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ADVISING THE FAMILY-OWNED BUSINESS

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This looseleaf service is expertly designed to assist the professional advising the family-owned business in legal matters. It explores the main stages in the life of the business from its start-up to its operation and any alterations in its structure and/or participants.

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What's New in this Update:

This release features updates to the Sentencing Table: Liability of Corporations for Offences Relating to Occupational Health and Safety. This release also features updates the Remedies Table – Breach of Fiduciary Duty.

Highlights:

- **Sentencing Table—Liability of Corporations for Offences Relating to Occupational Health and Safety—Criminal Code Offences—Criminal Negligence Causing Death—**The mass of the retaining wall and the soil behind it were an obvious sign of risk of worker injury without adequate controls in place. The Court was satisfied that the company made substantial changes to its policies and practices after the offences. The company's liability arose from the collective failure of its senior officers to interpret properly, or at least clarify, the limited scope of the engineering certificate, and to proactively take appropriate precautions in the face of obvious and foreseeable hazards in a high-risk work environment. The Court noted that the fines and victim surcharges on the two counts amounted to $575,000, which the Court considered to be a proportionate sentence consistent with the principles of sentencing: *R. v. J. Cote and Son Excavating Ltd.*, 2026 CarswellBC 1179, 2026 BCSC 626 (B.C. S.C.).
- **Remedies Table—Breach of Fiduciary Duty—Business Relationship —**The Court was fully satisfied that the Applicant had made out a case for breach of fiduciary duty by Reis. He interfered with VGA's completion of the Schedule "A" projects by failing to instruct employees to finish the jobs while allocating the employees to Dupont. There was no realistic, affordable way to conduct a separate assessment of loss of profit on each project without detailed records. The Court agreed that Reis obtained a springboard for Dupont by breach of his fiduciary duties to VGA. In the Court's view, there was a causal relationship between the wrongdoing and the profits to be disgorged. Reis should not have taken VGA employees to do profitable work for Dupont while leaving VGA to abandon two projects and leave others unfinished. Reis ought to have kept proper records as required by the unanimous shareholders' agreement. The Court noted that it was also appropriate and fit that both Reis and Dupont be jointly and severally liable. The Court ordered Reis and Dupont jointly and severally to pay the aggregate sum of $2,248,328 to VGA as disgorgement of profits for oppression and breach of fiduciary duties. The Interim Receiver would then report and

seek to proceed with a liquidation in the normal course of a receivership proceeding: *Surace v. Reis*, 2026 CarswellOnt 5784, 2026 ONSC 2251 (Ont. S.C.J.).