



THE CANADIAN
BAR ASSOCIATION
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BARREAU CANADIEN

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October 15, 2015

Via email: PRPP@novascotia.ca; Michael.Ingram@novascotia.ca

Mr. Michael Ingram
Director, Policy and Fiscal Planning
Finance and Treasury Board
Pension Regulation Division
PO Box 2531
Halifax, NS B3J 3N5

Dear Mr. Ingram:

Re: Nova Scotia Pooled Registered Pension Plans Regulations

I am writing on behalf of the Canadian Bar Association's Pensions and Benefits Law Section (CBA Section) about the proposed Pooled Registered Pension Plan (PRPP) Regulations issued by the Department of Finance and Treasury Board on September 9, 2015 (Draft Regulations).

The CBA is a national association of 37,000 lawyers, Québec notaries, students and law teachers, with a mandate to promote improvements in the law and the administration of justice. The CBA Section includes 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 benefits consultants, and investment managers and advisors.

The CBA Section supports PRPPs, properly structured, as vehicles to improve the retirement savings system. They can provide an accessible, straightforward and administratively low-cost option for Canadians, particularly the self-employed and employees of small and medium-sized businesses. Harmonization, including laws relating to the licensing, registration and regulation of PRPPs across Canada is essential to achieve their purpose. In July 2014, we expressed our desire for harmonization in a letter sent to the Minister of Finance and Treasury Board (attached as Annex A).

All Canadians should have equal access to PRPPs as part of their retirement planning toolkit. Since PRPPs can give pension coverage to workers without employer sponsored pension plans, PRPP administrators licensed under provincial or federal legislation should be able to offer a PRPP anywhere across Canada. To achieve the intended purpose, PRPPs must be fully portable and available across the country. PRPP providers (i.e., financial institutions) require economies of scale to keep investment and administrative costs as low as possible.

Economies of scale and full portability can only be achieved if PRPPs are available in all Canadian jurisdictions, requiring all provinces enact PRPP legislation.

We have a few comments on the Draft Regulations.

Draft Regulations

1. Plan Administrators (Licensing)

Section 20 of the Draft Regulations requires that all of an administrator's PRPPs be registered under the federal Act. Provinces, however, have taken different approaches to PRPP legislation. Administrators may therefore establish PRPPs that comply with and are registered under the requirements of a province but not those under the federal Act. Requiring all PRPPs of an administrator to be registered under the federal Act would overly restrict the number of eligible administrators.

If PRPPs are offered by regulated financial institutions capable of taking on a role similar to that of an "administrator", additional restrictions seem unnecessary. The market will ensure that PRPP administrators remain competitive (e.g. if a qualified administrator cannot offer a plan in multiple jurisdictions, it will have to change to remain competitive). If non-financial institutions offer the product, then the standards for all should be the same.

The smaller the group of eligible administrators, the less likely there will be a price-competitive functioning market. A more diverse group of eligible administrators and eligible sponsors, and a more diverse set of terms upon which they can create a PRPP, would likely be necessary to ensure appropriate fee arrangements.

2. Locking-in, Transfers and Refunds Rules

We prefer national harmonization in the regulation of PRPPs to simplify administration and to allow for low administration fees for PRPPs. However, if Nova Scotia has more flexible options available for retirement vehicles other than PRPPs, this may create a disincentive to choose PRPPs in Nova Scotia. In the interest of promoting PRPP coverage in Nova Scotia we do not object to the general approach adopted by the Draft Regulations to harmonize PRPP termination and retirement options with the *Pension Benefits Act* and Regulations rather than the federal PRPP Regulations.

3. Spousal Division

The spousal division provisions are not clear as to whether a spouse will have the ability or option to leave their proportionate entitlement in the PRPP fund under their own name, or whether the entitlement must be paid out.

- Subsection 17(2) implies that the spouse would need to request to have the entitlement transferred out.
- In contrast, subsection 18(2) implies that the payment must be made – i.e., the funds must be transferred out.

The CBA Section supports allowing entitlement to remain in the fund as an option as is the case with variable benefits under the Pension Benefits Regulations.

Drafting

There are some drafting issues with the Draft Regulations:

- Section 11 states “in this Section and Sections 11 to 20” should be “...Sections 12 to 19”;
- Heading of Section 12 should read “Application of Sections 11 to 19”;
- Subsections 12(1), 12(2), 13(1), and 13(2), should read “Sections 11 to 19” in place of “Sections 10 to 20”;
- Subsection 16(1)(a) references subsection 14(1) which should be a reference to 15(1);
- Subsection 16(1)(b) references subsection 16(2) which should be a reference to subsection 17(2);
- Subsection 18(1)C(ii) references subsection 16(2) which should be a reference to subsection 17(2); and
- Section 19 references subsection 14(1) which should be a reference to 15(1).

We appreciate the opportunity to provide comments on the Draft Regulations and would be pleased to respond to any further questions or provide additional information regarding the issues addressed.

Yours truly,

(original letter signed by Noah Arshinoff for Michael Wolpert)

Michael Wolpert
Chair, CBA Pensions and Benefits Law Section



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July 30, 2014

Via email: financeminister@gov.ns.ca

The Honourable Diane C. Whalen
Minister of Finance and Treasury Board
7th Floor, Provincial Building
1723 Hollis Street
P.O. Box 187
Halifax NS, B3J 2N3

Dear Minister Whalen,

Re: Harmonization of Pooled Registered Pension Plans (PRPPs)

I am writing on behalf of the Canadian Bar Association's National Pensions and Benefits Law Section (CBA Section) to ask your government to harmonize legislation for pooled registered pension plans (PRPPs) with that in other jurisdictions across Canada.

The Canadian Bar Association is a national association of 37,500 lawyers, Quebec notaries, students and law teachers, with a mandate to promote improvements in the law and the administration of justice. The CBA Section is comprised of lawyers from across Canada who practise 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 benefits consultants and investment managers and advisors.

BACKGROUND

The CBA Section supports PRPPs, if properly structured, as vehicles that would improve the retirement savings system by providing an accessible, straightforward and administratively low-cost option for Canadians, particularly the self-employed and employees of small and medium-sized businesses. The CBA Section believes that a high-level of harmonization across Canada is essential for PRPPs to serve their purpose as such an option.

PRPP legislation has been introduced federally and in British Columbia, Alberta, Saskatchewan and Quebec. The federal government was first to introduce the concept in 2011, with the federal *Pooled Registered Pension Plans Act* and Regulations coming into force in December 2012. Quebec followed in December 2013, passing Bill 39 to create Voluntary Retirement Savings Plans (VRSPs), Quebec's version of the PRPP. Bill 39 comes into force on July 1, 2014. The Quebec legislation differs from the federal legislation.

In May 2013, PRPP legislation in both Alberta (Bill 18) and Saskatchewan (Bill 92) received Royal Assent, but neither have entered into force. Alberta adopted legislation different from the federal legislation, while the Saskatchewan legislation primarily (though not entirely) imports by reference the federal legislation leaving many of the details to be prescribed in the Regulations to follow.

In British Columbia, Bill 9 was introduced in February 2014 and received second reading on March 19, 2014. Much like Saskatchewan, Bill 9 essentially imports the federal legislation by reference.

The CBA Section has participated in consultations on the federal PRPPs at different stages including the design and regulatory framework, the PRPP legislation and the tax rules for PRPPs.

The CBA Section has also made [submissions](#) on Quebec's Bill 80 – An Act respecting voluntary retirement savings plans and Saskatchewan's [consultation](#) on PRPPs.

To achieve harmonization, we urge the legislators of each province to consider the following.

Saskatchewan

We urge your government to consider harmonizing the legislative and regulatory framework for PRPPs in your province.

Alberta and British Columbia

We urge your governments to consider harmonizing the legislative and regulatory framework in preparing the regulations for PRPPs in your respective provinces.

Quebec

We urge your government to consider harmonizing the legislative and regulatory framework of VRSPs with the framework of PRPPs in other Canadian jurisdictions if the legislature modifies the rules of VRSPs in the future.

Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island and Ontario

We urge your respective governments to consider harmonization when determining whether to enact legislation to permit PRPPs in your provinces and in setting up the legislative and regulatory framework for the provincial PRPPs.

PRPPs ACROSS CANADA

All Canadians should have equal access to PRPPs as part of their retirement planning arsenal. For PRPPs to function as they were designed they must be fully portable and therefore available across the country. PRPP providers (i.e., financial institutions) require economies of scale to keep investment and administrative costs as low as possible. The CBA Section is of the view that economies of scale and full portability can only be achieved if PRPPs are available in all Canadian jurisdictions, requiring that all provinces enact PRPP enabling legislation.

FEDERAL PRPP LEGISLATION VERSUS PROVINCIAL PENSION LEGISLATION

The CBA Section recommends that provincial PRPP legislation mirror the federal PRPP legislation, to the extent possible, for consistency, clarity, simplicity and cost minimization.

Any provincial deviation from the federal PRPP legislative framework will likely result in complexity and increased cost which could reduce the likelihood that PRPPs will be successfully implemented and adopted by employers and employees across Canada. The CBA Section is of the view that deviation from the federal PRPP legislation should be an exception sparingly exercised.

There are some differences between federal and provincial pension legislation. If the provincial PRPP legislation "mirrors" the federal PRPP legislation, the provincial PRPP legislation may have provisions that are different from provincial pension legislation. There are two conceptual approaches on this issue. One approach is to consider a PRPP much like an RRSP and as an entirely different category of retirement savings vehicle, requiring an entirely different regulatory approach. The other approach is to take the view that a PRPP is a pension plan and should be subject to minimum standards protections. In this case, we believe that the provincial PRPP legislation should be consistent with provincial pension standards legislation. This will avoid creating an entirely new regulatory regime which may confuse stakeholders and increase costs.

PRPP LEGISLATION

In an ideal world, PRPP legislation and regulations would be fully harmonized. However, the jurisdictions that have thus far introduced or proposed PRPP legislation have taken different approaches. Quebec and Alberta have adopted their own distinct PRPP legislation while Saskatchewan and British Columbia have essentially adopted (by reference) most of the federal PRPP Act.

Some important differences between the federal PRPP legislation and the legislation introduced or adopted by some provinces may result in serious harmonization issues.

1. Plan Administrators (Licensing)

The Quebec VRSP Act provides that only life insurers, trust companies and investment fund managers may act as administrators of a VRSP while the federal Saskatchewan and British Columbia PRPP Acts permit any corporation to be an administrator if the required conditions are satisfied. The Alberta PRPP Act provides that any corporation licensed by the Superintendent may act as an administrator. The federal PRPP Regulations do not require that a corporation be a life insurer, a trust company or an investment fund manager to act as an administrator. A corporation that is not a life insurer, a trust company or an investment fund manager licensed to act as an administrator under the federal PRPP Act and Regulations would not be able to fulfill the same role under the Quebec VRSP Act and Regulations. Given that one of the main purposes of PRPPs is to provide pension coverage to workers without employer sponsored pension plans, the CBA Section believes that PRPP administrators licensed under provincial or federal legislation should be able to offer a PRPP anywhere across Canada.

2. Low Cost Requirement

Another example of the need for harmonization is the "low cost" requirement in all PRPP legislation. At present, only the Quebec VRSP draft Regulations and the federal PRPP Regulations set out criteria to determine whether a PRPP is being provided to its members at low cost. While the criteria in the federal PRPP Regulations is adopted (by reference) in the Quebec VRSP draft Regulations, these draft Regulations add other criteria that must also be satisfied for a VRSP to be provided at low cost. Given the fundamental importance of the low cost requirement, the CBA Section believes the rules for this requirement should

be uniform across Canada. Indeed, having different rules imposes an additional administrative burden on plan administrators which in turn, will likely have an impact on the low cost requirement itself. This would be counterproductive. The CBA Section urges all jurisdictions to consider harmonization on at least the key principles and rules such as the "low cost" requirement.

3. Locking-in, Transfers and Refunds Rules

Locking-in rules also raise harmonization issues. The legislation in Saskatchewan, Alberta and British Columbia, as well as the federal PRPP Act, all provide that both member and employer contributions (if any) are locked-in. However, the Quebec VRSP Act states that any employer contributions are to be credited to the member's locked-in account while member contributions are to be credited to their non-locked-in accounts. These different locking-in rules also have a direct impact on the rules for transfers and refunds. As a result, plan administrators will have to deal with different rules if the PRPP covers both Quebec and non-Quebec members. To keep PRPP costs low, PRPP legislation and regulations should not force plan administrators to apply different legislative and regulatory regimes.

4. Contributions

In no jurisdiction are employer contributions to PRPPs mandatory. Quebec requires most employers to make VRSPs available to employees, but there is no requirement for employer contributions.

Under the Quebec VRSP Act, members may determine their contributions, failing which the rate set by regulation applies. Under the federal, British Columbia, Saskatchewan and Alberta PRPP Acts, the administrator sets the member contribution rate(s) and there is no default rate. In all jurisdictions, members have an opportunity to reduce their contributions to zero for a period of time, which is specified in the federal PRPP Regulations but not yet prescribed in the other jurisdictions. Communicating and administering different contribution rules, including the contribution reduction provisions, adds to the complexity of administration.

5. Regulation of Member Optional Investments

Another example of different approaches is the regulation of investment options. All jurisdictions appear to require that the administrator establish a default investment option. However, the law varies in the degree of prescription imposed for the parameters for the default option. Under the federal legislation, the default option is loosely prescribed while the Quebec legislation includes specific investment criteria for the default option. The specific investment rules prescribed are also different between the federal and Quebec legislative schemes.

Further variation exists between the jurisdictions on whether alternative options may be made available to members, and if so, the number of options that may or must be offered. Under the federal, British Columbia, Saskatchewan and Alberta PRPP legislation, an administrator has discretion to offer members a choice of investments by offering alternative options, but is not required to offer options. In contrast, the Quebec legislation requires an administrator to offer members a choice of investments by offering from three to five alternative investment options.

As a consequence of these variations, plan administrators will have to deal with different investment rules and likely provide different investment options to its members if the PRPP covers members in multiple jurisdictions, especially between Quebec and non-Quebec members. This is inconsistent with the "low cost" intent and spirit of creating PRPPs which is achieved by keeping administrative expenses low and allowing pooled plans to capitalize

on economies of scale. The CBA Section urges all jurisdictions to consider harmonization on at least the default investment options and rules for alternative options offered.

REGULATORY FRAMEWORK

In addition to legislative harmonization, the CBA Section supports regulatory harmonization of PRPPs. A high level of regulatory harmonization across the federal, provincial governments is instrumental in increasing the scale of PRPPs and achieving low costs. Regulatory harmonization of PRPPs would simplify administration, allowing lower administration fees, and provide consistency in the supervision and maintenance of PRPPs across different jurisdictions.

To achieve full regulatory harmonization, the CBA Section would prefer to have one supervisory authority oversee all aspects of PRPP regulation across Canada. Current and proposed PRPP legislation in Canada, however, have different supervisory authorities to regulate PRPPs based on the jurisdiction where a PRPP is registered. The CBA Section supports PRPP legislation that allows multi-jurisdictional agreements to be made between and among the governments of different Canadian jurisdictions, to authorize, among other things, the delegation of powers from one supervisory authority to another. A multilateral agreement would permit consistent and uniform supervision of multi-jurisdictional PRPPs. It could also reduce the possibility of inequities in the treatment and regulation of PRPPs and PRPP administrators across different jurisdictions.

The delegation of powers from one PRPP supervisory authority to another promotes regulatory harmonization while facilitating administration of a PRPP where it is offered in more than one jurisdiction.

Where a multi-jurisdictional PRPP is offered and the majority of members are located in one jurisdiction, the CBA Section supports the delegation of powers from the supervisory authority(ies) of the jurisdiction(s) with a minority of members to the supervisory authority of the jurisdiction with a majority of members. Limiting the number of regulating entities that a PRPP administrator must deal with for a multi-jurisdictional PRPP would ease administration and allow lower administrative costs. It would also encourage eligible PRPP administrators to offer a single PRPP across multiple jurisdictions, as opposed to different PRPPs in different jurisdictions, thereby increasing the cost of the PRPP.

With several PRPP supervisory authorities operating across Canada, the CBA Section favours the establishment and operation in Canada of an association of supervisory authorities to provide guidance and consistency in the regulation of PRPPs. A high level of regulatory harmonization of PRPPs would make it easier for PRPP administrators to provide PRPPs that serve their purpose of being an accessible and administratively low-cost option for Canadians to save for retirement.

We trust these comments are a helpful step toward harmonization. Please do not hesitate to let us know if you have any questions or if you would like any further information.

Yours truly,

(original signed by Noah Arshinoff for Lawrence Swartz)

Lawrence Swartz
Chair, National Pensions and Benefits Law Section