

FIDUCIARY DUTIES: REAL ESTATE AGENTS and ACCOUNTANTS, A CASE LAW REVIEW¹

I. INTRODUCTION

Both fiduciary relationships and the imposition of fiduciary duties are equitable concepts that have been applied by the courts for a lengthy period of time. Until the last two decades, those concepts have lacked any precise definition. That definition has resulted from the Supreme Court of Canada developing a number of principled statements that have emphasized a flexible approach to the determination of the existence of a fiduciary relationship. That determination is based on factors such as vulnerability and sophistication of the parties, power and discretion, as well as trust and confidence. In addition, the scope of any fiduciary duties owed is also fact and relationship specific.

The courts have applied the principles in both the traditional categories of fiduciaries such as with real estate agents and to other relationships, such as the accountant-client relationship, in order to assess whether the true characteristics of a fiduciary relationship exist. The professional and ethical obligations set out by the self-regulating governing bodies for real estate agents and accountants are a starting point for the assessment of the fiduciary duties owed by individuals working in these industries.

A review of the case law since the refinement of the fiduciary principles by the Supreme Court of Canada illustrates the application of these principles in both the real estate agent and professional accounting contexts. In addition, the remedies available to address breaches of breach of fiduciary duties, and the special principles applicable in the court granting such remedies, produce a number of advantages in advancing fiduciary duty claims.

II. INDICIA OF THE FIDUCIARY RELATIONSHIP

The overriding policy concern in the area of fiduciary law is to “. . . protect and reinforce the integrity of social institutions and enterprises. . .”(Hodgkinson v. Simms, [1994] S.C.J. No. 84 at 23 (online: QL))². This policy concern reflects the recognition that not all relationships in a capitalistic society are driven by self-interest and the marketplace, and that such relationships have great commercial and social value. This policy concern has given rise to a number of principles and guidelines upon which a relationship

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² Alternative citations are provided in the Appendix.