



MEMORANDUM

TO: **MIRIAM MAISONVILLE, PRESIDENT**

Caroline Nevin, Executive Director

AND TO: Joanne Silver, Director of Stakeholder Relations

DATE: November 2, 2008

From: Stuart Rennie, Legislation and Law Reform Officer

RE: **UPDATE**

CBABC BRIEF

THE REGISTERED PLAN (RETIREMENT INCOME) EXEMPTION ACT FOR BRITISH COLUMBIA

INTRODUCTION

This memo updates the law and references cited in the May 26, 2008 update of the CBABC brief, *The Registered Plan (Retirement Income) Exemption Act For British Columbia* (November 2005) (the "November 2005 CBABC Brief").

The 60+ page November 2005 CBABC Brief is available at <http://www.cba.org/BC/Initiatives/main/submissions.aspx>.

The information in this memo is current to November 2, 2008.

The information in this memo updates the information from November 2005 and follows the organization of the November 2005 CBABC Brief.

The November 2008 Update information is in **bold blue font**.

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REASONS TO ENACT THE REGISTERED PLAN (RETIREMENT INCOME) EXEMPTION ACT

THE DATA ON RETIREMENT SAVINGS: REGISTERED PLANS ARE ESSENTIAL

- Income Security and Stability During Retirement in Canada (March 2008)
Using longitudinal data to track cohorts as they age, we find that average family income peaks at about age 60, declines until age 68 and is stable thereafter. However, this pattern varies considerably across the income distribution. People at the bottom of the distribution experience relatively little change in their incomes as they age, while those at the top witness a significant decline, on average. Hence, the income gap between the high- and low-income individuals falls as the cohorts age; income inequality falls as cohorts enter and move through the retirement years. (pp. 22-23 of PDF version)¹;
- RRSP investments (February 2008)
In 2005, 6 in 10 families held RRSPs, with a median value of \$25,000.²
- 2005 Survey of Financial Security: Public Use Microdata User Guide (September 2007)
The single most important asset for Canadians was their principal residence, accounting for one third of the total. This was followed by employer pension plans (EPP), which represented almost 18.5% of all assets.

About 58% of family units had RRSPs, RRIFs or Locked-in Retirement Accounts (LIRAs) in 2005. The median value of these plans was \$30,000.

Just under one-half (48.6%) of family units had assets in employer pension plans. The median value of those assets was a much larger \$68,300.³
- Pension Coverage and Retirement Savings of Canadian Families, 1986 to 2003 (September 2006)
In sum, using families' stock of financial wealth as a metric to gauge their preparedness for retirement suggests that, since the mid-1980s, the degree to

¹ <http://www.statcan.ca/english/research/11F0019MIE/11F0019MIE2008306.htm>.

² <http://www.statcan.ca/english/freepub/75-001-XIE/2008102/article/10520-en.htm#Summary>.

³ <http://www.statcan.ca/english/research/13F0026MIE/13F0026MIE2007001.htm>.

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which Canadian families were prepared for retirement has improved in the top quartile but not in the bottom quartile.⁴

- [Preliminary results of the Pension Satellite Account, 1990 to 2007 \(June 2008\)](#)⁵
“Total assets of the pension programs account for \$2.1 trillion at year-end 2007 (Chart 1), or 38% of National Net Worth.”

“From 2002 onwards, the share of IRSPs invested in other types of plans, including self-directed RRSPs offering more diversified investment options, has grown significantly (Chart 5).”

NEED FOR RETIREMENT SAVINGS

- Ministry of Health 2008/09–20010/11 Service Plan BC Budget 2008

The Aging Population

Between 2001 and 2006, the British Columbia population grew by 5.4 per cent from 4,078,447 people to 4,310,452 people, and all of this increase was from the population aged 45 or older. While the population under 20 years old decreased, and the 20 to 44 age group remained relatively constant, the 45 to 64 aged population increased 16 per cent and the seniors population aged 65 or older increased 10 per cent, with the over 85 year old segment growing faster than any other age group.

The aging population is a significant driver of demand as the need for health services rises dramatically with age. For example, compared to a typical 65 to 74 year old, a typical 85 years or older person uses three times more acute care services, 12 times more community services and 25 times more residential care services. In 2005/06 those over 65 made up 14 per cent of the B.C. population, but used 47 per cent of acute care services, 49 per cent of PharmaCare expenditures, 71 per cent of home and community care services and 93 per cent of residential care services.(pp. 8-9 of PDF version)⁶

- [A Portrait of Seniors in Canada \(2006\)](#)

Between 1981 and 2005, the number of seniors in Canada increased from 2.4 to 4.2 million and their share of the total population increased from 9.6% to 13.1%.

⁴ <http://www.statcan.ca/english/research/11F0019MIE/11F0019MIE2006286.htm>.

⁵ <http://www.statcan.ca/english/freepub/13-605-XIE/13-605-XIE2008002.htm>.

⁶ Ministry of Health Service Plan at <http://www.bcbudget.gov.bc.ca/2008/serviceplans.htm>.

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Consequently, older age groups are more and more represented in the total Canadian population.⁷

- **2007 General Social Survey Report The retirement puzzle: Sorting the pieces (September 2008)**⁸

“Conclusion

While much attention is devoted to the financial resources Canadians accumulate en route to retirement, much less is generally said about their informational resources. Results from the 2007 GSS show that about one in three near-retirees do not typically receive financial advice from any source, with this proportion far larger among groups such as lower-income households and recent immigrants. The same holds true for knowledge of public retirement income programs. While most near-retirees say they understand public retirement programs and the basic structure of their pension, a significant proportion do not. Furthermore, individuals who do not receive advice and information regarding retirement express greater uncertainty about their financial future than those who do, even after other characteristics are taken into account. Our data do not make clear whether the absence (or presence) of such information will have significant impacts on the capacity of individuals to make a successful transition into retirement. However, it does appear that some of these near-retirees may be lacking the informational resources needed to navigate a financial marketplace characterized by increasing complexity and sophistication.”

- **2007 General Social Survey Report: The retirement plans and expectations of older Workers In September 2008, the found that:**

most expect their retirement income to be adequate⁹

⁷ <http://www.statcan.ca/english/freepub/89-519-XIE/2006001/demographic.htm>.

⁸ Grant Schellenberg and Yuri Ostrovsky, *2007 General Social Survey Report The retirement puzzle: Sorting the pieces* (<http://www.statcan.ca/bsolc/english/bsolc?catno=11-008-X200800210667>).

⁹ Grant Schellenberg and Yuri Ostrovsky, *2007 General Social Survey Report The Retirement Plans And Expectations Of Older Workers* (<http://www.statcan.ca/english/freepub/11-008-xie/11-008-xie2008002.htm>).

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SELF-EMPLOYED NEED LEGAL PROTECTION

In 2003, 98 per cent of all businesses in British Columbia were small businesses.

In 2006, 98 per cent of all businesses in British Columbia were small businesses (pp. 1 and 3 of PDF version).¹⁰

In 2007, 98 per cent of all businesses in British Columbia were small businesses (pp. 2 and 3 of PDF version).¹¹

BENEFITS TO EXEMPT RRSPS

In 2005, Vancouver was ranked third best city in the world to live.

In 2007, Vancouver was still ranked third best city in the world to live.¹²

In 2008, Vancouver was ranked fourth best city in the world to live.¹³

LEGISLATION IN OTHER CANADIAN JURISDICTIONS

MANITOBA

On November 1, 2007, similar to the Saskatchewan legislation, Manitoba put into force its *Registered Retirement Savings Protection Act*, C.C.S.M. c. R116.¹⁴

NEWFOUNDLAND AND LABRADOR

On December 12, 2006, Newfoundland And Labrador added section 131.1 to the *Judgment Enforcement Act*, S.N.L. 1996, c. J-1.1.¹⁵

Similar to the Saskatchewan legislation, section 131.1 exempts registered plans (RRPS, DPSPs and RRIFS), including a current obligation or future obligation under these plans, from the enforcement process, except for family support obligations (so that registered plans are still subject to creditor enforcement for family support obligations).

¹⁰ <http://www.sbr.gov.bc.ca/resource-centre/publications.htm>.

¹¹ <http://www.sbr.gov.bc.ca/resource-centre/publications.htm>.

¹² Mercer Human Resource Consulting, "2007 World-wide Quality of Life Survey" (April 2007) (copy available at: <http://www.mercer.com/referencecontent.jhtml?idContent=1128060#Americas>).

¹³ Mercer Human Resource Consulting, "2008 World-wide Quality of Life Survey" (June 2008) (copy available at: <http://www.mercer.com/pressrelease/details.htm?idContent=1307990>).

¹⁴ <http://www.canlii.org/mb/laws/sta/r-116/20080415/whole.html>.

¹⁵ <http://www.canlii.org/nl/laws/sta/j-1.1/20080415/whole.html>.

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OPTIONS, IMPLICATIONS AND RECOMMENDATIONS FROM OTHER JURISDICTIONS

BILL C-12: PROPOSED CANADIAN RRSP EXEMPTION LEGISLATION

On December 14, 2007, the Canadian Parliament passed Bill C-12 (now Chapter 26 of the Statutes of Canada 2007).¹⁶

Among other things, Bill C-12 amended Bill C-55 (now Chapter 47 of the Statutes of Canada, 2005).

Sections 32 and 33 of Bill C-12 amend section 57 of Chapter 47.

Section 32 and 33 of Bill C-12 are in force July 7, 2008.¹⁷

Section 57 of Chapter 47 amends section 67(1)(b) to (b.3) and section 67(1)(c) of the *Bankruptcy and Insolvency Act* (R.S., 1985, c. B-3).

Chapter 47 has not been proclaimed into force.¹⁸

Section 57 of Chapter 47 is in force July 7, 2008.¹⁹

That means that the Bill C-12 amendments will not come into force until Chapter 47 is proclaimed in force.

The Legislative Summary for Bill C-12 is useful to clarify some of the complexity in Bill C-12:

2. Exemption of RRSPs and RRIFs (Clause 32(1))

The BIA governs the distribution of assets when a person becomes bankrupt. The general rule is that all assets belonging to a bankrupt person become the property of the bankruptcy trustee and available to satisfy creditors' claims. However, certain classes of property ("exempt property") continue to belong to the debtor. Under section 67(1)(b) of the BIA, property that is exempt from execution or seizure under any laws

¹⁶ Royal Assent version is

http://www2.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Parl=39&Ses=2&Mode=1&Pub=Bill&Doc=C-12_4.

¹⁷ <http://canadagazette.gc.ca/partII/2008/20080723/html/si78-e.html>.

¹⁸

<http://www.parl.gc.ca/LEGISINFO/index.asp?Language=E&Chamber=N&StartList=A&EndList=Z&Session=13&Type=0&Scope=I&query=4514&List=force>.

¹⁹ <http://canadagazette.gc.ca/partII/2008/20080723/html/si78-e.html>.

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applicable in the province or territory within which the property is situated and within which the bankrupt resides, is also exempt from seizure in bankruptcy.

Due to this provision, funds invested in Registered Pension Plans (RPPs) are exempt from seizure in bankruptcy by virtue of provincial and federal pension benefits legislation.⁽³⁹⁾ Registered Retirement Savings Plans (RRSPs) in the form of a contract with an insurance company and where a spouse, child, parent, grandparent, or grandchild of the plan owner is named as a beneficiary are exempt from seizure on bankruptcy under laws governing insurance.⁽⁴⁰⁾ Locked-in RRSPs holding money that was transferred from a pension plan on termination of employment after pension rights have vested are exempt from seizure on bankruptcy under pension legislation.⁽⁴¹⁾ By contrast, RRSPs held by banks, brokerages, or mutual funds, or in self-directed RRSP accounts, are not exempt from seizure in the event of bankruptcy.⁽⁴²⁾ These RRSPs vest in the trustee in bankruptcy on the bankruptcy of the plan owner. The money held in the RRSP becomes available for distribution to creditors.

In order to ensure the consistent treatment of retirement savings vehicles, Chapter 47 exempts property in RRSPs and Registered Retirement Income Funds (RRIFs), as those terms are defined in the *Income Tax Act*, from seizure in bankruptcy. However, to prevent abuse of the exemption, property contributed to the RRSP or RRIF in the 12 months before the date of bankruptcy, or such longer period prescribed by the court, is subject to seizure. Finally, the exemption of RRSPs and RRIFs is subject to “any prescribed conditions and limitations” (section 67(1)(b.3) of the BIA).

Bill C-12 makes the amendments to section 67(1)(b.3) that were requested by the Bloc Québécois in the 1st Session of the 39th Parliament, in order to respect the provisions of the Quebec *Civil Code* and *Code of Civil Procedure* regarding the seizure of RRSPs and RRIFs.⁽⁴³⁾ Under Bill C-12:

- Section 67(1)(b.3) specifies that the exemption of RRSPs and RRIFs does not restrict the generality of paragraph 67(1)(b). As mentioned above, paragraph 67(1)(b) of the BIA exempts from seizure in bankruptcy any property that is also exempt from seizure under any laws applicable within the province or territory where the property is situated and within which the debtor resides. Thus, if provincial/territorial law protects contributions within the 12 months preceding the date of bankruptcy, the clawback will not apply.
- The power of the court to extend the 12-month clawback period is removed.
- The Government no longer has the authority to prescribe conditions or limitations on the exemption. Therefore, the Government may not, for example, require that an RRSP be “locked in” until retirement in order to be protected.

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- The Government is authorized to apply the exemption in section 67(1)(b.3) to any other plan prescribed by regulation.²⁰

CBA NATIONAL BANKRUPTCY AND INSOLVENCY LAW SECTION

In February 2008, the National CBA National Bankruptcy And Insolvency Law Section made submissions to the Senate Banking Committee on Bankruptcy and Insolvency Legislation regarding Bill C-12:

Personal Insolvency Summary

RRSPS and RRIFS: The CBA Section supports an exemption for RRSP contributions, however, in designing the exemption, it is essential to take into consideration the key differences between RRSPs and pensions, and the policy goal that underlies the exemption of retirement funds. The new RRSP exemption in s. 67 violates bankruptcy policy on many levels, lacks adequate anti-abuse controls and, as enacted, will quickly become irrelevant. The PITF scheme requiring mandatory lock-in and an effective claw-back is necessary to address the important differences between pensions and RRSP and to ensure public respect for the administration of justice. (page v).²¹

CONCLUSION

If you have questions, or if I can be of further assistance, please feel free to contact me.

Stuart

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²⁰ <http://www.parl.gc.ca/LEGISINFO/index.asp?Language=E&query=5298&Session=15&List=ls#exemption>

²¹ Study of the Senate Banking Committee on Bankruptcy and Insolvency Legislation (<http://www.cba.org/CBA/submissions/2008eng/08-16.aspx>).