



Guideline No. 2

Electronic Communication in the Pension Industry

November 2018

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 any communications required under pension legislation from a pension plan administrator, which are provided in electronic format (e-communication). By setting out principles-based guidance and best practices for, the Guideline provides a framework in which pension plan sponsors, plan administrators, and pension plan members can apply the provisions of e-commerce legislation and applicable pension benefits standards legislation, to pension related communications. Some jurisdictions also have legislation that requires plan administrators to meet standards for information and communication to accommodate the needs of people with disabilities.

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.

References 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. Reference to "plan administrator" includes agents employed by a plan administrator in the administration of a pension plan.

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 over time 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.

The 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 legislative approaches regarding e-communication fall into three broad categories. Pension legislation:

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 any communication 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 must be accessible by the recipient and capable of being retained to be usable for subsequent reference. This means it must be capable of being viewed, stored and printed.
- 1.3 Where permitted by applicable legislation, CAPSA encourages 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.
- 1.4 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 pension legislation requires that recipients expressly consent to receiving e-communication from the plan administrator. CAPSA encourages that such consent be provided.
- 2.2 Where pension legislation permits deemed consent, the plan administrator can accept 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 any e-communication provided by the plan administrator, by notifying the plan administrator.
- 3.3 The plan administrator will provide the recipient with a paper copy of any required communication, if electronic delivery fails.

4. Providing information in a specific form

Information provided through e-communication must mirror the content of the paper copy.

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 be able to:
- identify the recipient; and,
 - associate 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.

- 6.2 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 e-communication was provided, and in light of all relevant circumstances.

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 Information that identifies the origin and destination of the e-communication and the date and time when it was sent or received must be retained.

8. Sending and receiving e-communication

E-communication should be presumed to be provided when it is:

- entered into or made available on an information system that the recipient has designated to receive such communication, and
- capable of being retrieved and processed by the recipient.

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. Plan administrators must consider and implement on an ongoing basis, a protocol to protect the security of information that is sent and retained as well as to retrieve lost or corrupted data.
- 9.2 E-communication that contains confidential information should be accessible only by the intended recipient(s) by means of a password or other unique identification system.

10. Use of website or other electronic technology

As technology changes, 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.

11. 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, or for any information to be transmitted by a specified method. If, for instance, legislation requires a notice to be placed in newspapers, then sending an e-mail sent would not suffice.

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