Ontario judges’ group sues pension plan sponsor to prevent investments in derivatives

Michael McKiernan5-6 minutes 4/7/2026

Ontario’s provincially appointed judges are taking their own pension plan to court to prevent the fund from investing in derivatives.

In a notice of application filed with the Ontario Superior Court of Justice in Toronto, the Association of Ontario Judges, which represents current and former judges of the Ontario Court of Justice, said the latest investment plan proposed by the Provincial Judges Pension Board would violate a previous agreement in place between the AOJ and the province to steer clear of derivative products and the “undue risk” the AOJ believes they generate.

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According to the document, which hasn’t been proven in court, the AOJ insisted on the prohibition in 2018 during negotiations with the Crown over a restructuring of the Provincial Judges Pension Plan. The judges’ group objected to a term of a trust agreement that would have authorized the pension board to trade and invest in a full suite of derivative products, including swaps, credit defaults, repurchases, forwards, futures, options, and other types of derivative contracts tied to various indices and equity or debt instruments.

The AOJ says the Crown accepted the removal of the provision, claiming the parties reached a "binding and enforceable agreement" that plan funds wouldn't be invested in derivatives before the trust agreement was finalized in late 2019.

"Derivatives are complex instruments, which impose risks that are difficult to predict and manage," reads the AOJ's notice, citing the central role of derivative investments in both the 2022 U.K. bond crisis and the 2008 global financial crisis. "Even expert market actors are vulnerable to severe losses caused by fluctuations in the prices of derivatives."

Closer to home, the AOJ noted that investment strategies relying on derivatives were also blamed when the Alberta Investment Management Corp., CPP Investments and the Ontario Municipal Employees Retirement System reported multibillion-dollar losses in 2020.

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"The risks associated with derivatives are particularly concerning in the specific context of the [PJPP]. Given the nature of their positions, provincial judges by necessity begin accruing pensionable service time later in life. Serving on the bench requires many judges to forego their prime earning years as practicing lawyers. In many cases, the judge's pension becomes the most valuable asset they own. As a result, the AOJ was reasonably worried about Plan funds being invested in risky assets."

In 2021, the AOJ says it became concerned that the agreement was being ignored after the PJPB released investment strategy documents indicating it planned to allow its asset manager, the Investment Management Corp. of Ontario, to invest funds in derivatives.

According to the AOJ's notice, the derivatives issue was subsequently the subject of mediation between the parties, but the AOJ launched its court action after the PJPB and the Crown unilaterally terminated the talks.

As well as declarations from the court that would allow it to enforce the prohibition on derivatives investments, the AOJ is also seeking confirmation that it's entitled to choose its own PJPB nominee, noting the Crown has resisted appointing the AOJ's preferred candidate, Justice Jon-Jo Douglas. Instead, the AOJ claims the Crown wants to make its own choice from a three-judge shortlist provided by the AOJ.

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Lawyers for the AOJ and Ontario's Treasury Board Secretariat didn't respond to requests for comment, while PJPB counsel Julian Ranger, declined the opportunity.

"As the matter is before the court, we are unable to provide you with further information," said Ranger, a partner in the pension and benefits practice group at Osler Hoskin & Harcourt LLP.

Joe Nunes, executive chairman of Actuarial Solutions Inc., says the governance dispute is likely a byproduct of the unique way that judges' compensation and benefits are negotiated with the province, noting the IMCO is used to handling funds without such specific investment requirements.

"It could be a matter of convenience for them. When you start separating funds out into separate buckets because of particular restrictions in place for certain groups, it's less efficient, administratively speaking," says Nunes, who isn't involved in the case. "With that said, I still think that if they negotiated a trust that says they won't invest in derivatives, then my take is that they shouldn't invest in derivatives."