



May 12, 2017

Minister Charles Sousa
Ontario Ministry of Finance
7th Floor, Frost Building South
Toronto, ON M7A 1Y7

Dear Minister Sousa:

RE: Bill 127, *Stronger, Healthier Ontario Act (Budget Measures)*

The Association of Canadian Pension Management (ACPM) understands the compressed timetable for Bill 127, *Stronger, Healthier Ontario Act (Budget Measures)* (“**Bill 127**”), which is currently before the Legislative Assembly. As such, we are writing to you on an urgent basis. We have significant concerns with the broad wording of proposed new sections 23.1 and 25.1 to the *Pension Benefits Act* (Ontario) (“**PBA**”) in Schedule 27 to Bill 127.

What is most concerning for us is the open-endedness of these new powers, which we believe are unprecedented for an Ontario regulator in their breadth and reach. They could have significant, unintended consequences for plan administrators, members and stakeholders.

Who We Are

ACPM is a national non-profit volunteer-based organization acting as the informed voice of plan sponsors, administrators, and their service providers, advocating for improvement to the Canadian retirement income system. Our membership represents over 400 retirement income plans consisting of more than 3 million plan members, with assets under management in excess of \$330 billion.

Section 23.1

Under proposed section 23.1, the Superintendent would have unprecedented discretion to order an administrator to hold a meeting at *any* time to discuss *any* matter the Superintendent sees fit, and may require not only that plan beneficiaries be invited to attend, but also that *any* “other interested persons” be allowed to attend.

In short, section 23.1 provides no limits on what the Superintendent could require the administrator to talk about, when, or with whom. The Superintendent would be as free to order a meeting with plan beneficiaries about a routine plan amendment as he or she would be to order a meeting with competing investors (or a plan beneficiary acting on their behalf) to discuss confidential investment strategies and financial holdings of the plan and its portfolio companies. Without any constraints or guidance in the PBA, the Superintendent has no basis to prefer a narrow use of this power over a broad one.

Section 25.1

Proposed section 25.1 is similarly concerning. As you know, the PBA currently provides an extensive regime for plan beneficiaries, their representatives and certain others to request and view plan information and documents. The parties who can make these requests, how often they can make them (in some cases, only once per year) and the kinds of documents and information that can be requested, are set out in detail in section 29 of the PBA and section 45 of the General Regulation under the PBA. This regime represents a balance between beneficiaries' rights to information and transparency on the one hand and the administrative efforts to respond to detailed information requests and a need to limit responses to frivolous inquiries on the other hand.

New section 25.1 circumvents this regime. It would provide the Superintendent with unprecedented expansive powers to order an administrator to provide plan beneficiaries with *any* information that the Superintendent chooses. As with proposed section 23.1, there are no apparent constraints to the kind of information that the Superintendent could require be disclosed, nor to the timing of the disclosure or to the potential recipients (other than they need to have an entitlement to a benefit under the plan). A general term like "information" could be interpreted to include confidential administrative information, investment information or even personal details of beneficiaries.

General Discussion

The purposes for which the powers set out in sections 23.1 and 25.1, as so broadly worded, may be exercised is unclear. There is not, for example, any statement of objectives or purpose made alongside the wording of these new powers. If the Superintendent requires broader powers to ensure compliance with plan terms and the PBA, these provisions do not say as much. For both of proposed sections 23.1 and 25.1, the proposed sweeping language will provide opportunities for the Superintendent to carry his mandate beyond the enforcement of the PBA and to second-guess administrators' discretion, determinations and decision-making that otherwise complies with legislation. Administrators are fiduciaries. They are required to come to decisions after careful deliberation and after weighing the pros and cons to various beneficiary groups. Subjecting this careful balancing act to regulatory "override" creates complexity, uncertainty and, potentially, a negative beneficiary experience. In addition, without any constraints on the Superintendent's use of this power, plan administrators will also be unable to foresee what costs or resources may be required to fulfill an order by the Superintendent. With today's strict budgets, any surprise costs can pose a challenge to an administrator.

It is important to point out that the PBA already provides the Superintendent powers to ensure compliance with the PBA. Section 87 of the PBA provides the Superintendent the power to make an order if the Superintendent is of the opinion that the pension plan or pension fund is not being administered in accordance with the Act or the regulations.

Finally, proposed sections 23.1 and 25.1 appear to mirror, to a large extent, sections 7.5 and 13 of the *Pension Benefits Standards Act, 1985* (Canada) ("PBSA"). If the intent, though, is to provide the Superintendent with powers equivalent to those under the PBSA, Bill 127 does not do that. It again goes further. The PBSA exists in another jurisdiction and in a distinct regulatory context. The federal regulator's powers under the PBSA are subject to subsection 4(5) of the *Office of the Superintendent of Financial Institutions Act* (Canada), which

mandates that: “regulation and supervision must be carried out having regard to the fact that administrators of pension plans are responsible for the management of the pension plans and that pension plans can experience financial and funding difficulties that can result in the reduction of those benefits.” The federal regulator must therefore exercise its powers with some legislated degree of deference to the administrator’s central role in managing a pension plan and investing the assets of the pension fund. The powers in Bill 127 do not have any similar over-arching corollary.

Proposal

Of greatest concern to ACPM is that this kind of overreaching legislation, in the context of a voluntary system, could clearly act as a disincentive for employers to create or even maintain registered pension plans. We encourage the Government instead to create legislation that will help foster coverage for all Canadians.

We understand the difficult choices that legislators make in balancing competing interests. However, we also believe that clearly defined limits to regulatory authority create certainty and foster more efficient, better targeted regulation. Regulatory powers with legislated parameters are, in short, in the interests not only of plan administrators, but also of plan sponsors, beneficiaries, bargaining agents and other stakeholders.

To this end, we strongly urge you to seek changes to proposed sections 23.1 and sections 25.1 to the PBA (sections 3 and 4 of Schedule 27 to Bill 127) so that the relevant portions of those sections read as follows:

- Under subsection 23.1(1): “*In prescribed circumstances*, the Superintendent may, in writing, order that an administrator of a pension plan hold a meeting to discuss any *prescribed* matters specified by the Superintendent.”
- Under subsection 23.1(2): “The Superintendent may specify a time, *within the prescribed time period*, when the meeting must be held.”
- Under subsection 23.1(3)(c): “The Superintendent may require the administrator to permit other *prescribed* persons to attend the meeting.”
- Under subsection 25.1(1): “*In prescribed circumstances*, the Superintendent may, in writing, order an administrator of a pension plan to provide members, former members, retired members and other persons entitled to benefits under the pension plan with any *prescribed* information that the Superintendent specifies in the order.”
- Under subsection 25.1(2): “The order may specify the manner in which the information is to be provided and the timeline, *within the prescribed time period*, for doing so.”

We respectfully request these changes for two reasons. First, they would allow time for additional consultation with stakeholders, including the Superintendent and the public, as regulations are drafted to flesh out the proposed power. Second, they would provide parameters for these new powers that will provide administrators with more guidance as to how to carry out their central role and duties, rather than with uncertainty that legitimate administrative decisions, including communication decisions, will be second-guessed at the eleventh hour.

We also suggest delaying when this provision would be proclaimed into force until the Financial Services Regulatory Authority is up and running. Though we understand that time may be of the essence for the government, we would be happy to meet with you to discuss our concerns in more detail.

Sincerely,

Best regards,

A handwritten signature in blue ink, appearing to read "Bryan D. Hocking", is written over a faint, light blue circular stamp or watermark.

Bryan D. Hocking
Chief Executive Officer, ACPM