

## FTR Now

# Ontario Budget 2016

**Date:** February 29, 2016

On February 25, 2016, the Ontario government tabled its 2016 Budget “[Jobs for Today and Tomorrow](#)” (“Budget”) and the corresponding Budget Bill, Bill 173, [Jobs for Today and Tomorrow Act \(Budget Measures\), 2016](#) (“Bill 173”).

In this *FTR Now*, we highlight some of the key proposals that are of particular interest to employers, human resources professionals and pension plan administrators. Many topics addressed in the Budget are updates of the progress made on, or confirmation of, commitments arising from prior announcements. Highlights include:

- confirmation of the Ontario Retirement Pension Plan (“ORPP”) contribution rate starting January 1, 2018 for Wave 1 employers
- updates about progress on the review of solvency funding for single employer defined benefit pension plans, the timing for the extension of existing temporary solvency funding relief measures, the timing for final pension advisory committees regulations under the *Pension Benefits Act* (“PBA”), progress on target benefit plan consultations and the implementation of pooled registered pension plans
- changes to the Ontario Drug Benefit Plan and harmonization of group benefits in the education sector
- the development of an employment strategy for persons with disabilities and the creation of a Directorate to address racism in Ontario
- updates on government initiatives currently underway, including managing public compensation, the Changing Workplaces Review and the Gender Wage Gap Strategy.

## REPORTING ON THE PROGRESS OF THE ORPP

The Budget provides a report on the government’s progress implementing the ORPP.

### ORPP DESIGN LEGISLATION FORTHCOMING IN SPRING 2016

As discussed in our *FTR Now* of January 28, 2016, “[Ontario Government Announces Additional Design Details](#),” in January 2016 the government provided more details regarding the elements of the ORPP’s design. In the Budget, the government confirms that legislation reflecting the final design elements will be introduced in the Spring of 2016. The legislation will focus on employer eligibility, benefit calculations and the compliance and enforcement regime. The Budget also

indicates that the legislation will contain requirements for the funding of the ORPP. Registration of the ORPP with the Canada Revenue Agency, pursuant to the *Income Tax Act*, is in progress.

## **ORPP CONTRIBUTIONS FOR WAVE 1 EMPLOYERS DELAYED TO JANUARY 1, 2018**

The Budget reaffirms the government's recent announcement that implementation of the ORPP will be delayed by one year, as discussed in our *FTR Now* of February 17, 2016, "[ORPP Implementation Delayed to January 1, 2018](#)" and provides additional clarification of how employer enrolment and contributions are affected by the delay. The Budget clarifies that the employer verification and enrolment process will start in January 2017 instead of in 2016, and confirms how ORPP contributions will be phased in for Wave 1 [1] employers whose participation is delayed until January 1, 2018. Contributions will begin on January 1, 2018, based on the following phase-in schedule:

	January 2018	January 2019	January 2020	January 2021
Wave 1	0.8%	1.6%	1.9%	1.9%
Wave 2	0.8%	1.6%	1.9%	1.9%
Wave 3	0%	0.8%	1.6%	1.9%
Wave 4	0%	0%	1.9%	1.9%

## **ORPP ADMINISTRATION CORPORATION ESTABLISHED WITH PROFESSIONAL BOARD**

The Budget confirms that the ORPP Administration Corporation ("Corporation") has been established and is an independent entity with a professional board and robust governance structure model. An initial board of directors drawn from diverse professional backgrounds has been appointed, and additional professionals to complete the board will be appointed later in 2016. As previously announced, Saäd Rafi has been hired as the first CEO of the Corporation.

The Budget indicates that specific measures will be implemented to support the accountability and transparency of the Corporation, including the development of a Memorandum of Understanding between the Minister of Finance and the Corporation, an annual report, an annual meeting for beneficiaries, external auditing and strong financial controls.

A formal funding policy will guide the government and the Corporation in the event of a funding shortfall or excess. The government will also introduce legislation in 2016 to establish an independent provincial Office of the Chief Actuary, modeled on the Office of the Chief Actuary of Canada, to advise the Province and the Corporation.

## **ORPP – MOVING FORWARD AND CPP ENHANCEMENT**

The Budget indicates that the government continues to seek the feedback of stakeholders, including feedback through groups such as the Business Advisory Group on ORPP Implementation. The government established the Business Advisory Group on ORPP Implementation Group in January 2016 and invited a number of organizations representing various business groups to provide additional input on the implementation of the ORPP.

The Budget applauds the federal government's renewal of the national discussions to enhance the Canada Pension Plan ("CPP"). The government indicates that its consultation regarding the implementation of the ORPP informed its view that CPP enhancement must provide a level of benefit adequacy and coverage consistent with these elements of the ORPP. The government affirms its commitment to work with the federal government and other provinces and territories to make progress on a CPP enhancement, starting with the Federal–Provincial–Territorial Finance Ministers meeting in June 2016.

The Budget also confirms that the government is developing a "comparable workplace pension plan" test to be applied to Pooled Registered Pension Plans ("PRPPs"), for purposes of determining whether a participating employer is exempt from the ORPP.

## **STRENGTHENING AND MODERNIZING WORKPLACE PENSION PLANS**

### **REVIEW OF CURRENT SOLVENCY FUNDING FRAMEWORK**

The Budget acknowledges the need for reforms that will allow pension plans to continue to be a viable retirement savings tool in different economic conditions. It similarly acknowledges the funding pressures caused by prolonged low long-term interest rates under the existing solvency funding regime applicable to single employer defined benefit pension plans.

As announced in the ["2015 Ontario Economic Outlook and Fiscal Review"](#) released in the Fall of 2015, the government is undertaking a solvency funding review. The review will proceed under the leadership of David Marshall, former President and CEO of the Workplace Safety and Insurance Board ("WSIB"). Mr. Marshall will make recommendations to the Minister of Finance with a view to assisting in the development of a balanced set of solvency funding reforms focused on plan sustainability, affordability and benefit security, taking into account the interests of pension stakeholders including sponsors, unions, members and retirees.

The government is also establishing a stakeholder reference group to ensure the reforms are informed by a broad range of stakeholder opinions. The first step in the process is a consultation paper to be released in the Spring of 2016.

The solvency funding review is an important initiative for sponsors of single employer defined benefit pension plans in Ontario. Following recent significant reforms in Quebec, which have

eliminated private sector defined benefit solvency funding requirements in favour of a new set of rules, the Ontario review is timely and necessary in the current economic climate.

## **SOLVENCY FUNDING RELIEF EXTENSIONS**

While the solvency funding review may ultimately lead to permanent solvency funding reform measures in Ontario for single employer defined benefit pension plans, the Budget acknowledges the need for more immediate funding relief for single employer plan sponsors. Accordingly, the Budget indicates that the government plans to post draft regulations for consultation in the Spring of 2016 directed at extending the 2009 and 2012 temporary solvency funding relief measures.

The 2009 and 2012 solvency funding relief measures were available to single employer defined benefit pension plans and some aspects required the approval of plan beneficiaries. [2]

Importantly, the Budget refers to these measures as relief “for private sector employers.” It therefore appears, at least from the Budget, that the regulations to be posted will not extend or otherwise address solvency funding relief specifically for broader public sector single employer pension plans. For an explanation of the existing broader public sector solvency funding relief, see our December 6, 2012 *Human Resources Legislative Update*, “[Third Window for BPS Solvency Funding Relief Proposed](#).”

## **TARGET BENEFIT PLANS**

As promised in the 2015 Budget, the government released a consultation paper, “[Regulatory Reform for Target Benefit Multi-Employer Pension Plans](#),” and engaged in a consultation process on a proposed regulatory framework for target benefit multi-employer pension plans (“MEPPs”), including a permanent exemption from solvency funding. The Budget reports that while submissions were supportive, some concerns were raised about the ability of MEPPs to transition to a new framework with new funding rules. As a result, the government has indicated that it will continue to consult with stakeholders on the framework, including funding rules, and committed to providing a transition period that will be minimally disruptive for the collective bargaining process.

In the 2015 Budget, the government indicated that a framework for single employer target benefit plans would follow once the framework for MEPPs is finalized. It appears that rules for single employer target benefit plans may be further delayed as a result of the continued consultations on target benefit MEPPs.

## **POOLED REGISTERED PENSION PLANS – AN UPDATE**

PRPPs are a type of defined contribution pension plan that pools assets from multiple unrelated participating employers and their employees. PRPPs are offered and administered by authorized financial institutions. The previous federal government introduced the legislative framework for

PRPPs in 2012 and Ontario passed the *Pooled Registered Pension Plans Act, 2015* (“PRPP Act”), which largely adopts the federal PRPP model. However, the regulations necessary to support the establishment of PRPPs in Ontario are still outstanding. The Budget indicates that the regulations are currently under development. No timeframe is given for the release of draft regulations. [3]

Bill 173 amends the PRPP Act to specify that the Ontario government will not begin to licence PRPP providers until a multilateral agreement contemplated by the federal PRPP legislation is entered into by the Ontario government and other jurisdictions. Bill 173 also amends the PRPP to extend its application to former employees who have funds remaining in the PRPP.

## **OTHER MEASURES RELATING TO RETIREMENT AND BENEFITS**

### **PENSION ADVISORY COMMITTEES**

A member pension advisory committee (“PAC”) can be established by a majority vote of members and retirees if certain other conditions are met. The purpose of a PAC is to monitor plan administration, make recommendations to the administrator regarding the plan and promote awareness and understanding of the plan amongst its members.

The PBA was amended in 2010 to facilitate the establishment of PACs, but those rules have not yet been proclaimed in force pending release of the regulations needed to implement them. In the Fall of 2015, draft regulations under the PBA related to the amended PAC rules were posted for consultation. The Budget confirms that final regulations to facilitate the establishment of PACs are expected later in 2016.

Bill 173 will also amend the PBA to allow an additional exemption from the PAC rules for pension plans that meet prescribed criteria.

### **FSCO AND FST MANDATE REVIEW**

In November 2015, an expert panel charged with reviewing the mandates of the Financial Services Commission of Ontario (“FSCO”), the Financial Services Tribunal (“FST”) and the Deposit Insurance Corporation of Ontario (“DICO”) released a preliminary position paper recommending the establishment of a new, independent and flexible regulator.

In the Budget, the government affirms its commitment to modernizing and strengthening the regulation of financial services and pensions, and to improving consumer, investor and pension beneficiary protection.

The panel’s final report is expected in the Spring of 2016. The government has indicated it will identify and pursue necessary legislative or regulatory changes “as early as possible”.

## **TEACHERS' PENSION PLAN RE-EMPLOYMENT RULES**

Under the Ontario Teachers' Pension Plan ("TPP"), the pension benefits of retired teachers (pensioners in receipt of a pension from the TPP) are subject to temporary suspension during a period of re-employment in certain circumstances. These provisions have been in place under the TPP for many years with varying re-employment limits in effect at different points in time throughout the history of the provisions.

Bill 173 contains amendments to the *Teachers' Pension Act* ("TPA") which expressly provide that the re-employment and suspension related provisions prevail over the PBA in the event of a conflict. These amendments eliminate an argument that pension suspension during a period of re-employment may be in violation of the PBA. This change to the TPA is retroactive to January 1, 1990.

## **REGULATION OF FINANCIAL ADVISORS**

Ontario does not currently have any general regulatory framework governing individuals who provide financial planning and advisory services. An independent expert committee reviewed the regulatory framework in 2015 and is finalizing its preliminary policy recommendations. Further consultations will be held and the final report is expected to be delivered in the Fall of 2016.

Given the shift away from workplace defined benefit plans, more people are left with the responsibility for investing their own retirement savings. The government believes that these measures will help residents obtain good financial advice and protect them as investors.

## **CHANGES TO THE ONTARIO DRUG BENEFIT PROGRAM ANNOUNCED EFFECTIVE AUGUST 1, 2016**

As part of the "Patients First: Action Plan for Health Care", the government indicated a redesigned public drug program will be introduced by 2019. The program aims to increase fairness and equity among beneficiaries and improve long-term sustainability. The Budget indicates that the new program would "effectively coordinate" with private insurance. A public consultation is expected to be launched in the Spring of 2016.

However, the government also announced that before it transitions to the new public drug program, it will make changes to the current Ontario Drug Benefit ("ODB") Program, increasing income-eligibility thresholds for low-income seniors and making changes to co-payments and deductibles for other seniors. Beginning August 1, 2016, the income threshold to qualify for the low-income seniors' benefit will be increased from \$16,018 to \$19,300 for single seniors and from \$24,175 to \$32,300 for senior couples. The \$2 per prescription co-payment with no annual deductible will continue. The increase in the income thresholds could result in a greater number of seniors qualifying for public programs. Seniors with incomes above the new thresholds will see their annual



deductibles increase from \$100 to \$170, and the per prescription co-payment will increase from \$6.11 to \$7.11. Depending on the changes, this could result in an increase to costs under workplace plans, where benefits are coordinated with public drug programs.

Over the next year, the government will continue to review programs to determine where benefits could be better targeted.

## HARMONIZATION OF BENEFITS IN THE EDUCATION SECTOR

The Budget states that currently, there are more than 1,000 different benefit plans for teachers and education workers throughout Ontario's 72 school boards. Consistent with its stated intention to manage compensation in the public sector, the Budget confirms that the government will harmonize benefits in the education sector. All individual benefit plans in the education sector will be consolidated into a small number of provincial trusts, to enhance purchasing power, to better manage costs and to ensure provision of comparable benefits. The government will provide financial support up front to aid in the transition to the harmonized plans.

## MANAGING BROADER PUBLIC SECTOR COMPENSATION

The Budget reaffirms the government's commitment to managing compensation in the Broader Public Sector ("BPS"), and signals the government's expectation that "All public-sector partners must continue to work together to control current and future compensation costs."

With respect to collective bargaining, the Budget confirms that it expects that BPS organizations will continue to strive for settlements that achieve a "net-zero outcome" (i.e. where "modest negotiated wage increases" are offset by other measures), a requirement first stated in the 2015 Budget.

The Budget also confirms that the government is moving ahead with its stated intention to develop sector-specific executive compensation frameworks under the *Broader Public Sector Executive Compensation Act, 2014* ("BPSECA"), referring specifically to the compensation information that has been collected from all colleges and universities. See our *FTR Now* of March 10, 2015, "[New BPS Compensation Restraint Law to Come into Force March 16 \[2015\]](#)", for a detailed explanation of the BPSECA, including the frameworks to be established.

The Budget indicates that consultation (and research on executive compensation at postsecondary institutions across Canada) is informing development of the college and university frameworks that are in progress. Moreover, the government also indicates in the Budget that it will begin to collect financial information from, and engage in consultations with, organizations in other sectors of the BPS over the coming months.

## INITIATIVES RELATED TO LABOUR AND EMPLOYMENT

For labour and employment matters, the Budget primarily provides an update of significant developments that are already underway that have the potential to affect all employers in Ontario, and announces a few new initiatives.

## **CHANGING WORKPLACES REVIEW**

In 2015, the government initiated a review of the changing nature of Ontario workplaces with a view to determining whether any amendments might be needed to the *Employment Standards Act, 2000* (“ESA”) or the *Labour Relations Act, 1995*. The focus of the review was on, among other things, non-standard working relationships, accelerating technological change and increasing workplace diversity. Two government-appointed Special Advisors have conducted public consultations and commissioned research. Among other subjects, the government has asked the Advisors to consider the personal emergency leave provisions of the ESA and their impact on business.

We anticipate that an interim report will be released in March 2016 at which time employers should have an opportunity for comment. A final report, together with recommendations, is expected in the summer of 2016.

## **GENDER WAGE GAP STRATEGY**

The government created a Gender Wage Gap Steering Committee in April 2015 to consider, among other things, the factors causing Ontario’s gender wage gap and to assess the impact of government actions, business practices and other factors on that gap. One mandate of the Committee was to consider how government, businesses, labour and other organizations can work together to deal with the systemic barriers confronting women.

The Committee was asked also to consider whether provincial legislation, such as the *Human Rights Code*, the *Pay Equity Act* and the ESA, adequately deals with the gender wage gap. However, the Committee was asked not to propose any legislative amendments. The Budget states the Committee is due to make its recommendations in May 2016.

## **THE WSIB UNFUNDED LIABILITY**

The Budget reports on steps being taken by the WSIB to reduce costs and to retire its unfunded liability by 2022. The WSIB estimates that removal of the unfunded liability component of employers’ premium rates will result in significant annual premium reductions in the future.

## **CHANGES TO THE ONTARIO COLLEGE OF TRADES**

The Budget states that the government will bring forward legislative changes to strengthen the Ontario College of Trades in response to recommendations received from Tony Dean. It will also work with the College of Trades to implement recommendations to improve the College’s



processes, which include reviewing how trades are classified based on the criterion of risk of harm, and ensuring that the scopes of practice of the trades are consistent.

## EMPLOYMENT STRATEGY FOR PERSONS WITH DISABILITIES

The government has announced it will develop a provincial employment strategy for persons with disabilities that will, among other things, involve employers with a view to breaking down employment barriers for persons with disabilities and promoting inclusive workplaces. The government will create the Partnership Council on Employment Opportunities for People with Disabilities to assist with this strategy.

## ANTI-RACISM DIRECTORATE

The government will create a Directorate to address issues of racism in Ontario. Among other things, the Directorate will work with business partners and others to increase public awareness of racism. It will also review government policies, programs and services from an anti-racism perspective.

## CONCLUSION

We will continue to monitor these Budget initiatives and will keep you informed of any details as they emerge, including the progress of Bill 173. Should you have any questions regarding Budget 2016, please contact [Stephanie J. Kalinowski](#) at 416.864.7263, [Natasha D. Monkman](#) at 416.864.7302, or your regular [Hicks Morley lawyer](#).

---

[1] See our *FTR Now* of August 11, 2015, "[ORPP: Government Announces Implementation Details](#)" for information about how to determine which wave an employer falls into.

[2] See our *FTR Now* of June 25, 2009 "[Solvency Funding Relief is Here](#)" for a full explanation of the 2009 relief and our *FTR Now* of November 9, 2012 "[Pension Solvency Funding Relief is Here...Again](#)" for a full explanation of the 2012 relief.

[3] For more information on the PRPP and ORPP, see our *FTR Nows* of December 8, 2014, "[Ontario Introduces ORPP and PRPP Legislation](#)" and December 23, 2014, "[Update on Ontario and ORPP and PRPP Legislation](#)."