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<p>PROFITING FROM RISK MANAGEMENT AND COMPLIANCE</p> <p>Archibald • Jull</p> <p>Release No. 10, November 2024</p>
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Release Updates

This publication provides an important perspective on the liability of organizations in regulatory and criminal contexts, and deals with issues that are relevant to many areas of the law including occupational health and safety, the environment, competition and securities. Expert guidance and insightful analysis is provided on the basis for regulatory and criminal liability, how regulations apply to organizations and individuals, how the principles of sentencing will impact upon a given scenario, and navigating the regulatory and criminal liability systems in Canada.

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What's New in this Update

This release features updates to Appendix B. Sentencing Tables including updates to VIII. Offences under Competition Act, IX.1 Violation of General Administrative Monetary Penalties Scheme under the *Telecommunications Act*, XIII. Offences Under Provincial Securities Acts, XVIII.1 Canadian Investment Regulatory Organization (CIRO), XIX. Offences Against Environment, XX. Occupational Health and Safety, and XXI. Miscellaneous Regulatory Offences.

Highlights

Sentencing Tables — Offences under the Competition Act — Misleading Advertising — The Respondent made Representations to the public in Canada about the price at which consumers could purchase Subscription Services. Making a price representation that is not attainable due to additional obligatory charges or fees, a practice known as drip pricing, constitutes a false or misleading representation under the Act, unless the obligatory charges or fees represent only an amount imposed by or under an Act of Parliament or the legislature of a province. The Commissioner concluded that the price Representations were not attainable outside of Quebec due to the addition of the Music Royalty and Administrative Fee, an obligatory fee that was imposed by the Respondent on consumers that they must pay on a monthly basis to access the Respondent's Subscription Services. The Commissioner concluded that the Music Royalty and Administrative Fee was not imposed by law directly on consumers. The Music Royalty and Administrative Fee increased the monthly cost of Subscription Services by approximately 10% or 20%, outside of Quebec, depending on the subscription plan chosen. The Commissioner concluded that certain Representations, outside of Quebec, as to price made by the Respondent in promotional emails created a materially false or misleading impression that consumers could purchase Subscription Services at the price represented, whereas consumers were also required to pay the Music Royalty and Administrative Fee, an additional obligatory non-governmental fee, on a monthly basis to access the Respondent's Subscription Service. The Respondent shall pay an administrative monetary penalty of \$3.3 million. The Tribunal agreed to more favourable terms in this Agreement than would otherwise be the case, in light of the changes that the Respondent made to its Website in December 2023 to address certain representations at issue: *The Commissioner of Competition v. Sirius XM Canada* (Competition Tribunal, Registered Consent Agreement CT-2024-004, dated June 4, 2024).

Sentencing Tables — Miscellaneous Regulatory Offences — Contempt of Court — Bige, Gallagher, and Leyden appealed sentences imposed on them following their convictions for criminal contempt of court. Their contempt consisted of blocking roads and

driveways that led to worksites operated by Trans Mountain. That conduct violated an injunction that prohibited persons from impeding Trans Mountain's workers from accessing its premises. Each of the appellants was sentenced to 28 days' imprisonment on their first conviction. In addition, Gallagher received a 90-day jail sentence for a subsequent conviction. All three appellants identify as Indigenous. The main issue on this appeal was the extent to which considerations applicable to sentencing of Indigenous persons were properly applied in the appellants' cases. Justice Groberman noted that of particular importance was an argument that the appellants ought to have been treated more leniently because of their belief that the injunction did not apply to them, as they claimed they were acting appropriately under Indigenous law. Leyden, in particular, suggested that his respect for Indigenous legal principles was raised before the sentencing judge, and it formed a ground of appeal. Leyden's assertion that he was following Indigenous laws was much stronger than that of Bige or Gallagher. That said, there was no assertion that Indigenous laws compelled Leyden to defy the injunction. Rather, he indicated that his goal was to appear before the court to make arguments that the pipeline should not be expanded because it traversed unceded territory. Far from being an imperative of Indigenous law, the goal of disobeying the injunction appeared to have been to appear before a common law court in order to make an argument about the use of unceded territory. Importantly, such an argument could have been advanced without defying the injunction. Leyden could have sought to set aside or modify the injunction as it applied to Indigenous people, or, alternatively, could have challenged the approval of the pipeline. In fact, the Tsleil-Waututh and Squamish Nations had already taken such a challenge Justice Groberman concluded that Leyden's attachment to principles of Indigenous law did not serve to diminish his culpability in a manner that could have affected his sentence. Justice Groberman considered the argument that the sentences imposed were unfit and concluded that the 28-day sentences were in keeping with others that had been upheld on appeal where factors similar to the ones in issue were at play. The judge considered all relevant factors, and reached a conclusion that was entitled to deference: *R. v. Leyden*, 2024 CarswellBC 1778, 2024 BCCA 227 (B.C.C.A.).