

Date: 2024 07 30
Docket: S-1-CV 2023 000 128

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

CHIEF JAMES MARLOWE, in his personal capacity and on behalf of the
LUTSEL K'E DENE FIRST NATION

Applicants

-and-

MIRZA MOHAMMAD IMRAN KARIM BARLAS (AKA RON BARLAS),
ZEBAR BARLAS, NORTHERN CONSULTING GROUP INC., EQUIPMENT
NORTH INC., DENE AURORA ENVIRONMENTAL TECHNOLOGIES INC.,
BARLAS FAMILY TRUST, TSA CORPORATION, TA'EGERA COMPANY
LTD., DENESOLINE CORPORATION LTD. and DENESOLINE COMMUNITY
DEVELOPMENT CORPORATION

Respondents

Application for Relief from Oppression under the *Canada Not for Profit Corporations Act*, SC 2009 c 23 and the *Business Corporations Act*, SNWT 1996 c 19.

Heard at Yellowknife: March 6, 8, 12 and April 2, 3 and 23, 2024

Written Reasons filed: July 30, 2024

**REASONS FOR JUDGMENT
OF THE HONOURABLE JUSTICE K.M . SHANER**

Marlowe et al v Barlas et al, 2024 NWTSC 38

Date: 2024 07-29
S-1-CV 2023 000 128

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

CHIEF JAMES MARLOWE, in his personal capacity and on behalf of the
LUTSEL K'E DENE FIRST NATION

Applicants

-and-

MIRZA MOHAMMAD IMRAN KARIM BARLAS (AKA RON BARLAS),
ZEBAR BARLAS, NORTHERN CONSULTING GROUP INC., EQUIPMENT
NORTH INC., DENE AURORA ENVIRONMENTAL TECHNOLOGIES INC.,
BARLAS FAMILY TRUST, TSA CORPORATION, TA'EGERA COMPANY
LTD., DENESOLINE CORPORATION LTD. and DENESOLINE COMMUNITY
DEVELOPMENT CORPORATION

Respondents

REASONS FOR JUDGMENT

INTRODUCTION

[1] This is an Application for relief from oppression under the *Canada Not-for-Profit Corporations Act*, SC 2009, c 23 (the "CNCA") and the *Business Corporations Act*, SNWT 1996 c 19 (the "BCA"). The Applicants' claims are founded on oppressive conduct, including breach of fiduciary duty, by the Respondent, Mirza Mohammad Imran Karim Barlas, who is also known as "Ron Barlas".

[2] Lutsel K'e is a remote community located on the East Arm of Great Slave Lake, in the Northwest Territories. According to the Northwest Territories Bureau of Statistics, it is accessible by air or boat and its population is approximately 300: <https://www.statsnwt.ca/community-data/infrastructure/Lutsel'Ke.html>.

[3] The Lutsel K'e Dene First Nation ("LKDFN") is a band within the meaning of the *Indian Act*, RSC, 1985 c I-5. Its headquarters are located in Lutsel K'e.

[4] Chief James Marlowe is the elected chief of the LKDFN.

[5] Tsa Corporation ("Tsa"), Ta'egera Company ("Ta'egera"), Denesoline Corporation Ltd. ("DCL"), and Denesoline Community Development Corporation ("DCDC") are related companies which serve the needs of the members of the LKDFN. They will be referred to collectively as the "LKDFN Companies".

[6] Tsa is a not-for-profit corporation incorporated under the *CNCA* which has "members" rather than "shareholders". Its objectives are, among other things, to carry on operations for the benefit of LKDFN members.

[7] DCL is the economic development arm of the LKDFN. It is incorporated under the *BCA* and wholly owned by Tsa. It exercises the LKDFN's rights and benefits under Participation Agreements or Impact Benefit Agreements with mining companies ("IBAs"). DCL's principal function is to realize those economic rights and benefits flowing from IBAs to which the LKDFN is a signatory. It does so primarily by entering into joint venture contracts with partner entities which provide goods and services to mining companies. DCL is also responsible for facilitating employment, training, and economic development with LKDFN community members. Finally, one of DCL's corporate objectives is to distribute funds back to the community through donations.

[8] Ta'egera is a wholly owned subsidiary of Tsa, incorporated under the *BCA*. It operates as a real estate holding company.

[9] DCDC is incorporated under the *BCA*. Its purpose is to enhance community welfare and development for the benefit of the LKDFN. It is wholly owned by DCL.

[10] The LKDFN Companies are subject to a receivership order granted by Grist, J on April 28, 2023.

[11] Mr. Barlas was the CEO, a director, and an officer of DCL and Ta'egera. He also oversaw the activities of Tsa.

[12] Zeba Barlas is Mr. Barlas' wife. She is the sole director of the Respondent corporations Northern Consulting Group Inc. ("NCG") and Equipment North Inc. ("EN"), both of which are incorporated under the *BCA*. At one time, she owned all the shares in those companies. Zeba Barlas provided no evidence in response to the allegations that she was a knowing participant and knowing recipient in the events leading to these proceedings.

[13] Dene Aurora Environmental Technologies Inc. ("DAET") is incorporated under the *BCA*. Zeba Barlas is a director. The company is no longer active.

[14] Mr. Barlas is the trustee of the Respondent, the Barlas Family Trust. The Trust holds common shares in NCG, EN, and DAET. The beneficiaries of the Trust are Ron and Zeba Barlas, and their two adult children.

[15] Mr. Barlas, his wife, the Barlas Family Trust, NCG, and EN are subject to a *Mareva* order granted April 28, 2023 by Grist, J, which, among other things, prohibits dissipation of assets.

THE KEY ISSUES

[16] The Applicants assert Mr. Barlas engaged in four broad categories of wrongdoing against the LKDFN Companies and that the wrongdoing amounts to oppressive conduct; conduct which is unfairly prejudicial; or conduct which unfairly disregarded the rights of Tsa members, as follows:

- a. He engaged in multiple self-dealing and undisclosed transactions which led to significant profits for corporate entities owned by Zeba Barlas and later, the Barlas Family Trust, over which Mr. Barlas exercised practical control. The profits were used for the benefit of Mr. Barlas and his family.
- b. Mr. Barlas controlled his own compensation as Chief Executive Officer and director of DCL and Ta'egera and overcompensated himself through an oppressive employment agreement.
- c. Throughout his tenure, Mr. Barlas took steps to erode the governance of the LKDFN Companies, which led to less oversight by the Board

and members, and which allowed him to conceal his self-dealing transactions from scrutiny.

- d. Mr. Barlas used corporate resources of the LKDFN Companies for his own benefit. This included paying friends inappropriate remuneration and having employees engage in work for Mr. Barlas' personal benefit.

[17] As noted, the Applicants also assert that Zeba Barlas knowingly participated in and benefitted from Mr. Barlas' oppressive conduct and is therefore subject to liability.

[18] In response, the Barlas Respondents assert that Mr. Barlas fully and properly disclosed his dealings to the President, Tom Lockhart, and the other DCL Board members, in compliance with his statutory obligations. With respect to the agreements and transactions at issue, they were approved and executed by Mr. Lockhart in his role as President of Tsa. He had actual or ostensible authority to do so and accordingly, the agreements should be upheld. Moreover, the Board members and Mr. Lockhart, approved and ratified agreements having DCL's best interests in mind. Finally, the contracts between EN and DCL, and LKDFN Companies were fair and benefitted the LKDFN Companies by increasing profits significantly. This, in turn, translated into benefits to the community itself.

PROCEEDING SUMMARILY

[19] The Barlas Respondents object to this Application proceeding summarily.

[20] The oppression provisions in both the *CNCA* and the *BCA*, discussed later, contemplate a summary procedure, directing relief be sought by way of "application". Pursuant to r 22 of the *Rules of the Supreme Court of the Northwest Territories*, R-10-96 where a statute authorizes an application to the Court and does not specify a particular procedure, the proceeding "shall" be commenced by originating notice. This generally connotes a hearing of a summary nature, based on affidavit evidence; however, it does not preclude a judge from directing an oral hearing or a trial of an issue. This is explicitly reflected in both the *CNCA* and the *BCA*.

[21] What is before the Court is substantially similar to a summary judgment application. It is therefore appropriate that the question, whether this Application can be properly determined without trial, be answered by applying the analytical framework set out in *Hryniak v Mauldin*, 2014 SCC 7 and which this Court applied

to its interpretation of its own summary judgment rules in *Leishman v Hoechsmann*, 2016 NWTSC 27 at para 5:

...the question is not whether there is a genuine issue for trial but rather, whether there is a genuine issue *requiring* trial - and tools such as cross-examination available in the trial process - to allow a court to reach a fair and just result.

[22] There will be no genuine issue requiring trial where the record allows the judge to make the necessary findings of fact and to apply the law to the facts, and the judge is satisfied that a summary proceeding will be a proportionate, more expeditious and less expensive means to achieve a just result. *Hryniak*, at para 49. It is for the Applicants to establish, on a balance of probabilities, that they are entitled to the relief sought and that there is no genuine issue for trial.

[23] The Applicants' position is that the only issue arising out of this matter that requires a trial is the quantification of damages arising out of the oppressive conduct.

[24] The Barlas Respondents argue that in the circumstances, it is inappropriate to deal with the Application summarily. If the Application is not dismissed, it should be converted to an action, with the parties filing formal pleadings, holding examinations for discovery, going to trial and calling oral evidence.

[25] Among other things, the Barlas Respondents point to the volume of affidavit evidence, cross-examination transcripts, and other documents, and the pending applications for leave to commence derivative actions against the LKDFN Companies' former lawyers and accountants. They argue allegations in the proposed derivative actions are tightly intertwined with the allegations against the Barlas Respondents. Those allegations, among other things, are that the accountants and lawyers knowingly assisted the Barlas Respondents in dishonest activities, raising evidentiary issues similar to those in conspiracy claims as to a party's knowledge and intentions. The narrative which would be provided by the proposed defendants in a derivative action – and possibly the Barlas Respondents - is essential for the Court to draw sound factual conclusions in this Application. Accordingly, everything should be heard at one time. Finally, the Barlas Respondents argue there are key facts in dispute which can only be resolved through a trial with oral evidence where the witness' own voice and words can be heard and the judge can determine credibility.

[26] Citing *Global Chinese Press Inc v Zhang*, 2021 BCSC 328 at para 32 and *Lougheed Estate v Wilson*, 2014 BCSC 2073 at para 117, the Barlas Respondents

submit that even where factual findings and conclusions can be drawn from affidavits, courts are generally cautious in making summary dispositions against separate defendants in multi-party litigation due to the risk of unforeseen or unintended consequences for other parties or other suits. A premature decision taken, or factual finding made, in the absence of all parties may become unsupportable after all the evidence is heard. *Carew v Goose*, 2005 BCSC 949 at para 84.

[27] With respect, it is my view that this Application, save for the question of damages, can proceed summarily, based on the paper record.

[28] The record, while voluminous, is comprehensive and substantial. All parties had an opportunity to submit affidavit evidence and to cross-examine the various deponents. Cross-examinations were extensive. The events leading to the transactions in issue and described in the affidavits are corroborated and supported by other documentation, such as financial statements, contracts and correspondence.

[29] Moreover, the evidence about what transpired is largely consistent. Where there are conflicts in the evidence, they are not so substantial that they cannot be resolved. What is in issue is not so much what happened with respect to each of the impugned activities, but rather, whether Mr. Barlas had the requisite authority and had made the appropriate disclosures to engage in those activities and, ultimately, whether those activities were oppressive.

[30] In any event, summary judgment is not limited to cases where the affidavit evidence is uncontested. Judges in summary judgment applications may make factual findings based on contested evidence. *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd.*, 2019 ABCA 49 at paras 21 and 29.

[31] With respect to the multi-party argument, my decisions in this Application may well lead to the LKDFN Companies' former lawyers and accountants claiming against the Barlas Respondents; however, this is ancillary, and at present, speculative. Certainly, it does not provide a foundation for the Court to insist on a full trial on the issues raised in this Application. To do so would be wholly disproportionate and inconsistent with the ends of justice and fairness.

[32] Based on the extensive, detailed, and largely consistent paper record, I am satisfied I can make the necessary factual findings, apply the law to those facts, and that proceeding summarily will achieve a just result in a proportionate, efficient, and cost-effective manner.

FACTS

[33] I find the following facts.

Hiring Mr. Barlas as CEO

[34] At all material times, Mr. Lockhart was the President of Tsa and a DCL Board member.

[35] DCL hired Mr. Barlas as its CEO in 2014. He also served as the CEO of Tsa and Ta'gera; however, his employment contracts were with DCL. He reported to Mr. Lockhart.

[36] Mr. Barlas and DCL executed a two-year term employment agreement which became effective May 19, 2014. The scope of work was broad. Mr. Barlas was responsible for the administration and execution of DCL's business, and for planning, organizing, and managing its operations and that of its subsidiaries. Specific responsibilities were:

- a. Leading DCL in the development of long-term strategic and annual operating policies, plans, and budgets;
- b. Providing timely advice to DCL on any developments that might affect its capacity to pursue its objectives;
- c. Managing financial and human resources in pursuit of DCL's objectives;
- d. Implementing policies and directives;
- e. Managing and mitigating corporate risks;
- f. Developing information systems and providing reports to allow DCL to assess its financial status and progress in meeting its objectives;
- g. Managing employee and contractor relationships;
- h. Managing revenues and expenditures;
- i. Representing DCL in business development activity and operational matters;
- j. Developing and maintaining effective, professional relationships with staff, contractors, partners, sponsors, and other key stakeholders, the media, and the community at large; and

k. Other tasks as directed by the Board.

[37] Mr. Barlas' salary was set at \$170,000.00 annually with a discretionary bonus, which would be determined by the Board, amounting to between 10% and 35% of annual salary. The position was based in Yellowknife, but Mr. Barlas would have the use of the corporate house in Lutsel K'e. He would also have the use of corporate vehicles in both Lutsel K'e and Yellowknife.

[38] On August 25, 2014, Mr. Barlas and DCL executed another two-year term agreement. The annual salary remained at \$170,000.00; however, the new agreement included a provision for severance pay and the use of a corporate suite in Yellowknife, owned by DCL and for which DCL covered all expenses. It increased the low-end of the bonus payout calculation to 20%. There was no change to the scope of duties.

[39] In June of 2015, Ta'egeera purchased a house in Yellowknife at 221 Niven Drive for Mr. Barlas' and his family's use.

[40] On September 10, 2015, Mr. Barlas entered into an permanent employment contract with DCL. The salary and bonus structure, and Mr. Barlas' duties, remained unchanged. The new contract gave Mr. Barlas the use of the Yellowknife House. The following year, DCL and Mr. Barlas entered into a revised employment agreement which increased his remuneration substantially and which contemplated a joint venture between DCL and NCG. This is discussed in more detail below.

Early Dealings between DCL and NCG

[41] NCG and EN were incorporated on November 2, 2015. Zeba Barlas was listed as the sole director and she was the sole shareholder of each company at the time of incorporation.

[42] On October 17, 2018, all shares in NCG were transferred to Mr. Barlas as Trustee of the Barlas Family Trust. On November 1, 2018, all shares in EN were transferred to Mr. Barlas as Trustee of the Barlas Family Trust. Zeba Barlas remains the director.

[43] On July 5, 2016, Mr. Barlas directed Sue Froude to have DCL pay an invoice he created for NCG in the amount of \$47,400.00. Ms. Froude was the bookkeeper for both NCG and DCL. The invoice listed research, outsourcing, prefeasibility and concept development for a call centre. Mr. Barlas asserted in his evidence that this was compensation for work he himself performed for approximately 20 hours, including speaking with the owner of a call centre in Malaysia. This was in

connection with the possible creation of a call centre in Lutsel K'e as a business venture for DCL. Mr. Barlas said the invoice reflected work he did for DCL through NCG. Other than the invoice, there is nothing to demonstrate the work was actually performed, such as a report for written feasibility study. Notably, Mr. Barlas gave evidence that he was never an employee of NCG and further, as discussed later in these reasons, Mr. Barlas would go on to consistently represent to the Board he had no substantive interest in NCG, other than by marriage.

[44] Barlas also provided evidence that around the same time, he caused DCL to pay \$25,000.00 to either NCG or EN, or possibly to Zeba Barlas directly, for work he performed on a website. There is no evidence of any disclosure to the Board; however, Mr. Barlas maintained it was approved because Mr. Lockhart would have signed the cheque.

The Joint Venture Agreement and the Revised Employment Agreement

[45] DCL and NCG entered into a joint venture agreement (the "JVA") which was made effective September 22, 2016. The entity which was to carry out the joint venture was an unincorporated association called Dene Northern Ventures. The JVA called for both parties to use commercially reasonable efforts to secure contracts on terms beneficial to both, with the object being to maximize profits and increase market share for the partnership. Among other things, the JVA made NCG responsible for all marketing and sales; employing staff; obtaining necessary permits, insurance, and licences; and maintaining books and records. Notably, 49% of all gross revenue was to be paid to NCG and the remainder to DCL.

[46] The JVA was signed by Mr. Lockhart on behalf of DCL and Zeba Barlas on behalf of NCG. Mr. Barlas confirmed in his evidence that he discussed the nature of the JVA and what it entailed with his wife, and that she knew she would be involved in a profit-sharing arrangement with DCL as a result of Mr. Barlas' efforts as its CEO. When asked if he was directing the various transactions with NCG, Mr. Barlas responded that he would discuss it with his wife. When asked if Zeba Barlas "fully knew" what was happening, Mr. Barlas responded "A lot". Finally, when it was put to him that Zeba Barlas would have been aware, based on their discussions that money was being paid to NCG, Mr. Barlas responded "Yes, sir".

[47] It is important to note that throughout the time period covered in these proceedings, NCG's only source of revenue was from DCL under the JVA.

[48] Earlier, on September 16, 2016, Mr. Barlas and DCL entered into an amended employment agreement. The following were included in the recitals (emphasis mine):

[. . .]

AND WHEREAS the Corporation has performed exceptionally well, achieving 70% growth in revenues, and 328% growth in earnings in the last fiscal year ending March 31, 2016 and would like to compensate and reward the CEO accordingly;

AND WHEREAS the Corporation is considering entering into a business arrangement with Northern Consulting Group Inc. ("NCG") that will be finalized in a joint venture agreement between NCG and the Corporation (the "Joint Venture Agreement"):

AND WHEREAS the Corporation acknowledges that NCG is owned and operated by the CEO's Spouse, Zeba Barlas that the complete extent of the CEO's interests in NCG are those interests provided by virtue of marriage, that the CEO is not a director, officer, shareholder, or employee of NCG, and that the CEO receives no remuneration, either directly or indirectly from NCG;

[. . .]

[49] Additionally, the amended employment agreement increased Mr. Barlas' annual base salary to \$221,000.00 from \$170,000.00; granted him a fixed annual bonus of 46% of his salary which could be changed only with his agreement; and it required DCL to pay Mr. Barlas a retroactive annual salary and bonus increase of 3.3% and 6.6% respectively and bonus going back three years in a lump sum.

[50] Importantly, the amended agreement contained the following clause with respect to the JVA, in addition to what was in the recitals:

4. The Corporation admits and agrees that the CEO has completely and fully disclosed the nature and extent of the CEO's interest in NCG, NCG's proposed business arrangement, the Joint Venture Agreement, and any other relationship the Corporation has or may have with NCG. The Corporation expressly waives and releases any claim, cause of action, and demands of every nature and kind that the Corporation has or may have against the CEO under the *Business Corporations Act* (Northwest Territories), in law, or at equity in connection with NCG, NCG's proposed business arrangement, the Joint Venture Agreement, and any other relationship the Corporation has or may have with NCG.

[51] DCL's board of directors was scheduled to meet on September 14, 2016. On September 8, 2016, Mr. Barlas circulated an agenda by email to Mr. Lockhart and the other Board members, Mary Rose Casaway, Adrian Nataway, and Archie Catholique. The email contained information regarding the need for more generous remuneration packages for employees, including Mr. Barlas, to reflect higher costs of living and DCL's improved economic performance. On this topic, the agenda included the following as a proposed motion:

Whereas the corporation has performed exceptionally well, achieving 70% growth in revenues, and 328% growth in earnings in the last fiscal year, ending March 31, 2016, and would like to reward the CEO accordingly, be it resolved that Denesoline Corporation amend the CEO's compensation with a retroactive increase of 3.33% per year as a cost of living increase (COLA), and 6.66% per year profit share/time served/performance-based increase.

[52] With respect to the JVA, the agenda included the following information and proposed motion:

New business development JV

Opportunity to pursue business outside Traditional lands and IBA territory

Dene Northern Ventures 51%/49% Denesoline/Management

Revenues split 51% to 49% as per JV agreement to be finalized

Motion: "Be it resolved that Denesoline Corporation enter into a joint venture agreement with Northern Consulting Group pursuant to the provisions of a JV agreement to be finalized between Denesoline Corporation and Northern Consulting Group"

[53] Mr. Barlas did not attach either agreement to the email he sent to Board members.

[54] The meeting proceeded as scheduled. It is not clear if the documents themselves were before the Board during the discussion. At the same meeting, Mr. Barlas proposed a bonus to each director in the amount of \$3,102.00 in recognition of DCL's financial success over the year.

[55] There was little, if any, Board deliberation on these two agreements, including the extent of Mr. Barlas' interest in NCG, at the meeting. What deliberation there might have been was not substantive. According to Mr. Lockhart, Mr. Barlas explained his interest in NCG was by virtue of marriage only. With respect to the JVA, Mr. Lockhart said Mr. Barlas explained it would allow DCL to expand outside of the LKDFN's traditional territory and open new revenue streams.

[56] In an affidavit sworn May 10, 2023, Ms. Casaway stated (emphasis mine):

3. In preparing this affidavit, I have reviewed an agreement dated September 22, 2016 between Denesoline and Northern Consulting Group ("NCG"), through which Denesoline agrees to pay NCG 49% of Denesoline's gross revenues. I have also reviewed four amending agreements, including an agreement dated October 5,

2018, which says Denesoline will pay NCG a “termination fee” of \$4,250,000 if its contract with NCG is terminated.

[. . .]

5. *Before the beginning of this lawsuit, I had no knowledge whatsoever of these agreements. I had never heard of NCG. I did not know that Ron Barlas or his wife owned any companies of their own, and I certainly did not know about any contracts entered into between their companies and any of Denesoline, Ta’egera, or Tsa. At no time during my time as a director did Ron Barlas disclose these contracts to me. If he had, there is no way I would have approved these agreements.*

[57] Further, there are no minutes of the September 14, 2016 board meeting.

[58] On September 21, 2016, Ms. Casaway wrote to Mr. Barlas about a \$2,886.41 deposit in her bank account from DCL. She asked for an explanation. Mr. Barlas responded to say it was a bonus in recognition of DCL’s exceptional performance that year. Ms. Casaway wrote back and among other things, asked for a copy of the minutes. Mr. Barlas replied the minutes would not be prepared until before the next Board meeting.

[59] In an affidavit sworn September 8, 2023, Mr. Barlas referred to these minutes “to the extent I have been able to obtain a copy of same” and appended a copy of a document purporting to be the minutes as an exhibit. That document is not the minutes of the September 14, 2016 meeting. It appears to be the agenda only. There is no reference to attendees and importantly, no formal motions are recorded.

[60] In connection with these proceedings, the Receiver asked its forensic consultant, Deloitte Canada, LLP, to conduct an electronic search for minutes of the September 14, 2016 board meeting. Jamie Chan, a Senior Manager in Deloitte’s Computer Forensic Group, deposed the search yielded no results for the meeting minutes.

[61] These agreements had important implications for DCL and the other LKDFN Companies, and the relationship between Mr. Barlas and NCG would have been an important factor in deliberation about whether either contract was in the LKDFN Companies’ interests. Despite Mr. Lockhart signing the agreements, the fact that there are no minutes and consequently, no recorded motions, combined with Ms. Casaway’s evidence that she had no knowledge of the agreements, nor NCG, leads me to conclude the Board did not engage in meaningful deliberations on either agreement.

[62] Mr. Barlas used his personal solicitors, Reynolds, Mirth, Richards, and Farmer, LLP (“RMRF”) to prepare and advise him on both the JVA and the revised employment contract. RMRF became DCL’s corporate solicitors sometime later.

Amendments to the JVA and Tsa’s By-Laws and Conflict-of-Interest Policy

[63] In August of 2017, Mr. Barlas wrote to Anthony Purgas of RMRF and asked him to assist in preparing an amendment to the JVA. Mr. Purgas did so. The amendments included the following:

This agreement applies to revenues obtained by DC [Denesoline], or any affiliate of DC as defined in the Business Corporations Act (NWT), through its Petro Canada Joint Venture, its DTR First Nations Construction Joint Venture, the Gilbert Joint Venture, the ERM Joint Venture, and all future joint ventures or comparable business arrangements entered into by DC (or its affiliate) after August 15, 2017. For greater certainty, Gross Revenue (as defined in section 6.1) shall include but is not limited to the revenue to DC (or its affiliate) in the joint ventures listed herein.

[64] The effect of the amendment was to bestow revenue rights on NCG from other joint venture contracts to which it was not previously a party.

[65] Mr. Lockhart signed the amended JVA. It was not placed before the Board and there was no Board deliberation. When asked about this on cross-examination, Mr. Barlas characterized the amended JVA as an agreement he negotiated with his superior, Mr. Lockhart, which would benefit him (ie. Mr. Barlas) and suggested Mr. Lockhart’s permission was all that was required.

[66] Mr. Lockhart was questioned on his understanding of the amended JVA during cross-examination on his affidavit. He said he relied on Mr. Barlas’ representations that the amended JVA would bring in more revenues and ultimately benefit the community. He had no knowledge of the joint ventures referenced in the amendment, nor did he understand why the JVA was being amended to extend to these other joint ventures. He did not seek legal advice before he signed it. His evidence was that had he wished to seek independent legal advice, he would have had to make those arrangements through Mr. Barlas.

[67] As noted, Mr. Barlas sought advice from lawyers at RMRF on other corporate legal issues, including a conflict-of-interest policy for Tsa.

[68] On August 31, 2017, RMRF lawyer Rick Ewasiuk emailed Barlas a draft conflict-of-interest policy. Mr. Ewasiuk suggested it should apply to employees and

officers, in addition to directors and members of Tsa and its subsidiaries. In a response the same day, in which Mr. Barlas appears to reference the JVA and “my wife’s companies”, he advised Mr. Ewasiuk he preferred that the policy only apply to directors and members (as written):

ON THE CONFLICT OF INTEREST POLICY ITS BEST IF IT CAN APPLY ONLY TO DIRECTORS AND COMMUNITY MEMBERS (AS WELL AS THE CODE OF CONDUCT POLICY). IT MAY UNNECESSARILY COMPLICATE THINGS TO INCLUDE EMPLOYEES. I CAN VOLUNTARILY TELL YOU THAT WHEN IT CAME TO ONE OF MY WIFE'S COMPANIES IN SUCH CIRCUMSTANCES, I HAD A SPECIAL CLAUSE PUT INTO THE AGREEMENT DISCLOSING THAT THIS WAS MY WIFE'S COMPANY, THAT THEY ACKNOWLEDGED I WAS FULLY DISCLOSING IT, THAT EVEN THOUGH I SIGN ALL SUCH DOCUMENTS NORMALLY FOR DENESOLINE, THAT BECAUSE OF MY RELATIONSHIP IN THIS CASE I WAS NOT SIGNING IT, WAS DISCLOSING IT, AND INSTEAD OF ME THE PRESIDENT WAS SIGNING IT. MY QUESTION IS WOULD SOMETHING LIKE THAT BE AFFECTED BY THE CONFLICT POLICY IF IT APPLIED TO OFFICERS AND EMPLOYEES AS WELL (EVEN THOUGH MY AGREEMENT IS IN PLACE ALREADY). MY CONCERN IS THAT I HAVE A DEAL WITH THEM [i.e.Denesoline] THAT ANYTHING I BRING THAT'S NOT STEMMING FROM THEIR POLITICAL STATUS

AND THAT I AM BRINGING TO THE TABLE MYSELF IS MINE AND I CAN CUT THEM INTO IT, OR THAT SOMEBUSINESS I BRING, EVEN IF SOME OF IT STEMS FROM OUR POLITICAL STATUS, I WILL BENEFIT FROM OVER AND ABOVE MY PAY, THROUGH A COMPANY I MAY SET UP, OR DIRECTLY AS A BONUS. AGAIN, IF I EVER HAD ANOTHER PERSONAL DEAL, I WOULD FOLLOW THE SAME FORMAT AS I DID BEFORE, BUT I AM RELUCTANT TO ACCEPT ANY CONSTRAINTS ON MY ABILITY OR TO CREATE ANY POTENTIAL CONFUSION. SO I AM RELUCTANT TO HAVE ANY OF THIS APPLY TO ME AS IT COULD BE RESTRICTIVE. I WANT NO CONUSION EVER IN TERMS OF SOMEONE EVEN BEING ABLE TO ALLEGE SOMETHING.

[69] In the same email, Mr. Barlas stated he wanted to be able to deal with “undesirables” who had conflicts of interest.

[70] Importantly, Mr. Barlas acknowledged the vulnerability of LKDFN members and the power imbalance between those members and himself (as written):

THEY CAN'T AFFORD TO CROSS ME BECAUSE I AM IN FULL CONTROL AND POSSESSION AND THEY WOULDN'T EVEN KNOW WHAT TO DO (I'M WELLOVED MY PREDECESSOR WAS HATED FOR 10 YEARS AND THE CHIEF AND COUNCIL AND EVEN SOME DIRECTORS WANTED HIM FIRED

- THEY COULD NEVER DO IT PRACTICALLY BECAUSE THEY WOULDN'T EVEN KNOW WHAT TO DO. THEY'RE FAR AWAY, NONE OF THEM ARE EDUCATED, AND THERE IS NO CAPACITY IN THE COMMUNITY FOR ANYONE TO EVEN COMPREHEND THE COMPLEXITY OF OUR DEALINGS ESPECIALLY NOW WHERE THE AGREEMENTS ARE LARGELY BASED ON YM STANDING, NOT THEIRS, AND WOULD BE LOST IF I LEFT BECAUSE THEY HAVE NO CREDIBILITY, AND PEOPLE DO BUSINESS WITH US BECAUSE OF ME INSPITE OF THEM. I'M VERY SORRY TO SAY THIS BUT ITS THE ABSOLUTE TRUTH. . .

[71] Mr. Ewasiuk prepared the conflict-of-interest policy as Mr. Barlas instructed, with no references to officers.

[72] Mr. Barlas also asked Mr. Ewasiuk to prepare amendments to Tsa's by-laws. At the time, Tsa's by-laws, which also governed the other LKDFN Companies, provided (in part):

- (a) Tsa's business would be managed by a board of three to ten directors;
- (b) One director was appointed by the LKDFN for a two-year term and remaining directors would be elected for a two-year term by an ordinary resolution of members at an AGM or a special meeting called for that purpose;
- (c) A director could only be removed in certain specified circumstances, or by a resolution of the members at a Special Meeting;
- (d) The only requirements for membership eligibility were that the individual be a member of the LKDFN and resident of Lutsel K'e;
- (e) A member could only be removed by special resolution of the members at an AGM; and
- (f) Auditors were to be appointed by the members at each AGM.

[73] As well, prior to amendment, Tsa's by-laws posed no restrictions on how directors could be nominated. Thus, directors could be nominated from the floor at an AGM.

[74] The amended by-laws imposed new criteria for membership in Tsa. While maintaining the requirement that members be members of the LDKFN and reside in Lutsel K'e, the amended by-laws required a member: be a "person of good repute"; support the purposes and objectives of Tsa; not be directly or indirectly engaged or financially interested in materially competing commercial activities; not directly or

indirectly be engaged in activities the Board deemed detrimental to Tsa's best interests; and be formally registered with Tsa. Importantly, the amended by-laws provided the Board with the power to remove members who did not meet the criteria, on the recommendation of the President or the CEO.

[75] The amended by-laws also introduced a significantly more complex process for nominating directors. Among other things, they imposed a formal nomination process requiring a nomination from the Board or a nomination by at least three other members, with written notice to be provided to the Secretary, President, or CEO by a certain date. If no new directors were nominated, terms of existing directors would renew automatically.

[76] The new nomination process was not used, and no directors were ever elected until the Receiver was appointed in this matter in 2023.

[77] Finally, the amended by-laws provided that a committee of the CEO, the President, and one other director could remove members or directors deemed to have contravened Tsa's policies, although such decision could be modified or reversed by the Board.

[78] There is no record of the amended by-laws, nor the conflict-of-interest policy, being considered by the Board prior to the AGM. They would ultimately be adopted at the 2017 AGM, discussed in more detail below.

The 2017 AGM

[79] Mr. Barlas retained KPMG to prepare financial statements for the LKDFN Companies. KPMG also provided corporate accounting services to NCG and EN and personal tax services to Mr. Barlas.

[80] KPMG prepared Tsa's financial statement for the year ended March 31, 2017. Although the notes contained a list of related parties and related party transactions, including other joint venture partners, there was no reference to the JVA with NCG, nor Dene Northern Ventures.

[81] Tsa's AGM was held on September 29, 2017 in Lutsel K'e. Mr. Barlas circulated the agenda by email to Mr. Lockhart and to Board members Mary Rose Casaway, Archie Catholique, and Sunrise Lockhart on September 25, 2017. He also advised the agenda had been posted in Lutsel K'e. Among the agenda items listed were review of financial statements, auditor selection, presentations on the amended

by-laws and conflict-of-interest policy, and the “1st Ever Distribution to TSA Members”. According to Mr. Bhatti, who attended the meeting, none of the 2017 financial statements, the proposed amended by-laws, and the conflict-of-interest policy were circulated to members in advance of the AGM, although copies of the financial statements were available at the AGM itself.

[82] A partner from KPMG attended and gave a presentation on the LKDFN Companies’ financial performance. There was no mention of the JVA or NCG. Mr. Barlas presented the CEO’s Report. He did not disclose the existence of the JVA, nor his wife’s interest in NCG. The financial statements were accepted. As well, KPMG was appointed as auditor.

[83] Mr. Ewasiuk and another partner from RMRF, Fred Kozak, attended the AGM and were introduced as DCL’s and Ta’egera’s lawyers. Mr. Ewasiuk presented an overview of the amendments to Tsa’s by-laws and Mr. Kozak gave a presentation on the conflict-of-interest policy. Copies of the proposed by-laws and the conflict-of-interest policy were not provided at the meeting.

[84] Iqbal Bhatti, who provided affidavit evidence in support of the Application, is a former employee of DCL and it was he who would ultimately bring Mr. Barlas’s various transactions to the attention of Chief Marlowe and the Council, prompting the investigation which led to these proceedings. Mr. Barlas and Mr. Bhatti attended university together and in December of 2016, Mr. Barlas recruited him to work for DCL. Mr. Barlas and Mr. Bhatti parted on bad terms, and I have considered whether this should affect the credibility of his evidence. I find, however, that his evidence on key points is consistent with that of other affiants, including Mr. Barlas, and much of it is corroborated by other documents.

[85] Mr. Bhatti deposed that just before Messrs. Ewasiuk and Kozak made their presentations, Mr. Barlas announced to the membership that there would be a distribution of \$1000.00 to each member household and that the cheques would be distributed after the by-laws and the conflict-of-interest policy were approved.

[86] According to Mr. Bhatti, this announcement was met with “jubilation”.

[87] Both Mr. Bhatti and Chief Marlowe recall the presentation was short. In his affidavit, Chief Marlowe stated:

36. I recall that that presentation of the bylaws felt rushed. I cannot remember if we were given a copy of the bylaws to review, but I recall that Barlas seemed very

eager to get it passed and did not want to focus on the details. The members were focused on getting the meeting over with so they could get their cheque and their feast. The motion to approve the bylaws was passed; but I did not understand the details of the changes that were made, and I am not sure that the members really knew or understood what they were voting on.

[88] LKDFN member and former DCL Board member, Stephanie Poole, deposed the following:

23. At one meeting, I recall that Mr. Barlas and another external person, possibly a lawyer or an accountant, presented on bylaw or policy changes they wished to make. I recall I asked questions about these changes because I wanted to make sure that they were purely administrative, and not substantive. I did not want any changes made that would affect our rights as members to ultimately control the corporation. I recall I was reassured that the changes to be made were mostly administrative. As a result, I stopped asking questions and a motion to approve the by-laws was passed.

[89] From the context, I infer Ms. Poole was describing the 2017 AGM.

[90] Ms. Poole's tenure and activities as a director are discussed in more detail later.

[91] Mr. Lockhart made the motion to adopt the amended by-laws and the conflict-of-interest policy, which passed.

[92] In connection with the 2017 by-law amendments, Mr. Barlas was asked about his knowledge of community members' ability to read English. He agreed that roughly half of them could not.

Acquisition of Aeroponics Equipment

[93] At a meeting held November 10, 2017, DCL's Board passed a motion that "Aeroponics Equipment be secured". It would be tested in Yellowknife and the ultimate intention was to move it to Lutsel K'e after testing to grow food for the community. Mr. Lockhart recalled Mr. Barlas "mentioned it a couple of times at a board meeting"; however, he was unaware the aeroponics equipment had already been purchased by Zeba Barlas' company, EN, for approximately \$160,000.00. EN, in turn, sold it to DCL for \$299,911.00. It is undisputed that as a result, EN made a profit of \$105,119.00 from the transaction.

[94] On July 24, 2018, Mr. Barlas sent an email to Ms. Froude, instructing her to prepare and send an invoice from NCG to DCL for "Aeroponic Technology

Development/Operations Management 2017/2018” in the amount of \$274,391.50. He also instructed her to pay it from DCL when she processed the next payments and to “capitalize it like you did the Waste to Energy Conversion we discussed yesterday”. Ms. Froude arranged for DCL to pay the invoice.

[95] The aeroponics equipment was never installed in Lutsel K’e. Mr. Barlas said it proved to be unworkable. Among other things, the electricity required to operate it was very expensive and the crop return was limited.

[96] In 2022, at Mr. Barlas’ direction, DCL transported half of the aeroponics equipment from Yellowknife to Mr. Cory Van Santen in Aldergrove, British Columbia. In cross-examination on his affidavit, Mr. Barlas described Mr. Van Santen as a former employee, real estate agent, and friend.

[97] Although it was ultimately shipped to British Columbia, the aeroponics equipment remained the property of DCL. Mr. Barlas said the plan was for it to be tested by Mr. Van Santen and his business associate to see if it would be feasible to grow basil and other produce for restaurants in the lower mainland. Ultimately, this proved infeasible. Mr. Barlas gifted the equipment to Mr. Van Santen “In light of your service and dedication . . .”

[98] It is convenient at this point to note that Mr. Barlas had hired Mr. Van Santen as Director of Business Development for DCL at a salary of approximately \$70,000.00 per year. It appears Mr. Van Santen worked from British Columbia and attended primarily to Mr. Barlas’ personal interests. These included helping Mr. Barlas find real estate investments and office space (for NCG) in British Columbia; looking at a Mercedes Benz which Mr. Barlas acquired through NCG for approximately \$160,000.00; and directing architectural work in connection with the conversion of a warehouse into a private gym Mr. Barlas installed in Yellowknife, discussed later in these reasons.

Mr. Barlas’ and RMRF’s Communications with and Treatment of Tsa Members

[99] At different times, Tsa members and others were threatened with legal action, either by Mr. Barlas or through RMRF on Mr. Barlas’ instructions. Mr. Barlas considered it necessary to send correspondence to certain individuals to protect the LKDFN Companies’ interests. During cross-examination on his affidavit, Mr. Barlas was asked about the amendments to Tsa’s by-laws which would allow for the removal of members and directors from Tsa. He stated that in 2014 he received

instructions from Mr. Lockhart to be careful in dealing with certain community members who were trying to usurp the resources of Lutsel K'e and Tsa.

[100] In her affidavit, former LKDFN councillor and sub-Chief, Adeline (Addie) Jonasson, described how in the past, the CEO of the LKFDN companies would report to and work closely with the Chief and Council to coordinate initiatives in the community and help members stay up to date on corporate activities. This was in addition to having a councillor assigned to the "Denesoline Portfolio" who would then sit as a Board member to liaise between the LKDFN Companies and the Council.

[101] On May 23, 2018, Ms. Iris Catholique, who was the executive assistant to the Council and to then Chief Daryl Marlowe, sent a request to Mr. Barlas to meet with the Chief and Council. She attached an agenda. Mr. Barlas sent back what can be fairly characterized as an aggressive response on May 25, 2018. It was addressed to Ms. Catholique and Ms. Jonasson. Its contents included the following (as written):

Dear Iris and Addie

[. . .]

5. It is TSA's position that Councillor Addie Jonasson appears to have a conflict of interest in this matter due to her relationship with [name redacted], who nearly bankrupted the company and was fired from it twice, so Councillor Jonasson should recuse herself from any and all matters pertaining to Denesoline Corporation, as should councillor Ron Desjarlais due to his previous employment history with the corporation. Both Addie and Ron are members of TSA like everyone else and are subject to its rules and regulations.

6. Lastly, Denesoline has a legal duty to defend Denesoline from people with well-known conflicts of interests with the corporation, or people trying to use the corporation's assets inappropriately for their own purposes, or people trying to wrongfully interfere with the business of the Corporation for personal gain under various pretences, or trying to wrongfully slander and damage the corporation for personal reasons, or people trying to further the personal interests of known adversaries of the Corporation by misusing their positions and breaching their fiduciary responsibilities in bad faith. Denesoline has been set up with strong legal protection against people who want to benefit at the expense of the whole community, and that the law will kick into place if there is any attempted wrongdoing, direct or indirect, as with the Tlicho, because all this information has been shared with our lawyers and board, and you have now been advised, so please be aware of the same and govern yourselves accordingly.

[102] Ms. Jonasson interpreted the foregoing as a threat that legal action would be taken against her if she continued to press Mr. Barlas for a report to the Council on the LKDFN Companies and she feared becoming a target. She did not respond to his email.

[103] On June 28, 2019, Mr. Barlas sent an email to the DCL Board members as well as LKDFN Council members. Attached was a “cease and desist” letter from RMRF to Tsa member Ron Dejarlais, of the same date. The letter accused Mr. Dejarlais of making false and defamatory statements about Mr. Barlas and DCL and sharing confidential information he learned about DCL in his capacity as a Councillor. The letter from RMRF threatened Mr. Dejarlais with an action for defamation and expulsion from Tsa in accordance with paragraph 3 of the 2017 by-laws. The letter also contained the following statement:

Denesoline is controlled by its CEO, Ron Barlas, who handles any and all matters relating to Denesoline’s business affairs, and reports to the Board of Directors of Denesoline with its own independent governance. . .

[104] Mr. Barlas’ email contained the following (as written):

Anyone who tries again to wrongfully insert themselves into Denesolin’s affaires when they have no right to do so, especially people with well known and easy to prove conflicts of interest, who’s actions intentionally or unintentionally harm the reputation of Denesoline, it’s CEO and management, or its directors, no matter what their position may be, will have to be dealt with legally in order to protect the interests of the rest of the community members.

In other words, as per my discussions with the Chief, the board, and our lawyers, anyone who tries to harm Denesoline Corporation or its management in this way, which we know is a small handful of people with well known conflicts of interest, will be dealt with the same way we have dealt with Ron Desjarlais, and if the matter persists, then, unfortunately, to protect the rest of the community from the interests of a selfish few, we will have no choice but to act legally. It is our job to protect the financial well being of Denesoline, and we will continue to be the protectors of the community’s assets from selfish people with long standing and well known conflicts of interest who engage in making false comments, defamatory statements, and slander. Please make sure you read the attached letter so you are very clear on the matter.

[105] In his affidavit, Chief Marlowe recounted witnessing Mr. Barlas treat members and others who asked questions about the LKDFN Companies’ affairs with disrespect, at one point telling an attendee at an AGM that he was not entitled to ask questions. Chief Marlowe also confirmed there were some people in the community

who, after they questioned what was happening with the LKDFN Companies, received “cease and desist” letters like that sent to Mr. Desjarlais.

[106] Chief Marlowe received a cease and desist letter himself in June of 2021, before he became Chief. He had attended a meeting with personnel from Diavik Diamond Mine (“Diavik”) as part of his role as liaison between Diavik and LKDFN. At the meeting he received a report showing that up to September 17, 2020, Diavik spent \$45 million with several “Lutsel K’e Dene” related suppliers. The report also showed that in 2021, Diavik spent approximately \$32 million on Lutsel K’e Dene related businesses.

[107] Chief Marlowe deposed he found this concerning. In his view, the benefits the LKDFN Companies provided to the community, such as an annual cheque for \$1,000.00, food hampers, and other donations, were incongruous with Diavik’s information. As well, Chief Marlowe had long harboured concerns with what he perceived as the lack of jobs and minimal training opportunities in the community. He took his concerns to then Chief Daryl Marlowe and the Council. He also discussed his concerns with Board member Archie Catholique.

[108] On June 17, 2021, RMRF, on behalf of DCL and Mr. Barlas, sent a “cease and desist” letter to Chief Marlowe. It stated Chief Marlowe’s assertions about Diavik and the lack of jobs and training available in the community through DCL were false. He was accused of breaching a duty of confidentiality to Diavik. Like Mr., Desjarlais, Chief Marlowe was threatened with a defamation suit and with expulsion from Tsa.

Further Amendments to the JVA

[109] In the fall of 2018, Mr. Barlas had his personal lawyer (who was not from RMRF) prepare two amendments to the JVA. These were signed by Mr. Lockhart on behalf of DCL and Zeba Barlas on behalf of NCG. They were not provided to, nor considered by the Board prior to execution. Mr. Barlas said he took them only to Mr. Lockhart to be signed because he dealt with Mr. Lockhart on his “employment matters”.

[110] Mr. Lockhart recounted that the documents were flown to Lutsel K’e from Yellowknife. They were presented to him by another DCL employee with a request that he sign them. From his evidence, it is clear he did not understand the implications of either document. He relied on Mr. Barlas, who explained it would be good for business by bringing in more revenue. At one point Mr. Lockhart said

he thought he was signing something that was connected to Mr. Barlas' employment. Mr. Lockhart did not seek legal advice on either agreement.

[111] The first of the amendments was effective October 5, 2018, the same date as a Board meeting as well as the 2018 AGM. There were serious implications for DCL. It would require DCL to pay NCG a fee in the amount of \$4,250,000.00 within 90 days in the event DCL terminated the JVA. DCL provided a promissory note of the same amount and a general security agreement over all its assets. Mr. Barlas directed his personal lawyer to register the security agreement.

[112] Mr. Barlas circulated the minutes from the October 5, 2018 on March 13, 2019. They reveal no record of any discussion of the proposed amendment to the JVA. As will be discussed, however, Mr. Barlas later created different iterations of these minutes which would be used to fundamentally change the governance structure of the LKDFN Companies.

[113] The October 5, 2018 amendment to the JVA was not presented at the AGM.

[114] The second of the amendments, dated November 8, 2018, allowed NCG to unilaterally terminate the JVA and still be entitled to \$4,250,000.00 termination fee. It also included a provision giving British Columbia courts jurisdiction to hear and determine disputes.

[115] Mr. Barlas's evidence was the termination fee was justified as compensation for NCG's lost revenues if DCL was to terminate the JVA. Mr. Barlas was asked if he agreed it would have been better for DCL not to pay a termination fee. He responded as follows (emphasis mine):

Well, then I wouldn't have brought them the business. Yes, it would be better for them, but there's no way in hell with the 30 years they had the same agreements. They didn't get that business. If I was going to build them, make them something out of nothing, I was going to share in the profit. I made them 28 million, and I made them grow much better than before. I spent 5 million extra in the community.

KPMG's 2018 Financial Statements and AGM

[116] In May of 2018, Ms. Froude sent an email to Don Matthew at KPMG with information required to prepare financial statements for DCL. The information included DCL's general ledger, which showed a payment to NCG of \$261,161.25. Mr. Barlas confirmed NCG had opened a bank account under the name of Dene Northern Ventures, the unincorporated association referred to in the JVA. Payments

of \$174,116.06 and \$274,536.65 to Dene Northern Ventures were reflected in the ledger as well.

[117] On August 10, 2018, KPMG issued unaudited financial statements for DCL and Tsa for the year ended March 31, 2018. NCG was not identified anywhere in either set of statements as a related party. There was no mention of the JVA, nor the amendments.

[118] As noted, Tsa's AGM was held on October 5, 2018. A representative from KPMG attended and presented the financial statements. Mr. Barlas presented an overview of the LKFN companies' business operations and achievements for the year. Neither Mr. Barlas, nor the representative from KPMG provided any information about the amendments to the JVA, including NCG's security interest.

Stephanie Poole's Tenure as Director

[119] In November of 2018, Ms. Poole was elected a Councillor of LKDFN. She requested and was granted the DCL portfolio and accordingly, she became a member of the DCL Board. She began attending Board meetings in 2019. She noted early on that directors did not receive reports or other documents in advance of the meetings, but simply an agenda and minutes from the previous meeting. Ms. Poole asked one of the other directors, Ms. Casaway, about this practice. She was given to understand that it was not the usual practice to provide documents in advance of the meetings and that it was only Mr. Lockhart who saw financial documents because he was the President.

[120] Ms. Poole deposed she found this troubling, but she was afraid to ask Mr. Barlas about it for fear he would take steps against her or have her removed from the Board.

[121] In February of 2020, Mr. Barlas circulated a new policy to the Board to address donations and payments from DCL. Ms. Poole reviewed it and in an email dated February 26, 2020 proposed a number of revisions, including revised language. Mr. Barlas responded by thanking her and advising her proposed revised language would be incorporated.

[122] Additionally, Ms. Poole had asked to add to the agenda for the next Board meeting the LKDFN Council's requests to meet with DCL. In his response, Mr. Barlas said he would put it on the agenda, but explained DCL's lawyers had advised against such meetings because DCL and the LKDFN Council had to maintain an

“actual and visible separation”. Otherwise, he wrote, LKDFN and DCL could be considered one entity and taxed as such, which would lead to bankruptcy.

[123] On March 13, 2020, Barlas sent an email to all Board members but Ms. Poole. Mr. Kozak from RMRF and the then Chief Darryl Marlowe were included in the distribution. The body of the email included what appears to be an investigation report respecting Ms. Poole and her mother concerning their interactions with someone from the DeBeers mine. “Findings” against Ms. Poole included damaging LKDFN’s relationship with one of the mines, usurping the Chief’s role, slander, and breach of her fiduciary duties.

[124] Mr. Barlas told the others on the email string to keep the matter confidential. Ms. Poole was not advised of the allegations, nor the investigation.

[125] A Board meeting was planned for March 27, 2020. On March 16, 2020, Mr. Barlas wrote to all Board members stating it would be cancelled. He included Ms. Poole in the distribution.

[126] Mr. Barlas did not include Ms. Poole on any further emails to Board members. In July of 2020, Ms. Poole noted she had not received her honoraria. She wrote to Mr. Barlas, who advised that her term had ended in April because her term as an LKDFN councillor had ended. This was incorrect. The Chief and Council elections had been deferred due to the pandemic. Ms. Poole raised this point. Mr. Barlas responded that it did not matter, that her term as a councillor had ended, and that the “paperwork was done then is final and irreversible”. There is no evidence that Ms. Poole, whose term as Director had not, in fact, expired, was removed in accordance with the requirements in ss 110 and 111 of the *BCA* and there is no “paperwork” in the record which would support Mr. Barlas’ statement.

Preparation of 2019 Financial Statements and the 2019 AGM

[127] In July of 2019, Mr. Matthew of KPMG was preparing year-end financial statements for Tsa and DCL, as well as NCG and EN. On July 29, 2019, Mr. Matthew sent an email to Mr. Barlas attaching draft financial statements for DCL and Ta’egera. The draft statement for DCL included three pieces of information pertaining to the relationship between NCG and EN, and DCL: it identified NCG and EN as related parties “controlled by a member of senior management”; it identified an “intangible asset acquisition from EN of \$299,011.00; and it disclosed a \$1,269,461.00 payment to NCG for “consulting services”. In his email, Mr. Matthew asked Mr. Barlas to have a discussion related to disclosure of his role in NCG.

[128] A series of written exchanges between Mr. Barlas and Mr. Matthew followed in which Mr. Barlas imparted information and his views on how and where the information should be reported in the financial statements.

[129] Mr. Barlas responded to Mr. Matthew on July 29, 2019, clarifying the \$1,269,461.00 was a revenue share from the JVA and not a consulting fee (as written):

Don Northern Consulting does not get consulting services of \$1.3 million, nor is this a debit to revenue. This is Northern consulting's 49% percent revenue share from the JV's it has helped Denesoline set up - so it is contra'd from the revenue. However, this is not a commission or fee, it is 49% of the actual revenue from the associated JV's as per NCG's agreement with Denesoline. So the note has to be changed. . .

[130] Later, Mr. Barlas offered a further explanation as to why the amount should not be recorded as a cash payment to NCG (as written):

. . . Also, as per its jV with NCG, Denesoline gets 51% of the revenue on the ice road contract (DTR First Nations), aurora manufacturing, petro canada lubricants, and arctic west trucking. The \$1.269 million or whatever is the remaining 49% revenue share of northern consulting after Denesoline's 51%, and is not a consulting fee as erroneously listed in the notes.

[131] In submissions, counsel for the Barlas Respondents pointed out that Mr. Barlas also used KPMG for his own personal tax planning and he needed to clarify that the payment was not a consulting fee, which is distinct from and a completely separate class of revenue than a revenue share.

[132] On July 30, 2019, Mr. Barlas wrote to Mr. Matthew to ask why NCG's revenue should be disclosed in the financial statements, since it was not a consulting fee, but a revenue share under a joint venture. He pointed out the revenue share of other joint venture partners was never disclosed. Mr. Matthew responded the same day to advise the disclosure would be changed and asked for information on which joint venture it concerned.

[133] The following day, Mr. Barlas wrote to Mr. Matthew with respect to where in the notes to the financial statement NCG should be listed. He suggested it be listed in the same note as the other joint ventures. He also inquired as to whether it was necessary to "keep in the part about Northern Consulting being controlled by a member of management or not" and asked Mr. Matthew to advise. Mr. Matthew responded with an email containing the following:

Understood re note reference.

Consulting fee is coming out.

[. . .]

[134] Mr. Barlas sent the following to Mr. Matthew on August 1, 2019:

I just received the attached statements now so am going to assume these are the ones you said you'd sent in the day and for some reason they got to me all these hours later. Note 6 it should also include "Dene Northern Consulting, 51%, June 30." This is because this is the JV between Denesoline and Northern Consulting that splits the aggregate revenues from the 4 JV's Northern Consulting has brought on board so far, also recently listed in note 4 (DTR First Nations, Aurora Manufacturing, Petro Canada Lubricants, and Arctic West.) Then Northern Consulting won't need to have been also disclosed in Note 4 because it will be getting listed as a JV in note 6. . .

[135] On August 5, 2019, Mr. Barlas instructed Mr. Matthew to change the descriptions of NCG and EN from "controlled by a member of senior management" to "controlled by a member of management". According to Mr. Barlas, he gave this instruction because DCL had only one level of management, ie. everyone reported to him, and therefore, it was unnecessary to state NCG and EN were controlled by a "senior" member of management.

[136] Mr. Matthew prepared the financial statements in accordance with Mr. Barlas' instructions. Among other things, the \$1,269,461.00 payment to from DCL to NCG was deleted; NCG and EN were listed as related parties; and the JVA was listed as under "investments subject to significant influence" and identified as "Dene Northern Consulting Group".

[137] The AGM proceeded on October 11, 2019. A representative from KPMG presented the financial statements and Mr. Barlas gave a CEO report. Neither said anything about NCG or EN.

2020 and 2021 Approval of Financial Statements

[138] No AGMs were held after 2019. According to Mr. Bhatti, in 2020 and 2021 there were no AGMs because of the Covid-19 pandemic. Instead, DCL employees attended in Lutsel K'e and asked members to put their signatures on a document which contained resolutions appointing KPMG as auditors; acknowledging they had an opportunity to review the financial statements; and acknowledging they had received \$1,000.00. Ms. Poole, who attended the meeting in 2021, deposed that she

thought she was signing only to acknowledge receipt of her cheque. She was not aware of the other resolutions.

[139] The 2020 financial statements did not identify ongoing payments to NCG and continued to describe NCG and EN as being controlled by a member of management. The 2021 financial statements were largely the same; however, they included \$2,208,580.00 in the cash flow statement, which was described in the notes as “purchase of contracts” from NCG. What this payment was for is discussed later.

2022 Community Meeting and Feast

[140] Although there were no further AGMs, Mr. Barlas convened a community meeting and feast in December of 2022 where he provided copies of the financial statements for Tsa. Information about NCG and EN remained the same as in previous financial statements.

Further Changes to Governance Structure and Final Amendments to the JVA

[141] The evidence demonstrates that in early 2020, Mr. Barlas began contemplating other means by which NCG and EN could profit through DCL. His ideas included a merger and trust. In cross-examination on affidavit, Mr. Barlas explained his intention was to protect his interests as he had been constructively dismissed in the past.

[142] Ultimately, Mr. Barlas had resolutions and four agreements prepared, all of which were signed by Mr. Lockhart on May 27, 2020. These were: a Unanimous Shareholder Agreement amongst DCL, Tsa, Ta’egera, and NCG dated May 26, 2020; an Assignment and Assumption Agreement made the same date; a fourth amendment to the JVA to reflect the Assignment and Assumption Agreement; two Indemnification Agreements by which DCL and Ta’egera would indemnify Mr. Barlas against any claim arising out of Mr. Barlas’ role as director, officer, employee, or agent of DCL or Ta’egera, as the case may be; and resolutions of DCL and Ta’egera accepting resignations from existing Board members and appointing Mr. Barlas and Mr. Lockhart as the only directors.

[143] The Unanimous Shareholder Agreement contained a number of terms which served to erode the LKDFN’s governance structure, centralize Mr. Barlas’ power, and insulate him from any real risk of removal from his position. Among them:

- a. Tsa, as the sole DCL shareholder, would vote its shares in favour of the DCL Board having just two directors, one of whom would be Mr. Barlas or a nominee of NCG. An identical clause applied to Ta'egera;
- b. In the event of a tie vote on the DCL Board, Mr. Barlas or the NCG nominee, would have the deciding vote. Again, there was an identical clause for Ta'egera;
- c. During the term of the agreement, Mr. Barlas could not be removed as CEO, unless he consented in writing;
- d. If Mr. Barlas was terminated from his position or resigned, NCG would have unfettered authority to appoint his replacement;
- e. Mr. Barlas or the NCG nominee would have sole signing authority for DCL's bank accounts;
- f. Mr. Barlas would have "sole and unfettered control and discretion" over the JVA, including the payment of amounts owing from DCL to NCG;
- g. The agreement would remain in effect until all amounts owing or that may become owing from DCL to NCG or its related parties had been paid.

[144] Under the Assignment and Assumption Agreement, signed by Mr. Lockhart on behalf of DCL and Zeba Barlas on behalf of NCG, DCL would assume all NCG's rights in its portion of the gross income from three contracts under the JVA in exchange for \$2,208,580.00. Mr. Barlas' evidence was that he arrived at this figure by estimating the value of the contracts, even though the actual values were available when this agreement was executed.

[145] Initially, Mr. Barlas sought legal advice on how to effect these changes to governance structure and transactions through DCL's corporate counsel, RMRF. Key elements of the advice he received from RMRF were how to address the obvious conflict of interest the proposed transactions would pose, the kind of documentation that would be necessary to authorize the transactions, and the consequent need for DCL Board members to obtain independent legal advice on the proposed transactions. It should be noted that Mr. Barlas ultimately retained another law firm to prepare all of the documents.

[146] The evidence demonstrates Mr. Barlas vigorously resisted the suggestion that of DCL Board members obtain independent legal advice. In an email to lawyers at

RMRF on April 27, 2020, Mr. Barlas asserted, among other things, that there was no one on the DCL Board with the education or experience required to give ongoing legal instructions; he was protected in any event because he had fully disclosed his interests in the past and there would be explicit disclosure in financial statements; he was getting a “fairness” opinion from KPMG; and he held “the ultimate trump card” by way of a general security agreement which would allow NCG to seize DCL’s assets. He also maintained that he trying to help DCL.

[147] Mr. Barlas sent an email to Mr. Matthew on April 27, 2020, in which he inquired how the transaction would be disclosed in the financial statements. Mr. Barlas also wrote “I would really appreciate a quick response. Tom [Lockhart] is in the hospital, health deteriorating badly since weeks, and I need this finalized asap.”

[148] Between April 20 and May 11, 2020, Mr. Barlas created several iterations of “minutes”, all purporting to be minutes from a Board meeting held October 5, 2018, with “resolutions” authorizing various transactions. The actual minutes from that meeting had been produced on March 3, 2019. The final version of the minutes, which Mr. Barlas sent to RMRF on May 11, 2020, was substantially different and included the following “resolutions”:

RESOLUTION S

The following resolutions were read to the meeting and passed by unanimous vote and apply to all of TSA Corporation, Denesoline Corporation, and Taegera Company Ltd.

BE IT RESOLVED THAT

1. Denesoline Corporation amend the Northern Consulting Group JV agreement to secure the amended termination provision therein via a promissory note and general security agreement in favour of Northern Consulting Group
2. Denesoline Corporation finalize the Dene Aurora IV via direct investment of up to \$5,000,000, within the next 36 months, based on each party's percentage contribution to total investment, and/or
3. Denesoline Corporation acquire up to 100% of the shares of Northern Consulting Group via direct investment of up to \$5,000,000, within the next 36 months, based on a mutually agreed upon evaluation, and/or
4. Denesoline Corporation acquire Northern Consulting Group's interests in certain contracts under its existing IV agreement with Northern Consulting Group, based on a mutually agreed upon evaluation, via direct investment of up to \$5,000,000, within the next 36 months

5. In regard to items 1,2,3 and 4 above, Tom Lockhart is fully authorized to execute any and all documents on behalf of the board of Denesoline Corporation, TSA Corporation, and Taegera Company, without reverting to the board for any further instructions of any kind.
6. In regards to 1,2,3, and 4 above, the Board explicitly acknowledges that Ron Barlas, Northern Consulting Group, and Dene Northern Ventures have fully disclosed all conflicts of interests, which have been reviewed and cleared by the board. Further, the Board has acknowledges and resolves that the deals contemplated in items 2, 3, and 4, based upon mutually agreed upon evaluations, benefit both parties
7. Ron Barlas be recognized for exceptional performance as CEO of TSA, Denesoline, and Taegera, for the sixth year in a row, in a Unanimous Resolution of the Board

[149] Mr. Barlas affixed an electronic copy of Mr. Lockhart's signature to the minutes. It is unclear if he had Mr. Lockhart's permission to do so.

[150] I find these "minutes" are false and were created by Mr. Barlas solely to allow him to cause DCL to engage in transactions which would increase revenues for NCG. The document does not reflect what happened at the Board's October 5, 2018 meeting.

[151] During the months leading up to the transactions, Mr. Barlas was also communicating with the DCL Board members (except Ms. Poole). On April 22, 2020, Mr. Barlas sent an email to the Board members, which suggested DCL needed to make "a deal" with NCG to diminish the financial effect of the pending bankruptcy of one of the mines. It included the following statement (as written):

Denesoline now needs new revenues because of all these losses, and we are presently working on the previously board resolution approved deal with Dene Northern Ventures and/or Northern Consulting to achieve these additional revenues by providing more fundamental and essential services to the diamond mines. I'm very grateful to God that we were already working on these deals, that Denesoline now need to survive . . .

[152] On May 13, 2020, Mr. Barlas sent another email to DCL Board members in which he warned of difficult financial times ahead and reinforced how the new arrangement with NCG would keep DCL in business. It read, in part (as written):

This is now going to be a very tough time financially for everyone. Many companies will go bankrupt. Denesoline will survive Covid, because it is extremely lucky to be run Professionally. . .

And now you are seeing the benefits of a business being run like a business by those trained and authorized to do so. Again, the long-awaited deal with Northern Consulting will likely help save Denesoline now, as will all the work outside the diamond mines that we brought to the table under various agreements, work that Denesoline never had before, nor could do without our agreements, expertise, relationships, and personal credibility, just like none of the other indigenous companies can. Denesoline's success is due to its ability to get business it never could before. This includes certain contracts JV's like Northern Consulting have brought to the table, without whom denesoline could never have them, and also including renewable energy, recycling, refining, aeroponics, and 3D Printing. These are based not on anything to do with Denesoline, but on what we, the management, and certain JV's who only do business with Denesoline because of my relationships with them, bring to the table. People should be very clearly aware of this because IBA's and that sort of stuff do nothing in these situations.

[153] On May 25, 2020, Mr. Barlas sent Mr. Lockhart an email with the agreements and resolution attached. Arrangements were made to meet the next day and have Mr. Lockhart sign everything. In the email, Mr. Barlas encouraged Mr. Lockhart to seek independent legal advice and pointed out the choice of law provision giving British Columbia courts jurisdiction over any disputes that might arise. He offered to provide the names of lawyers in British Columbia who could provide the advice.

[154] Mr. Lockhart was in very poor health at this time. Mr. Barlas knew this. When he received the documents, Mr. Lockhart was at home recovering from heart surgery following a lengthy stay in hospital in Yellowknife and Edmonton. He did not have access to a computer. He reviewed the documents on his phone. He did not review the documents closely, spending approximately a half hour going over them. He signed the documents the following day in a private meeting with Mr. Barlas.

[155] Notably, the Unanimous Shareholder Agreement and attached Indemnity Agreements, the Assignment and Assumption Agreement, and the fourth amendment to the JVA total over 30 pages, most of which is in 10-point font. The documents, particularly the Unanimous Shareholder and Indemnity Agreements, are written in complex legal language. Mr. Lockhart gave evidence about his educational background, which is relatively modest, particularly in comparison to that of Mr. Barlas and the lawyers he hired to prepared the documents. While I do not suggest Mr. Lockhart did not have the skills required for his position and responsibilities, it is difficult to imagine he could have reviewed the documents and appreciated their contents and implications in such a short time frame.

[156] Mr. Lockhart did not seek legal advice. Rather, he relied on Mr. Barlas' representations that the transactions would keep DCL "afloat". Mr. Lockhart

admitted he had no experience with indemnity and assignment agreements, nor with unanimous shareholder agreements. Importantly, he admitted he did not understand that DCL would be paying \$3.5 million to NCG: \$2.2 million from the Assignment and Assumption Agreement and \$1.2 million in profit shares. In short, Mr. Barlas did not disclose the true implications of the transactions and Mr. Lockhart did not appreciate them.

[157] After Mr. Lockhart signed the documents, Mr. Barlas drafted an email for him to send Mr. Ewasiuk at RMRF (as written):

I am writing to confirm that as per the resolutions and consents which I have attached here, we have now finalized the details to be worked out and finalized the deal as contemplated under the directors resolution. I do not need you to review or prepare any related agreements. I need you to change the directors of Denesoline Corporation and Taegera company as follows. Please remove Archie Catholique and Mary-Rose Casaway as directors of Denesoline and Taegera and appoint Ron Barlas as a new director in their stead. Thereafter, under the provisions of our new Unanimous Shareholder's Agreement, only Ron Barlas and I will be Directors of Denesoline Corporation and Taegera company. The directors of TSA Corporation remain unchanged as Tom Lockhart, Archie Catholique, and Mary- Rose Casaway. Please confirm directly to Ron once he has been added as a director. Please send Ron the consent forms to be a director and register him as a director, and remove Archie and Mary Rose as directors as soon as possible so we can comply with the terms of our agreements. Thank you.

[158] Mr. Lockhart sent the email and attachments to Mr. Ewasiuk that day.

[159] Meanwhile, Mr. Barlas wrote to Messrs. Ewasiuk and Kozak and instructed them to prepare new by-laws for DCL and Ta'egera to reflect the new governance arrangements. He also asked that a directors' resolution be prepared approving and ratifying all the agreements. The lawyers complied with these instructions.

[160] Mr. Barlas sent an email to Mr. Lockhart and Board members Archie Catholique and Mary Rose Casaway on May 26, 2020 asking if they would be available by telephone for a Board meeting on May 29, 2020.

[161] On May 27, 2020 Mr. Barlas caused DCL to pay \$1.5 million to NCG, pursuant to the Assignment and Assumption Agreement.

[162] On May 28, 2020, Mr. Barlas circulated an agenda which included "Ratification of NCG Agreements" under "Items for Discussion". He provided no other information in advance of the meeting.

[163] The Board meeting took place the next day. Under “Items Discussed” the minutes recorded that “Dominion Diamond has filed for bankruptcy and 70% of the money they owe is to our JV’s” and “the NCG deal saved the day for [DCL] by guaranteeing more revenues”. The minutes also recorded the ratification motions pertaining to the documents Mr. Lockhart had executed on May 26, 2020. Mr. Barlas recalled the meeting lasted approximately one hour.

[164] The meeting was held by teleconference. There is no evidence that Mr. Barlas provided either hard or electronic copies of the documents to the Board members in Lutsel K’e; however, under cross-examination, he said he was “told they were all provided with hard copies”. He also maintained in his evidence that it was up to Mr. Lockhart to ensure the Board members had the documents.

Use of Corporate Resources for Personal Interests

[165] Mr. Barlas used DCL’s fiscal and human resources to fulfill his own interests. For example, in addition to the tasks he assigned to Mr. Van Santen, Mr. Barlas had a DCL employee, Mr. Bhatti’s son, maintain his Porsche; and he had another DCL employee winterize the Small Lake cabin and perform leasehold improvements on the Curry Drive property.

[166] Finally, the evidence is clear that Mr. Barlas used corporate professional RMRF and KPMG for advice aimed at advancing his personal interests and that advice was paid for by DCL directly or with funds acquired by NCG or EN through the arrangements with DCL.

How the Barlas Respondents benefitted from the transactions

[167] It is clear from the evidence that the Mr. Barlas and his wife and children benefitted significantly from the arrangements put in place over the course of his tenure as CEO.

[168] Evidence about Mr. Barlas’s and his family’s lifestyle is relevant because it demonstrates the benefits they derived from the profit-sharing arrangement between DCL and NCG and the transactions between DCL and EN. NCG’s general ledger for the year ending June 30, 2021 reveals the following:

- a. Ron and Zeba Barlas and their two adult children, as well as a personal assistant hired to work for Mr. Barlas through both DCL and NCG, each had a corporate credit card through NCG. The general ledger shows

\$286,500.00 in charges for items such as food, cosmetic surgery, travel, liquor, high-end clothing, and other purchases.

- b. NCG paid \$1.1 million in dividends to Zeba Barlas;
- c. NCG paid \$700,000.00 to the Barlas Family Trust;
- d. Both adult children were on NCG's payroll, one earning a salary of \$76,450.00 and the other \$73,700.00;
- e. NCG purchased gaming equipment for the Barlas' adult son, as well as paying rental expenses and purchasing furniture for him in the United States;
- f. The daughter's college tuition expenses were paid;
- g. NCG paid telephone expenses for all family members totalling approximately \$5,000.00.

[169] NCG's general ledger for the year ending June 30, 2022 included the following:

- a. Corporate credit card charges for various items including food, tuition, liquor, retail purchases, travel, jewellery, and plastic surgery in the amount of approximately \$456,000.00;
- b. NCG paid the costs of rental accommodation for the adult daughter while she was attending college in Red Deer, as well as rental payments on a house for her in Edmonton;
- c. Lease payments on a condominium in downtown Vancouver;
- d. Salaries for the two adult children of \$45,360.00 and \$36,000.00;
- e. Payments totalling \$60,000.00 to Mr. Barlas' nephew and sisters, for consulting work.

[170] In 2022, NCG paid Zeba Barlas \$478,000.00 in dividends.

[171] In June and July of 2020, EN acquired three properties with the money NCG paid under the Assignment and Assumption Agreement.

[172] A cabin (#1 Small Lake in the Yellowknife vicinity) was purchased for \$376,000.00. Mr. Barlas's signature appears on the Statement of Adjustments, on behalf of EN.

[173] EN purchased the residence at 221 Niven Drive in Yellowknife from Ta'egeera. This was where Mr. Barlas lived. It was purchased for \$760,000.00 the same price Ta'egeera paid for it in 2015. This property was subsequently transferred to Zeba Barlas in March of 2021.

[174] Finally, EN acquired a building at 84 Curry Drive in Yellowknife in June or July of 2020 for \$895,000.00. DCL renovated the building at its cost and then entered into a lease with EN to use the building as its Yellowknife headquarters. DCL paid \$15,000.00 a month to EN for rent. Title to the property was later transferred to Zeba Barlas and DCL continued to pay rent to her.

[175] When Zeba Barlas acquired 221 Niven Drive and 84 Curry Drive, she encumbered them with mortgages and according to Mr. Barlas, used the mortgage money to repay EN. As of the date of Zeba Barlas' financial statement, executed May 12, 2023, those encumbrances were \$540,000.00 for the Niven Drive property and \$330,000.00 for 84 Curry Drive.

[176] In addition to the building leased to DCL at 84 Curry Drive, Mr. Barlas, through either EN or NCG, acquired a number of pre-fabricated buildings which now sit on the property. The buildings include a warehouse which was later converted into a gym (with assistance from Mr. Van Santen) and another building converted into a type of games room and bar. The renovations on the buildings were effected through the use of employees who worked for and were paid by DCL, and other DCL resources. Subsequently, Mr. Barlas sold the buildings to DCL and directed Ms. Froude to transfer funds from DCL to NCG for the cost. There is no evidence this was disclosed to the Board.

OPPRESSION REMEDY

[177] The oppression remedy was described in *BCE v 1976 Debentureholders*, 2008 SCC 69 as follows:

[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: *Wright v. Donald S. Montgomery Holdings Ltd.* (1998), 1998 CanLII 14805 (ON SC), 39 B.L.R. (2d) 266 (Ont. Ct. (Gen. Div.)), at p. 273; *Re Keho Holdings Ltd. and Noble* (1987), 1987 ABCA 84 (CanLII), 38 D.L.R. (4th) 368 (Alta. C.A.), at p. 374; see, more generally, Koehnen, at pp. 78-79. It follows that courts considering claims for oppression should look at business realities, not merely narrow legalities: *Scottish Co-operative Wholesale Society*, at p. 343.

[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.

[178] The remedy is codified in s 253 of the *CNCA* and in s 243 of the *BCA*. The provisions under the *CNCA* are as follows:

253 (1) On the application of a complainant, a court may make an order if it is satisfied that, in respect of a corporation or any of its affiliates, any of the following is oppressive or unfairly prejudicial to or unfairly disregards the interests of any shareholder, creditor, director, officer or member, or causes such a result:

- (a) any act or omission of the corporation or any of its affiliates;
- (b) the conduct of the activities or affairs of the corporation or any of its affiliates;
or
- (c) the exercise of the powers of the directors or officers of the corporation or any of its affiliates.

[179] The provisions under the *BCA* are almost identical:

243. (1) A complainant may apply to the Court for an order under this section.

(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.

[180] A preliminary question is whether the Applicants are proper complainants. Both the *CNCA* and the *BCA* refer to a “complainant” bringing an application for relief from oppression. That term is defined in s 250 of the *CNCA* as follows:

“complainant” means

- (a) a former or present member or debt obligation holder of a corporation or any of its affiliates;
- (b) a present or former registered holder or beneficial owner of a share of an affiliate of a corporation;
- (c) a former or present director or officer of a corporation or any of its affiliates;
- (d) the Director; or
- (e) any other person who, in the discretion of a court, is a proper person to make an application under this Part.

[181] A substantially similar definition appears in s 240 of the *BCA*:

“complainant” means

- (a) a registered holder or beneficial owner, or a former registered holder or beneficial owner, of a security of a corporation or any of its affiliates,
- (b) a director or an officer or a former director or officer of a corporation or of any of its affiliates, or
- (c) any other person who, in the discretion of the Court, is a proper person to make an application under this Part.

[182] There is no dispute amongst the parties that Chief Marlowe is a member of Tsa. Therefore, he may bring the Application as “a member of a corporation or any of its affiliates”. He falls squarely into the definition of “complainant”.

[183] The LKDFN does not fit into the category of “complainant” as neatly as Chief Marlowe does; however, it is my view LKDFN falls under the “proper person” category of the definition of “complainant”.

[184] In *N’Quatqua Logging Co Ltd v Thevarge*, 2006 BCSC 1122, a First Nation’s logging company obtained a timber sale license and cutting permit to harvest timber on the band's traditional lands. Certain band members brought an application for an interim order for relief from oppression on the grounds the proposed logging was

inconsistent with traditional and cultural interests. One of the questions was the applicants' standing. Pitfield, J, considered whether the applicants were "appropriate persons" to seek relief from oppression under the equivalent legislation in British Columbia and stated (emphasis mine):

[18] The section empowers the court to restrain oppressive or prejudicial corporate actions by direction or injunction on application by a shareholder or other appropriate person. The meaning of the phrase "any other person whom the court considers to be an appropriate person" has not been the subject of judicial consideration in the context of the *Business Corporations Act*. The section differs from s. 200 of the former *Company Act* which used the words "any other person who, in the discretion of the court, is a proper person to make an application under this section". *In my opinion, there is little substantive difference between a "proper person" and an "appropriate person"*.

[19] *The reference to an appropriate person is intended to provide a remedy for persons who are not shareholders but who, by virtue of their relationship to, or dealings with, the company, have an interest that is not dissimilar to that of a shareholder. Such is the position in which the dissidents who are Band members find themselves.*

[185] From the evidence is clear LKDFN's sole source of revenue are the LKDFN Companies, particularly DCL, which exercise its economic rights. The LKDFN Companies exist for the benefit of the LKDFN members. Accordingly, the LKDFN has an interest akin to that of members and shareholders and easily meets the definition of complainant.

[186] There are two questions which must be addressed in assessing and determining a claim for oppression. First, does the evidence support the reasonable expectation the complainant asserts? Second, if the expectations are reasonable, does the evidence establish it was violated by oppression, unfair prejudice, or unfair disregard for a relevant interest? *BCE*, at para 68.

[187] In determining whether an expectation is reasonable, courts may consider "general commercial practice; the nature of the corporation; the relationship between the parties; past practice; steps the claimant could have taken to protect itself; representations and agreements; and the fair resolution of conflicting interests between corporate stakeholders": *BCE*, para 72.

[188] The availability of an oppression remedy was summarized in *JBRO Holdings Inc v Dynasty Power Inc*, 2021 ABQB 463, aff'd 2022 ABCA 140:

[88] An oppression remedy is available if one of three statutory tests is met. The threshold test of "oppression" requires bad faith, but the other two tests only require

unfairness. Conduct that is "unfairly prejudicial" to or that "unfairly disregards" the complainant does not require an assessment of intention. Instead, the court must consider the effect of the impugned behaviour on the complainant, an act or omission that "effects a result" that is oppressive or unfairly prejudicial to the interests of the security holder, director or officer. As noted in *BCE*, wrongs falling short of oppression fall within the remedy. Examples of unfair prejudice include squeezing out a minority shareholder: at para 93. The impugned acts need not be unlawful; they must merely be wrongful: Robert WV Dickerson, John L. Howard and Leon Getz, *Proposals for a New Business Corporations Law for Canada*, Vol 1 (Ottawa: Information Canada 1971) at para 485(c).

[89] The court may apply "general standards" of fairness to decide cases on their merits: *Ibid* at para 484.

[189] Corporate officers and directors are fiduciaries and as such, have both statutory and common law duties of honesty and good faith. Where a breach of fiduciary duty has occurred, the test for oppression is met. *Calmont Leasing Ltd v Kredl*, 1993 CanLII 7118 (ABQB) at para 134, aff'd 1995 ABCA 174; *McAteer v Devencroft Developments Ltd*, 2001 ABQB 917 at para 489.

[190] Directors' and officers' fiduciary duties are codified in the *BCA* as follows:

123. (1) Every director and officer of a corporation shall, in exercising his or her powers and discharging his or her duties,

(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.

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

(3) Subject to subsection 148(7), no provision in a contract, the articles, the bylaws or a resolution relieves a director or officer from the duty to act in accordance with this Act or the regulations or relieves him or her from liability for a breach of that duty.

[191] An almost identical provision is found in s 148 of the *CNCA*.

[192] The statutory duties were described in *Peoples Department Stores Inc. (Trustee of) v Wise*, 2004 SCC 68:

35. The statutory fiduciary duty requires directors and officers to act honestly and in good faith *vis-à-vis* the corporation. They must respect the trust and confidence that have been reposed in them to manage the assets of the corporation in pursuit of the

realization of the objects of the corporation. They must avoid conflicts of interest with the corporation. They must avoid abusing their position to gain personal benefit. They must maintain the confidentiality of information they acquire by virtue of their position. Directors and officers must serve the corporation selflessly, honestly and loyally: see K. P. McGuinness, *The Law and Practice of Canadian Business Corporations* (1999), at p. 715.

[193] Section 121(1) of the *BCA* and s 141(1) of the *CNCA* set out disclosure requirements with which directors and officers must comply if they are or wish to engage in a material contract or transaction with the corporation. In summary, the nature and extent of the interest must be disclosed immediately and without delay, and it must be in writing or alternatively, the director or officer may request to have it entered in the minutes of directors' meetings.

[194] A mere declaration of a director's or officer's interest in a transaction or contract is not enough – the board must be fully informed. In *Gray v New Augarita Porcupine Mines Ltd.*, [1952] CanLII 322 (UK JCPC), which was an appeal from the Ontario Court of Appeal, Lord Radcliffe summed up what is required to meet the disclosure requirements of the statutory duty to disclose:

There is no precise formula that will determine the extent of detail that is called for when a director declares his interest or the nature of his interest. Rightly understood, the two things mean the same. The amount of detail required must depend in each case upon the nature of the contract or arrangement proposed and the context in which it arises. It can rarely be enough for a director to say, "I must remind you that I am interested" and to leave it at that... His declaration must make his colleagues "fully informed of the real state of things" (see, *Imperial Mercantile Credit Ass'n v. Coleman* (1873), L.R. 6 H.L. 189 at 201, per Lord Chelmsford). If it is material to their judgment that they should know not merely that he has an interest, but what it is and how far it goes, then he must see to it that they are informed.

[195] Even where a director's or officer's self-interested contract or transaction is fully and properly disclosed, it may nevertheless be set aside. "Disclosure of a director's interest is but the first step. Disclosure does not relieve the director of his duty to act honestly and in good faith with a view to the best interests of the corporation. The director must always place the interests of the corporation ahead of his own . . ." *UPM-Kymmene Corp v UPM-Kymmene Miramachi Inc*, 2002 CanLII 49507 (ONSC), at para 120, aff'd 2004 CanLII 9479 (ONCA). The Court will consider both whether the process leading to the transaction is fair and reasonable and whether it is substantially fair and reasonable. *UPM-Kymmene*.

[196] I turn finally to the law of knowing assistance and knowing receipt, which applies to the relief the Applicants seek against Zeba Barlas. A third party who

knowingly assists in and receives benefits from a breach of fiduciary duty may be held liable for the breach. The elements required to establish that a third party is a knowing participant and knowing recipient were set out succinctly in *Extreme Venture Partners Fund I LP v Varma*, 2021 ONCA 853:

[74] The constituent elements of the tort of knowing assistance in the breach of a fiduciary duty are that: (i) there must be a fiduciary duty; (ii) the fiduciary must have breached that duty fraudulently and dishonestly; (iii) the stranger to the fiduciary relationship must have had actual knowledge of both the fiduciary relationship and the fiduciary's fraudulent and dishonest conduct; and (iv) the stranger must have participated in or assisted the fiduciary's fraudulent and dishonest conduct: *Air Canada v. M & L Travel Ltd.*, 1993 CanLII 33 (SCC), [1993] 3 S.C.R. 787, at pp. 811-13.

[197] To establish knowing receipt, it is sufficient that the recipient has constructive knowledge of the fiduciary duty. A third party can be found to be a knowing recipient where they knew or ought to have known a fiduciary duty was breached but nevertheless accepted money, property, or other benefit without further inquiry. Courts have made this finding where the recipient has no legitimate expectation of receiving the benefit. *0731431 BC Ltd v Panorama Parkview Homes Ltd*, 2021 BCSC 607 at para 327, aff'd 2023 BCCA 376; *Waxman v Waxman*, 2004 CanLII 39040 (ONCA) at para 528.

DISCUSSION

Whether Mr. Barlas engaged in oppressive conduct

[198] As noted, where a breach of fiduciary duty is established, the test for oppression will be made out. There is no doubt that Mr. Barlas breached his fiduciary duties, and that he did so in an extreme and egregious manner.

[199] With respect to the various iterations of the JVA and as well as the agreements Mr. Lockhart and Zeba Barlas executed in May of 2020, Mr. Barlas did not disclose the nature and extent of his interests as required under the law. His disclosure of interest boiled down to an acknowledgment that EN and NCG were his wife's companies; that he had an interest by virtue of marriage; and that he received no remuneration. That is the equivalent of what Lord Radcliffe said is decidedly insufficient: "I must remind you that I am interested". *Gray v New Augarita Porcupine Mines Ltd*. Mr. Barlas and his family stood to gain - and did in fact gain - substantial financial benefits from these transactions and that was never properly disclosed.

[200] The agreements themselves, including the September 2016 amended employment agreement, were either not disclosed to the Board members or if they were, they were disclosed in such an untimely fashion that there would be insufficient time for Board members to analyze them and possibly obtain independent legal or financial advice, had they known of their option to do so. To argue the Board members had an opportunity to engage in the type of deliberative process necessary to make an informed decision on whether the transactions would serve the interests of the LKDFN Companies is entirely unreasonable.

[201] Mr. Barlas also made material misrepresentations to the Board and to Mr. Lockhart, and actively misled them, about the purpose and need for the JVA and its various iterations, particularly the last amendment, telling the Board members that NCG would protect DCL from an impending economic downturn and diamond mine bankruptcies. Mr. Lockhart and the other Board members relied on what Mr. Barlas told him. They were entitled to do so: it is entirely reasonable to expect a CEO will be scrupulously honest in representations made to directors.

[202] Even if there had been proper disclosure, the agreements and transactions are clearly not reasonable, fair, or in the best interests of the LKDFN Companies. NCG was taking, and Mr. Barlas was financially benefitting from, just less than half of the DCL's profits from joint ventures which had procured before the JVA came into existence. Over the years it amounted to millions of dollars. Further, Mr. Barlas robbed the LKFN Companies of the power to contest the transactions by, among other things, allowing DCL to grant NCG a security interest.

[203] The 2017 changes to Tsa's by-laws, the conflict-of-interest policy, served very little purpose and provided no benefits to the Tsa members. The new by-laws made it more difficult to elect directors and allowed for the automatic renewal of terms. This would, ultimately, allow Mr. Barlas to control turnover on the Board and eliminated or diminished the risk he would be questioned or called to account. There were no elections held and no turnover on the Board after the by-laws came into effect.

[204] The revised by-laws also made it easier to eject members from Tsa. Mr. Barlas used this to threaten individuals who questioned how he conducted business. This allowed him to create an atmosphere of fear, discouraging Tsa members and DCL Board members from asking legitimate questions and in turn, allowing Mr. Barlas to pursue his own business interests under diminished scrutiny.

[205] Mr. Barlas deliberately excluded Ms. Poole from communications, thereby interfering with her ability scrutinize his activities. By the time Mr. Barlas told Ms. Poole she had been “removed” from the Board, the 2020 transactions had been put in place and ratified.

[206] The Unanimous Shareholder Agreement and Indemnities do not serve the interests of the LKDFN Companies in any way. It is clear from each document, as well as from Mr. Barlas’ evidence about the events leading up to their creation, that their only purpose was to erode corporate governance and weaken the LKDFN Companies, while solidifying Mr. Barlas’ power. In turn, this allowed him to divert more money from the LKDFN Companies for his and his family’s benefit.

[207] Finally, it is axiomatic that corporate officers and directors breach their fiduciary duty when they use the corporation’s resources for personal interests or for the benefit of friends and family. The evidence is replete with examples of Mr. Barlas having engaged in this conduct, including: using corporate counsel and accountants for personal advice or for advice and hiring Mr. Van Santen as DCL’s Director of Business Development to have him assist Mr. Barlas in pursuing personal investment opportunities.

[208] The Barlas Respondents claim the transactions are legitimate and served the interests of the LKDFN Companies by increasing overall profits. They rely on Mr. Lockhart having had the legal authority to enter and approve the various transactions, agreements, and changes to corporate governance structures implemented during Mr. Barlas’ tenure on behalf of the DCL Board.

[209] In all of the circumstances, this argument does not assist the Barlas Respondents. The fact is, Mr. Barlas fundamentally misled the Board members, including Mr. Lockhart, on almost every aspect of the transactions and further, he worked to actively conceal his gains. It is clear Mr. Lockhart often did not understand what he was signing or agreeing to, and Mr. Barlas knew this. Mr. Barlas manipulated circumstances and took advantage of the knowledge imbalance between himself and the Board, including Mr. Lockhart, and between himself the Tsa members, to avoid disclosing the full extent of his interests and the benefits he was reaping. He also took advantage of the trust placed in him by the Board and the members of Tsa.

[210] There is overwhelming evidence that Mr. Barlas knowingly breached his fiduciary duties and in doing so harmed the interests of the LKDFN members and the LKDFN Companies and its stakeholders while gaining significant financial

benefit for himself and his family. Not only did Mr. Barlas fail to properly disclose his interest in the various transactions – and their effect on the LKDFN Companies – he *actively* concealed what was happening. He misled the Board and the Tsa members through omission and with outright falsehoods on virtually every aspect of the impugned transactions. His actions harmed the LKDFN Companies and its stakeholders.

[211] I find Mr. Barlas knowingly engaged in oppressive conduct which harmed the LKDFN Companies and Tsa members. He knowingly breached his fiduciary duties to the LKDFN Companies, including failing to disclose his own interests, which were significant, and he caused them to enter into agreements, transactions, and governance structures which were unfair and prejudicial. The Applicants are entitled to remedies for that conduct.

Liability of Zeba Barlas

[212] I find Zeba Barlas knowingly assisted in the transactions and that she was a knowing recipient of the proceeds and benefits which flowed therefrom.

[213] As noted, Zeba Barlas did not provide evidence in response to this application, particularly the allegation that she was a knowing participant and knowing recipient of benefits derived from Mr. Barlas' oppressive conduct and breach of fiduciary duties. This has worked against her.

[214] It is clear from the evidence that Mr. Barlas breached his fiduciary duties dishonestly. There is no dispute that Zeba Barlas was the director of NCG and EN. There can be no dispute that she knew her husband was the CEO of DCL. There is no dispute that she signed contracts on behalf of NCG and EN which caused DCL to transfer large sums of money to those companies, from which she gained direct and obvious financial benefits for no legitimate reason. In 2020, that amounted to some \$3.5 million and among other things, allowed EN and NCG and Zeba Barlas personally to purchase three expensive properties. All of this gives rise to a strong *prima facie* case against her, which she has completely failed to answer, despite having an opportunity to do so. The only reasonable inference to be drawn is that she was a knowing participant in the various oppressive transactions and a knowing recipient of the fruits they bore.

REMEDIES

[215] The Applicants seek the following remedies:

- a. A declaration that Mr. Barlas has acted in a manner that is oppressive, prejudicial, and/or which unfairly disregards the interests of the Applicants as members of Tsa and stakeholders of the LKDFN Companies, including through various breaches of his fiduciary duties, *mala fides*, and fraud;
- b. A declaration that Zeba Barlas has acted as a knowing participant in Mr. Barlas's breaches of fiduciary duty and fraud, and is a knowing recipient of the proceeds of those breaches of fiduciary duty;
- c. An order setting aside all self-interested transactions between the Barlas Respondents and the LKDFN Companies;
- d. An order permanently removing Mr. Barlas as a director and officer of any of the LKDFN Companies;
- e. An order requiring the Barlas Respondents to account for all benefits they have received, directly or indirectly, from the LKDFN Companies;
- f. An order imposing constructive trusts over 221 Niven Drive, 84 Curry Drive, and #1 Small Lake (the cabin); and
- g. An order directing a trial of an issue with respect to the quantification of damages or other restitution arising from the self-interested transactions, the diversion and misuse of corporate resources and the remuneration paid under the 2016 amended employment agreement.

[216] In imposing remedies for oppression, the Court must intervene only to the extent required to address the conduct. *Wilson v Alharayeri*, 2017 SCC 39 provides guidance on remedies for oppression. Although the statute at play was the *Canada Business Corporations Act*, RSC 1985 c C-44, the principles are applicable here:

[26] Section 241(3) thus gives a trial court broad discretion to “make any interim or final order it thinks fit,” before enumerating specific examples of permissible orders. But this discretion is not limitless. It must be exercised within legal bounds, and, as a starting point, it must be exercised within the bounds expressly delineated by the *CBCA*.

[27] Any order made under s. 241(3) exists solely to “rectify the matters complained of”, as provided by s. 241(2). The purpose of the oppression remedy is therefore corrective: “. . . in seeking to redress inequities between private parties”, the oppression remedy seeks to “apply a measure of corrective justice” (J. G. MacIntosh, “The Retrospectivity of the Oppression Remedy” (1987), 13 *Can. Bus. L.J.* 219, at p. 225; see also *Nanef v. Con-Crete Holdings Ltd.* (1995), 1995 CanLII 959 (ON CA),

23 O.R. (3d) 481 (C.A.) (“*Naneff*”); 820099 *Ontario Inc. v. Harold E. Ballard Ltd.* (1991), 3 B.L.R. (2d) 113 (Ont. C.J. (Gen. Div.)) (“*Ballard*”), at p. 197). In other words, an order made under s. 241(3) should go no further than necessary to correct the injustice or unfairness between the parties.

[217] In my view, the oppressive conduct here is extreme and the consequences for the LKDFN Companies and their stakeholders are so serious that significant intervention is warranted.

Declaratory Relief

[218] Having found Mr. Barlas engaged in oppressive conduct and that Zeba Barlas knowingly assisted and knowingly received benefits from that conduct, it is unnecessary to grant declaratory relief. It would be redundant and serve little purpose. Accordingly, I decline to do so.

Contracts and Transactions to be Set Aside

[219] In my view, the LKDFN Companies must be immediately, wholly, and permanently relieved of any obligations under the following agreements and transactions:

- a. Amendment to Employment Agreement between DCL and Barlas made effective September 14, 2016;
- b. Agreement made effective September 22, 2016, between DCL and NCG;
- c. Amendment to Agreement between DCL and NCG, dated September 22, 2016, made effective August 15, 2017;
- d. Second Amendment to Agreement between DCL and NCG, effective October 5, 2018;
- e. Third Amendment to Agreement between DCL and NCG, effective November 8, 2018;
- f. Fourth Amendment to Agreement between DCL and NCG, dated May 26, 2020;
- g. Unanimous Shareholder Agreement between DCL, Ta’egeera, Tsa, and NCG, dated May 26, 2020;

- h. Assignment and Assumption Agreement between NCG and DCL, dated May 26, 2020;
- i. Ta'egera Indemnification Agreement dated May 26, 2020; and
- j. DCL Indemnification Agreement dated May 26, 2020.

[220] Section 121(9) of the *BCA* and s 141(10) of the *CNCA* each provide that where, as here, a director or officer of a corporation fails to disclose an interest in a material contract in accordance with the statute, the Court is entitled to set the contract aside on any terms it considers fit. As discussed, Mr. Barlas did not properly disclose his interests.

[221] As well, the agreements are plainly prejudicial and unfair, and undermine the interests of the LKDFN Companies and their stakeholders. This provides an additional basis for setting them aside pursuant to s 243(3)(j) of the *BCA* and s 253(3)(h) of the *CNCA*.

Removal of Ron Barlas as Officer and Director

[222] Mr. Barlas engaged in egregious conduct and abused his position as CEO. There is no question he must be removed from any role in any of the LKDFN Companies. Allowing him to continue in any capacity is untenable.

Imposition of Constructive Trust

[223] In *Soulos v Korkontzilas*, 1997 CanLII 346 (SCC), McLachlin, J (as she was then) describe the remedial constructive trust:

[17] . . . the constructive trust is an ancient and eclectic institution imposed by law not only to remedy unjust enrichment, but to hold persons in different situations to high standards of trust and probity and prevent them from retaining property which in “good conscience” they should not be permitted to retain. This served the end, not only of doing justice in the case before the court, but of protecting relationships of trust and the institutions that depend on these relationships. These goals were accomplished by treating the person holding the property as a trustee of it for the wronged person’s benefit, even though there was no true trust created by intention. In England, the trust thus created was thought of as a real or “institutional” trust. In the United States and recently in Canada, jurisprudence speaks of the availability of the constructive trust as a remedy; hence the remedial constructive trust.

[224] The oppression remedy is based in equity and the provisions under the *BCA* and the *CNCA* give the Court broad discretion in crafting appropriate orders. The imposition of a constructive trust is one such remedy. (See *Gambin Estate v Di Battista Gambin Developments*, 2018 ONSC 4905 at paras 110-111, aff'd 2019 ONSC 1376, which considered equivalent provisions under the Ontario statute).

[225] Among others, one of the ways Mr. Barlas breached his fiduciary duties was through the Assignment and Assumption Agreement, which was also signed by Zeba Barlas, and which resulted in a \$2.2 million payment to NCG. That money was then used to purchase #1 Small Lake, 221 Niven Drive, and 84 Curry Drive, with DCL funding significant improvements on the latter. The Applicants argue that in the circumstances, allowing these properties to remain in the hands of the Barlas respondents would be manifestly unjust. I agree. A constructive trust will be imposed over the three properties, subject to prior encumbrances.

Trial to Quantify Extent of Financial Losses

[226] I direct there be a trial on quantification of financial losses suffered by the LKDFN Companies. The Applicants' claim that they have suffered financial loss is well-supported. Determining the extent of the losses will, doubtless, require the assistance of forensic accounting and other experts and it beyond the scope of this Application. I am not seized with that issue.

ORDER

[227] Upon finding Mr. Barlas engaged in oppressive conduct and that Zeba Barlas was a knowing participant in that conduct and a knowing recipient of financial benefits from that conduct, the Applicants shall have the following relief:

- a. The following agreements and transactions are set aside:
 - i. Amendment to Employment Agreement between Denesoline Corporation Ltd. and Barlas made effective September 14, 2016;
 - ii. Agreement made effective September 22, 2016, between Denesoline Corporation and Northern Consulting Group;
 - iii. Amendment to Agreement between Denesoline Corporation and Northern Consulting Group, dated September 22, 2016, made effective August 15, 2017;

- iv. Second Amendment to Agreement between Denesoline Corporation Ltd. and Northern Consulting Group Inc., effective October 5, 2018;
 - v. Third Amendment to Agreement between Denesoline Corporation Ltd. and Northern Consulting Group Inc., effective November 8, 2018;
 - vi. Fourth Amendment to Agreement between Denesoline Corporation Ltd. and Northern Consulting Group Inc., dated May 26, 2020;
 - vii. Unanimous Shareholder Agreement between Denesoline Corporation Ltd., Ta'egera Company Ltd., Tsa Corporation, and Northern Consulting Group Inc., dated May 26, 2020;
 - viii. Assignment and Assumption Agreement between Northern Consulting Group Inc. and Denesoline Corporation Ltd., dated May 26, 2020;
 - ix. Ta'egera Indemnification Agreement dated May 26, 2020; and
 - x. Denesoline Corporation Ltd. Indemnification Agreement dated May 26, 2020.
- b. Ron Barlas is immediately removed as a director or officer of any and all LKDFN Companies;
 - c. Ron Barlas, Zeba Barlas and the Barlas Respondents shall forthwith account for all benefits received, directly or indirectly, from the LKDFN Companies;
 - d. A constructive trust for the benefit of the LKDFN Companies is imposed on the properties known as 221 Niven Drive and 84 Curry Drive, and #1 Small Lake, subject to prior registered encumbrances;
 - e. There shall be a trial on the issue of quantification of damages;
 - f. The Applicants are entitled to the costs of this application, but the scale shall be determined following the quantification of damages, whether by trial or otherwise.

[228] For clarification, the *Mareva* injunction shall remain in effect.

K. M. Shaner
J.S.C.

Dated at Yellowknife, NT, this
30th day of July, 2024

Counsel for the Applicants:

Matthew P. Sammon
Jessica Kras, Larry D. Innes

Counsel for the Barlas Respondents:

G. James Thorlakson, Sara E. Hart, KC

Counsel for the Receiver:

Toby Kruger

**IN THE SUPREME COURT OF THE
NORTHWEST TERRITORIES**

BETWEEN:

CHIEF JAMES MARLOWE, in his personal capacity
and on behalf of the LUTSEL K'E DENE FIRST
NATION

Applicants

-and-

MIRZA MOHAMMAD IMRAN KARIM BARLAS
(AKA RON BARLAS), ZEBAR BARLAS,
NORTHERN CONSULTING GROUP INC.,
EQUIPMENT NORTH INC., DENE AURORA
ENVIRONMENTAL TECHNOLOGIES INC.,
BARLAS FAMILY TRUST, TSA CORPORATION,
TA'EGERA COMPANY LTD., DENESOLINE
CORPORATION LTD. and DENESOLINE
COMMUNITY DEVELOPMENT CORPORATION

Respondents

REASONS FOR JUDGMENT
