June 2012

Flexibility Key to Revised *Pensions Benefits Standards Act*

Lisa Chamzuk

Employers and employees in B.C. will soon benefit from a long-awaited and wide-ranging overhaul to the *Pensions Benefits Standards Act* (PBSA). Significant changes to how pensions are structured and administered in B.C. have followed the passing of Bill 38 on May 31, 2012. The Bill repeals and replaces the PBSA, which has remained largely unchanged since it was first introduced in 1993.

These changes will greatly benefit businesses in the province by adding a level of flexibility to how pensions can be structured and removing much of the rigidity employers face in seeking to offer a pension plan to employees. These revisions provide employers with many more options in terms of structures and features that better reflect B.C.'s workforce and address the cost pressures employers face in terms of sponsoring pension plans.

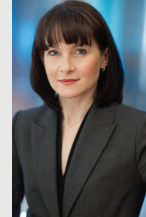
In the past, pension plans in B.C. had to be either "defined benefit," meaning that the benefit on retirement is defined and the employer has to contribute the amounts necessary to meet that promise, or "defined contribution" where the entire risk of investment loss was passed on to the employee. A more flexible structure that promised a particular benefit, but that permitted an amendment to that benefit if required because of funding pressures, called a "negotiated cost plan," was only available in certain, narrow circumstances.

One of the disadvantages of defined benefit pension plans is that they require the employers to make up any funding shortfalls during the life of the plan due to poor investment returns. Those payments can be debilitating for employers, particularly during difficult economic times. This type of plan makes the employer alone bear the risk of poor investment returns.

A defined contribution plan, on the other hand, shifts all of that investment return risk to the employees who simply get the value of the assets in their accounts as they exist at retirement. However, those accounts are often insufficient to fund a comfortable retirement. The new PBSA will introduce new plan structures and features that allow the employer and its employees to share the risk of poor investment returns and governance of the plan and to add safety valves into a plan if funding pressures arise.

One example of this added flexibility will be the availability of a target benefit provision, which can be added to any type of pension plan. A target benefit provision promises a benefit upon retirement. In this way, the provision resembles the classic defined benefit pension promise that can be such a useful tool in attracting and retaining employees, but which can be amended if required by funding concerns that arise for the plan. Currently, classic defined benefit provisions are incapable of being amended for service already provided, which imposes a heavy onus on the employer to fund that promise even when poor investment returns make it extremely difficult to do so. The target benefit provision creates a safety valve of sorts, which can help the employer ride out a period of poor investment returns.

The new PBSA will also allow a sponsor to create a solvency reserve account in a classic defined benefit pension plan. Historically, when special payments were needed to fund the benefits promised by the plan due to poor investment returns, employers



Lisa Chamzuk
604.631.6732
lchamzuk@lawsonlundell.com

would make those payments and the funds were inaccessible afterwards, even if the plan's funded position improved and the plan had an excess of funds. The new PBSA will allow sponsors to have a separate account into which those special payments can be paid, and from which excess can be withdrawn if appropriate.

In addition, there are some significant changes to the rules that set out how pension plans are to be administered. New policies such as the Governance Policy will be mandatory, and regular governance reviews or assessments will be required. These policies will lead to greater cooperation and increased transparency in terms of how pension plans are administered.

Although the changes will not take effect until 2013, the introduction of new options and requirements means that employers will need to consider carefully which plans are best suited to their businesses. For example, an employer that has traditionally avoided a defined benefit pension plan because it does not provide enough cost certainty, but who is dissatisfied with the retirement savings offered by a defined contribution pension plan or a group RRSP, should consider whether an employer-sponsored plan with a target benefit provision makes sense for its workforce. Similarly, an employer that has a defined benefit pension plan may wish to take advantage of the target benefit provision or add a solvency reserve account to give it some additional cost certainty and flexibility.

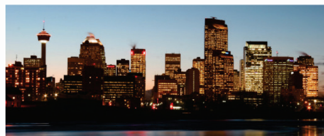
We are hopeful that the changes to the *Pensions Benefits Standards Act* will result in more employers offering their staff pensions which, in turn, will alleviate the economic pressures of an aging workforce looking towards retirement.

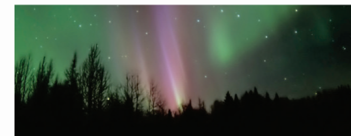
This article was published in BC HRMA's HRVoice.org on June 18, 2012. http://www.hrvoice.org/flexibility-key-to-revised-pensions-benefits-standards-act/

Lisa Chamzuk is a partner at Lawson Lundell practicing exclusively in the area of pension and employee benefits. She represents boards of trustees and corporate plan sponsors in both the public and private sector and in a wide variety of industries.

For more information please contact Lisa Chamzuk at 604.631.6732.

Lawson Lundell LLP is a British Columbia Limited Liability Partnership. The information contained in this update is for general information purposes only. If you require legal advice or further information, please contact one of the lawyers listed above.





Vancouver
Suite 1600, Cathedral Place
925 West Georgia Street
Vancouver, British Columbia
Canada V6C 3L2
(T) 604.685.3456
(F) 604.669.1620

Calgary
Suite 3700, 205-5th Avenue S.W.
Bow Valley Square 2
Calgary, Alberta
Canada T2P 2V7
(T) 403.269.6900
(F) 403.269.9494

Yellowknife
P.O. Box 818
Suite 200, 4915 – 48 Street
Yellowknife, Northwest Territories
Canada X1A 2N6
(T) 867.669.5500 Toll Free: 888.465.7608
(F) 867.920.2206