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## EVENTS

## ONTARIO'S EXPERT COMMISSION ON PENSIONS

Faisal Siddiqi, FSA

Because of how Canada's constitution divides responsibilities between the federal government and the provinces, most pension plans must be "registered" (a registered plan in Canada is akin to a qualified plan in the United States) in one of the 10 provinces and overseen by that province's regulator. For these same constitutional reasons, the pension plans of companies in the transportation, communications, and financial sectors are regulated by the federal government. In contrast to the United States where all pension plans are governed by ERISA, Canada has eleven different pension jurisdictions.

The Financial Services Commission of Ontario (FSCO) is responsible for overseeing more pension plans than any other Canadian regulator (almost 7,400 registered plans out of a total of over 15,000 in Canada, 2.15 million plan members out of a Canadian total of 6.7 million).

## Background

In the fall of 2006, the Government of Ontario established the Expert Commission on Pensions to examine the legislation governing Ontario-registered pension plans.

Why is such a review being done? There are many reasons. Significant changes to the Ontario Pension Benefits Act (PBA) were made back in 1987. Since then, many changes have taken place in terms of plan design, pension coverage and workforce mobility. Also, the pace of mergers, acquisitions and corporate downsizing has increased. There was a perception that the PBA had become outdated and was not able to adapt to these changes. Some specific developments of concern include the growth of defined contribution plans, the need for a regulatory framework that better deals with the needs of multi-employer pension plans, the impact of long-standing uncertainty regarding the ownership of surplus assets—both in ongoing pension plans and on wind-up—on DB plans, and the need to codify many of the administrative practices of FSCO.

The mandate of the Commission is to review the viability, security and sustainability of the pension system in Ontario. A panel of experts was selected to assist the Chair of the Commission in conducting the review and preparing a report to the Minister of Finance. A series of guiding principles were established to provide a framework within which the review would be conducted. The Commission was asked to observe the following principles:

- The importance of maintaining and encouraging the system of defined benefit pension plans in Ontario.
- The importance of maintaining the affordability of defined benefit pension plans for members and plan sponsors.

Members of Pension Section Council are available to explain the Retirement 20/20 initiative to your local actuarial club or any other interested group. If you'd like to arrange for a presentation - either in person or via Web cast - please contact Ann Gineo at [agineo@segalco.com](mailto:agineo@segalco.com). Ann is a member of Pension Section Council and leader of the Retirement 20/20 Communication and Outreach subgroup.

- The importance of pension plans to a competitive economy.
- The need to safeguard the security of pension benefits.
- The need to balance the rights of employers, plan members and pensioners.
- The impact of demographics and changing nature of the workforce on the provision of occupational pensions.

The scope of the Commission's review is quite broad and the Commission's report can be expected to make recommendations for regulatory change in the following areas:

- Pension plan funding.
- Treatment of pension plan surplus (the framework in Ontario is very different from the reversion rules in the United States).
- The existence and operation of the Pension Benefits Guarantee Fund (similar in concept to the Pension Benefit Guaranty Corporation in the United States).
- Pension plan wind-ups.
- Pension plan splits and mergers.
- Pension plans and their inter-relationship with attraction and retention of a qualified workforce.

The Commission is expected to provide its final report to Ontario's Minister of Finance in the fall of 2008.

The Commission—Chair, Advisory Panel and Senior Staff

In choosing the Chair of the Commission, the Government of Ontario wanted to select an individual who would be unbiased and open to input from all stakeholders. The government also wanted the Chair to have familiarity with this type of an assignment and credibility in the eyes of the interested parties. University Professor Emeritus Harry Arthurs was chosen. He is a former Dean of Osgoode Hall Law School and a former President of York University. He recently served as a Commissioner charged with reviewing the federal labor-standards legislation.

After the Chair was selected, a panel of experts in pension issues had to be assembled to assist the Chair in this complicated endeavor. Typically, such a panel would consist of pension lawyers, pension actuaries, and other technical experts in this field. An Advisory Panel consisting of the following four individuals was created:

- Bob Baldwin is an Ottawa-based consultant who specializes in pensions, aging society and labor market issues. He is a senior associate with Infrometrica Limited and adjunct research professor in the School of Public Policy at Carleton University. He served as the pension specialist for the Canadian Labour Congress for twenty-eight years.
- Kathryn Bush is a lawyer who works primarily with plan sponsors. She is a partner in the Pension and Employee Benefits Group of Blake, Cassels & Graydon LLP. She is also a former vice chair of FSCO.
- Murray Gold is another lawyer, one whose practice involves considerable work for organized labor. He is a Partner in the Toronto office of Koskie Minsky LLP. He practices in pensions, benefits, insolvency law.
- Ian Markham is an actuary. He is director of pension innovation, Canada for Watson Wyatt Worldwide. He specializes in providing strategic advice related to the full spectrum of retirement consulting services.

Five senior staff members were appointed to assist the Chair and Advisory

Panel. One of these is an actuary, Rob Brown, who acted as director of research. Rob is a professor at the University of Waterloo, and a former president of both the Society of Actuaries and the Canadian Institute of Actuaries.

#### Public Meetings and Research Papers

In February of 2007, the Commission issued a consultation paper entitled "Reviewing Ontario's Pension System: What Are the Issues?" The purpose of the consultation paper was to seek input from interested stakeholders and to help focus submissions to respond to the scope of the Commission's mandate. The consultation paper asked stakeholders to share their views on issues related to Ontario's regulatory pension framework. A period of public consultation occurred in the fall of 2007. Stakeholders could make written submissions, and/or they could appear in front of the Commission at one of a series of hearings which took place in five different cities.

In all, 78 presenters filed formal briefs and appeared at one of the hearings. Presenters included representatives of employees and retirees, public sector plan sponsors, private sector plan sponsors, employee benefits consulting firms, and professional organizations including the Canadian Institute of Actuaries. The Commission also received informal submissions from 45 individuals who either walked in to a hearing or made informal submissions online.

Themes and recommendations arising from the submissions generally fell into one of the following categories:

- Amend the PBA to encourage and promote the coverage of Ontario workers in defined benefit pension plans.
- Amend the PBA to improve understanding of plan sponsors' and members' rights and responsibilities and to remove the lack of clarity in many issues that arise with respect to the operation of pension plans in Ontario such as funding, mergers and acquisitions, asset transfers, plan wind-ups, investment rules, rules for DC arrangements, treatment of plan expenses, etc.
- Amend the PBA to permit alternate funding approaches for defined benefit pension plans (for example, the creation of "superfunds," use of letters of credit to secure solvency/wind-up deficiencies, elimination of funding where unnecessary).
- Treatment of the asymmetry of risk in pension plans from both plan sponsors' and plan participants' points of view to clarify responsibility for plan funding and ownership of surpluses.
- Harmonize pension legislation with legislation of other Canadian jurisdictions.
- Improve pension plan governance.

Issues relating to pension plans in Ontario, as elsewhere, can be contentious and many stakeholders have opposing views. Because of this, the Commission also asked several independent parties to conduct research to consider and analyze the claims made by various parties with respect to pension plan funding, use of surpluses, plan conversions, plan wind-ups, and pension plan splits and mergers.

Between February and April of 2007, the Commission initiated 17 studies. Researchers were asked to analyze topics such as:

- Pension coverage and the funding of plans.
- Factors affecting trends in pension plans in Ontario.
- Funding regimes in a comparative context.
- Insurance against pension plan failure.

FSCO's regulatory practices.

- Multi-employer pension plans, and.
- Pension plans and the labor force.

#### Status of the Commission and Its Final Report

In January of 2008, the Chair of the Commission submitted an interim report to the Minister of Finance. The report provided background, outlined the Commission's approach, explained the process followed to collect submissions, and provided an update on how meetings with the various interested parties went. Also in January 2008, Executive Summaries of all 17 research papers were posted to the Commission's Web site.

The final report of the Commission is expected before the end of 2008.

All of the formal briefs, as well as the summaries of the research papers, can be found at [www.pensionreview.on.ca](http://www.pensionreview.on.ca). The complete research papers are available on request from [info@pensionreview.on.ca](mailto:info@pensionreview.on.ca).

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