



ACPM Submission to the Government of PEI Department of Justice and Public Safety

Consultation Paper Bill 30 Pension Benefits Act

February 7, 2011

**Prepared by:
ACPM Advocacy &
Government Relations Committee**



ACPM/ACARR

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

ACPM CONTACT INFORMATION

Mr. Bryan Hocking
Chief Executive Officer
Association of Canadian Pension Management
1255 Bay Street, Suite 304
Toronto ON M5R 2A9
Tel: 416-964-1260 ext. 225
Fax: 416-964-0567
Email: bryan.hocking@acpm.com
Web: www.acpm-acarr.com

TABLE OF CONTENTS

Foreword	3
Section I: Responding to Consultation Paper Questions:	4
Question 1: Should the legislation maintain the proposed two-year vesting period?	
Question 2: Regarding the locking-in provision, should the legislation include any other exceptions than the proposed two exceptions for a small amount and /or shortened life expectancy?	
Question 3: Should the proposed transition period be three years?	
Section 2: General Comments on Legislation	4

FOREWORD

The Association of Canadian Pension Management (ACPM)

The Association of Canadian Pension Management (ACPM) is the informed voice of Canadian pension plan sponsors, administrators and their allied service providers. Established in 1976, the ACPM advocates for an effective and sustainable Canadian retirement income system through a nonprofit organization supported by a growing membership and a team of volunteer experts. Our members are drawn from all aspects of the industry from one side of this country to the other. We represent over 400 pension plans consisting of more than 3 million plan members, with total assets under management in excess of \$330 billion.

ACPM promotes its vision for the development of a world leading retirement income system in Canada by championing the following Guiding Principles:

- Clarity in legislation, regulations and retirement income arrangements;
- Balanced consideration of other stakeholders' interests; and
- Excellence in governance and administration

Introduction

ACPM appreciates the opportunity to provide our input to the Government of Prince Edward Island (PEI) consultation process regarding Bill 30.

In this Brief you will find our perspective on the questions asked by the consultation paper as well as our general comments on the proposed legislation.

Section I - Responding to Consultation Paper Questions

Question 1: Should the legislation maintain the proposed two-year vesting period?

ACPM is not opposed to the concept of full and immediate vesting, provided that plan membership can be delayed. Any decision should be made with harmonization to other jurisdictions in mind.

Accelerated vesting would be more acceptable to employers if it were coupled with a removal of partial wind-ups, as has been implemented in Québec and proposed in Ontario and by the Nova Scotia Pension Review Panel.

Question 2: Regarding the locking-in provision, should the legislation include any other exceptions than the proposed two exceptions for a small amount and /or shortened life expectancy?

As noted in the Consultation Paper, unlocking for financial hardship has been provided for in Nova Scotia's *Pension Benefits Act*. We urge PEI to ensure that its unlocking rules are harmonized with those of the other Atlantic provinces. Therefore, we generally support including unlocking for financial hardship in PEI's legislation, even if to do so may require the imposition of increased registration fees. However, if Nova Scotia removes unlocking for financial hardship from its legislation as recommended by the Nova Scotia Pension Review Panel, we would support not including this unlocking provision in PEI's legislation. We also believe that an unlocking option for persons who have left Canada, should be included as several provinces have adopted, or considered adopting this provision.

We strongly urge PEI to ensure that no new methods or Superintendent override powers relating to unlocking are introduced.

Question 3: Should the proposed transition period be three years?

ACPM supports the three-year transition period.

Section 2 – General Comments on Legislation

Flexibility in Plan Design, Funding and Administration

ACPM promotes a regulatory environment that allows flexibility in plan design, funding methods, investment strategies, and other aspects of operating an occupational pension plan. While traditionally regulators think in terms of defined benefit or defined contribution plans, we encourage PEI to make changes to accommodate new plan designs that transcend these definitions so that sponsors can design and manage plans to meet their particular requirements without legislative restrictions.

Need for Harmonization

ACPM welcomes PEI's initiative in adopting pension legislation modeled on the Nova Scotia *Pension Benefits Act*. We note that both Nova Scotia and New Brunswick are currently in the process of reviewing and revising their pension legislation. Therefore, we urge PEI to ensure that its legislation is

harmonized with that of Nova Scotia and/or New Brunswick as pension reform unfolds in these provinces. Harmonization of pension legislation is very important for pension plan administrators with members in more than one Maritime province as it minimizes the costs and complexity of plan administration.

There are a number of comments that ACPM made as part of the Nova Scotia reform process that we wish to bring to your attention, given the similarity between the proposed PEI legislation and the existing Nova Scotia legislation.

Appeal Process

The proposed *Pension Benefits Act* provides that once the Superintendent makes a “proposed order”, a party that is affected by the order has the right to request that the Superintendent reconsider her proposal. This places the Superintendent in the position of hearing an appeal from her own initial decision. Following the Superintendent’s reconsideration, a party may appeal the Superintendent’s reconsideration to the Court.

ACPM suggests that an independent appeal process be included in the proposed legislation providing for an appeal to an administrative tribunal, prior to any appeal being made to the courts. In five Canadian pension jurisdictions, decisions of the pension regulator may be appealed directly to an administrative tribunal.

ACPM suggests appeals should be directed to an independent second level decision maker. ACPM believes that it is important that the decisions of the administrative tribunal are protected from judicial review and appeal to the extent permitted by law. This will give the parties comfort that the decision of the tribunal is final.

ACPM suggests the Island Regulatory Appeals Commission (“IRAC”) as the appropriate administrative tribunal to hear appeals since IRAC is an independent, quasi-judicial body which has both regulatory and adjudicative jurisdiction, it reports to the provincial legislature through the Minister of Education and it administers a number of provincial statutes dealing with economic regulation and hears appeals. IRAC is the most suitable of the present administrative bodies to handle appeals of decisions issued by the Superintendent of Pensions.

Grow-In Benefits

ACPM supports the elimination of prescribed grow-in entitlements. Grow-in benefits should be removed from the proposed legislation. Grow-in benefits can be provided in the pension plan text, where desired by the plan sponsor and subject to the agreement of employee groups, where applicable. Not including grow-in benefits in the proposed legislation would also contribute to increased harmonization with other jurisdictions. We note that, in its March 2010 consultation paper, the Nova Scotia Department of Labour & Workforce Development proposed to remove mandatory grow-in entitlements from its legislation.

Partial Wind-Ups

We are also concerned with the inclusion of the partial wind-up concept and the requirement to distribute surplus upon partial wind-up. ACPM recommends eliminating the concept of partial wind-up from the proposed legislation.

Surplus Rules

Adopting reasonable and efficient rules relating to surplus ownership issues is key to the success of any pension legislation. The proposed legislation should establish that pension plans are employment contracts and that ownership of pension funds is governed by those contracts, thereby achieving clarity and avoiding any surplus disputes. The proposed legislation should override common law trust precedents and establish the paramountcy of contract law for pension plans. The proposed legislation should also contain principles-based provisions requiring that surplus and deficit “ownership” be clearly defined in plan documents. In addition, it would be beneficial to allow plans to confirm their surplus sharing provisions where earlier versions of their plan documentation were silent on the matter.

Final Comment

As a final comment, we have included with our submission ACPM’s recently released *Improving Retirement Coverage in Canada – the ACPM Five Point Plan* for recommendations as to how to encourage more retirement plans in Canada.

We appreciate the opportunity to provide our comments. We would be pleased to make ourselves available to respond to any further issues that arise through the consultation process.