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VIA E-MAIL [FIN.Pensions-Pensions.FIN@canada.ca](mailto:FIN.Pensions-Pensions.FIN@canada.ca)

*Consultations and Communications Branch*  
Department of Finance Canada  
14<sup>th</sup> floor  
90 Elgin Street  
Ottawa, Ontario K1A 0G5

RE: **Consultations on Canadians' Unclaimed Pension Balances**

Dear Sirs/Mesdames:

## I. INTRODUCTION

We are pleased to provide this submission ("**Submission**") on the June 22, 2018 consultation paper entitled "Modernization of the Unclaimed Balances Regime and Proposals for an Unclaimed Pension Balances Framework" (the "**Consultation Paper**") and, in particular, to provide comments with respect to the proposal for an unclaimed pension balance framework as set out in Part 2 of the Consultation Paper (the "**Unclaimed Pension Balance Program**"). The Submission is made on behalf of the Pensions, Benefits & Executive Compensation Group ("**Pensions Group**") at Blake, Cassels & Graydon LLP ("**Blakes**"). The Pensions Group consists of lawyers in Toronto, Montreal, Calgary and Vancouver whose practices are devoted to pension, benefits and compensation law. The Pensions Group is supported by lawyers with pensions and benefits sub-specialties in the employment, corporate tax, litigation and securities law practice groups at Blakes.

We appreciate the opportunity to comment on the Consultation Paper. Our Submission has been made from the perspective of practicing lawyers in the pension law field. We are not writing on behalf of, or to express the views of, any client of Blakes. Nothing in this Submission is intended to express any legal opinion or legal interpretation of existing or proposed legislation.

Our comments are set out below.

## II. GENERAL

We strongly support the expansion of the Bank of Canada's program for unclaimed balances to include the holding of unclaimed pension balances, provided that there is no obligation on administrators to transfer money to the Bank of Canada's program for unclaimed balances and that the plan administrator would clearly receive a full statutory discharge with respect to all amounts transferred.

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We think that interest should be paid in certain circumstances, and will provide comments on search methods, public disclosure and tax withholding.

Our Submission is focused on specific questions and the proposed approach raised in the Consultation Paper.

### **Application to both Terminated and Ongoing Plans**

The Consultation Paper proposes to amend the *Pension Benefits Standards Act, 1985* (the “PBSA”) to make the Unclaimed Pension Balance Program available to terminated plans only and that consideration may be given to expanding the program to ongoing pension plans at a later date. The Pensions Group agrees that this proposed approach would relieve the pressure of unclaimed pension balances for terminated plans where the need is greatest. We also appreciate that this approach would permit the Bank of Canada to establish procedures for unclaimed balances for terminated pension plans before expanding to ongoing pension plans.

That said, we submit that it would be in the best interests of pension plan administrators and beneficiaries for the Unclaimed Pension Balance Program to be expanded to include ongoing plans when it becomes administratively feasible to do so. We agree with the Consultation Paper’s acknowledgment that ongoing plans may not be able to comply with requirements under the PBSA (such as sending annual statements) and the ITA (such as pensions commencing no later than the end of the calendar year in which the recipient reaches age 71) for unlocatable plan beneficiaries. Given changes in businesses such as mergers, sales of businesses, reorganizations, and name and location changes, plan beneficiaries may find it useful to have a permanent, government entity that is designated to hold unclaimed pension balances.

The Consultation Paper proposes that for terminated plans, after a termination report has been approved by the Superintendent of Financial Institutions (the “Superintendent”), a plan administrator could apply to the Superintendent to transfer pension benefit credits of unlocatable beneficiaries after the plan administrator has undertaken what it considers to be sufficient time and effort searching for unlocatable beneficiaries. It is the view of the Pensions Group that this approach should also apply to ongoing plans, i.e., administrators of ongoing should have the option of applying to the Superintendent to transfer pension benefit credits of unlocatable beneficiaries after the plan administrator has undertaken what it considers to be sufficient time and effort searching for unlocatable beneficiaries.

### **Transfer to the Unclaimed Pension Balance Program Should be Optional**

The Pensions Group agrees with the proposed approach set out in the Consultation Paper that the transfer of unclaimed pension balances to the Unclaimed Pension Balance Program should be at the option of the plan administrator. Plan administrators, particularly when the plan administrator is an employer, may have particular insight or knowledge as to circumstances of unlocatable beneficiaries or their circumstances and would be in the best position to determine an appropriate time to apply to the Superintendent to transfer pension benefit credits of unlocatable beneficiaries.

### **Clear Statutory Discharge**

The Consultation Paper indicates that “It is understood that terminated pension plans that transfer unclaimed pension balances to the designated entity would not retain any liability in respect of those balances under the PBSA.” It is our view that plan administrators would be reluctant to utilize the Unclaimed Pension Balance Program for unclaimed pension balances without a clear statutory discharge. We strongly urge that the PBSA be amended accordingly. A clear statutory discharge would also be consistent with the Consultation Paper’s statement that a plan transferring an unclaimed pension balance would no longer retain any liabilities in respect of the transferred balances.

### **Claiming Funds from the Designated Entity**

The Consultation Paper proposes that specified individuals be able to claim an unclaimed pension balance. The Pensions Group agrees with the specified individuals set out in the Consultation Paper, but also proposes that spouses or former spouses of the unlocatable beneficiary be able to claim in respect of divorce, annulment, separation or breakdown of common-law partnership, subject to applicable provincial property law (as defined in the PBSA).

### **Interest and Administration Fees**

We understand the trade-off that is proposed between not charging administration fees and paying interest. However, we are concerned that this is not equitable with respect to large balances. Instead, we would suggest similar to the two time periods for which amounts are held based on the size of the balance, there ought to be different treatment with respect to interest and fees based on the size of the balances.

### **Search Methods**

With respect to the Consultation Paper’s questions in Section 2.3, we would like to provide the following answers:

1. We have found internet searches, telephone database searches and private investigator searches to be effective search methods. We have found letter forwarding and government agencies to be of limited utility. Finally, we have found newspaper advertisements generally to be of limited utility in reaching plan members and beneficiaries and extremely expensive.
2. We think that one year is an appropriate minimum time to search for a plan beneficiary prior to having the balance transferred to the designated entity.

### **Disclosure of Information**

We would be concerned about the amount of information being disclosed, in particular the amount of the balances, unless there was a method to ensure that only someone who is authorized to receive that information, for example who has the social insurance number of the member, received that information.

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### Tax Withholding

We understand the simplicity of the tax withholding proposal but as the balances in issue represent retirement income we believe, again for perhaps only balances of a specified size, that they should be eligible to be transferred to a tax deferred vehicle and therefore that no tax withholding should occur when the balances are transferred to the designated entity. While such "tax sheltered" funds are being held by the designated entity, they could be subject to the registered retirement income fund withdrawal requirements. It would be very detrimental for members with significant balances not to have their retirement income tax sheltered in accordance with the retirement savings rules.

### Application to Provincially Regulated Pension Plans

While not discussed in the Consultation Paper, the Pensions Group strongly urges Finance Canada to work with provincial governments and pension regulators (e.g., through Finance Canada's participation in the Canadian Association of Pension Supervisory Authorities) to enable provincially registered pension plans across Canada the option of transferring unlocatable members' entitlements to the Bank of Canada. The issues identified in the Consultation Paper and the Submission would also apply generally to provincially regulated pension plans, particularly in provinces where there is currently no clear legal regime for the treatment of unlocatable pension beneficiaries. Therefore, the expansion of the Unclaimed Pension Balance Program would be of benefit broadly to Canadian pension plan beneficiaries and administrators.

The Pensions Group would be pleased to meet with Finance Canada to share our experience and expertise and to assist in the development of the Unclaimed Pension Balance Program.

Should you have any questions, please do not hesitate to call any member of our group.

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Yours very truly,

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