

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Isoflex USA v. Webster*,
2026 BCSC 984

Date: 20260512
Docket: S259515
Registry: Vancouver

Between:

Isoflex USA

Petitioner

And:

**Brian Webster, Roselle Bourgeois, Andrea Libman,
1488314 BC Ltd., and 1218146 BC Ltd.**

Respondents

Before: The Honourable Justice Marzari

Oral Reasons for Judgment

Counsel for the Petitioner:

D.A. Garner
J. Rost
M. Nakatsu

Counsel for the Respondents Brian
Webster, Roselle Bourgeois, Andrea
Libman, and 1488314 BC Ltd.:

H. Poulus
K.A. Maw

Counsel for the Respondent 1218146 BC
Ltd:

R. Power

Place and Dates of Hearing:

Vancouver, B.C.
May 5 – 6, 2026

Place and Date of Judgment:

Vancouver, B.C.
May 12, 2026

Table of Contents

INTRODUCTION	3
THE PETITION	7
THE LAW ON CONVERSION	10
ISSUES IN DISPUTE.....	15
DETERMINATION	20
1. Prematurity	20
2. Whether the particular issues involved require an assessment of credibility ...	22
3. The need for the Court to have a full grasp of the evidence	24
4. Undesirability of multiple proceedings	25
5. The desirability of avoiding unnecessary costs and delay	26
6. Whether it is in the interests of justice to convert this matter to the trial list.....	29
CONCLUSION.....	30

INTRODUCTION

[1] The respondents to this petition, Brian Webster, Roselle Bourgeois, Andrea Libman, and 1488314 BC Ltd. (the “Webster Respondents”), apply to convert this petition into an action under the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [Rules].

[2] The petition is brought by Isoflex USA (“Isoflex”), which is a privately held company operating out of California and which is in the business of brokering sales of isotopes from various sources to its international clientele. Isoflex is also a minority shareholder in a BC Company: 1218146 BC Ltd. (TMC2). In its petition, Isoflex seeks the dissolution or winding up of TMC2 on the basis of oppression pursuant to s. 227 or pursuant to s. 324 of the *Business Corporations Act*, S.B.C. 2002, c. 57 (“BCA”).

[3] TMC2 is a company based out of North Vancouver that produces specialized stable isotopes. Isoflex alleges 11 incidents of oppression by the Webster Respondents and TMC2 under s. 227 of the *BCA*, and pleads that the corporate governance, specifically the relationship between itself and the Webster Respondents, who are the majority shareholders in TMC2, is irretrievably broken, such that it would be just and equitable to wind up TMC2.

[4] Mr. Webster, and his wife, the respondent Roselle Bourgeois, are the principals of a predecessor company, TMC Manufacturing Company Inc. (“TMC”) incorporated on November 8, 2008 that manufactured (and might still manufacture) stable isotopes.

[5] By way of brief background, I understand from the materials and arguments before me that prior to the formation of TMC2, Isoflex and TMC had a good working relationship. Isoflex acted as a broker for the sale of TMC’s isotopes, and collected a 35% commission on those sales pursuant to what both parties call a “non-binding” MOU.

[6] In 2019, the principles of TMC and the principles of Isoflex agreed to form a new company, TMC2, specializing in the production of a particular isotope, with Isoflex holding a minority shareholding position, and the Webster respondents holding the majority shareholding position. The evidence of both parties indicates that the formation of TMC2 was for the purposes of capitalizing on a particular opportunity with a third party client, ITM, who had need of a specific isotope and was prepared to make a substantial loan to the new company for its production. Upon incorporation of TMC2, TMC2, Isoflex and ITM entered into the contemplated contract (the ITM Contract). Both the Webster Respondents and Isoflex appointed two representatives to the TMC2 Board, who were also principles of their respective companies, and both donated management staff and officers to the functioning of TMC2.

[7] The gravamen of Isoflex's complaint in this petition are changes made by the Webster Respondents to the corporate governance structure and procurement processes of TMC2 starting in 2023 but coming to a head in 2024 and 2025, whereby the Webster Respondents are alleged to have progressively "frozen out" the Isoflex-associated Board members and staff from governance of the Board and the operations of TMC2. Of greatest concern to Isoflex before me at least is the move by the TMC2 Board to exclude Isoflex from having what it says was by then its "longstanding" and exclusive role as the sales and marketing arm of TMC2, contrary to Isoflex's reasonable expectations.

[8] The Webster Respondents argue before me that conversion to the trial list is required in this case. They argue that the petition raises many triable issues, including:

- a) What the reasonable expectations of Isoflex were or could have been in light of the history and context of the relationship between Isoflex and the Webster Respondents and TMC. Where Isoflex says that it expected to maintain its "longstanding" role as TMC2's marketing and sales provider, first established through its MOU with TMC2's predecessor TMC, the Webster Respondents

- say that no reasonable shareholder expectations could have arisen from the previous MOU arrangement between two distinct and different companies. They say Isoflex has no longstanding reasonable expectations as a shareholder of TMC2, other than what was agreed at the formation of TMC2, which includes entitlement to dividends, but not control of TMC2 generally, or control over sales and marketing efforts by TMC2 for any products that exceed the ITM Contract;
- b) Whether there has been a breach by the Webster Respondents as majority shareholders with respect to Isoflex's reasonable expectations in terms of shared control and an exclusive sales and marketing role, or whether, as the Webster Respondents argue, Isoflex and its directors that sit on the TMC2 Board, have acted in a conflict of interest and breached their fiduciary duties to TMC2, leading to the changes in governance structure and direct sales activity that Isoflex complains are oppressive; and
 - c) Whether winding up TMC2, a highly successful and profitable company, is just and equitable in light of the full context of the nature of the relationship between the shareholders (which the Webster Respondents deny is akin to a partnership or joint venture), and the reasons for its breakdown which they place at the feet of Isoflex.

[9] TMC2 (which has appointed a special committee made up of Board members other than the individual respondents) takes no position on the oppression allegations made by the petitioner, but opposes the remedy of liquidation, and supports the conversion application.

[10] On April 14, 2026 TMC2 brought an action against Isoflex and a number of its directors for breach of fiduciary duty (as agents and board members of TMC2), unjust enrichment, and civil conspiracy in its dealing with TMC2 (the "Action"), primarily by preferring the interests of Isoflex over the interests of TMC2 in its dealings with existing and future customers, and competitors, of TMC2. TMC2 takes the position that the factual underpinning of the petition brought by Isoflex and the

Action brought by TMC2 are essentially two sides of the same coin, and both address the key conflicts between Isoflex on the one hand, and TMC2 and its majority shareholders on the other, in terms of governance issues, control of intellectual property and control over sales to third parties. It argues that conversion of the petition is necessary to avoid a multiplicity of proceedings on the same factual matrix, and specifically in relation to its Action.

[11] Isoflex opposes the application to convert this petition into an action. Broadly, it argues that:

- a) To do so would be premature because the Webster Respondents have expressly stated that they “reserve the right” to file additional evidence and to amend their petition response in the event that the petition is not converted, such that the Court does not have the Webster Respondents’ full response materials before it for the purposes of this application;
- b) Conversion of the petition to the trial list will make the resolution of this matter drag out for considerably longer, particularly when they have secured four to five days for the hearing of the petition in June. Isoflex argues that an order requiring the liquidation of TMC2 is urgent (even if liquidation is not their end goal) because allowing this corporate dispute to remain unresolved for any length is harmful to Isoflex’s reputation and business as a reliable supplier of isotopes, including those produced by TMC2, and to TMC2 itself, which is giving up major sales opportunities brought to it by Isoflex while this dispute continues;
- c) There is considerable common ground on the evidence in terms of the history and conduct that Isoflex relies upon to establish its reasonable expectations for shared control of the Board and management of TMC2, and in particular its expectation that Isoflex would be the sole means through which TMC2 markets and sells its isotopes, as well as the breach of those expectations. Isoflex argues that the conflicts in the evidence relied upon by the Webster

Respondents in support of conversion are vague, overblown and determinable on affidavit evidence alone;

- d) The TMC2 Action is a tactical filing that is largely tangential to the dispute between the TMC2's shareholders in the petition; and
- e) Regardless of whether the petition raises triable issues on the issue of oppression, it is obvious that there is an irretrievable rift between the Webster Respondents as majority shareholders, Isoflex as the minority shareholder, and indeed TMC2 as a corporate entity, resulting in a functional deadlock, such that an order for dissolution of the company is inevitable.

[12] I turn then to the petition itself and the nature of the dispute between the parties on that petition.

THE PETITION

[13] Isoflex says that the evidence that it has filed in support of its petitions does and will establish that it had the following reasonable expectations:

- a) TMC2 would be operated in a manner that respected the relationship of mutual trust and transparency which had existed among the parties for years prior to its incorporation;
- b) The number of directors of TMC2 would remain at four, with equal representation on the board of directors by both parties;
- c) Isoflex would retain signing authority and transparent access to TMC2's financial information, as a business partner would expect to have;
- d) Isoflex would retain access to TMC2's production facility, including for the purpose of conducting customer tours;
- e) Isoflex would continue to have a meaningful role in the making of important decisions of TMC2, such as significant expenditures or hirings;

- f) The fundamental arrangement between Mr. Webster, Ms. Bourgeois, Ms. Libman and Isoflex would remain intact, namely that Isoflex handled all financial, sales and marketing, contractual and commercial relations tasks, while Mr. Webster and Ms. Bourgeois were responsible for leading all of TMC2's production, facility, and technical matters, in collaboration with Mr. Hardy as Executive Vice-President; and
- g) Mr. Webster, Ms. Bourgeois, and Ms. Libman would not attempt to take control of the financial relationship with ITM or attempt to remove Isoflex's involvement in the business.

[14] The petition alleges eleven instances of oppressive or unfairly prejudicial conduct dating back to December 2023:

- a) Changing the number of directors of TMC2 from four to five, and appointing Ms. Libman as a director, without the agreement of Isoflex;
- b) Changing the signing authority over TMC2's financial accounts;
- c) Removing Ms. Teo's access to the financial accounts of TMC2;
- d) Refusing Isoflex access to TMC2's production facilities;
- e) Taking steps to freeze Isoflex out of decision making in TMC2, such as by instituting the Change of Directors;
- f) Withholding Isoflex's agreed upon compensation unless Isoflex agreed to significant and objectionable changes to its Draft Consulting Agreement for Services;
- g) Attempting, and taking steps, to change the fundamental division of responsibilities between Isoflex and Mr. Webster, Ms. Bourgeois, Ms. Libman;
- h) Attempting and taking steps to remove Isoflex's influence and control in the company;

- i) Engaging WestCove at significant expense, without notice to or approval by the board;
- j) Refusing to accept purchase orders from Isoflex unless Isoflex released all communication and control with its primary customer, ITM;
- k) Attempting to wrest control of the relationship with ITM from Isoflex.

[15] The petition is supported by three affidavits sworn by Isoflex directors, including Mr. Richard McKannay who is the founder and managing director of Isoflex, as well as a director of TMC2; Teck Hing Teo who is the Chief Financial Officer of Isoflex and who also assisted with the work of TMC2 in its initial years; and Patrick Hardy who is the Chief Business Officer of Isoflex and the former Executive Vice-President of TMC2. The affidavit material filed in support of the petition includes over 50 pages of sworn affidavit evidence and approximately 300 pages of documentary exhibits attached.

[16] The Webster Respondents filed a response to petition late in the day, after filing their conversion application and the supporting affidavit of Mr. Webster. There is no question that this response, and the affidavit of Mr. Webster filed in the conversion application upon which it relies, were filed months after the 21 days the *Rules* allow for the filing of responsive materials to petitions.

[17] The affidavit filed by Mr. Webster is larger than all three of the petitioner's affidavits combined, and includes over 30 pages of single-spaced affidavit evidence and over 450 pages of documentary exhibits. The Webster Respondents' response to petition denies the asserted reasonable expectations of the petitioner and the incidents of oppression, sets out a materially different account of the context, history and conduct of the parties leading up to this dispute, and asserts that conversion of the petition is required to fairly adjudicate these disputes. The response materials expressly attempt to "reserve the right" to file additional materials if the petition is not converted.

THE LAW ON CONVERSION

[18] There is no question that oppression proceedings under the *BCA* are authorized and properly brought by petition as was done in this case. Properly commenced petition proceedings may nevertheless be the subject of conversion to the trial list pursuant to Rule 22-1(7)(d) of the *Rules*.

[19] Furthermore, while the test for conversion to the trial list used to be subject to a the lower threshold of whether there was a triable issue, a five member panel of the BC Court of Appeal in *Cepuran v. Carlton*, 2022 BCCA 76, have substantially raised that threshold.

[20] The history of the conversion rule and the new approach to it under *Cepuran* was helpfully summarized by Justice Branch in *New Great Land Developing Ltd. v. 1034113 B.C. Ltd.*, 2023 BCSC 2207 [*New Great*]:

[37] Under the new *Cepuran* framework, if there is a triable issue, the Chambers Judge retains the discretion to convert the matter to an action or to use hybrid procedures within the petition proceeding pursuant to R. 16-1(18) and R. 22-1(4): para. 160. In other words, the mere fact that there is a triable issue is no longer enough to discard a petition in favour of an action: para. 158. The Court of Appeal sought to give effect to the "modern approach to civil procedure" by giving trial courts the tools necessary to "tailor the pre-trial and trial procedures to a given case, in the interests of proportionality and access to justice, while preserving the court's ability to fairly determine a case on the merits": para. 159. The Court was reluctant to provide a fixed set of factors for a judge to consider in exercising their discretion, stating it is up to the courts to determine the issue on a case-by-case basis: paras. 161-162. The Court, however, commended earlier reasoning in *Boffo Developments (Jewel 2) Ltd. v. Pinnacle International (Wilson) Plaza Inc.*, 2009 BCSC 1701 [*Boffo*] and *Terasen Gas Inc. v. Surrey (City)*, 2009 BCSC 627 [*Terasen*], which set out certain factors to consider: *Cepuran* at para. 165.

[21] The factors to consider in deciding whether to convert a petition to an action set out in *Terasen Gas Inc. v. Surrey (City)*, 2009 BCSC 627 at para. 39 [*Terasen*], and referenced in *Cepuran* at para. 165, are as follows:

- a) the undesirability of multiple proceedings;
- b) the desirability of avoiding unnecessary costs and delay;

- c) whether the particular issues involved require an assessment of the credibility of witnesses;
- d) the need for the court to have a full grasp of the evidence; and
- e) whether it is in the interests of justice that there be pleadings and discovery in the usual way to resolve the dispute.

[22] In *Edenbrook Capital, LLC v. Absolute Software Corporation*, 2025 BCSC 1469, where the petitioner themselves sought conversion to the trial list which was opposed by the respondent company, Justice Stephens articulates some of the headwinds an applicant for conversion might face:

[63] The "BCA contemplates a speedy resolution of oppression claims by way a petition proceeding on affidavits": *Weisstock v. Weisstock*, 2022 BCSC 209 at para. 32, quoting *Nielsen v. Nielsen*, 2015 BCSC 1622 at para. 20. That "is so even if there are some disputed facts": *Nielsen* at para. 17. This is at least in part because, as explained in *Nielsen*:

[18] ... Oppressive conduct on the part of the company towards a shareholder is prejudicial. Equally, allegations of oppressive conduct that lack merit can be prejudicial to the company. Both should be dealt with summarily if possible.

[64] The "modern approach to civil procedure" within a petition proceeding "allow[s] ... the trial courts to tailor the pre-trial and trial procedures to a given case, in the interests of proportionality and access to justice, while preserving the court's ability to fairly determine a case on the merits": *Cepuran* at para. 159, citing *Hryniak*; see also R. 16-1(18) and R. 22-1(4).

[65] *Cepuran* holds that the following approach must be taken:

[160] To summarize, I am of the view that a judge hearing a petition proceeding that raises triable issues is not required to refer the matter to trial. The judge has discretion to do so or to use hybrid procedures within the petition proceeding itself to assist in determining the issues, pursuant to R. 16-1(18) and R. 22-1(4). For example, the judge may decide that some limited discovery of documents or cross-examination on affidavits will provide an opportunity to investigate or challenge the triable issue sufficiently to allow it to be fairly determined by the court within the petition proceeding, without the need to convert the proceeding to an action and refer it to trial.

[66] A main factor in this analysis is whether there is a "triable issue", which is described as a disputed issue of fact or law, which is not bound to fail: *Cepuran* at paras. 140, 146; *Beedie (Keefer Street) Holdings Ltd. v. Vancouver (City)*, 2021 BCCA 160 at para. 80 [*Beedie*].

[67] It makes sense that not all petition proceedings which raise triable issues need to be converted to an action: adjudication of a disputed issue of law may well not require a full trial; and, for some disputed facts, cross examination on an affidavit may suffice to do justice when, for example, credibility is at issue.

[68] I add that the parties referred me to a substantial number of prior cases which addressed requests to convert petitions to an action. For its part, Absolute argues among other things that "Edenbrook has failed to refer to a single case where an application to convert an oppression proceeding involving a public company was granted" (para. 11). While reference to prior caselaw is helpful, each case turns on its own facts and circumstances, and I find none of these prior cases deal with circumstances equivalent to those which are before me.

[69] For example, in *New Great Land Developing Ltd. v. 1034113 B.C. Ltd.*, 2023 BCSC 2207 [*New Great*], an oppression petition was converted to an action. The Court observed that prior cases have found mere cross examination on affidavits insufficient when "a disputed oral agreement is foundational to the claim" (para. 68) and there were gaps in the evidence. In *New Great*, the Court found that conversion to an action was required, since the:

[70] ...agreement at issue was not clearly drafted and had 'a number of uncertainties and ambiguities in the clauses relied on by both parties,' which required 'ascertaining the parties' intentions' with respect to certain crucial clauses in dispute and for which 'the surrounding circumstances or factual matrix are thus of considerable relevance in this case'...

See also *Taj Park Convention Centre Ltd. v. Sher-A-Punjab Community Centre Corporation*, 2022 BCSC 473 [*Taj Park*].

[70] The Court in *New Great* found that since the "parties dispute[d] the terms of an oral agreement ... credibility will be a critical issue", and, noting the number of disputes that needed to be resolved, held that conversion to an action was required: paras. 73, 74.

[71] In *Phaneuf v. 0896459 B.C. Ltd.*, 2022 BCSC 1706, the Court converted a BCA petition to an action where the petition sought to rectify the articles of incorporation of companies based on an allegation that they fail to accurately record a prior agreement: paras. 3, 78.

...

[73] *Phaneuf* states, at para. 47, three issues which arise where a petition is sought to be referred to the trial list:

1. Is the proceeding one that was properly initiated by petition?
2. If so, does the proceeding raise triable issues?
3. If so, should the triable issues be determined by referring the petition to the trial list or by hybrid procedures within the petition proceeding?

[23] I agree with Stephens J. that “the starting point is that oppression proceedings should be conducted through a summary procedure, and that legislative intention is relevant”, and that “There should be good reason for dispensing with a petition's summary procedure in favour of an action. The mere fact that there is a triable issue is no longer a good reason.” As a Justice of this Court, I wish to see justice done as expeditiously as possible and I favour summary procedures where I consider them to be viable.

[24] *Cepuran* also directs trial courts to consider the importance of Rule 1-3:

[166] At a minimum, when considering whether to order the use of hybrid procedures within the petition proceeding itself, or to refer the matter to trial, the court will need to be mindful of the object of the *Rules* set out in R. 1-3: to secure the just, speedy and inexpensive determination of every proceeding on its merits, and so far as can be achieved, in ways that are proportionate to the amount involved, the importance of the issues, and the complexity of the proceeding.

[Emphasis added.]

[25] The principle of proportionality was also addressed in *Hryniak v. Mauldin*, 2014 SCC 7, and is central to the question before the court in a conversion application.

[26] However, the determination of how best to dedicate finite party and judicial resources in a proportionate and fair way, does not always militate towards summary procedures or even hybrid procedures. There are many cases where fairness requires, and proportionality warrants, full trial procedures, and where a summary or hybrid procedure may ultimately lead to a greater delay and a waste of both party and judicial resources.

[27] One such case was referenced by Isoflex: *Bolt 9 Inc. v. Conor Pacific Inc.*, 2017 BCSC 1283 (petition hearing), and *Bolt 9 Inc. v. Conor Pacific Inc.*, 2016 BCSC 1489 [collectively *Bolt 9*], where hybrid orders were made, and ultimately resulted in multiple long chambers hearings finally leading to conversion to the trial list after significant delay.

[28] In *Phaneuf v. 0896459 B.C. Ltd.*, 2022 BCSC 1706 [*Phaneuf*], Justice Jackson referred a petition commenced under the *BCA* to the trial list in the context of a disputed oral contract. The Court found this would require a credibility assessment of the people involved in the alleged agreement. The Court noted that:

[9] ... In the context of an oral agreement there is greater flexibility with respect to the nature of the evidence that is admissible to prove the terms of the contract and the meaning of the language used by the contracting parties, since the key interpretive tool - the words of the agreement itself - are not available: [citations omitted].

[29] In rejecting a hybrid procedure in that case, Jackson J. noted the inefficiency that may be associated with such proceedings, and stated:

[73] To these observations I would add the risk that a hybrid process may foster a lack of certainty about the applicable procedure, which can in turn lead to the need for interim determinations, whether through interim applications, requests for directions, case planning conferences, or even case management, all of which further engage judicial resources, potentially involving multiple judicial officers, each of whom will each need to become familiar with the history and context of the case. This does not serve the objective of judicial economy. Conversely, if a matter is referred to the trial list the applicable procedure is well established. The parties can always seek to present non-contentious evidence by affidavit or agreed statement of facts if they wish to do so.

[74] Although it is possible the chambers judge may decide "some limited discovery of documents or cross-examination on affidavits will provide an opportunity to investigate or challenge the triable issue sufficiently to allow it to be fairly determined by the Court within the petition proceeding, without the need to convert the proceeding to an action and refer it to trial" (*Cepuran* at para. 160). there is also the risk that the limited investigation, once completed, will prove inadequate. There is no guarantee the chambers judge who orders a hybrid process will be the chambers judge who later hears the (hybrid) petition, and it is by no means certain to me that the second chambers judge would be bound to accept the decision of the first chambers judge that a hybrid petition hearing is sufficient.

[30] This caution goes back to *Boffo Developments (Jewel 2) Ltd. v. Pinnacle International (Wilson) Plaza Inc.*, 2009 BCSC 1701 [*Boffo*], approved by the BC Court of Appeal in *Cepuran*, where the Court cautioned against "addressing the resolution of a *bona fide* triable issue through the creation of a hybrid proceeding that permits certain pre-trial and trial mechanisms to the parties, but denies them others": para. 50. As cautioned by Justice Balance in *Boffo*, pre-trial and trial

procedures within a petition hearing can sometimes overwhelm and undermine the benefits of the intended summary process:

[50] ...Where the driving underpinning for such approach is largely one of practicality, it strikes me that there is a very real risk of diminishing returns where the summary process is expanded to allow the filing of additional lengthy affidavits, cross-examination on affidavits and possibility a broader scope of cross-examination, selective document disclosure, and other features of the trial process. At some point, the process that looks like a trial, should be trial.

[Emphasis added.]

[31] Although both the Webster Respondents and Isoflex point to the availability of hybrid procedures in the alternative to their primary positions (conversion or no conversion), neither strongly advanced the usefulness or practicality of a hybrid procedure before me.

[32] I turn then to the nature of the dispute between the parties as disclosed on the materials and argued before me in this conversion application.

ISSUES IN DISPUTE

[33] Both parties seem to agree, before me at least, that the instigation for the incorporation of TMC2 was a particular opportunity presented by Isoflex to TCM and its principals involving a multi-year contract for the production of a specific isotope with through the ITM Contract. The ITM Contract itself was not produced in evidence (I gather for confidentiality reasons) but there is no dispute between the parties that by the end of 2019 they did enter that Contract, and that under the ITM Contract, Isoflex is a party in its own name primarily responsible for invoicing, shipping the isotopes, and collecting payment from ITM, and TMC2 is a separate party and is responsible for producing the isotopes required by ITM under the ITM Contract. I understand that ITM, who provided funding for the expansion of TMC2's production facilities and a 10-year contract to purchase those isotopes worth many millions of dollars per year, provided up-front financing for a new production facility and a steady income stream through its purchase of the isotopes produced by TMC2.

[34] It is also apparent on the evidence that the parties were able to agree on a share structure for TMC2 whereby the Webster Respondents would hold 57.5 percent of the shares and Isoflex would hold 42.5 percent of the shares. Isoflex agreed to take shares in TMC2 in lieu of a commission on sales as it had previously done with TMC, and all of the proceeds of sale paid by ITM under the ITM Contract would simply flow through Isoflex to TMC2 without commission under the ITM Contract.

[35] It also seems to be common ground that all parties agreed that there would be no dividends or officer salaries for several years while TMC2 focused on ramping up production to meet the terms of its multi-million dollar contract with ITM. TMC2 and Isoflex have fulfilled that ITM Contract over the last five to six years, and are in a position to continue to do so under the terms of that Contract for several more years.

[36] Also not in dispute is that after incorporating TMC2, there were many efforts by the parties to enter into a shareholders agreement about the shareholders' respective roles in TMC2 beyond what is contained in the ITM Contract and the agreement about how many shares each would hold in TMC2. Those efforts were not successful.

[37] Before me, both parties point to affidavit evidence and documents exchanged that suggest different starting and ending points for these negotiations. The petitioner alleges an oral agreement with respect to the number of directors to be appointed by each of Isoflex and TMC, and their respective division of responsibilities, all of which is denied by Mr. Webster. The evidence of the parties on whether such an oral agreement was reached, and if so, what its terms were in relation to control and governance of TMC2, and specifically the responsibility for sales and marketing of TCM2 product in particular (beyond product covered by the ITM Contract), is fundamentally at odds.

[38] The parties also assert different expectations arising from the incorporation and governance structure at the time of incorporation, with Isoflex asserting a reasonable expectation of equal control due to the appointment of two of four board

members by Isoflex on the TMC2 board, and the Webster Respondents asserting their expectation of control of TMC2 given their agreed majority shareholdings and the fact that they are the producers of the product being sold.

[39] The parties also differ, and adduce conflicting evidence, on whether there was any agreement or established expectations about many aspects of TMC2, including:

- a) Whether this corporation was akin to a partnership, a joint venture or simply a company with majority and minority shareholders with a tri-partite contract between them and ITM;
- b) The roles of TMC and Isoflex in the newly incorporated company, including whether Isoflex had exclusive conduct of sales and marketing activities for TMC2 (as asserted by Isoflex), and what duties Isoflex owed to TMC2 with respect to sales and marketing, particularly where Isoflex directors also sat as directors of TMC2. Any fiduciary or agency role held by Isoflex in TMC2 is complicated by the fact that Isoflex is also a contractor with TMC2 as a party to the ITM Contract, and Isoflex also services other customers, and does not appear to consider itself constrained in its sourcing from potential competitors of TMC2;
- c) Whether TMC2 might pursue additional customers outside those brokered by ITM for its isotope production, and if it did, who would be responsible for those pursuits and how they would be invoiced, billed, collected and shipped (Isoflex asserts that it was well-established that this would be their role exclusively as it is under the ITM Contract, while TMC2 asserts that there is no established practice in this regard, and the issue did not even come up until more recently when TMC2 began to produce product beyond the requirements of the ITM Contract).

[40] The above are thematic and significant differences between the parties and their evidence going directly to the asserted reasonable expectations of Isoflex. They

highlight multiple attempts to enter written agreements that failed, and the differing interpretations of the parties as to why they failed and what implied or oral agreements might have been salvaged from the continuation of TMC2 despite the lack of a shareholders agreement. More differences and conflicts arise from the evidence of the parties on more specific details of the history of the relationship between the parties going back to 2011 when Isoflex and the Webster Respondents first started working together in the context of the Isoflex MOU with TMC which form the context for the defining of reasonable expectations.

[41] Moreover, the issue of remedy, and whether it would be just and equitable to liquidate the company or to force the buyout of one party by the other is very much in dispute. Isoflex argues that this is patently obvious that the relationship as irretrievably broken from the acrimonious communications between the parties and that the filing of the Action alleging breaches of fiduciary duty and conspiracy against Isoflex such that the parties can no longer work together. Isoflex argues that, while there may be no true deadlock because TMC2 has oppressively diluted their participation on the Board by exercising its majority shareholder rights, that there is still a functional deadlock in that Isoflex is not in a position to pursue additional opportunities for TMC2 (and Isoflex's ability to do so for other customers in competition with TMC2 is now also in question as a result of the Action).

[42] The Webster Respondents say that TMC2 continues to operate highly profitably, that the issues in dispute are tangential to the fundamental basis for the incorporation of TMC2 which was to fulfill the multimillion dollar and multiyear contract with ITM which still has several more years to go, and that there is no deadlock because it was always intended that they would control TMC2 as majority shareholders. The Webster Respondents also say that if Isoflex would provide transparency about the additional opportunities it is bringing to the TMC Board beyond the ITM Contract, establishing that Isoflex is not including secret commissions or reservations for Isoflex's own benefit (something Isoflex assures the Court is not happening), TMC2 would be able to function without a conflict on its

Board and all shareholders could benefit from these opportunities beyond the core ITM Contract.

[43] Despite Isoflex's attempts to convince me otherwise, I consider all of the above are triable issues that are central to the allegations of oppression in the petition, and the liquidation remedy Isoflex seeks, whether under s. 227 or s. 324 of the *BCA*.

[44] The threshold issue of whether there are triable issues is therefore met. I turn then to the question of whether these triable issues should be determined by a pure petition proceeding, or by referring the petition to the trial list, or by some hybrid of procedures.

[45] To answer that question, I will consider the *Terasen* factors relied upon by the respondents in the context of the objections to a trial procedure raised by the petitioners:

- a) I will begin by addressing Isoflex's concern about the prematurity of this conversion application.
- b) I will then consider whether the particular issues in this case require an assessment of the credibility of witnesses, taking into consideration Isoflex's arguments that the conflicts in the evidence are immaterial and overblown, particularly on the oppression issue, and that the winding up remedy is inevitable given the conflict between the parties regardless of whether oppression is proven.
- c) Related to the above factor, I will also consider the need for the Court to have a grasp of the evidence for which trial processes would be important.
- d) I will then address the issue of the undesirability of multiple proceedings, and Isoflex's argument that the Action brought by TCM2 is merely tactical and largely unrelated to its petition.

- e) I will then consider the desirability of avoiding unnecessary costs and delay and Isoflex's concerns about the urgency of this petition.
- f) Finally, I will consider whether it is in the interests of justice to convert the petition to a trial.

DETERMINATION

1. Prematurity

[46] One of Isoflex's strongest objections to conversion of the petition to a trial at this point is the incomplete nature of the Webster Respondents' response to petition. Isoflex argues that it should be impermissible for a petition respondent to seek conversion before laying out the entirety of the evidence available to it in affidavit form. Only then, says Isoflex, is it possible for the Court to know whether the affidavit evidence is truly insufficient to resolve the triable issues in the case.

[47] In this case, the Webster Respondents have filed a response and affidavit, but have stated that they "reserve the right" to file more evidence than that contained in their 480-plus page affidavit if conversion is not granted. As I noted during the hearing of this matter, this is not a "right" of the respondent to "reserve". If conversion is not granted, leave to file additional materials would be required. Whether leave would be granted would be up to this Court.

[48] The Webster Respondents say that the *Rules* do not require that a full and complete response be filed in advance of an application to convert. They argue that such a requirement in this case would require an even greater investment of time and resources into the preparation of additional affidavits that ultimately will not be needed if they succeed on their conversion application on the materials before the Court.

[49] In my view, an application for conversion must be founded in evidence, and in most cases affidavit evidence will be needed to establish the triable issues, and that those triable issues raise the types of factual conflicts that a trial is more suited to or that discovery is required to consider fairly. Before me, the parties have pointed

to numerous cases where the Court found deficiencies in the pleadings as they stood, and on that basis either denied conversion as premature (as was initially done in *Bolt 9* and *J.M.H. v. M.A.Q., et al*, 2003 BCSC 1764), or the Court has found that the pleadings were so deficient that conversion was necessary in the interests of justice, as was found by Justice Skolrood, as he then was, in *Taj Park Convention Centre Ltd. v. Sher-A-Punjab Community Centre Corporation*, 2022 BCSC 473 [Taj].

[50] I agree with Isoflex that a party to a petition should not be able to put only the minimal amount of evidence into court to support conversion, and then, if unsuccessful, get multiple kicks at that can as they file additional materials.

[51] In this case, however, I do not have a cursory or pro-forma response. I have over 480 pages of affidavit evidence filed by the Webster Respondents, and this evidence, even if said not to be their complete case, is more than sufficient to establish the factual conflicts relied upon by the Webster Respondents to support their conversion application.

[52] Furthermore, I find that the evidence that has been filed by the Webster Respondents goes well beyond mere vague or flat denials of the evidence put forward by the petitioners. There is extensive documentary evidence filed in support of many of the areas of controversy. I find that the materials before me demonstrate a real conflict in the evidence on the key triable issues, and many more conflicts on the historical and contextual matters plead in the petition and response that are often so important to oppression remedy cases.

[53] While I recognize that it is open to me to require the Webster Respondents to file more affidavit evidence to support their application, or to adjourn the conversion question over to the four to five days reserved next month to hear the petition proper, as Isoflex argues I should do, I find to do so would be an utter waste of party and judicial resources in this case. I have the evidentiary foundation before me to decide the conversion application and I would not delay this decision any further.

2. Whether the particular issues involved require an assessment of credibility

[54] Isoflex notes the many issues that are not in dispute in this case, including what percentage of shares each of the shareholder parties own, that Isoflex used to have equal representation on the Board but their representation has now been diluted, and that Isoflex employees and officers used to have access to TMC2 financial records and production information and that they have now been shut out of that. They also say that the hostility between directors of the Board is self-evident in the materials filed by all three parties, and that that alone should be enough to warrant the ordered dissolution of TMC2. They say that it is unnecessary to prove oppression under s. 227 of the *BCA*, and the law is well settled that in appropriate circumstances an order for dissolution of a company may be made under s. 324 of the *BCA* where, regardless of who is to blame, a company cannot function any longer and winding up would be just and equitable: See *Weisstock v. Weisstock*, 2022 BCSC 209.

[55] Having made that argument, however, Isoflex does not actually seek liquidation of the company except as a means to force a share sale. Further, Isoflex is not prepared to abandon its arguments in oppression for the purposes of expediting a petition hearing on s. 324 alone. Nor do I consider that to be a particularly fruitful path to resolution in this case.

[56] More importantly, while there is little dispute about the relative equity the shareholders have in the company, and that initially Isoflex appointed two of four directors to the TMC2 Board, there is little agreement about the implications of this. Mr. Webster points to correspondence he exchanged with Isoflex principals where Isoflex originally proposed the Webster group appoint two directors to the Board and Isoflex appoint only one. There are controversies and gaps in the evidence as to how that situation then evolved, and what it meant for the reasonable expectations of the parties in terms of Board control.

[57] On Isoflex's key oppression complaint, the conflict and credibility issues are significant and fundamental. Isoflex's affiants, including its founding director, aver that it has been excluded from its longstanding role as the exclusive sales broker to TMC2, and before that, to TMC, and that this role is the subject of an oral agreement in the formation of TMC2 when Isoflex moved from broker to shareholder.

[58] Mr. Webster says that Isoflex was TMC's broker since 2011 subject to their MOU which it was agreed could be terminated by either party on 30 days notice. Until 2019, Isoflex was not a shareholder and could have had no reasonable expectations arising from this MOU. After incorporation of TMC2, Mr. Webster says that no sales or brokering of product was contemplated initially, including by Isoflex, because the ITM Contract took up all of TMC2's capacity. It was only when, in the last two years or so, when TMC2 developed surplus capacity, that the issue of brokering the sales of that additional product arose, and no longstanding practice evolved because the parties were unable to agree, despite many attempts, on Isoflex's role and duties within TMC2 beyond its role as a party to the ITM Contract.

[59] Mr. Webster also asserts non-written agreements or assumptions with respect to TMC's retention of its intellectual property that have mired further agreements as the parties have attempted to define their roles and responsibilities within TMC2 in the absence of a written shareholder agreement being reached. This is an area of considerable importance to Mr. Webster and the other Webster Respondents. While Isoflex denies before me that it has any designs on this intellectual property for itself, it also asserts that because TMC2 owns this intellectual property (not TMC), Isoflex owns 42.5 percent of that intellectual property. Resolution of this issue will require a firm grasp of the controversial historical relationship between TMC, Isoflex and TMC2, and is relevant not only to the reasonable expectations of the shareholders about roles and responsibilities, but also to any remedy ordered by this Court.

[60] The evidentiary record before me shows a lengthy and evolving course of dealing between the parties, marked by frequent and ongoing disagreements in the

last few years regarding their respective roles, obligations, and expectations on the key issues in the petition. In the absence of an executed shareholders' agreement, and other failed agreements such as the attempted and also failed consulting agreement, the shareholders' rights and expectations in this case will have to be determined largely from the parties' conduct, written and oral communications, and competing recollections of events—matters that are inherently credibility-driven.

[61] The conflict between the parties in the petition directly engages the credibility of the parties swearing the affidavits, and the weight to be given to various statements in the affidavits, including statements attributed to others, and the meaning of documents exchanged and relied upon.

[62] The centrality of credibility issues, particularly where oral and not written agreements are relied upon in an oppression case, are frequently found to merit conversion to the trial list, as was noted in *Phaneuf*, *Taj*, *New Great* and others.

[63] This factor strongly favours conversion of this petition.

3. The need for the Court to have a full grasp of the evidence

[64] The need for the Court to have a full grasp of the evidence also supports conversion in this case. As noted by Branch J. in *New Great* with respect to cases where credibility of the witnesses is at issue, "... Our system is based on the presumption that there is a material advantage to be gained by allowing the court to see witnesses answer questions so that it may assess demeanour: *R. v. N.S.*, 2012 SCC 72 at paras. 21-27.": at para 58.

[65] Evidentiary gaps in the petition record also support conversion: *Phaneuf*. In the submissions before me, it was already apparent that there were gaps in the evidentiary record filed on key points, where reference was made to facts or documents not in evidence, including the ITM Contract itself. At this point, the parties have provided only a curated slice of the correspondence between them in their possession, and have not provided disclosure to the others of relevant evidence in their possession other than what will advance their own positions.

[66] Much of the distrust between the principles of these shareholders is generated by suspicions that the other parties are doing something contrary to the others' interests. For example, The Webster Respondents accuse Isoflex and its principals of proposing sales opportunities to TMC2 while refusing to share the client, price and other details of the sale to the TMC2 Board because Isoflex is retaining margins for itself rather than flowing the entire contract price through to TMC2.

[67] Isoflex strongly denies that it is retaining any margins on these proposed deals, but says that it cannot trust the TMC2 Board with its client information because the Board members will attempt to undermine Isoflex's position with its customers by doing an end-run around Isoflex. Isoflex says that none of the opportunities it has presented to TMC2 for surplus isotope supply involve undisclosed margins reserved to Isoflex, and the only reason for their secrecy is a fear that the majority shareholders will separately approach these same customers which they say has already occurred.

[68] Neither party will be in a proper position to resolve this issue without the discovery processes provided by trial procedure.

4. Undesirability of multiple proceedings

[69] TMC2 (supported by the Webster Respondents) argues that conversion is necessary to avoid a multiplicity of proceedings because its recently filed Action raises many of the same contested issues as those raised in the petition, particularly those regarding:

- a) the control of TMC2;
- b) whether an oral shareholders agreement was reached in the absence of a written one;
- c) the origins and reasons for the collapse of good relations between the Webster shareholders and the Isoflex shareholders;

- d) Isoflex's role (or lack of role) in its governance and operations; and
- e) whether Isoflex principals have acted in a conflict of interest or contrary to its fiduciary duties as board members and agents of TMC2 in pursuing opportunities (or withholding opportunities) that prefer Isoflex over TCM2.

[70] Isoflex argues that the Action is tangential to its allegations in the petition, other than that it demonstrates that the relationship between itself, TMC2 and the majority shareholders have now irretrievably broken down. It argues that the Action is purely tactical and favours the Webster Respondents in this petition, and that "there is nothing that will prevent [TMC2] from proceeding with its lawsuit after a share sale" (assuming of course that the wind-up of the company actually sought in the petition does not occur).

[71] I am satisfied that the Action pleads bona fide triable issues. Furthermore, the triable issues of both fact and law raised in the Action significantly overlap with those in the petition, in much the same way a counterclaim might. Although the Action was filed four months after the petition, the issues it raises will have to be answered by Isoflex, and there is a risk of inconsistent verdicts on these issues if one proceeds by way of a more limited petition proceeding and the other has the benefit of the full discovery and trial processes before a different presider.

[72] TMC2's position that the Action could stand as counterclaim in the petition proceeding if the petition was converted to an action would address that concern, and strongly favours conversion in this case.

5. The desirability of avoiding unnecessary costs and delay

[73] Isoflex argues that it has managed to secure four to five days in June for the hearing of the petition, and that conversion would result in the loss of those days and a significant delay in having its dispute with TMC2 and the Webster Respondents resolved.

[74] In the interim, Isoflex says that TMC2 is losing opportunities to contract with other customers for the excess isotopes it is now able to produce beyond those contracted from in the ITM Contract. The most recent of these opportunities is a contract presented to the Board by Isoflex in December 2025 which it says is worth \$24 million dollars, but that TMC2 rejected because of their conflict with Isoflex.

[75] Isoflex asserts that the frustration of this opportunity and others because TMC2 has asserted that it will not allow Isoflex to broker the sale of its surplus isotope supply, is harmful to Isoflex's reputation, which it describes as "irreparable harm". It says that any delay in the hearing of the petition will cause great expense and reputational damage to TMC2.

[76] Isoflex also concedes that its reputation might also be harmed if TMC2 was liquidated pursuant to the orders sought in the petition and Isoflex could not sell TMC2 isotopes at all, which would place Isoflex in breach of its own corporate obligations under the ITM Contract. However, Isoflex argues that, practically speaking, TMC2 would not be dissolved as a result of a court order to that effect, but rather such an order would create the necessary impetus to force the sale of shares in TMC2, which it sees as being possible as early as next month if the petition is able to proceed without conversion. Isoflex argues that the best outcome in this dispute (though not the one pleaded by Isoflex) is for TMC2 to have one shareholder group buy out the other as soon as possible.

[77] For their part, the Webster Respondents deny that there is any real urgency in this case. TMC2 is still operating and fulfilling its contract with ITM and Isoflex. Isoflex is still invoicing and billing and collecting the revenues from ITM and flowing them through to TMC2, for the most part. TCM2 can continue to fulfil the ITM Contract for several more years and still be highly profitable without harming anyone's reputation. Furthermore, they say there is no deadlock with respect to how TMC2 will go about its business with respect to the ITM Contract, or existing or future opportunities, because ownership and control of the company is not equally shared.

[78] Furthermore, the Webster Respondents say that the reserved four to five days of hearing in June, even without conversion, is plainly inadequate given the volume of materials already filed, particularly if hybrid procedures are ordered, and the need for submissions from three sets of counsel for three parties. The scale of the evidentiary record—spanning a 15-year relationship and different companies, multiple affidavits exceeding hundreds of paragraphs, and numerous contested issues—cannot reasonably be addressed within the time allocated. Any hybrid procedures ordered would only further expand the record.

[79] Instead, they say that booking for trials commencing in November 2027 in Vancouver is now available, and December 2027 will be open soon. That is an appropriate time frame to resolve a dispute of this complexity involving a company worth as much as TMC2 is worth.

[80] I agree with the Webster Respondents that the June dates are wholly insufficient for a hearing of the merits of this petition.

[81] I also agree with them that there is no evidence of irreparable harm in the sense of harm that is not compensable by damages. I am not convinced that the reputational harm asserted by Isoflex as a result of the disruption of its ability to reliably broker TMC2 isotopes would be averted by a petition resulting in a liquidation order of that company, or that it can be assumed that such an order would not practically be made although it is being sought.

[82] Rather, I find that the continued operation of TMC2 remains both possible and profitable to both groups of shareholders, and that TMC2 can continue to fulfill its contract with ITM and continue to benefit both shareholders as it has done for the last five years, during which time it has reaped tens of millions of dollars. The inability to pursue additional opportunities for surplus isotopes produced by TMC2 is not an existential threat to either TMC2 or the interests of its shareholders, and any losses suffered by the failure to capitalize on new opportunities prior to resolution of this dispute may properly be considered in the litigation itself. I do not consider that this petition has the urgency pressed on the Court by Isoflex.

[83] I also find that given:

- a) the nature of the contested facts in this case, including substantial disagreements on multiple terms of asserted oral contracts derived from multiple failed attempts at reaching written contracts, that will require extensive examination and cross-examination;
- b) the many documents mentioned before me which are not already part of the record, some of which are the subject of confidentiality clauses with third parties, and others which are referenced but not attached to the affidavits filed thus far;
- c) demands by both shareholder groups for transparency about dealings they are having with third parties that are likely to require disclosure; and
- d) the significant overlap in the factual and legal disputes between the petition and the Action;

the conversion of this proceeding to an action would provide for many of the procedural steps without the need for long chambers applications, and will overall minimize costs and delay.

[84] Finally, I consider that the more robust procedures associated with a trial is proportionate to the interests at stake and the value of this company.

[85] Ultimately, though summary procedures can be faster in appropriate circumstances, I find that the goal of avoiding undue delays actually weighs in favour of conversion in this case. Proceeding by petition in this case risks inefficiency, duplication, and procedural complexity that will ultimately increase, rather than reduce, cost and delay.

6. Whether it is in the interests of justice to convert this matter to the trial list

[86] Ultimately, I am satisfied that it is in the interests of justice that the petition be converted to the trial list.

[87] This is not a decision I make lightly, but I am convinced that the resolution of the issues raised in the petition cannot be fairly or expeditiously resolved in the course of a four to five day chambers hearing this June, or even one of twice that length, on the basis of affidavit evidence alone. Furthermore, I consider that the fair adjudication of this dispute will most likely require discovery of documents, examination for discovery and cross-examination.

[88] I am satisfied that any hybrid procedures I ordered would just add complexity and delay in the circumstances of this case, and not address the issue of the multiplicity of proceedings due to the filing of the related Action. Even without that Action, I find that this is a case that calls out for the full panoply of trial procedures, and that such procedures are proportionate to the financial, reputational and (for TMC2) the existential nature of this petition.

CONCLUSION

[89] In conclusion, I am granting the application to convert. As such, I am dismissing the application to compel sought by Isoflex.

[90] I am prepared to make an order that the petition stands as the notice of civil claim ("NOCC"), unless Isoflex would prefer to file a distinct NOCC.

[91] Similarly, I am prepared to make an order that the responses to petition stand as the response to civil claim, unless the Webster Respondents or TMC2 prefer to file a separate response to civil claim, in which case I would give them some time to do so.

[92] TMC2 advises that it is content to have its NOCC in Action No. S262823 stand for its counterclaim in the Isoflex proceedings, thereby avoiding a multiplicity of proceedings on the same issue. If there are additional joinder issues with respect to the personal defendants to that Action, those can be addressed.

[93] I am vacating the dates set aside in June for the hearing of the petition. Even if I had not converted this petition to the trial list, I am of the view that four to five

days would have been insufficient to hear the volume of materials and issues in the petition and the arguments of three parties. Just the procedural question of conversion took two full days of argument, and even had I limited the Webster Respondents to their filed response materials, considerable reply materials from Isoflex would still be anticipated for the hearing of the petition. The parties are free to use these dates productively in other ways, including seeking mediation. I see many prospects for resolution that would allow this company to go forward and to capitalize on additional opportunities beyond the ITM Contract for the benefit of all, if that is what the parties truly want.

[94] I am prepared to set a three-week trial for November 22 or 29 of 2027 right now.

[SUBMISSIONS OF THE PARTIES]

[95] The parties are referred to Scheduling to seek four weeks in November and/or December of 2027 to the extent that is possible with counsel schedules, or to find another date as soon thereafter as possible.

[96] Isoflex will have three weeks to prepare a notice of civil claim to stand in the place of its petition. The respondents will have three weeks to draft a response to civil claim that will stand in place of the petition responses, and TMC2 will also have that time to re-file its Action in the form of a counterclaim.

[SUBMISSIONS ON COSTS]

[97] Costs will be to the Webster Respondents payable by Isoflex in the cause.

“Marzari J.”