**Chapter 28: Corporate Governance: The Internal Affairs of Corporation**

**Corporate Governance** – the rules governing the organization and management of the business and affairs of a corporation in order to meet its internal objectives and external responsibilities

**Publicly Traded Corporations** – corporations that issue shares to the public, also known as public corporations, widely held corporations, reporting issuers and issuing corporations

**Public Offering** – selling shares to the public, which must be done in compliance with provincial securities regulations

**Board of Directors** – the governing body of a corporation, responsible for the management of its business and affairs

**Officers** – high-ranking members of a corporation’s management team as defined in the bylaws or appointed by the directors, such as the president, vice-president, controller, chief executive, officer, chief financial officer, general counsel, and general manager

**Audit Committee** – a group of directors responsible for overseeing the corporate audit and the preparation of financial statements

**Compensation Committee** – committee responsible for setting director and officer pay

**Nominating Committee** – committee responsible for proposing and recruiting new directors

**Cumulative Voting** – a method of electing directors by a form of proportional representation

Fiduciary Duty  
- directors and officers must act honestly and in good faith with a view to the best interests of the corporation

Duty of Care, Diligence and Skill  
- directors and officers must exercise the care, diligence, and skill that a reasonably prudent person would exercise in comparable circumstances  
- a director or officer owes a duty not to be negligent in carrying out their duties  
- the duties are owed to the corporation and to the shareholders/other stakeholders and public

**Defences to Breach of Duty**  
a) Reasonable Diligence, also known as the *due diligence defence*  
- by establishing that required degree of care was taken, directors and officers can defend themselves against claims of breach of the articles, bylaws and the act

b) Good Faith Reliance  
- good faith reliance on audited financial statements or expert reports is a defence to breach of fiduciary duty or duty of skill and care  
- therefore, obtaining expert reports prior to key decisions is a good risk-management strategy

c) Corporate Indemnity  
- an agreement with the corporation to reimburse a director or officer for any costs associated with liability for breach of duty is enforceable provided that the director acted honestly, reasonably, and in good faith

d) Directors’ and Officers’ Liability Insurance  
- a corporation may purchase directors’ liability insurance on behalf of its board  
- these policies have many exclusions including bad faith and fraud, and are very expensive

**Due Diligence Defence** – establishing that an acceptable standard of care and skill was exercised by a director or officer

**Business Judgement Rule** – courts will defer to the business decisions of directors and officers provided they are arrived at using an appropriate degree of prudence and diligence  
- courts recognize they are not business experts and even sound decisions may be unsuccessful  
- courts therefore focus on the process used to arrive at the decision

Directors may be subject to *strict liability* where no breach of duty need be established.

Perhaps the most important fiduciary obligation is the duty to disclose any interest that the director may have in contracts made with the corporation. If a director has a personal interest in a contract, there is a risk that the directors will be excessively generous to each other or to their CEO. When it is a director’s duty to acquire a particular item of property for the corporation or to give the corporation the chance of first refusal, and instead she acquires the property for herself a different situation arises. Another situation arises when a director receives info about a profitable venture or an opportunity to buy property at an advantageous price. If the corporation decides not to acquire the property, the director is free to do so but she makes a dangerous decision if she assumes that the corporation wouldn’t want the property anyways and acquires it in her own name without consulting the corporation.

A director may not carry on a business competing with that of her corporation.

**Insider Trading** – the use of confidential information relating to a corporation in dealing in its securities

Rights of Shareholders:  
- to vote at any meeting of shareholders  
- to receive any dividend that is declared  
- to receive the remaining property of the corporation (after payment of its debts) on dissolution

**General Meeting of Shareholders** – a formal meeting of shareholders at which they are able to vote on matters concerning the corporation

**Annual General Meeting** – the general meeting of shareholders that is required by law to be held each year to transact certain specified business

**Special Meeting** – any general meeting of shareholders other than the annual general meeting

**Ordinary Resolution** – a resolution adopted by the general meeting and passed by a simple majority

**Special Resolution** – a resolution of the general meeting required to be passed by a special majority

**Class Rights** – special rights attached to a particular class of shares

**Proxy** – a person appointed to attend a general meeting of shareholders and to cast the votes of the shareholder appointing him or her

**Proxy Form** – a form required to be circulated to shareholders before a general meeting, inviting them to appoint a proxy if they so wish

In the event of a proxy fight between two groups of shareholders, each group solicits all the shareholders by mail in order to persuade them to give their proxy forms to the group making the solicitation.

**Dividends** – a distribution to shareholders of a share of the profits of the corporation

**Pre-Emptive Right** – a right to have the first opportunity to purchase a proportionate part of any new shares to be issued

**Financial Statement** – annual accounts that are required to be presented to the shareholders at the annual general meeting

**Documents of Record** – documents that a corporation is required to keep and make available to shareholders

Documents of record include:  
- minutes of shareholders’ meeting  
- a register of all transfers of shares  
- a copy of the corporation’s charter, copy of all by-laws and register of shareholders  
- a register of the directors

**Annual Report** – the report on the business and affairs of the corporation, which the directors are required to present at the annual general meeting

**Inspector** – a person appointed by the court to investigate the affairs of a corporation

**Appraisal Remedy** – the right to have one’s shares bought by the corporation at a fair price

**Derivative Action** – proceedings brought by one or more shareholders in the name of the corporation in respect of a wrong done to the corporation

**Winding Up** – the dissolution of a corporation

**Oppression Remedy** – a statutory procedure allowing individual shareholders to seek a personal remedy if they have been unfairly treated

**Shareholder Agreement** – an agreement between two or more shareholders that is distinct from the corporation’s charter and by-laws

**Unanimous Shareholder Agreement** – a shareholder agreement to which all shareholders are parties