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PENSION BENEFITS LAW IN ONTARIO Andrea Boctor and Mariana MacIntosh Release No. 1, April 2022
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Publisher's Special Release Note 2021

The pages in this work were reissued in September 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the September 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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Pension Benefits Law in Ontario is an indispensable resource to the understanding and practice of pension law. It provides a comprehensive annotation and analysis of the Ontario Pension Benefits Act and related Regulations. Copies of forms, reciprocal agreements and the Bulletins, Guidelines and Policies are also included. The case law reviewed includes the decisions of the Financial Services Tribunal, plus reported and unreported cases of the trial and appellate courts of Canada. Each provision sets forth a list of terms defined in the Act and Regulations, and the definition sections are cross-referenced with the applicable provisions.

Below is a summary of changes made or proposed to the *Pension Benefits Act (Ontario)* (“**PBA**”), Regulation 909 (General) (the “**Regulations**”) and other regulations made under the PBA, material initiatives of the Ontario government and Financial Services Regulatory Authority (“**FSRA**”), and material cases affecting the PBA for the period from September 1, 2021, to December 31, 2021, as well as cases affecting pension minimum standards legislation in other Canadian jurisdictions that we think are relevant to the PBA.

Changes to the PBA and Regulations

This release includes updates to the *Pension Benefits Act* and **R.R.O. 1990, Reg. 909: General**. With this release, Ont. Reg. 287/11 – *Family Law Matters* has also been added to the text (as am. To O. Reg. 289/20).

Prior legislative changes that were not in effect at the time of prior publication but that are now in effect have been updated. Proposed amendments not in force at time of publication have been labelled as not in force and included in the text in italics.

Pension Benefits Act

Repeals

Sections 1(4.1), (4.2) and (4.3) of the Act have been repealed. So too have the previously pending ss 35.1 (Phased retirement option), 77.12 (Arbitration re allocation of surplus on wind-up), 80.3 (Transfers between certain public sector pension plans) and 116 (Review of Act, regulations) without those sections ever coming into force.

Amendments in effect

Amendments in effect include changes to language to incorporate the title Chief Executive Officer rather than Superintendent at, for example, s. 77.3 and throughout the Act, as well as changes to ss. 79.2(7), 79.2(16), 80.4(12.1)(b), 81(0.1) (Adoption of successor pension plan), (81)(8), 101.1 (Special exemption, certain individual pension plans and designated plans).

Pending Amendments

Pending amendments include changes to ss. 39.2 (Target benefits), 65 (Void transactions), 65 (Exemption from execution, seizure or attachment), 67 (Commutation or surrender *Family Law Act* matters), throughout Part XI Family Law Matters (including at ss. 67.1(3), 67.2(1), 67.3(8), 67.3(10), 67.3(12), 67.3.1, 67.5(1)), 77.11.1, 81.0.2 (Conversion by

amending the pension plan).

Pending amendments to Part XI Family Law Matter relate to pension division on marriage breakdown. The amendments: require that rules relating to marriage breakdown and pension division be interpreted to take into account changes to members' status under the pension plan occurring after the date of marriage breakdown; empower FSRA to make rules altering the provisions applying to pension valuations for family law purposes under certain circumstances; and permit settlement of spousal claims from successor plans where assets in a member's pension were transferred to.

R.R.O. 1990, Reg. 909: General

Repeals

The following sections of Regulation 909 have been repealed: 3(2.1), 4(0.1) (consolidated prior solvency deficiency), 4(2)(c.1), 4(2.8)(d), 5(0.1) (consolidated prior solvency deficiency), 5(1.0.0.1)(h) and (i), 5(17.1) 3 and 4, 5.5.1 to 5.10, 6(0.1) (consolidated prior solvency deficiency), 12(2.1), 14(0.2), 14(10.1), 18(2), 29(3.1), 29(4.1), 29.1(2), 32(1.1), 37(14.1), 37(14.2), 39(1.1), 47.5, 47.7, 47.7.1, 76(4.1), 77(1.1), 78(5.1), 78(6.1).

Amendments in effect

Section 47(3)(2.2) of Regulation 909 has been amended to incorporate the title Associate Judge rather than Case Management Master. In addition, the following amendments to Regulation 909 are in effect and reflected in the Regulation included in this text: ss. 3(1.1.2), 4.1 (Deferral of certain contributions to 2021), 5(1.1)(c), 5(1.2) 5 iii., 5(2), 5(3), 5(16.3), 5(17.1), 6(4.3) 5, 14(8.0.4)(c), 14(8.0.4)(h), 14(8.0.4.1), 16.1(2), 18(1), 37(15), 40.1(3.1), 40.2(3.1), 45(1), 45(7) and (8), 45(1) and (2), 46(5) and (6), 76(2.1), 78.1, and 81-85.

FSRA Policies, Forms and Guidance

New Guidance: Automatic Features in Defined Contribution Plans (No. PE0298INT)

On November 8, 2021, FSRA released new Interpretation Guidance on automatic features in DC pension plans. In the Guidance, FSRA affirms that the PBA and the Regulations do not prohibit the use of automatic features such as auto-enrollment, auto-escalation and default funds and concludes that such features have the potential to enhance retirement outcomes for plan members.

New Guidance: Administration of Pension Benefits upon Marriage Breakdown (No. PE0225INT)

On November 9, 2021, FSRA released new Interpretation and Approach Guidance on the Administration of Pension Benefits upon Marriage Breakdown. This new Guidance consolidates and refreshes previous FSCO family law Q&As and FAQs (all of which are now inactive) and includes Approach Guidance regarding FSRA's supervisory approach and expectations, as well as Interpretation Guidance, regarding FSRA's

view of statutory and regulatory requirements.

The Interpretation Guidance includes interpretations regarding the following:

- Valuation
 - Calculation of Preliminary Value
 - Application of CIA SOP Effective December 1, 2020
 - Calculation: Multi-employer Pension Plans
 - Ancillary Benefits
 - Indexation
 - Change in Plan Membership after Family Law Valuation Date (FLVD) but before Application
 - Purchased Pension Credit vs. Transfers
 - Annuities
- Payment and Division
 - Options Available for Division
 - Interest on Payments to the Spouse
 - Adjustment / Revaluation after Transfer or Pension Division
 - Change in Member Status from Active/Former to Retired Post FLVD
 - Re-Employment and Suspension
 - Spouse Dies Before the Retired Member
 - Retired Member Dies Before the Spouse
- Survivor Benefits
 - Waiver of Post-Retirement Joint and Survivor Pension

New Family Law Forms

On November 12, 2021, FSRA released the following new family law forms:

- Application for Family Law Value (Family Law Form FL-1)
- Statement of Family Law Value – Defined Contribution Benefit (Family Law Form FL-4A)
- Statement of Family Law Value – Active Plan Member with a Defined Benefit (Family Law Form FL-4B)
- Statement of Family Law Value – Active Member of a Plan with Defined Benefit and Defined Contribution Provisions (Family Law Form FL-4C)
- Statement of Family Law Value – Former Plan Member (Family Law Form FL-4D)
- Statement of Family Law Value – Retired Member with a Defined Benefit Pension (Family Law Form FL-4E)
- Spouse’s Application for Transfer of a Lump Sum (Family Law Form FL-5)
- Spouse’s Application to Divide a Retired Member’s Pension (Family Law Form FL-6)
- Spouse’s Application to Divide a Retired Member’s Pension – Special (Combined Option) (Family Law Form FL-6S)
- Post-retirement Waiver of Survivor Pension After Separation (Optional) (Family Law Form FL-8)

FSRA announced that to allow time for transition, the prior FSCO family law forms and updated FSRA family law forms will both be available and may be used until April 30, 2022. Effective May 1, 2022, the updated FSRA family law forms must be used for all steps in the pension valuation and division process that occur on or after that date.

New Reporting Forms

On November 12, 2021, FSRA released its updated Form 7 (Annual Summary of Contributions/Revised Summary of Contributions) and related processes.

Other Noteworthy Items

FSRA Seeking Feedback for 2022-2023 Statement of Priorities

On October 7, 2021, FSRA announced that it was consulting on its proposed 2022-23 Statement of Priorities and financial plan. FSRA highlighted that it will continue its focus on improving regulatory efficiency and effectiveness and will enhance its focus on public protections in the sectors it regulates. The consultation closed on October 29, 2021.

FSRA Releases its Insights Regarding Alternative Assets and Risk Management

On November 2, 2021, FSRA released its insights regarding its review of the risk management practices for alternative assets of the six largest public sector pension plans in Ontario:

- Colleges of Applied Arts and Technology Pension Plan;
- Healthcare of Ontario Pension Plan;
- Investment Management Corporation of Ontario;
- Ontario Municipal Employee Retirement System;
- Ontario Pension Board;
- OPSEU Pension Trust;
- Ontario Teachers' Pension Plan

FSRA notes that real estate, infrastructure and private equity are the the prominent classes of alternative assets held by the plans. FSRA's review includes its insights regarding the risks associated with alternative assets as well as the risk management practices of the plans, including valuation and model risk, asset-liability management, stress testing, and risk and liquidity management. FSRA's insights includes a list of questions to consider for investment in externally managed funds to alternative assets.

In FSRA's view, the leading practices summarized in the report can help all plans in their consideration of meeting their standard of care for investing in alternative assets.

FSRA Announces Family Law Webinar on Administration of Pension Benefits Upon Marriage Breakdown Guidance

On November 5, 2021, FSRA announced that it would offer a webinar on November 30, 2021 to discuss FSRA's new family law forms, FSRA's

Approach to the valuation and division of pensions in a marriage breakdown, and FSRA's Interpretation of key provision of the PBA and the Regulations relating to marriage breakdown.

Solvency Status of DB Plans in Q3

FSRA monitors the solvency funding position quarterly and estimates the solvency ratios based on the latest filed actuarial valuation information for Ontario Defined Benefit ("DB") pension plans that are subject to solvency funding. On November 5, 2021, FSRA released its Q3 Quarterly Estimated Solvency Report for Ontario's DB plans.

Highlights of the Report include that:

- Approximately two thirds of plans have a solvency funded ratio above 100%
- The median projected solvency ratio was 106% as at September 30, 2021.

Summary of Outcomes and Recommendations from Joint FSRA/OSFI DC Pension Plan Committee

On November 12, 2021, FSRA released the outcomes and recommendations from the Technical Advisory Committee on DC Plans. The Committee identified several recommendations and proposed that they be presented to the Canadian Association of Pension Supervisory Authorities (CAPSA). The Committee also explored ways to promote member engagement, to improve regulatory efficiency and effectiveness and to support DC plan administrators in providing decumulation options within the existing regulatory and legislative framework.

Timing of Filings

On November 12, 2021, FSRA announced that in the upcoming weeks, it would begin reinstating its process for following-up with plan administrators on outstanding filings. FSRA will use a phased approach to compliance with legislative filing requirements.

FSRA Releases Stakeholder Feedback

On November 30, 2021, FSRA released insights from the feedback it received from over 3000 stakeholders who responded to its online survey.

FSRA's Inaugural Exchange Event - Registration Open

On December 16, 2021, FSRA announced that registration was open for its inaugural Exchange Event, a half-day virtual event where FSRA will discuss its approach to regulation and how it can positively impact financial services in Ontario.

ProView Developments

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work

- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable
- Footnote text only appears in ProView-generated PDFs of entire sections and pages