

One-Day Conference



# **The Fiduciary Standard and Beyond: Rethinking the Financial Advisor- Client Relationship**



**Thursday, March 25, 2010**

OBA Conference Centre  
20 Toronto Street, 2<sup>nd</sup> Floor  
8:00 am to 4:30 pm

Hosted by FAIR Canada and  
The Jay and Barbara Hennick Centre for Business and Law



*“In today’s economy, clients demand high standards from their financial service professionals.”*

# The Fiduciary Standard and Beyond: Rethinking the Financial Advisor-Client Relationship

## Fiduciary Standard in Today’s Economy

In today’s economy, clients demand high standards from their financial service professionals. Investors are increasingly focused on long-term financial prospects and are highlighting the need for greater integrity to avoid another financial crisis. Implementing a uniform fiduciary standard for both dealers and advisors is one proposal for addressing client demand and protecting the financial sector from future downturns. Examining the fiduciary standard will shed light on the crucial relationship between clients and their financial service professionals – pointing the way to potential policy reforms and regulatory changes in Canada.

The concept of the fiduciary duty does not exist in Canada in the context of the client-advisor relationship. Instead, financial professionals in Canada (including both individual representatives and firms) have a duty to satisfy suitability obligations to their clients. The suitability obligation includes both the “know your client” and “know your product” obligations.

Should that duty be broadened to a fiduciary standard?

## Why You Should Attend

This one-day conference will focus on the client-advisor relationship, and how that relationship connects to the debate over extending the fiduciary standard to all financial service professionals. Speakers will provide Canadian and international perspectives, and will include scholars as well as regulatory and industry experts. Our ultimate objective is to inform and motivate relevant policy initiatives in Canada through discussion and comparative analysis.

## WHO SHOULD ATTEND

- Lawyers
- Investor and Shareholder Advocates
- Industry Representatives
- Financial Dealers and Advisors
- Regulators
- Business and Law Faculty and Students

## KEY BENEFITS

- Gain a clear understanding of the issues, especially regarding the fiduciary standard
- Learn what other countries are doing with respect to the financial advisor-client relationship
- Understand the impact on your business of various policy reform proposals

# Conference Programme – Thursday, March 25, 2010

**8:00 Registration and Continental Breakfast**

**8:30 Welcome and Remarks**

**8:45 Panel 1: Introducing the Fiduciary Standard Debate**

**MODERATOR** - Edward Waitzer, Stikeman Elliott LLP (Partner) and Hennick Centre for Business and Law (Director)

Tamar Frankel, Boston University School of Law (Professor of Law)

Laura Paglia, Torys LLP (Partner)

Knut Rostad, The Committee for the Fiduciary Standard (Chairman)

---

This panel will lay out the key issues in the debate over whether to apply the fiduciary standard to all financial service professionals. Topics to be discussed include:

- What is the fiduciary standard and to whom should it be applied?
- The different definitions of the fiduciary standard put forward in various proposals.
- The relationship, or lack thereof, between the need for a fiduciary standard and the current financial crisis.

**10:00 Break**

**10:15 Panel 2: Rethinking the Client-Advisor Relationship**

**MODERATOR** – Jacquie McNish, The Globe and Mail (Senior Writer) and BNN (Co-Host)

James Allen, CFA Institute (Head, Capital Markets Policy)

Cary List, Financial Planning Standards Council (President and CEO)

Janis Sarra, University of British Columbia (Professor of Law)

Peter Smith, UK Financial Services Authority (Head of Department, Investments Policy)

---

This panel will look more broadly at the way that a fiduciary standard for financial advisers would impact various aspects of the client-adviser relationship. Topics to be discussed include:

- Fee-based vs. commission-based advisers.
- The UK proposal to ban embedded commissions and similar initiatives in Australia.
- Potential conflict-of-interest situations, such as custody arrangements, margin lending and other potentially controversial sales practices.

**11:30 Break**

**11:45 Lunch – Keynote Speaker (TBA)**

**1:15 Panel 3: Enforcement and Remedies**

**MODERATOR** – Mary Condon, Osgoode Hall Law School (Professor) and Ontario Securities Commission (Commissioner)

Joseph Groia, Groia & Company (Principal)

Kelley McKinnon, Gowling Lafleur Henderson LLP (Partner)

Pierre Paquet, Miller Thomson Pouliot (Partner)

---

Participants here will discuss the impact of a fiduciary standard on investor protection, enforcement of securities law and remedies for investors affected by financial fraud. Topics to be discussed include:

- How a fiduciary standard might help with enforcement of securities law violations, viewed from a regulatory enforcement and civil remedies perspective.
- Whether a fiduciary standard would assist clients in better understanding their avenues for redress.
- The impact of a fiduciary standard on remedies awarded to investors.

**2:30 Break**

**2:45 Panel 4: Implementing a Fiduciary Standard and Beyond**

**MODERATOR** – Susan Wolburgh Jenah, Investment Industry Regulatory Organization of Canada (President and CEO)

Ellen Bessner, Cassels Brock (Partner)

Barbara Roper, Consumer Federation of America (Director of Investor Protection)

Ian Russell, Investment Industry Association of Canada (President and CEO)

---

This session will address the issues that would arise from the actual implementation of a fiduciary standard and/or other regulatory initiatives affecting the client-adviser relationship. Topics to be discussed include:

- The debate over differing standards for broker-dealers vs. investment advisers in the U.S.
- The impact of a fiduciary standard on institutional investment management and the mutual fund industry.
- The place, if any, for a fiduciary standard within the context of a national securities regulator in Canada.

**4:00 Closing Remarks**

**FAIR Canada** is a newly established independent, non-profit organization dedicated to representing the interests of Canadian investors in securities regulation.

The mission of FAIR Canada is to be a national voice for investors in securities regulation and a catalyst for enhancing the rights of Canadian shareholders and retail investors.

[www.faircanada.ca](http://www.faircanada.ca)

**The Jay and Barbara Hennick Centre for Business and Law** explores issues at the intersection of business, law and public policy.

A joint initiative of Osgoode Hall Law School and the Schulich School of Business, the Centre is the first in Canada to promote and develop joint business and law scholarship and education. By creating new linkages among the business, law and public policy communities of Canada and beyond, the Hennick Centre for Business and Law is helping legal professionals and business leaders to be more effective in today's global economy.

[www.hennickcentre.ca](http://www.hennickcentre.ca)

FAIR

Canadian Foundation for  
Advancement of Investor Rights  
Fondation canadienne pour l'avancement  
des droits des investisseurs

THE Hennick Centre  
FOR BUSINESS AND LAW



**Special thanks to our sponsors**



**Conference Registration Fee:** General \$100 | Faculty and Students Free

## 4 Convenient Ways to Register

- REGISTER ONLINE with credit card payment at [www.faircanada.ca](http://www.faircanada.ca)
- Complete the enclosed registration form (forms also available for download at [www.faircanada.ca](http://www.faircanada.ca)) and MAIL with cheque payment to address below or FAX with credit card payment to 416-572-4109

## FAIR Canada

161 Bay Street, 27<sup>th</sup> Floor  
Toronto, ON M5J 2S1  
416-572-2039  
416-572-4109

[info@faircanada.ca](mailto:info@faircanada.ca) | [www.faircanada.ca](http://www.faircanada.ca)

*We will make every effort to present the program as advertised, but it may be necessary to make changes with little or no notice.  
No cancellations are available. Registrations are transferrable and delegates may be substituted.*