## Index

Aboriginals Band council. 25:64 rights and Crown appropriate forum, 25:58 conflicting claims of bands, 25:34 courts and quasi-judicial boards, 25:47 pleadings, 25:50 creation of reserves. 25:37 discriminatory treatment, 25:39 duty, scope and content of, 25:14 duty to consult, 25:19 future impact, 25:27 nature and scope of the consultation process, 25:23 potential or established right, 25:24 remedies, 25:32 duty to individual members of bands, 25:35 duty to negotiate aboriginal claims, 25:18 duty to pay interest or invest, 25:60 general principle, 25:11 honour of Crown, 25:12 information in possession of, 25:46 infringement of aboriginal rights generally, 25:17 interpretation of treaties and Charter. 25:13 limitations of actions, 25:52 statutory limitations, 25:53 management of reserve lands, 25:36 off reserve lands. 25:38

Aboriginals—Cont'd rights and Crown-Cont'd residential schools, 25:40 Sixties Scoop, 25:44 surrender of reserve lands to Crown. 25:16 third parties, 25:33 Accountants auditors, 14:18, 14:19 case synopses, **14:20** confidential communications, 14:17 forensic. 14:5 inspectors, 14:16 investment advisors, as, 14:2 liquidators, 14:14 receiver/managers, 14:9 et seq. summary judgment synopses, **14:21** et seq. trustees in bankruptcy, 14:15 Accounting remedy types of relief in equity factors influencing quantification of accounting by global estimate, 26:10 cost of doing business, **26:10** deduction for reasonable expenses, 26:10 discounting for exigencies related to gain, 26:10 length of time, 26:10 presumption of maximum value. 26:10 prohibition against gain, 26:10

general, **26:9** Action, failure to prosecute, 28:26 Adjuster duty to insured, **9:6** 

© 2021 Thomson Reuters, Rel. 3, 3/2021

## Administrators. See Executors/ administrators

## Advice

duty to provide reasonable banking institutions, **10:6** real estate agents duty to obtain best price, **8:19** innocent misrepresentation, **8:20** solicitor/client relationship general, **12:20** where in conflict of interest, **12:21** independent legal, **10:7** 

## Agency

agent's duty to principal confidential information, misuse of. 3:15 conflict of interest, 3:14 fiduciary/nonfiduciary dichotomy, 3:7 obligation of full disclosure, 3:10 parameters of, 3:8 prohibition against personal gain. 3:11 prohibition against personal purchase, 3:13 secret commissions. 3:12 cases, 3:18 defined, 3:1 et seq. distinguished from creditordebtor, 3:5 distinguished from employment, 3:2 distinguished from partnership, 3:3 distinguished from trustee, 3:4 intra-employment duties as, 21:17 relationship, formation of nomenclature, 3:6 sub-agents, 21:3 termination. 3:17

## Agent

duty to principal confidential information, misuse of. 3:15 conflict of interest. 3:14 fiduciary/nonfiduciary dichotomy, 3:7 obligation of full disclosure, 3:10 parameters of, 3:8 prohibition against personal gain, 3:11 prohibition against personal purchase, 3:13 secret commissions. 3:12 employee as, 21:4 insurance agents (See Insurance agents) intra-employment duties as, 21:17 real estate agents (See Real estate agents) remuneration of, 3:16

Appeals, 28:28

Appraisers, real estate liability, 8:25, 11:14

## Arbitration of disputes, 28:33

Assets

directors appropriation of corporate, 20:12 improper distribution of executors/administrators general, 5:18 in specie distribution, 5:17 misuse of partnership, 16:8

## Attorney, power of, 4:2, 5:52

Auditors, 14:2

Bank. See also Banking institutions as "constructive trustee," 10:8 relationship between the, and its customers, 10:2

Banking institutions ancillary operations, 10:12 **Banking institutions—Cont'd** cases. 10:17 as "constructive trustee," 10:8 creditor-debtor premise, 10:1 creditor-debtor relations, 19:5 duties guarantors, to, 10:10 mortgagors, to, 10:11 fiduciary concept application of, 10:3 fiduciary duties confidentiality, 10:5 conflict of interest, **10:4** guarantors, to, 10:10 independent legal advice, 10:7 mortgagors, to, 10:11 reasonable advice, 10:6 other banking operations, 10:12 relationship between bank and customers, 10:2 summary judgment synopses, 10:18 et seq.

Bankruptcy Bankruptcy and Insolvency Act, 27:1 et seq. procedure, 27:6

## Bankrupt estate. See Estate

## Beneficiaries

breach of fiduciary duty adherence to instructions, **1:20** inability of, to benefit, **1:12** validating breach consent of, **5:25** contracting with trustee as purchaser of trust property, **2:16** executors/administrators as conflict of interest and duty, **5:30** dichotomy between executor as executor and as beneficiary, **5:28** discretion under will, **5:29** general, **5:27**  Beneficiaries—Cont'd executors/administrators as -Cont'd gifts and presumption of resulting trust, 5:32 remuneration for transfer to self, 5.31 incidental benefit to. 1:6 irrelevance of inability of, to attain benefit, 26:3 trustee, as, 2:5 trustee's duty to act for all impartially, 2:21 trustee's failure to properly establish. 5:13 **Benefits** and pension plans, employee, 22:10 Board condominium (See Condominium Developers) necessity of independent promoter's duty, 23:10 Breach of duty avoidance of "potential" conflict, 1:11 close relations. 1:19 defence of. 28:3 deterrence, 1:14 disclosure, inevitability of loss, 1:18 duty owed by individuals associated with director, 20:43 employee's breach departing, 21:32 general, 21:45 wages for past services, 21:21 termination for breach as cause for dismissal, 21:20 impugned activity adherence to benficiary's instructions, 1:20 disclosure. 1:16 prohibition against personal gain, 1:18

Breach of duty—Cont'd impugned activity-Cont'd serving two masters, 1:19 inability of beneficiary to benefit, 1:12 inducing, 1:21 law firm liability for all partners for breach by one, 12:39 non-lawyer employees, 12:43 lawyer acting for both sides of transaction. 12:8 confidentiality, 12:23 conflict of interest placing self-interest ahead of duty, 12:14 rebuttable presumption of undue influence, 12:9 waiver. 12:17 duty of full disclosure, 12:7 duty to provide reasonable advice general, 12:20 settlement discussions, 12:22 where in conflict of interest. 12:21 evidence. 12:36 fees, 12:19 remedies, 12:35 summary judgment synopses, 12:64 et seq. trust funds, 12:34 medical practitioners failure to follow instructions. 13:13 "mere employee" breach by association, **21:15** participation in, 1:20 partner's breach partnership liability for, 16:16 third party liability for, **16:14** promoter's breach waiver of, 23:13 stock brokers, 11:17 strict ethic against gain, 1:13

Breach of duty—Cont'd windfall, 1:15 **Breach of trust** directors statute of limitations, 20:46 et seq. duty as between insurance agents and insured where breach found, 9:5 where breach not found, 9:4 executors/administrators effect on remuneration. 5:40 failure to act impartially, 5:16 failure to follow express instructions. 5:14 failure to properly establish beneficiaries, 5:13 improper accounting, 5:21 improper distribution of assets generally, 5:18 in specie distribution. 5:17 misuse of estate property, 5:15 power of attorney, 5:19 unauthorized withdrawal of fees. 5:20 validating breach consent of beneficiaries, 5:25 remedial provisions in testamentary document, 5:24 remedial statutory provisions, 5:26 lawyer, liability to trustee, 2:33 power of attorney, 5:19, 6:22 trustees application to court for advice, 2:29 areas of fiduciary default duty to act for all beneficiaries impartially, 2:21 duty to follow trust instructions, 2:22 duty to secure best price, 2:20 unauthorized use of trust property, 2:18

## Breach of trust—Cont'd trustees—Cont'd constructive liability for misuse, 2:30 criminal breach, 2:38 inevitability, 2:25 mitigating circumstances, 2:27 remedial legislation, 2:28 unenforcability of contracts in breach, 2:26 unauthorized withdrawal of fees,

5:20

**Builders and contractors** 

duty of, 15:3

Businesses

duty of, **6:26** operation of by administrator of estate, **5:33** 

## **By-laws**

impact of permissive director's conflict of interest, 20:19

Certificate of pending litigation, 28:29

Charities, 2:40

## Chiefs of police, 25:74

## Children, care of

by biological parents, **6:5** child support legislation, **6:6** fiduciary obligation between parents and, **6:2 et seq.** governmental authorities, and, **25:69 et seq.** guardians, **6:26** non-governmental institutions, and, **6:23 et seq.** by non-parents, **6:23 et seq.** by other family members, **6:4** relationship with parents, **6:2 et seq.**  Churches, 7:14 vicarious liability, 6:25 **Civil procedure** appeals, 28:28 application of summary judgment rules, **28:11** certificate of pending litigation, 28:29 choice of forum clauses. 28:31 class actions, 28:24 et seq. discovery and evidence, 28:21 failure to prosecute action, 28:26 incompetent parties and litigation guardians, 28:19 injunctions procedure, 28:14 jury trial, **28:23** limitations, 28:4 et seq. Alberta. 28:6 British Columbia, 28:5 Manitoba, 28:7 Ontario, 28:8 other, 28:10 Saskatchewan, 28:9 parties, 28:18 pleadings, 28:2 proof of foreign law, 28:30 prosecution of action/derivative claim. 28:26 reasons for decision. 28:32 res judicata considerations, 28:17 service ex juris, 28:20 solicitor-client privilege, **28:18** trustees interpleader, 2:36 request for advice or directions, 2:35Vexatious Proceedings, 28:13 Claims equitable, against bankrupt estate, 14:17 et seq. Class actions, 28:24 et seq. Clients lawyers fiduciary relationship with, 12:1

et seq.

© 2021 Thomson Reuters, Rel. 3, 3/2021

Clients—Cont'd purchase from real estate agents, 8:11 et seq. stockbroker, relationship with sophisticated client, 11:6 unsophisticated client, 11:6 **Co-insureds** duty as between, 9:14 **Collective agreement** effect of, 22:3 Colleges duties of, 7:22 et seq. **Commercial contractual relations** confidentiality, 19:4 creditor-debtor relations, 19:5 Crown development corporations, 19:9 distribution agreements, 19:6 duty of good faith, 19:2 negotiating parties, **19:3** purchase of property from trustee, 19:8 relationship generally, 19:1

## summary judgment synopses, 27:11 et seq. trustees for specific purposes, 19:7

## **Commission. See Real Estate Agents**

## Common law

"confidentiality" employees, **21:26** prohibitions trustees, **2:15** remuneration for services rendered executors/administrators, **5:35 et seq.** 

## Company

director's gain through separate, 20:18 statutes, 20:49 to-be-formed promoter's duty, 23:4 Condominium Developers, 7:5 et seq.

Confidential contractual relations, 19:4

Confidential information misuse of agency, 3:15

## Confidentiality

accountants, 14:19 banking institutions, **10:5** commercial contractual relations. 19:4 common law employees, 21:26 medical practitioners duty as defence, 13:10 factors vitiating rights of disclosure of consent, 13:8 disclosure through "due process of law," 13:8 premise of confidence, 13:7 records, sale or seizure of, 13:11 statutory protection of, 13:9 solicitor/client relationship, 12:23 testifying against former client, 13:12

## Conflict

avoidance of "potential," 1:10 et seq.

## **Conflict of interest**

agents serving two principals, **3:14** banking institutions, **10:4** directors breach, **20:39** corporate opportunity doctrine, **20:20** gain through separate company, **20:18** general, **20:39** inability of company to benefit, **20:22** 

INDEX

Conflict of interest—Cont'd directors-Cont'd multiple directorships, 20:14 nature of conflict, 20:40 permissive by-laws, 20:19 ratification of conflict, 20:23 executors/administrators as beneficiaries. 5:16 lawyers (See Solicitor/client relationship) medical practitioners, 13:17 personal representative removal for, 5:48 solicitor/client placing self-interest ahead of duty, **12:14** providing reasonable advice, 12:21 rebuttable presumption of undue influence, 12:9 waiver by client, 12:17

Constructive trustee bank as, 10:8 breach of trust, 2:30

Constructive trusts equitable claims against bankrupt estate, 14:15 relief in equity general, 26:13 irrelevance of absence of gain, 26:14 trustees in bankruptcy, 27:9

Contracting out liability for breach of duty joint ventures, 17:9

Contract law contrast with breach of fiduciary duty, 1:24 partnership is creation of, 16:1

Contractors general, 15:3 independent, 21:3 Contractors and builders duty of, 15:3

Contractors (in employment law) Duty owed by, 21:3 Duty owed to, 22:4

Contracts. See also Commercial contractual relations duty of good faith, 19:2 unenforceability of breach of trust, 2:26

Contributory fault breach by lawyer, 12:37 breach by stockbroker or financial advisor, 11:18 contributory negligence not applicable, 26:27

Corporate opportunity doctrine departing employees breach by, 21:32 breach through personal gain, 21:33 Canaero Decision, 21:31 preparing to compete, 21:34 directors conflict of interest, 20:13

Corporations duty of, 6:26

Costs

doing business, **26:10** receiver/manager, of, **14:13** solicitor-client costs, **26:24** 

Counsellors duty of, 15:4

## Court

appointment of receiver/manager, 14:10, 26:18 native rights, 25:47 appropriate forum, 25:58 court costs, 25:57 proper parties, 25:62

© 2021 Thomson Reuters, Rel. 3, 3/2021

Court—Cont'd trustees approval of purchase of trust property, 2:15

#### Creditor

appointment of receiver/manager, 14:11 director's duty to, 20:42

Creditor-debtor commercial contractual relations, 19:5 distinguished from agency, 3:5 premise banking institutions, 10:1

Criminal breach of trust trustees, 2:38

Criminal liability, 26:31 breach of trust, 2:38 generally, 26:31

Crown. See also Governments, ministries and agencies, aboriginals care of children, 25:69 et seq. case synopses, 25:85 development corporations, 19:9 documents solicitor-client privilege over, 25:73 Honour of, 25:12 servants, 25:66 et seq.

## Crown corporations, 25:80

Crown development corporations, 19:9

Crown prosecutors liability of, 25:75

Customers bank's relationship with, 10:2

Damages apportionment of overall damage award, 26:39

#### Damages-Cont'd

breach of fiduciary duty v. damages for intentional tort, **26:38** causation and remoteness, **26:20** departing employees, **21:39** interest, **26:24** mitigation, **26:34** non-accounting, **26:19** punitive, **26:22** solicitor-client costs, **26:24** 

## Decision-Makers. See Substitute Decision-Makers

Defence breach of fiduciary duty as, 28:3 duty of confidentiality medical practitioner, 13:10

## Dentists, 13:18

Deterrence purpose of remedy, as, 1:14

Developers. See Condominium Developers as promoters, 23:14

## Directors ancillary liability of, in actions against corporations, 20:50 appropriation of corporate assets. 20:12 business judgment rule, 20:25 case synopses, 20:54 companies under CCAA protection, 20:26 company law statutes, 20:49 competition with shareholders, 20:36 condominium corporations, 7:5 et seq. defences, 20:46 et seq. director/shareholder dichotomy, 20:3 duties to creditors, 20:39 et seq. to other directors. 20:42

## INDEX

Directors—Cont'd duties-Cont'd owed between directors, 20:42 owed by persons associated with director's breach, **20:43** to shareholders, 20:29 et seq. diminution of value of shares, 20:33 generally, 20:30 oppression remedy, 20:37 purchase and resale of minority shares, **20:32** to whom owed, 20:4 inception of fiduciary duty, 20:2 nature of duty owed corporation appropriation of corporate assets, 20:12 avoidance of responsibility, 20:10 conflict of interest (See Conflict of interest) disclosure. 20:28 "packing" the Board, 20:8 share manipulation, 20:7 secret profits, 20:11 passive or ignorant, 20:46 personal liability, 20:50, 26:33 general, 26:33 joint ventures, 17:10 pleadings, 20:53 generally, 20:53 professional advice, 20:47 remedies, 20:51 et seq. remuneration charitable corporations, 20:45 commercial corporations, 20:44 shareholders, competition with, 20:36 statute of limitations, 20:46 et seq. statutory liabilities, 20:49 summary judgment synopses, 20:55 et seq. termination of directorship, **20:21** unanimous shareholders agreement, effect of. 20:35

## Disclosure full agency, 3:10 medical practitioners access to medical records, 13:6 general practice. 13:4 medical experimentation, 13:5 promoters, 23:9 solicitor/client, 12:7 full and fair executors/administrators, 5:8 impugned activity breach of duty, 1:16 "righteous transaction" and real estate agents, 8:9 Dismissal breach of duty as cause for, 21:20 **Distribution agreements** duties. 19:6 **Doctors. See Medical practitioners** Duty conflict between, and self-interest executors/adminstrators, 5:4 et seq. trustee, 2:9 et seq. In-house counsel. of, 12:51 **Elderly persons** duty of nursing homes and shelters toward. 7:14 Elected officials

fiduciary duty, **25:7** observations re: duty, **25:9** statutory provisions, effect of, **25:8** 

## Employees

associations, **22:7** Crown employees, **25:66 et seq.** Crown servants, **25:66 et seq.** departing collective agreement, effect of, **21:36, 22:3**  **Employees**—Cont'd departing-Cont'd common law "confidentiality," 21:26 corporate opportunity doctrine breach by, 21:32 breach through personal gain, 21:33 Canaero Decision. 21:31 preparing to compete, 21:34 damages, 21:39 injunctions, 21:39 length of time of restriction on competition, 21:28 liability of new employer, 21:35 manner of termination, 21:20 restrictive covenants vs. fiduciary restraints. 21:27 directors, duty owed by, 20:38 effect of breach on employee's claims, 21:40 fiduciary as agent, 21:4 civil law (Ouebec), 21:16 employer's vulnerability as factor. 21:11 "key personnel" test general, 21:6 "key" to department, 21:7 length of employment, **21:12** "mere" employee: fiduciary breach by association, 21:15 present confusion, 21:13 size of business as factor, 21:10 status as a duty general, 21:2 independent contractors and sub-agents, 21:3 "top management" test, **21:5** intra-employment duties (See Intraemployment duties) limitations of actions, 21:41 pension and benefit plans, 22:10 public sector, 22:10 personal liability, 20:50, 26:33

## Employees—Cont'd

pleadings, 21:43 generally, 21:43 reasonable expectations test, 21:14 summary judgment synopses, 21:46 et seq. synopses, 21:45 unions, 22:7

## Employer

case synopses, 22:16 collective agreement, effect of, 22:3 duty generally, 22:1 employer associations, 7:5 et seq., 22:9 existance of fiduciary duty, 22:1 independent contractors, 22:4 new employer's liability for departing employee, 21:35 pension and benefit plans, 22:10 sub-agents, 22:4 summary judgment synopses, 22:17 vicarious liability, 22:6, 26:30 vulnerability as factor fiduciary employees, 21:11

## Employment

distinguished from agency, 3:2 length of employment of employee, 21:12 lower level employees, 21:12 termination of breach as cause of dismissal, 21:20 for breach of fiduciary duty wages for past service, 21:21 manner of, 21:22

## Employment associations, 7:5 et seq.

Engineers duty of, 15:2

## Equitable execution, 26:16

Equitable jurisdiction effect of equity presumptions and reverse onuses, 26:2

INDEX

Equitable jurisdiction—Cont'd irrelevance of inability of beneficiary to attain benefit, 26:3 irrelevance of inevitability of loss, 26:5 set-off. 26:4 Equity claims, 26:19 et seq. effect of: presumptions and reverse onuses, 26:2 types of relief in accounting remedy, 26:8 constructive trust general, 26:13 irrelevance of absense of gain, 26:14 declaratory relief declaration of trustee status, 26:3 disgorgement, 26:17 equitable execution, 26:16 generally, 26:6 injunctions, 26:15 receiver, appointment of, 26:18 recission through tracing, 26:11 restitution. 26:11

## Estate

bankrupt insurance proceeds, **14:20** power of attorney, **5:52** tracing, **14:9 et seq.** trustees in bankruptcy, **14:15** personal fiduciary liability to third party creditors of executors/administrators, **5:33** trustees in bankruptcy, **14:15** 

## **Estate property**

business, continued operation of, 5:34 misuse of, 5:15 purchase of, by representative, 5:9 Evidence of breach by lawyer, 12:36 generally, 28:22 **Evidentiary Issues**, 28:22 Executors/administrators. See also **Breach of trust, Personal** representative actions on behalf of estate, 5:10 beneficiary, as conflict of interest and duty, 5:30 dichotomy between executor as executor and as beneficiary, 5:28 discretion under will. 5:29 general, 5:27 gifts and presumption of resulting trust. 5:32 remuneration for transfer to self. 5:31 business, continued operation of, 5:34 case synopses, **5:55** conflicts between duty and selfinterest exceptions to rule, 5:11 prohibition against personal gain duty to attain best price, 5:6 duty to avoid personal benefit through performance of duty, 5:7 full and fair disclosure, **5:8** secret profits, 5:5 purchase of estate property by representative, 5:9 defined generally, 5:1 personal representative v. Trustees, 5:2 inception of duty, **5:3** non-executor partners of executor, 5:34 personal fiduciary liability to third party creditors of estate, 5:33 pleadings, 5:54

Executors/administrators. See also Breach of trust, Personal representative—Cont'd remuneration for services rendered enabling provisions by agreement before probate, 5:39 at common law, 5:36 effect of breach of trust, 5:40 permissive statutory provisions, 5:38 permissive terms in will, 5:37 prepayment for services rendered, 5:42

## Fair price

promoter's duty, 23:11

#### **Family relations**

care of children by third parties, 6:23 et seq. case synopses, 6:32 incompetent parties and litigation guardians, 6:30, 28:10 other family members, 6:4 fiduciary relationship, 6:15 parents and children, 6:2 et seq. by-stander parents, 6:3 general, 6:2 limitations, 6:7 power of attorney, 6:22 spouses, 6:16 et seq. summary judgment synopses, 6:33

## Fees

duty relating to solicitor-client relationship, **12:19** for services rendered medical practitioners, **13:2** 

Fiduciary agency terminating, 3:17

Fiduciary concept application of banking institutions, 10:3

## Fiduciary concept—Cont'd

compared with other civil wrongs, 1:24 et seq. defined, 1:1 nature of relationship, 1:2 scope of, 1:30 trust aspect, 1:3

## Fiduciary default

trustees duty to act for all beneficiaries impartially, **2:21** duty to follow trust instructions, **2:22** duty to secure best price, **2:20** unauthorized use of trust property, **2:18** 

## **Fiduciary duties**

banking institutions confidentiality, 10:5 conflict of interest. 10:4 independent legal advice, 10:7 reasonable advice, 10:6 comparison with statutory and other duties. 1:28 directors creditors, 20:39 et seq. between directors, 20:42 inception of, 20:2 nature of, owed to corporation, 20:5 et seq. elected officials, 25:7 employees status of, 21:2 employers existance of, 22:1 executors/administrators inception of, 5:3 nature of duty breach (See Breach of duty) comparison with other civil wrongs, 1:24 et seq. "utmost good faith" generally, 1:4

## Fiduciary duties—Cont'd

nature of duty-Cont'd "utmost good faith"—Cont'd incidental benefit to beneficary, 1:6 inevitable loss. 1:7 reverse onus. 1:8 strict liability, 1:5 vulnerability, 1:9 persons associated with director's breach. 20:43 promoters concept of, 23:2 fair price, 23:11 full disclosure, 23:9 inception of, 23:3 independent boards, necessity of, 23:10 to whom duty owed, 23:4 provincial Crown, 25:51

Fiduciary engagement length of lawyers, 12:3 et seq.

Fiduciary liability personal liability third party creditors of estate, 5:33

Fiduciary obligations after departure from law firm, 12:42 other family members, 6:15 other party transaction, 8:22 parents and children by-stander parents, 6:3 general, 6:2 limitations, 6:7 between partners, 16:3 real estate agents to other party to transaction, 8:22 spouses, 6:16 et seq.

Fiduciary relationship commercial contractual relations, 19:1 Fiduciary relationship—Cont'd joint venture breath of, 17:8 general, 17:3 scope of relationship agreements to terminate relationship, 17:7 negotiating parties, 17:4 post-negotiation "fall-out," 17:5subsisting duty after termination of relationship, 17:6 medical practitioners, consequences of conflict of interest, 13:15 duty of full disclosure access to medical records, 13:6 general practice, 13:4 medical experimentation, 13:5 fees for services rendered, 13:2 misuse of doctor/patient relationship, **13:14** presumption of undue influence, 13:3 real estate agents, 8:1 solicitors with client, 12:1 et seq.

Fiduciary restraints restrictive covenants and departing employees, 21:26

Fiduciary status employee synopses, 21:45

Fiduciary trust trustee following trust instructions, 2:22

## Forensic accountants, 14:5

Forum choice of, 28:31

Franchises, 18:1 et seq.

Good faith, duty of between contracting parties, 19:2

Good faith, duty of—Cont'd contrast with breach of fiduciary duty, 1:25 power of attorney, 4:2

Governments, ministries and agencies. See also Crown band council. 25:63 children in care, 25:69 et seq. Crown development corporations, 19:9 duty to pay interest or invest on behalf of First Nations peoples, 25:60 generally, 25:65 elected officials, 25:7 et seq. employees, 25:66 et seq. municipal corporations, 25:6 pension commissions, 25:5 pleadings, 25:84 right to expropriate, 25:2

Guarantors banking institutions duty to, 10:10

#### Income tax consequences, 26:33

#### Income tax considerations, 26:32

Independent board necessity of promoter's duty, 23:10

**Independent contractors** 

commercial relationship, as, **19:15** contrasted with employees, **21:3**, **22:4** 

Independent legal advice duty of bank, 10:7

## **Indians. See Aboriginals**

Inducing breach of fiduciary duty, 1:21

In-house counsel duty of, 12:51

Injunctions

departing employees, **21:37**, **21:39** equitable relief, **26:15** generally, **26:15** procedure, **28:14** 

Innocent misrepresentation real estate agents, 8:20

In Specie distribution breach of trust executors/administrators, 5:17

## Inspectors, 14:16

Insurance agents cases, 9:17 duty as between, and insured, 9:3 et seq. where breach found, 9:5 where breach not found, 9:4 duty as between, and insurer, 9:2 duty of insurer to insured, 9:8 summary judgment synopses, 9:18 et seq.

Insurance proceeds equitable claims against bankrupt estate, 14:15 generally, 27:8

## Insured

duty as between adjuster and, 9:6 duty as between agent and, 9:3 et seq. where breach found, 9:5 where breach not found, 9:4 duty as between co-insureds, 9:14 duty as between insurer and, 9:7 et seq. comparison with duty of good faith, 9:10 duty of insured's lawyer to insuer, 9:12 duty of insured to insurer, 9:7 government insurers, 9:9 scope of policy and duty to defend. 9:11

Insurer duty as between, and agent, 9:2 duty as between insured and, 9:7 et seq. obligation to defend, 1:27

## Interest

duty of government to pay, **25:65** equitable and compounding, **26:25** 

Intra-employment duties ordinary employees, 21:17 pursuant to "top" or "key" employment status, 21:18

Investment advisors accountants as, 14:2

Investment counsellors and advisors, 11:11

Investment of trust funds Return on, 26:26

## Investors present promoter's duty, 23:5

## Joint venture. See also Fiduciary relationship case synopses, 17:12 contracting out, 17:9 differentiated from "partnership," 17:1 et seq. personal liability of directors, 17:10 pleadings, 17:11 summary judgment synopses, 17:13 et seq.

## Jurisdiction

choice of forum clauses, **28:31** claims against governments, **25:4** forum non conveniens, and, **28:21** 

## Jury trials, 28:23

## Labour relations

departing employees, **21:36** employer associations, **7:5 et seq.** 

Labour relations—Cont'd summary judgment synopses, 7:18 et seq. unions, 7:2 et seq.

## Labour unions, 22:7

## Laches

generally, **26:35** native rights and the Crown, **25:54** partnership claims, **16:18** 

## Law firms

acting for both sides, **12:38** fiduciary obligation after departure from firm, **12:42** liability of all partners for breach of one, **12:39** liability to trustee, **2:33** non-lawyer employees, **12:43** summary judgment synopses, **12:64 et seq.** 

## Lawyers. See Law firms, Solicitor/client relationship

## Legislation remedial trustee breach of trust. 2:28

Lessee

trustee as, 2:17

## Limitation periods

Crown and aboriginal claims, **25:52** directors, **20:46 et seq.** employees, **21:41** financial advisors and stockbrokers, **11:19** generally, **28:4 et seq.** incest, **6:7** 

## Liquidators, 14:14

## Loss

inevitability of, **1:7** Loyalty 1:22 (See also Conflict of Interest)

© 2021 Thomson Reuters, Rel. 3, 3/2021

Management manipulation directors, 20:6 Management services agreements liability, 24:1 **Medical experimentation** disclosure in. 13:5 Medical practitioners. See also Non-professional health advisors and Professional Colleges breach of duty or battery failure to follow instructions, 13:13 case synopses, 13:22 confidentiality (See Confidentiality) fiduciary relationship, consequences of conflict of interest. 13:15 duty of full disclosure access to medical records, 13:6 general practice, 13:4 medical experimentation, 13:5 fees for services rendered, **13:2** misuse of doctor/patient relationship, 13:14 presumption of undue influence, 13:3 professional colleges, 13:2 et seq. records, sale or seizure of, 13:11 summary judgment synopses, 13:23 et seq. **Medical records** access to. 13:6 Medicare and medical officers, 25:78 Mental health professionals, 13:19 Mining personnel duty of, 15:6 Misconduct removal of personal representative, 5:44 et sea.

**Misrepresentation** innocent real estate agents, 8:20 Mortgage brokers duty to clients, 11:12 Mortgages banking institutions, duties of, 10:11 mortgage brokers, 11:12 Mortgagors banking institutions duty to, 10:11 Municipal corporations, 25:6 Natives. See Aboriginals **Negotiating parties** commercial contractual relations. 19:3 joint ventures, 17:4 Non-client lawyer's responsibility to, 12:44 et seq. **Non-parents** care of children by, 6:23 et seq. Non-professional health advisors. 13:17 Notary publics, 12:52 Nursing homes, 7:14 Oil and gas operators, 19:11 **Owner** vs. trustee dichotomy promoters, 23:7 **Parents** obligation to children, 6:2 et seq. obligation to other parent, 6:16 et seq.

## Parties to proceeding, 28:14

Partners. See also Partnership continuing responsibility, 16:17 et seq. "intending" partners, 16:2 laches. 16:18 law firm fiduciary obligation after departure from firm, **12:42** liability of all partners for breach of one, 12:39 non-executor partners of executor, 5:34 reciprocal obligations general partner's liability to limited partners, 16:5 misuse of partnership assets, 16:8 prohibition against personal profit profits from sales to partnership, **16:7** secret profit, 16:6 purchase of partnership property after termination of partnership, 16:10 during life of partnership, 16:9 third party liability for partner's breach. 16:14

Partnership. See also Partners case synopses, 16:20 continuing responsibility, 16:17 et seq. defining the relationship, 16:1 differentiating from "joint venture," 17:1 et seq. distinguished from agency, 3:3 general principals, 16:3 liability for partner's breach, 16:16 profits from sales to, 16:7 termination of relationship, 16:15 third party liability for partner's breach, 16:14

## Pension commissions, 25:5

## Pensions

and benefit plans, 22:10

Pensions—Cont'd duty of Crown, 25:5, 25:63

Pension Trusts, 2:44

Personal benefit duty to avoid, through preformances of duties executors/administrators, 5:7

Personal gain prohibition against agency, 3:11 executors/administrators, 5:4 trustee, 2:25

Personal representative. See also Executors/administrators removal of conflict of interest, 5:48 deterioration of relationship betweeen representatives, 5:46 general, 5:45 miscellaneous causes, 5:49 misconduct, 5:47 resignation, 5:50 trustee and, 5:2

Police officers, 25:74

## Police service board, 25:74

Power of attorney, 5:52 breach of trust, 6:22 executors/administrators, 5:19 family relations, 6:22

# Practice and procedure. See Civil procedure

## Price

duty to attain best executors/administrators, **5:6** real estate agents, **8:19** duty to secure trustee, **2:20** fair promoters duty, **23:11** 

**Principals** agents duty to, 3:9 et seq. **Probate** remuneration by agreement before executors/adminstrators, 5:39 **Procedure. See Civil procedure** Professional codes of ethics remedies through, 26:29 Professional colleges, 13:16 Prohibition common law trustee right of, to purchase trust property, 2:16 general trustees, 2:9 against personal gain agency, 3:11 executors/administrators, 5:4 trustee, 2:25 against personal profit partners, 16:6 trustees, 2:11 against personal purchase agency, 3:13 trustee, 2:26

## Promoters

case synopses, 23:15 developers as, 23:14 fiduciary duty concept of, 23:2 fair price, 23:11 full disclosure, 23:9 inception of, 23:3 independent Board, 23:10 to whom duty owed company-to-be-formed, 23:4 future shareholders, 23:6 present investors, 23:5 "owner" vs. "trustee" dichotomy, 23:7 Promoters—Cont'd rule against secret profits, 23:12 waiver of promoter's breach, 23:13

## Property

estate misuse of executors/administrators, **5:15** purchase of, by personal representative, **5:9** purchase of partnership by partner, **16:9** 

Psychological counselling duty of practitioners, 15:4

Purchase prohibition against personal agency, 3:13 trustee, 2:26

Purchasers of real estate, 7:14

## Real estate

mortgage brokers, **11:12** revenue sharing arrangements, **19:10** vendors and purchasers of, **19:12 et seq.** 

## **Real estate agents**

acting for both parties, 8:23 case synopses, 8:26 commission forfeiture of. 8:16 kickbacks, 8:17 rate. 8:15 duty of disclosure and righteous transaction. 8:9 existence of duty, 8:1 fiduciary aspect creation and termination of experation of duty, 8:6 inception of duty, 8:5 fiduciary obligation to other party to transaction, 8:22 fiduciary relationship, 8:1

Real estate agents—Cont'd nature of duty, 8:7 et seq. to purchaser, 8:8 to vendor, 8:7 providing reasonable advice duty to obtain best price, 8:19 innocent misrepresentation, 8:20 undisclosed competitive bidding, 8:21 purchase from client agent, by, 8:12 agent's associate, by, 8:13 sale to client. 8:14 summary judgment synopses, 8:27 et seq. to whom duty owed to purchaser, 8:3 to vendor. 8:2 to vendor and purchaser, 8:4

Real estate appraisers liability, 8:25, 11:14

## Real estate boards, 8:24

## **Reasonable expectations test, 21:14**

Reasons of trial judge, 28:32

## **Receiver/managers**

appointed by court, **14:10**, **26:18** appointed by creditors, **14:11** costs, **14:13** dichotomy, **14:12** general, **14:10** 

## Recission, 26:11

## Relationship

duty arising from long standing stockbrokers and financial advisors, **11:2 et seq.** 

## Religious advisors duty of, 15:5

Remedial considerations clean hands doctrine, 26:36 abuse of process, 26:37 client cost awards, 26:6 et seq. deterrence, 1:14 forfeiture of deposit, 26:40 generally, 26:19 et seq. historical developments, 26:1 penalty clauses, 26:40 share sale, 26:21 substantial indemnity, 26:6 et seq.

## Remedies Table - Breach of Fiduciary Duty, 26:41 et seq.

Remuneration agents, for, 3:16 directors charitable corporations, **20:45** commercial corporations, 20:44 executors/administrators prepayment for services rendered. 5:42 for services rendered by agreement before probate, 5:39 at common law, 5:36 effect of breach of trust, 5:40 enabling provisions permissive statutory provisions, 5:38 permissive terms in will, 5:37 for transfer to self, 5:31 trustee generally, 2:12

statutory entitlement, **2:12** trust terms providing for, **2:12** 

Representative. See Personal representative

Residential schools, 25:40

Restitution, 26:11

Restrictive covenants vs. fiduciary restraints departing employees, 21:27

Resulting trust presumption of executor as beneficiary, 5:32 generally, 2:32

Retainer lawyer duty extending beyond period of, 12:5 duty may be owed before created, 12:4

Revenue Sharing arrangements, 19:10

"Righteous transaction" real estate agents, 8:9

## School Boards, 25:71

Secret commissions agency, 3:12

Secret profits directors, 20:11 executors/administrators, 5:5 partners, 16:6 promoters, 23:12 trustees, 2:13

Self-interest

conflicts between duty and executors/administrators, **5:4 et** seq. trustee, **2:9 et seq.** 

## Service ex juris, 28:21

## Services

fees for, rendered medical practitioners, **13:2** prepayment for, rendered executors/administrators, **5:42** remuneration, for, rendered executors./adminstrators, **5:36** 

## Shareholders

case synopses, **24:8** corporate opportunity doctrine, **24:5** 

Shareholders—Cont'd director's duty to diminution of value of shares, 20:33 generally, 20:30 oppression remedy, 20:37 purchase and resale of minority shares, 20:32 director/shareholder dichotomy, 20:3 duty to other shareholders. 24:1 future promoters duty to, 23:6 relationship with company, 24:4 small corporations departing shareholders, 24:3 unanimous shareholders agreement. effect of. 20:35 vending duty to purchaser of shares, 24:2

Shares directors share manipulation, 20:7 vending shareholder's duty to purchaser, 24:2

Solicitor. See also Breach of trust, Solicitor/client relationship as beneficiary of fiduciary duty, 12:53 business relations with client or other person, 12:50, 12:51 fiduciary relationship with client, 12:1 et seq. responsibility to non-client, 12:45

Solicitor-client privilege Crown documents, 25:73 general, 28:20

Solicitor/client relationship acting for both sides breach of duty (See Breach of duty) business relations between, 12:50 case synopses, 12:63 clients who are competitors Solicitor/client relationship—Cont'd conflict of interest, 12:9 contributory fault, 12:37 costs following unsuccessful claims. 12:59 duties confidentiality, 12:23 full disclosure, 12:7 loyalty to former or existing clients. 20:20 reasonable advice, 12:20 trust funds, 12:34 zealous representation, 12:15 evidentiary considerations, 12:36 fees, 12:19 fiduciary engagement, length of commencement, 12:4 duty extending beyond period of retainer, 12:5 liability to trustee, 2:33 relationship, 12:1 et seq. remedies for breach of duty, 12:35 summary judgment synopses, 12:64 et seq. who is a client. 12:2

Spiritual advisors duty of, 15:5

#### **Spouses**

fiduciary obligations between, **6:16** et seq.

Statute of limitations director's breach of trust, 20:46 et seq.

## Statutes. See "Legislation" tab

#### **Statutory duties**

compared to fiduciary duties, **1:28** directors and officers, **20:49** stockbrokers and financial advisors, **11:8** 

Statutory enactments remedies through, 26:28 **Statutory provisions** remedial validating the breach executors/administrators, 5:26 Stockbrokers and financial advisors breach of duty, 11:17 case synopses, 11:21 content of duty, 11:7 et seq. defences contributory negligence, 11:18 limitations, 11:19 illegal investment schemes, 11:15 "perfect good faith and full disclosure" duty arising from longstanding relationship, 11:4 effect of internal broker's guidelines, 11:6 effect of professional rules, **11:6** effect of subsequent transactions, 11:6 longstanding relationship, 11:6 no requirement, 11:5 reliance upon, skills, 11:6 sophisticated client, **11:6** unsophisticated client, **11:6** generally, 11:2 market volitility, **11:3** pleadings, 11:16 summary judgment synopses, 11:22 et seq. vicarious liability of firm, **11:15** 

Sub-agents status as fiduciary duty, 21:3

Substitute Decision-Makers case synopses, 4:9 executors, becoming, 4:4 pleadings, 4:8 power of attorney, 4:2 practice, 4:7 remedies, 4:6 remuneration, 4:5 state-appointed, 4:3

Substitute Decision-Makers —Cont'd summary judgement tables, 4:10

Summary judgment, (Refer to each chapter for judgment synopses) generally, 28:11

Summary Trial procedure, 28:12 Vexatious Proceedings, 28:13

## **Summary Trial Procedure, 28:12**

Teachers, 7:18 et seq.

Testamentary document remedial provisions in validating breach executors/administrators, 5:24

Third party creditors personal liablity to, of the estate executors/administrators, 5:33

Third party liability partner's breach, for, 16:14

**Top management test** fiduciary employee, **21:5** 

Tort law contrast with breach of fiduciary duty, 1:24

## Tracing

equitable claims against bankrupt estate, 14:11 generally, 27:7 restitution and recission through, 26:11

## Transaction

acting for both sides of solicitor/client relationship, **12:8** fiduciary obligation real estate agent, **8:22** 

## Tribunals, 25:79

## Trust

avoiding use of, opportunity, trustee, **2:18** constructive trust (See Constructive trusts) creator of, as trustee, **2:4** duty to follow instructions of, **2:22** failure to follow express, intestructions breach of trust executors/administrators, **5:14** legal representation of, **2:37** presumption of resulting trust, **2:32** terms providing for trustee remuneration, **2:12** 

## Trust and confidence

specific reposing of stockbrokers and financial advisors, **11:5** 

## Trustee

breach of trust (See Breach of trust) capacity bare trustees. 2:6 beneficiary as trustee, 2:5 creator of trust as trustee. 2:4 fiduciary nature of status, 2:3 case synopses, 2:44 charities as, 2:40 conflict between duty and self-interest. 1:6 declaration of status of, 26:7 defined, 2:1 distinguished from agency, 3:4 general prohibition, 2:9 void or voidable, 2:10 as lessee. 2:17 personal representative and, 5:2 promoters owner vs. trustee dichotomy, 23:7 as purchaser of trust property contracting with beneficiary, 2:16

## INDEX

Trustee—Cont'd as purchaser of trust property -Cont'd right to common law prohibitions, 2:15permissive trust terms. 2:15 prevailing premise against purchase, 2:15 purchase after resignation, 2:15 validation through court approval, 2:15 validation through informed consent, 2:15 removal of trustee, 2:42 specific purposes, for, 19:7 summary judgment synopses, 2:45 et seq. **Trustees in bankruptcy**, 14:15 immunity, 14:15 Trust funds solicitor/client relationship, 12:34 **Trust property** trustee as purchaser of contracting with beneficiary, 2:16 right to common law prohibitions, 2:15pension funds, 2:44 permissive trust terms, 2:15 prevailing premise against purchase, 2:15 purchase after resignation, 2:15 validation through court approval, 2:15 validation through informed

consent, 2:15 trustee's unauthorized use of, 2:18 Unanimous shareholders agreement director's duties, effect on, 20:35

Unconscionability contrast with breach of fiduciary duty, 1:25

Undue influence presumption of medical practitioners, **13:3** rebuttable presumption solicitor/client relationship, **12:9** 

Unions. See also Labour relations effect of collective agreement, 22:3 as fiduciaries, 22:7

Universities and colleges duties of, 7:15 pleadings, 7:15

Utmost good faith accidental benefit to beneficary, 1:6 general, 1:4 inevitable loss, 1:7 reverse onus, 1:8 strict liability, 1:5 vulnerability, 1:9

Vendors purchasers of real estate, and, 7:14

Vicarious liability employer, 22:6, 26:30 generally, 26:30 stockbrokerage firm, of, 11:13

## Will

discretion under executors/administrators as beneficiary, **5:29** permissive terms in executors/administrators remuneration for services rendered, **5:35 et seq.**