



May 2, 2019

Lynn Hemmings
Acting Director General of Financial Services Division
Senior Director, Pensions Policy
Department of Finance
90 Elgin Street
Ottawa, ON

Via email

Re: New proposed section 17.1 of the Pension Benefits Standards Act, 1985 (the “PBSA”), contained in Bill C-97.

Dear Ms. Hemmings,

ACPM is the leading advocate for plan sponsors and administrators in the pursuit of a balanced, effective and sustainable retirement income system in Canada. We represent plan sponsors, administrators, trustees and service providers and our membership represents over 400 companies and retirement income plans that cover millions of plan members.

We are writing to you regarding new proposed section 17.1 of the Pension Benefits Standards Act, 1985 (the “PBSA”), contained in Bill C-97. As you know, the Association of Canadian Pension Management (“ACPM”) is an advocacy group devoted to promoting the interests of Canadian pension plan administrators, including those subject to the PBSA. We have heard from several such administrators expressing concern with proposed section 17.1.

We understand that proposed section 17.1 is intended to safeguard, on plan termination, the accrued pension benefits to which a member is entitled while the plan is ongoing. Insofar as this goal is a policy decision, we do not take issue with it.

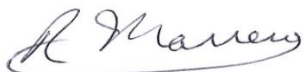
Our concern is that proposed section 17.1 could be interpreted and applied more broadly. Specifically, we read proposed section 17.1 as prohibiting a “pension benefit” from being “affected” on plan termination. A “pension benefit” is defined under the PBSA to include “*a periodic amount to which....a member or former member...is or may become entitled*”. Contingent benefits, such as indexation to which a member may become entitled only if and when a plan has a sufficient surplus, or consent benefits to which a member may become entitled only where the employer grants its consent, could be characterized as a pension benefit to which a member is not currently, but “may become entitled”. Such benefits are permitted under the PBSA and are, by their very nature, “affected” on plan termination. Indeed, on plan termination, consent benefits may or may not be granted, and contingent indexation of the type described above is reduced or disappears entirely.

A parallel can be drawn between the objective of proposed section 17.1 and the general prohibition on reducing amendments without Superintendent consent contained in subsection 10.1(2) of the PBSA. Subsection 10.1(2) protects only pension benefits that have "accrued before the date of the amendment" or to which the member was "entitled before the date of the amendment". A pension benefit to which the member "may become entitled" is not protected, and is not included in a member's "pension benefit credit".

Given the foregoing, we suggest that proposed section 17.1 be drafted in a similar fashion to subsection 10.1(2). We have appended to this letter language for your consideration, but would welcome the opportunity to work with you to refine proposed section 17.1 as you determine appropriate.

Thank you for the opportunity to make submissions to the Department of Finance on matters of importance to Canadian pension plan administrators. We look forward to discussing this and other items with you at our upcoming meeting on May 17, 2019.

Yours truly,

A handwritten signature in cursive script, appearing to read "Ric Marrero", written in black ink.

Ric Marrero
Chief Executive Officer
ACPM

Appendix

CURRENT WORDING OF PROPOSED SECTION 17.1

Entitlement Not Affected For greater certainty

17.1 For greater certainty, a pension plan is not to provide that a pension benefit, or any other benefit or option referred to in paragraph 17(b), or a member's entitlement to such a pension benefit or option, is affected when a plan is terminated.

SUGGESTED WORDING OF PROPOSED SECTION 17.1

Entitlement Not Affected For greater certainty

17.1 For greater certainty, a pension plan¹ is not to provide that the termination of the pension plan has the effect of reducing:

(i) pension benefits accrued before the date of the termination or pension benefit credits relating to pension benefits accrued before the date of the termination, or

(ii) an immediate or deferred pension benefit to which a member, former member or any other person was entitled before the date of the termination.

¹ Negotiated Cost Plans by their very nature should not be subject to 17.1. Unless the legislation elsewhere exempts NCPs from 17.1, the text above could be changed to: "For greater certainty, a pension plan, other than a negotiated contribution plan, is not to provide that the termination..."