

## **Research Project #8: Analysis of the Financial Services Commission of Ontario**

### **Research Paper: The Effectiveness and Efficiency of Pension Regulation in Ontario and in Comparative Perspective**

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#### **Executive Summary**

This study investigates the efficiency and effectiveness of pension regulation in Ontario.

Pension regulation in Ontario occurs within a broader framework of the Financial Services Commission of Ontario (FSCO), which includes the Financial Services Tribunal (FST). FSCO, which is led by the Superintendent of Financial Services, has authority over enforcing the Ontario *Pension Benefits Act* (PBA). Pensions are just one area for which FSCO is responsible (insurance and mortgage brokers are two other regulated sectors). Similarly, the FST adjudicates disputes between FSCO and affected parties from all regulated sectors.

The criteria for efficient and effective regulation include whether the goals of the PBA are being fulfilled. Because there is significant uncertainty as to precisely which goals the PBA is intended to advance, it is difficult to find a consensus on the criteria for efficient and effective pension regulation. For this reason, it is helpful to examine how pension regulation in Ontario compares with peer jurisdictions in Canada and abroad.

The Pension Division within FSCO regulates all private pension plans in Ontario. In many areas, it has shown a commitment to improving both its efficiency and effectiveness. Its risk-based approach to monitoring and enforcement is designed to maximize the benefits of the resources invested in pension regulation. The Pension Division has also made significant strides in providing better service to its stakeholders. For example, while the number of inquiries from plan members has increased from 650 to over 1000 in the past five years, the response time to address these inquiries has gone down from 94 days to 14 days over the same period.

FSCO is funded by Government on a cost-recovery basis through the collection of levies and fees from regulated pension plans. FSCO exercises functional autonomy in relation to pension regulation. Government has the potential for influence over FSCO, however, through its control over the budget, through the appointment of the Superintendent and through its development of pension legislation.

The FST operates at arm's length from FSCO and ensures that those wishing to challenge FSCO decisions receive a fair hearing before an impartial tribunal. The structure of the FST, which consists of part-time members drawn from across FSCO's

regulated sectors has led to a series of challenges, including a lack of deference from the Courts and a lack of institutional capacity and leadership in relation to pensions.

This study concludes that there are a number of areas where the efficiency and effectiveness of FSCO and the FST could be enhanced. These areas include more transparent benchmarks and performance evaluation and augmenting the statutory tools available to FSCO. Other strategies include strengthening the expertise available both to FSCO and the FST, more emphasis on education, outreach and communication within the FSCO, and greater structural independence for the Pension Division within FSCO, and for FSCO within Government. Effective pension adjudication would be enhanced by an expert body dedicated to resolving pension disputes. Finally, to clarify the criteria for efficiency and effectiveness in pension regulation, the objectives of the PBA should also be more clearly expressed.

The possible benefits of such enhancements are highlighted by an analysis of pension regulation in Australia, the United Kingdom and the United States. While these jurisdictions have national pension regulators, and deal with much higher volumes of pension plans than Ontario, their success in the areas of performance evaluation, education and outreach and their mix of reactive and proactive enforcement strategies provide a valuable basis of comparative data for evaluating pension regulation in Ontario.

Pension regulation in Ontario is neither inefficient nor ineffective; however, it is neither as efficient nor as effective as it could be.