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

May 22, 2025

Kathleen Wrye
Director, Pensions Policy
Financial Crimes and Security Division
Department of Finance
90 Elgin Street, 13th Floor
Ottawa, Ontario, K1A 0G5

Email: re-pension@fin.gc.ca

Re: PBSA Provisions on Spousal Rights and Electronic Communications

Dear Ms. Wrye:

ACPM is the leading advocacy organization for plan sponsors and administrators in the pursuit of a balanced, effective and sustainable retirement income system in Canada. We are the voice of retirement plan sponsors, administrators and trustees in both the private and public sectors and our membership represents retirement income plans that cover millions of plan members.

We would like to bring to your attention a few issues where we believe simple amendments could be made to the *Pension Benefits Standards Act, 1985* (PBSA) that would be beneficial to several pension plan members, retirees and their spouses and facilitate the administration of federally regulated pension plans. These issues, which are interdependent, relate to:

- required disclosures to spouses and
- facilitating electronic communication with plan beneficiaries.

Required Disclosures to Spouses

Generally, the PBSA requires information to be given to a plan member or former member, such as a pensioner, also be provided to the spouse or common-law partner. For example, Section 28(1)(a) provides that that "...each employee who is eligible to join the plan, and that person's spouse or common-law partner, will be given, in the prescribed circumstances and in the prescribed manner, (i) a written explanation of the provisions of the plan and of any applicable amendments to the plan...". While from a principles perspective, we are supportive of a spouse having access to their partner's pension particulars, in practice these requirements are problematic because:

1. **No direct link.** Employers and plan administrators do not as a matter of course communicate separately to an employee's spouse and do not have independent spousal contact information, including electronic contact information. Also, with disclosure of information migrating to on-line modes of accessibility, such as an internal web portal, spouses would generally not have access to the propriety networks that employees do.
2. **Uncertainty of spousal eligibility.** In most cases, the maintenance of spousal records is routine. However, a plan administrator is reliant on the Plan member and/or spouse of record in tracking changes thereto. The PBSA defines:
 - "spouse, in relation to an individual, includes a person who is party to a void or, in Quebec, null marriage with the individual";
 - "common-law partner, in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year"; and
 - "survivor, in relation to a member or former member, means (a) if there is no person described in paragraph (b), the spouse of the member or former member at the time of the member's or former member's death, or (b) a person who was the common-law partner of the member or former member at the time of the member's or former member's death."

In complex or transitional cases, the parties themselves may be challenged to determine when a spousal or common-law relationship ceases, or who would be entitled to survivor benefits in the case of death. The plan administrator should not be put in a position to determine the spousal relationships of members, except when it affects the payment of benefits.

While complex cases are the exception, it is exactly in these cases where the provision of pension information could become problematic. For example, in a separation scenario with potentially domestic violence issues, would the provision of an annual statement with address information and the names of new common law spouses violate privacy rights? In practice, it is most pertinent for spouses or former spouses to have access to a member's pension information when the parties are involved in the division of property on the breakdown of their relationship. Provincial property law generally requires the disclosure between the parties to enable the valuation of assets for family law purposes. Therefore, it is not clear there is a need for pension legislation to require the disclosure of information to spouses. However, as it is currently provided for within PBSA, it may not be desirable to remove it entirely. Another scenario that is also supported by other legislation is when a spouse (or other individual) is acting as a power of attorney.

3. **Harmonization.** Provincial jurisdictions, which administer most pension plans in Canada, do not require similar disclosures to spouses, illustrating that it is not essential to the operation of pension plans. Furthermore, any step to encourage alignment between jurisdictions would help to alleviate interprovincial barriers which are so prevalent in the operation of RPPs.
4. **Duplication.** By requiring disclosure to the member and their spouse, in theory, the PBSA is duplicating the volume of communication materials, when in practice, they could be routinely shared.

Recommendation: We recommend that the PBSA be amended to provide that a spouse or common-law partner may obtain, upon request, a copy of any documents given to a plan member or former member. The wording could be similar to Section 28(1)(c) of the PBSA which permits information filed with the Superintendent to be examined annually by plan beneficiaries or their spouses. As in British Columbia, details affecting privacy could be redacted. Spousal information would still be required to be included on termination and retirement statements, and waivers would still be required for any transaction that compromises a spouse's statutory right. However, unless a request is made, there should be no requirement to give the spouse such termination or retirement statement, as currently required under Section 28(1)(d), unless a spouse so requests.

Facilitating Electronic Communication with Plan Beneficiaries

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 a barrier to using electronic means for communications. 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. The OSFI policy interpretation illustrates why the recommended changes to the required disclosures for spouses outlined above is essential.

Since 2010 the landscape has continued to evolve. Over the past few years, many provincial governments and regulators have put into place legislation and guidelines encouraging digital-first communications between pension plan administrators and their members. This was an important step to ensure seamless delivery of information that is vital to ensuring a secure retirement. There is a need, however, for this strategy to apply equally to retired members so that they are not subjected to unnecessary distinctions that could potentially create barriers to receiving important information and updates. The recent postal disruption, and the threat of another one, illustrates the necessity for alternatives. Furthermore, providing the flexibility to shift to paperless distribution reduces waste and supports environmental responsibility.

With respect to retirees, viewing traditional mail communication as a more effective means or the preferred method of communication by retirees is outdated and misguided. In fact, there has been a dramatic evolution in the acceptance of electronic communications, especially in the last five years. Retirees are increasingly tech-savvy and we should not assume that they are unwilling or incapable of receiving electronic communications. Over and above the ease and convenience of receiving electronic communications, retirees are recognizing the benefits of receiving low cost, timely and more frequent communications from their banks, healthcare providers, retail stores and more. Moreover, these communications seamlessly follow them as they travel or relocate and are easily adaptable to Power of Attorney situations.

The vulnerability of retirees to online fraud is also often cited as a reason to avoid electronic communications. Unfortunately, paper delivery is also susceptible to fraud, theft and privacy breaches. With electronic communication, personal information is required to be accessed via a secure information

system rather than having the information in a member's physical mailbox. If a member has relocated, access to that personal information electronically is safer than paper.

To help ensure that crucial information reaches retired members without any disruption, retired members are best positioned to decide whether paper is best. This can be achieved through an opt-out system (i.e., opt out of electronic communication to paper) rather than the current environment of express consent and paper only. This aligns with the approach adopted by several financial services organizations, utility companies, municipal tax authorities and telecommunications companies that have either evolved to require receipt of information electronically or apply a fee to receive paper correspondence – irrespective of a client's age. ACPM member organizations report that where pension plans can communicate electronically with retired members, communications have a high open rate. Further, an extremely small percentage of retired members request paper options.

Recommendation: We recommend that the PBSA regulations introduce deemed consent to permit electronic communications unless the member or former member specifically requests paper, and that such deemed consent be applicable to both members and former members. Furthermore, the plan administrator should have the flexibility to require active members to access a designated electronic platform provided by the plan administrator, as long as the information can be printed or downloaded. No spousal consent would be required per the previous recommendation.

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

Sincerely,

A handwritten signature in dark ink, appearing to read 'Korinne Collins', with a stylized, flowing script.

Korinne Collins

Chief Executive Officer, ACPM