



June 8, 2014

Ministry of Finance  
Pension Policy Branch  
5<sup>th</sup> Floor, Frost Building  
7 Queen's Park Crescent  
Toronto, ON M7A 1Y7

Dear Sir or Madam:

**RE Proposed Regulation: Pension Payments from Pension Plans which provide Defined Contribution Benefits**

We are pleased to comment on the proposed regulation in respect of Bill 120 which allows defined contribution pension plans to make payments of pensions and pension benefits that are authorized by the Income Tax Act. We congratulate you on taking this important initiative on behalf of current DC plan members and future PRPP members.

The Association of Canadian Pension Management (ACPM) is the informed voice of Canadian retirement income plan sponsors, administrators and their allied service providers. We are a non-profit organization and our objective is to advocate for an effective and sustainable Canadian retirement income system. Our membership represents over 400 retirement income plans consisting of more than 3 million plan members, with assets under management in excess of \$330 billion.

The ACPM generally supports the proposed regulation and agrees that it should be implemented. We have reviewed the proposed regulation and will first provide some high level comments, then respond to the Questions for Stakeholders and finally provide some more detailed comments on the proposed regulation.

**High Level Comments**

We encourage you to review the legislative regimes already in place governing the payment of variable benefits in the four western provinces. Ontario is the fifth province to pass enabling provisions in response to the amendments made to the Income Tax Act (Canada) in 2005 to permit the payment of variable benefits from a DC pension account. From the point of view of national DC plans or PRPP's which might be licensed across Canada, it is very important to harmonize Ontario's provisions with the existing provisions already in force in western Canada.

In addition, we encourage you not to include provisions in the Ontario regulation that are unnecessarily repetitive of provisions already in the Income Tax Regulations relating to variable benefits. For example Section 8506 already includes provisions relating to matters such as Specified Beneficiaries and minimum required withdrawals. The four provinces (BC, AB, SK, MB) that already permit the payment of variable benefits have, for the most part, incorporated the federal provisions by reference rather than replicate them and perhaps inadvertently confuse or contradict them in the provincial legislation.

Finally, variable benefit payments, while similar to, are not the same as LIF withdrawals. They are calculated differently, taxed differently and reported differently. It is critical to maintain this distinction within the legislative framework to be enacted in Ontario.

### **Questions for Stakeholders**

Where a DC sponsor is willing to offer a variable benefit option, we recommend that the proposed regulation should allow maximum flexibility in terms of benefit design. Sponsors who do not wish to offer such features, however, should not be required to do so.

- Participants should be allowed to transfer funds into a variable benefit account from other registered sources as this is currently allowed in other jurisdictions (BC, AB, SK and MB) and is permitted under the Income Tax Act (ITA). Participants would benefit from consolidating assets and lower costs. We would suggest that the plan sponsor be given the option to decide if it wishes to allow these transfers. Smaller plans may not want the additional administrative cost associated with this option.
- Participants should be allowed to transfer funds from a variable benefit account to other retirement vehicles. One of the reasons to allow the payment of retirement income directly from a DC pension plan is to provide an opportunity for increased flexibility in funding retirement. Participants should be allowed to transfer a portion of their DC balance out of the Plan to purchase an annuity or to transfer into a LIF. An all or nothing approach would eliminate this flexibility.
- To ensure a level playing field, 50% unlocking should be permitted when establishing a variable benefit account. This option could be limited to a 60 day window, similar to that applicable to an Ontario LIF. While the ACPM generally supports locking-in as it protects the assets of those who are not yet retired, the participants of a variable benefit arrangement have already reached retirement age and are more likely to be conservative in the use of these funds. Unlocking is already available in Ontario LIF arrangements and is already offered to DC members who elect to receive variable benefits in AB, MB and SK. We would also suggest that unlocked funds could remain in the plan in a separate variable benefit account, where agreeable to the Plan provider. In addition, we would suggest that funds unlocked from a LIF could be transferred to a variable benefit account.
- While providing transfer and unlocking options would increase the Plan's administrative costs somewhat, we do not feel it would cause a significant burden. Plans that decide to offer variable benefits would already be required to provide statements, communicate with members, process payments and prepare tax reporting. We do not see transfers and unlocking as adding significantly to the administration involved in offering a variable benefit retirement income option.

We have some concerns regarding the following items in the proposed regulation:

### **Minimum Withdrawals**

Sections 5 and 7 of the proposed regulation indicate that the RRIF minimum withdrawal should apply, which contradicts the Income Tax Regulations, s. 8506 (7) for variable benefit accounts. We agree that the LIF rules should apply in the case of the maximum permitted withdrawal. However, LIF rules should not apply regarding minimum withdrawals from a variable benefit account. In particular, there should be no requirement to commence payments by the end of the fiscal year following the establishment of the account. The Income Tax Regulation applies the minimum withdrawal factors set out in s. 7308(4) to variable benefits, but only upon reaching age 71. Section 8506 (7) indicates that there is no minimum

withdrawal until the year following the member's 71<sup>st</sup> birthday. This allows variable benefit payments to be stopped or reduced at the participant's request. The experience of providers in western Canada suggests that the ability to stop payments until age 71 is particularly important in the event of adverse investment performance or a decision by the member to return to work.

### **Use of Funds at Retirement**

Section 4, Assets in a Variable Benefit Account, indicates that the entire amount of the DC account must be moved to the variable benefit account if the participant elects this option. We would suggest that retired DC members should be allowed to transfer some of their assets to another financial institution, use them to purchase an annuity or simply leave them in their DC accounts. To limit the participant's options on retirement seems to contradict the spirit of the legislation as it limits flexibility. Such flexibility is permitted in SK, AB and BC.

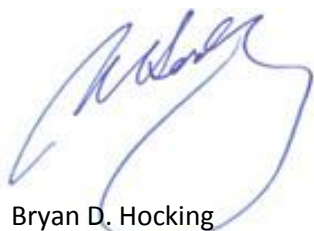
### **Survivor Benefits**

Section 10, Survivor Benefits, provides that the determination of the marital status of the participant is to be made and at the time of his or her death. We believe it would be more appropriate to have this determination made at the time of benefit commencement. This would be consistent with the post-retirement benefit provisions set out in the Ontario *Pension Benefits Act* for defined benefit plans. It would also be consistent with the provisions in those jurisdictions currently permitting variable benefits. That is, the rights of spouses and beneficiaries are determined at benefit commencement, and substantially controlled thereafter by the terms of the variable benefit account. In MB, SK, AB and BC, the participant is required to name a spouse, if there is one at the time benefits commence, as specified beneficiary, unless the spouse waives this right at that time. Additional details on the rights of a specified beneficiary are provided in the Income Tax Regulations in s. 8506 and can be included in the Ontario regulation by reference.

In closing, we would reiterate our opening points. For greater clarity, the Ontario regulations should refer to the relevant sections of the Income Tax Regulations rather than attempting to reiterate them. And finally, we have always been strong supporters of harmonization. Regulations governing the payment of variable benefits have already been in force in other jurisdictions for many years. These would serve as a useful reference and starting point in the drafting of Ontario's variable benefit regulations.

We thank you for allowing us the opportunity to comment on the proposed regulations. We look forward to providing further assistance to the Ministry of Finance in the future when detailed provisions are drafted.

Sincerely,



Bryan D. Hocking  
Chief Executive Officer