

Special Communiqué

ABOUT US

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Through Morneau Sobeco and Shepell•fgi, the firm delivers solutions to assist employers in managing the financial security, health and productivity of their employees.

With over 2,300 employees in offices across North America, Morneau Sobeco Income Fund offers its services to organizations that are situated in Canada, in the United States and around the globe.



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2009: Key Legislative Developments

2009 was a very eventful year in pension legislation, with wide-ranging reforms currently being proposed for 2010. This *Special Communiqué* highlights some of the key areas of change, discussing key developments organized by theme.

Solvency Funding Relief

National

Perhaps the most pressing issue for governments in 2009 was solvency funding. Defined benefit plan sponsors with valuation dates in late 2008 or 2009 faced significantly increased funding requirements. As a result, many jurisdictions implemented temporary solvency funding relief measures in 2009.

Temporary solvency funding relief measures were adopted in the following jurisdictions:

- > **Federal** – Draft regulations published in April, regulations adopted in June (*News & Views*, April 21, 2009, and July 17, 2009)
- > **Ontario** – Regulations adopted in June (*Special Communiqué*, June 25, 2009, and *News & Views*, October 20, 2009)
- > **Quebec** – Draft regulations published in April, regulations adopted in November (*News & Views*, April 21, 2009, and November 19, 2009)
- > **Alberta** – Regulations adopted in February (*News & Views*, March 17, 2009)

- > **British Columbia** – Policy Bulletin 09-001, *Guidelines for Requests for Solvency Extensions for Defined Benefit Pension Plans*, published in January (*News & Views*, March 17, 2009)
- > **Saskatchewan** – Changes announced in May, regulations adopted in September (*News & Views*, October 20, 2009, and June 12, 2009)
- > **Nova Scotia** – Regulations adopted in November (*News & Views*, January 13, 2010)

Some plan-specific solvency funding relief was also provided. Most notably, the federal government provided funding relief to Air Canada in respect of its pension plans and the Ontario government provided funding relief to General Motors. Federal pension reform proposals would include establishing a workout scheme for distressed DB pension plans.

The Canadian Institute of Actuaries' revised *Standard of Practice for Pension Commuted Values* came into effect on April 1, 2009. Ultimately, all pension jurisdictions other than Nova Scotia allowed for the revised Standard to be used for actuarial reports with valuation dates prior to April 1, 2009, with lower solvency liabilities the result. (*News and Views*, April 21, 2009)



Benefit Security Measures

At the same time that provinces were providing solvency relief, a number of jurisdictions took measures to increase benefit security. Temporary solvency relief came with a number of funding restrictions and requirements.

National

In November, CAPSA released a consultation paper on *The Prudence Standard and the Roles of the Plan Sponsor and Plan Administrator in Pension Plan Funding and Investment*. Up for comment until April 30, 2010, the paper discusses the duties of plan sponsors and administrators and makes suggestions in regards to the possible establishment of formalized funding policies, additional governance work in the area of conflict of interest and code of conduct, and investing. Although not a legislative development, the paper could prove to be influential in plan funding, governance and investment.

Federal (OSFI)

OSFI released the final version of its Instruction Guide on DB actuarial reports on March 31, 2009. The Guide includes rules on discount rates, disclosure, margins for adverse deviation and mortality improvements (*News & Views*, May 15, 2009).

Proposed federal pension reforms would require a solvency funded status of at least 105% for employer contribution holidays to occur, and restrict benefit improvements when solvency funding slips below 85%.

Federal pension reform proposals would require full funding of DB entitlements on plan wind-up for all plans. This leaves Saskatchewan as the only jurisdiction that generally permits solvent DB plan sponsors not to fully fund pension entitlements on plan wind-up (with an exception for

employers electing to take advantage of funding relief who then terminate their plans during the three-year funding relief period).

Ontario

Ontario prohibited contribution holidays in plans with fiscal years ending between June 30, 2010, and December 31, 2012, unless an actuarial cost certificate is filed at the beginning of the fiscal year demonstrating sufficient funding. (*Special Communiqué*, June 25, 2009)

Ontario rules respecting the transfer of DB commuted values out of underfunded plans were amended in June, with further details being provided in subsequent months. According to the Financial Services Commission of Ontario (FSCO), a DB plan administrator is required to test the plan's funding status at least every three months, and temporarily halt transfers if the plan's funded ratio has fallen by more than a prescribed amount. The administrator is required to notify FSCO of the revised funded ratio and apply for permission to make transfers at the revised, lower ratio. The new rules apply to all DB plans, whereas previous rules applied only to plans that were fully funded as at the last valuation.

Quebec

Quebec's new funding rules, originally passed in Bill 30, came into effect on January 1, 2010. They include a requirement for a provision for adverse deviation (PfAD) and an actuarial reserve. Letters of credit are permitted on a permanent basis. Detailed regulations were released in October. (*News & Views*, November 19, 2009, and April 21, 2009).

West

Alberta imposed a number of specific actuarial requirements in respect of temporary solvency funding relief reports, including: (i) a requirement to explain

changes in actuarial methodology, (ii) a limitation on the ratio of smoothed assets to 115% of market value, and (iii) certain baseline actuarial assumptions. The British Columbia Superintendent of Pensions required that an application for solvency extension display: (i) an acceptable margin of conservatism, (ii) extenuating reasons for granting the extension, and (iii) detailed employer financial information.

Bankruptcy and Insolvency

National

Amendments to the *Bankruptcy and Insolvency Act* (BIA) and *Companies' Creditors Arrangement Act* (CCAA) came into force on September 18, 2009. The amendments require that, in order to obtain court approval, BIA proposals and CCAA plans of reorganization must provide for payment of the unpaid pension contributions that would be subject to the super-priority for pension amounts, unless parties to the pension plan have entered into an agreement that is approved by the applicable pension regulator. A super-priority secured charge became effective on July 7, 2008, for the following pension amounts:

- > unremitted employee pension contributions;
- > unpaid employer contributions for a DC pension plan;
- > unpaid normal costs for a DB plan.

Ontario

The 2009 Ontario Budget indicated that the government was concerned about the solvency of the Pension Benefits Guarantee Fund (PBGF) and the PBGF will face an actuarial review. After the review, the government will consider establishing an independent PBGF agency and increasing employer contribution rates. The *Pension Benefits Act* was amended on June 5, 2009, to allow the government to make grants as

well as loans to the PBGF, if necessary. However, the amendments also clarify that the government is not required to bail out the PBGF and is not legally liable for the obligations of the PBGF.

Quebec

Quebec now temporarily offers, where an employer becomes insolvent, a limited pension guarantee fund for retirees and those eligible to retire. (*News & Views*, November 19, 2009) These individuals are permitted to transfer their reduced pension entitlements to the Régie des Rentes for management, with a guarantee of the amount of the pension that would have been paid to the members had the employer not taken advantage of the temporary solvency relief measures.

Governance and Disclosure

Although it was slightly under the radar screen, governments moved to increase governance and disclosure requirements.

Federal (OSFI)

The federal pension reforms would introduce a new governance framework for DC plans, based in part on the *Guidelines for Capital Accumulation Plans (CAP Guidelines)*. The federal reforms would also allow for electronic communication of plan documents with member consent.

Ontario

The Ontario pension reforms would provide for enhanced obligations for the establishment of pension advisory committees, formal recognition of retired members as a group, and advance disclosure of all plan amendments.

FSCO released a draft policy in December on the management and retention of records by a pension administrator. It would require administrators to establish a formal and

comprehensive written records management and retention policy. Public comments are requested by February 26, 2010.

Pension Reform Developments

National

Pension reform was on the national radar screen in 2009. In addition to the provincial reform measures, pension plans were subject to discussions at the national level. The federal and provincial ministers of finance met in a “pension summit” in Whitehorse on December 17 and 18, with proposals ranging from a supplemental Canada Pension Plan to province-wide or national government-sponsored pension plans, as well as measures to encourage employer-sponsored pension plans and individual savings on the table. Research studies were prepared by economist Jack Mintz for the ministers and by pension consultant Bob Baldwin for the Ontario Minister of Finance. The ministers decided to hold a national consultation in early 2010 and meet again in May.

The Canadian Association of Pension Supervisory Authorities (CAPSA) released the final draft of its Multi-Jurisdictional Pension Plans Agreement in June 2009 (*News & Views*, September 17, 2009, and October 20, 2009). The Agreement now goes to the provincial governments for consideration. The draft federal reform proposals include authorizing the federal Minister of Finance to sign the Agreement. The 2009 Ontario Budget stated that the Ontario government would sign the Agreement. Legislation in other jurisdictions already authorizes their respective ministers or regulators to sign such agreements.

Federal (OSFI)

The federal government released pension reform proposals in October 2009 (*Special Communiqué*, October 29, 2009). The draft

legislation has not yet been released, and there could be a lengthy implementation period.

The federal government’s phased retirement rules came into force for federally regulated plans in March.

Ontario

Ontario followed up on the report of its Expert Commission on Pensions by announcing in its 2009 Budget that a number of changes would be made to its pension legislation (*Special Communiqué*, March 30, 2009). The Ontario Pension Benefits Regulation was amended in June to implement solvency funding relief, changes to commuted value transfers, and changes to locked-in investment accounts (*Special Communiqué*, June 25, 2009). The first stage of pension reforms, including a draft regulation, was released in December (*Special Communiqué*, December 14, 2009). More changes are promised in 2010.

West

Developments have been less dramatic in Alberta and British Columbia, where joint pension legislation was among the Joint Panel’s proposals. British Columbia took preliminary legislative measures to implement the ABC provincial pension plan, but the proposals are on hold until the results of the national pension consultations are in.

Manitoba released draft pension regulations in July 2009 consistent with changes to the *Pension Benefits Act (Manitoba)* passed in 2005 (*News & Views*, July 17, 2009). The 2005 changes were part of a wide-ranging pension reform act, Bill 10, in 2005, most of which has not yet been proclaimed. When and if the changes come into force, plan sponsors with Manitoba members will likely need to amend their plans.

Atlantic

The final report of the Nova Scotia Pension Review Panel was released in January 2009 (*News & Views*, March 17, 2009). One of the more controversial proposals was the development of a new funding standard. The government has not yet moved to implement the recommendations, with the exception of the recommendation to permit phased retirement.



2010: The Year Ahead

The upcoming year promises to be an important one, as well. Developments to watch for include the following:

- > The implementation of the first stage of pension reform in Ontario and the content of the second stage;
- > The outcome of the pension summit and national debates on pension coverage;
- > The fate of the proposed province-wide pension plan in British Columbia/ Alberta and whether any other province “goes it alone” in providing supplemental pension coverage;
- > The implementation of the Multi-Jurisdictional Pension Plans Agreement;
- > Continuing pressure on the federal government to provide enhanced priority for DB plan members’ claims in bankruptcy and insolvency proceedings;
- > The details of federal pension reforms and how any investment rule changes are applied nationally;
- > Further developments in solvency funding relief and funding requirements;
- > Requirements for increased disclosure to and consultation with members and other stakeholders;
- > Revisions and possible adoption of the CAPSA Consultation Paper on *The Prudence Standard and the Roles of the Plan Sponsor and Plan Administrator in Pension Plan Funding and Investment*;
- > Continued evolution of governance requirements, including the express adoption of the *CAPSA Pension Governance Guidelines* or the *CAP Guidelines* in pension legislation.