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PROFITING FROM RISK MANAGEMENT AND COMPLIANCE

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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 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 Provincial Securities Acts — The Panel accepted evidence that: a) The Respondents attracted investors through the use of an investor's testimonial statement and endorsement who did get in at the beginning and did, in fact, earn the promised returns. That same investor became a victim of this fraud when his later investment was diverted by the Respondents to repay three investors' returns. b) White also attracted some investors by projecting shared spiritual values and by carefully building trust through representations about her family's alignment with the Salvation Army Church and common dreams and aspirations, and through her calculated use of faith-related institutional logos on investment-related materials. Those were not acts of inadvertence. c) White avoided accountability to investors by being difficult to locate and communicate with and, when reached, by continuing to promise repayments to those investors, in some such cases, for years. d) The Respondents used pressure and aggressive tactics on investors by creating a false sense of urgency and going so far as to accompany one investor to their financial institution in order to facilitate payment to the Respondents despite attempts by staff at such institution to warn such investor. The Respondents committed serious contraventions of the Act. The fact that White maintained virtually no business records and failed to comply with demands made for information and documents that were reasonably required for the investigation of the matters only served to make matters worse. The irreparable harm caused to investors and the negative impact the Respondents' acts and omissions had on the trust investors generally have in the fairness and integrity of our capital markets called for significant penalties. No evidence would lead the Panel to conclude that, at the outset, the Respondents set about to distribute securities illegally, and to defraud investors and obstruct justice. The Panel imposed on White an administrative penalty of $350,000. The executive director did not seek an administrative penalty against Kingdom and the Panel concluded there was no reason to depart from that approach: *White*, 2024 CarswellBC 1170, 2024 BCSECCOM 137 (B.C. Sec. Comm.).

Sentencing Tables — Miscellaneous Regulatory Offences — Central Okanagan Responsible Dog Ownership Bylaw — With respect to the trial judge's statement that Sisett made no argument

to the contrary, Justice Veenstra noted that the transcript of the hearing indicates that Sisett did make arguments to the contrary — albeit without reference to authority and not at great length. He argued that the costs were unsupported, that the overall claim was oppressive, and that the claim failed to recognize Sisett's success on three of the seven charges. Justice Veenstra concluded that the trial judge failed to recognize those submissions and thus did not deal with them in the Sentencing Reasons. In Justice Veenstra's view, the trial judge erred in failing to consider the important costs principles raised by those submissions. That was an error in principle and justified appellate intervention notwithstanding the discretionary nature of a costs order. The award of costs of the trial judge exceeded the total of all of the other financial awards in the judgment. That in and of itself raised concerns of proportionality. In Justice Veenstra's view, the fact of Sisett's success on three of the seven counts, which took up a substantial portion of trial time should have been recognized and accounted for by the trial judge in the assessment of costs. In Justice Veenstra's view, the trial judge erred in principle through a failure to consider questions of proportionality and degree of success. As a result, the award of costs must be set aside. The next question was whether to assess costs as part of the appeal judgment or to refer the matter back to the trial judge. Given the amount of the costs award, the costs already incurred, and the costs that would be incurred by further proceedings in the Provincial Court, Justice Veenstra concluded that it would not be appropriate to refer the matter back to the trial judge. In Justice Veenstra's view, it was appropriate for an appellate court to adjust the award to reflect those two factors (proportionality and degree of success). The total financial award (apart from costs) was $5,000 ($4,000 in fines and $1,000 in restitutionary payments). In light of that, and of Sisett's substantial success on some of the issues at trial, it was Justice Veenstra's view that it would be appropriate to reduce the award in respect of costs to $2,500: *Sisett v. Central Okanagan (Regional District)*, 2024 CarswellBC 1231, 2024 BCSC 730 (B.C.S.C.).