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ADVISING THE FAMILY-OWNED BUSINESS Robert M. Halpern, LL.B. Release No. 2022-6, July 2022
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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 Appendix D.II – Remedies Table – Breach of Fiduciary Duty. This release also features the addition to Appendix E. Canada Revenue Agency of the following CRA publications: T4002 Self-employed Business, Professional, Commission, Farming, and Fishing Income 2020 and T4002 Self-employed Business, Professional, Commission, Farming, and Fishing Income.

Highlights:

- **Remedies Table—Breach of Fiduciary Duty—Business Relationship**—Justice Goepel observed that the most contentious issue on the appeal was the order that Hutchison should pay to the partnership \$476,258.59 in equitable compensation for the Secret Profits. In making this award, Justice Goepel noted that the Chief Justice appeared to have overlooked the impact of the order on the certified capital accounts and his finding in Hinkson #1, that the certification of the capital accounts was *res judicata*. The certified capital accounts were premised on the Secret Profits being assigned to Hutchison as draws. If Hutchison must pay the Secret Profits back to the firm, his capital account would have to be recalculated. That recalculation would increase Hutchison's capital account to \$1 million, more than double that of McKnight whose capital account would be unchanged from the calculations made by the special referee. McKnight argued that the certification of the special referee's report was not an impediment to the award of equitable compensation, submitting that no judge had ordered the partnership be wound up on the basis of the certified capital accounts and there was nothing to prevent the capital accounts now being readjusted to take into account the order for equitable compensation. Justice Goepel explained that the submission mischaracterized the remedy granted in the First Action. The determination of the capital accounts was a necessary step in the winding up. Justice Grist, when he certified the capital accounts, recognized that there may be further issues to be resolved which could affect the ultimate equities between the parties. Indeed, the entire Second Action was dedicated to resolving those issues. What was resolved in the First Action was the capital accounts. The certification of the special referee's report was intended to conclusively fix the amounts of those accounts to bind the parties going forward. McKnight's various attempts to obtain a judgment against Hutchison were premised on the certified accounts. The Chief Justice finding in Hinkson #1 that the capital accounts were *res judicata* and could not be revisited was fatal to the award of equitable compensation. While it might have

been open to Justice Grist to order Hutchison repay the Secret Profits to the firm, he chose a different remedy. McKnight did not appeal that decision and indeed, argued in the First Appeal that the accounting ordered by Justice Grist was the proper remedy for the breach: *McKnight v. Hutchison*, 2022 CarswellBC 159, 2022 BCCA 27 (B.C.C.A.).

ProView Developments

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable.
- Footnote text only appears in ProView-generated PDFs of entire sections and pages.

