



*Ontario Retirement Pension Plan*

**Date:** February 13, 2015

**Submitted to:** Ministry of Finance

**Submitted by:** Ontario Bar Association  
Pension and Benefits Section



ONTARIO  
BAR ASSOCIATION  
A Branch of the  
Canadian Bar Association

L'ASSOCIATION DU  
BARREAU DE L'ONTARIO  
Une division de l'Association  
du Barreau canadien



## Table of Contents

The OBA.....	2
(a) Background.....	2
(b) The OBA Pension and Benefits Section.....	2
Introduction to Approach of the Section .....	3
Comparable Plans.....	3
Administrative Issues .....	4
Waiting Periods.....	4
Timing of Implementation .....	4
Categorization of the ORPP .....	5
Next Steps.....	6



The Ontario Bar Association (OBA) Pension and Benefits Section appreciates the opportunity to provide advice on the Ontario Retirement Pension Plan (ORPP) and congratulates the government on its consultative approach and thoughtful discussion paper. We look forward to continuing to work with the government to ensure that its laudable goal of increasing post-retirement income security for Ontarians is achieved in the most effective manner.

## **The OBA**

### **(a) Background**

Established in 1907, the OBA is the largest legal advocacy organization in the province, representing more than 16,500 lawyers, judges, law professors and students. OBA members are on the frontlines of our justice system in no fewer than 39 different sectors and in every region of the province. In addition to providing legal education for its members, the OBA assists government and other decision-makers with several legislative and policy initiatives each year - both in the interest of the profession and in the interest of the public.

### **(b) The OBA Pension and Benefits Section**

This submission was formulated by members of our Pension and Benefits Section (the "Section"). The Section represents approximately 300 lawyers who 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 advisors. Our members have, over the years, analyzed and provided assistance to the Ontario government on virtually every legislative and policy initiative in the pension field.



## Introduction to Approach of the Section

In this submission, the Section has not sought to address the public policy issues raised by the discussion paper. We have not taken a position on the general merits of the ORPP. Instead, we have addressed below some more discrete issues that engage the Section's legal expertise and in depth knowledge of the sector.

These issues include:

- (a) Factors to consider in identifying “comparable plans”;
- (b) Administrative considerations, including:
  - (i) Treatment of waiting periods in the context of comparable plans; and
  - (ii) Transition and timing issues; and
- (c) Categorization of the ORPP for tax purposes.

## Comparable Plans

The government's current proposal uses a set of criteria derived from the Canada Pension Plan to define what constitutes a “comparable plan”. The Section suggests that any plan, whether it is defined benefit, multi-employer, defined contribution or otherwise, be considered a “comparable plan” if it meets all of the criteria set out in the discussion paper.

The government may wish to consider a default/application scheme in which defined contribution plans are excluded by default unless and until the administrator applies for comparable plan status and can establish compliance with the criteria. This would minimize administrative burden for government and still allow desired flexibility.



## **Administrative Issues**

### **Waiting Periods**

Some “comparable plans” have waiting periods before employees become eligible to participate. A sponsor/employer should not be required to undertake the administrative work of enrolling employees in the ORPP for that limited period (as they will no longer be enrolled in the ORPP when they join the comparable plan at the expiration of the waiting period). It should also be noted that some plans with a waiting period will even recognize serviceable credits from the date of employment rather than only from the date of enrollment. The government should consider exempting employees from the ORPP during the defined period between being hired and being permitted to participate in any comparable plan. This exemption may have to include protection against a course of conduct designed to avoid participation in the ORPP by hiring and terminating employees during the waiting period.

### **Timing of Implementation**

There are factors that should be considered in determining the timing of implementation of the ORPP and other pension reforms. These include:

- (a) There is currently no framework for establishing a single-employer target benefits plan (“TBP”). As it is proposed that such plans would be “comparable plans,” stakeholders should be given a realistic opportunity to offer a TBP to its employees as an alternative to the ORPP. The Section recommends that the TBP framework be in place to permit a TBP to be established before, or coincident with, the 2017 implementation of the ORPP;
- (b) Stakeholders require time to consider their options and establish plans or make any required amendments to their current registered pension plan or retirement savings plan designs. This may include restructuring of contributions, particularly if those contributions are currently at



- allowable limits. Sufficient information about how the ORPP will work needs to be available in order for parties to make informed decisions and make appropriate changes to the current retirement savings arrangements;
- (c) Employers and employees subject to collective agreements may need time to negotiate possible changes to those collective agreements ; and
  - (d) Where the ORPP would materially change the terms of employment, employers would require up to two years lead time in order to avoid constructive dismissal concerns, unless such concerns are addressed in ORPP legislation by, for example, providing for deemed continuation of existing employment relationships on the implementation of and for the purpose of implementing the ORPP.

While the government's approach to consultation appears to be thorough, ultimately, it may be advisable to phase in the ORPP to allow for adjustments to the framework after it is tested in practice.

## **Categorization of the ORPP**

The Consultation Paper states that the ORPP is being designated as a Multi-Employer Pension Plan ("MEPP") for the purpose of the *Income Tax Act (Canada)*. The pension adjustment for MEPPs is reported by employers on a defined benefit basis. It will be difficult for employers, particularly small businesses, to determine the value of the adjustment on that basis. If, on the other hand, the ORPP were treated as a Specified Multi-Employer Pension Plan ("SMEPP"), the adjustment would be a simpler calculation based on combined employer and employee contributions. However, the current definition of a SMEPP requires the contributions to be made in accordance with a collective agreement. The ORPP clearly does not meet that criterion.



It is suggested that the government request an amendment to the *Income Tax Act* to extend the SMEPP definition to include the ORPP or to create another category for the ORPP that allows for a feasible employer pension-adjustment calculation and facilitates eventual integration with the CPP.

## **Next Steps**

We look forward to continuing to work with the government on the design and implementation of the ORPP as your consultations continue. Future issues will include discussions with the federal government on matters such as basic exemption of employee contributions from income tax, interaction with the Guarantees Income Supplement and Old Age Security benefits, and creditor protection.

As you proceed to through the next steps in your consultation plan, we look forward to proposed details on issues such as: how and when annuities will be purchased; guarantee periods; spousal survivor benefits; and asset division on spousal relationship breakdown.

Once again, we appreciate the opportunity to provide input. Please do not hesitate to contact us if you have questions on this submission or we can be of any further assistance.