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The Association of Canadian Pension Management

L'Association canadienne des administrateurs de régimes de retraite



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ACPM Comments on Québec Bill 39, Voluntary Retirement Savings Plans Act

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

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FOREWORD

The Association of Canadian Pension Management (ACPM)

The Association of Canadian Pension Management is the informed voice of Canadian retirement income plan sponsors, administrators and their allied service providers. We are a non-profit organization and our objective is to advocate for an effective and sustainable Canadian retirement income system. Our membership represents over 400 retirement income plans consisting of more than 3 million plan members, with assets under management in excess of \$330 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

ACPM would like to thank the Public Finance Committee for the opportunity to provide the Committee with our input on Bill 39. ACPM is the leading advocate for the retirement income industry in Canada and we are proud of the fact that we enjoy strong and mutually productive working relationships with the Canadian federal government and all of the provincial and territorial governments as well. In our goal to help improve Canada's retirement income system and supported by our colleagues at the ACPM Québec Regional Council, we are pleased to provide you with our comments on Bill 39 – the Voluntary Retirement Savings Plans Act.

A Low-cost Plan for Small Business

- The ACPM applauds the Québec government for moving forward with the VRSP, a low-cost simplified pension plan for small and medium sized workplaces. The regime you have created includes many very commendable attributes such as automatic enrollment of employees, flexibility around contribution rates and protection for the employer for the acts of the administrator. In order to help achieve this low-cost objective and enhance the sustainability of the plan, we very much encourage the government of Québec to continue to work with the other provinces and the federal government to arrive at a regulatory regime and plan design with as many common elements as possible. This is the best way to ensure the low-cost and simplified plan objectives as well as the objective of expanding pension coverage across the country.

Mandatory Nature

- Section 41 requires any employers with an establishment in Québec with five eligible employees or more to subscribe to a voluntary retirement savings plan and automatically enroll those employees. ACPM, as a general principle, prefers a voluntary approach to the private savings pillar of Canada's retirement savings system. If, as a matter of policy, the government proceeds with a mandatory approach for employers with more than five eligible employees, ACPM recommends that the administrative burden on the employers be as small as possible. We note that in the United Kingdom a workplace retirement plan that was similarly mandatory was phased in over a number of years commencing with larger scale businesses and progressing to small entities with a view to allowing the smaller entities time to prepare. We would encourage the government to consider this approach for VRSP.
- If the VRSP is to be mandatory in nature, ACPM recommends that the criteria for employee eligibility set out in section 41 make use of the criteria set out in the *Québec Supplemental Pension Plans Act*.
- Making use of the eligibility criteria in the QSPPA would help address the question of whether employers who sponsor pension plans for which certain employees may not yet be eligible must subscribe for a VRSP. Harmonizing the rules in this way would allow employers to make this decision voluntarily recognizing the complications that come from offering both a traditional pension plan and being part of a VRSP.
- The government will be aware of the concern that low income earning Québécois would save more effectively in a Tax Free Savings Account (TFSA) than a VRSP as any income earned does not offset OAS/GIS benefits. ACPM recommends that the VRSP be offered with a TFSA with low income earning member contributions being defaulted into the TFSA.

One Plan Restriction

- Section 11 restricts each administrator to one plan. Section 21 states that the plan must be provided on the same conditions for all participants. ACPM believes that the single plan approach may be unnecessarily restrictive. The objective of low-cost, assuming that this is the purpose behind the provision, is already set out in the legislation (section 26). Administrators have an obligation to offer low-cost plans. How they do so should be up to each administrator.

We note that the Pooled Registered Pension Plan legislation in other jurisdictions does not restrict each administrator to a single plan; we believe that such an approach allows for flexibility while still supporting the low-cost objective.

Low-cost

- Section 26 states that criteria for determining if a plan meets the low-cost objective will be established by regulation.
- We look forward to reviewing those regulations, and note that this would be an example of where coordination with other jurisdictions would be of tremendous value. For instance, the federal regulations supporting the *Pooled Registered Pension Plans Act* states that the comparator should be defined contribution plans that provide investment options to groups of 500 or more members. The comparator should take into account the services offered by the VRSP, its very low assets under administration, at least initially and factors such as contribution rate, cash flow, and distribution structure.

Administrator Definition

- Section 13 provides for three types of financial entities which may be administrators of a VRSP. ACPM believes that the list may be unduly narrow given the various pension regimes that currently operate in Canada. In order to recognize the potential for other such entities we recommend adding a category of Administrator as may be prescribed by regulation.

Personal Information

- Section 19 requires that personal information provided by the employer about employees who opt out of the plan must be destroyed by the administrator within 60 days after the opting out notice has been received. Legislation already exists to protect personal information, an Act respecting the protection of personal information in the private sector, Section 12.
- Section 19 creates other practical concerns for the administration of the VRSP, as follows:
 - If the personal information is provided in paper format, together with personal information of employees who decide not to opt out, redacting that adds significant cost and time, and risks loss of data that should be retained.
 - Section 43 requires that eligible employees who have opted out must be offered the opportunity to join the plan during the month of December of the year following the date the employee opted out of the plan or discontinued contributions to the plan. We expect that administrators would do this on behalf of the employer, to ease the employer's administrative burden and minimize costs. Information about those previously opted-out employees would be needed in order to do this.

Employer Contributions

- Section 2 states: "Employers may contribute to the voluntary retirement savings plan they have subscribed to on behalf of their employees when the latter pay contributions to the plan." ACPM believes that this language might prevent employers that would make contributions from doing so. Giving employers the right to contribute regardless of employee contributions would support the overall principle of helping Québécois save for retirement.

Administrator

- Section 17 requires the administrator to give "the individual", meaning individual savers or self-employed members, a written summary of the plan that includes the information set out in section 18. That information includes the default contribution rate and the conditions under which the individual may set his or her contribution rate to 0%. It may be difficult to apply a default contribution rate (which is normally stated as a % of salary) to the contributions of individuals since they will contribute via pre-authorized debit dollar amount rather than a % of payroll deduction and they must provide approval for the amount of the withdrawal as per the Canadian Payments Association rules. Also, if an individual can set their contribution rate to 0% for a period of time after which it should be reinstated, it will not be possible to reinstate the contributions of individuals without getting their permission to make pre-authorized debits from their bank account. We recommend that the summary required under section 18 allow for a "Not Applicable" response in appropriate circumstances.
- Section 18(1) requires that the administrator not only send notice to an employee confirming his or membership in the plan, but also "a copy of the notice" to the employer. The notice to the employee could include private information including such things as a personal access code to the website and beneficiary details. Sending a copy of this notice to the employer for each participating employee adds unnecessary duplication and costs, and could create privacy concerns. We recommend that the Administrator simply inform the employer in writing of which employees are confirmed as members.
- In the second paragraph of section 18, sub paragraph (1) requires that an employee opting out of the plan notify the employer and the administrator. Section 44 requires that the employer notify the plan administrator of the employee's opt-out. These sections duplicate the notice to the administrator. We recommend that the legislation allow the plan to determine whether the employee should notify the administrator OR the employer of their opt-out, and not require the employee to notify both parties. If the plan requires the employee to notify the administrator, the administrator would be responsible for retaining proof of the notice of opting out.

Financial Report

- Section 23 provides that "The administrator must cause to be prepared, within the same time, a financial report containing a statement of the plan assets and a statement of revenues and expenditures for the fiscal year just ended...". We would encourage harmonization with the simplified pension plans in terms of reporting requirements and exemptions. It does not require that the financial report be audited by an accountant (an exemption that is created by regulation); a parallel exemption should apply to VRSPs.

Investment Options

- ACPM agrees with the approach taken to investments as set out in Section 24. To the extent that there is to be a ceiling on the number of investment options we would recommend this as an area of harmonization with other jurisdictions. In order that the ceiling not become unduly restrictive, we recommend that any suite of funds (e.g., target date funds and guaranteed investment options of identical nature save for the term) be considered a single investment option.

Changing Investment Choices

- Section 25 states that the member's investment choice can't be changed by the administrator except on request or in the circumstances determined by regulation. Regulations should recognize that there may be occasions when an administrator is no longer able to offer a particular fund (e.g., when a fund manager discontinues an underlying investment fund or where it would be prudent for an administrator to discontinue use of a particular investment option immediately in order to protect VRSP members). If that happened, the administrator would try to replace the discontinued fund with another fund that complies with the terms of the legislation, provide notice to members about the substitution and provide them with the option to redirect their monies to another investment option should they wish.

Transfers to Other Registered Plans

- Section 45 allows an employer to transfer from one VRSP to another VRSP but is silent on transfers to other registered plans. As some employers might grow and wish to offer other types of plans in future, we recommend that the legislation allow employer initiated plan transfers to any registered plan, subject to continued segregation of locked-in and non locked-in money.

Collection, Remittance, and Contribution Rates

- Section 53 states that the employer must deduct members' contributions "from the sixty-first day" after notice has been sent. Presumably, if the 61st day falls in the middle of the pay period, the employer would be able to commence deductions on the next following pay period. For the sake of clarity, we recommend wording to the effect, "No earlier than the sixty-first day....or the first pay period thereafter..."
- Section 58 requires that a plan administrator notify the Régie of unremitted contributions "and the measures taken to ensure remittance". This latter phrase is not included in current simplified pension plan regulations. We recommend that appropriate measures be defined as a letter sent to the employer about their late remittance and obligation to remit.

Non locked-in Account

- Section 64 states that members can request a refund or transfer "to a pension plan". Given that this is not locked-in money, there should be greater choice than is the case for locked-in funds, e.g., non locked-in money should be transferrable to RRSPs as well. We believe that the recommended wording for Section 45 would be appropriate here as well, i.e. "to any registered plan". We expect that regulations will determine what the admissible plans are (e.g. "as defined under the *Income Tax Act*").

Discontinuance/setting Rate of Contribution at 0%

- Section 67 states that an employee who discontinues contributions to the plan must wait 12 months before recommencing contributions. Section 68 states that setting the rate of contribution at 0% is not considered to be a discontinuance of contributions. The distinctions between discontinuing contributions and setting the rate at 0% requires greater clarity.

Pre-Notice

- Section 42 (7) states that the pre-notice contains the employer contributions. We suggest removing it as employer contributions may be unknown at that stage.

Obligation to Inform

- Section 92(2) requires a new statement be provided to all members at age 55. This is currently not a requirement for members of pension plans or Simplified Pension Plans. We recommend that a new statement at age 55 should only be provided to those members who are receiving variable payments. That would be consistent with the plan's low-cost objective.
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