

September 16, 2019

The *Wildman* Case - U.S. Court Provides Practical Guidance On Fulfilling Pension Fiduciary Duties

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The 2019 decision of the U.S. District Court for the Western District of Missouri in [Wildman v American Century Services, LLC](#)¹ (*Wildman*) provides a detailed judicial “road map” of good governance practices and is recommended reading for anyone involved in the governance of a pension plan in Canada.

Background - The Canadian Regime

Under Canadian pension benefits standards legislation and at common law, pension plan administrators owe fiduciary duties to plan beneficiaries. These fiduciary duties impose, among other things (i) a duty of prudence, requiring the administrator to exercise care, diligence and skill, and (ii) a duty of loyalty, requiring the administrator to act solely in beneficiaries’ best interests when completing plan administration tasks. Fiduciary duties apply to both defined benefit (DB) and defined contribution (DC) plans.

The importance of robust pension governance structures and practices for the purpose of ensuring that these fiduciary responsibilities are met cannot be understated. Pension plan assets and liabilities often warrant significant risk management attention as part of an entity’s overall corporate governance structure. As well,

- CAPSA Guideline No. 4: Pension Plan Governance Guideline, originally released in 2004, and recently updated in 2016, provides regulatory guidance from Canadian pension regulators on principles of good governance and guidance on the implementation of those principles;
- Pension legislation in British Columbia and Alberta requires administrators to establish a formal governance policy, covering prescribed topics; and
- The Ontario *Pension Benefits Act* requires administrators of Ontario registered plans to establish governance policies (though the provision is not yet in force).

Beyond existing corporate governance practices and pension regulatory guidance, those involved in pension governance consider case law, like the *Wildman* case, to

¹ 4:16-CV-00737-DGK, 2019 WL 293382.



inform best practices. Though decided by a court in the United States, the guiding principles of the *Wildman* case are equally applicable in the Canadian context.

The *Wildman* Case

American Century Services, LLC (“American Century”), an investment management company, maintains the American Century Retirement Plan (the “Plan”), a DC plan, for eligible employees. Members are responsible for investing their individual accounts within the range of investment options offered under the Plan. Plan administration responsibilities, including investment matters, were delegated to the American Century Retirement Plan Retirement Committee (the “Committee”) composed of American Century employees appointed by the senior management team. Investment options are comprised almost entirely of American Century’s own actively managed proprietary funds.

A group of members commenced a legal action alleging that the Committee was in a conflict of interest and had breached the duty of loyalty owed to Plan members by offering primarily proprietary funds. It was also alleged that the nature of the funds led to higher fees and poor performance and was a breach of the prudent person investment rule.

The Court rejected the Plaintiffs’ claims. In relation to the practices and procedures challenged by the plaintiffs, the Court specifically and repeatedly held that those practices and procedures fulfilled American Century’s duties of prudence and loyalty. Specifically, the Court noted the following actions - which are widely recognized in Canada as best practices - as evidence that the Committee had met its fiduciary duties to the members of the Plan:

Regular Committee Meetings

The Committee met at least three times a year with special meetings held to discuss urgent matters. Those meetings lasted as long as was necessary to address each agenda item.

Meeting Materials

Prior to each meeting the Committee was provided with a comprehensive set of materials, including, among other things: benchmark summaries that showed how the performance of the Plan’s investment options measured against comparable plans; and information about underperforming funds including special consideration of funds that had been placed on a ‘watch list’. These materials along with the meeting minutes (discussed below) were evidence that the Committee appropriately considered items under its purview of delegated powers.



Meeting Minutes

Extensive Committee meeting minutes were taken. The Court referenced the minutes several times in its decision and commented on their thoroughness in capturing the topics discussed, who initiated questioning, the outcome of votes and the ultimate decision made by the Committee. The meeting minutes established a record of evidence that enabled the Court to find that the Committee had thoroughly discussed and had given appropriate consideration to the investment options offered under the Plan.

Consulting with experts and seeking external advice where appropriate

The Committee obtained advice from consultants and lawyers who provided information relevant to the Committee's work.

Evidence was provided that the Committee engaged an external consultant to conduct a review of the Plan's investment line-up and the offering of proprietary funds and provide a report to the Committee. Following the presentation of the report the Committee convened a special meeting dedicated to considering the findings and recommendations. Although the Committee did not act on all of the report's recommendations the Court was satisfied that the Committee had given the report thorough consideration.

Fiduciary training

Upon being appointed to the Committee, Committee members received training and information about their fiduciary duties, including a "Fiduciary Toolkit" which outlined their duties as fiduciaries, a summary of the Plan, and articles regarding fiduciary duties in general.

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The *Wildman* case is noteworthy because it provides judicial endorsement for the proposition that complying with Canadian recommended governance best practice will help ensure that an administrator's fiduciary duties are met.

If you have any questions regarding this update please do not hesitate to call a sidebar with any of us – we're here to help.



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