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The Association of Canadian Pension Management
L'Association canadienne des administrateurs de régimes de retraite

February 18, 2002

The Hon. Gregory F. Selinger
Minister of Finance for Manitoba
Room 103, Legislative Bldg.
450 Broadway
Winnipeg, Manitoba
R3C 0V8

Dear Mr. Selinger:

PENSION BENEFITS LEGISLATION CHECKERBOARD/FINAL LOCATION

This letter addresses the issue of the application of provincial pension legislation to members of pension plans who transfer from one province to another while remaining employed by the same employer. There are current legal issues that create both expense and uncertainty, adding to the difficulty of administering a flexible workforce in Canada. We believe these issues can and should be resolved reasonably easily, and offer both a medium term and a short-term solution.

There are two legislative approaches to transfers to different jurisdictions within pension plans. These are usually referred to as the "checkerboard" and the "final location" approach. We would urge the adoption of a clear "final location" approach in legislation (medium term), and in the interim (short term), urge the adoption of a multi-lateral agreement among the jurisdictions on this single issue. We note that the Manitoba, as most provinces and the federal government, has enacted legislation enabling such a multi-lateral agreement.

The issue has recently arisen in the *Imperial Oil* case that is presently before the Ontario Pension Tribunal. This case has implications for governments and pension regulators in all jurisdictions, and for all pension plans with members employed in more than one jurisdiction. We do not purpose to comment on that case in this letter, except to say that whatever the final judicial result in Ontario, the issue will not be finally settled across Canada without government/regulatory action.

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WHO WE ARE

The Association of Canadian Pension Management (“ACPM”) represents private and public pension plan sponsors, administrators and related stakeholders. The ACPM currently has 750 members across Canada representing 400 pension plans with total assets of \$300 billion.

ACPM’s mission is to promote the growth and health of Canada’s retirement income system by championing the following principles:

- Clarity in pension legislation, regulation and arrangements;
- Good governance and administration; and
- Balanced consideration of stakeholder interests.

BACKGROUND

(a) Legislative Scheme

Many employers in Canada who sponsor pension plans have operations in more than one jurisdiction in Canada. Employees may be transferred from one province to another, while remaining a member of the plan.

Each province and the federal government have pension legislation that applies to pension plans with respect to members of those plans employed in the particular jurisdiction. Accordingly, a number of different pension benefit statutes often apply to the same plan. Pension legislation requires registration of the plan with regulatory authorities, but pursuant to a 1968 agreement among the jurisdictions, and by practice, pension plans are registered only in the jurisdiction having the plurality of active members. The regulatory authority in the jurisdiction of registration is required to supervise the application of pension standards based on the legislation of the jurisdiction in which the member is employed. The jurisdiction in which a plan is registered can change as the plurality of its active members changes from one jurisdiction to another.

(b) Checkerboard/Final Location Issue

The checkerboard/final location issue brings into focus the legislative and administrative problems of a lack of uniformity. The issue arises when a member of a pension plan who has been employed by the same employer in more than one jurisdiction terminates employment, retires, dies, undergoes a marriage or relationship breakdown, or when a plan is wound up. At these points the pension benefits of the member (or spouse or other beneficiary) are quantified. The issue is whether the legislation of each jurisdiction in which the member was employed applies to the period of employment in that jurisdiction (the checkerboard approach), or whether the legislation of the jurisdiction in which the member was employed at the date of the event triggering the quantification applies to the member's entire period of employment (the final location approach). The checkerboard/final location issues are exacerbated by the lack of clarity and consistency of application and enforcement by jurisdiction.

(c) Uniformity

The checkerboard/final location issue is one of the unfortunate results of the lack of uniformity of pension legislation. ACPM has been in the forefront of advocating such uniformity, and we are glad to see that the uniformity issues are being seriously considered at a number of levels.

The proposals to simplify the administration of pension plans by addressing issues of uniformity are several:

- (i) the ACPM approach of encouraging the adoption of uniform pension legislation by each jurisdiction;
- (ii) the approach of the Canadian Association of Pension Supervisory Authorities (CAPSA) in developing a Model Law that will be adopted by various governments in due course or at least serve as a guideline to governments considering pension legislation amendments; and
- (iii) a revised comprehensive multi-lateral agreement among the jurisdictions also being considered by CAPSA. The effect of which would be to apply the law of

the jurisdiction of registration to all members of the same plan, regardless of their jurisdiction of employment.

We do not favor the comprehensive multi-lateral agreement approach for reasons of complexity, political acceptability and retroactivity, and because we are concerned that the thrust towards true uniformity will be weakened with what is at best a band-aid solution. However, we do see a role of single-issue multi-lateral agreements to address practical problems pending more uniformity. The checkerboard/final location issue would be very helpfully addressed in such a multi-lateral agreement.

COMMENT

(a) Policy: Equitable Considerations

Some of the areas in which there are differences in the legislation across Canada that would have to be taken into account in a checkerboard approach are:

- Portability
- Sex distinct or unisex assumptions
- Locking-in
- Pre-retirement death
- Indexing of deferred pensions
- Prescribed locked-in vehicles
- Spousal definition
- Work after normal retirement age
- Vesting
- Rights on a partial plan wind up
- Interest on employee contributions
- Payment of deficit on full plan wind up
- Marriage/conjugal relationship breakdown

The quantum of pension benefits or certain rights may differ depending on what approach is used. There are winners and losers under either approach.

For example:

- (i) On a plan wind up, a member who is employed in Ontario at the time of the wind up but who was employed in Alberta for a significant period before coming to Ontario will benefit from the Ontario grow-in provisions applied to his employment in both jurisdictions if the final location approach is used. Conversely, a member employed in Alberta at the time of the wind up but who was employed in Ontario for a significant period would benefit if the checkerboard approach were used.
- (ii) A deferred vested member who terminates employment while employed in Quebec but who had a significant period of employment in British Columbia will benefit from the Quebec requirement to index his entire pension in the deferral period where the final location approach is used, but a deferred vested member who terminates in British Columbia but who had a significant period of employment in Quebec would benefit more from the checkerboard approach.

It is not always possible, even if it were not administratively complex, to take the law of the jurisdiction most favourable to the member to apply to all service. For example, it is not universally agreed whether unlocking or locking-in is the approach most favourable to the member.

Accordingly, we believe issues of equity are not clear-cut. Moreover, the number of individuals affected is relatively small in relation to the number of members in a plan, and in many cases, the amounts of money, if any, are small.

(b) Administrative Complexity

In our experience the final location approach is used in the administration of most pension plans in Canada, wherever they are registered. The final location approach is far less complex to administer than a checkerboard approach, and most pension administrative systems are set up in this way.

The prospect of adjusting administrative systems to apply checkerboarding is nightmarish. The problems are exacerbated because it is not clear which jurisdictions require which approach, and what the legal basis underlying the approach of a particular jurisdiction might be.

(c) Legislation

We do not purport to give a legal opinion on the issue. We note that pensions come under the purview of the provinces as property and civil rights. We note that employment standards, and matrimonial property rights are also matters of provincial jurisdiction, and believe they are applied in practice on a final location basis. However, whatever the law may be or be found to be in a particular jurisdiction, we believe that the balance of administrative cost and convenience weighs heavily in favour of the final location approach.

RECOMMENDATIONS

- I. Clarify Pension Benefits Act. First, we ask that your government establish the final location principle with respect to the entitlement of all rights and benefits under the Pension Benefits Act.

Although legislative clarity is preferable, and we recommend legislative amendments to clarify the issue, we recognize that amending legislation on single issues is difficult. Accordingly, we see the legislative route as a medium term solution.

The long-term approach is establishing uniformity of pension legislation across Canada. We have advocated uniformity as one of our major goals as an association, and are pleased to see some progress, but acknowledge that waiting for uniformity will not address the immediate problems of pension administrators.

- II. Multi-lateral Agreement. **We urge that at this time, pending clarifying legislation, that the all Canadian jurisdictions enter into a limited multi-lateral agreement to the effect that the final location rule is to be used in the determination of a member's pension benefits for whatever purpose.**

The multi-lateral agreement solution would serve to end the immediate uncertainties as to the issues, which have recently been raised by the *Imperial Oil* matter. It would also show the willingness of both governments and regulators to take a practical approach to the administration of pension plans, which would be very welcome to the pension industry.

We would welcome any comments or questions you may have, and would be most happy to meet with Ministry staff or regulatory officials to discuss our proposals.

Sincerely,

(ORIGINALLY SIGNED BY)

Priscilla H. Healy

Chair — ACPM Government and Advocacy Committee

Chair — ACPM Uniformity Task Force

PHH:cas

cc: Gail Armitage — Chair, CAPSA & Executive Director of Financial Sector Policy
Sherallyn C. Miller — Chair, CAPSA Model Law Working Committee
Phil Howell — Chair, CAPSA Model Law Implementation Committee
Debbie Lyons — Superintendent of Pensions (Acting), Manitoba
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