

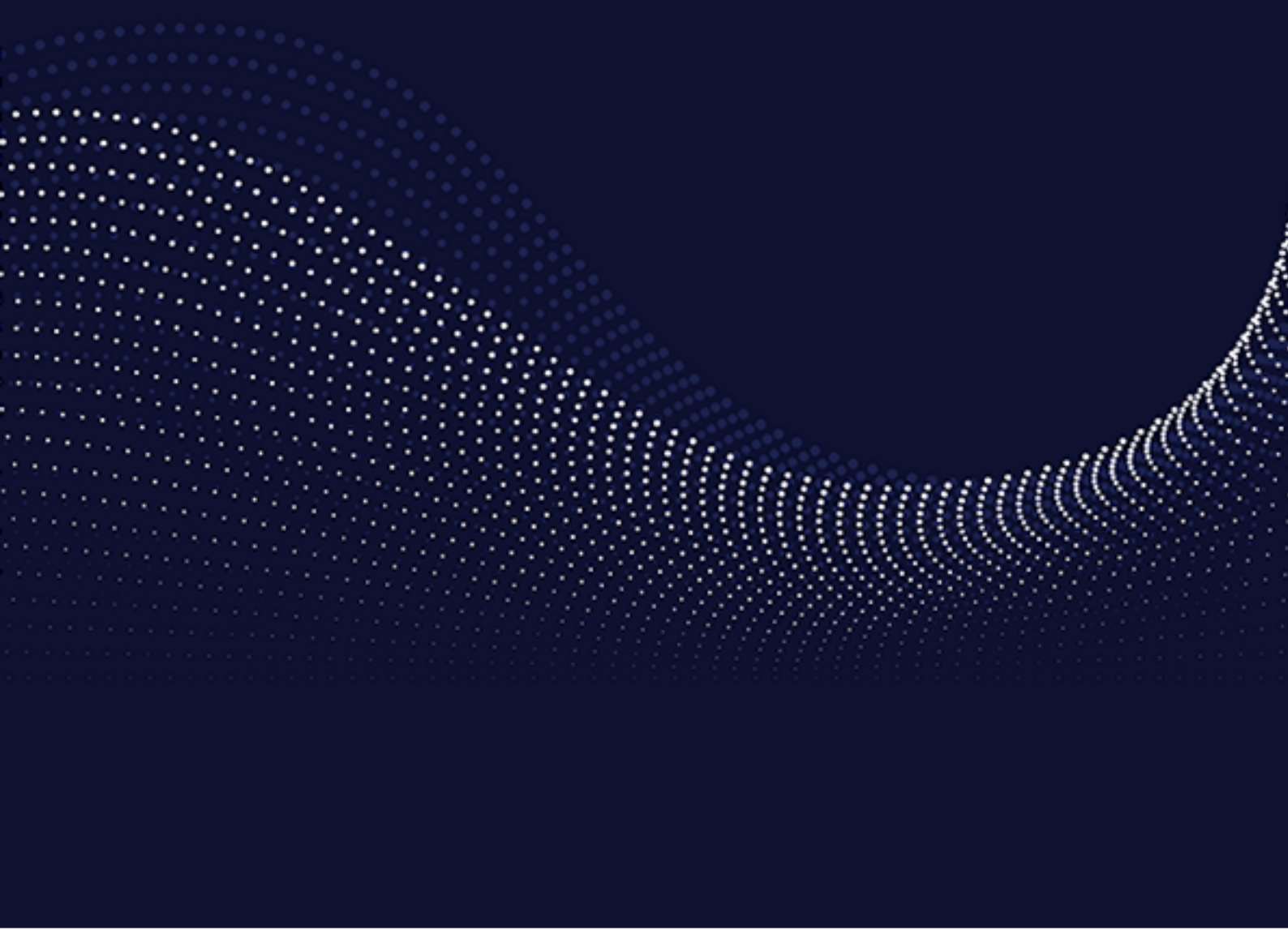
# PENSIONS & RETIREMENT PLANS

## Canada

Contributing Editor

**Penny Cogher**

Irwin Mitchell LLP



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# Contributors

## Canada

Goodmans LLP

**Goodmans**<sup>LLP</sup>

**Brian Sweigman**

[bsweigman@goodmans.ca](mailto:bsweigman@goodmans.ca)

## STATUTORY AND REGULATORY FRAMEWORK

### Primary laws and regulations

#### What are the main statutes and regulations relating to pensions and retirement plans?

Canada is a federal state, composed of a central federal government, 10 provincial governments (Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, and Saskatchewan) and three territorial governments (the Northwest Territories, Nunavut and Yukon).

Under the [Constitution Act 1867](#), the legislative and executive jurisdictions in Canada are divided between the federal government and the provincial governments. The federal government has exclusive jurisdiction over matters affecting the country as a whole (eg, immigration, criminal law, international trade, aviation), while the provincial governments have jurisdiction over matters such as property, contracts, natural resources, education and healthcare.

Public pensions, private pensions established for the benefit of employees in the federal government and in federally regulated industries, and private pensions established for employees working in the

Northern Territories are all subject to federal pension regulation.

Private pensions established for the benefit of employees in provincially regulated industries are subject to the pension laws of the employer's province and the province of registration of the pension plan.

The federal government and each provincial government have enacted the minimum standards pension legislation that apply to private pension plans, as listed below. The federal and provincial governments have also established pension plans for public sector employees, many of which are established by their own legislation, including the [Canada Pension Plan Act](#) and the [Act respecting the Quebec Pension Plan](#), and may be subject to provincial minimum standards legislation.

For federally regulated pension plans, the minimum standards legislation is the [Pension Benefits Standards Act 1985](#) and its associated regulations.

For provincially regulated pension plans, the minimum standards legislation is as follows:

- Alberta: [Employment Pension Plans Act 2012](#);
- British Columbia: [Pension Benefits Standards Act 2012](#);
- Manitoba: [Pension Benefits Act](#);
- New Brunswick: [Pension Benefits Act 1987](#);
- Newfoundland and Labrador: [Pension Benefits Act 1997](#), [Pension Plans Designation of Beneficiaries Act 1990](#) and [Perpetuities and Accumulations Act 1990](#);
- Ontario: [Pension Benefits Act 1990](#);
- Nova Scotia: [Pension Benefits Act 2011](#);
- Quebec: [Supplemental Pension Plans Act](#); and

- Saskatchewan: [Pension Benefits Act 1992](#).

Each of the above statutes has associated regulations.

Although the base legislative framework for pensions is largely consistent between the federal and provincial governments, it is always important to understand which statutory regime applies to each respective situation, as a public sector plan may have its own legislation and may be subject to minimum standards legislation.

All registered pension plans are also subject to the federal [Income Tax Act 1985](#).

## **Regulatory authorities**

### **What are the primary regulatory authorities and how do they enforce the governing laws?**

Federally regulated pensions are overseen and enforced by the Office of the Superintendent of Financial Institutions. Except for Prince Edward Island, all Canadian provinces have their own regulatory bodies to oversee and enforce their specific statutory frameworks, as follows:

- Alberta: Alberta Treasury Board and Finance;
- British Columbia: British Columbia Financial Services Authority;
- Manitoba: Manitoba Pension Commission;
- New Brunswick: New Brunswick Financial and Consumer Services Commission;
- Newfoundland and Labrador: Digital Government and Service NL – Pension Benefit Standards Division;
- Nova Scotia: Nova Scotia Department of Finance – Pension Division;
- Ontario: Ontario Financial Services Regulatory Authority (FSRA);
- Quebec: Retraite Québec; and
- Saskatchewan: Financial and Consumer Affairs Authority of Saskatchewan.

Each of the regulators participates in the Canadian Association of Pension Supervisory Authorities (CAPSA). CAPSA regularly issues guidelines and communications, setting out industry best practices, but these do not have the force of law. Enforcement powers are granted to the federal and each provincial regulatory body by statute.

For private pensions in Ontario, the FSRA oversees the sector and those who work within that sector to ensure compliance with governing legislation, and conducts investigations where prosecution or administrative action may be taken. Administrative actions may include imposing fines, issuing regulatory orders (referred to as notices of intended decision), and undertaking examinations, investigations and inquiries. Notices of intended decisions (NOIDs) may be appealed to the Financial Services Tribunal (FST) and decisions of the FST may be appealed to the Ontario Superior Court of Justice. The FSRA may also lay charges under the [Provincial Offences Act](#) for violations of the Pension Benefits Act. If convicted, the penalty is a fine.

## Pension taxation

### What is the framework for taxation of pensions?

All registered pension plans in Canada, whether federally or provincially regulated, are subject to the Income Tax Act. Contributions to private pension plans are tax deductible up to a maximum amount that, for a defined benefit pension plan, depends on the plan formula (approximately C\$150,000 for a plan that provides a benefit equal to 2 per cent of final average earnings, multiplied by years of service). For a defined contribution pension plan, contributions are tax deductible up to a maximum of the lower of: 18 per cent of the employee's earnings; and a fixed amount (C\$31,560 in 2023). Investment gains made within a defined benefit or defined contribution pension plan accrue on a tax-deferred basis, and tax only becomes payable once the pension benefits are disbursed.

For pension contributions in excess of the maximum annual tax-deductible amount, an employer may offer a funded or unfunded defined benefit or defined contribution supplemental employee retirement plan or a retirement compensation arrangement. These plans, typically referred to as supplemental executive retirement plans, are not tax-deferred and do not face the same regulatory scrutiny as standard private pension plans.

## STATE PENSION PROVISIONS

### Framework

#### What is the state pension system?

The Canada Pension Plan (CPP) is a mandatory, universal, contribution-based public retirement pension plan. With very limited exceptions, any Canadian over the age of 18 who has employment earnings must contribute to the CPP. Annual contributions are calculated based on an individual's remuneration and are made in equal parts by the employer and employee. Individuals working in Quebec pay their contributions directly to the Quebec Pension Plan (QPP). The QPP is almost a mirror image of the CPP but is administered by the province of Quebec. Annual CPP and QPP contributions are tax deductible under the Income Tax Act 1985.

As of 2023, the contribution rate by employers and employees under the CPP is 5.95 per cent of covered earnings (between C\$3,500 and the Year's Maximum Pensionable Earnings (YMPE), which is C\$66,600 in 2023), and the maximum employee or employer contribution is set at C\$3,754 (C\$7,508 in total). Under the QPP, the contribution rate by employers and employees is 6.4 per cent of covered earnings (between C\$3,500 and the YMPE) and the maximum employee or employer contribution is set at C\$4,038 (C\$8,076 in total).

In June 2016, the federal government, together with provincial finance ministers, reached an agreement to enhance the CPP. Quebec has implemented similar enhancements. The enhancements to the CPP and QPP will result in increased contributions, maximum pensionable earnings levels and retirement benefits. The enhancements have been phased in over seven years, starting in 2019. On 1 January 2024, the government is introducing a second earnings ceiling to the CPP and QPP known as the Year's Additional Maximum Pensionable Earnings (YAMPE). In 2024, the YAMPE will be set at an amount that is 7 per cent higher than the YMPE. In 2025, the YAMPE will be set at an amount that is 14 per cent



higher than the YMPE. On and after 1 January 2024, employers and employees will each contribute an additional 4 per cent on earnings above the YMPE up to the YAMPE.

Individuals who have contributed to the CPP over the course of their working lives may apply for full benefits starting at age 65. Eligible individuals may apply to receive benefits on an actuarially reduced basis as early as age 60 or an actuarially increased basis as late as age 70. In 2023, the maximum monthly benefit amount under the CPP and the QPP is C\$1,306.57.

Canadians may also apply for Old Age Security (OAS). The OAS is a government retirement programme funded by tax revenues, providing a modest pension (C\$691 per month) to Canadians over the age of 65. Canadians over the age of 65 and living in Canada are entitled to the OAS provided they have lived in Canada for a minimum of 10 years after their 18th birthday. Effective 1 July 2022, individuals over the age of 75 received a 10 per cent increase in OAS entitlements.

Canadians living outside Canada may also be entitled to an OAS pension if they are 65 years of age or older, were a Canadian citizen or a legal resident of Canada the day before they left Canada and lived in Canada for at least 20 years after turning 18.

The Guaranteed Income Supplement (GIS) is available for those with very low incomes (under C\$21,168 for a single individual in 2023). The maximum monthly GIS amount for a single, widowed or divorced pensioner in 2023 is \$1,032.10.

## **Pension calculation**

### **How is the state pension calculated and what factors may cause the pension to be enhanced or reduced?**

Individuals are entitled to apply for CPP benefits if they have contributed to the CPP at any point during their working life. The monthly benefit an individual is entitled to receive is a product of the number of years worked, the amount contributed to the CPP and the age of retirement. Benefit calculations are subject to specific rules that take into account long-term leave from the workplace and other relevant circumstances.

Although the full benefits of the CPP do not crystallise for an individual until the individual is aged 65, an individual may apply for benefits as early as age 60 or as late as age 70. The monthly payment for an individual electing to receive benefits early will be reduced or increased based on actuarial data and the number of contribution years. CPP rate increases are calculated once a year using the All Items Consumer Price Index with rate increases coming into effect in January each year. These increases are legislated under the Canada Pension Plan Act (CPP Act) to ensure benefits reflect any increases in the cost of living.

While CPP rates may be increased each year, if the cost of living decreases over the year, the calculation of the rate increase would lead to a negative amount. Under the CPP Act, benefit amounts do not decrease; therefore, they will stay at the same level if there is a decrease in the cost of living in a given year.

The OAS is reduced for higher-income earners on a sliding scale, and those with incomes of over C\$129,757 as at 2023 would have the entire OAS amount clawed back. OAS payments may be delayed, in which case the amount payable will be actuarially increased. Those individuals whose income is above the maximum annual income threshold for the GIS based on marital status will not be eligible to receive the GIS benefit.

## Aims

**Is the state pension designed to provide a certain level of replacement income to workers who have worked continuously until retirement age?**

The CPP and QPP are currently designed to replace approximately 25 per cent of a worker's average pre-retirement employment earnings up to the year's maximum pensionable earnings (C\$66,600 in 2023). The enhancements to the CPP and QPP will eventually result in a replacement ratio of 33 per cent. Since the increase is gradual and determined depending on the number of years of contribution to the enhanced part of the plan, employees who will retire in the coming years will benefit from an increase in their pension prorated to the number of years of their contribution to the enhanced plan.

The OAS is designed to provide approximately 15 per cent income replacement to those eligible.

## Current fiscal climate

**Is the state pension system under pressure to reduce benefits or otherwise change its current structure in any way on account of current fiscal realities?**

Emerging from the pandemic, the Canadian government was pressured to delay the CPP enhancements due to employee financial concerns with respect to the increased contributions. However, the CPP enhancement continued as planned, and will continue through 2025 until fully implemented.

The CPP is maintained in accordance with applicable funding regulations, setting out the methodology for the actuarial calculation, acceptable range of contribution rates and mechanisms for sustainability. The CPP is funded on a modified steady state pay-as-you-go basis, with financial and demographic projections for the following 75 years. The CPP is valued on this basis every three years. Based on these valuations, the CPP is sufficiently funded and, other than the current enhancement plan, does not anticipate any reductions to benefit payments or increases to contribution levels in the foreseeable future. The current financial stability of the CPP is in large part owing to contribution increases implemented throughout the 1990s and the government intends to strengthen retirement income security through the CPP and QPP enhancements.

## OCCUPATIONAL PENSION SCHEMES

### Types

**What are the main types of private pensions and retirement plans that are provided to a broad base of employees?**

There are essentially three forms of employer-sponsored private pension plans in Canada: defined benefit pension plans (DBPPs), defined contribution pension plans (DCPPs) and target benefit pension plans (TBPPs).

## Defined benefit pension plan

Benefits paid out on retirement are predetermined based on a formula typically using years of service and earnings. Employers manage and invest the assets of a DBPP and are liable to pay the pension benefit to members on retirement.

## Defined contribution pension plan

Benefits paid out on retirement are not predetermined, but rather based on the assets within an individual's account at the time of retirement. Employers contribute to the DCPP and employees choose the investment options in which to invest the contribution. Employees are often required or entitled to match their employer's contributions to the DCPP. The employer has no liability in respect of the ultimate benefit and the benefit paid out upon retirement reflects the aggregate value of the contributions and investment returns in the DCPP as chosen by the employee.

In addition to DCPs, which are regulated by minimum standards pension legislation, there are other types of tax-sheltered group retirement savings plans, such as registered retirement savings plans (RRSPs), deferred profit sharing plans (DPSPs) and tax-free savings accounts. These types of plans are regulated by the Income Tax Act but are not subject to provincial minimum standards legislation.

## Multi-employer pension plan

Multi-employer pension plans (MEPPs) are established by a group of two or more employers and are prevalent in construction and similar industries. MEPPs are governed by a board of trustees, with board representation evenly split between employer and union-appointed representatives. Contribution amounts are established under the applicable collective agreements in unionised environments and, therefore, the benefit is not predefined or guaranteed and may be reduced.

A new category of employee-sponsored private pension is emerging in Canada. These plans take different forms but have some form of sharing of risk in common. These plans include the following.

## Target benefit pension plan

Employer contributions are negotiated to a predetermined amount. The pension plan seeks to achieve the returns necessary to meet a target benefit level established by a board of trustees. The advantage of a TBPP is the flexibility provided by not having guaranteed benefits. If investment returns fail to meet the target benefit, there are options available to address the shortfalls.

Since TBPPs are an emerging pension option, regulations governing acceptable risk tolerances for investments and other important considerations are continuing to develop.

## Jointly sponsored pension plan

Broader public sector employees in Canada (teachers, civil servants, municipal workers, healthcare professionals, police, firefighters, etc) typically participate in pension plans jointly sponsored by the employee and the relevant public sector agency. These plans are subject to the same basic funding and management regulations as the private pension plans outlined above, except that they are exempt from solvency funding requirements, and benefits may be reduced on wind up if the plan is not fully funded.

### **Restrictions**

**Are employers required to arrange or contribute to supplementary pension schemes for employees? What restrictions or prohibitions limit an employer's ability to exclude certain employees from participation in broad-based retirement plans?**

Employers are not required to adopt a private pension or retirement arrangement, although doing so is a useful recruiting tool and in some industries is expected. The minimum requirement for an employer is to make the contributions to the Canada Pension Plan (CPP) or the Quebec Pension Plan (QPP), as applicable.

If an employer does provide a private pension plan to its employees, such employer-sponsored pension plans must be structured so as to permit participation for all employees who fall within a certain class of employees that are eligible to join the pension plan, in accordance with the plan documents. Employees may be excluded from those plans on the basis of short-term, casual or voluntary employment status, as well as differentiators that exclude them from the class of eligible employees, but part-time employees who are in the eligible class of employees and meet the prescribed thresholds must be permitted to participate in the plan.

### **Restrictions**

**Can plans require employees to work for a specified period to participate in the plan or become vested in benefits they have accrued?**

Pension plans are permitted to establish waiting periods of up to 24 months before employees are eligible to join the plan.

Immediate vesting is required under minimum standards pension legislation applicable to private pension plans in all jurisdictions in Canada, except for Saskatchewan, which may require two years of continuous service for vesting. Regardless of the vesting requirements, employees are immediately entitled to their own contributions to the pension plan and any amounts invested on their behalf.

### **Overseas employees**

**What are the considerations regarding employees working permanently and temporarily overseas? Are they eligible to join or remain in a plan regulated in your jurisdiction?**

Employees working outside Canada are generally entitled to remain in their Canadian plan for up to five years. This entitlement is governed by the Income Tax Act 1985, and specific advice should be sought from Canadian legal counsel.

## **Funding**

### **Do employers and employees share in the financing of the benefits and are the benefits funded in a trust or other secure vehicle?**

The benefit financing model will always be unique to a specific pension plan. Plans are typically financed by the employer:

- alone;
- with required (matching) contributions from the employee; or
- with optional (matching) contributions from the employee.

Regardless of the financing system employed for the specific pension plan, contributions are held separately either in a formal trust or under a policy held by an insurance company. The monies invested and assets held by the pension fund up to the liabilities owed under the plan are for the benefit of the plan members and are never treated as the property of the employer. The treatment and ownership of surplus funds are typically set out in the plan documents and are subject to tax and pension legislation.

## **Funding**

### **What rules apply to the level at which benefits are funded and what is the process for an employer to determine how much to fund a defined benefit pension plan annually?**

While precise requirements vary slightly by jurisdiction, all pension plans are required to file regular actuarial valuations to the appropriate regulator. Typically, if a plan is underfunded, it must file annual valuations, while a fully funded plan may file valuations on a triennial basis.

Pension plans are generally required to be 100 per cent funded on both a solvency and going-concern basis or on a modified going-concern basis, depending on the jurisdiction. If a pension plan is found to be underfunded, it must comply with heightened reporting obligations and meet various targets in resolving the funding deficiency. Recent solvency reform in certain jurisdictions has permitted pension plans to escape heightened reporting obligations if they are funded at a solvency ratio below 100 per cent (eg, pension plans in Ontario and Nova Scotia have an 80 per cent solvency ratio). While funding standards differ between jurisdictions, pension plans typically have between five and 10 years to resolve a solvency deficiency and 15 years to resolve a going-concern shortfall.

Jointly sponsored pension plans (JSPPs) and MEPPs are exempt from the solvency funding rules if they meet certain requirements.

## **Level of benefits**

### **What are customary levels of benefits provided to employees participating in private plans?**

There is a high degree of variance in the level of benefits provided to employees participating in private pension plans, which range by industry as well.

From a best practice perspective, employees should aspire to obtain benefits that, when combined with CPP or QPP, Old Age Security, and Guaranteed Income Supplement, as applicable, provide a 60 to 70 per cent income replacement over their retirement years. This figure has faced scrutiny in recent years and should not be taken as a definitive statement of the benefits actually received.

Historically, DBPPs were the most common form of private plan in Canada, generally basing benefits on a percentage of average compensation or a dollar amount for each year of service. While large multi-employer plans and JSPPs maintain a defined benefit pension for certain public and private employees, recently, single employer private plans tend to offer only defined contribution or other capital accumulation savings plans.

## **Pension escalation**

### **Are there statutory provisions for the increase of pensions in payment and the revaluation of deferred pensions?**

This concept is typically referred to as 'indexing' in Canada, which increases the dollar amount paid to retired members. Typically, indexing is tied to the Consumer Price Index (CPI) and in certain jurisdictions, voluntary indexing of deferred pensions must be approved by the regulator. Any indexing must comply with tax rules as well.

Indexing applies to the CPP and QPP, but there is no legislative requirement for private pension plans to provide indexing. The JSPPs in the broader public sector and unionised workforces are more likely to provide indexation, subject to the plan meeting funding objectives.

## **Death benefits**

### **What pre-retirement death benefits are customarily provided to employees' beneficiaries and are there any mandatory rules with respect to death benefits?**

There are pre-retirement death benefits and rules in the applicable pension legislation for each province and federally.

In Ontario, for example, the Pension Benefits Act provides that where an active plan member who is entitled to a pension under the plan dies before the payment of the first instalment is due, or if a former member or retired member dies before the payment of the first instalment of their deferred pension is due, the member's spouse on the date of the member's death is entitled to:

- receive a lump sum payment equal to the commuted value of the pension;

- require the administrator to pay an amount equal to the commuted value of the deferred pension into a prescribed registered retirement savings arrangement; or
- receive an immediate or deferred pension, the commuted value of which is at least equal to the commuted value of the deferred pension.

The member's spouse may also waive their entitlement to pre-retirement death benefits. In the event of a waiver, the commuted value of the pension will be paid to the designated beneficiary.

A similar provision with respect to pre-retirement death benefits and their provision to the employees' spouse or designated beneficiary exists in the Pension Benefits Standards Act 1985, applicable to federally regulated private pensions and found in all provincial statutes that regulate private pensions. The main difference between jurisdictions is whether the pre-retirement death benefit payable to the spouse is paid on a locked-in or non-locked in basis.

For purposes of pension legislation across Canada, 'spouse' is defined to include common-law spouses and same-sex partners. The definition of spouse in the pension legislation also varies across jurisdictions.

## **Retirement**

### **When can employees retire and receive their full plan benefits? How does early retirement affect benefit calculations?**

The normal retirement age in all applicable jurisdictions in Canada is 65. However, the age upon which entitlement to full benefits arises varies by private pension plan. Most jurisdictions in Canada require that a pension plan permit a participant to demand benefits at age 55, or within 10 years of the member's normal retirement date. A defined benefit pension will be subject to an actuarial reduction for early retirement.

## **Early distribution and loans**

### **Are plans permitted to allow distributions or loans of all or some of the plan benefits to members that are still employed?**

No, this is not permitted in Canada.

## **Change of employer or pension scheme**

### **Is the sufficiency of retirement benefits affected greatly if employees change employer while they are accruing benefits?**

Applicable legislation across Canada provides portability options in the event of employee movement or a termination of employment. The employee will continue to accrue benefits in the pension plan through the severance period, in accordance with employment standards legislation. On and after the termination date, the employee will no longer accrue benefits in the plan.

On termination, the employee has the following options with respect to their pension benefit:

- leave the pension entitlement in the plan until retirement for a deferred vested benefit;
- transfer the commuted value to another pension plan or prescribed retirement savings vehicle on a locked-in basis; or
- purchase a deferred life annuity.

Although it is technically possible for an employee to change employers without any loss of retirement benefits, the reality is that if an employee is a participant in a DBPP, the employee may experience significant obstacles to having their benefits transferred between employers. The main obstacle is that the administrator of the receiving plan must consent to the transfer, and such consent is rarely given in the context of private plans, unlike in the broader public sector where plan-to-plan transfers are common.

### **Change of employer or pension scheme**

#### **In what circumstances may members transfer their benefits to another pension scheme?**

Members may elect to transfer their benefits to another pension plan or another vehicle at the cessation of membership in the pension plan, such as when a member's employment has been terminated. However, the transfer must be accepted by the receiving plan's administrator. For individual transfers, other than in the broader public sector, it is much more common for the member to transfer the commuted value of their benefit to a locked-in RRSP or another prescribed vehicle. A transfer to another pension plan or a prescribed retirement savings vehicle will protect the preferred tax treatment of the pension entitlement.

A different set of rules applies to transfers on the sale of business. An employer considering a sale of business should consult Canadian legal counsel.

### **Investment management**

#### **Who is responsible for the investment of plan funds and the sufficiency of investment returns?**

The management of the investment of the pension plan funds and oversight of investment returns depends on the type of pension plan.

In a DBPP, the employer administers the plan and makes the necessary investment decisions. It is the employer's liability to pay the member's promised benefits, so the ongoing investment and monitoring of returns is maintained by the employer.

In a DCPP, typically, the employer will select a suite of investment funds for the employee to choose from and direct the investment of the defined contribution account. The employer is responsible for overseeing and maintaining the suite of funds, including monitoring the investment returns and selecting a default fund. Individual employees make the choice as to how their specific benefits are invested across the selected suite of investment funds. If



the employee does not make a selection, the individual defined contribution account will be invested in the default fund, which is selected by the employer.

For TBPPs and MEPPs, investment decisions are made by a board of trustees, typically with employer and employee representation.

Most provinces have adopted the investment rules in the federal Pension Benefits Standards Act. Every plan must put in place a statement of investment policies and procedures (SIPP), which governs the investment of the plan's assets.

In Ontario, since February 2016, the SIPP must be filed with the Ontario Financial Services Regulatory Authority and must include information as to whether the plan administrator has taken into consideration environmental, social and governance factors in setting its investment policy.

### **Reduction in force**

#### **Can plan benefits be enhanced for certain groups of employees in connection with a voluntary or involuntary reduction in workforce programme?**

Yes, DBPPs may enhance the benefits in specific circumstances, subject to regulatory approval. The most common example of enhancement is an early retirement window for eligible plan members meeting specified age and service criteria.

### **Executive-only plans**

#### **Are non-broad-based (eg, executive-only) plans permitted and what types of benefits do they typically provide?**

Yes. Canada does not prohibit discrimination in favour of highly compensated employees, unlike the non-discrimination rules in the United States. For example, registered pension plans for executives are permitted, with separate entitlements to the executives, as long as the class is carefully defined to include such executives.

In addition, employers are permitted to provide plans that provide benefits to executives that exceed the limits set by the Income Tax Act, such as supplemental executive retirement plans (SERPs) or retirement compensation arrangements (RCAs). Unlike registered pension plans, these plans are contractual in nature and are not given the same preferential tax treatment. These supplemental pension plans are not registered or regulated under minimum standards legislation, provided that they are properly drafted. Employers can define their own vesting and other rules. Supplemental pension plans can be structured as a defined benefit or defined contribution arrangement and with or without employee contributions.

### **Executive-only plans**

#### **How do the legal requirements for non-broad-based plans differ from the requirements that apply to broad-based plans?**

It is possible to establish a pension plan for specific classes of employees. If the plan is below the maximum tax-deductible limit provided in the Income Tax Act, it must comply with the same requirements as any registered pension plan. The class of employees must be a bona fide class and defined in such a manner that the eligible members are determinable on the basis of objective criteria.

With reference to the taxation of pensions, executive pension plans such as SERPs and RCAs, which are limited to contributions and benefits beyond the maximum limits provided in the Income Tax Act, are not subject to the same benefit and funding regulations imposed on broad-based private pension plans (ie, DBPPs and DCPPs).

### **Unionised employees**

#### **How do retirement benefits provided to employees in a trade union differ from those provided to non-unionised employees?**

While the same types of pension plans may be established for both unionised and non-unionised workforces, MEPPs are more prevalent in the union environment. The typical MEPP will require several unrelated employers, called participating employers, to contribute to the plan at a rate negotiated in a collective bargaining agreement with the applicable union, often expressed as dollars and cents per hour worked by a member. This allows the employees to change jobs more easily within the same industry (such as electrical or other jobs within the construction industry) without losing benefits.

The participating employers will only be liable for the contributions to the MEPP on behalf of the unionised employees and will not participate in the oversight or administration of the MEPP. The benefit payable upon retirement is often a target benefit, calculated on the basis of actuarial factors applied to the total contributions made to the plan. MEPPs are governed by boards of trustees, typically with representation by employers and union employees. In the broader public sector, the unionised employees participate in JSPPs.

### **Unionised employees**

#### **How do the legal requirements for trade-union-sponsored arrangements differ from the requirements that apply to other broad-based arrangements?**

These situations typically involve MEPPs and JSPPs. MEPPs and JSPPs have different funding and governance rules and obligations compared with typical broad-based pension arrangements. Where a MEPP is less than fully solvent, accrued benefits under the plan may be reduced. In the case of JSPPs, employers and employees share the funding risk; therefore, if a JSPP has an unfunded liability or solvency deficiency, contributions by employers and employees will be increased to fund the deficiencies. The funding rules and compliance requirements may vary depending on the MEPP or JSPP's jurisdiction of registration.

## **ENFORCEMENT**

## **Examination for compliance**

### **What is the process for plan regulators to examine a plan for periodic legal compliance?**

Regulatory bodies responsible for administering pension and income tax legislation in Canada enjoy a wide discretion to ensure compliance. Annual reporting obligations are contained in all relevant statutes, and regulators may seek additional disclosure from a pension plan at any time, provided the request furthers the legislation's purpose.

Each regulator has set up a separate audit process to examine pension plan compliance. For example, the pension minimum standards legislation in Alberta and British Columbia requires registered pension plans to conduct triennial plan assessments as to whether the administration of a pension plan complies with statutory requirements. The assessment needs to be available to the Alberta and British Columbia regulators upon request but does not need to be filed with the regulator. The regulator in Ontario regularly conducts plan examinations, targeted reviews and desk reviews of registered pension plans. A targeted review is intended to examine a specific pension legislative requirement, process or practice.

In the normal course, plan administrators in each jurisdiction must submit the plan's annual reporting documents within six months of the plan's year-end.

## **Penalties**

### **What sanctions will employers face if plans are not legally compliant?**

Sanctions vary by province and include sizeable fines. For example, with reference to the federal Pension Benefits Standards Act 1985, an individual who contravenes a provision of this Act may face a fine of up to C\$100,000 or imprisonment for no longer than 12 months, or both. In the case of a corporation, the maximum fine is increased to C\$500,000.

In Ontario, the Financial Services Regulatory Authority (FSRA) may impose administrative monetary penalties (AMPs) if the pension plan administrator has contravened Ontario Pension Benefits Act requirements. AMPs are not the same as a fine, which requires a pleading or finding of guilt in a court proceeding. AMPs are meant to promote compliance with the legislation and regulations rather than be a punishment for wrongful activity. A general AMP may be imposed for a specific contravention that is found through a complaint, a plan examination, a targeted review or a general desk review conducted by FSRA. A Summary AMP may be imposed if an administrator is late in submitting their regulatory filings.

The federal tax authority, the Canada Revenue Agency, has the authority to deregister a pension plan that is non-compliant with the Income Tax Act.

## **Rectification**

### **How can employers correct errors in plan documentation or administration in advance of a review by governing agencies?**

Plan documents should be amended to correct regulatory non-compliance. Any such amendments must be filed with the regulators. Amendments can also be filed to correct

other types of errors in plan documentation. Any such amendments will be subject to regulatory review and, in some cases, advance notice to plan members.

Certain administrative errors can be corrected by giving notice to the members and appropriate regulator. The Canada Revenue Agency works with administrators to correct administrative errors that may contravene the tax limits. Most recently, the federal government made amendments to the Income Tax Act and its regulations to correct contribution errors in defined contribution pension plans.

If a plan administrator becomes aware of an administrative or document error, it is advisable to obtain advice from Canadian legal counsel.

### **Disclosure obligations**

#### **What disclosures must be provided to the authorities in connection with plan administration?**

The pension plan administrator will be responsible for submitting certain annual filings to the relevant regulatory body. The annual filing must adhere to a form approved by the regulator. The required forms depend on the jurisdiction, but generally an annual information return, financial statements and actuarial valuations must be submitted to each regulatory body, depending on the type of pension plan. Each regulatory body makes the template of the prescribed forms available to the public. There is typically an administrative fee associated with the filing of a pension plan's annual information return, which can be linked to the number of plan members. Some regulators also require the filing of certain policies, such as funding and governance policies. Such filings, if required, are not made on an annual basis, but on registration and amendment.

### **Disclosure obligations**

#### **What disclosures must be provided to plan participants?**

An administrator of a pension plan must provide annually to each member a written statement containing the prescribed information in respect of the pension plan, the member's pension benefits and any ancillary benefits. In addition, administrators must provide statements to former and retired members. The information and timing of such inactive member statements vary by jurisdiction. Most provinces and regulators prescribe the information that must be included in the active and inactive member statements.

For example, annual statements to active members under the Ontario regulations must include:

- the name of the pension plan and its provincial registration number;
- the member's name and date of birth;
- the period covered by the statement;
- the date on which the member joined the plan and a statement that their entitlement to benefits has vested;
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the date on which the member was employed by the employer, if the pension plan is not a multi-employer pension plan;

- the member's normal retirement date under the plan;
- where applicable, the earliest date the member will be eligible to receive an unreduced pension;
- where applicable, the name of the person recorded as the member's spouse;
- any person designated by the member as a beneficiary for the purposes of the pre-retirement death benefit;
- a description of any benefits provided on the death of a member and the name of any person designated as a beneficiary;
- the amount of required contributions, if any, made to the pension fund by a member during the period covered by the statement;
- the accumulated amount of required contributions, if any, made to the pension fund by the member, including interest credited to such contributions, to the end of the period covered by the statement;
- the amount of any additional voluntary contributions made by the member to the pension fund during the period covered by the statement;
- the accumulated amount of any additional voluntary contributions made by the member to the pension fund, including interest credited to such contributions, to the end of the period covered by the statement;
- in the case of a plan providing defined contribution benefits:
  - the amount of employer contributions allocated to the member during the period covered by the statement; and
  - the accumulated amount of employer contributions, including interest credited to such contributions, allocated to the member, to the end of the period covered by the statement;
- in the case of a defined benefit plan:
  - the member's years of employment for the purpose of the calculation of pension benefits, determined as of the end of the period covered by the statement;
  - the annual amount of pension benefit payable at the normal retirement date accrued at the end of the period covered by the statement;
  - where salary is a factor in determining a pension benefit, the salary level utilised for the purpose of determining the benefit;
  - information as to whether the pension is reduced by an amount of pension payable under the Canada Pension Plan, Quebec Pension Plan or [Old Age Security Act](#) (Canada);
  - the transfer ratio of the pension plan as of the valuation date of the report filed most recently;
  - the estimated transfer ratio calculated as of the end of the period covered by the statement; and

- an explanation of the transfer ratio and how it relates to the level of funding of members' benefits;
- where special payments are being made in respect of any going concern unfunded liability, a statement to that effect;
- where special payments are being made to liquidate any reduced solvency deficiency to increase the plan's solvency ratio to 85 per cent, a statement to that effect;
- a statement setting out the treatment of any surplus in a continuing plan and on wind up;
- an explanation of any amendments affecting the member made to the pension plan during the period covered by the statement;
- for multi-employer pension plans and pension plans that provide defined benefits where the obligation of an employer to contribute to the pension fund is limited to a fixed amount set out in a collective agreement:
- a statement that the pension benefits established under the pension plan are not guaranteed by the Pension Benefit Guarantee Fund (PBGF); and
- a statement that if, on wind up of the plan, the assets of the plan are not sufficient to meet the liabilities of the plan, pension benefits may be reduced;
- for a pension plan that is a jointly sponsored pension plan that received a transfer of assets under section 80.4 of the Pension Benefits Act (Ontario) during the period covered by the statement, a description of any changes in the governance structure of the jointly sponsored pension plan;
- a statement of investment policies and procedures that the administrator of the pension plan must establish for the plan, containing:
  - the investment policies and procedures in respect of the plan's portfolio of investments and loans; and
  - information about whether environmental, social and governance factors are incorporated into the plan's investment policies and procedures and, if so, how those factors are incorporated;
- a statement that the administrator of the pension plan is required:
  - to make available to the member for inspection without charge copies of any statements of investment policies and procedures that are established for the plan; and
  - upon receipt of a written request and payment of the applicable fee, to provide by mail or electronically copies of any statements of investment policies and procedures that are established for the plan; and
  - a statement that the member is entitled:
    - to inspect, at the office of the CEO during business hours of that office, the most recent statement of investment policies and procedures that is established for the plan; and
    - to make a written request and pay the applicable fee for the CEO to provide the most recent statement of investment policies and procedures by mail or electronically.

For example, biennial statements to inactive members under the Ontario regulations must include:

- the name of the pension plan and its provincial registration number;
- the former member's name and date of birth;
- the period covered by the statement;
- the former member's normal retirement date under the plan and the annual amount of pension benefit payable at that date;
- where applicable, the earliest date the former member will be eligible to receive an unreduced pension;
- where applicable, the name of the person recorded as the former member's spouse;
- any person designated by the former member as a beneficiary for the purposes of the pre-retirement death benefit;
- a description of any benefits provided on the death of a former member and the name of any person designated as a beneficiary;
- any indexation provisions applicable to the deferred pension;
- any bridging benefit or special allowance and the date on which the benefit ceases to be paid;
- where applicable, the formula by which the deferred pension will be integrated with a pension payable under the Canada Pension Plan, the Quebec Pension Plan or the Old Age Security Act (Canada) and the reduction or increase to the deferred pension as a result of such entitlement;
- in the case of a plan providing defined contribution benefits, an estimate of the accumulated amount of contributions, including interest credited to such contributions, allocated to the former member, to the end of the period covered by the statement;
- in the case of a defined benefit plan:
- the transfer ratio of the pension plan as of the valuation date of the report filed most recently;
- the estimated transfer ratio calculated as of the end of the period covered by the statement; and
- an explanation of the transfer ratio and how it relates to the level of funding of former members' benefits;
- where special payments are being made in respect of any going concern unfunded liability, a statement to that effect;
- where special payments are being made to liquidate any reduced solvency deficiency to increase the plan's solvency ratio to 85 per cent, a statement to that effect;
- a statement setting out the treatment of any surplus in a continuing plan and on wind up;
- an explanation of any amendments affecting the former member made to the pension plan during the period covered by the statement;

- for multi-employer pension plans and pension plans that provide defined benefits where the obligation of an employer to contribute to the pension fund is limited to a fixed amount set out in a collective agreement:
- a statement that the pension benefits established under the pension plan are not guaranteed by the PBGF; and
- a statement that if, on wind up of the plan, the assets of the plan are not sufficient to meet the liabilities of the plan, pension benefits may be reduced;
- for a pension plan that is a jointly sponsored pension plan and that has specified a solvency deficiency that is lower than the amount of the solvency deficiency that would be calculated for the pension plan:
- a statement that the pension benefits established under the pension plan are not guaranteed by the PBGF;
- a statement that, on wind up of the pension plan, the Pension Benefits Act (Ontario) allows pension benefits to be reduced if assets of the plan are not sufficient to meet the liabilities of the plan; and
- if the most recent report for the pension plan has specified a solvency deficiency that is lower, a statement that additional contributions are not being made by an employer (or a person or entity required to make contributions on behalf of an employer) or by members to eliminate the solvency funding shortfall determined in the most recently filed report;
- for a pension plan that is a jointly sponsored pension plan that received a transfer of assets under section 80.4 of the Pension Benefits Act during the period covered by the statement, a description of any changes in the governance structure of the jointly sponsored pension plan;
- a statement of investment policies and procedures that the administrator of the pension plan must establish, containing:
  - the investment policies and procedures in respect of the plan's portfolio of investments and loans; and
  - information about whether environmental, social and governance factors are incorporated into the plan's investment policies and procedures and, if so, how those factors are incorporated;
- a statement that the administrator of the pension plan is required:
  - to make available to the former member for inspection without charge copies of any statements of investment policies and procedures that are established for the plan; and
  - upon receipt of a written request and payment of the applicable fee, to provide by mail or electronically copies of any statements of investment policies and procedures that are established for the plan; and
- a statement that the former member is entitled:
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to inspect, at the office of the CEO during the business hours of that office, the most recent statement of investment policies and procedures that is established for the plan; and

- to make a written request and pay the applicable fee for the CEO to provide the most recent statement of investment policies and procedures by mail or electronically.

### **Enforcement mechanisms**

#### **What means are available to plan participants to enforce their rights under pension and retirement plans?**

The common recourse for plan participants who believe their rights have been violated under pension legislation is to lodge a formal complaint with the relevant regulatory body. The regulatory body will review the complaint and address it with the plan administrator. Often, a regulatory body will have a tribunal that will perform hearings and issue decisions.

Alternatively, an aggrieved individual may commence a civil claim, or may appeal a tribunal decision to the civil court, including in the form of a class action if a number of members allege their rights have been violated. If the plan participant is a member of a union and the pension benefits are addressed in the collective agreement, a complaint may be pursued through the labour grievance process. The choice of venue, regulator, court or grievance arbitrator is an important consideration for employers, employees and unions.

## **PLAN CHANGES AND TERMINATION**

### **Rules and restrictions**

#### **What restrictions and requirements exist with respect to an employer changing the terms of a plan?**

Except for target benefit pension plans (TBPPs) and multi-employer pension plans (MEPPs), employers are prevented from reducing any accrued benefits within the plan. To the extent an employer may implement a permissible change to the pension plan's operation and benefit scheme, it may only apply the change to future contributions or benefits. Any other amendment affecting accrued benefits is considered a void amendment. An amendment may also be considered void if it purports to increase defined benefits or causes the solvency ratio or going concern funded ratio to be below the prescribed level.

TBPPs and MEPPs have different funding rules and obligations from typical employer pension arrangements. When a TBPP or a MEPP is faced with insufficient funds, there is a limited ability to reduce accrued benefits under the plan.

Other than the above, any change to the terms of a pension plan must be documented in the form of a plan amendment and be filed with the regulators, together with prescribed forms. Some jurisdictions specify that if a proposed amendment to a pension plan will adversely affect the rights or benefits of plan members, the members must be given advance notice of the amendment and an opportunity to make representations to the regulators. Under general employment law principles, there are limitations with respect to an employer's right to unilaterally change the terms and conditions of employment, in addition to constructive

dismissal considerations. Typically, notice is provided to employees of any prospective material reduction of future accrual of pension benefits.

## **Rules and restrictions**

### **What restrictions and requirements exist with respect to an employer terminating a plan?**

The termination or winding up of a pension plan in Canada is highly regulated. In Ontario, for example, winding up may only commence after a plan administrator complies with stringent notice requirements setting out the reason for the winding up. The regulator may then require the production of further information or documents before permitting the winding up to continue. Any plan wind up must comply with the filing requirements of the applicable regulator policy. The regulator itself may order the winding up of a pension in prescribed situations (see, for example, section 69(1) of the Ontario Pension Benefits Act).

In general, a plan wind-up occurs in six steps:

- the employer or regulator decides to wind up the plan;
- the administrator files a wind-up report and other wind-up documentation;
- the administrator issues benefit statements to members;
- the regulator approves the wind-up report and payment of basic benefits;
- the administrator distributes benefits in accordance with the wind-up report; and
- the administrator distributes surplus, if any.

Unless the employer is insolvent, in all jurisdictions in Canada, any deficits in the plan on wind up must be funded within a prescribed time frame (normally five years).

On the wind up of a pension plan that provides benefits on both a defined benefit and defined contribution basis, the two parts are generally seen as separate. Once the pension fund receives all contributions that are required up to the date of the wind up for the defined contribution part of the plan, it is fully funded for the portion that offers defined contribution benefits. The part of the plan that offers defined benefits may have a surplus, a deficit or neither, based on the assets and liabilities of this portion of the plan.

## **Insolvency protection**

### **What protections are in place for plan benefits in the event of employer insolvency?**

Except in the case of surplus assets upon the winding up of a pension plan, the assets of an employer pension plan are never considered to be the property of the employer. The assets are held in trust for the benefit of the members, and those pension assets are not accessible to the employer's creditors in the case of insolvency.

Under federal bankruptcy and insolvency legislation, plan members are generally treated as general creditors of an employer in the event of an insolvency. In terms of members' claims in respect of an insolvent pension plan, the plan members rank equally with other

unsecured creditors. However, there is a super priority in favour of plan members in respect of an employer's unpaid regular contributions owed to the plan to the date of the insolvency or bankruptcy. In addition, the federal government has recently passed the Pension Protection Act, which will give priority to amounts required to liquidate any unfunded liability or solvency deficiency of the pension fund, including any special payments. There is a four-year transition period built into the legislation for existing pension plans, meaning the new pension priority will not take effect until 27 April 2027.

Ontario's approach to employer insolvency in this area is unique in Canada as its legislation includes the Pension Benefits Guarantee Fund (PBGF), which provides protection (subject to specific maximums and exclusions) to Ontario members and beneficiaries of privately sponsored, single-employer defined benefit pension plans in the event of an employer's insolvency. Benefits are typically protected up to a maximum of C\$1,500 per month, subject to various restrictions. The implications of the [Pension Protection Act](#) on the PBGF are being evaluated by the Financial Services Regulatory Authority of Ontario.

## **Business transfer**

### **How are retirement benefits affected if the employer is acquired?**

The treatment of employee retirement benefits through an acquisition is highly regulated and dependent upon the transaction type. In a share purchase transaction, the process is simple as the purchaser steps into the shoes of the seller and assumes all retirement benefit obligations as the plan sponsor.

The treatment of retirement benefits becomes more complicated when the acquisition proceeds as an asset purchase. In all jurisdictions other than Quebec, affected employees are terminated by the seller at closing and offered employment by the purchaser. The common law recognises that benefits must be substantially similar, in the aggregate, to avoid constructive dismissal risk. As a general statement, the treatment of retirement benefits is a matter typically negotiated by the transaction parties. Given the risk of future liability, a prudent seller will ensure any asset purchase agreement clearly provides for pension benefits in some form.

## **Surplus**

### **Upon plan termination, how can any surplus amounts be utilised?**

Defined contribution pension plans generally have no surplus amounts at termination. The use of defined benefit pension plan surplus funds upon winding up has been a heavily litigated matter in Canada.

The employer generally has three options for the use of surplus assets remaining after all benefits have been properly calculated and distributed: full refund to the employer, distribution to the plan members or a surplus sharing agreement. If the plan documentation supports a refund to the employer, the employer may apply to the regulator for a full refund. Ultimately, the distribution of funds in the face of competing claims will be determined by a regulatory tribunal, for example, the Financial Services Tribunal in Ontario, or by a court of competent jurisdiction based on the legal precedents of that jurisdiction.

## FIDUCIARY RESPONSIBILITIES

### Applicable fiduciaries

#### Which persons and entities are 'fiduciaries'?

Under pension plan legislation, pension plan administrators are considered fiduciaries and subject to a standard of care and duty of loyalty to the plan members. An administrator must be a person, body or entity specified by the applicable legislation. For most plans, the administrator is also the same entity as the employer of plan members and the plan sponsor. Another common form of administrator is a board of trustees.

Administrators often engage third-party service providers. Agents of the plan administrator, including asset custodians or managers, have also been found to be in fiduciary relationships with the pension members. However, this determination is fact-specific and if such service providers are not fiduciaries, they should be subject to clear reporting obligations and have established policies and procedures that can be reviewed and monitored.

The fiduciary concept is broadly applied in Canada in circumstances in which an individual is uniquely vulnerable to, and places a high degree of trust in, another person or entity. The legal determination as to whether a person or entity is a fiduciary is highly fact-specific. The category of potential fiduciaries is by no means closed in Canada.

### Fiduciary duties

#### What duties apply to fiduciaries?

Pension plan fiduciaries are subject to statutory and common law fiduciary duties. Under the common law, a fiduciary is required to act with the utmost good faith and in the best interest of beneficiaries. This means that administrators must be honest, act in good faith and treat plan beneficiaries impartially. They must also avoid or manage conflicts of interest (ie, the individuals and legal entities acting as administrators must not permit their interests to conflict with the interests of plan beneficiaries). Under statute, a fiduciary is required to act with the care, diligence and skill that a person of ordinary prudence would exercise in dealing with the property of another person. They must also use all relevant knowledge and skill that they possess or, by reason of their profession, business or calling, ought to possess. Individuals carrying out administrator functions must be knowledgeable about their responsibilities and the standard of care they must meet. Depending on the circumstances, the standard of care may require the administrator to obtain the appropriate level of knowledge from third-party advisers.

As fiduciaries, pension plan administrators are responsible for prudently managing risks in their pension plans, making decisions in the best interest of pension plan beneficiaries, and administering the plan in accordance with the filed plan documents and all applicable laws. 'Beneficiaries' refer to any individual with an entitlement under a pension plan, including members, former members and retired members, and any other individual who may be entitled to payment from the plan.

## **Breach of duties**

### **What are the consequences of fiduciaries failing to discharge their duties?**

Fiduciary-like duties are imposed by most pension statutes in Canada and are also common law concepts. Individuals who fail to discharge their fiduciary duties may face personal liability in a civil action. A court has a number of powers on sentencing penalties where the prosecution results in a conviction, including monetary penalties.

In most cases, the breach of a fiduciary duty will also encompass a violation of pension legislation and could be subject to statutory sanctions in addition to common law damages. However, a fiduciary breach is an independent legal wrong. Canadian courts will typically award damages for a breach of fiduciary duties, the amounts of which are fact-specific.

## **LEGAL DEVELOPMENTS AND TRENDS**

### **Legal challenges**

#### **Have there been legal challenges when certain types of plans are converted to different types of plan?**

In the hope of obtaining greater certainty in their payment obligations, many employers continue to make the shift from a defined benefit pension plan to a defined contribution pension plan. Challenges to these shifts are most often seen in the unionised context. However, regulators have published guidelines instructing administrators with best practices for converting a defined benefit pension plan to a defined contribution pension plan. Moreover, regulations have been published for the conversion of a single-employer pension plan to a multi-employer pension plan. Therefore, legal challenges are becoming increasingly rare. Any shift in pension type is subject to regulations made under the applicable statute, as well as any regulatory policies.

### **Legal challenges**

#### **Have there been legal challenges to other aspects of plan design and administration?**

There have been several legal challenges in connection with the optimal or appropriate use of pension plan assets.

In circumstances where an ongoing plan has generated a surplus, a dispute often arises as to whether that surplus may be applied to offset contributions required by the employer, known as a contribution holiday, or whether the surplus should be used with a more direct benefit flowing to the plan members. An entitlement of members to surplus on plan termination does not give members a right to access or an entitlement to surplus in an ongoing plan. An employer's right to take a contribution holiday depends on the plan terms. Legal challenges have also arisen on the employer's right to surplus assets on plan wind up.

Where an employer has entered bankruptcy protection or restructuring, there have been legal challenges to the priority of pension plan members over other creditors, including concerning wind-up deficiencies. This is now mostly settled law, but new considerations will

come forward after the Pension Protection Act passes, which expands the priorities given to pension plan funding upon the bankruptcy of a sponsoring employer.

Legal challenges often arise in the administration of a pension plan, including in the context of family law, whether in the consideration of a breakdown of a marriage, the definition of spouse, or the entitlement to a death benefit. These are fact-specific considerations.

A more recent trend in Canadian courts has to do with litigation in the United States involving fiduciary breach claims relating to oversight and management of defined contribution pension plan investments and the investment and other fees borne by members. As a result, regulators have increased their emphasis on strong pension plan governance and member transparency.

### **Future prospects**

#### **How will funding shortfalls, changing worker demographics and future legislation be likely to affect private pensions in the future?**

The most immediate response to the increased financial strains placed on pension plans is a marked shift away from defined benefit pension plans and towards defined contribution pension plans, or target benefit pension plans and multi-employer pension plans. Most recently, large public sector multi-employer pension plans have encouraged private sector employers to join their multi-employer plans under separate provisions. These provisions provide a defined benefit pension to employees and the employer is only responsible for contributions in respect of its employees. This enables smaller employers to participate in large pension plans, relieving itself of the administrative and financial burden of pension plan administration, and relying on the existing administration, governance and investment infrastructure in place.

In addition, the federal government recently passed the Pension Protection Act, which expands the priorities given to pension plan funding upon the bankruptcy of a sponsoring employer.

## **UPDATE AND TRENDS**

### **Hot topics**

#### **Are there any current developments or trends that should be noted?**

Most influential pieces of legislation have been passed and implemented into the Canadian pension legal landscape. However, the threat of cybersecurity and related risks are currently being examined by most pension regulators through the lens of pension plan administrators. Pension plan administrators are encouraged to review and update the governance and oversight processes related to cybersecurity in compliance with any regulatory guidance that is published.

Another development is the treatment of underfunded pension plans in the context of a bankruptcy or restructuring. The federal Pension Protection Act, which will come into effect in 2027, will provide a super priority that applies to pension liabilities of registered pension plans upon the bankruptcy of a sponsoring employer. The implications of this new legislative

development for employers and pension plan sponsors, as well as any implications on the Ontario Pensions Benefits Guarantee Fund, will be seen over the course of the next few years.