

Bill 30: Is your pension committee ready for December 13, 2007?

By Catherine Maheu and Marie-Claude Perreault

The countdown has begun! Have the governance rules for your pension committee been set out in an internal by-law? If not, there's no time to lose! The deadline is December 13, 2007.

Source

In Quebec, billions of dollars are managed by pension committees. This is an onerous responsibility for the members of these committees who, on behalf of several million workers and retirees, regularly make important decisions, notably with respect to the pension fund's investment policy and the choice of fund managers, actuaries, administrators and various advisers for the purposes of the plan.

But, what rules govern the exercise of the duties of a pension committee? What rules should the members follow to ensure that they act ethically and appropriately? How should important decisions be made with respect to the administration and management of the fund? What skills do the members of the pension committee need to have in order to perform their duties properly?

Until now, nothing required a pension committee to organize or structure its operations, which sometimes has led to improvisation and *ad hoc* solutions as problems arose.



It is precisely in order to improve and better structure the governance of pension plans, and to provide for greater transparency, that the *Act to amend the Supplemental Pension Plans Act, Particularly with Respect to the Funding and Administration of Pension Plans* (commonly known as "Bill 30"), passed on December 13, 2006, henceforth requires that every pension committee, without exception, adopt an internal by-law to govern its functioning. This is a very avant-garde legislative innovation.

Content

The internal by-law must cover, among other things,

1. the duties and obligations of the committee members;
2. the rules of ethics to which such members are subject;
3. the rules governing the appointment of the chair, vice-chair and the secretary;

4. the procedure for meetings and the frequency of meetings;
5. the measures to be taken to provide professional development to committee members;
6. the measures to be taken with respect to risk management;
7. the internal controls;
8. the books and registers to be kept;
9. the rules to be followed when selecting, remunerating, supervising and evaluating agents, representatives and service providers; and
10. the standards that apply to the services rendered by the committee, including, among others, those relating to communications with the plan members and beneficiaries.

It must also be provided that, in the event of a discrepancy between the text of the pension plan and the text of the internal by-law as regards the functioning and governance of the committee, the internal by-law will prevail. Hence the importance of ensuring that the by-law is drafted in accordance with the law and that it is also consistent with the by-laws governing the plan itself.

The internal by-law thus becomes the basic work tool of the pension committee. The committee must ensure that it is complied with and must revise it regularly to take into account new realities relating to the plan, the committee itself and the members.



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Through its audit powers, the Régie des rentes du Québec is to ensure that all pension committees act in accordance with the new legislative provisions.

What needs to be done?

The drafting of an internal by-law involves an analysis of the current functioning of the pension committee and the role of its members. However, the circumstances specific to the company and its active and retired workers, as well as their expectations with respect to the role of the pension committee, must also be looked at. In addition, the plan's history should be taken into account. A review of the particular risks inherent in the powers and duties of the pension committee members will reveal more specifically the various measures to be taken to better manage them.

This is work which requires time, attention to detail, thoroughness and in-depth knowledge of the legal provisions relating to ethics and governance when administering the property of others. Indeed, sound management and governance practices for pension committees can be based on the rules of governance applicable to company directors, trustees and mandataries.

It should also be kept in mind that a standard form of internal by-law is not necessarily appropriate for all pension committees! Each by-law must be customized to suit the specific needs of the pension committee and realities of the plan, the employer and the members.

Conclusion

In the wake of the increasing number of lawsuits in Quebec and elsewhere in Canada involving the responsibilities of pension committees and their members, it is important to properly define the rules relating to the functioning and governance of pension committees. In this context, the importance of careful drafting, proper adoption and strict enforcement of the internal by-law should not be underestimated.

Our specialists can help you determine the most appropriate content of the by-law based on your circumstances. They can also help you draft the internal by-law, ensure that it is updated regularly, enhance the knowledge of your pension committee members and answer any questions relating to the application of the by-law.

Don't forget — this must be done before December 13, 2007!

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