FTR Now

Supreme Court Denies Leave in *Carrigan*

Date: March 28, 2013

The Supreme Court of Canada will not be providing further clarification regarding the administration of pre-retirement death benefits under section 48 of the Ontario *Pension Benefits Act* ("PBA"). Today, the Court denied leave to appeal in *Quinn v. Carrigan*.

As first discussed in our *FTR Now* "Ontario Court of Appeal Decision Rewrites the Pension Pre-Retirement Death Benefit Regime", the Court of Appeal's decision fundamentally alters 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. The decision was based on an unexpected interpretation of the PBA under which it was held that since the member also had a legally married spouse from whom he had separated but not divorced, there was no spouse who qualified to receive the benefit on the basis that section 48, which gives priority to a spouse, no longer applied. In making its decision, the Court of Appeal caused significant uncertainty regarding the administration of pre-retirement death benefits under section 48 of the PBA. The denial of leave to appeal by the Supreme Court of Canada means that the Court of Appeal's interpretation will stand.

The Ontario pension regulator, the Financial Services Commission of Ontario ("FSCO"), had publicly supported the common law spouse's application for leave to appeal by writing a letter in support of the application. The letter, written by the Deputy Superintendent, Pensions, refers to the Court of Appeal's decision as "unexpected and inconsistent with how section 48 had been previously administered." The letter also set out FSCO's interpretation of section 48 of the PBA and highlights several administrative concerns raised by the Court of Appeal's decision.

In light of FSCO's letter, it remains to be seen whether there will be any policy or legislative changes to restore FSCO's interpretation of section 48 or to address some of the administrative concerns raised by the decision. We will continue to monitor for developments from FSCO or the Ontario legislature regarding the administration of pre-retirement death benefits in Ontario.

In the meantime, if you have any questions regarding the administration of pre-retirement death benefits and the regime established by the *Carrigan* decision, please contact Natasha D. Monkman at 416.864.7302 or any member of our Pension, Benefits and Executive Compensation Practice Group.

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