

Submission to the Pension Commission of Manitoba

**Re: Proposals for Amendments to the
Pension Benefits Act of Manitoba**

January 24, 2003

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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 includes representative of all persons and disciplines involved in MEPPs, including union and employer trustees, professional third party administrators, non-profit or “in-house” plan administrators and professionals. In addition, MEBCO represents the interests of multi-employer benefit plans (*MEBPs*).

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 almost 700,000 individuals. Annual Employer and where applicable Member contributions to MEPPs exceed \$1.8 billion. The majority of Canadians who participate in MEPPs earn middle to low incomes.

MEPPs in Canada are a unique Labour and Management response for meeting the needs of workers and their dependents. 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 the Pension Commission of Manitoba in meeting its objectives 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 opposes immediate vesting
- MEBCO would like the introduction of a pension equivalent of “unclaimed Bank Balances”

HIGHLIGHTS OF OUR SUBMISSIONS

MEBCO urges Manitoba to focus pension reform legislation on the harmonization of pension legislation consistent with the Model Law initiatives being developed by the Canadian Association of Pension Supervisory Authorities. As MEBCO's constituents include many national plans, the distinct nature of various pension legislation adds a meaningful cost to the administration of these pension plans. As contributions are essentially fixed, the consequences of additional costs mean that lower benefits are provided to the plans beneficiaries. Our submission will voice our opposition to initiatives that mandate different benefits be provided for Manitoba beneficiaries than are currently provided for in general plan design.

MEBCO acknowledges that the *Proposals* clearly attempt to effect harmonization in some areas, including specifically the movement to 60% as the spousal survivor benchmark, rather than the current 66 2/3% provision. Unfortunately, many other *Proposals* move away from the point of probable common ground nationally.

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 *Proposals* refer to as Multi-Unit Pension Plans (“MUPPs”). MEBCO sees MUPPs as possibly having an ‘employer-bias’, and as such, possibly requiring more stringent regulation to protect the interest of Plan beneficiaries. For example, “surplus” may be an issue with SEPPs and / or MUPPs. “Surplus” is never an issue with MEPPs, as they will always acknowledge that the contributions and 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, **at least** half of whom must be appointed by “Labour”, and **at most** half of whom can be appointed by Management. Many MEPP Boards consist solely of Labour-appointed Trustees.

The role of the Board of Trustees in a MEPP cannot be overlooked, and these Trustees have a fiduciary responsibility to act solely in the best interests of Plan beneficiaries. The Labour Trustees are either elected specifically by Plan beneficiaries, or appointed by Union officials democratically elected by Plan beneficiaries. As such, these Trustees recognize that they must act responsibly, over and above their fiduciary obligations at law.

MEBCO offers input only on aspects to the *Proposals* that impact MEPPs.

Notwithstanding, MEBCO would like to specifically express its support for the position put forth on Page 26 (albeit with respect to MUPPs, and we speak solely for MEPPs) that a MEPP should test its funding adequacy by using only the “going-concern” valuation.

Of the *Proposals*, two are most strongly opposed by MEBCO. These are:

Pension Committees, and related actions.

MEBCO suggests that these Committees are a particularly inappropriate requirement to impose on a MEPP. MEBCO suggests that pension plans where a Board of Trustees exists (*with 50% or greater membership elected specifically by Plan beneficiaries, or appointed by Union officials democratically elected by Plan beneficiaries*) require no separate Pension Committee.

Similarly, the related requirements for Annual Meetings should not apply to MEPPs.

Immediate vesting

MEBCO supports the harmonization of vesting at two-years of plan membership. MEBCO does not support any lowering of this threshold.

Additional Suggestion

Finally, MEBCO is concerned that there is no solution to a major problem facing administrators of Pension Plans, and suggests that any review of the Pension Benefits Act should take the opportunity to address this problem.

MEPPs (*and probably other pension plans, too*) face a problem with long-ago terminated members in deferred vested status. While administrators attempt diligently to keep in contact with such former members, it is common for these persons to become “lost souls”, and in spite of efforts to locate such lost souls (*including searching on the Internet through such sources as <http://www.canada411.com>, and paying HRDC for search and communication*) some people cannot be found. They may have died, moved, including out-of-Canada, or simply stubbornly refuse contact. MEBCO suggests that Pension Legislation provide that, after appropriate search efforts have occurred, and no contact has been made for a minimum period of time (*say 12-months from last search*) at normal retirement or upon Plan wind-up, the value of vested pension entitlements may...at the option of a Plan...be transferred to Government as a full and final settlement of all Plan entitlements.

INTRODUCTION

(a) *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, including:

- Union (*labour*) trustees
- Employer (*management*) trustees
- Professional third party administrators
- Non-profit or "in-house" plan administrators, and
- Professionals including actuaries, benefit consultants, lawyers and chartered 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.

(b) *Our Submission*

MEBCO is pleased to respond to the *consultation paper* issued by the Pension Commission of Manitoba, reviewing the *Pension Benefits Act* of Manitoba.

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

For the Commission's Convenience, we respond to the *Proposals* in the order they are presented in the consultation document.

Pension Plan Eligibility & Membership (Page 3)

The *Proposals* suggest that there is a need to clarify the term "Class" or "Classes"

MEBCO RECOMMENDATION

MEBCO suggests that further clarification beyond that cited is required. For MEPPs, however, MEBCO suggests that any "Class" defined in a Collective Bargaining Agreement should be acknowledged to be a satisfactory definition.

Ancillary Benefits (Page 4)

The *Proposals* suggest that no Plan should be permitted to provide discretionary benefits that are granted only at the consent of the ... Trustees of the Plan, so that a Member can determine his or her pension benefits simply by referring to the terms of the pension plan

MEBCO RECOMMENDATION

MEBCO disagrees with this position. For MEPPs, MEBCO suggests that ‘consent’ benefits are appropriate, provided that they involve no ‘individual’ discrimination, are fully communicated and involve a stated time period.

MEBCO’s position may best be set forth by an example.

Consider a Plan providing a Normal Retirement Age of 65, but upon “consent”, qualified members can retire at (*say*) Age 62 with no reduction. The plan may not be able to fund a permanent Age 62 benefit without an overall reduction in benefits but maybe able to do so for those retiring in the intermediate future, and wishes to do so. Thus, it uses “consent” benefits as a viable vehicle to achieve this objective. MEBCO suggests that such “consent” benefits are an appropriate Ancillary Benefit to provide within Plan terms, provided

1. Provisions for qualification are communicated (*e.g. ~ All active members with at least 20-years of during which contributions have been made*)
2. The period of time for “consent” is announced in advance (*e.g. ~ The Trustees announce that “consent” will apply for Calendar year 2004, and only thereafter if subsequently granted*)
3. “Consent” is announced in advance. (*e.g. ~ If consent is applicable for 2004, it must be announced before 2004 begins*)

Vesting of Benefits (Page 5)

The *Proposals* suggest that full and immediate vesting of basic pension benefits should apply.

MEBCO RECOMMENDATION

MEBCO most strongly objects to this position for MEPPs. MEBCO suggests vesting at two years is an acceptable minimum provision.

Immediate vesting is more than merely a ‘cost’ issue. Certainly, cost is an important aspect. Contributions to pension plans are not member-specific wages. They are part of an overall program whose primary purpose is to provide longer-term members with adequate lifetime retirement income. In virtually all MEPPs, the employer contribution is collectively bargained, and the Union decides (*reflecting the wishes of its members*) what the contribution formula to the MEPP will be. The majority of MEPPs provide Defined Benefits. Essentially, a \$1.00 of contribution in respect of a “young” member subsidizes the benefit entitlements generated by a \$1.00 of contribution in respect of an “old” member. The benefit formulae provided for in some MEPPs is designed to recognize benefits that are funded from non-vested forfeitures, either explicitly, or implicitly as what amounts to a provision for margin in actuarial valuation assumptions. The *Proposals* would eliminate this source of funding or margin, and potentially result in benefit reductions...or as a minimum result in a lower rate of increase to benefits.

MEPPs are designed to provide people who work for a multitude of employers over their career with a pension. Many MEPPs have a number of people (*often young*) who work briefly for only one employer, and never again participate in the Plan. It is expensive administratively to process termination benefits for members. For non-vested members, the costs often would prove prohibitive, as the processing costs may exceed by several magnitudes the value from a non-vested termination. MEBCO supports the harmonization of vesting at two-years of plan membership. MEBCO does not support any lowering of this threshold. If the Commission wants to explore more generous vesting, MEBCO suggests the Commission seek comments on specific alternate proposals, which could include, for example:

- Immediate vesting, provided the value of pension entitlements exceeds a threshold such as \$3,500 (*chosen as the YBE under the Canada Pension Plan*); or
- Immediate vesting upon completion of two years of combined Membership and pre-Membership service. [*Thus, a Plan with no probationary period could vest after 2 years membership, a Plan with a 1-year probationary period must vest after no more than 1 year of membership, and a Plan with the maximum allowable 2-year probationary period must vest immediately.*]

The *Proposals* further suggest that full and immediate vesting of basic pension benefits should apply **retroactive to 1976**

MEBCO RECOMMENDATION

MEBCO most strongly objects to this position for MEPPs. MEBCO suggests any form of retroactivity is totally inappropriate, and most particularly if applied to former members.

MEBCO could accept application of the two year-vesting rules applicable to all benefits for those members who are “active” at its date of introduction. Any proposal to apply such a provision to deferred vested former members and particularly to non-vested terminated former members or fully settled former members could politely best be labeled ludicrous!

Entitlement to Pension (Page 6)

The *Proposals* suggest that Normal Retirement Age be tied to provisions in the Canada Pension Plan for unreduced pension benefits.

<p>MEBCO RECOMMENDATION</p>

<p>MEBCO recommends that reference to the Canada Pension Plan be eliminated.</p>

MEBCO suggests that the normal retirement age should not be later than the first day of the month following the month in which the member attains Age 65.

MEBCO would also support a slight variation that could extend normal retirement for up to 1-year beyond age 65 if a common date were used (*e.g. ~ the December 31st following attainment of Age 65*).

Joint and Survivor Pensions (*Page 8*)

The *Proposals* make 4 recommendations.

MEBCO fully supports the two harmonization proposals, involving a 60% threshold and the ability for “waiver”.

MEBCO is sympathetic to the “Independent Legal Advice” proposal, but cannot support it fully as our experience is that where “waiver” truly is appropriate for a couple, it will require that couple to spend several hundred dollars (*or more*) getting possibly unnecessary legal advice. Perhaps a preferred solution is a better prescribed form (*the “waiver”*), and the necessity of having the Administrator or designate thereof “witness” the signature of the spouse [*not in the presence of the member*], and attest that the spouse has confirmed she / he understands what is being given up.

MEBCO is mildly sympathetic to the 3-year rule, but doesn’t understand why Manitoba chooses to dis-harmonize itself from other jurisdictions, where the definition of a spouse with entitlements ends at separation.

Pre-retirement Death Benefit (*Page 9*)

Again, MEBCO is mildly sympathetic to the 3-year rule, but still doesn’t understand why Manitoba chooses to dis-harmonize itself from other jurisdictions, where the definition of a spouse with entitlements ends at separation.

Portability of Benefits (Page10)

The *Proposals* suggest that Manitoba harmonize its portability provision whereby the right to portability should not be mandatory once a terminating member is entitled to a pension. MEBCO supports this harmonization action.

The *Proposals* suggest, however, that on Plan termination, a pensioner should have the option to transfer the commuted value of his / her remaining benefit to a prescribed retirement benefit plan, or purchase the remaining pension from an insurance company.

MEBCO RECOMMENDATION

MEBCO recommends that upon any MEPP Plan termination, a transfer option not be the right of a pensioner, or any other person receiving or entitled to an immediate pension.

In the event of plan wind-up, the possibility of a deficiency exists. Bulk purchasing of benefits without the possibility of anti-selection results in the ‘best price’, and will therefore minimize any “cut-backs”. Members are promised pensions, and ‘purchasing’ best meets this promise.

Locking-In (Page11)

The *Proposals* suggest that premature access, such as for reason of financial hardship is not recommended. MEBCO supports this recommendation, in that it meets the primary purpose of all MEPPs...to provide beneficiaries with lifetime retirement benefits.

Shortened Life Expectancy (*Page12*)

The *Proposals* suggest commutation be allowed on a ‘less than 2-year’ test. While MEBCO has no significant position on this issue, we note that commutation does not generate “normal transfer values”, and opine that the Plan payout should continue to be commensurate with value equivalent to continued payment without commutation.

Perhaps where the form of pension involves spousal survivorship benefits, and the spouse does not have a shortened life expectancy, Manitoba should consider permitting only the “non-spousal” portion to be commuted. In such circumstances, any “waiver” would be redundant.

Phased Retirement (Page13)

The *Proposals* suggest a Quebec-style “phased retirement” program.

MEBCO RECOMMENDATION

MEBCO recommends that this not be implemented, at least for MEPPs, where employment can involve various employers and ‘phased retirement’ is not always clear.

MEBCO suggests that MEPPs permit non-phased Early Retirement where the Member continues to work part-time, provided such part-time employment is less than a prescribed threshold (*say 400 hours per year*). During post-retirement part-time employment, no accrual of pension would occur (*contributions made by the employer to the MEPP under a Collective Bargaining Agreement would still be required, but would be available for the general welfare of the MEPP*). If the member works in excess of the threshold, the pension should cease, to resume at Normal Retirement.

Multi-Unit / Employer Pension Plans (Page15-16)

Again, we are only commenting on behalf of MEPPs (*but the **Proposals** seem to combine MUPPs and MEPPS*)

The ***Proposals*** suggest a Forfeiture provision. MEBCO observes that this seems inconsistent with the immediate vesting proposals. MEBCO refers the Commission to the **Additional Suggestion** included in our earlier HIGHLIGHTS section.

The ***Proposals*** suggest various employer and union “withdrawal” required provisions. MEBCO suggests that these aspects can best be left with the Board of Trustees, and within the confines of Collective Bargaining. MEBCO opposes any employer withdrawal provisions that could ever generate a ‘partial wind-up’. Members’ rights should continue identical to that which would apply if the member terminated employment...(s)he could soon join another employer and in a MEPP, continue active membership.

The ***Proposals*** suggest that the Act’s provisions prohibiting the reduction of accrued pension or pension benefits should not apply in some circumstances. MEBCO suggests that provisions prohibiting reduction of accrued pension or pension benefits should not apply to MEPPS in **all** circumstances, subject always to the consent of the Superintendent.

Pension Committees (*Page18*)

The *Proposals* suggest establishment of Quebec-style Pension Committees be required.

MEBCO RECOMMENDATION

MEBCO strongly recommends that this not be implemented for MEPPs, where a Board of Trustees with (at least) 50% Labour representation exists.

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 do add additional cost. Rather, MEBCO suggests that pension plans where a Board of Trustees exists (*with 50% or greater membership elected specifically by Plan beneficiaries, or appointed by Union officials democratically elected by Plan beneficiaries*) require no separate Pension Committee. The Board of Trustees, if it is at all now unclear, should have 5 of the 7 “responsibilities” set forth in the *Proposals, namely*

- Providing required disclosure
- Registering and Filing documents
- Delegating powers to a third party (*while retaining responsibility for that party*)
- Managing the pension fund (*subject to above-noted delegation*) and establishment and monitoring of investment policies and procedures)
- 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

MEBCO suggests that it is usually the Union’s responsibility to address unpaid contributions, in accordance with the provisions of the Collective Bargaining Agreement.

MEBCO suggests that the Board of Trustees is solely responsible for benefits and amendments. “Recommendations” is not a relevant concept in a MEPP.

Similarly, the related requirements for Annual Meetings should not apply to MEPPs. MEPPs communicate with the membership successfully through Statements, Booklets, Newsletters, other mailings and Union meetings. Further communication should not be mandated. There is and should be no provision for members to appoint designates, outside the demographic process of Union elections. The additional overhead adds no value, and merely introduces an additional layer of cost that results in less benefits that beneficiaries could otherwise be provided from contributions and investment yields.

Division of Pension Benefits (Page20 - 23)

The *Proposals* suggest that Manitoba follow the lead of Nova Scotia, (*which is similar to British Columbia*) and adopt the Canadian Institute of Actuaries position on Division of Pension Benefits on Marriage Breakdown. MEBCO notes that the Institute will soon release the final version of this document, which represents the Institute's "position" on this matter. The final paper will be largely unchanged from the "draft" first exposed in 1998.

MEBCO does not formally support the Institute's Paper, which can be found at <http://www.actuaries.ca/publications/1998/9859e.pdf>, but certainly presents no opposition to the well-thought-out *Deferred Settlement Method*.

Surplus (Page24)

Surplus is a non-issue to MEPPs.

Tests for Solvency (*Page26 -27*)

The *Proposals* request input

MEBCO RECOMMENDATION

MEBCO specifically supports the Paper produced by the Canadian Institute of Actuaries Task Force on Multi-Employer Pension Plans. Solvency funding of any form is in MEBCO's view, inappropriate for MEPPS. Going concern funding only should apply.

MEBCO notes Paper can be found at <http://www.actuaries.ca/publications/2001/20145e.pdf>.

Certainly, MEPPs exist in 'sunset industries' as well as in the 'new economy'. MEPPs use all of their assets to back up all of their obligations. It is true that a small number of MEPPs may wind-up. MEBCO submits that the likelihood of a MEPP winding-up is far less than of a SEPP winding-up. If it happens, that is unfortunate, but a MEPP actually provides "expectations", not "promises". The sole promise of a MEPP is to **use all of their assets to back up all of their obligations**. Expectations may have to be curtailed, but a Board of Trustees will do everything in its power to fulfill expectations.

Solvency funding rules harm members, and prohibit Trustees from delivering benefits to members commensurate with contributions. Solvency funding rules essentially require a Plan to fund benefits that never will be delivered (*principally early retirement benefits, as not all members eligible to retire will elect to do so at their 'maximum value' date.*) Other considerations...including largely the fact that income from employment usually significantly exceeds pension benefits, often induce members to work past their 'maximum value' date. If Plan liabilities require appropriating assets to provide for non-existent benefits, Trustees cannot deliver value to members.

The possibility of unfulfilled expectations must be mitigated against the failure to provide benefits of fair value.