



Guideline No. 2

Electronic Communication in the Pension Industry

May 2019

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CONTEXT FOR THE GUIDELINE

The 'Electronic Communication in the Pension Industry Guideline' (Guideline) was first published in 2002, in response to industry stakeholder feedback and the introduction of electronic commerce (e-commerce) legislation in several Canadian jurisdictions at that time. Since then, continually evolving technology has transformed the way we communicate, playing a critical role in new communication processes, products and strategies.

Recognizing these changes and responding to stakeholder feedback, the Canadian Association of Pension Supervisory Authorities (CAPSA) has revised the Guideline.

The Guideline is intended to apply to communications required under pension legislation from a pension plan administrator and/or pension plan sponsor, which are provided in electronic format (e-communication). By setting out principles-based guidance and best practices the Guideline provides a framework in which pension plan administrators and sponsors can apply the provisions of e-commerce legislation and applicable pension benefits standards legislation to pension related communications. Some jurisdictions also have legislated accessibility standards for workplace e-communications.

This Guideline is not aimed at e-communications that pension plan administrators and/or sponsors receive from recipients ('recipient' as defined below). However, CAPSA recommends that when a 'recipient' communicates electronically with pension plan administrators and/or plan sponsors, they must ensure that they do so through secure information systems. Plan administrators/sponsors must ensure that they meet their fiduciary responsibilities as well as the requirements of all applicable legislation with respect to such e-communications. Recipients have a responsibility to ensure that their contact information on file with the plan administrator is up-to-date in order to facilitate on-going e-communications with plan administrators/sponsors. More guidance about roles and responsibilities for maintaining accurate contact information is available in CAPSA's Guideline No. 9: Searching for Un-locatable Members of a Pension Plan: 'Roles/Responsibilities – Records Management'.

References in this Guideline to 'recipient' include an active plan member, a deferred plan member, a retired plan member, or a spouse, common-law partner or beneficiary of an active, deferred or retired plan member. References to 'plan administrator' includes agents employed by a plan administrator in the administration of a pension plan.

This Guideline does not override existing e-commerce legislation, nor does it create legal rights or obligations in jurisdictions where e-commerce legislation does not exist. Each plan administrator should consider how to apply the guidance, so that their communication process and products fit within the context of their applicable legislation, industry guidelines and, common law considerations.

INTRODUCTION

Pension legislation in Canada has historically implied the mandatory use of paper documents. For example, “written”, “in writing”, “signed” or “certified”, are used throughout various pension legislation. However, the growth of e-communication in personal, professional and business applications has provided opportunities in pension plan administration to increase engagement, streamline processes and lower costs. E-mail, sophisticated websites, and an increasing use of various e- channels and products offer enhanced communication techniques that are useful and relevant in the pension landscape.

A challenge the pension industry faces in utilizing e-communication is that pension legislation varies across jurisdictions when defining default provisions for communicating on pension related matters.

Current pension legislation regarding e-communication falls into three broad categories:

1. Recognizes e-communication as equivalent to written communication unless the recipient directs otherwise.
2. Is silent on e-communication. In this case, some jurisdictions have permitted e-communication in lieu of paper copy, unless the recipient directs otherwise.
3. Specifies that e-communication be permitted only if the recipient has authorized it.

GUIDING PRINCIPLES

1. E-Communication

- 1.1 E-communication is communication required under pension legislation that is created, sent, or made available by electronic means by a pension plan sponsor and/or pension plan administrator, to a recipient.
- 1.2 E-communication should be presumed to be provided when it is:
 - entered into or made available on an information system that a recipient has designated to receive such communication, and
 - capable of being retrieved and processed by the recipient.
- 1.3 E-communication must be accessible by the recipient and capable of being retained to be usable for subsequent reference.
- 1.4 Where permitted by applicable legislation, CAPSA supports the use of e-communication as the default option, as an efficient and effective communication tool. Advantages include more cost effective methods resulting in reduced administration costs to the pension fund, e.g. easier delivery tracking, improved record-keeping and timelier exchange of information.

- 1.5 CAPSA encourages jurisdictions that have not already done so, to adopt legislation that permits e-communication as a default form of communication (with requisite safeguards) or at least recognize “deemed consent”.

2. Consent

- 2.1 CAPSA recognizes that some legislation requires that recipients expressly consent to receiving e-communication from the plan administrator. CAPSA encourages that such consent be provided by the recipient.
- 2.2 Where pension legislation permits deemed consent, the plan administrator can find that there is deemed consent if a recipient designates an information system to the plan administrator.
- 2.3 Where express or deemed consent is required, the plan administrator should inform the recipient when they are providing consent, that they have a right to revoke it.

3. Requirement for information to be in writing

- 3.1 A requirement under pension legislation for a plan administrator to provide information in writing may be satisfied by e-communication.
- 3.2 The recipient may request a paper version of the e-communication provided by the plan administrator, by notifying the plan administrator.
- 3.3 If electronic delivery fails and the recipient does not provide another designated information system, the plan administrator will provide the recipient with a paper copy of the required communication.

4. Providing information in a specific form and by a specific method

- 4.1 Where the information being provided is available electronically as well as in paper format, the information provided electronically must be identical in content to the paper version.
- 4.2 The requirement for information to be transmitted by a specified method must be met. For instance, if legislation requires a notice to be placed in newspapers, sending an e-mail would not suffice.

5. Electronic signature

- 5.1 Where there is a requirement under pension legislation for a signature, this may be satisfied by an electronic signature.
- 5.2 An electronic signature should allow:
 - identification of the recipient; and,
 - association of the signature with the e-communication, in light of all relevant circumstances and any relevant agreement between the recipient and the plan administrator, at the time the electronic signature was provided.
- 5.3 The Guideline recognizes that the technology available to the plan administrator may determine how the plan administrator will confirm that the electronic signature is “reliable”.

6. Providing originals

- 6.1 A requirement under pension legislation to present an original document may be satisfied by e-communication.

7. Retaining e-communication

- 7.1 A requirement under pension legislation for the plan administrator to retain information may be satisfied by retaining it electronically.
- 7.2 E-communication must be retained in the format in which it was made, sent or received, or in a format that accurately reflects the information contained in the original communication.
- 7.3 The plan administrator or sponsor who sends and receives e-communication should retain information that identifies its sender or other origin, its recipient or other destination of the e-communication, and the date and time it was sent or received.
- 7.4 A reliable assurance must exist as to the integrity of the e-communication, from the time it was first provided to the recipient. The criterion for assessing integrity is whether the e-communication has remained complete and unaltered, apart from changes that may arise in the normal course of storage and display. The standard of reliability required should be assessed in light of the purpose(s) for which the the e-communication was provided, and in light of all relevant circumstances.

8. Use of website or other electronic technology

Plan administrators may wish to provide recipients with information through a website or other electronic tools. In such cases, plan administrators must notify them about the release of such information. This notification must include all relevant details on how to access the information.

9. Data Security

- 9.1 Plan administrators must take into account the challenges regarding data protection and data security. Increased reliance on information technology along with new types of products and services has made proprietary data and personal information vulnerable to cyber-attacks and unintended disclosure. Plan administrators must implement , a protocol to protect the security of information that is sent and retained as well as to retrieve lost or corrupted data. This protocol should be reviewed as often as is reasonable, as well as when new methods of transmitting e-communication are developed or new security threats are discovered.
- 9.2 E-communication that contains confidential information should be delivered to, or made accessible to the intended recipient(s) through secure information systems. The plan administrator is responsible for ensuring that the communications channel will protect confidential information and accurately deliver information to intended recipients only.

10. Other requirements

This Guideline does not limit or override any requirement under pension legislation for any communication to be provided or displayed in a specified manner.