



EXCLUSIVE INTERVIEW:

Today I'm pleased to be talking Ari Kaplan, a pension partner in the labour-side law firm Koskie Minsky.

Our discussion centres on whether the recent pension reform announcements made by Ontario Finance Minister Dwight Duncan will in fact achieve the balance Professor Arthurs was aiming for in the 2008 Expert Commission Report "*A Fine Balance: Safe Pensions, Affordable Plans, Fair Rules.*"

Thanks for joining me today Ari.

Thank you for having me Sheryl.

Q. Some of this week's announcements were more controversial than others. From the employee perspective, what do think of the restrictions on smoothing and the new framework for contribution holidays?

A. That's a good question. I'm not sure that many employees will be thinking about these types of technical amendments to the Act. I don't think the concepts such as smoothing go through a plan member's mind. Now contribution holidays on the other hand, are certainly things that trade unions and certain employee groups get riled up over.

When it comes to last week's legislative announcement, I guess the devil is going to be in the details. The backgrounder says that contribution holidays will not be allowed if the funding is over 105% unless permitted by the plan. My question is whether the detailed rules will provide for a historical analysis of the plan documents that we currently have, in order to determine whether contribution holidays are lawful or not?

Is it bad for employees?

It is only bad for the employees if the funding levels get so low that there is not going to be enough funds to cover the benefits. So provided that the benefits are being covered, I can't see this being too controversial from the employee side, but others may certainly have different opinions.

Q. What about the whole issue of accelerating the funding of benefit improvements so they have to be funded over eight years instead of the current 15 years? Will that provision limit the number of plan sponsors making benefit improvements? Is that a good thing or a bad thing?

A. Whether or not benefit levels will be affected, I've always taken with a grain of salt claims that certain legislative changes will influence plan sponsor behaviour regarding levels or provision of benefits. I certainly haven't seen any link or study between those two things.

First of all, I doubt reducing the period to fund benefit improvement from 15 years to eight years will lower the provision of this type of benefits. Usually benefits like this are offered when there is a surplus in the plan in the first place, so how it is going to be funded is not as big a concern.

Secondly, when it comes to collective bargaining, whether the plan is in surplus or not the employer will presumably be aware of the cost and will cost the benefit increase as funded over that time, so I'm not as concerned about that.

I think it's a good thing in the sense that I see it as a quid pro quo to the contribution holiday benefit. As a whole in this package, I see a little bit given to employers and a little bit to employees that is consistent with the Arthur's report. I think perhaps you can say it would make employers and employees equally happy and equally unhappy.

Furthermore, shortening the funding period for benefit improvements would certainly be a source of comfort for employees.

Q. Surplus is an issue about which I'm sure you will have an opinion. Do you think the proposed new binding arbitration process to deal with surplus on wind up and the entitlement/consent regime will simplify matters and keep plan sponsors and employee groups out of court?

A. I certainly hope so. It is a big part of my practice. One of the biggest bones of contention I think on both the employer and employee sides is just the lack of clarity in the rules. The devil will be in the details here as well.

For example, I like that there is an arbitration clause that keeps things out of court. On the other hand, what the powers of that arbitrator will be is something that we have yet to see. For example, will the arbitrator have the power to determine an employer/employee surplus split by something other than 100% or zero.

What if we get 60% approval not 2/3 from members? Will the arbitrator have the power to approve a fair agreement in his/her determination, even if it otherwise doesn't meet the 2/3 threshold? Can it be allocated other than "hitting a home run" or "pop fly out?"

Anything that would reduce costs and put more money in the hands of the beneficiaries and by that I mean both plan members and as the case may be, employer -- that would be a good thing.

Q. The modified funding requirements for MEPPs and JSPPs that meet specified criteria seem to be a step in the right direction for both employers and employees. But I'm not seeing any proposals that would let industry groups or associations sponsor target benefit MEPPs for their members. Is that going to come later?

A. There is something in there about target benefit MEPPs and it seems to be revising the current temporary rules. Again, the details aren't out yet so we need to see the criteria the government is talking about – exactly what they mean by the target date MEPPs they are proposing.

Now, it does say this is going to be consistent with the current Specified Ontario Multi Employer Plan ([SOMEPP](#)) rules. I have many clients that are MEPPs but not SOMEPPs due to some very technical aspects of the SOMEPP rules that also play into the corresponding federal rules. So what I would like to see is the solvency relief and solvency funding elimination occur for all MEPPs regardless of whether they meet the current SOMEPP definition or not.

Certainly the intent is a good one, which I like. It says if the MEPP is designed in such a way that it is truly a joint risk-- sharing of benefits and hardships in the plan by the members and the sponsors -- then there should be the same type of funding solvency relief regardless of their size and the number of employers. That I would like to see clarified as well.

Q. The big issue that the business press seems to have fixated on is future funding and benefit levels for the PBGF. Employers will have to pay premiums up to 5x higher per member and yet maximum benefit levels will not increase above \$1000/month. Nobody is happy. What do you think?

A. First of all, I think it is a good thing that they are doing something to the PBGF. The fact that it is now going to be properly funded for the first time is important. Because it has not been properly funded for the last 30 years, the government from what I understand has put half a billion dollars into the PBGF in the last couple of years.

The fact that they are asking employers to pay higher premiums or assessments is not going to be a radical change. I understand that in 2009 the PBGF earned about \$42 million in assessments. If the new model were applied to last year's funding, it would increase by \$30 million from \$42 million.

So we are not talking a huge increase in the relative scheme of things as compared to the government's contribution. It would have been nice to see a benefit increase because it hasn't changed in decades, but I think first things first. I see it as a tiered approach where tier one is to get the fund into proper healthy shape and once it is I would expect the government will increase the benefit levels.

Q. It's been two years since the Expert Commission Report was filed and there will be further consultations before this week's proposals come into law. What does this mean for DB pensions? Who are the winners and losers here? Will we achieve the fine balance the Expert Commission was aiming?

A. That's a great question.

What I've seen in the announcement, is first of all is that there is going to be a five year review period -- that the government and the legislature will look at the state of pension legislation and the pension industry every five years. This is as opposed to the current situation where this is the first major reform package in 20 years. So I think it is good to see the intention to review the system regularly.

I believe that everybody is a winner in this package. It could have gone farther. Yet on the other hand I would not call it baby steps. Between this package and Bill 236 in the spring, I see it as a comprehensive package that gives something to everybody.

As I mentioned earlier in this conversation, there are a number of "quid pro quos" in the package that was just announced and we saw that also in the first package. The extension of grow in I think is a fair quid pro quo to the elimination of partial windups and the distribution of surplus on partial windups. This has been a very emotional issue for plan sponsors and there is a huge victory for employers there.

On the other hand, the extension of grow in is a fair compromise for that. It gives the level of benefit security that was intended by the grow in provisions, but at the same time eliminates much of the administrative cost that would go along with the events that would have to occur before grow in is provided.

So that's an example where it really is a fine balance and I think the government is trying hard to find that balance. Whether they have or not will be in the details in the legislation; and whether in the long run it's a good thing is I guess what prophets and soothsayers will have to tell us, because I can't at this stage.

Thanks very much Ari.

My pleasure.

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