Legislation matters

October 2010

1 Ontario – First part of pension reform adopted

In the January 2010 issue of *Legislation matters*, we explained that Ontario had presented the first part of its pension reform through Bill 236, which is amending the *Ontario Pension Benefits Act.*

The proposals provided under Bill 236 are based largely on recommendations made by Harry Arthurs, former president of York University in Toronto, who headed the Ontario Expert Pension Commission.

Since then, Bill 236 has been adopted and received Royal Assent on May 18, 2010.

However, the majority of the amendments, such as immediate vesting, new commutation rules for small pension benefit, etc. will come into effect by a day named by proclamation of the Ontario government. In fact, very few changes came into effect on May 18, 2010.

We will keep you informed once the measures are proclaimed into effect.

The main changes that came into effect on May 18, 2010 include the following:

- The document waiving the joint and survivor pension must be provided to the plan administrator or insurance company (signed and dated) within the 12-month period before the pension benefit starts to be paid.
- The period in which an application for return of overpayment can be made has been extended.
- Requirements have been clarified for certain pension plan members (e.g.: members of multi-employer pension plans) who can end their membership when contributions have ceased.
- Requirements have been revised for payment of a surplus upon plan wind up.

2

Ontario – Second part of pension reform introduced

On August 24, 2010, Ontario introduced the second part of its pension reform thereby addressing another 40 recommendations from the Expert Commission on Pensions by presenting proposals that will:

- strengthen Ontario's pension funding rules by requiring sustainable funding of promised benefits and tougher funding standards for benefit improvements;
- clarify pension surplus rules and provide a dispute resolution process to allow members, retirees and sponsors to reach agreements on how surplus should be shared on wind up; and
- provide a more sustainable Ontario Pension Benefits Guarantee Fund by implementing a strategy to build reserves, increase revenues, limit current exposure and reduce risk to taxpayers in the future.

The Ontario government is also proposing to:

- permit employers to use irrevocable letters of credit from a financial institution to cover as much as 15% of solvency liabilities;
- allow payment of variable (life income fund-like) benefits from defined contribution pension plans;
- allow "flexible" defined benefit pension plans, as permitted under the *Income Tax Act* (Canada);
- allow defined benefit pension plans to amortize special payments related to solvency and going concerns over a time period beginning up to one year following the valuation date;
- explore (with interested stakeholders) the feasibility, design and implementation of jointly-governed, single employer "target benefit plans" for employees represented by unions or "union-like organizations";
- grant the Superintendent the power to appoint a new administrator in certain circumstances;
- allow reasonable expenses to be paid from the pension fund, unless prohibited by the plan terms;
- enable the Minister of Finance to enter into the proposed Agreement Respecting Multi-Jurisdictional Pension Plans;
- parallel federal changes to pension plan investment rules and continue to review the appropriateness of the 30% rule for pension investments;
- require the *Pension Benefits Act* to be reviewed every five years.

It is expected that draft legislation will be introduced later this fall.

The Ontario government indicated that "If these proposals are passed by the Legislature – and required regulations made effective – a significant proportion of the Expert Commission's recommendations will have been addressed. Recommendations not addressed to date will be considered for inclusion in a subsequent round of pension reform".

The Ontario government also indicated that they are continuing to call for a modest expansion of the Canada Pension Plan and are currently in discussions with other governments regarding pension innovations that could lower costs and facilitate access to defined contribution plans.

3

Update – Changes to the federal *Pension Benefits Standards Act, 1985*

Bill C-9

In the July 2010 edition of *Legislation matters*, we explained that the federal government had tabled Bill C-9, which is proposing amendments, among other things, to the federal *Pension Benefits Standards Act, 1985* (PBSA). Bill C-9 contains most of the proposed changes to the PBSA announced by the Government on October 27, 2009.

Since then, Bill C-9 has been adopted by the Senate and received Royal Assent on July 12, 2010.

Most of the amendments to the PBSA, such as immediate vesting, will become effective on a day or days to be fixed by order of the Government of Canada while others have come into effect on July 12, 2010.

Many of the amendments require regulations to bring them into effect. Timing for those provisions will likely be linked to the adoption of these regulations.

We will keep you informed once the measures, are proclaimed into effect.

Changes to the PBSA that came into effect on July 12, 2010 include the following:

- The Superintendent's consent is not required anymore for asset transfers between defined contribution pension plans.
- The power for the Superintendent of Financial Institutions to replace an actuary if he or she is of the opinion that it is in the best interests of members or retirees.
- Only the Superintendent may declare a pension plan to be partially terminated.

One change impacts the *Income Tax Act* (Canada). The pension surplus threshold has been increased from 10% to 25% before employer contributions under defined benefit (DB) pension plans are suspended. This new measure is now in effect for contributions paid by an employer after 2009 to fund benefits relative to periods of pensionable service after 2009. This measure applies to both federally and provincially regulated DB pension plans.

Pension Benefits Standards Regulations

In the July 2010 edition of *Legislation matters*, we explained that the Minister of Finance, Mr. Jim Flaherty, had tabled a draft regulation in order to modify the *Pension Benefits Standards Regulations, 1985* applicable to federally-regulated pension plans by enhancing protection for plan members, reducing funding volatility, and modernizing the rules for investments by pension funds.

The Department of Finance Canada has since then finalized these regulations and most of them came into effect on July 1, 2010.

However, one new regulation will come into effect on January 1, 2011, which is related to the contribution remittance deadlines.

Currently, the deadline for both the normal cost (i.e., Current Service) and special payments to the plan is 30 days **after the end of the quarter** for which the contributions are payable.

The new deadlines as of January 1, 2011, are as follows:

- Normal cost of the plan (i.e., Current Service): not less frequent than **monthly** and no later than 30 days after the end of the period in respect of which the instalment is paid.
- Any special payments: no less frequent than **monthly** and no later than 30 days after the end of the period in respect of which the instalment is paid.

Reminder

The main changes to the *Pension Benefits Standards Regulations*, 1985 that came into effect on July 1, 2010 are the following:

- A new standard that uses average – rather than current – solvency ratios to determine minimum funding requirements.
- Limiting contribution holidays unless the solvency ratio exceeds full funding plus a new solvency margin, set at a level of 5 per cent of solvency liabilities.
- A modernized investment framework that removes the limits on the amount pension plans can invest in resource and real property investments. More specifically, the amendments eliminates the 5%, 15%, and 25% investment limits relative to resource and real property investments.

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