

# The Public Fiduciary: Emerging Themes in Canadian Fiduciary Law for Pension Trustees

**Webinar: Review of Research Findings and Q&A**  
**Wednesday, July 17, 2013 at 1:00pm ET**  
**Investor Responsibility Research Center Institute**



# Agenda

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- Introductions
- Overview of Research & Findings
- IRRCi Perspective
- Q&A

# Speakers

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- **Edward Waitzer**, Partner  
Stikeman Elliott LLP
- **Douglas Sarro**, Student  
Osgoode Hall Law School
- **Jon Lukomnik**, Executive Director  
Investor Responsibility Research Center Institute

# About IRRC Institute



- Not-for-profit organization established in 2005, HQ in NYC.
- Fund, disseminates research at intersection of corporate responsibility and informational needs of investors.
- Examines capital market context that impacts how investors, companies make decisions.
- All research available at no charge at [www.irrcinstitute.org](http://www.irrcinstitute.org).



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# Recent IRRCi Research

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- *Integrated Financial and Sustainability Reporting in the United States*, April 2013
- *Controlled Companies in the S&P 1500: A Ten-year Performance and Risk Review*, October 2012.
- *Executive Superstars, Peer Groups and Over-compensation – Cause, Effect and Solution*, September 2012.
- *Environmental, Social and Governance Investing by College and University Endowments in the United States*, July 2012.
- *Voting Decisions at US Mutual Funds: How Investors Really Use Proxy Advisors*, June 2012
- *Discovering Shale Gas: An Investor Guide to Hydraulic Fracturing*, March 2012.
- *Finding Common Ground on Metrics that Matter*, February 2012.
- *Mergers and Acquisitions and the Universal Investor*, January 2012.

# About IRRC Award



- Launched in 2012 to encourage thought leadership that integrates analysis of private sector behavior with investment theory.
- One academic and one practitioner paper selected by blue ribbon panel to each receive a \$10,000 award.
- 2013 Winners
  - *Academic Award*: “Disappearing Association between Governance and Returns” by Lucian Bebchuk of Harvard Law School, Alma Cohen of Tel-Aviv University Economics Department, and Charles Wang of Harvard Business School.
  - *Practitioner Award*: “**The Public Fiduciary: Emerging Themes in Canadian Fiduciary Law for Pension Trustees**,” by Edward Waitzer, of Stikeman Elliott LLP and Douglas Sarro, student at Osgoode Hall Law School.

# Overview

## The Public Fiduciary: Emerging Themes in Canadian Fiduciary Law for Pension Trustees

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- Argues that evolving trends in fiduciary responsibility will impose public and inter-generational obligations on trustees and require that they consult with beneficiaries (or their proxies), be strategic, and collaborate with other like-situated fiduciaries.
- Such actions will serve interests of beneficiaries over time better than maximizing short-term relative returns, which has no bearing on whether such an investment will yield benefits to current or future pension beneficiaries.

# Nature & Consequences of Fiduciary Relationships

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- Focus on increasing specialization & interdependence
- Protecting private interests (vulnerability)
- Protecting public interest (confidence in fiduciary services)
- Classic non zero sum game



# Dynamic Approach to Determine Nature & Scope of Fiduciary Obligations

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- Per growing importance of fiduciary services
- Based on values of trust & loyalty
- Shaped by "reasonable expectations"
- Encourages fiduciaries to err on side of caution
- Easily adapt to social needs/norms

# Current Issues

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- **Duty of Care**

- Encourages lemming behavior
- Discourages stewardship
- Delegation to agents
- Creates new conflicts

# Current Issues

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- **Duty of Loyalty**

- Conflating interests of plan and beneficiaries
- Duty of impartiality (mediating interests over extended time horizon)

# Reasonable Expectations

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- Respect for social norms
- Giving beneficiaries a voice
- Duty to be strategic
- Duty to collaborate

# IRRCi Viewpoint

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- Hot topic
  - 2<sup>nd</sup> year that practitioner paper focuses on fiduciary obligation
- Intelligent thought about fiduciary obligation goals
  - Moves away from “lemming” standard

# IRRCi Viewpoint

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- Practical implication
  - Two ways fiduciary obligation changes in the real world
    - Legislation
    - Evolution of thought
      - \* This paper can be major contribution to that evolution

# Questions?



# Contacts

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The logo for Stikeman Elliott consists of a dark red rectangular box with the text "STIKEMAN ELLIOTT" in white, uppercase, sans-serif font. A thin white horizontal line is positioned below the text.

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