

Submission to the

Canadian Association of Pension

Supervisory Authorities (“CAPSA”)

Re: A Uniform Model Law

June 2004

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EXECUTIVE SUMMARY

The Multi-Employer Benefit Plan Council of Canada (*MEBCO*) represents the interests of Canadian multi-employer pension plans (*MEPPs*) and multi-employer (*health and*) benefit plans (*MEBPs*) and includes representative of all persons and disciplines involved in MEPPs and MEBPs, including union and employer trustees, professional third party administrators, non-profit or “in-house” plan administrators and professionals.

Among MEBCO’s many constituents are multi-employer pension plans, which provide pensions to their Members. There are approximately 360 MEPPs in Canada that have Membership of an estimated 1,000,000 individuals. Annual Employer, and where applicable Member, contributions to MEPPs are estimated to exceed \$2.0 billion. Many Canadians who participate in MEPPs earn middle to low incomes.

MEPPs in Canada are a unique Labour and Management response for meeting the retirement needs of workers and their dependents. Without the formation of MEPPs and MEBPs, a substantial portion of the Canadian population would not have access to the benefits of Death, Disability, Health and or Dental plans, nor would they have an employment program to provide additional lifetime retirement income beyond the floors provided by the Canada (*or Quebec*) Pension Plan, Old Age Security and the Guaranteed Income Supplement. This role should not only be recognized by government, but also should be preserved and indeed encouraged.

The purpose of our submission is to both assist CAPSA in meeting its objectives **to simplify and harmonize pension regulation in Canada, while protecting Members’ rights and benefits** and **to represent the interests of our Members with respect to retirement and taxation issues.**

- MEBCO supports the concept of harmonization of pension legislation and regulation across Canada, within the initiative of the CAPSA Model Law
- MEBCO supports “going-concern” funding for MEPPS, not any form of “solvency” funding.
- MEBCO supports the introduction of a pension equivalent of “unclaimed Bank Balances”
- MEBCO supports all reasonable obligations to disclose important information to Plan Members

- MEBCO supports greater available choice for a Member and pension partner mutually to modify mandatory pension partner priority rights to death and survivor benefits.
- MEBCO supports the roles performed by Boards of Trustees acting in a fiduciary capacity for the best interests of all Members and former Members, and opposes having all or any aspect of those roles and responsibilities inappropriately usurped by the Superintendent.
- MEBCO supports the premise that the primary purpose of every registered pension plan must continue to be the provision of lifetime retirement income to plan Members.

MEBCO provided responses to various regulatory pension reform consultation processes, including earlier this year, submissions to both Alberta and Manitoba. Upon request, MEBCO would be pleased to provide copies of these responses, in electronic and/or paper format (*Our submissions are available at www.mebc.org*). At this writing, MEBCO has received no response to either of our submissions, or to our coincident offers to meet with the two provinces to discuss the unique and legitimate concerns of MEPPs and the Administrators of MEPPS. MEBCO, however, is pleased that several provinces have established MEPP Advisory Committees that have plan representatives and professionals to interact with regulators. In addition, MEBCO notes that Alberta has proposed a trial period without solvency funding.

MEBCO would be pleased to meet with representatives of CAPSA to discuss all or any aspect of our submission, and to dialogue as to how regulation of Multi-Employer Pension Plans and specifically Negotiated-Contribution, Defined Benefit ('specified') Multi-Employer Pension Plans can be improved.

HIGHLIGHTS OF OUR SUBMISSION

MEBCO urges CAPSA to continue to focus pension reform legislation on harmonization of pension legislation across Canada. MEBCO attended the initial session with CAPSA on the Model Law in February, and continued to have representatives attend many of the 'road-show' presentations across English Canada held in April and early May, in order present the position of Multi-Employer Plans within the public portion of the CAPSA consultation process. MEBCO is concerned that CAPSA may give insufficient consideration to the unique nature of negotiated-contribution, defined benefit MEPPs. Thus, in addition to making this formal submission within CAPSA's stated time-frame, MEBCO offers to meet with CAPSA to review the unique requirements of MEPPs, in hopes that Model Law Proposals will ensure that pension legislation and regulation does not focus solely on single-employer plans, and plans that are outside the bound of a negotiated-contribution, defined benefit MEPP.

MEBCO's constituents include many national plans. The disparate nature of various pension legislation adds a significant cost to the administration of these pension plans. As contributions are essentially fixed, the consequences of additional costs translate into lower benefits provided to plan beneficiaries. Our submission voices our support for initiatives that mandate consistent benefits shall be provided regardless of provincial residence.

MEBCO submits that that Multi-Employer Pension Plans are, by their very nature, distinctly different from most Single-Employer Pension Plans (*SEPPs*) and what the earlier provincial consultations have referred to as Multi-Unit Pension Plans (*MUPPs*). MEBCO sees MUPPs as distinct from MEPPs, possibly by having an employer-bias, and as such, possibly requiring more stringent regulation to protect the interest of Plan beneficiaries. For example, surplus assets may be an issue with SEPPs and/or MUPPs. Surplus is never an issue with MEPPs, as MEPPs will always acknowledge that all contributions and all assets can only be used for the interests of beneficiaries, and such funds can never revert to employers.

In all cases, MEPPs are formed under the responsibility of a Board of Trustees. Labour must appoint at least half of the Board Members. Management can appoint not more than half of Board Members.

The role of the Board of Trustees in a MEPP is very important. Trustees have a fiduciary responsibility to act solely in the best interests of Plan beneficiaries. Labour Trustees are either elected specifically by Plan beneficiaries, or appointed by Union officials who were democratically elected by Plan beneficiaries. MEBCO submits that either approach is perfectly satisfactory. These Trustees recognize that they must act responsibly, and in accordance with their fiduciary obligations at law.

MEBCO offers input only on aspects of the *Model Law* Proposals that impact MEPPs.

MEBCO would like to specifically reiterate its position that a MEPP should test its funding adequacy by using only the “going-concern” valuation. MEBCO specifically supports the Paper produced by the Canadian Institute of Actuaries Task Force on Multi-Employer Pension Plans, which can be found at <http://www.actuaries.ca/publications/2001/201455e.pdf>. Solvency funding of any form is in MEBCO’s view, inappropriate for MEPPS. Going concern funding only should apply.

Of the *Key Proposals*, the following aspects are most strongly opposed by MEBCO.

A. Immediate Vesting

MEBCO feels the Proposal to implement immediate vesting for MEPPs would needlessly add material cost in terms of both benefits and administration. MEBCO would support the harmonization of vesting at two-years of plan Membership (*including pre-transition service*) as a simplification. MEBCO does not support any material lowering of this threshold, but would consider other options approximately equivalent to 2-year vesting (*such as related to hours of covered employment or dollars of employer contributions*).

B. Unlocatable Beneficiaries

MEBCO acknowledges the need for an ‘unclaimed balance’ solution upon wind-up, but feels this Proposal is deficient if it doesn’t also address situations involving ‘lost souls’ past normal retirement age.

C. Partial Wind-Up

MEBCO suggests this concept be eliminated for all negotiated-contribution, defined benefit MEPPs.

D. Report by Advisors

MEBCO categorically rejects any mandated 'snitch-rule.'

INTRODUCTION

Who we are

The Multi-Employer Benefit Plan Council of Canada was established in 1992 to represent the interests of Canadian multi-employer pension and benefit plans in relation to existing or proposed federal and provincial legislation and policies affecting multi-employer plans (*MEPs*). MEBCO is a federal non-share capital corporation, operating on a not-for-profit basis. MEBCO's Board of Directors consists of representatives from a diverse cross-section of the pension and employment benefits field. MEBCO represents all persons and disciplines involved in MEPPs and MEBPs. MEBCO's Membership includes

- Union (*Labour*) trustees
- Employer (*Management*) trustees
- Non-profit or "in-house" plan administrators
- Professional third party administrators, and
- Professionals including actuaries, benefit consultants, investment managers, insurers, lawyers and accountants

MEBCO currently has over 190 Members in jurisdictions across Canada. There are hundreds of MEPs (*MEPPs and MEBPs*) in Canada covering well over **one million workers, and the dependents of those workers**, in industries such as

- Building and construction
- Food service
- Retail
- Hotel and Restaurant
- Graphic Arts
- Garment Manufacturing
- Security
- Textile
- Transportation, and
- Entertainment

A MEP may be national, regional, provincial or local in coverage. Anywhere from two to over one thousand employers may contribute to a single MEP pursuant to one or many Collective Bargaining Agreements.

MEBCO is pleased to respond to *CAPSA's* initiative to take the first step(s) toward a Model Pension Law for Canada.

MEBCO responds only on those Key Proposals that impact MEPPs. Where no input is provided, MEBCO may support the Key Proposal, deem it not relevant to MEPPs, or may be relatively neutral.

For *CAPSA's* convenience, we respond to each Key Proposal set forth at the final countrywide presentation made in Toronto on May 7, 2004. Since the Key Proposals have changed somewhat from the initial session MEBCO attended in February, we also respond to those Key Proposals deleted since February.

Key Proposal Number 1 – Final Location

CAPSA proposes that calculation of benefits be based on “final location,” rather than “checkerboard.” CAPSA notes that this codifies the current practice in most jurisdictions, and provides certainty for plan Members and administrators.

MEBCO RECOMMENDATION

MEBCO supports this recommendation. MEBCO could also support “checkerboard,” if uniformity existed. MEBCO suggests that the most important result is consistency.

Additional Comments:

Notwithstanding, MEBCO notes that the “Final Location” approach may be as difficult or complex as the “Checkerboard” approach.

MEBCO observes that some concepts, such as excess contributions, can’t be dealt with on a “Final Location” approach without loss of benefits, or provision of added benefits with added cost.

MEBCO further observes that some concepts that can be easily dealt with on a “Final Location” approach would not necessarily provide certainty for plan Members. For example, a Member transferring from Ontario to Nova Scotia could find that the pre-retirement death benefits of 100% of post-reform ‘value’ would only be 60% of post-reform value

Before effecting “Final Location,” CAPSA must consider that “Final Location” can possibly create unintended harm. “Final Location” may inadvertently deprive Members of benefit rights...or by harmonizing at the highest common denominator, introduce added cost to pension plans.

MEBCO understands that Ontario is currently the only jurisdiction that specifically does not allow a plan to be administered on a “Final Location” approach. Other jurisdictions allow “Final Location” as a “best practice,” even though the “Final Location” approval might not be legally sound.

On balance, MEBCO concludes that the harmonization advantages of a successful, well-designed Model Law will out-way the disadvantages that minor benefit reductions may be imposed on Plan Members.

Key Proposal Number 2 – Plan Administrator

CAPSA proposes that the ‘Administrator’ of a pension plan must be a pension committee comprised of at least two Members designated by plan Members.

MEBCO RECOMMENDATION

Except for one key aspect, MEBCO offers no comment on this Proposal.

We understand that this Proposal specifically does not apply to Multi-Employer Pension Plans where the Administrator is a Board of Trustees, at least half of whom are representatives of Members, either through direct election, or indirectly, being appointed by duly elected Union officials or convention delegates.

Additional Comments:

MEBCO suggests that Pension Committees are a particularly inappropriate requirement to impose on a MEPP. They usurp the obligations of the Board of Trustees, or at least duplicate that role with no added value. They add additional costs. Rather, MEBCO suggests that pension plans where a Board of Trustees already exists (*all of who have 50% or greater Membership democratically elected specifically by Plan beneficiaries, or appointed by Union officials elected by Plan beneficiaries*) require no separate Pension Committee.

The Board of Trustees should have at least the following responsibilities

- Registering the Plan and all amendments thereto
- Acting with honesty and loyalty in the best interest of the Members or beneficiaries (*as a whole*), while not permitting any conflict between a Trustee’s own interests and his / her powers and duties in respect of the Plan
- Delegating powers to a third party (*while retaining responsibility for that party*)
- Filing required documents with all pension regulators (*the Commission and CRA*)
- Managing the pension fund (*subject to above-noted delegation*) and establishment and monitoring of investment policies and procedures; and
- Providing for all required disclosures.

In a unionized environment, MEBCO suggests that it may be the Union’s primary responsibility to address unpaid contributions, in accordance with the provisions of a Collective Agreement, and if so, the Board’s responsibilities are limited to reviewing delinquency reports and otherwise ensuring that the Union is adequately fulfilling this responsibility.

MEBCO suggests that the Board of Trustees of a MEPP is solely responsible for determining Plan benefits and amendments. “Recommending plan amendments to a plan sponsor” is not a relevant concept in a Negotiated-Contribution Defined Benefit MEPP.

The related requirements for Annual Meetings should not apply to MEPPs. MEPPs communicate with the Membership successfully through statements, booklets, newsletters, other mailings, Union meetings, and increasingly, via the Internet. Further communication should not be mandated. There is and should be no provision for Members to appoint designates, outside the democratic process of Union elections. The additional overhead adds no value, but rather merely introduces an additional layer of cost that results in fewer benefits than could otherwise be provided.

Key Proposal Number 3 – Funding

CAPSA supports the requirement that the Employer must make contributions to the pension fund sufficient to pay for all benefits. Contributions must be made in accordance with prescribed funding and solvency requirements, policies for which are noted as under development. An Employer may take contribution holidays, if the plan documentation permits and regulatory requirements are met; and, the administrator shall ensure that all required contributions are paid within the prescribed time.

MEBCO RECOMMENDATION

MEBCO strongly objects to solvency funding for MEPPS, and suggests that another party may be better positioned to address timely submission of contributions, where contributions are set forth in Collective Bargaining Agreements. Issues such as employers' obligations to fund and employer-controlled contribution holidays are outside of the issues applicable to *negotiated-contribution, defined benefit* Multi-Employer Pension Plans.

Additional Comments:

MEBCO would like to specifically reiterate its long-held position that a MEPP should test its funding adequacy by using only the “going-concern” valuation. MEBCO specifically supports the Paper produced by the Canadian Institute of Actuaries Task Force on Multi-Employer Pension Plans, which can be found at <http://www.actuaries.ca/publications/2001/201455e.pdf>. Solvency funding of any form is, in MEBCO's view, inappropriate for MEPPS. Going concern funding only should apply. MEBCO's principal objections to 'solvency funding' include

- *(For Ontario Plans)* the necessity to include 'grow-in' rights that likely will never be fully realized
- The failure to reflect expected retirement dates for Members who have fully met any age / service / etc. requirements for a pension, save for actual retirement
- The necessity to discount liabilities at rates systematically below the yields that reflect the actuary's (and the Board of Trustees) conservatively determined 'best estimates' of future yields, and, in some situations
- The requirement to reflect Mortality expectations materially above the actuary's *(and the Board of Trustees)* conservatively determined 'best estimates' of future mortality *(note: many MEPPs Membership experience substandard mortality, compared to pension plan Membership in general)*
- The fact that solvency funding is potentially highly volatile and negotiated contributions realistically are level
- The fact that solvency funding is “front-loaded,” whereas negotiated contributions are level
- The fact that it keeps participants from receiving benefits that the plan can realistically afford to pay them

MEBCO observes that it may be the Union's responsibility to address unpaid contributions, in accordance with provisions of a Collective Bargaining Agreement, and if so, the Board's responsibilities are limited to reviewing delinquency Reports, and otherwise ensuring that the Union is adequately fulfilling this responsibility.

MEBCO strongly reiterates our position that suggests that employers in a Negotiated-Contribution, Defined Benefit MEPP must never have any obligation to fund benefits beyond the provisions of the Collective Agreement. Even in the unfortunate position of a plan failure, pension legislation and regulation should never obligate an employer to make supplementary contributions to a MEPP beyond the contributions set forth in a Collective Bargaining Agreement. Specifically, MEBCO advises that it abhors the distinct Quebec legislation that seemingly obligates employers to provide supplementary funding in the event a Negotiated-Contribution, Defined Benefit MEPP fails.

Finally, with respect to action plans that must be undertaken by Negotiated-Contribution, Defined Benefit MEPP Boards of Trustees where any unfunded liability is revealed through actuarial valuation, MEBCO suggests that the time period that should be provided for a MEPP to address any unfunded position through 'amortization' of a deficiency should be 15-years. MEBCO acknowledges that regulators are unlikely to accept any action plan that does not expect funding deficiencies to diminish. Some MEBCO constituents would suggest that Negotiated-Contribution, Defined Benefit MEPPs may operate successfully like the Canada / Quebec Pension Plans, where a perpetual unfunded liability is expected, subject to goal of steady-state funding. MEBCO is pleased that some provinces are willing to consider funding solutions, one of which is Alberta's Proposal for a rolling ten-year period, which has both advantages and disadvantages. MEBCO would be pleased to participate in discussions on all alternatives that positively impact the viability of Negotiated-Contribution, Defined Benefit MEPPs.

Key Proposal Number 4 – Vesting

CAPSA proposes that all Members would be vested immediately. CAPSA suggests that this enhances Member entitlements, adds an insignificant incremental cost, eliminates the need for a partial wind-up, and with enhancements in technology, is not administratively complex.

MEBCO RECOMMENDATION

MEBCO strongly objects to such a Proposal for MEPPs, which may be exceedingly difficult to administer successfully, and which could add substantial cost to administering Negotiated-Contribution, Defined Benefit MEPPs. At a minimum, this Proposal may force Trustees to provide smaller pensions to those who retire, in order to fund miniscule benefits for large numbers of workers who had only a minimal connection with the industry.

Particularly for MEPPs, in many cases there is no initial ‘probationary period’ and uncountable individuals may acquire one week or less of contributory service (*Note: Collective Bargaining Agreements generally obligate Employers to make contributions on behalf of all Members, for every hour worked*). Single-employer plans in particular overcome the high turnover from short-service Members by introduction of a ‘probationary’ or ‘qualifying’ period prior to Plan entry. Pension law recognizes this as a reasonable provision, and MEBCO expects a Model Law will continue to do so. People who work briefly and leave are often impossible to locate, and as such, the Administrator cannot effect any settlement. When they can be located, the cost of locating them and providing the settlement may often exceed the amount of the settlement itself.

Additional Comments:

MEBCO notes that the Model Law for MEPPs likely will (*and certainly should*) permit a ‘probationary period’ similar or identical to Section 31 (4) of the Pension Benefits Act of Ontario. MEBCO suggests that the primary objective of CAPSA in suggesting “immediate vesting” is to expand pension coverage. MEBCO supports expanding pension coverage. Therefore, MEBCO suggests that a period equivalent to that set forth in Section 31 (4) of the Pension Benefits Act of Ontario be permitted to occur EITHER before Membership commences, OR before benefits vest, but not both. Plans should be permitted to select EITHER provision, or any combination that doesn’t exceed either provision.

Particularly for many MEPPs, the administrative expenses associated with immediate vesting will be particularly costly. MEBCO would like to support the written submission of Jack McAteer of J. M. McAteer Associates, a benefit services provider, who eloquently addressed this issue in a written submission to CAPSA.

MEBCO suggests further that partial wind-ups never should apply to any MEPP. Rather, Members for whom contributions have ceased for a sufficient period of time should have, as applicable, termination or retirement rights. Since Members of a MEPP may move from employer to employer, the conditions precedent for a partial wind-up in a single-employer environment are not relevant to a MEPP.

Key Proposal Number 5 – Locking - In

CAPSA proposes that all pension benefits would be locked-in. Notwithstanding, CAPSA seemingly proposes an unspecified set of exceptions, where benefits would not be locked-in.

MEBCO RECOMMENDATION

MEBCO supports “locking-in” requirements, as the primary purpose of all registered pension plans is to provide Members with lifetime benefits on retirement.

Additional Comments:

MEBCO would have minor objection to the absence of locking-in to small amounts, perhaps where entitlements expressed as Defined Benefits are less than 20% of the maximum (age 65) C (Q) PP benefit, or where entitlements expressed as Defined Contribution (*including commuted values of DB entitlements*) are less than 20% of the C (Q) PP's YMPE.

MEBCO has at most minimal support for any Shortened Life Expectancy locking-in exemptions, and has virtually no support for any Marriage Breakdown or Financial Hardship locking-in exemptions.

Key Proposal Number 6 – Benefits on Involuntary Termination

CAPSA seemingly suggests that Members should have added value beyond Plan provisions, in the event of a sale of a business, plan termination, or plan conversion. Moreover, CAPSA seemingly implies that in a final-average earnings plan, accrued benefits settled on a Member should reflect future salary increases that may never occur.

MEBCO RECOMMENDATION

MEBCO strongly objects to any requirement that has the effect of transferring entitlements from contributing Members to former Members beyond the value attributable to such former Members.

MEBCO notes that MEPPs use all assets for all Members. MEBCO also notes that most of the issues underlying this Proposal are largely, but not totally, outside the scope of most MEPPS. Finally, MEBCO particularly notes that Trustees are expected, and indeed obligated, to reduce benefits if the Plan cannot support current benefits.

Additional Comments:

Without knowing where CAPSA will end up on this Proposal, MEBCO suggests that, at least initially, any such Proposal only address single-employer Plans, and that CAPSA consult directly with MEBCO and the MEPP community before any inappropriate additional values are added to the benefits of former MEPP Members.

Key Proposal Number 7 – Unlocatable Beneficiaries on Plan Wind-Up

CAPSA notes that it is often impossible to fully wind-up a plan, as there is currently no way to dispose of all plan assets where some beneficiaries cannot be located. CAPSA essentially proposes a series of 'Unclaimed Balances' programs, similar to the program administered by the Bank of Canada for Unclaimed Bank Accounts.

MEBCO RECOMMENDATIONS

MEBCO would support virtually any reasonable resolution to this problem, particularly where it addressed the broader problem MEBCO also noted, rather than merely the narrow problem cited by CAPSA.

MEBCO notes that this problem needs a satisfactory resolution.

MEBCO notes that this problem exists other than just at wind-up. The problem of 'missing' beneficiaries also exists when a former Member exceeds normal retirement retirement age, *{or at least by the end of the calendar year in which a Member attains age 69}* and is clearly due entitlements, but in spite of substantial efforts, still cannot be located.

Additional Comments:

MEBCO does not believe that administration fees should disproportionately deplete former Members' entitlements. MEBCO does suggest that a non-located beneficiary is partly responsible for the problem, and hence should bear reasonable costs for any search. MEBCO particularly notes this problem in many cases would be significantly exacerbated if CAPSA's suggestion of 'Immediate Vesting' were implemented without modification. MEBCO would have no objection to using the Bank of Canada's current Unclaimed Balance facility; however, notwithstanding the sensibility of this action, there likely is no way that a provincial responsibility would ever be ceded to a federal entity *(at least by most provinces)*. Therefore, MEBCO suggests that provinces establish non-located beneficiary pension entitlement accounts.

Finally, MEBCO notes that in a *(relatively)* small number of situations, the beneficiary is not really 'missing', but has moved and lost contact with his / her old employer and / or refuses to act. It is practically impossible for a plan to settle pension entitlements when a Member refuses to act on his / her own behalf.

Key Proposal Number 8 – Partial Wind-Up

CAPSA suggests that the concept of ‘partial wind-ups’ be totally eliminated for MEPPs. The rationale should eliminate grow-in rules for partial wind-ups (*which MEBCO could support be eliminated for MEPPs, in totality*). MEBCO notes that Nova Scotia abandoned grow-in for MEPPs, leaving Ontario as the sole province with this plan requirement. [*Nova Scotia announced its intention to eliminate “grow-in” for non-MEPPs, but the final reading of the Nova Scotia bill left grow-in unchanged for non-MEPPs*]. CAPSA suggests that the concept of partial wind-up is redundant, if immediate vesting applies. While essentially irrelevant for MEPPs, the Monsanto appeal may leave surplus to be dealt with on partial wind-up, in the absence of specific legislative changes.

MEBCO RECOMMENDATION

MEBCO would be perfectly content to eliminate Partial Wind-ups for MEPPs, but for reasons that do not include support for Immediate Vesting.

Additional Comments:

MEBCO would also strongly support eliminating grow-in, particularly as grow-in leads to adverse and inappropriate consequences on Solvency liabilities.

MEBCO does not support imposing the added cost of (*partial*) pre-retirement mandatory indexing prior to early retirement entitlements, and thus opposes the current Quebec approach.

Key Proposal Number 9 – Surplus Withdrawal.

MEBCO RECOMMENDATION

MEBCO notes that this issue is a non-issue for MEPPs, and as such, provides no further comment.

Key Proposal Number 10 – Surplus in Mergers and Sales

MEBCO RECOMMENDATION

MEBCO notes that this issue is generally a non-issue for MEPPs.

Additional Comments:

MEBCO nevertheless, is concerned that in Ontario, issues of surplus in Aegon seemingly have put a halt to virtually all asset transfers, even clearly legitimate situations where plans are to be partitioned into independent stand-alone plans, with assets pro-rated on liabilities. MEBCO suggests that Negotiated-Contribution, Defined Benefit MEPPs always have the right to partition into two or more ongoing independent stand-alone MEPPs, where there exists a Board of Trustees willing transfer liabilities and commensurate assets, and there exists a Board of Trustees willing to accept transfer of liabilities and commensurate assets. The asset transfer should be approved on a pro-rata basis, where valuation liabilities are determined by regulation.

Key Proposal Number 11 – Time Period for Resolving Surplus Issues

MEBCO RECOMMENDATION

MEBCO notes that this issue is a non-issue for MEPPs, and as such, provides no further comment.

Key Proposal Number 12 –Surplus Provisions are Paramount

MEBCO RECOMMENDATION

MEBCO notes that this issue is a non-issue for MEPPs, and as such, provides no further comment.

Key Proposal Number 13 – Rule-Making

CAPSA suggests that a number of strictly technical or administrative matters (e.g.: procedures for registering plans, procedures for making applications, and, content of required forms) could be addressed by rules established by regulators, rather than within pension legislation and / or regulation. Public consultation prior to implementing any rule, and the possibility of Minister rejection were cited as controls and balances.

MEBCO RECOMMENDATION

MEBCO generally supports this Proposal, subject to satisfactory checks and balances, pre-implementation meaningful public consultation, and with assurance that a rule must be in compliance with pension legislation, and not be able to override pension legislation.

Additional Comments:

Provided 'rule-making' doesn't over-step the bounds of the Law and the related Regulations, MEBCO could be supportive of the proposed rule-making procedures proposed by CAPSA, noting the public consultation proposed process. MEBCO would oppose any 'rule' that added to cost, without clearly providing commensurate value. MEBCO would be oppose any 'rule' that is designed solely to benefit a regulator that adds little value to Member entitlements, and generates unnecessary added costs.

Presumably, not only could the Minister reject a rule, but so too could such rule be overturned by Tribunal or by the Courts. MEBCO's support is contingent upon the presence of an appeal process, where a Plan finds a rule contrary to the Law and the related Regulations.

Key Proposal Number 14 – Report by Advisors

CAPSA suggests that persons retained or employed by the Administrator must report to the regulatory authority any material contravention of the Law and the related Regulations that is not corrected by the Administrator. CAPSA suggests that what is commonly called the “snitch-rule” would provide checks and balances for the effective administration and enforcement of the Law and the related Regulations. CAPSA suggests that a mandatory “snitch-rule” would protect Member benefits and rights by ensuring timely action in the event of contravention of the Law and the related Regulations.

MEBCO RECOMMENDATION

MEBCO categorically rejects any form of “snitch-rule”

Additional Comments:

MEBCO observes, first of all, that legal advisors will likely be excluded in any event.

MEBCO suggests that the most probable consequence of a ‘snitch-rule’ is an opposite consequence - advisors (*particularly actuaries and auditors*) may have significantly reduced opportunity to explore a number of aspects of plan administration that could lead to better administration and protection of Members rights and benefits. These experts could end up with largely a computational and technical role, rather than any advisory capacity, to the detriment of the Plan and its beneficiaries.

Finally, the definition of ‘material non-compliance’ is subjective, and except in extremes, far too open to interpretation.

MEBCO does not support an initiative to expand the authority of the Superintendent to obtain information from all parties involved in the Plan’s administration. MEBCO would support increased penalties for making intentionally false or misleading statements, or failure to comply with a valid ‘Request for Information’ needed for any ‘plan review’, and in any event, MEBCO would only support the Superintendent’s ability to obtain supplemental information beyond that provided for in pension legislation and regulation only if there exists an appropriate appeal process, and only if such supplemental information is not automatically encompasses under any ‘access to information’ provisions.

In the event the Superintendent demands work to be performed by a plan’s advisor further to any ‘plan review’ investigation, that advisor should be reasonably compensated for such work. Professionals should not be expected to perform professional services without compensation.

Also, MEBCO would be concerned if the Superintendent had the unfettered right to compel information from parties in the Plan’s administration other than directly from the Administrator or a person designated by the Administrator, without the Administrator’s knowledge and consent. As a consequence, MEBCO would be supportive of such authority falling to the Superintendent only where all such requests for information are fully disclosed to the Administrator, and only if there is ample opportunity for the Administrator to preclude unilateral actions by way of appeal to a Tribunal, and then to the Courts.

At the initial consultation stage in February, CAPSA had identified a number of other “Priorities”. It is unclear why these priorities disappeared. MEBCO will provide brief commentary on each of these items, and upon request, could provide further input.

Additional Proposal ‘A’ – Notice of Plan Amendments

This *Proposal* called for allowing the Superintendent to withhold approval of an adverse amendment until satisfied that the plan administrator has met legislated requirements for consultation with persons entitled to or receiving benefits.

MEBCO RECOMMENDATIONS

MEBCO would be supportive of certain aspects of this *Proposal*.

MEBCO fully supports obligations to disclose and provide notice of any adverse amendment on a timely and accurate basis.

MEBCO equally supports obligations that disclosures provide a full and accurate explanation of the impact of the amendment on all affected individuals and the plan.

MEBCO objects to onerous obligations to consult with individual Members or groups of Members. Boards of Trustees have clear fiduciary responsibilities, and while they may choose to implement a consultation process before effecting an adverse amendment, neither need nor want any added legislative obligation whose conclusion likely will be expensive and not add any value to the final actions.

Since a fundamental principal of Negotiated Contribution – Defined Benefit (“specified”) Multi-Employer Pension Plans is that the plan’s assets...nothing more and nothing less...are all that back up the target / promises to Members and former Members, MEBCO does not support legislation that would allow the Superintendent to frustrate a Board of Trustees’ attempts to timely fulfill its fiduciary obligations.

Additional Comment:

In a single-employer environment, it may be appropriate to not only avoid any retroactivity, but also require a (*brief*) period between notice of an adverse amendment and its effective date. Regrettably, in a MEPP, where Trustees can and sometimes must effect benefit reductions, it may be impractical to preclude the effective date of an amendment from preceding its announcement date.

MEBCO cannot foresee any situation wherein it would not be appropriate to permit the effective date of an “enhancement amendment” from preceding the date at which notice is provided. If an “enhancement amendment” provides Members with any options, a Member should be able to re-determine his/her option election if notice was not provided at the time of election.

Additional Proposal 'B' – Phased Retirement

This *Proposal* called for mandating a Quebec-style phased retirement

MEBCO RECOMMENDATION

MEBCO would strongly oppose phased retirement becoming a mandatory requirement for MEPPs, but would be pleased to support such a program if it were permissive, at the option of the Board of Trustees.

Additional Comment:

MEBCO notes that MEPPs often provide enhanced early retirement provisions, typically under the expressed understanding that enhancements are available in return for a Member of a plan leaving the particular trade, thus providing employment opportunities to younger Members of the same trade.

MEBCO submits that MEPPs should have the legislated right, in a non-discriminatory fashion, to eliminate all added value from early retirement enhancements to a Member who returns to covered employment after commencing his / her pension.

Additional Proposal ‘C’ – Pension Splitting (*on Marriage Breakdown*)

This *Proposal* requested input on this matter.

MEBCO RECOMMENDATION

MEBCO fully supports the public position of the Canadian Institute of Actuaries, which can be found at <http://www.actuaries.ca/publications/2003/203015e.pdf> in its Task Force Report. This Report urges the legislators and regulators to effect the “Deferred Settlement Method”, which is the only equitable methodology of dividing a pension at source. MEBCO urges CAPSA to enable the “Deferred Settlement Method” as the only ‘in-plan’ process to divide pension entitlements on “Marriage Breakdown”.

Additional Comment:

Currently, most pension legislation precludes a Court or a Member, in the event a marriage dissolves, from assigning to the non-Member spouse more than 50% of entitlements acquired during marriage. This limit should be maintained. MEBCO would strongly oppose any Proposal to eliminate the 50% limit, and allow voluntarily or otherwise, a Member to lose (*up to*) 100% of his / her pension on Marriage Breakdown. The apparent theory is that would allow the parties to have greater flexibility in the division of matrimonial property. MEBCO believes that the primary purpose of every pension plan is to provide Members with lifetime retirement income, and ceding more than 50% of the income acquired during marriage would inappropriately frustrate this key principle.

Additional Proposal ‘D’ – Simplified Pension Plans

MEBCO RECOMMENDATION

Not applicable

Essentially this issue is irrelevant to MEPPs.

Additional Proposal ‘E’ – Flexible Pension Plans

MEBCO RECOMMENDATION

Not applicable.

Although theoretically possible, this issue is also essentially irrelevant to MEPPs.

Additional Proposal ‘F’ – Powers of Regulatory Authority

This issue involved a regulator delegating responsibility to ‘outsource’ certain regulatory review functions, and assess the Plan for such services.

MEBCO RECOMMENDATION

MEBCO opposes this action.

MEBCO suggests that regulators should be required to regulate, without imposing any additional charges for performing this role.

MEBCO is particularly concerned where due to ‘insufficient resources,’ the Regulator may ‘outsource’ various review and investigative services for some Plans, and retain such review and investigative services for other Plans “in house”. MEBCO suggests that if the Regulator assessed third-party fees in one circumstance and no fees in the other circumstance, an obvious inequity results.

As a minimum, MEBCO suggests that the Regulator should have no power or authority to ‘outsource’ any review or investigative service where costs may be assessed without the Plan having the ability to have such action authorized by a Tribunal, appealable to the Courts. Regulators who don’t have actuaries or benefits lawyers on staff need to be able to go out and hire them as needed, but not at a plan’s expense. Because of potential conflicts, the Plan should have the right to ‘veto’ the hiring of any external professional, subject to valid concerns.

MEBCO does agree that if one or more Plan Member(s) or other beneficiaries feels there exist significant plan issues, then the Plan Member(s) or other beneficiaries should have the ability to meet with the Regulator along with Plan representatives to review such issues. Resolution would depend upon the issue, and what if any action(s) are needed. Plans are expected to provide benefits in accordance with the Plan Document, and the Plan Document is expected to follow the relevant Pension and Income Tax legislation. Clearly, if the issue involves failure to follow the Plan or the Law, the resolution is obvious.

Additional Proposal ‘G’ – Review of the Act

MEBCO supports the necessity of having timely review of Pension Law and related Regulations. MEBCO expects that any such review would involve public consultations.

As MEBCO favours harmonized pension law and regulation, MEBCO would prefer that legislative review focus on harmonization, and that Review always include deviations from the Model Law.