FTR Now

Ontario Tables Its 2013 Budget

Date: May 6, 2013

On Thursday May 2, 2013, the Ontario government introduced its 2013 Budget, entitled *A Prosperous and Fair Ontario* (the "Budget"). The government also introduced Bill 65, the *Prosperous and Fair Ontario Act (Budget Measures), 2013* ("Bill 65"), omnibus legislation designed to implement some of the proposals contained in the Budget.

The Budget announced that the 2012-2013 deficit is estimated to be $9.8 billion – a $5 billion improvement compared to the 2012 Budget forecast. The deficit reduction results from higher than projected revenue and lower than projected expenses. Building on the commitments made in the 2012 Budget, in this current Budget the Ontario government is continuing to commit to reaching a zero deficit by the 2017-18 fiscal year.

From a human resources perspective, much of the 2013 Budget provides a status update on a number of the government's ongoing initiatives aimed at helping to eliminate the deficit. Only a few new initiatives which have general human resources implications were announced.

While Bill 65 introduces amendments to 14 statutes, it does not implement all of the measures and initiatives canvassed in the Budget. Many of the human resource-related initiatives will need to be implemented through subsequent legislation, regulations or the establishment of working groups.

In this *FTR Now*, we consider the provisions of the Budget and Bill 65, with an emphasis on those proposals that relate directly to human resources issues, including labour relations and pensions.

COMPENSATION RESTRAINT

The 2013 Budget affirms that the compensation restraint measures currently imposed by Part II.1 of the *Broader Public Sector Accountability Act, 2010* will remain in effect until Ontario's budget deficit is eliminated (still projected to be the 2017-18 fiscal year).

In addition to the current compensation restraint provisions, the government announced that it will be creating an advisory panel to review compensation practices for executives in the Broader Public Sector ("BPS"). The panel will be empowered to consider, among other things, whether salaries for BPS executives should be subject to hard caps.

The government also signalled that it expects public sector employers and unions to continue to collectively bargain within current fiscal constraints. While the government committed to not overriding existing collective agreements, it also indicated that its fiscal framework “includes no funding for incremental compensation increases for new collective agreements.”

In a clear attempt to distance itself from the recent labour unrest, the government is committing to working with public sector unions, and unions in the education sector in particular, to establish a more effective process. This includes a commitment to consult with BPS bargaining agents and employer groups on how to improve collective bargaining efficiencies, including the possible establishing of sectoral tables to reach a wider consensus on common issues. While not specifically addressed in the Budget, the government had earlier announced in its Throne Speech that it would also consult on a “fair and transparent interest arbitration process”.

In addition, the government announced that it will implement its commitment made to education sector unions to establish a working group to explore the creation of one or more province-wide benefit plan(s) for workers in the education sector.

OTHER EMPLOYMENT MATTERS

In addition to compensation restraint, the Budget contains a number of other employment-related items. Of note, the government stated that it will establish a Minimum Wage Advisory Panel whose mandate will be to advise on how to adjust minimum wage rates in Ontario. Such panels are a feature of the employment standards regimes of a number of other provinces in Canada. The Panel would be comprised of an independent chair and representatives from business, worker and youth groups.

The government also committed to more funding to hire additional employment standards officers and to increase the number of audits that it conducts of employers for *Employment Standards Act, 2000* compliance.

Finally, the government announced a number of initiatives to increase employment among groups commonly associated with higher levels of unemployment, including:

- youth (addressed through a comprehensive Youth Jobs Strategy);
- persons with disabilities (addressed through a variety of initiatives, including the transfer of the Accessibility Directorate to the Ministry of Economic Development, Trade and Employment); and
- persons in receipt of social assistance.

COMMITMENT TO BROAD-BASED RETIREMENT INCOME SYSTEMS

The Budget took note of recent studies which indicate that many Canadians will face inadequate incomes in retirement and advised of its commitment to implement a strong and secure retirement income system for workers.

CANADA PENSION PLAN ("CPP") ENHANCEMENT

In the Budget, the government reaffirmed its commitment to working with the other provinces and the federal government to introduce "a modest, fully funded enhancement to the CPP". At the December 2012 Finance Ministers' meeting, provinces and the federal government agreed to work together to define the parameters of "a modest enhancement" to the CPP, including the economic conditions necessary to implement the enhancement.

POOLED REGISTERED PENSION PLANS ("PRPPs")

PRPPs are a national initiative introduced by the federal government intended to increase pension coverage by providing a low-cost savings vehicle that is professionally managed and portable. A PRPP is a workplace defined contribution pension scheme administered by a financial institution (not the employer). On December 14, 2012, the federal PRPP framework came into force for federally regulated employees. However, PRPP legislation must also be introduced at the provincial level for non-federally regulated employees.

In its 2012 Budget, the government expressed a number of concerns about the introduction of PRPPs. In the 2013 Budget, the tone of the government's position vis-à-vis PRPPs has changed. It has now indicated that it will be consulting with interested parties to determine how PRPPs should be implemented as an optional retirement savings vehicle, before legislation is introduced. The consultations will focus on some of the concerns expressed by the government in its 2012 Budget, namely, ensuring that the PRPP fiduciary framework adequately protects members, and that PRPPs are able to meet their stated objective of being low-cost.

PENSION, BENEFITS AND TAX ISSUES

BROADER PUBLIC SECTOR PENSIONS

The theme of increasing sustainability and efficiency in Ontario's public sector pension plans has been carried forward in the 2013 Budget. The 2013 Budget continues to develop the pension initiatives set forth in 2012, with a key objective being the control of the government's pension expense.

BROADER PUBLIC SECTOR: JOINTLY SPONSORED PENSION PLANS ("JSPPS")

In the 2012 Budget, the government announced its intention to consult on a legislative framework that would freeze contribution rates under the province's largest pension plans (which are all JSPPs) until the provincial deficit is eliminated. The 2013 Budget reported that after extensive consultation with each of the four JSPPs consolidated in the province's financial statements, the sponsors of these plans signed agreements in 2012 freezing contribution rates until the elimination of the deficit in 2017-18 and requiring the reduction of future benefits in the event of future funding deficits.

BROADER PUBLIC SECTOR: SINGLE-EMPLOYER PENSION PLANS ("SEPPS")

The Budget reported on the temporary solvency relief initiatives extended to BPS SEPPs in recent years and the negotiation of plan changes to improve the sustainability and affordability of plans that was a condition of this temporary solvency relief.

The government confirmed its commitment of encouraging all BPS SEPPs to move towards equal cost sharing for ongoing contributions within five years and exploring opportunities to support joint sponsorship as the model for pension plan governance and funding in Ontario's public sector. Moreover, the government announced its intention to: (i) consider additional solvency funding relief for public sector SEPPS that have demonstrated a commitment to improve sustainability; and (ii) develop a framework that would permit the transfer of assets from SEPPs to JSPPs and allow SEPPs to be converted to JSPPs if specified criteria are met.

The Budget makes specific reference to the electricity sector pension plans. The government intends to establish a working group with the employee and employer representatives to promote a common understanding of the challenges facing electricity plans and move towards a sustainable framework. Bill 65 introduced amendments to the *Electricity Act* which will remove statutory barriers to a merger of the electricity sector pension plans.

POOLED ASSET MANAGEMENT

The 2012 Budget announced the government's intention to introduce a pooling framework for public sector pension plans. Bill Morneau was then appointed to consult with interested parties and develop recommendations for consideration. His report, *Facilitating Pooled Asset Management for Ontario's Public-Sector Institutions*, was released on November 16, 2012. The Budget indicates that the government will now establish a technical working group to advise on the pooled asset management framework and transition issues. The working group would report back to the Minister of Finance later this year with a detailed implementation plan.

ONGOING PENSION REFORM

In 2010, the Ontario Government introduced two pension reform packages. In previous issues of *FTR Now*, we summarized the key provisions of these packages – "Implementing Phase One of Ontario Pension Reform: A Roadmap for Plan Sponsors and Administrators" (May 19, 2010) and "Ontario Introduces Bill 120, The *Securing Pension Benefits Now and for the Future Act, 2010*" (October 29, 2010). Many reforms contained in Bills 236 and 120 were proclaimed into force in

2012, including the elimination of partial wind ups, immediate vesting and the provision of grow-in benefits to eligible members on involuntary termination of employment.

In the Budget, the government indicates that it intends to take the following steps to further pension reform already underway:

- develop regulations to streamline the process for unlocking Ontario-regulated locked-in accounts due to financial hardship;
- implement the pension asset and liability transfer provisions of Bill 236;
- amend the *Pension Benefits Act* ("PBA") and its regulations to permit asset transfers from SEPPS to JSPPs, and allow SEPPs to be converted to JSPPs if specified conditions are met;
- implement a new "funding concerns" test to determine when plans that are exempt from the solvency funding rules (e.g. JSPPs) are required to file annual valuations;
- implement rules for contribution holidays addressing eligibility conditions and disclosure requirements to affected pension parties;
- update regulatory requirements to reflect changes to standards issued by professional bodies; and
- establish rules for plan documents and statements for former and retired members.

The government also committed to reviewing the decision of the Ontario Court of Appeal in *Carrigan v. Carrigan Estate*, and to proposing amendments to the PBA and its regulations, if necessary, relating to spousal entitlements on the death of pension plan members. We summarized the *Carrigan* case in our November 7, 2012 *FTR Now* – "Ontario Court of Appeal Decision Rewrites the Pension Pre-Retirement Death Benefit Regime".

Finally, the government announced its intention to develop a framework for single-employer target benefit plans assuming federal tax issues will be resolved. This new plan design would have the advantage of fixing contributions and permitting pension benefits to be adjusted to ensure the plan remains sustainable.

EMPLOYER HEALTH TAX

All private sector employers, regardless of size, are exempt from paying Employer Health Tax ("EHT") on up to $400,000 of their Ontario payrolls each year. Groups of associated employers share the exemption. Payroll above the $400,000 threshold is taxed at a rate of 1.95 per cent.

To assist small businesses, the government proposes to increase the amount of annual payroll that is exempt from EHT. Under this proposal, the EHT exempt portion of payroll will be increased to $450,000 (from $400,000) commencing in 2014, resulting in EHT savings of up to $975 per employer. The exempt amount is to be adjusted for inflation every five years using the Ontario Consumer Price Index. At projected inflation rates, the government expects that the exempt payroll amount will rise to $500,000 in 2019.

As an offset, the EHT exemption will be altogether eliminated for private sector employers with payrolls of over $5 million. The government projects that over 5,000 large employers would each pay up to $7,800 more in EHT per year.

CONCLUDING COMMENTS

From a human resources perspective much of the 2013 Budget highlights the past and ongoing austerity, reform and efficiency measures. In this Budget the government has resolved to “stay the course” with respect to wage freeze and pension sustainability initiatives. A number of working groups will be established to move specific initiatives forward.

Ordinarily, Budget Bills can be expected to pass as they are necessarily confidence measures – if the Budget does not pass, a government will fall. Because the current Liberal government is a minority government, it is possible that the Budget will either not pass or will pass in an amended form (if changes are needed to ensure the support of one of the opposition parties).

We will continue to monitor any changes to the Budget and to Bill 65, and will inform our clients of any significant amendments. In the meantime, if you have any questions about the Budget, please feel free to contact any of the authors of this *FTR Now* or your regular Hicks Morley lawyer.
