CITATION: Losak v. The Financial Services Regulatory Authority of Ontario, 2026 ONSC 804
COURT FILE NO.: CV-25-88716
DATE: 2026-02-27

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:	
FRANK LOSAK	J.A. Brown, P. Bates, counsel for the Plaintiff/Responding Party
Plaintiff/Responding Party	
- and -	
THE FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO	S. Bieber, J. Howell, D. Ionis, counsel for the Defendant/Moving Party
Defendant/Moving Party	
	HEARD: January 14 and 15, 2026

ENDORSEMENT ON MOTION FOR SUMMARY JUDGMENT

The Honourable Justice M. Valente

Overview

[1] In this putative class action, the Plaintiff, Frank Losak, seeks to advance a class proceeding against the Defendant, The Financial Services Regulatory Authority of Ontario

('FSRA'), for the loss in value of the proposed class members' shares in Pace Savings and Credit Union Limited ('PACE') that resulted from PACE's ultimate liquidation after being placed in administration.

[2] PACE was a medium-sized credit union based in southwestern Ontario.

[3] Mr. Losak alleges that FSRA is liable in damages pursuant to ss. 75(3) of the *Credit Unions and Caisses Populaires Act*, 2020, c. 36, Sch. 7 (the '*Credit Union Act*'), by reason of its failure to provide an offering statement to the putative class members who purchased securities in PACE while it was in administration. Mr. Losak alleges that an offering statement would have disclosed that the securities were a high-risk investment.

[4] Subsection 75(3) of the *Credit Union Act* creates a right of action for damages for the purchaser of a security where an offering statement contains a misrepresentation. The theory of Mr. Losak's proposed class action is that he, like all putative class members, should have, but did not, receive an offering statement when they acquired PACE shares through transfers from other PACE members, and this omission constitutes a misrepresentation pursuant to ss. 75(3) of the *Credit Union Act*.

[5] For its part, FSRA brings a motion for summary dismissal of Mr. Losak's claim pursuant to Rule 20 of the *Rules of Civil Procedure*, R.R.O. Reg. 194, because it submits there is no genuine issue for trial. Specifically, FSRA submits that Mr. Losak cannot establish that the shares he acquired in PACE, in the circumstances that he acquired them, required an offering statement. Otherwise, it is FSRA's position that according to

the provisions of ss. 75(3), FSRA is not a proper defendant in any event. Finally, FSRA submits that separate from the applicability of ss. 75(3) to the facts of this case and to FSRA, as a defendant, the *Crown Liability and Proceedings Act*, 2019, S.O. 2019, c.7 Sch. 17 (the '*CLPA*'), applies to and bars Mr. Losak's proposed class action.

Summary of the Evidence

(a) The Parties

[6] Mr. Losak is retired after having worked for some twenty years with the city of Hamilton in its waste disposal department.

[7] On October 25, 2018, November 23, 2019, and November 23, 2019, Mr. Losak acquired between $330,500 and $370,971.49 of Class A Shares and Class B Shares in PACE (the record is not clear: these amounts are taken from the statement of claim and Mr. Losak's affidavit affirmed August 11, 2025). Mr. Losak used his retirement savings to acquire the PACE shares.

[8] Mr. Losak obtained his shares by means of share transfer transactions at his local PACE branch in Hamilton. The same PACE employee assisted him on each occasion. Mr. Losak's evidence is that he decided to purchase the PACE shares based on representations made to him by the PACE employee.

[9] FSRA is a corporation without share capital. It is constituted under the *Financial Services Regulatory Authority of Ontario Act*, 2016, S.O. 2016, c. 37, Sch. 8 (the *FSRA*

Act’). FSRA became operational as a regulator on June 8, 2019, when it assumed the roles previously undertaken by the Deposit Insurance Corporation of Ontario (‘DICO’), the Financial Services Commission of Ontario (‘FSCO’) and FSCO’s superintendent.

[10] Pursuant to the *FSRA Act*, FSRA is required to “carry out [a] regulatory function” consistent with enumerated statutory objects, including “to promote and otherwise contribute to the stability of the credit union sector in Ontario”; and to pursue its objects “for the benefit of persons having deposits with credit unions and in such manner as will minimize the exposure of the Deposit Insurance Reserve Fund to loss” (see: *FSRA Act*, s. 3).

[11] Subsection 10(2) of the *FSRA Act* establishes the position of the FSRA chief executive officer (‘CEO’) who is responsible for the management and administration of FSRA and is empowered to exercise specific powers and duties under the *FSRA Act* and the *Credit Union Act*. Mark White served as FSRA CEO at all relevant times.

[12] Generally, the regulatory authority of FSRA is granted by statute to the FSRA CEO rather than the FSRA itself. FSRA is granted only the authority to make rules under its sector statutes. The *FSRA Act* specifically excludes from FSRA the powers and duties assigned to the FSRA CEO. (see: *FSRA ACT*, ss. 6(2)(b), 21(1) and *Credit Union Act*, s. 285(1).

(b) PACE

[13] PACE, like all credit unions, was at all material times a member-owned financial institution. Unlike banks that can have publicly traded share capital, credit unions are considered a form of co-operative, in that their share capital is restructured to their members.

(c) The Share Structure of PACE

[14] The *Credit Union Act* provides for three classes of shares: (i) membership shares; (ii) patronage shares; and (iii) investment shares. PACE's share structure includes each of these three classes of shares.

[15] Membership shares are required under the *Credit Union Act*. These shares reflect a shareholder's membership in the credit union and give the holders of these shares the right to vote in board elections and receive dividends on the credit union's shares (see: *Credit Union Act*, ss. 43(1) and 44(1)). Mr. Losak held membership shares. This class of shares is not at issue on the motion.

[16] The *Credit Union Act* defines patronage shares as "payable to members as a dividend…or as a patronage return" (see: *Credit Union Act*, ss. 45(1), 57 and 58). Patronage shares are typically created to reward members for their patronage.

[17] Investment shares may be issued and offered for sale by a credit union to its members to help maintain capital requirements under the *Credit Union Act* and provide an investment opportunity to members. Investment shares are one of the limited ways in which credit unions can raise capital. Where credit unions have identified opportunities

for growth that will increase their total assets significantly, they may issue investment shares to comply with FSRA's capital rule which requires credit unions to maintain a minimum level of capital in relation to its total assets.

[18] The Class A Shares, otherwise referred to in the record as Class A Profit Shares, acquired by Mr. Losak were issued as patronage shares or as dividends on previously issued Class A Profit Shares or Class B Shares. Class B Shares are otherwise referred to in the record as Class B Investment Shares. Class B Investment Shares, as their name suggests, are investment shares. Mr. Losak also acquired Class B Investment Shares.

[19] In its Third Report, dated May 5, 2023, PACE's court-appointed liquidator, KPMG Inc. ('KPMG'), describes PACE's Class A Shares / Class A Profit Shares as follows:

> Class A Profit Shares were created to reward members for their patronage….
>
> Class A Profit Shares were issued to members as a patronage reward or as dividends on previously issued Class A Profit Shares or Class B Investment Shares at the discretion of management and the board of directors of PCU and/or the predecessor credit unions at various instances in the history of PCU and/or the predecessor credit unions (at paras. 21-22).

[20] Class A Profit Shares issued as patronage shares can only be transferred to PACE or another credit union. On the other hand, Class A Profit Shares issued as dividends on existing Class A Profit Shares or Class B Investment Shares can be

transferred amongst PACE members. In its same Third Report, KPMG explains the transfer rights of the holders of Class A Profit Shares in this way:

> Pursuant to section 45(3) of the CUCPA, the holders of patronage shares cannot transfer an interest in those shares to a person other than the credit union or another credit union and any transaction that purports to make such a transfer is void. Given that certain of the Class A Profit Shares were issued as patronage shares, those shares are not transferrable amongst members. The Class A Profit Shares that were issued as dividends on existing Class A Profit Shares or Class B Investment Shares hold the same transfer rights pursuant to the Offering Statements, the CUCPA and the Articles of Amalgamation as the Class B Investment Shares (at para 27).

[21] Based on the materials filed, it is unclear whether all, some or none of the Class A Profit Shares issued to Mr. Losak were acquired as patronage shares or as dividends on previously issued shares.

[22] In so far as Mr. Losak's Class B Investment Shares are concerned, the *Credit Union Act* permits credit unions to issue and sell investment shares by means of an offering statement memorandum. Subsection 68(1) of the *Credit Union Act* provides as follows:

> **Selling Securities**
>
> 68(1) A credit union may sell its securities to a member or accept from a member, directly or indirectly, consideration for its securities if, (a) the credit union has obtained a receipt under section 71 for an offering statement respecting the securities and the receipt has not been revoked or expired; …

[23] The offering statement memorandum required by ss. 68(1) is subject to disclosure requirements as stipulated in the *Credit Union Act* and its supporting

regulations, all of which must be satisfied to obtain a receipt from the FSRA CEO (see: *Credit Union Act*, s. 70 & 71; *O. Reg. 105/22*).

[24] The *Credit Union Act* treats inter-member share transfers differently from that afforded to initial share issuances and sales. Once a credit union, like PACE, has issued and sold investment shares pursuant to an offering statement, the *Credit Union Act* permits the subsequent transfers of investment shares between members as prescribed by regulation. Section 67 of the *Credit Union Act* states:

> **Restriction on transfer of securities**
>
> 67(1) A security issued under circumstances described in clause 68(1)(a) shall not be transferred except to another member of the credit union or to a person prescribed by regulation.
>
> **Same**
>
> (2) The transfer of a security that is permitted under subsection (1) shall be made in the manner prescribed by regulation and subject to the conditions prescribed by regulation.

[25] I address the provisions of the regulations as they apply to the transfer of securities between credit union members later in this decision.

(d) The PACE Administration and Liquidation

[26] Administration is a regulatory measure under the *Credit Union Act* that enables a statutorily empowered actor, the Administrator, to exercise powers over a credit union where, for example, the Administrator believes the credit union is conducting its affairs in

a way that may harm the interests of its members or that may increase the risk of claims by its members. The Administrator's powers include carrying on, managing and conducting the credit union's operations and to otherwise exercise the powers of the credit union's board of directors (see: *Credit Union Act*, ss. 233 & 234). From June 8, 2019, the *Credit Union Act* granted the Administrator's powers to the FSRA CEO (see: *Credit Union Act*, ss. 233 & 234).

[27] On September 18, 2018, DICO issued an administration order placing PACE into administration under the *Credit Union Act*'s predecessor legislation. DICO's administration order was made based on a number of prudential findings including conflicts of interests, breaches of fiduciary duty and a number of regulatory breaches regarding PACE's management and operations.

[28] The initial purpose of the PACE administration (the 'Administration') was to resolve PACE's governance issues with the goal of restoring PACE to member-controlled governance. To that end, DICO, as the Administrator, suspended the powers of PACE's board of directors and assumed those powers. On June 8, 2019, when DICO amalgamated with FSRA, the FSRA CEO assumed the role of Administrator and assumed responsibility for the Administration.

[29] PACE initially made progress towards exiting the Administration and returning to member-controlled governance, however, because of the COVID-19 pandemic and various claims relating to the alleged misconduct of PACE's former management, PACE's

financial condition deteriorated. Ultimately, the Administrator determined that FSRA's statutory objects would be best met by selling PACE's business to another credit union and winding up PACE's operations.

[30] On June 30, 2022, PACE sold its operating business together with certain of its assets and liabilities to Alterna Savings and Credit Union Limited ('Alterna').

[31] On August 24, 2022, this court granted an order winding up PACE pursuant to s. 240 of the *Credit Union Act* (the 'Liquidation Order'), and appointing KPMG as liquidator. KPMG has established a claims process for the liquidation. PACE's membership, profit and investment shares were excluded from the sale to Alterna and are to be addressed as a part of the liquidation's claims process.

(e) Mr. Losak's leave to Pursue a Claim

[32] Mr. Losak's position is that it is only as a result of the mismanagement of PACE's business affairs that it ended up in liquidation and the value of his PACE shares were lost as a consequence.

[33] Whereas Mr. Losak may have a claim against PACE, PACE's former management for their misconduct in administering PACE's affairs and PACE's employee who sold him the credit union shares, he is barred from suing them pursuant to the Liquidation Order.

[34] In *Pace Credit Union & Savings Limited v. Financial Services Authority of Ontario*, 2024 ONSC 4489, Steele J. found that Mr. Losak required leave of the court in the liquidation proceeding before bringing claims against both the FSRA and the FSRA CEO. In that same decision, Steele J. granted leave to Mr. Losak to bring this putative class proceeding against FSRA pursuant to the statutory right of action stipulated by ss. 75(3) of the *Credit Union Act*. Steele J., however, denied leave to Mr. Losak to commence a claim against the FSRA CEO on the basis that such a claim was barred by the immunity provisions of the *FSRA Act*.

[35] In a subsequent endorsement in the same proceeding, Steele J. confirmed that Mr. Losak did not have leave to pursue a claim in regulatory negligence against FSRA.

[36] In sum, Mr. Losak has been granted leave to pursue the statutory right of action pursuant to ss. 75(3) of the *Credit Union Act* and it is that right of action that is the focus of this summary judgment motion.

(f) Mr. Losak's PACE Shares

[37] Mr. Losak acquired his Class A Profit Shares and Class B Investment Shares by means of PACE's 'Share Transfer Form'. The Share Transfer Form identifies the type of share and number of shares to be transferred along with the certificate number and the date of transfer. Mr. Losak is described both as the shareholder and transferee.

[38] In the Share Transfer Form, Mr. Losak certified in part as follows:

> I/We do hereby certify that I/We are the recipient(s) of the shares described herein and request that the Board of Directors of Pace Savings & Credit Union Limited transfer the shares described above…

[39] The Share Transfer Forms proffered in evidence are signed by Mr. Losak as transferee and witnessed by PACE employee, Tina Edwards. The forms are not, however, signed by the secretary of PACE's board of directors approving the various share transfers. There is no dispute, however, that Mr. Losak is the owner of the shares acquired by him by means of the PACE Share Transfer Form.

[40] After reviewing all available member files with respect to PACE's Class A Profit Shares and Class B Investment Shares, KPMG confirmed in its Third Report that share transfer forms, like the Share Transfer Form signed by Mr. Losak, were used by PACE in circumstances where there was a transfer of shares from one member to another member. In the same report to the Court, KPMG confirmed that PACE used different share subscription forms when investment shares were sold to members on initial share offerings.

[41] PACE's Class B Investment Shares were originally issued and offered to members at $1.00 per share by means of five separate share offerings by PACE's predecessor credit unions that ultimately amalgamated to become PACE (the "Initial Offerings"). The Initial Offerings were made from September 15, 1995 to July 29, 2009. In each case, the Class B Investment Shares were offered for sale to credit union members under contemporaneous offering statements together with valid receipts. From

1997 to 2013, PACE's predecessor credit unions amalgamated to become PACE, and the Class B Investment Shares became PACE's authorized capital.

[42] After its review of PACE's books and records with a view of accessing PACE's share activity, KPMG further confirmed that it saw no evidence of new share issuances during the Administration period apart from share dividends issued on existing investment and profit shares. The only other share activity observed by the liquidator in PACE's share accounts was with respect to share transfers pursuant to share transfer forms.

[43] Mr. Losak concedes that he did not purchase any Class B Investment Shares at the time of the Initial Offerings which both predated his membership in PACE and his initial acquisition of PACE shares approximately one month after PACE was placed into Administration.

Position of the Parties

[44] FSRA's primary submission in support of its summary judgment is that Mr. Losak is unable to establish that the shares he acquired, in the circumstances that he acquired them, required an offering statement as prescribed by ss. 68(1) of the *Credit Union Act*. FSRA submits that an offering statement is only required upon the initial issuance of the investment shares from the credit union to a member. The *Credit Union Act* does not require an offering statement when shares are transferred as between members.

[45] Apart from Mr. Losak not being able to satisfy this threshold issue, FSRA submits that it is not a proper defendant in Mr. Losak's ss. 75(1) statutory right of action putative

class action. Subsection 75(3) of the *Credit Union Act* limits the categories against whom the relevant statutory right of action may be brought. Mr. Losak relies on two such categories: (1) the directors of the credit union at the time that the offering statement was filed; and (2) every person who sold the security on behalf of the credit union. FSRA's position is that it never acted as a director of PACE at any time, and nor was it capable of doing so pursuant to the prevailing litigation. FSRA further submits at no time did it sell anyone, including Mr. Losak, securities on behalf of PACE.

[46] Finally, FSRA submits that s. 11 of the *CLPA* bars Mr. Losak's claim. Its position is that this provision eliminates any cause of action against Crown agents, like FSRA, in respect of any regulatory or policy decisions that they make in good faith.

[47] In the end, however, FSRA submits that Mr. Losak and the proposed class members are not without recourse. They can advance their claims by means of the claims process established by KPMG and approved by the Court in PACE's liquidation.

[48] For his part, Mr. Losak submits that s. 68(1) of the *Credit Union Act* applies to the acquisition of his shares and to all inter-member share transfers because in part the transaction occurred in circumstances involving consideration. It is Mr. Losak's position that ss. 68(1) is engaged: (1) whenever consideration is exchanged between a seller and a purchaser of shares, including transfers between credit union members; and (2) by the receipt of any consideration by a credit union from its members.

[49] In the case of patronage shares, Mr. Losak submits that because PACE's articles of amalgamation do not permit the issuance of patronage shares, and in any event, as ss. 45(3) of the *Credit Union Act* does not permit inter-member transfers of patronage shares, the ss. 68(3) offering statement exception does not apply and any PACE member who provided consideration in exchange for the transfer of patronage shares was entitled to receive an offering statement as required by ss. 68(1) of the *Credit Union Act*.

[50] It is also Mr. Losak's submissions that FSRA was both a director of PACE at the relevant time and a person who sold security on behalf of PACE within the meaning of ss. 75(3) of the *Credit Union Act*, and therefore, is a proper defendant to these proceedings. Mr. Losak argues in late 2020 when the FSRA CEO, as Administrator, assumed oversight of PACE's day to day operations and FSRA exercised the powers of PACE's board of directors, FSRA became a *de jure* director. He further submits that this Court should otherwise adopt the definition of "director" as stipulated in the *Securities Act*, R.S.O. 1990, c. 5.5 (the '*Securities Act*').

[51] Although Mr. Losak has not proffered any evidence to establish that FSRA sold securities, he submits that he and the proposed class members nonetheless have a right of action against FSRA because it knew or ought to have known, permitted or acquiesced in the sale of PACE securities.

[52] Mr. Losak's final position is that the *CLPA* has no application to this case because the proposed class action is not founded in negligence, and nor is it concerned with the

duties or functions of a legislative nature, or for that matter, regulatory or policy decisions. The claim is based on a statutory right of action to which the *CLPA* has no application.

Governing Legal Principles

[53] Rule 20.04(2)(a) of the *Rules of Civil Procedures* provides that the court shall grant summary judgment if "the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence".

[54] With amendments to Rule 20 introduced in 2010, the powers of the court to grant summary judgment were enhanced. Rule 20.04(2.1) states:

> 20.04(2.1) In determining under clause (2)(a) whether there is a genuine issue requiring trial, the court shall consider the evidence submitted by the parties and, if the determination is being made by a judge, the judge may exercise any of the following powers for the purpose, unless it is in the interest of justice for such powers to be exercised only at a trial:
>
> 1. Weighing the evidence.
> 2. Evaluating the credibility of a deponent.
> 3. Drawing any reasonable inference from the evidence.

[55] In *Pastink et al. v. 1190393 Ontario Limited et al.*, 2023 ONSC 6037, at para. 6, Fowler Byrne J. identified the following summary judgment principles, which I accept and adopt:

> a. There will not be a genuine issue requiring a trial if I am able to reach a fair and just determination on the merits of the motion. This will be the case when I can make the necessary findings of fact, apply the law to those facts

and this is a proportionate and more expeditious means to achieve a just result: *Hryniak v. Mauldin*, 2014 SCC 7, ("*Hryniak*"), at para. 49;

b. I should first determine if there is a genuine issue requiring a trial based only on the evidence before me, without resorting to my enhanced fact-finding powers as set out in r.20.04(2.1). f, after this step, it appears that there is a genuine issue requiring a trial, I should then determine if a trial can be avoided utilizing my powers under r.20.04(2.1) and (2.2). Again, this is as long as their use is not against the interests of justice. Their use will not be contrary to the interests of justice if they lead to a fair and just result, and serve the goals of timeless, affordability, and proportionality, in light of the litigation as a whole: *Hryniak*, at para. 66;

c. The moving party bears the onus of showing that there is no genuine issue requiring a trial. It cannot rely on mere allegations or pleadings. When it has satisfied the court that there is no genuine issue requiring a trial, the burden shifts to the responding party to prove that their defence has a real chance of success. The responding party cannot rely on allegations or denial. They must set out, in affidavit material or other evidence, specific facts showing there is a genuine issue requiring a trial: *New Solutions Extrusion Corporation v. Gauthier*, 2010 ONSC 1037, at para. 12, aff'd 2010 ONCA 348;

d. A party must put their best foot forward on a motion for summary judgment with respect to the existence of non-existence of material issues to be tried: *Broadgrain Commodities Inc. v. Continental Casualty Company (CNA Canada)*, 2018 ONCA 438, at para. 7; *New Solutions*, at para. 32, affirmed 2014 ONCA 878, leave to appeal refused, 2015 CanLII 5860 (S.C.C.); and

e. The court is entitled to assume that the record contains all the evidence which the parties will present if there was a trial: *New Solutions*, at para. 12; *Canada (Attorney General) v. Lameman*, 2008 SCC 14 [2008] 1 S.C.R. 372, at para. 11; *Broadgrain* at para. 7.

[56] Perell J. makes clear in *Riha v. A. Wilford Professional Corporation*, 2022 ONSC 1110 ("*Riha*"), that if a judge is to decide a matter summarily, then they must have the confidence that a fair and just determination can be reached without a trial. This will be the case when the summary judgment process: (1) allows the court to make necessary findings of fact; (2) allows the court to apply the law to the facts; and (3) is proportionate,

more expeditious and a less expensive means to achieve a just result (see: *Riha* at para. 8; and *Hryniak*, at paras. 49 and 50). The court is required to assess whether the attributes of trial process are necessary to enable him or her to make a fair and just determination (see: *Riha*, at para. 8; and *Hryniak*, at paras. 51-55). To grant summary judgment, on a review of the record, the court must be of the view that sufficient evidence has been presented on all relevant issues to allow it to draw the inferences necessary to make dispositive findings and to fairly and justly adjudicate the matter (see: *Riha*, at para. 8 and *Campana v. The City of Mississauga*, 2016 ONSC 3421).

Analysis

[57] Based on KPMG's review of PACE's books and records, during the Administration, Mr. Losak and the proposed class members could only have acquired (1) Class A Profit Shares issued as dividends on existing Class A Profit Shares and Class B Investment Shares or (2) previously issued Class A Profit Shares or previously issued Class B Investment Shares by means of inter-member transfers. In other words, KPMG saw no evidence of Class B Investment Shares issued during the Administration.

[58] Consistent with KPMG's conclusion, FSRA's evidence is that no Class B Investment Shares were issued during the Administration, and therefore, no new capital was raised by PACE through share offerings throughout the Administration. FSRA's evidence is that the last time PACE sold shares was more than a decade before the Administration began.

[59] Mr. Losak has not led any evidence that contradicts the KPMG conclusion and the evidence of FSRA which I accept. On the contrary, Mr. Losak concedes that he did not purchase any Class B Investment Shares at the time of the Initial Offerings and there is no evidence in the record to suggest any of the putative class members did so. Indeed Mr. Losak's own share acquisitions were by way of share transfer forms consistent with and identical to those identified by KPMG as the means by which PACE members transferred shares to one another.

[60] Based on this record, I find that during the Administration, Mr. Losak and the proposed class members could only have acquired Class A Profit Shares issued as dividends on existing profit and investment shares or by means of inter-member transfers of previously issued profit and investment shares.

[61] The *Credit Union Act* distinguishes between selling securities and transferring securities. Whereas as a condition to a credit union selling its securities, ss. 68(1)(a) requires the credit union obtain a receipt under s. 71 for an offering statement respecting the securities, ss. 67(1) and (2) of the *Credit Union Act* permit credit union members to transfer securities issued under circumstances described in ss. 68(1)(a) to other members or to persons authorized by regulation and subject to any manner or conditions prescribed by regulation.

[62] Section 19 of *O. Reg. 105/22*: *General* under the *Credit Union Act* is the relevant regulation for purposes of s. 67. FSRA submits that s. 19 of the regulations and the

regulations generally under the *Credit Union Act* do not prescribe any manner or conditions for the transfer of investment securities between credit union members.

[63] Mr. Losak submits, however, that an offering statement must be a condition to any inter-member transfer because one of the "circumstances" under which the security was issued in the first place pursuant to ss. 68(1)(a) mandated that an offering statement be provided.

[64] I cannot accept Mr. Losak's interpretation of s. 67 of the *Credit Union Act* when it clearly stipulates that any condition to the inter-member transfer of investment shares is to be determined by the regulations and the regulations are silent in this respect.

[65] Alternatively, Mr. Losak submits that ss. 68(1) of the *Credit Union Act* requires the delivery of an offering statement as a prerequisite to inter-member transfers because an offering statement is required whenever "consideration" is accepted in exchange for a security. Mr. Losak submits that the *Credit Union Act* does not distinguish between a "sale" and a "transfer"; rather the disclosure obligation is triggered by the acceptance of consideration for securities which occurred when PACE accepted funds on behalf of FSRA during the Administration. In support of his submission, Mr. Losak relies on the description of "consideration" as provided in s. 51 of the *Credit Union Act* as it relates to the issuance of shares.

[66] I do not agree with Mr. Losak's interpretation of ss. 68(1) of the *Credit Union Act*. I find that his broad interpretation is inconsistent with the statutory scheme.

[67] Based on the plain language of ss. 68(1), the “consideration” captured by the subsection is limited to consideration received: (1) by a “credit union”; and (2) “for its securities”.

[68] This conclusion is supported by s. 51 of the *Credit Union Act* which provides under the heading “Consideration” that:

> A credit union shall not issue any share, other than a patronage share, until the credit union has received full payment for it in cash or, with the approval of the Chief Executive Officer, in property.

[69] Pursuant to s. 51, “consideration” does not capture any payment made between anyone but rather it is limited to a credit union’s receipt of consideration, in the form of cash or approved property, in exchange for its securities.

[70] The receipt of consideration by a seller other than a credit union does not trigger the ss. 68(1) offering statement requirement. Similarly, the receipt of funds by a credit union for services other than the sale of securities is not captured by ss. 68(1).

[71] Furthermore, Mr. Losak’s interpretation of s. 68(1) does not accord with the design of the statutory framework of the *Credit Union Act*. Pursuant to the terms of the legislation when a credit union issues and sells its shares, it must prepare and submit an offering statement to the FSRA CEO for approval (see: ss. 68(1)(a)). This puts FSRA on notice to the proposed issuance and gives FSRA an opportunity to vet the offering

statement and issuance. This process did not occur in this instance because no sales or issuances of PACE's shares occurred during the Administration.

[72] In contrast to the legislated process where a credit union wants to issue and sell shares, the *Credit Union Act* and its regulations do not provide for disclosure requirements for the transfer of shares (see: s. 67). The lack of processes between members for the transfer of shares is reflective of the operational nature of inter-member share transfers.

[73] To otherwise describe the difference between the two scenarios, and adopting an analogy from the securities law context, I accept the FSRA submission that the legislature has distinguished between primary market purchasers and secondary market purchasers in the *Credit Union Act*, creating a disclosure regime and corresponding statutory right of action for only primary market purchasers. Unlike the case of the *Securities Act* when in 2005, that legislation was amended to provide a cause of action for breach of continuous disclosure obligations, no similar provisions exist in the *Credit Union Act* notwithstanding its 2022 amendments. In short, today the *Credit Union Act* provides only a statutory cause of action for primary market purchasers.

[74] It also does not escape me that Mr. Losak has not proffered any evidence that PACE received consideration from its members in exchange for securities during the Administration.

[75] Certainly, FSRA executive vice president, Medrdad Rastan, admitted on cross-examination that PACE accepted consideration from Mr. Losak when it transferred funds

from his pension into a PACE account but this transfer of funds is separate from Mr. Losak's acquisition of shares by way of transfer from another member. By disregarding the context and nature of the transaction, Mr. Losak's position that the receipt of any consideration by PACE as necessitating an offering statement is not tenable.

[76] Finally, I accept Mr. Rastan's evidence that share transfers between members would not increase or change the capital position of PACE. This evidence further supports the conclusion that PACE did not receive consideration from its members during the Administration.

[77] As a final argument regarding the threshold issue as to the applicability of ss. 68(1) of the *Credit Union Act* to the facts of this case, Mr. Losak submits that any member who gave consideration in exchange for the transfers of patronage shares was entitled to receive an offering statement because patronage shares are not authorized by PACE's articles of amalgamation, and in any event, ss. 45(3) of the *Credit Union Act* prohibits the inter-member transfer of patronage shares.

[78] Once again, I am unable to accept Mr. Losak's submission.

[79] Firstly, Mr. Losak offers no evidentiary basis for his position that patronage shares are not a part of PACE's authorized capital. Section 6 of PACE's articles of amalgamation, dated September 12, 2012, clearly provide that PACE's authorized capital consists of an unlimited number of membership shares, Class A Profit Shares issuable in series and Class B Investment Shares issuable in series. The unchallenged evidence of

KPMG is that PACE's Class A Profit Shares were created to reward members for their patronage and were issued as a patronage reward or as dividends on previously issued Class A Profit Shares or Class B Investment Shares.

[80] Secondly, while it is undisputed that Class A Profit Shares issued as patronage shares can only be transferred to PACE or another credit union, Class A Profit Shares issued as dividends can be transferred as between members pursuant to ss. 45(3) of the *Credit Union Act*. Furthermore, there is no evidence as to what amount, if any, of the Class A Profit Shares, originally issued as patronage shares, were acquired by Mr. Losak, or any of the proposed class members, by means of inter-member transfers.

[81] Thirdly, I fail to find any logical nexus between a violation of ss. 45(3) of the *Credit Union Act* and the requirements of ss. 68(1).

[82] I also find that Mr. Losak's submission ignores the reality that all Class A Profit Shares, whether they were issued as a patronage reward or as dividends as previously issued shares, are exempt from the offering statement requirements of ss. 68(1) of the *Credit Union Act*. Subsection 68(3) of the *Credit Union Act* specifically provides in part that subsection 68(1) and the *Securities Act* do not apply with respect to the issuance of patronage shares and patronage shares issued pursuant to s. 57 of the *Credit Union Act* to pay a dividend.

[83] To the extent that patronage shares may have indeed been transferred as between members contrary to the *Credit Union Act*, as Mr. Losak alleges, I agree with

FSRA's submission that Mr. Losak's remedy lies in an application to void those transactions within the context of PACE's liquidation proceedings.

[84] In sum, based on the record, I find that none of the PACE shares acquired by Mr. Losak or the proposed class members during the Administration required an offering statement as mandated by ss. 68(1) of the *Credit Union Act*, and therefore, the statutory cause of action as prescribed by ss. 75(3) is not engaged.

[85] I further find that because the *Credit Union Act's* ss. 75(3) cause of action is not engaged, there is no genuine issue requiring a trial in respect of the putative class proceeding against FSRA, and therefore, I need not consider the balance of the submission advanced by FSRA in support of its motion for summary dismissal of Mr. Losak's proposed class action.

Disposition

[86] For the reasons as I have explained them, FSRA's motion for summary judgment dismissing Mr. Losak's claim is granted.

Costs

[87] Given the circumstances of the parties, I strongly encourage them to reach an agreement as to the issue of costs. In the unfortunate event, however, that they are unable to agree, the party seeking costs may make written submissions within 15 days of the release of this Endorsement, and the responding party will have 10 days after receipt

of the submissions of the party seeking costs to respond. There shall be no reply. Each party's cost submissions shall not exceed three double-spaced pages, excluding offers to settle, cost outlines and authorities. All cost submissions shall be sent to my attention via my Judicial Assistants at HamiltonSopinka.SCJJA@ontario.ca . If cost submissions are not received within this timeframe, the issue of costs will be considered as resolved.

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Justice M. Valente

Released: February 27, 2026

CITATION: Losak v. The Financial Services Regulatory Authority of Ontario, 2026 ONSC 804
COURT FILE NO.: CV-25-88716
DATE: 2026-02-27

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

FRANK LOSAK

Plaintiff/Responding Party

- and –

THE FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO

Defendant/Moving Party

ENDORSEMENT ON MOTION FOR SUMMARY JUDGMENT

Justice Valente

Released: February 27, 2026