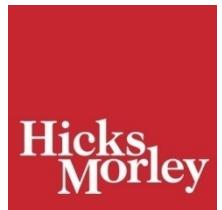
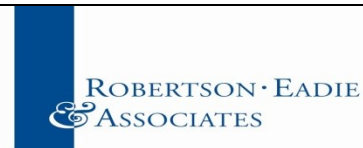


Pension Reform: Saving the DB Pension Plan?

John G. Deinum, Robertson Eadie
Stephanie J. Kalinowski, Hicks Morley
Presentation to APMA, November 18, 2010



Agenda

- Pension Reform Overview
- Ontario Bill 236
- Ontario Bill 120

Saving the DB Pension Plan?

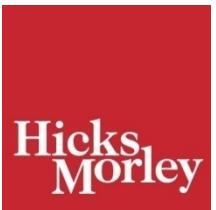
Background

- Alberta/British Columbia Joint Expert Panel on Pension Standards - 2008
- Ontario Expert Commission on Pensions Report – 2008
- Federal Consultation Paper – 2009
- Nova Scotia Pension Review Panel - 2009
- CPP Reform - 2010
- NB Pension Reform Commission - 2010

Busy Year in Pension Reform

- Bill 236 [amends Ontario Pension Benefits Act] – Royal Assent May 18, 2010
- Pension Benefits Standards Act (PBSA) Regulations – promulgated June 25, 2010 [federal pension standards]
- Bill C-9 [amends federal PBSA] – Royal Assent July 12, 2010
- Bill 120 [amends Ontario Pension Benefits Act] – Introduced October 19, 2010
- Regulations under federal and Ontario statutes still to come...

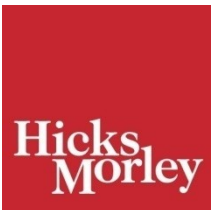
Saving the DB Pension Plan?



Ontario Pension Reform: Phase I

- *Pension Benefits Amendment Act, 2009* – received Royal Assent May 18, 2010
- Much of the Act is not yet in force

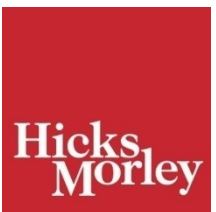
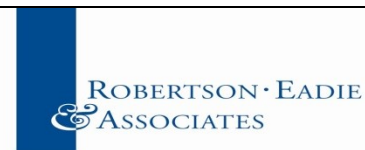
Saving the DB Pension Plan?



Ontario Pension Reform: Phase I

- Immediate vesting
- Small benefit commutation
- Partial plan wind ups eliminated
- Expanded grow-in rights
- Surplus sharing
- Increased disclosure to members and former members
- Advance notice of plan amendments
- Strengthened pension advisory committees

Saving the DB Pension Plan?



Ontario Pension Reform: Phase I

- Employer overpayment application
- Phased retirement rules
- Simplified asset transfer approvals
 - transfer of surplus
- Expansion of Superintendent's powers
 - valuation reports
 - CCAA/BIA proposals
- Records retention

Saving the DB Pension Plan?

Ontario Pension Reform: Phase I

- Immediate Vesting and Locking-In
 - impact for employers with high turnover
 - amend plan to add waiting period? (if possible)
- Small benefit commutation/forced cash-out
 - increased to 4% of YMPE (annual pension)
 - adds new threshold of 20% of YMPE (CV)
 - extends to survivor benefits
- Plan amendments will be required

Saving the DB Pension Plan?

Ontario Pension Reform: Phase I

- Elimination of partial wind ups
 - events after July 1, 2012
 - risk remains for events prior to July 2012
 - no requirement to buy annuities on plan wind up
- Expansion of grow-in for involuntary terminations
 - after July 1, 2012

Ontario Pension Reform: Phase I

- Surplus sharing
 - employer entitlement or member consent, not both
 - in force, but no Regulations
 - FSCO view is member consent still required, but can put applications on hold

Saving the DB Pension Plan?

Ontario Pension Reform: Phase I

- Advance notice of plan amendments
 - notice to members AND former members + union
 - whether affected by amendment or not
 - content of notice to be prescribed
 - some exceptions to be prescribed
- Annual communication to deferreds/retirees?
 - to be prescribed

Ontario Pension Reform: Phase I

- Facilitation of pension advisory committees
 - union can consent (need majority)
 - retirees can appoint two+ members
 - administrator must send notice to all members and retired members and provide “assistance” as prescribed
 - administrator must give the committee information “under the administrator’s control and...required by the committee..for the purposes of the committee”

Saving the DB Pension Plan?



Hicks
Morley

Expansion of Grow-In

- Currently:
 - DB members whose age and years of service or plan membership total 55 or more (“Rule of 55”) “grow into” subsidized early retirement benefits and bridge benefits
 - only on full or partial wind up
- Effective July 1, 2012:
 - any member who is involuntarily terminated (*i.e.* terminated other than for cause) and who meets the Rule of 55

Expansion of Grow-In

- Exceptions:
 - (Voluntary) resignation or retirement
 - Termination for wilful misconduct, disobedience or wilful neglect of duty that is not trivial and not condoned by the employer...[Where will this be adjudicated?]
 - Other prescribed exceptions...[wait and see]

Expansion of Grow-In

- funding implications

Saving the DB Pension Plan?

Expansion of Grow-In

- Can affect current terminations in Ontario
 - May increase cost of termination package significantly

Grow-in Example

Facts

- Terminated: November 5, 2010
- D.O.B: November 1, 1965 (age 45)
- Length of employment: 22 years
- Type of Plan: defined benefit (provincially regulated)
- Unreduced early retirement “milestone” under the plan: age 60 with 80 points
- Place of Employment: Ontario

Grow-In Example

Severance Offer

- “Without Cause” termination
- Exit interview on Friday, November 5, 2010
- Salary continuation, benefits and pension accrual continue to November 5, 2012 (24 months)
- This member will not be age 60 when her notice period ends so not eligible for unreduced early retirement, Right?
- Wrong

Grow-In Example

- pension implications without grow-in
 - doesn't meet age 60/80
 - age 47 with 71 points on November 5, 2012
 - reduced pension/lower commuted value
- with grow-in
 - unreduced pension age 60/enhanced commuted value

Examples of Grow-In

- male, age 48
 - 21 years of service
 - CV = \$255,000 (without grow-in)
 - CV = \$679,000 (with grow-in)
- female, age 43
 - 17 years of service
 - CV = \$106,000 (without grow-in)
 - CV = \$191,382 (with grow-in)

Saving the DB Pension Plan?

Avoiding Grow-In

- Agree to characterize termination as resignation or retirement?
- Reduce severance offer in light of increased Pension? (Note: No set off permitted as per *Imperial Oil v. Atlantic Oil Workers Union*)
- Amend pension plan to eliminate subsidies (eliminates grow-in for all members)?
- JSPPs/MEPPs can elect out (OMERS already has)

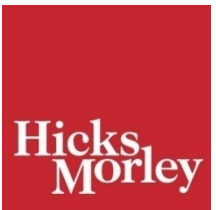
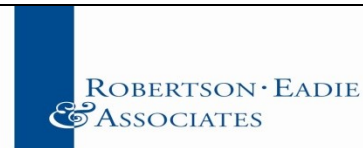
Issues to Consider

- Release Language
- Disclosure Obligations
 - Heightened if there is an option between lump sum and salary continuation severance package (*Allison v. Noranda*)
- Supplementary Plans
 - If grow-in rights flow through to “top up” plan, cost will be even greater

Ontario Reform Phase II

- Government's August 24, 2010 announcement
- Bill 120, *Securing Pension Benefits Now and for the Future Act, 2010*
- Introduced October 19, 2010

Saving the DB Pension Plan?



Ontario Reform Phase II

- Flexible benefits/optional contributions under DB plans
- DC plans can elect to offer a variable benefit paid from the plan (payments similar to a life income fund)
- Target benefits

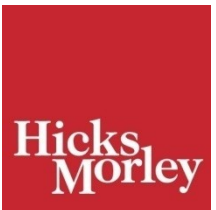
Ontario Reform Phase II

- Use of letters of credit for up to 15% of solvency liabilities
- Tougher standards for funding benefit improvements
- Changes to acceptable actuarial methods (smoothing, included benefits)

Ontario Reform Phase II

- Limits on contribution holidays
- Payment of plan expenses
- Surplus distribution: Agree or Arbitrate

Saving the DB Pension Plan?



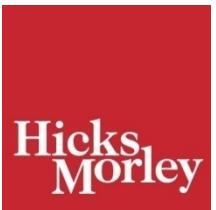
Ontario Reform Phase II

- Solvency funding exemption for existing JSPPs
- Withdrawals from MEPPs and JSPPs
- Modifies funding rules applicable to MEPPs and JSPPs
- Stabilize PBGF

Ontario Pension Reform Phase II

- Funding assumptions
 - eliminate averaging of solvency interest rates
 - limit smoothing of going concern assets
 - limit actuarial value of assets to within 20% market value
 - indexing included in GC valuation
 - Regulations about acceptable actuarial methods and assumptions

Saving the DB Pension Plan?



Ontario Pension Reform Phase II

- 85% transfer ratio triggers annual valuations
- Accelerated funding of benefit improvements
 - 8 years on a going concern basis
 - if plan's transfer ratio is less than 85%, then:
 - lump sum payment to avoid reduction in funded ratio
 - remaining cost amortized over maximum 5 years

Ontario Reform Phase II

- Stabilize PBGF
 - increase PBGF revenue/build reserve
 - minimum assessment of \$250/covered plan
 - increase base fee per member from \$1 to \$5
 - maximum fee per member from \$100 to \$300
 - no overall assessment cap
 - extend eligibility deferral periods

Ontario Pension Reform Phase II

- Letters of Credit:
 - maximum value up to 15% of solvency liabilities
 - obtained by employer
 - held by administrator
 - notice to Superintendent
 - expenses of obtaining not payable from fund
 - expenses of enforcing – maybe?
 - additional conditions and requirements to be prescribed

Saving the DB Pension Plan?

Ontario Pension Reform Phase II

- Target benefits
 - contributions fixed by collective agreement
 - benefits can be reduced by plan administrator
 - no solvency funding
 - no PBGF funding
 - single employer plans? employer as administrator?

Saving the DB Pension Plan?

Ontario Pension Reform Phase II

- Contribution holidays
 - explicitly permitted if not prohibited by plan documents (historical?)
 - minimum transfer ratio of 105%
 - other prescribed conditions
 - annual filing with FSCO, disclosure to members, former members, survivors

Ontario Pension Reform Phase II

- Administration expenses
 - authorized
 - unless prohibited by plan or otherwise provided for (historical?)

Ontario Pension Reform Phase II

- Surplus withdrawal
 - binding arbitration process introduced for plan wind up
- Surplus cushion for withdrawal from ongoing plan

What's Next?

- Bill 120 2nd reading/Standing Committee
November 17
- likely to be passed on December 2
- Regulations for 236 and 120 to follow shortly thereafter
- All reform in place by July 1, 2011?

What's Next?

- Comments/discussion
- Opportunities?

Saving the DB Pension Plan?

