SHAREHOLDER INSPECTION RIGHTS IN SOUTH AFRICA AND FOREIGN JURISDICTIONS

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INTRODUCTION

Corporate information is valuable and companies must protect business strategies and there is legitimate justification for opacity in the boardroom. On the other hand, however, some information access is necessary to support sound corporate governance. It is also trite that shareholder inspection rights, *inter alia,* facilitates and enable shareholder activism in that it allows a shareholder an opportunity to identify other shareholders with a view to communicating and garnering support for resolutions to be proposed. Hence there is a need to balance these two competing interests. This note shall consider these matters by:

i. Discussing the legal and regulatory framework within which shareholders may exercise their rights to access to company records in South Africa;
ii. Examining the ways in which these rights are exercised in Australia, United Kingdom and Canada;
iii. providing brief comments in relation to the concept of beneficial ownership in South Africa; and
iv. finally providing some closing remarks regarding as to how shareholders may obtain access to company records not provided for in section 26(1) (a) of the Companies Act 71 of 2008.

SOUTH AFRICAN LEGAL AND REGULATORY FRAMEWORK RELATING TO ACCESS TO COMPANY RECORDS

The Constitution[i]

Section 2 of the Constitution provides that it is the supreme law of the Republic and that law or conduct inconsistent with it is invalid and further that the obligations imposed by it must be fulfilled. Section 32 of the Constitution guarantees a right to access to information held by the state ; and any information that is held by another person and that is required for the exercise or protection of any rights. It further provides that national legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the State. The national legislation contemplated in s 32(2) of the Constitution is the Promotion of Access to Information Act[ii] *(PAIA).*

The Companies Act

Shareholder inspection rights under South African law are rights held , *inter alia,* under the Companies Act[iii] (the Act) . Further expression to these rights are provided for, inter alia, in the regulations promulgated pursuant to the Act[iv] (the Company Regulations). Under section 26(1)(a) of the Act, a person who holds or has a beneficial interest in any securities issued by a profit company, or who is a member of a non-profit company, has a right to inspect and copy, without any charge for such inspection or upon payment of no more than the prescribed maximum charge for any such copy, the information contained in the following records of a company:[v]

- The Memorandum of Incorporation, and any amendments or alterations to it and any rules of the company made in terms of section 15(3) – (5), as referred to in s 24(3)(*a);*
- The record of directors, as referred to in s 24(3)(*b*);
- All reports presented at an AGM of the company, as referred to in s 24(3)(*c*)(i);
- The annual financial statements of the company, as referred to in s 24(3)(*c*)(ii);
- Notices and minutes of annual meetings (or to meetings of members in the case of a non-profit company), including resolutions adopted by shareholders (or the members) and any document that was made available by the company to the shareholders(or members) in relation to each resolution, as referred to in s 24(3)(*d*) ;

- Any written communications sent generally by the company to all shareholders of any class of the company's securities (or communications sent to members in the case of a non-profit company) as referred to in s 24(3)(*e*); and
- The securities register of a profit company and members' register of a non-profit company that has members, as referred to in s 24(4)(*a*).

In essence, such persons may not have access to the accounting records of the company (required to be maintained by the company in terms of s 24(3)(c)(*iii)* or minutes of meetings and resolutions of directors and directors' committees and audit committee(required to be maintained by the company in terms of s 24(3)(*f*) of the Act.[vi]

It is important to note that that rights under s 26(1) of the Act are conferred on members of are conferred on members of a non-profit and on persons who hold a beneficial interest in securities issued by a company *and not to registered holders of securities who are not also the beneficial holders of the securities.*[vii] However, a Memorandum of Incorporation of a company may make provision for additional information rights of any person with regard to information relating to the company.[viii] This is subject to the proviso that no right may negate or diminish any mandatory protection of any record required by or in terms of Part 3 of PAIA.

The rights of access to company records set out in s 26 of the Act are in addition to, and not in substitution for, any rights a person may have to access information in terms of s 32 of the Constitution of the Republic of South Africa, 1996, PAIA or any other public regulation.[ix].*(Part B deals with an analysis of the information rights under PAIA.)*

It is notable that section 26 provides shareholders of a company (and members of a non-profit company) a right to inspect and copy certain records of a company, but this provision does not extend to the directors of a company. Directors nevertheless have a common-law right to inspect the books and records of a company.[x]

How do shareholders exercise information rights in terms of s 26

A right of access to any information contemplated in s 26 of the Act may be exercised only in accordance with PAIA, or the provisions of s 26 of the Act and Regulation 24(3) and (4) of

the Companies Regulations. Any person claiming a right of access to any record held by a company may not exercise that right until a written request to exercise such a right(as contemplated in s 26(4)) has been made to the company by delivering to the company a completed Request for Access to Information Form*(Form CoR 24*) , or to the extent applicable any further documents or other material required in terms of PAIA.[xi] To the extent applicable, the requester's right of access to the information must be confirmed in accordance with PAIA.

A company that receives a request in terms of a Request for Access to Information Form must accede to the request within 14 business days by providing the opportunity to inspect or copy the register concerned to the person making the request. Since as s 26(2) confers an unqualified right of access, to the extent the company fails or refuses to provide access to the register concerned, the requester is entitled, of right, to an order compelling access.[xii] It is an offence for a company to fail to accommodate any reasonable request for access, or to unreasonably refuse access, to any record that a person has a right to inspect or copy in terms of s 26 or s 31 of the Companies Act, or to otherwise impede, interfere with or attempt to frustrate, the reasonable exercise by any person of their right to access to the company records set out in s 26 or s 31 of the Act.

Access to Company Records under PAIA

Section 50(1) (a) of PAIA provides as follows:

(1) A requester must be given access to any record of a private body if –

(a) That record is required for the exercise or protection of rights;

(b) That person complies with the procedural requirements in this Act relating to a request for access to that record; and

(c) Access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part.

Section 68(1) of PAIA provides that access to a record of a company may be refused if the record:

(a) Contains trade secrets of the company;

(b) Contains financial, commercial, scientific or technical information, other than trade secrets, of the company, the disclosure of which would be likely to cause harm to the commercial or financial interests of the company;

(c) Contains information, the disclosure of which could reasonably be expected; will put the company at a disadvantage in contractual and other negotiations; or will prejudice the company in commercial competition.

Jurisprudence relating PAIA and access to company records

The Supreme Court of Appeal in *Nova Property Group Holding Ltd v Cobbett*[xiii] said that the use of the disjunctive*"or"* in s 26(4)(b) in the Companies Act (instead of the conjunctive "*and*") makes it clear that, procedurally, PAIA is an alternative to requesting access to a company's share register in terms of section 26 of the Companies Act. Thus the right under 26(2) of the Companies Act may be exercised independently of, and in addition to PAIA, and a company may not require disclosure of the reason for the request to access the securities register of a company since the right is unqualified.[xiv] If there is any inconsistency between the Companies Act and PAIA, then the provisions of both Acts apply concurrently to the extent that it is possible to apply and comply with one of the inconsistent provisions without contravening the second. To the extent that it is impossible to apply or comply with one of the inconsistent provisions without contravening the second, then the provisions of PAIA shall prevail.[xv]

In *Clutcho (Pty) Ltd v Davis*[xvi] the Supreme Court of Appeal examined the right of access of shareholders to company information. There the court was dealing with the 1973 Companies Act.[xvii]The respondent, a shareholder of a private company, had sought access to the company's books of first accounting entry, such as its cash book, ledgers, journals and invoice books. He claimed that he needed access to these records to value his shares for purposes of them,and contended that he needed access to the underlying financial records because he suspected that the audited financial statements were inaccurate. The court *a quo* had permitted the respondent's application under PAIA. It was against this order that appellant, the company, lodged an appeal. The SCA confirmed that, while a shareholder does have a right to receive copies of the company's annual financial statements and to obtain copies of the minutes of the company's general meetings, he does not have an automatic right to a company's accounting

records, or a right to inspect the minutes of directors' meetings and managers' meetings. It was for this reason that the respondent had sought access to the company's accounting records in terms of s 50(1) (a) of PAIA read with section 32 of the Constitution. The SCA assumed, without deciding, that the right of a shareholder to value his or her shareholding in order to fix an appropriate selling price amounted to "*right*" for purposes of s 50(1)(a) of PAIA. The court ruled that the word" required" in s 50(1) (a) of PAIA does not mean necessity, but means " *reasonably required*" for the exercise or protection of any rights, " provided that it is understood to connote a substantial advantage or an element of need "[xviii]

Moreover, the SCA found that the Companies Act of 1973 was replete with provisions designed to protect the interests of shareholders, and opined that the machinery established by legislation and the common law for the protection of shareholders is not to be taken lightly or be disregarded.[xix] The court ruled that, in enacting PAIA, the legislature could not have intended that the books of a company, great or small, should be thrown open to shareholders on a whiff of impropriety or on the grounds that relatively minor errors or irregularities had occurred, and that a far more substantial foundation would be required. The court was not persuaded that the respondent had succeeded in laying such a foundation and found that he had failed to show the access he had sought was required for the exercise or protection of the rights he had asserted.[xx]

It should be noted that the respondent in this matter required the company's books of first accounting entry to ascertain the value of his shares that he intended to sell, and not, for instance, for purposes of disclosing confidential information to competitors.

Key Takeaways

Section 26(1)(a) of the Companies Act, disentitles a shareholder from gaining access to:

- the accounting records of a company;
- the minutes of meetings and resolutions of directors;
- minutes of meetings and resolutions of directors' committees and the audit committee.

Shareholders may avail themselves of the remedy under PAIA to gain access to the aforementioned accounting and financial information, but it is likely that such a request may be met with refusal on the grounds for refusal discussed above.

FOREIGN JURISDICTIONS

This section explores the regulatory landscape of other jurisdictions as it relates to shareholder inspection rights with a view to comparing and contrasting same to the South African regulatory regime. What follows is a "birds eye view" survey of shareholder inspection rights in other jurisdictions.

Australia

The shareholder inspection right is found in s. 247A of the Corporations Act[xxi](the Corporations Act). The statutory regime in Australia does not grant a shareholder a "*right*" of inspection *per se,* but instead provides a shareholder with standing to apply to the court for an order authorizing such inspection. The legislation thus regulates shareholder inspection not by delineating the circumstances in which inspection can occur by conferring a broad discretion on the courts to decide whether inspection is appropriate.[xxii] Accordingly, in terms of s. 247A[xxiii], the court is given a gatekeeping function and an applicant utilizing this remedy must show " good faith" and " a proper purpose" to enable the court to exercise its discretion to grant the inspection right. Section 247A is a mandatory provision of the Corporations Act which applies to all types of companies incorporated under the legislation.

In relation to the issue of *locus standi* , as it pertains to the application contemplated under s.247A, it should be noted that :

(a) standing to apply for inspection under the section is provided to a "member" of a company, which is defined as a person who is registered as a member in the company's register of members (Corporations Act, s 9, s 231); and

(b) in the case of a company with a share capital, an applicant must therefore be registered in the company's share register as a holder of shares in the company (i.e. registered shareholders)

This means that a person who has only an underlying beneficial interest in shares, such as an investor holding shares through a nominee, will not have standing for the purposes of an application under s. 247A.[xxiv]

Inspection under s.247A relates to the "books of the company". The legislation defines "books" broadly: it includes any register, other record of information, document, and financial reports or records. As the legislation uses the phrase" of the company", the courts have held that the books must belong to the company, in the sense of forming part of its property.[xxv] As a result, an inspection order will not extend to books that are in a company's possession but which do not belong to it.[xxvi] For instance, the courts have found that proxy forms completed and lodged by shareholders with a company in advance of a shareholders meeting are not to considered as "books of the company". This is so because proxy forma relate to the execution of voting rights by a member and the company obtains possession of it merely as a result of the Corporations Act requirement which obliges a company to play an administrative role in the receipt and retention of proxy forms in anticipation of a shareholders meeting. Accordingly, court has opined that these documents do not belong to the company.

However, the definition of "books of the company" is sufficiently broad to mean that an applicant, in practice, is unlikely to find that corporate records to which access is sought are considered not be "books of the company"[xxvii]. The instances in which members have been permitted to inspect company records include:

- a company's insurance policies;
- non-public financial statements;
- hedging arrangements and communications with bankers;
- board papers;
- information relevant to scrutinizing a board's determination that one proposed disposal of the company's assets was superior to an alternative disposal for those assets.[xxviii]

What is meant by the phrase " good faith" and for a " proper purpose" under the rubric of an application under s. 247A

Section 247A provides that a court may only grant an order permitting inspection if it is satisfied that an applicant is acting in good faith and for a proper purpose. These jurisdictional requirements are necessary but not determinative conditions for the grant of inspection. The courts have made it clear that even where an applicant demonstrates good faith and propriety of purpose, a court may still decline to authorize inspection be reference to any other considerations it considers relevant.[xxix]

The courts treat good faith and proper purpose as a composite requirement which is assessed by the courts objectively. The onus of proof rests on the applicant to show *bona fides* and propriety of purpose .[xxx] In order to determine good faith and a proper purpose, an applicant must articulate a substantive purpose for their inspection; that is, they must adduce evidence to show that inspection is for a purpose that is not fanciful, artificial or specious.[xxxi] Moreover , the purpose must be germane to the applicant's status as a shareholder or reasonable related to it.[xxxii] The courts have held that this requirement will be satisfied where an applicant seeks access in order to obtain information to determine the value of their shares for the purpose of exercising a right of pre-emption under the company's constituent documents.[xxxiii] It is also been stated that this requirement is satisfied in instances where an applicant endeavours to obtain access to company books in order to investigate some apprehended wrongdoing or inappropriate conduct involving their company. In such instances, the courts have held that an applicant need not establish that they have a particular cause of action arising from such conduct and that it will suffice, instead, if the applicant outlines a basis for a reasonable apprehension or suspicion that a wrong has occurred.[xxxiv] or that their investment may be adversely affected by the relevant conduct.

United Kingdom

In the UK, the position in relation to shareholder inspection rights is somewhat different to the position in South Africa and Australia and is provided for in terms section 116 and s. 117 of the UK Companies Act 2006 which in broad terms are summarized as follows:

- shareholders may, upon request, inspect the register and members' names without charge;

- shareholders requiring copies of thereof are entitled thereto upon payment of prescribed fee;
- the request must contain, *inter alia*, specify the purpose for which the records is to be used;
- A company receiving such a request must within five days either comply with such a request or apply to court, on notice to the requester, for an order directing that the records have not been sought for a proper purpose in which event and if the court is satisfied, the court shall direct the company not to comply with the request and in which event the court may order the requester to bear the costs of the company(either wholly or in part)[s.117(1)-(3)];
- The court may, on the other hand, dismiss such an application direct the company to comply with the request for records.[xxxv]

The meaning of "*proper purpose*" as a requirement has not been defined in the UK Companies Act and in the absence thereof the common law applies. Unlike in the Australian context, there is no need for an applicant to show *good faith* in addition to "proper purpose" when a request is made under s. 116 of the UK Companies Act. It should be noted that the Institute of Chartered Secretaries and Administrators has issued non-binding Guidance in relation to what should constitute a proper purpose.[xxxvi]

Canada

The legal and regulatory framework relating to the rights of shareholders to gain access to company records in Canada appear to be closely aligned with the inspection rights afforded to shareholders in the South African context. It is necessary, as a starting point, to have regard to the provisions of the Canada Business Corporation Act 1985(CBCA), more particularly sections 20 and 21 thereof, which in relevant part provides that:

"20(1) a corporation shall prepare and maintain, at its registered office or at any other place in

Canada designated by the directors, records containing:

1. *the articles and the by-laws, and all amendments thereto, and a copy of any unanimous shareholder agreement;*
2. *minutes of meetings and resolutions of shareholders;*

3. *copies of all notices required by section 106[xxxvii] or 113;[xxxviii] and*
4. *a securities register that complies with section 50[xxxix]"*

"20(2) in addition to the records described in subsection (1), a corporation shall prepare and maintain adequate accounting records and records containing minutes of meetings and resolutions of directors and any committee thereof."

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

Comparatively, the similarities between section 26(1) (a) of the Companies Act and section 21(1) of the CBCA are, notably, self -evident in that shareholders may, as of right, request the documents referred to therein from a company without the need for any judicial intervention or oversight nor are they obliged to specify any purpose for such records may be required. Moreover, a further point of similarity is that shareholders both in the South African context and the Canadian context are not, in terms of section 26(1)(a) of the Companies Act and section 21(1) of the CBCA, entitled to access of the accounting records of the company or the minutes of meetings and resolutions of directors and any committees of directors.

Given the similarities of the legal position of shareholders in relation to their inspection rights under the Canadian regime and the South African regime, this note shall examine the position in Canada on a more granular level as follows. The Ontario Business Corporations Act[xl](the OBCA) , which is the provincial counterpart of and which is subordinate to the CBCA, in section 140(1) thereof, lists the records in respect of which shareholders have an entitlement, as of right. The documents listed in s. 140(1) of the OBCA mirrors the list set out in s. 20(1) of the CBCA and as in the case of the CBCA, shareholders are not entitled under the OBCA, *to inspect the accounting records listed in section 140(2) or the information pertaining to directors' meetings that is referenced in section 140(2) thereof.* As noted above, the drafting and formulation of shareholder inspection rights in section 26 of the Companies Act closely

resemble the comparative Canadian company law provisions. Accordingly, it may be useful to examine the Canadian case law on this point, bearing in mind that under section 5 of the Companies Act, more particularly s. 5(2) thereof, to the extent appropriate, courts interpreting or applying the Companies Act may consider foreign company law.

The trend in recent Canadian case law suggests that courts are increasingly inclined to provide shareholders with access to financial information of a company beyond the limits set out in section 21(1) of the CBCA under the oppression remedy.[xli] The most recent case to discuss the rights of shareholders to financial information of the corporation is *APAC Limited v Cronin(APAC Limited)*.[xlii]This was an application heard in the Ontario Superior Court of Justice and was an application pursuant to s.248 of the OBCA brought by the applicant for an order compelling the respondent company and one other to produce financial documentation and disclosure and an accounting of the proceeds of mortgages. In explaining the law underlying the oppression remedy, the court stated that the oppression remedy is an equitable remedy and, as such, the focus must be on business realities and fairness as opposed to technical legalities.[xliii]The court reaffirmed a two-stage inquiry which must be embarked upon when considering an oppression claim, that is, (i) does the evidence support the reasonable expectations asserted by the moving party complainant(*sic*) and, (ii) if yes, does the evidence support that such reasonable expectations were violated by conduct that could be described as oppressive or unfairly prejudicing or disregarding the relevant interest.[xliv]

The court stated further that a claimant that can establish a reasonable expectation to an entitlement is to be treated fairly and in good faith by the corporation and the court set out a non-exhaustive list of the factors which determine the existence of a reasonable expectation, these being:

- general commercial practise;
- the nature of the corporation;
- relationship between the parties;
- past practices;
- steps the claimant could have taken to protect himself;
- representations and agreements;

- the fair resolution of conflicting interests between corporate stakeholders[xlv]

The court found that the applicant's expectation of the production of the financial documents was entirely reasonable[xlvi] . In arriving at this conclusion, the court considered the provisions of s.140(1)(b) and (d) of the OBCA wherein it requires a corporation to prepare and maintain minutes and resolutions and information relating directors. Under s. 145, so the court found, shareholders or beneficial shareholders, are entitled to review or to be given a copy of those documents and furthermore that under s.15, a corporation is required to provide shareholders with financial statements at the annual shareholders' meeting. The court relied on and found support for this view in the judgment in *Pandora Select Partners, LP v Strategy Real Estate Investments Ltd*[xlvii] where it was held that shareholders have a statutory right to know the financial health of the corporation.[xlviii] The application was granted and the court remarked, additionally, that corporate actors may take decisions that unfairly advantage one shareholder and unfairly prejudice or disregard the legitimate interests of another. In these situations, the disgruntled or unfairly treated shareholder must establish on a balance of probabilities that he(*sic*) is entitled to reasonably expect fair treatment as dictated by the circumstances. As remedial legislation, the oppression remedy is subject to broad and liberal interpretation.[xlix]

It is significant to note that the respondent company took the matter on appeal where the Ontario Superior Court of Justice (Divisional Division)[l] confirmed the decision of the court *a quo*.

EXCURSUS: BENEFICIAL OWNERSHIP TRANSPARENCY

South Africa is currently, not fully compliant with the G20 High-Level Principles on Beneficial Ownership Transparency, more particularly Principle 3 thereof which requires that countries should ensure that legal persons maintain beneficial ownership information onshore and that information is adequate, accurate and current. What this means is that under the Companies Act, there is a lack of adequate provisions to allow for the establishment of the identity of the true owners of companies. Accordingly, a shareholder wishing to exercise access rights in terms of section 26 of the Companies Act would be unable to ascertain the identity of the true owners, that is , the natural persons who own the company.

On 1 October 2021, the Department of Trade and Industry published a new draft of the Companies Amendment Bill (the 2021 Bill) for public comment. The 2021 Bill aims to deal, *inter alia*, with the anomalies associated with the concept beneficial ownership matters relating to access of company records. The 2021 Bill corrects this by providing a definition of "true owner" and aims to ensure that transparency not only around the first tier of beneficial holder(or all nominee arrangements in the security register) but also to require that companies reveal the identity of the true owners or ultimate beneficial owners. A true owner is defined by the proposed amendments as a natural person who has the power to direct the registered holder of a share with regard to the share or who ultimately benefits from the shareholding. In terms of the proposed definition in the amendments, only a natural person can be a true owner.[li]

CONCLUSION

As noted above, the legal and regulatory framework in relation to shareholder inspection rights in South Africa is closely aligned to that of Canada. As has been shown, there is an increasing trend in Canada to rely on the oppression remedy in instances where shareholders wish to obtain access to the financial information of a company or information not covered under section 20(1) of the CBCA. Section 163 of the Companies Act provides for an oppression remedy and it is also closely aligned with the ambit of the oppression remedy under Canadian law, more particularly section 241 of the CBCA. Accordingly, shareholders who wish to obtain access to records not specified in s. 26(1)(a) of the Companies Act may, in appropriate circumstances, seek access to such records based on a complaint of oppressive conduct on the part of company. Interestingly, in Clutcho, [lii]the Supreme Court of Appeal stated, without deciding the issue, that there might exist special circumstances in which a court would, in terms of section 252 of the 1973 Companies Act[liii] (now s. 163 of the Companies Act) grant some of access to company information to a shareholder who complained of oppressive conduct by a company.

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The Hamilton Law Association: Shareholder/Director EntitlementtoCorporate Information/Documents,14th Annual Corporate Commercial Law Seminar; October 2021

ENDNOTES

[i] Constitution of the Republic of South Africa, Act 108 of 1996 .
[ii] Act 2 of 2000
[iii] Act 71 of 2008. The Companies Act shall be referred to interchangeably as " the Companies Act" or "the Act" throughout this document
[iv] Section 31 of the Act provides to shareholders access to a company's annual financial statements.
[v] Contemporary Company Law, Cassim et al 3rd ed(Juta 2021) at 523
[vi] Ibid,524
[vii] Op cit fn 3. 524
[viii] Section 26(3) of the Act is apposite here.
[ix] Section 2
[x] Conway v Pretorius Clothing Co Ltd[1978] 1 ALL ER285
[xi] Op cit fn 4, 532
[xii] Ibid
[xiii] 2016(4) 317(SCA) para 25.
[xiv] Ibid, para 32.
[xv] See s 5(4)(b)(i)(cc) of the Companies Act.
[xvi] 2005(3) 486(SCA)
[xvii] Companies Act 61 of 1973, repealed in substantial part by the Companies Act.
[xviii] Ibid, paras 11 -13.
[xix] Ibid, par 17.
[xx] Ibid, para18.

[xxi] Act 50 of 2001
[xxii] Tim Bowley & J.G. Hill: Shareholder Inspection Rights in Australia, p.2.
[xxiii] Section 247A provides that (1) On application by a member of a company or registered managed investment scheme, the Court may make an order: (a) authorising the applicant to inspect books of the company or scheme; or (b) authorising another person (whether a member or not) to inspect books of the company or scheme on the applicant's behalf. The Court may only make the order if it is satisfied that the applicant is acting in good faith and that the inspection is to be made for a proper purpose.
[xxiv] Op cit note 21, p10.
[xxv] Ibid.
[xxvi] See Areva NC(Australia) Pty Ltd v Summit Resources (Australia) Pty Ltd(No 2) 2008; Sun Hung Kai Investments Services Ltd v Metals X Ltd 2019; Re Cromwell Property Securities Ltd 2019. See also Note 21, p11.
[xxvii] Op Cit Note 21, p 11.
[xxviii] See Hanks v Admirality Resources N.L 2011); London City Equity Ltd v Penrice Soda Holdings Ltd 2011 and Acehill Investments PtyLtd v Incitec Ltd 2002.
[xxix] Op Cit Note 21, p 11.
[xxx] Mesa Minerals Ltd v Mighty River International Ltd 2016.
[xxxi] T Bowley & JG Hill: Shareholder Inspection Rights in Australia: Then and Now(2022) at 12 and authorities cited therein..
[xxxii] Ingram v Ardent Leisure 2020[58].
[xxxiii] Ibid.
[xxxiv] Ibid. See also Sun Hung Jai Investment Services Ltd v Metals X Ltd 2019,364; Hanks v Admirality Resources N.L.2011,[39].
[xxxv] Section 117(5) of the UK Companies Act 2006.
[xxxvi] Working group of Institute of Chartered Secretaries and Administrators,ICSA Guidance on Access to the Register of Menbers: Proper Purpose Test,(January 2009): available at http://icsasoftware.com/dl/060607Acces-to-the-Register-of-Members pdf
[xxxvii] Section 106 traverses matters relating to notices to directors, their term of office, their election to office, among other related matters.
[xxxviii] Section 113 traverses matters relating notices of change of address in respect of directors.
[xxxix] Section 50 deals with the constitutive elements of the securities register among other related matters.
[xl] RSO 1990.c B 16.
[xli] Section 248 of OBCA and s. 241 of CBCA..
[xlii] 2018 ONS 3256 . See also The Hamilton Law Association: Shareholder/Director Entitlement to Corporate Information/Documents,14th Annual Corporate Commercial Law Seminar; October 2021, at 7.
[xliii] APAC Limited at para 22.
[xliv] Ibid at para 23.
[xlv] Ibid at para 24 & 25.
[xlvi] Ibid at para 29.
[xlvii] 2007 CarswellOnt 1567(Ont.S.C.J)
[xlviii] Op Cit n. 45 at para 29.
[xlix] Ibid at para 40.
[l] 2019 CarsewellOnt 15, 2019 ONSC 86,300 A.C.W.S.(3d) 539
[li] Background Note and Explanatory Memorandum on the Companies Amendment Bill, 2021 at 351
[lii] Op Cit n.15.
[liii] Act 61 of 1973.