

7<sup>th</sup>

# Pension Law & Litigation

Protecting the organization in an era of increased pension liabilities, shortfalls and litigation

APPLICABLE TOWARD CPD REQUIREMENT

**Workshop Included: Avoiding Being Outclassed in Pension Class Actions**

## participating organizations

Aon Hewitt  
Blakes, Cassels & Graydon LLP  
Borden Ladner Gervais LLP  
British Columbia Ministry of Attorney General  
ComprehensivePensionGovernance  
Fasken Martineau DuMoulin LLP  
Financial Institutions Commission of British Columbia  
Lawson Lundell LLP  
Mercer Canada Ltd.

## who should attend

Pension Plan Administrators, Committee Members, Trustees; Senior HR, Pension & Benefits and Risk Management Professionals; In-House Counsel; Actuaries; Financial Officers; Lawyers; Pension Consultants

## course highlights

Get the latest on current regulatory and legislative issues  
How to avoid being outclassed in pension class actions  
Developing an effective pension risk management approach  
Avoiding litigation over pension shortfalls  
Avoiding liability as a plan sponsor or trustee



**Course Leader**  
Ross Gascho,  
Fasken  
Martineau  
DuMoulin LLP



**Course Leader**  
Orla Cousineau,  
Mercer  
Canada Ltd.



Lisa Chamzuk,  
Lawson  
Lundell LLP



Bita Jenab,  
Aon Hewitt



David Crerar,  
Borden Ladner  
Gervais LLP



Eleni Kassaris,  
Blake, Cassels  
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Michael Peters,  
Financial  
Institutions  
Commission of  
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Gerry Wahl,  
Comprehen-  
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Governance

Sandra  
Wilkinson,  
Ministry of  
Attorney  
General (British  
Columbia)

### COURSE LEADERS

#### ROSS GASCHO

Ross Gascho is a partner in the pension and employee benefits law group of Fasken Martineau DuMoulin LLP in Toronto.

#### ORLA COUSINEAU

Orla Cousineau, Partner with **Mercer (Canada) Ltd.** Ms. Cousineau is a lawyer in Mercer's Retirement, Risk and Finance business. She is an advisor to several jointly-trusted and corporately governed pension plans.

#### LISA CHAMZUK

Since 2002, Lisa Chamzuk, of **Lawson Lundell LLP**, has practiced in the area of pension and employee benefits exclusively, representing boards of trustees and corporate plan sponsors in both the public and private sector and in a wide variety of industries.

#### DAVID CRERAR

David Crerar is a partner in the corporate and commercial litigation group at **Borden Ladner Gervais LLP**, and serves as an adjunct professor at the University of British Columbia Faculty of Law.

#### MICHAEL PETERS

Michael Peters is Executive Director, Pensions, for the **Financial Institutions Commission of British Columbia**.

#### GERRY WAHL

Gerry Wahl is the Managing Director at **Comprehensive Pension Governance** and Ampersand Advisory Group. His expertise includes pension governance, administration investments, risk management for DB and CAP programs.

#### SANDRA WILKINSON

As Legal Counsel to the Financial Institutions Commission, Sandra Wilkinson of the **BC Ministry of Attorney General**, Legal Services Branch is responsible for advising the Financial Institutions Commission, Superintendent of Financial Institutions, Superintendent of Pensions, Superintendent of Real Estate and Registrar of Mortgage Brokers.

#### BITA JENAB

Bitra Jenab is a senior actuary and Senior Vice-President in **Aon Hewitt's** Vancouver Retirement Strategies practice, providing actuarial and pension consulting services to a variety of clients in the public and private sectors.

#### ELENI KASSARIS

Eleni Kassaris is a long-time member of the litigation and dispute resolution, labour and employment, privacy and pension and employee benefits groups at **Blake, Cassels & Graydon LLP** in Vancouver.

### CO-LECTURERS

## COURSE PROGRAM

### PENSION LEGISLATION & REGULATION: WHAT YOU NEED TO KNOW

In a rapidly changing regulatory environment it is important for new trustees and pension committee members to have a thorough understanding of the current regulatory landscape as it affects legal requirements for pension plans and administrators. This session will explore the legislative and regulatory environment in which pension plans operate.

- The role of federal and provincial Pension Benefits Acts
- The role of the Income Tax Act
- The roles of federal and provincial pension regulators
- National regulatory initiatives and the role of CAPSA
- CAPSA guidelines as they relate to plan trustees or pension committee members

### PENSION PLAN RISK MANAGEMENT

How does an organization determine the amount of risk to undertake in its pension plan? The key to success is determining which of the most common danger areas merit attention from the plan sponsor and then taking appropriate action to mitigate these risks. This session will focus on positive actions sponsors can take today to manage members' expectations and help members achieve their goals.

- Identifying the risks that you need to manage
- Financial and design risks
- Creating an effective and responsive risk management system
- Instituting a risk review process that identifies issues before they become problems
- Determining the best investment strategy to manage pension funding risk

### SUPPLEMENTARY COURSE MATERIAL

Federated Press is now providing delegates with access to an innovative new database containing at least 25 interactive multimedia presentations by leading experts and approximately 20 hours of lectures on the topics covered by this course, including all slides and speakers' papers. See the list of presentations on page 4.

Delegates will also receive a trial subscription to the Pension Channel, a much broader resource representing hundreds of hours of interactive multimedia lectures on leading edge Pension topics as delivered at our many recent Pension conferences and courses.

- *This program can be applied towards 9 of the 12 hours of annual Continuing Professional Development (CPD) required by the Law Society of Upper Canada. Please note that these CPD hours are not accredited for the New Member Requirement.*
- *For Alberta lawyers, consider including this course as a CPD learning activity in your mandatory annual Continuing Professional Development Plan as required by the Law Society of Alberta.*
- *Attendance at this course can be reported as 12 hours of Continuing Professional Development (CPD) to the Law Society of B.C.*
- *The Barreau du Québec automatically accredits training activities held outside the Province of Quebec and accredited by another Law Society which has adopted MCLE for its members*
- *Attendance at this course can be reported as 12 hours of Continuing Professional Development (CPD) to the Law Society of New Brunswick*

### PROTECTING THE ORGANIZATION THROUGH COMMUNICATING PENSION BENEFITS

The business rationale for a robust communications program has historically been strong. More recently, difficulties in financial markets have resulted in regulators seeking more transparency in pension arrangements, with significant consequences for employers and administrators. This presentation will discuss:

- Communications an employer or administrator must provide in order to meet best practices
- What plan members want to hear
- Investment education vs investment advice
- Latest cases, legislation and regulatory developments concerning pension and benefits communication

### DC PLAN ISSUES

Under defined contribution plans, employers must be more vigilant with regards to governance issues such as providing employees with proper investment options, plan communication and investment education. This session will examine the heightened governance requirements of DC pension plans.

- Understanding DC plan risks and potential liabilities
- Advising plan members on investment decisions
- DC plan fees and expenses disclosure
- Improving plan design to address investor behaviour

### PENSION REFORM

The governments of Ontario, Alberta, British Columbia and Nova Scotia established expert commissions to examine their pension standards legislation. All of the commissions are tasked with looking at issues relating to the security, viability and sustainability of the private pension system. This session will look at B.C. reform initiatives and how they might affect the pension system in Canada.

- Latest developments in pension reform
- Current pension reform initiatives in B.C.
- Findings of the Alberta-B.C. Pension Standards Review
- Key panel recommendations

### IDENTIFYING AND ADDRESSING PENSION LEGAL RISKS IN M&AS AND RESTRUCTURINGS

In the future, pension aspects will be at the centre of corporate financings and M&A activity. This discussion details how to avoid or mitigate key pension legal risk during a restructuring or M&A.

- Debt capacity analyses: taking account of pension deficits and their funding implications
- Responsibility of the plan sponsor under proposed CCAA pension regulations
- Transferring assets and liabilities
- To merge or not to merge pension funds?

### LIABILITY & THE TRUSTEE

This discussion details the legal pitfalls of acting as a trustee, including the main sources of liability and how to avoid them.

- Liability: what happens when there is a breach of trust?
- Protection from personal liability
- How common law impacts the day-to-day role of trustees and plan sponsors
- Legal requirements for trustee learning

### FIDUCIARY DUTIES

Trustees are answerable to every member for the proper administration of the trust enforcement. This discussion will examine the key issue of sorting the fiduciary duties of the trustees from their duties in other capacities.

- Acting in the best interests of the plan beneficiaries: a definition
- The duty of evenhandedness in a pension trustee context
- Resolving all the duties: statutory, the trust agreement, and equity
- Communicating to members their rights and entitlements

### ASSESSING & MANAGING CONFLICTS OF INTEREST

From plan sponsors to administrators, from actuaries to consultants, potential conflicts abound around pension management, particularly in light of proposed changes in liability for underfunding. This discussion details how to avoid potential conflicts of interest among all players.

- The impact of a pension deficit on collective bargaining strategies
- Using pension deficits to contain demands for benefit increases
- Managing conflicts of interest in pension investment advisors
- Developing a procedure for assessing conflicts of interest

### PENSION MISREPRESENTATION CLAIMS

Pension misrepresentation claims against companies and actuarial firms are on the rise. Rare in Canadian law until recently, the full exposure posed by such claims remains unknown. Any company with a pension plan, however, may be sitting on an unknown and enormous time-bomb of litigation and liability. This session will look at:

- Where pension misrepresentation claim most frequently arise
- Addressing pension misrepresentation risks
- Risks in providing employees with the option of switching from DB plan to a DC plan
- Insight into the key issues involved in the Dawson case: DC plan conversion trial

## WORKSHOP

### AVOIDING BEING OUTCLASSED IN PENSION CLASS ACTIONS

Class action litigation is expanding - and pension cases are a prime source. While pension litigation in Canada was formerly about surpluses, the new wave in pension cases concern the breadth and content of pension plan administrators' and sponsors' trust and fiduciary obligations. This workshop will explore developments in pension class actions.

- The suitability of class actions as a means of litigating and resolving pension claims
- Types of claims against plan sponsors and administrators
- Actuarial and technical evidence on certification motions
- Insight into the key issues involved in the Dawson case: DC plan
- Actions against third parties: corporate trustees, advisors and auditors

## MULTIMEDIA PRESENTATION

Your registration includes an interactive multimedia database comprising the following presentations from recent Federated Press courses and conferences. They are presented in their entirety with complete audio or video and accompanying slides. You may also purchase the multimedia proceedings of the course which will be available on CD-ROM 60 days after the course.

### Pension Plan Risk Management

Marc Williams  
Towers Watson

### DC Plan Issues

Rosalind Gilbert  
Aon Hewitt

### Identifying and Addressing Pension Legal Risks in M&As and Restructurings

Sean Maxwell  
Blake, Cassels & Graydon LLP

### Liability and the Trustee

Craig A.B. Ferris  
Lawson Lundell LLP

### Fiduciary Duties

David Blair  
Allison Tremblay  
Victory Square Law Office, LLP

### Assessing and Managing Conflicts of Interest

Randy Bauslaugh  
McCarthy Tetraault LLP

### Avoiding Being Outclassed in Pension Class Actions

Jason Murray  
Klein Lyons

### Legal Risks Associated with Auto-Enrollment

Randy Bauslaugh  
McCarthy Tetraault LLP

### Pension Reform

Joann Cain  
Ministry of Finance, Government of British Columbia

### Pension Regulation: What You Need to Know

Christine Anderson  
Financial Services Commission of Ontario

### TTC Pension Plan Case Study: Effective Accountability for Pension Management

Brian Leck  
Toronto Transit Commission

### Pension Concerns in Bankruptcy Proceedings: An Overview of the Main Issues and Legislative Reform

Susan Rowland  
Goodmans LLP

### A Union Perspective on Pension Plan Governance

Jo-Ann Hannah  
CAW-Canada

### Pension Funding: Practical Tools to Address Funding Shortfalls

Charlie Eigl  
OPSEU Pension Trust

### Governance and Best Practices for Member Education and Communication: Impact of the Economic Crisis on Communication Practices

Clark Steffy  
Nadia Savva  
Manulife Financial

### What Does it Take to Establish a Successful Pension Committee?

Peter Gorham  
Morneau Sobeco

### Evolution of Pension Fund Investment Governance

Louise Greig  
Osler, Hoskin & Harcourt LLP

### Impact of Insolvency on Pension Governance

Andrew G. Harrison  
Borden Ladner Gervais LLP

### Managing Pension Risks

Pirjo Davitt  
Office of the Superintendent of Financial Institutions  
Canada

### Governance Structures to Monitor Performance

Tom Iannucci  
Cortex Applied Research Inc.

### Pension Funding and Governance: Practical Tools to Address Funding Shortfalls

Domenic Barbiero  
Eckler Ltd.

### Trends in Pension Litigation

Mary M. Picard  
Fraser Milner Casgrain LLP

### Liability and the Fiduciary

Kathryn M. Bush  
Blake, Cassels & Graydon LLP

### Pension Governance Duties: Safeguarding Pension Funds in an Era of Financial Uncertainty

Caroline L. Helbronner  
Blake, Cassels & Graydon LLP

### Plan Governance Fiduciary Duties: Measuring the risks and rewards of plan investment

Evan Howard  
Ogilvy Renault LLP

**Registration:** To reserve your place, call Federated Press toll-free at 1-800-363-0722. In Toronto, call (416) 665-6868 or fax to (416) 665-7733. Then mail your payment along with the registration form. Places are limited. Your reservation will be confirmed before the course.

**Location:** Metropolitan Hotel Vancouver, 645 Howe Street, Vancouver, BC, V6C 2Y9

**Conditions:** Registration covers attendance for one person, the supplementary course material as described in this document, lunch on both days, morning coffee on both days and refreshments during all breaks. The proceedings of the course will be captured on audio or video. Multimedia proceedings with all slides and handouts can be purchased separately on a CD-ROM which will also include the course material.

**Time:** This course is a two-day event. Registration begins at 8:00 a.m. The morning sessions start promptly at 9:00. The second day ends at 4:00 p.m.

**Cancellation:** Please note that non-attendance at the course does not entitle the registrant to a refund. In the event that a registrant becomes unable to attend following the deadline for cancellation, a substitute attendee may be delegated. Please notify Federated Press of any changes as soon as possible. Federated Press assumes no liability for changes in program content or speakers. A full refund of the attendance fee will be provided upon cancellation in writing received prior to February 29, 2012. No refunds will be issued after this date.

**Discounts:** Federated Press has special team discounts. Groups of 3 or more from the same organization receive 15%. For larger groups please call.

Payment must be received prior to March 5, 2012

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## TO REGISTER FOR PENSION LAW & LITIGATION

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