

## Pensions Law

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### New Brunswick: Proposed Amendments to the PBA Related to Shared Risk Plans

Effective July 1, 2012, the Province of New Brunswick introduced the shared risk pension plan (“SRPP”) model, the first of its kind in Canada. The SRPP design contains elements of a target benefit design, such as a DB-type formula, fixed contributions (subject to certain adjustments in accordance with the funding policy) and the possibility of benefit adjustments. However, the New Brunswick model also incorporates sophisticated risk management and governance requirements to help ensure benefit security and pension sustainability.

New Brunswick’s *Pension Benefits Act*, (the “PBA”) was first amended in 2012 in order to permit the creation of SRPPs. The Government of New Brunswick now intends to make further amendments to the PBA to strengthen the SRPP model.

On December 11, 2012, the Government of New Brunswick introduced Bill 20, *An Act to Amend the Pension Benefits Act* for First Reading (second reading was on December 12, 2012). If it becomes law, Bill 20 will be deemed to have come into force on July 1, 2012, to coincide with the date on which the first SRPP enabling legislation came into force. Among other things, Bill 20 will afford additional protections for those carrying out administrative functions with respect to SRPPs, provide protection for parties involved in the conversion of DB plans to SRPPs and clarify the treatment of vested base benefits.

Some key elements of Bill 20 are discussed below:

#### Trust and Contract Law

Bill 20 clarifies that conversion to a SRPP may occur and vested benefits may be affected despite the terms of any contract or trust.

#### Reduction of Vested Base Benefits

One feature of SRPPs is the potential for reduction of base benefits in the event that the plan is less than

100% funded for two consecutive years. While SRPPs are designed in such a way that there is a low probability of benefit reductions, such reductions are nonetheless a possibility. Bill 20 will amend certain definitions in the PBA to clarify that following a conversion of a pension plan to an SRPP, vested base benefits and vested ancillary benefits accrued prior to conversion could be subject to a reduction in accordance with the plan’s funding policy.

#### Enhanced Immunity for Administrative Functions

When the PBA was first amended to enable the creation of shared risk pensions, immunity was extended under the legislation to the Crown in right of the Province, the Minister, a person designated to act on behalf of the Minister, the Superintendent or plan administrator, assuming that such persons act with the care, diligence and skill of a reasonably prudent person. Bill 20 will extend this protection to any officers, directors, employees or members of these persons who meet the standard of care. Moreover, Bill 20 would extend immunity to all actions taken under the entire PBA and the regulations in relation to SRPPs, whereas the existing provision offers immunity under only Part 2 of the PBA, which governs SRPPs and related regulations.

Bill 20 will also amend existing rules to extend immunity to parties involved in the conversion of pension plans to shared risk plans. In addition to the persons listed above, the proposed changes would extend immunity with respect to actions related to the conversion to a trustee, a board of trustees, an employer, a trade union that represents members, and an employee organization that is the bargaining agent of members and any of their officers, directors, employees, members, agents or advisors.

At present, the SRPP model, including the changes proposed by Bill 20, applies only to pension plans registered in the Province of New Brunswick. It is to be hoped that this innovative new pension model will be considered and adopted by other pension jurisdictions.

This article, by Jana Steele of our Pensions Group, was originally published on BenefitsCanada.com.

If you have any questions regarding this model, please contact any member of our Pensions Group.