COMMENTS
COMMENTAIRES

Hawrelak v. City of Edmonton

> Confidence in our institutions is at a low ebb. This statement is not very original but unfortunately is unchallengeable. Many factors have brought about this crisis and unconscionable conduct by public officials is only part of the story. Still, if we are to regain some of the lost ground, we have to start somewhere. To reaffirm the requirements of highest public morality in elected officials is a major step in that direction. To speak of civil liberties is very hollow indeed if these liberties are not founded on the rock of absolutely unimpeachable conduct on the part of those who have been entrusted with the administration of the public domain.[1]

The sober words of Mr Justice de Grandpré are an indication that there were issues at stake in this recent case other than whether the disqualified Mayor of the City of Edmonton should be required to disgorge profits he might have made while he was the Chief Magistrate.

The Facts

Prior to his election as Mayor of the City of Edmonton in October of 1963, Hawrelak owned 50% of the voting shares in Sun Alta Limited, a company whose main asset was certain lands in the Rundle Heights area of the City of Edmonton. The City of Edmonton had from 1961 been moving ahead with negotiations to re-zone the area which would greatly enhance the value of the land. Four or five months prior to his election, Hawrelak spoke to a city commissioner and indicated that his company was eager for the re-zoning to proceed. He had visited the land owned by his company and had discussed other details of it with the city commissioner.

Another company interested in land in the City of Edmonton about the same time was the Chrysler Corporation (Canada) Limited, which wanted land on 142nd Street in the City of Edmonton but a purchase of that land, because of zoning and building regulations, would not allow Chrysler to put it to its required use. A scheme was devised by Chrysler whereby it would purchase

---

[1] [1975] 4 W.W.R. 561, 584 (S.C.C.).

lands in the Rundle Heights area and then exchange them for the land it actually required on 142nd Street and thereby circumvent the regulations.

After taking office early in the fall of 1963, Hawrelak signed a report of the city commissioners recommending to City Council that the exchange with Chrysler take place. He acknowledged at trial that this exchange would have hastened the re-zoning scheme. Apparently he was not at the Council meeting when the report was considered and affirmed.

The proposal met with strong opposition from taxpayers in the area of 142nd Street. A solicitor and a representative for Chrysler met with Mayor Hawrelak, who was, according to the evidence, in favour of the scheme. The Mayor felt that a better promotion of the scheme, including pictures *etc.*, would improve Chrysler's chances of success. Hawrelak then agreed to have the matter again put on the agenda of City Council and gave specific advice as to the presentation of Chrysler's proposal. In spite of the assistance given by the Mayor the proposal was not acceptable to City Council.

Meanwhile, negotiations had been taking place between the City of Edmonton Land Department and Sun Alta. The City needed certain lands in Rundle Heights for public use, this being one of the steps in the re-zoning scheme. According to the evidence, negotiations on this transaction took place in July, 1963, prior to Mayor Hawrelak's election but the contract for the transfer of land to the City was not signed until March of 1964, some five months after Hawrelak took office. Mayor Hawrelak, as an officer of Sun Alta, signed the contract. He testified that this was done to make his position clear and that he left the document with his solicitor who, contrary to his directions, forwarded it to the City. When the document came to him again in his capacity as Mayor he testified that he was on his way out of town and left instructions that it was not to be signed for the City in his absence. Upon his return he discovered that the Deputy Mayor had executed it. Hawrelak took no steps to rectify the situation.

The facts relating to whether or not Hawrelak made a full and frank disclosure to City Council are, of course, extremely important. The evidence indicated that when he took office Hawrelak read and sent a letter to Council members in which he listed the companies in which he had some interest. Included in that list was Sun Alta Limited. Although the letter went on to give a detailed description of certain land holdings in one of the other companies listed, no

specifics of the Sun Alta holdings in Rundle Heights were given in this letter. The evidence indicated that at least three aldermen on City Council did not know of the letter.

One alderman had tried on numerous occasions to have the whole Rundle Heights re-zoning scheme put before City Council for full discussion, but had met with no success. At a City Council meeting on June 29, 1964, he asked Mayor Hawrelak whether he had an interest in property in that area. Hawrelak replied that he was a director of Sun Alta. This was the first Council meeting at which Hawrelak was recorded as not having voted.

At a committee meeting in August of 1964 which Hawrelak attended, the purchase of the Chrysler lands was approved. At a Council Meeting in November of 1964, at which Hawrelak presided, the re-zoning scheme for Rundle Heights was passed. In 1965, Hawrelak sold his shares in Sun Alta for $80,000 more than he paid for them.

The City alleged that the profit was directly attribuable to its acquiring the Chrysler lands and proceeding with the re-zoning scheme and that Hawrelak had recommended both the acquisition of the lands and the re-zoning scheme. In doing so, the City felt he had a personal interest which was in conflict with his duty to give the City the benefit of an unbiased opinion. The claim was for the profit that Hawrelak had made and the loss thereby suffered by the City of Edmonton.

The Judgments

The Supreme Court of Canada, in a 3 to 2 decision reversed the Appellate Division of the Supreme Court of Alberta and the Trial Division of the Supreme Court of Alberta and found that Hawrelak had made no profits by reason of being mayor.

The majority judgment in the Supreme Court of Canada was written by Mr Justice Spence and concurred in by Mr Justice Judson. The Chief Justice agreed with much of what Spence J. said and came to the same conclusion in a separate judgment. The dissenting justices were de Grandpré J. (who wrote a judgment) with whom Dickson J. concurred. The Trial Judge, Kirby J.[2] wrote an extremely thorough judgment and his findings of fact and law were concurred in by the Appellate Division of the Supreme Court of Alberta.[3]

---

[2] [1972] 2 W.W.R. 561 (S.C. Alta).
[3] [1973] 1 W.W.R. 179 (A.D. Alta).

The different conclusions of the courts may be the result, in part, of their divergent views of the facts. The majority of the Supreme Court of Canada felt that all but the formalization of the contract had been concluded by Sun Alta before Hawrelak became Mayor, whereas the Trial Judge and the Appellate Division concluded that the failure by Sun Alta to execute the contract would have stopped the re-zoning scheme.

The courts came to different conclusions as to whether Hawrelak knew that the Sun Alta lands were contiguous with the Chrysler lands. Spence J. found that it was unimportant whether Hawrelak knew or not. The Appellate Division found that there was ample evidence that Hawrelak knew of the proximity and of the desirable effect on the value of Sun Alta lands which would result from the Chrysler exchange taking place. Kirby J. of the Trial Division recognized that the proposal for the exchange had begun before Hawrelak took office but that nevertheless the exchange could not be completed without the zoning and building regulations being changed. The Commissioner's report which Hawrelak signed urged that such exchange take place.

> With respect to this exchange, therefore, Mayor Hawrelak, because of his private interest, was in a position in which he was unable to give the city the benefit of his unbiased judgment as to whether the development permit should be granted and the rezoning by-law enacted. Indeed, in making suggestions to Cranshaw and Chrysler's solicitor on December 30th 1963, as to how they could improve on the presentation to Council in support of the application for the development permit, he exercised the authority of his position as Mayor to influence the outcome of this application.[4]

The majority of the Supreme Court of Canada, however, felt that the disclosure was adequate and Chief Justice Laskin stated that the City had proceeded with full knowledge of the facts.

The Alberta Courts and the dissenting justices in the Supreme Court of Canada took quite a different view of the evidence regarding disclosure. De Grandpré J. examined the letter which the Mayor read and sent to Council members immediately after his election. He noted that Sun Alta was listed as one of the companies which might be doing business with the City in which Hawrelak had an interest but nothing further was said about Sun Alta. It would have been very easy for Hawrelak to make the same type of disclosure in connection with this company as he had in connection with another company. The Trial Judge, with whom de Grand-

---

[4] *Supra*, note 2, 594.

pré J., agreed, had noted that the present Mayor and two other aldermen had not been aware of Hawrelak's interest until the June 29, 1964 meeting at which, in answer to a question by Alderman Leger, Hawrelak stated that he had an interest in Sun Alta lands.

It is clear that there was a wide difference of opinion among the courts on the effect and influence that a Mayor might have in such a situation. Whereas Chief Justice Laskin felt that Hawrelak was only "one voice in a chorus of elected representatives",[5] the Appellate Division felt very differently.

> It appears to us to be clearly obvious that the influence of the Mayor on the votes of the Council could have and probably did have a decisive influence upon the direction and place of extension of the city.[6]

The Chief Justice of the Appellate Division went on to cite the case of *Toronto* v. *Bowes*:

> Influence is a subtle agent. The mere will of the possessor [the Mayor of Toronto] often brings it into active operation.[7]

Overriding these issues was the difference of opinion between the majority of the Supreme Court of Canada and the dissenting justices concerning the history of the re-zoning scheme of the City of Edmonton. The majority of the Supreme Court of Canada felt that the re-zoning scheme was a firm policy of the City of Edmonton dating back to at least 1961 and was for the benefit of the City of Edmonton. Chief Justice Laskin noted that counsel for the City conceded that the City would have in all probability gone ahead with the re-zoning scheme in any event. Mr Justice Kirby of the Trial Division found, on the other hand, that the re-zoning scheme would not have proceeded had the Sun Alta and the City of Edmonton contract not been executed.

These different interpretations of the facts can be reconciled, albeit in a rather facile and unsatisfactory manner. The majority of the Supreme Court of Canada found that there was no profit, *i.e.* no sum of money calculable as that sum which should be disgorged by Hawrelak. The Trial and Appellate Division of the Supreme Court of Alberta as well as the dissenting justice in the Supreme Court of Canada found that there was both a technique for calculating the profit and an actual profit.

---

[5] *Supra*, note 1, 579.

[6] *Supra*, note 3, 184.

[7] (1854) 4 Gr. 489 *per* Blake C.; aff'd 6 Gr.1; aff'd (1858) 11 Moo P.C. 463, 14 E.R. 770.

The Law

But what of the law? Did the courts agree on that? Do the judgments reflect different approaches? The use of different rules? The first issue for the Trial Judge to determine was the position in law of the Mayor of a municipality.

After a thorough examination of the case law and a probing analysis of the facts the Trial Judge decided that "[a] member of a Municipal Council is an agent or trustee accountable to the municipality whose affairs he administers, and accordingly his duties are of a fiduciary nature".[8]

In coming to his decision he looked at the case of *The City of Toronto* v. *Bowes,* in which the Chancellor of Ontario said:

> The Common Council is in fact entrusted with the management of the affairs of the City of Toronto, and I am at a loss to discover why the rule applicable to every other case of trust should not be applied to this. If the rule be one of pressing necessity in cases of ordinary trust, why is it to be abrogated where the trusts are of such a vast magnitude and importance? Why is the principle to be held inapplicable when the probabilities of an abuse of trust are so greatly multiplied? Such a determination in a country, the local concerns of which are managed to so large an extent by corporations of this sort, possessed of such extensive powers, would be productive, in my opinion, of the worst consequences to the moral and material interests of the community.[9]

Both the Appellate Division and the Supreme Court of Canada accepted Mr Justice Kirby's statement of the law; Mayor Hawrelak was bound by fiduciary duties.

> In commenting on the *Toronto* v. *Bowes* case de Grandpré J. said: For nearly 125 years, the law has stood thus and I see no reason to dilute it as we enter the last quarter of the 20th century. Indeed, there is every reason to reaffirm it in all respects and even to give it further strength. At the time, the population was very small compared to that of Respondent (City of Edmonton) and the complexities of modern urban administration were obviously unknown. Accordingly, the possibility of misdemeanours by public officials remaining undetected was considerably less than it is today. It follows that the vigilance of the courts must be more active and more exacting than ever.[10]

But the finding that Mayor Hawrelak was in a fiduciary relationship with other members of Council and the citizens of the City of Edmonton was not difficult. The difficulty arose over the test to be used to measure the scope of Hawrelak's duty and consequently determine his liability.

---

[8] *Supra,* note 2, 592.
[9] *Supra,* note 7, 507.
[10] *Supra,* note 1, 584.

The Rules

Professor McClean has carefully analyzed the relevant Canadian and English cases in the area of fiduciary relationships and concludes that:

> In both England and Canada, perhaps more by default rather than by conscious decision, two separate rules respecting a trustee's duty of loyalty have developed, the first that he may not retain a profit made out of his position and the second that he may not retain a profit made in circumstances where there is a conflict of his interest and his duty. Often the application of these rules will yield the same results. On the other hand in such cases as *In re Gee*[11] in England and *Crocker and Croquip Ltd* v. *Tornroos*[12] in Canada the application of one will impose liability, while the other would not. It is important therefore for the courts to clearly distinguish them.[13]

He distinguished their application in Canada:

> The courts talk of both the conflict and profit principles but in general do not indicate what the relation between them is. There does, however, seem to be a less stringent application of the principles to the facts of the particular case than is usual in England.[14]

There are four decisions of the Supreme Court of Canada which illustrate the present state of Canadian law. Two of the cases involve the application of the conflict rule (*Zwicker* v. *Stanbury*[15] and *Crocker and Croquip Ltd* v. *Tornroos*[16]) and two of the profit rule (*Midcon Oil and Gas Ltd* v. *New British Dominion Oil Co. Ltd*[17] and *Peso Silver Mines Ltd* v. *Cropper*[18]). The latter followed the English case of *Regal (Hastings) Ltd* v. *Gulliver,*[19] which was decided on the profit rule.

These cases were considered by the Supreme Court of Canada and the judgments in the *Hawrelak* case provide an excellent opportunity to examine the consequences of the application of both of these rules.

---

[11] [1948] Ch.284.

[12] [1957] S.C.R. 151.

[13] McLean, *The Theoretical Basis of the Trustees Duty of Loyalty* (1968-69) 7 A.L.R. 218, 236.

[14] *Supra,* note 13, 229.

[15] [1953] 2 S.C.R. 438.

[16] *Supra,* note 12.

[17] [1958] S.C.R. 314.

[18] [1966] S.C.R. 673.

[19] [1942] 1 All E.R. 378 (H.L.).

The Conflict Rule

Mr Justice Kirby in applying the conflict rule, like the English courts, insisted on a strict application of the rule. He quoted *Parker* v. *McKenna*[20] for the enunciation of it:

> Now the rule of this court as I understand it as to agents is not a technical or arbitrary rule. It is a rule founded upon the highest and truest principles of morality. No man can, in this court, acting as an agent, be allowed to put himself into a position in which his interests and duty will be in conflict.[21]

It is immaterial whether the principal did or did not suffer injury; this contention is supported by a comment by Chief Justice Cardozo in the case of *Meinhard* v. *Salmon*:

> Many forms of conduct permissible in a work-a-day world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market-place. Not honesty alone, but the punctilio of an honour the most sensitive, is then the standard of behaviour. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the "disintegrating erosion" of particular exceptions... Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd. It will not consciously be lowered by any judgment of this Court.[23]

Kirby J. went on to observe that following *Regal (Hastings)*,[24] bad faith is not necessarily an essential element in the application of the rule.

The learned Trial Judge had decided that Hawrelak's duties were of a fiduciary nature and as such he could not enter into any transaction in which his personal interest was or might be in conflict with the interests of his principal. He concluded:

> Mayor Hawrelak had put himself in a position where he was unable to give the City the benefit of an unbiased judgment in this matter, and he actively participated by signing the replot agreement on behalf of Sun-Alta and negatively participated by his acquiescence in the signing of the agreement by Alderman Mitchell as Acting Mayor, which he claimed occurred contrary to his instructions.
>
> In both instances there was therefore a breach of the rule governing the conduct of a person in a fiduciary position. Whatever profit was realized by Hawrelak from these transactions accordingly accrues to the City.[25]

---

[20] (1874-75) L.R. 10 Ch.App.96.
[21] *Supra*, note 2, 587.
[22] 164 N.E. 545 (1928) (N.Y.).
[23] *Ibid.*, 546.
[24] *Supra*, note 19.
[25] *Supra*, note 2, 594.

The Appellate Division agreed with the Trial Judge in applying the conflict rule. Chief Justice Smith followed the Alberta Court of Appeal in *R. ex rel. Anderson* v. *Hawrelak*:

> Many people engage in the activity of acquiring ownership of land in the pass of urban development with a view to selling the land profitably when the city extends to the location of the land. There cannot ordinarily be any valid criticism of this practice. But any person who engaged in that type of activity must be made to realize that if, while conducting such activities, he becomes elected to the office of alderman or mayor of the city within which the land lies, or if he commences to engage in such activities after he has been elected to such an office, he places himself in the position in which his duty and interest may conflict.[26]

Not surprisingly, the dissenting justices of the Supreme Court of Canada agreed with the conflict approach. De Grandpré J. quoted a portion of the Hawrelak factum in which it was submitted that Hawrelak had no private or conflicting interest in the exchange of lands between the City and Chrysler Corporation nor in the acquisition by the City of land owned by Sun Alta Builders and then noted that this submission was abandoned by Hawrelak's counsel in open court. He went on to state that: "In my view, the other points raised by the appellant [Hawrelak] must all be examined in the light of the findings below that at all material times appellant [Hawrelak] had a conflict of interest".[27]

Regal (Hastings) Ltd v. *Gulliver*,[28] the *Midcon Oil* v. *New British Dominion Oil Co.*[29] case and the case of *Peso Silver Mines Ltd* v.

---

[26] (1966) 53 D.L.R. (2d) 353, aff'd without reasons 53 D.L.R. (2d) 673 (S.C.C.). Hawrelak was disqualified under s.97(f) of the *City Act*, R.S.A. 1955, c.42 which read:

"The following persons are not eligible to be elected mayor or a member of the council or entitled to sit or vote thereon, ...

(f) a person who is for the time being a party to any subsisting contract with the city under which any money of the city is payable or may become payable for any service, work, matter, or thing, or who has any pecuniary interest in any such contract whether the interest is direct or indirect."

S.98 made s.97(f) inapplicable to a person by reason only of the fact,

"(a) of his being a shareholder in any incorporated company having a contract or dealings with the council,

(i) Unless he holds or there is held by himself and his spouse, parents, children, brothers and sisters more than twenty-five per cent of the issued capital stock of the corporation...".

See also Lucas, *Municipal Councillors — Disqualification for Interest-Application of the rule in Keech* v. *Sanford — R. ex rel. Anderson; Starr* v. *City of Calgary* (1966-67) 5 A.L.R. 330.

[27] *Supra*, note 1, 583.

[28] *Supra*, note 19.

[29] *Supra*, note 17.

Cropper,[30] in de Grandpré's opinion, had no application to the case at bar.

The Profit Rule

Mr Justice Spence for the majority of the Supreme Court of Canada said that the City of Edmonton had failed to make out a case to fall within the *Regal (Hastings) Ltd* line of authorities. He must, therefore, have applied the profit rule. To be caught by this application of the profit rule the City would have had to have proven that Hawrelak made profits "by reason and only by reason of the fact" that he was Mayor.[31] After looking at the *Regal (Hastings)* case,[32] the *Midcon Oil and Gas* case[33] and the *Peso Silver Mines* case,[34] Mr Justice Spence held that Hawrelak escaped the application of the profit rule:

> Applying, then, such law, I am of the opinion that it has never been shown that the mayor made any profits "by reason and only by reason of the fact that he was such mayor...".[35]

He went on to say that:

> This view really disposes of the case, but I am of the opinion that even if I were in error and it could be said that the appellant, by some use of his position, did put himself in a position where he could profit, then all the appellant can be compelled to do is to disgorge that profit and the problem becomes what profit did the appellant make as a result of his position or his use of that position.[36]

Mr Justice Spence then found that there was no evidence put forward by the City of Edmonton as to the value of Sun Alta shares on the date Hawrelak became mayor compared to the date the rezoning scheme was carried out. He accepted the evidence of a witness who had made an offer to purchase the Sun Alta lands and who would have put a high valuation on the land even prior to Hawrelak becoming mayor. It is important to note that this witness was not believed by the Trial Judge, nor by the Appellate Division.

Chief Justice Laskin's judgment is difficult to understand.[37] He agreed that a mayor would be in a fiduciary position and would

---

[30] *Supra*, note 18.
[31] *Supra*, note 1, 572.
[32] *Supra*, note 19.
[33] *Supra*, note 17.
[34] *Supra*, note 18.
[35] *Supra*, note 1, 572.
[36] *Ibid.*, 573.
[37] This is especially true in view of his judgment in *Canadian Aero Service Ltd* v. *O'Malley et al.* (1974) 40 D.L.R. (3d) 371, where he held corporate directors and senior officials to a high standard in carrying out their

thus have to account for any profit but he was unable to find a profit where the mayor was only one of a number of people who realized a gain. There would seem to be no procedure in law whereby the Chief Magistrate can be required to pay back his gains. Yet later in his judgment he states:

> There may be ways in which a municipality may capture all or part of the increase in the value of private holdings brought about by its exercise of its public functions, as, for example "by expropriation or by some form of special assessment, but not, in my view" by direct action for recovery (unless, of course, authorized by legislation).[38]

Chief Justice Laskin does not directly refer to either of the two rules but the nature of his judgment is such that one could only assume that he could apply the profit approach. He does twice mention Hawrelak's ouster from office and refers to the risk of disqualification of any council member who votes in certain circumstances. Perhaps he thought that Hawrelak had already paid the price of his conduct.

Comment

Until the Supreme Court of Canada decision there seemed to be considerable support for strengthening the fiduciary duties of an elected representative even to the point of putting him in a position analogous to that of a trustee.[39] Certainly the Supreme Courts of Alberta followed Equity's direction to protect those who had entrusted another with an important position. Equity requires a high standard of loyalty in order to safeguard from temptation anyone in the position of trust.[40]

If a judge is unwilling to find liability he may weaken the fiduciary duties; there is much at hand to assist him. The cases show a conflict in approaches and standards. Certain types of fiduciaries have profited from a practical approach which says that commercial realities must be considered.[41] Inded, there is a feeling that

---

fiduciary duties and said that neither the conflict test nor the test of accountability for profits "should be considered exclusive touchstones of liability. In this, as in all other branches of the law, new fact situations may require a reformulatioin of existing principle to maintain its vigour in the new setting" (at p.383). See also Waters, *Law of Trusts in Canada* (1974), 651.

[38] *Supra,* note 1, 579.

[39] See Waters, *supra,* note 37, 642.

[40] See Jones, *Unjust Enrichment and the Fiduciary's Duty of Loyalty* (1968) 84 L.Q.R. 472, 474, 487.

[41] *Supra,* note 39, 491, 493.

precedent is not relevant and that Equity requires a feeling for the individual case.[42] When one adds to this the fact that few judges have made clear the public policy reasons behind their decisions, the potential to lower the standard is clear.[43]

Hawrelak was Chief Magistrate and as such was in an obvious position of trust. He did not make his interest in Sun Alta clear. He actively assisted Chrysler in their attempts to circumvent or change City regulations. He took no steps to bring the contract between his company and the City out into the open preferring to lay the blame on his solicitor and the Deputy Mayor. He voted until his conflict of interest was exposed by a question in City Council. But for this Mayor, it is not certain that the City would have proceeded in the manner or with the haste it did to re-zone the Rundle Heights area. Hawrelak's profit was $80,000. A taxpayer had him ousted from office.[44] If Hawrelak was not dishonest he was, at least, acting with manifest disregard for the City's interests.[45]

Conclusion

The majority of the Supreme Court of Canada in the *Hawrelak* case[46] followed the "profit rule" in order to determine whether a breach of a fiduciary duty existed. Unfortunately, they concluded that no profit had been proven. The Trial Judge, the Appellate Division and the dissenting Justices of the Supreme Court of Canada followed the "conflict rule" by which, given the evidence, a technique existed to ascertain the profit Hawlerak had gained. This is a case where the application of the conflict rule imposes liability where the application of the profit rule does not.[47] None of the judgments, however, recognizes the possibility of two approaches, a conscious choice of one of which would lead to very different consequences than the other. The Supreme Court of Canada has not only been unclear as to which rule should be applied, but has not insisted on a strict application should either be the proper rule. The result has been that elected representatives may continue to ignore their proper duties.

---

[42] *Phipps* v. *Boardman* [1967] 2 A.C. 46 (H.L.).

[43] See Sugarman, *Seeing Through the Double-Dutch of Corporate Opportunity?* (1974) 52 Can.Bar Rev. 280.

[44] *Supra*, note 26.

[45] See *supra*, note 39, 475, where the test for whether a fiduciary has manifestly disregarded his principal's interest is said to be an objective one

[46] *Supra*, note 1.

[47] See *supra*, note 13.

> The Canadian Courts have unfortunately allowed the duties of fiduciaries to fall below this high level; it is to be hoped that the trend will be reversed.[48]

The Supreme Court of Canada has missed the opportunity seized by the Alberta courts to increase the intensity of the fiduciary duty of elected representatives to a degree worthy of their power and responsibility.

E.I. Jacobs*

---

[48] *Ibid.*, 238.

* Of the Faculty of Law, University of Alberta, Edmonton.