



**ACPM Submission to the
Government of PEI
Department of Environment,
Labour and Justice**

**Consultation Paper
Bill 41 Pension Benefits Act**

September 28, 2012

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 4

General Comments 5

Final Comment 8

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 300 pension plans consisting of more than 3 million plan members, with total assets under management in excess of \$300 billion.

The 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

The ACPM appreciates the opportunity to provide our input to the Government of Prince Edward Island (PEI) consultation process regarding Bill 41.

In this Brief you will find our perspective on certain topics that arise from the overview paper as well as our general comments on the proposed legislation.

GENERAL COMMENTS

Need for Harmonization

ACPM again 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 proceeding through their respective processes of reviewing and revising their pension legislation. We support PEI decision to ensure that its legislation is harmonized with that of Nova Scotia, where appropriate, and subject to our comments below. 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.

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 support PEI's intended 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. We support jointly sponsored pension plans and target benefit plans (we refer you to the ACPM paper on target benefit plans). We welcome the statement that there will be further consultation on the regulations since many key requirements for these new forms of pension plans are set out in the regulations.

Immediate /Delayed Membership

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.

Solvency funding Requirements and Funding Relief

Letters of Credit

The ACPM is pleased that Bill 41 allows prescribed employers to use letters of credit to fund solvency deficiency payments. However, as the implementation of these provisions is dependent on certain matters to be prescribed in regulations, we urge the government to finalize and release the required regulations as soon as possible. Key matters that should be clarified through the regulations include:

- Application of the 15% of solvency liability cap – Bill 41 seems to read that this cap applies to the amount of letters of credit provided to the “prescribed person or entity”, which

presumably will be prescribed to be a trustee for the plan. We are uncertain if it is intended that the 15% cap could be exceeded in aggregate if letters of credit were provided to more than one such prescribed person or entity. The ACPM would generally be in favour of allowing greater use of letters of credit, with no effective overall plan maximum, as a qualifying letter of credit serves the same purpose as cash in providing benefit security.

- Conditions that allow for the reduction in face value of the aggregate letters of credit held for the benefit of the plan – the ACPM encourages PEI to consider the Federal PBSA regulations that generally allow a reduction in letters of credit if the solvency ratio is at least 105%.

Solvency Accounts

ACPM also urges PEI to build on the funding flexibility provided by letters of credit by also enabling the use of solvency accounts, independent from the pension trust. A solvency account would be a separate pension funding vehicle. Going concern funding contributions would continue to be paid to the main pension fund. Where the employer is the sole contributor to the pension plan, or where the employee contributions are fixed, further employer contributions required under the solvency valuation could be paid to the solvency account. However, similar to the pension fund, the solvency account would be segregated from the employer's assets, tax-sheltered, and protected from non-pension creditors.

Upon plan windup, any assets in the solvency account not required to satisfy benefit entitlements would revert back to the employer. In an ongoing situation, assets in the solvency account could be accessed by the employer only if the sum of the assets in the pension fund and the solvency account exceed the plan's solvency valuation obligation, including any appropriate margin (e.g. 105% solvency ratio). The ability to make these additional voluntary contributions will provide employers with greater flexibility to manage their cash requirements within their own business cycles and would lead to enhanced benefit security for plan members.

A solvency account also addresses some of the drawbacks of letters of credit. In some respects a solvency account is preferable to a letter of credit. Instead of the trustee holding a letter of credit issued by a financial institution, the trustee holds cash in the solvency account. This cash may be invested and earn a return, unlike a letter of credit. As well, the fees associated with the letter of credit may be substantial. These fees are avoided if a solvency account is used. A complete discussion of the concept of solvency accounts is found in the Alberta-British Columbia pension reform panel report.

Funding Relief

Given the extremely low interest rate environment and the effect this has on solvency liabilities in particular, the ACPM notes that a number of jurisdictions have adopted some form of solvency funding relief measures in addition to letter of credit. In addition to the above considerations, PEI should consider other measures such as permitting modification to the prescribed discount rate or extending the amortization period either on a permanent or temporary basis.

¹ Getting our Acts Together – Pension Reform in Alberta and British Columbia, Report of the Joint Expert Panel on Pension Standards
ACPM Brief to the Government of PEI

Absence of Grow-In and Partial Wind-Up

Grow-In Benefits

The ACPM supports the decision to eliminate prescribed grow-in entitlements from the draft legislation.

Grow-in benefits, which would provide a legislated benefit increase to employees which is not part of the pension plan text, can be provided in the pension plan text, where desired by the plan sponsor and subject to the agreement of employee groups, where applicable. This exclusion supports harmonization generally with other jurisdictions.

Partial Wind-Ups

ACPM recognizes and supports the elimination of partial wind-ups from the proposed legislation.

ACPM believes that the notion of partial wind-ups should be eliminated from applicable legislation. This would not only ease the administrative burden on plan sponsors but, more importantly, it would confirm the fact that plan surplus cannot be known and should therefore not be crystallized until a full plan wind-up occurs. The concept of partial wind-ups leads to regulatory uncertainty and increased litigation risk. Its exclusion will result in the PEI legislation being harmonized with other Canadian jurisdictions. We note that the definition of partial wind-up in ss. 1(gg) should be removed. As well, the circumstances for a full wind-up set out in ss. 92(1), particularly (d), (e), and (f) appear excessively broad, and applicable only to situations of a partial wind-up. These appear to be derived from the Nova Scotia Pension Benefits Act. As an alternative, we would refer to s. 69 of the Ontario Pension Benefits Act.

Surplus

ACPM encourage policy makers to be clear about surplus ownership and support the establishment of a clear policy on this point. It is in the interest of all parties to understand surplus ownership without having to resort to the courts. A clear policy regarding ongoing surplus and wind-up surplus would remove barriers to improved funding of pension plans.

Advisory Committees

ACPM does not oppose the provisions of the proposed Act governing advisory committees, which are modelled on the NS PBA. However, it is critical that the roles of the advisory committee be clearly separated from the legal functions of the administrator of the Pension Plan.

FINAL COMMENT

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. We look forward to the opportunity to comment on the draft regulations in due course.