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DIRECTORS AND OFFICERS IN CANADA: LAW AND PRACTICE

Carol Hansell, B.A., M.A., LL.B., M.B.A.

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Directors and Officers in Canada: Law and Practice is a comprehensive text on the current legal framework of corporate governance in Canada. It considers and compares the Canada Business Corporations Act and the corporate statutes in each of the provinces and territories, describes relevant case law in detail, and discusses current themes in corporate governance.

This release features updates to the commentary in Chapter 14, Indemnities.

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Highlights

- **Indemnities — Overview** — Directors and officers may become involved in civil, criminal, administrative, investigative or other proceedings as a result of their relationship with the corporation. Most corporations undertake to indemnify their directors and officers for the costs they incur in connection with such proceedings. In part, this reflects a recognition that the corporation will not be able to attract talented individuals to its board and management team if it is not prepared to protect them from the liabilities to which they are exposed in serving the corporation. Even where a corporation has not provided such an indemnity, most of the corporate statutes will require the corporation to indemnify its directors and officers if certain conditions have been satisfied.
- **Indemnities — Scope of Indemnities — General** — The Court considered the “reasonableness” of legal fees in relation to cost awards. In this case, the plaintiff was successful in its derivative action against the defendants, after which point, the Court awarded costs on a partial indemnity basis. The plaintiff sought clarification of the indemnity order, arguing that it had a prima facie entitlement to a cost award including the full indemnity of its costs. The Court concluded that this was not a reasonable circumstance to award full indemnity: *563815 Ontario Inc. v. Nassif*, 2021 CarswellOnt 19902, 2021 ONSC 8170 (Ont. S.C.J.).
- **Indemnities — Conditions Precedent for Indemnification — General — Acting Honestly and in Good Faith** — The Court considered whether the applicants’ acted honestly and in good faith with a view to the best interests of the corporation. The Court believed that the applicants’ acted in good faith and found that the respondents’ allegations were disingenuous. Specifically, the Court noted that the applicants’ faced active opposition from the respondents when they tried to carry out various corporate matters. The applicants devoted many hours to: completing outstanding contracts, disposing of chattels, defending against prosecution for tax evasion, dealing with accounting issues, answering the respondent’s questions and winding up the corporation. Accordingly, the Court found that applicants were entitled to the indemnity pursuant to the corporation’s by-laws and the OBCA: *Gustafson et al. v. Johnson et al.*, 2021 CarswellOnt 873, 2021 ONSC 549 (Ont. S.C.J.), direct history and related proceedings 2021 CarswellRP 317055 (Ont. S.C.J.).