



Recent Pension Reform Initiatives

ONTARIO GOVERNMENT ANNOUNCES PROPOSED CHANGES

On August 24, 2010, the Ontario government announced proposals regarding the second phase of pension reform in the province. According to the Ministry of Finance Press release, the package of changes to be released this fall will build on the phase 1 changes (see below for more) by addressing an additional 40 recommendations of the Ontario Expert Commission on Pensions. We will provide more detailed information once the proposals become draft legislation. The Ministry of Finance stated the proposals would:

- 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.
- 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.

RECENT LEGISLATIVE CHANGES & AMENDMENTS TO YOUR PENSION PLAN

Recent amendments to pension rules at the federal level and in Ontario will change the way pension plans registered in those and other jurisdictions are administered.

A number of the changes will affect plans registered in other provinces: for example, changes to the federal investment rules will apply to plans registered in British Columbia, Alberta, and other provinces that have adopted the federal rules, and a number of the Ontario changes will apply to plans registered in other provinces but which have Ontario members.

Due to the significant impact of many of the changes, we recommend that plan sponsors and administrators of federally-regulated plans, or provincially-regulated plans with Ontario members, pay particular attention to the key rule changes described below which require plan amendments, or which make plan amendments advisable.

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The rule changes arise out of the following legislative amendments:

- amendments to the federal *Pension Benefits Standards Regulations, 1985* (majority in force July 1, 2010)
- Federal Bill C-9, the *Jobs and Economic Growth Act* (Royal Assent July 12, 2010, some provisions yet to be proclaimed into force), which amends the federal *Pension Benefits Standards Act, 1985* and the *Income Tax Act*
- Ontario Bill 236 (Royal Assent May 18, 2010, many provisions yet to be proclaimed into force)

Immediate Vesting of Benefits

Rule changes at both the federal level and in Ontario introduce immediate vesting of benefits once an employee becomes eligible to join a plan. While these provisions will come into force on a date or dates to be proclaimed in the future, plan sponsors and administrators will need to begin considering whether to amend plans to extend the eligibility waiting period. The benefit of lengthening the eligibility period to the maximum 24 months – for those plans which do not already have a 24-month waiting period – will be to reduce the costs of enrolling and terminating short-service members.

For plans with members in provincially-regulated employment in Ontario, the increase in the threshold for small benefit entitlements from 2% to 4% is likely to require a plan amendment. Plan sponsors and administrators are encouraged to review their plan text and relevant provincial schedules to determine the extent to which revisions are required.

Partial Wind-ups / Grow-in rights

Bill 236 abolishes the concept of partial wind-ups from Ontario legislation on a date to be proclaimed. This change is consistent with the change to grow-in rights, which effective July 1, 2012 will be provided to all involuntarily terminated members (except those terminated for “wilful misconduct”, as defined in Ontario’s *Employment Standards Act*) who meet the 55 age-plus-service threshold. Sponsors and administrators of plans with Ontario members may wish to consider the potential cost impacts of this significant change, including whether plans should be amended to eliminate early retirement subsidies to avoid the impact of the change.

At the federal level, a provision of Bill C-9 now in effect is a new prohibition on employers initiating a partial wind-up. Notably, the Superintendent retains the power to order a plan to be partially terminated.

Phased Retirement

Changes to the Ontario legislation will permit, on a date to be proclaimed, plan members to continue accruing service while they collect a pension. To qualify, members must be age 60, or 55 if they are eligible for an early unreduced pension, and have a written agreement with their

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employer. The maximum amount a member can receive under a phased retirement plan is 60% of the pension payments they would receive as a retired member.

Plan sponsors and administrators who intend to offer phased retirement to members in Ontario will be required to make plan amendments to permit such arrangements.

Other Rule Changes of Note

With respect to rule changes at the federal level, there is a new requirement for employers to fully fund pension benefits on plan termination, which will come into force on a date to be proclaimed.

Amendments impacting federally-regulated plans and some provincially-regulated plans were included in the changes to the federal *Pension Benefits Standards Regulations, 1985*. The Department of Finance Regulatory Impact Analysis Statement lists the changes as follows:

- amendments to the funding rules to adopt a new standard for establishing minimum funding requirements on a solvency basis that will use average rather than current solvency ratios to determine minimum funding requirements;
- the introduction of a solvency margin which precludes sponsors from taking contribution holidays, unless the solvency ratio exceeds full funding plus the margin, which is set at a level of five percent of solvency liabilities; and
- the removal of the five, fifteen, and twenty-five per cent quantitative investment limits in respect of resource and real property investments.

While the first two amendments will apply solely to federally-regulated plans, the removal of the quantitative investment limits will affect plans registered in British Columbia, Alberta, and other jurisdictions which have adopted the federal investment rules. The investment rule change should prompt administrators to review whether revisions are required to existing plan investment policies.

For plans registered at both the federal and provincial level, changes to the *Income Tax Act* increase the surplus threshold from 10% to 25%. The Canada Revenue Agency (CRA) has indicated that plan sponsors or administrators wishing to reflect the new threshold in actuarial valuation reports with an effective date of December 31, 2009 or later may do so, notwithstanding the fact that this amendment is not yet in force.

Administrators of plans registered in Ontario will be subject to two additional requirements (to be proclaimed): providing advance notice of all amendments to members, deferred vested members, and retired members; and, assisting with the establishment of advisory committees. The latter change appears to be a significant enlargement of the duties of administrators. Once these provisions are proclaimed, administrators will be under a duty to assist with the formation and administration of the committee. It is significant to note that the formation of

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the committee can be unilaterally initiated by a union with members in the plan. Once formed, the administrator will be required to provide the committee with such information as is under the administrator's control and is required by the committee. Notwithstanding the administrator's duty to assist with the committee, there is no employer representation required. The minimum committee composition is two representatives from each member group, and two retiree representatives.

There remains a somewhat open question as to whether the new notice and advisory committee requirements will be restricted to plans registered in Ontario, or rather will be considered "individual member rights" and thus apply to plans registered elsewhere with Ontario members. If these changes are considered "individual member rights," they are likely to significantly complicate the administration of multi-jurisdictional plans.

Future Rule Changes

We anticipate that further legislative and regulatory changes will be made in the near future, impacting plans registered at both the federal and provincial levels.

Summary of legislative amendments in effect now or at a future specified date

- The amendments to the PBSA Regulations are in force as of July 1, 2010 – use of average solvency ratios; restrictions on contribution holidays; and, elimination of the quantitative investment limits. These apply to federally-regulated plans, and those provincially-regulated plans where the federal investment rules have been adopted.
- Federal plan sponsors are now prohibited from initiating a partial wind-up.
- For plans with Ontario members, as of July 1, 2011, partial wind-ups are abolished and grow-in rights are extended to all involuntarily terminated members.
- The remainder of the amendments referenced in this bulletin come into effect at a date to be proclaimed in the future.

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For further information regarding the above amendments or to discuss any other aspect of pensions and benefits law, please contact a member of the Spectrum HR Law Pensions, Employment Benefits and Executive Compensation Practice Group:

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