



OBA Submission on the Proposed Amendments to Ontario  
Regulation 909 of the Pension Benefits Act: Removing  
Certain Requirements for Administrators of Defined  
Contribution Pension Plans

Submitted to: Pension Policy Branch, Ministry of Finance

Submitted by: Ontario Bar Association

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## Introduction

The Ontario Bar Association (“OBA”) appreciates the opportunity to make this submission to the Ministry of Finance (the “Ministry”) in respect of the proposed regulatory amendments to Ontario Regulation 909 (the “Regulation”) under the *Pensions Benefits Act* (“PBA”).

## The Ontario Bar Association

Established in 1907, the OBA is the largest and most diverse volunteer lawyer association in Ontario, with over 16,000 members who practice on the frontlines of the justice system, providing services to people and businesses in virtually every area of law in every part of the province.

Each year, through the work of our 40 practice sections, the OBA provides advice to assist legislators and other key decision-makers in the interests of both the profession and the public, and delivers over 325 in-person and on-line professional development programs to an audience of over 12,000 lawyers, judges, students and professors.

This submission was prepared by members of the OBA Pensions and Benefits Law Section. Our members serve as legal counsel to virtually every stakeholder in the pension and benefits industry, including pension and benefit plan administrators, employers, plan members, pension and benefit consultants, investment managers, actuarial firms and other stakeholders.

## Overview

The Section welcomes these proposed amendments in principle in keeping with the Government’s continued initiatives to modernize the pension sector and streamline pension



plan administration, subject to the comments noted below. The purpose of these comments is to clarify the intended scope and application of the amendments proposed.

## Comments

The proposed amendments include the removal of the requirement for administrators of member-directed defined contribution (“DC”) pension plans to establish a Statement of Investment Policies and Procedures (“SIPP”).

Currently, the exemption applies “where all the pension benefits provided under the plan are defined contribution benefits and are directed entirely by the members.” We note two issues with the amendment:

- 1) The use of the phrase “and are directed entirely by the members” should be clarified to account for members who do not make an active choice and are subject to the plan’s default investment option.
- 2) The wording of the amendment should be clear that the SIPP exemption applies to the assets of a defined contribution provision of a hybrid or combination plan. If a SIPP is not required for a stand-alone member choice DC plan, then the SIPP for a hybrid or combination plan need not address the assets of the member choice DC provision.

### Member choice accounts

The SIPP requirement in section 78 of the Regulation incorporates by reference the “federal investment regulations”<sup>1</sup>, which includes subsection 7.1(1) of the *Pension Benefits Standards Regulation, 1985* (the “PBSR”). As such, we recommend that the Ministry align their

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<sup>1</sup> Defined under subsection 66(1) of the Regulation as sections 6, 7, 7.1 and 7.2 and Schedule III to the Pension Benefits Standards Regulations, 1985 made under the *Pension Benefits Standards Act, 1985* (Canada) as they may be amended from time to time.



definition of member-directed account with the concept of a “member choice account” under the PBSR, defined as:

an account in relation to which a member, former member, survivor or former spouse or former common-law partner of the member, former member is permitted to make investment choices under a plan referred to in subsection 8(4.2) of the Act.<sup>2</sup>

A member choice account is essentially an account under a DC pension plan or DC provision of a combination benefit or hybrid pension plan for which the member or other beneficiary is permitted to make the investment choices.<sup>3</sup> As of April 1, 2015, subsection 7.1(1) of the PBSR has provided that the SIPP established for a federally regulated pension plan is not required to address the assets of a member choice account.

In our view, it would be helpful if the proposed amendments made clear that the exemption to the SIPP requirements provided by the proposed new section 78.1 applies to a pension plan with a member choice DC provision (i.e. standalone DC pension plans, combination and hybrid pension plans), as well as to DC provisions with default investment options (as is the case in most such pension plans).

## Proposed Amendment

Specifically, we recommend the following revisions to the proposed new section 78.1:

Despite section 78, the administrator of a pension plan is not required to establish a statement of investment policies and procedures for **a defined contribution**

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<sup>2</sup> Subsection 2(1), PBSR. Subsection 8(4.2) *Pension Benefits Standards Act, 1985*, provides that “[a] pension plan may permit a member, former member, survivor or former spouse or former common law partner of a member or former member to make investment choices with respect to their account maintained in respect of a **defined contribution provision** or with respect to their account maintained for additional voluntary contributions.” [emphasis added]

<sup>3</sup> Financial Services Commission of Ontario, Investment Guidance Notes (IGN-003) “Statements of Investment Policies and Procedures (SIPPs) for Member-Directed Defined Contribution Plans”, section 2.2.



**provision of the plan where ~~all the pension benefits provided under the plan are defined contribution benefits and the members are permitted to make investment choices are directed entirely by the members.~~**

The above recommended revisions also apply, with necessary modification, to the proposed new subsections 40(2.1), 40.1(3.1) and 40.2(3.1).

## **Conclusion**

Once again, the OBA appreciates the opportunity to provide this submission to response to the Ministry's proposals. We look forward to continuing to participate in the Ministry's periodic reviews and introduction of statutory amendments, new legislation, and any regulations made thereunder.