litigation Committee re: Derivative Action Applications (Bellman)**

* Committee advising board on whether to sue must be independent – can’t have defendant directors on it. Must also consider all the issues raised by the complainants.
* No case in Canada suggesting what would happen if the committee WASN’T tainted – in US, Auerbach says that decides it – if independent committee says so, it’s not in best interest to sue. Game over. Zapata says independent committee can’t oust judicial discretion.

**Oppression Remedy**

* Only shareholders have standing as of right. Creditors and directors must apply for leave as “appropriate persons” unless they are also shareholders. Your status, whether you are a shareholder or creditor, is determined as at the time of the conduct complained of (First Edmonton Place). That case also said court is likely to find creditors appropriate, also widows of deceased shareholders and trustees in bankruptcy.
* S.227(2): affairs of the company are being conducted or powers of the director exercised in a manner oppressive to one or more shareholders including the applicant.
* Second ground: an act of the company or resolution of the shareholders is unfairly prejudicial to one or more shareholders including the applicant.
* First ground, oppression, is conduct that is burdensome, harsh, and wrongful. Not fraud, but something egregious that’s more than unfairness or disappointment at how you’ve been treated (Ferguson). Classic case is a series of events that when collectively viewed almost amounts to persecution of the individual shareholder, though a long pattern of behaviour isn’t mandatory. It’s quasi-fraud, “burdensome or harsh” behaviour (Diligenti)
* If you fail oppression, go to unfair prejudice, which must be in relation to the capacity in which standing was claimed (Diligenti). That said, in closely-held context, director and shareholder capacities are intertwined.
* Oppression focuses on nature of the conduct while prejudice focuses on its effect on applicant.

**BCE Template for Oppression Applications**

* After standing, ask what the reasonable expectations of the applicant were in respect of their being whatever their standing was.
* Second step: were those expectaitons breached.
* Third step: did that breach ohf expectations amount to oppression or unfair prejudice?
* Reasonable expectaionts depend on commercial practice in the industry, relationship between the parties, nature of the business. Also, if applicant is partially responsible for the affairs they’re complaining of, their entitlement to relif is undermined.
* Reasonable expectations are typically just tied to the board making their best efforts to, say, protect your interests (like forming an independent committee, giving you contractual protect)
* Breaches of fiduciary duty can often be argued under oppression – it’s always a reasonable expectation for directors to respect their duties and breaches of those duties will typically be enough for oppression or prejudice.
* Relief can basically be any order, final or interim, the court can come up with, including, under s.227(3), the appraisal remedy. They won’t give that though if they can end the persecution by some other order – no reason for you to get out anymore.
* S.227(4): laches is a defence to the oppression remedy.

**Compliance Remedy (s.228)**

* Based on s.19, shareholders have standing as of right to ask court to recognize their entitlement for terms of company’s constitution to be observed. Can also be “appropriate persons.”
* Example: meeting is held without inadequate notice, shareholder asks for injunction to prevent it going ahead until appropriate period of notice.
* Court can make compliance order to extent that a provision in the Act, regulations, or articles are not being complied with that they be complied with or cease violating them.

**Remedying Corporate Mistakes (s.229)**

* Standing is just “interested persons,” which includes shareholders or company itself.
* Confess the error and try to convince court nobody suffered as a result of it.
* Remedy: court retroactively validates the error.

**Appraisal Remedy (ss.237-247)**

* S.238: fundamental changes that trigger the remedy – alteration of articles to modify restrictions, a merger or amalgamation, continuation, sale of all or substantially all of the assets, and then a catch-all provision.
* S.240: mandatory notice of the resolution on a s.238 matter and shareholders must be advised of their right to dissent and that this will trigger appraisal remedy. If no notice is given and the resolution passed, company has 14 days to send shareholder a copy of the resolution, say it passed and when, and a statement advising of the right to send a notice of dissent.
* S.242: dissenter must send a notice of intent to dissent within 2 days of the meeting. They must then vote in dissent and if the resolution passes and the company intends to proceed with the fundamental change, they must send a notice of intent to proceed (s.243)
* After getting that notice, dissenter sends notice of intent to sell with their share certificates within a month.
* S.246: lose the right to dissent if they act inconsistently with their statement of intent, like voting in favour. They also lose the right to force company to buy their shares if resolution doesn’t pass or board elects not to proceed.
* Must sell ALL shares to the company, not some.
* S.245: payout value is first determined by negotiations between company and shareholder. If shareholder isn’t happy to that, apply to court for court to determine the value.
* S.247: shareholder is entitled to “fair value” of the shares they own immediately prior to the resolution passing. Judge will get outside expert – it’ll usually be market value, if not that, it’ll be asset value (list all assets of the company, appraise them, add it all up, divide it by number of shares to get per-share value) or failing that, based on company earnings.
* S.244(6): the appraisal remedy is EXCLUSIVE, cannot be pursued with other remedies.

**Winding-Up Remedy**

* Shareholders, directors, and appropriate persons have standing for this. It is discretionary.
* What were the applicant’s reasonable expectations? Were they breached? And is that breach a just and equitable basis for the company to be wound up? (Ebrahimi)
* Clean-hands applies: undermines your entitlement if you contributed to the situation.
* Courts will often end up granting other forms of relief instead (appraisal, oppression).
* Reasonable expectations could be that you expected to be a director and equal shareholder and now you’re not, got booted out of one or the other. (Ebrahimi)
* “Just and equitable” ios vague: if court thinks things are at a point where dissolving the company is the only reasonable thing to do to end a difficult situation, they’ll do it.
* Requires a finding of a lack of confidence in viability of the company and/or the directors exercising their powers in good faith.