

Special Communiqué

December 14, 2009

Ontario's Pension Reform – Round 1

About Us

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Through Morneau Sobeco and Shepell•fgi, the firm delivers solutions to assist employers in managing the financial security, health and productivity of their employees.

With over 2,200 employees in offices across North America, Morneau Sobeco Income Fund offers its services to organizations that are situated in Canada, in the United States and around the globe.



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On December 9, 2009, the Ontario Government introduced the first step of new pension reform legislation. The *Pension Benefits Amendment Act, 2009* brings into effect some of the recommendations released last year by Ontario's Expert Commission on Pensions. This Special Communiqué highlights some of the proposed reforms and offers a few comments.

The main objectives of the proposed legislation are as follows:

- 1 Clarifying benefits of plan members affected by lay-offs and eliminating partial wind-ups.
- 2 Facilitating pension plan restructuring during corporate reorganizations and protecting benefit security.
- 3 Increasing transparency and access to information for plan members and pensioners.
- 4 Enhancing regulatory oversight.
- 5 Improving plan administration and reducing compliance costs.

Partial Wind-Ups and Immediate Vesting

Partial wind-ups will be eliminated effective December 31, 2011. Along with the elimination of partial wind-ups will be the introduction of immediate vesting of all benefits, following a brief transition period. Partial plan wind-ups that occur prior to 2012 would continue. During the transition period, the administrator would not be required to annuitize all pension entitlements to satisfy the distribution requirement on partial wind-up. This change follows the recent decision of the Financial Services Tribunal in the matter of *Imperial Oil*, which rejected the previous policy of forced annuitization.

Grow-In

Grow-in rights will be extended to all eligible members whose employment is terminated without cause by the employer, effective January 1, 2012. Current eligibility requirements of age and service totaling at least 55 for grow-in benefits would continue. Multi-employer pension plans and jointly sponsored pension plans would be able to opt out of the requirement to provide grow-in benefits.

Facilitating Pension Restructuring

Rules for asset transfers between defined benefit plans will be simplified. An individual's specific benefits could change as a result of a transfer. However, the commuted value of the member's accrued benefits, pension or deferred pension, may not be reduced. Administrators will be able to offer individual plan members, or bargaining agents on their behalf, an option to transfer their pension benefits to the successor plan. Transfer to the successor plan will be allowed for a prescribed portion of surplus related to the assets transferred. Until July 1, 2013, with the agreement of the pension plans, individual plan members who have benefits in multiple plans from past restructurings may elect to consolidate their pension benefits in a single plan.

Increasing Transparency

The legislation will include separate definitions of "retired members" and "former members". Retired members would have the right to participate in pension committees and to receive other prescribed information. The legislation will also make it easier to establish Pension Advisory Committees. It will require greater

disclosure of the plan's funded status. Notice to members, retired members and former members, of all plan amendments will be required prior to applying for registration of an amendment. This would replace the current requirement to provide notice for adverse amendments. An exception from disclosure of prescribed records might be available if disclosure would prejudice the employer's economic interests or competitive position.

Enhancing Oversight

Under certain circumstances, the Superintendent of Financial Services would have the power to make interim orders without proceeding by means of a Notice of Proposal. As an example, a special valuation might be required if there were evidence that a plan was at risk. Appeals related to an order could be made to the Financial Services Tribunal. The Superintendent would be granted the power to approve arrangements under the federal *Companies' Creditors Arrangement Act* and *Bankruptcy and Insolvency Act*.

Administration

Among the administrative simplifications would be that the filing of certain specified documents could be waived. The time limit for refund of employer contributions made in error will be extended.

Other Measures

Review of historical documents would not be required in the case of an all-party surplus sharing agreement on plan wind-up. As announced in the 2009 Ontario budget, phased retirement will proceed.

Commentary

Ontario's Expert Commission on Pensions was born in November 2006. That time was a period of economic growth. The report itself was tabled during the financial market turmoil last year. Since then, the government has had a year to assess where to go with pension reform. However, this first stage of pension reform consists primarily of technical issues.

Generally, it may be fair to reserve full judgment on the reforms announced, since Ontario's pension reform is expected to have a second stage in the spring. Hopefully, more fundamental issues will be announced at that time. The focus in this first stage is on enhancing transparency, regulatory oversight and benefit security. Some administrative requirements have been streamlined – in particular the elimination of partial wind-ups, and hence elimination of surplus distribution on partial wind-up.

Nevertheless, many plan sponsors likely will be disappointed with what Ontario has announced thus far. For example, even though Ontario is at odds with every other jurisdiction

in Canada concerning grow-in rights, these provisions have been expanded rather than curbed. Grow-in exacerbates the problem of funding adequately for a hypothetical wind-up without overfunding on a going-concern basis. Requiring grow-in for single employer plans, when multi-employer and jointly sponsored plans can elect not to provide grow-in benefits, is unfairly onerous on the dwindling percentage of single employers who still provide defined benefit pension plans.

None of the changes suggest the government is encouraging the formation of new pension plans or the expansion of pension coverage. Conspicuous by its absence in this round of reforms is the fact that nothing was mentioned to facilitate innovation in plan design. Reforms that allowed for target benefit plans or new forms of hybrid defined benefit/defined contribution plans would have been welcomed. We can only hope that more creative reforms will be contained in the next stage.