## **Publisher's Note**

An Update has Arrived in Your Library for:

Please circulate this notice to anyone in your office who may be interested in this publication.  Distribution List

## CANADA BUSINESS CORPORATIONS MANUAL

Jack J. Quinn Release No. 7, September 2025

The Manual provides corporate law practitioners with a comprehensive and up-to-date toolkit, including: a narrative roadmap through the relevant statutes and regulations; authoritative commentary on case law developments; clear guidance on the technical aspects of federal corporate organization, maintenance, and transactions; and a comprehensive collection of precedents, forms, and checklists.

THOMSON REUTERS®

**Customer Support** 

1-416-609-3800 (Toronto & International)

1-800-387-5164 (Toll Free Canada & U.S.)

E-mail CustomerSupport.LegalTaxCanada@TR.com

This publisher's note may be scanned electronically and photocopied for the purpose of circulating copies within your organization.

This release features updates to Appendix 11A. Remedies Table for Breach of Fiduciary Duty by Directors and Officers in Chapter 11 (Directors – Officers). This release also features updates to Appendix PS. Procedural Summaries including the addition of the following summaries: Registered Office and Records pursuant to Part IV. of the *CBCA*—Corporate Finance pursuant to Part V. of the *CBCA*—Proxies pursuant to Part XIII. of the *CBCA*, and Remedies—Offences and Punishment pursuant to Part XX of the *CBCA*.

## **Highlights**

Remedies Table—Breach of Fiduciary Duty—Damages—The Court concluded that Massaro had ceased acting honestly and in good faith in the best interests of the company by engaging in a pattern of diverting business opportunities to companies owned by the defendants and/or their associates. The Court explained that the case law recognizes that any consideration of a corporate stakeholders' reasonable expectations is a contextual question. However, there is general acceptance for the position that it is reasonable to expect fair treatment, compliance with the *OBCA*, and that directors will fulfill their fiduciary obligations by acting honestly and in good faith. Hogan, as a 50% owner and long-term business partner of the company, had a reasonable expectation that Massaro would not breach his fiduciary duties, which included the duty to act in the best interests of the company and its shareholders. This necessarily included the reasonable expectation that, as a director, Massaro would refrain from self-dealing, diversion of opportunities, and acting in conflict-of-interest situations. Therefore, by virtue of their positions within the company as directors, both Hogan and Massaro were obliged to respect their fiduciary duties, and each had the reasonable expectation that the other would also comply. The Court noted that a plaintiff may only recover damages which are caused by a defendant's wrong. There must be a causal connection between the wrong and the damages, and the onus of establishing this connection is borne by the plaintiff. Not only must the plaintiff prove the existence of a loss caused by the defendant's wrong, the plaintiff must also establish the extent, or quantum, of the loss. In other words, the plaintiff has the onus to prove the amount of damage he or she has endured. The plaintiffs' evidence suggested that Hogan was unable to access accounting information relating to the company for a period of time. However, following Bonner's dismissal in June 2023, Hogan was once again able to access enough of the company's financial information in order to inform himself and provide evidence as to the nature of Massaro's misconduct. The Court explained that it seemed reasonable to assume that before coming to court, the plaintiffs would have accessed as much evidence as was available so that Gosnell could provide a proper valuation analysis of the company. It may also be reasonable to assume that, without Massaro's participation in this litigation, there were a number of rocks which remained unturned and, as such, the full extent of the company's valuation was unknown. A declaration shall issue pursuant to s. 248 of the Business Corporations Act that Massaro and BJSM engaged in or caused conduct that was oppressive, unfairly prejudicial to, and unfairly disregarding of the interests of the plaintiffs in the company. A declaration shall issue that Massaro and BJSM breached their fiduciary duties owed to Hogan and TGH, and both Massaro and BJSM were liable to Hogan and TGH for damages. In fashioning a remedy to address the oppressive conduct and breach of fiduciary duties by Massaro and BJSM, it was appropriate that Massaro and BJSM, jointly and severally, forthwith pay damages to Hogan and TGH such that they purchase TGH shares in the Company for \$13,350,000 plus post-judgment interest as provided by the *Court of Justice Act*. Upon full payment for the shares of the company, TGH shall transfer its shares in the company to BJSM or another designate of Massaro or BJSM: *Hogan v. Massaro*, 2024 CarswellOnt 18491, 2024 ONSC 6581 (Ont. S.C.J.).

Procedural Summaries—Remedies, Offences and Punishment pursuant to Part XX of the CBCA-Application to Court to **Rectify Records**—The wife was a one of three directors of Rovimat. On August 11, 2019, unbeknownst to the wife, the husband took steps to dissolve Rovimat. On April 1, 2020, the husband filed "Articles of Revival" for Rovimat, again, unbeknownst to the wife, and her 50% interest was diluted such that she became a one-third shareholder, and one of three directors, with the husband installed as a director. The wife had no knowledge that Rovimat had been dissolved or revived. The wife was never asked to sign or authorize any corporate documentation with respect to Rovimat. Justice Kraft explained that it had been open to the wife to resign as a director of Rovimat at any time. She had not done so, presumably, because she sought to be removed as a director effective to August 11, 2019, which was about 18 months prior to the parties' separation, and wanted to ensure that her liability was limited to that date. Justice Kraft noted that in an application under s. 243, the court may make any Order it thinks fit, including an order requiring the registers or other records of the corporation to be rectified. When dealing with a close corporation, the Court may have regard to the relationship between the shareholders and not simply legal rights as such. In addition, the Court must look at the bona fides of the corporate transaction in question to determine whether the act of the corporation effects a result which is oppressive or unfairly disregards the interests of a shareholder or by inference a director. Where it is found that the business or affairs of the corporation have been carried out in a manner that is oppressive or unfairly disregards the rights of a complainant, the Court can make an Order to rectify the matter complained of. The Court is given a broad discretion in this regard, since s. 248(3) permits the Court to make an interim or final order it considers appropriate and lists a non-exhaustive list of potential orders. Justice Kraft was persuaded that the husband's conduct resulted in unfair prejudice to his wife, because his failure to communicate, or otherwise advise her that he was dissolving Rovimat, and then reconstituting the shareholding and directors of Rovimat was not done in good faith, nor did he exercise the care and diligence that a reasonably prudent person would exercise in comparable circumstances, as required by him to do under s.122 of the CBCA. The husband's actions resulted in unfair consequences to the wife by exposing her to personal liability for corporate debt starting on August 11, 2019, when he dissolved the company. Similarly, Justice Kraft concluded that the husband's conduct constituted an unfair disregard of the wife's interests. The husband's failure to file corporate financial statements and income tax returns or pay employee deductions and HST suggested that he disregarded the wife's liabilities and role as a director, and that was contrary to the wife's reasonable expectations. Justice Kraft was satisfied that the remedy sought by the wife that she be removed as a director effective August 11, 2019, when the husband first dissolved Rovimat was necessary to satisfy the wife's reasonably held expectations:  $Ror\ v.$   $Pires,\ 2025$  CarswellOnt 1823, 2025 ONSC 828 (Ont. S.C.J.).