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### **PENSION BENEFITS LAW IN ONTARIO**

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**Release No. 3, October 2023**

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.

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## Highlights

### CASE LAW

In this release, digests of two Superior Court of Justice decisions have been added to the text: *Vaux-Lacelle v. OMERS Administration Corporation et al* involving an application for a declaration of entitlement to survivor benefits (and an estate's motion to dismiss that application on the basis that an administrative dispute resolution process was a more appropriate forum); and *Monteiro v. CEO Financial Services Regulatory Authority*, where the Divisional Court confirmed the standard expected of a plan administrator, the interpretation of an administrator's fiduciary duty, and the standard of review applicable to challenges to a Financial Services Tribunal decision.

This release also includes a digest of the Financial Services Tribunal's decision in *Ardron v. Ontario (CEO of FSRA)* reasserting the principle that applicants before it have the burden of establishing their entitlement to pension benefits on a balance of probabilities. There, the Tribunal found there was no evidence (other than circumstantial evidence) tying the pension plan described in a booklet to the applicant. None of the typical evidence establishing plan membership — such as application forms, pay stubs, tax returns or correspondence — had been tendered.

### POLICIES, FORMS AND GUIDANCE

**FSRA HIGHLIGHTS — JANUARY 2023** — On January 4, 2023, FSRA published its monthly newsletter detailing key activities from FSRA in the month of December. The goal of FSRA Highlights is to provide stakeholders with relevant communications and information to keep stakeholders informed of the work FSRA is doing. The newsletter can be accessed at <https://myemail.constantcontact.com/FSRA-Highlights---Points-Saillants-de-l-ARSF.html?soid=1132656455417&aid=29myU5IhogU>.

**FSRA HIGHLIGHTS — FEBRUARY 2023** — On February 16, 2023, FSRA published its monthly newsletter detailing key activities from FSRA in the month of January. The newsletter can be accessed at: <https://myemail.constantcontact.com/FSRA-Highlights---Points-Saillants-de-l-ARSF.html?soid=1132656455417&aid=HHCYo7osQ84>.

**FSRA HIGHLIGHTS — MARCH 2023** — On March 3, 2023, FSRA published its monthly newsletter detailing key activities from FSRA in the month of February. The March edition included summaries of the above-noted items from February 2023. The newsletter can be accessed at: <https://myemail.constantcontact.com/FSRA-Highlights---Points-Saillants-de-l-ARSF.html?soid=1132656455417&aid=uilIZxJ4p7Y>.

**CYBER SECURITY GUIDANCE CONSULTATION** — On January 23, 2023, FSRA announced that it was consulting on guidance to help the sectors and individuals it regulates effectively manage a threat to their IT systems,

infrastructure and data. Proposed guidance was published that purported to apply across all sectors. The comment period closed on March 31, 2023. Many organizations submitted comments. They are available to review on FSRA's website.

**FSRA CYBER SECURITY WEBINAR** — On November 29, 2022, FSRA hosted a webinar on Cyber Security and Pension Plans. The video recording, transcript, presentation materials, and Q&As were published on the FSRA website on February 1, 2023 and can be accessed at <https://www.fsrao.ca/industry/pensions/webinars/webinar-cyber-security-and-pension-plans>.

**FSRA POLL ON RETIREMENT SAVINGS** — On February 6, 2023, FSRA published the results of a poll it had conducted regarding retirement savings views and perspectives in Ontario. Material regarding the poll can be accessed at <https://www.fsrao.ca/newsroom/more-should-be-done-encourage-ontarians-save-retirement>. The poll found that, of respondents:

- 88% feel more needs to be done to encourage people to save for retirement
- 60% feel there is not enough public information available about pensions
- 78% signed up for their pension plan immediately when they joined their workplace
- 64% contribute the maximum amount that is eligible for matching
- 49% admitted they know more about their favorite TV show than about the inner workings of their pension plan
- 36% retired or plan on retiring before age 65
- 27% plan on retiring or did retire at 65 years old
- 12% feel they will never be able to retire
- 56% know how much they need to save to retire comfortably
- 80% have a retirement plan
- 61% believe the right time to start setting money aside is in your 20's
- those with a workplace pension (48%) is nearly evenly split with those who don't have a workplace pension (47%)

**PENSION UPDATE** — On February 14, 2023, FSRA published in Pension Update reporting on, among other items, the Q4 2022 Solvency Report, Pension Awareness Day, and New Processes, Update and Reminders. The update can be accessed at <https://www.fsrao.ca/newsroom/pension-update-february-14-2023#:~:text=FSRA%20has%20revamped%20its%20plan,ensure%20good%20administration%20of%20plans>.

**SOLVENCY REPORT Q4 2022** — On February 14, 2023, FSRA published its quarterly report on solvency funding on Ontario registered defined benefit pension plans for Q4 2022. The report can be accessed at <https://www.fsrao.ca/industry/pensions/publications/quarterly-update-estimated-solvency-funded-status-defined-benefit-plans-ontario>. The key findings of the Q4 2022 Solvency Report include:

- The median projected solvency ratio was 112% as at December 31, 2022 — returning to its all-time high — a 3% increase from 109% as at September 30, 2022.
- The percentage of pension plans that were projected to be fully funded on a solvency basis as at December 31, 2022 was 81%. The percentage of plans falling below an 85% solvency ratio was 2%, decreasing by 1% from the end of last quarter.

- The average fourth quarter pension fund investment returns for 2022 were 2.9% gross and 2.7% net.

**FSRA SERVICE STANDARDS** — On March 24, 2023, FSRA published its Q4 2022 report on service standards. The report can be accessed at <https://www.fsrao.ca/media/16816/download>. The report included Q4 results on three pensions-related services standards:

- 90% of inquiries (plan specific, non-plan specific and general) will be responded to within 45 business days.
- Defined Benefit Plan wind-up applications will be reviewed, and a decision will be made within 120 business days.
- Defined Contribution plan wind-up applications will be reviewed, and a decision will be made within 90 business days.

**CONSULTATION ON PROPOSED GUIDANCE FOR ADMINISTRATIVE MONETARY PENALTIES** — On March 27, 2023, FSRA published proposed “interpretation” and “approach” guidance on when Administrative Monetary Penalties (AMPs) are imposed and how the amounts are determined. The proposed guidance notes that in levying an AMP, FSRA may consider:

1. The Statutory Purposes for the imposition of AMPs described above;
2. Severity of the contravention or failure to comply and its effect on consumers of financial services and the public;
3. Availability of and effectiveness of alternative enforcement options;
4. Pattern of non-compliant behaviour;
5. Prevalence of similar contraventions or failures to comply in the regulated sector and the need for deterrence;
6. Achievement of the objectives of the concerned Sector Statute(s); and
7. FSRA’s statutory mandate, priorities and strategic enforcement objectives.

The proposed guidance also notes that FSRA may settle AMPs, and in doing so may consider:

- Actions of the concerned person after the commencement of the enforcement action proposing to impose the AMP;
- Any new information or evidence brought to the notice of FSRA after the commencement of the enforcement action; and
- The overall sanctions and outcomes that will be achieved through settlement.

## **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