Diversity has been, and continues to be, the pride of this nation and the bane of existence for the various levels of government. It is this diversity that encourages provincial and regional identities. But in an effort to maintain those identities, diversity discourages legislative harmonization. One area of law that would benefit from this harmonization is the regulation and administration of private sector pension plans. However, we are far from achieving that goal.

The purpose of legislation and judicial precedent is to create a legal system that is consistent and predictable, yet still capable of evolving. The problem that arises in applying differing legislative requirements to the same area of law is that predictability and consistency become lost in the administrative burden of trying to reconcile the varying legal requirements. More importantly, the evolution of the law becomes restricted to the specific jurisdiction in which it is applicable. An example of this is the 2004 Supreme Court of Canada decision in Monsanto Canada Inc. v. Ontario Superintendent of Financial Services, which states that surplus assets related to a partial windup must be distributed at the time of the partial windup of a pension plan. Although this decision is directly applicable to pension plans regulated in Ontario and to federally regulated pension plans, Monsanto has limited application in Western Canada where pension legislation does not contain the particular language that was subject to analysis by the Supreme Court.

The discussion around the harmonization of pension law is not new. Over the past several years, the Canadian Association of Pension Supervisory Authorities (CAPSA) has been developing a model law that addresses a number of areas that resonate with many in the pension industry. More recently, the industry has seen some movement toward evolution with the appointment of the Ontario Expert Commission on Pension Reform, the Alberta/B.C. Joint Expert Panel on Pension Standards and the Nova Scotia Committee to Review Pension Benefits Legislation. However, the primary mandate of these panels is not the national harmonization of pension law. This means that the only harmony between the respective recommendations that is likely to occur will be in relation to those few areas of concern, such as safe harbours and overall legislative changes, that happen to overlap. While all of the panels have been tasked with providing input and insight into the advancement of pension legislation in their respective jurisdictions, they are not working together—nor are they expected to—to provide a single harmonized direction for pension law in Canada. Even the Alberta/B.C. initiative, arguably the only panel with a mandate for multi-jurisdictional harmonization, is likely to encounter hurdles because it is still dealing with two different provincial governments and regulators. In fact, there is no guarantee that even if a single interprovincial pension law was introduced and accepted, the respective governing and regulatory bodies would interpret the same provisions in a similar manner.

Steps are being taken to bring pension legislation into a more universally applicable genre. However, there is still a long way to go, and the governmental players remain largely on the sidelines. With the release of the various panel recommendations expected in late 2008, it remains to be seen what the commissioning governments will do with the results. Rather than examining the individual reports in a vacuum, the respective governments will need to engage in a national dialogue to maximize the benefits of the various panels and to create a more harmonized approach to pension law. Such a dialogue would serve to determine the broader applicability of the recommendations arising out of the panels and how those results may benefit the pension industry and plan members.

If the pension industry is able to convince the governments that it is necessary to mesh the essential elements of the CAPSA model law with the insights of the panels, then pension administrators and service providers in both Eastern and Western Canada may find themselves on the road to a more coordinated regime of legislative regulation.