

Group Retirement Solutions

Ontario's Bill 70 introduces a new regulatory framework and changes to pension legislation

On December 8, 2016, Ontario passed Bill 70, [Building Ontario Up for Everyone Act \(Budget Measures\), 2016](#). Bill 70 introduces a new regulatory framework for the financial services industry in Ontario, amendments to the Ontario *Pension Benefits Act* and repeals the Ontario Retirement Pension Plan legislation.

New Financial Services Regulator

Bill 70 introduces the *Financial Services Regulatory Authority of Ontario Act, 2016*, that establishes the initial parameters for the Financial Services Regulatory Authority of Ontario (FSRA), a new independent regulator of financial services and pensions.

In 2015 an expert advisory panel reviewed the mandates of the Financial Services Commission of Ontario (FSCO), Financial Services Tribunal (FST), and the Deposit Insurance Corporation of Ontario (DICO). In June 2016, the government released the expert advisory panel's final report. The panel recommended significant reforms to the regulatory landscape, including the establishment of a new, independent and flexible regulator with modernized governance and accountability framework and a mechanism to ensure individuals' perspectives are considered. As a result FSCO, FST and DICO will be merged to create a single regulator, FRSA, to oversee the financial services sector in Ontario.

Regulated Sector

FRSA's structure and objective is to regulate the "regulated sectors" which includes:

- Provincially incorporated insurers;
- Pension plans, loan and trust companies;
- Credit unions and caisses populaires;
- Mortgage brokers;
- Co-operatives;
- Insurance agents and adjusters; and

- Service providers to auto insurers in relation to statutory accident benefits

Transfer of information

The Bill deals with the provision of information from FSCO, the Superintendent of Financial Services and DICO for the purpose of the preparing for the transition to where the FSRA is the regulator.

Directors and Employees

The board of directors shall consist of at least three and not more than 11 directors. Officers and employees of FRSA are ineligible to be a director.

Assessment of the regulated sector

The Bill also provides for the ability to assess entities in the regulated sectors to pay for, among other things, the transition expenses and expenditures of the FRSA and the Ministry. The methodology for determining the share for each sector would be set out in the regulations.

Much of the details of the mandate will be released with the regulations.

Amendments to the Ontario's Pension Benefits Act (PBA)

The changes to the PBA include:

Portability Options

The portability options set out in section 42 of the PBA would now apply to retired members who are entitled to begin to receive a pension by virtue of having reached the normal retirement date under the pension plan but who have not yet elected to receive the pension, if the pension plan permits. Currently, the options are technically restricted to employees whose employment terminated prior to the employee's normal retirement date set out in the pension plan.

This change essentially addresses uncertainty created by amendments to the PBA in 2012, which failed to include "retired members" among the persons able to elect portability under section 42 by carving out pensioners



from the definition of “former member” and defined them under “retired member”.

Superintendent approval to purchase annuities

The Superintendent of Financial Services (Superintendent) must provide approval before purchasing life annuities in connection with a wind up. The approval is only required where the administrator of the plan was appointed by the Superintendent under the Act.

Prescribed Exemption

The Bill adds regulation making powers to exempt an employer or successor employers from the requirement to pay certain amounts into a pension fund in the course of a plan wind up, under certain conditions.

Definition of Successor employer

The Bill also amends section 75 of the Act, to add the definition “successor employer” to mean, the person who acquires the business of an employer who is required to make contributions under a pension plan, if the person assumes some or all of the employer’s obligations and rights under the pension plan in connection with the acquired business.

Administrative penalties

Under the amendments the Superintendent has the authority to impose administrative penalties to promote compliance with requirements under the Act and to prevent any contravention of a requirement under the Act or a prescribed provision of the Act or regulations.

The provisions include:

- No administrative penalty can be paid out of a pension fund;
- The Superintendent must provide the notice to impose a penalty within 5 years from the date of the contravention occurred;
- If an administrative penalty is paid no charges can be brought with respect to an offence under the Act for the same contravention;

- Maximum penalty for an entity is \$25,000 and for an individual \$10,000.

Finally, the regulation-making power under the Act will be expanded to provide for regulations governing administrative penalties imposed under the Act and to the timing and manner of allocating amounts from the Guarantee Fund and paying those amounts to pension plans.

Repeal of Ontario Retirement Pension Plan (ORPP) Legislation

As previously stated, in the August edition of Legislation Matters, Ontario announced it would repeal and discontinue its plans with ORPP given the Federal government’s commitment to Canadian Pension Plan (CPP) enhancements. The federal government has since introduced various legislation, to implement the CPP enhancements, as reported in the November edition of Legislation Matters, and as such Bill 70 now repeals the ORPP-related legislations.

New Rules respecting Pension Advisory Committee (PACs) in Ontario:

Effective January 1, 2017, [new rules](#) come into effect regarding the establishment of pension advisory committees in Ontario. The new rules not only make it easier for members to establish a PAC, it also places new obligations on the administrator of the pension plan.

What types of Pension Plans are subject to the new PAC rules?

The new rules apply to both defined benefit and defined contribution pension plans registered in Ontario, except for:

- Jointly sponsored pension plans
- Multi-employer pension plans established pursuant to a collective agreement
- Pension plans administered by a pension committee or other governing body with a least



one representative selected by members or a trade union acting on their behalf

- Pension plans with fewer than 50 members and retired members (combined)

The new PAC rules

Members can elect to establish a PAC by way of notice to the administrator if:

- at least 10 members or by one or more trade unions that represents at least 10 members notifies the administrator that they wish to establish a PAC, and
- there are at least 50 members in the plan.

Where a PAC is established it must consist of at least 4 but not more than 15 representatives. The PAC representatives must include:

- One representative from each class of employees represented in the pension plan (or two representatives if there is only one class of employees participating in the pension plan)
- Two representatives appointed by retired members

Former members may be appointed to the PAC but there is no requirement for them to participate.

The PAC has no legal authority. Its purpose is limited to monitoring the administration of the plan, making recommendations to the administrator regarding the plan administration, and promoting awareness and understanding of the plan among the membership.

Administrator responsibilities

The administrator would be required to assist in the formation of the PAC by distributing notices and other information related to the plan membership relating to the vote and appointments to the PAC. If the vote is not favorable, the administrator is relieved of the requirement to assist for three years from the date of the most recent vote.

Where a PAC is established the administrator would also need to:

- hold a meeting with the committee at least twice annually, or once annually if the PAC so determines, to discuss the administration of the plan and matters of interest to members,
- make the plan actuary available to meet with the committee at least annually if the plan provides defined benefits,
- ensure that the PAC has access to an individual who can report on the fund's investments of the plan, and
- provide reasonable administrative assistance to the PAC to prepare and distribute an annual report about its activities.

The new rules also allow for reasonable costs associated with the establishment and operation of the PAC to be paid from the pension fund.

Costs

The costs associated with the establishment of the PAC and the operating of same are payable out of the pension fund.

Existing PACs

PACs established before January 1, 2017 will have until June 30, 2017 to ensure that their current composition meets the new requirements.

PRPP developments for Ontario and Manitoba

Pooled Registered Pension Plans (PRPP) legislation now in force in Ontario

On November 8, 2016, Ontario's *Pooled Registered Pension Plans Act, 2015* (Act) and the new regulations supporting the Act came into force.

The supporting PRPP regulations largely incorporate by reference the federal PRPP regulations such as, the conditions to be met for the regulator to issue a license, investment options, prohibition on inducements,



disclosure requirements, locking-in of contributions and circumstances in which PRPP funds can be unlocked.

The regulations also provide for Ontario-specific regulations such as, multi-lateral agreements, creditor protection, portability options, treatment of accounts on relationship breakdown and the content of forms used for withdrawal of funds.

It is also expected that Ontario will join the Multilateral Agreement Respecting Pooled Registered Pension Plans and Voluntary Retirement Savings Plan Agreement (Multilateral Agreement). British Columbia, Nova Scotia, Saskatchewan, Quebec and the federal government have already signed the Multilateral Agreement, which came into effect June 15, 2016.

Manitoba introduces PRPP legislation

On November 23, 2016, the Manitoba legislature introduced Bill 3 - *The Pooled Registered Pension Plans (Manitoba) Act*. This Bill provides the legal framework for PRPP's to be available to employees and self-employed persons in Manitoba who are engaged in work that falls within the legislative authority of Manitoba. Similar to Ontario, the Bill incorporates many of the provisions of the Federal PRPP Act.

Group Benefits

Quebec Bill 92: Greater Transparency

On December 6, 2016 the Québec government passed important amendments to Bill 92, *An Act to extend the powers of the Régie de l'assurance maladie du Québec and to amend various legislative provisions*.

This Bill is intended to give the Régie de l'assurance maladie du Québec (RAMQ) greater administrative powers to help them manage certain commercial practices by health professionals. The Bill seeks to address non-authorized payments claimed or amounts obtained by health professionals or other intermediaries. Essentially the Bill is also designed to create greater transparency

while helping reduce the pressure on the cost of the public health insurance plan.

Of particular interest for private plans, one of the amendments adopted is the requirement for pharmacists to provide a detailed receipt that breaks out the cost of the pharmaceutical services. The receipt must indicate the professional fees of the pharmacists for each service rendered (listed separately), the cost assumed by the public plan for each medication or supply and the profit margin of the wholesaler. For prescription drugs this includes the ingredient cost, the dispensing fee (the pharmacist's professional fee) and the markup (upcharge) charged by the pharmacy.

Today, in Quebec, pharmacists are not required to break out these costs. The ingredient cost, dispensing fee and markup are bundled together as one charge, which means the patient or third party paying for the cost of the prescription are not aware of what the actual cost are. Breaking out the costs creates transparency and allows consumers to better understand what they are being charged and potentially compare costs with other vendors.

Finally, the Bill also includes the express provision that prohibits a group insurance contract or benefit plan from restricting an individual to choose the pharmacist of their choice. Ultimately, the choice of pharmacist remains up to the individual.