



October 13, 2015

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

Email: pension.feedback@ontario.ca

Dear Sir/Madam:

RE: Proposed Amendment to Regulation 909 of the Pension Benefits Act - Pension Advisory Committees

The Association of Canadian Pension Management (ACPM) is a national, non-profit organization acting as the informed voice of plan sponsors, administrators and their service providers in advocating for improvement to the Canadian retirement income system. Our membership represents over 400 companies and retirement income plans that cover more than 3 million plan members.

In response to the proposed amendment to Regulation 909 of the Pension Benefits Act ('PBA') regarding the operation of a pension advisory committee ('PAC'), we have organized our comments under two headings: general concerns that address the most important issues and then a number of specific issues that we believe should be considered.

General Comments

The general comments relate to two specific issues: the willingness of plan sponsors to offer a regulated pension plan for employees and the provision in Sec. 24 (7) of the PBA that costs as prescribed are payable out of the pension fund.

- 1. The willingness of employers/sponsors of pension plans to offer plans regulated by the Pension Benefits Act.** While the amendments to the PBA have been passed into law and are awaiting proclamation, the ACPM believes the amendments to Sec. 24 provide a disincentive to employers that may be considering whether to offer, or continue to offer, a registered pension plan for their employees. While we recognize that Sec. 24 has been in existence for some time, we believe that, as revised, Sec. 24 and the draft regulations increase the administrative burden on the administrator and offer increased opportunities for disagreement and confusion in the administration of a pension plan. The ACPM strongly seeks to encourage pension coverage in Canada and these amendments to the PBA and the Regulations may work against that goal.

2. **Costs as prescribed are payable out of the pension fund.** Sec. 24 (7) of the PBA states that costs as prescribed are payable out of the pension fund. Sec. 65 (9) of the draft regulations states that the following costs are payable: ‘reasonable costs associated with holding a vote...’ and ‘reasonable costs relating to the advisory committee’s establishment and operation’. The draft regulations raise a number of concerns for an administrator and, potentially, for members and retired members of a pension plan regarding costs. In essence, there needs to be much greater clarity over what costs are ‘reasonable’.

Examples of where greater clarity would be useful include the following:

- a. We are concerned about the need for the pension fund to pay for a potentially unsuccessful vote. Accordingly, if the number of people required to request a membership vote remains at a low number, such as 10, we believe that the pension fund should not pay the costs relating to a vote where the members and retired members decide not to create a PAC.

As structured, a very small group of members and retired members (i.e. 10) can require the administrator to hold a vote of the membership. If that vote is unsuccessful, it will be so because the majority of the membership do not want a PAC. In this event, it is unclear why the majority should fund a campaign by relatively few members of the plan.

Understandably, it could be argued that such votes are less likely if the people seeking the vote have to pay the costs of an unsuccessful vote. This should, however, be balanced against the costs associated with a vote being borne by the pension fund.

If, on the other hand, the number of members and retired members required to request a vote were increased to 100 or more, we do not believe that the issue of costs is so important. (The suggestion to increase the minimum number of people required to request a vote is discussed in more detail below under our specific observations.)

- b. The regulations should identify what types of costs are payable by the pension fund ‘relating to the advisory committee’s establishment and operation’. Without greater clarity on this issue, confusion on what costs should be paid from the pension fund will occur. Examples of potential costs are detailed below.

At the establishment phase, what are ‘reasonable’ costs relating to the holding of elections to identify the members of the PAC. For example, is it ‘reasonable’ for the pension fund to pay for marketing and related materials?

In the operation phase, the PAC will monitor the administration of the pension plan, make recommendations to the administrator respecting the administration of the plan and promote awareness and understanding of the plan, all of which can incur costs. In addition, the PAC may consider hiring the following services:

- An independent lawyer to ensure that the PAC operates within the limits of Sec. 24 and Regulations 909, Sec. 65, and, potentially, to advise on the handling of recommendations made by the PAC that the administrator does not implement.
- An independent consulting actuary to assist in the review of actuarial valuations for a defined benefit plan.
- An investment consultant to assist in reviewing the long term asset allocation, the SIPP, the manager selection and performance reporting; or, for a DC plan, the selection of the record keeper, the investment options to be offered to members and the performance of those managers.
- A communications specialist to assist in raising the awareness and understanding of the plan including maybe, a website, social media postings, training sessions and an annual report from the PAC to the members and retired members of the plan.

With regard to costs that are payable out of the pension fund, the fundamental issue is what is 'reasonable'. In addition, it should be noted that any costs payable out of the pension fund must either be made up for by increased contributions by the sponsor and members of DB plans or they will result in reduced accumulated balances for members of DC plans.

Finally, it is worth noting that retired members will receive the benefit of the PAC at no cost to them as they are no longer contributing to a DB plan or have likely transferred their balances out of a DC plan.

As noted at the outset, the impact on the willingness of sponsors to offer pension plans and the potential cost impact on the sponsor and members are the two general comments that we believe are most important. We believe that the draft regulations should spell out in much greater detail what types of costs are reasonable and limit the amounts that can be charged to the pension fund.

Specific Observations

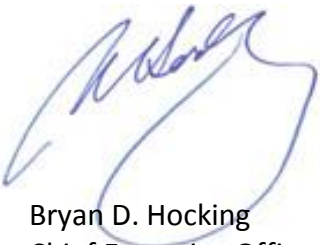
There are a number of specific issues that we believe should be addressed in the draft regulations.

- **Sec. 65 (1)** – The current minimum of 10 members needed to request a vote for a plan with a minimum of 50 members or retired members is too low for the administrative burden being placed on the administrator. We believe that more appropriate minimums would be 100 and 500.
- **Sec. 65 (3)** – The draft regulation requires the administrator to take certain actions within 60 days. The required actions include notifying all members and retired members and distributing a ballot and the information required to explain the rationale for establishing a PAC. For larger pension plans, this time limit is unrealistic and should be extended to at least 180 days.
- **Sec. 65 (6)** – The draft regulation sets limits on the size of the PAC as being ‘at least five and no more than 15’. We believe that a committee of 15 is too large and that 9 or 10 would be a more reasonable number. Having said that, it would appear that setting the size of the PAC is not a matter to be ‘prescribed by regulation’ in Sec. 24 (3) and that the maximum size cannot actually be restricted by regulation as, inter alia, Sec. 24 (3) allows each class of member to have a representative and if the number of classes exceeds 12, after allowing for the representatives of the retired (2) and former (1) members, the committee will have more than 15 members.
- **Sec. 65 (8) (b)** – The draft regulation makes reference to ‘beneficiaries’ for the first time. In all other references (except Sec. 24 (3.1)), the PAC is restricted to ‘members and retired members’, which we believe would be more appropriate wording in this paragraph.
- **Sec. 65 (10)** – If the vote to create a PAC is unsuccessful, the draft regulation proposes a wait period of 2 years before another vote is held. Given the time, effort and cost required to organize a vote, we believe that the wait period should be at least 5 years between votes.
- The draft regulations do not address how to disband a PAC if it becomes inactive for an extended period of time.
- In a situation where the majority of members are represented by a trade union, the trade union should be allowed to speak on behalf of its members rather than requiring that additional elections be held for the PAC. Elections could still be used to select members of the PAC for those members and retired members that are not represented by a trade union.

- The draft regulations do not consider under what circumstances existing employee pension committees would qualify as a PAC, meaning that there would be no need to create a new committee.
- The draft regulations do not consider the Terms of Reference for a proposed PAC. This could address such issues as meeting frequency, method of appointment of members of the PAC, limits on terms of service on the PAC and qualifications required to serve as a member of a PAC, among many others.

If you wish to discuss any of our comments or observations or you would like additional information about the observations we have made, we would be pleased to meet and discuss this letter or to provide additional written input for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bryan D. Hocking", is written over a faint, light blue circular stamp or watermark.

Bryan D. Hocking
Chief Executive Officer