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## The Latest Developments Concerning Multi-Employer Pension Plans (MEPPs)



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## **CCWIPP:** Canadian Commercial Workers Industry Pension Plan

- Canada's largest private-sector MEPP, 300 employers
  - as at Dec. 31, 2007, going-concern funded ratio of 83% and a wind-up funded ratio of 54%
- “representative action”** (class action)  
\$ 1 billion lawsuit against all participating employers and the individuals on the board of trustees
- prosecution** under the PBA against the individuals trustees



## CCWIPP “representative action” ended: civil litigation over (for now)

- Dec. 2006 **\$1 billion** lawsuit by beneficiaries of CCWIPP
- defendants: all participating employers + individual trustees

**April 2008:** consent order dismissing claims against the participating employers

**May 2009:** order dismissing the action (against trustees) for delay, with costs



## CCWIPP: prosecution against trustees

FSCO “Pension Examination Report” March 2005: sloppy bookkeeping, breach of 10% limit, potential conflicts of interest, etc.

December 7, 2009: **convictions** under PBA:

- trustees on investment committee convicted of failure to comply with the 10% investment limit on certain property in the Caribbean
- remaining trustees convicted of failure to adequately supervise the investment committee in a prudent and reasonable manner in respect of compliance with the 10% investment limit

## **CCWIPP –*acquittals***

due to lack of expert testimony, Court acquitted the trustees on the other 9 counts related to failing to exercise the care, diligence and skill in the administration and investment of the pension fund

124-page ruling:

Minutes from board investment meetings submitted in court were “totally lacking in detail and of no assistance whatsoever” in determining whether the defendants acted prudently or not

## **CCWIPP: this is serious**

individual trustees not yet sentenced for  
December 2009 convictions

\$100,000?

insurance protection?

indemnity protection?



## **CCWIPP “stabilization fund”**

- established in 2008, with the agreement with FSCO (okay to continue with no benefit reduction for now)
- voluntary contributions will be tracked on an employer-by-employer basis
- val report as at Dec. 31, 2010 will take into account the money in the “SF”
- precious little information provided to participating employers now

# Participating Co-ops

Happy ending in 2008!

- Employers paid \$14 million
- Ontario paid \$20 million (“to facilitate an orderly wind-up of the plan”) – not PBGF -



## **New accounting standards** for public companies, commencing 2011

IFRS (International Financial Reporting Standards) to replace current Canadian GAAP

MEPPs with defined benefit characteristics to be accounted for as DB plans

employers who have Quebec current & former employees in a MEPP may have to value their liability

employers with Ontario members of a MEPP must be sure that they have no liability



## MEPP benefit in Quebec is “a debt of the employer”

Bill 68 became law in Quebec in 2008: no reduction of MEPP benefits  
... so ... trustees of MEPPs with Quebec members should:

- wind up the Quebec component?
- revise (is it possible?) plan documents to isolate Quebec component
- can a single plan have a true separate Quebec division?



**“Tiger Woods really doesn’t like to lose.  
Neither, apparently, does  
Quebec’s pensions regulator.”**

... you never know what could happen...



## multi-jurisdictional MEPPs

- Bill 68 (the 2008 Regie bomb) applies to all MEPPs, regardless of where registered ... does your client know that?
- Magical solutions not present in the proposed CAPSA multi-jurisdictional agreement
- Will we see the demise of multi-jurisdictional MEPPs?
- Ontario-registered MEPPs should ban members from Quebec, Manitoba & New Brunswick

## Arthurs Commission recommendations:

- Amend the PBA to eliminate the exemption for MEPPs from the notice requirements of s. 26 (plan amendments).
- If contributions to a MEPP are mandated by a collective agreement, participation agreements should be required to be negotiated and filed by a specified date in the future. The essential terms of the participation agreement should be set out in the Regulation.

## ... Arthurs Commission...

Introduce a requirement that MEPPs explicitly address the consequences of the withdrawal of an employer (including by reason of insolvency), in circumstances of both surplus and deficiency

*Sad but true: this is not currently the case in many MEPPs*

## ... Arthurs Commission ...

- If plans are funded only on a going concern basis, the basis for commuted value payouts should be considered.
- Change definition of MEPP in the PBA: remove reference to “affiliate” as defined in the OBCA. MEPP rules should not apply to corporate structures that may not be related for corporate purposes. Partnerships and joint ventures should be treated as related (not subject to MEPP rules) for purposes of participation in a pension plan.

## **Unlike Quebec, the federal government appears to want MEPPs to survive – PART I**

OSFI's "Guidance Note" September 2008:  
Board of Trustees should communicate the possibility of benefit reduction at time of enrolment, in member booklets, on annual statements and upon termination/retirement (spouses too)

## Federal government encourages MEPPs – PART II

“NCDB plans” = negotiated contribution defined benefit plans = MEPP

October 27, 2009, federal government announced many proposed PBSA changes, including:

employer liability under an NCDB cannot exceed the negotiated contributions, ***regardless of what the plan text says*** (i.e. no Participating Co-ops nightmare!)

## The collective agreement says *what?*

“In the event of a full or partial plant closure, the Company agrees to fully fund the [MEPP] pension benefits. This funding will be the amount necessary to provide that all active and retired members receive 100% of the commuted values of their pension, determined as defined benefits pensions, without regard to the actual level of funding of the [MEPP] plan. This full funding will be provided to [MEPP] prior to the date of closure.”



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