

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

BENJAMIN NASBERG and CARBONE COAL	)	<u>Faron J. Trippier</u>
FIRE PIZZA INC.,	)	<u>Patricia I. West</u>
	)	<u>Natasha Ellis</u>
applicants,	)	<u>Brent Tichon (Articling Student-at-Law)</u>
	)	
- and -	)	for the applicants
	)	
CARBONE RESTAURANT GROUP LTD., LORNE	)	<u>Won J. Kim</u>
RAPKIN, JAMES HUBER, HARVEY JENKALA,	)	<u>Aris Gyamfi</u>
PERCY WIREDU and KRIS KROHN,	)	for the respondents
	)	
respondents.	)	
	)	<u>Judgment Delivered</u>
	)	May 28, 2026

HARRIS J.

INTRODUCTION

[1] In this Application, Benjamin Nasberg ("Nasberg") and Carbone Coal Fired Pizza Inc. ("CCFP") seek oppression remedies, injunctive relief with respect to the issuance of shares which would dilute their shareholdings, removal and/or replacement of the individual respondents as officers and/or directors of Carbone Restaurant Group Ltd.

("CRG"), an order that Nasberg be re-appointed as a director, President and Chief Executive Officer ("CEO") of CRG, and other ancillary relief.

[2] Nasberg's Motion for injunctive relief to restrain and enjoin the respondents from diluting the shares owned by the applicants in CRG and from taking any extraordinary activity outside the ordinary course of business pending further order of the court and/or the pending initial public offering was heard by Suche J. on February 18 and 20, 2026. She granted an Order prohibiting CRG from issuing additional shares or undertaking a commitment to do so, by way of private placement or otherwise, until the issues raised in the Application are decided.

[3] At the outset of the hearing on April 14, 2026, counsel for Nasberg advised the court that despite the request for relief under the oppression remedy set out in the Notice of Application, the only relief being sought by Nasberg was for confirmation of the Nasberg board of directors, which Nasberg asserts consists of himself and Kris Krohn ("Krohn") ("the Nasberg Board"). If the court determines that the Nasberg Board is the lawful board, then there will be no need to consider the balance of the relief requested.

[4] If the court determines that the Board consists of respondents - Lorne Rapkin ("Rapkin"), James Huber ("Huber"), Harvey Jenkala ("Jenkala"), Nasberg and Krohn ("the Board") - it will be necessary to consider whether Nasberg is entitled to any oppression relief.

[5] Nasberg asserts that the respondents Rapkin, Huber and Jenkala are not board members as determined at shareholders' meetings which took place on February 18,

March 13 and April 8, 2026. The respondents say that these meetings were not properly called or constituted and as a result, had no legal impact on the constitution of the Board.

[6] An alternate position advanced by Nasberg is that Huber did not provide a signed consent to act as a director following his appointment in December 2023 and as a result, he is not and never was a director of CRG. Huber says that his written consent is not required and that he always acted as a director in accordance with the By-laws.

[7] In addition, Nasberg relies on an alleged March 10, 2025 resolution which purports to accept the resignation of Rapkin and Huber from the Board. Rapkin and Huber both deny that they resigned and say that they had no knowledge of any such resolution until this litigation was commenced. Jenkala, whose electronic signature appears to be endorsed on the resolution, says he has no knowledge of any such resolution and denies that he signed it.

[8] The respondents say that the Board consists of Rapkin, Huber, Jenkala, Krohn and Nasberg and that the applicants are not entitled to the other relief sought.

[9] For the following reasons, I conclude that the Board consists of Rapkin, Huber, Jenkala, Nasberg and Krohn. I further conclude that Nasberg is not entitled to relief under the oppression remedy.

ANALYSIS

[10] Nasberg was the founder of CRG, a corporation incorporated pursuant to the laws of Manitoba, which conducts business as a fast-food franchise. The Manitoba Companies Office ("Companies Office") listed Nasberg, Rapkin, Huber, Jenkala and Krohn as directors as of February 5, 2026. Percy Wiredu ("Wiredu") is the President and CEO of CRG.

[11] Nasberg and CCFP are shareholders of CRG, as are the individual respondents, apart from Wiredu. Nasberg asserts that he is the majority shareholder of CCFP, however, as I will explain, there is doubt as to whether this is true.

[12] Sean Dollinger ("Dollinger") is a shareholder of CCFP personally and through his company Yikes Inc. ("Yikes"). According to a share register sent to Dollinger by Nasberg in October 2023, Yikes owned 6,285,714 shares in CCFP, Dollinger owned 1,714,286 shares and Nasberg owned 6,287,001.40. This would give Dollinger the majority control over CCFP.

[13] The shareholders' list relied upon by Nasberg to support his assertion that he is the majority holder of shares in CCFP does not reflect any shares for Yikes but allocates an additional 6,185,714 to Nasberg as of January 10, 2022, a date that predates the register referred to above. Dollinger says that Yikes does not have a record of ever requesting any change to its shareholdings in CCFP, nor of authorizing any change nor of having received any consideration for this diminution of its shareholding. He says that he only became aware of this when he was served with the materials in this proceeding on February 4 and 6, 2026. The record does not provide an explanation for this very significant discrepancy.

[14] Significantly, Nasberg admitted that he did not have a resolution of CCFP to commence this litigation. The issues raised by this and other shareholding discrepancies will be discussed later in these reasons.

[15] Returning to the substantive issues, according to the Companies Office filing as of November 28, 2023, Nasberg was the sole Director of CGR. Rapkin says that in or about

2023, he was approached by Dollinger who asked him to join the Board of CRG as a director. Dollinger advised him that CRG intended on commencing a “going public transaction” (or proposed IPO) on the Nasdaq stock exchange. Rapkin says that he had then, and still has, considerable experience in advising companies on best practices and steps to best position themselves for successful private and public placement/offerings. Dollinger advised that CRG was actively seeking qualified individuals to join the Board to assist with a possible public offering. Rapkin says his understanding is that the Nasdaq listing of companies requires at least three independent directors to be appointed to the company’s Audit Committee.

[16] An Annual General and Special Meeting of the shareholders was held on December 28, 2023, at which time the number of directors was increased to five and Nasberg, Rapkin, Huber, Jenkala and Krohn were all elected as directors. According to Rapkin, the Board did not hold a formal Board meeting again until December 3, 2025. Nonetheless, there were informal board-level discussions concerning CRG’s governance, financing and strategic direction ongoing throughout that time. Rapkin was Chair of the Audit Committee which audited financial statements for the years ending 2023 and 2024. During this period, Nasberg would generally oversee the operations of CRG as President. This included general oversight and control over CRG’s bank accounts.

[17] In August 2025, CRG provided a draft registration to the United States Securities and Exchange Commission (“SEC”) which was part of the confidential process required by the SEC in relation to a public offering of shares. On or about September 30, 2025,

Eric Sherb ("Sherb"), the Interim Chief Financial Officer ("CFO") of CRG, advised that CRG had completed its most recent filing with the SEC.

[18] On or about December 2, 2025, Rapkin called a Board meeting for December 3, 2025, for the purpose of:

- a) engaging all members of the Board for the purpose of re-initiating formal meetings of the Board to strengthen corporate governance;
- b) emphasizing the importance of regular Board oversight, particularly in light of CRG's plans to go public and the heightened regulatory overview that will come with that; and
- c) reinforcing the Board's responsibilities with respect to governance, transparency and regulatory expectations.

[19] Nasberg and Krohn did not attend this meeting, however, Rapkin, Jenkala and Huber were all in attendance, constituting quorum.

[20] Aside from the issues with respect to the IPO and the SEC covenants, the Board noted that CRG was in a negative financial position and in dire need of capital to continue operations and to fund the cost necessary to complete regulatory and transactional work required as part of the proposed IPO. An investor had committed approximately \$1.5 million USD through a proposed convertible note to CRG which would have improved financing and provided operational liquidity and assistance addressing the negative financial position of the company.

[21] Huber and Jenkala indicated they had not received updated financial information of CRG and that improved communications and regular meetings of the Board was necessary going forward.

[22] Between that meeting and the Board meeting of December 31, 2025, Rapkin, Dollinger, Huber and Jenkala had discussions regarding the financial status of CRG leading Rapkin to believe that Nasberg had engaged in various misconduct while acting in his capacity as President of CRG. The misconduct identified included that Nasberg:

- a) failed or neglected to file corporate annual returns on behalf of CRG since 2023 with the annual returns for 2024 and 2025 being late in 2025;
- b) failed to file T4's on behalf of CRG employees since at least 2024, causing considerable tax liabilities to be accrued, including \$82,780.52 for outstanding GST/HST remittances and \$512,274.75 for outstanding payroll remittances;
- c) acted to prevent Rapkin and other directors from accessing CRG's Canada Revenue Agency ("CRA") online business portal preventing them from monitoring and obtaining updated assessments of CRG's liabilities to CRA;
- d) utilized a third party, Visionary Growth Fund, to advertise and illegally market CRG share offerings to the public as part of a "pre-IPO investment opportunity" with a "[c]lear path to liquidity with planned public offering" and in so doing falsely advertised that CRG had secured a "[m]ajor Walmart partnership for nationwide pizza distribution" in the United States ("U.S."), all without obtaining Board authorization or approval or consent from

Walmart Inc. and prior to appropriate filings with the SEC (see Affidavit of Lorne Rapkin, affirmed April 2, 2026, at para. 27(Iv)). (On cross-examination, Nasberg first said that the Board approved the ads, but when pushed, said that the ads were approved only by him and Krohn. These ads were of significant concern because they led, as was expected, to a lawsuit by Major Foods Group for misrepresenting a business connection to brands owned by Major Foods Group.);

- e) entered into a high-interest loan agreement at a rate of approximately 32% interest payable over the course of six months without Board authorization and approval and in contravention with CRG's amended By-law. The funds in the amount of \$250,000.00 USD were advanced by Agile Capital Funding LLC to CRG and were deposited into CRG's U.S. Chase Bank account on October 6, 2025, and by the end of that month more than \$206,000.00 USD had been transferred out of that account at the direction of Nasberg. CRG had no ability to make payments on the high-interest loan and was in default of same;
- f) incorrectly filed CRG's annual corporate returns indicating he was the sole director of CRG as of April 1, 2025;
- g) continued to unilaterally file documents with the Companies Office which were inaccurate and resulted in CRG's counsel, MLT Aikins LLP, having to communicate with the Companies Office directly to prevent any further inaccurate filings;

- h) misappropriated funds from CRG's various bank accounts and used the funds for his own personal benefit, requiring Rapkin to personally pay advisors of CRG:
- i. in November 2025, approximately \$90,762.50 USD was deposited into CRG's U.S. Chase Bank account, and approximately \$90,700.00 USD was transferred out of that account by Nasberg in the same month;
 - ii. in December 2025, approximately \$75,000.00 USD was deposited into CRG's U.S. Chase Bank account, and approximately \$72,000.00 USD was transferred out of that account by Nasberg in the same month;
 - iii. CRG's U.S. Chase Bank account statements further reflect individual instances where deposits in the amount of \$50,000.00 USD and \$25,000.00 USD were made to that account, and within one day thereafter wire transfers were executed by Nasberg withdrawing from that account substantially similar amounts;
 - iv. during the period of April 4 to September 5, 2025, \$45,900.00 was electronically withdrawn by Nasberg from an RBC business account; and
 - v. during the period of March 27 to September 26, 2025, \$33,800.00 was electronically withdrawn by Nasberg from another RBC business account;

- i) neglected to make payments to suppliers, former employees and counsel of CRG, exposing CRG to lawsuits both in Manitoba and other provinces. CRG is a defendant in six actions in this court, four of which have arisen since April 2025;
- j) failed to pay several employees' wages resulting in lawsuits and judgments against CRG;
- k) is alleged to have wrongfully terminated CRG's former corporate secretary and marketing officer after she questioned Nasberg about large wire transfers out of CRG's bank accounts. CRG is listed as a defendant in the action of his former employee as against CRG;
- l) caused CRG to be involved in several other outstanding lawsuits including a trademark infringement and false advertising dispute in the New York Southern District Court; a trademark dispute in the Federal Court of Canada which alleges that Nasberg exposed CRG to a lawsuit commenced by Blaze Pizza LLC for a trademark infringement for which the cost award issued against CRG continues to remain outstanding; and litigation in Alberta in which default judgment was entered against CRG resulting in a franchisee dispute, which has now been registered in Manitoba (collectively, the "alleged misconduct").

[23] Sherb says that through his review of CRG's U.S. Chase Bank account statements and through communications with members of the Board, he learned that funds deposited into CRG's operating account were being transferred out by Nasberg immediately after

receipt, without Board authorization or authorization by him as Financial Controller. He further said that the pattern of immediate withdrawal meant that CRG's accounts were chronically depleted such that CRG could not pay its advisors, could not make loan payments and could not remit payroll deductions to the CRA. According to Sherb, the company was operated as a pass-through account rather than as a legitimate business.

[24] The apparent misconduct of Nasberg and consequences to CRG raised concerns at the Board level regarding the viability of the proposed IPO and the ability of CRG to continue to meet its ongoing obligations.

[25] Rapkin expressed his opinion at the December 31, 2025 Board meeting that the proposed IPO would not likely be approved by the SEC if CRG continued to face its current liquidity concerns as CRG remained in a negative financial position. He proposed a private placement of \$1.5 million USD to assist CRG in meeting its liquidity concerns. The private placement was agreed to in principle on December 31, 2025 and tabled for a further Board meeting.

[26] As a result of the Board's concerns about Nasberg's misconduct and mismanagement, the financial status of CRG and the Board's limited/restricted access to the financial records of CRG, the Board resolved, *inter alia*, that Nasberg be requested to resign as CEO and Wiredu was appointed CEO in his place effective January 1, 2026. CRG's lawyer was to communicate the Board's resolutions to Nasberg and to report back to the Board by January 5, 2026.

[27] The resolutions were conveyed to Nasberg and on January 5, 2026, the Board received a requisition from Nasberg to call a Special Meeting of the Shareholders for the

purposes of removing Rapkin, Huber and Jenkala as directors of the Board and replacing them with Nasberg and Krohn.

[28] On January 15, 2026, Rapkin called a meeting of the directors for January 16, 2026. Present at that meeting were himself, Jenkala, Huber and Dollinger along with counsel Won Kim ("Kim") and Tom Provost ("Provost"). A new slate of officers was elected - Jenkala as Chairman, Wiredu as President and CEO, Satish Kumar ("Kumar") as CFO and Sherb as Corporate Secretary. The employment of Nasberg as President and CEO and his executive employment agreement were terminated effective immediately for just cause in accordance with the employment agreement. The Board also addressed appointments of new officers and their duties, the need for compliance and control measures to ensure proper review of CRG's financial record, the issue of funds for the high-interest loan that were transferred out of CRG's bank account and placed in accounts associated with Nasberg without Board authorization and approval and concerns regarding the non-sanctioned promotional activities.

[29] On the same day, Wiredu sent Nasberg a letter informing him of the termination of his employment and removal as an officer of CRG.

[30] On January 17, 2026, counsel sent Nasberg a letter directing him, *inter alia*, to cease and desist holding himself out as having any authority with respect to CRG, to return corporate property and not to access any of the accounts of CRG.

[31] Following the review of the financial statements of CRG for the year ended December 31, 2024, and Nasberg's mismanagement misconduct in relation to CRG's finances, Rapkin noted that liabilities exceeded assets by \$2 million.

[32] On January 22, 2026, Rapkin and Jenkala called a further Board meeting for January 23, 2026, providing 24 hours notice. Rapkin, Huber, Jenkala, Kim, Provost and Dollinger attended.

[33] At that meeting, the Board discussed and considered the various circumstances and factors that might be relevant to determining whether the notice sent by Nasberg on January 5, 2026, requesting a shareholders meeting was a valid requisition under law including:

- a) Nasberg's employment had been terminated for just cause;
- b) CRG was working towards a going public transaction and based on responses from the SEC, was nearing completion;
- c) the Board learned that Nasberg was co-ordinating or directing a false advertising campaign online that led to a major lawsuit against CRG. The campaign falsely claimed a partnership between CRG and Walmart which may very well constitute violations of anti-fraud, securities and broker-dealer registrations and other provisions of U.S. securities laws;
- d) a Nasdaq requirement was that listed companies have an Audit Committee of three independent directors;
- e) that the above-referenced conduct may expose Nasberg to potential orders and charges under applicable U.S. securities law that would constitute disqualifying events under the "bad actor" provisions under applicable U.S. securities laws and CRG is reviewing its options to pursue legal action and remedies against Nasberg in connection with the alleged misconduct;

- f) Sections 129(6) and 137(2) of ***The Corporations Act***, C.C.S.M. c. 225 (the "***Act***") require that a requisition to call a shareholders meeting state the business to be transacted at a meeting in sufficient detail to permit shareholders to form a reasoned judgment thereon; and
- g) the notice did not provide shareholders with any detail or context of the going public transaction, Nasdaq's directors requirements or the alleged misconduct or any biographical details to permit the shareholders to form a reasoned judgment on the proposed resolutions to set the number of directors of CRG and to elect Nasberg and Krohn as directors of CRG, resolutions which, approved by the CRG's shareholders, would compromise the going public transaction.

[34] The Board concluded that the notice was deficient and did not constitute a valid requisition within the meaning of s. 129(6) and s. 137(2) of the ***Act*** which requires that the requisition state the business to be transacted at a meeting in sufficient detail to permit shareholders to form a reasoned judgment thereon. The Board also approved a private placement of 5 million common shares for \$5 million USD, with shareholders being entitled to subscribe on a *pro rata* basis relative to their current ownership of all issued and outstanding shares.

[35] In their letter to Nasberg of January 23, 2026 advising of their decision, the Board noted that it was in the best interest of CRG to call a meeting of the shareholders to, *inter alia*, elect a board of directors that will satisfy the Nasdaq directors requirements and facilitate the going public transaction. Nasberg was also reminded of the

cease-and-desist direction of the Board and of the meeting of the shareholders called for March 13, 2026.

[36] Simultaneous with the letter to Nasberg, the Board sent a notice to the shareholders with respect to the Annual General and Special Meeting of the Shareholders to be held on March 13, 2026 regarding the proposed private placement. Nasberg was included in the notice list as both a shareholder and director. The notice informed the shareholders that they were being offered the opportunity to participate in the private placement on a *pro rata* basis based on their relative proportion of ownership.

[37] On January 26, 2026, after receiving the Board's notice, Nasberg sent out his own notice of a Special Meeting of Shareholders to be held on February 18, 2026. Despite his termination, the cease-and-desist letter sent by CRG's counsel on January 17, 2026, and the reminder of those facts in the Board's January 23, 2026 letter, Nasberg continued to hold himself out as President and CEO of CRG, did not advise the shareholders of the fact that he had been terminated as President and CEO because of financial irregularities, or at all, nor did he advise shareholders of the Nasdaq requirement for three independent directors for the going public transaction and how reducing the Board to two directors might impact that transaction or why removing Huber, Rapkin and Jenkala would be in the interests of the CRG.

[38] Nasberg admits that contrary to s. 129(1)(b) of the **Act**, he did not send his January 26, 2026 notice to the directors, nor was it sent to all of the shareholders. The notice was sent only to those shareholders who had email addresses with the CRG. It is known that Greg Hoffman, the owner of Cap Mines which has 1 million shares in CRG,

Eva Marie Dajer Portoreal, Boston Crust and Dollinger did not receive notice of this shareholders' meeting. Dollinger says that he first learned of the meeting when reading Nasberg's Supplemental Affidavit, affirmed February 13, 2026.

[39] Nasberg says that this court has discretion pursuant to s. 139(2) of the **Act** to make any "order it thinks fit" to cure the defective notice. In the circumstances, I am not prepared to cure these defects as Nasberg did not act in good faith with respect to this notice. It is apparent that Nasberg was trying to avoid the current Board members and was going behind their backs to achieve his objective of taking over the Board. He knew who they were and where they were, and he could have provided notice to them. I do not accept Nasberg's argument that the Board had notice when they received his Supplemental Affidavit, affirmed February 13, 2026. He deliberately chose not to provide appropriate notice, and the court will not sanction such conduct. Moreover, it is known that besides the other directors, at least four other shareholders did not receive notice and that Nasberg sent the notice only to shareholders for whom CRG had email addresses.

[40] Finally, as will be discussed later, there is significant uncertainty with the respect to the shareholdings and shareholders (or the "cap table") of CRG, raising further questions as the validity of the notice.

[41] Nasberg submits that the court can validate the election of directors even if the meeting had irregularities when the irregularities do not "substantially affect the majority wishes of qualified voters" (see **Dumont v. Manitoba Metis Federation Inc. et al.**, 2004 MBCA 149, at para. 66).

[42] These circumstances are much different than those in ***Dumont*** where departures from the Election By-Law by the Chief Electoral Officer were “done in the interests of conducting an impartial election in which qualified voters would be enfranchised, thus leading to a just and democratic result, not just for the presidential candidates, but for all candidates in all seven regions” [emphasis added] (at para. 63). Here, Nasberg disenfranchised an unknown number of shareholders and deliberately disenfranchised the directors.

[43] Further, the notice was substantively defective in that it did not disclose that Nasberg’s employment was terminated by the Board for alleged financial misdeeds and illegal advertising. In addition, he continued to hold himself out as President and CEO.

[44] For these reasons, I find that notice of January 26, 2026, and all business allegedly conducted at the February 18, 2026 meeting, including the alleged resolutions to elect Nasberg and Krohn as the sole directors of the Board, are a nullity.

[45] On March 9, 2026, Wiredu sent a letter to the shareholders advising of the decision of the Board to postpone the March 13, 2026 shareholders’ meeting to April 27, 2026 to allow additional time for these court proceedings. There is nothing improper about this as suggested by Nasberg. There was an active litigation, and it is entirely appropriate for the Board to hit pause until issues raised in the litigation were resolved.

[46] However, Nasberg was not prepared to wait for the court process to conclude and sent an email on the same day advising that the meeting would take place as originally scheduled. The distribution list was not included in Nasberg’s evidence, so it is not clear

if he relied on the distribution list that has already been determined to be deficient. However, notice was not sent to Huber, Jenkala and Rapkin.

[47] This notice was also misleading in that it referred to matters that were no longer part of the Board's plans, including that the 50:1 voting rights private placement that did not materialize, as well as the Board's resolution of December 31, 2025, approving a \$1.5 million USD convertible note that was not finalized and was replaced by another private placement that would not dilute the shares of shareholders who chose to participate. As well, Nasberg continued to hold himself out as President and CEO despite the termination of his employment in January 2026 and the cease-and-desist notice.

[48] On March 13, 2026, Nasberg sent a letter to the Board advising that resolutions removing Jenkala, Huber and Rapkin from the Board had been unanimously passed at the shareholders' meeting of the same date and directing them to cease and desist in holding themselves out as directors. According to Nasberg, he and Krohn were the sole directors.

[49] I agree with the respondents that the notice for the March 13, 2026 meeting was deficient in that it failed to provide the shareholders with accurate information regarding CRG's financial position and its need for capital. To the extent that Nasberg knew of these inaccuracies, it would be fair to say that his notice was deliberately misleading.

[50] Further, no evidence was proffered to establish that Nasberg sent the notice to all shareholders or that he relied on anything other than the deficient list which he relied on for his January 26, 2026 notice. As noted, he did not provide Huber, Jenkala and Rapkin with notice.

[51] Nasberg then purported to call a shareholders' meeting for April 8, 2026 to confirm the resolutions of the February 18, 2026 and March 13, 2026 meetings. There was no evidence led as to whom Nasberg provided notice of this meeting and there is no reason to believe that he relied on anything but the deficient list that he relied on with respect to the February and March meetings.

[52] As noted earlier, there are concerns regarding the "cap table" which establishes the list of shareholders for the purpose of notice. For example, there is evidence that three parties – Cap Mines, Anita Bealer and Rapkin - were entitled to shares which had not been issued. Nasberg admits that Rapkin "may be entitled to shares, but the evidence provided on this issue is insufficient to make a determination at this time". A shareholder whose interest was not listed on the cap table would not get notice of shareholders' meetings. As noted earlier in these reasons, the evidence establishes that there are parties who are entitled to shares but who have either not been issued those shares or are not listed as shareholders.

[53] There is also a concern with respect to the extent of the shareholdings of Nasberg and entities related to him and/or his family. Rapkin deposed that he has no knowledge of the issuance of shares or reservations of shares under convertible securities having been approved by the Board after MLT Aikins LLP conducted the audit of and updates to the shareholder registry in April 2024. Despite this, the register shows 1,000,000 shares issued to Nasberg and a company allegedly controlled by Nasberg and another 250,000 shares being issued to his father, Larry Nasberg, in March 2025. This is a significant discrepancy which must be explained and reconciled.

[54] The issue of the shareholdings of CCFP referred to earlier in these reasons are also important to sort out as it has a significant bearing on control of CRG. On its face, it appears that Nasberg improperly allocated shares belonging to Dollinger and/or Yikes to himself, not only depriving Dollinger and Yikes of their voting rights but tipping the balance of the shareholdings of CRG in Nasberg's favour.

[55] I agree with the respondents that until these issues are resolved, shareholders' meetings cannot be validly convened, and any resolutions from any shareholders' meeting cannot be assumed to reflect the will of the majority.

[56] Despite his efforts to remove Huber, Jenkala and Rapkin from the Board in 2026, Nasberg also says that Huber and Rapkin resigned as directors in March 2025 and that Huber was never a director.

[57] Nasberg says that Huber was not present at the December 2023 meeting where he was appointed and as he did not provide his written consent to act as a director, he was "never formally appointed or included in board communications or actions". He says that Huber did not participate or attend any directors' meetings between December 2023 and December 2025.

[58] These allegations are incongruous with his repeated attempts to call shareholders' meetings to remove Huber and Rapkin from the Board. If he believed that Huber and Rapkin had resigned or that Huber was never a director, it would not be necessary to call repeated meetings of the shareholders to remove them.

[59] On December 31, 2025 Nasberg sent Huber a document titled "Confirmation of Non-Appointment and, if Applicable, Resignation" for his signature based upon the

premise that Huber did not consent in writing to his appointment as a director. Huber responded that he was properly elected as a director and that he had continued to act as a director. According to Huber, at no time before this had Nasberg, or anyone else, ever suggested to him that he was not a director of CRG.

[60] The requirement pursuant to s. 4.05(b) of the Amended and Restated General By-Law, By-Law No. 1, upon which Nasberg relies in support of his assertion requires that the person (i) has consented in writing to act as a director or (ii) has *acted* as a director pursuant to the election or appointment [emphasis added]. There is no requirement that a person attend Board meetings to be a member of the Board. In any event, according to Rapkin, there were no Board meetings between December 28, 2023, and December 5, 2025. Rapkin and Jenkala say that they understood at all relevant times that Huber was a director.

[61] I am satisfied on the evidence that even if there were no formal Board meetings for two years, Huber participated in informal Board level discussions concerning CRG's governance, financing and strategic direction throughout this whole period. As a Board member he communicated directly with Nasberg in his capacity as shareholder, director and former President and CEO of CRG. He provided his address to Nasberg's assistant, apparently for corporate filings with the Manitoba Securities Commission. Huber has acted as a director continuously from his appointment in December 2023.

[62] Nasberg also says that Rapkin and Huber resigned from the Board on March 10, 2025 pursuant to a resolution which purports to have the electronic signatures of Nasberg, Krohn and Jenkala. There is no evidence that this resolution was circulated

prior to this litigation. In fact, it appears that the only person in this litigation who had knowledge of it was Nasberg.

[63] Jenkala says that while the signature on the resolution resembles his, it does not look accurate. He says that he does not have a specific recollection of the meeting of March 10, 2025, or of the purported resolution or of signing the same. He says that Rapkin and Huber told him that they never resigned. He says that had he been told that they resigned he would have questioned their attendance at subsequent Board meetings. He says he has worked cooperatively with Mr. Rapkin in scheduling and conducting directors' meetings since March 2025. He says that he understood at all relevant times that Rapkin and Huber were directors.

[64] Rapkin unequivocally denies that he resigned. He says that he never agreed to resign, never submitted a written resignation, never communicated any intention to resign and has remained a director of CRG.

[65] Huber likewise says that he never resigned as a director of CRG and prior to December 31, 2025 no one, including Nasberg, asked him to resign.

[66] I am satisfied that the meeting and discussions which Nasberg allege occurred with respect to the alleged resignations of Huber and Rapkin did not occur. All of the evidence is entirely inconsistent with any notion that Rapkin and Huber resigned as alleged by Nasberg. If the resolution was legitimate, one wonders why Nasberg thought it necessary to have Huber sign a document acknowledging that he never acted as a director. I conclude that the alleged resolution is a fabrication.

[67] The conclusion that Huber and Rapkin were directors continuously from the date of their appointment in 2023 disposes of Nasberg's submission that there was an absence of quorum for the Board meetings of December 3 and 31, 2025 and January 16, 2026. Quorum for the Board requires three other directors to be present. While both Nasberg and Krohn were absent from those Board meetings, Rapkin, Huber and Jenkala were all present and had the lawful authority to act.

[68] I conclude that the directors of the Board of CRG are Rapkin, Huber, Jenkala, Nasberg and Krohn.

[69] Nasberg asks the court to make a finding of oppression against the respondents with respect to each meeting of the shareholders, as the respondents refused to recognize the meeting, purported to ignore the shareholders' votes, threw up procedural roadblocks in an obstreperous manner, all for the purpose of wrongfully gaining control of the corporation.

[70] Having regard to my analysis and conclusions with respect to the shareholders' meetings that Nasberg purported to call and the make-up of the Board, I conclude that Nasberg's claim for oppression must fail. I am satisfied, based on that analysis, that the respondents acted responsibly and lawfully throughout, in the interests of CRG. The Board, recognizing the dire financial status of CRG, acted reasonably in considering sources of funding that would enable CRG to continue its operations. The duty of the directors is not to an individual shareholder, but to CRG. Moreover, the planned offering would permit existing shareholders to participate proportionate to their current holdings

to maintain their *pro rata* share in CRG. As stated by the Alberta Court of Appeal in ***Shefsky v California Gold Mining Inc***, 2016 ABCA 103:

[72] ...Quite simply, an existing shareholder cannot complain about subsequent share offerings even if it has the effect of diluting that complaining shareholder's shares, provided the share offering is done in the best interests of the corporation. And, no shareholder has the right to acquire additional shares and no corporation is obliged to offer additional shares to existing shareholders....

[71] The shareholders' meetings that Nasberg purported to call were not properly called and no decisions allegedly made at these meetings were validly made.

[72] Nasberg's expectation that he would retain his position on the Board and his employment after his mismanagement and misconduct were discovered is also not objectively reasonable. It is abundantly clear that he exposed CRG to serious legal and financial liability.

[73] Further, at least in respect of the termination of his employment, Nasberg is not entitled to seek an oppression remedy as stated in ***Brar v Brar et al.***, 2018 MBCA 87:

[32] As explained, the oppression remedy was not meant to be a substitute for pursuit of legal rights. It was enacted to address a specific gap in the law. Unhappy corporate stakeholders are not entitled to pursue an oppression claim when they have legal redress that will adequately compensate them.

[74] The appropriate redress would likely be through an action of wrongful dismissal.

[75] The application is dismissed and the injunction is set aside, with costs.