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<b>LAW OF CONFIDENTIAL BUSINESS INFORMATION</b> The Honourable Julie A. Thorburn and Rachel Chan Release No. 1, March 2026
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### What's New in this Update

This release features case law updates to Chapter 4 Confidential Business Information and the Employment Relationship, Chapter 5 Claims for Breach of Confidential Business Information, Chapter 6 (Defences to Claims for Breach of Confidential Business Information) and Chapter 7 (Remedies for Breach of Confidential Business Information).

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## Highlights:

- **Claims for Breach of Confidential Business Information—Civil Actions—Breach of Confidence—Introduction**—Justice Pfuetzner concluded that the trial judge erred in determining that a fiduciary relationship existed between Marsh and the plaintiff, PRM. While the trial judge made no reversible error in concluding that Marsh misused PRM’s confidential information, he awarded damages well in excess of the loss that flowed from Marsh’s wrongful conduct. Justice Pfuetzner explained that what was lacking in the trial judge’s analysis was a determination that Marsh had relinquished its own self-interest and agreed to act solely on behalf of PRM. The trial judge’s analysis focused on his conclusion that Marsh misused PRM’s confidential information. However, “the fact that confidential information is obtained and misused cannot itself create a fiduciary obligation” and where “the essence of the complaint is misuse of confidential information, the appropriate cause of action is breach of confidence and not breach of fiduciary duty”. Marsh and PRM were arm’s length commercial entities. The relationship created certain obligations of confidentiality. The trial judge’s imposition of a fiduciary duty, however, was in error as he failed to apply a required element of the legal test. The trial judge properly instructed himself on the test for breach of confidence: *Prairie Risk Management Inc v. Marsh Canada Ltd*, [2025] 4 W.W.R. 598, 45 C.C.L.I. (6th) 1, 2025 CarswelMan 20, 2025 A.C.W.S. 326, 2025 MBCA 6 (Man. C.A.), leave to appeal refused 2025 CanLII 80291, 2025 CarswelMan 274, 2025 CarswelMan 275 (S.C.C.).
- **Remedies for Breach of Confidential Business Information—Damages—Damages for Breach of an Equitable Duty of Confidence or Fiduciary Duty**—The trial judge awarded \$750,000 in damages, based on disgorgement of profits. The Court of Appeal agreed that the trial judge failed to consider the *Limitations Act* defence to the TCS opportunities claim. The TCS opportunities claim was statute-barred. The Court of Appeal agreed that the appropriate remedy was to deduct the amount attributable to the TCS opportunities claim from the trial judge’s award of damages. The trial judge awarded \$750,000 in damages for both claims combined. The damages awarded by the trial judge were 75.76 percent of the amounts testified to by the respondent’s expert. The appropriate deduction from the damages award for the TCS opportunities claim being statute-barred was 75.76 percent of \$305,360, which as \$231,340.74: *Total Meter Services Inc. v. GVM Integration*, 61 B.L.R. (6th) 8, 2025 CarswellOnt 6300, 2025 A.C.W.S. 2091, 2025 ONCA 321 (Ont. C.A.).

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