



March 4, 2020

Lynn Hemmings
Director General
Department of Finance Canada
90 Elgin Street
Ottawa, ON K1A 0G5

Re: PBSA Provisions on Pre-retirement Death and Electronic Communications

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.

First, we would like to bring to your attention an issue where we believe a fairly simple amendment could be made to the Pension Benefits Standards Act, 1985 (PBSA) that would be beneficial to a number of pension plan members and their spouses. Second, we wish to suggest ways in which the ability provided under the PBSA to issue communications to members electronically could be enhanced.

Pre-retirement death benefit waiver

With respect to the situation of death of a member after retirement, the PBSA requires the payment of a survivor pension for the life of the surviving spouse equal to at least 60% of the retired member's pension. However, subsection 22(5) provides the ability to the retiring member and spouse to waive this benefit by duly completing a prescribed form. This mechanism works well in protecting spousal interests while allowing flexibility to both parties in relation to their personal circumstances.

If the death of the member occurs prior to retirement, the current provisions of the PBSA offer much less flexibility. Subsection 23(5) provides that, if a pension plan permits it, a spouse can surrender the pre-retirement death benefit in favour of another dependent, but only after the death of the member. Since this provision is at a plan's option, the plan terms must specifically allow it to be offered.

A common situation where this question can arise is when a member starts a new relationship. In accordance with the definition of spouse, after one year of cohabitation, the new common-law partner is entitled to the pre-retirement death benefit. Some members, especially when they have young children from a previous relationship, would appreciate more flexibility in considering their circumstances for beneficiary designation.

Members and their common-law spouses in such a situation might wish for the children, or another person responsible for the children, to be the beneficiary. Even if the common law partner has the opportunity to surrender the benefit after death (if allowed by the plan, and if the children are still dependent at the time of death), the member cannot have the certainty it will be done. This situation is a complicating factor for estate planning.

The issue of spousal waiver also arises in the case of separated but not divorced spouses. A divorce would settle the issue of spousal rights since the former spouse is no longer legally a spouse. However, many couples do not obtain a divorce for various reasons, which can include avoiding additional legal costs, wishing to maintain a more cordial relationship, and not having an interest in remarrying.

On the other hand, separated spouses often wish to remove each other's rights to pension plan survivor benefits as they intend to settle all financial matters through their separation agreement. In the context of the PBSA, this is difficult to achieve given the legislative provisions outlined above. It is also difficult to communicate to members and former spouses that the legal context is different between death before and after retirement.

We note that the Ontario Pension Benefits Act allows a spouse to waive a pre-retirement death benefit prior to the member's death (subsection 48(14)), making the provisions for pre-retirement and post-retirement death similar in this regard. The Quebec Supplemental Pension Plans Act also contains a similar provision (section 88.1).

We suggest that amending the PBSA to mirror the Ontario and Quebec provisions on waiver of pre-retirement death benefits would go a long way in addressing this issue in a manner that would be more accommodating of the needs of plan members.

Electronic communications

The ability to issue required communications to plan members under the PBSA was added in 2010, subject to regulations that require a member's active consent, failing which communications in written form must continue to be issued to that member. Because of the PBSA requirement to make these communications available to a member's spouse, OSFI issued a policy interpretation to the effect that the spouse's consent to electronic communications is also required.

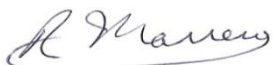
For many sponsors, this framework makes it impractical and not worthwhile to consider introducing electronic means for these communications. In particular, employers do not as a matter of course communicate separately to an employee's spouse and do not have a need to maintain records of spouse email addresses for this purpose. These shortcomings essentially defeat the policy objective of allowing plan sponsors to reduce administrative costs and use modern communication methods to interact with employees and retirees.

Since 2010 the landscape has continued to evolve. In particular, we raise the fact that Ontario recently amended its legislation to allow electronic communications to members and retirees on a deemed consent basis. Amending the federal regulations to introduce deemed consent would go a long way in making electronic communications effectively feasible.

We also note that the federal Income Tax Act now permits the issuance of T4 slips electronically on a deemed consent basis. We believe that the policy considerations leading to that change would equally apply to pension communications.

ACPM would be pleased to assist your department in examining this issue at a more detailed level with recommendations that would make the PBSA provision more effective.

Sincerely,



Ric Marrero
Chief Executive Officer, ACPM

cc: Kathleen Wrye, Senior Project Leader, Finance Canada