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FIDUCIARY DUTIES
Obligations of Loyalty and Faithfulness

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This loose-leaf service offers readers a wide-ranging, up-to-date analysis of fiduciary relationships in Canada. The publication's comprehensive coverage of fiduciary responsibility is organized into four parts: (1) Overview of Fiduciary Law; (2) Fiduciary Relationships; (3) Duties of Faithfulness; and (4) Consequences of a Breach of Faithfulness. The publication also provides readers with detailed case law analysis, valuable commentary, summaries of remedies awarded for breaches of fiduciary obligation, and other value-added reference tools. The publication includes coverage of many different types of established fiduciary relationships including directors/officers, key employees, executors and administrators, trustees, accountants, insurance advisers, lawyers, physicians, spouses, and others. The updatable loose-leaf format ensures currency.

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What's New in this Update:

New case law and commentary, including the following recent decisions:

- **Fiduciary *Per Se* Relationships—Directors—Business Opportunities—**Justice Latimer noted that, between 2019 and 2024, Bilzerian was Ignite's chairman, CEO, and director. During this time, his likeness and social media personality were inextricably linked with Ignite products. This linkage was facilitated by a licensing agreement. In his own words, he essentially became the "public face" of the company. Ignite invested tens of millions of dollars in the promotion of its products using this linkage. By design and agreement their two brands were connected. The agreement between the parties permitted Bilzerian to continue advancing his own brand separate and apart from Ignite, for example, in books and movies. Ignite was authorized to use Bilzerian's brand for the marketing of vape products. That was the symbiotic relationship agreed to by the parties. Bilzerian sought to take the benefit of the investment Ignite made in developing and connecting vape products to his brand, and directly compete with Ignite in the production and sale of vapes. He sought to do so, while simultaneously trying to return as a director of Ignite who would be subject to continuing *per se* fiduciary duties to Ignite. Justice Latimer concluded that Ignite had established a strong *prima facie* case that conduct breached Bilzerian's fiduciary duties as a director of Ignite, which survived his removal from that position. While those duties only persist for a reasonable period of time, given Bilzerian's ongoing efforts to utilize the Court's process to find his removal to be of no force and effect, Justice Latimer concluded those duties continued to persist. As a result, despite that Ignite removed Bilzerian as a director against his will in June 2024, Ignite established a *strong prima facie* case that the Competition was a breach of Bilzerian's ongoing fiduciary duty to Ignite, and in particular, his duty not to compete with Ignite in respect of vape products: *Ignite International Brands, Ltd v. Bilzerian*, 2025 CarswellBC 933, 2025 BCSC 566 (B.C.S.C.).
- **Ad Hoc Fiduciary Relationships Relationships—Fiduciary Duties in the Governmental Context—**The sole issue to be determined on the motion was whether this action was suitable for certification as a class action proceeding. The task of the Court on a certification motion is not to resolve conflicting facts and evidence or assess the strength of the case. Rather, the task is simply to answer, at a threshold level, whether the proceeding can go forward as a class proceeding. The Plaintiffs' pleadings alleged that Canada has an implicit hiring and promotion practice of "Black employee

exclusion." The Plaintiffs argued that the practice of delegation and sub-delegation of the power to make appointments, which is legislated by the *Employment Act*, was the official policy that made room for subjectivity in the hiring and promotion process, allowing Black employees to be subject to systemic discrimination across the public service. They submitted that this practice was the reason why Black employees are underrepresented in the public service. Justice Gagné explained that the employer-employee relationship is an inherently commercial relationship in which the interests of the employer and those of the employee will often be in opposition. As such, each party recognizes and accepts that the other is acting in its own self-interest. In *Professional Institute of the Public service of Canada v. Canada (Attorney General)*, 2012 SCC 71*PIPSC v. Canada (Attorney General)* (2012), 352 D.L.R. (4th) 491 (S.C.C.) at para 142, the Supreme Court of Canada concluded that no fiduciary duty was owed to the government employees (plan members) - imposing such a duty would conflict with the Government's duty to act in the best interests of society as a whole. Justice Gagné noted that was consistent with the preamble of the *Labour Relations Act*, which sets out as one of the principles recognized by Parliament that "the public service labour-management regime must operate in a context where protection of the public interest is paramount." The fact that the Plaintiffs and putative class members were "subject to constant contact with, supervision by and direction from Canada" and the fact that they "performed Public service obligations and duties as part of their jobs" did not give rise to a fiduciary duty in their favour. Justice Gagné concluded that the *Employment Equity Act*, the *Values and Ethics Code of the Public Sector* and other PSC policies did not create a fiduciary duty either. These all enunciate principles that ought to govern staffing in the public service. They do not dictate the Government to act in the best interest of the Plaintiffs and putative class members to the detriment of other groups or society as a whole. In the federal public service context, the duty to represent the interests of employees or groups of employees is incumbent upon the public service bargaining agents; they represent the interests of employees in collective bargaining and participate in the resolution of workplace issues and rights disputes. Justice Gagné was of the view that the claim for a breach of fiduciary duty was not viable and that there was no cause of action adequately pleaded to allow such a claim to be certified: *Thompson v. Canada*, 2025 CarswellNat 832, 2025 CarswellNat 833, 2025 CF 476, 2025 FC 476 (F.C.).