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<p>Fiduciary Duties in Canada Ellis Release No. 3, April 2024</p>
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This service gives a comprehensive, up-to-date case law analysis of fiduciary responsibility. Separate chapters give specific analysis of fiduciary duty as it applies to each individual business and professional relationship. The updatable format ensures currency.

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What's New in this Update:

This release features updates to Chapter 2, Trustees; Chapter 3, Agency; Chapter 4, Substitute Decision-Makers; Chapter 5, Executors and Administrators; Chapter 8, Real Estate Agents; Chapter 11, Stockbrokers and Financial Advisors; Chapter 12, Lawyers; Chapter 20, Directors; Chapter 25, Governmental Authorities.

Highlights:

- **True Fiduciaries — Trustees — Presumption of Resulting Trust** — The plaintiff brought a claim against his son and former daughter-in-law regarding the transfer of \$500,000 by the father to the son, to assist in the purchase of a family home. The issue was whether the funds were advanced as an equity investment (as alleged by the plaintiffs), an interest free loan (as alleged by the son), or a gift (as alleged by the defendant former daughter-in-law). It was undisputed that the father had advanced the funds for no consideration and that the funds had been used to purchase the property. As such, a presumption of a resulting trust arose: *672047 B.C. Ltd. v. Johal*, 2023 BCSC 2261, 2023 CarswellBC 3847 (B.C. S.C.).
- **Financial Advisors — Stockbrokers and Financial Advisors — Pleadings — Generally** — Court of Appeal decided the question of whether a class action proceeding disclosed a cause of action for breach of fiduciary duty between certain investment advisors and a group of their clients. The certification judge had held that the claim did not disclose such a cause of action. The decision was appealed to the Divisional Court where a majority of the Court agreed with the certification judge. However, Sachs J., in dissent, found that the claim did disclose a cause of action. The Court of Appeal essentially agreed with the dissent, allowing the appeal and declaring that the claim did disclose a cause of action for breach of a class-wide fiduciary duty. The Court remitted the action to the Superior Court of Justice for a fresh determination, by a different judge, of the common issues and preferable procedure certification criteria. The Court was guided by the S.C.C. in *Hodgkinson v. Simms*, the leading case on when investment advisors can be found to have a fiduciary relationship with their clients, noting that such a determination remains challenging: *Boal v. International Capital Management Inc.*, 2023 ONCA 840, 2023 CarswellOnt 19786 (Ont. C.A.).
- **Professionals — Lawyers — Breach of Fiduciary Duty — Examples of Application of Principle** — The Court of Appeal upheld the lower court's decision not to disqualify a law firm after a finding that it had breached the bright line rule. The judge had determined, with respect to expropriation proceedings, that there was no risk of improper use of confidential information because the law firm had not received any such relevant

information. In addition, the defendant corporation's interests would not be materially and adversely affected. In other words, there was no risk of impaired representation. The contextual factors the judge considered included whether there was evidence of deliberate acts, bad faith, preferred interests or other breaches of the law firm's duty of loyalty. He also considered the fact that disqualification would result in the City of Winnipeg losing its counsel of choice: *The City of Winnipeg v. 3177751 Manitoba Ltd.*, 2023 MBCA 100, 2023 CarswellMan 429 (Man. C.A.).