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FIDUCIARY DUTIES
Obligations of Loyalty and Faithfulness

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This loose-leaf service offers readers a wide-ranging, up-to-date analysis of fiduciary relationships in Canada. The publication's comprehensive coverage of fiduciary responsibility is organized into four parts: (1) Overview of Fiduciary Law; (2) Fiduciary Relationships; (3) Duties of Faithfulness; and (4) Consequences of a Breach of Faithfulness. The publication also provides readers with detailed case law analysis, valuable commentary, summaries of remedies awarded for breaches of fiduciary obligation, and other value-added reference tools. The publication includes coverage of many different types of established fiduciary relationships including directors/officers, key employees, executors and administrators, trustees, accountants, insurance advisers, lawyers, physicians, spouses, and others. The updatable loose-leaf format ensures currency.

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What's New in this Update:

New case law and commentary, including the following recent decisions:

- **Fiduciary *Per Se* Relationships—Caretaker Roles—Trustees—**The Court considered whether the *Trustee Act* permits the termination of a charitable trust. The Court noted that the University did not terminate the Yaroslav & Margaret Hunka Ukrainian Research Endowment Fund ("the Hunka Trust") because it determined that Yaroslav was a war criminal or anti-Semitic. Rather, it did so because it perceived that any continued association with an individual who had served in a regiment connected to the Nazis would adversely affect the University of Alberta. The House of Commons incident, and the public response that followed, made it clear that maintaining the Hunka Trust was not in the University's best interests. As sole trustee, the Court determined that the University owed fiduciary duties to the Hunka Trust. At the same time, as a corporate board, they also had a fiduciary duty to act in the best interests of the University. The Court noted that the *Post-Secondary Learning Act* requires the University to act in the best interests of the University of Alberta. That duty is broad and multi-faceted, and the University cannot be faulted for choosing a course of action that advanced some interests over others. The controversy surrounding Yaroslav's recognition in the House of Commons, and the public attention drawn to his service in the Galicia Division during the Second World War, placed the University's fiduciary duties as trustee in direct conflict with legislated and fiduciary obligations under the *PSLA*, the University's Bylaws, and the common law. That conflict strongly supported termination of the Hunka Trust. The termination of the Hunka Trust was justified: *Governors of the University of Alberta v. Alberta (Minister of Justice)*, 2026 CarswellAlta 1971, 2026 ABKB 562 (Alta. K.B.).
- **Accessory Liability—Knowing Assistance—**The Court concluded that a cause of action based on knowing assistance did not exist on the material facts as pleaded. Assuming that by signing the bond they had knowledge that Fost was standing or seeking to stand in a fiduciary role in relation to the estate and its rightful beneficiaries, that was not enough. It would also be necessary to plead that they had actual knowledge or were reckless or wilfully blind to fraudulent and dishonest conduct on the part of Fost. The Statement of Claim contained no such allegation. As regards their conduct, the Court noted that the Statement of Claim did not plead that the Second and Third Defendants' provision of an administration bond constituted their knowing participation in or assis-

tance to Fost's alleged fraudulent and dishonest conduct. The Court explained that as a predicate to a knowing assistance claim against a stranger, a fiduciary must have breached their duty fraudulently and dishonestly. The Court noted that while the Statement of Claim alleged that Fost and the Plaintiff knew each other since childhood and the Petition falsely stated that the Plaintiff was not entitled to apply for Letters of Administration or to share in the estate, fraud was not alleged. The mere pleading that Fost and the Plaintiff knew each other since childhood and the Petition falsely stated the Plaintiff's status did not constitute a proper pleading of fraudulent conduct on the part of Fost. The Court explained that a statement may be false but not necessarily fraudulent and dishonest: *Izquierdo v. Fost*, 2026 CarswellNfld 168, 2026 NLSC 86 (N.L. S.C.).