

## **Research Project # 11: Analysis of Multi-Employer Pension Plans**

### **Research Paper: Current Issues Concerning Multi-Employer Pension Plans in Ontario**

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#### **Executive Summary**

The majority of pension plans in Ontario are single-employer plans (“SEPPs”), established or sponsored by individual employers to provide benefits to their own employees. A significant number of Canadian workers, however, are members of plans that do not fit this model. They belong to multi-employer pension plans (“MEPPs”), which provide benefits to members based on their employment with one or more of a specific group of employers who participate in the plan. Ontario regulates significantly more MEPPs than any other Canadian jurisdiction; more than 30% of Canadian MEPPs are registered in Ontario. The regulatory framework in Ontario was originally designed with the single employer model in mind. While it has been adapted over the years to accommodate some of the unique features of MEPPs, this process has been a “patchwork” exercise which has left gaps and inconsistencies. Many pension plan officials, their professional advisors and the regulators share the view that there is room for improvement in the regulatory “fit” between the *Pension Benefits Act* (“PBA”) and the real world of MEPPs in Ontario.

The purpose of this Report is to provide the OECF with background information for addressing a number of policy questions, including:

- Does the *PBA* adequately recognize the variety of MEPPs currently in existence, and is it sufficiently flexible to provide for the on-going development of new structures and benefit types?
- Does the *PBA* provide adequate regulatory guidance with respect to the representative structure, quality and conduct of the governing bodies of MEPPs?
- Does the *PBA* provide adequate protection for the benefits of MEPP member? Are its funding rules realistic in light of the unique structure of MEPPs?
- Do the *PBA*'s wind-up and partial wind-up rules adequately recognize the fluidity among participating employers in MEPPs?
- Do MEPPs generally experience more regulatory problems than SEPPs?

Part I of the Report examines MEPPs in Ontario, including a review of the legislative history of MEPP regulation and an examination of the current profile of Ontario MEPPs. MEPPs in Ontario range in size from 230,000 members to seven members. They fall into three broad categories. The first and largest category is the “classic” MEPP, characterized by substantial trade union involvement in the establishment and governance of the plan, an important role for broad-based collective bargaining in recruiting participating employers and establishing

contribution levels, and mobility of plan members among participating employers. Classic MEPPS are normally DB plans funded by fixed, collectively bargained contributions. The second category is the public sector MEPP. This category includes a number of very large statutory DB plans, several of which are jointly sponsored by employers and plan members. Several public sector plans are established by trust agreement; many of these are DB plans as well. The common element in these plans is the fact that the employers involved are fully or substantially publicly funded. The third category is the “co-operative” MEPP, a heterogeneous group of plans organized on a multi-employer basis simply to achieve administrative efficiencies and economies of scale, rather than because of employee mobility, or a coordinated collective bargaining structure. These plans, which may involve unions, have a broad range of benefit structure and may be either DB or DC plans. A recurring theme throughout the Report is that Ontario law was designed primarily to accommodate the classic MEPP, and fails, in some areas, to encompass the realities of other types of MEPPs.

Part I also includes a detailed examination of the current regulatory framework for MEPPs, focusing on:

- how MEPPs are defined;
- how they are governed;
- what rules are in place to address benefit stability and plan funding; and
- what rules are in place with respect to plan wind-ups and partial wind-ups.

This analysis identifies the fact that many of the special legal rules applicable to MEPPs in Ontario apply only to MEPPs established pursuant to collective or trust agreements. The new (2005) legal regime applicable to jointly sponsored pension plans (JSPPs) is examined as well.

Part II is an analysis of how these issues (definition, governance, benefit stability/funding, and wind-ups) are addressed in the regulatory frameworks of certain other jurisdictions across Canada: specifically, the federal jurisdiction, British Columbia, Alberta and Quebec. These jurisdictions have been chosen because together with Ontario, they regulate most of the MEPPs registered in Canada, and because they represent a range of different approaches to MEPP issues. The analysis identifies a number of areas in which these jurisdictions approach the regulations of MEPPs differently than Ontario, including:

- British Columbia’s distinction between Negotiated Cost Plans and other types of DB plans;
- Alberta’s distinction between unionized MEPPs and non-unionized MUPPs; and
- The requirement in the federal and British Columbia legislation that there be regulatory approve of any reduction in accrued benefits;

In addition, three recent amendments to Quebec’s pension legislation are relevant to the regulation of MEPPs:

- the new member-funded pension plans;
- additional quality-control measures within governing bodies; and

- innovations in regulating the relationship between governing bodies and third party service providers.

Part III examines available data on how well MEPPs are faring within the current regulatory regime compared to SEPPs. In addressing this issue, the Report first examines data generated by the Financial Services Commission of Ontario (“FSCO”) and related bodies, on:

- decisions of the Superintendent of Financial Services;
- pension cases before the Financial Services Tribunal;
- the funded status of pension plans;
- plan wind-ups and partial wind-ups; and
- prosecutions.

The purpose of this examination is to identify, where possible, areas in which MEPPs have raised particular problems for FSCO within the current regulatory framework. The Report then looks at comparative data from other jurisdictions under these headings, where available. The data is incomplete, but suggests that MEPPS do not pose more, or more serious, problems within the regulatory system than SEPPS.

Part IV is a thematic discussion of issues arising out of the current legislative framework for MEPPs, commenting on problems raised for regulators in Ontario by the current system, and exploring some solutions that have been implemented in other provinces. Issues addressed include approaches to MEPP categories, representation and quality control in MEPP governance, whether MEPPs should have to meet solvency funding standards, wind-ups and partial wind-ups, the role of unions, multi-jurisdictional MEPPs and communications with plan members.

Part V concludes the report with a brief discussion of implications for regulation. Appendices to the Report provide statistical information on:

- the incidence of MEPPs and SEPPs across Canada,
- the six largest and six smallest MEPPs in Ontario,
- the number of Pension Plans by Plan Type in the surveyed jurisdictions,
- Pension Plan Members by Plan Type in the Surveyed Jurisdictions,
- Number of MEPPs and SEPPs by Plan and Benefit Type in the Surveyed Jurisdictions,
- Wind-ups and Partial Wind-ups in the Surveyed Jurisdictions,
- Funding Data in the Surveyed Jurisdictions; and
- Alberta MUPPs.