

Publisher's Note

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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 case law annotations to the *Partnership Act*. This release also features updates to the Regulations under the Securities Act including National Instrument 51-102 Continuous Disclosure Obligations, B.C. Reg. 110/2004 — Amended by 111/2018 (Sched. G), and the addition of National Instrument 58-101 Disclosure of Corporate Governance Practices — B.C. Reg. 241/2005.

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Highlights:

- **Partnership Act — Part 2 — The Nature of Partnership — Section 38 — Power of Court to decree dissolution in certain cases** — It appeared that the summary trial judge was not directed to the *Partnership Act*, R.S.B.C. 1996, c. 348 nor to the law of the dissolution of partnership and erred in deciding the case on the basis of contract law, rather than applying the law specific to partnerships. In *Brew v. Rozano Holdings Ltd.*, 2006 BCCA 346 (B.C. C.A.), the Court considered the same question: “[d]oes the common law concept of accepted repudiation of a contract under which both parties are relieved from further performance of the contract, and the repudiator is liable in damages to the acceptor ... apply to partnerships governed by a written agreement?”. Justice Southin answered, “if at all, only in limited circumstances”. She did not find any limited circumstances in that case, and did not elucidate on when those circumstances might arise. The relevant provisions of the *Partnership Act*, ss. 27, 38, 42, and 47 are supplemented by the rules of equity, and absent any provision in the agreement to the contrary, the statutory and equitable principles apply. The judge’s order declaring that Ning was permitted to terminate the Partnership Agreement based on a fundamental breach of contract could not stand in light of *Brew*: *Ning v. Li*, 2017 CarswellBC 1020, 2017 BCCA 156, [2017] 10 W.W.R. 527, [2017] B.C.W.L.D. 2935, [2017] B.C.W.L.D. 2947, 100 B.C.L.R. (5th) 219, 278 A.C.W.S. (3d) 190 (B.C. C.A.).
- **Partnership Act — Part 3 — Limited Partnerships — Section 60 — Business dealings by partner with partnership** — On its face, s. 60 of the *Partnership Act* provides that a limited partner who lends money to the partnership may receive a proportionate share of the assets along with third party creditors. A consideration of the *Partnership Act* is essential to determine whether the Arbitrator’s decision was defensible in law. Crestmark and the Greata partners had robust opposing views of the proper interpretation of the *Partnership Act* as it relates to contractual rights, and these should be explored fully and properly on appeal: *The Crestmark Developments Limited Partnership v. Greata Ranch Developments Limited Partnership*, 2018 CarswellBC 1463, 2018 BCSC 932, 293 A.C.W.S. (3d) 237 (B.C. S.C.).