Moving Toward Consistency

Changes for Multijurisdictional MEPPs in Quebec and New Brunswick

by Doug LeFaive
Legislative and regulatory policy changes in Quebec and New Brunswick have brought the rules governing multijurisdictional MEPPs in those provinces largely in line with those of many other Canadian jurisdictions.
Recent changes in legislation and regulatory policy mean that multijurisdictional multi-employer pension plans (MEPPs) can treat the benefits of members in Quebec and New Brunswick in much the same fashion as in all other Canadian jurisdictions.

In Quebec, the changes came about through a radical overhaul of the Supplemental Pension Plans Act (SPPA), while New Brunswick has adopted a new administrative practice.

Prior to the SPPA amendment, Quebec pension legislation effectively treated all MEPPs as if they were single employer, private sector, defined benefit pension plans. It required them to be funded on a solvency basis, prohibited the reduction of benefits accrued in a MEPP for any reason apart from employer insolvency and made contributing employers responsible for funding any solvency shortfall that existed should they stop making contributions.

Solvency funding determines a plan’s funding requirements by hypothetically assuming that it was wound up on a specific date and that all benefits were paid out immediately. During periods of low long-term interest rates, solvency funding is much more expensive than going concern funding, which assumes that the plan will continue indefinitely.

As MEPPs are normally much less likely to be wound up than single employer plans, Alberta, British Columbia, Ontario and Nova Scotia, the provinces in which most MEPPs are registered, have made solvency funding relief available to MEPPs for several years, provided they satisfy certain criteria. All other provinces require solvency funding for MEPPs.

Contributions to MEPPs are fixed by collective agreement, which means their trustees cannot unilaterally increase contributions to deal with a funding shortfall. Without the ability to increase contributions, MEPPs must be able to reduce benefits to the level that plan assets and ongoing contributions are capable of paying for. In recognition of this fact, the pension legislation of all Canadian jurisdictions, except Quebec and New Brunswick, has long permitted traditional MEPPs to reduce accrued benefits to eliminate a funding shortfall.

Since the 2008 financial crisis, governments around the world have kept long-term interest rates at historic lows in an attempt to stimulate their economies. While low long-term interest rates may assist business, they have been devastating for pension plans as they have increased solvency liabilities at an unprecedented pace.

Generally, a board of trustees tries to avoid reducing benefits, but some MEPPs have had no other option because of the continuing low long-term interest rates. To remain viable, MEPPs must be able to reduce benefits to the level that plan assets and ongoing contributions are capable of paying for. However, this relief previously was not available in Quebec and New Brunswick.

Prior to the changes, multijurisdictional MEPPs with members in those provinces were in the untenable position of being able to reduce the accrued benefits only of members outside of the two provinces. Leaving accrued benefits of some members untouched while reducing those of all other members is inequitable and would increase the size of benefit reductions required for members outside of Quebec and New Brunswick.

The changes to SPPA were a long
time in coming. For more than a decade, Quebec’s pension regulator, the Régie des rentes du Québec, vigorously opposed any attempt to reduce benefits accrued by Quebec members of a multijurisdictional MEPP.

In April 2008, the Quebec Court of Appeal ruled in Multi-Marques Distribution Inc. c. Régie des rentes du Québec that SPPA permitted a multijurisdictional MEPP to reduce the accrued benefits of Quebec members since those benefits were always conditional on available funding.

Quebec quickly responded with Bill 68, which retroactively amended SPPA to overturn the Court of Appeal’s decision. Bill 68 explicitly barred MEPP pension benefits from being conditional on any extrinsic factor, including the availability of the funds required to pay for them. The only exception was if an employer ceased contributing to a MEPP because the employer was insolvent.

Bill 68 was passed in June 2008. The legislature took the unusual step of making the bill “declaratory,” meaning that it was to be interpreted as if it was part of SPPA when it came into force in 1991.

While MEPP trustees could pursue employers that withdrew from a MEPP for the employer’s share of the solvency funding shortfall that existed when the employer stopped making contributions, SPPA did not provide any mechanism for an ongoing MEPP to obtain the additional funding required to pay the increasing cost of benefits that had already accrued.

Quebec’s legislation regarding MEPPs changed in 2015 with the introduction of Bill 34, An Act to amend the Supplemental Pension Plans Act with respect to the funding and restructuring of certain MEPPs. Bill 34 was fast-tracked through the legislative process with the support of all political parties.

Bill 34 created a new class of pension plans called negotiated contribution plans, which are defined as “multi-employer defined benefit-defined contribution plans in force on 18 February 2015 which may not be amended unilaterally by a participating employer.”

Bill 34 came into force retroactively on December 31, 2014 and provides that negotiated contribution plans are funded on a going concern basis and any funding shortfall must be amortized over a maximum period of 12 years. Former members who elect to transfer their benefits out of a negotiated contribution plan receive only the solvency-funded portion of their benefits, unless their former employer agrees to make an additional payment to fund their benefits.

Bill 34 limits an employer’s financial obligations to a negotiated contribution plan to making the contributions it has agreed to under a collective agreement. Employers may not share in any surplus in a negotiated contribution plan, take a contribution holiday or use a letter of credit to satisfy their contribution obligations.

If an actuarial valuation reveals that contributions are insufficient, Bill 34 requires the negotiated contribution plan to be restructured within 24 months. The restructuring options include increasing employer contributions, increasing or establishing employee contributions or reducing accrued and/or future benefits.

Bill 34 provides that reductions to pensions in pay may not be greater than the reductions for active members. It also eliminated the 50% rule (which says that no more than half of a member’s benefits can be from employee contributions) and the indexing of deferred pensions for the period prior to the former member reaching early retirement age. Negotiated contribution plans are not required to establish a funding reserve.

Negotiated contribution plans that need to reduce accrued benefits are not required to consult with members if the plan text already permits the reduction. If it does not, members and beneficiaries must be notified of the proposed reductions and advised of their right to object. Benefits may be reduced only if less than 30% of members and beneficiaries object to the proposed reductions. If 30% or more of the members and beneficiaries oppose the proposed reductions, the negotiated contribution plan must be terminated within 60 months of the valuation that identified the contribution shortfall.

Bill 34 provides that pensioners and deferred vested members whose former employer has ceased contributing to the MEPP must have their accrued benefits reduced to the solvency-funded level of the plan. These so-called orphan members may then elect to leave their reduced benefits in the plan, transfer them to another form of locked-in retirement savings vehicle or annuitize them.
Bill 34 also largely eliminated SPPA’s previous employer debt provisions for MEPPs. However, if an employer withdraws from a negotiated contribution plan or the plan is wound up before April 2, 2020, any benefit reductions due to restructuring must be reversed and the employer will be required to pay its employer debt. The exceptions to this rule are if the withdrawal or wind-up is triggered by the failure of the MEPP to adopt a restructuring plan, the sale or closure of the business, the employer’s insolvency or a change in the union representing employees.

If an employer withdraws from a negotiated contribution plan after April 2, 2020, the benefits of its current and former employees are paid out at the plan’s solvency funding ratio and must be transferred out of the plan or annuitized.

**New Brunswick**

In 2012, New Brunswick’s Pension Benefits Act (PBA) was amended to create a new class of pension plans called shared risk plans (SRPs). Single employer plans and MEPPs that are registered in New Brunswick can be converted to an SRP.¹

SRPs provide base benefits, using a target formula, and ancillary benefits, such as indexing and early retirement subsidies. Ancillary benefits are only payable when the SRP has sufficient funds. If there is a funding shortfall, employer and employee contributions may be increased to a predetermined maximum. If such increases are insufficient, base benefits are reduced.

SRPs are required to undergo annual valuations and stress testing, which must demonstrate there is a 97.5% certainty that base benefits will not be reduced over the next 20 years. The testing must also indicate with 75% certainty that ancillary benefits will not be reduced over the same period.

So far, most of the plans that have converted to SRPs have been public service or broader public service plans. Absent significant ancillary benefits, large reductions to basic benefits would be required before most MEPPs could pass the 97.5% certainty stress test. As a result, only a handful of plans have converted to the SRP structure.

Much like SPPA prior to Bill 34, New Brunswick’s pension legislation still prohibits the reduction of accrued benefits in a traditional MEPP. However, unlike SPPA, PBA does not require employers to make any payments to a traditional MEPP over and above those required by the applicable collective agreement.

In 2014, New Brunswick’s pension regulator was approached by a multijurisdictional MEPP registered in another province. This MEPP planned to reduce the accrued benefits of all of its members and pensioners to bring the MEPP into compliance with the going concern funding requirements of its province of registration.

The MEPP trustees had decided to wind up the New Brunswick part of the plan if they were not permitted to include New Brunswick members in the reductions. They believed it would be unfair to leave the benefits of the New Brunswick members untouched while reducing the benefits of all other members.

Not reducing the benefits of New Brunswick members also would have increased the benefit reductions required for the members outside of New Brunswick.

As noted previously, in periods of low long-term interest rates, solvency liabilities are much higher than are going concern liabilities. That makes it much easier for MEPPs to

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**Takeaways**

- Low long-term interest rates have increased pension plan solvency liabilities at an unprecedented pace.
- Solvency funding relief is available to multi-employer pension plans (MEPPs) that satisfy certain criteria in Alberta, British Columbia, Ontario and Nova Scotia but was not available in Quebec or New Brunswick.
- Because of the inconsistent legislation, multijurisdictional MEPPs that needed to make benefit reductions because of a funding shortfall previously were required to treat the benefits of their members in Quebec and New Brunswick differently from members in other provinces.
- Quebec amended its Supplemental Pension Plans Act, creating a new class of pension plans called *negotiated contribution plans* that are funded on a going concern basis rather than a solvency funding basis and that can reduce accrued benefits.
- Following a request from a multijurisdictional MEPP in another province, New Brunswick’s pension regulator issued an order applying pension legislation of the MEPP’s province of registration, which allowed it to reduce the benefits of its New Brunswick members.
multi-employer plans

satisfy going concern funding requirements than solvency funding requirements.

The benefit reductions required by this MEPP to satisfy the going concern funding requirements of its province of registration were about half the cuts that would have been required if it had to be funded on a solvency basis. Terminating the New Brunswick portion of the MEPP would have resulted in the New Brunswick members having twice the benefit reduction they would receive if they continued as members of this ongoing MEPP.

Section 93 of the PBA provides as follows:

If a pension plan required to be registered in the Province is registered in a designated jurisdiction, the Minister by order may limit the application of this Act and the regulations to the pension plan and authorize the application of the law of the designated jurisdiction in respect of the pension plan.

While Section 93 was intended to permit the application of the Memorandum of Reciprocal Agreement, the MEPP argued that the section’s wording was broad enough to allow New Brunswick’s Minister of Justice to issue an order applying the pension legislation of the MEPP’s province of registration to reduce the benefits of its New Brunswick members.

In August 2014, the minister agreed, and the New Brunswick members were spared the much larger benefit reductions they would have suffered had their portion of the MEPP been wound up.

Since then, at least two other multijurisdictional MEPPs have applied for such ministerial orders. One of those MEPPs received the requested order while the other is awaiting a response.

Conclusion

The changes in Quebec and New Brunswick bring the rules governing multijurisdictional MEPPs in those provinces largely in line with those of all other Canadian jurisdictions. The changes will help to maintain the viability of the multijurisdictional MEPPs that previously were hamstrung by conflicting provincial rules that prevented trustees from treating all members in the same fashion.

Endnote


BIO

Doug LeFaivre is a partner at Goldblatt Partners LLP whose practice focuses on multi-employer pension plans. He serves as legal counsel to the board of trustees of several multijurisdictional, multi-employer pension plans, including both jointly trustee and union-trusted plans and plans with members from more than one union. His practice also includes representing unions and individuals in their dealings with single employer pension plans. He is a member of the Financial Services Commission of Ontario’s Multi-Employer Pension Plan Advisory Committee.