

# ONTARIO PENSION LEGISLATION: ALPHABET SOUP COMES TO QUEEN'S PARK

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Even though many decide that December is the time to focus on holiday festivities and other matters, Ontario legislators have been busy in early December on various initiatives, including new pension legislation. On December 8, 2014, the Government introduced both Bill 56 and Bill 57. If the legislation comes in effect, then in addition to CPP, Ontario residents will be potentially considering both Ontario Retirement Pension Plan (ORPP) and Pooled Registered Pension Plan (PRPP) alternatives.

Bill 56 establishes the ORPP. This is the mandatory Ontario version of the Canada Pension Plan. The ORPP would require all Ontario employers and employees to make equal contributions on earnings between a threshold and a maximum. The maximum earnings level is set by Bill 56 at \$90,000. The minimum threshold in the government's Consultation Paper released on December 16, 2014 is proposed to be \$3,500. The legislation contemplates the combined employer and employee contributions will be at a total amount not to exceed 3.8% of earnings.

The PRPP legislation in Bill 57 is Ontario's (reluctant?) tagging along with the Government of Canada scheme for PRPPs introduced in late 2010. PRPPs are not mandatory and are essentially defined contribution pension plans that are to provide lower cost management investment fees. The stated purpose of PRPPs is to be attractive to employers because the operation and administration of the plan is the responsibility of the financial institution. Under the PRPP structure, all that an employer is required to do is remit the contributions.

Participation in the ORPP will not be required if an individual participates in a "comparable workplace pension plan" which would be as determined under the final ORPP enactment legislation. While this looks to be a simple concept, this will be a case of the devil being in the detail, and should be of concern for employers.

The ORPP Consultation Paper identifies the comparable plan definition as one of three key plan design issues. The government's starting proposition is that defined contribution pension plans and group RRSPs are not comparable because even with contribution rates of at least 3.8% the benefit is not fixed, which is unlike the ORPP benefit. The Consultation Paper does recognize that employers who sponsor DC type plans will be forced to examine the future of such plans in their total compensation package. If defined contribution arrangements

are not comparable, any new employer PRPPs will not exempt employers and their employees from ORPP contributions. This of course then begs the question of why any employer would even consider operating a PRPP if such plans are ultimately trumped by the ORPP.

There are a number of political questions which are swirling about in Ontario and the announced pension changes touch on some of them. One key point of context is the strained relations between the current Ontario Premier and Canada's Prime Minister. There is also the challenging question of whether or not it is the role of government to "force" individuals to save more aggressively for retirement than they are currently doing. Added onto all of that is the various questions about what structure is most appropriate to achieve relevant policy objectives. While the exact outcomes are difficult to predict, particularly in light of the current uncertain political dynamic in Ontario and Canada, one modest thought is that Ontario's consultation sessions in early 2015 are likely to produce additional ideas, structures and acronyms before there is any settled consensus on the way forward.

by George Waggott and David Wentzell

#### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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