ACPM Response to Bill C-25

An Act Related to Pooled Registered Pension Plans and Making Related Amendments to other Acts

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ACPM/ACARR

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FOREWORD

The Association of Canadian Pension Management (ACPM)

The Association of Canadian Pension Management (ACPM) is the informed voice of Canadian pension plan sponsors, administrators and their allied service providers. Established in 1976, the ACPM advocates for an effective and sustainable Canadian retirement income system through a non-profit organization supported by a growing membership and a team of volunteer experts. Our members are drawn from all aspects of the industry from one side of this country to the other. We represent over 400 pension plans consisting of more than 3 million plan members, with total assets under management in excess of $330 billion.
The ACPM promotes its vision for the development of a world leading retirement income system in Canada by championing the following Guiding Principles:

- Clarity in legislation, regulations and retirement income arrangements;
- Balanced consideration of other stakeholders' interests; and
- Excellence in governance and administration

Introductory Comments

ACPM welcomes the opportunity to respond to Bill C-25 which received first reading in the House of Commons on November 17th, 2011.

ACPM strongly supports the decision by the federal government to introduce this new retirement savings vehicles, having proposed such a model as part of our ACPM Five Point Plan that we introduced to all levels of government in June of 2010.

Pooled Registered Pension Plans are one important step in ensuring greater retirement income coverage and sufficiency in Canada. ACPM compliments the federal government on the introduction of the Bill to enact this new option for saving. We would encourage all governments to work together to create a legislative framework that can be adopted in every jurisdiction.

Enclosed in this paper are our specific comments on Bill C-25 as presented upon first reading.

We would be more than pleased to enter into further dialogue and provide additional detail should this be desired.

Ensuring the Success of PRPPs

ACPM is gearing its efforts to ensuring that the PRPP is a success, and makes a significant difference for Canadians in their retirement years. Critical to the success of the PRPP will be the willingness of administrators to create and offer these plans. To this end, we have some general principles that we feel need to be better reflected in the legislation. We also wish to provide comments on specific aspects of the current Bill that we feel require clarification as well as comments regarding the regulations to come.

We agree with the focus on achieving affordable plans with appropriate fiduciary responsibilities to make PRPPs an attractive choice for employees and the self-employed. At the same time, we believe that success will depend on making it attractive and worthwhile for providers to offer plans, for those plans to be on a national in scale, and for competition to drive pricing and innovation.

ACPM urges deliberate attention to ensuring the legislation promotes the harmonization of PRPP rules across the country. This would go a long way towards ensuring lower costs are achieved. Differing requirements not only add to costs, they discourage national scope which in turn hurts affordability. Harmonization is also important in a country with considerable labour market integration and mobility of workers between provinces/territories. RRSP rules set out in the Income Tax Act and the Federal pension investment rules are two good examples of legislative provisions relating to retirement that have been adopted across Canada.

We also believe it critical that the legislation deal more clearly than it does with the fiduciary responsibilities of plan administrators. This will ensure smooth operation of the plans and will promote lower costs. Uncertainty relating to obligations will raise costs, as administrators will need to include the cost of this uncertainty in their pricing. Uncertainty could even cause potential administrators to decline to offer PRPPs. A clear example is the lack of guidance offered by the Bill on the administrator's responsibilities with respect to acceptable investment defaults. We emphasize that in these important areas there should be clear guidance in the Act around the administrator's fiduciary responsibilities, supplemented by clear rules in regulations where necessary.

As we have stated many times, adequate protection of plan members and their investments is essential to an effective system. At the same time, we remind legislators that over-regulation comes with substantial cost implications.

Finally, we have some concern about the impact that making low cost a legislative requirement could have on the potential success of PRPPs. It is likely that a legislative requirement for low cost will be unable to achieve regulatory clarity without being arbitrary. As noted above, we have consistently advocated for the ability of a competitive, national market to ensure plan options are most affordable. If a legislative requirement for low cost is seen to be politically necessary, we strongly urge that it be applied only with respect to a PRPP's default investment option.

Comments Regarding Clarity of Specific Provisions

The sections in the Bill dealing with the self-employed and how they become members of a PRPP are neither clear nor sufficient. For example, are they considered employees under the legislation? Are they also employers for purposes of remitting contributions?

The Bill needs to be clearer that employers have no legal responsibilities other than enrolling employees and remitting contributions.

The Bill appears to require an employee to stay within the plan once they opt in. While encouraging savings for retirement is the desire, it would seem that greater legislative attention should be given to potential members' concerns, such as dissatisfaction with a plan's investment performance. As well, the application of these provisions to self-employed individuals in this regard should be clearer.

ACPM also believes that the rules around enrolment and re-enrolment should be approached more directly. It appears that employees are enrolled by their employer and are members of the plan unless they opt out. The Bill does not address how an employee who has previously opted out might subsequently become a plan member.

In this same vein, we propose that Sections 45 and 46 should allow a member to change his or her contribution rate from time to time.

Section 4 could deal more directly with the transition of PRRP members who move from federal to provincial jurisdiction and vice versa, including the self-employed.

We question why section 11 appears to limit the administration of PRPPs to corporations. As indicated above, competition will play an important role in keeping costs low. Our concern is that the word "corporation" may disqualify certain highly-qualified organizations from offering PRPPs.

We also are concerned that the requirement in Section 22 that an administrator must administer a PRPP and its assets as a "trustee" for its members may not sufficiently recognize the legal limitations that apply to insurers and banks.

The use of both "reasonably prudent" and "reasonable and prudent" to describe the standard of care applicable to an administrator in Section 22 is confusing, particularly as the PBSA uses "person of ordinary prudence" and "reasonable and prudent" in the corresponding sections. We would encourage the use of the same language used in other pension legislation.

The language in Section 27 appears too broad. The legislation should not prohibit employers from establishing other permissible types of plans that may have as their purposes a means of saving for retirement.

We propose that Section 41should deal with the issue of employee notice as a waiting period after the contract is signed rather than before the contract is signed.

Lastly, is the Income Tax Act concept of "variable benefits" meant to be captured in the use of the word "variable payments" in Section 48? Unless some new retirement income option is intended to be permitted under the Income Tax Act, we would suggest that the terms used in this legislation should be changed to correspond with the current provisions in the ITA that permit the payment of retirement income from DC pension plans.

Comments Regarding Regulations to Come

The regulations created to support the disclosure requirements in Section 12 should be limited to what is necessary, reasonable and useful to inform plan members. Administrators should not be required to comply with excessive demands by a few, as this will increase plan costs for all.

Regulations need to provide more detail about what exactly will be required to "police" the remittance of contributions as set out in Section 18. Typically, administrators of multi-employer plans are able to confirm whether scheduled remittances are being received on time. Requiring an administrator to ensure that correct amounts are being remitted however would increase PRPP costs significantly.

Regulations should define for what purposes the Superintendent can compel administrators to hold "meetings" with members as required by Section 20.

More clarity should be provided with respect to what might constitute an inducement under Sections 24 and 33. Further consultation with the industry would be beneficial to achieving a workable regime that will promote competition and support the legislation's low cost objective.

Regulations supporting section 25 should contemplate the ability of administrators to change investment offerings for compliance and other reasons, such as a determination by the administrator that a particular investment option is no longer suitable for the plan.

With respect to Section 43, the regulations should specify what is meant by 'costs' of a transfer of assets, as well as guidance around transition timing to avoid "fire sale" liquidation in the old plan.

It should be made clear that, in meeting the needs of Section 50, the 'without delay' standard needs to apply after all required information is provided.

Requirements in the regulations for financial statements to satisfy Section 58 will be cost sensitive and could benefit from further discussion.

Regulations defining/supporting the powers of the Superintendent set out in Sections 59 and 60 should be consistent with the government's objectives for the PRPP program.