

9th Annual Pension & Benefits Seminar: *Cooking with Gas – How We Can Help You with Plan Management*

Wednesday, November 27, 2019

CONFERENCE MATERIALS

mccarthy
tétrault



TABLE OF CONTENTS

Agenda	3
Food for Thought: Recent Developments in Pension Law	5
Avoid A Boil Over – Managing Before Issues Arise	15
From the Frying Pan into the Fire – Practical Tips for Resolving Claims and Compliance Breaches	23
On the Back Burner – Emerging Risk Mitigation Strategies	36
Drawing Water from the Well – GST/HST & QST	45
Trends: The View from Our Office	56
Speaker Biographies	65



**mccarthy
tétrault**



McCarthy Tétrault *Advance*TM - 9th Annual Pension & Benefits Seminar: *Cooking with Gas – How We Can Help You with Plan Management*

Wednesday, November 27, 2019
Agenda

TIME	TOPIC	PRESENTER
8:30 – 9:00 am	Registration and Breakfast	
9:00 – 9:10 am	Opening Remarks	<u>Randy Bauslaugh</u>
9:10 – 9:40 am	Recent Legal & Legislative Developments <ul style="list-style-type: none"> • Recent Caselaw Developments • Recent Legislative Developments 	<u>Kelleher Lynch</u>
9:40 – 10:10 am	Avoid A Boil Over – Managing Before Issues Arise <ul style="list-style-type: none"> • Plan Drafting – Avoiding the Unintended • Implementing Benefit Changes • Effective Communications 	<u>Randy Bauslaugh</u>
10:10 – 10:40 am	From the Frying Pan to the Fire – Practical Tips for Resolving Claims and Compliance Breaches <ul style="list-style-type: none"> • Plan Interpretation Issues • Class/Representative Actions • Voluntary Disclosures 	<u>Deron Waldock</u>
10:40 – 10:50 am	Mid-Morning Break	
10:50 – 11:20 am	On the Back Burner – Emerging Risk Mitigation Strategies <ul style="list-style-type: none"> • Outsourced Administrative Roles and Responsibilities • Decumulation Strategies and Variable Benefits (Smart DC) • Plan Consolidation 	<u>Greg Winfield</u>
11:20 – 11:50 am	Drawing Water from the Well – GST/HST Recoveries <ul style="list-style-type: none"> • Subduing the Complexity in GST/HST Rules for Benefit Plans • Obtaining Rebates and Credits 	<u>Greg Hurst,</u> <u>Managing Director,</u> <u>Greg Hurst &</u> <u>Associates Ltd.</u>
11:50 – 12:20 pm	Lunch Service	

TIME	TOPIC	PRESENTER
12:20 – 12:45 pm	Trends: The View from Our Office <ul style="list-style-type: none"> • Data Management, Cyber-Security and Electronic Communications • Collective Plans • The Myth of the Outsourced Fiduciary • ESG – Please Don't Let Me Be Misunderstood 	<u>Randy Bauslaugh</u>
12:45 – 1:00 pm	Closing Remarks <ul style="list-style-type: none"> • Publications – Past Year; Upcoming • Speaking Engagements – Past Year; Upcoming • Awards 	<u>Deron Waldock</u>

Food for Thought: Recent Developments in Pension Law

Kelleher Lynch, Associate, McCarthy Tétrault LLP

mccarthy
tétrault



Overview

Legislative & Regulatory Developments :

1. New Regulators in Ontario and BC
2. Deemed Consent & Electronic Communications
3. Buy-Out Annuities & Statutory Discharge

Recent Decisions :

- 4.(a) *Trustees of the IWA v. Wade*, 2019 BCSC 1085
- 4.(b) *Calder v. Alberta*, 2019 ABCA 289

1. New Regulators in Ontario and BC



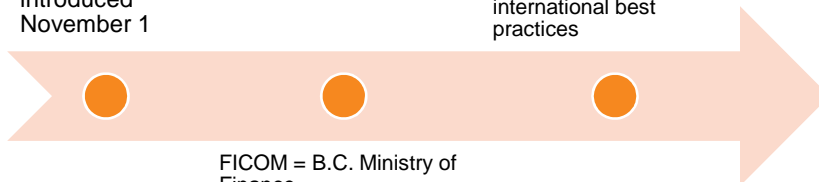
1. New Regulators - So Long, FSCO...



1. New Regulators - Farewell, FICOM...

BCFSA
introduced
November 1

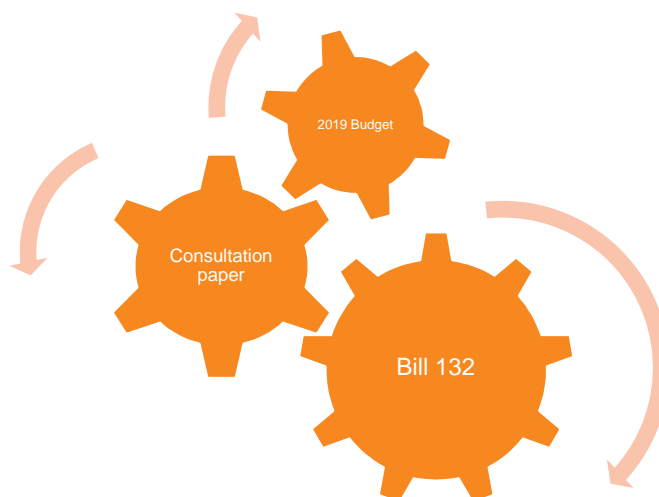
Improves accountability
and aligns with
international best
practices



FICOM = B.C. Ministry of
Finance

BCFSA = Crown Agency

2. Electronic Communications - Ontario



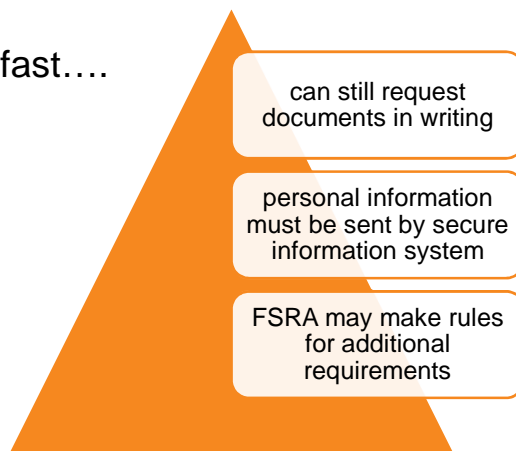
2. Electronic Communications - Ontario

Consent may be...

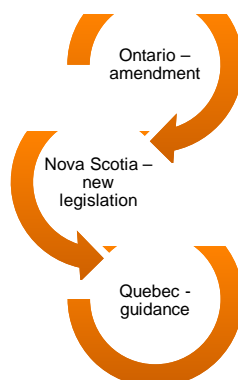
- inferred from a person's conduct where relevant to documents being communicated
- deemed where an administrator has first sent notice by regular mail
- may continue into retirement, provided a confirmatory notice is sent

2. Electronic Communications – Ontario

Not so fast....



3. Buy-Out Annuities – Statutory Discharge



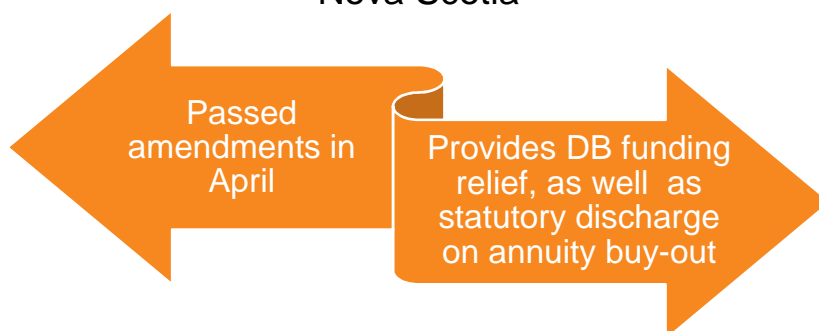
3. Buy-Out Annuities – Statutory Discharge



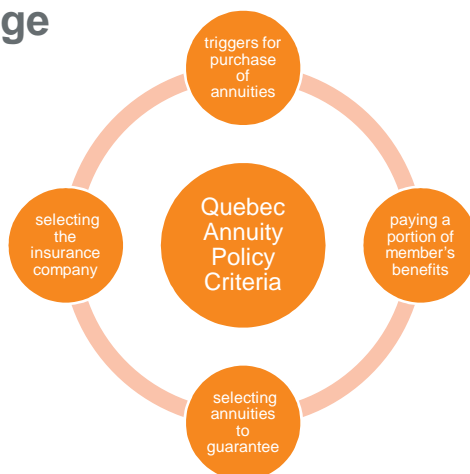
- Administrators can now obtain statutory discharge in respect of surviving spouses
- Regulator may order repayment of annuity purchase amount in certain circumstances

3. Buy-Out Annuities – Statutory Discharge

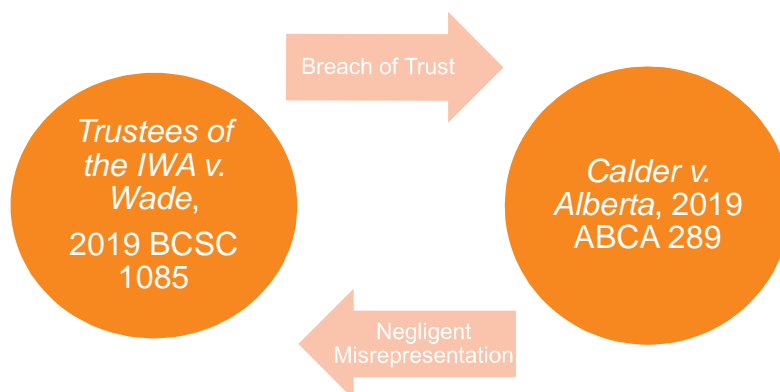
Nova Scotia



3. Buy-Out Annuities – Statutory Discharge



4. Case Law - Recent Decisions



4. Case Law - Recent Decisions

Trustees of the IWA v. Wade, 2019 BCSC 1085

- Defendant was the owner of RW Log Transport
- RW Log Transport entered in to participation agreements to join
 - IWA Pension Plan and
 - IWA LTD Plan
- In 2014, RW Long Transport began to experience financial difficulties

4. Case Law - Recent Decisions

Trustees of the IWA v. Wade, 2019 BCSC 1085

- IWA Pension Plan = deemed trust created by *Pension Benefits Standards Act* in B.C.
- IWA LTD Plan = deemed trust created by terms of LTD Plan
- Trustees of both plans brought claims against RW Log Transport for unremitted contributions
- Obtained default judgment in July 2015

4. Case Law - Recent Decisions

Trustees of the IWA v. Wade, 2019 BCSC 1085

- 2015 default judgement went unpaid
- Trustees brought actions against Wade in personal capacity
- Court found that:
 - 1) Breach had occurred
 - 2) Breach was dishonest and fraudulent
 - 3) Actual knowledge of trust and knowing assistance in breach

4. Case Law - Recent Decisions

Calder v. Alberta, 2019 ABCA 289

- Plaintiff worked for Alberta public service
- 1978 to 1986 = service in Public Service Management Closed Membership Pension Plan
- 1995 to 2011 = service in the Management Employees Pension Plan

4. Case Law - Recent Decisions

Calder v. Alberta, 2019 ABCA 289

- *Public Sector Pension Plans Act* addressed method of calculating benefits where member in both plans
- Alberta Pension Services Corporation (APSC) interpreted act to allow for benefits calculation under first plan to be based on salary after plan had closed
- APSC assured Calder that pension would be calculated in this manner

4. Case Law - Recent Decisions

Calder v. Alberta, 2019 ABCA 289

- Calder retired in 2011 on basis of information
 - Received \$8,000 per month
- APSC changed interpretation after retirement
 - pension reduced to \$2,000 per month
- Calder sued

4. Case Law - Recent Decisions

Calder v. Alberta, 2019 ABCA 289

- Calder argued
 - (i) APSC incorrectly interpreted legislation
 - (ii) negligent misrepresentation.
- Trial judge determined that legislation was correctly interpreted
 - but there was a negligent misrepresentation on the part of APSC in assuring pension calculation
- Calder awarded \$267,017 in damages
- Court of Appeal upheld findings



Avoid a Boil-Over – Managing Before Issues Arise

Randy Bauslaugh, Partner, McCarthy Tétrault LLP



2

Three Areas

1. Plan Drafting – Avoiding the Unintended
2. Implementing Benefit Changes
3. Effective Communications

3

Plan Drafting – Avoiding the Unintended

1. Recent Cases
2. General Rules
3. Plan Definitions:
 - Administrator and “Sponsor”
4. Relationship of plan text to other documents
5. Calculations
6. Surplus Use and Withdrawal Provisions
7. Provisions required by statute
8. The word “deem”

4

Ontario Superintendent of Financial Services, Notice of Intended Decision, Pension Plan for Employees of Hewlett Packard Enterprise Canada, December 28, 2018

- Whether lump sum payment of unused vacation time on termination of employment should be included in determination of final average earnings ?
- Plan definition of “Final Average Earnings” requires it to be determined based on the remuneration paid to a plan member including “base pay” and eligible commissions but “excluding bonuses, overtime pay, and any other forms of compensation.”
- Vacation pay was not expressly excluded from the definition of Final Average Earnings or from “base pay”, and under the Employment Standards Act, vacation pay accrues during employment. Accordingly, the vacation pay was included.

5

Service Employees International Union, Local 1 v. Bluewater Health, 2019 CanLII 25975

- Employer “will provide equivalent coverage” for certain retirees and that the employer “will contribute the same portion towards the billed premiums of these benefit plans as is currently contributed by the [employer] to the billed premiums of active employees.”
- Employer argued this meant it must pay the same dollar amount it is paying for active employees.
- Union argued, that if employer is paying 100% for actives, it must pay 100% for retirees.
- Arbitrator agreed it was ambiguous, and decided in favour of the union. Use of the word “portion” meant a percentage of the whole, not the same amount.

McCarthy Tétrault LLP / mccarthy.ca

6

Austin v Bell Canada., 2019 ONSC 4757 (CanLII)

- How plan provisions relating to the calculation of indexing of retiree benefits are to be interpreted. The difference revolves around how the actual annual increase in CPI of 1.49371% is to be rounded.
- Employer says plan language requires rounding to 1%.
- Plan members say plan language requires rounding to 2%.
- Judge finds the relevant provisions ambiguous but prefers employer interpretation because otherwise a whole section of the plan would be unnecessary.

McCarthy Tétrault LLP / mccarthy.ca

Austin v Bell Canada., 2019 ONSC 4757 (CanLII)

- s. 1.29 'Pension Index' means the annual percentage increase of the Consumer Price Index, as determined by Statistics Canada, during the period of November 1 to October 31 immediately preceding the date of the pension increase.
- s. 8.7(ii): ... the rate of indexation is the greater of:
 - a) the Pension Index calculated under s. 1.29, rounded to the nearest whole number as required by s. 8.7(iv), up to a maximum of 2% as stipulated in s. 8.7(i), and
 - b) 60% of the Pension Index rounded to two decimal places under s. 8.7(ii) to a maximum of 4% under s. 8.7 (ii)(a).
- Plaintiffs argued the annual percentage increase published by Statistics Canada, which only goes to 1 decimal place is to be used. That results in rounding to 2%. Plaintiffs argued that if there is ambiguity, it should be resolved against the plan drafter. They also pointed to cases in which courts generally favoured pensioners because of their inherent vulnerability.
- Employer's evidence was that it was "mathematically impossible" to go to three or more decimal places when calculating 60% of a one decimal place percentage increase. So using the Statistics Canada published one-decimal rounding of the CPI rate, would eliminate the need for any further rounding as set out in s. 8.7(ii) – rendering it meaningless

Austin v Bell Canada., 2019 ONSC 4757 (CanLII)

"The comma has earned its notoriety as a troublemaker." (Para.45)

"I do not know why s. 1.29 is phrased in the awkward way that it is. I certainly do not know why a comma had to be inserted before the modifying phrase "as determined by Statistics Canada". It was not necessary, since that modifier applies only to the CPI which is the last antecedent before the modifying clause. It was likely punctuated that way unconsciously; I do not believe it was a legally induced comma." (Para. 67)

Plan Drafting -- General Rules

- (a) Clear and concise
- (b) Shorter sentences preferred
- (c) Adhere zealously to rules of English grammar
- (d) Use action words and avoid awkward verb forms (e.g., active, rather than passive voice, present tense verb forms)
- (e) Be logical
- (f) Say it once
- (g) Be boring

Plan Drafting: Key Provisions

1. Administrator / sponsor roles
2. Surplus rights – ongoing and windup
3. Payment of fees and expenses
4. Funding document subordinate to plan text
5. Plan prevails over other documents (or communications)
6. Plan booklet
7. Benefit descriptions and formulae

Definitions – Administrator/Sponsor

Section 2 Construction, Interpretation and Definitions

“**Administrator**” means the Company

“**Company**” means Acme Ltd. or any entity which shall be a successor to it and which assumes all of its rights and obligations under the Plan.

“**Employer**” means the Company and any affiliate of the Company, as that term is defined by the *Business Corporations Act* (Ontario), which is designated by the Company to be participating employer as defined in the Income Tax Rules.

8.01 Administrator

The Company shall be the Administrator of the Plan and be responsible for carrying out the provisions of the Plan.

10.01 Power to Amend

The Company reserves the right to amend or discontinue the Plan, at any time or times, subject to the Income Tax Rules and the provisions of the Act....

Definitions -- Administrator/Sponsor

Section 2 Interpretation

“**Administrator**” means the Company acting in the capacity of an administrator under the Act.

“**Company**” means Acme Ltd.

“**Employer**” means the Company in its personal capacity and interest as an employer, and any includes any other employer authorized by the Company to participate in the Plan, provided that any reference in the Plan to any discretion or power to be exercised by the Employer means the Company acting through its board of directors or any person or committee authorized by its board of directors.

10.01 Power to Amend

The Employer reserves the right to amend or discontinue the Plan, in whole or in part.

Relationship of plan text to other documents

5.01 Establishment and Amendment of the Pension Fund

- (a) The Administrator maintains a Pension Fund to provide benefits under the Plan. The Pension Fund shall be held pursuant to the terms of Funding Agreements. Any term of a Funding Agreement that is inconsistent with the terms of the Plan, shall to the extent of the inconsistency be of no force or effect. A Funding Agreement is subordinate to the terms of the Plan.
- (b) The Administrator reserves the right to amend or revoke any Funding Agreement, to remove the Funding Agent and to appoint additional or successor Funding Agents.

Other Interpretation Issues

- Calculations
 - Use formulae
- Surplus Use and Withdrawal Provisions
 - Preserve employer rights
- Provisions required by statute
 - Use the statutory language
 - NO -- It's not plagiarism, or a copyright violation
 - Ensures you don't mean to provide greater rights or benefits
- The word "deem"
 - Not a synonym for "shall", "consider" or "to determine"
 - It denotes a legal fiction – "this apple is deemed to be an orange"

Implementing Pension Benefit Changes

1. Benefit Reductions

(a) Check pension standards laws

- Cannot reduce accrued "pension benefits"
- What is a "pension benefit"?
 - Ancillary benefits
 - Other benefits
 - Different rules in different provinces

(b) Check Plan Provisions

- Plan restrictions or notice requirements
- Employment agreements (collective or individual)

2. Benefit Increases and New Benefits

(a) Can you limit coverage

(b) Can you reduce in the future

(c) Ad hoc vs. permanent plan feature

Effective Communications

1. Know the Prescribed Rules

- Often a challenge to effective communication

2. Communicate the "WIFM"

- Employee perspective
- Employer perspective

3. Don't Oversell -- Consistency with Plan Rules

- Highlight all relevant restrictions or limitations

4. Date the Communication

5. Information vs. Advice

- Manager training



From the Frying Pan into the Fire – Practical Tips for Resolving Claims and Compliance Breaches

Deron Waldock, Partner, McCarthy Tétrault LLP



2

Mistakes....We've Seen a Few



"When you make a mistake, there are only three things you should ever do about it: admit it, learn from it, and don't repeat it"

Paul "Bear" Bryant

"And in the pension context, we add: 'correct it!'"

Randy Bauslaugh



3

Overview

Plan Interpretation Issues:

- Get Out in Front of It

Class / Representative Actions:

- Take the Lead
- Attack - Don't Just Defend
- Pre-Certification Motion Can Be Efficient

How to Fix / Mitigate Tax Problems:

- Voluntary Disclosures (VDs)
- A Formal Process You May Not Be Aware Of



McCarthy Tétrault LLP / mccarthy.ca

4

I. Plan Interpretation Issues

- When we hear of “Court proceedings” we think “hostile litigation”:
 - A costly and time consuming dispute with a “winner” and a “loser”
 - Typically, pits Plan members vs. Plan Sponsor
- However, “non-hostile” litigation can be effective
- Typically involves the Plan Administrator or Trustee seeking directions from the Court on how a plan should be administered or what a provision means

McCarthy Tétrault LLP / mccarthy.ca

5

“Direction Applications”

- Previously – Courts did not think they had inherent jurisdiction to provide “opinion, advice or direction”
- Legislation and rules of court introduced to allow the Plan Sponsor/Administrator to ask for directions and guidance
- Some pension legislation specifically provides for this
 - For example, in the case of marriage breakdowns, s. 86(1) of the *Employment Pension Plans Act* (Alberta) provides a specific right for the Plan Administrator to go to Court



6

“Direction Applications”

- In Ontario, Rules 20 (summary judgment) and 21 (determination of an issue before trial) (Rules of Civil Procedure) may be used to address an issue in a direct fashion where proceedings have been initiated
- Similarly, may apply to the court for its “opinion, advice or direction” pursuant to section 60(1) of the *Trustee Act* (Ontario)

7

“Direction Applications”

- Must remember:
 - Legislation oriented at trustee protection → not meant to provide the Court with jurisdiction to determine competing interests in the trust
 - Court not meant to make decisions or exercise fiduciary discretions that trustee is supposed to exercise personally
 - If court feels it is not appropriate to ask the court, it may:
 - refuse to give directions;
 - refuse to allow costs of the application to be paid out of the pension fund;
 - if other parties are involved, pay their expenses; or
 - any combination of the foregoing

8

“Direction Applications”

- A good summary of this can be found in *Re Wright* (1976), 14 O.R. (2d) 698 (Ont. H.C.J.); *cb*, p.942
 - Here, the Court refused an attempt to force a non-consenting trustee to act where the majority of trustees favoured action, nor would the Court replace the non-consenting trustee.
 - Per Craig J.:

... ‘The executors are protected from all liability if they honestly and with due care exercise the discretion vested in them. But the responsibility is theirs, and cannot be shifted upon the Court. **The executors cannot come to the Court and ask whether the present is a good time or a bad time to sell stock or anything else, or ask whether a price offered is sufficient or insufficient. The advice which the Court is authorized to give is not of that type or kind; it is advice as to legal matters or legal difficulties arising in the discharge of the duties of executors, not advice with regard to matters concerning which the executors’ judgment and discretion must govern.**’ [emphasis added]

9

Rectification – A Special Case

- Rectification actions have been used sparingly in Canada (unlike the UK, where used more frequently with pension schemes)
 - Allows a Plan Sponsor to apply to court in circumstances to rectify the plan text
 - Court makes an order revising or rectifying the plan text to remove or alter erroneous language so that language provides the originally-intended benefits
 - Courts require compelling proof that there was a mistake in order to grant rectification
 - Not a mistake in the sense of a bad decision
 - Mistake = a drafting error that clearly caused the pension plan language to provide for benefits that were never intended to be provided

10

II. Class Action Proceedings

- We have previously discussed the benefits of using class proceedings as a way to implement a settlement in pension disputes
- But → what if a “mistake” has led to the commencement of a class action → what do you do?
- How else can you use class action proceedings to your advantage?



11

A Not So “Hypothetical Hypothetical”

- Our office recently acted for the defendant in a class action involving 35,000 plan members and a claim of \$100 million
- Not your typical pension class action:
 - Sponsor/Administrator was solvent
 - No allegation of improper use of surplus
 - No issue about payment of expenses
 - Full DB pension being paid to retirees
 - Indexation was being paid

12

A Not So “Hypothetical Hypothetical”

- The case involved a dispute over the calculation of indexation benefits
- Plan directed indexation should be given to members annually, and defined the method of calculation.
- First of two steps → determine the annual increase in the cost of living, using the method in s. 1.29 of the Plan (emphasis added):
 - s. 1.29: “‘Pension Index’ means the annual percentage increase of the Consumer Price Index, as determined by Statistics Canada....”

13

A Not So “Hypothetical Hypothetical”

- Statistics Canada publishes the monthly Consumer Price Index (the “CPI”), and also publishes an annual percentage increase
- Which one to use?
- A pensioner argued that the placement of the comma in s. 1.29 required the Company to use the Statistics Canada annual figure, which would increase the indexation for 2017, with a ripple effect of increasing pension payments by millions of dollars over time

McCarthy Tétrault LLP / mccarthy.ca

14

A Not So “Hypothetical Hypothetical”

- Specifically, the Plaintiffs claimed that the placement of the comma before the qualifying “as determined by Statistics Canada” meant that those words should apply to both the definition of CPI and the annual percentage increase
 - This would peg the increases of the pension in question to the determinations made by Statistics Canada, a third-party who does not administer the pension plan
 - As the provision was drafted by the Defendant, the Plaintiffs invoked *contra proferentum* to have the provision read against the Defendant’s interests

McCarthy Tétrault LLP / mccarthy.ca

15

So What Do You do?

- If we listened to Randy... we would prevent this
- Demonstrates the importance of having lawyers review plan documents that are drafted
 - Beyond just the contents, lawyers consider syntax, grammar, and even punctuation
 - Lawyers aware of case law -- we enjoy reading cases and we look for these things!
 - *O'Connor v. Oakhurst Dairy* (US Court of Appeals), First Circuit (lack of comma)
 - *Rogers Communications Inc. v. Bell Aliant Regional Communications LP* (CRTC 2006-45, rev'd CRTC 2007-75) (position of comma)
 - "Let's eat, Grandma" or "Let's eat Grandma." As the saying goes, "commas save lives."

McCarthy Tétrault LLP / mccarthy.ca

16

So What Do You do?

- In this case, Defendant brought a pre-certification motion
- Such motions can be difficult to win but it can be worthwhile in certain circumstances
- Defendant focused on interpreting the definition of Pension Index in the ordinary grammatical meaning of the sentence structure and in the context of the plan as a whole

McCarthy Tétrault LLP / mccarthy.ca

17

So What Happened ?

- The Court found that the Plan must be read as a whole, in order to determine the meaning of the allegedly ambiguous wording in s. 1.29
- The determination of the “Pension Index” was only the first of two steps required to proceed with indexation
- A separate provision of the Plan (s. 8.7) explains the calculation of the annual indexation
 - This provision provides two methods:
 - the greater of a rounding up to the nearest whole number up to 2%, or 60% of the Pension Index in s. 1.29, or
 - rounded to two decimal places to a maximum of 4%.

McCarthy Tétrault LLP / mccarthy.ca

18

So What Happened ?

- Rounding provision in s. 8.7 would be engaged extensively if the Company’s reading of “Pension Index” was used but, hardly ever if the Plaintiff’s reading was used
- Given that the calculation provision of the plan was drafted with enormous mathematical precision, dependent on rounding of numbers and the number of decimals, the Court was understandably unwilling to interpret the plan in a manner that would render it completely meaningless
- Court concluded that the comma at issue “... *was not necessary, since that modifier applies only to the CPI which is the last antecedent before the modifying clause. It was likely punctuated that way unconsciously; **I do not believe it was a legally induced comma***” [emphasis added]

McCarthy Tétrault LLP / mccarthy.ca

19

III. How to Fix/Mitigate Tax Problems

- Pension Plans
 - Annual calculation of pension adjustment for plan member
 - What if the calculation has an error?
 - What if it covers hundreds or thousands of employees over not one but two or three years?
 - What if you under reported their benefits and now your employees and former employees have filed their tax returns?
- Not only do you have an administrative nightmare to clean up, you have a huge reputational exposure!!



McCarthy Tétrault LLP / mccarthy.ca

20

How to Fix/Mitigate Tax Problems

- Tax issues arise also in Executive Compensation
- For example, an employer mistakenly under reported the amount paid from their executive compensation program
- Error affected their top executives
- T4s have been issued and tax returns filed
- The error is discovered (nightmare of every human resource manager)



McCarthy Tétrault LLP / mccarthy.ca

21

VDP – Voluntary Disclosure Process

- A form of “amnesty” allowing taxpayers to come forward to disclose omissions in order to avoid penalties, prosecution and (possibly) to obtain some interest relief
- Includes the *Income Tax Act* → also the *CPP and Excise Tax Act*
- Therefore, it may be used in the context of both pension plan and executive compensation administration



Dispute Resolution
&
Voluntary Disclosure



McCarthy Tétrault LLP / mccarthy.ca

22

VDP – Voluntary Disclosure Process

- Until February 2018, there were 4 conditions:
 - **Voluntary**: must approach CRA before you have knowledge of CRA enforcement action that would likely have uncovered the misdeed
 - **Complete**: must provide full and accurate facts relating to all tax accounts
 - **Penalty**: generally (but not always), circumstances must involve the application, or potential application, of a penalty
 - **Age of misdeed**: disclosure must generally include information that is at least one year past due
- Until February 2018, disclosures could be “named” or “no-names”



McCarthy Tétrault LLP / mccarthy.ca

23

Voluntary Disclosure Process

- Effective March 1, 2018, changes were made to the VDP to tighten and limit the program
 - Two tracks:
 - General Program; and
 - Limited Program (involving “an element of intentional conduct”)
 - More limited benefits for Limited Program disclosures: only gross negligence penalties relieved, no interest relief, waiver of most objection rights
 - Additional condition: payment of estimated tax owing
 - No protection during any “no-name” period
 - Disclosure of advisors
 - Generally, VDs by corporations with gross revenue in excess of \$250M in at least two of the last five taxation years, and related entities, will be considered under the Limited Program

McCarthy Tétrault LLP / mccarthy.ca

24

If Not a VDP, what About Another Option?

- Taxpayers (both individuals and corporations) facing large amounts of interest and penalties from the CRA do have other avenues of potential relief.
 - Taxpayers may apply under the Taxpayer Relief Program where the CRA has the discretion to grant relief from the interest and penalties
 - The CRA will do so in cases of extraordinary circumstance (i.e. illness, divorce etc.), actions of the CRA (i.e. long delays in closing an appeal) and/or an inability to pay or financial hardship
 - These categories are broad and are not necessarily exhaustive

McCarthy Tétrault LLP / mccarthy.ca

If Not a VDP, what About Another Option?

- While the CRA has the discretion to grant relief from interest and penalties, the Federal Courts have stated that they must use their discretionary reasonably
- The Courts have stated that the CRA's decision must "fall within a range of possible, acceptable outcomes which are defensible in respect of the facts." While this is not a high bar, it still forces the CRA to act reasonably
- In more simple cases, discussing possible solutions and fixes can help expedite remedial action and avoid penalties and fines



On the Back Burner – Emerging Risk Mitigation Strategies

Greg Winfield, Counsel, McCarthy Tétrault LLP



2

Overview

Today's focus is on three “risk mitigation” strategies for pension plans:

- Outsourced Administrative Roles and Responsibilities
- Decumulation Strategies and Variable Benefits (Smart DC)
- Plan Consolidation

3

Outsourced Administrative Roles & Responsibilities

- Been around forever – days of even large employers with large pension administration/management group are largely over
- Big picture point – by delegating some or most functions, employer/administrator seeks better expertise and in some cases lower costs
 - Main issue here has always been are you really getting better expertise and is it worth the cost
 - For most employer's anyway, it is a good bargain and helps it to better focus on its business undertaking
 - Downside is that tight connection to the plan erodes

McCarthy Tétrault LLP / mccarthy.ca

4

Outsourced Administrative Roles & Responsibilities (cont'd)

- Types of outsourcing being spoken to today are:
 - General (i.e. DB third party administration)
 - Outsourced Chief Investment Officer
- In both cases delegation does not functionally mean abdication nor does it mean that the administrator is free of risk

McCarthy Tétrault LLP / mccarthy.ca

5

Outsourced Administrative Roles & Responsibilities (cont'd)

- Risk is mitigated if (a) service provider (“**SP**”) is competent and selected reasonably, (b) service provider is supervised by administrator
- Canadian model is that the plan administrator (the “**Administrator**”) remains ultimately responsible but should avoid liability where it has properly engaged and supervised the service provider

McCarthy Tétrault LLP / mccarthy.ca

6

Outsourced Administrative Roles & Responsibilities (cont'd)

- While not the focus today, the contracts with SP should include the following features
 - Representations and warranties – at least to memorialize qualifications of SP
 - Appropriate standard of care
 - Ability to terminate on fairly short notice if need be
 - Avoid a limitation of liability provision or at least strive to get one that is fair
 - Ideally, obtain an indemnity in favour of Administrator
- The final point is important – if the goal is to reduce the employer/Administrator risk, then granting limitation of liability to the SP erodes the mitigation should something “bad” happen

McCarthy Tétrault LLP / mccarthy.ca

7

Outsourced Administrative Roles & Responsibilities (cont'd)

- A word on the “flavour of the month” – *Outsourced Chief Investment Officer* (“**OCIO**”)
 - Only the rarest of Administrators of private sector plans actually makes any day to day investment decisions – instead hire investment managers or select investment funds
 - So outsourcing of investment roles is not exactly new – most plans have some form of “investment consultant” that assists Administrator in framing an appropriate asset mix and selecting investment funds or managers of segregated accounts by providing professional recommendations
 - Difference with OCIO is that even that higher decision-making is often delegated away
 - Key Point – unlike U.S., Canadian Administrators always remain fiduciaries

McCarthy Tétrault LLP / mccarthy.ca

8

Outsourced Administrative Roles & Responsibilities (cont'd)

- OCIO could involve a range of approaches but the full-blown approach would involve:
 - SIPP, including asset mix developed by OCIO (although likely approved by administrator)
 - OCIO decides appropriate means of investment
 - “segregated” mandates, or funds (including fund of funds) or a combination
 - Chooses the managers and/or the funds
 - Both reports on performance and supervises managers/funds

McCarthy Tétrault LLP / mccarthy.ca

9

Outsourced Administrative Roles & Responsibilities (cont'd)

- Two elements bear comment:
 - Just as Administrator will enter into contract with OCIO, OCIO will enter into contracts with SPs it retains on behalf of the relevant plan
 - Generally, the OCIO's themselves or their affiliates provide investment management or funds thus there is a new layer of potential conflicts of interest and need to navigate "related party" limitations in pension investment rules

McCarthy Tétrault LLP / mccarthy.ca

10

Decumulation Strategies and Variable Benefits

- Of the three topics discussed today, this is the "one that is not like the other"
 - Risks it mitigates is not pure pension plan risk,
 - Rather it mitigates the risk of an employer's workforce having inadequate pensions,
 - Inadequate pensions may result in:
 - Individuals remaining in employment even if productivity has declined
 - Thus possibly blocking advancement of younger employees;
 - Could result in employer needing to incur substantial costs to terminate employment of the individual – if becomes epidemic, accountants may one day add this to future liabilities to be reflected on balance sheets

McCarthy Tétrault LLP / mccarthy.ca

11

Decumulation Strategies and Variable Benefits (cont'd)

- A word on “smart DC”
 - Uses auto enrollment and potentially increases contribution levels automatically
 - Uses professional management for all members thus not giving members choices on investments
 - Includes a decumulation strategy to keep members from having to purchase annuities or investment products at retail rates
 - As such mirrors advantages of DB in most aspects other than mortality risk sharing

McCarthy Tétrault LLP / mccarthy.ca

12

Decumulation Strategies and Variable Benefits (cont'd)

- Employers select DC plans to avoid negative implications on their balance sheets caused by unfunded DB plans
- So-called “variable benefits” paid from DC plans add to complexity of administration by adding another feature but it is intended to provide better benefits principally by continuing the presumptive lower-cost of group plans with respect to investment management fees

McCarthy Tétrault LLP / mccarthy.ca

13

Decumulation Strategies and Variable Benefits (cont'd)

- Variable benefits are permitted under the ITA and certain pension standards laws. They operate as follows:
 - Additional option on retirement is for member to remain in the plan
 - Plan maintains the member's account as a "variable benefit account" which continues to be invested as per plan terms
 - Member is supposed to issue annual form to employer as to amount he or she wishes to receive
 - Member thus receives one or more payment from the pension fund (presumably monthly in most cases) with minimum annual amount similar to a RRIF and a maximum amount that applies to a LIF
- There is clearly extra work but the main risk points for the employer are the management of the minimum and maximum annual payments to keep the plan compliant with ITA and PBA requirements

McCarthy Tétrault LLP / mccarthy.ca

14

Plan Consolidation

- "Plan Consolidation" is our Team's euphemism for ditching a single-employer pension plan model and rolling an organization's plan into either a multi-employer pension plan or a jointly sponsored pension plan
- The industry news has been rife with these events over the last couple of years; what started as a trickle is now becoming a torrent
- In the context of risk management strategies, keeping with our cooking theme, this is the equivalent of dining out at a prix-fixe restaurant – no work, no clean up, just the effort to get there.
- In a hockey analogy, this is the penalty shot!

McCarthy Tétrault LLP / mccarthy.ca

15

Plan Consolidation (cont'd)

- By choosing to merge its plan with a receptive, larger plan, the employer ceases to be the Administrator of any pension plan, does not itself have to worry about commissioning valuations, issuing annual statements or even option statements and certainly need not hire an OCIO – it has outsourced every aspect of pure pension administration.
 - It must continue to make contributions as directed by the Administrator of the successor arrangement;
 - It needs to continue to share relevant employee data and life event information to the plan Administrator; and
 - It will need to respond to queries from time to time from the Administrator.

McCarthy Tétrault LLP / mccarthy.ca

16

Plan Consolidation (cont'd)

- The upfront work is significant in that the employer should recognize the plan merger as essentially an irreversible decision since no employer who has done this will likely ever go back to having their own single-employer
- Accordingly, there must be a “fit” on a current benefit level and confidence that the successor plan will be operated favourably and deliver what the workforce needs
- Compliance with collective bargaining agreements and, rarely, individual employment contracts will need to be reviewed but unions for the most part have welcomed plan consolidation to date

McCarthy Tétrault LLP / mccarthy.ca

Plan Consolidation (cont'd)

- There is a regulatory process to go through involving notices to employees with a “consent” requirement but experience shows that once the decisions are made this is simply a matter of undertaking the prescribed tasks
- Where there is a funding deficiency in the organization’s plan, it will likely need to make a contribution to balance the respective funded ratios although this is not linear since the funding rules for SEPPs and JSPPs are not identical

PENSION PLAN GST/HST & QST

McCarthy Tétrault

9th Annual Pension & Benefits Seminar

"Drawing Water from the Well"

© Greg Hurst & Associates Ltd. All rights reserved - do not copy

- ▶ Some employers have zero net GST/HST or QST costs on pension plan expenses
- ▶ Some employers may face pension plan GST/HST costs of up to 3 times the appropriate tax rate
- ▶ Many employers with some operations in Quebec unnecessarily pay QST
- ▶ Master trust expenses

OVER-FILLING THE WELL

© Greg Hurst & Associates Ltd. All rights reserved - do not copy

- ▶ Insurance contracts (issued to employer):
 - ▶ Pension plan deemed supply rules do not apply
 - ▶ Eligible input tax credits (ITCs) may be unclaimed
 - ▶ Often fees and taxes are hidden
 - ▶ Eligible unclaimed ITCs available

OVER-FILLING THE WELL

© Greg Hurst & Associates Ltd. All rights reserved - do not copy

- ▶ Trusts:
 - ▶ In addition to vendor collection, tax may be self-assessed on
 - ▶ Pension plan deemed supply rules
 - ▶ Mis-conception of "re-supply"
 - ▶ Mis-interpretation of recipient for foreign taxable supplies
 - ▶ Application of QST selected listed financial institution (SLFI) rules
 - ▶ Sometimes offsets are missed
 - ▶ Eligible ITCs may be unclaimed

OVER-FILLING THE WELL

© Greg Hurst & Associates Ltd. All rights reserved - do not copy

SOME FIRST PRINCIPLES OF PENSION FUNDING ARRANGEMENTS

Laying the Groundwork for Understanding
Pension Plan Commodity Taxation

© Greg Hurst & Associates Ltd. All rights reserved - do not copy

- ▶ Trust Agreements
 - ▶ Administrative – Board of Trustees administers RPP
 - ▶ Custodial – Corporate Trustee holds RPP assets
- ▶ Insurance Contracts/Policies
 - ▶ Investment and Administration (primarily DC plans)
 - ▶ Investment Only (primarily DB plans)
 - ▶ Paid-up Annuity (archaic – DB plans)
- ▶ Pension Corporation
 - ▶ Pension Fund Society – Very limited utilization (archaic)

TYPES OF FUNDING ARRANGEMENTS FOR REGISTERED PENSION PLANS

© Greg Hurst & Associates Ltd. All rights reserved - do not copy

- ▶ Trusts are intangible constructs
 - ▶ Established by agreement between Trustee(s) and employer(s) (for RPPs)
 - ▶ Trust consists of property held by Trustee for beneficiaries of the trust
 - ▶ Trusts are **deemed** to be persons under tax law
 - ▶ ITA – income (potentially) taxable under the trust, independently of the trustee
 - ▶ ETA – s. 267.1(5) deems “anything done by a trustee in respect of a trust” to be done by the trust
 - ▶ There is no similar provision for a employer plan administrator
 - ▶ (But) Trusts are not persons under common law
 - ▶ Trusts cannot enter into agreements to supply or receive goods or services

TRUST AGREEMENTS

© Greg Hurst & Associates Ltd. All rights reserved - do not copy

Dick is an employer. Tom is a guy with a bucket. Dick is looking for a guy like Tom to hold money in a bucket to give to Dick's employees after they retire. Dick meets with Tom and says: "I'd like to put some cash in your bucket for you to hold for my employees until they retire, if we can agree on how you'll look after and use the money in the bucket."

"OK," says Tom. "I'm willing, but first, you must understand that I own the bucket and everything that is put into it. Secondly, you'll have to pay fees to me for the use of my bucket and for my services in looking after what's in the bucket."

Dick replies: "I'm OK with both of those requirements, provided that you agree to do whatever I tell you to do with the money I put in the bucket and anything else that gets put in the bucket."

THE PARABLE OF TOM AND DICK

© Greg Hurst & Associates Ltd. All rights reserved - do not copy

Tom thinks about that and after a few minutes says, "Well, I guess I'm OK with that, as long as you agree that whatever you tell me to do will be according to the government's rules — which among other things make you a fiduciary to your employees' interests in the bucket — to make sure that most of the money in my bucket gets paid to your employees when they retire. And that, besides following your instructions, I'm not required to do anything else with whatever is in the bucket."

"That's exactly what I want," says Dick. "But I may tell you to give me some of my cash back, too, in certain circumstances, like when I have to pay your fees. Don't worry, though, the government's rules allow for that. And besides, we'll have the whole deal written out so that we both know how you'll look after and use the money I put in the bucket."

THE PARABLE OF TOM AND DICK

© Greg Hurst & Associates Ltd. All rights reserved - do not copy

A few weeks later, Dick and Tom meet and agree on the following rules for Tom to follow:

- § Dick has hired Harry, an actuary, to provide periodic estimates of how much money he needs to put into Tom's bucket to meet the promises he has made to his employees after they retire.
- § Dick will give Tom the amount of money Harry has calculated.
- § Dick has also hired Harriet, an investment manager, to tell Tom, on behalf of Dick, how to invest the money in the bucket and when to buy or sell any of the investments that are in it.
- § When Tom, Harry and Harriet bill for the services they've provided to Dick, he can choose:
 - § To have Tom pay the bills with cash from the bucket;
 - § Have Tom give him back some cash from the bucket to pay the bills; or
 - § Just pay the bills himself.
- § If Harry tells Dick there's a lot more money in the bucket now than he needs to pay his employees, he can tell Tom to give him back the extra cash from the bucket.
- § Dick will tell Tom when and how much he's to pay out of the bucket to an employee who retires.

THE PARABLE OF TOM AND DICK

© Greg Hurst & Associates Ltd. All rights reserved - do not copy

To put the transactions described above into a GST/HST context, here are some questions :

- ▶ 1. What supplies are being made by Dick and who's the recipient?
 - ▶ Dick supplies cash to Tom to put in his bucket.

THE PARABLE OF TOM AND DICK

© Greg Hurst & Associates Ltd. All rights reserved - do not copy

To put the transactions described above into a GST/HST context, here are some questions :

- ▶ 2. What supplies are being made by Tom and who's the recipient?
 - ▶ Tom supplies:
 - ▶ The bucket and his custodial services to Dick; and
 - ▶ If Dick instructs Tom, cash from the bucket:
 - ▶ To himself;
 - ▶ To the retired employees;
 - ▶ To Harry or Harriet; or
 - ▶ To Dick.

THE PARABLE OF TOM AND DICK

© Greg Hurst & Associates Ltd. All rights reserved - do not copy

To put the transactions described above into a GST/HST context, here are some questions :

- ▶ 3. What supplies are being made by Harry and who's the recipient?
 - ▶ Harry supplies actuarial services to Dick.
- ▶ 4. What supplies are being made by Harriet and who's the recipient?
 - ▶ Harriet supplies investment management services to Dick.
- ▶ 5. Is Dick supplying investment management or actuarial services to Tom?
 - ▶ No, under the terms of the agreement between Tom and Dick, Tom has no responsibilities related to, and thus no use for, either actuarial or investment management services.

THE PARABLE OF TOM AND DICK

© Greg Hurst & Associates Ltd. All rights reserved - do not copy

To put the transactions described above into a GST/HST context, here are some questions :

- ▶ 6. Is Dick (as the Canada Revenue Agency and most tax advisors believe) resupplying custodial trustee, investment management or actuarial services to the bucket?
 - ▶ This is an absurd question, in two respects:
 - ▶ The bucket can't do anything, except serve as a receptacle for the cash and investments. It can't use custodial trustee, investment management or actuarial services, as they would be meaningless to a thing that's only a receptacle. Those statements will be true, whether or not we were to adopt the idea that the bucket is a person.
 - ▶ There's no resupply made by Dick. Unlike goods, services are of a temporal nature, performed by a particular party at a particular time and place. The concept of resupply in relation to services only has logical validity if they're embedded into another supply. However, as noted above, the bucket has no use for such services, and thus Dick doesn't make any supplies to the bucket.

THE PARABLE OF TOM AND DICK

© Greg Hurst & Associates Ltd. All rights reserved - do not copy

- ▶ A supply (taxable or otherwise) can only be made to, or by, a trust (of any kind) if it is made to, or by, the trustee in respect of the trust - this flows from:
 - ▶ common-law principle that a trust is not a person (and therefore incapable of entering into contracts)
 - ▶ This was recently articulated relative to the *Income Tax Act* in *Olympia Trust Company v. Canada*, 2015 FCA 279
 - ▶ Deeming provision in ETA s. 267.1(5)
- ▶ Administrative trusts can receive (or make) supplies by way of the trustee(s)
- ▶ Generally, there are few provisions in custodial trusts that result in receipt or making of supplies by trustee(s)

THE PARABLE OF TOM AND DICK

© Greg Hurst & Associates Ltd. All rights reserved - do not copy

- ▶ Contractual arrangement between issuer (insurer) and policyholder (employer for RPPs)
 - ▶ Insurance contracts/policies are not persons under either common law or tax law
 - ▶ Insurance contracts/policies are considered to be property
 - ▶ Income generated by insurance contracts/policies is subject to ITA provisions
- ▶ GST/HST & QST applies to certain types of fees charged under insurance contracts/policies

INSURANCE CONTRACTS/POLICIES

© Greg Hurst & Associates Ltd. All rights reserved - do not copy

- ▶ Expenses relating to insurance contracts:
 - ▶ Undertake technical analysis to determine whether employer is recipient of supply of insurer services
 - ▶ Quantify fees and taxes paid
 - ▶ 48 month look back period for unclaimed ITCs
 - ▶ Review payment procedures for 3rd party pension services for unclaimed ITCs

DRAWING WATER FROM THE WELL

© Greg Hurst & Associates Ltd. All rights reserved - do not copy

- ▶ Expenses relating to pension trusts:
 - ▶ Ensure ITCs claimed on all 3rd party invoices included in pension plan deemed supply calculations
 - ▶ Eliminate collection of tax on "re-supply"
 - ▶ No re-supply if employer is pension plan administrator
 - ▶ May be re-supply to plans administered by board of trustees
 - ▶ Utilize election to not collect tax, or tax adjustment notes
 - ▶ Ensure pension entity rebates are claimed

DRAWING WATER FROM THE WELL

© Greg Hurst & Associates Ltd. All rights reserved - do not copy

- ▶ Expenses relating to pension trusts:
 - ▶ Review any self assessments on foreign taxable supplies
 - ▶ Focus on foreign funds that utilize performance-based fund management fees (e.g. Orbis)
 - ▶ For tax purposes, fee disclosure differs from consideration paid
 - ▶ QST SLFI Rules likely not applicable to plans that are not regulated by the Regie des Rentes du Quebec
 - ▶ Consider (with legal advice) QST de-registration

DRAWING WATER FROM THE WELL

© Greg Hurst & Associates Ltd. All rights reserved - do not copy

- ▶ Expenses relating to master trusts:
 - ▶ Consider converting master trust to taxable "pooled pension trust"
 - ▶ Annual distribution of all income to participating pension trust ensures no tax payable
 - ▶ Pension plan deemed supply relating to master trusts will not apply
 - ▶ GST/HST collected on investment and master trust custody expenses eligible for 100% ITC claims

DRAWING WATER FROM THE WELL

© Greg Hurst & Associates Ltd. All rights reserved - do not copy

- ▶ Expenses relating to pension & master trusts:
 - ▶ Consider converting trusts to custodial agreements, with insurance wrapper
 - ▶ Custom “investment only” insurance contract
 - ▶ Custodial trust agreement becomes custody only agreement
 - ▶ Can use captive insurer for this purpose
 - ▶ Pension plan deemed supply eliminated
 - ▶ SLFI rules applicable only to single segregated fund

DRAWING WATER FROM THE WELL

mccarthy
tétrault

Trends: The View from Our Office

Randy Bauslaugh, Partner, McCarthy Tétrault LLP

mccarthy
tétrault



2

Trends: The View From our Office

1. Collective Plans
2. The Myth of the Outsourced Fiduciary
3. ESG – Financial / Ethical?
4. Scams

3

Collective Plans

- Industry-Wide MEPPs
 - Contingent benefits-- better bang for the buck than DC
 - If you are an association, you should provide a MEPP
 - If you are in an association, you should demand they provide a MEPP
 - New rules on the way for non-union workplaces
 - Ontario Budget (April 2019, page 236)
- JSPPs Opening up to Public Sector

4

The Outsourced Fiduciary

- ☐ Investment management is complex
- ☐ Pension fund investment management is a fiduciary duty/liability of plan administrators.
- ☐ Most plan administrators (fiduciaries) do not have sufficient training, knowledge and expertise
- ☐ Obtaining expert help, assists in properly discharging fiduciary responsibility

5

The Outsourced Fiduciary

The Myth:

- ❑ Fiduciary responsibility can be off-loaded to:
 - Discretionary Consulting
 - Discretionary Management
 - Outsourced Chief Investment Officer (OCIO)

The Facts:

- ❑ Fiduciary responsibility cannot be outsourced, the plan administrator will always retain ultimate fiduciary responsibility for monitoring and oversight
- ❑ But, fiduciary responsibility can, and in some situations should, be shared with an expert

6

The Outsourced Fiduciary – The Legal Basics

Fiduciary duty has two main components:

- **Duty of loyalty**
 - No conflicts of interest ... ever
 - Fiduciary may never prefer personal interest to interests of plan beneficiaries
- **Duty of Prudence**
 - Largely about the standard of care
 - Pension legislation imposes a reasonable standard of care unless the fiduciary has expertise. Experts are generally subject to an expert standard.

The Outsourced Fiduciary – Legal Implications

7

- **Plan administrator perspective**
 - **Ultimate fiduciary responsibility, therefore:**
 - **Due diligence before appointing the OCIO**
 - Conflicts?
 - actuary, investment consultant, benchmarking agent and OCIO?
 - Understand scope of outsourced activity
 - **Continual monitoring and oversight of OCIO**
 - Set measurable goals or standards
 - Reasonable and understandable reporting
 - **Contracting – fiduciary basics**
 - Acknowledge that OCIO is a fiduciary
 - Acknowledge that expert standard of care applies
 - Appropriate disclosure of fees and conflicts
 - Resist or challenge limitations of fiduciary liability and indemnities

The Outsourced Fiduciary – Legal Implications

8

- **From the perspective of the OCIO:**
 - **Be mindful of possible co-fiduciary status imposed by statute:**
 - Define scope of engagement
 - **Contracting – fiduciary basics**
 - Limit fiduciary acknowledgement – co-fiduciary status
 - Limit standard of care by relating it to specifics of engagement
 - Limit liability and obtain reasonable indemnities
 - Make appropriate disclosure of fees and conflicts to avoid invalidating contract factors
 - **Avoid selling the myth – fiduciary duty is not fully outsourced**
 - Explain conflicts
 - Extent of expertise relevant to scope

ESG: What's It All About, Legally ?

9

1. May pension plan fiduciaries take ESG factors into account?
 - **Yes**, if relevant to purpose -- which is invariably a financial purpose, namely to provide retirement income security
2. Must they take ESG factors into account?
 - **Yes**, if fiduciary has or can reasonably obtain ESG information relevant to purpose and it is material to financial risk or reward
3. How should they engage on ESG factors?
 - Spectrum of responses, based on impact on financial risk and reward
 - Divestment is not the only response
 - Active engagement may be superior legal/fiduciary response
 - Does it matter if its DB or DC? (**Yes, maybe**)
 - Do the moral, ethical or philosophic ESG concerns of participants matter? (**Not really**)
4. Can plan assets be invested to avoid ESG harm or promote ESG good?
 - **No**, unless the harm or good is a collateral benefit arising from pursuing the Plan's primary purpose, or a tie-breaker, or there is a legal direction in the foundation documents

McCarthy Tétrault LLP / mccarthy.ca

Investment Policy

10

- "shall take into account the extent to which portfolio managers are able to take ESG factors into account"

- "shall take reasonable and proper care to consider ESG opportunities and risks when making direct investments"

- "engage with investee or investment manager to seek information and understanding of the effect of ESG factors on the investment decision"

McCarthy Tétrault LLP / mccarthy.ca

11

Pension Scams -- Don't Get Stung



McCarthy Tétrault LLP / mccarthy.ca

12

Pension Scams

In 2019, UK Pension Ombudsman upheld a complaint against a plan administrator for failure to carry out due diligence before transferring a member's commuted value to a fraudulent pension arrangement, in 2013.

- ***Pensions Ombudsman, Mrs. H, PO-21489, Hampshire Pension Scheme***

Even though Mrs. H. acknowledged receiving from the Plan administrator a pension fraud warning document prepared by the Government, the Ombudsman found that the administrator should have engaged directly with the member about the red flags, explained its concerns and pointed out the possibility that the receiving plan could be a scam. It was not enough to merely pass on a copy of the Government's "Scorpion Warning".

The Ombudsman ordered the plan to reinstate the pension and pay £500 in damages.

McCarthy Tétrault LLP / mccarthy.ca

Pension Scams

Pension vs. Commuted Value ?

- Can be significant

Should Canadian administrators communicate more than:

- “Get professional financial advice” ?

Some administrators might also suggest:

- consider fees and expenses,
- whether “excess CV” subject to tax,
- comfort with DIY investments, and
- survivor benefit issues

Pension Scams: FSCO/OSC/FSRA Regulatory Warnings:

- **Pension Unlocking: Non-Hardship**
 - <http://www.fSCO.gov.on.ca/en/pensions/lockedin/Pages/nonhardshipunlocking.aspx>
 - The creditor protection provisions of the Pension Benefits Act no longer apply to any money withdrawn from an Ontario locked-in account and the money may be seized by your creditors.
 - Money withdrawn from your Ontario locked-in account is subject to income tax, which may be withheld at the time the withdrawal is made.
 - Before you make an application in Ontario for special access to money in your locked-in account, it's important to verify that your locked-in account is subject to Ontario law, rather than federal legislation or the law of another province or territory. If you worked for a federally regulated industry such as banking, telephone, television or airline transportation, for example, your locked-in account may be subject to federal law. If you're not sure, check with the bank, insurance company or other institution that administers your account. If their records indicate that your account is not subject to Ontario law, the financial institution cannot release any money from your locked-in account based on the Ontario unlocking rules.
 - Where your spouse's signed consent is required, you must include their signed consent on your application to withdraw money from an Ontario locked-in account except where you are applying to withdraw amounts that exceed federal Income Tax Act limits. The spouse's signature must be obtained on a date not more than 60 days before the date your financial institution receives your completed application.
 - Your completed, signed and dated application must be received by the financial institution that administers your Ontario locked-in account within 60 days of the date it is signed.
 - Withdrawing money from your locked-in account may affect your eligibility for certain government benefits, such as social assistance.
- **Beware of Scams Involving Your Retirement Savings, Regulators Warn**
 - <http://www.fSCO.gov.on.ca/en/pubs/News-Releases/Pages/20040923-warning.aspx>

15

Pension Scams: Red Flags

Celeste had a pension fund from a former job in a locked-in retirement account (LIRA). She knew that she couldn't withdraw money from the LIRA until she reached the age of 55. She also knew that there was a limit to how much money she could take out each year and that she would have to pay tax on the money she withdrew. But when a flyer appeared in her mailbox promising that she could withdraw as much as she wanted from her LIRA without paying tax, she was intrigued.

Celeste phoned the number on the flyer. The person who answered told her that his company was offering a special Registered Retirement Savings Plan (RRSP) loan that would let her get around the tax laws and tap into her locked-in funds. To get the loan, he said, Celeste had to sell the investments she now held in her LIRA and then use the money to buy shares of his start-up company. In return, he promised to loan her back 60 to 70 percent of the money she invested, and keep the rest as a fee. Celeste would get ready cash, pay no tax on it and still hold a valuable investment in her LIRA.

The offer was too good to pass up. Celeste agreed. She cashed in her investments and bought shares of the company. Then she waited for her loan.

It never arrived. The investment she'd bought was worthless. On top of that, she had to pay tax to Revenue Canada for money she never received.

Lessons Celeste learned:

- Promises to "get around" the tax laws are usually signs of a scam.
- You should never invest with a seller who is not registered to sell securities.
- A complicated, confusing process is a sign that you should get independent advice.

McCarthy Tétrault LLP / mccarthy.ca

16

Pension Scams – Warning Signs

- Cold call, text message, or website pop-up
- "One-off opportunity", "time limited opportunity", "legal loophole"
- Single investment (rather than diversification of assets)
- Unrealistic returns – 8% or more
- Rush to sign documents
- "Government Authorized", but not registered with OSC
- Offshore investments

McCarthy Tétrault LLP / mccarthy.ca

Pension Scams

Bottom-line Communication:

- Avoid giving financial or legal advice
- Advise members to get professional financial advice, but understand that:
 - Not all financial advisors have same depth of knowledge
 - Not all put member interest ahead of the advisor's personal interest (and worse, there are some scammers) – so do the due diligence
- Reference regulatory bulletins or other information?
 - FSCO/FSRA
 - <http://www.fSCO.gov.on.ca/en/pensions/lockedin/Pages/nonhardshipunlocking.aspx>
 - BPM, August 23, 2019: *Should you Take Your Pension Commuted Value?*
 - <https://bpmmagazine.com/article/should-you-take-your-pension-commuted-value/>

SPEAKER BIOGRAPHIES

mccarthy
tétrault





Randy Bauslaugh

Partner

Toronto

rbauslaugh@mccarthy.ca

t. 416-601-7695

Bar Admission

Ontario 1983

Law School

Osgoode Hall Law School

Practices

Pensions, Benefits, & Executive Compensation

Industries

Automotive
Pension Funds Group

With a strong ability to communicate the complex and finding practical solutions, Randy possesses the knowledge and expertise to advise clients on the most sophisticated pension and benefits plans

Randy Bauslaugh leads McCarthy Tétrault's national Pensions, Benefits & Executive Compensation practice.

Randy provides legal advice to sponsors, administrators, service providers and governments on a wide range of pension 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 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 proved 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 board member, 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. He is currently on the Board of Scarborough Health Network Foundation and is 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:

Randy Bauslaugh

Partner

Toronto

rbauslaugh@mccarthy.ca

t. 416-601-7695

- On behalf of the Canadian Bar Insurance Association developing and implementing a multi-employer target benefit plan for law and accounting firms;
- 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 PBFG refunds;
- On behalf of Brewers Retail Inc., Canada's largest privately owned chain of retail outlets selling beer and other mal beverages, in class and regulatory proceedings relating to future indexing of benefits;
- 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;
- Assisted in the successful representation of a plan administrator and sponsor in a \$140 million class action relating to the proper calculation of benefit entitlements; and
- Representing former senior executives on tax and other issues relating to their executive pension and compensation arrangements.

RECENT SPEAKING ENGAGEMENTS

- ESG and Your Portfolio, Putting Beneficiaries First. Day long conference for trustees of various New York City Pension Funds. Key note speaker, CFA Institute of New York City, November 4, 2019
- Target Benefit Developments What's New and What's Needed, OBA Pension Hot Spots, Toronto, ON, October 8, 2019
- Composite Pension Plans: The Canadian Experience, NCCMP, Hollywood, Florida, September 21, 2019
- Better Pensions for Law Firm Employees, TLOMA Toronto, August 9, 2019
- How UN Development Goals are Shaping Investment Managers, Korie Global, Miami, Florida, July 10 to 12, 2019
- Workshop #13 – Flexible Benefits , IPEBLA Lisbon, Portugal, May 19 to 22, 2019
- Workshop #9 – Flexible Benefits , IPEBLA Lisbon, Portugal, May 19 to 22, 2019

Randy Bauslaugh

Partner

Toronto

rbauslaugh@mccarthy.ca

t. 416-601-7695

- Trends: The View from Our Offices?, McCarthy Tétrault Client Conference Vancouver/Calgary, Feb. 6 & 7, 2019
- Trends: The View from Our Offices?, McCarthy Tétrault Client Conference Toronto, November 15, 2018
- Cost Efficient Retirement Plans, Law Firm Leadership Conference, Toronto, November 8, 2018
- Investment Policy and Investment Duties of Pension Fiduciaries, Kried Global Summit, Miami, Florida, July 10 to 13, 2018
- Target Benefit Plans — Hitting the Bulls-Eye, McCarthy Tétrault Annual Labour & Employment Seminar, Vancouver, February 7, 2018
- Target Benefit Plans — Hitting the Bulls-Eye, McCarthy Tétrault 1st Annual Pension Seminar, Calgary, February 8, 2018
- Recent trends in Pension Governance and Legislative & Regulatory Update, Independent Actuaries Network, Mississauga, February 27, 2018
- Innovative Pension Plan Design, Osgood Certificate Program, Toronto, March 21, 2018
- Session 3 - Managing Environmental Social and Governance (ESG) and Responsible Investing, Iceland Chamber of Commerce, Reykjavik, Iceland, May 12 to 16, 2018
- Managing Environmental, Social And Governance (ESG) Factor Integration, co-speaker Dr. Hendrik Garz and Target Benefits - A Bold Innovation in Pension Plan Design, ICA Conference, Berlin, June 3 to 8, 2018
- Workshop XIX: Say it Ain't So — Dutch to go DC, CBA/ABA/IPEBLA Conference, Boston, MA, June 10 to 12, 2018

Articles

- ["A Tale of Two Pension Plans: My Experience with a Contingent Pension Plan and the Lessons Learned"](#), *Institut C.D. HOWE Institute*, October 3, 2019
- ["How Funds Can Achieve ESG Integration."](#) *top1000funds.com*, June 2019
- ["Dumb and Dumber: Giving Members Investment Choice in DC Plans"](#), *International Pension Lawyer*, Volume 90, May 2019
- ["Pension Fund Investment: Managing Environmental, Social and Governance \(ESG\) Factor Integration"](#), *Trust Law International*, Volume 32, Number 4, 2019

Randy Bauslaugh

Partner

Toronto

rbauslaugh@mccarthy.ca

t. 416-601-7695

- ["End Discrimination Against Non-Union Workplaces"](#), Institut C.D. HOWE Institute, Intelligence Memos, February 26, 2019

Awards & Rankings

Chambers Global

Band 1: Pensions, Benefits & Executive Compensation

Chambers Canada

Band 1: Pensions & Benefits

Canadian Legal Lexpert Directory

Most Frequently Recommended: 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

Randy Bauslaugh

Partner

Toronto

rbauslaugh@mccarthy.ca

t. 416-601-7695

Recent Experience

- **Thompson Street Capital Partners' portfolio company Tropichem Research Labs, LLC acquires TetraGenx**
March 21, 2018
- **Shell divests oil sands interests in Canada in C\$11.1B transaction**
May 31, 2017

Recent Insights

- **Pension Fund Investment: Managing Environmental, Social and Governance (ESG) Factor Integration**
May 01, 2019
- **Ontario Budget 2019: Pensions**
April 11, 2019
- **Giving Individual Investment Choice in DC Plans Is A Bad Idea**
April 02, 2018

Events

- **9th Annual Pension & Benefits Seminar: Cooking With Gas – How We Can Help You With Plan Management**
October 15, 2019
- **8th Annual Vancouver Pension and Benefits Seminar: Diary of a Pension Fiduciary**
January 18, 2019
- **Pensions Update: Legal Developments & Emerging Trends in British Columbia, Alberta and Beyond**
December 10, 2018
- **Pensions Update: Legal Developments & Emerging Trends in British Columbia, Alberta and Beyond**
December 06, 2018

Greg Hurst

Guest Speaker Profile

Greg Hurst & Associates Ltd.

Greg Hurst is well-known in the pension industry for his innovation and entrepreneurship. He has held administrative, actuarial, consulting and leadership roles within the pension industry since 1982, including roles with large international consulting firms and a large Canadian insurer. Greg started his own firm in 2010 to tackle the complexities of new GST/HST (and QST) rules imposed on pension and investment plans, and has become recognized as the leading pension tax practitioner in this area. Greg has been a prolific author of articles on pension matters, and is frequently asked to comment on pension related matters.



Kelleher Lynch

Associate

Toronto

klynch@mccarthy.ca

t. 416-601-8177

Bar Admission

British Columbia 2017

New York, USA 2012

Ontario 2014

Practices

Pensions, Benefits, & Executive
Compensation

Industries

Pension Funds Group

Kelleher Lynch is an associate in the Pensions, Benefits and Executive Compensation Group in Toronto. He advises on legal issues pertaining to provincially and federally regulated pension plans and employee benefit arrangements.

Prior to joining McCarthy Tétrault, Kelleher worked on pension-related legal and regulatory matters with the Financial Services Commission of Ontario and pension policy development with the Ministry of Finance. He also served as counsel with the Department of Justice on a range of administrative and litigation matters, and previously clerked for the Honourable Justice Glennys L. McVeigh and the Honourable Justice Simon Fothergill at the Federal Court.

Kelleher has recently acted for:

- Unilever Plc in the sale of its spreads business to KKR for US\$8 billion
- 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
- 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
- Olymel L.P. in the purchase of all the issued and outstanding shares of Pinty's Delicious Foods Inc.
- Brookfield Asset Management in the C\$4.3 billion acquisition of Enercare Inc. by Brookfield Infrastructure Partners
- Nestlé S.A. in its US\$7.15 billion strategic alliance with Starbucks to market Starbucks' consumer and foodservice products globally
- 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
- 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
- Nestlé S.A. in its US\$2.3 billion acquisition of Atrium Innovations Inc.
- Vista Equity Partners in the acquisition of Obero Technologies Inc. by Xactly Corp

Kelleher received his LLB from Trinity College Dublin in 2009 and his

Kelleher Lynch

Associate

Toronto

kllynch@mccarthy.ca

t. 416-601-8177

LLM 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 Upper Canada and the Law Society of British Columbia.

Recent Experience

- **Rayonier Advanced Materials completes the sale of its Matane pulp mill in Quebec to Sappi Limited for US\$175M**
November 04, 2019
- **Novacap acquires Spectrum Health Care**
July 11, 2019
- **Morningstar Inc. enters agreement to acquire DBRS for US\$669M**
July 02, 2019
- **CCMP Capital Advisors enters into approx. US\$1B agreement to acquire BGIS**
May 31, 2019

Recent Insights

- **Ontario Introduces More “Good News” Legislation for Employers**
December 10, 2018

Kelleher Lynch

Associate

Toronto

kllynch@mccarthy.ca

t. 416-601-8177

Events

- **9th Annual Pension & Benefits Seminar: Cooking With Gas – How We Can Help You With Plan Management**
October 15, 2019
- **8th Annual Vancouver Pension and Benefits Seminar: Diary of a Pension Fiduciary**
January 18, 2019
- **Pensions Update: Legal Developments & Emerging Trends in British Columbia, Alberta and Beyond**
December 10, 2018
- **Pensions Update: Legal Developments & Emerging Trends in British Columbia, Alberta and Beyond**
December 06, 2018



Deron Waldock

Partner

Toronto

dwaldock@mccarthy.ca

t. 416-601-7523

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

Deron Waldock

Partner

Toronto

dwaldock@mccarthy.ca

t. 416-601-7523

Association, Derron 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 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

Recognized Practitioner: Pensions & Benefits

Recent Experience

- **Rayonier Advanced Materials completes the sale of its Matane pulp mill in Quebec to Sappi Limited for US\$175M**
November 04, 2019
- **Acuity Brands Lighting, Inc. acquires The Luminaires Group**
September 17, 2019
- **Cortland Partners, LLC to acquire Pure Multi-Family REIT LP for US\$1.2B**
- **Xilinx acquires NGCodec**
July 01, 2019

Recent Insights

- **Ontario Budget 2019: Pensions**
April 11, 2019

Deron Waldock

Partner

Toronto

dwaldock@mccarthy.ca

t. 416-601-7523

Events

- **9th Annual Pension & Benefits Seminar: Cooking With Gas – How We Can Help You With Plan Management**
October 15, 2019
- **8th Annual Vancouver Pension and Benefits Seminar: Diary of a Pension Fiduciary**
January 18, 2019



Gregory Winfield

Counsel

Toronto

gwinfiel@mccarthy.ca

t. 416-601-7907

Bar Admission

Ontario 1988

Law School

Queen's University

Practices

Pensions, Benefits, & Executive Compensation

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 25 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 25 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.

Gregory Winfield

Counsel

Toronto

gwinfiel@mccarthy.ca

t. 416-601-7907

Prior to joining McCarthy Tétrault, he worked for the Pensions Commission of Ontario ("PCO") (predecessor to the Financial Services Commission of Ontario ("FSCO")) 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 MEPP Advisory Committee to the FSCO (having served two terms on the Legal Advisory Committee).

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

Awards & Rankings

Chambers Canada

Leading Lawyer: Pensions & Benefits

Chambers Global

Leading Lawyer: Pensions & Benefits - Canada

The Canadian Legal Lexpert Directory

Repeatedly Recommended: Pensions & Employee Benefits - Employer

Best Lawyers in Canada

Leading lawyer in the area of employee benefits law

Recent Experience

- A consortium agrees to acquire up to a 100 per cent interest in Alberta PowerLine for up to C\$1.7B
- OMERS to acquire 10.01% stake in 407 International from SNC-Lavalin for C\$3.25B
- Financing for acquisition of Sandvine Corporation by affiliate of Francisco Partners
September 21, 2017

Gregory Winfield

Counsel

Toronto

gwinfiel@mccarthy.ca

t. 416-601-7907

Recent Insights

- **Don't Forget About the Upcoming Changes to CPP**
October 05, 2018

Events

- **9th Annual Pension & Benefits Seminar: Cooking With Gas – How We Can Help You With Plan Management**
October 15, 2019