MANAGEMENT COUNSEL
*Employment and Labour Law Update*

SHERRARD KUZZ LLP
Employment & Labour Lawyers

# The Latest Ontario Retirement Pension Plan Developments – *A Primer for Employers*

First announced as part of the 2014 Ontario Budget, the Ontario Retirement Pension Plan ("ORPP") is a new, provincially managed pension plan for employees working in Ontario initially scheduled to take effect in 2017. On February 16, 2016, Ontario Finance Minister, Charles Sousa, announced a one year implementation delay (to 2018) to allow for negotiations with the federal government regarding a possible enhancement to the Canada Pension Plan ("CPP"). In many ways the ORPP is similar to the CPP – both require contributions from employees through payroll deductions, as well as matching contributions from employers. While possible expansion of the CPP has cast some doubt on the future of the ORPP, at least for now public pension reform in Ontario remains advertised as a two-pronged approach – ORPP implementation occurring simultaneously with CPP reform.

## What retirement benefits will the ORPP provide?

Starting in 2022, a retiree who has made contributions to the ORPP will be eligible to draw retirement benefits at age 65, with options to receive adjusted benefits as early as age 60 or as late as age 70. The value of benefit payments will vary depending on the employee's earnings and the number of years of contributions. However, the plan was designed to provide up to a 15 per cent income replacement rate for persons who have contributed over a 40 year period. Retirement benefit payments will be indexed to inflation. The ORPP also provides for survivor benefits to a spouse, beneficiary or estate.

## How much will the ORPP cost?

Once fully implemented, the total contribution rate per employee will be 3.8 per cent of employment income up to $90,000 per year. The first $3,500 of income will be exempt from the ORPP contributions, as will all income earned by an employee less than 18 years of age or over the age of 70. The 3.8 per cent contribution will be split evenly between employer and employee – 1.9 per cent being contributed from each.

## When will the ORPP take effect?

The following chart illustrates the rollout of employer contributions to the ORPP, including the most recent changes announced by the government:

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| Type of Employer | 2017 | 2018 | 2019 | 2020 | 2021 |
|---|---|---|---|---|---|
| Large Employer (500+ employees) without an existing registered pension plan | -- | 0.8% | 1.6% | 1.9% | 1.9% |
| Medium Employer (50-499 employees) without an existing registered pension plan | -- | 0.8% | 1.6% | 1.9% | 1.9% |
| Small Employer (49 or fewer employees) without an existing registered pension plan | -- | -- | 0.8% | 1.6% | 1.9% |
| Employers (all sizes) with an existing registered pension plan which does not meet the "comparability test" (described below) | -- | -- | -- | 1.9% | 1.9% |

## Exemption for "Comparable" Pension Plan

Employers and employees who participate in a "comparable" pension plan are exempted from mandatory participation in the ORPP. For a pension plan to qualify as comparable it must be a registered pension plan - that is, a plan subject to federal and provincial government regulation, and it must satisfy a prescribed minimum contribution threshold.

One kind of plan, known as a Defined Benefit plan ("DB plan"), pays a specific monthly retirement benefit calculated according to a formula set out in the plan. For a DB plan to be considered comparable, the retirement benefit formula must provide for an annual accrual rate equal to at least 0.5 per cent of the employee's earnings.

Another kind of plan, known as a Defined Contribution plan ("DC plan"), provides for contribution of a fixed amount into an established account in the employee's name. The eventual retirement benefit is based on the amount of money in the plan on retirement, and this is a product of how much has been contributed and how well the investment has performed. For a DC plan to be considered comparable there must be a minimum total contribution rate of 8 per cent of base earnings, at least half of which must be contributed by the employer. An employer with a non-comparable DC plan will have until 2020 to convert the plan into a comparable plan; otherwise the employer will be required to make ORPP contributions.

Similar comparability criteria exist for other kinds of pension plans, including a Multi-Employer Pension Plan and Pooled Registered Pension Plan.

The exceptions are Group Registered Retirement Savings Plans and Deferred Profit Sharing Plans. The Government of Ontario has already determined these types of plans are not 'comparable' to the ORPP regardless of the rate of contribution.

## Other Exclusions

As a provincial initiative, the ORPP will exclude federally-regulated employers (*e.g.*, employers in the banking, inter-provincial transportation, or telecommunications sectors). Self-employed individuals will also be excluded from participation in the ORPP, for now. Other exemptions exist for certain persons employed as a member of a religious order or sect and for First Nations employees working on a reserve.

An employee in receipt of ORPP retirement benefits who returns to paid employment may opt back into the ORPP and suspend benefit payments; however reenrollment is not mandatory.

*Best practice suggests conducting an assessment of the risks and benefits of establishing a comparable pension plan versus contribution to the ORPP.*

## Next Steps for Employers

A federally-regulated employer, self-employed individual or employer which already has a comparable registered pension plan does not need to take any immediate action.

However, an employer with a non-comparable pension plan, or no pension plan at all, should not wait to start exploring options. Waiting until the ORPP becomes law may eliminate potentially money-saving initiatives.

Best practice suggests conducting an **assessment of the risks and benefits of establishing a comparable pension plan versus contribution to the ORPP.** This includes consideration of any existing workplace arrangements (such as a collective agreement or employment contract) which might prohibit the establishment of a pension, or amendment of an existing pension arrangement, and whether the employer will have a right to set off amounts contributed to the ORPP against contributions to an existing plan.

*We will continue to monitor ORPP developments, particularly in light of possible CPP reform, and report back to readers. In the meantime, to learn more about the ORPP, how it may impact your workplace, and what steps you might take to minimize liability, contact the employment law experts at Sherrard Kuzz LLP.*

# *Check It Out!*

## Ontario's New Police Reference Check Legislation

Does your organization conduct police reference checks on its potential or current employees, student interns or volunteers? If so, you should know the Ontario legislature has passed a bill which will change the process by which police record check information is sought and used. Failure to follow the new rules could lead to your organization being fined up to $5000.

### Standardizing the Process

On December 3, 2015, Bill 113: *Police Record Checks Reform Act, 2015* (the "Bill") received Royal Assent. The Bill sets out a new, standardized process by which police reference checks are requested, conducted and obtained, and limits disclosure of certain types of information. Until now, police reference checks have been conducted across Ontario in an inconsistent manner with each police service having its own protocols regarding the process and type of information disclosed. However, the wide range of information released through these record checks had the potential to infringe on individual privacy and lead to discriminatory treatment. The Bill standardizes the police reference check process across all police services in Ontario.

Under the current regime, when a potential employer carries out a police record check it might receive records of suicide attempts, mental health detentions, complaints where charges were never laid, withdrawn charges, as well as acquittals. The Bill specifically prohibits disclosure of mental health records, non-conviction records, and records from police "carding" checks, except in limited circumstances.

In addition to limiting categories of disclosure, the Bill prescribes how to request a record check, how to respond, and the proper scope and manner of disclosure. For example, the Bill specifies that a person or organization that receives information in response to a police record check shall not use or disclose it except for the purpose for which it was requested or as authorized by law.

It is also worth mentioning that the individual being 'checked' will have the final say whether to disclose the results of a police record check to a potential employer. At present, some police services seek consent upfront and then release results as they become available. Under the Bill, results will first be provided to the individual who will then submit written consent to the police service to release the results to the organization requesting it.

### Types of Checks

The Bill provides for three types of police record checks:

- **Criminal record check:** Discloses criminal convictions for offences for which a pardon has not been granted, and findings of guilt under the *Youth Criminal Justice Act* (subject to certain limitations in the *Youth Criminal Justice Act*).
- **Criminal records and judicial check:** Everything a criminal records check discloses PLUS offences for which the individual received an absolute discharge (if occurred within one year of the request), offences for which the individual received a conditional discharge (if occurred within three years of the request), every court order made against the individual, and criminal offences for which there is an outstanding charge or warrant to arrest the individual.
- **Vulnerable sector screen (for individuals working with children or vulnerable persons):** Everything a criminal record and judicial check discloses PLUS every criminal offence with which the individual has been charged that resulted in a finding of not criminally responsible on account of mental disorder and any non-conviction information authorized for exceptional disclosure (the Bill provides various examples such as whether the individual targeted a child or vulnerable person).

### What Does This Mean for Employers?

Not in compliance with this new legislation? Do not fret. For now employers can breathe easy as the legislation has not yet been proclaimed into force. But do not delay, as we anticipate this will happen within the next few months.

As a best practice, consider implementing the following steps now so as to be ready when the Bill becomes law:

1. **Review** and **update** existing policies and template documents (or if none exist create them) regarding **when** and **how** your organization will seek a record check. For some organizations, the requirement to conduct a check, including the type of check, is mandated by law.
2. Ensure appropriate measures are in place to **protect privacy** throughout the process.
3. **Train** (and retrain) individuals in your workplace responsible for requesting record checks on the **new procedures** including **how the results of a police record check can be used.**

*To learn more and for assistance contact the employment law experts at Sherrard Kuzz LLP.*

## DID YOU KNOW?

The Ontario government recently passed the *Protecting Employees' Tips Act, 2015* (Bill 12). The Act, which prohibits employers from withholding, deducting from, or collecting, tips or gratuities, without authorization, takes effect on June 10, 2016.

*To learn more, contact a member of our team.*

# MANAGEMENT COUNSEL

***Please join us at our next HReview Breakfast Seminar:***

**HReview**
*Seminar Series*

# Ontario Employers!

## Critical Amendments Are Coming to the *Employment Standards Act* and *Labour Relations Act*! *Learn. Get Involved. Prepare.*

In 2015, Ontario launched public consultations *(Changing Workplaces Review)* into amendments to the *Employment Standards Act* and *Labour Relations Act*. An Interim Report is expected to be released in early 2016. **Recommendations will be far reaching and, we believe, have a dramatic impact on the regulation of Ontario workplaces. Yet, to date, there has been little employer participation in the consultation process.**

Recommendations could include:

### *Employment Standards Act*

- Increased minimum entitlements for part-time, casual and temporary agency employees
- Joint client – contractor liability for contractor employees (*i.e.*, temp agencies, building services, franchisor/franchisees, *etc.*)
- Reconciliation and/or expansion of protected leaves
- Fewer exemptions from the application of the ESA
- Heightened enforcement, inspection and audit processes

### *Labour Relations Act*

- Unionization: Replacement of the vote process with a card based system
- Greater access to employee contact information given to trade unions
- Automatic access to interest arbitration to resolve disputes
- Increased regulation of strikes/lockouts (*e.g.*, ban on replacement workers; time-limited strikes, *etc.*)
- Increased Labour Board powers to regulate the trade union–employer relationship (*e.g.*, multi-site collective agreements, increased enforcement powers, greater financial penalties, *etc.*)

Join us and learn about the **significant amendments** under consideration, **key opportunities for employer participation**, and **how best to prepare** for increased regulation of your workplace.

**DATE:** **Tuesday May 31, 2016; 7:30 – 9:30 a.m.** (breakfast at 7:30 a.m.; program at 8:00 a.m.)

**VENUE:** **Mississauga Convention Centre**, 75 Derry Road West, Mississauga

**COST:** Complimentary

**RSVP:** **By Monday May 16, 2016 (spaces limited) at www.sherrardkuzz.com/seminars.php**

**Law Society of Upper Canada CPD Hours:** This seminar may be applied toward general CPD hours.

**HRPA CHRP** designated members should inquire at www.hrpa.ca for eligibility guidelines regarding this *HReview Seminar*.

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**SHERRARD KUZZ LLP**
*Employment & Labour Lawyers*

250 Yonge Street, Suite 3300
Toronto, Ontario, Canada M5B 2L7
Tel 416.603.0700
Fax 416.603.6035
24 Hour 416.420.0738
www.sherrardkuzz.com
@SherrardKuzz