



Financial Services Commission of Ontario  
Commission des services financiers de l'Ontario

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SECTION: Spousal Rights

INDEX NO.: S500-901

TITLE: Same-Sex Spouse Survivor Benefits  
The Trustees of the OPSEU Pension Plan v. Her Majesty the Queen et al.

APPROVED BY: Superintendent of Financial Services

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EFFECTIVE DATE: December 8, 1998 [No longer applicable - Mar. 2000]

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**What did the Ontario Court of Justice (General Division) decide in the recent case of The Trustees of the OPSEU Pension Plan v. Her Majesty the Queen et al?**

The Trustees of the Ontario Public Service Employees Union Pension Plan (OPSEU) filed an application in the Ontario Court (General Division) asking for directions on whether the definition of spouse in the *Pension Benefits Act* (the "PBA") contravenes the *Canadian Charter of Rights and Freedoms* (the "Charter"). The application was heard on December 4 and the decision was released on December 8, 1998.

The court held that the definition of "spouse" in the PBA contravenes the Charter as discrimination based on sexual orientation. The appropriate remedy for this violation is to strike out the words "either a man or a woman" from the PBA definition of spouse and to substitute therefor the words "either one individual or another, whether of the same or opposite sex".

The decision took effect immediately. Although the Attorney-General has filed notice of appeal, no stay was sought. The decision is therefore the law of Ontario unless a higher court rules otherwise.

**Do pension plan texts have to be amended in order to comply with the above decision?**

No. The plan administrator must administer the plan and fund in accordance with the PBA even if the plan has not been specifically amended to comply. However, it is good practice to amend the plan so that it complies with the PBA.

**Do pension plans have to provide same-sex survivor benefits?**

Because the PBA definition of spouse is to be read to include "same-sex" spouses, plan administrators must provide the spousal benefits required by the PBA to same-sex spouses, regardless of the plan text. A plan administrator who refuses to provide survivor benefits to same-sex spouses would be in breach of the PBA.

**Will employers now be required to fund same-sex survivor benefits?**

Yes. Employers will have to ensure that their plans are funded to support the additional cost of survivor benefits to same-sex

spouses. However, the cost of funding these benefits will likely be minimal.

**Will the Superintendent accept an amendment to a plan, or a plan text, which extends survivor benefits to same-sex spouses of pension plan members?**

Yes. Although all plans must be administered as if they comply with the amended PBA definition of spouse, it is good practice to amend the plan text specifically in order to provide for same-sex spousal benefits. The Superintendent will accept such an amendment if it otherwise meets the requirements of the PBA.

**Could the court appeal affect obligations under the PBA?**

If the appeal is pursued and the appeal court reverses the declaration of invalidity of the “definition of spouse” in the PBA, then pension plans would no longer be obliged to provide same-sex survivor benefits nor fund same. However, the Superintendent would still accept amendments to plans to provide same-sex benefits, as these would be benefits more advantageous than the spousal survivor benefits required by the PBA.

*Reviewed by FSCO Staff in March 1999*