

# Blakes Bulletin

## Pension & Employee Benefits

### Moving Forward with Phase One of Ontario Pension Reform

#### INTRODUCTION

On May 18, 2010, Bill 236, the *Pension Benefits Amendment Act, 2010*, received Royal Assent. This represents the first stage of pension reform in Ontario.

Bill 236 amends the Ontario *Pension Benefits Act* (the PBA) by enacting some of the changes proposed in the *Expert Commission on Pensions, A Fine Balance: Safe Pensions, Affordable Plans, Fair Rules* (the Expert Report), including dealing with the key issues of plan wind-ups, grow-in, asset transfers, plan splits and mergers, surplus, plan communications and record-keeping, and regulatory oversight and plan administration.

The Blakes Pension & Employee Benefits Group addresses these key issues at the following podcast microsite:

- [Overview](#)
- [Plan Communications and Record-Keeping](#)
- [Regulatory Oversight and Plan Administration Issues](#)
- [Surplus Sharing](#)
- [Pension Plan Wind-ups](#)
- [Restructuring Pension Plans—Asset Transfers.](#)

#### PLAN AMENDMENTS WHICH ARE REQUIRED OR ADVISABLE AS A RESULT OF BILL 236

There are plan amendments in a number of areas which are required or advisable as a result of Bill 236. They are as follows:

##### 1. Immediate Vesting and Locking-In

Both defined benefit and defined contribution pension plans must be amended to provide immediate vesting and locking-in of pension benefits. Previously, vesting and locking-in were required after two years of plan membership.

Given the accelerated vesting, plan sponsors may consider lengthening the eligibility provisions of their plans. Increasing the waiting period for eligibility will reduce the costs associated with enrolling and terminating short-service employees. There has been no change to the minimum standard that the maximum waiting period for eligibility is 24 months of continuous employment.

##### 2. Grow-In Benefits

Many single-employer defined benefit plans will require some form of plan amendment to reflect that “grow-in” benefits will be extended to all members with both age and service totalling 55 who are terminated for any reason, except for cause or as prescribed by regulation.

Jointly-sponsored and multi-employer pension plans can opt out of providing these benefits by filing an election and accordingly it may be useful for these plans to be amended to clarify what grow-in benefits may or may not be provided.

Sponsors of other plans may wish to consider the funding and accounting implications of these changes so they can properly consider whether to amend existing early retirement or bridging benefit provisions to avoid additional cost that may be associated with these changes.

##### 3. Excess Amounts and Small Payments

Prior to Bill 236, where excess amounts arose from the application of the 50% rule or small pensions were subject to commutation under the terms of the plan, the resulting payments could be made only in a lump sum, subject to applicable tax withholdings.

As a result of Bill 236, a plan administrator must now provide former members and retired members with the option to elect to transfer the value of the excess amount or small pension, as the case may be, to a “registered retirement savings arrangement,” which is defined to include RRSPs and RRIFs.

CONT'D ON PAGE 2

CONT'D FROM PAGE 1

The option to transfer to an RRSP or RRIF must also be given to spouses who are entitled to a pre-retirement death benefit from the pension plan.

Plan sponsors should review their plan texts to determine if amendments will be required in order to provide for these new transfer options. Plan administrators should also consider what systems and/or operational changes will need to be made to implement the new rules relating to excess amounts and small pensions.

#### 4. Phased Retirement

Employers will now be permitted to offer phased retirement under a defined benefit pension plan to eligible members.

During the period of phased retirement, the eligible member is entitled to accrue additional pension benefits while receiving periodic payments from the pension plan not exceeding 60% of the pension payments to which he or she would be entitled as a retired member.

Any plan sponsor wishing to offer phased retirement under its defined benefit plan will need to amend the plan accordingly, in compliance with the new requirements.

#### PROVISIONS OF BILL 236 CURRENTLY EFFECTIVE

The following is a summary of provisions of Bill 236 which became effective on May 18, 2010:

- Definition of "registered retirement savings arrangement" added.
- Further restrictions added to who may administer a plan.
- Exceptions to the registration filing requirements in subsection 9(2) may be prescribed by regulation.
- Exceptions to the requirements to include certain information in the documents creating and supporting a plan may be prescribed by regulation.
- Required inclusions in the documents creating and supporting a MEPP have been amended.
- Provision added to clarify the date on which termination in a plan is effective.
- A spouse may exercise entitlement to a pre-retirement death benefit by delivering a direction to the administrator within the prescribed period, and will be deemed to have elected an immediate pension if they fail to do so.
- Also with respect to pre-retirement death benefits, provision is made for lump sum payments of required member contributions made prior to January 1, 1987, to spouse, personal representative or beneficiary, as the case may be. Spouse is able to elect to transfer lump sum to RRSP.
- In connection with CPP/QPP offsets, the amount of the reduction that is required by a plan in relation to those payments shall not be increased by reason of an increase in those payments after the date on which the member's employment or membership in the plan is terminated.
- The direction provided to the administrator by a member respecting the election of portability options no longer has to be in the "form approved by the Superintendent".
- The delivery provisions of a waiver of a joint and survivor pension have been modified. A waiver in the form approved by the Superintendent is not effective unless it is delivered to the administrator or insurance company and dated and signed within the 12-month period preceding commencement of the payment of the pension. For a copy of a domestic contract, the provision remains the same (i.e., it must be delivered to the administrator or insurance company within the 12-month period prior to the commencement of pension payments).
- The period for which an application for return of an overpayment may be made has been extended to the later of two years from the date of the overpayment or six months from the date the administrator becomes aware of the overpayment.
- The Superintendent may now consent to payment of surplus to the employer on wind-up where (a) the pension plan provides for payment of surplus to the employer or (b) a surplus sharing agreement is entered into with members, former members and other persons entitled to payments.

CONT'D ON PAGE 3

CONT'D FROM PAGE 2

- If the pension plan does not provide for a payment of surplus to an employer on wind-up and there is no agreement entered into authorizing payment of surplus to the employer, the pension plan will be construed to require surplus after December 31, 1986 to be distributed to members, former members and other persons entitled to payment under the plan on the date of wind-up.

We will provide updates as further provisions of Bill 236 become effective.

### FURTHER LEGISLATIVE ACTIVITY EXPECTED

The Ontario government has announced that further legislative reform will be forthcoming in respect of additional aspects of the Expert Report. We will provide updates on further legislative initiatives as they are announced.

For further information, please contact a member of the Blakes Pension & Employee Benefits Group.

Go to [blakes.com/english/subscribe.asp](http://blakes.com/english/subscribe.asp) to subscribe to other Blakes Bulletins.

NEW YORK      MONTRÉAL      OTTAWA      TORONTO      CALGARY      VANCOUVER  
CHICAGO      LONDON      BAHRAIN      AL-KHOBAR\*      BEIJING      SHANGHAI\*      [blakes.com](http://blakes.com)  
\* Associated Office