

**Publisher’s Note**

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| <p><b>FIDUCIARY DUTIES</b><br/><b>Obligations of Loyalty and Faithfulness</b><br/><b>Michael Ng</b><br/><b>Release No. 7, August 2025</b></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:

- **Fiduciary *Per Se* Relationships—Agency Roles—Generally**—Justice Marzari concluded that Chand lied about purchasing the Kelowna Property for the Rahils as an assignment, or at all. He lied about having various offers on the Kelowna Property throughout the fall of 2018 and early 2019. In any event, Justice Marzari accepted Mrs. Rahil's evidence that at no point did she intend to gift Chand any portion of the \$215,000 she advanced to him for real estate transactions, or to allow him to use her funds to purchase the Abbotsford Property. Justice Marzari did not accept the explanation by Chand, and the evidence did not support it, including the acknowledged fact that Chand knew that the Rahils had a great deal of debt, had borrowed the \$200,000 against their home, and had to pay interest on those funds. Justice Marzari was satisfied that, although the parties never entered into a realtor agreement for Chand to act as their realtor, Chand did in fact do so, and owed them fiduciary duties as such. Justice Marzari was satisfied that Chand represented himself as the Rahils' realtor, and brought their attention to listings, prepared real estate contracts, and received funds that should have been placed into trust by him and applied towards the purchase of the Surrey and the Kelowna Properties in accordance with the contracts and other documentation he provided them. Chand breached his fiduciary duties as the Rahils' realtor in a myriad of ways including: a) Not describing the nature of his relationship with them, the sellers and previous assignees of the Surrey and Kelowna Properties, and the limits of his ability to act; b) Not providing transparent and truthful information about the list price and existing or pending assignments of the Surrey Property and the Kelowna Property; c) Not advising the Rahils that the listed price for the Kelowna Property was \$165,000, that Daniel Chand had recently signed a contract for \$193,000 for that Property and that he had received a commission for that assignment in April 2018; d) Failing to place the funds provided by the Rahils for the purchase of the Surrey and Kelowna Properties into trust; e) Using the \$15,000 the Rahils provided him with in July 2018 towards his own down payment on the Abbotsford Property in early August 2018, contrary to their instructions and without informing them, and in a clear conflict of interest; f) Not purchasing the Kelowna Property with the \$215,000 advanced by the Rahils; g) Using the Rahils' additional \$200,000 to complete the purchase of the Abbotsford Property in his own name a week after they

provided these funds to him for the purchase of the Kelowna Property contrary to the Rahils' instructions to him and in a clear conflict of interest; and h) Not accounting to the Rahils immediately for the use of their funds and lying to them about their non-existent purchase of the Kelowna Property until April 2019. Chand also breached his agreements with the Rahils that he would use the funds they provided to invest in the Surrey Property, and later the Kelowna Property. Implicit in those agreements was that he would not use their funds to buy a property for himself: *Rahil v. Chand*, 2025 CarswellBC 165, 2025 BCSC 106 (B.C.S.C.).

- **Fiduciary *Per Se* Relationships—Trust and Confidence in Fact**—Justice Pfuetzner concluded that the trial judge erred in determining g that a fiduciary relationship existed between Marsh and the plaintiff, PRM. While the trial judge made no reversible error in concluding that Marsh misused PRM's confidential information, he awarded damages well in excess of the loss that flowed from Marsh's wrongful conduct. The damages sought by the plaintiffs and set out in their expert's report included the full amount of the profits PRM would have earned from the insured members who chose to remain with Marsh up to the date of the sale to BFL. The damages calculation also included an amount equal to three times the expected yearly revenue from those insured members on the theory that the value of PRM was reduced by that amount on the sale to BFL. Justice Pfuetzner explained that what was lacking in the trial judge's analysis was a determination that Marsh had relinquished its own self-interest and agreed to act solely on behalf of PRM. The trial judge's analysis focused on his conclusion that Marsh misused PRM's confidential information. However, as noted by the Supreme Court of Canada in *Lac Minerals Ltd. v. International Corona Resources Ltd.*, [1989] 2 S.C.R. 574, "the fact that confidential information is obtained and misused cannot itself create a fiduciary obligation" and where "the essence of the complaint is misuse of confidential information, the appropriate cause of action in favour of the party aggrieved is breach of confidence and not breach of fiduciary duty". The trial judge did not conclude that Marsh expressly or impliedly agreed to put PRM's interests before its own and to act solely in PRM's interests—nor would the evidence support such a conclusion. The trial judge's conclusion that Marsh agreed not to use PRM's confidential information for a purpose other than placing insurance did not create a fiduciary relationship. Marsh and PRM were arm's length commercial entities operating in the agricultural insurance market. For several years they worked together to service the insured members. That relationship created certain obligations of confidentiality. The trial judge's imposition of a fiduciary duty, however, was in er-

ror as he failed to apply a required element of the legal test:  
*Prairie Risk Management Inc. v. Marsh Canada Ltd.*, 2025  
CarswellMan 20, 2025 MBCA 6 (Man. C.A.).