STANDARD LIFE

Group Savings & Retirement

Legislation matters

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Multi-jurisdictional issues – Which laws apply?

The October 21, 2008 release of a Proposed Agreement Respecting Multi-Jurisdictional Pension Plans (Proposed Agreement) by the Canadian Association of Pension Supervisory Authorities (CAPSA) is a reminder that the pension standards legislation environment in Canada is complex.

Indeed, the federal and the provincial governments each have a different pension law, which provides for different minimum standards benefits.

As a result, the administration of registered pension plans in Canada becomes rather complex for pension plans with members in more than one province, or with members who have worked in more than one province with the same employer.

CAPSA have taken steps to resolve multi-jurisdictional issues by releasing a Proposed Agreement, which "is intended to provide a clear framework for the regulation of multi-jurisdictional pension plans by applying the rules of the jurisdiction where the plan is registered for matters affecting the entire plan, and the rules of the jurisdiction in which plan members are employed for matters affecting their entitlements". (For more details, please refer to the box below.)

Currently, the Memorandum of Reciprocal Agreement initiated in 1968 and signed by the provincial pension regulators (except P.E.I.) and other bilateral agreements between pension regulators provide the rules governing pension plans with members employed in more than one jurisdiction.

So, how does it work?

Provincial pension legislation

A pension plan with members employed in more than one province has to be registered in the province where a plurality of members is employed.

For example, a pension plan covers 15 members employed in British Columbia; 10 members employed in Alberta; 50 members employed in Ontario and 25 members employers in Quebec.

That pension plan would be registered in Ontario, because the number of members working in Ontario is greater than the number of members employed in any other province.

On the other hand, this pension plan would also have to comply with the pension legislation of the other provinces where members are employed and therefore, members' pension benefit entitlements, such as vesting and locking-in, would be governed by the pension legislation of their own province of employment.

In other words, the pension legislation that applies to a member's pension benefits corresponds to the pension legislation of his/her province of employment, **not** the pension legislation of his/her province of residence. For example, if a member resides in Gatineau (Quebec) and works in Ottawa (Ontario), the member's pension benefit entitlements would be governed by the Ontario *Pension Benefits Act.*

Federal PBSA

The one exception to the above is when a pension plan must be registered under the federal *Pension Benefits Standards Act, 1985* (PBSA).

A pension plan must be registered under the federal PBSA if the pension plan covers employees whose employment is generally in connection with the operation of any work, undertaking or business that is within the legislative authority of the Parliament of Canada.

This includes employees of Crown Corporations, banks, railways, airlines, shipping companies, broadcasting and other communication companies (e.g., radio, television and telephone companies) and any undertakings that are declared by Parliament to be for the general advantage of Canada (e.g., atomic energy and uranium mining), and employees in the Yukon, Northwest Territories and Nunavut.

As a result, members whose employment is in connection with the operation of any work, undertaking or business described above have their pension benefit entitlements governed by the federal PBSA, regardless of their province of employment.

Dual registration

In principle, a pension plan is required to be registered in one jurisdiction.

However, any pension plan registered under the federal PBSA that also covers members in Quebec whose employment is not federally regulated is also required to be registered in Quebec, and any pension plan registered in Quebec that also covers members whose employment is federally regulated is also required to be registered under the federal PBSA. This is what is called *dual registration*.

Final location or checkerboard?

Another complication is when plan administrators have to settle termination, retirement or death cases regarding members who have worked in more than one province with the same employer.

Then, the question is which laws apply?

All the provinces (except Ontario) have adopted the final location approach while Ontario has adopted the checkerboard approach, except for grow-in benefits on pension plan wind-up.

The “final location” approach means that if a member who has worked for the same employer in different provinces terminates, retires or dies while employed in New Brunswick, for example, his/her pension benefits would be determined and paid according to the Pension Benefits Act of New Brunswick.

The “checkerboard” approach means that if, for example, a member who has worked for the same employer in different provinces terminates, retires or dies while employed in Ontario, each portion of his/her pension benefits would have to be split per period where he/she has worked in a given province and determined and paid in accordance with each pension legislation of provinces where he/she has worked for the same employer. Considering that the vesting, the locking-in and the death benefit rules, among other things, vary from one province to the next, the settlement of pension benefits of members who have worked for the same employer in different provinces becomes quite complex for plan members to understand and for plan administrators to administer.

Proposed Agreement Respecting Multi-Jurisdictional Pension Plans

"The proposed Agreement addresses a number of complex issues in the regulation of multi-jurisdictional pension plans, including clarifying which jurisdiction's legislation applies to specified matters covered under pension regulation. The proposed Agreement is intended to provide a clear framework for the regulation of multi-jurisdictional pension plans by applying the rules of the jurisdiction where the plan is registered for matters affecting the entire plan, and the rules of the jurisdiction in which plan members are employed for matters affecting their entitlements. The proposed Agreement also addresses matters not contemplated in pension standards legislation, such as the allocation of assets among jurisdictions on plan wind up or asset transfer."

Stakeholders have until January 30, 2009 to provide their comments to CAPSA. In the mean time, CAPSA has conducted consultation sessions in various locations across Canada in November/December 2008. The Régie des rentes du Québec has conducted a separate consultation session in Montréal on November 25, 2008.

It is expected that the Proposed Agreement, as revised following the consultation process, will be submitted to governments for consideration and adoption.

If adopted by pension standards regulators across Canada, the Proposed Agreement would replace the current agreement – i.e., the Memorandum of Reciprocal Agreement – and other bilateral agreements between pension regulators.

Note: Standard Life, through its affiliation with the Canadian Life and Health Insurance Association of Canada, provides commentary on CAPSA proposals and may from time to time assist CAPSA in the development of initiatives. Standard Life worked closely with CAPSA on the development of the CAP Guidelines and has supported the ongoing development of a "model law" proposal.

2 Communication to employees is key, but sometimes costly

Unfortunately, a pension plan sponsor has recently experienced this the hard way.

In a recent court decision (*Beaulieu v. Abitibi Consolidated*), the Superior Court of Québec has ordered the plan sponsor to pay to a certain number of its employees an amount of $4,423,463 with interests.

Facts

On January 1, 1996, the company decided to transform the defined benefit (DB) pension plan into a pension plan with a DB component and a defined contribution (DC) component.

The non-unionized employees were advised of this change in June 1995 by a letter from the president of the company, in which the employees were asked to make a choice between staying in the DB component and joining the new DC component.

Information sessions were held in the various plants of the company where a representative of the company provided additional information to the employees.

During these information sessions, it is alleged by the plaintiffs in this case (i.e., the non-unionized employees) that the company's representative explained that the DB component would not be subject to any improvement in the future. As a result, based on this information, the employees joined the new DC component and converted their pension benefits accrued under the DB component to the DC component.

Subsequently, the company was purchased and the purchaser made changes to the DB component that improved the pension benefits.

It is important to note that company's executives remained in the DB component.

In 2004, the plaintiffs filed a class action against the company requesting compensation because the company had breached its obligation to disclose information when they were asked to make their choice in 1995.

Alternatively, the plaintiffs requested the Court to declare their 1995 choice void and null, and to order the company to reinstate the plaintiffs in the DB component retroactive to January 1, 1996 with a corresponding refund of their over-contributions paid to the DC component.

Court decision

The Court concluded that the communication during the information sessions to the effect that there would be no improvements in the future under the DB component constituted a commitment from the company and that the improvements made to the pension benefits thereafter were contrary to this commitment. The Court considered that members had been misled especially considering that the executives of the company remained in the DB component.

The Court ordered the company to compensate the members who converted to the DC component.

The conclusion that we can draw from this is that, if you are a plan sponsor, you need to be very careful on how and what you communicate to your members. Otherwise, it might come back to haunt you one day.

3 Marriage breakdown – Do you share more than what is required?

It is no secret that rules governing the division of pension assets under registered pension plans (RPP) are complex and vary considerably according to the applicable pension legislation.

One of those rules requires that no more than 50% of a member's pension benefit entitlement accrued during the marriage or conjugal relationship can be assigned to the former spouse.

Unfortunately, the 50% limit is often forgotten in court decisions and separation agreements. This makes it difficult for RPP administrators to comply.

On the other hand, the 50% limit does not apply in some jurisdictions and also, the accrual period that is subject to the 50% limit varies in some jurisdictions.

The chart below describes the applicable limit per jurisdiction.*

Division of pension benefits upon breakdown of marriage or of conjugal relationship	
Jurisdictions	**Applicable limit**
Federal	The sum of the value of the pension benefit entitlement assigned to the former spouse and the value of the member's residual pension benefit entitlement should not exceed the value of the pension benefit entitlement the member would have received in the absence of breakdown. The purpose is to make sure that the RPP does not have more financial obligations after the assignment of the pension benefit entitlement than before.
British Columbia	*Defined contribution RPP* - One-half of the member's pension benefit entitlement accrued during the marriage or relationship may be transferred to the former spouse's locked-in vehicle, plus net returns on that portion. *Defined benefit RPP* – One-half of (pensionable service accruing during the marriage) divided by (all of the member's pensionable service up to the date of transfer).
Alberta	The member's pension benefit entitlement must not be reduced by more than 50% of the value of the pension benefit entitlement accrued during the period of marriage (a division cannot occur on the breakdown of a conjugal relationship). However, additional voluntary contributions and any optional ancillary contributions may be divided in any proportion.
Saskatchewan	No more than 50% of the member's pension benefit entitlement prior to the division (i.e., the pension benefit entitled accrued during the date the spousal relationship started and ending on the date specified in the court order or in the interspousal agreement) may be assigned to the former spouse.
Manitoba	The member's pension benefit entitlement accrued during the marriage or the conjugal relationship must be split equally between spouses.

Ontario	The member's pension benefit entitlement must not be reduced by more than 50% of the value of the pension benefit entitlement accrued during the period of marriage or conjugal relationship.
Quebec	Except when otherwise specified in the court order, the member's pension benefit entitlement accrued before and during marriage or civil union must not be reduced by more than 50%. Within 1 year following termination of their conjugal relationship, common-law spouses may agree in writing to a partition and transfer to the former spouse up to 50% of the member's pension benefit entitlement.
New Brunswick	The member's pension benefit entitlement must not be reduced by more than 50% of the pension benefit entitlement accrued during the period of marriage or conjugal relationship, pursuant to a marriage contract or separation agreement. However, the 50% limit does not apply when the division is ordered by a court.
Nova Scotia	The member's pension benefit entitlement must not be reduced by more than 50% of the value of the pension benefit entitlement accrued during the period of marriage or conjugal relationship.
Newfoundland and Labrador	The member's pension benefit entitlement must not be reduced by more than 50% of the value of the pension benefit entitlement accrued before the division.

* Please note that "pension benefit entitlement" refers to the value of pension benefits to which a member is entitled under a Registered Pension Plan (RPP).

You can contact us

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