

Canadian Pension Law: 2023 Year in Review

February 12, 2024

Canadian pension law went through numerous changes in 2023. Below is an overview of certain significant developments from the previous year as we look ahead to what may be coming next.

New Regulator Guidelines

FSRA Final Guidance on IT Risk Management

On November 8, 2023, the Financial Services Regulatory Authority of Ontario (FSRA) released their [IT Risk Management Guidance](#) (IT Guidance). The IT Guidance contains guidance that is both applicable to sectors regulated by FSRA and specific to pension plans. The IT Guidance sets out seven practices for effective IT risk management that is based on industry-accepted practices and that FSRA expects pension plan administrators to follow. These seven practices are as follows:

1. Governance – ensuring proper governance and oversight of IT risks
2. Risk management – relying on industry-accepted practices to effectively manage IT risks
3. Data management –utilizing industry-accepted strategies to effectively manage and secure confidential data
4. Outsourcing – effectively managing IT risks associated with any outsourced or co-sourced activity, function and service
5. Incident preparedness – being prepared to effectively detect, log, manage, resolve, recover, monitor and report on IT incidents in a timely manner
6. Continuity and resiliency – being prepared to ensure the continuity of IT assets and ability to deliver critical services during and following an incident
7. Notification of material IT risk incidents – notifying the respective regulators in the event of a material IT risk incident

There is no set definition for a material IT risk incident. However, relevant considerations for pension plan administrators include, but are not limited to, the extent to which the incident (1) disrupts the operations of the pension plan to a degree that the plan can no longer be effectively administered, (2) is likely to negatively affect other entities or individuals regulated by FSRA, or is likely to reoccur with other entities or individuals regulated by FSRA, (3) compromises confidential plan member data, or (4) impacts the ability of the administrator to pay benefits.

The IT Guidance also contains FSRA's expectations in the event of a material IT risk incident, including that FSRA be notified as soon as is reasonable.

The IT Guidance becomes effective April 1, 2024.

FSRA Draft Guidance on Pension Plan Administrator Roles and Responsibilities

FSRA published a draft [Guidance on Pension Plan Administrator Roles and Responsibilities](#) (Draft Administrator Guidance) for consultation on August 15, 2023. The Draft Administrator Guidance contains FSRA's recommendations in respect of the following areas:

- An administrator's fiduciary duty and standard of care
- The handling of potential conflicts of interest
- Engagement with service providers
- Communications with members, including providing information and responding to complaints or inquiries
- Proper administration expenses
- Maintenance of a governance framework or policy

Comments on this consultation were due September 28, 2023.

FSRA Draft Guidance on Pension Amendments

FSRA published a draft [Guidance on Pension Plan Amendments](#) (Draft Amendment Guidance) for consultation in November 2023. The Draft Amendment Guidance contains FSRA's recommendations in respect of the following areas:

- When FSRA would consider a plan amendment to be a retroactive adverse amendment
- FSRA's approach to exercising its discretion to register a retroactive amendment with potentially negative impacts
- Amendments purporting to replace a variable indexation formula with a fixed rate for accrued benefits
- Notice requirements for prospective adverse amendments
- FSRA's authority to issue a notice of intended decision to refuse registration of a plan amendment
- Possible penalties for an administrator that does not comply with the applicable requirements

Comments on this consultation were due January 19, 2024.

Draft CAPSA Guidelines

On June 6, 2023, the Canadian Association of Pension Supervisory Authorities (CAPSA) published a draft [Guideline No. 3 – Capital Accumulation Plans](#) (Guideline No. 3) for consultation to replace the [2004 Guidelines for Capital Accumulation Plans](#). Guideline No. 3 clarifies CAPSA's views regarding the operation of capital accumulation plans (CAPs) and outlines the responsibilities of CAP sponsors and administrators and industry best practices in the administration of a CAP.

On June 28, 2023, CAPSA published a draft [CAPSA Guideline: Pension Plan Risk Management](#) (Draft Risk Guideline) for consultation. The Draft Risk Guideline notes that establishing a risk management framework is part of a plan administrator's standard of care and fiduciary duty. The Draft Risk Guideline provides guidance about a number of topics related to risk management and calls for plan administrators to integrate their risk management framework and be equipped with sufficient training and expertise to appropriately manage risk.

Submissions in respect of these draft CAPSA guidelines have been closed. However, plan administrators and sponsors should be aware of possible finalized guidelines being published.

The 30% Rule

Canadian pension funds are currently restricted from holding securities of a corporation that would provide more than 30% of the votes that may be cast to elect the directors of the corporation (30% rule), subject to limited exceptions. The 2023 Fall Economic Statement announced that the government will explore removing the 30% rule from investments in Canada. The government also proposes additional disclosure requirements related to the distribution of large federally regulated pension plans assets, both by jurisdiction and asset-type per jurisdiction.

Bill C-47, the Budget Implementation Act, 2023, No. 1

On June 22, 2023, [Bill C-47, the Budget Implementation Act, 2023, No. 1](#) (Bill C-47) received royal assent. Bill C-47 implements certain provisions of the 2023 federal budget, including measures to correct contribution errors by defined contribution (DC) pension plans. This applies to both over and under contributions. The amendments in Bill C-47 further include definitions and administrator filing requirements related to the measures to correct contribution errors by DC pension plans. These amendments are deemed to have come into force on January 1, 2021.

Bill C-47 also amended the rules that apply to borrowing by defined benefit (DB) pension plans. The first change was that defined benefit plans (other than individual pension plans) cannot borrow money (for purposes other than acquiring income-producing real property) if the amount is greater than (1) 20% of the value of the plan's assets (net of unpaid borrowed amounts) and (2) the amount, if any, by which 125% of the plan's actuarial liabilities exceeds the value of the plan's assets (net of unpaid borrowed amounts). The second change was that, in certain circumstances, a trust that is prescribed to be a master trust can now borrow on behalf of beneficiaries that are DB pension plans, provided that the amount borrowed is apportioned to the beneficiaries. This change was effective April 7, 2022.

Bill C-228, the Pension Protection Act

On April 27, 2023, [Bill C-228, the Pension Protection Act](#) (PPA) received royal assent and was proclaimed into force. The PPA amended *the Bankruptcy and Insolvency Act* (BIA) and the *Companies' Creditors Arrangement Act* (CCAA) to expand super-priority protections for pension plan deficits in the event of the insolvency of a debtor employer. Bill C-228 also amended the *Pensions Benefits Standards Act* (PBSA) to require an annual report on the operation of the PPA and pension plan funding. The PPA contains a four-year transition period for employers that had prescribed pension plans in place before the PPA came into force.

To learn more, see our April 2023 [Five Under 5: New Protections for Pensions in Insolvency Proceedings](#).

For further information on this bulletin, please contact any member of our [Pension, Benefits & Executive Compensation](#) group.

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