



Consultation on a Framework for Pooled Registered Pension Plans (PRPPs) in Ontario

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Submitted by: The Ontario Bar Association,
Pensions and Benefits Law Section



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Introduction

The Ontario Bar Association (“OBA”) appreciates the opportunity to provide comments to the Ministry of Finance (“the Ministry”) on its discussion paper *Securing our Future: Strengthening Retirement Income in Ontario through Pooled Registered Pension Plans* (“the Discussion Paper”), which lays out a framework for implementing pooled registered pension plans (“PRPPs”) in Ontario.

The OBA

Established in 1907, the OBA is the largest voluntary legal association in Ontario and represents approximately 16,000 lawyers, judges, law professors and law students.

This submission was prepared by the OBA Pensions and Benefits Section, which has nearly 250 members, including the leading practitioners in the field. These members serve as legal counsel to virtually every stakeholder in the pension and benefits industry, including pension and benefit plan administrators, employers, unions, employee groups, pension and benefit consultants, banks, trust and insurance companies, investment managers, actuarial firms and other advisors.

Over the years, our members have analyzed and provided advice to the Ontario government on every significant legislative and policy initiative in the area of pensions and retirement saving.

Overview

The government of Ontario has expressed a concern that many people could face inadequate retirement savings, due in part to an aging population with increasing life expectancy and declining coverage of traditional employer pension plans.

In its 2013 Fall Economic Outlook and Fiscal Update, the government announced a plan to strengthen retirement income consisting of three strategies:

- Enhancing the Canada Pension Plan and introducing retirement savings tools like PRPPs and target benefit plans for those without workplace pensions.
- Working to reduce costs and improve financial literacy for those with self-directed savings.
- Helping to ensure Ontario's defined benefit plans remain sustainable.

The government has suggested that the introduction of PRPPs would offer employees and the self-employed an additional retirement savings tool and could complement an enhancement to the Canada Pension Plan.



PRPPs are a new form of tax-assisted retirement savings for individuals. They are intended to make it easier to save for retirement by providing people with a low-cost savings vehicle that is professionally managed and can move with the employee through his or her career.

The OBA supports the government's interest in providing appropriate strategies to assist Ontarians in adequately saving for retirement. While the appropriateness of each strategy depends, in part, on the specific other strategies that are ultimately adopted, the OBA recognizes that there are a number of inherent policy-related challenges that the government needs to address in considering the adoption of a provincial PRPP scheme.

In terms of eligibility and participation under a new PRPP framework, it is important to strike an appropriate balance between encouraging widespread participation to address the shortfalls in retirement savings and increase opportunities for economies of scale with the need to provide appropriate flexibility of choice about whether and how to participate, especially for those for whom alternative strategies may be more beneficial. For example, there has been some recognition that PRPPs will not necessarily help those in lower income brackets.¹ Income levels at which negative tax effects flow from saving for retirement in a tax-deferred plan such as a PRPP or RRSP can be quite high, and often in excess of \$50,000/year for a single individual (wages equal to or in excess of the Year's Maximum Pensionable Earnings, which is \$52,500 in 2014).

Similarly, in establishing the PRPP framework it is important to balance the objective of encouraging participation with the cost implications for businesses in terms of set-up and administration. For example, any mandatory scheme might require small businesses with few employees to set up a PRPP only to have the employees opt out because their relatively low incomes make saving difficult and/or the associated concerns about lower income brackets noted above.

The government will also need to address how a potential PRPP scheme might be introduced and coordinated both with existing programs, such as the CPP and OAS, and a possible new enhanced Ontario pension plan. The Ministry has already stated that any enhancement to the CPP should acknowledge the coverage provided by existing benefit programs, and should limit or minimize unnecessary additional contributions from low-wage earners and the businesses that employ them. This should also include an assessment of the contributions and benefits that might be

¹ See James Pierlot and Alexandre Laurin, "Pooled Registered Pension Plans: Pension Saviour – or a New Tax on the Poor?", which argues that PRPPs, as conceived at the federal level, would actually have a deleterious effect on low income earners for two reasons. First, the tax deferral available in respect of PRPP contributions is of limited value to low-income individuals whose preferential tax rates mean that they cannot generally take full advantage of it. Second, the resulting PRPP income in retirement results in clawbacks to income-tested benefits that such individuals could otherwise have expected to receive.



associated with a provincial PRPP scheme, as certain PRPP threshold issues, such as the possibility of mandatory participation, can only be properly analyzed in the context of what might be required under an enhanced CPP or Ontario pension scheme.

For the purposes of this brief submission, we have focused our input on issues related to a potential framework for PRPPs based on our members' considerable experience in pension-related issues.

Comments on Specific Issues

Disclosure Requirements

The OBA encourages the province to adopt a principles-based approach to disclosure requirements under a PRPP, by which transparency and clarity should be the expected standards.

Plan participants should be provided with the information necessary to understand the costs and benefits associated with their investments. In our view, the items that best promote the necessary transparency and clarity are, in order of importance:

1. Account balance at beginning and end of year.
2. Estimated retirement income that the account balance could provide at retirement ages from 55 through 70.
3. Investment performance, net of fees.
4. Investment management fees paid in the year, as a lump-sum amount and as a percentage of assets.
5. Administration and custodial fees (if any) paid in the year
6. Fund performance relative to a benchmark.

In general, it would also be helpful for PRPP members to have access to information concerning investment options and the key features of each option, as well as high level information on the financial health of the administrator.

In terms of how often information should be provided, in our view it would be desirable to provide members access to their account information on-line at any time.

Practically speaking, the majority of individuals, including very prudent savers and the financially literate, do not have the tools necessary to approximate their own and their dependents' lifespans with precision (and this may ultimately be impossible). The OBA notes that even a low-cost plan



will be of little benefit to an individual who has contributed only 4-5% of an average salary over 30 years of working life and who has typical life expectancy at retirement of 85 or 90 years of age.

One option for mitigating longevity risk is for legislation to require administrators to offer tools to PRPP members to enable them to project their expected retirement income over a number of different age/contribution rate/investment return/interest rate scenarios. We note that some defined contribution pension plan providers already provide retirement income estimates based on a member's account balance even though it is not required for such plans. In our view, PRPP administrators would be in the best position to provide this information to members, and should be able to do so without significantly increasing legal risks or administrative costs. Alternatively, if PRPPs are considered capital accumulation plans, the obligation to provide education or other tools would be imposed without legislative intervention.

Standard of Care

The OBA's view is that it is unnecessary and unhelpful to create a different standard of care under a new Ontario PRPP framework.

The generally worded standard of care contained in the federal PRPP Act reflects the standard in Ontario's *Pension Benefits Act* and connotes the duty to manage conflicts of interest. Since there is already an existing body of case law built up under this standard, the OBA's view is that the introduction of a different definition could give rise to unnecessary litigation.

Under the federal framework, members' contribution rates are set by the administrator; the administrator is also permitted to increase the rates. One way to eliminate the potential conflict of interest this framework creates is to allow employees to set their contribution rates.

Lastly, the government should seek to ensure that mandating lowest possible cost investments does not overweight the administrator's decision on the selection of appropriate investments, which would function to the detriment of plan members. For example, while passively managed investments may be an appropriate choice under a plan, the PRPP framework should not encourage providers to select such investments merely as a means to meet the low cost requirements.

Licensing, Registration and Supervision

There are significant costs associated with monitoring compliance. The main factor that should be considered in determining where authority for the regulation of PRPPs should rest is capacity—meaning the designated authority should have the expertise and resources necessary to do the job properly.



The *Financial Services Commission of Ontario Act*, the *Pension Benefits Act*, and the *Insurance Act* already provide the existing norms for licensing and regulating behavior. There is no need to create a separate scheme when it is possible to utilize the elements of the existing scheme. It is our recommendation that a new PRPP should employ criteria analogous to those FSCO currently uses to license and regulate service providers.

In terms of the revocation of PRPP licenses, it is not clear why licenses issued under the federal *PRPP Act* are not revocable. While it is easy to conceive of poor conduct that should allow the regulator to revoke a license, there are also more benign circumstances where it might be necessary. For example, on the merger of two PRPP administrators, the regulator would need to revoke the two separate licenses and issue a new license to the resulting entity. Any provincial legislation should address these situations.

Harmonization

Harmonization is desirable in as much as a coordinated approach to the licensing and supervision of PRPP administrators would result in fewer resources being required for both administrators and regulators and would likely help to keep costs down.

However, there are already differences between the Federal and Quebec rules for PRPPs in the key categories of eligibility, contribution requirements, and withdrawal rules. As we have already noted in response to just one issue (the revocation of licenses), we see merit in Ontario adopting legislation that departs from the federal scheme.

In our opinion, it would be more practical to focus on the harmonization of permitted PRPP investments among jurisdictions. This type of harmonization is feasible and should be pursued, since it would reduce costs by making it possible to offer the same investment funds Canada-wide. Similarly, portability among PRPPs of different jurisdictions should also be permitted, as it is now permitted for registered pension plans.

Conclusion

The OBA appreciates the opportunity to provide input into the Ministry's consideration of a new framework for PRPPs and we look forward to an opportunity to assist on further development of any options the government is interested in pursuing as part of strengthening retirement income opportunities in the province.