national union

pensions backgrounder #7

Legislative Framework Governing Pensions

Part 7 in a Series

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BACKGROUNDER #7

Legislative Framework Governing Pensions

There are approximately 14,000 employer-sponsored pension plans in Canada, covering just under 4.5 million employees or about one-third of the total Canadian workforce. Pension plans in Canada are subject to significant regulation through pension, tax, family law and employment standards legislation.

••• Pension Standards Legislation

The federal government and every provincial jurisdiction in Canada, except the province of Prince Edward Island, have pension standards legislation in force that establishes minimum requirements for pension plans. Prince Edward Island has pension benefits legislation that received Royal Assent in April 1990, but still has not been proclaimed. The federal *Pensions Benefit Standards Act* covers federally regulated companies as well as companies that operate in Canada's three territories (about 10% of the Canadian workforce).

These Acts differ in many significant and insignificant aspects, and are frequently changed, sometimes retroactively and sometimes proactively.[1] Each legislative scheme is governed by a regulatory commission (see forthcoming chart for a list of federal and provincial legislation and the corresponding regulatory commission).

The primary purpose of the federal and provincial pension standards legislation is to provide protection to members of Registered Pension Plans (RPPs). This is accomplished through imposing minimum standards related to virtually every aspect of an RPP.

Each of the pension statutes imposes minimum standards on workplace pension plans. Specifically, the rules cover, but are not limited to: eligibility for membership; funding; information disclosure to plan members; investment of plan assets; registration of pension plans; locking-in of contributions and benefits; vesting and portability; business sales and corporate reorganizations; division of benefits on spousal relationship breakdown; the form of benefits for members' spouses; death benefits; and integration with public pension plans.

The regulations under pension legislation set out minimum funding requirements for pension plans. These requirements provide a level of protection for pension benefits through minimum funding levels and deadlines for contributions to pension funds. The minimum funding requirements apply primarily to defined benefit pension plans. The only requirements that affect defined contribution pension plans are those dealing with the timing of contributions.

Employers are required to contribute towards the current service costs of their pension plans. They are also obligated to make special payments over a specified period of time to amortize any unfunded liability or deficit that may exist. These amortization periods range from five to fifteen years, depending on the type of unfunded liability or deficit.

Since the members of a pension plan may work in more than one jurisdiction, the plan may be affected by pension legislation in a number of provinces. An RPP must, however, be registered with the regulatory authority of the jurisdiction in which the majority of the plan members report to work or, if they do not report to work, at an establishment of the employer from where they are paid.

Federally regulated industries, such as banks and airlines, must register with the federal body (i.e. the Office of the Superintendent of Financial Institutions (OSFI)), rather than with a province. The laws of the province where the plan is registered, however, do not determine an individual's minimum right to benefits.

A plan member's rights to benefits will be determined by the province of residence (i.e. where the particular plan member reports to work or, if he does not report to work, at an establishment of the employer from where he is paid).

For years, the Canadian pension industry has been lobbying for simplicity and harmonization in the regulation of multi-jurisdictional pension plans, but the provincial governments have failed to reach a consensus on the issue (see section below on the Canadian Association of Pensions Supervisory Authorities (CAPSA)).

Pension standards legislation is not static and periodic changes are common. Many jurisdictions have amended their legislation in the last couple of years and many additional changes could occur in the next few years.

••• Canadian Association of Pension Supervisory Authorities (CAPSA)

Canadian Association of Pension Supervisory Authorities (CAPSA) is an inter-jurisdictional association of those federal and provincial pension regulatory commissions noted in the table below. The overall objective of CAPSA and its members is to facilitate an efficient and effective pension regulatory system in Canada.

For the past five years, CAPSA has been working towards the development of a Model Pension Law that would form the basis of a harmonized and simplified model pension statute. Once drafted, the model law would serve as a model for federal and provincial governments to consider when they are making amendments to their pension legislation.

As a component of CAPSA's Model Law initiative, the funding principles that have been identified are intended to form the basis for harmonized model funding rules for defined benefit pension plans. According to CAPSA, harmonized funding rules would contribute to the reduction of compliance costs and simplify the administration of multi-jurisdictional pension plans.

The Model Law Initiative was presented as a way to improve pensions for the plan members. However, as it was drafted, the model law reduced member protection and benefits by omitting many of the highest existing standards contained in the federal and provincial pensions standards legislation.

In its submission to CAPSA's consultation process on the Model Law Initiative, the Canadian Labour Congress stated that "there is more to be gained through substantive improvement in the law in jurisdictions that want to make progress than there is to be gained by establishing uniformity around a lower level of regulatory protection .... it could also serve as a barrier to progress on regulatory change in areas where no jurisdiction has taken adequate action ... such as the absence of mandatory indexation".

It is also important to note that in many areas CAPSA's proposed model pension law ignores the role of the bargaining agent and the collective bargaining process.[2]

Pensions Standards Legislation in Canada

Jurisdiction	Applicable Legislation	Regulatory Commission	Official Websites
Federal	*Pension Benefits Standards Act*	Office of the Superintendent of Financial Institutions	www.osfi-bsif.gc.ca/osfi/index_e.aspx?ArticleID=216
British Columbia	*Pension Benefits Standards Act*	The Financial Institutions Commission of British Columbia	http://www.fic.gov.bc.ca/responsibilities/pension/overview.htm
Alberta	*Employment Pensions Plan Act*	Alberta Superintendent of Financial Institutions (ASFI)	www.finance.gov.ab.ca/business/pensions/ index.html
Saskatchewan	*Pension Benefits Act*	Pensions Division, Financial Services Division	http://www.sfsc.gov.sk.ca/pensions/default.shtml
Manitoba	*Pension Benefits Act*	The Manitoba Pensions Commission	www.gov.mb.ca/labour/pen/index.html
Ontario	*Pension Benefits Act*	Pensions Plans Branch, Financial Services Commission of Ontario	http://www.fsco.gov.on.ca/english/pensions/
Québec	*Supplemental Pension Plans Act*	Direction des régimes de retraite, Régie du Québec	www.rrq.gouv.qc.ca/en
New Brunswick	*Pension Benefits Act*	Office of the Superintendent of Pensions Department of Training and Employment	http://www.gnb.ca/0307/001e.htm
Prince Edward Island	*Pension Benefits Act* (not yet in force)	N/A	N/A
Nova Scotia	*Pension Benefits Act*	Office of the Superintendent of Pensions	http://www.gov.ns.ca/enla/pensions/
Newfoundland & Labrador	*Pension Benefits Act*	Office of the Superintendent of Pensions	http://www.gs.gov.nl.ca/cca/ip/

••• Income Tax Legislation

Canadian pension plans must also be registered under the *Income Tax Act* (ITA). The rules and regulations under the ITA relating to registered pension plans are extremely complicated. Although the actual sections outlining the

ITA's treatment of pension benefits are not numerous, thousands of pages of technical notes, newsletters, technical interpretations and budget speeches have been released regarding these provisions. The responsibilities imposed on pension plan sponsors are onerous, especially for those who sponsor defined benefit plans. The difficulty of compliance increases with plan complexity. Therefore, a fair degree of expertise is needed to comply with all aspects of the legislation.

Employer contributions to a pension plan are tax deductible and are only taxable to the member once he or she begins to draw a pension. Any investment gains earned on the contributions to the pension plan are generally tax exempt. Employee contributions, if permitted by the plan, are deductible to the employee in the year that they are made.

A pension plan registered under the ITA with the Canada Revenue Agency (CRA) and the applicable pension regulatory authority must be funded in accordance with pension standards legislation and the ITA, its regulations and CRA policies.

• • • Pension Benefits Guarantee Fund – Ontario

Up until very recently Ontario is the only jurisdiction in Canada that provides a guarantee fund to protect pension benefits in the event of a plan wind-up (see section on the federal C-55 Bill below). The purpose of the Pension Benefits Guarantee Fund (PBGF) is to guarantee payment of certain benefits in respect of service in Ontario where the employer is insolvent. The PBGF is funded by assessments on employers sponsoring defined benefit plans. The Ontario Superintendent of Financial Services (Superintendent) is responsible for the administration of the PBGF.

If certain conditions are satisfied, the Superintendent may declare that the PBGF applies to a particular pension plan. First, the plan must be registered in Ontario or a designated province. Second, the plan must provide defined benefits which are not exempt from the PBGF. Third, the pension plan must be wound up in whole or in part. Finally, the Superintendent must be of the opinion, based on reasonable and probable grounds, that the funding requirements of the Ontario *Pensions Benefit Act* and its regulations cannot be satisfied.

Where money is paid out of the PBGF as a result of a wind-up, the Superintendent has a lien and charge on the assets of the employer who sponsored the pension plan in an amount equal to the payment out of the fund, plus interest.

••• *Wage Earner Protection Act*

In December 2007, the federal government passed and gave Royal Assent to Bill C-12, *An Act to amend the Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act, the Wage Earner Protection Program Act and chapter 47 of the Statutes of Canada*. The legislation has become commonly known by its short title, Wage Earner Protection Act.

The genesis of the legislation dates back to the Spring of 2005 when it was first introduced as Bill C-55. The original legislation, coined by the federal NDP as the *'Workers First Bill'*, was one of the concessions the NDP obtained from the Liberal government of Prime Minister Paul Martin in the Spring of 2005 for the NDP's support for the minority government's 2005 budget.

Amongst other things, the legislation contains measures to protect workers' pension plans and RRSPs in the event of bankruptcy, namely by giving priority to unpaid regular employee and employer contributions when an employer sponsoring a pension plan goes bankrupt. It establishes a new national fund enabling workers to collect up to $3,000 in unpaid wages and pension benefits when employers go bankrupt. The national fund is expected to be operating by June 2008 and will receive initial funding of $35 million.

••• Family Law Legislation

Although there is a reference to benefit splitting upon the end of a spousal relationship, the legislation usually defers to the jurisdiction family law legislation. Family law affects pension plans since pension plans generally form part of 'net family assets' on a relationship breakdown. This covers opposite sex and same-sex marriages as well as common-law relationships. In some provinces, employment standards legislation has been amended to require the continued accrual of pension plan benefits in the event of maternity or parental leave or periods where workers' compensation benefits are payable.

[1] For one of the best summaries and comparisons between federal and provincial pensions standards legislation see ***Summary of Pensions Legislation in Canada (2004 edition)*** compiled by Morneau Sobeco and published by CCH Canadian Limited.

[2] For greater detail on the labour movement's concerns with CAPSA's Model Pension Law see the **Canadian Labour Congress Submission to the Canadian Association of Pension Supervisory Authorites (CAPSA) on the Proposed Regulatory Principles for a Model Pension Law** (September 15, 2004) available online at http://canadianlabour.ca/index.php/Pensions__Retirement/pensions_submission_capsa