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12th Annual Pension & Benefits Conference

Tuesday, November 8, 2022

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Agenda

12th Annual Pension & Benefits Conference

Tuesday, November 8, 2022

Time (ET)

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| 9:00 a.m. | Opening Remarks <i>Deron Waldock</i> |
| 9:10 a.m. | Annual Case Law Update <i>Julia Miller</i> |
| 9:45 a.m. | Annual Regulatory and Legislative Review <i>Deron Waldock</i> |
| 10:20 a.m. | Mid-Morning Break |
| 10:30 a.m. | Life, Health and Other Benefits <i>Ryan Plener, Deron Waldock</i> |
| 11:05 a.m. | Digital Assets as a POTENTIAL Pension Plan Investment <i>Lori Stein, Greg Winfield</i> |
| 11:40 a.m. | Lunch Break |
| 12:00 p.m. | The Power Lunch Panel <i>Scott W. Bell, Kelleher Lynch, Shevaun McGrath, Leah Ostler, Deron Waldock</i> |
| 12:45 p.m. | Announcements – Welcomes, Celebrations and Thank you's <i>Deron Waldock</i> |
| 1:00 p.m. | Closing Remarks <i>Deron Waldock</i> |

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Reliable support, strategic counsel, and an innovative approach

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- registered pension plans
- post-employment benefits
- profit-sharing plans
- employee life and health trusts
- registered savings plans
- short-term incentive plans
- equity or equity-based plans
- retirement compensation arrangements



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COLLABORATION — We understand that every client and employee benefit plan is unique. Many require a collaborative and tailored approach. Our core team is supported by leading lawyers in our restructuring, institutional investment, securities, labour and employment, tax, and litigation practices who have specialized experience with employee benefit matters.



MARKET RECOGNITION — We are consistently recognized in the area of Pensions and Benefits law by leading directories including Chambers Global, Chambers Canada, The Canadian Lexpert Legal Directory, and The Legal 500 Canada.

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Our Pensions, Benefits, & Executive Compensation team has advised on the following matters and mandates:

| | | |
|---|--|--|
| <p>Pension Plan Sponsors and Administrators</p> <p>Responding to general queries on day-to-day plan administration matters, including member complaints and compliance</p> | <p>Brookfield Asset Management Inc.</p> <p>In its US\$9 billion private equity financing and all related pensions and executive compensation considerations</p> | <p>Investment Fund Clients (Including Investment Managers)</p> <p>On the structuring, formation, taxation, and regulation of both traditional and alternative investments</p> |
| <p>Global Leader in Agri-Food Business</p> <p>Addressing novel regulatory concerns of material value relating to administration of benefits, over several decades</p> | <p>Stifel Financial Corp.</p> <p>In connection with developing and implementing a long-term incentive plan for Canadian employees</p> | <p>Multinational Hospitality Company</p> <p>In proceedings before the Financial Services Tribunal in a claim alleging the miscalculation of pension benefit entitlements</p> |
| <p>Various Pension Plan Sponsors and Administrators</p> <p>Negotiating service contracts and advising on the tender process</p> | <p>Centrica and Direct Energy</p> <p>On pension and benefit aspects of the US\$3.63 billion sale of Direct Energy to US-based NRG Energy Inc.</p> | <p>Major Financial Services Firm</p> <p>On compliance and administrative matters relating to beneficiary designations and electronic communications</p> |
| <p>Realty Arm of Public Sector Pension Plan</p> <p>In its private placement offering of debentures worth several hundreds of millions of dollars</p> | <p>Aon plc</p> <p>As Canadian counsel, in its subsequently abandoned US\$30 billion acquisition of Willis Towers Watson</p> | <p>Lawyers Financial</p> <p>On retainer to negotiate an affinity agreement with the CAAT Pension Plan for the legal profession</p> |
| <p>Plan Surplus Issues</p> <p>Advising on strategic approaches to reduce the risk of trapped surplus, and implementation of surplus sharing proposals</p> | <p>Environmental, Social and Governance (ESG) Thought Leadership</p> <p>Advising pension funds on climate change and financial risk management, including the UN-supported Principles of Responsible Investment and ESG factors</p> | <p>Credit Suisse AG</p> <p>In connection with loans to a business with pension plan in deficit positions</p> |

ESG and Climate Change: Pension Fund Dos and Don'ts*

RETIREMENT SAVING AND INCOME (November 8, 2022)

Peer reviewed paper for the **C.D. Howe Institute**
Author: Randy Bauslaugh

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Introduction

- Pension fund administrators have a fiduciary duty to prudently manage financial risks and opportunities when investing plan assets and when managing plan operations that are paid from the pension fund. This includes the financial risks and opportunities associated with climate change and other environmental, social and governance (ESG) issues. But what are the legal dos and don'ts?
- Plan fiduciaries will always be on solid legal ground if they take ESG information into account for financial purposes – to protect the value of accruing pensions or to provide more cost-efficient benefits. They will be on shaky legal ground if they prioritize the use plan assets to achieve ESG impacts ahead of those financial considerations.
- The current legal environment, which puts the financial interests of plan beneficiaries first, is appropriate from a policy perspective. Regulators should resist any framework that prioritizes impacts. ESG regulations beyond those adopted by Ontario and those proposed for adoption federally should be avoided.

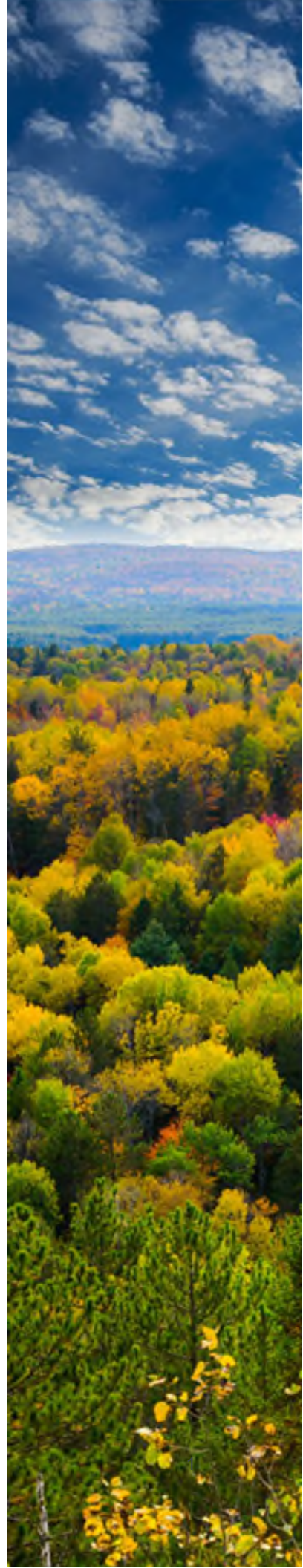
Can Canadian pension plan administrators take ESG factors, including climate change, into account in managing the investment of plan assets, or even when managing their own plan operations?

Must they consider ESG factors? What about the ESG concerns of plan participants, participating employers or plan staff? This paper will answer these questions in a manner that should address some of the confusion or misunderstanding around fiduciary rights and responsibilities. It will do that in the context of both defined-benefit and defined-contribution plans. The goal of this paper is to provide a sort of fiduciary radar to help administrators and other stakeholders understand what can or cannot be done legally in terms of taking climate change or other ESG factors into account when investing the assets of workplace pension plans.

The short answers to the questions above are: (a) plan administrators may take into account any ESG factor relevant to investment performance; (b) plan administrators who

*** Disclaimer:** This is not a legal opinion nor is it legal advice. It is intended to provide general information. Users are advised to seek specific legal advice about their circumstances by contacting their own legal counsel.

The author thanks Alexandre Laurin, William Robson, Benjamin Dachis, Keith Ambachtsheer, Bob Baldwin, Malcolm Hamilton, Eric Monteiro, James Pierlot, George Turpie and anonymous reviewers for comments on an earlier draft. The author retains responsibility for any errors and the views expressed.





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ignore ESG factors that are financially relevant and material put themselves at legal risk; and (c) plan administrators generally have no legal obligation to consider the ESG views of plan stakeholders.

Fiduciaries, however, live in a practical world where they may need to respond pragmatically to the non- financial ESG concerns of investment partners, participants, participating employers or plan staff. Typically, they will want to do this to support or enhance the plan's reputation or to promote or maintain confidence in the plan. Accordingly, this short paper provides some guidance on managing that practical reality as well.

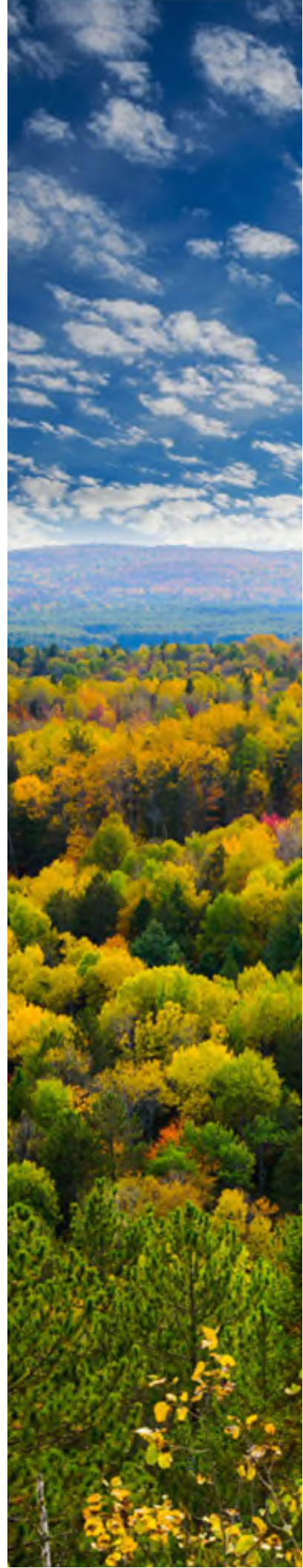


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1. Fiduciary Duty: Decision-Making that Prioritizes Financial Purpose

Pension plan administrators are fiduciaries. In the words of the federal *Pension Benefits Standards Act*, they “shall administer the pension plan and pension fund as a trustee for the employer, the members of the pension plan, former members, and any other persons entitled to pension benefits under the plan.”¹

The legal concept of the trust and fiduciary duty is about as close as the law gets to imposing a moral code of conduct. This is because trust law relies on behavioural concepts of good will, community standards and competence within a social relationship in which one party, the fiduciary, has control over the assets of another, the beneficiary.²

The behavioural standard of a fiduciary is not perfection. It is reasonableness. A pension plan fiduciary does not have a duty to “maximize returns.” It does have a duty to invest plan assets prudently: that is, to achieve a reasonable rate of return, without undue risk of loss, having regard to all relevant circumstances.

Relevant circumstances certainly include matters within the usual collection of financial, statistical and accounting metrics. But they also include so-called “non-financial” factors that are relevant to investment performance. A good example might be to consider the factors taken into account when hiring an investment manager. Typically, price, asset mix and past financial performance are all recognized as financial factors.

But what about the intangibles that invariably go into manager selection, like, who are the people who were responsible for that past performance, and are they still there? How will the administrator be served or reported to? What communications will be provided and when? What passion, philosophy or decision-making process does the manager bring to the table? Those are not financial factors *per se*, but no one would argue they are not factors that are appropriate to consider when hiring or firing asset managers. These so-called non-financial factors are accepted because they are relevant to financial purpose – to achieve a cost-effective financial result.

The term “non-financial” is often applied to ESG considerations. This term contributes to confusion. An ESG factor is not “non-financial” if it is taken into account as additional information to assess or manage financial risk or financial opportunity. Any fiduciary who ignores ESG information that is both relevant and material to financial management puts themselves at legal risk of being sued.

Another fundamental duty of fiduciaries and plan administrators is to act for a proper purpose (Pollard 2021).³ This means they should exercise investment powers consistent with the purpose of the plan and the purposes of the power.⁴ They must obey the plan documents and any special duties imposed by law. The *Canadian Income Tax Act* requires the “primary purpose” of a tax-qualified plan to be to provide lifetime retirement income as consideration

¹ *Pension Benefits Standards Act* (Canada), ss. 8(3). Note, the duty is owed to employers as well as plan participants.

² See for example the two paragraph, 18th century foundational case of *Keech v. Sanford* [1726] EWHC J76

³ See David Pollard, “The ‘Prudence’ Test for Trustees in Pension Scheme Investment: Just a Shorthand for ‘Take Care’”, in *Trust Law International* 34(4) 2021, pp. 215-247.

⁴ *Ibid.*, at p. 217.

for services rendered by the plan participants.⁵ This is a primary financial purpose that is consistent with common-law views of workplace pension plans.⁶

Fiduciaries have a duty under pension standards laws (and the common law) to “administer” the plan. They bear ultimate accountability for the formulation of investment policies and goals. While they can delegate tasks and responsibilities, they cannot delegate accountability. Sure, they can seek advice relating to the establishment of investment policy, or a plan document could be written to require consultation with members. But even so, fiduciaries cannot delegate ultimate responsibility for investment policy. They can be held personally accountable if investment policy is not consistent with the primary financial purpose dictated by the *Income Tax Act*, pension standards legislation or the common law. As a result, fiduciaries should not rely on the ESG or climate change concerns or wishes of plan participants or participating employers as determinative. They should not take direction from others, nor should they formulate investment policy based on the concerns or desires of plan stakeholders. That doesn’t mean they cannot consider their views, but they cannot prioritize the ESG concerns of plan stakeholders over financial considerations, and they certainly should not take direction from them. Fiduciary duty for investment management cannot be delegated to a survey, or a threat. The decisions of fiduciaries will be evaluated legally in the context of their reasonableness and their relevance to the primary financial purpose of the plan.

So what does all this mean practically? It means that plan administrators who take ESG factors, such as climate change, into account will always be on solid legal ground if they develop investment policy or make investment decisions by using ESG information that is relevant to management of financial risk or financial opportunity. Accordingly, they should compose investment policy and document ESG considerations in a manner that ties ESG or climate change considerations to administration of the financial risks and financial opportunities presented by ESG or climate change factors. They should avoid statements that simply tie ESG or climate change considerations to environmental or other non-financial impacts. Administrators who prioritize ESG impacts or who simply accede to stakeholder concerns about the climate or other ESG factors without some driving economic purpose will be on very shaky legal ground. As noted below, this does not prevent non-financial factors from being secondary considerations; but the safest legal course, is to focus on value, not values. It will be legally helpful for fiduciaries to prioritize, and to be seen to be prioritizing, financial concerns.

While that is generally applicable legal advice, there are still very practical issues that plan administrators must deal with. Plan participants, participating employers, plan staff and the communities they serve may have non-financial expectations that do not turn on legal niceties or financial priorities. Ignoring those non-financial concerns may have adverse reputational effects that could diminish confidence, trust, pride or even the long-term sustainability of the plan. As a practical matter, not a legal matter, it will likely be in the best long-term interests of the plan itself for plan fiduciaries to deal with these concerns pragmatically.

One typical example is climate change. Many plans have recently adopted zero emission climate change targets. On its face, that sounds like an impact goal, not a financial goal. But a close review of the statements from some of Canada’s largest plans about their zero emission targets invariably connects the zero emission statement to the predominant financial purpose. One of them specifically notes that the zero emission goal is not about the impact *per se*, but rather is one of several mechanisms they use to help gauge or oversee their financial progress in assessing, and responding to, climate-related financial risks and opportunities. These statements respond

⁵ *Income Tax Act Regulations*, ss. 8502(a). This also recognizes that registered pension plans are not charities. The pension must be provided as consideration for services rendered.

⁶ See *Cowan v Scargill* [1985] Ch 270, which confirms that the purpose of a workplace pension plan is to provide financial benefits for the beneficiaries.

pragmatically to participant and reputational concerns about climate change while not deviating from the pension fund's primary financial lane.

2. The Duty Owed Differs from Other Institutional Fiduciaries

It is helpful to point out that the allowable legal perspective of pension fund fiduciaries is narrower than that of fiduciaries of other organizations. A good example is the difference between pension plan fiduciaries and fiduciaries who are directors or officers of a corporation.

Officers and directors are required by corporation statutes in Canada to act in the best interests of the corporation. The Supreme Court of Canada has said on a number of occasions over more than three decades that the duty to act in the best interests of the corporation does not mean a focus on shareholders and their immediate financial interests. The federal *Canada Business Corporations Act* was recently amended to reflect this case law. It expressly states that when acting in the best interests of the corporation, the directors and officers may take into account factors that include the interests of shareholders, employees, retirees and pensioners, creditors, consumers, and governments, as well as the environment and the long-term interests of the corporation.⁷

By contrast, as noted above, tax rules require pension fund fiduciaries to focus on the primary financial purpose of providing lifetime retirement income as consideration for services rendered by the plan participants. That is a much narrower purpose than directors or officers have in acting in the best interests of the corporation. The rule applicable to pension fiduciaries requires a primary focus on delivering a financial benefit to members, namely lifetime retirement income.

In short, pension funds have one lane that provides legal safety – a focus on the money. Other business entities or charitable organizations can safely navigate multiple lanes of interest where ESG and climate change impacts may be given equal or superior weight to financial considerations.

3. Possible Exceptions to Financial Priority

While plan fiduciaries are advised to stick to their financial lane, there may be some legal exceptions, but these can be ambiguous, and they will carry differing levels of legal risk.

(a) As a Tie-Breaker

Using a non-financial factor as a secondary tie-breaker consideration between two competing investment alternatives with similar financial characteristics, appears to be relatively safe for pension fund fiduciaries, since the financial purpose analysis precedes, and leads to, the tie-breaker decision.

⁷ *Canada Business Corporations Act*, ss. 122(1.1)

(b) Direct Fiduciary Discretion in Plan Documents

Where plan participants share an identifiable ethical, religious, political or community purpose, such as a pension plan for employees of the Cancer Society, the plan fiduciary may have more flexibility in taking factors consistent with that purpose into account; but only as a concern that must be secondary to the primary financial purpose. If fiduciaries wish to prioritize such a concern, they should write the priority into the plan document in a way that serves to inform or direct fiduciary discretion to that secondary purpose. They cannot do this by simply writing it into a statement of investment policies and procedures because that statement is merely a policy developed by the fiduciaries themselves, not a power granted to the fiduciaries by the sponsor or “settlor” of the plan or required by applicable legislation. It is also only a “policy” – a statement of what they intend to do. It is not a legal standard like a law or a contract dictating what they must do. It does not define their legal obligation; it provides guidance and principles they will follow or implement to help discharge the legal obligation they have.

It is the plan text or trust agreement put in place by the plan sponsor that along with applicable legislation provides effective legal authority. It is those particular plan documents along with the legislation that endows or empowers fiduciaries with their administrative decision-making and oversight authority. Accordingly, the plan documents are what ought to be revised if they wish to elevate or prioritize relevant ESG factors to a purpose consistent with other organizational goals or stakeholder interests. However, these impact purposes should always be, and be seen to be, second in priority to the primary financial purpose of the plan to provide pensions.

(c) A DC Plan Exception?

Another possible exception may exist in regards to defined-contribution (DC) plans that offer individual member investment choice. If the plan fiduciaries have evidence that a significant number of participants would like specific ethical, environmental or similar choices, the fiduciary may wish to include such funds in the menu of choices that are made available to members. Fiduciaries should appreciate that making those funds available for member choice does not transfer fiduciary responsibility for the choice from the fiduciary to the plan member. This is because the fiduciary remains responsible for selecting the menu of choices. It also does not mean that financial considerations should not remain a priority. The plan administrator remains responsible for ongoing monitoring of the menu and for removing underperforming, expensive or misleading funds from the menu of choices, such as those that may reflect “greenwashing” or impose an inappropriate “greenium” (Bauslaugh and Lynch 2022)⁸. In other words, adding an ESG or climate change option may respond to member preferences, but it will increase the fiduciary workload in terms of prudent oversight. Fiduciaries must remain reasonably vigilant to ensure that any particular choice is both financially appropriate to respond to the primary purpose and consistent with the secondary consideration at the time the selection is made and thereafter. As a consequence, a fiduciary will also have to deal with managing removal of any such fund from the menu of choices if the fund subsequently fails to meet either the primary financial or secondary ESG or climate change emphasis.

(d) Low Risk of Substantial Financial Detriment?

Some Canadian financial experts have suggested that an administrator is legally entitled to exercise discretion to take ESG factors into account to achieve impacts if the plan participants are generally in agreement with prioritizing the factor, and the risk of financial detriment is not significant. This two-prong test, which appears to enable investment decisions to be made by fiduciaries on non-financial grounds, comes out of a 2014 UK Law Commission

⁸ “Greenwashing” refers to false or misleading claims about the investment product. A “greenium” is a term used to refer to an additional cost or lower yield imposed on environmentally friendly or sustainable investments or investment products.

Report⁹ that, according to many legal experts in the UK, inappropriately applied fiduciary principles arising out of the law applicable to charities to pension funds.¹⁰ It is not the law in Canada. For one thing, it is perfectly clear in Canada that a tax-qualified pension plan is not a charity. As noted above, the *Income Tax Act* requires tax-qualified pensions to be provided as compensation for employment services rendered.¹¹ The legal conclusion that a workplace pension plan is not a charity (or a gift) is also likely the case under the general common law. In summary, that two-prong test is not applicable and should not be relied on by Canadian plan administrators.

4. ESG Investment Disclosures: Never Say Never

Changes to Ontario law in 2016 require plan fiduciaries to disclose in the statement of investment policies and goals and in participant statements whether they take ESG factors into account when investing plan assets, and if so, how.¹² Ottawa has announced its intention to require similar disclosures for federally regulated plans.

In my experience, this has resulted in more fiduciaries and their advisors seeking legal advice and a deeper understanding of the relevance of ESG factors.

The bottom-line advice is that fiduciaries should never say they never consider ESG factors. That would amount to an admission that they may be improperly fettering their discretion or that they are not adhering to proper fiduciary standards of prudence by intentionally turning a blind eye to information that could be financially relevant and material to the investment of plan assets.

Large funds that make direct investments are likely to have more sophisticated disclosures that may also include information about their engagement strategies. However, for the vast majority of registered pension plans with assets that are passively invested (including many of the large funds), that statement is likely to be more of a simple

⁹ Law Commission, (LAW COM No. 350), *Fiduciary Duties of Investment Intermediaries*, June 2014, at page 113 (found at www.gov.uk/government/publications): “In general, non-financial factors may only be taken into account if two tests are met: (1) trustees should have good reason to think that scheme members would share the concern; and (2) the decision should not involve a risk of significant financial detriment to the fund.” Note, this test is very similar to the two-prong test referred to in the Manitoba Law Reform Commission, *Ethical Investment by Trustees* (January 1993), however the Manitoba report indicates that this test is still subject to a predominant financial consideration: “However, there may be circumstances where it would be appropriate to include ethical or other non-financial factors as additional (but subordinate) factors. This will particularly be the case where the trust can reasonably be said to encompass objectives that go beyond the predominant goal of securing a reasonable financial return. Moreover: (a) An investment policy which respected the reasonable and firmly held moral precepts of a trust’s beneficiaries may be justified, provided it does not imperil the financial returns to the trust. (b) It may be appropriate to have regard to widely held societal values. A trustee who chooses not to invest the trust’s assets in enterprises notorious for dangerous products or discriminatory hiring practices should not be guilty of breach of trust, provided the trustees have nonetheless ensured a sufficiently wide range of alternative investments to produce a reasonable financial return.”

¹⁰ See for example, Philip Bennett. 2019. “Must an Occupational Pension Scheme Take into Account ESG Factors, Even if There is a Risk of Financial Detriment to the Pension Fund?” *Trust Law International* 32(4) p.239, at pages 256-263.

¹¹ *Supra*, footnote 5.

¹² *Pension Benefits Act* (Ontario) Regulation, RRO1990, Reg. 909, subsections 40(1)(v)(ii); 40.1(1)(s)(ii); 40.2(1) (r)(ii); 78(3).

acknowledgement that ESG factors are taken into account in assessing fund performance, and also as one of many factors used to assess manager selection or ongoing oversight and retention.

As implied above, the legal assessment of fiduciary duty does not relate to financial performance *per se*. It relates to the reasonableness of the investment decision-making process itself, regardless of outcome. In simple terms: Were the choices reasonable? Did the fiduciaries consider information relevant to purpose? Did they properly prioritize it? Did they disregard information not relevant to purpose? Are they continuously monitoring to ensure assumptions and objectives remain relevant and that their choices remain reasonable? In short, the legal standard is reasonableness, not perfection.

The legal evidence of reasonableness will be found in the written formulation of the administrator's policies and objectives, as well as in documentation supporting its choice of investments or managers, the appropriateness and timeliness of its ongoing review, its internal or external service provider's ability to do appropriate assessments and the minutes of its deliberations. While performance is not relevant *per se*, poor financial performance is likely to trigger an inquiry. So are statements suggesting that ESG factors are never considered, or that they are given unreasonable (in the circumstances) priority, or that they are considered for impact purposes, rather than financial purposes.

At this time, there seems to be a substantial body of evidence to indicate that integrating ESG factors into investment decision-making is correlated to more positive long-term-risk-adjusted returns – but it is not conclusive. There is also a veritable fire-hose of information and developments relating to the urgent implications of climate change. Not all of it is relevant to financial performance. Much of it is inconsistent. Most fiduciaries will simply not have the resources or band-width to track all of it, so the best they can do is rely on others. This is not likely to be an issue where financial risk and opportunity are driving decision-making, or are seen to be driving decision-making.

Thankfully, the legal duty of plan fiduciaries is not perfection; it is reasonableness. It is an inquiry that must be contextual. Those with expertise will be held to an expert standard of care. Those with no expertise will be held to the reasonable person standard.¹³ The surest route to reasonableness from a legal perspective is to focus on financial purpose, financial relevance, and financial materiality. But context is relevant too – what is the plan administrator itself able to do given its size and sophistication? This legal landscape allows room for those with little expertise; but it leaves little room for saying “never.” It also opens up some uncertainty whenever fiduciaries stray from a laser-like focus on financial purpose when articulating their policy or documenting their decisions.

5. ESG Factor Integration in Plan Operations

Finally, many large plans, like many of our public-sector plans, operate for all intents and purposes as fully fledged financial institutions. They have premises, equipment, boards of directors (trustees), records, computer systems, officers and employees, all paid for from the pension fund.

Moreover, like any financial institution or business entity, they are entitled to implement management systems, strategies and processes to carry out their business purpose of providing pensions. As is the case with any large institution, they will likely adopt strategies or processes for planning, measuring and attributing positive social or environmental changes to the workplace, such as occupational health and safety management systems, anti-discrimination policies, contributions to local charities, or climate change strategies within the workplace. These

¹³ *Pension Benefits Act* (Ontario), subsections 22(1) and (2).

operational strategies serve to buttress, improve or maintain internal employee relations and other management goals or processes. They can also be used to strengthen external relationships by enhancing plan reputation or brand with others, such as potential investment partners. The overall goal will often be to bring a sense of cohesiveness, pride, efficiency, collegiality and common purpose to the workplace, to their business partners and to the communities in which they operate. Inevitably, the costs of these measures will be paid from the pension fund. Assuming all of those measures are in furtherance of the business of providing pensions, this in itself is not inconsistent with the primary financial purpose of the plan. It is not likely to be viewed as an impact, rather than a financial investment of plan assets, as long as it can be reasonably tied to the primary business purpose of providing pensions.

Nonetheless, fiduciaries who use plan assets to implement such human resources, branding or other internal strategies to further their business activity may expose themselves to criticism or legal proceedings. Consequently, they would be well advised to document the process in a manner that ensures it is depicted as a business process, not a plan investment *per se*, and one that is consistent with, or in furtherance of, the primary financial purpose of the plan to provide lifetime pensions as consideration for employment services rendered by plan participants.

6. Do We Need Legal Changes?

Canada's workplace pension system was established with tax incentives to encourage development of a voluntary system that can provide a financially secure transition from the workplace to retirement, as well as support for our financial markets and overall economic efficiency. Despite tax incentives, coverage still remains inadequate with barely 39 percent of the workforce covered by registered pension plans, and most of that in the public sector. The system is also dominated by small plans. Of the more than 16,000 registered pension plans, more than 60 percent have fewer than 10 members, and the 32 largest plans account for more than 50 percent of all plan members (Statistics Canada 2022).¹⁴ By and large, pension administrators are non-experts who rely on fee-taking third-party experts and providers.

In my opinion, a regulatory framework that imposes specific ESG metrics or financial approaches or considerations will not provide an incentive for growth in an environment dominated by non-experts. It is not needed for the large funds, many of which have demonstrated a sophisticated understanding and approach to ESG factor integration and engagement with investee entities. On the other hand, perhaps we ought to be encouraging smaller players to leave the field and join up with large pension funds that can provide more cost-efficient means to obtain financial growth and sustainability. It is possible more regulation related to specific ESG approaches might provide incentives for smaller providers to move to much more efficient, large, industry-wide, multi-employer defined-benefit or target-benefit arrangements.

It is also my view that a regulatory framework that would shift the current emphasis on value to permit greater latitude to consider values or impacts is not appropriate. It seems to me a values approach has the potential to further undermine the economic efficiencies of a workplace pension system already undercut by the transition away from cost-efficient defined-benefit plans to defined-contribution arrangements. It is also fundamentally inconsistent with the policy rationale for encouraging tax-deferred pension savings.

The near-term answer for our specific system appears to be the kind of soft legal approach adopted by Ontario and proposed for adoption federally to improve disclosure. It is an approach that appears to have encouraged or developed awareness and better understanding of ESG factor integration by Canadian workplace pension fund

¹⁴ See various Statistics Canada publications, such as *Registered Pension Plans (RPPs), active members and market value of assets by contributory status* released 2022-07-18, or *Pension plans in Canada, as of January 1, 2021* released 2022-07-18.

fiduciaries and their advisors. Increasingly, they are coming to understand that financial interests come first, and that those financial interests can be better served by appropriately using ESG information to manage financial risk and opportunity.¹⁵

7. Conclusion

The foregoing is meant to provide big picture clarity to the powers and responsibilities of workplace pension plan fiduciaries in connection with ESG factor integration, including climate change.¹⁶ Specific circumstances require specific legal review. Hopefully, this will serve as a sort of fiduciary radar to provide more clarity on an issue that still seems to be perceived as opaque and confusing. A good rule of thumb is that pension fund fiduciaries will always be on safer legal ground by prioritizing value over values when investing plan assets.¹⁷

Any regulation in this area ought to be aimed at simple disclosure rules: a statement as to whether ESG factors are considered, and if so, how. Regulatory guidance should be in place to reinforce understanding that this is about improving or protecting investment performance to provide lifetime retirement income; it is not about changing the world for the better, although that may be a consequence. Regulation should not impose additional sophisticated reporting hurdles. Most importantly, regulation should not permit deviation from the priority to provide lifetime retirement income.

¹⁵ See for example, CAPSA Draft Guideline, Environmental, Social and Governance Considerations in Pension Plan Management, Released June 9, 2022.

¹⁶ For more in depth legal treatment of climate change, see Randy Bauslaugh, Climate Change, Legal Implications for Canadian Plan Fiduciaries and Policy-Makers, a legal opinion prepared for the Canada Climate Law Initiative, and released publicly by the Commonwealth Climate Law Initiative 26 May 2021. It can be accessed here: <https://ccli.ubc.ca/considering-climate-change-is-part-of-pension-trustees-legal-responsibilities-a-new-analysis-reveals/>. It includes research assistance by the CD Howe Institute.

¹⁷ See also, Randy Bauslaugh, "Value, Not Values," *Benefits and Pensions Monitor*, (November 2020); Randy Bauslaugh and Dr. Hendrik Garz, "Pension Fund Investment: Managing Environmental Social and Governance (ESG) Factor Integration," International Congress of Actuaries (Berlin 2018) republished in *Trust Law International* 32: 264-278.

References

Bauslaugh, Randy. 2020. "Value, Not Values." *Benefits and Pensions Monitor*, November.

Bauslaugh, Randy, and Dr. Hendrik Garz. 2018. "Pension Fund Investment: Managing Environmental Social and Governance (ESG) Factor Integration." International Congress of Actuaries (Berlin) republished in *Trust Law International* 32: 264-278.

Bauslaugh, Randy, and Kelleher Lynch. 2022. "Freedom of Choice Means Personal Responsibility – Except in DC Pension Plans?" *Benefits and Pension Monitor*, April.

Bennett, Philip. 2019. "Must an Occupational Pension Scheme Take into Account ESG Factors, Even if There is a Risk of Financial Detriment to the Pension Fund?" *Trust Law International* 32(4): p.239, at pages 256-263.

Canadian Association of Pension Supervisory Authorities (CAPSA). 2022. "Draft Guideline, Environmental, Social and Governance Considerations in Pension Plan Management." Released June 9.

Pollard, David. 2021. "The 'Prudence' Test for Trustees in Pension Scheme Investment: Just a Shorthand for 'Take Care.'" *Trust Law International* 34(40): 215-247.

Statistics Canada. 2022. "Registered Pension Plans (RPPs), active members and market value of assets by contributory status." July 18.

_____. 2022. "Pension plans in Canada, as of January 1, 2021." July 18.



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Annual Case Law Update

Julia Miller

Meloche v. Meloche, 2021 ONCA 640

—**Issue:** *“Where a retired member spouse’s pension payments are divided at source for family law purposes, can the payment sharing continue to the non-member spouse’s estate for the balance of the retired member spouse’s life?”*

—**Holding:** Pension payments divided at the source can continue to the estate of a non-member spouse during the life of the member spouse, in the event that the non member spouse predeceases the member spouse.

—Leave to appeal dismissed with costs by SCC (2022 CanLII 26223).

Carvalho v. Amorim, 2022 ONCA 158

—**Issue:** Can a member's former wife meet the definition of spouse under section 44 of the PBA if they are living in separate locations?

—**Holding:** While individuals can be in a marital relationship while living in separate locations, there must be evidence of a common purpose, involvement in each other's lives, and ongoing communication.

Crosby Canada Inc. v. Ontario, 2022 ONFST 11

—**Issue:** What is required for a pension plan text to be "incorporated by reference" in a trust agreement?

—**Holding:** *"Where a trust agreement contains references to the plan text ... then the two documents should be read together in respect of the distribution of the trust funds ... in a way that seeks to interpret them ... without conflict or inconsistency. If there is a conflict between the plan text and the trust agreement, ... the trust agreement must prevail."*

Hughes v. Northwestern University

United States Supreme Court

— **Issue:** Does the duty of prudence require plan administrators to continually monitor investment options and remove imprudent options from the available list of investments?

— **Holding:** “[P]lan fiduciaries are required to conduct their own independent evaluation to determine which investments may be prudently included in the plan’s menu of options” ... and ... “if the fiduciaries fail to remove an imprudent investment from the plan within a reasonable time, they breach their duty”.

Other Recent Cases

— Pension Plan Administration

- Ryerson University v Ryerson Faculty Association, 2022 CanLII 32449 (ON LA)
- Winspear v. Ontario (CEO of FSRA), 2022 ONFST 12
- McHayle v. CEO of Financial Services Regulatory Authority, 2022 ONSC 1534
- Nova Chemicals (Canada) Limited v Unifor Local 914 – Nova (Corunna Unit), 2021 CanLII 134196 (ON LA)
- Coca Cola Ltd. v. Ontario (CEO of FSRA), 2022 ONFST 9

— Family Law Cases

- Davis v. Davis, 2022 NSSC 212

— Benefit Cases

- Cambie Surgeries Corporation v. British Columbia (Attorney General), 2022 BCCA 245

Annual Regulatory and Legislative Review

Deron Waldock



2022 Things of the Year...

The 2022 Pension Word of the Year may well be “RISK”



FEDERAL DEVELOPMENTS



- The April 7, 2022 Federal Budget proposed certain measures, including allowing solvency reserve accounts for federally regulated pension plans and accommodating variable payment life annuities under the federal *Pension Benefits Standards Act, 1985 (PBSA)*.
- Proposed amendments to the *ITA Regulations*, effective April 7, 2022, would give Administrators of defined benefit (DB) plans more borrowing flexibility.
- Federally regulated pension plans will also be required to disclose environmental, social and governance considerations, including climate-related risks.

FEDERAL DEVELOPMENTS



- In March, 2022, the federal pension regulator, the Office of the Superintendent of Financial Services (OSFI), released a consultation paper on investment risk management.
- The paper introduced several principles OSFI believes are relevant to federally regulated pension plans in four areas:
 - Independent risk oversight;
 - Portfolio and risk reporting;
 - Risk appetite and risk limits; and
 - Valuation policies and processes.

FEDERAL DEVELOPMENTS



- OSFI indicated to stakeholders that its proposed guidance on investment risk management would expect plan Administrators to have a risk oversight function that is independent of operational management.
 - Could be Administrator's own internal audit function or a third-party service provider reporting directly to the administrator's board of directors.
 - Role would be to establish the risk management framework, to identify and assess risks, to set risk limits, and to establish risk monitoring and reporting requirements.
 - Aim is to provide some assurance of independent review of the plan's risk management approach so that potential conflicts can be avoided.

FEDERAL DEVELOPMENTS



- OSFI has also proposed that plan sponsors establish processes to ensure that plan Administrators are provided with access to timely and comprehensive risk reporting, including market, credit and liquidity risks.
 - Contemplated that such reporting would provide “sufficient look-through to the underlying holdings of investment funds” to understand the plan's risk exposures, including leverage, derivative, and foreign exchange exposures.
 - Hope is that will ensure plan administrator's ability to identify, quantify and manage such risks.



FEDERAL DEVELOPMENTS

— Lastly, OSFI's consultation paper proposes that plans enhance their documentation of valuation policies and processes.

— This includes not only periodic “due diligence” of valuation policies and processes of third-party service providers, but also interim valuations of alternative assets during periods of market stress to ensure sufficient accuracy of the valuation.



ONTARIO DEVELOPMENTS

— Amendments made to PBA Regulations, in spring 2022, to remove some requirements for Administrators of pension plans where all the benefits are defined contribution (DC) plans:

- DC plan Administrators no longer need to file an audited annual financial statement unless specifically required by FSRA.
- A SIPP is no longer required for DC plans where members direct all their investments, and statements about the SIPP no longer need to be included in annual/biennial member statements of these plans.

CAPSA DEVELOPMENTS

- On June 9, 2022, CAPSA published consultation drafts of pension plan guidelines covering “Environmental, Social and Governance (ESG) Consideration in Pension Plan Management”, as well as cyber security and leverage issues.

- CAPSA also announced that it was contemplating the establishment of a separate, principles-based risk management guideline, but was inviting comments on whether to instead prepare a single document that combines all of these items into an inclusive risk management guideline.

CAPSA DEVELOPMENTS

- The June 9th consultation includes three principles on **ESG** issues:
 - Administrators (either directly or through their delegates) should consider ESG characteristics that may have material relevance to the financial risk-return profile of the pension fund’s investments.
 - Administrators, as part of their standard of care must assess whether plan governance, risk management and investment decision-making practices are sufficient to identify and respond to material ESG information in a manner proportionate to their plans and appropriate for their investment beliefs.
 - Administrators should disclose information about the pension fund’s investment policies in relation to ESG considerations in their SIPP. Where appropriate, pension plan Administrators should also provide reports on their stewardship activities as well as request companies in which they invest to disclose their ESG-related policies.

CAPSA DEVELOPMENTS

- The Guideline also reviews **cyber-related risks** and related actions that Administrators should be considering, including the following:
 - Regular review and assessment of cyber risk, with a view to establishing and maintaining appropriate controls, taking into account the evolving nature of technology, cyber practices, and data standards, and the need for specialized technological expertise and training. As well as the sensitive nature of information retained by plans.
 - Obtain or retain the required skills, expertise and/or training to understand and manage cyber risk.
 - Clearly define, assign, and understand roles and responsibilities related to cyber risks, including with respect to any activities delegated to third-party service providers (and all applicable subcontractors).
 - Establish a strategy for responding to and reporting cyber incidents, including with respect to business continuity, disaster recovery and incident response.

CAPSA DEVELOPMENTS

- Similarly, with respect to **leverage and the effective management of associated risks**, draft guidelines identify a number of practices that Administrators should consider, including:
 - Identification of risk factors and economic exposures, including approaches for their measurement, monitoring and mitigation.
 - Describing objectives respecting the use of leverage in the plan's Statement of Investment Policy and Procedures.
 - Content for a risk management framework, including the roles and responsibilities of key stakeholders, risk monitoring, reporting and oversight.
 - Establishment of appropriate risk guidelines and controls.
 - Stress testing and scenario analysis.

BILL 27 – *Working for Workers Act, 2021*



- On November 30, 2021, the Ontario legislature passed bill 27, Working for Workers Act, 2021 an omnibus bill which amended a number of employment-related statutes.
- Key change from a benefit plan perspective came into effect on December 2, 2021 when Ontario became the first Province to prohibit employers from binding an employee to any form of non-compete agreement.
 - Why broad application — amendment defines "non-compete agreement" as an "agreement, or any part of an agreement, between an employer and an employee that prohibits the employee from engaging in any business, work, occupation, profession, project or other activity that is in competition with the employer's business after the employment relationship between the employee and the employer ends."

BILL 27 – *Working for Workers Act, 2021*



There are only two exceptions:

1. Executives, defined as "any person who holds the office of chief executive officer, president, chief administrative officer, chief operating officer, chief financial officer, chief information officer, chief legal officer, chief human resources officer or chief corporate development officer, or holds any other chief executive position.
 2. Sellers of part of all of their business, who become employees of the buyer immediately following the sale.
- The amendment does not affect the use of other forms of restrictive covenants such as non-solicitation, confidentiality and intellectual property provisions.
 - There is no "grandfathering" or transition period.

BILL C-228 –

An Act to amend the *Bankruptcy and Insolvency Act*, the *Companies' Creditors Arrangement Act* and the *Pension Benefits Standards Act*, 1985.



- Bill C-228 seeking to amend the *Bankruptcy and Insolvency Act*, the *Companies' Creditors Arrangement Act* and the *Pension Benefits Standards Act*, essentially to extend the “superpriority” (already secured by all assets of a debtor in case of bankruptcy or needed to be paid in full in case of a CCAA plan) for all pension obligations, i.e. including the unfunded liability or solvency deficit (which are currently not included in the superpriority of the BIA and CCAA).
- The Bill would allow a “transitional provision”, meaning that for existing pension plans, it would take effect on the 4th anniversary of the enactment of the law, so this gives some time to adjust credit agreements to consider this new priority.
- Is this a new Indalex?

**Life, Health and
Other Benefits**
Are you ready for a
change?

**Randy Bauslaugh, Ryan
Plener, Deron Waldock**

National Dental Care Program

On September 13, 2022 the federal government provided more detail around the National Dental Care Program set out in the Federal Budget

- Applies to Families with an annual income of less than \$90,000
- Stage 1 to provide care for children under age 12 without access to private dental care
 - Implementation to be December 1, 2022 – but effective from October 1, 2022
 - Income between \$80,000 and \$89,999 = \$260/child
 - Income between \$70,000 and \$79,999 = \$390/child
 - Income less than \$70,000 = \$650/child
- Next stages to expand coverage to children under 18 years of age, seniors and persons living with a disability
- Fully implemented by 2025.

May affect design of dental plans.

Tax Credit for Surrogacy Expenses

Subsection 118.2 of the ITA changed to permit a medical expense tax credit for expenses “to obtain sperm or ova to enable the conception of a child by the individual, the individual’s spouse or common-law partner or a surrogate mother on behalf of the individual”. The purpose is to help reduce the high costs of in-vitro fertilization and medical expenses related to surrogacy and childbirth.

To qualify the expense must be:

- A reimbursed expenditure: described in the Reimbursement Related to Assisted Human Reproduction Regulations, (for the purpose of surrogacy, donating sperm or ova, or maintenance and transport of an in vitro embryo), or paid in respect of a surrogate mother or donor.
- An expense incurred in Canada in respect of a good or service provided in Canada

Impact on Medical plans?

Alberta and Manitoba expanding surgery access by funding private surgical clinics

Alberta has been funding more orthopedic and other general surgeries performed in accredited private or "charter" facilities. Since 2019 the number of surgeries being performed have gone from about 13% of such surgeries in 2019 to about 20% in 2021.

Manitoba recently announced agreements with private clinics in Ontario, North Dakota and Cleveland Ohio for patients willing to receive out-of-province access to orthopedic and other surgeries as an interim measure

In both provinces this should reduce wait times exacerbated by the pandemic. It will also allow public hospitals to focus on emergency and more complex surgeries.

Workplace impacts:

- Reduction of costs under disability plans ?
 - Benefit plans in Alberta may see some savings.
 - In Manitoba, private health care plans should be reviewed to determine if they will be affected by costs related to travel or follow up therapeutic assistance.
- Improved productivity?
 - In both provinces it is expected these measures may result in reduction of time off for disability, as a result of shortened wait times

Cambie Surgeries Corporation v. British Columbia, BCCA, July 15, 2022

Issue:

Cambie Surgery Centre, challenged the sections of the province's *Medicare Protection Act (MPA)* that prevent private practitioners from charging patients who are enrolled in Canada's universal healthcare system for services available in that system, due to long wait times.

The appellant, Cambie, says the delays breach patients' section 7 Canadian Charter of Rights and Freedoms rights to life, liberty, and security of the person and that the breach of those rights is not saved by section 1 of the Charter which allows rights to be limited if "demonstrably justified in a free and democratic society".

Decision:

In upholding the lower court decision, the majority found that even though the impugned provisions deprive some patients of their right to life and security of the person, they don't breach section 7 because they do so in accordance with principles of fundamental justice. All three judges determined that even if the provisions did breach section 7, they are saved by s. 1.

Cambie Surgeries Corporation v. British Columbia, BCCA, July 15, 2022

Implications:

Most provincial legislation imposes limits to ensure fair treatment while preventing the creation of a two-tier system where access to healthcare depends on ability to pay. The Cambie decision protects the public healthcare system *status quo*; but it does highlight issues with delays in the system.

It is expected that the plaintiffs will appeal the decision to the Supreme Court of Canada.

It is worth keeping this case on your radar, for two main reasons:

- any decision of the Supreme Court of Canada could have significant implications for public healthcare and employee health care plans;
- the focus on delays in the system is an issue that different provinces are actively trying to address, and how they do that could affect workplace health care plans.

Return to Office, Hybrid and Remote Work

- Pre-Pandemic (2016)
 - Approximately 4% (across Canada) of employee's worked from home
- During Pandemic (April 2020-June 2021)
 - Approximately 30% of employee's worked from home
 - 7/10 employees in finance and insurance and professional, scientific and technical sectors worked from home
 - Ontario employees: 37% worked from home
 - Quebec employees: 30% worked from home
 - Saskatchewan employees: 20% worked from home
 - Atlantic Provinces: Between 17-23% worked from home
- Post Pandemic

Return to Office, Hybrid and Remote Work

Hagholm v. Coreio Inc., 2017 ONSC 7713 (aff'd 2018 ONCA 633)

- Pre-Pandemic
- Employee worked from home 3 days per week for 22 years
- Company was sold and new corporation modified terms, requiring employee to come to work 5 days per week
- Employee lived 110km from office (220km roundtrip)
- Determined to be unilateral change of essential term of her employment agreement with employer
- Employee received 22 months' pay in lieu of notice

Return to Office, Hybrid and Remote Work

Current Trends and Issues:

- Hybrid Work Arrangements/Agreements
 - Local and outside of Province
- Health and Safety
 - If an employee is injured while working from home, are they covered under Workers Compensation Insurance?
 - If an employee has moved outside of province, are they covered under Workers Compensation Insurance?

Return to Office, Hybrid and Remote Work

Current Trends and Issues:

- Employees Who Have Moved Without Advising
- Medical Accommodations
- Recalling Employees
- 4-Day Workweek
- Sabbatical

Hiring Bonuses and Mid-Term Bonuses- Trends and Considerations

- What Is a Mid-term Bonus?
 - Opportunities
 - Drawbacks
- Payout Date
- Conditions
- Compatibility With Bonus Plan

Policy Trends and Bargaining Asks

- Pet-Friendly Policies
 - No right under Employment or Human Rights Legislation
 - Different than service animals
 - Balanced with Duty to Accommodate up to Undue Hardship
 - *Accessibility for Ontarians with Disabilities Act*
- Cost of Leaving Allowance (COLA)

Policy Trends and Bargaining Asks

"Effective June 3, 1996 and thereafter during the period of this agreement, **each employee shall receive a cost of living allowance as set forth in this section.** COLA will be frozen for the life of this agreement (Employees will not "catch-up" in any way for any COLA forgone). **The amount of cost of living adjustment (COLA) shall be determined in accordance with changes in the Consumer Price Index** of the base 1986 = 100, hereinafter referred to as the 1986 Consumer Price Index or 1986 CPI. In determining the three (3) month average of the indexes for a specified period, the computed average shall be rounded to the nearest .1 index point - i.e. .05 and greater rounded upward and less than .05 rounded downwards. The COLA shall be computed using the three month average of the 1986 CPI for March 1993; April 1993 and May 1993 as the base period. Cost of Living Adjustments will be made on a quarterly basis at the following times: Effective Date of Adjust-ment Based Upon Three Month Average of the 1986 CPI Form First pay period beginning on June 1993, July 1993 or after October 1, 1993 and at three calendar month intervals thereafter August 1993 and at three calendar month intervals thereafter One cent (\$0.01) adjustments in the cost of living shall become payable for each .0958 change in the Consumer Price Index. Effective January 1, 2000, the current .0958 will be changed to .0849. If at anytime the CPI indicates a drop in COLA, the adjustment will not be reduced. **The adjustment, therefore, will not be increased until the CPI rises above where it was when the reduction would have been made.** For purposes of this Collective Agreement, any paid COLA shall be treated as if it were incorporated into the base rate. In the event Statistics Canada ceases monthly publication of the Consumer Price Index, or changes the form of the basis of calculating the Index, **the parties agree to ask Statistics Canada to make available, for the life of this agreement, a monthly index in its present form and calculated on the same basis as the Index for 1993.**"

Digital Assets as a POTENTIAL Pension Plan Investment

Lori Stein, Greg Winfield

Presentation Overview

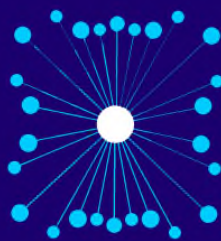
- Digital Assets 101
- Key Risks associated with Digital Assets
- Considerations for Pension Plans



Digital Assets 101

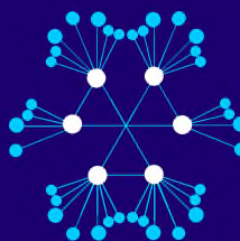
Types of Computer Networks

Centralized vs Decentralized vs Distributed Network: An Overview



Centralized Network

All the nodes are connected under a single authority



Decentralized Network

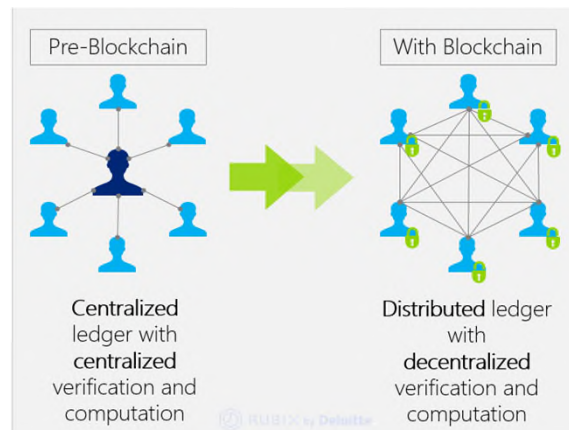
No single authority controls the nodes; they all have distributed authority



Distributed Network

Every node is independent and interconnected with each other

Blockchain Technology seeks to Decentralize the Internet

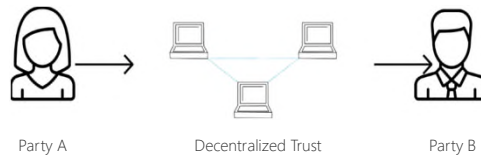


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Blockchain Technology seeks to Decentralize the Internet

- In a decentralized/distributed network, every node keeps a copy of the ledger and the entire network must agree on all transactions



Consensus among copies of a ledger kept at multiple nodes to maintain accuracy and secured using **cryptographic** protocols

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Crypto Asset Transactions

- Digital asset transactions are transfers of value based on public key cryptography:
 - Person A creates a transaction to send value to an address provided by Person B
 - Person A signs the transaction with their private key
 - Person A publishes the transaction to the network
 - Person B waits for the transaction to be confirmed by the network
 - Upon confirmation of the transaction, the value is recorded at Person B's address
- The network must achieve consensus to confirm a transaction:
 - Proof of work (POW): nodes compete to solve a cryptographic puzzle; first to solve forms new block and receives "block reward"
 - Proof of stake (POS): validator nodes earn network fees for witnessing transactions; fees increase based on amount of tokens/assets delegated to the node; fees are shared between validator and delegators
- Network charges a "gas fee" to confirm transactions, payable in the native token

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Blockchain-Based Digital Assets

- Each entry on a blockchain ledger is an "address" where value can be stored
- Each address has a public key known to all, and a private key known only to its owner
- The private key is required to transfer value from one address to another
- A blockchain-based digital asset, also known as a "coin" or "token", is the software code which states the value held at a blockchain address
- Below is an example of a token issued by a smart contract on the Ethereum Network

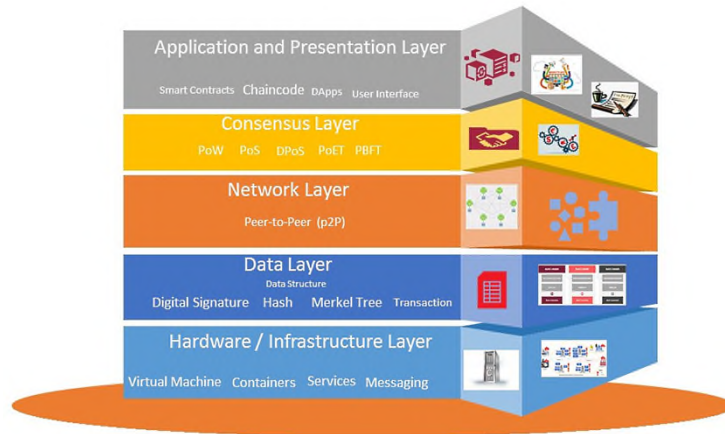
```
1  /*
2  Implements EIP20 token standard: https://github.com/ethereum/EIPs/blob/master/EIPS/eip-20.md
3  .*/
4
5
6  pragma solidity ^0.4.21;
7
8  import "./EIP20Interface.sol";
9
10
11 contract EIP20 is EIP20Interface {
12
13     uint256 constant private MAX_UINT256 = 2**256 - 1;
14     mapping (address => uint256) public balances;
15     mapping (address => mapping (address => uint256)) public allowed;
16     /*
```

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Blockchain Technology

Infrastructure, Networks, Protocols and Applications



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Key Attributes of (Most) Blockchain Networks

- Pseudonymity
 - Near-anonymous: Users are identified on the network only by their public key address
 - If a real world identity can be associated with a blockchain address, it is possible to trace transactions by that person
- Immutability
 - A transaction cannot be reversed, unless the recipient of a token chooses to return it to the sender in a subsequent transaction
- Decentralization
 - Securities markets are centralized: Information is private and held by centralized intermediaries (exchanges, clearing houses, depositories) and their participants (dealers, custodians)
 - Participants need accounts with intermediaries to own and trade securities
 - On a decentralized ledger, all transactions are public and all nodes participate in consensus, therefore intermediaries are not required
 - The network consensus process removes the need for a trusted third party

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Crypto Asset Wallets

- Hardware wallets: Devices which store crypto asset data offline
- Software wallets: applications that simplify holding and transferring crypto assets:
 - Track user balances at associated blockchain addresses
 - Facilitate writing, signing and broadcasting of transaction messages
- When a wallet owner holds their own private keys, they are solely responsible for custody of the crypto assets held at the wallet address
- Many crypto asset holders do not want to be responsible for custody, and choose hosted wallets maintained by an exchange or custodian that hold keys using enhanced security software:
 - Multi-factor authentication
 - Multi-party computation

Types of Digital Assets

- Cryptocurrencies
 - Bitcoin, Ether, Dogecoin
 - Store of value and means of exchange on a blockchain network
 - “Gas” required to pay for transfers among blockchain addresses
- Stablecoins
 - Fiat-backed stablecoins like USD Coin (USDC)
 - Central Bank Digital Currencies
 - Asset-backed stablecoins
- Security tokens
- Non-Fungible Tokens (NFTs)

Stablecoins

- Crypto assets with “stable” values pegged to real world assets, e.g. currency, commodity or financial instrument
 - ❑ Fiat-backed –e.g. USD Coin (USDC), Tether (USDT)
 - ❑ Crypto collateral –deposited to smart contract, e.g. DAI and MakerDAO
 - ❑ Algorithmic –smart contracts adjust number of tokens in circulation to maintain the peg
 - ❑ Commodity-backed –e.g. precious metals
 - ❑ Intersection of digital and traditional economies
 - ❑ USDC market cap almost US\$60 billion
 - ❑ USDT market cap almost US\$70 billion
 - ❑ Potential source of systemic risk and focus of regulation
 - ❑ Central bank digital currencies (CBDCs) under consideration by many sovereign nations

Non-Fungible Tokens (NFTs)

- NFTs are “non-fungible tokens”
 - ❑ Digital assets, like cryptocurrency, but each one is unique
 - ❑ An NFT is a unit of data –a unique cryptographic token –stored and managed on a blockchain, a decentralized ledger that tracks the ownership and transaction history of each NFT
 - ❑ NFTs are typically linked to intellectual property content (e.g. art work, video clip) stored outside of the NFT itself
 - ❑ NFT holders rarely own the IP, rather, they own the NFT and have a license to use the IP, examples:
 - ❑ Beeple’s digital artwork that sold at a Christie’s auction for \$69 million
 - ❑ Dapper Laps NBA Top Shot Moments
 - ❑ Bored Apes collection from Yuga Labs
 - ❑ NFTs sometimes carry rights to participate in online communities
 - ❑ Consumer brands are exploring uses for NFTs >> loyalty/status, like a Web3 fan club membership
 - ❑ NFTs are valuable based on scarcity and authenticity/provenance



Key Risks Associated with Digital Assets

Key Risks Associated with Crypto Assets

- 1) Custody risk: loss of assets due to theft, hacks, loss of private keys
- 2) AML/ATF Sanctions risk: pseudonymity and disintermediation
- 3) Securities regulatory risk
- 4) Tax risk: how to track and tax crypto asset transactions
- 5) Investment risk

Custody Risk

- Digital, bearer assets
- Online hacks and thefts
- Technical sophistication required to manage private keys



AML/ATF and Economic Sanctions Risk

- Pseudonymous identities transacting on public blockchain ledgers and protocols
- Disintermediated transfers of value without KYC
- Many large centralized spot and derivatives market remain unregulated



Securities Regulatory Risks

- Securities regulatory risk
- Characterization as securities or derivatives
- Tokens may be sold under investment contracts until related networks and protocols are sufficiently decentralized
- Frauds and scams

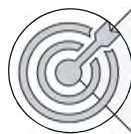
Investment Risk

- Unlike a security, does not represent a payment obligation or participating interest in net assets of an issuer
- Difficult to value using traditional techniques and metrics
- Highly speculative
- Extremely volatile

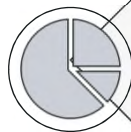


Considerations for Pension Plans

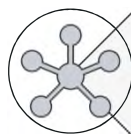
How to Invest in Crypto



Direct



Funds, including ETFs



Indirectly

- Crypto linked businesses
- Businesses that serve Crypto
- Businesses that accept Crypto as payment

How Can Crypto Risks be Managed?

- Invest through a fund or managed account
 - Publicly traded ETFs for bitcoin, Ether and maybe more soon
 - Hedge funds managed by crypto-native and “TradFi” managers
- Do your due diligence
 - Regulatory regime: U.S. registered RIA /CPO, EU AIFM, MiFID compliant, Canadian registered PM/IFM
 - How does the manager mitigate crypto-specific risks?
 - How does the manager diversify across counterparties and exchanges?
 - How does the manager value crypto assets?

How Can Crypto Risks be Managed? (cont'd)

- If direct investments in crypto are contemplated
- Custody policies & procedures
- Technical expertise monitoring blockchain networks and protocols

Crypto as a Pension Plan Investment

- Context
 - Plan Administrators act in a fiduciary or fiduciary-like capacity – need to be mindful of this
 - All plan investments need to be permitted by the SIPP
 - Demands a review of SIPP
 - Need to consider how specific or general this needs to be
 - May demand coming to a view as to the nature of Crypto if undertaking direct investment
 - Investing indirectly in the Crypto “space” may not require any revisions

Crypto as a Pension Plan Investment (cont'd)

- Key high-level considerations for any investor, including pension plans:
 - New asset class with an unknown future and little history
 - Volatility risk
 - Correlation risk
 - How liquid is the investment if you need to sell?
 - What security does the asset provide?
 - Given the foregoing is it preferable to invest in crypto or in the adjacent space

Crypto as a Pension Plan Investment (cont'd)

- As with any investment in a new type of asset for a pension plan it is important to:
 - Be sure to undertake due diligence
 - In this context, retain external experts
 - Keep clear minutes of decision-making process including how Crypto fits within the asset mix of the plan
 - Have a clearly articulated notion of expectations and when to sell
 - Address each of the reputational and operational risk points raised by Lori

Key Takeaways

- Consider how Crypto fits into your current portfolio and the purpose it will play
- Employ proper due diligence to understand the asset class since you are making a long-term investment
- Consider investing indirectly in crypto adjacent businesses which may provide more security



Speaker Biographies

(alphabetical by last name)





Randy Bauslaugh

Counsel

Toronto

rbauslaugh@mccarthy.ca

t. +1 416-601-7695

Bar Admission

Ontario 1983

Law School

Osgoode Hall Law School

Practices

Pensions, Benefits, & Executive
Compensation

Industries

Automotive
Pension Funds Group

Client interviews indicate Randy is practical, solutions oriented and a clear communicator. He possesses the knowledge and expertise to advise clients on the most complex pension and benefits issues.

Randy Bauslaugh is co-Chair of McCarthy Tétrault's 7-lawyer national Pensions, Benefits & Executive Compensation practice, and our 45-lawyer national Pension Funds Group.

Randy provides legal advice to plan sponsors, administrators, service providers and governments on a wide range of pension and benefit matters. He has been involved in many of the leading pension and benefit cases over the past 35 years. He has also been a litigator, mediator, arbitrator, plan trustee and professional lobbyist. Randy is considered an international expert on ESG and Climate Change investment risk and disclosure. Randy has worked closely with public and private companies, appointed administrators of wound up plans, financial institutions, joint boards of trustees, and Canadian and foreign governments. This variety of experience has provided him with many insights to identify and solve a broad range of legal problems efficiently.

Randy strives to provide practical solutions. As a trustee of one of Canada's largest ELHTs and as a corporate director, he understands the need for diligent, practical and comprehensible legal advice when advising or representing decision makers and in-house counsel.

He is an active supporter of many industry associations: for example, he is a member of the Pension Policy Council of the C.D. Howe Institute, the editorial advisory board of Benefits and Pensions Monitor and a former Chairman of the International Pension and Employee Benefits Lawyers Association. Randy actively engages in community service. He served six years as Chair of the HR Committee of the Canadian Cancer Society and President of Theatre Direct Canada. He is currently a member of the Executive Committees of the Boards of Directors of the Canadian National Exhibition Association, its Foundation and a for-profit subsidiary.

Randy obtained a BA from the University of Waterloo in 1977 and his LLB from Osgoode Hall Law School in 1981. He was called to the Ontario Bar in 1983.

REPRESENTATIVE WORK

Randy Bauslaugh often acts with his colleagues at McCarthy Tétrault LLP in high profile matters, including the following ongoing matters:

- On behalf of the Canadian Bar Insurance Association developing and implementing a multi-employer target benefit plan for law and accounting firms;
- On behalf of Brewers Retail Inc., Canada's largest privately owned chain of retail outlets selling beer and other malt beverages, in class and regulatory proceedings relating to future indexing of benefits;

Randy Bauslaugh

Counsel

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- As a lobbyist for certain multi-employer plans to end discrimination against non-union workplaces in the provision of contingent (target) benefits;
- As lead counsel for the appointed administrator of Nortel's pension plans in which the firm recovered almost \$1 billion, and lead litigation counsel in 2019 relating to PBGF refunds;
- Currently representing a leading North American marketer of grain, oilseeds and pulses in negotiating a settlement of regulatory and potential class action claims relating to misadministration of bridging benefits in the period since 1986;
- On behalf of foreign and domestic governments in designing, drafting and setting up regulatory structures for workplace pension arrangements; and
- Representing former senior executives on tax and other issues relating to their executive pension and compensation arrangements.

RECENT SPEAKING ENGAGEMENTS

- Canada Climate Law Initiative and Canadian Pension and Benefits Institute, Virtual, May 26, 2021. Randy presented an opinion he was retained to provide to CCLI "[Climate Change: Legal Implications for Canadian Pension Plan Fiduciaries and Policy-Makers](#)", and then engaged in a conversation about the opinion with Catherine McCall, Executive Director, Canadian Coalition for Good Governance. The session was recorded, and can be found here: [Climate Change](#)
- Canadian Pension and Benefits Institute, Saskatchewan Regional Conference, April 20, 2021, Virtual: **Keynote Address: What We Need Now is Change Leadership**. Randy spoke about how he promoted and accomplished organizational change for CPBI and his views on change leadership needed in the design and governance of pension and benefit plans;
- Osgoode Hall Law School, Osgoode Certificate in Pension Law, Virtual, February 24, 2021. **Keynote Address: Three Current Issues**, Randy expressed his views and insights on, the urgency of climate change for pension fund fiduciaries, the advantages of plan consolidation, and provided a reminder that plan administrators in Canada have fiduciary duties to employers too.
- International Pensions and Employee Benefits Lawyers Association, January 26, 2021, **Recent ESG Developments**. Participated on a panel with lawyers from the UK, US and Belgium to discuss legal issues relating to a broad range of ESG risks and opportunities.
- Lancaster House, Pension Conference, December 4, 2020, "**Panel 5: Pension Plans in the New World of Work**", Pension Plans in the New World of Work: Assessing the impact of disruptive technologies, artificial intelligence, and shifting demographics.
- McCarthy Tétrault's 10th Annual Pension Seminar, November 18, 2020, "**The Accelerated Normal**", Webinar
- US Lawyers Webinar, October 29, 2020, "**Canadian Pensions and Benefits Law for U.S. Lawyers**"

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- Osgoode Certificate in Pension Law, Toronto, February 19, 2020, "**ESG for Pension Fiduciaries: Focus on Value, not Values**".
- McCarthy Tétrault's Vancouver Conference, February 12, 2020 "**Managing Risks Before The Boom Drops**".
- KORIED/NYCBERS, January 25, 2020, Key West, Florida, "**Effective Trustee Oversight(or, How I learned to delegate without losing control)**".
- McCarthy Tétrault's 17th Annual Disclosure and Governance Seminar, November 19, 2019, "**Climate Change**".
- CFA Institute of New York City, "Putting Beneficiaries First", November 4, 2019. Day long conference for trustees of various New York City Pension Funds. Keynote speaker: "**ESG and Your Portfolio**".
- Ontario Bar Association, "Pension Hot Spots", October 8, 2019. **Target Benefit Developments: What's New and What's Needed**.
- National Coordinating Committee for Multiemployer Plans, 2019 Annual Conference, September 21-25, Hollywood, Florida. "**Composite Pension Plans: The Canadian Experience**".
- Law Office Management Association of Toronto, August 8, 2019, "**Better Pensions For Law Firm Employees**".
- KORIED Global Summit, "Future of Finance – Disruption, Innovation and Thinking Outside the Box", July 11-12, 2019, Coral Gables, Florida. Presented and moderated an expert international panel on "**How UN Sustainable Development Goals are Shaping Investment Managers**".
- International Pension and Employee Benefit Lawyers Association Biennial Conference, Lisbon Portugal, May 19-22, 2019. Participated on an expert panel on "**Flexible Benefits**".
- International Pension and Employee Benefit Lawyers Association Biennial Conference, Lisbon Portugal, May 19-22, 2019. Lead a discussion workshop: **Managing Pension Fund Trustees**.
- Osgoode Certificate In Pension Law Program, Toronto, February 27, 2019, Luncheon Address: **Recent Trends to Watch**
- McCarthy Tétrault Client Pension Conferences in Vancouver and Calgary, February 6 and 7, 2019: **Trends, the View from Our Office**.
- KORIED Plan Sponsor Educational Institute, January 15-18, 2019, Key West Florida. Chaired Day 2 of the 3 day conference for U.S. public sector funds: **Responsible Investing**.
- TLOMA: Toronto Law Firm Leadership Conference, Toronto, Canada. November 8, 2018: **Cost Efficient Pension Plans**,
- International Congress of Actuaries (quadrennial conference), Berlin, June 7, 2018, presented a paper entitled **Target Benefits – A Bold Innovation in Pension Plan Design**.
- International Congress of Actuaries (quadrennial conference), Berlin, June 3, 2018, presented a Paper and participated in a panel discussion: **Pension Fund Investment: Managing Environmental, Social and Governance (ESG) Factor Integration**.

Randy Bauslaugh

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- Joint Conference of the International Pension and Employee Benefit Lawyers Association, Canadian Bar Association and American Bar Association, Boston, MA, June 10 to 12, 2018, *Say it Ain't So — Dutch go DC?*

RECENT ARTICLES

- [*A Debate: Is Carbon Divestment Becoming Obligatory For Pension Plans*](#), *Benefits Canada*, April 2020
- [*An ESG Mantra for Pension Fund Fiduciaries*](#), *Benefits and Pensions Monitor*, November, 2020
- [*Are there legal issues for pension funds making charitable donations right now?*](#), *Canadian Investment Review*, April 8, 2020
- [*A Tale of Two Pension Plans: My Experience with a Contingent Pension Plan and the Lessons Learned*](#), *CD Howe Verbatim*, October 3, 2019
- [*How Funds Can Achieve ESG Integration*](#), June 2019
- [*Target Benefit Rules: End Discrimination Against Non-Union Workplaces*](#), *CD Howe Intelligence Memo*, February 26, 2019:
- [*Pension Fund Investment: Managing Environmental, Social and Governance \(ESG\) Factor Integration*](#), *2019 Trust Law International*, Vol. 32, No. 4, pp. 264-278.
- [*Dumb and Dumber: Giving Members Investment Choice in DC Plans*](#), *International Pension Lawyer*, May 2019, Volume 90, and pp. 27-33.
- [*Pension Fund Investment: Managing Environmental, Social and Governance \(ESG\) Factor Integration*](#), May 01, 2019
- [*The Lorax Speaks to Pension Fund Administrators - And They Better Listen!*](#), October 27, 2014
- [*Fiduciary Duty: ESG Disclosure 101*](#), *Benefits and Pension Monitor*, April 21, 2017
- [*Retirement Plan Fees and Expenses*](#), *Benefits and Pension Monitor*
- [*When The Logic Fits Together, But Everything Falls Apart*](#), *Benefits and Pension Monitor*
- [*ESG Implications of COVID-19*](#), *International Pension Lawyer – Journal of the International Pension and Employee Benefits Lawyer Association*, Volume 92 – July 2020, Page 24 to 27

Awards & Rankings

Chambers Global

Band 1: Pensions, Benefits & Executive Compensation

Chambers Canada

Senior Statesperson: Pensions & Benefits

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Canadian Legal Lexpert Directory

Leading Lawyer: Pensions & Employee Benefits - Employer

The Legal 500 - Canada

Leading Lawyer: Pensions

Who's Who Legal Canada

Leading Lawyer: Labour & Employment

Lexpert/American Lawyer Guide to the Leading 500 Lawyers in Canada

Most Frequently Recommended: Pensions and Employee Benefits

Federated Press Directory of Professionals

Distinguished Contributor

Canadian Pension & Benefits Institute Hall of Fame

Key Leader & Third Inductee to CPB Hall of Fame

Best Lawyers in Canada - 2020

"Lawyer of the Year" in the area of Employee Benefits Law (Toronto)

Best Lawyers in Canada

Leading lawyer in the area of Employee Benefits Law

OBA 2022 Award of Excellence in Pensions & Benefits Law

Recent Experience

- **Deschenes Group Inc. acquires Crane Supply for C\$380M**
May 31, 2022
- **Aon plc terminates proposed US\$30B aquisition agreement of Willis Towers Watson**
July 26, 2021
- **Centrica plc completes agreement to sell Direct Energy to NRG Energy for US\$3.625B**
January 05, 2021

Recent Insights

- **Key Takeaways from the 2021 Pension & Benefits Seminar**
November 26, 2021
- **Climate Change: Legal Implications For Canadian Pension Plan Fiduciaries and Policy-Makers**
May 26, 2021

Randy Bauslaugh

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Events

- **12th Annual Pension & Benefits Seminar**

November 08, 2022

- **11th Annual Pension & Benefits Seminar - Presumption of Resumption: A Post-Pandemic Future?**

November 23, 2021

- **10th Annual Pension & Benefits Seminar: The Accelerated Normal**

November 18, 2020

- **Canadian Pensions and Benefits Law for U.S. Lawyers**

October 29, 2020



Scott W. Bell

Partner

Toronto

swbell@mccarthy.ca

t. 416-601-8277

Bar Admission

Ontario 1998

Law School

Dalhousie University
University of Western Ontario

Practices

Pensions, Benefits, & Executive
Compensation
Tax Planning

Industries

Private Equity & Investments

Scott W. Bell is a partner in McCarthy Tétrault's Toronto office in the Business Law Group, specifically the Private Equity, and Pensions, Benefits, & Executive Compensation Groups. His practice involves advising Canadian pension funds and their asset managers on investment structures and related activities, ensuring compliance with each pension fund's unique governing legislation and applicable Canadian pension legislation.

Scott acts as lead pension investment counsel on domestic and international acquisitions in the areas of private equity, infrastructure and real estate assets, as well as fund investments, platform investments and co-investments.

Scott is absolutely fantastic and an expert in his field. He is always available and offers prudent legal advice." "He's just incredibly knowledgeable, very commercial and responsive.

— CHAMBERS CANADA, 2021

With a career spanning more than 20 years, Scott has built a stellar reputation for delivering excellent client service and creative solutions to critical pension-related matters in a complex, rapidly changing industry affected by shifts in global markets and regulations.

He has worked closely with Canada's most respected and leading pension funds investors, including CPPIB, Investment Management Corporation of Ontario, OMERS, OMERS Infrastructure, Ontario Teachers' Pension Plan, OPTrust and Oxford Properties.

Scott serves on the Board of Directors of Dixon Hall Neighbourhood Services, a city-building agency assisting more than 10,000 Torontonians in need through well-known programs including the Out of the Cold Shelter Program, Meals on Wheels and the Dixon Hall Music School in Regent Park. He is a member of Dixon Hall's Executive Committee and Chair of its Governance Committee.

Experience

Scott has acted as counsel on a number of significant Canadian pension-related matters, including,

- Counsel to Ontario Teachers' Pension Plan, as pension investment regulatory counsel, in connection with the formation of Sidewalk Infrastructure Partners LLC, a joint venture with Alphabet Inc., creator of Sidewalk Labs LLC.
- Advised OMERS Infrastructure in its acquisition from Macquarie Infrastructure and Real Estate Assets of an interest, alongside PGGM, Alberta Investment Management Corporation, and British Columbia Investment Management Corporation, in Puget Sound Energy, a Washington state energy utility company.

Scott W. Bell

Partner

Toronto

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- Advised Canada Pension Plan Investment Board in its C\$1.75 billion acquisition of a 49% equity interest in a portfolio of select renewable power assets in North America and Europe from Enbridge Inc., including the establishment of a joint venture partnership, and related ownership and management arrangements.
- Counsel to OMERS Growth Equity as one of the lead investors in the C\$158 million Series E financing for TouchBistro Inc., a leading global provider of restaurant technology solutions.
- Ontario Teachers' Pension Plan in its follow-on investment with RedBird Capital in Compass Datacenters, LLC, to fund in part Compass' acquisition of ROOT Data Center Inc., a leading wholesale data center provider in Montreal, Québec.

Clients affirm: "He's able to provide creative solutions—he is very hard-working and very good at what he does."

— CHAMBERS CANADA, 2021

Awards & Rankings

Chambers Canada - 2021-2022

Leading Lawyer - Pensions and benefits

Best Lawyers in Canada - 2021-2022

Leading Lawyer - Employee Benefits Law

The Canadian Legal Lexpert Directory - 2021

Leading lawyer: Pensions - Employer; Pensions & Employee Benefits

Events

- **12th Annual Pension & Benefits Seminar**
November 08, 2022



Kelleher Lynch

Associate

Toronto

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t. +1 416-601-8177

Bar Admission

British Columbia 2017

New York, USA 2012

Ontario 2014

Practices

Pensions, Benefits, & Executive
Compensation

Industries

Pension Funds Group

Kelleher is an Associate in McCarthy Tétrault's National Pension, Benefits and Executive Compensation Practice in Toronto and a member of the Firm's Pension Funds Investment Group. Kelleher provides strategic legal advice to public pension funds, nonprofits, and corporate entities across all industries on legal issues relating to the planning, establishment, administration, governance, funding and winding-up of pension plans, profit sharing plans, retirement savings plans, welfare benefits plans, retirement compensation arrangements, equity compensation plans and other forms of executive compensation. Kelleher is also actively engaged in advising clients on pension and benefit issues in commercial transactions and secured lending arrangements. By way of example, Kelleher acted for Brookfield Infrastructure on the "2019 Private Equity Deal of the Year", as awarded by the International Financial Law Review, and for Brookfield Infrastructure on a "Top 10 Deal of 2018" in Canada, as awarded by Lexpert.

Kelleher serves in a leadership role within the Firm, having recently served on the Toronto Associates Committee from 2018-2020, as well as in the broader pensions and benefits industry, acting as Secretary of the 2019-2020 Executive of the Pension & Benefits Section of the Ontario Bar Association, and as a member of the Ontario Regional Council of the Canadian Pension and Benefits Institute since 2018.

Prior to joining McCarthy Tétrault, Kelleher worked on pension compliance issues with Ontario's Ministry of the Attorney General and separately drafting pension policy with Ontario's Ministry of Finance. He also served as counsel with Canada's Department of Justice on a range of business and regulatory matters, and previously clerked for the Honourable Justice Glennys L. McVeigh and the Honourable Justice Simon Fothergill at the Federal Court of Canada.

Kelleher has recently acted for:

- Brookfield Infrastructure and GIC in the acquisition of Genesee & Wyoming Inc.'s railroad operations for US\$8.4 billion
- Unilever Plc in the sale of its spreads business to KKR for US\$8 billion
- Nestlé S.A. in its US\$7.15 billion strategic alliance with Starbucks to market Starbucks' consumer and foodservice products globally
- Brookfield Infrastructure in the C\$4.3 billion acquisition of Enercare Inc.
- Nestlé S.A. in its US\$2.3 billion acquisition of Atrium Innovations Inc.
- Credit Suisse AG in the US\$1.48 billion financing to Searchlight Capital Partners, L.P. in connection with its acquisition of Mitel Networks Corporation
- CCMP Capital Advisors in the approximate US\$1 billion acquisition of leading facilities management company BGIS from Brookfield Business Partners

Kelleher Lynch

Associate

Toronto

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t. +1 416-601-8177

- Jefferies Finance LLC, as the administrative and collateral agent, joint lead arranger and bookrunner, in the US\$908 million debt financing by Dentalcorp Health Services ULC
- Morningstar Inc. in the US\$669 million acquisition of credit rating agency DBRS
- Samsonite International S.A. in the refinancing of its senior secured credit facilities including revolving facility of US\$650 million and initial term loan facilities of US\$1.493 billion
- Evolution Mining in the US\$375 million cash acquisition of the Red Lake Gold Mine from Newmont Goldcorp
- Rayonier Advanced Material in the sale of the Matane Pulp Mill to Sappi Limited for US\$175 million.
- Olymel L.P. in the purchase of all the issued and outstanding shares of Pinty's Delicious Foods Inc.
- Mill Road Capital in the sale of PRT Growing Services Ltd. to TriWest Capital Partners
- CVC Capital Partners Asia Fund IV in its acquisition of OANDA Global Corporation
- Vista Equity Partners in the acquisition of Obero Technologies Inc. by Xactly Corp

Kelleher received his LL.B from Trinity College Dublin in 2009 and his LL.M from University College London in 2011, and was admitted to practise law in New York in 2012, Ontario in 2014 and British Columbia in 2017. He is a member of the Law Society of Ontario and the Law Society of British Columbia.

Awards & Rankings

Chambers Canada

Leading Lawyer: Pension & Benefits

The Legal 500 Canada

Rising Star: Pensions

Best Lawyers in Canada

Ones to Watch: Employee Benefits Law

Recent Experience

- **Enercare acquires all issued and outstanding units of HydroSolution**
September 12, 2022
- **SNDL Inc. announces agreement to acquire The Valens Company**

Kelleher Lynch

Associate

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August 22, 2022

- **Ironbridge Equity Partners acquires Kore Outdoor Inc.**
August 09, 2022
- **GTY Technology Holdings Inc. completes acquisition by GI Partners**
July 07, 2022

Recent Insights

- **Key Takeaways from the 2021 Pension & Benefits Seminar**
November 26, 2021

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- **12th Annual Pension & Benefits Seminar**
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November 23, 2021
- **10th Annual Pension & Benefits Seminar: The Accelerated Normal**
November 18, 2020
- **Canadian Pensions and Benefits Law for U.S. Lawyers**
October 29, 2020



Shevaun McGrath

Partner

Toronto

shmcgrath@mccarthy.ca

t. +1 416-601-7970

Bar Admission

New York, USA 2001
Ontario 2000

Law School

Queen's University

Practices

Mergers & Acquisitions
Capital Markets
Distressed Transactions

Industries

Private Equity & Investments
Technology
Pension Funds Group

US and International Markets

United States

With keen business instincts, Shevaun is invested in clients' success. A skilled negotiator with energy to spare, she gets the deal done.

Shevaun McGrath is a partner in the firm's Toronto office, Co-Head of McCarthy Tétrault's National Private Equity Group and a member of the firm's Board of Partners. An accomplished deal-maker, Shevaun's practice is focused on private equity, mergers and acquisitions, and capital markets.

With a proven ability to assist clients with investment opportunities, and an instinct for negotiating the best outcomes, Shevaun takes a practical and business-driven approach to clients' transactions. She advises domestic and foreign companies, both public and private, on their M&A, divestiture and capital raising activities. In her private equity practice, Shevaun represents institutional investors in their investment activities, including direct investments, investments in private equity and other alternative investment funds and fund formation. She is also an active member of the Canadian Chapter of PE WIN, CVCA and Women in Private Equity.

She is very responsive to requests and jumped into action straight away on a time-sensitive transaction. She is a strong negotiator and client advocate.

— CLIENT, CHAMBERS CANADA

Shevaun's experience includes cross-border and domestic transactions in a wide range of industries. Select recent experience includes:

Private Equity M&A:

- **GI Partners**, a US-based private equity firm, in the acquisition of Insurity, Inc.
- **Novacap** in its acquisition of the business of Spectrum Health Care
- **Fortive**, a US-based diversified industrial conglomerate company, in its acquisition of Intelix Technologies Inc. through its wholly-owned subsidiary Industrial Scientific
- **City Capital Ventures** in its acquisition of Burger King and Pizza Hut franchisee business from Redberry Group, as well as in its acquisition of Taco Bell franchisee business from Sundance Group
- **Gryphon Investors** in its acquisition of Fishbone Analytics, Inc. and Iceberg Networks
- **Fairfax Africa** in its strategic transaction with Helios Holdings Limited
- **TT Capital Partners** in its investment in Macrohealth Solutions

Shevaun McGrath

Partner

Toronto

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- **ACON Investments**, a U.S. asset management company, in its acquisition of Raymond O'Neill & Son Fisheries et Suncoast Seafood
- **Altius Renewable Royalties** in its strategic partnership with Apollo Infrastructure Funds
- **Olympus Growth Fund VI, LP**, a US-based private equity firm, in its acquisition of Rise Baking Artisan Bread, Inc., Rise Baking Sweet Goods, Inc. and PBF Pita Bread Factory Ltd.
- **Vista Equity Partners**, an American private equity company, in its:
 - acquisition of QuickMobile by Cvent Inc.
 - acquisition of Obero Technologies Inc. by Xactly Corp.
 - US\$4.4 billion take private acquisition of DH Corp
- **Ares Management L.P.**, the U.S. asset management company, in the acquisition of Convergent Technologies, a leading global independent security integrator

Investment Funds and Fund Formation:

- **NAV Canada** in connection with their primary, secondary and co-investment activities
- **KPS Capital Partners, LP** in connection with the launch of its KPS Special Situations Fund V
- **Northleaf Capital Partners** in connection with its:
 - primary, secondary and co-investment investments activities
 - launch of Northleaf Venture Catalyst Fund II
- **Woodbridge Corporation** in connection with their primary, secondary and co-investment activities
- **Forthlane Partners** in connection with their primary, secondary and co-investment activities
- **CPPIB** in connection with their primary, secondary and co-investment activities
- **Canada Post Pension Plan** in connection with their primary, secondary and co-investment activities
- **Thomvest** in connection with its primary, secondary, and co-investment activities
- **IMCO** in connection with its primary, secondary, and co-investment activities

Shevaun McGrath was organised and diligent. She found the right balance between focusing on the details and considering the most important aspects of the matter.

— CLIENT, CHAMBERS CANADA

Shevaun McGrath

Partner

Toronto

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Shevaun is an active volunteer in the Toronto and surrounding community. A past board member of Bereaved Families of Ontario, Shevaun volunteers with BFO and acts as a facilitator to assist parents dealing with the loss of infant children.

She received her LLB from Queen's University in 1998 and her BA in Political Science from McGill University in 1995.

Awards & Rankings

Chambers Global

Leading Lawyer: Private Equity: Buyouts - Canada

Chambers Canada

Leading Lawyer: Investment Funds; Investment Funds: Fund Formation and Private Equity: Buyouts

The Legal 500 - Canada

Leading Lawyer: Corporate and M&A

IFLR 1000 Guide to the World's Leading Financial Law Firms

Highly Regarded: Private Equity, M&A

The Lexpert/American Lawyer Guide to the Leading 500 Lawyers in Canada

Leading Lawyer: Private Equity

The Canadian Legal Lexpert Directory

Leading Lawyer: Investment Funds & Asset Management

Lexpert Special Edition - Finance and M&A

Leading Lawyer

Lexpert Special Edition: Technology and Health Sciences

Leading Lawyer

Lexpert Rising Stars: Leading Lawyers Under 40 - 2011

Rising Star

Best Lawyers in Canada

Leading Lawyer: Corporate Law, Private Funds Law, Leveraged Buyouts and Private Equity Law, Securities Law and Mergers and Acquisitions Law

BTI Consulting Group - 2021

BTI M&A Client Service All-Star

Expert Guides

Recognized as a leading lawyer in Private Equity

Shevaun McGrath

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Recent Experience

- **Ironbridge Equity Partners acquires Kore Outdoor Inc.**
August 09, 2022
- **True Wind Capital invests in Sterling Capital Brokers**
February 16, 2022
- **Assent Compliance raises US\$350M in funding**
January 06, 2022
- **ACON Investments acquires Raymond O'Neill & Son Fisheries and Suncoast Seafood**
October 14, 2021

Recent Insights

- **On Target: 2022 Private Equity Outlook**
January 06, 2022
- **Private Equity Investors and Merger Control in Canada**
October 19, 2021
- **Webinar - Looking Ahead to 2021: How COVID-19 Will Continue to Reshape Your Business in 2021 (December 14, 2020)**
January 12, 2021
- **On Target: 2021 Private Equity Outlook**
January 05, 2021

Events

- **12th Annual Pension & Benefits Seminar**
November 08, 2022
- **Private Equity Outlook Webinar**
February 03, 2021



Julia Miller

Associate

Toronto

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Bar Admission

Ontario 2021

Law School

University of Western Ontario

Practices

Pensions, Benefits, & Executive
Compensation

Julia Miller is an associate in McCarthy Tétrault National Pensions, Benefits and Executive Compensation Practice in Toronto. She advises on a broad range of legal issues related to defined benefit and capital accumulation plans across Canada, including plan design, administration, governance, funding, winding-up of pension plans and continuous regulatory compliance.

Prior to joining McCarthy Tétrault, Julia articulated at a leading boutique litigation firm advising clients on a broad range of issues, including commercial matters, sports disputes and class actions.

Julia received her J.D. from Western University. While at law school, Julia worked for Professor Richard H. McLaren, assisting him with his sports, commercial, and labour arbitrations as well as updating his textbooks, including the Canadian Commercial Reorganisations: Avoiding Bankruptcy, Secured Transactions in Personal Property in Canada and the Ontario Annotated Personal Property Security Act.

Julia earned her Honours Bachelor of Arts, in Economics from McMaster University. During her undergraduate degree, Julia spent her summers working for the Financial Services Commission of Ontario in the Project Management Group.

Julia was called to the Ontario bar in 2021. She is a member of the Law Society of Ontario.

Recent Experience

- **SNDL Inc. announces agreement to acquire The Valens Company**
August 22, 2022
- **Ironbridge Equity Partners acquires Kore Outdoor Inc.**
August 09, 2022
- **Paper Excellence Group enters into definitive agreement to acquire Resolute Forest Products Inc.**
July 06, 2022

Events

- **12th Annual Pension & Benefits Seminar**
November 08, 2022



Leah Ostler, Associate

Expertise: **Class Actions, Litigation and Dispute Resolution, Corporate Commercial Litigation** || Office: **Toronto** || Year of call: **2017**

Leah's practice focuses on defence litigation, including commercial matters, professional negligence, and telecommunications.

- Represents individuals, corporations, and financial institutions in complex, high-stakes disputes
- Has served as junior counsel in trials and class actions up to the Court of Appeal, and as lead counsel before courts and administrative tribunals in a wide range of complex matters

Representative experience includes:

- Representing large companies in determining pension disputes in class actions, mediations and regulatory proceedings (including defeating a jurisdiction motion and successfully certifying a defendants' class action in parallel regulatory and court proceedings relating to the ability to amend pensions plans to reduce future indexing benefits: *Brewers Retail v. Campbell*, 2022 ONSC 2795)
- Defending financial institutions in high value class action proceedings regarding trailing commissions (including *Stenzler v. TD Asset Management Inc.*, 2020 ONSC 111)
- Representing a financial institution in a novel, highly political and publicized interpleader motion
- Representing a university in a complex construction negligence matter
- Representing professional accounting firms in civil and regulatory proceedings
- Defending physicians in liability cases tried before judges and juries and regulatory matters before the CPSO and HPARB, including successfully defending a physician in a jury trial in 2020



Ryan Plener

Associate

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Bar Admission

Ontario 2017

Law School

Queen's University

Practices

Employment
Labour

Ryan Plener is an associate in our Labour & Employment Group in Toronto. He represents clients in both the private and public sectors and regularly advises on employment standards, wrongful dismissals, human rights, workplace investigations, occupational health and safety, labour arbitrations and employment issues arising in corporate transactions.

Ryan graduated from the dual Master of Industrial Relations/Juris Doctor program at Queen's University. During his years at Queen's, Ryan was an active member of the Labour & Employment Law Club, a past President and received the Queen's Law student ambassador award for his work promoting and supporting the school. Ryan has an honours Bachelor of Management and Organizational Studies with a specialization in Human Resources and Organizational Behaviour from Western University. Ryan has also received his Certified Human Resource Professional (CHRP) designation.

Prior to law school, Ryan worked at a leading Canadian Retailer creating and facilitating soft and hard skills training programs.

Ryan was called to the Ontario bar in 2017. He is a member of the Law Society of Ontario, the Ontario Bar Association and the Canadian Bar Association.

Recent Experience

- **SiteOne Landscape Supply, Inc. acquires Linzel Distributing**
August 12, 2022
- **T-Base Communications acquires CommonLook**
October 13, 2021
- **Manitoba court enforces arbitration agreement in incentive payments dispute**
August 10, 2021
- **MLSE announces "Bringing Toronto Back to Its Feet" program**
April 24, 2020

Recent Insights

- **Mitigation Following Termination of Employment: A Cautionary Tale**
July 18, 2022
- **Canada Emergency Response Benefit: To Deduct Or Not To Deduct**
March 21, 2022
- **Break In Service and Impact on Notice Period**
November 22, 2021
- **Ontario Publishes Guidance on Medical Exemptions to COVID-19 Vaccination Rules**
September 20, 2021

Ryan Plener

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Events

- **12th Annual Pension & Benefits Seminar**

November 08, 2022

- **Coast-to-Coast L&E Series: Your Top Questions Answered**

February 17, 2022

- **Labour and Employment Conference: Ontario and Alberta**

October 29, 2021

- **Coast-to-Coast L&E Series: Your Top Questions Answered**

July 27, 2021



Lori Stein

Partner

Toronto

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t. 416-601-8867

Law School

University of Toronto

Industries

Fintech
Private Equity & Investments
Technology
Pension Funds Group

Practices

Securities Regulation and Investment
Products
Capital Markets

With in-depth knowledge of the complex Canadian securities regulatory landscape and digital asset ecosystem, Lori helps clients maximize opportunities and respond to emerging regulatory trends

Lori Stein is Co-Head of McCarthy Tétrault's Fintech Group and a partner in the firm's Business Law Group, more specifically our Securities Regulatory and Investment Products Group in Toronto. Lori advises Fintech businesses, portfolio managers, dealers, investment fund managers and institutional investors on all aspects of Canadian securities regulation. Lori is at the forefront of the fast-paced digital asset space, guiding clients on how to manage legal and regulatory risks associated with crypto assets and blockchain infrastructure. She regularly engages with the Canadian Securities Administrators on behalf of crypto asset trading platforms and other Fintechs.

Lori helps clients obtain regulatory approval for innovative business strategies through applications for registration and exemptive relief under securities and derivatives regulation, and advises on day-to-day compliance issues, investigations, regulatory audits and strategic transactions.

Clients appreciate Lori's ability to bring clarity to the complexities of the Fintech industry. At a time when innovative technologies in the digital asset ecosystem are rapidly outpacing the existing rules and regulatory framework, Lori is at the forefront of these discussions and has a thorough understanding of the relevant key legal issues.

Lori has been instrumental in helping shape the regulation of the Canadian crypto industry. She is a trusted advisor in a constantly changing regulatory landscape.

— CLIENT

Lori has also previously spent several years in-house at a major hedge fund and this unique, client-side perspective allows her to deliver practical advice for clients with an understanding of their internal realities.

Lori's recent representative work includes:

- **Newton Crypto Inc.**, in its registration as a restricted dealer with the Canadian Securities Administrators (August 2022)
- **VirgoCX**, in its registration as a restricted dealer with the Canadian Securities Administrators (May 2022)
- **Bitvo Inc.**, in its registration as a restricted dealer with the Canadian Securities Administrators (April 2022)
- **WonderFi Inc. (NEO:WNDR)**: Regulatory counsel in acquisition of Bitbuy Technologies Inc. (March 2022)
- **Carta Capital Markets Inc.**, provider of the CartaX Alternative Trading System, in its application for exemptive relief from the requirement to

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be recognized as a marketplace under Canadian securities laws (January 2022)

- **Willow Financial** in its registration as an exempt market dealer under Canadian securities laws to offer an online platform for fractional real estate investments (December 2021)
- **Simply Digital Technologies Inc. COB CoinSmart** in its registration as a restricted dealer and regulation as a marketplace under Canadian securities laws (November 2021)
- **Wealthsimple Digital Assets** in the launch of the first digital asset trading platform in Canada to be registered as a restricted dealer under securities and derivatives laws (August 2020, amended June 2021)
- **Ether Capital** (NEO:ETHC) in its public offering of common shares and warrants raising C\$28 million (March 2020)
- **3iQ Corp. and The Bitcoin Fund**: Led securities regulatory team in successful hearing before the Ontario Securities Commission (OSC) and subsequent initial public offering of the first publicly-traded bitcoin investment fund in the world (October 2019 and April 2020)
- **Canadian public-sector pension plans**: Advised two plans on their investments in digital asset hedge funds.
- **Blockchain developers**: Advise regarding regulatory risks associated with projects, including Layer 1 and Layer 2 protocols, wallets, asset-backed stable coins, video games, non-fungible tokens (NFTs) and proposals to structure token issuances in compliance with securities and AML/ATF regulation.
- **Canadian and foreign crypto asset trading platforms** (including exchanges and OTC desks). Lori has advised numerous platforms on the following matters:
 - CSA restricted dealer registration and marketplace regulation
 - Responses to inquiries and investigations of the CSA
 - Legal opinions and memoranda re: regulatory risk associated with their products and services
 - Regulatory engagement strategies (e.g. applications for registration and exemptive relief, global strategies)
 - Money services business (MSB) registration and compliance under AML/ATF laws
 - Negotiations with crypto asset custodians and other service providers
- **PE-Gate Inc.** in its registration as an exempt market dealer in Ontario to offer private equity investment opportunities through an electronic communications and recordkeeping portal (2018)

Lori is highly market-focused and is a frequent speaker and author on key issues that impact clients in the digital assets sector. She is also a member of the Ontario Securities Commission Office of Innovation Beta Directory, providing pro bono legal services to Fintech start-ups.

Previous Speaking Engagements

Lori Stein

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- Panelist: North American Cryptocurrency Law: The View from Canada, Mexico and the United States (January 2022)
- Keynote speaker: Canadian Blockchain Association for Women (June 2021)
- [The Law of Code Podcast](#) (Jan 2022)
- [Crypto Cast Podcast](#) (Aug 2021)
- Law Society of Upper Canada
Speaker, Update on Securities Regulatory Initiatives, 2016-2018
- Portfolio Managers Association of Canada (PMAC)
Speaker, Regulatory & Compliance Forum, September 2018
Speaker, Chief Compliance Officers Network, September 2015-2017
- RBC Investor & Treasury Services Investor Forum
Speaker, Fireside Chat on Securities Regulation, May 2018

Lori earned her J.D. from the University of Toronto and was called to the Ontario Bar in 2002. She successfully completed a Partners, Directors and Officers Exam from the Canadian Securities Institute (CSI) and holds a Canadian Securities Course designation from the CSI.

Awards & Rankings

Chambers Fintech – Canada

Leading Lawyer: Fintech Legal

Recent Insights

- **White House Publishes "Comprehensive Framework for Responsible Development of Digital Assets"**
September 29, 2022
- **OSFI Publishes First Interim Framework for Cryptoassets held by Federally Regulated Financial Institutions**
September 08, 2022
- **New Requirement for Crypto Trading Platforms to Provide Pre-Registration Undertakings to Canadian Securities Administrators – Initial Two Undertakings Published by OSC**
August 16, 2022
- **OSC Issues Orders Against Foreign Crypto Trading Platforms KuCoin and ByBit**
June 24, 2022

Events

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Bar Admission

Ontario 1994

Alberta 2007

Law School

University of Western Ontario

Practices

Pensions, Benefits, & Executive
Compensation

Industries

Pension Funds Group

With equal measures of creativity and pragmatism, Deron delivers successful business outcomes at the leading edge of the complex and evolving pensions industry

Deron Waldock is a partner in our National Pensions, Benefits & Executive Compensation Group in Toronto. He provides strategic legal advice to employers with respect to pension plans, profit sharing plans, registered retirement savings plans, welfare benefits plans, retirement compensation arrangements and other areas of executive compensation. He has broad and deep experience with respect to the treatment of plans on purchase or sale of a business and corporate reorganizations (including CCAA) and provides advice as to entitlement to use of surplus assets.

With more than 20 years' experience in connection with the design, administration, operation and compliance of pension plans, Clients count on him to deliver results and find creative approaches to their pensions and benefits challenges and deliver results. He is noted in particular for his enthusiastic creativity in devising common sense solutions to complex challenges by disaggregating and reassembling the problem to investigate every possibility and deliver practical, real world advice and guidance.

Clients look to him for his practical approach to pensions law. He understands that to provide the best advice, he needs to understand your business, your appetite for risk, and how you measure success. Having previously led the legal consulting and compliance practice at a major consulting firm, Deron has developed an appreciation for not just the legal side of pensions work, but the role actuarial science has in future-proofing our clients' pension, group benefit and profit-sharing plans. Deron represents universities, municipal bodies, governmental agencies, multinational corporations and jointly-trusted and multi-employer pension plans. In addition, he has significant transaction experience involving numerous publicly traded entities with pension plans involving employees in numerous Canadian jurisdictions.

Deron has written and spoken at numerous industry conferences in virtually all areas of pension law, including obligations of administrators and other fiduciaries, governance, communication and legal liability, mergers and acquisitions, insolvencies, investments, executive pensions and risk management. Prior to joining McCarthy Tétrault, he was Canadian Practice Leader, Legal Consulting & Compliance at a major international consulting firm, having been previously a partner in the Pension and Employee Benefit Group of a national law firm.

Past chair of both the Canadian Pension and Benefits Institute Ontario Region and the pensions and benefits executive of the Ontario Bar Association, Deron has also been a guest lecturer at Osgoode Hall Law school and was also a member of the FSCO Legal Advisory Committee. Deron has previously been rated as a leading lawyer in the area of pensions and employee benefits in Chambers Global and Martindale Hubbell.

Deron Waldock

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Deron is a member of the Board of Oakville Minor Baseball Association as well as the Central Ontario Baseball Association (COBA). These positions allow him to satisfy his life-long love of baseball as well as his desire to give back to the community.

Deron received his BA from the University of Waterloo in 1989 and his LLB from Western University in 1992. He is called to the Ontario and Alberta bars.

Awards & Rankings

Chambers Canada

Leading Lawyer: Pensions & Benefits

The Legal 500 Canada

Recommended: Pensions

The Canadian Legal Lexpert Directory

Leading Lawyer: Pensions & Employee Benefits

Recent Experience

- **Novacap enters in a partnership with Ratehub.ca**
July 13, 2022
- **Lafarge Canada acquires Mathers Group's St-Eustache quarry and asphalt operations in Quebec**
June 30, 2022
- **Instar partners with management to acquire Greenwood Mushrooms Development Corp. from Novacap**
June 29, 2022
- **Deschenes Group Inc. acquires Crane Supply for C\$380M**
May 31, 2022

Recent Insights

- **OSFI Reaches out to Industry in Advance of Issuing a Guideline Concerning Culture Risk Management**
March 24, 2022
- **Key Takeaways from the 2021 Pension & Benefits Seminar**
November 26, 2021

Events

- **12th Annual Pension & Benefits Seminar**

Deron Waldock

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November 08, 2022

- **11th Annual Pension & Benefits Seminar - Presumption of Resumption:
A Post-Pandemic Future?**

November 23, 2021

- **10th Annual Pension & Benefits Seminar: The Accelerated Normal**

November 18, 2020

- **Canadian Pensions and Benefits Law for U.S. Lawyers**

October 29, 2020



Gregory Winfield

Counsel

Toronto

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t. +1 416-601-7907

Bar Admission

Ontario 1988

Law School

Queen's University

Practices

Pensions, Benefits, & Executive
Compensation
Tax

Industries

Pension Funds Group

Gregory Winfield is counsel in our Pensions, Benefits & Executive Compensation Group. Since joining the group in 1990, he has provided strategic legal advice to employers with respect to pension plans, profit sharing plans, registered retirement savings plans, welfare benefits plans, retirement compensation arrangements and other areas of executive compensation.

Gregory has over 30 years' experience in connection with the administration, operation and taxation of pension plans and with respect to legislation governing taxation and administration of plans. In addition, he has broad experience with respect to the treatment of plans on purchase or sale of a business and corporate reorganizations (including CCAA) and provides advice as to entitlement to use of surplus assets.

Gregory has been involved in many of the leading pension and benefits matters of the past 30 years including the first decisions relating to contested partial wind ups of pension plans and the deemed trust provisions of the Pensions Benefits Act (Ontario). He acted as lead pension counsel for Algoma Steel in its pension restructuring under CCAA in 2001 and has participated in a number of other restructurings (most recently Chrysler Canada Inc.) with key benefits issues. He worked on the first Employee Life and Health Trust to be established in Canada. Gregory frequently acts on pension investment matters for the largest pension plans in Canada and has a particular expertise in dealing with public sector pension plans, including structuring of investments and debt offerings.

Gregory was the lead lawyer among the McCarthy team that contributed the Canadian research and analysis in the seminal ESG work "A legal framework for the integration of environmental, social and governance issues into institutional investment" produced for the Asset Management Working Group of the UNEP (United Nations Environmental Program) Finance Initiative, October 2005.

He has written and spoken at numerous industry conferences in virtually all areas of pension law, including obligations of administrators and other fiduciaries, governance, communication and legal liability, mergers and acquisitions, insolvencies, investments, executive pensions and risk management. More recently, he won the 2013 *International Pensions & Employee Benefits Lawyers Association's* Tony Thurnham Award for the article entitled "Canadian Employee Life and Health Trusts" which he co-authored with Mark Firman.

Prior to joining McCarthy Tétrault, he worked for the Pensions Commission of Ontario ("PCO") (predecessor to the Financial Services Regulatory Authority of Ontario ("FSRA")) in its policy branch and for an international pension consulting firm. Gregory has acted as special advisor to the PCO in respect of pension reform matters.

He currently serves on the FSRA Technical Advisory Committee for Asset Transfers.

Gregory Winfield

Counsel

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Gregory received his BA from the University of Toronto in 1982 and his LLB from Queen's University in 1986.

Awards & Rankings

Chambers Global

Leading Lawyer: Pensions & Benefits - Canada

Chambers Canada

Leading Lawyer: Pensions & Benefits

The Canadian Legal Lexpert Directory

Leading Lawyer: Pensions & Employee Benefits

Best Lawyers in Canada

Leading lawyer in the area of employee benefits law

The Legal 500 Canada

Recommended: Pensions

Recent Experience

- **SiteOne Landscape Supply, Inc. acquires Linzel Distributing**
August 12, 2022
- **Paper Excellence Group enters into definitive agreement to acquire Resolute Forest Products Inc.**
July 06, 2022
- **ACON Investments acquires Raymond O'Neill & Son Fisheries and Suncoast Seafood**
October 14, 2021
- **Aon plc terminates proposed US\$30B acquisition agreement of Willis Towers Watson**
July 26, 2021

Recent Insights

- **Key Takeaways from the 2021 Pension & Benefits Seminar**
November 26, 2021
- **New Pension Holiday-Makers May Suffer Hangover**
October 16, 2020

Events

Gregory Winfield

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- **12th Annual Pension & Benefits Seminar**

November 08, 2022

- **11th Annual Pension & Benefits Seminar - Presumption of Resumption:
A Post-Pandemic Future?**

November 23, 2021

- **10th Annual Pension & Benefits Seminar: The Accelerated Normal**

November 18, 2020

- **Annual Pension and Benefits Client Seminar: Cooking with Gas – Tips
to Help You with Plan Management**

February 13, 2020