



THE CANADIAN
BAR ASSOCIATION
L'ASSOCIATION DU
BARREAU CANADIEN

September 29, 2017

Via email: fin.legislativereview-examenlegislatif.fin@canada.ca

Eleanor Ryan
Director
Financial Institutions Division
Financial Sector Policy Branch
Finance Canada
James Michael Flaherty Building
90 Elgin Street
Ottawa, ON K1A 0G5

Dear Ms. Ryan:

Re: Review of the Federal Financial Sector Framework – Second Consultation Paper

I am writing on behalf of the Canadian Bar Association's Pensions and Benefits Law Section (CBA Section) in response to Finance Canada's Second Consultation Paper, *Potential Policy Measures to Support a Strong and Growing Economy: Positioning Canada's Financial Sector for the Future*, released on August 11, 2017 (the Consultation Paper).

The CBA Section is pleased to comment on the "Unclaimed Balances" policy measure at page 24 of the Consultation Paper. We understand that Finance Canada is looking at modernizing the current Bank of Canada program and may be interested in whether there is support for extending this program to include unclaimed pension monies.

The CBA is a national association representing over 36,000 jurists, including lawyers, notaries, law teachers and students across Canada. We promote the rule of law, access to justice, effective law reform and provide expertise on how the law touches the lives of Canadians every day. The CBA Section contributes to national policy, reviews developing pensions and benefits legislation and promotes harmonization. Our members are involved in all aspects of pensions and benefits law, including counsel who advise pension and benefit plan administrators, employers, unions, employees and employee groups, trust and insurance companies, pension and benefit consultants, and investment managers and advisors.

Unclaimed Pension Monies

The CBA Section knows that administrators of pension plans registered in federal jurisdiction and in many provinces across Canada routinely face the question of how to deal with pension entitlements of former plan members who cannot be located. In most jurisdictions, including federally, there is no process for pension plan administrators to transfer these monies out of the plan. Only Alberta, British Columbia and Quebec have processes to deal with unclaimed pension monies and even these processes have their limitations.

The unclaimed pension monies issue can be particularly problematic where:

- (i) the pension plan is being wound up, in which case the wind-up may be delayed as a result of the inability to settle the missing members' entitlements under the plan; and
- (ii) the missing member reaches age 71 and the plan administrator is unable to comply with the *Income Tax Act* (Canada) requirement that the member's entitlements be transferred out of the pension plan no later than the end of the year in which the member reaches age 71.

The CBA Section has long advocated for governments and pension regulators to create a mechanism that would allow for missing members' entitlements to be transferred out of a pension plan while ensuring the security of those entitlements for the members' benefit. In 2013, the CBA urged the federal, provincial and territorial governments:

- (i) to create funds for unclaimed pension monies in their jurisdictions into which pension plans may deposit pension monies which remain unclaimed after the plans have exhausted reasonable efforts in locating the persons entitled to them; and
- (ii) to establish internet based tools through which former pension plan members and beneficiaries may search for unclaimed pension monies.¹

Since Finance Canada is considering modernizing the Bank of Canada's administration of unclaimed balances held by federally regulated banks and trust companies, the CBA Section believes this is an opportunity to consider expanding the scope of the Bank of Canada's authority to include holding monies of missing members transferred from registered pension plans.

We urge Finance Canada to make the necessary changes to the *Pension Benefits Standards Act, 1985* and its regulations to allow for these transfers. We further urge Finance Canada to work with provincial governments and pension regulators (perhaps through its participation in the Canadian Association of Pension Supervisory Authorities) to enable registered pension plans across Canada to have the option of transferring missing members' entitlements to the Bank of Canada. We suggest targeting jurisdictions where the possibility to remit unclaimed pension monies does not currently exist, while also supporting those jurisdictions with processes already in place. In conjunction with modernization of the Bank of Canada's unclaimed balances program, the option to remit unclaimed pension monies should include internet-based tools through which missing members would be able to search for their entitlements.

¹ Canadian Bar Association, *Resolution 13-01-M, Protecting Unclaimed Pension Monies* (February 17, 2013), available [online](http://ow.ly/z6br30fwL9a) (<http://ow.ly/z6br30fwL9a>).

The CBA Section would be pleased to meet with Finance Canada to share our expertise and to assist in the development of an appropriate framework to allow the Bank of Canada to hold missing plan members' pension entitlements and solve this difficult issue for pension plan administrators.

The CBA Section appreciates the opportunity to comment on the treatment of unclaimed pension monies. We trust that our comments are helpful and we would be pleased to provide any further clarification.

Yours truly,

(original letter signed by Gillian Carter for Elizabeth Brown)

Elizabeth Brown
Chair, CBA Pensions and Benefits Law Section

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encl.

Protecting Unclaimed Pension Monies

WHEREAS encouraging saving for retirement through pension plans is an important national issue, of concern to federal, provincial and territorial governments, public policy organizations and the public;

WHEREAS it is desirable to have a system of laws facilitating sound governance and efficient administration of pension plans and the payment of pension monies to plan members and beneficiaries;

WHEREAS many pension funds hold pension amounts for former plan members who cannot be located and who have often forgotten they are entitled to the amounts;

WHEREAS there is no efficient means for pension fund administrators to find these individuals or for the individuals to find out whether they are entitled to any amounts;

WHEREAS the federal government, through section 438 of the *Bank Act*, permits banks to deposit unclaimed deposits with the Bank of Canada after ten years of inactivity and authorizes the Bank of Canada to establish an internet-based tool to allow individuals to search for inactive accounts;

Protéger les prestations de retraite non réclamées

ATTENDU QUE le fait d'encourager l'épargne retraite au moyen de régimes de retraite constitue un enjeu important pour les gouvernements fédéral, provinciaux et territoriaux, les organismes chargés d'élaborer les politiques publiques et les membres du public;

ATTENDU QU'il est souhaitable de mettre en place un régime juridique qui faciliterait la bonne gouvernance et l'administration efficace des régimes de retraite et du versement des prestations de retraite aux participants et bénéficiaires de régimes de retraite;

ATTENDU QUE de nombreuses caisses de retraite détiennent des sommes d'anciens participants de régimes de retraite qui sont introuvables ou qui, souvent, ont oublié qu'ils ont droit aux sommes en question;

ATTENDU QU'il n'existe aucun moyen efficace pour les administrateurs de régimes de retraite de retrouver ces individus, ni pour ces derniers de savoir s'ils ont droit à de telles sommes;

ATTENDU QUE le gouvernement fédéral, aux termes de l'article 438 de la *Loi sur les banques*, permet aux banques de verser les dépôts non réclamés auprès de la Banque du Canada, s'il n'y a eu aucun mouvement relatif à ces dépôts pendant une période de dix ans, et il autorise la Banque du Canada à établir un outil en ligne

WHEREAS pension plan administrators, former plan members who cannot be located or have forgotten about pension entitlements, and families and estates of individuals who have died prior to claiming pension entitlements would benefit from a facility through which unclaimed pension amounts may be centrally deposited and searched on the internet;

BE IT RESOLVED THAT the Canadian Bar Association urge the federal, provincial and territorial governments:

- to create funds for unclaimed pension monies in their jurisdictions into which pension plans may deposit pension monies that are unclaimed after the plans have exhausted reasonable efforts in locating the persons entitled to the pension monies; and
- to establish internet based tools through which former plan members and beneficiaries may search for unclaimed pension monies.

Certified true copy of a resolution carried by the Council of the Canadian Bar Association at the Mid-Winter Meeting held in Mont-Tremblant, QC, February 16-17, 2013.

pour permettre aux individus de chercher des comptes inactifs;

ATTENDU QUE les administrateurs de r gimes de retraite, les anciens participants   des r gimes qui sont introuvables ou auraient oubli  qu'ils ont droit   des prestations de retraite, ainsi que les familles et successions d'individus qui sont d c d s avant de r clamer leurs prestations de retraite, b n ficiaient d'un m canisme par lequel ils pourraient consulter via Internet les prestations de retraite non r clam es, et ce, en un endroit centralis ;

QU'IL SOIT R SOLU QUE l'Association du Barreau canadien exhorte les gouvernements f d ral, provinciaux et territoriaux :

-    tablir dans leurs ressorts respectifs des fonds pour les prestations de retraite non r clam es une fois que tout effort raisonnable afin de retrouver les personnes ayant droit   ces prestations aura  t   puis ; et
-   mettre sur pied des outils Internet par lesquels les anciens participants et les b n ficiaires de r gimes de retraite pourront rechercher les prestations non r clam es li es   ces r gimes.

Copie certifi e d'une r solution adopt e par le Conseil de l'Association du Barreau canadien, lors de l'Assembl e de la mi-hiver,   Mont-Tremblant (QC), du 16 au 17 f vrier 2013.

**John D.V. Hoyles
Chief Executive Officer/Chef de la direction**