

Re: opinion

From: "Petsche, Nadine (TBS)" <nadine.petsche@ontario.ca>
To: "Veinot, Cindy (TBS)" <cindy.veinot@ontario.ca>
Date: Mon, 19 Sep 2016 22:17:18 -0400

Ah. Sounds like a good discussion. Do you still want to chat? N

From: Veinot, Cindy (TBS)
Sent: Monday, September 19, 2016 10:16 PM
To: Petsche, Nadine (TBS)
Subject: RE: opinion

They are going to talk to Oslers – they are just checking completeness of the list

From: Petsche, Nadine (TBS)
Sent: September-19-16 10:11 PM
To: Veinot, Cindy (TBS)
Subject: Re: opinion

Great points, but shouldn't they be addressed to council?

From: Veinot, Cindy (TBS)
Sent: Monday, September 19, 2016 10:06 PM
To: Petsche, Nadine (TBS)
Subject: FW: opinion

From: Hatzis, Len (TBS)
Sent: September-19-16 9:30 PM
To: MacIntyre, Kyle (TBS); Orencsak, Greg (TBS)
Cc: Veinot, Cindy (TBS); Kaufman, Paul (TBS); Kearney, Sean (TBS)
Subject: Re: opinion

Just for discussion: initial comments

Page 3 – para 1 of conclusions – where it is noted that the Teachers' Act provides for a framework under which an agreement may be entered into – is it possible to note that one has in fact been entered into?

- Page 4/5 – para 4 of conclusions – is it possible to emphasize this more prominently in the opinion, i.e. that the applicable legislation and plan documents provide considerations that may shape expectations? – particularly, the point in 4c regarding neither party having a unilateral right meaning that that both parties have an equal opportunity to benefit?
- Page 12 – is the discussion about the 'call right' really relevant to the discussion, given that the quantum is not expected to be reasonable?

- Is it necessary that the discussion on page 17/18 be so extensive/definitive, and is the analogy on the top of page 18 really apt? if the point here is that the FMP does not provide a specific right to utilize the surplus in a particular way that seems fair, but is there not room to argue that the FMP is in fact a legally enforceable agreement, especially in light of the intention of the parties as expressed in para 110 of the partners' agreement? In the labour relations context it is not unusual for an agreement framework to provide for certain issues between the parties to be dealt with through a mediation or arbitration process, but that does not undermine the validity of the overall agreement.

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: MacIntyre, Kyle (TBS)
Sent: Monday, September 19, 2016 9:09 PM
To: Orencsak, Greg (TBS)
Cc: Hatzis, Len (TBS); Veinot, Cindy (TBS); Kaufman, Paul (TBS); Kearney, Sean (TBS)
Subject: Re: opinion

Please use this instead, I can be the moderator

416-212-8014# Conference ID: 6935349#

On Sep 19, 2016, at 9:07 PM, Orencsak, Greg (TBS) <Greg.Orencsak@ontario.ca> wrote:

Yes - available tonight. Can we chat at 9:30 on 416 212 8011, passcode 8228801# ?

On Sep 19, 2016, at 8:46 PM, Hatzis, Len (TBS) <Len.Hatzis@ontario.ca> wrote:

Greg

Sorry - I didn't make myself clear. While I realize time is of the essence, Cindy and I still think it makes sense to have a quick call with you to confirm next steps and review key comments about the opinion. After our internal call, Cindy and I could reach out to oslers to prove additional feedback. Is that agreeable on your end?

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Orencsak, Greg (TBS)
Sent: Monday, September 19, 2016 8:32 PM
To: Hatzis, Len (TBS)
Cc: Veinot, Cindy (TBS); Petsche, Nadine (TBS); Kaufman, Paul (TBS); Kearney, Sean (TBS); MacIntyre, Kyle (TBS); Hughes, Karen (TBS)
Subject: Re: opinion

Thanks...keep us posted if Oslers is willing to refine based on feedback and add'l info.

Greg

On Sep 19, 2016, at 8:22 PM, Hatzis, Len (TBS) <Len.Hatzis@ontario.ca> wrote:

Greg

Chatting with Cindy now, we think we need a call before it goes more broadly as the opinion may not provide enough support for Deloitte and after our call, we may have an opportunity to attempt to

persuade oslers to clarify some issues etc....

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Orencsak, Greg (TBS)
Sent: Monday, September 19, 2016 8:11 PM
To: Hatzis, Len (TBS)
Cc: Veinot, Cindy (TBS); Petsche, Nadine (TBS); Kaufman, Paul (TBS); Kearney, Sean (TBS); MacIntyre, Kyle (TBS); Hughes, Karen (TBS)
Subject: Re: opinion

Thanks Len - feel free to share more broadly, time is of the essence.

I'm wondering if any of the draft's conclusions would be a surprise to us or Deloitte, based on the phone check-ins so far. If so, we should probably discuss. Otherwise, I don't think we need a call tonight.

Greg

On Sep 19, 2016, at 7:57 PM, Hatzis, Len (TBS) <Len.Hatzis@ontario.ca> wrote:

We have received the draft opinion from Osler. We are still reviewing but note the following:

- The opinion makes it clear that neither party has a legally enforceable **unilateral** right to utilize the surplus in the OTTP and the provisions in the FMP relating to utilization of surplus do not give rise to a legally enforceable right to a portion of the surplus
- The opinion does however note the past practice of 50/50 sharing, the overall legislative framework that contemplates sharing in surpluses, and the fact that the requirement for good faith bargaining
- The opinion also specifically notes that since neither party can unilaterally decide how to utilize a surplus the Sponsors have "an equal opportunity to benefit from surplus utilization"

Should we set up a call to discuss before oslers finalizes. Also, would you like me to send immediately to bigger group - ie SoC/William Bromm and Scott?

Thanks

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Hatzis, Len (TBS) <Len.Hatzis@ontario.ca>
Sent: Monday, September 19, 2016 7:23 PM
To: Veinot, Cindy (TBS); Petsche, Nadine (TBS)
Cc: Kaufman, Paul (TBS); Smook, Nick (TBS); Kearney, Sean (TBS)
Subject: Fw: opinion

Can you review - we are reviewing as we speak.
Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Rienzo, Douglas <DRienzo@osler.com>
Sent: Monday, September 19, 2016 7:06 PM
To: Hatzis, Len (TBS)
Cc: Marin, Jon; Kaufman, Paul (TBS); Steele, Jana
Subject: RE: opinion

Len:

Please find enclosed the draft opinion. Please let us know if you have any comments or questions; subject to your comments we can prepare it in final form. Please note that due to time restrictions we are still reviewing it internally, so there may be some minor changes to be made before finalizing.

Doug

<image001.gif>

Douglas Rienzo

Partner, Pensions & Benefits
Chair, Diversity Committee

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<image002.gif>

<image003.jpg>

From: Hatzis, Len (TBS) [<mailto:Len.Hatzis@ontario.ca>]
Sent: Monday, September 19, 2016 3:15 PM
To: Rienzo, Douglas <DRienzo@osler.com>
Cc: Marin, Jon <jomarin@osler.com>; Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca>; Steele, Jana <JSteele@osler.com>
Subject: opinion

Hi

Any update on delivery of draft opinion . thanks

Len Hatzis
Deputy Director
Legal Services Branch | Treasury Board Secretariat
77 Wellesley Street West, 9th Floor, Toronto ON M7A 1N3
416.327.6393

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<Draft Osler Opinion re OTTP surplus.pdf>