

Publisher's Note

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Wayne Gray

Gray's Commentaries on Federal Corporate Laws

Gray's Commentaries on Federal Corporate Laws is a comprehensive reference providing instant access to federal corporate legislation, case law and expert commentary and analysis. Readers can use this one-stop reference in meetings, in court, or at their computer to find full annotations of key corporate statutes—particularly the *Canada Business Corporations Act* and the *Canada Not-for-profit Corporations Act*—including all regulations and prescribed forms. *Gray's Commentaries on Federal Corporate Laws* also features references to the most recent reported and unreported cases, cross-references to related statutory provisions, a glossary of terms defined by statute and case law, memoranda on key practice questions, and coverage of current developments.

This release features the addition of new case law and commentary to *Canada Business Corporations Act* Part III (Capacity and Powers), Part X (Directors and Officers) and Part XIII (Proxies), amongst others. This release also features the addition of nine new memoranda in Chapter 13 of the publication.

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Highlights

- **Canada Business Corporations Act — Part III — Capacity and Powers — Section 18 Indoor Management Rule** — The court in *NCC Dowland* held that the indoor management rule indicates that an outsider, when dealing with the corporation, need not look behind the apparent authority of a person held out by the corporation to exercise the powers and perform the duties that are customary for the corporation and usual for a director, officer or agent. It estops the corporation from asserting against a third party that the corporation has not complied with its internal management requirements. Absent something significant that should alert a third party to irregularities, the third party is entitled to rely on the apparent authority of the person held out by the corporation to exercise its usual powers and duties: *Intact v. NCC Dowland*, 2018 ABQB 381, 2018 CarswellAtla 919.
- **Canada Business Corporations Act — Part X — Directors and Officers — Section 122 Duty of Care of Directors and Officers** — The court in *Borrelli v. Chan* held that a fiduciary may be held liable to account for profits that he obtained as a result of conduct in breach of his fiduciary duty. A fiduciary who breaches his duty must account for and disgorge any profit received even if the corporation suffered no loss. The fiduciary's liability arises from the mere fact of a profit having been made from a breach of duty. Also, ordering repayment of executive compensation is appropriate where the corporation would have dismissed the officer for cause had it known of his breach of duty. The fiduciary is also liable for all consequential and special damages, including the professional fees and other costs that the corporation incurred to investigate the fiduciary's fraud. Punitive damages are appropriate in situations of fraud and breach of fiduciary duty where the fiduciary's actions are purposely repugnant to the corporation's best interests and were motivated by the fiduciary's self-interest: *Borrelli v. Chan*, 2018 ONSC 1429, 2018 CarswellOnt 4302 (S.C.J.).
- **Canada Business Corporations Act — Part XIII — Proxies — Section 146 Unanimous Shareholder Agreement** — The court in *1552906 Ontario (Bankruptcy)* held an agreement between a corporation and all of its shareholders is not a USA unless it confers authority to govern the affairs of the corporation at large. It is not enough for the agreement to deal only with the management of the corporation's assets (even if they are the corporation's only assets): *1552906 Ontario (Bankruptcy)*, 2018 ONSC 1731, 2018 CarswellOnt 5437.