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C.D. Howe Institute COMMENTARY

THE PENSION PAPERS

The Pension Tangle:

Achieving Greater Uniformity of Pension Legislation
and Regulation in Canada

Gretchen Van Riesen



In this issue...

Canada's maze of differing pension regulations by province and territory discourages the creation of national, single-employer pension plans. Four options for reform – and greater harmonization – should be on the table.

THE STUDY IN BRIEF

THE AUTHOR OF THIS ISSUE

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National single-employer pension plans covering employees across Canada are at a very fragile juncture. Pan-Canadian organizations are discouraged by the additional administrative burden involved in providing pension coverage in multiple jurisdictions. Cross-jurisdictional differences in pension legislation and regulation make it less likely an employer with employees in more than one province will establish a registered pension plan.

This paper suggests four possible options for the regulatory environment for employer-sponsored pension plans. All of them incorporate better harmonization of pension legislation. The options explored are: 1) one law, one regulator; 2) a model law across Canada with multiple regulators; 3) multiple jurisdictional laws with one regulator; and 4) multiple jurisdictional laws with multiple regulators. The author notes that a single law and regulator is the most efficient approach to address the uniformity issue, but may also require the resolution of constitutional issues.

Inadequate private pension coverage leaves a gap to be filled, and many experts have suggested expanding the role of governments in response. Those who believe that voluntary and contractual approaches to employment-related retirement saving are better than government-sponsored solutions should push for greater uniformity of pension legislation and regulation in Canada.

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Canada has a very challenging regulatory environment for pension plans, particularly for those plans that cover employees across the country. The administrative burden involved in providing pension coverage in multiple jurisdictions is among the factors that have led many actual or potential pension plan sponsors to consider whether it is worthwhile providing tax-effective opportunities for employees to accumulate pensions.¹

This *Commentary* sets out the genesis of that situation and explores options for improving the regulatory environment, as well as potential consequences if we fail to do so.

The alternatives explored in this paper include moving to a system of one national pension law with one regulator, implementing a model law across Canada with multiple regulators, keeping our multiple jurisdictional laws but with one regulator, or maintaining our multiple jurisdictional laws with multiple regulators.

Why Does it Matter?

Why should Canadians be concerned if the number of registered pension arrangements is reduced due to current onerous, complex and non-uniform pension legislation?

A recent OECD study offers one reason why Canadians should do all they can to preserve and promote a private pension system. The report, *Reforming Retirement Income Systems: Lessons from Recent Experiences of OECD Countries*,

argues that private pensions have a growing role to play in providing incomes in old age, particularly in those countries where public pensions are low for middle- and high-income earners and where there are no mandatory private pensions to supplement public pensions.

Canada is among 11 countries identified, along with the United Kingdom and the United States, whose income replacement rate for an average earner showed a sizable gap (from about 6 to 28 percentage points) between what the mandatory system provides and the OECD average replacement rate of 58.7 percent.² For Canada, the gap is about 20 percent. In other words, the average Canadian worker can expect a public pension to replace a far smaller share of income than the average OECD worker.

We need to promote healthy and well-run private pension plans, not discourage their creation and continuance, if we are to effectively close this gap. In its conclusions, the *Commentary* warns against complacency in the face of the tough decisions needed to sustain an appropriate mix of public and private pension systems.

The most important issue for Canadians facing the challenges of potentially inadequate retirement income is the lack of private pension coverage. Over 60 percent of working Canadians do not have private pensions sponsored by their employer.³ Discontent over inadequate private coverage has inspired some radical suggestions for reform such as:

- (1) expanding the Canada Pension Plan by raising the level of the defined benefit or by introducing a new CPP defined-contribution component (mandatory or voluntary); or
- (2) establishing a supplementary national mandatory system as found in Australia and Norway that would remove the need for most basic employment-related pension plans.⁴

Acknowledgements go to Pauline Chung and Priscilla Healy for their valuable advice and counsel on preparing this paper. I would also like to thank members of the Pension Advisory Panel for their helpful suggestions and comments on earlier versions of the paper.

- 1 Other disincentives include funding and pension expense volatility for defined-benefits plans, along with legal/governance risks.
- 2 Martin and Whitehouse (2008), pp. 14-18; Accessed at <http://www.oecd.org/dataoecd/58/3/40962388.pdf>
- 3 See Statistics Canada, "Proportion of labour force and paid workers covered by a registered pension plan (RPP)." Accessed at <http://www40.statcan.gc.ca/l01/cst01/labor26a-eng.htm>
- 4 Ambachtsheer (2008).

History and Current Status

There are two levels of jurisdiction that govern private and public pension plans in Canada – tax and minimum standards. Generally, the federal level deals with tax deferral/tax shelter limits, while provincial jurisdictions establish minimum standards for design, funding, communications and administration. However, some employees fall under federal jurisdiction (e.g., employees of banks, communications companies and other businesses included under the *Federal Pension Benefits Standards Act*), for minimum standards as well.

While tax legislation affecting pension plans has evolved over time, all pension plans are covered by the same federal tax rules. There is, however, no such uniformity in minimum standards regulation. Provinces have developed their pension legislation at different times and with different provisions – sometimes very different provisions – even for employers whose operations are national in scope. Unlike the situation in other countries, such as the United States and the United Kingdom, Canada's Constitution has given authority over pension standards to subnational jurisdictions, rather than having a national standard. A key complicating factor in subnational regulation is that different aspects of pension policy tend to fall under different ministries – principally finance, labour and justice – that have different constituencies, priorities and expertise.

Jurisdictional legislation and regulations have been enacted in Canada over a very broad period of time (1965 to 1993) and one province, P.E.I., has not yet enacted legislation. The first jurisdiction to establish minimum pension standards was Ontario in 1965, with several other provinces following suit in the latter part of the 1960s. British Columbia and

the Atlantic provinces did not move forward with legislation until the late 1980s and early 1990s. In the spring of 1981, the federal government hosted a national pension conference which gave impetus to reform. Most of the provinces made subsequent changes to their legislation with the most significant reform wave coming in 1987 when many provincial pension acts were updated to improve participants' access to, and security of, benefits. For example, most provinces shortened the period of employment required before benefits vest. Surprisingly, however, given this similarity of focus, no jurisdiction took the opportunity to harmonize its standards with those of others.

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FAILED HARMONIZATION EFFORTS: The most significant effort to effectively harmonize pensions came in the mid-1970s when the Canadian Labour Congress pushed for expanding the Canada Pension Plan. Its proposal would have eliminated the need for most private plans, thereby addressing the issue of the non-uniformity of private pension legislation. However,

this initiative was strongly opposed by the private sector. The resulting debate gave rise to formal studies of pensions and the retirement income system in general by the federal government and a number of provinces.

Federal and provincial regulators established the Canadian Association of Pension Supervisory Authorities (CAPSA) in 1974 in an attempt to address the Canadian patchwork quilt of legislation. CAPSA is "a national inter-jurisdictional association of pension supervisory authorities whose mission is to facilitate an efficient and effective pension regulatory system in Canada. It discusses pension regulatory issues of common interest and develops policies to further the simplification and harmonization of pension law across Canada."⁵

Another noteworthy attempt at harmonization came just prior to the reform of the *Ontario Pension*

5 CAPSA website: <http://www.capsa-acor.org>

Benefits Act in 1987, when Larry Grossman, then Treasurer of Ontario, led a concerted effort to reach a federal-provincial accord on private pension reform. While he helped achieve consensus on the general direction of private pension reform, there was little agreement on details – the level that affects day-to-day pension administration and regulation.

POST-'87 DISARRAY: Even if harmonization had been achieved, post-harmonization divergence would have always been a risk. Since that time, while legislation has been amended periodically to address various regional concerns, it has not been subject to broader reforms, including any effort to achieve greater uniformity. In fact, most of the legislative and regulatory changes that have occurred since 1987 have exacerbated the disharmony across the Canadian pension scene.

The Appendix summarizes key differences in legislation and regulations in the various jurisdictions.⁶ From the perspective of actual or potential plan sponsors, most of the differences are immaterial to achieving a “win-win” compensation package with employees. However, they pointedly demonstrate the increased administrative burden of plan sponsorship. Other countries such as the United States and the United Kingdom have not permitted their pension standards legislation to become so diffused. On the contrary, both have a single act of legislation and one regulatory body to govern pension plans, which helps to ensure a more efficient and effective regime.

There has been little progress in getting jurisdictions to consider uniformity when introducing new legislation and regulations. A sample of disharmonies that have persisted or have become worse over that period include:

- Introduction of the “grow-in” rule in Ontario and Nova Scotia that applies in the event of a partial or full plan wind-up. In such a case, employees whose age plus service equals at least 55 are entitled to the same benefits they would have received under the plan, had it continued. While Nova Scotia has this

grow-in provision in their legislation today, the government’s Pension Review panel earlier this year recommended its elimination.

- Prohibition of benefit reductions in hybrid multi-employer plans in Quebec – even where collective agreements provide for them – while other provinces allow such reductions.⁷
- Varying rules on the time-periods before benefits vest. In some jurisdictions it is two years of membership in the plan; in others it is two years of membership or continuous service, while one jurisdiction (Quebec) has immediate vesting.
- Varying treatment for pension splitting on marital breakdown. Some jurisdictions split benefits on the basis of termination value at the time of breakdown; others base the split on accrued benefits at retirement, while some simply defer to the courts.
- Differing definitions of common-law spouse. Cohabitation requirements for recognizing spouses vary from one to three years. Other criteria differ among provinces as well.
- Elimination of partial wind-ups in Quebec while all other jurisdictions still allow them.
- A failed attempt to standardize rules for the conversion of lump-sum pension balances to life income funds. CAPSA was unable to coordinate this relatively simple concept.
- Differing requirements for the establishment of pension committees with administrative oversight for plans.
- Differing approaches to the use of letters of credit to cover pension deficits.
- Differing small-benefit commutation rules for those terminating employment with only a small vested benefit.

SMALL VICTORIES: There have been small steps to in the right direction, however. The most significant achievements of CAPSA have been: (1) promoting and participating in the successful development and introduction of Capital Accumulation Plan (CAP)

⁶ Standard Life Summary of Pension Legislation January 1, 2009.

⁷ See Martin Rochette, “Employers Beware: MEPP Sponsors with Quebec Members May be in for a Few Surprises in Light of the Pension Funding Crisis,” *Benefits Canada*, May 2009.

guidelines by the Joint Forum of Market Regulators; (2) developing model law principles on “non-contentious” issues; and (3) developing a new multilateral agreement in 2008 that would establish rules for dealing with multi-jurisdictional plans. The proposed agreement was released for public comment prior to presentation to the provincial/federal ministers responsible for pensions.

These initiatives are laudable. They have, however, done little to move Canada closer to uniformity of regulation. Legislation and regulatory redrafting in the various jurisdictions has not achieved the CAPSA goal of an efficient and effective Canadian pension regulatory system.

What’s Wrong With This Picture?

It is unsurprising that the various Canadian pension jurisdictions are trying to meet the expectations of their constituents. When advocating changes that directly or incidentally affect pensions, those constituents naturally argue that the proposed changes are of material benefit to plan beneficiaries. However, this is often not the case. For example, the differences in the definition of spouse across Canada (see Appendix) seem unlikely to affect the likelihood that a given employer will conclude a mutually satisfactory compensation arrangement with a particular group of employees. Yet these small differences, cumulatively, threaten the very fabric of national private pension coverage. These differences are like many loose threads in the regulatory structure that may easily unravel under stress.

The key impact of cross-jurisdictional legislation and regulatory differences is the administrative effort and cost that is created for plan sponsors who have employees across Canada, particularly sponsors of defined-benefit plans. In addition to the costs to governments and, therefore, to taxpayers, this complexity creates additional expenses for human

resources, consultants, legal advice, accounting work and information technology. While the heterogeneity of these costs makes tallying them challenging, an estimate a decade ago put them at as much as \$1 billion annually⁸ and they would have grown substantially since then.

From my experience as an administrator and as a participant in a national defined-benefit pension plan, I have learned that Canada’s myriad differences create confusion as well as perceptions of inequity and distrust among employees who belong to these national plans. The truth is that plan members across jurisdictions are not treated uniformly or, arguably, fairly vis-à-vis each other. Employers

sponsoring these plans, moreover, face a higher risk of administrative error and legal challenges when confronted with dissonant rules or, potentially worse, rules that appear similar but have differences that may become apparent only in a courtroom.

These differences make a new employer or existing employers

with employees in more than one province less able or willing to take on the additional burden of non-uniform pension legislation. Particularly, this situation makes it less likely that an employer will establish a registered plan (either defined benefit or defined contribution). Alternatively, employers may establish other means of retirement savings where such regulatory burdens do not exist, such as group RRSPs (Registered Retirement Savings Plans), TFSAs (Tax-Free Savings Accounts), or even cash in lieu of a pension plan. This reluctance to establish registered plans seems to be a likely factor behind the decline in registered plan membership among private-sector workers in Canada.

As noted, defined-benefit plans, in particular, already face significant and rapidly increasing challenges due to funding concerns, risk asymmetry and legal issues. Since most private-sector employers are not in the pension business, it is unreasonable to

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national plans.**

⁸ Cohen (1999).

expect them to provide plans that are cumbersome to administer, require the dedication of significant internal resources and create legal and compliance risks. Existing plan sponsors may even choose to wind up their registered plan rather than face these daunting challenges. The regulatory complexity only exacerbates the problem. In and of itself, the lack of uniformity may not be the sole cause of such a decision, but it may end up being the proverbial “straw that breaks the camel’s back.”

Is There A Better Way?

There are a number of possible ways out of the box that characterizes Canada’s regulatory structure. By juggling the responsibilities for legislation, regulation and enforcement, we can arrive at a number of different combinations worth considering. Should the number of laws or regulators be limited, or both? What are the implications of such changes, and how easy would they be to achieve?

The following alternatives are proposed for consideration.

1. One Law/One Regulator

Canada would institute one piece of pension legislation, similar to the US *Employee Retirement Income Security Act*, bringing together the most representative elements of existing jurisdictional legislation. In addition, there would be one national regulatory body to supervise pension plans, possibly with staff in each province. One suggestion is that this role could be assumed by the Office of the Superintendent of Financial Institutions, which currently maintains the *Pension Benefits Standards Act* for employers in “included employment” under federal legislation.

From the perspective of actual or potential pension plan sponsors, this alternative would be the most logical and cost effective. However, it may be the most difficult of all the alternatives to achieve politically. The provinces’ vigorous defence of their primacy in pension matters under the Canadian Constitution may be a significant barrier to

successfully implementing this alternative. (It is of note that provincial resistance has stymied efforts to achieve a single or even uniform securities law, notwithstanding the powerful arguments and cogent reports recommending this route.)⁹

Still, now that the freer movement of labour within Canada is attracting more emphasis, perhaps compensation and, in particular, pensions will also emerge as an issue worth national attention. Further, with the recent release of the Report of the Joint Expert Panel on Pension Standards from British Columbia and Alberta,¹⁰ it is both refreshing and encouraging to see the respective provinces’ ministers of finance recommending that their governments fix and harmonize pension standards legislation. In fact, the BC/Alberta report goes on to urge both governments to work toward the establishment of a joint pension regulator that would administer resulting harmonized statutes. The report also champions a national council of ministers responsible for pensions that would have a mandate to consider the viability of harmonized or uniform pension standards across the country and a single national regulator.

2. Model Law across Canada with Multiple Regulators

Under this alternative, Canada would maintain the current regulatory structure, but the various jurisdictions would align their legislation with a “model law” design to be developed and championed by CAPSA. CAPSA introduced model law principles in June 2005, sought stakeholder input on these principles over the subsequent nine months and, as noted earlier, recently introduced a proposed model law for adoption by the various jurisdictions. Revealingly, this model law deals only with “non-contentious” issues such as eligibility for plan membership, vesting and portability of pensions, leaving alone many other areas of non-uniformity.¹¹ While CAPSA has done significant work and should be congratulated for developing these principles, the contentious issues not

⁹ See www.investorvoice.ca.

¹⁰ See the full report at www.ab-bc-pensionreview.ca/

¹¹ See Report on CAPSA’s work on “Regulatory Principles for a Model Pension Law” at www.capsa-acor.org/capsa-newhome.nsf

addressed, such as grow-in and funding flexibility, are very problematic for multi-jurisdictional defined-benefit plan sponsors. CAPSA does not have a mandate to resolve these issues, so the solutions most likely lie in attracting national, political-level engagement.

Even if the concept of a model law is accepted by the jurisdictions, it will be difficult over time to prevent provinces or the federal government from making changes that move away from the model law as monitored and promoted by CAPSA. Post-model-law divergence looms as a very large risk.

3. Multiple Jurisdictional Laws/One Regulator

This alternative would maintain the current structure of multiple acts of pension legislation, but under the supervision of one national regulator – for example, the federal Office of the Superintendent of Financial Institutions. At the same time, multilateral agreements, including the proposed multilateral agreements recently reviewed and revised for provincial adoption by CAPSA,¹² would remain in place to ensure some consistency in the application of legislation for national employers. Such agreements do need clarification, as there have been legal challenges by some jurisdictions regarding their scope and applicability.¹³

As the long saga of attempts to create a national securities regulator shows, implementing a single pensions regulator in Canada is likely to be just as difficult. CAPSA's proposed new multilateral agreement for a coordinated, simplified and harmonized pension regulatory system¹⁴ is a step toward a multi-jurisdictional/one-regulator model. While CAPSA is to be congratulated on this initiative, the proposed agreement – like its other initiatives – does not encompass some of the more

contentious issues such as grow-in. This agreement would also be very difficult to administer should changes in employment patterns change the jurisdiction that contains a plurality of plan participants. In the end, we cannot even be sure that it will be adopted by the various governments or that it will be uniformly applied.

4. Multiple Jurisdictional Laws/Multiple Regulators

The final alternative set out in this paper maintains the current structure of multiple laws supervised by multiple regulators, but would augment it with CAPSA-sponsored guidelines and rule-making authority for regulators to increase and maintain uniformity. However, rule-making authority entails the possibility of movement away from uniformity rather than towards it. Guidelines, similar to CAPSA's Pension Governance Guidelines and Self Assessment Questionnaire as well as its Guidelines for Capital Accumulation Plans,¹⁵ should be created and adopted to discourage such tendencies. This type of authority for jurisdictional regulators could be effective in enabling them to reach agreements without another level of political pressure.

The Securities Parallel

There are a number of ways in which uniformity of legislation and regulation of pensions in Canada can be moved forward.

In securities regulation, there are examples of success in establishing multi-jurisdictional/multi-regulatory environments that could be incorporated into the last three alternatives in the previous section. The first is rule-making authority, where regulators have the power to establish certain types of rules without requiring

12 [http://www.capsa-acor.org/capsa-newhome.nsf/257bb0033af16a0a85256c1a00754637/63170903b0c01418852574e9004ce49c/\\$FILE/Consultation%20Package%20for%20Proposed%20Agreement_Oct_21_2008_EN.pdf](http://www.capsa-acor.org/capsa-newhome.nsf/257bb0033af16a0a85256c1a00754637/63170903b0c01418852574e9004ce49c/$FILE/Consultation%20Package%20for%20Proposed%20Agreement_Oct_21_2008_EN.pdf)

13 For example, the Leco case involving a pension plan wind-up in Quebec and several other provinces in 1987 prior to the introduction of Ontario's 1991 member consent-based surplus withdrawal rules became a jurisdictional dispute between the Quebec and Ontario pension regulators. See www.osler.com/resources.aspx?id=7938#2

14 CAPSA Proposed Agreement Respecting Multi-Jurisdictional Pension Plans; [http://www.capsa-acor.org/capsa-newhome.nsf/257bb0033af16a0a85256c1a00754637/63170903b0c01418852574e9004ce49c/\\$FILE/Consultation%20Package%20for%20Proposed%20Agreement_Oct_21_2008_EN.pdf](http://www.capsa-acor.org/capsa-newhome.nsf/257bb0033af16a0a85256c1a00754637/63170903b0c01418852574e9004ce49c/$FILE/Consultation%20Package%20for%20Proposed%20Agreement_Oct_21_2008_EN.pdf)

15 See [http://www.capsa-acor.org/capsa-newhome.nsf/4a5938dfa169be3285256c1a00752c5d/bbe9515c561d349485256e91004f5e64/\\$FILE/Guideline%20Number%203.pdf](http://www.capsa-acor.org/capsa-newhome.nsf/4a5938dfa169be3285256c1a00752c5d/bbe9515c561d349485256e91004f5e64/$FILE/Guideline%20Number%203.pdf)

legislative changes. This approach has been used effectively in securities regulation since 1995.

Another example from the securities world that is applicable to the pension regime is its “passport” system, which has been a major step in improving the securities regulatory system by providing market participants with a single window of access to Canadian capital markets. The passport system, introduced in 2005, has been described as a free-trade agreement based on mutual recognition of regulatory systems. Regulators implemented phase one of the passport system through rules and policy changes, but the reform was limited by a lack of harmonized legislation. Since 2005, the passport jurisdictions have implemented large volumes of harmonized securities legislation (entirely new Securities Acts in several jurisdictions) designed to support phase two and to complement uniform instruments being developed by the Canadian Securities Administrators (CSA).¹⁶

By way of comparison in the pension field, the January 2009 Pension Review Panel report submitted to the government of Nova Scotia went further by recommending the relegation of all Nova Scotia jurisdiction rules to the province where the plan is registered; in other words a form of “passport” system.¹⁷

Prospects and Next Steps

In 2007 and 2008, several expert pension commissions (in Ontario, Alberta/British Columbia and Nova Scotia) considered the problems of registered pension plans in Canada.¹⁸ While all three reports have been released for public comment, it is unclear whether the work of these expert commissions will help or hinder efforts to resolve the pension-legislation uniformity issues that plague Canada. On one level, these commissions seem to be a logical forum for such issues to be raised, but it is clear that the issue of national employers with

employees across Canada has not received the appropriate attention, given the provincial focus of these commissions. On an optimistic note, the Alberta/B.C. study understood the efficiencies of establishing identical pension acts with one regulator, at least in that region. For its part, the Nova Scotia Pension Review Panel report recommended the relegation of all Nova Scotia jurisdiction rules to the province where the plan is registered.

Meanwhile, a federal pension review is being finalized. Notably, the review’s public discussion paper from the federal department of finance did not invite comment on regulatory harmonization, likely reflecting Ottawa’s caution about appearing to infringe on provincial authority. However, Finance Minister Jim Flaherty recently asked his parliamentary secretary, Ted Menzies, to form a Research Working Group comprised of finance ministers from British Columbia, Alberta, Saskatchewan, Ontario and Nova Scotia. While the group’s mandate is unclear at the time of writing, it may be cause for hope that pension coverage for those not in pension plans and harmonization of legislation will be topics of discussion.

To solve a significant problem of this nature requires three things – focus, capability and will. The focus exists – the problem is well-identified. The capability is there – both the technical and professional skills to fix the system exist. What is lacking is the will, particularly the political will, to solve the problem. Each of the alternatives set out here requires different levels of political will.

A single law and regulator is the most efficient approach to address the uniformity issue, but that approach may require resolution of constitutional issues. Is this realistic? Perhaps a national body could create the requisite momentum for national regulation and achieve the buy-in required from political actors.

Another potential solution is a standing federal-provincial committee on pensions where each province’s seat is occupied by a different minister or

16 For more on the Provincial-Territorial Securities Initiative, see www.securitiescanada.org

17 <http://www.gov.ns.ca/lwd/pensionreview/>

18 OECF (Ontario Expert Commission on Pensions); <http://www.pensionreview.on.ca/english/JEPPS> (Joint Expert Panel on Pension Standards) ; <http://www.ab-bc-pensionreview.ca/> and the Nova Scotia Pension Review Panel; <http://www.gov.ns.ca/lwd/pensionreview/>

deputy minister, depending on which aspect of pension legislation is being addressed. Hopefully, this may be an outcome of the Menzies Research Working Group.

Conclusion

There are many reasons to be discouraged about Canada's potential success in resolving the pension legislation non-uniformity issue. Most of the progress to date in addressing the non-uniformity of pension legislation has been minor and cosmetic. When there has been any opportunity to seek a harmonized solution to a new or contentious regulatory issue (e.g., letters of credit, phased retirement, solvency funding), there has been little or no success.

National single-employer pension plans in Canada are at a very fragile juncture. Definitive action is required that will enable these plans to grow and to address the issue of inadequate pension coverage. Alberta and British Columbia have shown that it is possible to make pragmatic suggestions for serious reform. Other provinces and Ottawa need to follow suit. In the alternative, the gap in coverage will need to be filled by expanding the Canada Pension Plan and/or the creation of national or provincially sponsored megaplans.

Canadians who believe that voluntary and contractual approaches to employment-related retirement saving are better than government mandates should push for more harmonization—preferably a single national pension law and regulator.

Appendix: Key Differences in Canadian Pension Legislation

(Excerpted from Standard Life Canada's Summary of Pension Legislation, January 1, 2009)

	Vesting	Employee Excess Contributions	Cash availability at termination of employment
<i>Federal Pension Benefits Standards Act, 1985</i> Original: Oct. 1, 1967 Reform: Jan. 1, 1987	Benefits accrued from 01/10/67 to 31/12/86: Age 45 plus 10 years of continuous service or plan membership. Post-1986 benefits: two years of continuous plan membership.	<ul style="list-style-type: none"> Used to increase pension or to purchase an immediate or deferred life annuity. Transferred to: another pension plan, a locked-in RRSP or a LIF. 	<p>Plan may provide for refund of:</p> <ul style="list-style-type: none"> a) 25% of commuted value of deferred pension (pre-1987 benefits); and b) commuted value of pension if total annual pension is less than 4% of YMPE. <p>Plan may provide for the unlocking of pension funds in cases of disability likely to shorten considerably life expectancy.</p> <p>Members and former members may commute locked-in pension funds if they have ceased to be residents of Canada for at least two calendar years (provision does not have to be in the plan text).</p>
<i>British Columbia Pension Benefits Standards Act</i> Original: Jan. 1, 1993 Reform: N/A (make clear whether not available or not applicable; if first, why not; if second, no need to mention.)	<ul style="list-style-type: none"> two years of continuous plan membership with respect to all years of membership. Locking-in applies to post-1992 benefits only. 	<ul style="list-style-type: none"> Reimbursed. Used to increase pension or to purchase a deferred life annuity. Transferred to: another pension plan, an RRSP or a RRIE. 	<p>Plan must provide for refund of: commuted value of pension if monthly pension is less than 1/12 of 10% of YMPE or if commuted value of pension is less than 20% of YMPE.</p> <p><i>Defined Contribution Plans only:</i></p> <p>Annuitants age 65 and older may commute their pension rights (including LIF & locked-in RRSP funds) if total value is less than 40% of YMPE (spousal consent required, where applicable).</p> <ul style="list-style-type: none"> Members, former members, their spouses or surviving spouses may commute locked-in pension funds held under pension plans (if plan permits), locked-in RRSPs and LIFs, if absent from Canada for two years or more and have become non-resident. Spousal consent required, where applicable. Plan may provide for the unlocking of pension funds in cases of disability likely to shorten considerably life expectancy. Spousal consent required, where applicable.
<i>Alberta Employment Pension Plans Act</i> Original: Jan. 1, 1967 Reform: Jan. 1, 1987	Benefits accrued from 1967 to 1986: Age 45 plus 10 years of continuous service. Benefits accrued from 1987 to 1999: five years of continuous service. Post-1999 benefits: two years continuous plan membership.	<ul style="list-style-type: none"> Reimbursed. Used to increase pension or to purchase a deferred life annuity. Transferred to: another pension plan, an RRSP or a RRIE. 	<p>Plan may provide for refund of:</p> <ul style="list-style-type: none"> a) 25% of commuted value of deferred pension (pre-1987 benefits); and must provide for b) commuted value of pension if annual pension* is less than 4% of YMPE or if commuted value of pension* is less than 20% of YMPE. <ul style="list-style-type: none"> Unlocking of pension funds possible in cases of terminal illness or a disability likely to shorten life expectancy considerably. Non-resident members and non-resident spouses upon member's death are entitled to commutation of locked-in pension funds. Members age 50 and over are allowed to unlock up to 50% of locked-in funds prior to transferring to a LIF, an annuity or a DC RIA. Spousal consent required, where applicable. <p>Excluding the refund made in a) above.</p>
<i>Saskatchewan The Pension Benefits Act, 1992</i> Original: Jan. 1, 1969 Reform: Jan. 1, 1993	Benefits accrued from 1969 to 1993: Age + service/plan membership = 45 (Minimum: one year of continuous service or plan membership). Post-1993 benefits: Two years of continuous service.	<ul style="list-style-type: none"> Reimbursed. Used to increase pension or to purchase a deferred life annuity. Transferred to: another pension plan, an RRSP or a RRIE. 	<p>Plan may provide for refund of:</p> <p>commuted value of pension if annual pension is less than 4% of YMPE or if the commuted value of pension is less than 20% of YMPE, in the year in which the payment occurs.</p> <p>Pension Plan assets as well as LIRA, LIF and LRIF assets may be commuted to cash if the member or former member has a condition that is likely to considerably shorten that person's life expectancy.</p>
<i>Manitoba Pension Benefits Act</i> Original: July 1, 1976 Reform: Jan. 1, 1984	Benefits accrued from 01/07/76 to 31/12/84: 10 years of continuous service or plan membership; fully locked-in at age 45 plus 10 years of continuous service or plan membership. Post-1984 benefits: two years of continuous plan membership or continuous service.	<ul style="list-style-type: none"> Reimbursed. Used to increase pension. 	<p>Plan may provide for refund of: 25% of commuted value of deferred pension (pre-1985 benefits); and</p> <ul style="list-style-type: none"> b) Plan shall provide for refund of: commuted value of pension if annual pension* is less than 4% of YMPE or if commuted value of pension* is less than 4% of YMPE. <p>Plan may provide for the unlocking of pension funds in cases of disability likely to shorten considerably life expectancy. Spousal consent required, where applicable.</p> <p>* Excluding the refund made in a) above.</p>
<i>Ontario Pension Benefits Act</i> Original: Jan. 1, 1965 Reform: Jan. 1, 1987	Benefits accrued from 1965 to 1986: Age 45 plus 10 years of continuous service or plan membership. Post-1986 benefits: two years of continuous plan membership.	<ul style="list-style-type: none"> Reimbursed. 	<p>Plan may provide for refund of:</p> <ul style="list-style-type: none"> a) 25% of commuted value of deferred pension (pre-1987 benefits); and b) commuted value of pension if total annual pension is less than 2% of YMPE. <p>Plan may provide for the unlocking of pension funds in cases of disability likely to shorten considerably life expectancy (i.e. two years or less). Spousal consent required, where applicable.</p>

Appendix: Key Differences in Canadian Pension Legislation

(Excerpted from Standard Life Canada's Summary of Pension Legislation, January 1, 2009)

Vesting	Employee Excess Contributions	Cash availability at termination of employment
<p><i>Quebec Supplemental Pension Plans Act</i> Original: Jan. 1, 1966 Reform: Jan. 1, 1990</p>	<ul style="list-style-type: none"> Used to increase pension or to purchase a life annuity. Transferred to: another pension plan, a LIRA or a LIF 	<p>Plan must provide for refund of: value of benefits if it is less than 20% of YMPE. Members who no longer are active members (i.e., employment has terminated), and cease to live in Canada for two years or more, are entitled to a refund of the value of their benefits. Plan may provide for the unlocking of pension funds in cases of disability likely to shorten life expectancy.</p>
<p><i>New Brunswick Pension Benefits Act</i> Original: Dec. 31, 1991 Reform: N/A[ditto]</p>	<ul style="list-style-type: none"> Reimbursed. Transferred to: another pension plan, an RRSP or a RRIIF <p>Pre-Dec. 31, 1991 benefits: No requirement. Locking-in at the same time as vesting. Note locking-in on 31/12/91 if entitled to a deferred pension before 31/12/91. Post-Dec. 31, 1991 benefits: five years of continuous service or two years of continuous plan membership beginning on or after Jan. 1, 2001.</p>	<p>Plan may provide for refund of: commuted value of pension if total value of the pension is less than 40% of the YMPE divided by 1.06 for each year the age of the member precedes age 65;</p> <ul style="list-style-type: none"> If plan permits, Defined Benefit Plan terminating members of retirement age may ask to transfer 25% of the commuted value of their pension into a RRIIF (once in a lifetime transfer). Foreign nationals can unlock funds* if the member and his/her spouse (if any) are not Canadian citizens or residents. A plan may provide for the unlocking of funds* in cases of significant physical or mental disability that considerably reduces life expectancy of the member or the former member. <p>* Spousal consent required, where applicable.</p>
<p><i>Nova Scotia Pension Benefits Act</i> Original: Jan. 1, 1977 Reform: Jan. 1, 1988</p>	<ul style="list-style-type: none"> Reimbursed. 	<p>Plan may provide for refund of:</p> <ol style="list-style-type: none"> 25% of commuted value of deferred pension (pre-1988 benefits); and commuted value of pension if annual pension* is less than 4% of YMPE or if commuted value of pension* is less than 10% of YMPE. <p>Plan may provide for the unlocking of pension funds in cases of disability likely to shorten considerably life expectancy.</p> <p>Defined Contribution Plan assets as well as LIRA and LIF assets may be unlocked at age 65 or older if total value is less than 40% of YMPE.</p> <p>* Excluding the refund made in a) above.</p>
<p><i>Prince Edward Island Pension Benefits Act</i> Original: The Act has not yet been proclaimed [is this still true; this chart more than 18 mos old?] (operative date = one year after coming into force) Reform: N/A</p>	<ul style="list-style-type: none"> Used to increase pension. <p>Pre-operative date: According to plan provisions. Post-operative date: three years of plan membership and five years of continuous service.</p>	<p>Plan may provide for refund of: commuted value of pension if annual pension is less than 2% of YMPE.</p>
<p><i>Newfoundland and Labrador Pension Benefits Act, 1997</i> Original: Jan. 1, 1985 Reform: Jan. 1, 1997</p>	<ul style="list-style-type: none"> Reimbursed. Used to increase pension or to purchase a life annuity. Transferred to: another pension plan, an RRSP or a RRIIF <p>Benefits accrued from 1985 to 1996: Age 45 plus 10 years of continuous service or plan membership. Benefits accrued after 1996: two years of continuous plan membership.</p>	<p>Plan may provide for refund of: commuted value of pension if annual pension is less than 4% of the YMPE or if commuted value of pension is less than 10% of YMPE. Plan may provide for the unlocking of pension funds in cases of disability likely to shorten considerably life expectancy. Spousal consent required, where applicable.</p>

Appendix: Key Differences in Canadian Pension Legislation

(Excerpted from Standard Life Canada's Summary of Pension Legislation, January 1, 2009)

	Normal Retirement	Postponed Retirement	Index of Defined Benefit Plans	Sex Discrimination	Definition of Spouse
Federal	Earliest age at which an immediate pension becomes payable to a member without reduction and without need of administrator's consent (pensionable age).	Membership must continue except if the member is receiving a pension.	Voluntary indexing of deferred pensions on the basis of increases of at least 75% of CPI less 1% or any other formula approved by OSFI (alternative to 50% rule).	Defined contribution plan: Discrimination prohibited. Defined benefit plan: Discrimination allowed.	The person who is married to the member or who is party to a void marriage with the member; or "Common-law partner": The person who is cohabiting with the member in a conjugal relationship at the relevant time, having so cohabited with the member for at least one year.
British Columbia	At the age or date (in relation to a prescribed age) determined by pension plan provisions.	Membership may continue except if the member is receiving a pension. Legislation still provides for age 69 as maturity age instead of age 71. However, the Superintendent of Pensions allows plan administrators to defer commencement of pensions until Dec. 31 of the year in which the member or former member attains age 71.	No requirement	Years of service before 1993: Discrimination prohibited. Years of service after 1992: Discrimination prohibited.	The person who: a) is married to the member and who was not living separate and apart from the member for more than two years immediately prior to the relevant time; or b) if the above definition does not apply, at the relevant time, was living and cohabiting with the member in a marriage-like relationship, including a marriage-like relationship between persons of the same gender, and who have been living and cohabiting in that relationship for a period of at least two years immediately preceding the relevant time.
Alberta	At the age or date (in relation to a prescribed age) determined by pension plan provisions.	Membership may continue except if the member is receiving a pension.	No requirement	Years of service before 1987: Discrimination allowed. Years of service after 1986: Discrimination allowed.	Pension "partner": a) The person who, at the relevant time, was married to another person and had not been living separate and apart from that other person for three or more consecutive years; or b) if there is no person to whom a) applies, the person who immediately preceding the relevant time, had lived with that other person in a conjugal relationship (i) for a continuous period of at least three years or, (ii) of some permanence, if there is a child of the relationship by birth or adoption.
Saskatchewan	At the age determined by pension plan provisions.	Membership may continue except if the member is receiving a pension.	No requirement	Years of service before 1993: Discrimination prohibited. Years of service after 1992: Discrimination prohibited.	The person who: a) is married to the member; or b) if the member is not married, has been continuously cohabiting with the member as his spouse for at least one year before the relevant time and who was still cohabiting with the member at the relevant time.
Manitoba	At the age determined by pension plan provisions.	Membership must continue.	No requirement	Years of service before 1984: Discrimination prohibited. Years of service after 1983: Discrimination prohibited.	The person who is married to the member; or "Common-law partner": The person who: a) with the member, registered a common-law relationship under <i>The Vital Statistics Act</i> ; or b) not being married to the member, cohabited with him or her in a conjugal relationship for a period of (i) at least three years, if either of them is married, or (ii) at least one year, if neither of them is married.
Ontario	No later than one year following 65th birthday.	Membership may continue except if the member is receiving a pension.	To be prescribed	Years of service before 1987: Discrimination allowed. Years of service after 1986: Discrimination prohibited.	The person who: a) is married to the member; or b) is not married to the member and who has been living with the member in a conjugal relationship continuously for a period of not less than three years, or who is in a relationship of some permanence if the person and the member are the natural or adoptive parents of a child, both as defined in the <i>Family Law Act</i> .
Quebec	No later than the first day of the month following the month in which the member reaches age 65.	Defined benefit pension is revalued. Membership is not required, but if contributions continue beyond normal retirement date, additional	Terminating members are entitled to an additional benefit, where applicable, for service after December 31, 2000, based on the value of the deferred pension which	Years of service before 1990: Discrimination required. Years of service after 1989: Discrimination required.	The person who: a) is married to, or in a civil union with, the member; or b) whether of the opposite sex or not, has been living in a conjugal relationship with the member, who is neither married nor in a civil union, for a period of not less than (i) three years or (ii) one year, if at least one child is born or is to

Appendix: Key Differences in Canadian Pension Legislation

(Excerpted from Standard Life Canada's Summary of Pension Legislation, January 1, 2009)

	Normal Retirement	Postponed Retirement	Index of Defined Benefit Plans	Sex Discrimination	Definition of Spouse
Quebec cont'd		pension must be provided. Payment of pension is allowed during postponement period under certain circumstances.	would otherwise be indexed from the termination date up to 10 years within normal pension age. This indexation is at the rate of 50% of the CPI (max. 2%, min. 0%).		be born from the relationship; or that person and the member have adopted together at least one child during their conjugal relationship; or that person or the member have adopted at least one child of the other during their conjugal relationship. The birth or adoption of a child during a marriage, a civil union or a period of conjugal relationship prior to the conjugal relationship in existence on the day as of which spousal status is established may qualify a person as a spouse.
New Brunswick	No later than one year following 65th birthday.	If allowed by plan, member-ship may continue except if the member is receiving a pension.	No requirement	Years of service before 31/12/91: Discrimination allowed. Years of service after 30/12/91: Discrimination prohibited.	The person who: a) is married to the member; or b) is married to the member by a marriage that is voidable and has not been annulled by a declaration of nullity; or c) in good faith, has gone through a form of marriage with the member that is void and who has cohabited with the member within the preceding year; or d) is not married to the member, but has cohabited with him or her (i) continuously for at least three years in a conjugal relationship, during which period one was substantially dependent upon the other for support, or (ii) in a relationship of some permanence, where there is a child born of whom they are the natural parents, and have cohabited within the preceding year.
Nova Scotia	No later than one year following 65th birthday.	Membership may continue except if the member is receiving a pension.	Mandatory indexing for deferred pensions according to formula to be prescribed.	Years of service before 1988: Discrimination allowed. Years of service after 1987: Discrimination prohibited.	The person who: a) is married to the member; or b) is married to the member by a marriage that is voidable and has not been annulled by a declaration of nullity; or c) in good faith, has gone through a form of marriage with the member that is void and who is cohabiting or, if they have ceased to cohabit, has cohabited with the member within the 12-month period immediately preceding the date of entitlement. "Common-law partner": The person who has cohabited with the member in a conjugal relationship for a period of at least two years, neither of them being a spouse. "Domestic partners": The persons who, together, have filed a valid domestic-partner declaration under the <i>Vital Statistics Act</i> of the province. They have the same rights and obligations as spouses for pension purposes.
PEI	No later than one year following 65th birthday.	Membership may continue except if the member is receiving a pension.	Voluntary indexing of deferred pensions on the basis of increases of at least 75% of CPI less 1% (alternative to 50% rule).	Years of service before operative date: Discrimination allowed. Years of service after operative date: Discrimination prohibited	The person who: a) is married to the member; or b) the person who is married to the member by a marriage that is voidable and has not been annulled by a declaration of nullity; or c) in good faith, the person who has gone through a form of marriage with the member that is void and who is cohabiting, or if they have ceased to cohabit, has cohabited with the member within the 12-month period immediately preceding the date of entitlement; or d) the person who has lived with the member as husband and wife for at least three years and who was still living with the member as husband and wife at the relevant time, provided that this person and the member were unmarried.
Newfoundland and Labrador	No later than 65th birthday	Member is entitled to continue membership. However, plan may provide for: - cease contributing and accruing additional benefits, and receipt of increased pension when commencing, taking into account the period the pension was not paid, to at least the actuarial equivalent of the pension accrued at normal retirement age; - commencement of pension while continuing to work with no further contributions nor additional benefits accrued;	No requirement	Years of service before 1997: Discrimination allowed. Years of service after 1996: Discrimination allowed.	"Spouse": The person who: a) is married to the member; or b) is married to the member by a marriage that is voidable and has not been annulled by a judgment of nullity; or c) in good faith, has gone through a form of marriage with the member that is void and who is cohabiting or has cohabited with the member within the preceding year. "Cohabiting partner": The person who is cohabiting or has cohabited with the member within the preceding year and has cohabited continuously with the member in a conjugal relationship for: (i) in relation to a member who has a spouse, at least three years, provided the person is not the spouse of the member; or (ii) in relation to a member who does not have a spouse, at least one year. These definitions do not apply in case of marriage breakdown.

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