



August 2, 2018

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By email: capsa-acor@fscs.gov.on.ca

Dear Ms. Mazerolle:

Re: Consultation re Guideline No. 9 – Searching for Un-locatable Members of a Pension Plan

I am writing on behalf of Canada's life and health insurance companies in response to CAPSA's consultation regarding the captioned draft guideline. Our industry greatly appreciates the opportunity to provide feedback on regulatory expectations described in CAPSA's proposed guidance.

As you know, the Canadian Life and Health Insurance Association (CLHIA) is a voluntary industry association representing manufacturers of life, health and wealth insurance products throughout Canada. CLHIA members manage approximately two-thirds of registered pension plans in Canada, with a particular focus on defined contribution plans for small and middle-size employers and their workers. In addition, Canada's life insurance companies administer over eighty-five percent of capital accumulation plans.

The challenge of mobility

Increasing mobility amongst Canadians – in terms of residence location, as well as financial and employment relationships – significantly increases the risk of a pension plan administrator losing contact with former plan members and their beneficiaries. Employment mobility increases the likelihood of short term employment relationships, where an individual's entitlement under a pension plan may not be viewed as a significant asset by that individual at the time of termination of employment. Thus, there can

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be little perceived value to an individual in maintaining contact with a former plan administrator in order to update pension plan records to reflect current residence or related contact information.

Reliance on electronic communications may compound this challenge. (Former) pension plan members and beneficiaries who have consented to and use electronic communication of information regarding their entitlements under a plan may reduce the likelihood that those individuals will advise plan administrators of changes in their physical address. Subsequent changes to electronic addresses can leave plan administrators and their service providers with two cold trails – one physical and one electronic - in their efforts to locate and re-engage with such individuals. Even worse, use of a work-based email address, rather than a personal address, virtually guarantees that at least one means of contact will be broken upon a change of employment.

Further, the sense of connectedness that arose from long employment relationships and lives spent in small communities in years gone by has given way to less communal connectivity and a greater awareness of and respect for personal privacy, with the result that once common informal search efforts may no longer be legally possible or appropriate. One can't simply ask the local bank manager "Whatever happened to Joe?" And while we may leave a large number of electronic "footprints", those may be "shallow" and temporary, providing limited depth that is insufficient to support an effective search.

Finally, as noted in the consultation document, there is a corresponding challenge for consumers when an employer's or plan's status changes. Merger, acquisition, wind-up or insolvency of an employer (as distinct from wind-up of a pension plan) can similarly complicate the efforts of (former) plan members or their beneficiaries who, upon reaching pensionable age, try to access pension entitlements in relation to a no longer readily locatable employer's pension plan.

As a result, guidance by CAPSA on expectations regarding appropriate search methodologies is welcome.

Characterization of "un-locatable" individuals

The draft guideline refers to the subject individuals as "un-locatable". This term suggests a finality to the individual's status, and therefore perhaps a futility to the search process. "Lost" is unclear regarding whether the status is temporary or permanent. "Missing" would seem to suggest that this may be a temporary, and therefore remediable, status. "Missing" may thus be the better characterization within the guideline.

Scope

While CAPSA's guidance is applicable to pension plans generally, and individual employers, labour organizations, benefits consultants, and service providers may adopt similar practices with respect to

arrangements that are not pension plans, there is the potential for some readers of the guideline to assume general applicability beyond the intended scope. It may be appropriate to incorporate a more direct discussion of scope as part of the preamble to the guideline, and this might reasonably include definitions of “pension plan”, “plan administrator” and “service provider”, as is done in other CAPSA guidance.

Who is responsible for maintaining accurate records?

A pension plan administrator may be expected to be responsible for maintaining contact information for plan members and others with entitlements under a pension plan, but this creates real complications where, at a practical level, it may be impossible to comply with that expectation, despite frequent efforts by plan administrators to ensure that client information is current and complete. While perhaps not typical, an example helps illustrate this challenge.

Consider a short-service former employee who is not yet of pensionable age but is widowed and childless, and who “sells everything, buys a boat, and sets sail for the south seas”. Such an individual may be – and probably is – unlikely to advise an employer of twenty plus years prior (or the plan administrator of that employer’s pension plan) of a non-existent forwarding address “somewhere in Tahiti, or maybe Tonga, or...”, assuming the individual even has a clear intent regarding his or her destination. In his or her mind, all ties to any fixed address, and any economic ties to Canada, may have been severed.

The first indication the employer or plan administrator may have of the individual’s departure for a grand adventure may be returned mail from a prior address, at which point investigations regarding a new residence or destination may not be fruitful – the trail may end at the water’s edge. And this presupposes that such mail is actually returned, rather than simply being destroyed by an unrelated recipient at the former member’s last known address, or ending up in a “dead letter office” at Canada Post. Such diversion of mail, once discovered, may create a significant delay in launching a search, making success even less likely.

While this example may seem flippant, we think it illustrates the practical challenges of maintaining perfect records. We therefore believe that the discussion of Plan Administrator responsibilities regarding “maintaining accurate pension plan records” on page 2 of the draft guideline needs to recognize the impossibility of compliance in some circumstances, and that the maintenance of plan member and beneficiary contact information must be a joint responsibility of plan administrators and those (former) plan members and beneficiaries. Imposing a unilateral obligation on plan administrators with no corresponding obligation on (former) members and beneficiaries is neither practical or realistic. A more balanced approach may be to soften the language, such that “Pension plan administrators are generally responsible...” and to include an acknowledgement that “(former) members are also expected to keep plan administrators informed of relevant contact information”. It may be reasonable to strengthen the

reference to members updating their contact information at the end of that section on page 3, notwithstanding that this document is targeted primarily at plan administrators and their service providers, and not at individual members and other plan beneficiaries.

Records Management Policies

The draft guideline indicates that a plan administrator's "records management policy should include a component that sets out how the plan administrator will maintain contact with former and retired members...". In general, we believe that the processes for managing member contact information may be addressed more appropriately in a separate document that is incorporated by reference into the administrator's records management policy. This possibility should be expressly noted in the guideline.

As well, we note that where a plan administrator contracts with a service provider for management of member records, adoption of the service provider's processes for maintaining accurate contact information may be more efficient than customizing those processes at the plan level. Such adoption would not absolve the administrator of a duty to consider and periodically review the appropriateness of the service provider's processes, but such adoption appears to be entirely reasonable where the service provider's processes are in accordance with CAPSA members' expectations.

Proportionate Effort

Where a (former) plan member or beneficiary has "gone missing", CLHIA members believe that legislative and regulatory requirements, as well as regulators' expectations, regarding the plan administrator's efforts to locate that individual need to be reasonable, and this includes that those efforts be proportionate to the individual's entitlement under the plan. Incurring a multi-thousand dollar search cost for an aggregate lump-sum entitlement of a few hundred dollars does not seem either reasonable or proportionate. We are pleased to see this balanced, flexible, expectation that plan administrators may customize search processes reflected on page 3 of the draft guideline. We note, however, that this expectation appears to conflict with the statement (in the prior paragraph on page 3) that "CAPSA encourages plan administrators to use *all* possible methods to locate plan members" (emphasis added). CLHIA members firmly believe that use of all possible search methods may be economically inappropriate in many scenarios, and that administrators must be able to select the range of search tools used to reflect the value of the underlying entitlement and be generally proportionate to that value.

Costs

We also note that the draft guideline does not appear to address who should bare the cost of searches for missing members. In a defined contribution plan context, it seems unreasonable to charge other members for member-specific costs; while minimal "normal course" costs of maintaining contact with

members are reasonably payable by the plan, we believe that excessive search costs are properly netted against the entitlement under the plan for the individual to whom the search relates. Such allocation of costs should be addressed in, and expressly permitted by, the guideline.

Harmonization

As is well known to CAPSA members, we believe that legislative and regulatory requirements, as well as regulators' expectations, need to be harmonized across all Canadian jurisdictions. CLHIA members acknowledge this objective in the mandate of the Un-locatable Members Committee. CLHIA members do not suggest that legislation or regulation is necessarily appropriate with respect to efforts to locate missing pension plan members and their beneficiaries. It is in this context, particularly where legislation or regulations are not applicable, that CAPSA guidance is most helpful in documenting consistent regulatory expectations.

Social Media

Among the strategies suggested in the draft guideline is the use of social media channels in plan administrators' efforts to locate individuals with entitlements under a pension plan. Insurers recognize that individuals have legitimate expectations of privacy, and that these impose practical limits on the measures that plan administrators – and life insurance companies as record keepers and service providers acting on behalf of plan administrators – can and should take in order to locate missing individuals. Plan administrators and service providers are understandably bound by privacy legislation, guidance from privacy commissioners and any decisions of the courts in this respect, particularly with respect to access to what are intended to be social media accounts, such as personal Facebook accounts, that are targeted to private, managed, audiences.

In light of these reasonable limits on access to social media accounts – be they statutory or contractual – the expectation that a plan administrator can maintain complete and current contact information for all individuals with entitlements under a pension plan becomes increasingly difficult to satisfy and may, for practical purposes, be an impossibility.

Evolving expectations

CLHIA members agree that methods used to locate individuals with plan entitlements will likely evolve over time, and should therefore be subject to both regular and ad-hoc review in light of legal guidance and technological change.

Social Insurance Number-based searches

Our industry recognizes the potential role of CRA's letter forwarding service in notifying individuals that they may have unclaimed pension entitlements. However, CRA's limited ability to report to the organization requesting assistance in locating missing plan members and beneficiaries makes this process less than satisfactory. Recognizing the current limits imposed on CRA by applicable privacy legislation, CLHIA members believe that a review of that legislation is appropriate; in particular, a plan administrator's inability to make payments due under a pension plan may be construed as non-compliance with reporting requirements under the *Income Tax Act*, and that may justify some limited communication of taxpayer information to the plan administrator or service provider in order to both enhance tax compliance and ensure pension entitlements are received by plan members and beneficiaries in a timely manner. We believe that, subject to appropriate confidentiality rules, such communications could be directed to plan administrators or their service providers through designated privacy officers, with appropriate penalties for misuse should such misuse occur. CLHIA will continue to raise this alternative with relevant officials.

Unclaimed Property Registers

In our view, the limited scope of current and proposed unclaimed property regimes does not serve consumers effectively. At the same time, we do not believe that a single, pan-Canadian, repository of unclaimed property is attainable or desirable.

However, CLHIA members believe that unclaimed property registers, with limited disclosure of consumer information and optional transfer of underlying assets or their value to a government department or crown agency, may have significant merit, especially if they operate in parallel with comparable registers maintained by plan administrators and/or service providers.

We are concerned that excessive publication of consumer information could encourage and facilitate identity theft and the resultant inappropriate access to and conversion of pension plan and other entitlements. CLHIA would be very interested in pursuing discussions with officials to explore how such regimes might provide flexible information for plan members and beneficiaries, while maintaining multiple sources of information and limiting risk to consumers, while preserving flexibility about where assets are held.

Again, thank you for the opportunity to provide comments regarding the proposed guidance. CLHIA would be pleased to expand on these concerns as necessary, and looks forward to continued dialogue with CAPSA and its members. Please feel free to contact me by telephone at 416-359-2021 or by email at

rsanderson@clhia.ca should you or your colleagues wish to discuss any of the issues identified in our comments, or those from other stakeholders.

Yours sincerely,

(Original signed by)

Ronald Sanderson
Director, Policyholder Taxation and Pensions

Copy: Linda Buchanan
Chair
CAPSA Un-locatable Members Committee