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<p style="text-align: center;">FIDUCIARY DUTIES Obligations of Loyalty and Faithfulness Michael Ng Release No. 1, January 2026</p>
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This loose-leaf service offers readers a wide-ranging, up-to-date analysis of fiduciary relationships in Canada. The publication's comprehensive coverage of fiduciary responsibility is organized into four parts: (1) Overview of Fiduciary Law; (2) Fiduciary Relationships; (3) Duties of Faithfulness; and (4) Consequences of a Breach of Faithfulness. The publication also provides readers with detailed case law analysis, valuable commentary, summaries of remedies awarded for breaches of fiduciary obligation, and other value-added reference tools. The publication includes coverage of many different types of established fiduciary relationships including directors/officers, key employees, executors and administrators, trustees, accountants, insurance advisers, lawyers, physicians, spouses, and others. The updatable loose-leaf format ensures currency.

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What's New in this Update:

New case law and commentary, including the following recent decisions:

- **Senior Management and “Key” Employees—Interlocutory Relief—Interim and Interlocutory Injunctions—** Justice Toews noted that it was not simply the nature of the evidence that led the Court to the conclusion that a strong *prima facie* case had not been made out. In particular, Justice Toews had grave concerns concerning various provisions in the agreements which purported to set out the terms of the employment relationship between Matix and Talal. Justice Toews' first area of concern was the confidentiality clauses found at sections 6.3 and 6.4 of the Employment Agreement and section 10.3 of the Employee Handbook, all of which formed part of the terms of Talal's employment with Matix. Justice Toews noted that it was difficult to imagine what piece of corporate information or scrap of paper, would not be covered as confidential information by that provision. Justice Toews noted that it was unnecessary to attempt to specify each of the concerns with those provisions, other than to observe that those provisions, and in particular section 6.4 of the Employment Agreement, were when considered in their totality, incomprehensible. Justice Toews agreed that those provisions when considered as a whole in the context of the Agreements purporting to bind Talal were decidedly ambiguous and overbroad and therefore unreasonable and unenforceable. Justice Toews explained that while it might not be necessary to determine whether Talal breached a fiduciary duty not to solicit Matix's customers. However, on the assumption that a fiduciary duty may be enforced independently of the specific wording of the Agreements, given the inherent inequality in the employer/employee relationship in setting the terms of an agreement, and the specific evidence here, Justice Toews was not satisfied that Talal's employment relationship with Matix amounted to a fiduciary relationship even if he specifically acknowledged being a fiduciary in the Employment Agreement. While Talal may have been a valuable employee of Matix and held an impressive title, Justice Toews was not satisfied with the evidence that he was in a fiduciary relationship with Matix. In determining that Talal was not a fiduciary, Justice Toews was satisfied on the basis of the facts here that whatever test was applied — the “key employee” test or the “ad hoc fiduciary relationship”, the evidence did not establish a strong *prima facie* case that Talal owed Matix a fiduciary duty. Specifically, the evidence did not establish that Talal was an integral and indispensable component of the management team responsible for guiding

the business affairs of Matix, that he was necessarily involved in the decision-making processes of the company, or that he had broad access to confidential information that, if disclosed, would significantly impair the competitive advantages that Matix enjoyed. Matix failed to show that Talal exercised sufficient power, discretion, or control, or that Matix was sufficiently dependent on or vulnerable to Talal to establish a fiduciary duty to Matix: *Matix Lumber Inc. v. Al-Kazimi et al.*, 2025 CarswellMan 196, 2025 MBKB 76 (Man. K.B.).

- **Ad Hoc Fiduciary Relationships—Fiduciary Duties in the Governmental Context**—The proposed class action followed several related and parallel actions against the federal and other provincial governments concerning the harms suffered by Indigenous children and families in the delivery of child welfare services. This claim was advanced on behalf of Indigenous children and parents not ordinarily residing on-reserve, i.e. “off-reserve” First Nations, Métis, and Inuit children and caregivers coming within the provincial child welfare system during the period of time known as the “Millenium Scoop”. The claim was brought on behalf of certain individuals in British Columbia as follows: a) The “Removed Child Class” or “Removed Child Class Members”: all First Nations individuals in British Columbia who at the time of removal were not ordinarily resident on-reserve, and all Inuit and Métis individuals (irrespective of residency on- or off-reserve), who were taken into care at any time between January 1, 1992 and the date of the certification of this action as a class proceeding (the “Class Period”); b) The “Essential Services Class” or “Essential Services Class Members”: Indigenous individuals in British Columbia who, during the Class Period and while they were under the age of 18: A. had a need for an essential service (inclusive of essential products); and B. faced a delay, denial, or service gap in the receipt of that essential service on grounds, including but not limited to a lack of funding or lack of jurisdiction, or a jurisdictional dispute with another government, level of government, or another governmental department; and c) The Indigenous caregiving parents or Indigenous caregiving grandparents of members of the above classes (the “Family Class” or “Family Class Members”). The proposed class action arose from two interconnected systemic issues: a) Removed Child Claim: British Columbia’s child welfare system prioritized Indigenous child removals (“Protection Services”) over culturally appropriate prevention services and support to Indigenous children and families (“Prevention Services”), causing the gross over representation of Indigenous children in British Columbia’s child welfare system and reflecting systemic discrimination. b) Essential Services Claim: the systematic and operational failure of the Defendants to provide equal, non-discriminatory access to other es-

sential health and social services to Indigenous children in BC, leading to gaps, delays, and denials of these services. Justice Wilkinson explained that it was difficult, however, to find anything in the factual relationship pleaded that suggested Canada made an undertaking to act in the best interests of the Class above others, such that it assumed an *ad hoc* fiduciary duty. Unlike in *Brown Certification*, the plaintiffs had not pointed to the specific execution of an agreement that could establish an undertaking by the federal Crown to exercise its discretion over funding in the best interests of the Class with the potential exception of the Inuit Child First Initiative constituting an undertaking for Inuit children. Indeed, the plaintiffs alleged that Canada's willful blindness and unwillingness to remedy its funding decisions constituted negligence to the Class. While the threshold is low on certification, Justice Wilkinson concluded that the plaintiffs had not made out an arguable case for an *ad hoc* relationship between the Class and Canada. There was, however, an arguable claim for breach of a *sui generis* fiduciary duty by Canada. While novel, the plaintiffs identified a legal interest in the Class' Indigenous culture and identity, family unity, and connections that might satisfy the interests guaranteed under s. 35 of the *Constitution Act, 1982*. The Claim alleged Canada wielded discretionary power over funding programs for the Class Members, and that Canada's "denial and wilful ignorance" caused the Class to suffer damages. Without assessing the merits of those claims, Justice Wilkinson was satisfied the plaintiffs had made out the essential elements of a cause of action in breach of *sui generis* fiduciary duty against the defendant Canada: *Neal v. Canada (Attorney General)*, 2025 CarswellBC 2353, 2025 BCSC 1498 (B.C.S.C.).