Pensions Law

November 25, 2008

OECP Report Released

On Thursday, November 20, 2008 the Ontario Expert Commission on Pensions released its much anticipated report: "A Fine Balance – Safe Pensions, Affordable Plans, Fair Rules" (the "Report"). The Chair of the Commission was Harry Arthurs, who was assisted by expert advisors.

The Report was commissioned by the Minister of Finance in November 2006. During the past two years, the Commission sought and received input from interested stakeholders and had several comprehensive studies completed in the pension area.

The Report does not change the current Ontario pension law. It provides a set of recommendations to the Government with respect to potential reform in the pension area.

Following the release of the Report, the Ministry of Finance announced that it is seeking feedback from Ontarians by February 27, 2009 because it is committed to introducing legislation soon. It is unclear which recommendations from the Report that the government intends to implement.

The Ministry of Finance acknowledged the current economic climate and the potential immediate concerns facing pension plans when it stated:

> While current global economic uncertainties are the short-term reality, Ontario is taking immediate action to strengthen and protect the viability of Ontario's pension system by increasing the capacity of the Financial Services Commission of Ontario (FSCO), the pension regulator, to oversee pension plans.
>
> To help plans manage solvency funding issues arising from recent market uncertainty, while taking into account the need for benefit security, the government is actively considering temporary solvency relief measures. The government is also working on this issue with its federal and provincial partners, through the *Federal-Provincial Working Group on Pensions*, announced by the Finance ministers on November 3, 2008.

Here are some highlights of the Report's recommendations

- Replace the current pension regulator and tribunal with an Ontario Pension Regulator and a Pension Tribunal of Ontario. The Report recommends that the Ontario Pension Regulator be given broader powers, including:

  - the ability to order interim valuations where there are reasonable grounds to believe that a plan is at risk of failure;
  - the power to approve arrangements to reset funding obligations (including contributions and amortization periods) for at-risk plans, provided that there is member or union consent to the arrangement;
  - the power to authorize the provision of additional forms of security for at-risk plans, provided that there is member or union consent to the arrangement;
  - the power to provide opinion letters and advance rulings
- Introduce a new Pension Champion and new Pension Community Advisory Council
- Require single employer funds to maintain a security margin of 5% of solvency liabilities (i.e., fund at 105% of solvency liabilities). If

single employer plans are at least 95% funded, allow for a longer amortization period to reach 105%

- Provide that surplus on wind up should be distributed in accordance with plan documents, if entitlement to surplus is clear. If the documents are not clear, then the company can seek agreement with the plan's members/union to distribute the surplus. For ongoing plans, surplus in excess of 125% may be withdrawn based on similar principles
- Permit contribution holidays once the plan's funding is at a minimum of 105%
- Require each pension plan to specify what provision (if any) has been made for benefit indexation and implement legislation allowing inflation adjustment to be required in cases of "inflation emergencies"
- Allow the use of letters of credit as security for a certain proportion of contributions owing to a plan and investigate the use of asset pledges to provide security
- Permit multi-employer pension plans, jointly sponsored pension plans and jointly governed target benefit plans to fund on a going concern basis only. Require single employer pension plans to continue to fund on both a solvency and going concern basis
- Persuade the federal government to reform the federal investment rules (which apply to Ontario registered pension plans) and if the federal government will not do so, the Ontario government should implement its own investment rules and cease to rely on the federal ones
- For plans that are jointly governed and have the capacity to make complex investment decisions, provide an exemption from the investment rule that prohibits the administrator of a pension plan from investing plan assets in securities of a corporation to which are attached more than 30% of the votes that may be cast to elect the directors of the corporation
- Extend "grow-in" rights to all qualifying members (i.e., members whose age and years of service add up to at least 55) who are involuntarily terminated (as opposed to providing grow-ins only in the event of a full or partial wind up)
- Provide for immediate vesting for all accrued pension benefits (as opposed to two years, which is current minimum standard)
- Provide that the regulator may declare a partial wind up where a minimum of 40% of active members are terminated within a two year period
- Continue the Pension Benefits Guarantee Fund in its current form for the short term and complete a study of possible alternatives. Increase maximum PBGF coverage from $1000 per month to $2500 per month
- Amend legislation to enable and promote large commingled target benefit plans

If you have any questions regarding the Report, or any other pension matter, please speak with any member of our Pensions, Benefits and Compensation Group:

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