



November 13, 2012

Via email: leah.anderson@fin.gc.ca

Ms. Leah Anderson  
Director, Financial Sector Division  
Department of Finance  
L'Esplanade Laurier, East Tower, 20<sup>th</sup> Floor  
140 O'Connor Street  
Ottawa, ON K1A 0G5

Dear Ms. Anderson:

**Re: Regulations Amending the Pooled Registered Pension Plans (PRPP) Regulations  
Canada Gazette, Part I – October 27, 2012**

The Canadian Bar Association's National Pensions and Benefits Law Section (CBA Section) is pleased to comment on the draft Regulations Amending the PRPP Regulations, pre-published in the Canada Gazette, Part I on October 27, 2012 (Draft Regulations). The CBA Section comprises lawyers from across Canada who practice in the pensions and benefits area of law, including counsel to benefit administrators, employers, unions, employees and employee groups, trust and insurance companies, pension and benefit consultants, and investment managers and advisors.

The CBA Section appreciates the opportunity to work with Finance Canada and provide input throughout the process of establishing the framework legislation for PRPPs and the regulations. For ease of reference, our comments are organized under the section headings of the Draft Regulations.

**Amendments**

The CBA Section generally agrees with the additions to the Draft Regulations and the modifications proposed to the French version but recommends the following changes:

- At subsection 1(2) «régime enregistré d'épargne retraite» should be spelled «régime enregistré d'épargne-retraite», with a hyphen in between *épargne* and *retraite*, to ensure consistency with the spelling in subsection 146(1) of the *Income Tax Act*.
- Section 5 should be modified to reflect the English version's intent by modifying subsection 18(1) of the French version of the Regulations (CBA Section's suggestions are underlined):  
**18. (1) L'administrateur avise le participant par écrit dès que possible après que l'administrateur prend connaissance que l'une de ses options de placement est abandonnée.**

- Section 8 should be modified to reflect the English version's intent by modifying the first words of paragraph 21(4)b) of the French version of the Regulations where « dans les » should be replaced by « au moins ».

## **General Requirements**

### Advance Notice to Employees and Notice of Plan Membership

The CBA Section supports sections 22 and 23 of the Draft Regulations, which address the notice requirements in subsection 41(1) and 41(2)(b) of the PRPP Act.

### Prescribed Information under Subparagraph 57(1)(b)(ii) of the PRPP Act

Section 57(1)(b)(ii) of the PRPP Act requires that each member be provided with an annual written statement, the contents of which are prescribed. Section 26 of the Draft Regulations prescribes a list of information to be included on the written statement. The CBA Section supports a definitive list of prescribed information. For this reason, we suggest that s. 26(b) be clarified to indicate whether the “account balance information for the year” requires inclusion of the prescribed information *only*, or if the term “including” suggests that the prescribed information be included *in addition* to other information.

Within this list, the CBA Section is uncertain what is meant in subsection 26(k) of the Draft Regulations which requires that the written statement show “how to obtain the information referred to in this section”. Since the prescribed information is provided to each member in a written statement, it is not clear how else, or in what other manner, the information can be obtained by a member. If subsection 26(k) is intended to require that the written statement explain how a member can obtain *further* information, the CBA Section recommends that members not be permitted to make demands for further information in an unqualified manner (for example, by requiring daily updates). The CBA Section further recommends that members should only be entitled to information to which they would otherwise be entitled under the PRPP Act.

Subsection 26(c) of the Draft Regulations also prescribes information to be provided on a written statement “for a member who elects to receive variable payments”. The CBA Section recommends that the additional prescribed information required for members who elect to receive variable payments be limited to a written statement issued in the year prior to the commencement of the variable payment, but not sooner.

In addition, the CBA Section recommends that the Draft Regulations be amended to adopt a principle-based approach to disclosure as opposed to a “laundry list” approach. However, if the “laundry list” is retained as the preferred approach, we recommend the use of a prescribed form for the annual written statement for ease of administration.

### Prescribed Information under Subsection 58(1) of the PRPP Act

Subsection 58(1) of the PRPP Act requires that administrators file annual information returns and section 27 of the Draft Regulations prescribes the contents of the information return. Similar to our recommendation in respect of the annual written statement, the CBA Section recommends the use of a prescribed form for the filing of an annual information return.

### **Remittances**

The CBA Section supports sections 28 and 29 of the Draft Regulations, as these provisions mirror the relevant subsections of the *Pension Benefits Standards Regulations, 1985* (PBSA Regulations).

The CBA Section supports the content of sections 30 to 33 of the Draft Regulations, but suggests they be moved to the Notices section, since they also deal with notices.

### **Locking In**

The CBA Section supports section 34 of the Draft Regulations regarding residency requirements, as this is consistent with the wording in section 28.4 of the PBSA Regulations.

The CBA Section supports section 35 of the Draft Regulations regarding individuals with certain disabilities, as it is in line with paragraph 2(2)(a) of the PBSA Regulations.

### **Variable Payments**

The CBA Section broadly supports the Draft Regulations on variable payments, but recommends that one significant modification be made.

The CBA Section believes that the “prescribed age” should include some flexibility for the establishment of a PRPP to maximize choices for employers and employees. Instead of fixing the “prescribed age” at 55, we propose that the regulations permit administrators to design and offer PRPPs that allow employers to choose the age at which variable payments may be available to their employees, or to design and offer PRPPs that do not permit variable payments until an age later than 55, such as 60 or 65. This flexibility can be achieved by making the prescribed age a minimum of 55, rather than a fixed age.

The CBA Section is of the view that requiring administrators to offer variable payments at age 55 or not at all, may discourage some administrators from offering variable payments, and may also discourage some employers from joining a PRPP that offers variable payments due to concerns that they might encourage unwanted early retirement or requests for phased retirements.

Additionally, this amendment would not create any inconsistency with the *Pension Benefits Standards Act, 1985* (the PBSA), since the relevant regulations have not yet been written.

The CBA Section proposes that “prescribed age” be modified to be any age at or above age 55.

### **Transfer of Funds and Purchase of Life Annuities**

The CBA Section supports the approach taken in the Draft Regulations of having transfer options available to PRPP members or their survivors that are similar to those offered to plan members transferring funds under the PBSA Regulations. The CBA Section therefore agrees with the approach of having sections 38 to 42 and the Forms in the Schedule closely resemble the language in the unlocking provisions and the Forms in Schedule V of the PBSA Regulations.

The CBA Section agrees that it is appropriate for vehicles to set out the method of determining the value of the assets in the vehicle, including the valuation method used to establish the value on death or on a transfer of assets.

The CBA Section supports the use of a form for purposes of requesting a transfer of funds from the member’s account. The form appears to be clear and easy to understand. The CBA Section continues to note the complexity of the proposed regulations. They may be so complex that

members will need to hire professional advisors to unlock their funds, which seems contrary to the spirit and intent of the PRPP initiative.

There is a minor typo in section 41(1)(j)(i). The reference should be to the “*Pension Benefits Standards Act, 1985*”. There also appears to be mis-references in Form 2. In several places it refers to the fact that a withdrawal of assets from the locked-in vehicle will mean that the funds lose the creditor protection provided by the PBSA, but presumably the form should refer to the *PRPP Act*.

### **Electronic Communications**

The CBA Section is pleased that electronic communications will be permitted under the PRPP Act as a means of communication with employees and plan members. As electronic communications seem to be permitted only for administrators communicating with employees or plan members, the CBA Section recommends that the Draft Regulations be amended to expressly authorize both PRPP administrators and participating employers to use electronic communications as a means to satisfy their obligations under the PRPP Act.

Although it would appear that the key objective of the electronic communications provisions of the PRPP Act is to permit administrators to use electronic means, several sections of the PRPP Act require employers, not administrators, to communicate with PRPP members. For example, subsection 41(1) of the PRPP Act requires an employer to notify employees prior to entering into a contract with an administrator to provide a PRPP and subsection 41(2) of the PRPP Act requires either the administrator or the employer to notify individual plan members of their membership in the plan. Sections 64 and 65 of the PRPP Act do not appear to limit the use of electronic communications to plan administrators.

Therefore, the CBA Section recommends that the provisions of the Draft Regulations on use of electronic communications should expressly apply not only to administrators but also to employers in their communications with employees and plan members.

Pursuant to subsection 43(3) the addressee may revoke consent to receive information electronically either orally, in writing or in electronic form. From a practical viewpoint and to avoid any debate as to an employee’s or plan member’s consent, the CBA Section recommends that any revocation be provided in writing or electronically.

Finally, the CBA Section urges the government to ensure that there is no significant variation between the regulations under the PRPP Act and the pending regulations under the PBSA, which should be consistent within the pension industry.

### **Objections and Appeals**

The CBA Section supports sections 47 and 48 of the Draft Regulations, as they are consistent with the PBSA and the PBSA Regulations.

### **Termination and Winding-Up**

The CBA Section supports section 49 of the Draft Regulations, as it is similar to the language of the termination and winding-up provisions for defined contribution plans in the PBSA and the PBSA Regulations.

However, while the PBSA Regulations appropriately defines the term “actuary” as “a Fellow of the Canadian Institute of Actuaries”, there is no such definition in the PRPP Act or the PRPP Regulations. The CBA Section believes it would be appropriate to define “actuary” as it is defined in the PBSA and the PBSA Regulations.

The CBA Section trusts these comments will assist Finance Canada in its work. We would be pleased to respond to questions and to provide further information on any of the issues addressed in this submission or on proposed PRPPs in general.

Yours truly,

*(original signed by Noah Arshinoff for Michael Mazzuca)*

Michael Mazzuca  
Chair, National Pensions and Benefits Law Section