

Table of Contents

	PAGE
<i>Preface</i>	PR-1
<i>Table of Cases</i>	TC-1

VOLUME 1

Part I: Overview of Fiduciary Law

Chapter 1: Duties Arising from Trust and Confidence

1:10	Positions of trust and confidence	1-1
1:20	Fiduciary law and other legal doctrines	1-3
1:20.10	Law of trusts and confidences	1-3
1:20.10.10	Law of confidences	1-4
1:20.10.20	Law of trusts	1-4.1
1:20.20	Tort law	1-7
1:20.30	Contract law	1-14

Chapter 2: Fiduciary Law Basics

2:10	Introduction	2-1
2:20	Duty and breach	2-2
2:20.10	Relationships with fiduciary aspects	2-2
2:20.20	Breaching the standard of faithfulness	2-6.5
2:20.20.10	Duties of loyalty	2-8.1
2:20.20.10.1	Conflicts of interest and duty	2-8.1
2:20.20.10.2	Conflicts of duty and duty	2-9
2:20.20.20	Personal performance	2-9
2:20.20.30	Other duties of faithfulness	2-10
2:20.20.30.1	Honesty	2-10
2:20.20.30.2	Disclosure of information	2-10
2:20.20.30.3	Exercise of prudence, care and skill	2-10

FIDUCIARY DUTIES

2:20.30	The liability of strangers	2-12
2:20.40	Consent or acquiescence	2-13
2:30	Remedies	2-14
2:30.10	Personal remedies	2-14
2:30.10.10	Compensation for actual losses	2-15
2:30.10.20	Accounting of profits	2-17
2:30.20	Proprietary remedies	2-26
2:30.20.10	The constructive trust	2-27
2:30.20.20	The equitable lien	2-27

Chapter 3: Development of Fiduciary Law in Canada

3:10	Introduction	3-1
3:20	Equity and conscience	3-1
3:30	Contextual approach to fiduciary law	3-3
3:40	Future issues in fiduciary law	3-8

Part II: Fiduciary Relationships

Chapter 4: Identifying Fiduciary Relationships

4:10	Introduction	4-1
4:20	Trust and confidence	4-2.1
4:30	Fiduciary <i>per se</i> and fiduciary <i>ad hoc</i>	4-4

Chapter 5: Fiduciary *Per Se* Relationships

5:10	Introduction	5-1
5:20	Caretaker roles	5-4
5:20.10	Directors	5-4
5:20.20	Senior management and “key” employees	5-12.4
5:20.30	Parents and guardians	5-15
5:20.40	Personal representatives	5-18
5:20.50	Trustees	5-22.04
5:20.55	Receiver and receiver-managers	5-22.05
5:20.60	The Crown	5-22.05
5:20.60.10	Wards	5-22.13
5:20.60.20	Surrender of reserve lands to the Crown	5-24.2
5:20.60.30	Protection of pre-existing and still existing aboriginal and treaty rights	5-34.01
5:20.60.40	Creation of reserves	5-34.03
5:20.60.50	Limits to <i>sui generis</i> fiduciary duty	5-34.4a
5:20.60.60	Fiduciary duty owed to Métis	5-34.6b
5:20.60.70	Section 35 of the <i>Constitution Act, 1982</i>	5-34.16b1

TABLE OF CONTENTS

5:20.60.80 Honour of the Crown — the source of a
duty to consult and accommodate 5-34.16e

5:20.60.90 When does the duty to consult and
accommodate arise? 5-34.16f

 5:20.60.90.1 Knowledge by the Crown of a
 potential claim or right 5-34.17

 5:20.60.90.2 Crown conduct or decision 5-34.19

 5:20.60.90.3 Adverse effect of the proposed
 Crown conduct on an aboriginal
 claim or right. 5-34.21

5:20.60.100 The scope and content of the duty to
consult and accommodate 5-34.30

5:20.60.110 Treaty making and treaty interpretation 5-34.41

5:20.60.120 The role of tribunals in consultation. 5-34.48

5:20.60.130 Do third parties owe a duty to consult
and accommodate? 5-34.57

5:20.60.140 Judicial review of alleged breach of duty
to consult. 5-34.61

5:20.60.150 Standard of review 5-34.62

5:20.60.160 Standing to assert collective right 5-34.63

5:20.60.170 Limitation periods 5-34.70a

5:20.60.180 Breach of duty to consult and
accommodate — remedies 5-34.73

5:20.60.190 Crown subjects. 5-34.77

5:20.70 Public officials 5-36.3

5:30 Adviser roles 5-38

 5:30.10 Financial advisers 5-38.1

 5:30.20 Insurance advisers. 5-41

 5:30.30 Legal advisers 5-43

 5:30.40 Medical advisers 5-46.9

 5:30.50 Spiritual advisers. 5-50.2

5:40 Agency roles 5-52.4

5:50 Cohort roles 5-55

 5:50.10 Partners 5-55

 5:50.20 Co-venturers 5-58.5

 5:50.30 Spouses. 5-67

Chapter 6: *Ad Hoc* Fiduciary Relationships

6:10 Trust and confidence in fact 6-1

6:20 *Ad hoc* fiduciary relationships 6-6.11

 6:20.10 Persons who are not typically fiduciaries. 6-6.11

 6:20.20 Persons who are already fiduciaries. 6-7

 6:20.30 Persons entrusted with vital practical interests. 6-8

 6:20.40 Fiduciary duties in the governmental context 6-21

FIDUCIARY DUTIES

VOLUME 2

Part III: Duties of Faithfulness

Chapter 7: Standards of Faithfulness

7:10	Introduction	7-1
7:20	Proscriptive and prescriptive fiduciary duties	7-2
7:20.10	Centrality of the conflict and profit rule	7-2
7:20.20	Prescriptive fiduciary duties	7-3
7:20.30	Fiduciary duties of prudence	7-4
7:30	Reasonable expectations	7-8.1
7:40	Direct and vicarious liability	7-11
7:40.10	Identification doctrine	7-14
7:40.20	Imputed knowledge	7-17
7:40.30	Imputed acts	7-18
7:40.40	Vicarious liability	7-20

Chapter 8: The Duty of Loyalty

8:10	Conflicts of interest and duty	8-1
8:10.10	The conflict rule and the profit rule	8-1
8:10.20	Breaching the duty to avoid a conflict	8-3
8:10.30	Conduct that does not conflict with a duty	8-3
8:10.40	Authorized conflicts and informed consent	8-6
8:10.50	Business or other opportunities	8-7
8:10.50.10	Caretakers	8-7
8:10.50.10.1	Directors	8-7
8:10.50.10.1.1	Corporate business opportunities	8-10.01
8:10.50.10.1.2	Corporate clients or customers	8-14.2
8:10.50.10.2	Key employees	8-14.2
8:10.50.10.3	Parents and guardians	8-14.16
8:10.50.10.4	Personal representatives	8-14.17
8:10.50.10.5	Trustees	8-16(2)
8:10.50.10.6	The Crown	8-16.2
8:10.50.10.7	Public officials	8-16.2
8:10.50.20	Advisers	8-16.2
8:10.50.30	Agents	8-16.3
8:10.50.40	Cohorts	8-17
8:10.50.40.1	Partners	8-17
8:10.50.40.2	Co-venturers	8-18.1
8:10.60	Unauthorized remuneration and “secret” commissions	8-18.2

TABLE OF CONTENTS

8:10.60.10 Caretakers 8-20
 8:10.60.10.1 Directors 8-20
 8:10.60.10.2 Key employees 8-21
 8:10.60.10.3 Personal representatives 8-21
 8:10.60.10.4 Trustees 8-22
 8:10.60.10.5 Public officials 8-23
8:10.60.20 Advisers 8-23
8:10.60.30 Agents 8-24.1
8:10.60.40 Cohorts 8-26
 8:10.60.40.1 Partners 8-26
 8:10.60.40.2 Joint venturers 8-26.2
8:10.70 Other abuses of position 8-27
 8:10.70.10 Caretakers 8-28
 8:10.70.10.1 Directors 8-28
 8:10.70.10.2 Key employees 8-30.3
 8:10.70.10.2a Parents and guardians 8-32.3
 8:10.70.10.3 Personal representatives 8-32.6b
 8:10.70.10.4 Trustees 8-32.12c
 8:10.70.10.5 The Crown 8-35
 8:10.70.20 Advisers 8-36
 8:10.70.30 Agents 8-39
 8:10.70.40 Cohorts 8-45
 8:10.70.40.1 Partners 8-45
 8:10.70.40.2 Joint venturers 8-48.1
 8:10.70.40.3 Spouses 8-48.2
8:20 Conflicts of duty and duty. 8-48.2

Chapter 9: The Duty of Personal Performance

9:10 The duty not to delegate 9-1
9:20 The authority to delegate. 9-3
 9:20.10 Trustees 9-3
 9:20.20 Agents 9-5
9:30 Duties to be performed personally 9-6
9:40 Liability for the wrongs of agents 9-7

Chapter 10: Other Duties of Good Faith

10:10 Honesty 10-1
10:20 Full disclosure of material information 10-3
 10:20.10 “True” and “false” duties of disclosure 10-3
 10:20.20 Material information 10-8.8
10:30 Prudence, care and skill. 10-11
 10:30.10 Caretakers 10-12
 10:30.10.10 Directors 10-12

FIDUCIARY DUTIES

10:30.10.20	Trustees	10-14.9
10:30.10.30	Parents and guardians	10-18
10:30.10.40	Crown	10-18.2
10:30.10.40.1	First Nations	10-18.2
10:30.10.40.2	Wards	10-28.4a
10:30.20	Advisers	10-28.13
10:30.20.10	Financial advisers.	10-28.13
10:30.20.20	Inspectors under the <i>Bankruptcy and Insolvency Act</i>	10-30.11
10:30.20.30	Insurance advisers	10-31
10:30.20.40	Legal advisers.	10-32
10:30.20.50	Medical advisers.	10-48
10:30.20.60	Spiritual advisers	10-48
10:30.30	Agents	10-48

Part IV: Consequences of a Breach of Faithfulness

Chapter 11: Accessory Liability

11:10	Introduction	11-1
11:20	Accessory liability and trusts of property.	11-1
11:20.10	Knowing assistance.	11-2
11:20.20	Knowing receipt and dealing.	11-6.5
11:20.30	Claims against innocent volunteers	11-8
11:30	Accessory liability and non-property trusts	11-9

Chapter 12: Consent and Acquiescence

12:10	Introduction	12-1
12:20	The three elements.	12-4
12:20.10	Capacity	12-6.2
12:20.20	Positive approval	12-6.2
12:20.30	Knowledge of all circumstances and rights	12-7

Chapter 13: Remedies for Fiduciary Breach

13:10	Introduction	13-1
13:20	Personal remedies	13-2
13:20.10	Compensation for actual losses	13-4.2
13:20.10.10	The equitable remedy of compensation.	13-4.2
13:20.10.20	The measure of compensation	13-8.2a
13:20.10.30	Heads of loss	13-14.2
13:20.10.40	Nominal damages.	13-14.8g
13:20.10.50	Bonuses payable to fiduciary employee.	13-14.8h
13:20.20	Accounting of profits	13-14.8k

TABLE OF CONTENTS

13:30 Proprietary remedies 13-15
 13:30.10 Constructive trusts 13-16
 13:30.20 Equitable liens 13-28
13:40 Appendix A: Remedies Table — Breach of Fiduciary
 Duty 13-29
13:50 Appendix B: Remedies Table — Misuse of Confidential
 Information 13-96.33
Index IN-1