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COMMENTARIES ON ONTARIO CORPORATE LAW

Wayne D. Gray,
Release No. 9, December 2024

Gray's *Commentaries on Ontario Corporate Law* provides a current and comprehensive overview of the law and includes full annotations of the Ontario *Business Corporations Act*, the *Business Names Act*, the *Corporate Information Act*, the *Co-operative Corporations Act* and the *Extra-Provincial Corporations Act*, including all the regulations and prescribed forms for these statutes, as well as pertinent government publications.

What's New in This Release

This release features updates to Appendix LM. Legal Memoranda.

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Highlights

- **Case Studies — Application of the Oppression Remedy to Public Companies — Case Studies — Application of the Oppression Remedy to Public Companies** — The oppression remedy has been applied to public corporations in ways that differ sharply from the typical application to private companies. Whereas in private companies the primary focus of an oppression claim is typically on ways to separate the minority shareholder from the minority (such as through a buyout of shares or, less commonly, a liquidation of the corporation itself), investors in most public corporations, by their nature, enjoy a market for the liquidation of their securities. The corporations themselves are too large to warrant the imposition of the heavy cost externalities of a liquidation on investors, employees, customers, suppliers and, in some cases, local communities. Therefore, the focus of attention for investors in public corporations tends to be much more varied than on the liquidity of its issued securities.
- **Case Studies — Private Corporations Engaged in Commercial Real Estate Investment or Development** — Private corporations that carry on the business of investing or developing commercial or residential real property present some unique problems, calling for nuanced solutions. The corporation holds a marketable commodity that can be liquidated with little or no external cost imposed on parties other than the warring shareholders, reducing an impediment that applies to the liquidation of corporation carrying on an active business with employees, customers, suppliers and others.
- **Due Diligence Defence to Liability for Unpaid Statutory Remittances** — Several potentially onerous liabilities are imposed on directors outside the provisions of the applicable corporate statute. For example, some of the most common sources of personal liability for directors arise under statutes requiring the corporation to pay: employee tax remittances; withholding taxes owing by non-residents of Canada; employer and employees components of Canada pension plan contributions and employment insurance premiums; net goods and services tax and harmonized sales tax remittances; and air travelers' security charges. These statutory regimes all have certain features in common, including a statutory due diligence defence.