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Borden Ladner Gervais LLP

British Columbia Corporation Manual Second Edition

This resource provides expert analysis of all recent changes in B.C. corporate legislation, as well as section-by-section commentary and comparisons between equivalent provisions of both the old and new Acts. It also features an extensive analysis of the latest court decisions, an up-to-date table of concordance linking both the new and old B.C. Acts to their equivalents in Canada, Ontario and Alberta, and related statutes and Regulations contained in the *Cooperative Associations Act*, *Securities Act*, *Small Business Venture Capital Act*, *Credit Union Incorporation Act*, *Financial Institutions Act* and *Society Act*.

What's New in this Update:

This release features updates to the case law annotations to the *Partnership Act*.

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Highlights:

- ***Partnership Act* — Section 22 — Fairness and Good Faith —** The trial judge considered the allegation that Roussy and Savage were partners and as such, owed each other *per se* fiduciary duties and concluded that there was no evidence of a partnership existing between the two men. SDSI was incorporated in 2003 to build drilling rigs with sonic drill heads. Roussy and Savage together made the business decision to incorporate SDSI. A partnership relationship is a species of *per se* fiduciary relationship, both at common law and under s. 22(1) of the *Partnership Act*. Fellow shareholders in a corporation are not considered partners: *Partnership Act*, s. 3. In addition, no partnership exists between shareholders of corporations simply because the corporations themselves are partners. In effect, the corporate form subsumes any partnership that might otherwise exist between individual shareholders, unless they conduct business together outside of the corporate framework. Prior to the planned incorporation of a company, the general rule is stated in *Linley & Banks on Partnership*, 20th ed. at 25 as follows: "[w]here two or more persons are preparing to set up a company and intend to become members of the company after its formation, they will not be regarded as partners if this is their only business association." Nevertheless, the mere intention to incorporate a company does not foreclose the possibility of partnership, where the partners embark upon the business prior to the incorporation of the company. However, this partnership will likely come to an end once the company is incorporated and the undertaking is handed over to its ownership and control. The undated unsigned handwritten notes of Savage titled "Partnership Agreement (SDSI)" indicated that ownership of the business and all its assets was to be held in equal shares by Jenor and a numbered company for Roussy. There was also a provision regarding "Company Sale/Disposal of Major Assets" which referred to the parties as partners, as did the term regarding death or disability of a partner. There was no evidence that SDSI was operating as a business prior to incorporation. The plaintiffs submitted that Roussy and Savage were partners in the business of SDSI. However, the totality of the evidence established that SDSI from its inception was equally owned by Jenor and 466 as contemplated by each of the parties in their notes. Although Savage in his notes referred to "partners", neither the individuals nor their holding companies were ever partners in the business of SDSI. The holding companies were the shareholders of SDSI as was intended. There was therefore no merit to the plaintiffs' submission that the individuals or their holding companies were partners and as such in a position of fiduciaries: *Roussy v. Savage*, 2019 CarswellBC 2886, 2019 BCSC 1669 (B.C.S.C.) [considering section 3 of British Columbia's *Partnership Act*].