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<p><b>ADVISING THE FAMILY-OWNED BUSINESS</b></p> <p><b>Robert M. Halpern, LL.B.</b></p> <p><b>Release No. 2024-2, April 2024</b></p>
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This looseleaf service is expertly designed to assist the professional advising the family-owned business in legal matters. It explores the main stages in the life of the business from its start-up to its operation and any alterations in its structure and/or participants.

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### **What's New in this Update:**

This release features updates to Appendix D.50 Remedies Table – Breach of Fiduciary Duty. Additionally, this release also features updates to Appendix PS. Procedural Summaries including updates to IX. Incorporation and Meetings of Directors Pursuant to Ontario's Business Corporations Act, X. Meetings of Shareholders Pursuant to Ontario's Business Corporations Act, XII. Summary of Major Corporate Events – Part XIV of the OBCA – Fundamental Changes, XIV. Summary of Major Corporate Events – Part XV of the OBCA – Dissolution and Revival, and XVIII. Summary of Major Corporate Events – Part XI of the OBCA – Books and Records.

### **Highlights:**

- **Remedies Table – Breach of Fiduciary Duty by Directors and Officers – Employment Relationship**—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.).

- **Procedural Summaries – Part XIV of the OBCA – Fundamental Changes**—The court had the jurisdiction that arose from section 60 of the *Trustee Act* applied in conjunction with the broad and remedial nature of the arrangement provisions of the *OBCA*. The arrangement was required to effect a complex transaction involving multiple parties and different business entities. The complexity of the arrangement made it appropriate to have in place procedural safeguards typical of an arrangement under the *OBCA*, such as court supervision and approval, the exercise of voting rights and dissent rights. No person had exercised the dissent rights provided in the arrangement and there was no opposition to the application. Those were further indicia of the fairness and reasonableness of the arrangement. In many ways, the Trust Indenture conferred on unitholders rights and obligations comparable to those of a shareholder, and on the board of trustees rights and obligations comparable to those of directors, of an *OBCA* corporation. There was no material conflict between the provisions of the Trust Indenture and the terms of the plan of arrangement. All requirements for approval of a plan of arrangement were satisfied: *NORANDA INCOME FUND*, 2023 CarswellOnt 3315, 2023 ONSC 1452 (Ont. S.C.J.) [Commercial List].

## ProView Developments

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- The opening page is now the title page of the book as you would see in the print work
- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
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- Footnote text only appears in ProView-generated PDFs of entire sections and pages.