
Older and Wiser The Future of Pension Policy

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Harmonization of Pension Legislation Challenges and Opportunities



Harmonization of Pension Legislation

Challenges:

- ▶ Construction Act, 1867
- ▶ 10 pension jurisdictions in Canada
- ▶ Income Tax Act (challenge or opportunity)
- ▶ 20% of all private sector plans have members in more than one province with 26% (1.5 million members) covered by multi-jurisdictional pension plans (MJPPs)
- ▶ Inconsistent laws, overlapping powers and uneven administration = frustration, increased costs and impaired appetite for cross-jurisdictional plan innovation.



Harmonization of Pension Legislation

What is harmonization?

- ▶ Process of “making the regulatory requirements or governmental policies of different jurisdictions identical, or at least similar”¹.
- ▶ May involve development of laws in different jurisdictions that are highly similar in terms of basic principles but not detailed provisions.

¹ O. Leebron (1996). Claim for Harmonization: A Theoretical Framework. *Canadian Business Law Journal*, 27:63-107, at p. 66



Harmonization of Pension Legislation

Objectives:

- ▶ Allow those who must comply with laws of several jurisdictions to do so without undue difficulty and expense, and to ensure that those familiar with the law in one jurisdiction can easily understand the law of another and to adjust to it without difficulty².
- ▶ Support labour mobility and innovation.

² Report of Alberta / British Columbia Joint Expert Panel on Pension Standards, p. 71



Harmonization of Pension Legislation

The Debate:

- ▶ Those in favour cite business efficiency, increased pension coverage and equitable treatment of members of same plan working in different jurisdictions.
- ▶ Diversity of pension standards seen as inhibitor of jurisprudence and uncertainty about authority/value of court decisions
- ▶ Concern expressed by some stakeholders that harmonization may result in a “race to the bottom” – dismantle fundamental standards to increase competitive advantage leading to lowest common denominator laws.



Harmonization Debate

- ▶ CAPSA approach very reasonable in adoption of common standards and “best practices” counters fear of race to the bottom.
- ▶ Those against uniformity fear an inherent loss of opportunity for innovation as multiple pension jurisdictions allow new laws to be tested in one jurisdiction and once proven adopted elsewhere.
- ▶ Fear of the unknown and constitutional give away.



Harmonization Opportunities

- ▶ JEPPS recommended full harmonization in form of identical statutes in B.C./Alta.
- ▶ Rule of “final location” should be confirmed in B.C./Alta. pension standards.
- ▶ Harmonized legislation would simplify regulatory requirements for MJPPs facilitating labour mobility and contributing to B.C./Alta. economic competitiveness.
- ▶ Would allow providers of savings and retirement income vehicles to create economies of scale, increased availability and competitiveness of products in two (or more?) provinces



Harmonization Opportunities

- ▶ Besides CAPSA's new reciprocal Memorandum of Agreement, what other national harmonization is available?



Harmonization Opportunities

- ▶ Recall that all Registered Pension Plans must be registered as such under the Income Tax Act.
- ▶ What if the ITA were amended to incorporate basic (and best practice) standards that all RPPs must comply with in order to continue or obtain their registered plan status?
- ▶ Constitutional challenge likely moot or manageable.



Harmonization Opportunities

- ▶ ITA as national harmonization driver of social/fiscal policy already exists and largely well accepted.
- ▶ Consider DPSPs, RRSPs, RESPs, TFSAs and, the most obvious, the Canada Pension Plan.
- ▶ Why not set the key standards within the ITA and let the provinces fuss if they must?

