

Fiduciary Update - It's All About Trust

**Hilary Clarke
November 20, 2003**

MCMILLAN BINCH LLP

Expanding the Fiduciary Obligation

- Who is a Fiduciary?
- Broader Definition of Duties of Fiduciary

Who is a Fiduciary?

- Category of who is a fiduciary is never closed
- Plan sponsor as fiduciary
- *Chao v. Hall Holding Co.*

Broadening the Duties of Fiduciaries

- Overarching obligation to pay attention to beneficiaries' interests
- *Froese v. Montreal Trust*
- Application to others possible

Limiting Exposure

- When is a Fiduciary not a Fiduciary?
- Employer v. Administrator
- *Attorney General of Canada v. Confederation Life*
- *Re: Imperial Oil Limited Retirement Plan*

Limiting Exposure (cont'd)

- Contracting out of liability
- *Bohemier v. Centra Gas Manitoba Inc.*
- Seek advice from Court

Limiting Exposure (cont'd)

- Characterizing the Breach
- Betrayal of Trust/Bad Faith or Negligence
- Availability of Defences
- Bad Facts