

MEBCO SUBMISSION RE MANITOBA BENEFIT REDUCTIONS
Tom Levy July 9, 2009

Ms. Debbie Lyon
Superintendent of Pensions
The Manitoba Pension Commission
1004 – 401 York Avenue
Winnipeg MB R3C 0P8

Dear Ms. Lyon:

This request relates to certain information that recently came to the attention of MEBCO as a byproduct of discussions with another pension regulator.

MEBCO

MEBCO was established in 1992 to represent the interests of all types of Canadian multi-employer benefit plans, including multi-employer pension plans (“MEPPs”) and multi-employer health and welfare benefit plans (“MEBPs”). MEBCO is representative of all persons and disciplines involved in these plans, including union and employer trustees, professional third party administrators, non-profit or “in-house” plan administrators, attorneys, actuaries, consultants, investment management professionals and chartered accountants. MEBCO is administered by a Board of Directors consisting of representatives from each of these groups. MEBCO is representative of MEPPs that have, on average, 400 participating employers.

MEBCO members have responsibility for administering benefit plans with accumulative membership of workers and families of over one million persons in Canada.

MULTI-EMPLOYER PENSION PLANS (“MEPPs”)

Over the past decades, labour and management joined together to respond to the problems of delivering retirement benefits to workers and their families in industries typified by small companies and a mobile work force. Members of MEPPs work in industries as diverse as building and construction, food, service, retail, hotel and restaurant, graphic arts, garment manufacturing, security, textiles, transportation, and entertainment. A single MEPP may be national, regional, provincial, or local in coverage. Anywhere from two to over 1,000 employers may contribute to one of these plans under collective agreements.

MEPPs provide continuous benefits coverage to workers as they change employment from one contributing employer to another. This portability provides seamless pension coverage, and is essential for workers in mobile or seasonal industries such as construction and entertainment.

A MEPP is typically structured as a pension trust fund for purposes of s. 149(1)(0) of the *Income Tax Act* (the “ITA”). The trustees, appointed pursuant to a trust agreement, are usually responsible for the administration of the plan and the fund. A fund will either handle its own administration or hire a third party administrator.

Multi-employer defined benefit pension plans based on labour-management negotiations in the private sector are a cornerstone to the provision of retirement income in Canada.¹ Unlike single employer plans (SEPPs), these plans are not being wound up, converted to (or replaced by) defined contribution plans, or subject to wind-up because of the insolvency of a single employer. They are not the subject of disputes about contribution holidays or surplus ownership. Further, the “defined benefit” is in reality a target benefit, because contribution rates typically are fixed in collective agreements.

MEPPs are administered by a Board of Trustees comprised of at least 50% member representatives.² All aspects of plan administration, investment of funds, etc. are the responsibility of the Trustees, not the participating employers.

“Traditional” MEPPs have fixed contribution rates that cannot be changed by the Trustees who administer these plans. Minimum funding requirements do not cause MEPPs’ contribution income to increase. The only way to remedy an apparent minimum funding violation is to reduce benefits. In most jurisdictions, the Trustees have the authority to make such benefit reductions, typically subject to approval by the regulator. Thus, these plans are more accurately described as having “target” benefits, with the members effectively bearing the risk.

All assets in a MEPP belong solely to the participants – there are no issues of surplus ownership or funding of deficits

MEPPs are fundamentally different from SEPPs and therefore require a different legislative and regulatory framework.

ISSUE FOR DISCUSSION (DEFINED BENEFIT PLANS)

As discussed above, in the event of adverse experience such as that recently experienced by almost all Canadian pension plans, MEPPs’ trustees do not have the power to increase contributions, and therefore must respond by reducing benefits. We have been advised that such reductions may not be applied to accrued benefits earned in Manitoba MEPPs in the absence of a plan wind-up. As a result, MEBCO has the following questions:

¹ According to the report commissioned by the Ontario Expect Commission on Pensions entitled *Current Issues Concerning Multi-Employer Pension Plans in Ontario* by Elizabeth Shilton, there are over 400 MEPPs in Canada covering over 1.5 million participants.

² There are a number of MEPPs, including some very large ones, where the Trustees are entirely drawn from member representatives, and there is no employer representation.

1. Is the information accurate? If so, please provide us with the statutory/regulatory basis for that position. Also, please indicate the extent of any such restriction. Specifically, can subsidized early retirement be reduced or eliminated for those who have not yet met the eligibility requirements? Can disability pensions be reduced or eliminated for those who are not yet disabled? Can benefits based on service prior to the establishment of the plan or the effective date of the Pension Benefits Act be reduced or eliminated?
2. We understand that a change in this limitation is currently under consideration. Is that accurate? If so, what is the appropriate way to provide MEBCO's input into this process?
3. As you may be aware, in Québec, the Régie's position is that the Supplemental Pension Plans Act not only prohibits reductions in accrued benefits, it also requires withdrawing employers to pay a potential "withdrawal liability" beyond the negotiated contribution obligation. This provision has caused multi-jurisdictional MEPPs to refuse to accept Québec employers into their plans. Does Manitoba provide MEPPs with any authority to collect additional employer contributions to fund benefits that cannot be reduced? If not, how can a MEPP meet provincial funding requirements in the event of a market downturn such as recently occurred?
4. In the current economic climate, how are Manitoba's solvency funding requirements being applied to MEPPs whose projections indicate that the negotiated contributions are not expected to meet solvency funding requirements? Are there any changes in solvency funding requirements for MEPPs currently under consideration? If so, what is the appropriate way to provide MEBCO's input into this process?

We look forward to your prompt responses to the above questions. These are matters of much urgency to the affected MEPPs, including particularly those registered elsewhere that have Manitoba participants.