

# TABLE OF CONTENTS

FOREWORD .....	iii
PREFACE.....	v
<b>1. IN THE BEGINNING: A BRIEF HISTORY OF CANADIAN PENSION PLANS</b>	
1. INTRODUCTION .....	1
2. THE 1800s.....	1
3. THE EARLY 1900s.....	2
4. THE 1940s AND 1950s .....	3
5. THE 1960s.....	3
6. THE 1980s.....	5
(a) Reforms of the Early 1980s.....	5
(b) The Haley and Grossman Reports .....	6
(c) The <i>Collins</i> Decision .....	6
(d) Major Reforms .....	7
(i) Ontario .....	7
(ii) Other Jurisdictions .....	8
(iii) <i>Income Tax Act</i> .....	8
7. DEVELOPMENTS SINCE THE EARLY 1990s.....	9
(a) The Early 1990s .....	9
(b) The Financial Services Commission of Ontario .....	9
(c) 1999 Amendments.....	10
(d) Accounting Standards .....	10
(e) Regulatory Guidelines.....	10
8. LOOKING FORWARD .....	11
<b>2. GETTING STARTED: ESTABLISHING A PENSION PLAN</b>	
1. INTRODUCTION .....	13
2. PRIMARY SOURCES OF RETIREMENT INCOME .....	13
(a) Publicly Administered Plans.....	13
(b) Registered Pension Plans.....	13
(c) Personal Retirement Savings .....	14
3. DECIDING WHETHER TO ESTABLISH A PENSION PLAN.....	14

## PRACTICAL GUIDE TO PRIVATE PENSION PLANS IN CANADA

4.	DESIGNING THE GOALS OF A PENSION PLAN .....	14
5.	PLAN DESIGN .....	15
	(a) Cost and Funding Flexibility.....	15
	(b) Risk .....	16
	(c) Employee Contributions.....	16
	(d) Employee Eligibility .....	17
	(e) Weighting of Contributions.....	18
	(f) Adequacy.....	18
	(g) Tax Effectiveness .....	18
	(h) Legislative Considerations.....	19
	(i) Supplemental Employee Retirement Plans .....	19
6.	TYPES OF EMPLOYER-SPONSORED PENSION PLANS ....	20
	(a) Defined Benefit Plans.....	20
	(i) Flat Benefit Pension Plans.....	20
	(ii) Career Average Earnings Pension Plans.....	21
	(iii) Final Average Earnings Pension Plans .....	21
	(iv) Flexible Pension Plans .....	22
	(b) Defined Contribution Plans.....	22
	(i) Money Purchase Pension Plans .....	22
	(c) Hybrid and Combination Plans.....	22
	(i) Hybrid Pension Plans.....	23
	(ii) Combination Plans.....	23
	(d) Multi-employer Pension Plans .....	23
	(e) Target Benefit Plans.....	23
7.	ESTABLISHING AND REGISTERING A PENSION PLAN.....	24
8.	CONCLUSION .....	25
<b>3.</b>	<b>THE BASICS: LEGISLATED MINIMUM STANDARDS</b>	
1.	INTRODUCTION .....	27
2.	MEMBERSHIP.....	27
	(a) Mandatory and Voluntary Membership .....	27
	(b) Eligibility .....	28
	(c) Disclosure .....	29
	(i) Annual Pension Statement .....	29
	(ii) Other Disclosure .....	29
3.	ADMINISTRATION .....	30
4.	CONTRIBUTIONS.....	30
5.	ACCRUAL AND VESTING .....	31
	(a) Accrual Rules .....	31
	(b) Vesting .....	32
	(c) Impact of Dismissal .....	32
6.	LOCKING-IN.....	33

TABLE OF CONTENTS

7.	PORTABILITY .....	33
	(a) General Rules .....	34
	(b) Exceptions .....	34
8.	RETIREMENT .....	35
	(a) Timing .....	35
	(b) Pension Amount .....	36
9.	BENEFITS FOR SPOUSES, BENEFICIARIES AND ESTATES .....	37
	(a) Pre-retirement Death Benefits.....	37
	(b) Post-retirement Death Benefits .....	37
	(c) Pension-splitting on Marriage Breakdown .....	38
	(d) “Marriage-like” Relationships and Same-Sex Marriage .....	38
10.	CONCLUSION .....	39
<b>4.</b>	<b>DAY-TO-DAY: THE PENSION ADMINISTRATOR</b>	
1.	INTRODUCTION .....	41
2.	THE ADMINISTRATOR .....	41
	(a) Legislative Requirements.....	41
	(b) Employee and Pensioner Representation .....	42
	(c) Advisory Committees .....	42
3.	THE ADMINISTRATOR: JOB DESCRIPTION .....	43
	(a) Overview .....	43
	(b) The Pension Plan and Fund .....	43
	(c) Statutory Duties of the Administrator .....	44
4.	DUTY AND STANDARD OF CARE .....	44
	(a) Statutory and Common Law Duties of Care .....	44
	(b) Standard of Care .....	45
	(c) Relevant Knowledge and Skill.....	46
	(d) Loyalty and Good Faith .....	46
	(e) No Conflict of Interest.....	46
	(f) Impartiality and Even-handedness .....	47
	(g) The Duty to Inform and Disclose .....	48
	(i) General Obligations .....	48
	(ii) Obligations on Administrators of Capital Accumulation Plans .....	49
	(h) Governance Best Practices.....	49
5.	DISCHARGING THE DUTY .....	50
	(a) Risk of Liability.....	50
	(b) Loss Recovery.....	51
	(c) Advice and Direction .....	51
6.	AGENTS.....	51
	(a) Delegation .....	51
	(b) Scope of an Agent’s Duty .....	52

PRACTICAL GUIDE TO PRIVATE PENSION PLANS IN CANADA

	(c) Typical Agents .....	53
7.	PLAN EXPENSES .....	53
	(a) Current Framework .....	53
	(b) Reform .....	54
8.	CONCLUSION .....	55
<b>5.</b>	<b>FUNDING: PENSION PLAN FUNDING</b>	
1.	INTRODUCTION .....	57
2.	VALUATION .....	57
	(a) Key Terms .....	57
	(i) Solvency Valuations versus Going-Concern Valuations ...	57
	(ii) Normal Costs and Special Payments .....	58
	(b) Actuarial Valuation Reports .....	59
	(i) Timing .....	59
	(ii) Content .....	59
	(c) Actuarial Assumptions .....	60
	(d) The Roles of the Superintendents .....	60
3.	CONTRIBUTIONS .....	61
	(a) Pre-funding .....	61
	(b) Basic Requirements .....	61
	(c) Employee Contributions .....	62
	(i) Contributory Plan Requirements .....	62
	(ii) Interest .....	62
	(iii) Remittance .....	63
	(iv) Suspension of Contributions .....	63
	(d) Employer Contributions .....	63
	(i) Normal Cost .....	63
	(ii) Solvency Funding Relief .....	64
	A. Ontario .....	64
	B. Federal .....	64
	(e) Defined Benefit Plans .....	65
	(f) Defined Contribution Plans .....	65
	(g) Multi-employer Pension Plan and Jointly Sponsored Pension Plan Rules .....	65
	(h) Administrator Responsibilities .....	66
	(i) The Duty of Care .....	66
	(ii) The Duty to Notify .....	67
	(iii) Enforcement .....	67
	(iv) Custodial Trustee Responsibilities .....	67
	(i) Statutory Deemed Trust .....	68
	(i) Application .....	68
	(ii) Limitations .....	68
	(j) Contribution Holidays .....	69

## TABLE OF CONTENTS

	(i) Current Framework .....	69
	(ii) Temporary Measures .....	70
	(iii) Proposed Permanent Measures .....	71
	(iv) Employee Contribution Holidays .....	71
4.	CONCLUSION .....	71
<b>6.</b>	<b>MANAGING THE MONEY: PENSION PLAN INVESTMENT</b>	
1.	INTRODUCTION .....	73
2.	OVERVIEW OF THE STATUTORY AND REGULATORY SCHEME .....	73
3.	ADMINISTRATOR DUTIES.....	74
4.	THE STATEMENT OF INVESTMENT POLICIES AND PROCEDURES.....	74
5.	PROHIBITED INVESTMENTS UNDER THE FEDERAL INVESTMENT REGULATIONS AND SCHEDULE III.....	76
	(a) General Requirements.....	76
	(b) Exceptions .....	76
	(c) Quantitative Restrictions and Diversification.....	77
	(i) The 10 Per Cent Rule .....	77
	(ii) The 30 Per Cent Rule .....	77
	(d) Related Party Transactions.....	78
6.	PROHIBITED INVESTMENTS UNDER THE <i>INCOME TAX ACT</i> .....	79
7.	AUDITING AND REPORTING REQUIREMENTS .....	79
8.	INVESTMENT ISSUES SPECIFIC TO DEFINED CONTRIBUTION PLANS.....	80
	(a) Investment Options .....	80
	(b) Information to be Provided.....	80
	(c) Default Options .....	81
9.	KEY CASES .....	82
	(a) Participating Co-operatives of Ontario Trusteed Revised Pension Plan .....	82
	(b) <i>R. v. Christophe</i> .....	82
10.	CONCLUSION .....	83
<b>7.</b>	<b>THE WIND UP: TERMINATING A PENSION PLAN</b>	
1.	INTRODUCTION .....	85
2.	FULL VERSUS PARTIAL WIND UP.....	86
3.	THE POWER TO WIND UP THE PENSION PLAN .....	86
	(a) Sponsoring Employer.....	86
	(b) Plan Administrator .....	87
	(c) Superintendent of Financial Services .....	87

## PRACTICAL GUIDE TO PRIVATE PENSION PLANS IN CANADA

	(d) Employees.....	87
4.	RIGHTS AND DUTIES ON WIND UP .....	88
	(a) Administrator .....	88
	(i) Statutory Standard of Care.....	88
	(ii) Wind up Notices.....	88
	(iii) Wind up Date.....	89
	(iv) Wind up Group .....	89
	(v) Wind up Report and Statement .....	90
	(b) Employers.....	91
	(i) Contribution and Funding Obligations.....	91
	(ii) Multijurisdictional Pension Plans .....	92
	(iii) Multi-employer and Jointly-sponsored Pension Plans .....	92
	(c) Employees' Rights and Benefits on Wind up .....	92
	(i) Accrual.....	93
	(ii) Vesting and Locking In.....	93
	(iii) Grow-In and Bridging Benefits .....	93
	(iv) Portability.....	94
	(v) Surplus.....	94
<b>8.</b>	<b>THE SHERIFF: PENSION PLAN REGULATION</b>	
1.	INTRODUCTION .....	97
2.	REGULATORY JURISDICTION.....	97
	(a) Pension Regulators .....	97
	(b) Federal Regulator .....	98
	(c) Multijurisdictional Plans .....	98
	(d) Canada Revenue Agency.....	99
3.	DUTIES .....	100
	(a) Registration Duties .....	100
	(i) Plan Text .....	101
	(ii) Employee Enrollment and Eligibility.....	102
	(b) Reporting Duties.....	102
	(i) Annual Information Return .....	103
	(ii) Actuarial Valuation .....	103
	(iii) Other Reporting Requirements .....	104
	(c) Communication Obligations.....	104
	(d) Duties Regarding Administrative Expenses .....	105
	(e) Duties on Amendment or Wind Up .....	106
	(i) Plan Amendment .....	106
	(ii) Asset Purchase Transactions.....	106
	(iii) Winding Up.....	107
4.	CONCLUSION .....	107

## TABLE OF CONTENTS

<b>9.</b>	<b>SHOW ME THE MONEY: PENSION SURPLUS</b>	
1.	INTRODUCTION .....	109
	(a) Terminology .....	109
	(b) Actuarial versus Actual Surplus .....	109
	(c) Surplus Circumstances .....	109
	(d) Historical Overview of Surplus .....	110
2.	DISCLOSURE .....	110
	(a) Going-Concern or Solvency Surplus .....	110
	(b) Wind Up Surplus .....	111
3.	SURPLUS POLITICS AND OWNERSHIP .....	111
	(a) The Politics .....	111
	(i) Employers' Perspective .....	111
	(ii) Employees' and Pensioners' Perspective .....	112
	(b) General Legal Principles .....	112
	(i) Regulatory Framework .....	112
	(ii) Jurisprudence .....	113
4.	WITHDRAWAL AND DISTRIBUTION .....	113
	(a) Overarching Duties .....	113
	(b) Surplus on Wind Up .....	114
	(i) Partial Wind Up .....	114
	(ii) Payment of Surplus on Wind Up .....	114
	A. Ontario .....	114
	B. Other Canadian Jurisdictions .....	116
	(iii) Surplus-Related Dispute Resolution .....	116
	(c) Ongoing Plan Surplus .....	117
	(i) Benefit Enhancements .....	118
	(ii) Plan Administration Expenses .....	118
	(iii) Contribution Holidays .....	118
5.	DEFICITS .....	119
6.	CONCLUSION .....	119
<b>10.</b>	<b>BUYING AND SELLING: MERGERS &amp; ACQUISITIONS</b>	
1.	INTRODUCTION .....	121
2.	PENSION PLANS IN CORPORATE TRANSACTIONS .....	121
	(a) Funding .....	121
	(b) Surpluses and Deficits .....	122
	(c) Plan Valuation .....	122
	(d) Types of Corporate Transactions .....	123
	(i) Share-Purchase Transactions .....	123
	(ii) Mergers and Amalgamations .....	123
	(iii) Asset-Purchase Transactions .....	124
3.	MANAGING PENSION RISKS IN CORPORATE TRANSACTIONS .....	124

## PRACTICAL GUIDE TO PRIVATE PENSION PLANS IN CANADA

(a)	Due Diligence .....	124
(i)	Step 1: Signing a Confidentiality Agreement.....	125
(ii)	Step 2: “Valuing” the Pension Plan .....	125
(iii)	Step 3: Seller’s Obligations.....	125
(iv)	Step 4: Buyer’s Obligations .....	126
(v)	Step 5: Signing a Letter of Intent.....	127
(vi)	Step 6: Retaining Pension Counsel at an Early Stage .....	127
(b)	Negotiation of Representations and Warranties .....	128
(c)	Other Provisions .....	130
(d)	Share-Purchase Transactions .....	131
(e)	Mergers .....	131
(f)	Asset-Purchase Transactions .....	133
(i)	Buyer Does Not Offer a Pension Plan .....	133
(ii)	Seller Retains Past-Service Liability and Buyer Offers a Plan for Future Service Only .....	134
(iii)	Wrap-around Arrangement.....	136
(iv)	Carve-out Arrangement .....	136
A.	The Current Regime .....	136
B.	Reform .....	138
(v)	Transfer of Pension Plan.....	139
4.	CROSS-BORDER CONSIDERATIONS.....	140
5.	STRATEGIES FOR SUCCESSFUL CONVERSION .....	141
6.	MULTI-EMPLOYER PENSION PLANS IN CORPORATE TRANSACTIONS.....	143
(a)	Share-Purchase Transactions .....	143
(b)	Asset-Purchase Transactions .....	144
7.	CONCLUSION .....	144
<b>11.</b>	<b>WHAT HAPPENS IF MY EMPLOYER GOES BANKRUPT? INSOLVENCY</b>	
1.	INTRODUCTION .....	147
2.	RESTRUCTURING UNDER THE CCAA .....	148
(a)	Who Can Use the CCAA.....	148
(b)	Initial Order and Stay of Proceedings.....	149
(i)	The Monitor .....	149
(ii)	Company Obligations.....	149
(iii)	Stay of Proceedings and Creditor Protection.....	150
(iv)	Court Discretion to Make the Initial Order .....	150
(c)	Following the Initial Order .....	151
(i)	Asset Sale.....	151
(ii)	Developing a Plan of Arrangement.....	151
(iii)	Renegotiating the Collective Agreement.....	151
(d)	Creditor Approval of a Plan .....	152

TABLE OF CONTENTS

	(e) Court Approval of a Plan .....	152
	(f) An Approved Plan .....	153
	(i) Continuing Pension Plan .....	153
	(ii) No Continuing Pension Plan .....	153
3.	RESTRUCTURING UNDER THE BIA .....	154
	(a) Who Can Use the BIA.....	154
	(b) Notice of Intention and Stay of Proceedings .....	154
	(i) Notice of Intention.....	154
	(ii) Stay of Proceedingsand Creditor Protection.....	155
	(c) Developing a Proposal .....	155
	(d) Creditor Approval of a Proposal.....	155
	(e) Court Approval of a Proposal.....	155
	(f) An Approved Proposal .....	156
4.	BANKRUPTCY .....	156
	(a) Initiating a Bankruptcy .....	156
	(i) Voluntary Bankruptcy .....	156
	(ii) Automatic Bankruptcy .....	157
	(iii) Involuntary Bankruptcy.....	157
	A. Application for Bankruptcy Order .....	157
	B. Interim Receiver.....	157
	C. Judicial Discretion to Make Bankruptcy Order .....	157
	D. Terminating an Involuntary Bankruptcy .....	157
	(b) The Bankruptcy Order .....	158
	(i) Security for Unpaid Pension Amounts .....	158
	(ii) Personal Liability of the Trustee or Subsequent Employers.....	159
	(iii) Employment Contracts and Collective Agreements .....	159
	(iv) Deemed Trusts up to here.....	160
	(v) Protection for Wages .....	161
	(c) Plan Wind Up.....	162
5.	RECEIVERSHIP.....	162
	(a) Overview.....	162
	(b) Privately Appointed Receivers.....	163
	(c) Court Appointed Receivers .....	163
	(d) Qualifications and Duties of Receivers .....	163
	(e) Impact of Receivership on Employment Contracts and Pension Plans.....	163
	(i) Security for Unpaid Amounts in Prescribed Pension Plans.....	163
	(ii) Personal Liability of Receiver or Subsequent Employers.....	164
	(iii) Employment Contracts and Collective Agreements .....	164
6.	PENSION BENEFITS GUARANTEE FUND .....	164

PRACTICAL GUIDE TO PRIVATE PENSION PLANS IN CANADA

7.	DIRECTORS' AND OFFICERS' DUTIES IN A BANKRUPTCY OR INSOLVENCY.....	165
8.	SOLVENCY FUNDING RELIEF .....	166
	(a) Overview.....	166
	(b) Federal Distressed Pension Plan Workout Scheme .....	166
	(c) Proposals for Permanent Funding Reform .....	167
	(d) Specific Regulations for Certain Corporations.....	167
	(i) <i>Algoma Steel Inc.</i> .....	167
	(ii) <i>Stelco Inc.</i> .....	167
	(iii) <i>General Motors</i> .....	168
	(iv) <i>Air Canada</i> .....	168
9.	CONCLUSION .....	169
<b>12.</b>	<b>THE GUARANTEE: PENSION BENEFIT GUARANTEE FUNDS</b>	
1.	INTRODUCTION .....	171
2.	POLICY DEBATE .....	171
3.	HISTORY .....	172
4.	ADMINISTRATION .....	172
5.	ASSESSMENT .....	172
6.	EXCLUDED AND QUALIFYING PLANS.....	173
	(a) Excluded Plans.....	173
	(b) Qualifying Plans.....	173
7.	MAKING CLAIMS UNDER THE PBGF.....	174
	(a) Wind Up of a Pension Plan .....	174
	(b) Application of the PBGF to a Pension Plan .....	174
	(c) Application for Allocation from the PBGF .....	175
8.	BENEFITS COVERAGE .....	176
9.	LIEN AND CHARGE .....	176
<b>13.</b>	<b>CHANGE NOT JUST FOR THE SAKE OF CHANGE: PENSION PLAN REFORM</b>	
1.	INTRODUCTION .....	179
2.	ONTARIO .....	180
	(a) <i>A Fine Balance: Safe Pensions, Affordable Plans, Fair Rules:</i> The Report of the Arthurs Commission .....	180
	(b) Ontario Pension Reform: Bill 236 and Bill 120.....	182
	(i) Defined Benefit Plan Funding.....	182
	(ii) Plan Administration .....	183
	(iii) Member Benefits.....	184
	(iv) Division of Pension Benefits on Marital Breakdown .....	184
	(v) Conclusion .....	185
3.	FEDERAL .....	185

## TABLE OF CONTENTS

	(a) Discussion Paper .....	185
	(b) Federal Pension Reform: Bill C-9 and Bill C-47 .....	187
	(c) The Creation of Pooled Registered Pension Plans (PRPPs) ...	189
	(d) Conclusion .....	190
4.	ALBERTA AND BRITISH COLUMBIA .....	190
	(a) Alberta and British Columbia’s Joint Expert Panel on Pension Standards (Joint Panel) .....	190
	(b) British Columbia Pension Reform .....	192
	(c) Alberta Pension Reform .....	193
5.	SASKATCHEWAN .....	193
6.	MANITOBA .....	193
7.	PENSION REFORM IN THE ATLANTIC PROVINCES .....	194
	(a) New Brunswick .....	194
	(b) Nova Scotia .....	195
	(i) <i>Promises to Keep</i> : Report of Nova Scotia’s Pension Review Panel .....	195
	(ii) Nova Scotia’s Legislative Reform: Bill 96 .....	197
	(c) Prince Edward Island .....	198
8.	QUEBEC .....	199
9.	CONCLUSION .....	199
<b>14.</b>	<b>A NEW VEHICLE FOR REFORM: POOLED REGISTERED PENSION PLANS</b>	
1.	INTRODUCTION .....	201
2.	POOLED REGISTERED PENSION PLANS .....	202
	(a) Structure .....	202
	(b) Membership .....	202
	(c) Administration .....	203
	(d) Funding and Portability .....	204
	(e) Coordination .....	204
	(f) Tax Implications .....	205
3.	LOOKING AHEAD .....	206
	INDEX .....	207