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GRAY'S COMMENTARIES ON FEDERAL CORPORATE LAWS

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Gray's Commentaries on Federal Corporate Laws is a comprehensive reference providing instant access to federal corporate legislation, case law and expert commentary and analysis. Readers can use this one-stop reference in meetings, in court, or at their computer to find full annotations of key corporate statutes — particularly the *Canada Business Corporations Act* and the *Canada Not-for-profit Corporations Act* — including all regulations and prescribed forms. *Gray's Commentaries on Federal Corporate Laws* also features references to the most recent reported and unreported cases, cross-references to related statutory provisions, a glossary of terms defined by statute and case law, memoranda on key practice questions, and coverage of current developments.

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This release features the updating of commentary in Chapter 1, *Canada Business Corporations Act*, Part III, Capacity and Powers; Part IV, Registered Office and Records; and Part V, Corporate Finance.

Highlights

- ***Canada Business Corporations Act* — Registered Office and Records — Section 19 — Registered Office** — The articles must set out the province or territory within Canada where the registered office is to be situated. The province or territory where the registered office is situated can only be changed by articles of amendment (or, where applicable, articles of amalgamation, arrangement or reorganization). The address within such province or territory may, however, be changed by passing a board resolution and filing a notice of such change. Subsection 19(4) specifies that the notice of change of address must be filed within 15 days of the change. However, a change of address that is filed after the 15-day period will still be effective when filed. In effect, because of s. 18(1)(c) of the Act, a change of registered office address has no effect on a person without knowledge of the change, which would probably exclude directors who signed a resolution in writing to approve the change or attended a meeting of the board at which a resolution changing the registered office was passed.
- ***Canada Business Corporations Act* — Registered Office and Records — Section 23 — Corporate Seal** — Given that the corporate seal is no longer needed for a corporation to execute a simple contract, it is unfortunate that affixation of the corporate seal was held to be insufficient to create at least a presumed intent to create a sealed instrument. The decision in *Friedmann Equity Developments Inc. v. Final Note Ltd.* renders the continued use of the corporate seal insufficient to create a sealed instrument and, therefore, potentially misleading to undisclosed principals: *Friedmann Equity Developments Inc. v. Final Note Ltd.*, 2000 CSC 34, 2000 SCC 34, 2000 CarswellOnt 2459, 2000 CarswellOnt 2458, *per* Bastarache J., citing the CBCA and OBCA.
- ***Canada Business Corporations Act* — Section 24(3) — Single Share Class** — The principle that rights attach to shares and not to holders of the shares presents practical drafting difficulties, particularly for non-distributing corporations. For example, on an estate freeze, the parties may wish that the votes attached to the shares retained by the parents effecting the freeze continue in force until the death of the last surviving parent but not control the corporation on their death. But the rights cannot change depending on who holds the shares. The workaround solution is to issue a separate block of voting, non-equity shares that are redeemed on the death of the last living parent. A second example is to calibrate the accrual of dividends on preferred shares from the date of issuance to each holder. But the equality principle does not lend itself to different accrual dates for different holders. The solution is to issue separate series of shares of the same class so that each series may have a different accrual date. A final example is that the corporation may wish to charge a backend redemption discount depending on how long the holder has continuously held the shares. This, too, is not valid because it confers different redemption or economic rights depending on who holds the shares and how long she held them. In a non-distributing corporation, the equality principle can be overridden in a USA. However, a USA is not always feasible. The equality principle is on stronger ground when the issuer is a distributing corporation. All holders of a class or series of shares expect to be treated

the same as all other holders of that class or series. The equality principle is on weaker ground when the issuer is a closely held non-distributing corporation because it undermines freedom of contract.