

Torys on Pension and Employment

P&E 2008-6
December 5, 2008

Ontario Expert Commission on Pensions Releases Final Report

By [Mitch Frazer](#) and [Stacey Parker-Yull](#)

On November 20, 2008, the Ontario Expert Commission on Pensions released its final report, *A Fine Balance: Safe Pensions, Affordable Plans, Fair Rules* (Report). The Commission was appointed in 2006 to review Ontario's occupational pension system – the first such review in 20 years.

After extensive research and consultation, the Commission has made 142 recommendations regarding funding, plan restructuring, plan failure, regulation, governance, and innovation in plan design and pension policy. Outlined below are some of the key recommendations.

Funding Recommendations

- Single-employer pension plans (SEPPs), multi-employer pension plans (MEPPs) and jointly sponsored pension plans (JSPPs) should have separate funding rules related to their distinctive characteristics. Generally, SEPPs should be subject to stricter rules, and MEPPs and JSPPs should be allowed more flexibility in funding.
- The funding approach for SEPPs should include both solvency and going-concern valuations, and SEPPs would have to maintain a security margin of 5% above full funding. Deficiencies should be amortized over five to eight years, and plan sponsors should be able to use letters of credit, and possibly asset pledges, to fulfill certain contribution obligations. When an SEPP's solvency ratio exceeds 105%, contribution holidays should be permitted; when a continuing plan's funded ratio on a solvency basis is more than 125%, surplus withdrawals should be permitted.
- The Ontario government should attempt to persuade the federal government to reform the federal investment rules, specifically exempting from the 30% rule larger plans whose members or representatives have significant participation in plan governance. If the federal government does not make these changes, the Ontario government should make its own investment rules.

Plan Restructuring Recommendations

- The concept of partial windup should not be eliminated completely (although it should be limited to cases in which 40% of active SEPP members are terminated within a two-year period); however, the Commission recommends immediate vesting for plan members under all circumstances, expanded grow-in for all involuntary terminations (only in SEPPs) and the elimination of surplus distributions on partial windups.
- Union bargaining agents, other member representatives or plan members should have the opportunity to approve plan mergers, splits or conversions. Where a

To discuss these issues,
please contact the authors.

For media calls, please
contact [Stuart Wood](#),
Director, Marketing &
Business Development,
416.865.8205.

To contact us, please email
info@torys.com.

Torys' bulletins are available
on our website at
www.torys.com, under
Publications.

*This bulletin is a general
discussion of certain legal and
related developments and should
not be relied upon as legal advice.
If you require legal advice, we
would be pleased to discuss with
you the issues raised here in the
context of your particular
circumstances.*

© 2008 by Torys LLP.
All rights reserved.

minimum percentage of plan members or their bargaining agent agrees in advance to a plan's restructuring, the regulatory approval process should be expedited.

- On plan conversions from defined benefit (DB) to defined contribution, surplus from the DB plan must be used first for the 5% security margin and then for contribution holidays or other expenses of the converted plan.

Plan Failure Recommendations

- The Superintendent should be able to monitor the pension system and individual plans more closely. And if there are reasonable grounds to believe a plan is at risk of failure, the Superintendent should have the power to order interim valuations, approve alternative funding arrangements and authorize additional time and forms of security.
- The Ontario government should support recent federal legislation that gives priority to unpaid current pension service costs in the event of bankruptcy, and it should initiate discussions with the federal government concerning extending similar priority to all special payments to fund deficiencies at the time of insolvency.

Regulation Recommendations

- The pension regulation and adjudication system should be overhauled and should include the introduction of (i) an independent pension regulator to replace the current Financial Services Commission of Ontario and to deal exclusively with pension matters; and (ii) a pension tribunal to replace the current Financial Services Tribunal and have exclusive and ultimate jurisdiction over all *Pension Benefits Act* (PBA) matters.
- The PBA should be amended to establish the rights of unions, other representative organizations and individuals to participate in regulatory proceedings and to allow the new pension tribunal to order the plan sponsor or plan to reimburse legal costs for meritorious complaints.

Governance Recommendations

- The regulator should establish benchmarks covering a broad range of governance issues, including funding, benefits, expense ratios, administrative costs and service to members and retirees so that sponsors, administrators and beneficiaries can evaluate their plan's performance.
- All plans should be required to establish pension advisory committees that represent members and retirees, and plan members should be more involved in overseeing plans.

The Report is available at www.pensionreview.on.ca/english/. 