FTR Now

Ontario Budget 2014

Date: July 17, 2014

On Monday, July 14, 2014, the newly elected Liberal government introduced the 2014 Ontario Budget. As was pledged by Premier Wynne during the election campaign, the new Budget is virtually identical to the version that was first tabled on Thursday, May 1, 2014 (and which triggered the recent election).

The newly tabled Budget is still entitled *Building Opportunity, Securing Our Future* (the "Budget"), and was accompanied by Bill 14, the *Building Opportunity and Securing Our Future Act (Budget Measures), 2014* ("Bill 14"), omnibus legislation designed to implement some of the proposals contained in the Budget.

In the Budget, the government announced that the 2013-14 deficit is estimated to be $11.3 billion – a $0.4 billion improvement compared to the 2013 Budget forecast, but an increase over the 2012-2013 deficit. The Province is projecting that the deficit will increase next year to $12.5 billion, but is then projected to decrease in succeeding years. The government is still projecting a balanced budget by the 2017-18 fiscal year.

From a human resources perspective, the Budget includes a number of significant announcements related to pensions, including the establishment of the Ontario Retirement Pension Plan ("ORPP"). Also of significance, the Budget includes the requirement that all long-term disability benefits be provided through an insurance contract.

There are few new general human resources initiatives announced, and the Budget largely reiterates proposals addressed in Bills that were previously before the Legislature, and which are being reintroduced by the current government.

In this *FTR Now*, we consider the provisions of the Budget and Bill 14, with an emphasis on those proposals that relate directly to human resources and pension issues.

RETIREMENT SAVINGS INITIATIVES

ONTARIO RETIREMENT PENSION PLAN

As part of its efforts to address its concerns about retirement income adequacy, the government has developed a new mandatory provincial pension plan that will supplement the pension a worker receives from the *Canada Pension Plan* ("CPP"). The ORPP is intended to provide higher retirement income for Ontarians who do not participate in a workplace pension plan and rely on CPP, Old Age Security and personal savings. The Budget states that the ORPP would build on the key features of the CPP, and could be integrated with the CPP in the future.

The ORPP will:

- be mandatory for those not participating in a "comparable" workplace pension plan. Details on what would be considered a "comparable" pension plan were not provided. For example, it is unclear whether defined contribution ("DC") pension plans or group RRSPs would qualify for the exemption;
- pay a defined benefit ("DB") type of pension, similar to the type paid by the CPP;
- require equal contributions by covered employers and employees of 1.9% of pensionable earnings each, to a total combined maximum of 3.8% of pensionable earnings;
- require contributions on earnings up to $90,000 (this maximum earnings threshold will be indexed the way the Year's

Maximum Pensionable Earnings (“YMPE”) under the CPP is increased);
- target a replacement rate of 15% of the individual’s earnings, to the maximum earnings threshold; and
- be operated and invested at arm’s length from the government.

The government will consult on whether the annual basic exemption for lower earners will be the same as under the CPP, which is currently $3,500. It also intends to conduct further actuarial analysis in order to finalize the ORPP design.

The ORPP would be introduced in 2017 and rolled out in stages, starting with the largest employers. Contribution rates would be phased in over two years. Technical details would be released later in 2014 prior to the introduction of legislation.

In the meantime, the government intends to consult on how best to assist the self-employed. It also intends to consult with employers and labour on the introduction of the ORPP with respect to balancing the need for retirement income security with minimizing the impact on business.

There remain a number of other questions to be answered in addition to what kind of “workplace pension plans” will exempt employees from mandatory participation in the ORPP. These include the treatment of employees who have access to a workplace pension plan but choose not to enrol, whether employees could opt into the ORPP even if they are already participating in a workplace pension plan, and precisely how the ORPP will work in the early years, especially for older employees with very short service who retire during the start-up phase of the ORPP.

The government continues to meet with its Technical Advisory Group to discuss how to move forward with implementation.

POOLED REGISTERED PENSION PLANS

The federal government introduced Pooled Registered Pension Plan (“PRPP”) legislation on December 14, 2012 for federally regulated employees. A PRPP is a workplace DC pension plan administered by a financial institution, and not the employer. In 2013 and 2014, the Ontario government consulted with interested parties on the implementation of PRPPs for Ontario’s workforce.

In the Budget, the government announced that it would introduce, in the Fall of 2014, a legislative framework for PRPPs that is generally consistent with the federal PRPP framework. Some of the key design features are:

- participation in and contributions by employers to a PRPP would be voluntary;
- where an employer elects to offer a PRPP, enrolment of employees would be automatic (subject to an employee’s ability to opt out within a specified period of time); and
- PRPP administrators (e.g. financial institutions) must provide PRPPs at a low cost.

At present, PRPP legislation is in force for federally regulated employees, and Quebec has comparable legislation in force for Voluntary Retirement Savings Plans (“VRSPs”). Several large insurance companies have identified that they are licensed to offer PRPPs and/or VRSPs.

PENSION REFORM

CONSULTATIONS ON TARGET BENEFIT PLANS

Further to the government’s 2013 Budget announcement that it would develop a framework for target benefit plans (“TBPs”), the 2014 Budget announces the government’s intention to consult on the TBP framework for multi-employer pension plans (“MEPPs”). A TBP combines the features of a DB pension plan and a DC plan, by defining a target retirement life pension that is funded by fixed contributions. Unlike traditional DB plans, accrued benefits under a TBP can be reduced when there is a funding deficiency.

The TBP framework would set out eligibility conditions, funding rules and governance requirements. Feedback from this consultation process will be used to develop a TBP framework for single-employer pension plans (“SEPPs”). The Budget does not set out a timeline for the consultations or related amendments to the *Pension Benefits Act* (“PBA”).

FUNDING

The Budget proposes to review the temporary exemption from annual actuarial filings currently available to specified Ontario multi-employer pension plans (“SOMEPPs”) and jointly sponsored pension plans (“JSPPs”). This exemption, which has been in place since 2011 and is scheduled to expire at the end of 2014, enables SOMEPPs and JSPPs that are exempt from solvency funding requirements to file valuations triennially (instead of annually) where a plan’s solvency ratio is less than 85%. The Budget proposes to extend this exemption until December 31, 2017 to allow additional time to consult on an appropriate test for all plans that are not or would not be subject to solvency funding, including TBPs.

The Budget proposes initiatives to further enhance the security of DB pension benefits and the long term sustainability of DB plans, by adopting new regulations that would:

- define the funding level at which a contribution “holiday” can be taken and the duration of any such holiday; and
- set parameters for accelerated funding of benefit improvements in underfunded DB pension plans.

The government intends to consult with stakeholders on other funding rules to enhance transparency and accountability with respect to plan funding and investment strategies.

CONVERSIONS TO JOINTLY SPONSORED PENSION PLANS

In the 2013 Ontario Budget, the government announced its intention to amend the PBA and its regulations to allow certain SEPPs to convert to a JSPP. A JSPP is a DB pension plan in which an employer(s) and plan members share in the responsibility for the plan’s governance and funding, and jointly determine contribution levels, among other things. If, upon wind-up, a JSPP is insufficiently funded, pension benefits and other benefits may be reduced.

Bill 14 specifies that SEPPs that are “public sector pension plans” and other prescribed plans may be converted to a JSPP. “Public sector pension plans” are defined as pension plans that are provided by an enumerated employer, including the Crown in right of Ontario, and certain other Crown entities, district school boards, health service providers, colleges, universities, municipalities and children’s aid societies. The Budget does not indicate what other types of pension plans would eventually be prescribed as eligible for conversion to a JSPP, and so whether private sector plans will be covered by the rules remains unknown.

Conversion from a SEPP to a JSPP can be achieved in one of two ways: through a transfer of assets and liabilities from the SEPP to a JSPP, or through an amendment to the SEPP itself. Where the conversion is accomplished through an asset transfer to a JSPP, the Budget indicates that the Regulations will require that the amount of assets transferred be sufficient to fund the transferred liabilities. Once all the specified criteria for the transfer of assets are met, the Superintendent is required to approve of the transfer of assets.

Superintendent consent is also required if all specified criteria for the conversion are met where the conversion is accomplished through an amendment to the SEPP. The employer will be required to make special payments in accordance with the Regulations to fund any going concern or solvency deficiency as of the effective date of the conversion.

In either case, consent of plan beneficiaries must be obtained prior to the conversion – the mechanism for obtaining consent will be set out in the Regulations, which may also set out circumstances in which consent can be deemed, or circumstances in which a trade union that represents members may consent on their behalf.

The PBA amendments would also require that:

- after conversion, the pensions of deferred vested members and retirees must be the same as they were under the SEPP, and the commuted values of the pension benefits of current members must be not less than they were under the SEPP; and
- detailed notice be provided to all plan beneficiaries and unions (if applicable) which explains, among other things, the lack of coverage under the Pension Benefits Guarantee Fund in a JSPP, and the possibility that benefits may be reduced on the wind-up of a JSPP.

A union that participates in the conversion consent process will be entitled to be reimbursed from the SEPP pension fund for its reasonable fees and expenses. The types of fees and expenses that will be eligible for reimbursement will be prescribed under the Regulations.

Bill 14 contains a provision for Crown immunity if the conversion complies with the PBA and Regulations. The PBA conversion provisions would also prevail over any collective agreement, trust and other supporting pension plan document.

The Budget indicates that SEPPs joining an existing JSPP with solvency funding exemptions would receive the same exemptions. However, any obligation to fund benefits upon transfer into a JSPP may, in effect, mean that such an exemption will only apply to solvency deficits arising after the transfer.

The government will consider developing exemptions for conversions to new JSPPs, whether they involve multiple employers or single employers.

PUBLIC SECTOR ASSET POOLING

The government intends to create a framework to enable the pooling of assets held by broader public sector pension plans, endowments and other public entity funds. Underlying this initiative is the idea that larger pools of assets allow for access to a broader range of investments, which would improve investment returns without taking on greater investment risk. The Budget states that the Workplace Safety and Insurance Board and the Ontario Pension Board are willing to be initial participants in the new pooling entity. Participation of other entities would be voluntary.

Legislation to enable the establishment of the new arm's length asset pooling entity would be introduced in the Spring of 2015.

AMENDMENTS TO CLARIFY ENTITLEMENT TO DEATH BENEFITS

Bill 14 proposes amendments to the PBA that are intended to correct the uncertainty regarding the administration of death benefits caused by the Ontario Court of Appeal's 2012 decision in *Carrigan v. Carrigan Estate* ("*Carrigan*") in situations where a pension plan member has a legally married spouse from whom the member is separated and also has a common law spouse on the date of the member's death (referred to as the "dual spouse situation"). Amendments to the PBA were previously introduced in Bill 151 on December 11, 2013 to address *Carrigan* but died on the order paper upon the calling of the June election.

Bill 14 proposes to amend the PBA to clarify that when a pension plan member is legally married to a spouse from whom the member is living separate and apart and is also in a relationship with a common law spouse on the date of death, the common law spouse will be the person who is entitled to a pre-retirement death benefit payable under the pension plan.

Corresponding amendments are also proposed in respect of the payment of joint and survivor pensions when a member retires. These amendments address circumstances when a plan member is legally married to but separated from a spouse and also has a common law spouse on the date of retirement. The amendments clarify that the pension must be paid as a joint and survivor pension with the common law spouse entitled as the member's survivor.

By way of background, in *Carrigan*, the Ontario Court of Appeal interpreted the provisions of the PBA governing the payment of death benefits in a manner that was inconsistent with the long-standing industry understanding of how entitlement to death benefits is determined and administered. These amendments are a welcome reversion to the industry's former understanding and practice.

Bill 14 includes the following provisions with respect to discharge:

- a discharge is available to plan administrators who determined that a common law spouse was entitled to a joint and survivor pension that commenced prior to the effective date of the proposed PBA amendments coming into force, and
- a discharge is available to plan administrators who paid death benefits to a common law spouse in a dual spouse situation if the payment was made prior to October 31, 2012 (the date the Court of Appeal released *Carrigan*).

It is worth noting that the latter discharge provision for the payment of death benefits to a common law spouse are only applicable to payments made prior to October 31, 2012. There is, therefore, no discharge for death benefits paid on or after October 31, 2012 and before the discharge provision comes into force. Accordingly, administrators should revisit any entitlement to death benefits that arose on or after October 31, 2012 that have not yet been paid out.

REQUIREMENT TO INSURE LONG-TERM DISABILITY PLANS

A significant change for many employers in Ontario is a proposed new requirement to provide all long-term disability (LTD) benefits through an insurance contract. This change will have cost and administrative implications for any employer that currently provides LTD benefits under administrative services only or other self-funded arrangements. Whether all public and private sector employers will ultimately be captured by this requirement is unknown, as the proposed amendments to the *Insurance Act* include provisions that enable the government to create exemptions. It is also uncertain when the new *Insurance Act* provisions would come into force and whether there will be any transition period for employers.

REGULATION OF FINANCIAL PLANNING

The Budget indicates that no consensus emerged from its January 2014 consultations with industry stakeholders on an appropriate framework for the regulation of financial planning in Ontario. The government will now appoint an expert committee to develop recommendations for more formal regulation of financial advisors and financial planners.

PUBLIC SECTOR COMPENSATION RESTRAINT

The Budget addresses public sector compensation restraint, and reiterates the proposals made by the minority Liberal government throughout the Spring of this year.

Compensation restraint was most recently addressed in Bill 8, the *Public Sector and MPP Accountability and Transparency Act, 2014*, which was introduced in the Legislature on July 8, 2014. Amongst other measures, Bill 8 would permit the government to establish binding compensation frameworks for broader public sector organizations, "including the use of sector-specific hard caps." A more detailed summary of Bill 8 can be found in our July 14, 2014 *FTR Now*, "Ontario Re-Introduces BPS Accountability, Transparency Legislation (Formerly Bill 179)."

The Budget also provides that, while the government respects the collective bargaining process, "[a]ny modest wage increases that are negotiated must be absorbed by employers within available funding and within Ontario's existing fiscal plan through efficiency and productivity gains or other tradeoffs so that service levels continue to meet public needs."

Other recent measures introduced by the government include steps to bring public service retirement benefits in line with practices in the private sector and other jurisdictions, for employees retiring on or after January 1, 2017, and by transitioning to a new cost-sharing model for members in the Ontario Public Service pension plans.

With respect to public sector pensions, the Budget reviews a number of measures implemented by the government – such as reaching contribution agreements with the four pension plans consolidated in the Province's financial statements and initiating temporary funding solvency relief measures. As a result of these measures, there is a potential savings of up to $1.5 billion in employer contributions through 2017, and 17 single-employer DB plans have negotiated changes resulting in higher member contribution rates and/or reduced benefits for future service.

In the electricity sector, the government announced in the Budget that it has received the report of Jim Leech, former CEO of the Ontario Teachers' Pension Plan, who had been appointed as Special Advisor, Electricity Sector Pension Sustainability. It is expected that the Minister of Energy will announce details about the report and government's response to it. Moreover, Bill 14 contains provisions that would amalgamate the Ontario Power Authority and the Independent Electricity System Operator ("IESO") into a single entity, which will continue to operate under the IESO name.

PERSONAL INCOME TAX RATE

The Budget contains an increase in the Personal Income Tax rate for high earners in Ontario. Effective January 1, 2014, the Ontario personal income tax rate for individuals whose taxable income is between $150,000 to $220,000 will increase by 1% to 12.16% and for individuals whose taxable income is between $220,000 and $514,090, it will increase by 2% to 13.16%.

MISCELLANEOUS MATTERS

The Budget contains a variety of other initiatives of interest to employers, including:

- the establishment of a new $2.5 billion Jobs and Prosperity Fund, which is intended to provide strategic incentives to secure investment in Ontario;
- an announcement of legislation that would tie future minimum wage increases to cost of living increases (this measure had been introduced in the prior Legislature as Bill 165, the *Fair Minimum Wage Act, 2014*, and was reintroduced on July 16, 2014 as Bill 18);
- limited healthcare initiatives such as an expansion to the current mental health and addictions strategy, limited coverage for in vitro fertilization and an expansion of dental care programs for low-income children;
- providing for across-the-board wage increases for Early Childhood Educators ("ECEs") employed in settings other than school boards; and
- providing for across-the-board wage increases for Personal Support Workers ("PSWs") in the publicly funded home and community care sector.

CONCLUDING COMMENTS

As can be appreciated by this overview of the 2014 Ontario Budget, there are significant changes that will be introduced over the next several years that will have long-term impacts on employers in Ontario. We will continue to monitor these changes as they are introduced and update our clients on those changes that affect your organization.

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.
