

Information Bulletin

In this issue

Annual Roundup – A Recap of 2018 Reforms for Ontario Pension Plans

- 1 Overview of Ontario's Fall Economic Statement and Bill 57
- 3 Other News for Ontario Employers
- 4 Federal Retirement Initiatives
- 4 Did You Miss Anything?

Annual Roundup – A Recap of 2018 Reforms for Ontario Pension Plans

The release of the Ontario government's annual economic statement and corresponding legislation tells us the year is nearly over. Since 2018 has been one of the most eventful years for Ontario pension reform in decades, it is a good opportunity to recap what has changed and what we are expecting for 2019.

Overview of Ontario's Fall Economic Statement and Bill 57

On November 15th, the *2018 Ontario Economic Outlook and Fiscal Review* was released.

Two key pension items were highlighted:

- Ontario's commitment to support the creation of a university sector jointly sponsored pension plan
- Support for the use of electronic pension beneficiary designations

To implement these and other items, Bill 57, *Restoring Trust, Transparency and Accountability Act, 2018* was introduced and subsequently received royal assent on December 6, 2018. Changes to the *Pension Benefits Act* (PBA) and other legislation impact:

- DC variable benefit accounts
- Beneficiary designations
- Non-resident unlocking for former members
- Asset transfers to jointly sponsored pension plans
- Administrator discharge following annuity purchase

(More details below on each of these topics.)

Bill 57 also addresses the Financial Services Regulatory Authority (FSRA). This is just one in a series of steps that have been taken this year to establish this new regulatory agency that will soon oversee pension plans in Ontario. Watch for an Aon bulletin in 2019 that will delve into these details further and highlight everything that Ontario pension plan sponsors and administrators need to know as the Financial Services of Commission Ontario (FSCO) transitions to the FSRA.

DC Variable Benefit Accounts Almost Here?

Ontario continues to build the legislative infrastructure needed to allow defined contribution (DC) pension plans the option of paying monthly benefits to retirees and survivors directly from the plan, rather than requiring members to transfer their account balances on termination or retirement. This process began with Bill 120 (2010) when the variable benefit provisions were first added to the PBA. These provisions remain unproclaimed to this day but have been amended and built-upon many times since.

Ontario is clearly committed to moving forward with the variable benefit option and, perhaps, we will soon see these rules finally proclaimed into force. Bill 177, which received royal assent in December 2017, added new provisions to the PBA for DC variable benefit accounts to address transferring funds to individuals who may have an entitlement to a retired member's account, pension statement requirements, and beneficiary designations. In addition, a description of proposed regulations, *Permitting the Payment of Variable Benefits from Defined Contribution (DC) Pension Plans*, published in March 20, 2018, indicated that new regulations will provide detailed

requirements for plan provisions, requirements and restrictions regarding transfers, timelines related to death benefits, disclosure obligations, and other miscellaneous items.

Now Bill 57 allows for the withdrawal of up to 50% of the amount transferred to the retired member's variable benefit account at the time it is established (within 60 days) either as a lump sum or as a transfer to an RRSP. Retirees may particularly like the flexibility this will afford to create highly customized retirement income structures.

It is the plan administrator's decision whether to offer this variable option and balancing employee needs with employer risk is a key consideration.

Once in force, Ontario will join British Columbia, Alberta, Saskatchewan, Manitoba, Quebec and Nova Scotia in offering this option to DC plan administrators. Until every Canadian jurisdiction is on the same page, certain multi-jurisdictional plan sponsors may be reluctant to offer this option as it is not available to all members.

Electronic Beneficiary Designations – Approach with Caution

Bill 57 also adds a new PBA provision to allow pension plan administrators to permit members, former members and retired members to designate beneficiaries electronically. Regulations would prescribe the conditions that must be met for the designations to be valid. No similar change has been proposed for registered accounts, like RRSPs and TFSAs, or insurance policies.

As many plan administrators move enrolments and other forms and transactions to online platforms, this may be a welcome amendment to the PBA, once in force. Advantages to using electronic documents include cost savings, timeliness, and in some ways, better record-keeping.

Up to this point, there has been uncertainty with respect to beneficiary designations, not just because of silence in the PBA but also because designations can be considered testamentary dispositions that are akin to a will. The *Electronic Commerce Act, 2000* generally provides that electronic documents are just as valid or enforceable as paper documents, but this legislation does not apply to wills or powers of attorneys.

This Bill 57 provision comes on the heels of the Canadian Association of Pension Supervisory Authorities (CAPSA) publishing an updated Guideline No. 2, *Electronic Communication in the Pension Industry*, in draft form on November 1, 2018. In it, CAPSA encourages the use of e-communication as the default option when possible, but of course acknowledges that consent or deemed consent is still required for an e-communication to be valid.

Times have clearly changed. Plan administrators and members alike tend to appreciate the convenience of electronic communication, and certainly there are many sophisticated options available for gathering and storing such information.

However, Aon recommends proceeding with caution. Requiring 'wet signatures' on beneficiary designations may still be the most prudent approach. It is not clear whether the new PBA provision allowing electronic beneficiary designations will be sufficient to fully protect plan administrators. For example, although this new PBA section specifically overrides any provision to the contrary in the *Succession Law Reform Act*, other legislation could potentially come into play, and if a dispute were to arise over the validity of a designation, a handwritten signature on a paper document may be more compelling evidence.

Similarly, sending member statements and notices by mail may still be the simplest way to ensure that PBA disclosure obligations are met. There is no need to confirm or deem consent to receive the information via mail, as there would be when sending information electronically.

Proposed Unlocking for Non-Residents

Bill 57 also adds a new section to the PBA to permit pension plans to pay the commuted value of a deferred pension to a former member who is a non-resident of Canada (according to the Canada Revenue Agency). If the former member has a spouse, the spouse must waive any rights they have in the pension fund before the commuted value can be unlocked. The wording of this provision does not appear to apply to non-resident spouses of members who may be in receipt of a survivor benefit.

The pension plan text must contain this provision in order to allow for non-resident unlocking. Previously, non-resident unlocking is only available in Ontario for locked-in retirement accounts and life income funds.

A number of other jurisdictions already permit non-resident unlocking for pension plans and most plan administrators decide to offer this to their former members when possible.

Support for Joint University Plan

In the *2018 Ontario Economic Outlook and Fiscal Review*, Ontario recognized that many broader public-sector employers have been working towards merging their single-employer pension plans into jointly sponsored pension plans (JSPPs) to reduce costs and improve efficiencies, and this includes a large initiative in the university sector.

Aon is pleased to see Ontario announce its expectation that a newly established university JSPP would be treated similarly to other broader public-sector, *solvency-exempt* JSPPs.

Bill 57 contains amendments to the PBA to facilitate the merger of certain public sector and prescribed pension plans into JSPPs, including those plans with both defined benefit and defined contribution provisions. In related news, Bill 66, *Restoring Ontario's Competitiveness Act, 2018*, which received first reading on December 6, 2018, proposes removing a PBA rule that only allows public sector plans to convert from a single employer pension plan to jointly sponsored pension plan.

House-Keeping for Annuity Purchase Rules

The PBA currently provides that if the administrator of a single employer pension plan has complied with certain requirements in respect of the purchase of a pension, deferred pension or ancillary benefit through an annuity (i.e., an 'annuity buy-out'), the administrator is discharged under the PBA.

However, there are a few gaps in the provisions that need to be cleaned up.

Bill 57 provides that an administrator may be deemed not to have been discharged if it is discovered that the annuity purchase did not actually meet the requirements of the regulations. New enforcement provisions would also permit the Superintendent to order the insurance company that provides the annuity to repay an amount, with interest, if the provisions of the PBA are not met.

Bill 57 also addresses some gaps related to spouses, clarifying:

- In addition to former and retired members, notices would need to be given to spouses (including former spouses) and survivors with entitlements under the plan
- If an annuity is purchased for a spouse and a survivor (in receipt of either a pre or post retirement death benefit) it must provide the same benefit as under the plan
- Any discharge would also apply to spouses and survivors (not just former and retired members)

Finally, with respect to surplus, the current PBA provides that after a discharge, the former and retired members would have the same rights to surplus as the former members and retired members who, as of the date of the wind up, are entitled to payments under the pension plan. Bill 57 adds that this applies whether or not there is a plan surplus at the time of the annuity purchase.

Other News for Ontario Employers

Pay Equity

Bill 57 also delays the pay transparency measures that were passed earlier this year (by the previous Ontario government) by changing the January 1, 2019 start date for the *Pay Transparency Act, 2018* to a future day to be named by proclamation of the Lieutenant Governor.

Meanwhile the federal government has proposed new legislation for federally regulated public and private sector employers with 10 or more employees, that would be geared towards furthering pay equity and that would establish a Pay Equity Commissioner within the Canadian Human Rights Commission to administer and enforce the new legislation. Employers would need a pay equity plan; they may need to adjust compensation to ensure that they provide equal pay for work of equal value; and they would have to submit annual statements to the Pay Equity Commissioner.

Employer Health Tax (EHT)

Ontario's Economic Outlook announced that the EHT exemption will increase, as a result of indexation, from \$450,000 to \$490,000 on January 1, 2019, thereby reducing the EHT payable for an eligible private-sector employer by

up to \$780 annually. In addition, Ontario will not implement measures proposed in the 2018 Ontario budget that would have restricted access to the EHT exemption.

Federal Retirement Initiatives

On November 21st, the federal government announced its *2018 Fall Economic Statement*. In retirement news, the government highlighted increases to the guaranteed income supplement since 2016 and the enhancements to the Canada Pension Plan that commence January 1st.

As promised in both the 2018 Budget and the *2018 Fall Economic Statement*, the federal government has also launched targeted consultations to explore ways to enhance retirement security, with a focus on workplace pension plans. The consultation seeks input about concerns with employer insolvencies which can result in pension reductions for retirees - losses that are made worse when companies also terminate or reduce health and welfare benefits. The federal government is looking to explore topics such as:

- incentives to eliminate pension deficits
- restrictions on corporate behaviour when insolvency may be on the horizon
- amendments to insolvency legislation to prioritize unfunded pension liabilities
- solvency reserve accounts
- funding relief measures
- possible transfers to self-managed accounts rather than annuities on plan termination
- more explicit prohibition in pension legislation that pension benefits cannot be made conditional on the continued operation of the plan

While looking for ways to increase benefit security, the federal government also wants stakeholders to consider potential costs to employers and to ensure that any additional requirements do not result in more defined benefit (DB) plan closures.

Did You Miss Anything?

2018 was indeed a busy year for pension reform! If you are an Ontario pension plan sponsor or administrator, check the list below to be sure you didn't miss any other important changes. Talk to your Aon advisors for more details.

- ✓ New funding regime for Ontario DB plans in which solvency funding requirements are reduced from 100% of solvency liabilities to 85%, and a Provision for Adverse Deviations (PfAD) in the going concern valuation has been added
- ✓ Upcoming changes to the Pension Benefits Guarantee Fund (PBGF) - increased benefit protection in effect retroactively for plans wound up on or after May 19, 2017, and new assessment rates apply to assessment dates on or after January 1, 2019
- ✓ Waivers required for biennial statements owed to unlocatable members and FSCO policy on missing member searches
- ✓ Registry of unlocatable members to be maintained by regulator with plan administrators required to report details (not yet in force)
- ✓ Statutory discharge provided to administrators when annuity is purchased, if conditions met
- ✓ New rules for Pooled Registered Pension Plans (PRPPs) to further harmonize Ontario and federal legislation
- ✓ Ontario proposals for disclosable events regime and a distressed pension plan workout scheme
- ✓ CAPSA's new or revised guidelines for governance self-assessments, DC plans, missing members, and using solvency or hypothetical wind-up liabilities based on actual life insurance company annuity quotations

Contact Information

Should you wish additional information on this topic, please contact your local Aon consultant, or send an email to canada.retirement@aon.com.

Aon publishes *Information Bulletin* for the purposes of providing general information. The information in *Information Bulletin* does not constitute financial, legal, or any specific advice and should not be used as a basis for formulating business decisions. For information tailored to your organization's specific needs, please contact your consultant at Aon. This issue of *Information Bulletin* contains information that is proprietary to Aon and may not be distributed, reproduced, copied or amended without Aon's prior written consent.

About Aon

Aon plc (NYSE:AON) is a leading global professional services firm providing a broad range of risk, retirement and health solutions. Our 50,000 colleagues in 120 countries empower results for clients by using proprietary data and analytics to deliver insights that reduce volatility and improve performance.

© 2018 Aon Hewitt Inc. All Rights Reserved.

The information contained herein and the statements expressed are of a general nature and are not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information and use sources we consider reliable, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

aon.com