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I P E B L A

Canadian Bar Association Pension and Benefits Section/International Pension & Employee Benefit Lawyers Association (IPEBLA) Quebec Conference: Pensions in a Global Environment

June 21-22, 2010
Fairmont Chateau Frontenac
Quebec, Que.

Program Agenda

SUNDAY, JUNE 20, 2010

- 9:00 - 17:30** CBA Pension and Benefits Section Executive and IPEBLA Steering Committee and Berlin Program Committee Meetings (**meeting details to be announced**)
- 17:00 – 20:00** Registration & Conference Information Desk Open
- 17:30 – 19:30** Welcoming Reception in the Petit Frontenac Room of the Chateau Frontenac
Sponsored by Eckler Ltd.

MONDAY, JUNE 21, 2010

- 7:30 - 17:30** Registration & Conference Information Desk Open
- 7:30 - 8:30** Breakfast – **Sponsored by Penad Pension Services Limited**
- 8:45 - 9:00** Welcome Remarks
- 9:00 - 9:45** **Keynote Address – Sponsored by Fasken Martineau DuMoulin LLP**
Speaker: Madame Justice Eileen Gillese, Ontario Court of Appeal
- 9:45 - 11:00** **Concurrent Workshops**

Workshop 1 Multi-jurisdictional Pension Plans (*simultaneous interpretation will be available*)

This session (**in French**) will address the new Agreement Respecting Multi-Jurisdictional Pension Plans and what it will mean to the day-to-day oversight by supervisory authorities as well as plan administrators. Because each jurisdiction has developed its own version of what is the appropriate approach to pension legislation, over the years plan administrators have been called upon to comply with legislation in every jurisdiction where they operate. The 1968 Multi-lateral Agreement meant to assist in some manner but since then laws and interpretations have evolved – now so has the agreement. The changes to the Agreement are overdue and there were and still may be obstacles to be fully efficient. Workshop participants will be encouraged to discuss their issues and problems. Topics include:

- the Agreement in general;
- how it affects the supervisory role of the authorities;
- how it affects day to day administration.

Speakers:

Josée Dumoulin, Lavery, De Billy and Mario Marchand, Régie des Rentes, Quebec

Workshop 2 Global Developments in Private Pension Regulation

This workshop will focus on recent developments in private pension regulation affecting the design, funding, investment, administration, governance and communication of employer-sponsored pension plans and schemes. In particular, the panelists will discuss developments in pension plan design in their respective countries that are responsive to world economic conditions.

Speakers:

Eric Bergamin **(NL)**, Bergamin & Gielink, Pensioenrechtadvies B.V.; Sara Cohen **(UK)**, Lewis Silkin; Caroline Helbronner, Blake Cassels & Graydon LLP and Mtende Owen Mhango **(ZA)**, University of Witwatersrand, South Africa

Workshop 3 Alternative Investments for Pensions Funds

Many pension funds and other institutional investors have increasingly shown an interest in direct alternative investments covering a wide spectrum of projects from infrastructure such as transportation and energy, to social projects such as hospitals, to more speculative investments such as commodities, junior oil and gas, biotech, specialized real estate and farmland. These projects present their own unique challenges and may involve different forms of financing (primary vs. secondary, debt vs. equity, private vs. listed, direct vs. indirect), and may involve other parties in public, private or limited partnerships. In making such investments, pension funds will have to consider leverage, legal and ownership issues, liquidity risks, environmental risks, as well as regulatory and political challenges. This session will examine ways in which a variety of direct investments are structured to meet legal obligations imposed on pension fund administrators and how investments can be structured to mitigate legal risk or to enable smaller pension funds to participate, with an emphasis on new investment vehicles.

Speakers:

Rory Albert **(USA)**, Proskauer Rose, LLP; Frank Guarascio, Blake, Cassels & Graydon LLP; Christine Sharp, OMERS Administration Corporation and Rafael Stone **(USA)**, Foster Pepper PLLC

Workshop 4 DC Plan Governance

Speakers at this interactive seminar will examine DC plan governance from Canadian, USA and UK perspectives. The speakers will discuss statutory frameworks and related regulatory or case law guidance with respect to DC plan governance in their jurisdictions. In addition, they will discuss DC plan governance best practices and common structures adopted by their clients, including committees, charters and policies and other recent trends. Information regarding the current governance practices of different jurisdictions will be informative to practitioners advising their clients of prudent DC plan governance.

Speakers:

Howard Pianko **(USA)**, Seyfarth Shaw LLP; Jana Steele, Goodmans LLP and Maria Stimpson **(UK)**, Allen & Overy LLP

11:00 - 11:15

Refreshment Break - Sponsored by McCarthy Tetrault LLP

11:15 - 12:30

Concurrent Workshops

Workshop 5 Non-Sponsor Liability

In most cases, pension plan members will have a cause of action against a pension plan sponsor and the plan trustee in case a major disaster or tragedy befalls the plan. However, should plan members have a cause of action against other parties involved with the pension plan? These other parties could include suppliers to the plan sponsor (such as the actuary, the investment manager, or legal counsel), and perhaps even the regulator. In North America, the class action is becoming a very popular method to resolve pension plan disputes, and often involves all parties involved with the pension plan, while plan sponsors are cross-claiming against service providers, or initiating litigation on behalf of the plan. In other jurisdictions, statutory or legal liability may be imposed upon suppliers and regulators.

This workshop will discuss liability that is imposed, either by statute or by the courts, on parties other than the plan sponsor.

- Who is a service provider, and how does the definition vary from jurisdiction to jurisdiction?
- When is a service provider a fiduciary, and how does that designation vary in different countries?
- Do plan members have a cause of action against all these service providers?
- How can these parties limit their liability against both the sponsor and the plan members?

- Should a limitation of liability be permitted in the context of pension plans? Should it be contractual or imposed by legislation?

Speakers:

Louis Kuypers **(NL)**, Houthoff Buruma NV and Mark Zigler, Koskie Minsky LLP

Workshop 6 Trends after the Crash: Executive Compensation in the Aftermath of the Financial Market Melt-down

Panelists from the UK, the USA and Canada will respond to questions from the moderator regarding changes in executive compensation practices, norms and regulations in their jurisdictions in response to the global credit and economic crisis. This workshop will explore the developments in pay practices that evolved due to increased investor, regulator and shareholder scrutiny. Topics that panelists are expected to discuss: How Equity Compensation Practices Have Changed, Latest "Say-on-Pay" Developments and New Governance Standards for Compensation Committees.

Speakers:

Andrea Boctor, Stikeman Elliott LLP; Sandra Cohen **(USA)**, Osler, Hoskin & Harcourt LLP, Jonathan Fenn **(UK)**, Slaughter & May and Stacey Parker-Yull, Dundee Wealth Inc.

Workshop 7 Pension Issues in Mergers & Acquisitions

Lawyers from the USA, Europe, South Africa and Canada will start the discussion by focusing on the distinctive features of their own jurisdiction that an out-of-jurisdiction lawyer most needs to know. From there, participants will have the opportunity to raise matters on which they would like to obtain perspectives from other jurisdictions. As well as learning about key issues of relevance around the world, this will help you to communicate effectively with your counterparts in other countries regarding pension and benefit issues in your jurisdiction, wherever an M&A transaction originates.

Speakers:

Richard Johnston, Fasken Martineau DuMoulin LLP; Tom Jorgensen **(USA)**, Calfee, Halter & Griswold LLP; Jonathan Mort **(ZA)**, Jonathan Mort Inc. and Wijnanda Rutten **(NL)**, Allen & Overy LLP

Workshop 8 Pension Design Initiatives in a Recessionary Market

This session will canvass recent "out-of-the-box" plan sponsor initiatives for controlling pension costs in hard times. Workshop participants will be encouraged to discuss their experiences in devising or implementing cost/cash reduction strategies for clients, either in the current or any future economic downturn. Topics include:

- client strategies to limit financial exposure in tough times;
- reducing employer contributions in defined contribution plans;
- solvency relief initiatives for defined benefit plans;
- strategies to recover refundable taxes paid on non-registered pensions;
- achieving economies of scale;
- regulatory hurdles;
- employment law/constructive dismissal implications;
- notice requirements and strategies; and
- managing communication issues.

Speakers:

Dan Brandenburg **(USA)**, Saul Ewing LLP; Jane Marshall **(UK)**, MacFarlanes LLP and Lyle Teichman, Towers Watson

12:30-14:00 Lunch Address – Sponsored by Blake, Cassels & Graydon LLP

Speaker: The Honourable Paula Cox JP, MP, Deputy Premier and Minister of Finance and Economic Development, Government of Bermuda

14:00 - 15:15 Plenary No. 1 - What is Driving Pension Reform?

Four provinces (Nova Scotia, Ontario, Alberta and British Columbia) have completed extensive expert panel/commission reviews of their respective pension legislation, making substantive recommendations for reform. Ontario and the federal government have recently proposed regulatory changes as well. This session will examine the common (and not so common) drivers for pension reform, the key recommendations and proposals of the various panels, commissions and governments. Ron Pink, a labour and pension lawyer from the Nova Scotia Pension Review Panel, Ian Markham, a pension actuary and advisor to the Ontario Expert Commission, and Scott Sweatman, pension and benefits lawyer and Co-chair of the Alberta/British Columbia Joint Expert Panel on Pension Standards will provide their perspectives on what is driving pension reform both from their experiences on these expert panel/commissions and from their own private client practice.

Speakers:

Darrell Brown, Sack, Goldblatt, Mitchell LLP; Ian Markham, Towers Watson; Ronald Pink, Q.C., Pink Larkin LLP and Scott Sweatman, Spectrum HR Law LLP

15:15 - 15:30 Refreshment Break – Sponsored by Ogilvy Renault LLP

15:30 - 16:45 Concurrent Workshops

Workshop 9 Pension Benefit Guarantee Funds

Similarities and differences among -- and looming crises faced by -- the pension guarantee systems in Canada, the USA, the UK, and Germany. Panellists from each jurisdiction will provide an overview of the benefits that are guaranteed, how the system is financed, recent and proposed legislative changes, and current challenges.

Speakers:

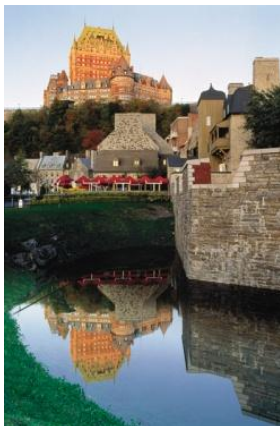
Harold Ashner (**USA**), Keightley & Ashner LLP; Dr. Hans-Joachim Liebers (**DE**), Hengeler Mueller; Jonathan Seres (**UK**), Sacker & Partners LLP and Paul Timmins, Towers Watson

Workshop 10 OECD Pension Activities

The Organization for Economic Cooperation and Development has over the past 10 years taken a growing interest in private pensions. In 1999, it established the Working Party on Private Pensions (WPPP) as a working group within the Insurance and Private Pensions Committee of the Directorate for Financial and Enterprise Affairs. The WPPP research group publications and the twice yearly meetings of the WPPP have resulted in the adoption of Core Principles for Occupational Pension Plans (recently updated in 2009) and more specifically Guidelines on Pension Asset Management (2006), Funding and Benefit Security (2007), Licensing of Pension Entities (2008), and Governance (updated in 2009). The WPPP has also been involved in a number of current issues facing pension arrangements in member countries, including responses to the financial crisis, DC plans, accounting standards, cross-border pensions, participant financial education and other matters.

Speakers:

Michel Benoit, Osler, Hoskin & Harcourt LLP; Kees-Pieter Dekker (**NL**), Clifford Chance LLP and David Powell (**USA**), Groom Law Group, Chartered



Workshop 11 Canada-USA Cross-Border Transfers - Taxation and Coverage Issues

This workshop will canvass issues encountered by employers transferring employees across the Canada-USA border and in particular, discuss the fifth protocol to the Canada US Tax Treaty and its impact on border crossings. Specific topics will include:

- taxation of benefit accruals in host country plan;
- deduction of employee and employer contributions in home country;
- treatment of stock options;
- planning pitfalls;
- excluded plans;
- short-term versus long-term transfers; and
- cross-border commuters vs. transfers.

Speakers:

Natalie Cadavid, Buck Consultants; Stephanie Kalinowski, Hicks Morley Hamilton Stewart Storie LLP and Susan Serota (**USA**), Pillsbury Winthrop Shaw Pittman LLP

Workshop 12 Electronic Record Retention and Destruction

Legal requirements with respect to record retention, destruction and privacy vary greatly around the world. The diverse requirements make it very difficult for multi-national corporations to effectively and consistently deal with the personal information of employees. For litigators, the wide variety and scope of discovery rules increase costs and can lead to abuses. This session will provide:

- an overview of considerations with respect to establishing international record retention practices;
- how to manage the competing interests of employers and employees in international privacy rules;
- costs – in both corporate and litigation matters - of electronic records management; and
- benefits of a good records management program.

Speakers:

Paul Meyer (**USA**), Towers Watson and Susan Philpott, Koskie Minsky LLP

18:30 Gala Dinner at The Quebec Garrison Club – **Sponsored by Robbins Geller Rudman Dowd LLP**
(tickets for the Gala Dinner are available for purchase on the registration form)

TUESDAY, JUNE 22, 2010

7:30 - 14:00 Registration & Conference Information Desk Open

7:30 - 8:30 Breakfast – **Sponsored by Osler, Hoskin & Harcourt LLP**

8:45 - 10:00 Plenary No. 2 - Settling Post-retirement Benefits: Lessons Learned from the Auto Industry

In this plenary session, lawyers from Canada and the USA will discuss issues that arise when settling post retirement benefits, with particular attention to recent experience as part of the restructuring of the North American auto sector. Matters to be discussed include:

- background on the legal and accounting environment;
- overview of USA considerations and VEBA/Class Action approach;
- review of legal and tax issues for Canadian plan sponsors; and
- possible solutions - including voluntary settlements, wind-ups (unilateral) and review of the proposed Health Care Trust vehicle.

Speakers:

Steve Friedman (**USA**), Littler Mendelson; Karen Millard, Towers Watson; Norm Tobias, Koskie Minsky LLP and Greg Winfield, McCarthy Tetrault LLP

10:00 – 11:15

Concurrent Workshops

Workshop 13 Dealing with Pension Issues in a Canadian Insolvency

Insolvencies and restructurings reached record levels in 2008 and 2009. This workshop focuses on the potential implications to pension plans of restructurings and insolvencies in Canada. In addition to sharing their insight and experiences on recent Canadian cases dealing with pensions in insolvencies and restructurings, the speakers will discuss topics including what happens to a pension plan in an insolvency or restructuring, the role of existing plan administrators, regulatory agencies and appointed third party administrators, the effect of appointed receivers and monitors, changes to pension entitlements as a result of companies being in financial difficulty, concerns about the Ontario Pension Benefits Guarantee Fund, and changes to the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act*. If you want to better understand how to handle pension issues in a Canadian insolvency or restructuring, this is a workshop you will not want to miss.

Speakers:

Mary Picard, Fraser Milner Casgrain LLP; Susan Rowland, Goodmans LLP and Bethune Whiston, Morneau Sobeco

Workshop 14 Bargaining Trends in Pension and Benefits

The global economic recession has caused many employers in Canada to search for ways of reducing costs. Pension and benefits plans are often a significant expense and naturally come under scrutiny in tough times. Implementing cost-cutting in a unionized environment can be particularly challenging from a legal perspective. The speakers in this workshop will tell you what measures employers have been proposing at the bargaining table and how unions have responded. The workshop will also cover some of the unique issues that arise when attempting to make changes to the benefits of retirees who had been members of a bargaining unit. For example, who represents the retirees? What forum can it be resolved in? (Court? Arbitration?) What happens when a company goes into bankruptcy protection? What about CCAA?

Speakers:

Danny Kaufer, Heenan Blaikie; Pierre Moreau, Rivest, Schmidt; Hugh O'Reilly, Cavalluzzo, Hayes and Adriana F. Wills, Harris & Co.

Workshop 15 Health & Welfare Plans: Rules and Regulations

While pension issues consumed centre stage for the past year, health and welfare benefits continue to pose complex challenges for many employers. The panelists will discuss the rules and regulations governing the design and provision of health and welfare benefits to employees, focusing on the differences between the United States and Canada. The form and structure of the benefit arrangements that are permissible in each country will be reviewed, including a discussion of any recent legislative changes and the rules applicable to retiree benefits.

Speakers:

Rick Menson (**USA**), McGuireWoods LLP; Marcel Theroux, Mercer and Shawn Hatch, Davis LLP

Workshop 16 D&O Fiduciary Liability

This workshop will address director and officer liability issues, including conflicts of duties, as they arise in the context of plan administration, amendments, and corporate restructuring. Speakers will provide an update on legislative and case law developments in pension fiduciaries' duties and liability, and will suggest best practices for managing pension plans and asset bases to minimize fiduciary liability issues. The benefits and risks of minimizing D&O liability by converting pension plans to less risky alternatives will be canvassed.

Speakers:

Brian Buggy (**IE**), Matheson Ormsby Prentice; Michael Mazzuca, Koskie Minsky LLP and Peter McLellan, Q.C. Stewart McKelvey

11:15 - 11:30

Refreshment Break – Sponsored by Hicks Morley Hamilton Stewart Storie LLP

11:30 - 12:45

Concurrent Workshops

Workshop 17 Dealing with Pension Plan Insolvencies (*simultaneous interpretation will be available*)

This session (**in French**) will be given by the Régie des rentes and will address how the Régie deals with plans where the sponsors have become insolvent, placing themselves under the *Companies' Creditors*

Arrangement Act be it for Quebec registered Plans or for plans registered out of province but with Quebec participants. Workshop participants will be encouraged to discuss their issues and problems. Topics include:

- how the Régie sees its oversight role;
- best practices;
- what the Régie can and cannot do; and
- what items can parties come to a agreement on.

Speakers:

Dominique Monet, Fasken Martineau DuMoulin LLP and Louis Robillard, Régie des Rentes

Workshop 18 Trends in Emerging Markets

The aging demographic profile in the Caribbean and other emerging markets around the world is creating healthcare and retirement income challenges for their citizens. The focus of the discussion will be on emerging trends in pension legislation and regulation in common law jurisdictions, including:

- the funded status and benefit levels under social security programs;
- a comparison of the jurisdictions that have adopted mandatory pension legislation and those that follow a voluntary pension system;
- developments in the jurisdictions in the Caribbean that do not have pension legislation; and
- movements toward consolidated regulation (insurance, pensions and banking) in the Caribbean.

Speakers:

Al Kiel, Morneau Sobeco and Cathy Smith, Government Employees Retirement System, US Virgin Islands

Workshop 19 Avoiding Litigation Pitfalls in Pension Plan Administration

This workshop will capture a snapshot of the current pension litigation landscape in Canada and the USA with a focus on the kinds of legal claims that are being brought against plan administrators, and provide guidance on litigation avoidance strategies for pension plan administrators. Claims to be discussed include:

- claims relating to alleged miscommunications about the plan;
- claims relating to breaches of the plan or trust terms, including transactions involving the plan;
- breach of fiduciary duty claims and discrimination; and
- fees litigation.

Litigation avoidance strategies to be discussed include:

- the need for close scrutiny of design changes for compliance with applicable laws;
- benefits of a centralized repository for questions about the plan terms and consistent responses, including well trained administrative staff, written policies and procedures, and a legal review of all policies and procedures;
- importance of well drafted internally consistent plan documentation that are drafted with litigation avoidance and enforceability in mind;
- positive ongoing relationships with employee and retiree groups, regular communication, and ongoing legal review of all member communication materials; and
- knowing all available defences and legal strategies, including the effect of delay on a civil action and the possibility of third party proceedings.

Speakers:

Elizabeth M. Brown, Hicks Morley Hamilton Stewart Storie LLP; Mariana Silva, Pension and Benefits Counsel, RBC Law Group and David Stamp, Osler, Hoskin & Harcourt LLP

Workshop 20 A Comparative Look at Some Pension Investment Issues

This workshop will focus on current issues in pension fund investment from the perspective of different jurisdictions – Canada, Germany, the UK and the USA – including:

- tax issues for inbound and outbound investment by pension funds;
- socially responsible investment – different approaches;
- the prudence standard in pension fund investment; and
- other current issues.

Speakers:

Andrew Harrison, Borden Ladner Gervais LLP; Edward Jewitt **(UK)**, Mayer Brown International LLP; Andrew Oringer **(USA)**, Ropes & Gray and Dr. Nicolas Rössler **(DE)**, Mayer Brown LLP

12:45 - 14:15

Lunch Address – Sponsored by Towers Watson

Speaker: William Kaplan, Arbitrator, Mediator and Author

14:15 - 15:30

Plenary No. 3 - Employee Benefits in Global Business Restructurings

Corporate restructurings, in the context of an insolvency or the regular business cycle, can have a dramatic affect on the pension and benefits plans sponsored by an organization. In recent years, we have also seen pension and benefits plans having a dramatic affect on the restructuring itself. This plenary will discuss the challenges faced by restructuring corporations where the pension and benefits plans play more than just a passing role in the restructuring. The panelists will discuss how the pension and benefits plans of a restructuring organization are dealt with in the USA, Canadian, Australian, and European context.

Speakers:

Lisa Butler Beatty **(BM)**, Appleby; Jens Mosbek **(DK)**, Kromann Reumert; Gary Nachshen, Stikeman Elliott and William Wright **(USA)**, Fisher & Phillips LLP

15:30 – 16:00

Closing Networking Event – Sponsored by Stikeman Elliott LLP

Please join us for a wine and cheese "after party." An opportunity to reflect on the conference, say au revoir to colleagues, or make dinner plans.



2010 Conference Steering Committee

Mitch Frazer, Chair – *Torys LLP* (mfrazer@torys.com)

Randy Bauslaugh, Vice-Chair – *Blake, Cassels & Graydon LLP* (randy.bauslaugh@blakes.com)

Elizabeth Brown - *Hicks Morley Hamilton Stewart Storie LLP* (emb@hicksmorley.com)

Natalie Bussiere - *Blake, Cassels & Graydon LLP* (NATALIE.BUSSIÈRE@blakes.com)

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