

# HOOPP's Submission to Ontario's Expert Commission on Pensions

Here are the highlights of the Healthcare of Ontario Pension Plan's submission to Ontario's Expert Commission on Pensions. The submission was presented at HOOPP's public hearing before the Commission on Oct. 17, 2007.

## Introduction

Among the issues covered in our submission are three that we feel are most important to our members, pensioners, and employers. They are:

- **Portability** – the ability for members to readily protect the value of their pension benefits when they move from one employer, or pension plan, to another
- **Wind-up and solvency funding rules**, particularly as they apply to multi-employer pension plans (MEPPs) like HOOPPs, and
- **How MEPPs are covered in the current legislation** – to us, as a plan administrator of a MEPP with 341 participating employers and approximately 150,000 active members, the current Pension Benefits Act (or PBA) and regulations need to be improved to better reflect and accommodate the different roles and responsibilities of MEPP plan administrators, employers and members; the current legislation, designed as it is for single-employer pension plans, is inadequate in a number of ways.

## Portability of benefits

Portability for HOOPP simply means that, when our members change jobs from one employer to another, they can readily transfer their accrued pension benefits from one pension plan to another – whether to HOOPP from a peer plan or, if their employer does not participate in HOOPP, to another plan – with reasonable options that preserve the value of their benefits. Without the ability to transfer prior years of pension service and link them with more recent service, a member might miss out on having one pension based on a career's worth of service, and instead receive several pensions built on partial service.

What's wrong with receiving multiple pensions, instead of one? Since the pension benefit is typically based on a final average earnings formula, the sum of benefits from the various plans is often less than the whole benefit that a member would otherwise have received if the member had stayed in one plan.

Ontario ambulance workers have often suffered the unfavourable effects of a lack of portability. As a result of health care restructurings over a number of years, many ambulance workers have been forced to change pension plans every few years. Each new restructuring has tended to tie up the pension benefits accrued by the affected members. In many cases, the affected members have accrued benefits in several plans, with no opportunity to combine through transfers their pension service into one plan.

So, rather than having one pension benefit based on a career of pension service, they end up with several pension benefits based on short stretches of service.

HOOPP recommends that the PBA be reviewed and amended to ensure that the portability rules are clear and predictable and work to benefit the interests of plan members. We see four difficulties with the present rules governing portability rights:

- **Clearer rules for asset transfers:** First, the rules dealing with asset transfers are interpreted and applied through policies adopted by the Financial Services Commission of Ontario, or FSCO, and are not set out clearly in the PBA or regulations. We believe asset transfer rules should be clear and predictable and should be contained in legislation and not policy. In clarifying new rules, care will need to be taken to ensure appropriate disclosure to members and time limits to minimize the possibility that transferring members delay their own decision-making and thereby obtain unfair advantage.
- **More flexibility:** The second problem is that the current legislation provides a “one size fits all” approach to asset transfers, despite the fact that the circumstances of a member or the affected plans tend to be unique. This means transfers are difficult to achieve unless the two plans involved are identical in design and benefits offered. Once again, HOOPP recommends a statutory amendment that will provide reasonable options to affected members and greater flexibility to plan administrators.
- **End need for “patchwork” administration:** The third concern is that FSCO, in interpreting the legislation and applying its policy, imposes a replication requirement that creates significant administrative demands for MEPPs. It is very challenging and costly for MEPPs to administer the rules of the other plans. For example, HOOPP currently has to deal with the rules of 20 other plans whose members have joined HOOPP. This concern applies most particularly to public-sector MEPPs where many divestments and mergers occur through government-directed restructurings. If MEPPs are compelled to administer – solely for the benefits of members who transfer in from another plan – certain rules from that plan, an administrative “patchwork” is created, one that may prevent plans from doing the transfer at all.
- **Less stringent notification rules:** Finally, the notification requirements imposed for a given transfer can be unduly excessive and unreasonable. For example, an employer with a relatively small pension plan may seek to transfer its plan and plan assets to HOOPP where the impact to HOOPP and its membership would not be material. The need to notify all HOOPP members of this proposed transfer imposes unnecessary complexity and costs. Some form of notification should be required, but perhaps only to affected members or possibly their employers and representative unions.

HOOPP recommends that the Commission view these various problems as HOOPP does – that the purpose of portability rules should be to help members preserve the value of their benefits when changing jobs or pension plans. The amendments should make transfers easier, faster and significantly less expensive to administer, and should be more aligned with the processes for reciprocal and commuted value transfers where the emphasis is on the value of benefits being transferred.

## Wind-up and solvency funding rules

HOOPP is also concerned about the existing wind-up or solvency funding rules, specifically as they apply to MEPPs. We note that the Ontario government has recently taken steps to address some of the funding challenges posed by solvency funding requirements for certain MEPPs – one example is the recently passed PBA regulation that creates a moratorium for private-sector MEPPs. We believe that a broader exemption from the solvency funding rules should be made applicable to MEPPs like HOOPP for the following reasons:

- **Full wind-up unlikely:** Contrary to the situation for most single employer pension plans, it is much more unlikely that a large MEPP like HOOPP, serving the healthcare sector, an essential service that is publicly funded, would ever fully wind up. The Ontario government has acknowledged this reality, at least in part, by exempting MEPPs from paying into the Pension Benefits Guarantee Fund (or PBGF).
- **Other jurisdictions exempt MEPPs:** It's noteworthy that Nova Scotia, New Brunswick and Prince Edward Island exclude all MEPPs from the solvency funding rules; most other jurisdictions exclude public sector MEPPs from these rules.
- **Consider exemption from partial wind-up rules:** If Ontario legislators are not prepared to grant an exemption to public sector MEPPs like HOOPP from the general solvency funding rules, they should at least provide an exemption from the partial wind-up rules for certain pension plans like HOOPP. The reason why is that HOOPP, and possibly other pension plans, treat terminating members much the same way that the existing wind-up/solvency funding rules would require them to be treated. Since members are already getting substantially the same benefits they would receive on a plan wind-up, whether full or partial, MEPPs shouldn't have to meet the more onerous solvency funding requirements imposed by the existing rules.

## Multi-employer pension plan rules

As a MEPP, a lot of administrative challenges that HOOPP encounters differ from those issues faced by single-employer plans. We think it's important for the Commission to have a good understanding of some of the distinguishing features of MEPPs:

- **MEPPs have different relationships:** With employer-sponsored or single-employer plans, the plan sponsor maintains an employment relationship with plan members. As a result, there tends to be greater certainty and control over administration.

With MEPPs, the plan administrator is much more remote from its members. The administrator does not have an employment relationship with its members, and thus must rely on its participating employers to help new members complete enrolments, calculate and remit contributions and help to reconcile the contributions at the end of the year, assist in the communication of benefit information and, often, assist in resolving problems.

- **Policy advantages:** There are very good policy reasons why Ontario's pension legislation should be reformed to provide greater certainty and accommodation for MEPPs like HOOPP:

- MEPPs offer significant economies of scale, in terms of administration and funding risks, to MEPP employers
- pension coverage is broader for Ontario workers through MEPPs, improving standards of living and reducing reliance on publicly funded financial support in retirement
- building pension benefits over a career – even when changing jobs – is possible by participating in a MEPP
- recruiting and retaining employees is made easier through participation in a MEPP
- large pools of sophisticated capital are formed through MEPPs; this can provide valuable investment advantages for the Canadian economy

## **Administration**

### **Plan Administrator vs. Participating Employer**

One of the significant problems with the current regulatory scheme is that it provides inconsistent treatment of plan administrators and employers: certain provisions of the PBA and the General Regulation appear to treat administrators and employers as the same entity, while other provisions may be interpreted to treat administrators as agents of the employer. This approach may be appropriate for single-employer plans, but for MEPPs, these provisions can create confusion and difficulty.

HOOPP has three recommendations on how the legislation can be improved here:

- The PBA should more clearly define the role and responsibilities of participating employers of a MEPP.
- The PBA should clarify that a participating employer is not an agent of the plan administrator unless such an agency relationship has been agreed.
- The legislation should clarify rights and remedies in the event a participating employer doesn't fulfill its responsibilities – if the plan administrator incurs costs as a result, the entire plan membership pays.

### **Plan Administrator vs. Plan Members**

Plan administrators also rely on plan members to provide in a timely and accurate way the information and documents needed to administer their benefits. The administrator has few options if a member doesn't cooperate. Sometimes the acts or omissions of uncooperative plan member's result in costs and liability to a plan administrator – once again, if the plan administrator incurs costs as a result, the entire plan membership pays.

HOOPP proposes that the PBA be amended to enable plan administrators to deal more effectively with uncooperative members. Any changes to the legislation should, of course, permit plan administrators to adopt policies and practices that encourage members to respond in a timely and responsible manner to such information requests but not policies or practices that impose unreasonable burdens on members.