

Radar

June 2, 2016

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A Message from the Editor

Please note that this issue covers the two week period from May 20, 2016 to June 2, 2016.

This week we would like to highlight the Canadian Association of Pension Supervisory Authorities' (CAPSA's) new *2016 Agreement Respecting Multi-Jurisdictional Pension Plans* (2016 Agreement).

Representatives of the governments of British Columbia, Nova Scotia, Ontario, Québec and Saskatchewan have signed the 2016 Agreement, which is intended to come into effect for these jurisdictions on July 1, 2016.

General

Newfoundland and Labrador – Employment Standards – Clearance Certificates

On May 26, 2016, Bill 31, *An Act to Amend the Labour Standards Act* received first reading.

The bill purports to amend the *Labour Standards Act* to establish a procedure for issuing clearance certificates and impose a fee for those certificates.

The bill would also confirm that fees for clearance certificates collected between April 1, 2013 and March 31, 2016 were validly imposed and collected.

Source: [Bill 31, An Act to Amend the Labour Standards Act](#)

New Brunswick/Nova Scotia/PEI – Employment Standards – Records

On May 20, 2016, Nova Scotia Bill 168, *Labour Standards Code (amended)* received royal assent. Prince Edward Island (PEI) has passed a similar bill (Bill 12) and in New Brunswick a similar bill (Bill 30) has received third reading and is awaiting royal assent. Changes will not take effect until January 1, 2017 in all three provinces.

While current record-keeping requirements are similar in all three provinces, there are some differences that can lead to confusion and more work. For example, the term pay is not clear. With these changes the relevant employment standards

legislation will clearly describe information required under this term.

Among other matters, the bill would:

- align record-keeping requirements among these three Maritime provinces
- clarify language around record-keeping requirements
- eliminate unnecessary record-keeping requirements
- the changes would also give employers the option of providing electronic pay statements

Source: [Bill 168, Labour Standards Code \(amended\)](#)

Health & Benefits

All – Palliative Care - Framework

On May 30, 2016, Bill C-277, *An Act providing for the development of a framework on palliative care in Canada* received first reading.

This bill purports to provide for the development and implementation of a framework designed to guarantee all Canadians access to high-quality palliative care.

As a result of the Supreme Court of Canada decision in *Carter v. Canada*, the federal government was required to introduce legislation related to medical assistance in dying. The federal government has previously introduced Bill C-14, *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)* to address *Carter v. Canada*.

The Final Report of the External Panel on Options for a Legislative Response to *Carter v. Canada* emphasized the importance of palliative care in the context of physician-assisted dying. The Final Report stated that a request for physician-assisted death cannot be truly voluntary if the option of proper palliative care is not available to alleviate a person's suffering. Bill C-277 has been proposed to address the issues associated with palliative care in Canada.

Please note that this is a private member's bill and it may not have the support required to become law.

Source: [Bill C-277, An Act providing for the development of a framework on palliative care in Canada](#)

Alberta – LTD – Pre-existing Conditions

On May 18, 2016, the Court of Queen's Bench of Alberta rendered its decision in *Tyson v. Holloway*.

In this case, a teacher claimed extended disability benefits as a result of a brain tumour. The plan denied the claim, arguing that the brain tumour was a "pre-existing condition".

The teacher had suffered severe headaches prior to her date of coverage under the school board's benefit plan (Date of Coverage), being the date she commenced employment under a full-time probationary teaching contract. The teacher had consulted with doctors prior to the Date of Coverage who thought she was suffering from migraines. It was not until after the Date of Coverage that she received a CT scan which revealed a large brain tumour.

Pre-existing condition was defined in the plan as follows:

- 1.15 "Pre-existing Condition means an accidental injury or illness for which an Employee received medical attention, consultation, diagnosis, or treatment during the 12 months before the Employee became covered under This Plan (2003-01-01)"

The court determined that there was no "legal" definition of pre-existing illness, and insurers were free to offer whatever coverage they chose to offer, and exclude whatever they want to exclude. The court discussed a number of cases dealing with exclusion clauses and determined that the case would be decided based on whether or not the language was clear or ambiguous.

The teacher and the plan provided different interpretations of “diagnosis”, which they felt were clear. The teacher argued that while she had a brain tumor prior to the Date of Coverage, she did not receive a “diagnosis” of brain cancer until after the Date of Coverage. The plan argued that “diagnosis” included “diagnostic measures” which she did receive prior to the Date of Coverage, although they did not identify the problem until additional diagnostic measures were taken after the Date of Coverage.

The court found that both the teacher and the plan had come up with “credible, competing and reasonable interpretations of the exclusion clause”, but these competing interpretations rendered the wording of the exclusion ambiguous. Therefore, the court found that *contra proferentum* and standard insurance policy interpretation required the ambiguity to be resolved against the drafter of the policy.

Therefore, the court found that the teacher was, in this case, entitled to coverage and her claim was not excluded by a pre-existing condition.

Source: [Tyson v. Holloway](#)

Ontario – ODBA – Unlisted and Generic Drugs

On June 1, 2016, draft amendments to O. Reg. 201/96 under the *Ontario Drug Benefit Act* (ODBA) and Reg. 935 under the *Drug Interchangeability and Dispensing Fee Act* (DIDFA) were published for comment.

The proposed amendments are intended to:

- optimize appropriate access to unlisted, non-formulary drugs
- further streamline generic interchangeability

It is anticipated that these regulations will come into force on the later of October 1, 2016 and the day they are filed.

Comments can be submitted until July 18, 2016.

Source: [Optimizing Appropriate Access to Unlisted Drugs and Further Streamlining Submission Requirements for Generic Drugs \(2016\)](#)

Retirement & Investment

All – CAPSA – Multi-jurisdictional Agreement

On June 2, 2016, the Canadian Association of Pension Supervisory Authorities (CAPSA) published the new *2016 Agreement Respecting Multi-Jurisdictional Pension Plans* (2016 Agreement).

Representatives of the governments of British Columbia, Nova Scotia, Ontario, Québec and Saskatchewan have signed the 2016 Agreement.

The 2016 Agreement is intended to come into effect on July 1, 2016, for multi-jurisdictional pension plans (MJPPs) where:

- the pension plan’s major authority (province of registration) is Ontario, British Columbia, Nova Scotia, Québec or Saskatchewan, and
- the plan has members subject to the pension legislation of two or more of these jurisdictions

The governments of Ontario and Québec had signed an earlier Agreement Respecting Multi-jurisdictional Pension Plans (2011 Agreement), which came into effect between Ontario and Québec on July 1, 2011. All of the provinces (except for Prince Edward Island) are also party to an older Memorandum of

Reciprocal Agreement (Reciprocal Agreement) originally signed by the provinces starting in 1968. The 2016 Agreement is intended to replace the 2011 Agreement and the Reciprocal Agreement as far as those older agreements apply between the governments that have signed the 2016 Agreement.

After the 2011 Agreement was adopted, CAPSA worked on a number of potential amendments to that agreement. One of these amendments was intended to deal with jurisdictions that amend their legislation to permanently eliminate requirements to fund defined benefit pension plans on a solvency basis (the 2011 Agreement was designed at a time when solvency funding was required for all defined benefit pension plans in all jurisdictions). In order to mitigate any adverse impact on pension plan members due to the application of those legislative amendments in the context of the agreement, the 2016 Agreement includes modifications to the asset allocation rules found in the 2011 Agreement. It also provides additional transitional rules for when the agreement first applies to a pension plan.

The 2016 Agreement was negotiated as an interim measure while CAPSA completes the development of amendments which will address the issue of changing funding regimes across jurisdictions. CAPSA expects to release proposed amendments to the 2016 Agreement for public consultation by 2018.

After CAPSA finalizes proposed amendments to the 2016 Agreement, it is expected that all CAPSA jurisdictions will enter into a revised 2016 Agreement that implements those amendments. In the meantime, the existing Reciprocal Agreement, originally signed in 1968, will remain in effect for those provinces which have not signed the 2016 Agreement, and all similar bilateral federal-provincial agreements will continue to remain in effect.

Source: [2016 Agreement Respecting Multi-Jurisdictional Pension Plans](#)
[CAPSA Communiqué](#)

All – Investment – 30 % Rule and Active Investments

On June 3, 2016, Finance Canada launched consultations to:

- assess the value of the 30% rule (the rule that restricts federally regulated pension plans from holding more than 30% of the voting shares of a company)
- seek views on the tax policy issues associated with the growth of active investments by pension plans

Since the 30% rule is contained in Schedule III to the *Pension Benefits Standards Regulations, 1985*, any change to the 30% rule could affect pension plans registered in a jurisdiction that incorporates the Schedule III investment rules (federal, Alberta, British Columbia, Manitoba, Newfoundland and Labrador, Ontario and Saskatchewan).

Changes to tax policy could potentially affect plans registered in any Canadian jurisdiction.

Consultation Questions

- Does the philosophy that plan administrators should act as passive investors continue to be valid? If not, why?
- What are the benefits and risks of pension plans taking on a dual role of providing benefits to members and taking an active role in the operations of a business?
- Are the prudent person and other PBSA standards sufficient to offset potential risks involved in pension plans acquiring a controlling stake in a corporation?
- If a pension plan's investment exceeds a certain threshold, should the plan be subject to additional requirements? If so, what should those requirements consist of and what would be the appropriate threshold?
- Does the 30% rule impede pension administrators from obtaining appropriate investment returns? If so, why?
- What are the costs, if any, that the 30% rule imposes for pension plans seeking active investments?
- Does the 30% rule create inequities between large and small pension plans? Conversely, could its removal do so? If so, why?

- Are any of the tax policy concerns relating to the ability of tax-exempt pension plans to acquire controlling positions in taxable corporations (e.g., potential strategies to eliminate corporate-level taxation, which could provide an advantage to the plans or the businesses they control) material in nature?
- How does the potential relaxation or elimination of the 30% rule impact any concerns described in respect of the previous question?
- Should the Government consider implementing tax measures (e.g., thin capitalization restrictions, application of the SIFT tax to pension-controlled trusts and partnerships) to limit the ability of pension plans to undertake tax planning strategies to reduce or eliminate entity-level income tax on business earnings? Are there other potential tax measures that the Government should consider in this regard? What considerations should be taken into account in the assessment of such potential measures?

Comments can be submitted until September 16, 2016.

Source: [Department of Finance Canada Launches Consultations on Federally Regulated Pension Plans](#)

Ontario – Private Sector - Funding Relief

On June 3, 2016, Ontario Regulation 161/16 was filed.

This regulation provides private sector sponsors of single-employer defined benefit pension plans with immediate assistance by extending solvency funding relief measures provided in 2009 and 2012 for an additional three years for valuation reports dated in the three-year period starting on December 31, 2015.

The regulations provide the following options:

- Consolidating existing solvency payment schedules into a new, longer five-year payment schedule
- Extending the solvency payment schedule to a maximum of 10 years (from the current maximum of five years) for any new solvency deficiency determined in the valuation report in which relief is taken, subject to the consent of plan beneficiaries

In addition, previous temporary restrictions on the use of contribution holidays are reintroduced for a plan fiscal year ending after June 29, 2017 and before January 1, 2020.

This regulation comes into force on July 1, 2016.

Source: [Ontario Regulation 161/16](#)

Ontario – ORPP – Additional Details

On June 2, 2016, Bill 186, *An Act to establish the Ontario Retirement Pension Plan* passed third reading.

As previously reported, the bill sets out, in legislation, the key requirements of plan design, including participation, contributions, benefit types, and plan sustainability for the Ontario Retirement Pension Plan (ORPP).

The bill was amended by the Standing Committee on Social Policy. Among other matters, these amendments include:

- a new definition of “employee” to further clarify who is subject to the Ontario Retirement Pension Plan (ORPP):
 - “employee” means:
 - (a) a person who is employed within the meaning of the definition of “employment” in subsection 2 (1) of the *Canada Pension Plan*, other than a person who is an officer within the meaning of that Act, or
 - (b) the holder of an office who is an employee under subsection 1(4)

- a new definition of “remuneration”, only as that term is used in section 5 of the bill, when referring to a pension plan (e.g., determining if a pension plan is comparable):
 - “remuneration”, in relation to a pension plan, means regular salary and wages as determined under the plan for the purposes of the plan
- amend the provisions related to the guarantee of pension payments for 10 continuous year to refer, instead, to 120 monthly instalments

Source: [Bill 186, An Act to establish the Ontario Retirement Pension Plan](#)

Workers’ Compensation/Occupational Health and Safety

Nova Scotia – OHS – Repeated Contraventions

On May 20, 2016, Bill 165, *Occupational Health and Safety Act (amended)* received royal assent. The provisions of this bill will come into force upon proclamation.

Generally, the bill provides additional tools and authority to enforce safety requirements for employers who repeatedly violate safety regulations and laws, putting workers at risk of serious injury or death.

Source: [Bill 165, Occupational Health and Safety Act \(amended\)](#)

Contact Information

If you would like further information on any of these topics, please contact your Aon Hewitt consultant at info@aonhewitt.com.

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