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THE ANNOTATED BUSINESS CORPORATIONS ACT OF ALBERTA

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This looseleaf service provides complete coverage of Alberta corporations law including: full text of the *Alberta Business Corporations Act* and Regulations as amended, clear and concise summaries of key reported and unreported decisions interpreting the Act, tables of cases and statutes, relevant case law from other jurisdictions, and a thorough index. This publication also includes forms and a comprehensive table of concordance relating to the *Alberta Business Corporations Act*. This publication features useful materials such as Words and Phrases, Legal Issues in Focus, and Extra-Provincial Corporations Summaries.

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This release features updates to the Remedies Table—Breach of Fiduciary Duty by Directors and Officers in Appendix A—Alberta Business Corporations Related Material. This release also features updates to the case law annotations under the *Partnership Act* and updates to the Remedies Table—Breach of Fiduciary Duty—Partnerships in Appendix B—Partnership Act and Related Material. This release also features updates to Appendix WP—Words and Phrases.

Highlights:

- **Remedies Table—Breach of Fiduciary Duty by Directors and Officers—Equitable Compensation/Damages**—Portnoy attended the bank expecting to find \$250,000 or \$300,000 in the Brave account but there was almost nothing. Portnoy learned that Ianovici had been e-transferring money and had set up a company credit card in his name. Brave paid some \$235,916.44 on the credit card. The account and cards were frozen. Ianovici stated that as a result of the Brave account being frozen, he was no longer able to pay the subcontractors on the St. Paul’s church project. He therefore approached the general contractor to have them pay the subcontractors directly. Ianovici generated a list of the workers on the project. Many of the workers were working for a company called Artebuz who would receive the largest payment. Over the course of many months, Trustin was receiving funds from Brave projects funneled through Artebuz. Justice Edelman explained that there was little question that Ianovici breached his fiduciary duties to Brave by engaging in the civil fraud. Even if his actions had not been outright fraudulent, his failure to disclose the relationship between Trustin and Artebuz was a clear breach of his fiduciary duties and placed him in a clear conflict of interest when approving purchase orders and payments to Artebuz: *Brave Construction Ltd. v. Ianovici*, 2024 CarswellBC 2447, 2024 BCSC 1526 (B.C.S.C.).
- **Remedies Table—Breach of Fiduciary Duties—Partnerships**—Justice Petersen conclude that the Applicant engaged in questionable business decisions involving members of her family, specifically not collecting the rent owed by her brother’s company for the 2023 lease of the All Treat Property, reducing the interest rate on the substantial loan to her parents’ company in April 2021, and increasing the balance of that loan in June 2022. Those impugned decisions were not in the best interest of either the Corporation or the Partnership; rather, they served the interests of the Applicant’s family members. The decisions did not fall within a reasonable range of options to which the court should show

deference to the Applicant's business judgment, particularly since she proffered no explanation for any of them. Moreover, the Applicant personally benefitted from surplus draws from the Partnership for the past three years without the Respondent's prior knowledge or consent. The Applicant had a duty to be transparent about those draws when she took them, as part of her disclosure obligation to her business partner (*Partnerships Act*, s. 28). The Applicant had a similar duty to be forthright about withdrawals from the Partnership that she attributed to the Respondent's draw even though the money was paid to her parents' company and not to him. The Applicant did not respect her disclosure obligations in that regard. The Applicant was also obligated to disclose the "equalization" payments that she unilaterally advanced to herself from business funds when the Applicant used the broiler farm business credit card to pay his legal expenses. Her failure to advance similar "equalization" payments to the Respondent on occasions when she used business accounts to pay for her own personal expenses made this failure to disclose more egregious. It constituted a violation not only of her disclosure obligations under s. 28 of the *Partnerships Act*, but also of her duty under s. 29(1) to account to the partnership for benefits derived by her from her use of partnership property. The Applicant had a statutory right to receive "full information [from the Applicant] of all things affecting the partnership": *Partnerships Act*, s. 28. The Respondent was therefore entitled to inspect more than just the bank statements and financial statements for the businesses; he was entitled to inspect the invoices, receipts, and other documents underlying the business transactions. Justice Petersen concluded that the Applicant had directed the businesses' accountant not to provide financial information or documentation to the Respondent (or his representatives), at least not without her prior approval. That constituted a flagrant breach of her fiduciary duty and disclosure obligations to the Respondent under the *Partnerships Act*, as well as a breach of his rights and reasonable expectations as a director and shareholder of the Corporation. Justice Petersen concluded that the Respondent had established his entitlement to equitable remedies for oppression and for the Applicant's breach of her fiduciary obligations to him as a business partner. However, some of the remedies sought by the Respondent would go beyond what was necessary to satisfy his reasonably held expectations, protect his legitimate business interests, deter fiduciary faithlessness, and preserve the integrity of the

parties' fiduciary relationship. In particular, the Respondent's request for an order that the Applicant take no step in the management of the layer farm without consulting and obtaining his prior consent for any business decision, including all payments and receipts, was impractical to the point of being unworkable. The Partnership's and the Respondent's personal interests would be adequately protected provided that appropriate safeguards were in place to prevent conflict of interest, ensure transparency and establish accountability for the Applicant's business decisions. The evidence suggests that her administrative decision-making authority should only be curtailed in respect of transactions involving her family members and payments made to herself: *Stickney v. Stickney*, 2024 CarswellOnt 9483, 2024 ONSC 3581, 3 R.F.L. (9th) 134 (Ont. S.C.J.).