

35TH ANNUAL ISCEBS
Symposium

Canadian Legislative Update

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PARTNERS IN EDUCATIONAL EXCELLENCE



International Society
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OF EMPLOYEE BENEFIT PLANS



“Everyone is facing the challenge of low returns on traditional assets . . . a lot of [pension plan] funds have to pivot into private markets. The change will prove ‘quite challenging’ for many.”

- Financial Times, August 24, 2016

Agenda

- I. Federal Legislative Updates
- II. Ontario
- III. Quebec
- IV. The Maritimes
- V. The West

I. Federal Updates

- 30% Rule Consultation
- Bill C-15
 - Changes to the *Pension Benefits Standards Act*
 - Changes to the *Old Age Security Act*
- CPP Enhancement

I. Federal Updates

→ 30% Rule

- Consultation process
 - Schedule III of the federal Pension Benefits Standards Regulations, 1985 prohibits a pension fund from holding more than 30 per cent of a corporation's voting shares (known as the "30% Rule")
 - The federal government has commenced a public consultation process on the usefulness of the 30% Rule
 - The federal consultation paper asks stakeholders to consider the following:
 - The intersection of the rule and the prudent person standard;
 - The impact of the rule on investment performance; and
 - Tax policy considerations
 - The consultation period closed on September 16, 2016

I. Federal Updates

→ Bill C-15

- Bill C-15, An Act to implement certain provisions of the budget tabled in Parliament on March 22, 2016 and other measures
 - Passed on June 22, 2016
 - Introduces the following amendments to the Pension Benefits Standards Act, 1985:
 - Combining the authorities for bilateral agreements and multilateral agreements into one authority for federal-provincial agreements; and
 - Clarifying that federal-provincial agreements may permit the application of provincial legislation with respect to a pension plan

I. Federal Updates

→ Bill C-15 *(continued)*

- Bill C-15 introduces the following changes to the Old Age Security Act:
 - Increases the single rate of the guaranteed income supplement for the lowest-income pensioners by up to \$947 annually; and
 - The previous amendments to increase the age of eligibility for Old Age Security and Guaranteed Income Supplement benefits from 65 to 67 and Allowance benefits from 60 to 62 period will be cancelled

I. Federal Updates

→ CPP Enhancement Agreement

- Agreement in principle between federal and provincial governments to enhance the Canada Pension Plan (CPP)
 - Announced June 20, 2016
 - Proposed to be implemented on January 1, 2019
 - Agreement put an end to the ORPP
 - The agreement includes British Columbia, Alberta, Ontario, Saskatchewan, Manitoba, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador
 - Quebec agreed to remain part of the discussions

I. Federal Updates

→ CPP Enhancement Agreement *(continued)*

- Agreement provides as follows:
 - Increase income replacement from one quarter to one third of maximum pensionable earnings; and
 - Increase the maximum amount of income subject to CPP by 14%, which is projected to be equal to roughly \$82,700 in 2025

II. Ontario Updates

- Changes to Regulatory Structure
- Multi-jurisdictional Plan Agreement
- Bill 144, *Budget Measures Act* – Asset Transfers + MEPPs
- Bill 173, *Budget Measures Act* – Advisory Committees + PRPPs
- Bill 186, *ORPP Act*, 2016
- Temporary Solvency Regulation
- Asset Transfer Regulation
- *Pension Benefits Act* Amendments
- Regulation Amendments re SEPPs to JSPPs Conversion

II. Ontario Updates

→ Ontario Budget 2016

- Regulation of Pensions
 - In November 2015, an expert advisory panel charged with reviewing financial regulators in Ontario released its preliminary position paper
 - The paper outlined the merger of the Financial Services Commission of Ontario (FSCO) and the Financial Services Tribunal and the Deposit Insurance Corporation of Ontario (DICO) into a single Financial Services Regulatory Authority
 - The government reiterated its commitment to strengthening the regulation of financial services and pensions

II. Ontario Updates

→ Multi-Jurisdictional Plan Agreement

- 2016 Agreement Respecting Multi-Jurisdictional Pension Plans
 - The governments of Ontario, British Columbia, Nova Scotia, Quebec and Saskatchewan have signed a new 2016 Agreement respecting the regulation of plans that:
 - Are registered in one of the signatory provinces; and
 - Have members subject to the pension legislation of two or more of these jurisdictions
 - Agreement went into effect on July 1, 2016
 - Intended as an interim measure to replace the 2011 Agreement Respecting Multi-Jurisdictional Pension Plans (Ontario and Quebec) and the Memorandum of Reciprocal Agreement signed by provinces in 1968

II. Ontario Updates

→ Multi-Jurisdictional Plan Agreement *(continued)*

- 2016 Agreement Respecting Multi-Jurisdictional Pension Plans
 - The 2016 Agreement includes modifications to the asset allocation rules found in the 2011 Agreement and provides additional transitional rules for when the agreement first applies to a pension plan
 - The Canadian Association of Pension Supervisory Authorities (CAPSA) is in the process of developing amendments, which will address changing DB plan funding regimes across Canada
 - CAPSA expects to release proposed amendments to the 2016 Agreement for public consultation by 2018
 - The 1968 Agreement will remain in effect for provinces that have not signed the 2016 Agreement

II. Ontario Updates

→ Bill 144

- Bill 144, An Act to implement Budget measures and to enact or amend certain other statutes
 - Passed on December 10, 2015
 - Includes the following amendments to the asset transfer provisions of the Pension Benefits Act (PBA) in relation to multi-employer pension plans (MEPPs)
 - Currently, s.79.2 (11) of the PBA provides that the employer sponsoring the successor pension plan assumes responsibility for providing pension benefits to the transferred members, former members, retired members, and other persons entitled to payments under the original plan
 - Amendment will describe the status of transferred members when there is a MEPP involved
 - Section 81 regarding the establishment of a successor pension plan will be amended to apply to MEPPs

II. Ontario Updates

→ Bill 173

- Bill 173, *Jobs for Today and Tomorrow Act (Budget Measures)*, 2016
 - Received royal assent on April 19, 2016
 - *Pension Benefits Act*
 - Regulations may provide additional exemptions and transitional rules
 - Revised draft regulations on notice and voting requirements for pension plan advisory committees closed for comment on September 12, 2016
 - *Pooled Registered Pension Plans Act, 2015*
 - Will be amended to broaden its application to include persons who are no longer employed in provincial employment or self-employed, but who continue to maintain funds in their account
 - Will provide that the Superintendent shall not issue a license authorizing a corporation to be an administrator of a PRPP before a multilateral agreement comes into effect in Ontario

II. Ontario Updates

→ Bill 186

- Bill 186, Ontario Retirement Pension Plan Act, 2016
 - Passed third reading on June 2, 2016
 - Establishes the Ontario Retirement Pension Plan (ORPP)
 - RIP: June 20, 2016

II. Ontario Updates

→ Temporary Solvency Regulation

- Ontario filed Regulation 161/16 on June 3, 2016
 - Finalizes the regulations that will extend the solvency funding relief provided in 2009 and 2012 for an additional three years
 - The latest round of solvency funding relief will apply to valuation reports dated in the three-year period starting on December 31, 2015
 - The government is reviewing the DB solvency funding framework and has appointed David Marshall, former president and CEO of the WSIB, to lead this review
 - Consultation paper was released at the end of June 2016
 - Submissions must be received by September 30, 2016

II. Ontario Updates

→ Temporary Solvency Regulation

- Regulation 161/16
 - Will provide private sector sponsors of single-employer DB pension plans with the following options:
 - Consolidating existing solvency payment schedules into a new, longer five-year payment schedule
 - Extending the solvency payment schedule to a maximum of 10 years (from the current maximum of five years) for any new solvency deficiency determined in the applicable valuation report, subject to the consent of plan beneficiaries

II. Ontario Updates

→ Asset Transfer Regulation

- Regulation 310/13—Asset Transfers under Sections 80 and 81 of the PBA
 - Amendments will allow the existing rules for asset transfers to apply to mergers involving two or more MEPPs
 - These rules currently only apply to single employer pension plans
 - Amendments came into force on July 1, 2016

II. Ontario Updates

→ *Pension Benefits Act* Amendments

- Amendments to the PBA and the General Regulation
 - Relate to member statements and statements of investment policies and procedures
 - Came into force on January 1, 2016 and July 1, 2016, respectively
 - Statement of Investment Policies and Procedures (SIPP) amendments
 - Plan administrators must file SIPPs with FSCO, and SIPPs must include information about whether Environmental, Social and Governance (ESG) factors are incorporated, and if so, how
 - A SIPP must be filed within 60 days after new plans are registered
 - Any amendment to a SIPP must be filed within 60 days

II. Ontario Updates

→ *Pension Benefits Act* Amendments (continued)

- Amendments to the PBA and the General Regulation
 - Statements for Former and Retired Members
 - Section 27(2) of the PBA now requires plan administrators to provide statements to former and retired members (in addition to active plan members)
 - Sections 40.1 and 40.2 of the Regulation set out the information to be included in the statements to former members and retired members
 - These statements are to be provided:
 - For plans registered on or before January 1, 2015: every two years beginning no later than July 1, 2017 (no later than six months after the plan's fiscal year end); and
 - For plans registered after January 1, 2015: within 18 months after the end of the plan's first fiscal year end and then every two years (no later than six months after the plan's fiscal year end)

II. Ontario Updates

→ *Pension Benefits Act Amendments (continued)*

- Amendments to the PBA and the General Regulation
 - Amendments to ss. 40, 40.1 and 40.2 of the Regulation
 - Add further requirements to the annual statements for active members, former members and retired members
 - Plan administrators will have to provide the following:
 - A statement that the plan administrator is required to establish a SIPP;
 - Information about whether ESG factors are incorporated into the SIPP and, if so, how those factors are incorporated; and
 - Information about how interested members may inspect or obtain a copy of the plan's SIPP

II. Ontario Updates

→ Amendments re SEPPs to JSPPs Conversion

- Regulations 311/15 and 312/15
 - Effective November 1, 2015
 - Permit a public sector employer-sponsored single employer pension plan (SEPP) to transfer or merge into a new or existing jointly sponsored pension plan (JSPP) (s. 80.4), or convert to a JSPP through plan amendments (s. 81.0.1)
 - The requirements for an asset transfer include the following:
 - Providing notice of the proposed transfer to current, former and retired members, other plan beneficiaries, any union, and the Superintendent;
 - Obtaining consent of at least two-thirds of the members;
 - Not more than one-third of retired members, former members and other plan beneficiaries, as a group may object; and
 - Filing an application for the Superintendent's consent within nine months after notice given

III. Quebec Updates

→ Bill 57

- Bill 57: An Act to amend the Supplemental Pension Plans Act mainly with respect to the funding of defined benefit pension plans
 - Came into force on January 1, 2016
 - Introduces a new funding method for Quebec DB plans
 - Removes the solvency funding requirement of the plans and allows them to be funded on a going concern basis
 - In exchange for the removal of the solvency funding rules, Quebec DB plans will have to meet certain other requirements, including:
 - Establishing a reserve account to be funded by actuarial gains, special current service contributions and special amortization payments
 - The scale of the reserve account would be determined in accordance with the investment policy of the pension plan
 - DB plans must adopt funding policies meeting regulatory requirements

III. Quebec Updates

→ Bill 57 *(continued)*

- Bill 57 (continued)
 - Actuarial Valuations:
 - Plan actuarial valuations must be completed every three years
 - Plans will have to send annual notice on the plan's financial position to the Retraite Québec
 - Where the plan's funding ratio falls below 90%, the plan must complete annual actuarial valuations until the funding level reaches at least 90%
 - Other changes include: eliminating the requirement to provide an "additional pension benefit" to deferred members, permitting plans to pay transfer values based on the plan's solvency ratio, and providing a discharge for annuity purchases that meet prescribed requirements

III. Quebec Updates

→ Bill 57 *(continued)*

- Bill 57 (continued)
 - New Surplus Rules:
 - Employers will only be permitted to use surplus assets in an ongoing plan when the plan is fully funded, the target level of the stabilization provision has been exceeded by 5% and the solvency ratio is at least 105%
 - Surplus assets must first be used to pay contributions
 - Up to 20% of any remaining surplus assets may then be used, in accordance with the plan's provisions, to pay additional obligations
 - The surplus sharing regime on plan termination would also be replaced with new allocation rules
 - Draft Regulation:
 - Published on April 6, 2016 and sets out the table that must be used to determine the level of the stabilization provision for a pension plan
 - Also provides information that the pension committee must submit annually to Retraite Québec to inform it of the plan's financial situation

III. Quebec Updates

→ Bill 75

- Bill 75: An Act respecting the restructuring of university-sector defined benefit pension plans and amending various legislative provisions
 - Passed on June 8, 2016
 - Provides for the restructuring of university-sector DB pension plans by December 31, 2017, including:
 - Equal employer and employee contributions, unless otherwise agreed
 - Establishment of a stabilization fund, funded by stabilization contributions to be paid into the plan beginning no later than January 1, 2018; and
 - Special restructuring measures to be applied to any pension plan with a cost exceeding 21% of the overall payroll of the active members

III. Quebec Updates

→ Bill 75 (*continued*)

- Bill 75 (continued)
 - Provides for a one-year negotiation period that may be extended once by a three-month period
 - The parties may turn to conciliation, and if negotiations fail, the dispute is to be submitted to an arbitrator
 - Solvency funding relief measures are extended until December 31, 2017 for certain pension plans

IV. Eastern Provinces Updates

- New Brunswick
 - Bill 19: An Act to Amend the Pension Benefits Act
- Newfoundland and Labrador
 - Bill 28: An Act Providing for the Funding of Certain Pension Plans and Retirement Benefits Sponsored by the Province
- Nova Scotia
 - Bill 38: Pooled Registered Pension Plans Act

IV. Eastern Provinces Updates

→ New Brunswick

- Bill 19: An Act to Amend the Pension Benefits Act
 - First reading on February 3, 2016
 - Amends the pre-retirement death benefit section to add a provision permitting a spouse or common-law partner to waive their entitlement to a death benefit
 - Currently, New Brunswick only provides for the waiver of a joint and survivor pension, but not pre-retirement death benefits

IV. Eastern Provinces Updates

→ Newfoundland and Labrador

- Bill 28: An Act Providing for the Funding of Certain Pension Plans and Retirement Benefits Sponsored by the Province
 - Amendments pursuant to an agreement to reform the pension plan between the government and Teachers' Association, who agreed to:
 - Jointly sponsor the plan and suspend post-retirement indexing for service accrued after September 1, 2015;
 - Increase member contributions by 2% with a government match;
 - Use the average of the best 8 years' salary instead of the average of the best 5 years for service after September 1, 2015; and
 - Effective September 1, 2016, require vested teachers who terminate employment and who have less than 24.5 years of service to wait to age 62 to commence receiving their pension (an increase from the prior age of 60)

IV. Eastern Provinces Updates

→ Newfoundland and Labrador

- Bill 28 (continued)
 - First reading on May 26, 2016
 - The government agreed to take responsibility for all existing retiree liability and 50% of the active member liability, with annual payments of \$135 million starting August 31, 2016
 - Introduces the following amendments:
 - Establishes the Teachers' Pension Plan Fund and the Teachers' Pension Plan Corporation to act as the administrator of the pension plan and trustee of the fund
 - Transfers the assets relating to the teachers' pension plan from the pooled fund under the Pensions Funding Act into the Teachers' Pension Plan Fund
 - Pensions Funding Act amended to exempt the teachers' pension plan from the deficiency guarantee

IV. Eastern Provinces Updates

→ Nova Scotia

- Bill 38: Pooled Registered Pension Plans Act (PRPP Act)
 - Enables pooled registered pension plans (PRPP) to be established in Nova Scotia
 - In effect as of May 4, 2016
 - Nova Scotia has indicated that PRPPs will be offered following the multilateral agreement between the federal government and other participating provinces

V. Western Provinces Updates

- Alberta
 - Extension of deadlines re: governance policies and plan assessments
- Saskatchewan
 - Pooled Registered Pension Plans Act
 - Negotiated Cost Pension Plans
- British Columbia
 - New Pension Benefits Standards Act (and Regulations)
 - BC Guideline re: Plan Conversions

V. Western Provinces Updates

→ Alberta

- Alberta Ministry of Finance announced extensions for the following:
 - Deadline for having a governance policy in place extended from December 31, 2015 to December 31, 2016
 - Deadline for completion of the first plan assessment extended by one year (for plans with December 31 fiscal year end, no later than December 31, 2017)
- Superintendent will publish additional information on expectations for content, process

V. Western Provinces Updates

→ Saskatchewan

- Pooled Registered Pension Plans Act
 - Saskatchewan proclaimed the PRPP Act in force, effective May 1, 2016
 - The PRPP Act enables pooled registered pension plans to be established in Saskatchewan

V. Western Provinces Updates

→ Saskatchewan

- Negotiated Cost Pension Plans (NCPPs)
 - NCPPs are plans where the funding obligations are limited by collective bargaining agreement or contract and where benefits can be reduced if there is a funding deficit
 - The Saskatchewan Financial and Consumer Affairs Authority has released a consultation paper regarding a proposed regulatory regime for certain private sector NCPPs
 - The proposed NCPP regime includes the following:
 - A permanent exemption from funding solvency deficiencies;
 - Requirements for provisions for adverse deviation or PfAD;
 - Enhanced member communications; and
 - Restrictions on benefit improvements

V. Western Provinces Updates

→ British Columbia

- Pension Benefit Standards Act (PBSA)
 - British Columbia passed a new PBSA and Pension Benefits Standards Regulations that came into force on September 30, 2015
 - The B.C. Superintendent of Pensions extended the deadline for filing amendments with respect to the PBSA and Regulation to March 31, 2016
 - The deadline for having a funding policy (benefit formula provisions), a participation agreement (non-collectively bargained MEPPs), and a governance policy in place was also extended to March 31, 2016

V. Western Provinces Updates

→ British Columbia

- **PBSA: Plan Governance and Administration**
 - All plans must have a written governance policy
 - All plans must provide for immediate vesting
 - Members may unlock the commuted value of their benefits if they are up to 20% of the Year's Maximum Pensionable Earnings in the year the commuted value is calculated
 - Records pertaining to pension plans must be retained in Canada
 - On a triennial basis, plan administrators must confirm (in writing) that the plan meets the requirements of the PBSA, and is being administered in accordance with the plan text document and governance, funding and investment policies

V. Western Provinces Updates

→ British Columbia

- **PBSA: Disclosure**
 - Additional disclosure requirements were added to the Regulation to ensure that plan members have a clear understanding of “the pension deal” and what their rights, duties and obligations are under the plan
 - Additional information must be included in the plan text, plan summary and existing statements, and new statements must now be provided
- **PBSA: Plan Funding**
 - Administrators of DB and target benefit (TB) plans are required to establish funding policies
 - Plans may establish a solvency reserve account (SRA) to hold only solvency deficiency payments
 - Employers will have greater ability to withdraw accessible actuarial excess from a SRA, subject to prescribed requirements

V. Western Provinces Updates

→ British Columbia

- **PBSA: Investments**
 - DC plans that permit members to make investment decisions must provide a default investment option that is either: a balanced fund, or a portfolio of investments that takes into account a member's age
 - Member-directed DC plans no longer require statements of investment policies and procedures
- **PBSA: Surplus**
 - Detailed requirements regarding use/withdrawal of actuarial excess and surplus
- **PBSA: Plan Conversions**
 - Specific rules for plan conversions have been introduced: where a DB provision is converted to TB provision, accrued benefits may be reduced if the union representing members agrees to the reduction

V. Western Provinces Updates

→ British Columbia

- PBSA: New Plan Types
 - JSPs and collectively bargained MEPPs are now recognized
 - Under a JSP, participating employers and active members share the plan's funding cost and participate in plan decisions regarding administration, investment, funding and governance
- PBSA: Superintendent Powers
 - The B.C. Superintendent has discretion to appoint a temporary plan administrator and/or to designate another actuary
 - The Superintendent may refuse to register an amendment if the amendment would reduce the plan's funded status

V. Western Provinces Updates

→ British Columbia

- BC Guideline re: Plan Conversions
 - The B.C. Financial Institutions Commission has published a Guideline for Converting Plans from DB to TB
 - The Guideline sets out the B.C. Superintendent's expectations, including with respect to:
 - Information to be included in the initial notice to the Superintendent;
 - Notice and communications to be provided to plan members;
 - Documents to be filed with the Superintendent (e.g., plan amendment, filing form, actuarial valuation); and
 - A plan conversion timeline

Questions?