

**Canadian Association of Pension Supervisory Authorities**

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**Association canadienne des organismes de contrôle des régimes de retraite**

**PROPOSED REGULATORY GUIDELINES FOR  
ELECTRONIC COMMUNICATION  
IN THE PENSION INDUSTRY**

**A Report by the  
Canadian Association of Pension Supervisory Authorities (CAPSA)  
Working Committee on Electronic Communication**

**May 25, 2001**

# CAPSA

May 25, 2001

Dear Stakeholder:

**Re: Proposed Regulatory Guidelines for Electronic Communication  
in the Pension Industry**

Please find enclosed a discussion paper from the Canadian Association of Pension Supervisory Authorities (CAPSA), entitled *Proposed Regulatory Guidelines for Electronic Communication in the Pension Industry*, for your review and comment.

CAPSA is an interjurisdictional association of pension supervisory authorities whose mission is to facilitate an efficient and effective pension regulatory system in Canada.

Pension plan administrators and members want to take advantage of information technology to exchange information, such as the annual statements which are provided to plan members. The result should be lower administrative costs and better service to members.

CAPSA supports innovation but also recognizes the need to ensure plan members' rights and interests are adequately protected. A CAPSA Working Committee was established to investigate standards or guidelines for electronic communication between pension plan administrators and members. The enclosed discussion paper was prepared by this Working Committee and endorsed by CAPSA as a consultation document.

The discussion paper contains broad guidelines on the use of electronic communication between pension plan administrators and members, to satisfy the disclosure requirements of pension legislation. Like most electronic commerce legislation across Canada, the proposed guidelines are largely derived from the Uniform Law Conference of Canada's *Uniform Electronic Commerce Act*, which was finalized in 1998.

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The proposed regulatory guidelines are intended to stir discussion, and should not be construed as a proposal for legislation or as the official position of any provincial or federal government or agency. Once the proposed guidelines are finalized, each jurisdiction will have to decide how best to implement the guidelines.

We welcome your comments, suggestions and ideas, and look forward to receiving your response by July 31, 2001. Further details on the consultation process are provided on page 6 of the discussion paper.

Sincerely,

Dave Wild  
Chair, Working Committee on Electronic  
Communication  
Superintendent of Pensions  
Saskatchewan Justice

Sherallyn Miller  
Chair, CAPSA  
Superintendent of Pensions  
British Columbia Ministry of Labour

***CAPSA'S REPORT ON PROPOSED  
REGULATORY GUIDELINES FOR  
ELECTRONIC COMMUNICATION  
IN THE PENSION INDUSTRY***

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***May 25, 2001***

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## **I INTRODUCTION**

As with most laws, pension benefits standards legislation in Canada implies the use of paper documents. The words “written”, “in writing”, “signed”, or “certified”, for instance, are used throughout the legislation.

The growth of electronic communication for personal, professional and business use, and especially the proliferation of electronic mail and the Internet as basic information tools, has inevitably raised the issue of accommodating paperless communication under pension law.

The potential benefits of electronic commerce in the pension industry are readily identifiable and include significantly reduced administrative costs, enhanced service to plan members, and improved fiduciary monitoring. One industry source indicates that the cost of an annual member statement would be reduced from approximately \$8 per year to a few pennies if provided electronically.

CAPSA believes that electronic communication should not be discouraged by pension regulations, provided some basic protections are in place. The intent of this paper is to propose appropriate guidelines for electronic communication between pension plan administrators and pension plan members.

The guidelines would create implementation issues for plan administrators. For example, how does an administrator ensure that electronic signatures are “reliable for the purpose of identifying a plan member”? The answer lies in the technology available to the administrator. A well-established principle of electronic commerce law is that it should be technologically neutral. That is to say regulations should not tie electronic communication to a specific technology or process that would become obsolete or irrelevant as new technologies or processes develop. Therefore, the technological solutions to the challenges raised by these guidelines will not be the subject of further CAPSA guidelines. That is not to say, however, that pension regulators would not be interested in how the guidelines would be applied by plan administrators.

The paper should not be construed as the official position of any provincial or federal government or agency. Each jurisdiction will have to address whether the guidelines should be adopted and in what form.

References in the guidelines to “plan member” should be read to include an active plan member, a deferred plan member, a retired plan member or a spouse 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.

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## **II PROPOSED GUIDELINES**

### 1.0 Legal recognition

The transfer of a document between a plan administrator and a plan member should not be denied legal effect or enforceability solely by reason that it is in electronic form.

### 2.0 Use not mandatory

A plan member should not be required to use, provide or accept a document in electronic form, unless the plan member gives consent or there is deemed consent.

### 3.0 Consent of plan member

3.1 The consent of a plan member to receive an electronic document should be deemed to have been given if an information system has been designated to the plan administrator by the plan member for the purpose of receiving documents of the type sent.

3.2 Consent should not be deemed to have been given unless the plan administrator informs the plan member that,

- designation of an information system to the plan administrator for the purpose of receiving documents of the type sent constitutes deemed consent to receive such documents,
- the plan member may revoke the deemed consent at any time, either in writing or electronically,
- the plan member may request a paper version of any documents by notifying the administrator,
- the plan administrator will provide the plan member with a paper copy of any documents delivered electronically if electronic delivery fails, and
- the plan member may at any time change the plan member's designated information system by notifying the plan administrator either in writing or electronically.

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- 3.3 The plan administrator must inform the plan member of the aforementioned before the first time an electronic document is sent to the plan member and with each electronic document sent thereafter.
  - 4.0 Requirement for information to be in writing
    - 4.1 A requirement under pension benefits standards legislation for a plan administrator to provide a document to a plan member or vice versa may be satisfied by electronic means.
    - 4.2 An electronic document must be accessible by the recipient of the document and capable of being retained by the recipient so as to be usable for subsequent reference. This means a document must be capable of being opened and viewed, downloaded or saved to file, and then permanently stored so as to be viewed again or printed.
  - 5.0 Providing information in a specific form
    - 5.1 A requirement under pension benefits standards legislation for a plan administrator to provide a document to a plan member or vice versa in a specified form may be satisfied by electronic means.
    - 5.2 The information in an electronic document must be provided in the same or substantially the same form as the written document.
    - 5.3 An electronic document must be accessible by the recipient of the document and capable of being retained by the recipient so as to be usable for subsequent reference.
  - 6.0 Electronic signature
    - 6.1 A requirement under pension benefits standards legislation for the signature of a plan member may be satisfied by an electronic signature.
    - 6.2 An electronic signature must be reliable for the purpose of identifying the plan member in light of all the circumstances and any relevant agreement between the plan administrator and the plan member at the time the electronic signature is made.
    - 6.3 An electronic signature must be reliable for the purpose of associating the electronic signature with the relevant electronic document in light of all the circumstances and any relevant agreement between the plan administrator and the plan member at the time the electronic signature was made.



7.0 Provision of originals

7.1 A requirement under pension benefits standards legislation for a plan administrator or plan member to present or retain an original document may be satisfied by the provision or retention of an electronic document.

7.2 A reliable assurance must exist as to the integrity of the information contained in the electronic document from the time it was first made in its final form. The criterion for assessing integrity is whether the information has remained complete and unaltered, apart from the introduction of any changes that arise in the normal course of communication, storage and display. The standard of reliability required should be assessed in light of the purpose for which the document was made and in light of all the circumstances.

7.3 An electronic document must be accessible by the plan member or plan administrator and capable of being retained by the plan member or plan administrator so as to be usable for subsequent reference.

8.0 Whether a document is capable of being retained

8.1 An electronic document should be deemed not to be capable of being retained so as to be usable for subsequent reference if the person providing the electronic document inhibits the printing or storage of the electronic document by the recipient.

9.0 Retention of documents

9.1 A requirement under pension benefits standards legislation to retain a document may be satisfied by the retention of an electronic document.

9.2 An electronic document must be retained in the format in which it was made, sent or received, or in a format that accurately represents the information contained in the document that was originally made, sent or received.

9.3 The information in the electronic document must be accessible so as to be usable for subsequent reference by any person who is entitled to have access to the document or who is authorized to require its production.

9.4 Where an electronic document was sent or received, information that identifies the origin and destination of the electronic document and the date and time when it was sent or received must also be retained.

10.0 Other requirements continue to apply

Nothing in these guidelines should limit the operation of any requirement under pension benefits standards legislation for any information or document to be posted or displayed in specified manner, or for any information or document to be transmitted by a specified method. If, for instance, legislation requires a notice to be placed in newspapers, then an e-mail sent to plan members would not suffice.

11.0 Sending and receiving electronic documents

11.1 Unless the originator and the recipient agree otherwise, an electronic document should be considered sent when it enters an information system outside the control of the originator or, if the originator and the recipient are in the same information system, when it becomes capable of being retrieved and processed by the recipient.

11.2 An electronic document should be presumed to be received by the recipient when it enters an information system designated to the originator by the recipient for the purpose of receiving documents of the type sent, and it is capable of being retrieved and processed by the recipient.

12.0 Use of a web site for the posting of documents

12.1 Where an electronic document relates to a plan member, the plan administrator should be able to post the electronic document on the web site of the plan administrator. However, an electronic document is not provided to a plan member if it is merely made available for access by the plan member.

12.2 The electronic document must be accessible by the plan member and capable of being retained by the plan member so as to be usable for subsequent reference.

12.3 The electronic document must remain confidential and accessible only by the plan member by means of a password or other unique identification system.

### **III CONSULTATION PROCESS**

CAPSA invites written comments and suggestions regarding any aspect of this discussion paper. The Working Committee will consider all submissions received by July 31, 2001. Your comments should be sent to:

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c/o Financial Services Commission of Ontario  
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17<sup>th</sup> Floor, Box 85  
North York, Ontario M2N 6L9

Facsimile: (416) 226-7880

E-mail: [cadams@fSCO.gov.on.ca](mailto:cadams@fSCO.gov.on.ca)

Questions arising from this discussion paper may be directed to any of the members of the Working Committee, as set out in Part IV.

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