

FOREWORD

To the First Edition

Pension law is fascinating. At a human level, its impact on a rapidly aging population cannot be overestimated. At a legal level, the challenge posed by issues in the field of pension law is unparalleled. Two factors contribute to this challenge.

First, as a newly emerging area of law, its structure is not fully established. Until that occurs, the predictability one needs and expects from the legal system cannot be had. The task of putting structure into this area is made more difficult by the fact that pension law is the intersection of a number of areas of law including contracts, trusts, labour and employment, fiduciaries, and the *Charter*, all made more complicated by an overlay of statutory regulation.

Second, pension law requires a person to analyze any given issue from two very different perspectives. On the one hand, pension law issues must be understood from a broad theoretical perspective. On the other hand, no understanding will be complete or accurate without a descent into a morass of complicated, often-conflicting, detail.

Even a brief consideration of these factors explains the burning need for a single text on pension law to which one can turn for education and assistance. Until now, there has been no such text. Ari Kaplan's *Pension Law* fills the void.

Ari Kaplan has written a book that provides a framework within which to understand pension law. It is balanced and comprehensive in its treatment of the issues. But, in addition, the book explains and explores the detailed considerations that underlie each issue. An

enormous amount of work has been done to locate the relevant materials and then to disseminate the information in an organized, readable fashion.

Five years ago, Ari Kaplan asked me if I would consider co-authoring a book on pension law. I was unable to accept but I urged him—forcefully!—to write the book himself. I am not surprised that it took him the better part of a decade to write but I am so glad that he persisted. This book would have provided me with invaluable assistance these past twenty years, as I explored the field of pension law from the perspective of law professor, regulator, and practitioner. As a judge, I am grateful to have it now.

Work in the pension field is challenging. My personal pleasure in writing this foreword comes from the knowledge that *Pension Law*, by Ari Kaplan, makes that challenge more manageable. I commend this book to all those who work or have an interest in pension law, lawyers and laypersons alike.

Justice Eileen E. Gillese
Court of Appeal for Ontario
Toronto, Ontario

FOREWORD

To the Second Edition

Pension law is an example of how an area of law can quickly develop and emerge as a major subject; not just for lawyers, but also particularly for employees, employers, and professional advisors. But even more important is the challenge to society; generally, how it responds to the myriad policy alternatives and approaches for the design and implementation of legislation that is required to cover the field satisfactorily. Pension law, like other legal regimes such as taxation, builds on numerous other legal subjects to make pension issues even more complex. Consequently, changes in those foundational subjects call for corresponding pension law adjustments, as can fundamental changes in the economic environment of Canada, as we have recently witnessed.

The first edition of *Pension Law* has met with great success. Apart from being the first text on the subject, it has been cited by various tribunals and by all levels of court in Canada, and many authors frequently referred to it in secondary commentary. The field is a dynamic one, with many significant judicial and legislative developments occurring in the six years since the first edition. For example, there have been four pivotal decisions by the Supreme Court of Canada, and the introduction of major reforms to pension legislation across the country.

Arguably, the 2008 economic recession was of paramount importance as an impetus for a second edition. This was without doubt a major, unprecedented, intervening event that tested the coherence, integrity, and adequacy of the pension legal environment. The impact of that occurrence was huge; hardly any entity of any significant size escaped

the need to re-examine its pension arrangements, and that attention has not dissipated. While dealing impressively with the above and related developments, the authors of the second edition have retained the aims of the first edition; that is, to provide lawyers and non-lawyers with a resource as a starting point for legal research—that although emphasizing Ontario, does provide extensive reference to trans-Canadian legislation and experience—and to expound on and explain general principles of pension law, and not technical applications of pension administration. This edition has achieved these aims again with an organizational structure and commentary that is logical, lucid, and insightful.

In highly recommending this book to all who work in or around the pension field, and to those who are otherwise interested in it, I wish also to thank and congratulate the authors for their efforts and generosity in sharing their knowledge, expertise, and insights with the readers of this valuable work.

The Honourable Frank Iacobucci, CC, QC
(Former Justice of the Supreme Court of Canada)

FOREWORD

To the Third Edition

Pension law is a uniquely interesting and complex area of the law. It has a direct impact on individuals, but is also of great importance to corporations and other employers. Pension law in Canada has matured to a key area of the law and business—for example, pension plans can be very significant and influential investors, and at times pensions may act as a catalyst for corporate restructuring. Over the years, what a pension plan may look like and what individual plan members may expect to receive upon retirement has also evolved, as other plan designs have been embraced.

In this third edition of *Pension Law*, Ari Kaplan and Mitch Frazer have updated and compiled the legislative and jurisprudential pension law into one comprehensive book. They have encapsulated the key developments and changes in this dynamic area of the law, including minimum standards, surplus, plan administration, and plan wind up.

When I practised in pension law, I always felt fortunate to work in an area of the law that has a complex legislative framework in addition to an intersection with many other areas of law, including constitutional, labour and employment, trusts, corporate, insolvency, and taxation. The multifaceted nature of pension law ensures that there are always new challenges. In this book, Ari Kaplan and Mitch Frazer ably dissect this complex web into a logical and understandable narrative.

I remember when the first edition of this book came out and I was so grateful to be able to turn to a comprehensive pension law resource. Throughout my years of practice, it was my go-to pension law book. It

is no surprise that this book has been cited by numerous tribunals, as well as all levels of court in Canada. So, when my friends Ari Kaplan and Mitch Frazer asked me to write the foreword to this third edition of the book, as a former pension lawyer who frequently turned to the prior editions of this text, I was honoured.

I recommend *Pension Law* to lawyers, consultants, and others working in the dynamic and challenging pension law field. I also offer my most sincere congratulations and thanks to Ari Kaplan and Mitch Frazer.

Justice Jana Steele
Ontario Superior Court of Justice
Toronto, Ontario