

**Introductory Remarks**  
**Ilana Singer, Deputy Director, FAIR Canada**  
**FPSC Vision 2020 Symposium – October 6, 2010**

Thank you, Frank, for that warm introduction.

And thank you, Cary, to you and your team for inviting me to moderate this very distinguished panel.

I understand that your Financial Planning Week is off to a great start. If the first panel today offers any indication of the rest of the day, you are very well-placed to have another highly successful symposium.

We have one hour and fifteen minutes to discuss the ‘fiduciary duty’ debate, as it relates to the financial planning industry.

I know that the term ‘fiduciary’ does not tend to excite a lot of people, but believe me, this panel finds the topic extremely interesting, and we certainly hope to engage and interest you in the discussion today.

In terms of our game plan: I will introduce our excellent panelists and the topic for 10 minutes. We will then launch into the substance of the debate, which will consist of a number of questions posed to our panelists, followed by what I anticipate will be a lively discussion among our panelists.

I encourage you, as participants, to write down your questions and pass them up to the front so that I have a chance to address them throughout the hour.

[Introduction of panelists.]

I will preface the substantive discussion by saying that, when my fellow panelists and I refer to the term ‘advisor’, we are using it generically to mean financial planners, whether commission-based or fee-based, portfolio

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managers, registered representatives and the like. We are not distinguishing among different categories of registration or licensing. Let me throw out a few warm-up questions to you, the audience:

How many among you are certified financial planners?

And within that group - How many of you consider yourselves 'fiduciaries', or believe that you owe a 'fiduciary duty' toward your clients?

Did you know that a finding by a court that you violated your 'fiduciary' duty to your client would result in you having to fully compensate your client for that breach – that would mean returning all money invested with you, including any commissions that you received from your client.

I'll bet that sends a shiver down your spines.

If it's any consolation to you, in Canada, based on legal precedents, there is no automatic fiduciary duty owed by financial advisors to their clients. The law in that area is still evolving, and the full "fiduciary" remedy that I described is granted in only the most egregious of cases. In brief, the concept of "fiduciary law and fiduciary duties" was introduced many centuries ago, to enable the most vulnerable in society who placed their trust in others, to have remedies available to them above and beyond traditional common law remedies.

Simply put, advisors who are considered 'fiduciaries' in the advisor-client context must always put a client's interests ahead of their own personal interests and those of their firm. The standard of conduct expected of a fiduciary is that he or she must act with honesty, integrity, fidelity and in utmost good faith, not only 'good faith', and always in the best interests of his or her client. If there is an unavoidable conflict, that conflict must be fully and clearly disclosed.

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In the financial advisor-client relationship, courts determine on a case-by-case basis whether a fiduciary duty exists. And they have been doing so for centuries.

A court's determination is based on an examination of the specific facts of each case.

Canadian courts have generally found fiduciary duties to exist in client-advisor scenarios where elements of trust, confidence, vulnerability, and reliance on skill, knowledge and advice are present.

Another factor that courts look to are the professional rules or codes of conduct governing the actions of the advisor.

Let's turn from the case law to the rules in Ontario. Is there anything in the legislation or rules that requires you, as financial planners, to act as fiduciaries toward your clients?

In my view, the short answer is no.

In Canada, advisors are not subject to a statutory fiduciary duty. There is nothing in the rules or legislation that requires advisors to act as fiduciaries toward their clients. That, of course, does not mean that you should not act professionally. And it is also important to note that advisors are required to follow a suitability standard (which includes both know your client and know your product obligations), and they must act honestly, fairly and in good faith with their clients. I should also mention that IIROC and the MFDA have client relationship model initiatives underway, with enhanced disclosure about conflicts of interest, costs and compensation.

It's worth noting that there are also certain professional codes, such as the FPSC and CFA Codes of Ethics, which refer to the 'fiduciary' concept – but many of the fiduciary-related provisions contained in professional codes, due to certain limitations, are rarely enforced. And again, nothing specific

at law requires advisors to put a client's interests ahead of their own and their firm's.

The recent global financial crisis has prompted a number of countries, such as the US and Australia, to consider whether introducing a uniform, fiduciary standard into law, for all those who provide financial advice, could better align client-advisor interests and improve client and consumer protection. Another potential effect would be a higher standard of diligence and professionalism in the financial advisory community.

In the US, the Committee for the Fiduciary Standard has put forward the following 5 principles, which it views as essential components for any uniform fiduciary standard:

1. Put the client's best interests first,
2. Act with prudence – that is, with the skill, care, diligence and good judgment of a professional,
3. Do not mislead clients – provide conspicuous, full and fair disclosure of all important facts,
4. Avoid conflicts of interest, and
5. Fully disclose and fairly manage, in the client's favor, unavoidable conflicts.

Putting clients' best interests first and making full disclosure about conflicts of interest are hallmarks of a fiduciary duty.

In Canada, as recently as last month, Tony Fell, a well-known corporate director and former Chairman and CEO of RBC Capital Markets stated during the Investment Industry Association of Canada's Toronto conference that "the financial services industry has suffered from a steady decline of ethical standards in recent years, including misguided incentives for financial advisors, which has eroded public confidence in the industry... regulatory changes must be made to ensure that advisors are acting in the best interests of their clients".

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The issue that we are grappling with today, in the context of this week's theme of 'professionalism in the financial planning industry', is whether introducing a fiduciary or fiduciary-like standard (such as through codification of certain principles) could help raise professional standards and rebuild public trust and confidence in your industry.

Thank you.