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BRITISH COLUMBIA CORPORATION MANUAL SECOND EDITION Borden Ladner Gervais LLP Release 3, April 2024

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This resource provides expert analysis of all recent changes in B.C. corporate legislation, as well as section-by-section commentary and comparisons between equivalent provisions of both the old and new Acts. It also features an extensive analysis of the latest court decisions, an up-to-date table of concordance linking both the new and old B.C. Acts to their equivalents in Canada, Ontario and Alberta, and related statutes and Regulations contained in the *Cooperative Associations Act*, *Securities Act*, *Small Business Venture Capital Act*, *Credit Union Incorporation Act*, *Financial Institutions Act* and *Society Act*.

What's New in this Update

This release features updates to XVII. Remedies Table – Breach of Fiduciary Duty by Directors and Officers in Appendix A. Analysis. This release also features updates to Appendix B. Business Corporations Act XI. Summaries of Major Corporate Events under British Columbia's Business Corporations Act including updates to BI. Meetings of Shareholders, Summary E1. Dissolution and Liquidation, E5. Court Proceedings, and E8. Company Alterations. This release also features updates to Appendix § N:16 Summaries of Cases - Sanctions Pursuant to Part 18 – Enforcement of Securities Act under Appendix N (Securities Act).

Highlights:

- **Remedies Table — Breach of Fiduciary Duty by Directors and Officers — Damages/Equitable Compensation** — In light of Justice Mainella's decision on the appropriateness of summary judgment and the concessions made at the hearing of the appeal, there was no basis to interfere with the motion judge's award of punitive damages. Justice Mainella did, however, consider it necessary to comment on the quantum of punitive damages ordered by the motion judge. Despite the thoroughness of the motion judge's reasons generally, how he arrived at the figure of \$100,000 in punitive damages as being "reasonable in the circumstances" was not readily apparent given that he appropriately concluded that Sheegl's outrageous conduct included not only taking over \$300,000 in bribes as a fiduciary, but also repeatedly attempting "to cover up his wrongdoing". The bribery scheme impacted not just one or even many victims, but public confidence in municipal government generally. Justice Mainella observed that it should not be forgotten that Sheegl was the most senior civil servant in the administration of the City heading up a construction project with the objective of providing the infrastructure for public safety. In Justice Mainella's view, satisfying the needs of denunciation and deterrence in the award for punitive damages was significant to send the correct message to other ethically bankrupt officials or business people and the public generally that the civil law will administer punishment fairly and firmly when necessary. Justice Mainella explained that the conduct of Sheegl was so serious and so reprehensible that the bounds of rationality could have justified a much higher award of punitive damages than \$100,000 to satisfy the need for retribution, deterrence and denunciation in light of the total award and the conduct in issue because the integrity of public finances must be protected by the courts from large-scale bribery and the systemic ignorance of fiduciary duties, particularly those involving the

most senior public officials. Accordingly, the quantum of the motion judge's award of punitive damages should be understood in the future to be a precedent within the bounds of rationality. It was not an award that gave rise to any concern of disproportionality, nor could it be said to be an award that tested the limits of the bounds of rationality given all of the relevant circumstances: *Winnipeg (City) v. Sheegl et. al.*, 2023 CarswellMan 249, 2023 MBCA 63 (Man. C.A.).

- **Summaries of Major Corporate Events under British Columbia's Business Corporations Act — Civil Proceedings and Structural Changes — Dissolution and Liquidation — Powers and Duties of the Court — Case Law** — Justice Marchand agreed that “the formal construct of the business is not the focus of the inquiry under s. 324.” The judge was correct when he stated that “[t]he partnership analogy does not require that the business was in fact a partnership before being incorporated.” He was also correct to rely on the proposition that “[t]he Court is not engaged in a labelling exercise in determining whether a partnership analogy is appropriate, but in an assessment of a constellation of factors that may, as between one person and another, make it unjust to insist on a strict application of legal rights.” Justice Marchand concluded that it was open to the judge to conclude that WHL historically resembled a partnership and had been formed or continued on the basis of personal relationships and mutual confidence between family members. While Justice Marchand agreed that the judge was obliged to consider the reasonable expectations of stakeholders, Justice Marchand did not agree that the judge erred by failing to expressly do so. The judge was not obliged to refer to every piece of evidence and argument. In Justice Marchand's view, when the judge concluded that Albert had a reasonable expectation of being involved in the high-level management of WHL, he must be taken to have concluded that Walter and Tony's expectation of carrying on without his involvement was unreasonable. In Justice Marchand's view, Walter and Tony's appeal failed because it was based on a restrictive, categorical and formulaic approach to the court's broad discretion under sections 324(1)(b) of the BCA. Their approach was at odds with the authorities and they had not identified any basis for interfering with the judge's exercise of discretion: *Weisstock v. Weisstock*, 2023 CarswellBC 2645, 2023 BCCA 352 (B.C.C.A.).

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