

## Pensions Law

November 10, 2015

### ORPP and CPP: Pension Reform Update

The recent election of a federal Liberal majority government has increased the likelihood of pension reform in the province of Ontario and perhaps federally. Employers in Ontario that have not yet done so should start to plan accordingly.

#### Background

Many commentators have pointed out the increasing “retirement income gap” in Canada. Statutory retirement plans such as the Canadian Pension Plan (CPP), employer sponsored registered pension plans such as defined benefit (DB) or defined contribution (DC) plans, or individual plans such as registered retirement savings plans (RRSP) or tax free savings arrangements (TFSA), are not anticipated to provide sufficient retirement income for many Canadians.

The Ontario government had long been pressing for an expansion of the federal CPP as a means of addressing the retirement income gap. With the federal Conservative government continuing to resist an expansion, in May of 2015 the Ontario provincial government passed legislation establishing a framework for a new Ontario Retirement Pension Plan (ORPP). The ORPP was designed to operate in a manner similar to the CPP. The ORPP is intended to replace 15% of an employee’s earnings up to a maximum annual threshold of \$90,000. Both employers and employees will be required to make equal mandatory contributions to a maximum of 3.8% of earnings. The ORPP will pay indexed benefits starting at age 65 (subject to the ability to start up to 5 years earlier or later).

Federal cooperation would be highly desirable for an efficient implementation of the ORPP. The prior federal government viewed the ORPP as a payroll tax and indicated it would not provide any cooperation.

The Liberals, on the other hand, stated during the election campaign that if elected they would consult with the provinces concerning an expansion of the CPP.

#### ORPP and/or CPP Reform?

In their first meeting following the federal election, Premier Wynne and Prime Minister designate Trudeau confirmed that both governments would be “active partners in the national discussion on pension enhancement, including the CPP and ORPP”. Employers in Ontario may now wonder if they will be facing both a new ORPP as well as an enhanced CPP. While it is too early to know, it is likely that any amendments to the CPP will take years rather than months to implement. These amendments would require federal and provincial consultations followed by the agreement of the federal government and two thirds of the included provinces (which must comprise two-thirds of the population of such provinces).

The Ontario government had stated that it would not proceed with the ORPP if the CPP were enhanced. But it has also recognized the timing issue and has confirmed that it will proceed with the ORPP for now and that the ORPP is being designed to integrate with any future CPP enhancement. It is anticipated that the new federal government will be more cooperative with implementation of the ORPP. Indeed, the new federal Finance Minister, Bill Morneau, the former executive chair of one of Canada’s largest pension consulting firms, sat on the technical advisory group that made recommendations to the Ontario government relating to the ORPP. Mr. Morneau’s expertise in pension matters may also enhance the possibility of reform of the CPP. For now, however, it is prudent for Ontario employers to prepare for implementation of the ORPP.

# Goodmans<sup>LLP</sup> Update

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## ORPP Implementation

The Ontario government provided some implementation details for the ORPP in August, 2015. The ORPP will not apply to employees who participate in a comparable workplace pension plan. Only registered pension plans meeting certain minimum thresholds will be considered comparable, including: (i) DB plans, (ii) DC plans, (iii) hybrid DB/DC plans, (iv) pooled registered pension plans, and (v) multi-employer pension plans. To be comparable, each of these plans must also meet certain thresholds. For example, DB plans must have a minimum annual accrual rate of 0.5% and DC plans must have minimum total contributions of 8% of base earnings with an employer contribution of at least 4%. Other kinds of plans such as group RRSPs, deferred profit sharing plans (DPSP) and TFSAs will not be considered comparable.

Implementation of the ORPP will occur in four annual “waves” commencing on January 1, 2017. The waves will be determined by the number of an employer’s employees who did not have a registered pension plan as of August 11, 2015:

Wave	Number of Employees	Contribution Commencement Date
First (Employers without a registered pension plan)	500 or More	January 1, 2017
Second (Employers without a registered pension plan)	50 to 499	January 1, 2018
Third (Employers without a registered pension plan)	Less than 50	January 1, 2019
Fourth (Employers with a registered pension plan that is not comparable)	Any Size	January 1, 2020

For the first three waves, contributions will commence at 0.8% for both employers and employees in the first year, increasing to 1.6% in the second year and to 1.9% in the third year.

For the fourth wave, contributions will commence at the maximum rate of 1.9% immediately unless the pension plan is modified to meet the comparability test before January 1, 2020.

## Planning Considerations

Ontario employers should assess the nature of their current or proposed retirement plans and consider whether changes to current plans or adopting new plans would be desirable to integrate with the ORPP. For example, a DB or DC plan that does not meet the contribution threshold could be adjusted to increase accrual or contribution rates. If the plan is thereby made “comparable” by January 1, 2020, employees covered by that plan will be exempt from the ORPP. Employers that sponsor only a Group RRSP, a DPSP or no plan, and which would therefore be required to participate in the ORPP, may wish to adopt a comparable pension plan before the contribution commencement date of the applicable wave to become exempt.

Changes to existing plans or adoption of new plans will need to be completed in accordance with the terms of the plans and any applicable employment agreements or collective bargaining agreements. Since this may entail notice and, possibly, employee consent, it will be prudent to start the planning process earlier rather than later.

For further information about the ORPP or to discuss changes to current arrangements, please contact any member of our Pension, Benefits and Compensation Group.