INSOL INTERNATIONAL

International Association of Restructuring, Insolvency & Bankruptcy Professionals

Pensions and Insolvency – An International Survey

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CANADA

QUESTION 1

What is the legal framework for private pension plans in your country?

Legislation, common law, and other sources of governance

Over 6.2 million Canadian private sector workers participate in employer-sponsored pension plans[1].

In Canada, private pension plans are regulated by both the federal and provincial laws and, to a certain extent, by the common law. Each province has enacted its own minimum standards pension legislation[2]. In addition, federally regulated companies are governed by the federal Pensions Benefit Standards Act[3]. Although registering a pension plan is optional, doing so affords the plan certain benefits, which are summarized below.

The following is a summary of the relevant pension legislation and regulators in each Canadian jurisdiction:

Chart A

Jurisdiction	Legislation	Regulator
Federal and Territories	Pension Benefits Standards Act	Office of the Superintendent of Financial Institutions
British Columbia	Pension Benefits Standards Act	Financial Institutions Commission
Alberta	Employment Pension Plans Act	Alberta Superintendent of Pensions
Saskatchewan	The Pension Benefits Act, 1992	Pensions Division
Manitoba	Pension Benefits Act	Manitoba Pension Commission
Ontario	Pension Benefits Act	Financial Services Commission of Ontario – Pensions Plans Branch
Québec	Supplemental Pension Plans Act	Régie des rentes du Québec – Direction des régimes de retraite
PEI	Pension Benefits Act (Not yet in force)	–
New Brunswick	Pension Benefits Act	Office of the Superintendent of Pensions
Nova Scotia	Pension Benefits Act	The Pension Regulation Division
Newfoundland & Labrador	Pension Benefits Act, 1997	Financial Services Regulation Division

1 Statistics Canada, as of March 10, 2015.

2 Pension legislation in Prince Edward Island ("PEI") has received royal assent but has not yet been proclaimed into force.

3 *The Pension Benefit Standards Act* also applies in Canada's three territories in the place of any similar provincial laws.

While pension legislation differs somewhat between provinces, there are common issues addressed in each instance, including:

- membership eligibility requirements;
- minimum funding requirements;
- plan asset investment considerations;
- the division of plan benefits on marriage breakdown; and
- entitlements upon death.

This list is certainly not exhaustive, and the breadth of protection is far-reaching.

Plan sponsor employers with employees in multiple provinces are required to comply with pension legislation in each relevant jurisdiction.

The common law also governs pension law in Canada in a number of ways. Jurisprudence aids in the interpretation and application of pension legislation, particularly regarding the rights and obligations of stakeholders (see Questions 5 and 6, below). Jurisprudence in the areas of trusts and employment law also frequently intersect with pension law, as does administrative law, which ensures employers and pension beneficiaries are accorded procedural fairness in their dealings with regulators. Constitutional considerations also apply, particularly to resolve issues surrounding the conflict between provincial and federal laws (e.g. paramountcy discussed in Question 6, below), and where the terms of pension plans are alleged to contradict citizens' rights under the *Canadian Charter of Rights and Freedoms*[4].

Tax considerations

While registration is not compulsory under the Canadian Income Tax Act, registered pension plans generally receive the beneficial treatment described below. However, registered plans are subject to enhanced reporting requirements.

Employers may deduct its employee plan contributions. Member contributions are similarly deductible in the year in which they are made, and members are taxed for amounts paid only when they begin to draw their pension. Investment income earned on pension funds are typically tax exempt. There are, however, maximum caps on contributions and deductions for both employers and employees.

[4] For example, section 15 of the *Charter* enshrines the right to equality, and has been applied to require the definition of "spouse" under a pension plan to extend to same-sex spouses.

QUESTION 2

Are the plans regulated by a government authority or any other independent authority?

Regulatory agencies

Pension plans in Canada are regulated on a provincial level by specific regulatory agencies, as outlined in the chart above. The extent of regulation depends on whether the plan is registered or non-registered. Registered plans are heavily regulated but also receive the tax benefits discussed above. Non-registered plans do not receive these benefits but are not subject to such comprehensive regulatory requirements.

The Canadian Association of Pension Supervisory Authorities ("CAPSA") is an inter-provincial body comprised of representatives of the provincial regulators that seeks to harmonize pension standards across the country. This association also established the National Pension Compliance Officers Association, tasked with ensuring consistency in administrative policies and processes.

Mandatory reporting on plan values

Defined benefit plans must comply with various financial reporting requirements, including the filing of an actuarial valuation report on a triennial basis. These reports address service costs, gains and deficiencies, unfunded liabilities, solvency deficiencies, and amortization payments, among others. In certain circumstances, reports must be filed annually; for example, in Ontario, where a plan falls below a specified solvency funding threshold, a valuation report must be filed annually.

Formulae for contributions and funding requirements

Various formulae for pension contributions are found across the Canadian legislative landscape. These formulae vary based on the type of plan. A variety of plan types are available, provided the plan complies with the minimum legislative standards in each relevant provincial jurisdiction[5].

Funding requirements also vary between jurisdictions and plan types. For example, defined benefit plans require both ongoing and solvency valuations every three years to ensure the plan is able to meet its funding obligations. Plan sponsors may be required to make special payments to amortize an actuarial deficit in the plan if a deficit is revealed in the plan valuation.

Plan sponsor employers are typically permitted to take contribution holidays under certain circumstances, generally where actuarial analysis reveals a plan surplus (i.e., where the plan's assets exceed its liabilities). However, minimum standard legislation only permits such holidays to the extent the plan remains fully funded without requiring additional contributions. Further, some provinces have legislated caps on contribution holidays, where contribution holidays may only be taken where plan solvency exceeds a specified percentage of solvency liabilities – typically between 5-10%.

[5] The most common plan types in Canada are defined benefit, defined contribution, and combination or hybrid plans. Each plan type has its own contribution formula.

Since the global financial crisis in 2008, many Canadian jurisdictions have enacted funding relief measures for specified periods of time. These measures allow, for example, the extension of solvency funding periods and the consolidation of debt.

Ability to take away benefits and withdraw funds subject to regulatory approval

Minimum legislative standards that govern vesting, locking-in, and portability vary between jurisdictions. Typically, vesting and locking-in occur at the same time. Age requirements for vesting and locking-in have been abolished. Instead, the criteria for both is typically the completion of a prescribed length of employment. In Manitoba and Québec, pension benefits vest and lock-in immediately.

There are several exceptions to the locking-in rules, most notably the contribution refund exception. When an employment relationship ends prior to a pension's vesting date, employees are entitled to a refund of their own contributions, with interest. Minimum standard legislation in every jurisdiction also provides for a "benefit unlocking rule". Typically, a plan provides for unlocking where the annual pension at the normal retirement date is less than 4% of the year's maximum pensionable earnings – typically from the termination year. Additional exceptions to the locking-in rules include those for shortened life expectancy and financial hardship.

Employees also have the right to transfer the commuted value of a vested pension to another retirement savings vehicle. For defined benefit plans, portability rights are not mandatory for employees who have attained early or normal retirement age. Such rights may be mandatory in defined contribution plans. Permissible locked-in retirement savings arrangements are prescribed by legislation. Some jurisdictions offer creditor-protected arrangements. For example, Saskatchewan allows transfers to creditor-protected Registered Retirement Income Funds.

QUESTION 3

How are the plans governed?

Employer responsibilities

Many constituencies are involved in the administration of pension plans in Canada. Employers are often "plan sponsors". Plan sponsors cannot delegate their fiduciary responsibilities. They may, however, delegate administrative or investment functions to outside professionals. An employer may also elect to be the plan administrator. Other relevant governing bodies may include pension committees (with employer and employee representatives and/or plan members), insurance companies, and boards of directors. These options are prescribed by minimum standards legislation across all jurisdictions.

The standard of care applicable to plan administrators is generally that of an ordinary person dealing with the property of another. Effectively, this duty requires administrators to consider the best interests of plan members, beneficiaries, and the plan itself. This is a legislated standard in many jurisdictions.

An employer may serve as a plan administrator; however, this dual role may result in an apprehension of conflict in certain circumstances, such as where there is a conflict between the best interests of the company and the best interests of the plan.

Employee responsibilities

Employees may participate in the administration of a plan by virtue of a plan committee. Depending on the size and type of plan, pension committees often include employees or employee representatives. Plan members may also appoint other members to such committees. In some jurisdictions, an employer is required to establish a pension advisory committee at the request of a majority of members.

Pension committees have a range of duties that are outlined in the minimum standards legislation, including, for example, making improvement recommendations and monitoring plan administration.

Plan members may also have administrative responsibilities, including ongoing reporting obligations. Such reporting is required where the employee makes a beneficiary designation change, has a change of address or contact information, and on marriage breakdown. This list is not exhaustive.

Board of directors

The board of directors of a private company often oversees plan matters. Depending on the size of an organization, the board may establish a sub-committee specifically for pension issues, including employee representatives from key departments. The board may also delegate certain administrative functions to external professionals. However, as discussed below, administrators are fiduciaries and they cannot delegate the responsibility to act in the best interest of plan members.

Fiduciary obligations

Plan administrators serve in a fiduciary capacity and as such must act in the best interest of plan members. Minimum standards legislation explicitly refers to such a role to varying degrees. While the legislation in some jurisdictions does not describe the administrator as a fiduciary, the legislated standard of care implies it. Significant fines may be imposed for breaches of statutory duties, in addition to traditional remedies available at common law through civil actions.

Other administrative requirements

Plan sponsors who elect to register a plan must do so within 60 days of its establishment. The registration process is subject to several procedural and substantive requirements to ensure coverage by minimum standards legislation and to receive applicable tax benefits under the Income Tax Act.

In addition to the financial reporting obligations discussed above, plan administrators have a number of additional regulatory reporting requirements. For example, investment reporting, reconciliation and audited financial statements must typically be filed every year. In particular, administrators of pension plans must file an Annual Information Return in the jurisdiction in which the plan is registered. Specific requirements under these returns vary between jurisdictions. The Canada Revenue Agency (Canada's federal tax authority) also has a number of filing requirements, for example with respect to notification of a plan amendment.

QUESTION 4

Is there a compensation fund for pension benefits?

There is one pension benefit guarantee fund in Canada, in the Province of Ontario.

The Pension Benefits Guarantee Fund ("PBGF") was established in 1980 and is governed by the Ontario Pension Benefits Act. It provides protection to Ontario members and beneficiaries of privately-sponsored, single-employer defined benefit plans in the event of plan sponsor insolvency. The PBGF guarantees specified pension benefits of up to $1,000 per month for service performed by eligible employees while employed in Ontario, subject to certain age and service criteria. As of March 2010, the PBGF covered more than 1.1 million plan members in over 1,500 defined benefit plans. The PBGF is administered by the Superintendent of Financial Services of Ontario, and PBGF investments are managed by the Ontario Financing Authority.

The PBGF is funded by plan sponsor employers through annual premium payments, capped at a maximum of $4 million per year. The annual premium is comprised of two main components – a per-member fee (a nominal amount of $5 per beneficiary), and a risk-based fee. The risk-based fee applies to underfunded plans.

To date, Québec is the only other province to attempt to establish a pension benefits guarantee fund. A bill currently working through the National Assembly of Québec would amend the Québec Supplemental Pension Plans Act to establish a fund that would provide up to $700 per month to eligible employees for a period of five years in the event of plan sponsor insolvency. In its current draft form, the fund would apply to over one million Quebec employees registered in more than 950 privately sponsored plans.

Québec has passed legislation that provides ad hoc support to employees whose employers are insolvent due to exceptional circumstances. Passed in the aftermath of the insolvency of Nortel Networks Corporation and in the wake of the 2008 global financial crisis, Bill 34, "An Act to amend the Supplemental Pension Plans Act", permits affected employees to apply to have their benefits paid through the provincial pension authority, the Régie des rents du Québec.

QUESTION 5

How are pension rights enforced in an insolvency of the employer / sponsor?

Canada has two primary insolvency statutes, the *Bankruptcy and Insolvency Act* ("*BIA*"), and the *Companies' Creditors Arrangement Act* ("*CCAA*"). The *BIA* is used primarily to effect bankruptcies, receiverships and liquidations, although creditor proposals are also possible. The *CCAA* is fundamentally a corporate restructuring statute, although it is also used in some cases to effect sales of assets, particularly in large and complex corporate entities. A common feature of both the *BIA* and *CCAA* is the "stay of proceedings" that freezes creditor rights (including the right to initiate or continue claims or enforcement of any kind against the debtor company outside the proceedings). The effect of the stay of proceedings is to force all of the debtor's creditors, including pension plan participants, where relevant, to deal with the debtor company within the insolvency proceedings.

Both the *BIA* and the *CCAA* contain provisions that offer various forms of protection to pension creditors in insolvency scenarios, as discussed in Question 6 below.

Regulatory intervention

Provincial legislation in some cases permits the provincial regulator to take certain steps to protect a pension fund's assets upon the sponsor employer's insolvency, including the acceleration of claims for contributions to underfunded plans.

The regulator may also, in certain circumstances, take steps to initiate the wind-up of a pension plan, particularly where the plan sponsor will no longer carry on business as a result of its insolvency.

Finally, where the employer serves as plan administrator, the provincial regulator may appoint an alternate plan administrator where there is a perceived conflict between the interests of the pension plan and the employers' duties to other stakeholders.

QUESTION 6

Are there special priorities for pension deficits in an insolvency?

The *BIA* and the *CCAA* both provide protections for certain pension-related claims. In addition, provincial pension legislation provides statutory priorities for certain unpaid pension amounts.

In some cases, these provincial statutory priorities directly conflict with the priorities set out in the federal insolvency statutes. This conflict between provincial pension legislation and federal insolvency law has been at least partly resolved by a recent decision of the Supreme Court of Canada (Canada's highest appellate court) in *Sun Indalex Finance, LLC v United Steelworkers*, 2013 SCC 6 ("Indalex").

CCAA

The *CCAA* is fundamentally a corporate restructuring statute rather than a bankruptcy statute, so it does not expressly provide a scheme of creditor priorities. However, a court may sanction a restructuring plan pursuant to the *CCAA* only if it provides for the payment of the following unpaid pension amounts:

1. amounts deducted as pension contributions from employee wages that have not been contributed to the pension plan; and

2. amounts that are required to be contributed to the pension plan in respect of "normal cost" contributions that have not been paid[6].

There is a significant exception to this restriction, which is that a court may sanction a restructuring plan that does not provide for the payment of the above noted amounts if it is satisfied that the relevant parties have entered into an agreement, approved by the relevant pension regulator, that provides for alternative arrangements in respect of the foregoing amounts.

The *CCAA* provides similar protections in circumstances where the court is asked to sanction a sale of assets. Specifically, a debtor company subject to the *CCAA* may only sell or dispose of assets outside the ordinary course of business if it is authorised to do so by the court. The *CCAA* provides that the court may grant that authorization only if it is satisfied that the company will make the pension payments that would have been required if it had been asked to sanction a restructuring plan[7].

The *CCAA* does not provide any special status for unpaid "special payments", which are the payments that the employer is required to make to amortize the actuarial deficiency in the pension plan.

The protection of employee deductions and normal cost contributions is also reflected in practice in the court orders that are typically granted to stay proceedings in respect of debtor companies pursuant to the *CCAA*. In particular, *CCAA* debtors are typically authorized to continue paying normal cost payments into their pension plans during a *CCAA* stay of proceedings. However, the debtor company's obligation to pay special payments has been stayed in several recent cases[8].

BIA

The *BIA*, which is primarily a bankruptcy, receivership and liquidation statute, provides a statutory scheme of priorities that includes priorities for pension amounts similar to those that must be paid in the context of a *CCAA* restructuring plan. Specifically, the *BIA* provides a statutory security in both bankruptcy and receivership for:

1. amounts deducted as pension contributions from employee wages that have not been contributed to the pension plan; and

2. amounts that are required to be contributed to the pension plan in respect of "normal cost" contributions that have not been paid[9].

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[6] *CCAA*, section 6(6).

[7] *CCAA*, section 36(7).

[8] See for example *Re Fraser Papers Inc.* [2009] 55 C.B.R. (5th) 217 (SCJ Commercial List).

[9] BIA, sections 81.5(1) and 81.6 (2).

This statutory security interest ranks in priority to every other claim against the debtor company other than certain rights of suppliers to repossess goods or produce, certain priorities for unpaid wages and certain tax amounts that are deemed to be held in trust[10].

Once again, there is no special protection for special payments owing to a pension plan.

Provincial priorities

In addition to the protections in the federal insolvency legislation, provincial pension benefits legislation provides for statutory deemed trusts for certain unpaid pension amounts. Deemed trusts operate in a manner akin to a floating charge by deeming the general assets of the debtor to be subject to a trust, as if the assets had been kept separate and apart for the benefit of the pension plan. Provincial pension legislation also typically provides a statutory lien and charge for these unremitted contributions.

For example, the Provincial pension legislation in Ontario provides for a statutory deemed trust that applies to:

1. money withheld or collected from an employee as a pension contribution that has not been deposited into the pension plan;

2. employer contributions due and not paid into the pension plan; and

3. employer contributions accrued to the date of the wind-up of a pension plan but not yet due[11].

The Ontario legislation also provides that the administrator of the pension plan has a lien and charge on the assets equal to the amounts deemed to be held in trust. In the recent Indalex decision, referred to above, the Supreme Court of Canada held that the Ontario provincial deemed trust applies to the full wind-up deficiency that arises on the wind-up of a pension plan.

Conflicts between federal insolvency law and provincial pension law

The more difficult question with provincial deemed trusts is how they apply in the context of insolvency proceedings, especially where they conflict with competing priorities established by the applicable federal insolvency statute. This question is resolved based on the constitutional law doctrine of federal paramountcy, in which direct conflicts between federal and provincial laws are resolved in favour of the federal law. Consequently, a provincial legislature cannot affect priorities established under a federal insolvency statute through legislation imposing deemed trusts or liens.

A party relying on paramountcy is required to demonstrate the direct incompatibility of the federal and provincial law, so the central question in a duel of provincial pension legislation and federal insolvency legislation becomes whether the provincial legislation is, in fact, incompatible with the federal legislation.

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[10] BIA, sections 81.5(2) and 81.6(2).

[11] *Pension Benefits Act* (Ontario), section 57.

In the case of the *BIA*, the answer appears to be relatively straightforward. Since the *BIA* establishes an express scheme of creditor priorities, any provincial law that purports to subvert that scheme of priorities is in direct conflict, so the scheme of priorities in the federal law governs. As a result, it is frequently said that pension deemed trusts are not effective in proceedings under the *BIA* because they would have the effect of reordering the statutory priorities set out in the federal legislation.

The *CCAA* is different because it does not set forth an express scheme of creditor priorities. Accordingly, it is said that a provincial deemed trust continues to operate in the context of a *CCAA* proceeding, subject to specific conflicts necessitating the application of federal paramountcy. Under the *CCAA*, the conflict necessitating federal paramountcy may arise from the orders granted by the court under its *CCAA* jurisdiction rather than specific priorities set out in the statute. For example, the *CCAA* authorises the court to grant certain super-priority charges, including charges to secure interim debtor-in-possession financing, administrative costs, director and officer indemnities and critical supplier payments[12]. To the extent that the priorities granted to these charges by a court acting under the *CCAA* conflict with the priorities established by the provincial pension legislation, the priority charge granted pursuant to the *CCAA* will govern. The decision of the Supreme Court of Canada in Indalex unanimously confirmed the ability of a court exercising authority under the *CCAA* to grant a super-priority debtor-in-possession financing charge in priority to a provincial deemed trust.

In light of these differences between the application of provincial pension priorities under the *BIA* versus the *CCAA*, there is frequently a tension between creditors who would benefit from an adjudication of priorities under the *CCAA* (typically employees, pensioners, pension administrators) and creditors who would prefer to see provincial pension priorities eliminated under the *BIA* (typically secured creditors who would otherwise rank behind pension deemed trusts or liens). In Indalex, the Supreme Court of Canada held that courts will favour an interpretation of the *CCAA* that avoids a race to liquidation under the *BIA*; however, courts will not read a *BIA* priority scheme into the *CCAA*.

Consequently, perhaps the most accurate way to characterize the situation in *CCAA* is that pension administrators, regulators and beneficiaries continue to benefit from the application of provincial pension priorities absent a direct conflict with the *CCAA*, but they do so under the specter that other creditors could seek a conversion of the proceedings into a receivership or bankruptcy under the *BIA* to eliminate the pension priorities. In fact, the recent decision of the Ontario Court of Appeal in Grant Forest Products Inc. v. The Toronto-Dominion Bank confirms that a supervising *CCAA* judge has the discretion to permit a creditor to bankrupt the debtor company to alter provincial pension priorities[13].

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[12] *CCAA*, sections 11.2, 11.4, 11.51 and 11.52.
[13] 2015 ONCA 570.

QUESTION 7

Are remedies to collect in respect of pension deficits available against parties or entities other than the employer?

Generally speaking, unpaid pension contributions and plan deficits are owed by the plan sponsor without recourse to third parties.

However, recourse to the plan administrator and directors and officers of the employer may be available where they have acted negligently in exercising their duties or where they have failed to comply with the governing pension legislation. The administrator is a fiduciary and owes a stringent duty of care (this duty is both codified under provincial legislation and exists independently at common law). Where this duty is alleged to have been breached, plan beneficiaries may claim against the administrator. These kinds of claims may include, among other things:

- imprudent investment decisions;
- inequality of treatment between different plan members; and
- improvident funding decisions.

Consequently, where the board of directors of a corporation is responsible for the administration of a pension plan, the directors continue to be responsible for the prudent management of the pension assets. Claims against the directors and officers of the plan sponsor are also possible where the plan sponsor is also the administrator of the plan (this occurred, for example in Indalex). Additional claims and fines may also apply where an offence has been committed under the applicable pension legislation[14].

There is also limited relief available against a Trustee under the *BIA* where the Trustee disposes of assets that are properly subject to the special priorities created for unremitted pension contributions. The *BIA* secures certain unpaid employer pension contributions. Such security ranks above all other claims against a bankrupt's assets, with limited exceptions. Where the trustee improperly disposes of such assets covered by the security, the trustee can be liable up to the amount realised on the improvident disposition.

QUESTION 8

Are there any cross-border features of your pension regime?

The *CCAA* Part IV and *BIA* Part XIII govern cross-border insolvencies in Canada. These insolvency statutes were substantially amended in 2009 to adopt the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvencies. The most notable amendment is that both the *CCAA* and *BIA* now addresses the recognition of foreign proceedings and obligations where a foreign proceeding is recognised.

[14] See section 110, *Pension Benefits Act* (Ontario).

There are three main requirements for a foreign proceeding to be recognised in Canada: the proceeding is a foreign proceeding, the applicant is a foreign representative, and the foreign proceeding is either a "foreign main proceeding" or a "foreign non-main proceeding". Where an application for recognition meets these requirements as defined under the relevant legislation, court recognition will be granted. These foreign recognition mechanisms have simplified cross-border proceedings in Canada and are useful in maximising worldwide creditor recovery and avoiding the multiplicity of claims.

As a result of these provisions, Canadian pension beneficiaries in the context of a foreign corporate group may find their claims adjudicated in proceedings outside Canada where a cross-border insolvency is being administered in a foreign jurisdiction. Similarly, foreign pension beneficiaries may find their claims adjudicated in Canada where Canada is the main jurisdiction for the administration of a cross-border insolvency.

In the summer of 2014, the Ontario Superior Court of Justice (Re Nortel Networks Corp., 2014 ONSC 6973) heard a trial of various claims asserted by a United Kingdom ("UK") pension trust and the UK Pension Protection Fund against Canadian domiciled companies under creditor protection. The trial included numerous cross-border pension issues, including the application of UK pension law (such as the UK financial support direction scheme) extraterritorially. The discovery process for the pension claims trial was conducted in co-ordination with the discovery process for other litigation in the Nortel bankruptcy proceedings that featured negotiated cross-border protocols governing discovery matters that incorporated a hybrid of Canadian provincial and United States federal civil procedures. The pension trial decision is currently under appeal, but the protocols implemented in the Nortel trial are an example of Canada's leadership in facilitating cross-border comity to complex cross-border insolvency scenarios, including those relating to the adjudication of pension claims.

QUESTION 9

Discuss the state of defined benefit plans in your country

The same forces of low interest rates, improved longevity and global market volatility that are creating issues for defined benefit plans internationally are causing their decline in Canada. In 2010, there were 11,744 registered defined benefit plans. This number dropped to 10,856 in 2013 and 10,414 in 2014. These plans are becoming less common in non-unionized, private sector workforces and new ones are not being introduced.

Other plan types have also emerged that are beginning to gain traction in the Canadian pension landscape. These so-called "hybrid plans", which have features of both defined benefit and defined contribution plans, have been implemented in some provinces in certain instances to help maintain existing defined benefit plans.

For example, “target” benefit plans allow fixed employer contributions with the same benefit promise to plan members. Target benefit plans provide greater flexibility since benefits and/or contributions can be adjusted when a plan encounters funding or solvency issues. Where implemented, these plans are increasingly popular among large employers which currently maintain defined benefit plans and do not want to make a full switch to defined contribution plans because they allow for greater risk sharing between employers and employees.

On September 1, 2014, the Alberta Employment Pension Plans Act came into effect. This new piece of legislation introduced a target benefit pension plan regime to the province. Alberta is the second province (after New Brunswick) to implement regulations to allow alternative plan types. The new Alberta rules provide that when a plan encounters funding concerns, it may reduce or eliminate ancillary benefits, reduce the targeted defined benefit (this reduction may apply to accrued benefits), or increase contributions. Unlike the New Brunswick reforms, the Alberta rules do not permit the conversion from a defined benefit plan to a target benefit plan on a retroactive basis.

Certain provinces have implemented legislative amendments to allow plans the option of converting to a “shared risk” plan. Generally, shared risk plans offer a modest initial benefit promise and future surpluses adjust for inflation before and after retirement rather than having indexation after retirement. The initial benefit is based on career average earnings. Under specific circumstances, these plans allow benefits to be reduced or redesigned to ensure pensions have sufficient surpluses in event of market shocks.

New Brunswick was the first province to adopt shared risk plans in its provincial pension framework under the Pension Benefits Act. Several pension plans within New Brunswick have since converted to shared risk plans.

As Canadian plan sponsors continue to move away from defined benefit plans, hybrid alternatives such as target benefit plans and shared risk plans may become increasingly popular.