The Voice of the Legal Profession

Submission

A Permanent Framework for Target Benefits: Revised Proposals

Date: October 17, 2023

Submitted to: Ministry of Finance

Submitted by: Ontario Bar Association

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ONTARIO BAR ASSOCIATION
A Branch of the Canadian Bar Association

L'ASSOCIATION DU BARREAU DE L'ONTARIO
Une division de l'Association du Barreau canadien

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Summary

The Ontario Bar Association ("OBA") appreciates the opportunity to provide this submission to the Ministry of Finance ("Ministry") on proposed regulations for implementing a permanent framework for multi-employer pension plans ("MEPPs") providing target benefits. For the reasons more fully set out below, we recommend the following:

- Remove the requirement that administrators provide notice of the registration of the plan amendment reflecting the conversion to all participating employers (in addition to trade unions and associations).

- The prohibition on the use of surplus in the first valuation report after a new collective agreement affecting contributions to the plan has been implemented should be removed because it would effectively prevent *many* MEPPs from ever using surplus to offset contributions.

- Clarification is needed on the requirement that previously reduced accrued benefits for former members must be restored before accrued benefits for members could be improved beyond a restoration of previously reduced benefits. How far back must one reach? There may have been several increases and decreases to accrued benefits for many MEPPs over the years.

The Ontario Bar Association

The OBA is the largest volunteer lawyer association in Ontario, with approximately 16,000 members, practicing in every area of law in every region of the province. We provide updates and education on every area of the law to combined audiences of 20,000 lawyers annually. The members of our 40 practice sections include leading experts in their field who provide practical advice to government and other decisionmakers to ensure the economy and the justice sector work effectively and efficiently to support access to high-quality justice for Ontarians.

This submission has been prepared by the OBA's Pensions and Benefits Law Section, which represents lawyers who serve as legal counsel to a broad cross-section of stakeholders in the pension and benefits industry, including pension and benefit plan administrators, employers, plan members, bargaining agents, pension and benefit consultants, investment managers, actuarial firms, and other stakeholders. Our members have analyzed and aided decision makers over the years on several important legislative and policy initiatives in the pension field. The submission also has the benefit of input for our Labour and Employment Section, whose members represent unions, management, and employees.

Comments

Notice of Conversion

The Ministry proposes that after conversion, administrators will be required to send the notice of the registration of the plan amendment reflecting the conversion to all participating employers (in addition to trade unions and associations).[1] However, the "pension promise" is not changing with these conversions, nor are the obligations of participating employers, as most of these plans have been providing target benefits for many years.

We note that many MEPPs providing target benefits have numerous participating employers. In many cases these employers have little to no role in the administration of the pension plan. They simply provide contributions at rates negotiated in collective bargaining. In these instances, providing notice to participating employers would be unnecessary, onerous for administrators, and likely confusing for employers. The requirements for these employers would not change because of conversion, and the notice of conversion is likely to raise confusion and concern among some employers when the reality is that the conversion is not relevant to their obligations to the plan. Where such employers are involved in the administration of the Plan, they will be fully aware of the conversion process.

Prohibition on the Use of Going Concern Surplus Following a Collecting Agreement

The Ministry proposes allowing the use of going concern surplus in the contribution sufficiency test under specific circumstances. In our view, this is a welcome addition to the framework.[2] However, we have concerns with the prohibition on the use of surplus in the first valuation report after a new collective agreement affecting contributions to the plan has been implemented.

As noted above, for many MEPPs providing target benefits, there are numerous contributing employers subject to numerous different collective agreements, each with its own term. This prohibition would be

[1] Ontario, Ministry of Finance, *A Permanent Framework for Target Benefits: Revised Proposals* (August 2023) at 22, online: <https://www.ontariocanada.com/registry/showAttachment.do?postingId=45527&attachmentId=59067>.
[2] *Supra* note 1 at 16.

unworkable for such plans. For a significant number of plans, collective agreements are regularly implemented (often affecting contributions), and each valuation could be the first following at least one new collective agreement. This prohibition would effectively prevent such plans from ever using surplus to offset contributions, and we would recommend removing the prohibition.

Benefit Improvements

The Ministry reiterates the proposed requirement that previously reduced accrued benefits for former members must be restored before accrued benefits for members could be improved beyond a restoration of previously reduced benefits.[3] However, for many MEPPs there may have been several increases and decreases to accrued benefits over many years. We recommend clarification with respect to how far back this rule is intended to reach. Upon implementation, does the rule apply:

- to all reductions to accrued benefits for former members that have ever been made, or
- only within a certain period dating back from the date of implementation?

The OBA would be pleased be of additional assistance including meeting to further discuss our comments and reviewing additional drafts and revisions of the follow-up consultation document.

[3] *Supra* note 1 at 18.