



October 21, 2022

Lauren Ellis, Legal Counsel
Financial and Consumer Affairs Authority of Saskatchewan, Legal Branch
601-1919 Saskatchewan Drive
Regina, SK S4P 4H2
Email: pensions@gov.sk.ca

Dear Ms. Ellis:

RE: The Pension Benefits Act, 1992 Consultation Paper - Enforcement Tools and Other Potential Amendments

ACPM is the leading advocacy organization for a balanced, effective and sustainable retirement income system in Canada. Our private and public sector retirement plan sponsors and administrators manage retirement plans for millions of plan members, including both active plan members and retirees.

The Pensions Division of the Financial and Consumer Affairs Authority (FCAA) is considering recommending amendments to the Pension Benefits Act, 1992 (the PBA) to the Saskatchewan government and consulting interested parties and organizations on those potential amendments.

As mentioned in the consultation paper, the amendments being considered may include provisions respecting the imposition of terms and conditions on approvals, consents and permissions, enhanced enforcement tools, the severance of parts of plan amendments for registration purposes, the cancellation of registration of plan amendments or parts of plan amendments, as well as other miscellaneous administrative amendments.

We generally support the amendments being proposed because modernization of the PBA and Regulations to reflect the tools and powers found in pension legislation in other Canadian jurisdictions as well as other regulatory legislation administered by the FCAA is both warranted and welcomed.

While we generally support the direction being considered, we have provided some brief comments on questions 2, 3 and 4; we have not commented on other questions.

Question 2: Do you agree that the superintendent should be able to sever a part of an amendment that does not comply with the PBA or PBR and register the part of an amendment that does comply?

We generally agree with this ability being added to the authority of the Superintendent if consideration is given to the over-all intent of the amendment in question. More specifically: severing and rejecting a part of an amendment in question may compromise the intent of the remaining parts of the amendment or the intent of the pension plan. Depending on the circumstances, it may be more beneficial to reject the entire amendment rather than only parts of the amendment. To that end, we would suggest that, before the Superintendent severs and rejects certain parts of an amendment and approves the remainder, the Superintendent consults with the plan administrator and ensures that severing and rejecting certain parts of the amendment would not be contrary to the overall intention of the amendment and the pension plan. This may be more desirable than using a formal appeal process involving the courts.

Question 3: Do you agree that the superintendent should have the authority to cancel the registration of a plan amendment or part of a plan amendment that does not comply with the PBA?

and

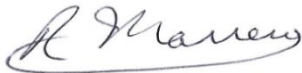
Question 4: Do you agree that the superintendent should be able to reverse transactions which were completed based on an assumption that an amendment to a pension plan would remain registered?

We feel the general rule is that administrators can assume in good faith that their amendment is acceptable and can act accordingly until advised otherwise by the pension regulator. Therefore, the ability for the superintendent to cancel the registration of a plan amendment (or part thereof), and then enforce the reversal of transactions that were based on the amendment in question, is a double-edged sword.

While we understand why the FCAA would want to include these abilities in its authority, we are concerned whether the authority could extend to amendments that have been filed and administered for an extended period of time before the amendment is rejected (ex.: what if the period of time is measured in years?). The reversal of transactions can be problematic and, in some cases, impossible; for example, in the case of transfer value payments on termination or pre-retirement death. It is for that reason that we would expect a consultation with the plan administrator (that does not need to involve a formal appeal to the courts) to work through the impact of rejecting an amendment – this should be considered before the decision is formally made by the superintendent.

Thank you for the consideration of our comments and we are available if we can be of further assistance.

Sincerely,



Ric Marrero
Chief Executive Officer
ACPM