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The Association of Canadian Pension Management

L'Association canadienne des administrateurs de régimes de retraite

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ACPM submission to the public consultation on Bill 176:

An Act to amend the Act respecting labour standards and other legislative provisions mainly to facilitate family-work balance



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FOREWORD

VISION

The leading advocate for plan sponsors and administrators in the pursuit of a balanced, effective and sustainable retirement income system in Canada.

MISSION

ACPM enlists the talent and resources of its national volunteer member base to provide thought leadership on behalf of Canadian plan sponsors, administrators and their service providers, in retirement income system policy and advocacy.

ACPM believes in the following principles as the basis for its policy development in support of an effective and sustainable Canadian retirement income system:

Diversification through Voluntary / Mandatory and Public / Private Options

Canada's retirement income system should be comprised of an appropriate mix of voluntary Third Pillar and mandatory First and Second Pillar components.

Third Pillar Coverage

Third Pillar retirement income plan coverage should be encouraged and play a meaningful ongoing role in Canada's retirement income system.

Adequacy and Security

The components of Canada's retirement income system should collectively enable Canadians to receive adequate and secure retirement incomes.

Affordability

The components of Canada's retirement income system should be affordable for both employers and employees.

Innovation in Plan Design

Canada's retirement income system should encourage and permit innovation in Third Pillar plan design.

Adaptability

Canada's retirement income system should be able to adapt to changing circumstances without the need for comprehensive legislative change.

Harmonization

Canada's pension legislation should be harmonized.

Clarity and Transparency

Legislation, regulations and retirement income arrangements should be clearly defined and pension plan beneficiaries should be appropriately informed of risks, costs and benefits.

Good Governance

Excellence in governance and administration in the retirement income system.

INTRODUCTION

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 more than 3 million plan members.

We are writing to you to share our concerns at ACPM regarding Bill 176: An Act to amend the Act respecting labour standards and other legislative provisions mainly to facilitate family-work balance.

Considering ACPM's mandate described above, we are interested only in the issue of disparity clauses in supplemental pension plans and group insurance plans based on the employee's date of hire. Our comments therefore concern primarily clauses 32 and 46 of Bill 176 amending section 87.1 of the Act respecting labour standards.

RETROACTIVE PROHIBITION OF DISPARITY CLAUSES

As stated in a letter to Ministers Leitão and Vien on February 7 of this year, we are very concerned about the possibility of a prohibition on including disparity clauses in pension plans, particularly if the prohibition were to apply retroactively.

We therefore welcome the decision to exclude a retroactive prohibition of disparity clauses in pension plans from the Bill and we strongly encourage the National Assembly not to amend this aspect of the Bill. Retroactive application of the prohibition would result in major administrative challenges. Moreover, we believe an onerous legal framework would be required to define its application.

A retroactive prohibition would furthermore unjustifiably breach agreements negotiated in good faith between employers and unions. We anticipate that a prohibition on previously negotiated disparity clauses would lead to major labour conflicts in upcoming collective bargaining and that pension plan-related strikes or lockouts should be expected.

PROSPECTIVE PROHIBITION OF DISPARITY CLAUSES

Although we are satisfied with the decision to protect existing disparity clauses, we want to reiterate our concerns regarding the impact of a prospective prohibition of disparity clauses on the Québec pension system. If employers no longer have the option of closing their defined benefit plans only to new employees, we worry that they will simply close their plans and instead migrate to defined contribution plans for everyone. Prohibiting prospective disparity clauses would therefore go against the purpose of Bill 29¹ adopted in December 2015. The aim of the bill was to ensure the sustainability of supplemental defined benefit pension plans.

1) An Act to amend the Supplemental Pension Plans Act mainly with respect to the funding of defined benefit pension plans, SQ 2015, c 29.

Furthermore, it is unlikely that other Canadian provinces will follow Québec's approach to disparity clauses.² The many Québec workers who are members of multi-jurisdictional plans may end up being treated less favourably than workers in other provinces. If employers cannot include disparity clauses in Québec, workers in that province who are currently members of a defined benefit plan could be excluded.

We believe that maintaining the status quo is by far preferable to retain a robust pension system and protect employees with long periods of service.

PROPOSED AMENDMENTS

Should a prospective prohibition of disparity clauses be maintained in the Bill, we advise the National Assembly to specify that there is no disparity when the employer offers pension benefits or other benefits or advantages of equal value to existing employees and to new employees. In other words, an employer should be able to offer a defined contribution plan or any other type of pension instrument or benefit plan to its new employees as long as the new plan is of equal value to the defined benefit plan in which existing employees are members. It would make perfect sense for the government to allow this type of flexibility and we believe that it is possible to develop the necessary regulations to govern this type of equivalency.

Furthermore, should a prospective prohibition of disparity clauses be maintained in the Bill as well as a transitional provision permitting existing disparity clauses when clause 32 comes into effect, we also advise the National Assembly to specify that this transitional provision continues to apply to pension plans even after the expiry of collective agreements in which a disparity has been approved, in order to avoid litigation and labour conflicts. Indeed, when employers have "closed" their defined benefit plans to new employees or have negotiated different provisions based on the date of hire, this generally constitutes a decision for the remaining lifetime of the pension plans offered to their employees, even when a collective agreement that includes disparity clauses expires.

CONCLUSION

We thank the National Assembly for allowing us to share our comments and suggestions regarding Bill 176. We encourage the National Assembly and the government to continue a dialogue on disparity clauses with all the various stakeholders over the next few months and we will be available to support you in that process.

2) For example, section 87.1 of the Act respecting labour standards introduced in 1999, prohibiting salary disparity, was not adopted outside Québec. It is therefore even less likely that a provision concerning pension plans would be enacted outside Québec.