

## News

### ***Carrigan v. Carrigan Estate Update: Ontario Pension Regulator Supports Common-Law Spouse's Appeal***

**Date:** February 6, 2013

As first discussed in our *FTR Now* of November 7, 2012 "[Ontario Court of Appeal Decision Rewrites the Pension Pre-Retirement Death Benefit Regime](#)", the decision in *Carrigan v. Carrigan Estate* fundamentally altered the interpretation of spousal rights and priorities relating to payment of pre-retirement death benefits. The Court of Appeal awarded the pre-retirement death benefit payable under an Ontario registered pension plan to a member's designated beneficiaries rather than to his common law spouse, on the basis that no benefit was payable to a spouse since the member also had a legally married spouse from whom he had separated but not divorced. The common law spouse is seeking leave to appeal to the Supreme Court of Canada.

In making its decision, the Court of Appeal caused significant uncertainty regarding the administration of pre-retirement death benefits under section 48 of the *Pension Benefits Act*. The Ontario pension regulator, the Financial Services Commission of Ontario ("FSCO"), [has publicly stated that it is supporting the common law spouse's application for leave to appeal](#). FSCO states that the Court of Appeal's decision "was unexpected and inconsistent with how section 48 had been previously administered." The Deputy Superintendent, Pensions, [has written a letter in support of the application](#). The letter sets out FSCO's interpretation of section 48 of the *Pension Benefits Act* and highlights several administrative concerns raised by the Court of Appeal's decision.

We continue to monitor developments in this case and will provide additional updates in the coming months as the application for leave to appeal to the Supreme Court of Canada moves forward. In the meantime, if you have any questions regarding the administration of pre-retirement death benefits, please contact [Stephanie Kalinowski](#), [Natasha Monkman](#) or any member of our [Pension, Benefits and Executive Compensation Practice Group](#).