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March 1, 2019

Via email: [capsa-acor@fscs.gov.on.ca](mailto:capsa-acor@fscs.gov.on.ca)

Ms. Angela Mazerolle  
Chair, CAPSA  
c/o CAPSA Secretariat  
5160 Yonge Street, 16th Floor  
Toronto, ON M2N 6L9

Dear Ms. Mazerolle:

**Re: Draft Strategic Plan 2019-2022**

I write on behalf of the Canadian Bar Association's Pensions and Benefits Law Section (CBA Section) in response to the Canadian Association of Pension Supervisory Authorities' (CAPSA) request for feedback on the draft CAPSA 2019-2022 Strategic Plan (Draft Plan). We commend CAPSA for engaging with stakeholders to understand the practical challenges they encounter, which will help CAPSA finalize the Draft Plan.

The Canadian Bar Association is a national association of 36,000 members, including lawyers, notaries, academics and students across Canada, with a mandate to seek improvements in the law and the administration of justice. The CBA Section contributes to national policy, reviews developing pensions and benefits legislation and promotes harmonization. The CBA Section comprises lawyers from across Canada who practise in pensions and benefits law, including as counsel to benefit administrators, employers, unions, employees and employee groups, trust and insurance companies, pension and benefits consultants, investment managers and advisors.

**General Comments**

The CBA Section generally supports the Draft Plan and encourages CAPSA to continue its proactive efforts, in accordance with its mandate, to harmonize regulatory principles and practices in the supervision of pension plans. We appreciate the difficulty in achieving consensus on these issues among all jurisdictions across Canada.

The CBA Section believes that one of CAPSA's top priorities should be adopting and implementing the Agreement Respecting Multi-Jurisdictional Pension Plans (MJPPA). Administrators of multi-jurisdictional plans have faced practical difficulties and uncertainty in administering such plans for many years. These challenges increase the cost of administering the plans and potentially prejudice

the security of the benefits for plan beneficiaries. Encouraging all Canadian jurisdictions to get on board with the MJPPA should be a key priority for CAPSA. CAPSA's Communique of January 2019 indicates that the Multilateral Agreement Committee is finalizing negotiations around the principles underlying a future agreement and has started drafting the agreement. In addition to our previous submission on funding,<sup>1</sup> we would be pleased to comment on the new draft agreement if helpful.

We also believe that CAPSA should give priority to updating the Guidelines outlined in the Draft Plan. CAPSA Guidelines are indicative of industry best practices and the expectations of pension regulators. The Guidelines must be kept current and reflect recent developments, as acknowledged in Priorities 2(ii) and (iii) in the Draft Plan.

The CBA Section is pleased that CAPSA has updated Guideline No. 8 (Defined Contribution Pension Plans Guideline) and released the new Guideline No. 9 (Searching for Un-locatable Members of a Pension Plan). Unclaimed benefits of plan beneficiaries who cannot be located after all reasonable efforts have been made remain a significant administrative problem, particularly on a plan wind-up. Guideline No. 9 correctly describes the current approach to unclaimed benefits: relying on provincial unclaimed property legislation or on guidance issued by pension regulators, where available.

We believe that developing a more coordinated and harmonized approach to address unclaimed benefits should be another priority in the Draft Plan. Lobbying the various legislatures may be part of such harmonization efforts.

## **Specific Comments**

### **Priority 2(i) – Implement Recommendations of the CAPSA Leverage Working Group**

The CBA Section has reviewed the CAPSA Leverage Working Group's Communique about the use of leverage by pension plans (February 2019). We support CAPSA's proactive approach in researching this issue. We understand that CAPSA has not requested feedback on this Communique and (from the "Next Steps" section of the Communique) that CAPSA is considering whether further research is required. In our view, CAPSA should solicit stakeholder feedback prior to issuing any guidance on the use of leverage by pension plans. We would be pleased to participate in any future consultations on this issue.

### **Priority 3(iii) – Research and Examination of Transformative Technologies**

We support CAPSA's examination and research on transformative technologies in the Canadian pension landscape. Technology has become increasingly important in pension plan administration for both small and large plans. It would be helpful and appropriate for CAPSA to provide regulatory guidelines on the use of technology, particularly on the issue of cybersecurity. While those guidelines would need to be sufficiently specific to provide useful guidance, they should also contemplate the future evolution of technology. We suggest that CAPSA consult with stakeholders in developing such guidelines.

Given the rapid pace of technological change, we recommend that CAPSA review and update its various guidelines that address technology issues (such as Guideline #2 - Electronic Communication and Guideline #9 – Searching for Un-locatable Members of a Pension Plan), as frequently as possible.

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<sup>1</sup> [Proposed Changes to Funding and Asset Allocation Rules for Multi-Jurisdictional Pension Plans](#) (Ottawa: CBA, 2017)

**Priorities 4 and 5 – Collaborating with Other Regulators and Increasing Stakeholder Awareness**

While Priorities 4 and 5 are useful, in our view they are not as important as the other priorities in the Draft Plan. Participating in the International Organization of Pension Supervisors should give CAPSA valuable information about global developments in the regulation of pension plans. Participating in the Joint Forum should help CAPSA consider pension regulatory issues in conjunction with other relevant regulatory issues and develop a holistic approach for resolving these issues.

Enhanced coordination with stakeholders is a worthwhile objective and we welcome the opportunity to provide feedback. We encourage CAPSA to continue to develop information and materials for pension industry publications to assist stakeholders and raise awareness about CAPSA, its roles and its guidelines, which is particularly helpful for plan administrators.

We trust that our input is useful and welcome further discussion at the stakeholder dialogue session on April 8, 2019. Please do not hesitate to contact us if you have questions or require other information.

Yours truly,

*(original letter signed by Nadia Sayed for Sonia Mak)*

Sonia Mak  
Chair, CBA Pensions and Benefits Law Section