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FIDUCIARY DUTIES **Obligations of Loyalty and Faithfulness**

Michael Ng
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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—Directors—Business Opportunities**—Khela and Phoenix Homes alleged that Takhar breached the JVA and his fiduciary duties to the joint venture company by transferring one of the properties to another company he controlled. The appellants accepted that Takhar, as a director, owed a fiduciary duty to Phoenix Homes as provided for in s. 142 of the *BCA*. They also acknowledged that ss. 147-149 of the *BCA* impose obligations on directors who may be in a conflict of interest with a corporation to provide full disclosure to the corporation and obtain its consent. The fiduciary duty owed to the corporation by a director is imposed both by statute and by the common law. A director is precluded from obtaining for himself, either secretly or without approval of the company, any property or business opportunity either belonging to the company or for which it has been negotiating. The appellants and the respondents parted company, however, on the extent to which Takhar's fiduciary duties as a director were circumscribed by the JVA and the reality that Phoenix Homes was nothing more than a corporate vehicle to carry out projects on behalf of the two principals. Justice Fenlon noted that there were fundamental problems with the submission that the parties intended only the JVA to govern. First, nothing in the JVA was inconsistent with expecting Takhar to adhere to the fiduciary duties of a director. To the contrary, the JVA obligated the two directors to consult each other on all contracts and transactions and to be honest and fully disclose all significant information related to the venture. Those obligations were consistent with the statutory obligations outlined in ss. 142 and 147-149 of the *BCA*. Second, the parties chose to use a corporation to carry out the project. A corporation is a separate legal entity distinct from its shareholders. By using a corporation, the joint venturers gained certain advantages, including shielding themselves from direct liability but they also thereby assumed certain obligations and constraints, including fiduciary duties imposed by the *BCA*. Those duties apply to joint venture corporations as they do to all corporations. Although what will constitute compliance with the fiduciary duty of a director may vary with the factual context, it is nonetheless mandatory that a director look to what is in the best interests of the corporation. Third, the appellants' submission relied on the assumption that Khela repudiated the JVA and that Takhar accepted that repudiation, effectively bringing the parties' obligations under the

JVA and any fiduciary duties to Phoenix Homes) to an end. However, the appellants did not plead that Khela repudiated the agreement. To the contrary, they pleaded that the JVA remained on foot, and that Khela agreed to substitute the 208th Street Property for the 199A Property, a claim the trial judge soundly rejected. The trial judge did not conclude that Khela's unwillingness to fund the purchase of the 199A Property in 2009 amounted to a breach of the JVA, let alone a repudiation of that agreement. To the contrary, the trial judge concluded that, given the effluxion of time and the increased value of the 199A Property, the parties were contractually obligated to discuss whether to sell the land at that point or press on with the development in light of Khela's reluctance to continue. In any event, the appellants' submission that Khela's failure to contribute \$1.5 million to the venture relieved Takhar of any fiduciary obligation to Phoenix Homes ignored two relevant considerations: the 199A Property had increased significantly in value in the four years that Phoenix Homes remained entitled to purchase it, and Khela had contributed \$150,000 to Phoenix Homes — a sum that included the money for the deposit paid to the vendor in 2005. In other words, Takhar took not only the opportunity, but also value belonging to Phoenix Homes when the joint venture broke down: *Takhar v. Phoenix Homes Limited*, 2025 CarswellBC 1415, 2025 BCCA 152, 3 B.C.L.R. (7th) 75, [2025] B.C.J. No. 865, 2025 A.C.W.S. 2339, 68 R.P.R. (6th) 25 (B.C.C.A.).

- **Ad Hoc Fiduciary Relationships—Fiduciary Duties in the Governmental Context**—The Court of Appeal noted that the chambers judge did not err in presuming that the decision to close Red Deer OPS was made in pursuit of the public interest. The appellant provided evidence showing that supervised consumption sites like Red Deer OPS ameliorate the risk of serious bodily harm and death associated with illegal drug use and substance use disorders. However, effectively managing the harms associated with substance use disorder and drug toxicity is complex and multi-faceted, and Alberta had indicated that it wanted to take a different approach in Red Deer, focusing on recovery from substance use disorders and offering harm reduction services in a different way. Its revised approach may prove to be more or less effective than previous approaches, but in adopting it Alberta was entitled to the legal presumption that it is acting in the public interest. The Court of Appeal explained that while courts can and do review the legality of government action, they also respect the government's institutional legitimacy and competence to make difficult policy choices addressing complex social issues. The importance of that respect weighed against granting an interlocutory injunction. The Court of Appeal noted that at the

balance of convenience stage, it is also appropriate to consider the strength of the case. The chambers judge did not err in identifying frailties in the appellant's case. A court may ultimately substantiate the appellant's claim based on a complete record and full argument. However, courts approach challenges to the development and implementation of polycentric health care and social policies on constitutional grounds carefully, in light of what is "a matter for Parliament and the legislature. The Court of Appeal observed that the relief sought by the appellant was extraordinary. He asked the court to direct Alberta to allocate public funds to a specific service, and that the court require Alberta to execute an agreement for the provision of that service, the terms of which would have to be established by court order for any period after the expiry of the existing agreement on March 31, 2025. Granting an injunction to that effect would not be just and equitable on an interlocutory basis in all of the circumstances: *Brown v. Alberta*, 2025 CarswellAlta 929, 2025 ABCA 146, [2025] A.W.L.D. 2273, [2025] A.W.L.D. 2274, 2025 A.C.W.S. 2042, 81 Alta. L.R. (7th) 200 (Alta. C.A.).