Canada Legal and Legislative Update

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Overview

• Introduction

• Pension Developments
  – Jurisdiction/Province Specific Developments
  – Canada-wide Developments
  – CAPSA

• Benefit Developments
  – Jurisdiction/Province Specific Developments
  – Canada-wide Developments

• Questions
Pensions—Western Canada

- British Columbia
  - New regulator (BC Financial Services Authority)
  - Solvency funding relief extended
  - Solvency funding consultation process including consultation paper
Pensions—Western Canada

- Alberta
  - *Calder v. Alberta* (2019 ABCA)
    - Upholds lower court’s decision
    - Negligent misrepresentation about value of pension
      - Significant difference between value of pension communicated to the member and the correct value of the pension
      - Critical issue in the case was *how* to calculate the damages to the member
Pensions—Western Canada

• Alberta
  – Changes for the Local Authorities Pension Plan, Special Forces Pension Plan and Public Service Pension Plan
    • New governance structures
    • Different relevant dates, but as of March 1, 2019 many of the significant changes/provisions in effect
    • Amendments made to EPPA and EPPR to reflect changes with these plans
Pensions—Western Canada

• Saskatchewan
    • Member designated beneficiary
    • In subsequent will, provided that all money owed from all pension plans be paid to a different beneficiary
    • Pension Benefits Act requires that designations be altered in the manner specified in the plan
      – Beneficiary designation not altered by the member’s will
Manitoba to amend Pension Benefits Act in fall of 2019

- Amendments not published but will be based on recommendations following the 2018 consultation
  - Permit target benefit plans
  - Modify solvency funding rules
  - Permitting unlocking due to financial hardship
Pensions—Ontario

- May, 2019 passed Bill 100
  - Provides for certain powers of the new FSRA
  - Amendments to the Pension Benefits Act
    - Extends target benefit structure to non-union multi-employer plans
    - Clarifies that PBGF is not part of consolidated revenue fund
    - Clarifies how excess contributions can be used
    - Minister given access to information rights in respect of FSRA
  - Some changes in force, others (related to FSRA) to be brought into force in future (likely fall 2019)
Pensions—Ontario

• Regulation 105/19
  – Amends General Regulation under the Pension Benefits Act
    • Excess contributions
    • PfAD calculation changes
    • SIPPs for SOMEPPs and JSPPs
Pensions—Ontario

• New Actuarial Information Summary required
• New Financial Services Regulatory Authority
  – New Financial Services Regulatory Authority launched June 8, 2019
  – New committees (missing members, asset transfers and PBGF)
Pensions—Ontario

- *Coco Paving Inc.* (Ontario Supt. Of Financial Services)
  - Employer over-contributed to multi-employer plan
  - Sought refund but was refused
    - Only administrator (Board) could apply for refund
    - But found that the employer was out of time, even without the issue of standing to make the request
Pensions—Quebec

- Actuarial Information Summary required
- Draft Regulation published July 3, 2019 for supplemental pension plans
  - Comments were due 45 days after publication
  - Revises the scale to be used for calculating stabilization provision
Pensions—Maritimes

- Nova Scotia amends Pension Benefits Act
  - Anticipated to become effective fall of 2019
  - Permits DB plans to have reserve accounts
  - Authorizes annuity purchases
  - Limits on letters of credit
  - Deemed trust provisions
Pensions—Maritimes

• Nova Scotia issues funding consultation paper
  – Seeking input before regulations are drafted under the recently amended Pension Benefits Act
    • Consultation Paper identifies the additional reforms and sought input (by June 21, 2019)
      – Funding rules
      – How to calculate PfAD
      – Implementing federal investment rules
Pensions—Maritimes

• *Casey v. Teachers’ Pension Plan Trustee Inc.* (2019 NSSC)
  – Court does not have jurisdiction to hear dispute as to disability pension entitlement because Teachers’ Pension Act provides for appeal to Appeals Committee
Pensions—Canada

• Bill C-97 passed
  – Amends the Pension Benefits Standards Act (Canada)
    • Plan membership ceases if plan fully or partially terminated
    • Permits annuities to be purchased and providing discharge if purchased in accordance with the rules set out in PBSA
  – Income Tax Act amendments announced
    • Deferred annuities and variable payment life annuities
    • Will prohibit contributions to a SMEP in respect of an individual over age 71 or in receipt of pension
• CAPSA releases
  – Guidelines 2, 8 and 9
    • Electronic Communication in the Pension Industry
    • Defined Contribution Pension Plans Guideline
    • Searching for Un-locatable Members of a Pension Plan
  – Paper on DB plan funding suggesting that a harmonized structure was possible
Benefits—Province Specific

- British Columbia
  - Reduced Medical Services Plan premiums Jan. 2, 2019
- *School District No. 63 v. CUPE Local 441* (2019, Arb.)
  - Does the reduction of MSP trigger the collective agreement clause requiring that the parties discuss the impact of the development?
Benefits—Province Specific

• Alberta
    • Retirees historically entitled to annual allotment of ... beer
    • Labatt reduces allotment and then eliminates entirely
    • A vested entitlement or a gratuitous practice?
Benefits—Province Specific

• Ontario
  – Eliminated drug coverage for children/youth who are under age 25 with access to private drug plans
  – *Sears Canada Inc. et al.* (ONSC, 2019)
    • Case concerns entitlement to surplus in respect of life insurance
      – Sears deducted amounts from employees’ salaries for insurance premiums
      – Insurance policy developed surplus and to allow Sears to profit from that surplus would violate the agent-principal relationship
Benefits—Canada Wide

• Conversion of health and welfare trusts to employee life and health trusts
  – Draft amendments to Income Tax Act to facilitate conversion
    • Board composition rules changed
    • Prohibited investments
    • Deductibility of contributions
    • July 31, 2019 submission date
Benefits—Canada Wide

• Federal Advisory Committee recommends national Pharmacare
  – Single payer public system of prescription drug coverage
  – New drug agency would develop a national formulary
  – Private insurance could be layered on top to supplement national coverage
Key Takeaways

- For pension plans
  - Funding reform continues to dominate in most jurisdictions even if some changes already adopted

- For benefit plans
  - There has been more activity than in recent years—particularly as national pharmacare is an election issue
  - While not a lot of new human rights cases in the last 12 months, this continues to be a significant issue to monitor