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GRAY'S COMMENTARIES ON FEDERAL CORPORATE LAW

Wayne Gray

Release No. 4, June 2022

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.

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This release features case law updates and additions to Chapter 1 (*Canada Business Corporations Act*) and Chapter 4 (*Canada Not-for-profit Corporations Act*).

Highlights

- **Canada Business Corporations Act—Directors and Officers—Recent Cases—Section 120 Conflict of Interest of Duty**—While the degree of disclosure required of a conflicted director depends on the context, a director has a positive duty to disclose. A party claiming a breach of fiduciary duty bears a burden to prove a breach. However, a fiduciary who has an interest in a transaction bears the onus to show informed consent. In the case of a closely-held corporation, informal disclosure to shareholders of the contract or transaction can be fair and reasonable from a procedural standpoint: *Sonic Holdings Ltd. v. Savage*, 2021 BCCA 441, 2021 CarswellBC 3679, a case decided under the *Business Corporations Act*, S.B.C. 2002, c. 57.
- **Canada Business Corporations Act—Liquidation and Dissolution—Recent Cases—Section 221 Duties of Liquidator**—The role of a liquidator in a winding-up is to arrange for the closing down of the corporation's business in an orderly and expeditious manner while minimizing, as far as possible, the losses and harm suffered by creditors and other interested parties and then distributing the assets. A liquidator, like a court-appointed receiver, is a fiduciary as to the interests of all concerned parties and as such it must act in good faith, with candour, disclosing all relevant material facts affecting the parties and avoiding any real or objectively perceived conflicts. A liquidator has a general duty to exercise its obligations with prudence, diligence, due care and skill: *Zanardo v. Di Battista*, 2021 ONSC 7835, 2021 CarswellOnt 17805, an OBCA case.
- **Canada Not-for-profit Corporations Act—Remedies, Offences and Punishment—Recent Cases—Paragraph 253(3)(b) Appointment of Receiver-Manager**—A receiver will be instructed to pursue an *en bloc* sale of the corporation's real property without delay where, among other factors, the overwhelming majority of the stakeholders with an interest in obtaining the highest price available have directed the receiver to enter into a specific agreement of purchase and sale, including its price and other terms and the current lender has given notice that it does not wish to renew the loan: *Lash v. Lash Point Association Corp.*, 2021 ONSC 4476, 2021 CarswellOnt 9533 (S.C.J. [Commercial List]), a CNCA case.

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