Conflicts.rtf

From: Steele, Jana [JSteele@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]; Kearney, Sean (TBS) [Sean.Kearney@ontario.ca]
CC: Kaufman, Paul (TBS) [Paul.Kaufman@ontario.ca]
Subject: Conflicts
Date: Wednesday, September 14, 2016 13:25:25

We have been unable to clear conflicts internally unfortunately. Our contact at OTPP is tied up in meetings for the balance of the day.
Here are names of other pension counsel:
David Vincent 416-593-6547 (David was previously with a large firm, but now runs his own pension practice)
Andrea Boctor (Stikeman Elliott) 416-869-5245
Stephanie Kalinowski (Hicks Morley) 416-864-7263
Mitch Frazer (Torys) 416-865-8220
Thanks again for thinking of us for this matter.
Best regards,
Jana

Jana Steele

416.862.6625
DIRECT
416.862.6666
FACSIMILE
jsteele@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

https://twitter.com/pensionsjana

-----Original Message-----
From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Wednesday, September 14, 2016 11:53 AM
To: Steele, Jana <JSteele@osler.com>; Kearney, Sean (TBS) <Sean.Kearney@ontario.ca>
Cc: Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca>
Subject: Re: Letter from Ms. Lysyk, Auditor General

Jana
Good to go on our end - pls proceed

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Steele, Jana
Sent: Wednesday, September 14, 2016 11:21 AM

To: Hatzis, Len (TBS); Kearney, Sean (TBS)
Cc: Kaufman, Paul (TBS)
Subject: RE: Letter from Ms. Lysyk, Auditor General

Ok - we are standing by. Jana

-----Original Message-----
From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Wednesday, September 14, 2016 11:20 AM
To: Kearney, Sean (TBS) <Sean.Kearney@ontario.ca>; Steele, Jana <JSteele@osler.com>
Cc: Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca>
Subject: Re: Letter from Ms. Lysyk, Auditor General

Sorry Jana - will be back to you momentarily on this

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Hatzis, Len (TBS)
Sent: Wednesday, September 14, 2016 11:18 AM
To: Kearney, Sean (TBS); Steele, Jana
Cc: Kaufman, Paul (TBS)
Subject: Re: Letter from Ms. Lysyk, Auditor General

Sean
Can we chat - this may have some wrinkles

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Kearney, Sean (TBS)
Sent: Wednesday, September 14, 2016 11:17 AM
To: Steele, Jana; Hatzis, Len (TBS)
Cc: Kaufman, Paul (TBS)
Subject: Re: Letter from Ms. Lysyk, Auditor General

Please do that Jana. Thanks!
S

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Steele, Jana
Sent: Wednesday, September 14, 2016 11:16 AM
To: Hatzis, Len (TBS)
Cc: Kaufman, Paul (TBS); Kearney, Sean (TBS)
Subject: RE: Letter from Ms. Lysyk, Auditor General

Thanks Len. We understand the urgency and will move quickly on the opinion.
If you are ok with us speaking with OTPP, then we will reach out to them right away and can resolve this.
Please let me know.
I can be reached at 416-862-6625 if you want to discuss.
Jana

-----Original Message-----

From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Wednesday, September 14, 2016 11:13 AM
To: Steele, Jana <JSteele@osler.com>
Cc: Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca>; Kearney, Sean (TBS) <Sean.Kearney@ontario.ca>
Subject: Re: Letter from Ms. Lysyk, Auditor General

Thanks - Can you give me timelines on this - i'm not sure we can wait as we need an opinion on this issue asap so if we need alternate counsel, we will need to move quickly on it. Also, pls send me any messages by BlackBerry as I am offsite. Thanks

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Steele, Jana
Sent: Wednesday, September 14, 2016 11:04 AM
To: Hatzis, Len (TBS)
Cc: Kaufman, Paul (TBS)
Subject: RE: Letter from Ms. Lysyk, Auditor General

Hi Len: I left you a voice message. We are trying to clear conflicts internally.
As I indicated in my voice mail, we do a lot of work for OTPP. And while this would not be a legal conflict, our conflicts committee has indicated that we would want to run our acting on this matter by them. Would that be ok?
If not, then I will provide you with some names of alternate pension counsel.
Happy to discuss.
Jana

Jana Steele

416.862.6625
DIRECT
416.862.6666
FACSIMILE
jsteele@osler.com

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Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

https://twitter.com/pensionsjana

-----Original Message-----
From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Wednesday, September 14, 2016 10:57 AM
To: Steele, Jana <JSteele@osler.com>
Cc: Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca>
Subject: Re: Letter from Ms. Lysyk, Auditor General

Hi jana
Any update on this - should we chat this morning re next steps? Thanks

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Steele, Jana
Sent: Tuesday, September 13, 2016 9:18 PM
To: Hatzis, Len (TBS)
Cc: Kaufman, Paul (TBS)
Subject: RE: Letter from Ms. Lysyk, Auditor General

Thanks very much Len and Paul. As mentioned I will run the internal conflicts check first thing in the morning and confirm that we can act on this matter.

-----Original Message-----
From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Tuesday, September 13, 2016 8:52 PM
To: Steele, Jana <JSteele@osler.com>
Cc: Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca>
Subject: Fw: Letter from Ms. Lysyk, Auditor General
Importance: High

Jana
Here is the AG's letter setting out her position.

_____

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****

Davies - Jessica Bullock.rtf

From: Steele, Jana [JSteele@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
Subject: Davies - Jessica Bullock
Date: Wednesday, September 14, 2016 17:22:47

---

https://www.dwpv.com/en/People/Jessica-Bullock

and one further thought - Jessica Bullock at Davies.
Jana

Jana Steele

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DIRECT
416.862.6666
FACSIMILE
jsteele@osler.com

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Toronto, Ontario, Canada M5X 1B8

https://twitter.com/pensionsjana

****

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****

Draft Opinion - Auditor General.rtf

From: Code, Jacqueline [JCode@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
CC: Steele, Jana [JSteele@osler.com]
Subject: Draft Opinion - Auditor General
Date: Tuesday, September 20, 2016 11:24:46
Attachment 1: image001.gif
Attachment 2: image002.gif
Attachment 3: 0997_001.pdf

Len,

Attached please find our draft opinion regarding the obligations of the Auditor General to audit the Public Accounts before they are tabled. We have provided it in draft in the event that you have questions or comments that would require it to be revised.

I'd be happy to discuss it with you at your convenience once you have had a chance to review it.

Best regards,

Jacqui

Jacqueline Code

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DIRECT

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****

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image001.pdf

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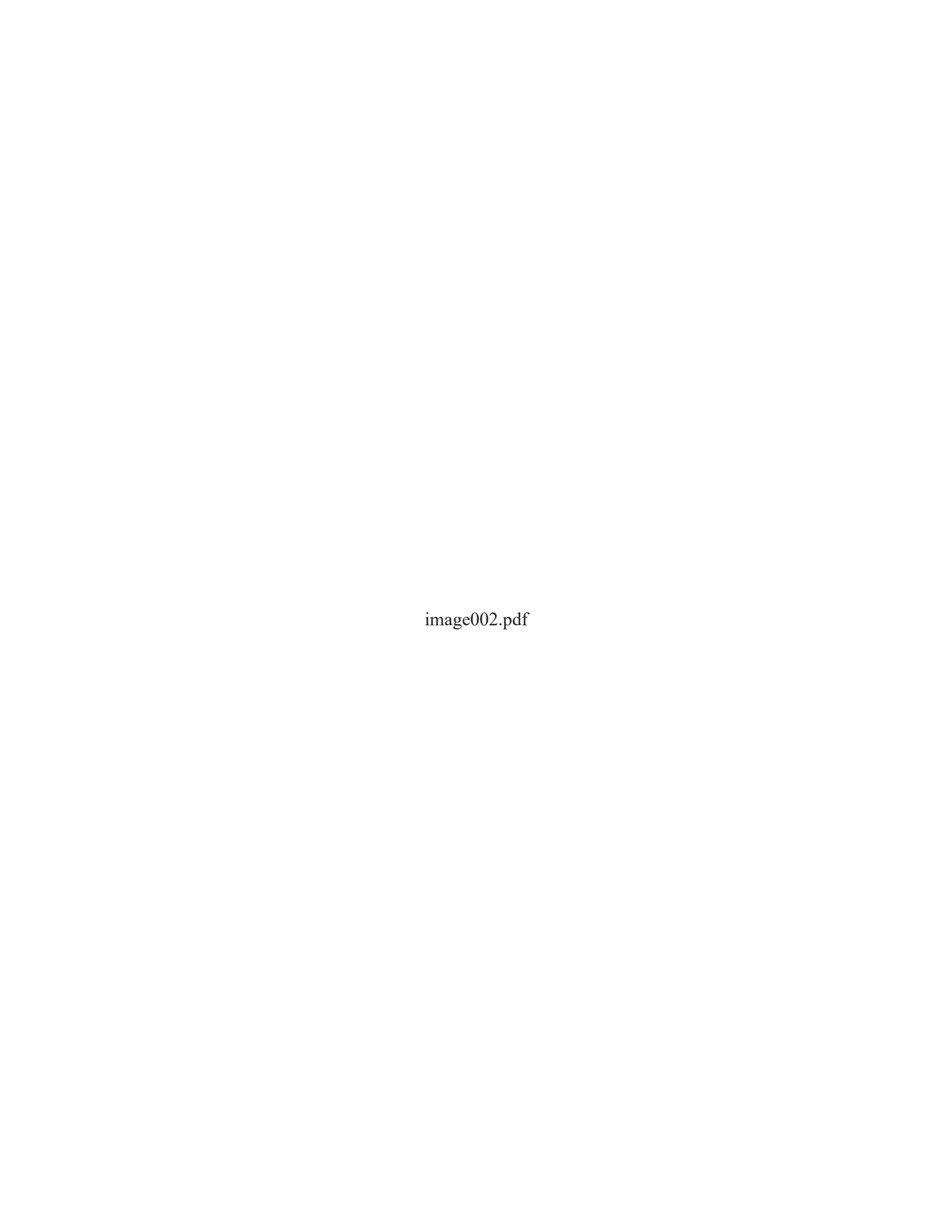
image002.pdf

osler.com

0997_001.pdf

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OSLER

Toronto
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Calgary
Ottawa
Vancouver
New York

September 20, 2016

Jacqueline Code
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jcode@osler.com

Jana Steele
Direct Dial: 416.862.6625
jsteele@osler.com

SENT BY ELECTRONIC MAIL

PRIVILEGED AND CONFIDENTIAL

Mr. Len Hatzis
Deputy Director, Treasury Board Secretariat Legal Services
Ferguson Block
77 Wellesley Street West
9th Floor
Toronto, ON M7A 1N3

Dear Sir:

Interpretation of *Auditor General Act*

You have requested our opinion regarding whether the Auditor-General of Ontario (the "Auditor General") is under a statutory obligation under the *Financial Administration Act* (Ontario) (the "FAA") and the *Auditor General Act* (Ontario) (the "AG Act") to audit the consolidated financial statements that form the basis for the public accounts of Ontario (the "Public Accounts") and to provide a report regarding this audit to the Government of Ontario (the "Government") prior to the deadline (the "Deadline") imposed under the FAA for the Government to table the Public Accounts before the Legislative Assembly (the "Assembly").

This opinion is requested in light of a statement by the Auditor-General that, due to a dispute with the Government regarding the application of accounting principles to a particular future benefit, the Auditor-General may decide not to provide the report that is required under the FAA in order to table the Public Accounts by the Deadline.

Summary of Opinion

For the reasons set out below, it is our opinion that, although the matter is not free from doubt, the better view is that both the FAA and the AG Act require the Auditor-General to conduct the audit of the consolidated financial statements and provide the report, including her audit opinion, prior to the Deadline.

Draft

The FAA and the AG Act do not impose an express obligation on the Auditor-General to conduct the audit and provide her report prior to the Deadline. In our opinion, however, the wording of the applicable legislative provisions, interpreted in light of the statutory scheme as a whole, analogous case law and past administrative practice, provide the Government with a good argument that the Auditor-General is under an implied statutory duty to conduct the audit and provide the report, including her audit opinion, before the Deadline.

Scope of Review

In providing this opinion, we have reviewed:

- The FAA;
- The AG Act;
- Legislative history, such as Committee Reports;
- Samples of the Public Accounts; and
- Applicable legal authorities (case law and texts).

In addition, we have relied upon certain information provided in conversations with representatives of Government.

The remedies or steps that the Government might take in the event that the Auditor General is not complying with her statutory duties are beyond the scope of this opinion.

Draft

Analysis

FAA Requirement to Table Public Accounts

Section 1.0.26(1) of the FAA provides that the Public Accounts for each fiscal year shall be prepared under the direction of the Minister of Finance and that the Public Accounts shall include, among other items, the consolidated financial statements of the Province for the fiscal year and the report of the Auditor General concerning his or her examination of the consolidated financial statements.[1]

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1 *Financial Administration Act*, R.S.O. 1990, c. F.12, as amended, s. 1.0.26(2)(b) and (c) [FAA].

The FAA requires the Government, except in extraordinary circumstances,[2] to submit the Public Accounts for each fiscal year to the Lieutenant Governor in Council on or before the 180th day after the end of the fiscal year (the Deadline). The Lieutenant Governor in Council is then required to lay the Public Accounts before the Assembly if the Assembly is in session or alternatively, to make them public and then lay them before the Assembly on or before the 10th day of the next session.[3]

As set out below, the terms of the FAA, the AG Act, analogous case law and past administrative practice support our opinion that the better view is that (a) the Auditor General owes an implied statutory duty under the FAA to audit the consolidated financial statements and provide her report prior to the Deadline; and (b) that the "report" that is required to be provided in accordance with the FAA must contain the Auditor General's audit opinion.

A. Obligation to Audit and Report Prior to the Deadline

i. Implied Duty under the FAA

Although section 1.0.26(1) of the FAA requires the Public Accounts to include the Auditor General's report concerning her examination of the consolidated financial statements, neither section 1.0.26(1) of the FAA nor any other provision of the FAA imposes an express obligation on the Auditor General to conduct the audit of the consolidated financial statements and provide her report prior to the Deadline. We have also found no case law interpreting section 1.0.26 of the FAA.

The applicable provision of the FAA is drafted in the passive voice ("The Public Accounts shall be prepared under the direction of the Minister of Finance… and shall include…the report of the Auditor General"). As a matter of statutory interpretation, the word "shall" is presumptively interpreted as imposing a mandatory obligation.[4]

In the absence of any other statutory obligation for the Minister of Finance to direct the preparation of the Public Accounts, it is our view that this language would likely be read as imposing a positive obligation on the Minister of Finance to direct the preparation of the Public Accounts.

Draft

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2 Upon your instructions, we have not considered whether the Auditor General's failure to provide the report required under section 1.0.26 of the FAA would constitute "extraordinary circumstances".

3 FAA, s. 1.0.26(5).

4 *Re Manitoba Language Rights*, [1985] 1 S.C.R. 721 at p. 737.

Equally, in the absence of an express statutory obligation for the Auditor General to audit the consolidated financial statements and provide her report prior to the Deadline, it is our view that section 1.0.26(1) of the FAA would likely be read as imposing an implied obligation on the Auditor General to audit the consolidated financial statements and provide the report regarding the examination of the consolidated financial statements before the Deadline. This implied obligation flows from the fact that the Public Accounts must include the Auditor General's report and the Government cannot table the Public Accounts without it,

It is our view that this implied duty arises not only from the purpose and wording of the FAA, but also by reference to the terms of the AG Act, which form part of the overall legislative scheme for ensuring that the Auditor General provides objective scrutiny of the Public Accounts.

ii. Obligations Under the AG Act

Section 9 of the AG Act imposes a statutory obligation on the Auditor General to audit, on behalf of the Assembly and in such manner as the Auditor General considers necessary, the accounts and records of the receipt and disbursement of public money forming part of the Consolidated Revenue Fund.[5] The Auditor General has further audit or audit oversight obligations in relation to an "agency of the Crown" that is not audited by another auditor,[6] Crown-controlled corporations,[7] and certain broader public sector institutions or organizations.[8]

Although section 9 of the AG Act does not specifically mention the obligation to audit the Public Accounts, we understand that the Public Accounts subsume the audited financial information of the Government (including the Consolidated Revenue Fund) and the agencies and public sector bodies set out in section 9. Section 9 is the primary section in the AG Act that imposes the duty on the Auditor General to perform the audit function for which the Auditor General is appointed. In our view, section 9 supports the position that the Auditor General is under a statutory obligation to audit the consolidated financial statements that will form the basis for the Public Accounts that must be tabled in accordance with the FAA.

Draft

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5 *Auditor General Act*, R.S.O. 1990, c. A.35, s. 9(1) [AG Act].

6 AG Act, s. 9(2). "Agency of the Crown" is defined in section 1 of the AG Act.

7 AG Act, s. 9(3).

8 AG Act, s. 9(4).

Section 9 does not impose an express obligation on the Auditor General to conduct the audit by the Deadline or to provide a report regarding this audit. However, section 79 of the *Legislation Act* provides that "...duties that are imposed on a person shall be performed, whenever the occasion requires."[9] Although we have found no case law interpreting section 79, the wording of this provision supports the conclusion that the Auditor General's audit duties under section 9 should be interpreted as being required to be performed prior to the Deadline because this is required in order for the Government to comply with its obligations under the FAA to table the Public Accounts by the Deadline.

The Auditor General is required under section 12 of the AG Act to report annually to the Speaker of the Assembly. This annual report shall be made after each fiscal year is closed and after the Public Accounts are laid before the Assembly. The deadline for such report is no later than the 31st of December in each year, unless the Public Accounts are not laid before the Assembly by that day.[10] In the annual report, the Auditor General shall express his or her opinion as to whether the consolidated financial statements of Ontario, "as reported in the Public Accounts", present fairly information in accordance with appropriate generally accepted accounting principles and the Auditor General shall set out any reservations he or she may have.[11]

The wording of section 12 of the AG Act provides further support for the position that the FAA imposes an implied obligation on the Auditor General to audit the consolidated financial statements and provide a report prior to the Deadline. The requirements under both subsections 12(1) and (3) depend on the Public Accounts having been prepared and tabled in accordance with the FAA. The Auditor General's functions under these subsections cannot be performed in a scenario in which the Public Accounts have not been tabled because the Government's obligations under the FAA – including the requirement to include the Auditor General's report in the Public Accounts – cannot be satisfied.

In our view, therefore, interpreting the FAA as imposing an implied duty on the Auditor General to audit the consolidated financial statements and provide her report prior to the Deadline is consistent with the provisions and the scheme of the AG Act. The contrary interpretation would arguably allow the Auditor General to frustrate the scheme that the Legislature has implemented under the FAA and the AG Act to provide objective scrutiny of the Public Accounts.

Draft

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9 *Legislation Act, 2006*, S.O. 2006, c. 21, Sched. F, s. 79.

10 AG Act, s. 12(1).

11 AG Act, s. 12(3).

iii. Applicable Case Law

Although we have found no case law interpreting either section 1.0.26 of the FAA or sections 9 and 12 of the AG Act, there is precedent in other cases for interpreting a statutory provision as imposing an implied duty on a statutory actor where the legislative scheme requires it. This case law, while not determinative when taken in isolation, provides general support for interpreting section 1.0.26 of the FAA as imposing an implied duty on the Auditor General to conduct her audit and provide a report before the Deadline.

For example, the Saskatchewan Court of Appeal has interpreted a statutory obligation to provide a claimant with a written decision to include an implied obligation to do so in a timely manner (i.e. sufficiently in advance of the expiry of a statutory appeal period). Such an implied obligation was held to arise from the scheme of the statute as a whole.[12] Similarly, under immigration law, an obligation by the Minister to process an application for refugee sponsorship has been held to include an implied duty to provide the necessary application to the potential immigrant.[13] Finally, child protection legislation has been interpreted to include an implied duty to investigate and present evidence to support a particular child placement.[14]

Moreover, although the Auditor General is not subject to an order of *mandamus*, it is instructive that, as a matter of administrative law, an order of *mandamus* – which compels a public official to perform a statutory duty – can be based on an implied duty.[15]

iv. Past Administrative Practice

Past administrative practice by the Auditor General, although not binding, can also be an aid to interpretation of a statutory scheme.[16] Administrative interpretation of a statute can be either express or implied.[17] The basis for accepting administrative practice as an aid to

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12 *Saskatchewan Government Insurance v. Schmidt*, 2008 SKCA 167 at para. 22.

13 *Nguyen v. Canada (Minister of Employment & Immigration)*, 1993 CarswellNat 92 (F.C.A.) at paras. 28 and 34-36.

14 *Children's Aid Society of Algoma v. R.M.*, 2001 CarswellOnt 2204 (C.J.) at paras. 63 to 65.

15 Brown & Evans, *Judicial Review of Administrative Action in Canada*, Vol. 1 (Toronto: Thomson Reuters, 2016 (looseleaf)) at para. 1:3220.

16 *Harel v. Quebec (Deputy Minister of Revenue)*, [1978] 1 S.C.R. 851 at p. 859; *Will-Kare Paving & Contracting Ltd. v. Canada* (2000), 188 D.L.R. (4th) 242 (S.C.C.) at p. 267.

17 Cote, *The Interpretation of Legislation in Canada*, 3rd Edition (Scarborough: Thomson Canada Limited, 2000) at p. 547 [Cote]; *Sullivan on the Construction of Statutes*, 6th Ed (Markham: LexisNexis, 2014) at para. 23.118 [Sullivan].

Draft

statutory interpretation is two-fold: (a) the administrator of a statute develops expertise and perspective by administering legislation on a day-to-day basis; and (b) consistent administrative interpretation creates legitimate expectations and reliance.[18]

In our view, the Auditor General would likely be viewed as the "administrator" of the scheme established by the Legislature to scrutinize Government spending. This scheme includes both the FAA and the AG Act. As such, the Auditor General's historic interpretation of the obligations imposed on her under the FAA and the AG Act would likely be given some weight in ascertaining the interpretation of the applicable provisions under both Acts.

It is our understanding that since at least 1999, the Auditor General has audited the consolidated financial statements and provided his or her report prior to the Government's deadline for tabling the Public Accounts, as that deadline was prescribed at the relevant time.

The Auditor General's website also describes the Auditor General's role in performing an "Attest Audit" of the Public Accounts. The website indicates that after the audit, the Auditor General expresses an opinion on the financial statements of the province. The opinion is then reproduced in both the Public Accounts of the province and in the Auditor General's annual report.[19] While not determinative from a legal perspective, these public statements arguably demonstrate the Auditor General's own view that she is required to conduct her audit and provide her opinion prior to the Deadline so that the opinion can be reflected in the Public Accounts.

B. Obligation to Provide Audit Opinion

We have considered whether the "report" that is required to be provided under the FAA is required to include the Auditor General's audit opinion.

Section 1.0.26(1) of the FAA provides that the Auditor General is required to provide "the report of the Auditor General concerning his or examination of the consolidated financial statements of the Province." There is no express reference in this provision to an audit opinion.

The language of the FAA can be contrasted with the wording of section 12(3) of the AG Act. Section 12(3) expressly provides that the Auditor General, in her annual report, shall "express his or her opinion" as to whether the consolidated financial statements present

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18 Sullivan, above, at para. 23.111; Cote, above, at p. 549.

19 http://www.auditor.on.ca/en/content/aboutus/whatwedo.html: "The Kinds of Audits and What is Audited".

fairly information in accordance with appropriate generally accepted accounting principles. Section 12(3) also contemplates that the Auditor General shall set out any reservations that he or she may have.

It could be argued that the explicit reference to the audit opinion in section 12(3), as contrasted with the reference to a "report" in section 1.0.26(1) of the FAA, means that the Auditor General is only required to provide her audit opinion in the annual report. Under section 12(1) of the AG Act, the annual report only has to be delivered after the Public Accounts have been tabled.

In our view, this is not the better interpretation of the FAA provisions. We have reviewed selected excerpts of the Canadian Auditing Standards (CAS), which indicate that an "auditor's report" is required to include the auditor's audit opinion.[20] Assuming that, as a matter of auditing standards, an audit necessarily entails an "auditor's report" and that an "auditor's report" is required to include the audit opinion, we believe the better view is that "report" in section 1.0.26(2) of the FAA would be interpreted to mean an auditor's report, including an audit opinion.

In our view, this interpretation is consistent with section 9 of the AG Act, which is the principal source of the obligation imposed on the Auditor General to "audit" the Public Accounts. Arguably, the Public Accounts have not been "audited" if the Auditor General has not expressed an audit opinion in respect of them.

Furthermore, the requirement to provide an audit opinion under the FAA prior to the Deadline for tabling the Public Accounts is consistent with the objectives of the FAA. If section 1.0.26(1) is interpreted as not requiring the Auditor General's report to include the audit opinion, the effect would be to require the Government to table the Public Accounts in an unaudited form. This appears contrary to the purpose for tabling the Public Accounts before the Assembly.

Finally, we understand that the Auditor General's own administrative practice – and the public statements on the Auditor General's website – indicate that the Auditor General's own view is that the audit opinion is required to be provided twice. It is required to be provided prior to the Deadline in order to include it with the Public Accounts and again in the annual report.

Draft

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[20] Canadian Auditing Standards CAS 700: Forming an opinion and reporting on financial statements, paras. 20-45.

Although not free from doubt, therefore, it is our opinion that the better view is that section 1.0.26(1) of the FAA would be interpreted as requiring the Auditor General to provide a full auditor's report, including an audit opinion, prior to the Deadline.

Yours very truly,

Osler, Hoskin & Harcourt LLP
JC/JS:

Draft

FW_ OTPP FMP questions.rtf

From: Steele, Jana [JSteele@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
CC: Marin, Jon [jomarin@osler.com]
Subject: FW: OTPP FMP questions
Date: Saturday, September 17, 2016 14:41:20
Attachment 1: image001.gif
Attachment 2: image002.png
Attachment 3: image003.png
Attachment 4: image004.png
Attachment 5: image005.png
Attachment 6: image006.png
Attachment 7: FMP history - updated September 29 by MC new format.pdf
Attachment 8: FMP Coles Notes.pdf
Attachment 9: OTPP JSPP Afreement final March 2013.pdf
Attachment 10: Report on Funding.pdf

Hi Len:

The FMP Coles notes that Barb sent are very helpful in understanding the operation of the FMP. We think it would be useful to provide these to Deloitte.

Jana

From: Barbara Zvan [mailto:Barbara_Zvan@otpp.com]
Sent: Saturday, September 17, 2016 2:16 PM
To: Steele, Jana <JSteele@osler.com>
Cc: Marin, Jon <jomarin@osler.com>; Rienzo, Douglas <DRienzo@osler.com>; Hatzis, Len (TBS) <Len.Hatzis@ontario.ca>; Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca>; Jeff Davis <Jeff_Davis@otpp.com>
Subject: RE: OTPP FMP questions

Hi all

Please find attached. BZ

FMP history – this is the document we use for board orientation

FMP Coles Notes – we created this summary in 2015 with a group from the Sponsors and their consulting actuaries and plan actuary

OTPP JSPP agreement – this was the term sheet sent to us. You can see only a small component was added to the FMP. In fact, we spent a lot of time speaking about this, how to incorporate. Given the term nature and low likelihood other benefit reductions would have to be put in place other than CIP, we only insert the small section in 3.08.

Report of Funding – this was a publication in 2002 sent to all plan members, the back page outlines the funds spent in during the "surplus" time of the late 1990s and early 2000s. You can see it was spent evenly so much so that a remaining amount of $76M (need to 2x check that, but of that order) which is relatively small amount was documented in the Partners' Agreement to be spent by the OTF at a future date. The $76M was the amount remaining after round to 0.45% for the CPP offset (vs using something with 6 decimal points). This was "spent" when contributions were later increased viaspecials, the Teachers had a slightly lower contribution rate for 1st (maybe 2) to offset for this $76M.

Barbara Zvan, FSA, FCIA, CERA
SVP, Strategy & Risk, Chief Investment Risk Officer
barbara_zvan@otpp.com
Direct 416-730-6364

Assistant: Karen Titus, 416-228-3172, karen_titus@otpp.com
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From: Steele, Jana [mailto:JSteele@osler.com]
Sent: Saturday, September 17, 2016 12:01 PM

To: Barbara Zvan <Barbara_Zvan@otpp.com>
Cc: Marin, Jon <jomarin@osler.com>; Rienzo, Douglas <DRienzo@osler.com>; Hatzis, Len (TBS) <Len.Hatzis@ontario.ca>; Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca>
Subject: Re: OTPP FMP questions

Call in details for 1 pm

416-343-4295

ID: 7801041

Sent from my iPhone

On Sep 17, 2016, at 11:57 AM, Barbara Zvan <Barbara_Zvan@otpp.com> wrote:

> Sure -. Just in the middle of taking my daughter between her activities. Can I call you around 1?
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
>
> **From:** Steele, Jana
>
> **Sent:** Saturday, September 17, 2016 11:20 AM
>
> **To:** Barbara Zvan
>
> **Cc:** Marin, Jon; Rienzo, Douglas; 'Hatzis, Len (TBS)'; Kaufman, Paul (TBS)
>
> **Subject:** OTPP FMP questions
>
> Hi Barb:
>
> We were just speaking with Jim Leech regarding the FMP. We are working with the Province of Ontario regarding the accounting issue.
>
> Would you have some time for a call today?

Best regards,

Jana Steele

****

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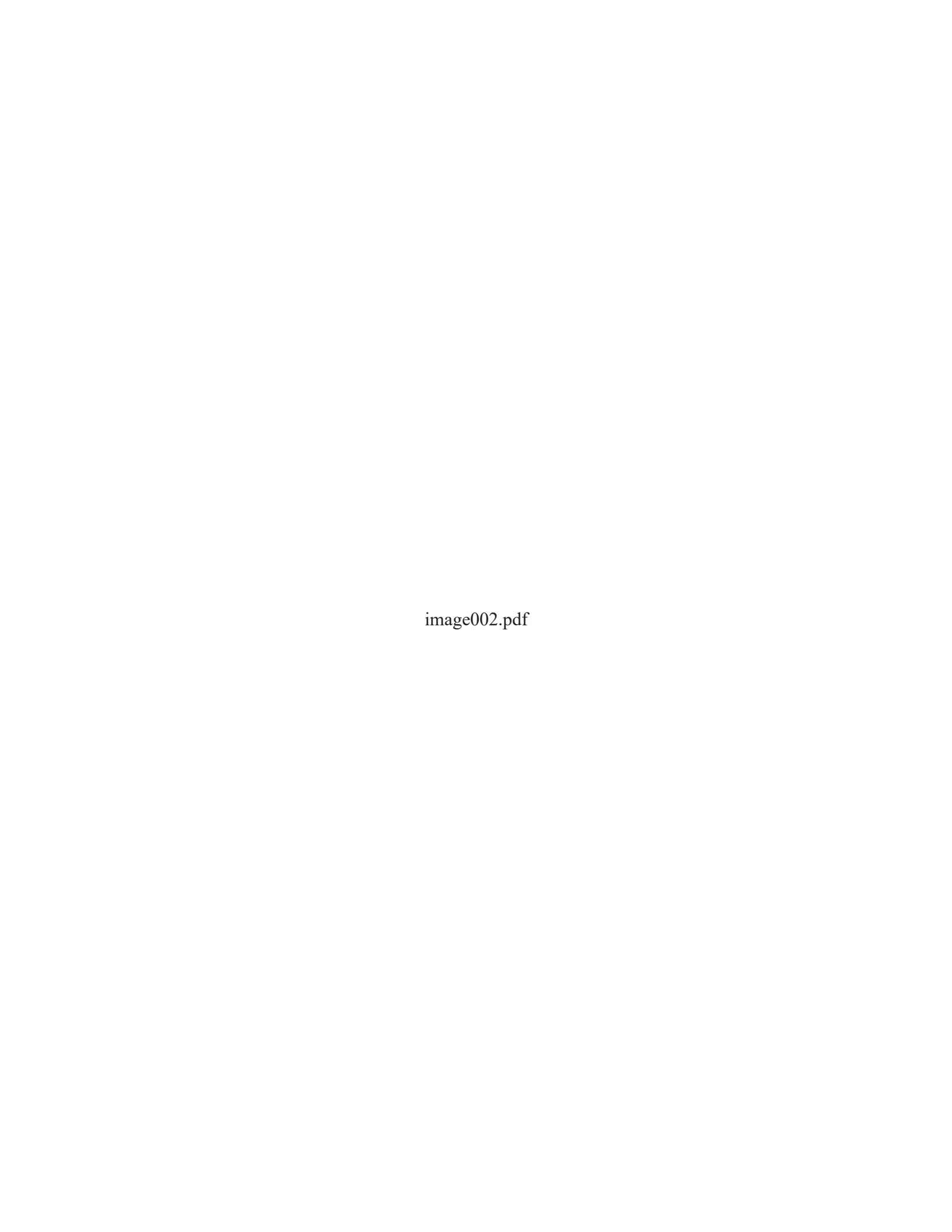
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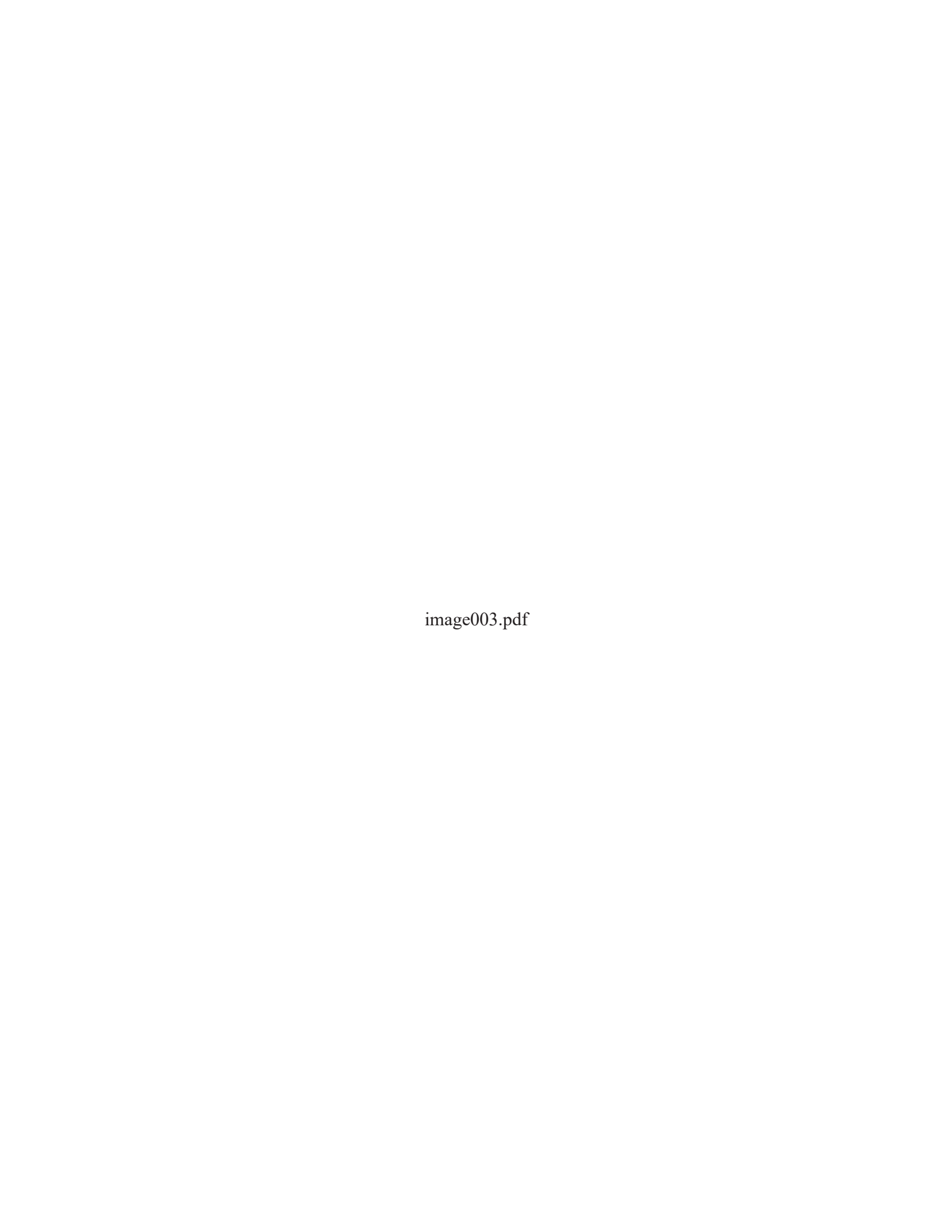
ONTARIO
TEACHERS'
PENSION PLAN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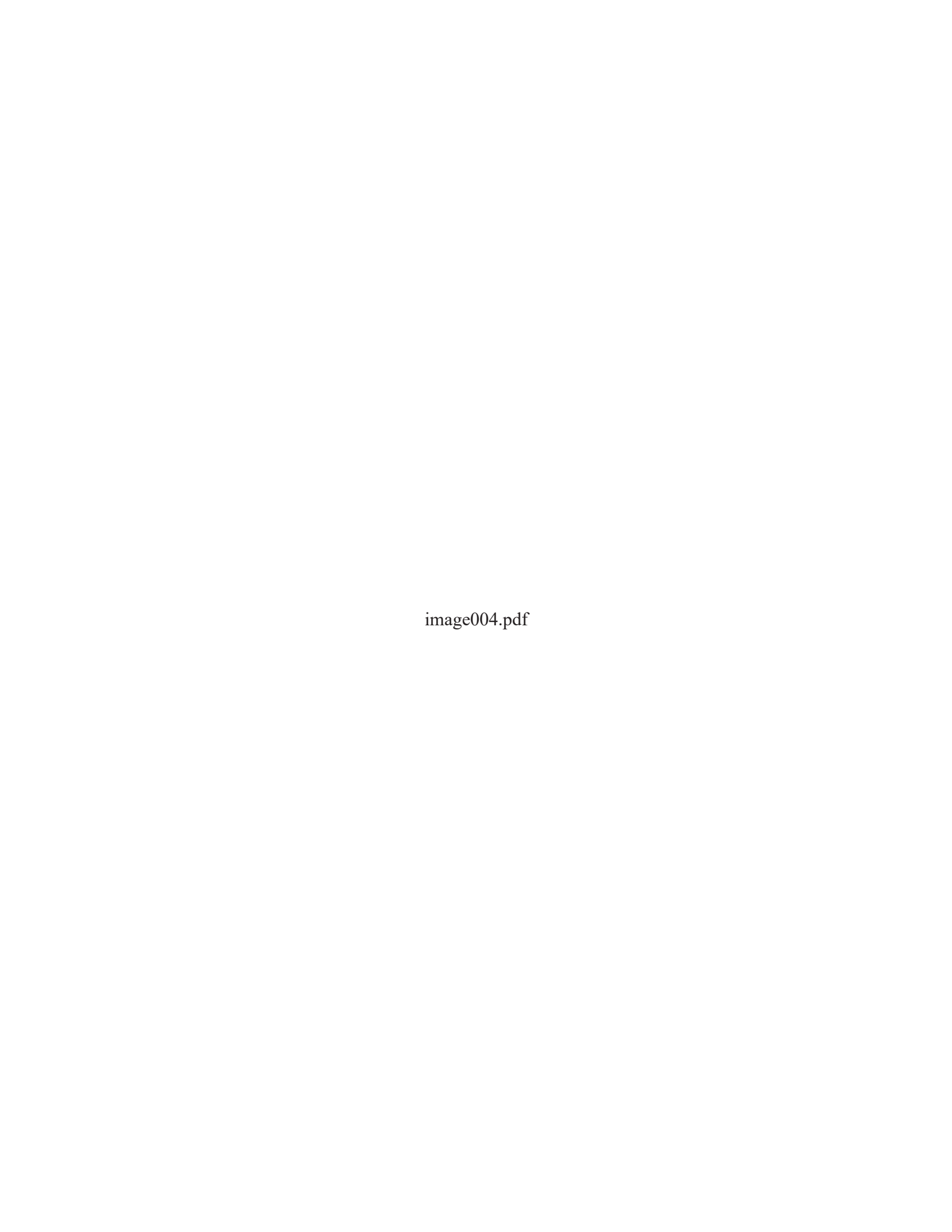
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FMP history - updated September 29 by MC new format.pdf

ONTARIO TEACHERS' PENSION PLAN

The Plan Sponsors'

Funding Management Policy

Structure and Historical Context

Strategy & Risk

HISTORICAL CONTEXT

OTPP is jointly sponsored by the Ontario government, through the Minister of Education, and the Ontario Teachers' Federation (OTF). The Sponsors are jointly-responsible for two key decisions: a) what pension benefits the Plan will provide, and b) the contribution rate needed to ensure the Plan's benefits are fully funded over the long term. In doing so, the Sponsors negotiate the use of surplus funds and, when there is a funding shortfall, both share responsibility for eliminating it.

In March 2003, the Sponsors adopted a Funding Management Policy (FMP) as a supplement to the Partners' Agreement, with the objective to provide a guidance framework for decision making when there is a funding surplus or shortfall. A key component in the creation of the FMP was the concept of 'funding zones', each defined by a range. The funding zones provide a point of reference for whether action is required by the Sponsors, and if so, guidance is provided on how to use any surplus funds or resolve any shortfall – specifically, answering the question of when is it prudent to increase or decrease benefits[1], raise or lower contribution rates, or simply conserve assets for an uncertain time. While the FMP outlines preferred mechanisms associated with its various funding zones, it is ultimately the Sponsors' responsibility to decide what actions to take.

The FMP has important implications from an investment perspective, as the decisions guided by the FMP impact our strategic asset allocation decisions through the Plan's ability to absorb risk. The OTPP Board cannot change benefits or contribution rates; however, they (along with Plan management) work closely with the Sponsors to ensure they have a strong and timely understanding of the financial position of the Plan and current economic and market realities via analytical expertise, and provide information and perspective as they deliberate on plan amendments[2].

The platform for ongoing dialogue between OTPP and the Sponsors is the Partners' Consultative Committee (established in 2008). Examples of important changes since 2003 were the inclusion of a maximum contribution rate in 2006 and the inclusion of Conditional Inflation Protection as an additional funding lever in 2008.

Before creation of the FMP, the Plan was considered "fully funded" if the ratio of assets to the cost of future pensions was 1:1, or 100%. That meant that if the Plan's funding status was below 100% when a valuation was filed, it would trigger an immediate contribution rate increase (by law) unless the Plan Sponsors decided to implement a reduction of future benefits. Conversely, when the funding status was above 100%, even by a small margin, there was opportunity to improve benefits on a permanent basis, even if the Plan's economic and market outlook did not support the added cost.

This practice had very practical pitfalls. The most obvious is that it provided false comfort that even a marginal surplus of assets over the cost of future benefits was enough cause to increase benefits. In the absence of a guidance plan, the opportunity to spend surplus was used. From 1998-2001, the Sponsors spent a total of $18.7 billion in surplus created in the late 1990s/early 2000s (~22% of the Jan 1, 2001 net liability) to eliminate special payments by the Province[3] and permanently improve pension benefits. However, the economic and funding conditions that drove the level of surpluses during this period were not sustainable, and because of how the funds were spent, what followed in the mid/late 2000s (and beyond) was a persistent and growing funding shortfall driven by pension benefits that were too expensive to be supported by our demographically maturing plan[4], in the midst of a historically challenging financial environment.

[1] The value of accrued pension benefits is protected under the Ontario Pension Benefits Act. Accordingly, the FMP contemplates changes to future benefits only.

[2] An important example of these deliberations was the introduction of Conditional Inflation Protection, which provided a systematic approach to reducing future benefits that could be restored in "good" times.

[3] To amortize the pre-1990 unfunded liability.

[4] For further detail into the demographic challenges faced by our mature plan, see *Plan Design Demographics and Investment Implications.*

CURRENT FMP STRUCTURE

Funding Zones

Under the FMP, the Plan is considered "Fully Funded" when its projected assets are within a range of the projected cost of the net liability[5] (depicted in yellow in Figure 1). The lower end of the funding range is defined as projected assets being equal to the projected cost of the net liability, employing a discount rate referred to as the "Restoration Basis". The upper end of the range is defined as projected assets equal to 110% of the projected cost of the net liability, employing a discount rate referred to as the "Distribution Basis". The Distribution Basis is a more conservative (lower) spread[6] than the Restoration Basis, and thus implies a higher projected cost for the net liability. The two bases are described further below.

When the funding position is within the fully funded range, FMP guidance is that the Plan is adequately funded to provide base benefits (including full inflation indexation) supported by the base contribution rate (average base contribution rate is 11% per Plan Sponsor). Given the volatility of market factors and the assumptions embedded in the funding valuation, no action toward benefit improvements or lower contributions is recommended. In other words, the guidance is to conserve the assets to protect against any uncertain times.

When the Plan is in a strong financial position, FMP guidance is for the Distribution Basis spread of 0.5% to be applied. Using the more conservative spread helps ensure that the Plan can afford the use of any surplus over the long term. When assets exceed the projected cost of future benefits (valued under the distribution basis) by more than 10%, the Plan is considered to be in the "Usable Surplus" zone (see blue zone in Figure 1) and the surplus can be used to lower contribution rates, permanently improve future benefits, or a combination of the two. The additional 10% threshold and lower basis are intended to create a buffer in 'good times' to cushion the Plan when economic conditions are less favourable. The higher standard for what constitutes a usable surplus aims to help the Plan avoid benefit improvements or unrealistic contribution reductions that could jeopardize the long-term health of the Plan.

In March 2015, a zone for Temporary Plan Improvements (depicted in green in Figure 1) was added to the FMP, to allow for temporary contribution decreases, surplus distribution and/or benefit improvements (so long as they do not increase the long-term cost of the Plan) when assets exceed the projected cost of future benefits when valued using the Temporary Basis. The basis for the Temporary Plan Improvements zone is the Reference Rate plus a spread of 1.25%, employing the lesser of the smoothed[7] or market value of the funding position. Temporary plan changes are implemented on a one-year lag, and are committed to for at least three years (until the next required filing). Uses of surplus in this zone are paced, amortized over a period between three and 10 years, with an annual spending limit applied to amortization terms shorter than 10 years. The zone includes a provision that temporary improvements cease if a significant market event occurs.

When the Plan has a funding shortfall[8], the Restoration Basis spread of 1.55% is applied according to the FMP (orange and red zones in Figure 1). Funding valuations that show a shortfall prepared on this basis require the Plan Sponsors to rebalance the Fund before filing with the regulators by raising contribution rates (the FMP dictates a maximum contribution rate of 14% (although formally documented as 15% of salary above YMPE), lowering future inflation indexing for service accrued after 2009, lowering other future benefits, or a combination of these options. The higher 1.55% spread helps absorb short-term market volatility, allowing the Plan to avoid the need for frequent changes to contribution or benefit levels to keep Plan assets and costs in balance.

See Appendix I for a summary of the FMP document, including the provisions associated with each defined funding zone.

[5] The projected cost of the net liability refers to the projected value of benefits already accrued plus the projected benefits to be earned by today's members less their future contributions.

[6] Spread over the Reference Rate (the rate chosen by the Board to represent Government of Canada nominal and real return bond yields).

[7] Any losses held back by smoothing are not available for temporary improvements.

[8] The cost of future benefits exceeds the Plan's net assets.

Real Discount Rate Guidance

The FMP guidance for the real discount rate assumption used in the annual funding valuation is documented as the Reference Rate plus a spread of either the Distribution (0.5%), Temporary (1.25%) or Restoration (1.55%) Basis. Which basis is used depends on the Plan's financial health. The Board has chosen its interest rate to be the 36-month average Government of Canada 30-year real-return bonds (intended to reflect the risk-free real returns being provided by the market). If the Board were to diverge from the FMP guidance in determining its interest rate, they would have a dialogue with the Partners prior to implementation.

While the FMP provides guidance, OTPP's Board is accountable for setting the real discount rate assumption. The FMP-guided rate essentially defines the starting point, upon which the Board overlays a thorough 'building block' analysis to assess future real returns less expenses and less provisions for risk, to assess whether the FMP-guided rate is acceptable for the purposes of the valuation in question, or whether it requires modification[9]. If the Board chooses to use a real discount rate above what is prescribed by the FMP (which, historically, it has) there is generally no concern from the Sponsors. However, if the Board uses a discount rate different from that outlined in the FMP and this discount rate is more conservative (that is, produces a larger deficit or a smaller surplus), the FMP becomes void in 12 months unless both Partners notify the Board otherwise.

Given the importance and impact of the real discount rate assumption in a funding valuation, the Sponsors, under certain conditions, can request an independent review by a Hearing Officer of the real discount rate proposed by the Board for a filing. This process, referred to at OTPP as the 'Discount Rate Review', can be invoked if a preliminary valuation shows a shortfall based on a real discount rate lower than 3.575%. The conditions for the review, as well as the process for selecting a Hearing Officer and timelines, are defined in the annual consultative process between OTPP and the Plan Sponsors.

Partners' Strategic Guidance Statement

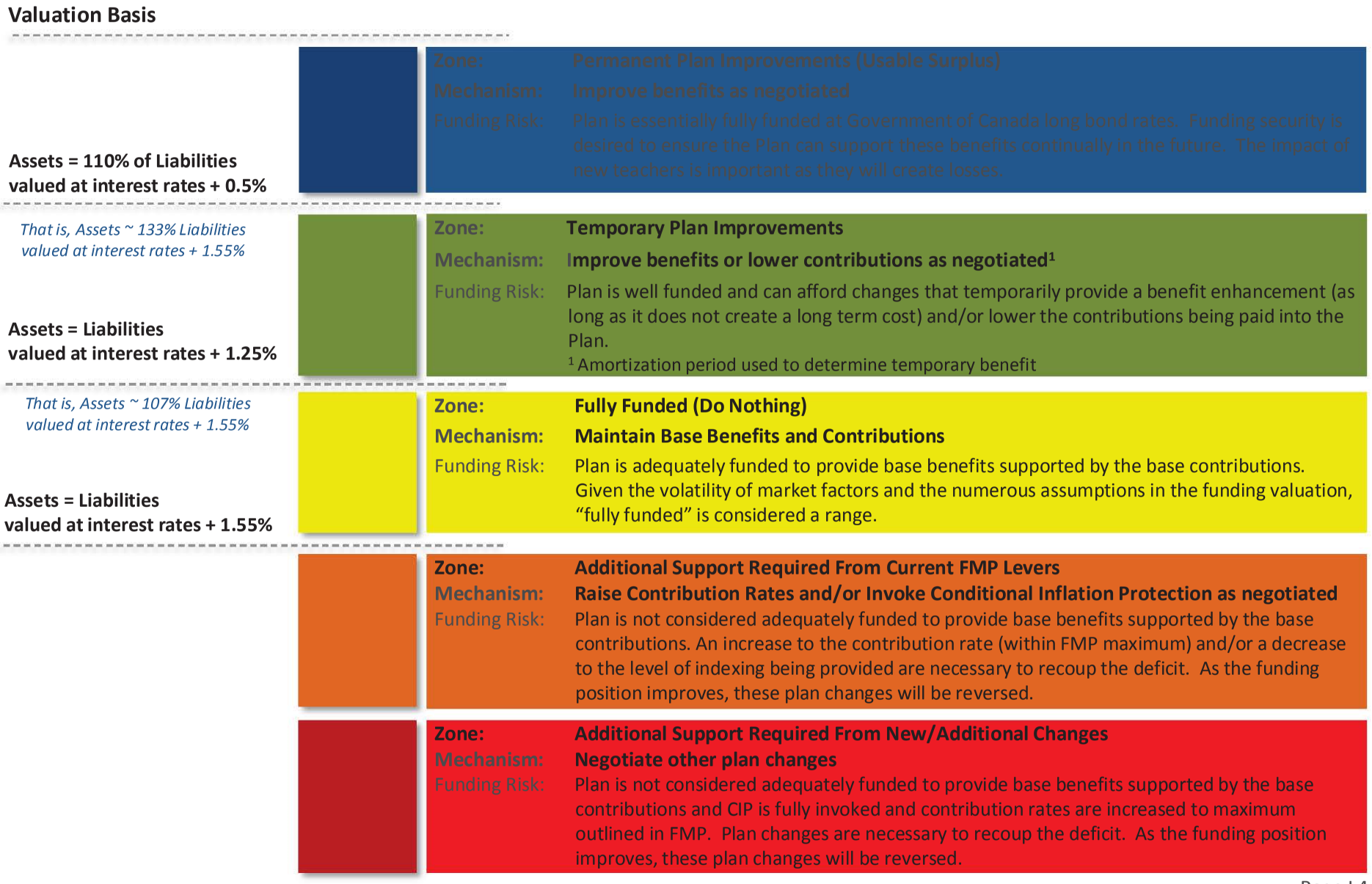
In planning its investment strategy and making other long-term arrangements, OTPP management has made a series of assumptions about the Partners' tolerance for risk, and consequently their willingness to make adjustments in CIP, contributions or other aspects of the Plan. In 2014, a tripartite Sponsor's Task Force (facilitated by Dr. Harry Arthurs) created the *Partners' Strategic Guidance Statement,* which outlines the Partners' objectives, including intergenerational equity and desired risk tolerance in terms of contribution, indexing and other benefit changes.

This document is an important resource in our working relationship with the Partners, particularly in guiding discussion on funding issues over time. The *Partners' Strategic Guidance Statement* provides a disciplined framework for discussion, particularly with respect to addressing key principles such as plan sustainability and intergenerational equity. Recognizing the continuous evolution of the Plan's characteristics over time, the statement serves as a 'living' document, where its principles reflect our current state but can also be revisited in the future. The Partners' Committee is committed to its periodic review (at a minimum of every five years) to ensure it remains relevant and reflective of the Plan, while maintaining a formal and collective understanding of the important underlying principles. See Appendix II for the *Partners' Strategic Guidance Statement* and a pictographic depiction of the tolerance levels within the Partners' Strategic Guidance Statement with respect to the current FMP levers.

[9] The review process undertaken by the Board in setting the real discount rate is discussed in detail in the document *Discount Rate for OTPP's Funding Valuation*.

FMP Coles Notes.pdf

FIGURE 1. FUNDING MANAGEMENT POLICY (FMP) FRAMEWORK DESCRIPTION



APPENDIX I. FUNDING MANAGEMENT POLICY SUMMARY

Subject	Summary of Provisions
Application (Article I):	**Section 1.01 and 1.02** ▪ Requires the Board to use Board's "best estimates assumptions," including a margin for adverse deviation in the case of the discount rate. ▪ Sets out what best estimates economic assumptions may be based on. ▪ Requires the Board to maintain indices to record inflation adjustments for post-2009 service. **Sections 1.03 and 1.04** ▪ If the Board uses a discount rate different from that outlined in the FMP and this discount rate is more conservative (that is, produces a larger deficit or a smaller surplus), the FMP becomes void in 12 months unless both Partners notify the Board otherwise. These sections serve as an "exit" provision for the Partners. **Section 1.05** sets out under what circumstances each section of the FMP applies. **Section 1.06** limits surplus distributions or contribution decreases to those permitted by law. **Section 1.07** makes temporary improvements conditional on not having a restoration basis deficit.
Definitions (Article II):	**Section 2.01** Defines key terms, including: ▪ Basic contributions (contributions as per Sch.1 on January 1, 2012), which is used throughout the FMP as the target contribution rate (10.4% on earnings up to the YMPE/12% above the YMPE). ▪ Run-rate benefits (benefits as per Sch.1 on January 1, 2009), which include 100% inflation protection and assume basic contributions. ▪ Reference Rate (rate chosen by the Board representing Government of Canada nominal and real return bonds, which may be based on market or smoothed data; has recently been 36 month smoothed nominal and real return bonds). ▪ Remaining amortization value (difference between the temporary improvement value and the commitment value). ▪ Temporary improvement value (present value of a temporary improvement amortized over 3-10 years; if amortized over fewer than 10 years, improvement for a year is limited to the amount of basic contributions paid during a year).
Restore basic contributions and benefits (Article III):	**Section 3.01** ▪ Restoration basis is used (*reference rate* + 1.55%). ▪ Defines assets (refers to PBA Regulations) and current and revised liabilities. **Section 3.02** ▪ Sets out that current and revised liabilities are calculated using the restoration basis, plus an adjustment. The phrase "plus an adjustment" is used throughout the FMP and reflects the fact that the Board often files using a basis that is higher than required under the FMP. **Section 3.03** ▪ Outlines how indexing is accounted for in the valuation (that is, level of indexing provided in current filing zone continues).
Restoration Basis: *Surplus* (Article III continued)	*Sections 3.04 to 3.08 apply when surplus exists using the restoration basis and current contributions are higher than target, partial indexing (for previous years or go forward) exists or other benefits have been reduced.* **Section 3.04** Sets conditions under which sections 3.05-3.08 apply: ▪ If Assets > Liabilities (surplus reported); and ▪ Current contributions > Basic contributions (i.e., contributions are above long-term target level); or ▪ Current Benefits < Run-Rate Benefits (i.e. contributions are above long-term target level or benefits are below the long-term target level). **Section 3.06** Sets out the order of how to restore past benefit reductions or contribution increases: ▪ Actions can consist of increasing benefits to run-rate (long-term target) including prospective restoration or lowering contributions to basic (target) or a combination. ▪ First, increase go-forward indexing to 50% for post-2013 service period, then to 100% on all post-2009 service periods. Second, restore current pension amounts to run rate level, as much as possible, starting with the years where indexing was less than 50% until all years of partial indexation are restored to the same level and then restore to 100% for all service periods. ▪ Partners reserve the right to reconsider order in the future. **Section 3.07** A number of conditions apply after a decision: ▪ Assets equal to or greater than revised liabilities (i.e. no deficit created); ▪ Inflation indexing restored to no more than if 100% of inflation was provided;

APPENDIX I. FUNDING MANAGEMENT POLICY SUMMARY

Subject	Summary of Provisions
	▪ Inflation indexing restored to no less than current level (i.e. can't lower prior inflation indexing given); ▪ The value of revised benefits needs to be between current and run-rate benefits (similarly, contributions must be between current and target). **Section 3.08** (Expires December 30, 2017) Sets out the limits from the 2013 Term Sheet (commonly known as the JSPP Agreement) with respect to escalated adjustments and benefit improvements: ▪ Escalated adjustments if assets are greater than 100% of the current liabilities (and not below 100% after). ▪ Benefit improvement or restoration if net assets available for benefits are greater than 105% of the current (unsmoothed) liabilities (and not below 105% after).
Restoration Basis: *Deficit* (Article III continued)	*Sections 3.09 to 3.14 apply when the liabilities are greater than the assets using the restoration basis; thus the Partners must raise contribution rates, lower the amount of indexing and/or decrease other benefits.* **Section 3.09** Sets conditions under which Sections 3.10 to 3.14 apply: ▪ If Current liabilities > Assets (i.e., deficit reported). **Section 3.11** Sets out that deficit can be eliminated by changing contributions or benefits provided that: ▪ Assets are equal to or greater than revised liabilities; and ▪ Revised member contributions are no more than 15% (above YMPE). **Section 3.12** The Partners can agree to change benefits or contribution level as long as: ▪ Partners have entered into a written agreement governing the manner in which contributions by the Minister and the Employers will be adjusted to offset any reduction in benefits; and ▪ No indexing granted gets taken away. **Section 3.13** Outlines the current intention that member contributions will be increased up to 15% (above YMPE) before benefits are reduced or less than full indexing is provided. **Section 3.14** Sets out the limits with respect to the 2013 Term Sheet regarding employer contribution increases.
Funding Zone: Temporary (Article IV):	**Section 4.01** ▪ Temporary basis is used (*reference rate* + 1.25%). ▪ Defines: - Assets (either market value of net assets or assets defined in PBA Regulations; that is, if smoothing creates surplus that otherwise would not exist, it cannot be spent). - Current liabilities (liabilities including the greater of current and run-rate benefits and any remaining amortization value from a previous temporary commitment). - Revised liabilities (liabilities including the greater of revised and run-rate benefits and any remaining amortization value from a previous temporary commitment). - Reference rate (ensures that smoothed data is not used to get a surplus if there otherwise would not be surplus). **Section 4.02** Sets out that the liabilities are calculated using the temporary basis, plus an adjustment. *Sections 4.03 to 4.06 apply when the plan has a surplus using the temporary basis; that is, there is surplus available for improving benefits, decreasing contributions or distributing surplus, all on a temporary basis. The surplus spend is amortized over a period of three to ten years, at the partners' choice. If amortization period is less than ten years, the annual spend limit is the amount of basic contributions for a year.* **Section 4.03** Sets out conditions under which Sections 4.04 and 4.05 apply: - If assets > liabilities; and - Current Contributions ≤ Basic Contributions (current contributions are equal to or lower than long-term target); and - Current Benefits ≥ Run-Rate Benefits (current benefits are equal to or higher than long-term target); and - Full inflation indexing has been provided. **Section 4.04**

APPENDIX I. FUNDING MANAGEMENT POLICY SUMMARY

Subject	Summary of Provisions
	The Board reports the commitment value (the amount of surplus that can be used to provide a temporary improvement). **Section 4.05** The Partners can agree to temporary improvements so long as after the change, assets over revised liabilities are equal to or greater than zero. **Section 4.06** provides a requirement for a side agreement setting out how Minister contributions may be adjusted if there is a surplus distribution or temporary improvement of benefits.
"Do Nothing" Zone (Article IV continued):	*Sections 4.07 to 4.09 apply if assets are equal to or less than current liabilities using the temporary basis; that is, if there is a deficit using the temporary basis.* **Section 4.09** States that the Partners will not provide new improvements if there is a temporary basis deficit. That is, the Partners will do nothing, and Article III (restoration basis) will apply. However, no actions result from move to restoration because contributions and indexing are already at run-rate in order to be in temporary zone. The Partners could, however, have to file a valuation (using the restoration basis) if the filing schedule required a filing.
Funding Zone: Distributions (Article V):	**Section 5.01** ▪ Distribution basis is used (*reference rate* + 0.5%). ▪ Defines: - Assets (either market value of net assets or assets defined in PBA Regulations; that is, if smoothing creates surplus that otherwise would not exist, it cannot be spent) - Liabilities (includes remaining amortization value) - Current targeted funding amount - Revised targeted funding amount - Reference rate (ensures that smoothed data is not used to get a surplus if there otherwise would not be surplus) **Section 5.02** Sets out that the liabilities are calculated using the distribution basis, plus an adjustment. *Sections 5.03 to 5.05 apply when the plan has a surplus using the distribution basis; that is, there is usable surplus for improving benefits above run-rate permanently or decreasing contributions below target level permanently.* **Section 5.03** Sets out conditions under which Sections 5.04 and 5.05 apply: - If Assets **>** 110% of Liabilities; and - Current Contributions ≤ Basic Contributions (current contributions are equal to or lower than long-term target); and - Current Benefits ≥ Run-Rate Benefits (current benefits are equal to or higher than long-term target); and - Full inflation indexing has been provided prospectively and benefits are fully restored. **Section 5.05** The Partners can agree to change benefits or contributions so long as after the change assets remain greater than 110% of the liabilities and a side agreement has been entered into to set out how Minister contributions may be adjusted if there is a surplus distribution or temporary improvement of benefits. *Sections 5.06 to 5.08 apply when the plan has a funding ratio that is at least 100% but less than 110% and valued using contribution rates at the basic or target level, full indexing provided prospectively and benefits fully restored.* **Section 5.06** Sets out the conditions under which Sections 5.07 and 5.08 apply: ▪ If Assets ≤ 110% of Liabilities; and ▪ Current Contributions ≤ Basic Contributions (current contributions are equal to or lower than long-term target); and ▪ Current Benefits ≥ Run-Rate Benefits (current benefits are equal to or higher than long-term target); and ▪ Full inflation indexing has been provided prospectively and benefits are fully restored. **Section 5.08** If the conditions in Section 5.06 are satisfied, there is not sufficient surplus to provide a permanent improvement; therefore, Article IV will apply to determine whether there is surplus using the temporary basis.

APPENDIX I. FUNDING MANAGEMENT POLICY SUMMARY

Subject	Summary of Provisions
Post-December 30, 2017 Valuations (Article VI):	*This section articulates at a high level the use of the surplus credits (earned pre-January 1, 2018) after December 30, 2017. OTF earns surplus credit for any unmatched forgone inflation (i.e., inflation indexing less than 50%) prior to January 1, 2018 or via other benefit reductions made before January 1, 2018. See the JSPP Agreement for more detail.* **Section 6.01** ▪ Restoration basis is used (*reference rate* + 1.55%). ▪ Defines: - Assets (PBA regulations) - Current Liabilities - Revised Liabilities **Section 6.02** Provides overriding provision for post-December 30, 2017: for valuations where assets are greater than current liabilities, Section 6.03 applies (with reference to the 2013 Term Sheet). **Section 6.03** Sets out the use of surplus credits: ▪ OTF has first call on surplus up to a limit; ▪ Surplus credits include foregone pension payment amounts.
Valuation frequency and filing (Article VII):	*This section reinforces an earlier section of the Partners' Agreement that specifies that it is the Partners' joint decision whether to file (other than in a required filing year).* ▪ Partners' decision when to file. ▪ Partners will notify the Board within 7 months of valuation date.
Arbitration (Article VIII):	Refers to Arbitration already in prior section of the Partners' Agreement.
Limitations (Article IX):	FMP does not apply for changes required by law or for changes that increase the liabilities by less than 0.5% or for changes that use the $76m in section 60 *(Note $76m was utilized with January 1, 2008 filing).*

OTPP JSPP Afreement final March 2013.pdf

OTPP Term Sheet – March 13, 2013

CONFIDENTIAL

This Term Sheet (the "Agreement") sets out the key terms of the agreement between the Plan Sponsors, which is effective during the "Freeze Period" (as defined below). The Government will provide a letter to the Plan Sponsors which will explain: the background of the 2012 Ontario Budget measures about jointly sponsored pension plans; the Government's plan to introduce legislation to carry out those measures, including pooling of broader public sector pension fund assets; the fact that discussions lead to this Agreement instead; and will confirm the Government Commitments which are based on those discussions and this Agreement.

A. General Principles

1. The Freeze Period runs from December 31, 2012 to December 30, 2017.

2. During the Freeze Period there will be no employer contribution increases except as provided for below. An employer contribution increase is defined as any increase in the employer contribution rate beyond the highest contribution rate provided for in the last valuation filed by the Plan prior to the Freeze Period. Employer contribution increases already scheduled to occur during the Freeze Period as a result of valuations filed with an effective valuation date before December 31, 2012 will occur.

3. During the Freeze Period, except as may be required by the Pension Benefits Act or as a result of a judicial or quasi-judicial decision that is binding upon the Sponsors or the Plan, there will be no benefit improvements unless the Plan's going concern funded status, based on the most recently filed valuation report, on a non-smoothed basis, as of the date that the benefit improvement amendments come into effect meets or exceeds 105%, and the benefit improvement will not bring the going concern funded status below 105% as of the effective date of the amendment.

4. During the Freeze Period, except as may be required by the Pension Benefits Act or as a result of a judicial or quasi-judicial decision that is binding upon the Sponsors or the Plan, there will be no restoration of benefits reduced as a result of application of these principles unless the Plan's going concern funded status, based on the most recently filed valuation report, on a non-smoothed basis, as of the date that the benefit restoration amendments come into effect meets or exceeds 105% and the restoration will not bring the going concern funded status below 105% as of the effective date of the amendment.

5. Ad hoc/conditional indexation is not considered to be a benefit improvement or restoration and Plan amendments to provide or restore ad hoc or conditional cost of living increases to pensioners can be made provided the Plan's going concern funded status on the date that the cost of living increase is agreed upon (based on the most recently prepared valuation report with a valuation date that is no more than twelve months earlier and that uses the same valuation methodology and assumptions that would apply to a filed valuation) exceeds 100% and the cost of living increase will not

bring the going concern funded status below 100% as of the effective date of the amendment.

B. Valuations and Consequential Actions During the Freeze Period

6. Should any draft valuation prepared for filing during the Freeze Period disclose a funding circumstance in which employer contribution increases would normally be implemented (i.e., a funding shortfall) the funding circumstance must be addressed within the following Parameters. Any valuation filed during the Freeze Period will conform to the General Principles above and the Parameters as follows:

a. During the Freeze Period there will be no employer contribution increases except as provided for below. A contribution increase is defined as any increase in the contribution rate beyond the highest contribution rate provided for in the last valuation filed by the Plan prior to the Freeze Period.

b. Any future benefit reductions determined to be required in order to meet the General Principles and these Parameters during the Freeze Period will not exceed twenty percent (20%) of the aggregate value of future benefits determined based on the Plan provisions in effect on December 31, 2011 ("the Benefit Reduction Limit"), which aggregate value the Sponsors agree is $42.590 billion. Benefit reductions implemented pursuant to the valuation as at January 1, 2012 shall be taken into account for purposes of achieving the 20% Benefit Reduction Limit. For clarity, twenty percent (20%) is measured on an cumulative basis in the Freeze Period.

c. In respect of the benefit reductions provided for under the January 1, 2012 valuation, the Sponsors agree that the reduction in the aggregate value of future benefits is $4.094 billion (9.6%). This reduction in the aggregate value of future benefits was calculated to include:

(i) the reduction in the funding shortfall from the impact of the decrease in the present value of future benefits and contributions stemming from the increase in the discount rate which resulted from the Plan amendment to remove and replace the remaining 50% guaranteed indexing with full conditional inflation protection ("CIP") for post-2013 service;

(ii) the reduction in present value of benefits from invoking an additional 10% of CIP (inflation protection from 60% to 50%) for post-2009 service effective January 1, 2014 along with the associated increase in the present value of the "share the pain payments" (matching contributions made by the Government/employers) plus the reduction in present value of benefits from invoking a further 5% of CIP (inflation protection from 50% to 45%) for post-2013 service effective January 1, 2015.

Appendix A attached hereto provides further details regarding this benefit reduction calculation.

d. Any future benefit reductions under a post-January 1, 2012 valuation, if necessary, will be implemented with an effective date that is no later than the earlier of:

i. two years following the valuation date of the filed actuarial valuation, or

ii. December 30, 2017.

e. In no case will future benefit reductions implemented as a result of the General Principles and/or Parameters affect or reduce pension benefits or ancillary benefits accrued prior to the implementation date of the benefit reduction(s). Ancillary benefits will be considered to have accrued, if, as of the implementation date of the benefit reduction, the person will have met all of the eligibility requirements to exercise the right to receive the ancillary benefits.

f. Sponsors' agreement on future benefit reductions would be effected by a Plan amendment to be prepared and filed within 60 days of agreement or outcome of the dispute resolution process.

g. Once the Benefit Reduction Limit has been reached (i.e., if the second or subsequent valuation(s) filed during the Freeze Period reduce benefits by $4.424 billion (10.4%)), the Sponsors will return to their usual process and make use of their usual tools (e.g., employer and member contribution rate increases and/or benefit reductions beyond the benefit reduction limit) to determine the steps necessary to avoid:

i. any remaining shortfall identified in the draft valuation; or

ii. a future new funding shortfall identified in a subsequent draft valuation during the Freeze Period.

After 2013, any valuation filed during the Freeze Period must be filed on or before September 30 of the year of filing.

C. Dispute Resolution

7. Any dispute with respect to the interpretation or application of this Agreement may be referred by either Sponsor to final and binding arbitration. Either of the parties may notify the other in writing of its desire to submit a difference or dispute to arbitration and the notice shall contain the names of the first party's appointment to an Arbitration Board. The recipient of the notice shall within five (5) days inform the other party of the name of its appointee to the Arbitration Board. The two (2) appointees so selected shall, within five (5) days of the appointment of the second of them, appoint a third person who shall be the Chairperson. If the recipient of a notice fails to appoint an appointee, or the two appointees fail to agree upon a Chairperson within the time limit, either party may request that the appointment shall be made by the Chief Justice for Ontario.

8. In the event that a dispute arises with respect to the interpretation or application of paragraph 6 in particular, all steps to appoint an Arbitration Board as set out in paragraph 7 will be taken on or before 60 days before September 30. The decision of the Arbitration Board shall be issued at least 20 days before September 30.

9. In the event that a dispute arises with respect to the interpretation or application of paragraph 6, in particular, including whether the Benefit Reduction Limit has been reached, the Arbitration Board's mandate will be restricted to determining the means by which the obligations in this Agreement will be carried out and will be subject to the same restrictions applicable to the Sponsors regarding the available options and for greater certainty will exclude an increase in employer contributions during the Freeze Period. The Sponsors, utilizing their usual processes may increase employer contributions once the Benefit Reduction Limit is reached.

D. End of the Freeze Period

10. At the end of the Freeze Period, this Agreement expires and any obligations to conform to this Agreement, and any measures taken in accordance with it, end with the exception of the provisions in paragraph 11.

11. After the end of the Freeze Period, if the Plan's going concern funded status (based on the most recently filed valuation report with a valuation date after December 30, 2017) exceeds 100%, the union/federation sponsors have "first call" on 100% of the surplus disclosed under a valuation report with a valuation date after December 30, 2017, up to a cumulative total of the value of either: the benefit reductions that are made during the Freeze Period; or the Benefit Reduction Limit, whichever is lower. The "first call" on surplus (to take the form of "surplus credits") would be subject to the following conditions:

(a) Surplus credits would only take into account the value of benefit reductions made during the Freeze Period, including the value of benefit reductions made in the January 1, 2012 valuation, but excluding: (i) the value of benefit reductions for which matching contributions are made by the Government/employer ("share the pain payments"), and (ii) the value of benefit reductions relating to the removal and replacement of the remaining 50% guaranteed indexing with full CIP for post-2013 service and the resulting change to the discount rate (as described in paragraph 6(c)(i) above).

(b) Subject to (c) below, the surplus credits could be used as the union/federation sponsors wish (i.e., credits would not be required to be used to restore the same benefits that were reduced during the Freeze Period).

(c) The union/federation sponsors are permitted to spend the surplus credits so long as the going concern funded status of the Plan does not fall below 100% after the surplus credits are spent.

(d) This is a one-time arrangement intended to compensate Plan members for absorbing 100% (rather than 50%) of funding shortfalls arising in the government initiated Freeze Period and is without prejudice or precedent for any future situation.

(e) If inflation protection is invoked below 50% during the Freeze Period, subject to paragraph 11(a), surplus credits will include an amount equal to the actual foregone pension payments during and after the Freeze Period that arise from the reduction in indexing invoked during the Freeze Period until such time as that inflation protection is restored at 50% or more during or after the Freeze Period.

Appendix B attached hereto provides further details regarding the surplus credit calculation.

E. Other Matters

12. The Sponsors will ensure that the cooperation of the Administrator is secured in relation to all aspects of this Agreement, including but not limited to the preparation of the draft valuation, the filed valuation, and applying for any necessary extension of the timelines for filing actuarial valuations and/or Plan amendments as may be necessary to give effect to this Agreement.

13. In order for the terms of this agreement to be effective, the Ontario Government will, subject to Cabinet approval, on or before May 1, 2013, amend Regulation 909 under the Pension Benefits Act to allow for a single four-year valuation cycle for a valuation filing that would otherwise be required to be made during the Freeze Period subject to the following conditions:

a. at least one valuation is filed during the Freeze Period;

b. there are no more than four years between the valuation dates of filed valuations; and

c. any benefit reductions arising from valuations filed during the Freeze Period are implemented in accordance with the General Principles and Parameters herein.

Failing amendment of the said Regulation, this Agreement is of no force or effect.

14. The terms of this Agreement supersede all other agreements (written and oral) between the Sponsors, including the Partners' Agreement. The Sponsors shall amend the Plan, the Partners Agreement or any other documents as necessary to give effect to this Agreement.

15. This Agreement may be executed in one or more counterparts and delivered by facsimile or other means of electronic transmission, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement.

Liz Sandals - Minister of Education

Date:

Terry Hamilton – President,
Ontario Teachers' Federation

March 13, 2013
Date:

15. This Agreement may be executed in one or more counterparts and delivered by facsimile or other means of electronic transmission, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement.

Liz Sandals - Minister of Education

Date: Mar 14/13

Terry Hamilton – President,
Ontario Teachers' Federation

Date:

Appendix A to Term Sheet Between Government and OTF

As of January 1, 2012 (all amounts in millions)

Calculation of Benefit Reduction Limit

Present Value of Future Benefits Based on Plan Provisions as of December 31, 2011 But Including Legislated Vesting Change		$ 48,899
Less:	Reduction in Present Value of Future Benefits to Reflect Indexation for Post-2009 Service at 60% of CPI	6,309
Equals:	Present Value of Future Benefits For Purposes of Calculating Benefit Reduction Limit	$ 42,590

Benefit Reduction Limit = 20% x $42,590 = $8,518

Calculation of Portion of Benefit Reduction Limit Utilized By Changes to Plan Incorporated into January 1, 2012 Actuarial Valuation

Increase in Reduction of Present Value of Future Benefits From Change in Indexation From 60% to 50% of CPI for Post-2009 Service	$1,367
Plus	
Increase in Government Matching Contributions From Change in Indexation From 60% to 50% of CPI for Post-2009 Service	1,367
Plus	
Reduction in Present Value of Future Benefits Resulting From Change in Discount Rate Associated With Plan Changes (15.0 basis points)	1,390
Plus	
Reduction in Present Value of Future Contributions Resulting From Change in Discount Rate Associated With Plan Changes (15.0 basis points)	(497)
Plus	
Increase in Reduction of Present Value of Future Benefits From Change in Indexation From 50% to 45% of CPI for Post-2013 Service	467
Equals	
Portion of Benefit Reduction Limit Utilized	
$ Amount	$ 4,094
% Amount from 20%	9.6%

Remaining Benefit Reduction Limit for Plan Changes in Freeze Period

Benefit Reduction Limit		$ 8,518
Less:	Portion of Benefit Reduction Limit Utilized By Changes to Plan Incorporated into January 1, 2012 Actuarial Valuation	4,094
Equals:	Remaining Benefit Reduction Limit For Plan Changes in Freeze Period	$ 4,424
	% Amount from 20%	10.4%

Appendix B to Term Sheet Between Government and OTF

The following are examples only. For purposes of paragraph 11(e) of the Term Sheet, the actual foregone indexing below 50% will be determined by the Plan Administrator based on the actual pension payments affected.

Subject to the above paragraph, the following example shows how the foregone pension payments in respect of which surplus credits are to be awarded (paragraph 11(e)) would be calculated in connection with invoking CIP below 50%. The example is based on:

- Inflation rate of 2.00% per year
- Retirements as of July 1st of each year
- New pensioner payments each year under the additional 50% CIP provisions for post-2013 service of $3 million times number of years of service from January 1, 2014 to mid-year retirement date
- 10-year period with no mortality reflected
- Indexation at 45% of CPI for the entire period

Calendar Year	Pension Payments With 50% of CPI (000's)	Pension Payments With 45% of CPI (000's)	Foregone Pension Payments (000's)
2014	$ 1,500	$ 1,500	$ 0
2015	$ 7,515	$ 7,514	1
2016	$ 19,592	$ 19,582	10
2017	$ 37,786	$ 37,759	27
2018	$ 62,164	$ 62,099	65
2019	$ 92,786	$ 92,658	128
2020	$ 129,714	$ 129,492	222
2021	$ 173,011	$ 172,658	353
2022	$ 222,741	$ 222,212	529
2023	$ 278,968	$ 278,212	756
			$ 2,091

The following example modifies the above example to show the impact of moving from 45% of CPI to 0% of CPI (for post-2013 service) effective January 1, 2017:

Calendar Year	Pension Payments With 50% of CPI (000's)	Pension Payments With 45% of CPI / 0% of CPI (000's)	Foregone Pension Payments (000's)
2014	$ 1,500	$ 1,500	$ 0
2015	$ 7,515	$ 7,514	1
2016	$ 19,592	$ 19,582	10
2017	$ 37,786	$ 37,582	204
2018	$ 62,164	$ 61,582	582
2019	$ 92,786	$ 91,582	1,204
2020	$ 129,714	$ 127,582	2,132
2021	$ 173,011	$ 169,582	3,429
2022	$ 222,741	$ 217,582	5,159
2023	$ 278,968	$ 271,582	7,386
			$ 20,107

Report on Funding.pdf

Teachers' Pension Plan Board

Ontario

REPORT ON FUNDING

April 2002

This is a report on the financial health of the Teachers' pension plan and on the progress of the development of a funding management policy.

The responsibility to ensure a defined benefit pension plan is fully funded lies with the sponsor of the plan, usually the employer. In the case of the Teachers' pension plan, however, there are two sponsors: the Ontario government and the Ontario Teachers' Federation, representing the plan members.

The co-sponsors negotiate the use of surplus and, when there is a deficiency, they both make additional contributions to ensure the plan is fully funded within a specified time period.

To assess the financial health of the plan, we hire an independent actuary to conduct a valuation at least once every three years. This valuation determines if the plan has a funding surplus or deficit.

Funding Valuation Results

On January 1, 2002, the Teachers' pension plan had a funding surplus of $1.9 billion, including a $3-billion smoothing adjustment. Without smoothing, the plan had a $1.1-billion deficit.

($ billions) (at January 1)	02	01	00	99	98	96	93**
Net assets	**$ 69.5**	73.1	68.3	59.1	54.5	40.1	29.4
Smoothing	**3.0**	(4.3)	(7.3)	(5.1)	(6.0)	(1.8)	---
Value of assets	**72.5**	68.8	61.0	54.0	48.5	38.3	29.4
Future contributions	**13.7**	14.4	13.4	12.0	12.6	14.5	14.3
Special payments*	---	---	---	3.7	8.5	8.4	8.4
Actuarial assets	**86.2**	83.2	74.4	69.7	69.6	61.2	52.1
Future accrued benefits	**84.3**	76.4	69.8	66.2	62.8	60.5	50.6
Surplus (deficit)	**$ 1.9**	6.8	4.6	3.5	6.8	0.7	1.5

* Payments committed by the government toward the pre-1990 unfunded liability

** Valuation dates determined by co-sponsors

Assumptions

Valuations use many estimates, or assumptions. Among them are: how long will a teacher teach? What will inflation be in the future? What salary increases are teachers likely to receive? How long will the average teacher live?

These assumptions are used to estimate the value of the future benefits owed to teachers. In addition, an assumption of the long-term rate of return is used to determine if today's assets plus future contributions will be sufficient to pay promised pensions.

Valuation Assumptions

(percent)	2002	2001
Discount rate	6.30	6.25
Salary escalation rate	2.90	3.20
Inflation rate	1.90	2.20

The discount rate is the long-term market rate of return used to determine the present value of all future pension benefits and assets.

The assumptions are intended to be accurate over a long horizon. While actual experience mirrors some assumptions closely, annual equity returns fluctuate greatly compared to our assumption (6% plus inflation).

It would be impractical to adjust contribution rates frequently because of investment swings. So, to reduce short-term fluctuations in the funding surplus, equity returns compared to our long-term assumptions are 'smoothed.'

WHAT'S INSIDE...

- Understanding Smoothing pg 2
- Funding Management Policy pg 2
- Use of Surplus pg 4

Questions? www.otpp.com or 1-800-668-0105

Understanding Smoothing

Gains and losses from equities are smoothed over five years, a practice accepted by the actuarial profession and pension regulators.

Smoothing defers gains when actual equity returns exceed the 6% plus inflation assumption. On the other hand, when returns are below the assumption, smoothing defers losses (as is the case this year). This practice is simply used to soften the impact of annual volatility in equity markets.

How Smoothing is Calculated

($ billions)

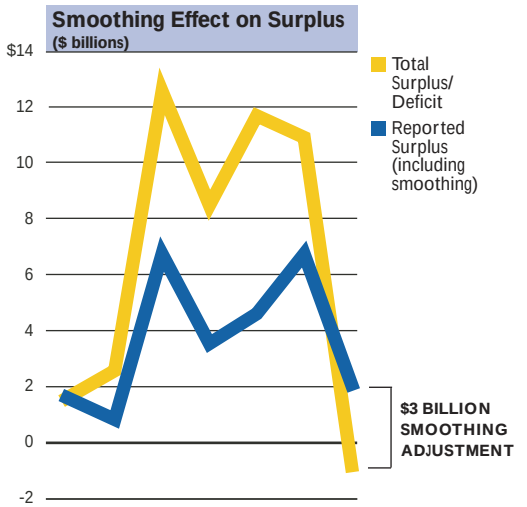
Year	Gain/ (loss)	to be recognized in 2006	2005	2004	2003	Held back in 2002
1997	$3.5					
1998	$1.3				0.3	**0.3**
1999	$6.7			1.34	1.34	**2.7**
2000	($1.2)		(0.24)	(0.24)	(0.24)	**(0.7)**
2001	($6.6)	(1.32)	(1.32)	(1.32)	(1.32)	**(5.3)**
Smoothing						**(3.0)**

Each year, we recognize 20% of equity gains or losses. Smoothing consists of the remaining portions that will be recognized in the future. For the last two years, equity returns have fallen short of our assumption, causing losses held back by smoothing.

At its peak, smoothing held $7.3 billion in reserve. In 2002, smoothing increased actuarial assets by $3 billion to show a $1.9 billion surplus, instead of a $1.1 billion deficit.

However, smoothing is only capable of absorbing short-term fluctuations in returns and will not sustain a funding surplus in a long period of poor market performance.

The funding surplus is the more important number for plan members. It is used to determine benefit improvements or changes to the contribution rate.



Without the $3-billion smoothing adjustment, the plan would have had a funding deficiency of $1.1-billion this year. We are concerned about the downward trend.

Comparing Valuations

We also report a financial valuation in our annual report. The two surpluses are different because the funding surplus includes two projections: future contributions and future benefits for all current teachers.

Comparing the valuations shows a $5.1-billion difference. In other words, there is a $5.1-billion cost to provide future benefits for plan members that are not funded by the current contribution rate. We expect this gap to grow as new teachers enter the plan.

($ billions)	Financial (at Dec. 31/01)	Funding (at Jan. 1/02)
Net assets	$ 69.5	$ 69.5
Smoothing adjustment	3.0	3.0
Future contributions	---	13.7
Actuarial assets	72.5	86.2
Accrued benefits	65.5	65.5
Future benefits	---	18.8
Surplus	**$ 7.0**	**$ 1.9**

The Role of a Funding Management Policy

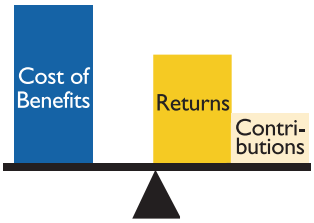
Within certain legislated limits, the co-sponsors negotiate benefit and contribution levels. For 2002, the co-sponsors have decided not to make any changes to contributions or benefits and to concentrate on developing the funding management policy. The pension board fully supports their decision and efforts.

In light of our outlook for equity markets, new benefit costs present a challenge to us and a cautionary note to plan members and the co-sponsors. Over the next decade, we expect modest real rates of return from stock and bond markets compared with the past 10 years.

Despite what the 1990s suggested, 2000 and 2001 have proven that markets are not one-way streets. In fact, historically they have only produced returns equal to the plan's 4.5% long-term funding requirement about 60% of the time.

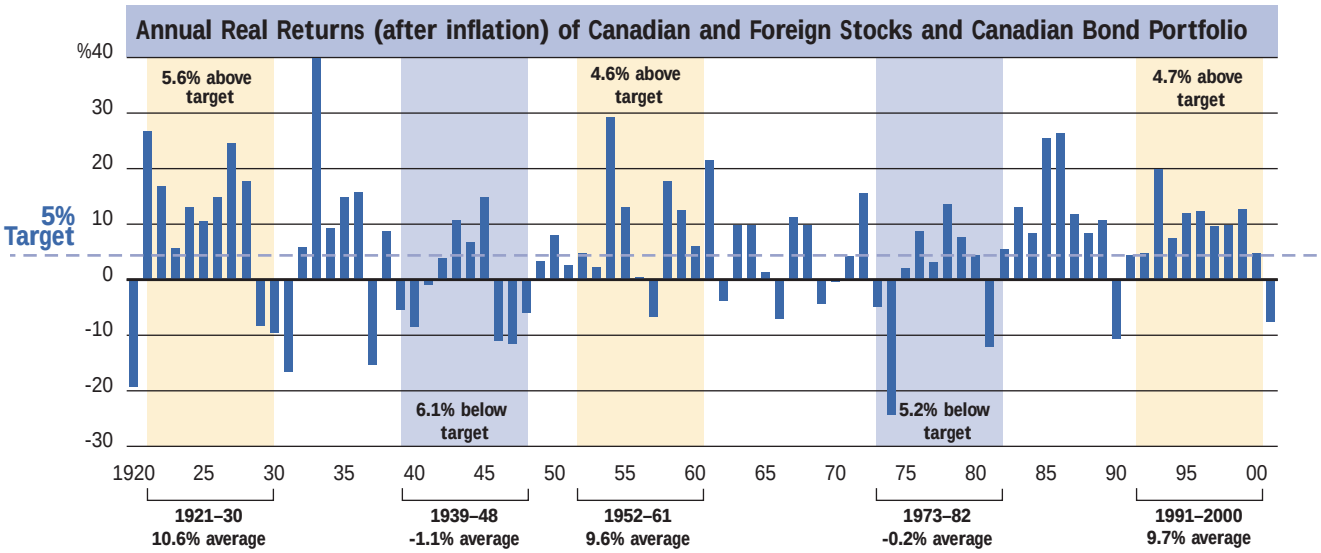
To sustain improved benefit levels for young and future teachers, without the need for contribution increases, we will need to generate a minimum real rate of return of 5% over the long term. That may be very difficult over the next decade.

Over the long term, benefits must balance with contributions plus investment returns or there will be a deficit. If the fund has a deficit when the funding valuation is filed, the law will automatically trigger a contribution rate increase. The only alternative for the co-sponsors would be to reduce future benefits.



The objective of a funding management policy is to provide a framework for improved long-term governance of the fund by determining when it is prudent to increase benefits, change contributions, or conserve assets. This policy will guide the co-sponsors in making these complex decisions, and help address the risks of poor market performance borne by both working teachers and the government. It is also important from an investment perspective, as it will change the risk profile of the fund and affect the pension board's investment policies.

Teachers have told us in focus groups that they would prefer contribution rates to remain stable. A funding management policy will help to ensure this occurs. Development of a workable policy will put the plan's co-sponsors at the forefront of exercising solid pension plan governance that balances the interests of all plan members – working or retired teachers – and the government.



This graph shows how a hypothetical portfolio, based on a similar asset mix as our own, would have performed over the last 80 years. One of the best decades in history was the 1990s. The portfolio includes two-thirds stocks (28% Canadian, 17% U.S., 22% foreign), and one-third Canadian bonds. The plan will need to earn a minimum of 5% over the long term to fund benefits at current levels.

Use of Surplus

In 1990, the plan had a $7.8 billion unfunded liability. The Ontario government agreed to pay the initial unfunded liability through a series of special payments over 40 years.

The pension plan has enjoyed a series of funding surpluses, primarily due to above-average investment growth brought on by strong equity markets throughout the 1990s and lower than expected increases in wages and inflation.

Since 1993, $18.6 billion in surplus was used by co-sponsors to improve benefits and eliminate special payments.

Valuation date	Surplus/ (Deficit)	OTF	Ontario government	Surplus remaining
1990	($7.8) unfunded liability	Increased contributions by 1% to 8.9%	Agreed to make a series of special payments to eliminate the unfunded liability and match increased contributions	Special payments considered an asset bringing the plan to a $0 surplus
1993	$1.5	$325 million to offset social contract days	Eliminated special payments for $1.2 billion saving	$0
1996	$0.7	$0.6 for benefit improvements and RCA contributions[2]		$0.1
1998[3]	$6.8	$2.2 for benefit improvements[4]	$4.6 to reduce the value of remaining special payments	$0
1999	$3.5		$3.5 to reduce the value of remaining special payments[5]	$0
2001	$6.8	$6.2 for benefit improvements[6]		$0.6
2002	$1.9	Co-sponsors agreed not to make any changes to benefits or contributions		$1.9
Total		$9.3 billion	$9.3 billion	

[1] Savings offset cuts that would have been made in the education sector as part of the government's overall cost-cutting program.

[2] Benefit improvements: reduced early retirement penalty to 2.5% from 5% for each point short of 90 factor, making it easier to retire early; lower CPP reduction after age 65 (to 6.8% from 0.7%).

[3] In 1998, the co-sponsors agreed future surplus would first be used to eliminate the remaining special payments, and the next $6.2 billion would be available exclusively to the OTF.

[4] Benefit improvements: 85-factor window from 1998 to 2002; lower CPP reduction after age 65 (to 0.6%)

[5] The government paid off its remaining special payments by the end of 1999.

[6] Benefit improvements: permanent 85 factor; 10-year pension guarantee; reduced pension as early as age 50; lower CPP reduction (to 0.45%); 5-year average YMPE to calculate CPP reduction; pension recalculation based on approximate best-5 salary for older pensioners; and top-up waived for LTIP contributions.

Final Opinion.rtf

From: Code, Jacqueline [JCode@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
CC: Steele, Jana [JSteele@osler.com]
Subject: Final Opinion
Date: Tuesday, September 20, 2016 12:47:07
Attachment 1: image001.gif
Attachment 2: image002.gif
Attachment 3: 1001_001.pdf

Len,

Attached is the final opinion in electronic form. I've incorporated the minor changes we discussed.

Let me know if you need anything further.

Regards,

Jacqui

Jacqueline Code

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DIRECT

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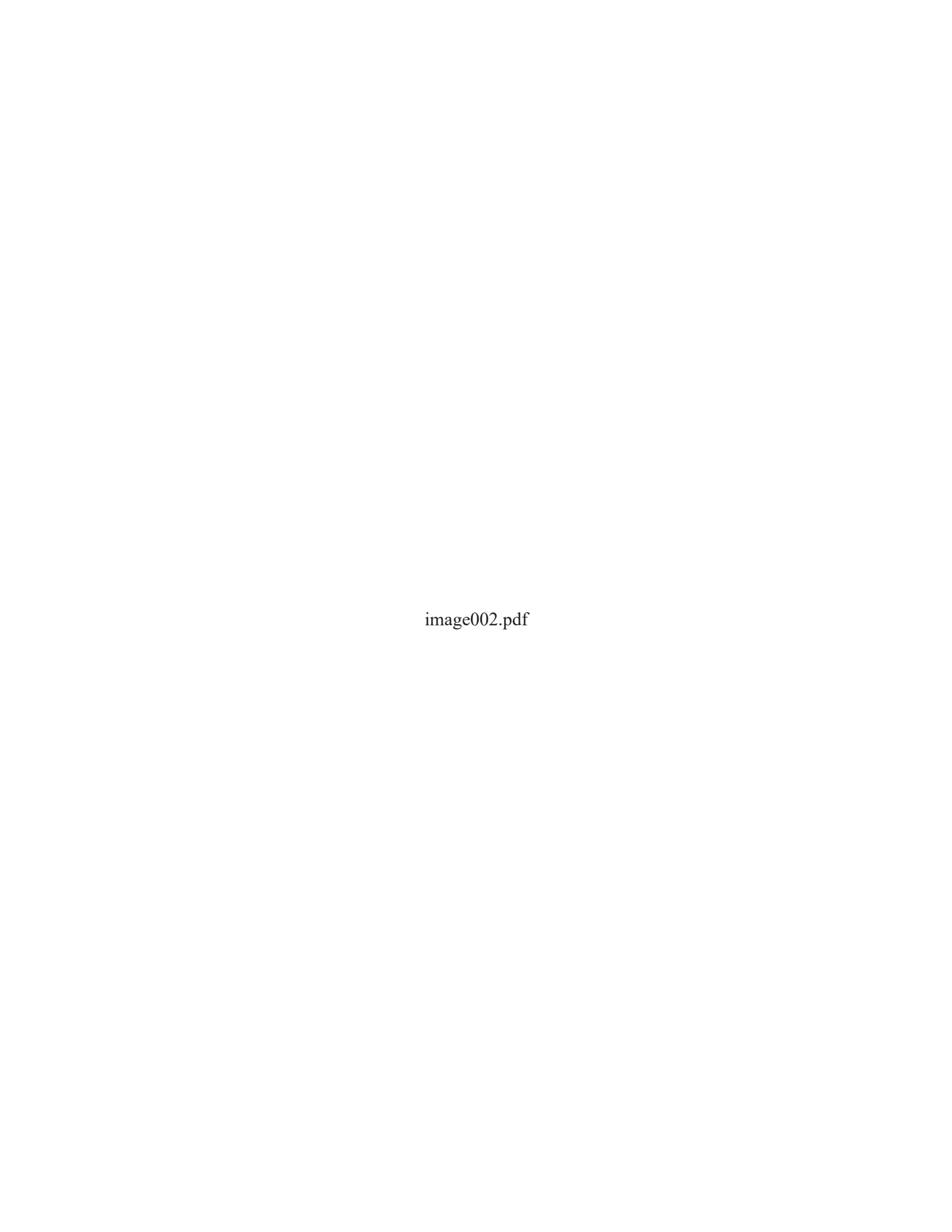
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SENT BY ELECTRONIC MAIL

PRIVILEGED AND CONFIDENTIAL

Mr. Len Hatzis
Deputy Director, Treasury Board Secretariat Legal Services
Ferguson Block
77 Wellesley Street West
9th Floor
Toronto, ON M7A 1N3

Dear Sir:

Interpretation of *Auditor General Act*

You have requested our opinion regarding whether the Auditor-General of Ontario (the "Auditor General") is under a statutory obligation under the *Financial Administration Act* (Ontario) (the "FAA") and the *Auditor General Act* (Ontario) (the "AG Act") to audit the consolidated financial statements that form the basis for the public accounts of Ontario (the "Public Accounts") and to provide a report regarding this audit to the Government of Ontario (the "Government") prior to the deadline (the "Deadline") imposed under the FAA for the Government to table the Public Accounts before the Legislative Assembly (the "Assembly").

This opinion is requested by the Government in order to clarify the relationship between the Government's obligations under the FAA and the duties of the Auditor General under both the FAA and the AG Act.

Summary of Opinion

For the reasons set out below, it is our opinion that, although the matter is not free from doubt, the better view is that both the FAA and the AG Act require the Auditor-General to conduct the audit of the consolidated financial statements and provide the report, including her audit opinion, prior to the Deadline.

Privileged & Confidential

The FAA and the AG Act do not impose an express obligation on the Auditor-General to conduct the audit and provide her report prior to the Deadline. In our opinion, however, the wording of the applicable legislative provisions, interpreted in light of the statutory scheme as a whole, analogous case law and past administrative practice, provide the Government with a good argument that the Auditor-General is under an implied statutory duty to conduct the audit and provide the report, including her audit opinion, before the Deadline.

Scope of Review

In providing this opinion, we have reviewed:

- The FAA;
- The AG Act;
- Legislative history, such as Committee Reports;
- Samples of the Public Accounts; and
- Applicable legal authorities (case law and texts).

In addition, we have relied upon certain information provided in conversations with representatives of Government.

The consequences if the Auditor General is not complying with her statutory duties and the remedies or steps available to the Government in such circumstances are beyond the scope of this opinion.

Analysis

FAA Requirement to Table Public Accounts

Section 1.0.26(1) of the FAA provides that the Public Accounts for each fiscal year shall be prepared under the direction of the Minister of Finance and that the Public Accounts shall include, among other items, the consolidated financial statements of the Province for the fiscal year and the report of the Auditor General concerning his or her examination of the consolidated financial statements.[1]

---

1 *Financial Administration Act*, R.S.O. 1990, c. F.12, as amended, s. 1.0.26(2)(b) and (c) [FAA].

Privileged & Confidential

The FAA requires the Government, except in extraordinary circumstances, to submit the Public Accounts for each fiscal year to the Lieutenant Governor in Council on or before the 180th day after the end of the fiscal year (the Deadline). The Lieutenant Governor in Council is then required to lay the Public Accounts before the Assembly if the Assembly is in session or alternatively, to make them public and then lay them before the Assembly on or before the 10th day of the next session.[2]

As set out below, the terms of the FAA, the AG Act, analogous case law and past administrative practice support our opinion that the better view is that (a) the Auditor General owes an implied statutory duty under the FAA to audit the consolidated financial statements and provide her report prior to the Deadline; and (b) that the "report" that is required to be provided in accordance with the FAA must contain the Auditor General's audit opinion.

A. Obligation to Audit and Report Prior to the Deadline

i. Implied Duty under the FAA

Although section 1.0.26(1) of the FAA requires the Public Accounts to include the Auditor General's report concerning her examination of the consolidated financial statements, neither section 1.0.26(1) of the FAA nor any other provision of the FAA imposes an express obligation on the Auditor General to conduct the audit of the consolidated financial statements and provide her report prior to the Deadline. We have also found no case law interpreting section 1.0.26 of the FAA.

The applicable provision of the FAA is drafted in the passive voice ("The Public Accounts shall be prepared under the direction of the Minister of Finance… and shall include…the report of the Auditor General"). As a matter of statutory interpretation, the word "shall" is presumptively interpreted as imposing a mandatory obligation.[3]

In the absence of any statutory obligation under the FAA for the Minister of Finance to direct the preparation of the Public Accounts, it is our view that this language would likely be read as imposing a positive obligation on the Minister of Finance to direct the preparation of the Public Accounts.

Equally, in the absence of an express statutory obligation for the Auditor General to audit the consolidated financial statements and provide her report prior to the Deadline, it is our view that section 1.0.26(1) of the FAA would likely be read as imposing an implied obligation on the Auditor General to audit the consolidated financial statements and

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2 FAA, s. 1.0.26(5).

3 *Re Manitoba Language Rights*, [1985] 1 S.C.R. 721 at p. 737.

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provide the report regarding the examination of the consolidated financial statements before the Deadline. This implied obligation flows from the fact that the Public Accounts must include the Auditor General's report and the Government cannot table the Public Accounts without it.

It is our view that this implied duty arises not only from the purpose and wording of the FAA, but also by reference to the terms of the AG Act, which form part of the overall legislative scheme for ensuring that the Auditor General provides objective scrutiny of the Public Accounts.

ii. Obligations Under the AG Act

Section 9 of the AG Act imposes a statutory obligation on the Auditor General to audit, on behalf of the Assembly and in such manner as the Auditor General considers necessary, the accounts and records of the receipt and disbursement of public money forming part of the Consolidated Revenue Fund.[4] The Auditor General has further audit or audit oversight obligations in relation to an "agency of the Crown" that is not audited by another auditor,[5] Crown-controlled corporations,[6] and certain broader public sector institutions or organizations and other grant recipients.[7]

Although section 9 of the AG Act does not specifically mention the obligation to audit the Public Accounts, we understand that the Public Accounts subsume the audited financial information of the Government (including the Consolidated Revenue Fund) and the agencies and public sector bodies set out in sections 9. Section 9 is the primary section in the AG Act that imposes the duty on the Auditor General to perform the audit function for which the Auditor General is appointed. In our view, section 9 supports the position that the Auditor General is under a statutory obligation to audit the consolidated financial statements that will form the basis for the Public Accounts that must be tabled in accordance with the FAA.

Section 9 does not impose an express obligation on the Auditor General to conduct the audit by the Deadline or to provide a report regarding this audit. However, section 79 of the *Legislation Act* provides that "...duties that are imposed on a person shall be performed, whenever the occasion requires."[8] Although we have found no case law

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4 *Auditor General Act*, R.S.O. 1990, c. A.35, s. 9(1) [AG Act].

5 AG Act, s. 9(2). "Agency of the Crown" is defined in section 1 of the AG Act.

6 AG Act, s. 9(3).

7 AG Act, s. 9.1.

8 *Legislation Act, 2006*, S.O. 2006, c. 21, Sched. F, s. 79.

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interpreting section 79, the wording of this provision supports the conclusion that the Auditor General's audit duties under section 9 should be interpreted as being required to be performed prior to the Deadline because this is required in order for the Government to comply with its obligations under the FAA to table the Public Accounts by the Deadline.

The Auditor General is required under section 12 of the AG Act to report annually to the Speaker of the Assembly. This annual report shall be made after each fiscal year is closed and after the Public Accounts are laid before the Assembly. The deadline for such report is no later than the 31st of December in each year, unless the Public Accounts are not laid before the Assembly by that day.[9] In the annual report, the Auditor General shall express his or her opinion as to whether the consolidated financial statements of Ontario, "as reported in the Public Accounts", present fairly information in accordance with appropriate generally accepted accounting principles and the Auditor General shall set out any reservations he or she may have.[10]

The wording of section 12 of the AG Act provides further support for the position that the FAA imposes an implied obligation on the Auditor General to audit the consolidated financial statements and provide a report prior to the Deadline. The requirements under both subsections 12(1) and (3) depend on the Public Accounts having been prepared and tabled in accordance with the FAA. The Auditor General's functions under these subsections cannot be performed in a scenario in which the Public Accounts have not been tabled because the Government's obligations under the FAA – including the requirement to include the Auditor General's report in the Public Accounts – cannot be satisfied.

In our view, therefore, interpreting the FAA as imposing an implied duty on the Auditor General to audit the consolidated financial statements and provide her report prior to the Deadline is consistent with the provisions and the scheme of the AG Act. The contrary interpretation would arguably allow the Auditor General to frustrate the scheme that the Legislature has implemented under the FAA and the AG Act to provide objective scrutiny of the Public Accounts.

iii. Applicable Case Law

Although we have found no case law interpreting either section 1.0.26 of the FAA or sections 9 and 12 of the AG Act, there is precedent in other cases for interpreting a statutory provision as imposing an implied duty on a statutory actor where the legislative

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9 AG Act, s. 12(1).

10 AG Act, s. 12(3).

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scheme requires it. This case law, while not determinative when taken in isolation, provides general support for interpreting section 1.0.26 of the FAA as imposing an implied duty on the Auditor General to conduct her audit and provide a report before the Deadline.

For example, the Saskatchewan Court of Appeal has interpreted a statutory obligation to provide a claimant with a written decision to include an implied obligation to do so in a timely manner (i.e. sufficiently in advance of the expiry of a statutory appeal period). Such an implied obligation was held to arise from the scheme of the statute as a whole.[11] Similarly, under immigration law, an obligation by the Minister to process an application for refugee sponsorship has been held to include an implied duty to provide the necessary application to the potential immigrant.[12] Finally, child protection legislation has been interpreted to include an implied duty to investigate and present evidence to support a particular child placement.[13]

Moreover, although the Auditor General is not subject to an order of *mandamus*, it is instructive that, as a matter of administrative law, an order of *mandamus* – which compels a public official to perform a statutory duty – can be based on an implied duty.[14]

iv. Past Administrative Practice

Past administrative practice by the Auditor General, although not binding, can also be an aid to interpretation of a statutory scheme.[15] Administrative interpretation of a statute can be either express or implied.[16] The basis for accepting administrative practice as an aid to statutory interpretation is two-fold: (a) the administrator of a statute develops expertise

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11 *Saskatchewan Government Insurance v. Schmidt*, 2008 SKCA 167 at para. 22.

12 *Nguyen v. Canada (Minister of Employment & Immigration)*, 1993 CarswellNat 92 (F.C.A.) at paras. 28 and 34-36.

13 *Children's Aid Society of Algoma v. R.M.*, 2001 CarswellOnt 2204 (C.J.) at paras. 63 to 65.

14 Brown & Evans, *Judicial Review of Administrative Action in Canada*, Vol. 1 (Toronto: Thomson Reuters, 2016 (looseleaf)) at para. 1:3220.

15 *Harel v. Quebec (Deputy Minister of Revenue)*, [1978] 1 S.C.R. 851 at p. 859; *Will-Kare Paving & Contracting Ltd. v. Canada* (2000), 188 D.L.R. (4th) 242 (S.C.C.) at p. 267.

16 Cote, *The Interpretation of Legislation in Canada*, 3rd Edition (Scarborough: Thomson Canada Limited, 2000) at p. 547 [Cote]; *Sullivan on the Construction of Statutes*, 6th Ed (Markham: LexisNexis, 2014) at para. 23.118 [Sullivan].

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and perspective by administering legislation on a day-to-day basis; and (b) consistent administrative interpretation creates legitimate expectations and reliance.[17]

In our view, the Auditor General would likely be viewed as the "administrator" of the scheme established by the Legislature to scrutinize Government spending. This scheme includes both the FAA and the AG Act. As such, the Auditor General's historic interpretation of the obligations imposed on her under the FAA and the AG Act would likely be given some weight in ascertaining the interpretation of the applicable provisions under both Acts.

It is our understanding that since at least 1999, the Auditor General has audited the consolidated financial statements and provided his or her report prior to the Government's deadline for tabling the Public Accounts, as that deadline was prescribed at the relevant time.

The Auditor General's website also describes the Auditor General's role in performing an "Attest Audit" of the Public Accounts. The website indicates that after the audit, the Auditor General expresses an opinion on the financial statements of the province. The opinion is then reproduced in both the Public Accounts of the province and in the Auditor General's annual report.[18] While not determinative from a legal perspective, these public statements arguably demonstrate the Auditor General's own view that she is required to conduct her audit and provide her opinion prior to the Deadline so that the opinion can be reflected in the Public Accounts.

B. Obligation to Provide Audit Opinion

We have considered whether the "report" that is required to be provided under the FAA is required to include the Auditor General's audit opinion.

Section 1.0.26(1) of the FAA provides that the Auditor General is required to provide "the report of the Auditor General concerning his or examination of the consolidated financial statements of the Province." There is no express reference in this provision to an audit opinion.

The language of the FAA can be contrasted with the wording of section 12(3) of the AG Act. Section 12(3) expressly provides that the Auditor General, in her annual report, shall "express his or her opinion" as to whether the consolidated financial statements present fairly information in accordance with appropriate generally accepted accounting

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17 Sullivan, above, at para. 23.111; Cote, above, at p. 549.

18 http://www.auditor.on.ca/en/content/aboutus/whatwedo.html: "The Kinds of Audits and What is Audited".

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principles. Section 12(3) also contemplates that the Auditor General shall set out any reservations that he or she may have.

It could be argued that the explicit reference to the audit opinion in section 12(3), as contrasted with the reference to a "report" in section 1.0.26(1) of the FAA, means that the Auditor General is only required to provide her audit opinion in the annual report. Under section 12(1) of the AG Act, the annual report only has to be delivered after the Public Accounts have been tabled.

In our view, this is not the better interpretation of the FAA provisions. We have reviewed selected excerpts of the Canadian Auditing Standards (CAS), which indicate that an "auditor's report" is required to include the auditor's audit opinion.[19] Assuming that, as a matter of auditing standards, an audit necessarily entails an "auditor's report" and that an "auditor's report" is required to include the audit opinion, we believe the better view is that "report" in section 1.0.26(2) of the FAA would be interpreted to mean an auditor's report, including an audit opinion.

In our view, this interpretation is consistent with section 9 of the AG Act, which is the principal source of the obligation imposed on the Auditor General to "audit" the Public Accounts. Arguably, the Public Accounts have not been "audited" if the Auditor General has not expressed an audit opinion in respect of them.

Furthermore, the requirement to provide an audit opinion under the FAA prior to the Deadline for tabling the Public Accounts is consistent with the objectives of the FAA. If section 1.0.26(1) is interpreted as not requiring the Auditor General's report to include the audit opinion, the effect would be to require the Government to table the Public Accounts in an unaudited form. This appears contrary to the purpose for tabling the Public Accounts before the Assembly.

Finally, we understand that the Auditor General's own administrative practice – and the public statements on the Auditor General's website – indicate that the Auditor General's own view is that the audit opinion is required to be provided twice. It is required to be provided prior to the Deadline in order to include it with the Public Accounts and again in the annual report.

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[19] Canadian Auditing Standards CAS 700: Forming an opinion and reporting on financial statements, paras. 20-45.

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Although not free from doubt, therefore, it is our opinion that the better view is that section 1.0.26(1) of the FAA would be interpreted as requiring the Auditor General to provide a full auditor's report, including an audit opinion, prior to the Deadline.

Yours very truly,

Osler, Hoskin & Harcourt LLP

Osler, Hoskin & Harcourt LLP
JC/JS:

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OTPP surplus accounting issue - follow-up Q.rtf

From: Rienzo, Douglas [DRienzo@osler.com]
To: Allan Shapira [allan.shapira@aonhewitt.com]
CC: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]; Steele, Jana [JSteele@osler.com]; Marin, Jon [jomarin@osler.com]
Subject: OTPP surplus accounting issue - follow-up Q
Date: Friday, September 16, 2016 13:31:25
Attachment 1: image001.gif
Attachment 2: image002.gif
Attachment 3: image003.jpg

Allan:

We have a few more questions about the technical application of the Funding Management Policy, and are hoping you can help us.

1. You mentioned some restrictions on the use of surplus to benefit members. Aside from the 2013 Term Sheet promises under 6.03 (which you said are not big ticket items, if they end up applying at all), are you referring to the "side agreement" provision in 4.06?

Section 4.06 *Side Agreement*: The commitment value shall be used to provide a surplus distribution referred to in Section 4.04(d) or a temporary benefit improvement referred to in Section 4.04(e) only if the partners have entered into a written agreement governing the manner in which the contributions by the Minister and the Employers may be adjusted to offset any surplus distribution or temporary improvement of benefits that is reflected in the value of the liabilities.

What does that section mean? It refers to an agreement to "offset any surplus distribution or temporary improvement in benefits" – does that mean that the government is supposed to get a contribution reduction of equivalent value if surplus is used for a distribution to members or for a temporary benefit improvement? Are there any other provisions in the FMP like this, that the government can point to as supporting its expectation to benefit from part of the surplus?

2. We understand that every time there is a valuation, the parties must sit down and consider what action to take under Article III, and go to mediation and perhaps to arbitration if they cannot agree (i.e. they follow the procedures set out in sections 74 to

100 of the Partners Agreement). If the plan is in Zone 4 or Zone 5, are the potential actions under Articles IV and V also folded into the mediation/arbitration process? The FMP is unclear on this point, and only seems to refer to that process applying to Article III decisions as set out below:

Section 8.01

Unless the partners mutually agree to the contrary, they shall follow the procedures described in paragraphs 74 to 100 when determining the plan changes arising from Section 3.07.

3. The Partners Agreement contains some guidelines for the arbitrator, in section 92:

92. The award made by the board of arbitration will,

(a) deal only with the contribution rate and/or benefits of the pension plan and otherwise maintain the plan as it is set out in Schedule 1,

(b) comply with the laws of Ontario,

(c) provide that the contributions of the Minister and those employers who are required to contribute are equal to the contributions of members,

(d) be based on the valuation of the plan and the costing of changes to benefits which were prepared by the Board,

(e) ensure that any increase in benefits is adequately funded,

(f) not impair the ability of the Board to fulfil its fiduciary responsibilities,

(g) if it includes benefit improvements, not provide for an increase in the contribution rate paid by plan members greater than .5% of pensionable salary,

provided that all such awards shall be subject to the limitations referred to in subparagraph EE(2). [emphasis added]

Do you have any idea what the reference to “subparagraph EE(2) means?

Could you perhaps reply by email or, if it's easier, suggest a time when we might chat about this? We have been asked to provide our opinion asap, so if we could speak to you this afternoon that would be ideal. I apologize for the short notice. Thanks, Allan.

Doug

Douglas Rienzo
Partner, Pensions & Benefits

Chair, Diversity Committee

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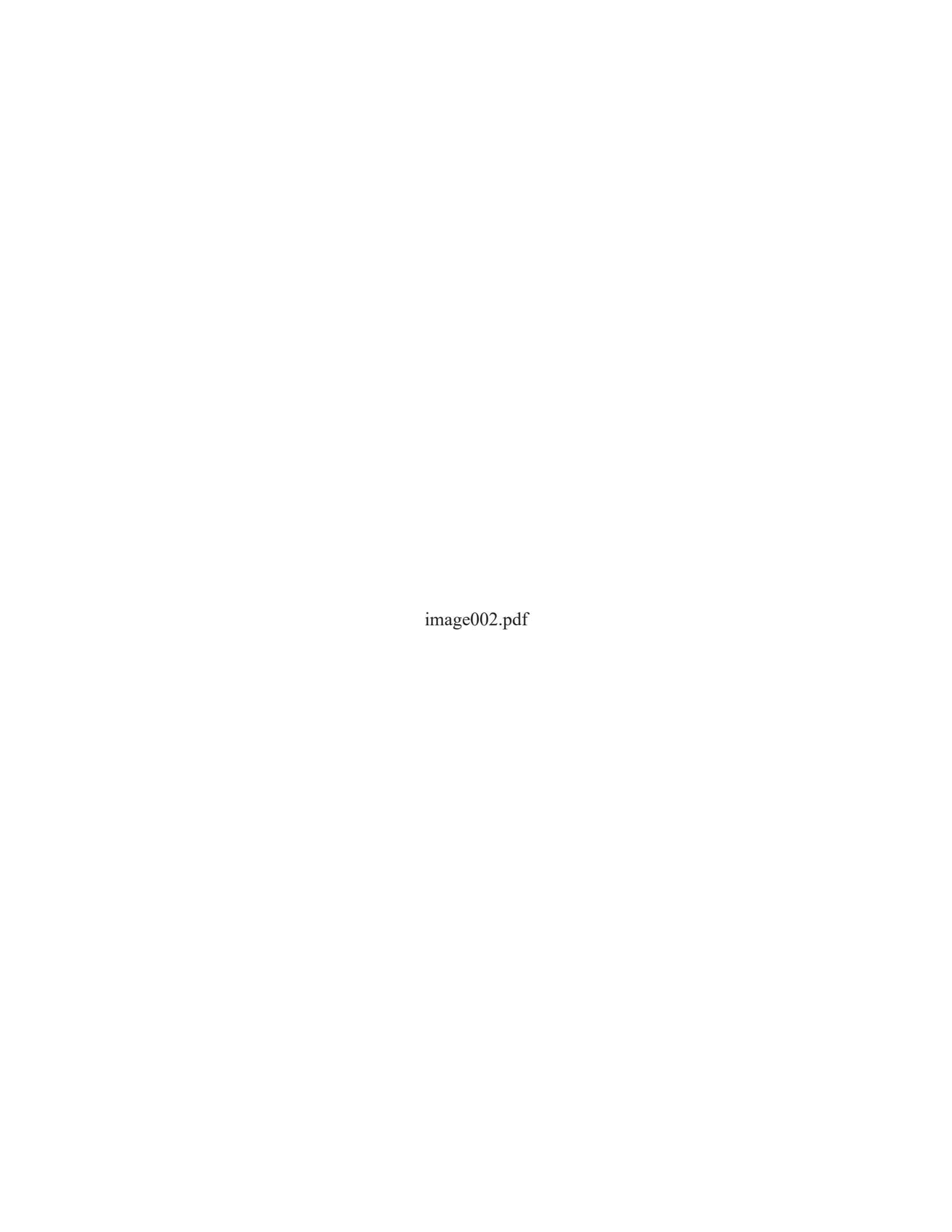
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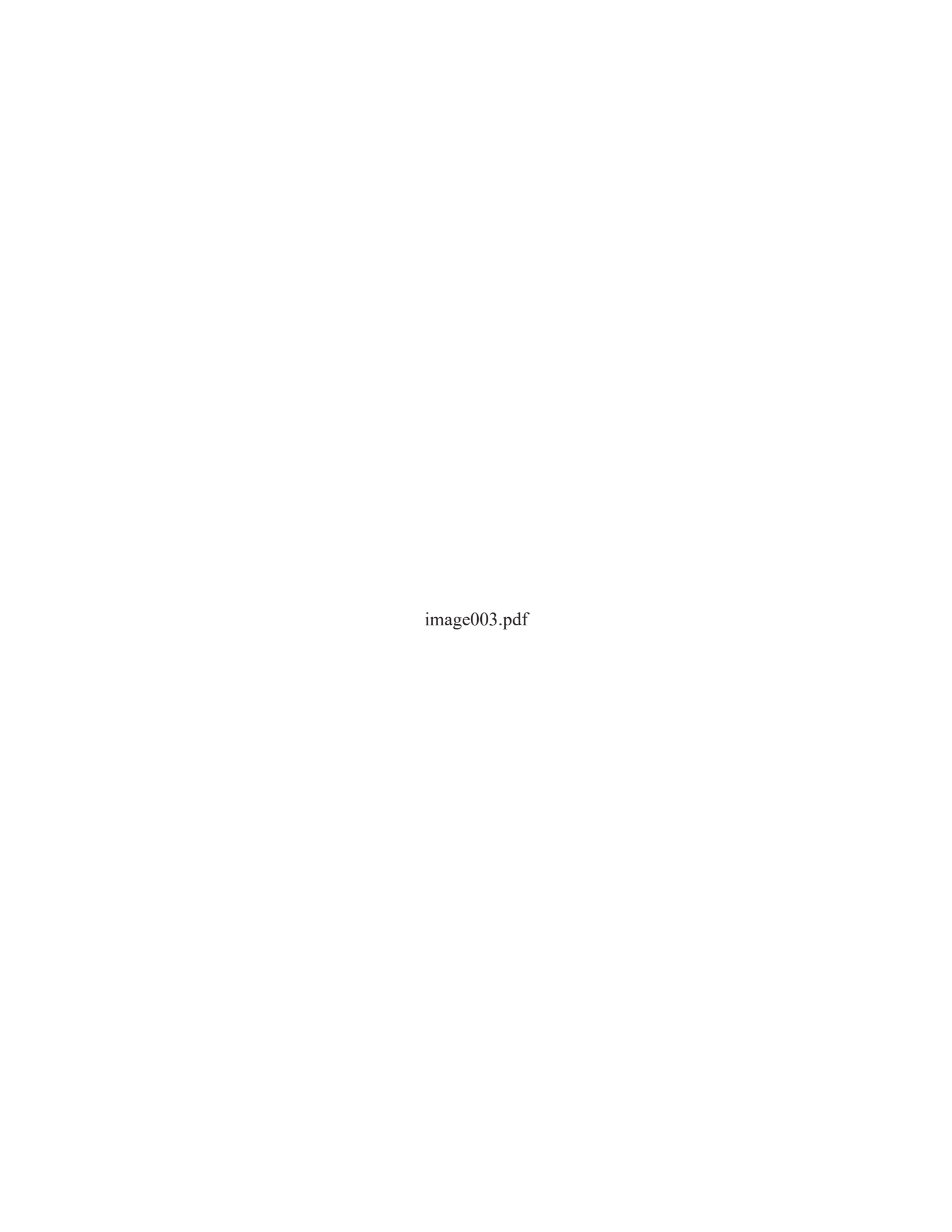
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2016
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Osler opinion re_ OTPP surplus.rtf

From: Rienzo, Douglas [DRienzo@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]; Kaufman, Paul (TBS) [Paul.Kaufman@ontario.ca]
CC: Steele, Jana [JSteele@osler.com]; Marin, Jon [jomarin@osler.com]
Subject: Osler opinion re: OTPP surplus
Date: Tuesday, September 20, 2016 12:01:59
Attachment 1: image001.gif
Attachment 2: image002.gif
Attachment 3: image003.jpg
Attachment 4: Opinion dated September 20, 2016.pdf

Len, Paul:

Please find enclosed our opinion in final form. We would be pleased to discuss it with you at your convenience.

Doug Rienzo

Douglas Rienzo
Partner, Pensions & Benefits

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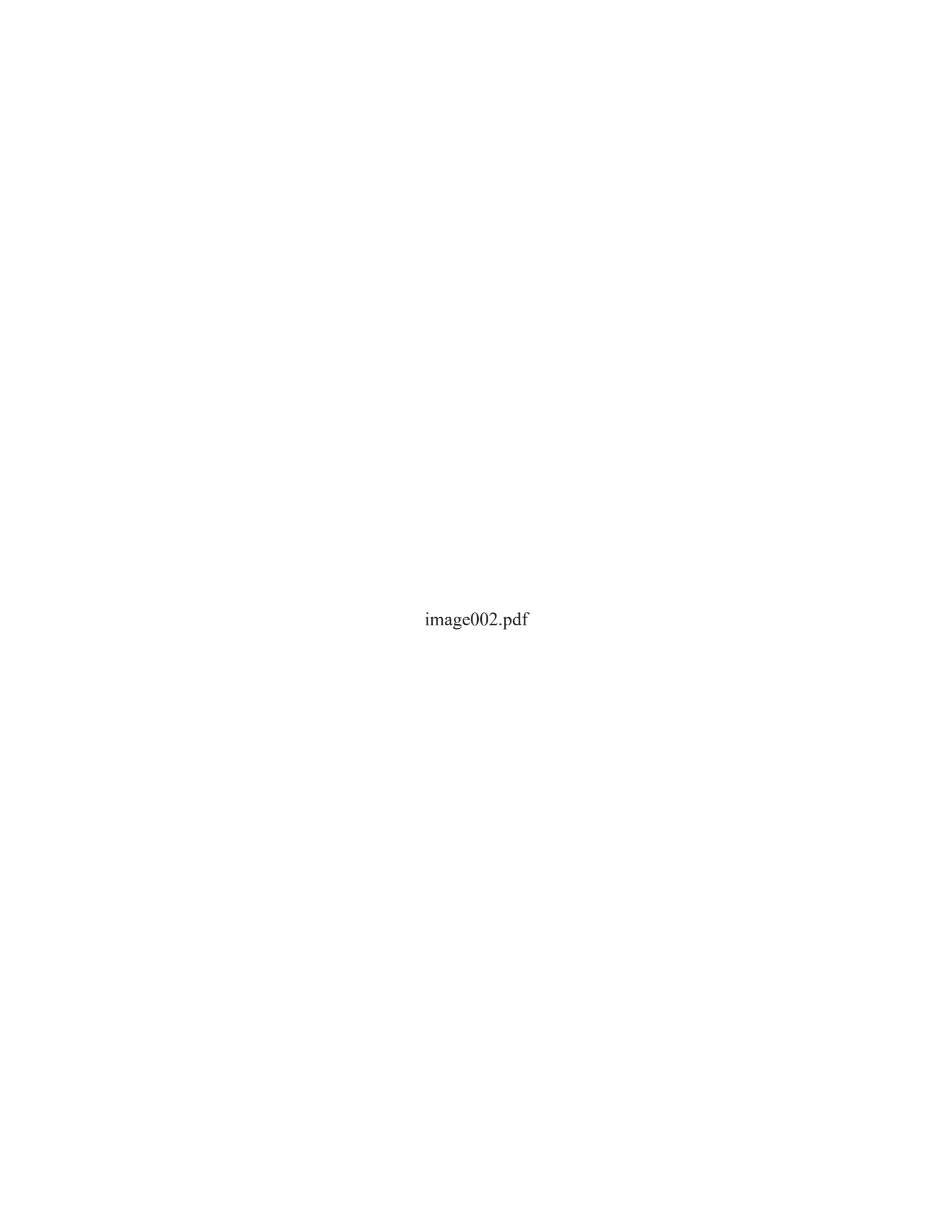
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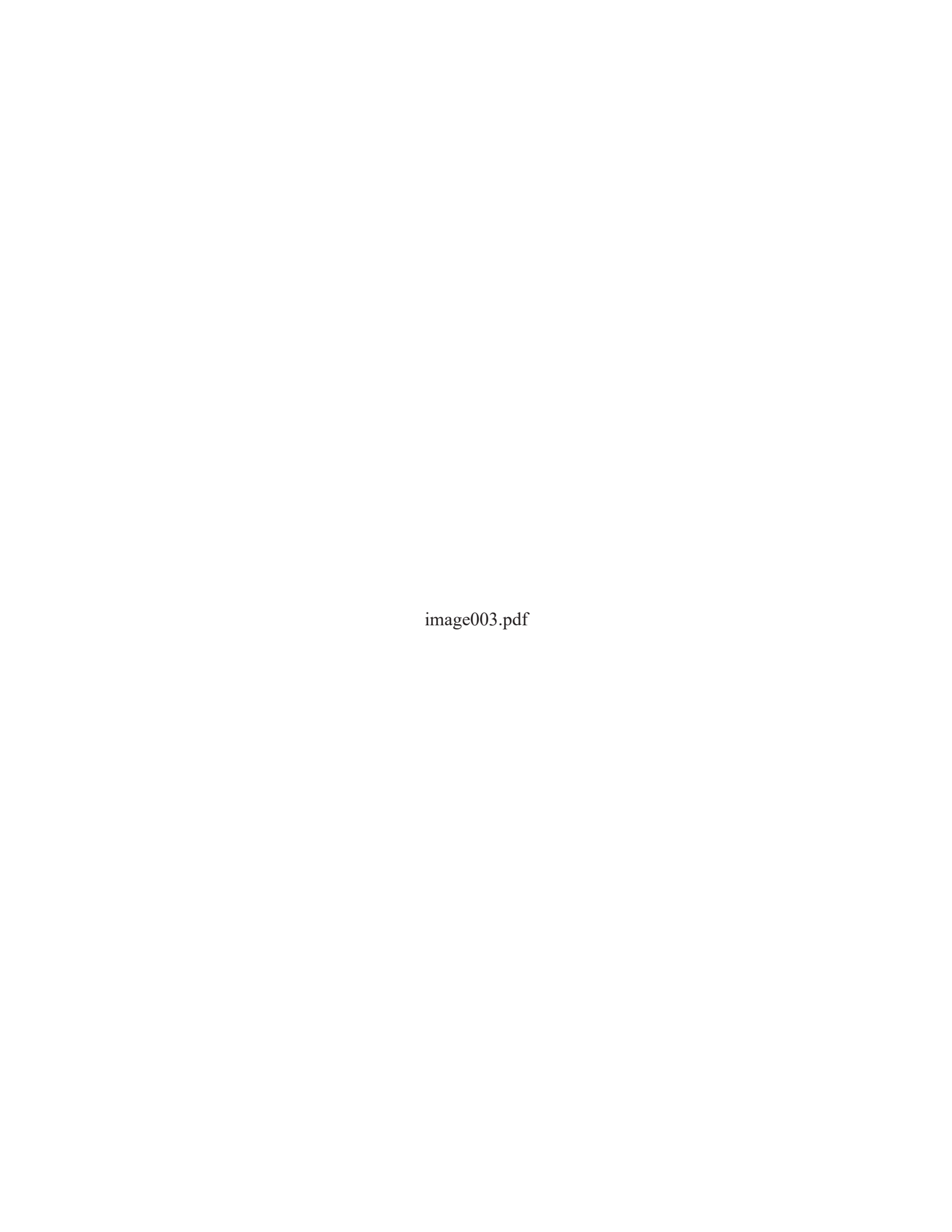
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2016
CANADA'S BEST
DIVERSITY EMPLOYERS

Opinion dated September 20, 2016.pdf

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Dear Sirs:

Accounting Treatment of Surplus in the Ontario Teachers' Pension Plan

I. BACKGROUND

We understand the pertinent background facts to be the following:

1. The Ontario Teachers' Pension Plan (the **"OTPP"**) is a jointly-sponsored defined benefit pension plan established under the *Teachers' Pension Act* (Ontario) and is, subject to certain exceptions, required to comply with the *Pension Benefits Act* (Ontario) as well as the *Income Tax Act* (Canada).

2. The sponsors of the OTPP are the Province of Ontario (the **"Province"**) and the Ontario Teachers' Federation (the **"OTF"**) (collectively, the **"Sponsors"**).

3. We understand that as at March 31, 2016 the Province's Statement of Financial Position (the **"Public Accounts"**) includes a pension asset totalling $10.6 billion (the **"Pension Asset"**) related in part to an accounting surplus under the OTPP.[1]

4. The Office of the Auditor General has indicated that because the Province does not have the legally enforceable right to unilaterally access the assets of the plan, and in the absence of that right, because the Province does not have an agreement in place with the OTF as of March 31, 2016 with respect to how the surplus would be utilized such that it would provide a benefit to the Province, the Pension Asset as presented in the Public Accounts should be removed.[2]

You asked us to consider the processes pursuant to which the Province may utilize surplus assets in the OTPP in accordance with the Plan Documentation (as defined below), and to identify any considerations that might inform the expectations of the Province as a Sponsor regarding the basis upon which decisions will be made relating to surplus utilization. We are not providing an opinion on the proper application of the accounting standards to the present situation, as that is an issue for the accountants to address.

II. SCOPE OF OPINION

For the purposes of our opinion, we considered the following documentation (collectively, the **"Plan Documentation"**):

1. The Ontario Teachers' Pension Plan (the **"OTPP"** or **"plan"**);

2. The Agreement between Her Majesty the Queen in right of the Province of Ontario represented by the Minister of Education and Training and The Ontario Teachers' Federation represented by its Executive (the **"Partners' Agreement"**);

3. The Funding Management Policy (the **"FMP"**), which forms Appendix "A" to the Partners' Agreement; and

4. The Term Sheet agreed to by the Sponsors dated March 13, 2013 (the **"2013 Term Sheet"**) describing the implications of the Freeze Period (as defined below) on the FMP.

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1 See letter from Bonnie Lysyk (Auditor General) to Greg Orencsak (Deputy Minister, Treasury Board) and Scott Thompson (Deputy Minister, Ministry of Finance), dated September 13, 2016. Part of the surplus relates to another pension plan; we understand that $10.1 billion relates to the OTPP.

2 *Ibid.*

We have also considered the following legislation/regulations:

1. The *Teachers' Pension Act* (Ontario) (the **"Teachers' Act"**); and

2. The *Pension Benefits Act* (Ontario) (the **"PBA"**) and the regulations thereunder (the **"PBR"**).

As per your instructions, we have not evaluated the ability of the Province to benefit from the *withdrawal* of surplus assets from the OTPP (although certain provisions of the FMP cited herein relate to both the withdrawal and other utilization of surplus). Rather, this opinion identifies the processes pursuant to which the Province may receive a financial benefit through the *utilization* of OTPP surplus (e.g., as a result of either a temporary reduction in the Province's contribution obligations (a contribution holiday) or through changes to the contribution formula that reduce the Province's contribution obligations).

We note that the concept of an *accounting* surplus is distinct from surplus identified in a funding valuation prepared in respect of the OTPP (a **"Funding Valuation"**). Where surplus has been identified in a Funding Valuation, the Plan Documentation provides the Sponsors with certain avenues pursuant to which the Funding Valuation surplus can be utilized. Any reference to "surplus" in this opinion, unless expressly stated otherwise, relates to the surplus identified by the actuary for the OTPP in a Funding Valuation and not to the accounting surplus identified in the Public Accounts. We understand that pursuant to the applicable accounting standards, the recognition of part or all of the accounting surplus on the Public Accounts depends on the ability of the Province to benefit from any surplus in the pension fund over the life of plan.

This opinion does not purport to draw any conclusions, express or implied, about the application of the accounting standards to the present circumstances; rather, it is solely intended to provide the Province with information concerning the legal framework governing the utilization of surplus under the OTPP so as to allow the Province's accountants to determine whether a related Pension Asset should appear on the Public Accounts.

III. SUMMARY OF OUR CONCLUSIONS

A brief summary of our material conclusions is set forth below (all capitalized terms are defined herein):

1. Paragraph 10(1)3 of the Teachers' Act provides that the Minister of Education and the executive of the OTF may enter into an agreement that provides for certain matters, including: "3. The sharing of entitlement to gains or surplus under the plan and of liability for deficiencies in the pension fund by the Minister, the employers who contribute under the plan and the active plan members". This is a

fundamental legislative pronouncement that the Province and the members of the plan are meant to "share" both upside (surplus) and downside (deficit) under the plan. Although it is not an express statement of 50/50 sharing, it would presumably inform the expectations of the Sponsors regarding how any surpluses are to be utilized. We note that the Sponsors have in fact entered into such an agreement, in the form of the Partners' Agreement (to which is appended the FMP).

2. The Plan Documentation (specifically the FMP) and applicable legislation allow for the Sponsors to utilize surplus in a variety of ways, depending on the funded status of the OTPP. These surplus utilization options include the following avenues through which the Province may receive a financial benefit through the utilization of surplus (the three "zones" describe different levels of surplus, a greater amount of surplus being required in order for the next "zone" to come into play):

    a. In the Restoration Zone, a Restoration Contribution Reduction may be approved once certain other requisite conditions have been met.

    b. In the Temporary Improvement Zone, surplus may be utilized to provide a temporary contribution reduction (i.e., a contribution holiday), either as a stand-alone measure or in combination with other surplus utilization options (i.e., benefit improvements or surplus withdrawal).

    c. In the Permanent Improvement Zone, surplus may be utilized to permanently reduce the current contribution obligations of the employers and the members, either as a stand-alone measure or in combination with changes to benefits.

    Notwithstanding the foregoing, under the FMP the Sponsors have the discretion to, by mutual agreement, utilize surplus in any other manner.

3. Any enforceable legal right to obtain some value from any surplus pursuant to the Partners' Agreement (and FMP appended thereto) would be grounded in the law of contract. As the relevant provisions of the FMP require the Sponsors to agree upon the manner in which surplus is to be utilized, neither Sponsor has a legally enforceable right to unilaterally utilize surplus in the OTPP. As such, the provisions in the FMP that contemplate the ability for the Province to receive a financial benefit through the utilization of surplus would not, in and of themselves, give rise to a legally enforceable right. What the Province does have, however, is a right to negotiate with the OTF the use of surplus that may arise under the plan, at least in the context of an actuarial valuation that discloses surplus and that is to be filed with the regulators.

4. Notwithstanding the foregoing, the Plan Documentation and applicable legislation give rise to the following considerations which may shape the Sponsors' expectation as to the basis upon which surplus will be utilized (and potentially lead to an expectation of equal sharing of the benefit of any surplus, at least over time):

    a. The Teachers' Act prohibits the total amount of the contributions payable by the Province (and other participating employers) to exceed the amount of contributions paid by or on behalf of active members in respect of credited service for the year (subject to certain exceptions for payment of a solvency deficiency and where there are insufficient cash and liquid assets in the fund).[3] In practice, this has resulted in 50/50 sharing of the regular contribution costs between the participating employers (including the Province) and plan members since the OTPP became jointly sponsored.[4]

    b. The history of surplus utilization after the OTPP became a jointly-sponsored plan and prior to the date that the FMP was established demonstrates a past practice of the Sponsors equally sharing (in the aggregate) the financial benefits of surplus utilization, although surplus was not shared equally each time. Since the time the FMP was established, the OTPP has not reached the requisite level of surplus such that the Sponsors could negotiate its utilization under the Temporary Improvement Zone or Permanent Improvement Zone.

    c. The inability for either party to unilaterally require surplus to be utilized in a particular manner (subject to the OTF Call Right), and the requirement to negotiate and agree (or in the absence of agreement, arbitrate) presents the Sponsors with an equal opportunity to benefit from surplus utilization.

    d. One could argue that the obligation to bargain in "good faith" found in the Partners' Agreement may include the obligation to take into account the

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3 Teachers' Act, subsections 5(1.1), (3) and (7).

4 We note that for the period from January 1, 2008 to December 31, 2008, the employee contribution rate was slightly lower than the employer contribution rate for earnings both above and below the Year's Maximum Pensionable Earnings (**"YMPE"**) (9.6%/11.2% versus 10.4%/12%, respectively). It is our understanding that member contribution rates in 2008 were partially subsidized by the OTF with a credit reserve from the 1998 to 2001 pension negotiations, which accounts for this difference. See, Ontario Teachers' Pension Plan: "How Contribution Rates Have Evolved" available at: https://www.otpp.com/documents/10179/20940/-/5e471c2b-23f1-44e6-b5c1-d22e3e50dbc3/How+Contribution+Rates+Have+Evolved.pdf

"sharing" principles described elsewhere in this opinion, given that the OTPP is a jointly-sponsored plan.

We note that it is our understanding that it is certainly the Province's expectation that the benefit of any surplus under the plan will in fact be shared equally between the Province and the members, over time.

5. In the event that the Sponsors cannot agree upon how surplus is to be utilized in the Restoration Zone, the Temporary Improvement Zone or the Permanent Improvement Zone, the matter can be submitted to an arbitration board of three arbitrators. Arbitration provisions are generally procedural in nature and therefore do not provide a strong foundation upon which to base parties' reasonable expectations about their substantive rights under an agreement. To resolve a dispute, the arbitration board would engage in an exercise in interpretation of the operative substantive provisions of the relevant governing documents, including any applicable statutory provisions. However, the arbitral award must meet certain mandatory conditions set forth in the Partners' Agreement. Among other things, the arbitral award is required to ensure that the contributions of the Minister and those employers who are required to contribute are equal to the contributions of members (section 92(c) of the Partners' Agreement).

   As part of the arbitration board's interpretation exercise of the relevant governing documents, in the event of ambiguity in the written terms of the documents, evidence of the parties' post-agreement practices can be admitted as an aid to interpreting the agreement. Past practices may illustrate the parties' intentions at the time of the agreement. These considerations of past practices would be in conjunction with any explicit mandatory considerations set out in the governing document, e.g. prevailing economic conditions and the overall state of the provincial economy under section 91 of the Partners' Agreement. The past practices which the arbitrator may consider would include those described herein: the long history of 50/50 member/employer contributions to the plan, and the equal sharing of surpluses prior to 2003 (from 2003 onwards the plan was mostly in deficit, with surpluses used to restore foregone escalated adjustments for members).

IV. FRAMEWORK IN THE PLAN DOCUMENTATION FOR SURPLUS UTILIZATION BY THE SPONSORS

1. Joint Sponsorship Plan Design and Cost Sharing

The OTPP qualifies as a "jointly sponsored pension plan" (**"JSPP"**) under the PBA, which has three material implications relevant to the present analysis:

1. Plan Governance – Under a JSPP, the employers (or any persons or entities who make contributions on behalf of the employers or represent the employers) and the members of the pension plan (or any representatives of the members) are jointly responsible for making all decisions about the terms and conditions of the pension plan and any amendments to the pension plan.[5]

2. Funding – The OTPP (and certain other prescribed JSPPs) are exempt from solvency funding requirements under the PBR.[6]

3. Cost Sharing – In a defined benefit pension plan which does not qualify as a JSPP, the employer is solely responsible for funding any going concern unfunded liability or solvency deficiency. Given that the OTPP qualifies as a JSPP, however, the PBA permits members to be required to make contributions in respect of any going concern unfunded liability or solvency deficiency.[7]

With respect to the cost-sharing principle referred to in #3 above, the Teachers' Act contains limitations on the contributions that the Province (and other participating employers) may make under the OTPP:

> 5(1.1) The total amount of the contributions payable by the Minister of Education and the employers who contribute under the pension plan in respect of any year shall not exceed the amount of contributions payable by or on behalf of active plan members in respect of credited service for that year.

Despite this general principle, under the Teachers' Act the Province is required to make additional contributions to the OTPP fund in the event that there are insufficient assets to make required payments out of the fund in any particular year.[8] The Province is also permitted to make additional contributions in respect of a solvency deficiency[9] (although, as noted above, solvency funding is not required under the OTPP). Notwithstanding that subsection 5(1.1) of the OTPP provides a *cap* on the Province's normal cost contribution obligation, rather than requiring 50/50 cost sharing, we understand that in practice there has been 50/50 cost sharing of the normal contribution cost under the OTPP since the OTPP became jointly sponsored (and for the majority of periods of time since the

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5 PBR, subsection 3.1(1).

6 PBR, subsection 1.3.1(3).

7 See PBA, subsection 1(2) and subsection 55(4).

8 Teachers' Act, subsection 5(3).

9 Teachers' Act, subsection 5(7).

inception of the plan in 1917).[10] The plan text itself also provides for equal contributions, at the basic level (see sections 25(1) and 26(1)).

Currently, the Sponsors are also required to mutually agree upon how any plan deficits are to be addressed.[11] While not binding upon the Sponsors, the FMP indicates that deficits may be addressed through increases to the contribution rates, lowering the amount of indexation and/or other decreases in benefits.

Joint governance and cost sharing form two of the core features of the OTPP. Consistent with the equal sharing of risk permitted under the JSPP plan design, there is a requirement for decisions relating to plan design and plan amendments to be made jointly by the Sponsors. In this regard, the FMP requires the Sponsors to negotiate and agree upon decisions relating to surplus utilization. Accordingly, the Sponsors can be said to have equal *opportunity* to benefit from surplus utilization through the negotiation process.

2. Provisions in the Legislation and Plan Documentation Relating to the Utilization of Surplus

(a) *Pension Benefits Act*

While they do address surplus withdrawals (which are not addressed in this opinion), the PBA and PBR do not otherwise mandate any particular use of ongoing surplus that may arise in a pension plan, e.g. for benefit improvements or contribution holidays. One must therefore look to the Teachers' Act, and to the Partners' Agreement and FMP in order to determine how ongoing surplus is dealt with under the OTPP.

(b) *Teachers' Pension Act* (Ontario)

Paragraph 10(1)3 of the Teachers' Act provides that the Minister of Education and the executive of the OTF may enter into an agreement (i.e., the Partners' Agreement) that provides for certain matters, including: "3. The sharing of entitlement to gains or surplus under the plan and of liability for deficiencies in the pension fund by the Minister, the employers who contribute under the plan and the active plan members". This is a

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[10] See, Ontario Teachers' Pension Plan: "How Contribution Rates Have Evolved" available at: https://www.otpp.com/documents/10179/20940/-/5e471c2b-23f1-44e6-b5c1-d22e3e50dbc3/How+Contribution+Rates+Have+Evolved.pdf As noted above, for the period from January 1, 2008 to December 31, 2008 the employee contribution rate was slightly lower than the employer contribution rate for earnings both above and below the YMPE (9.6%/11.2% versus 10.4%/12%, respectively). It is our understanding that member contribution rates in 2008 were partially subsidized by the OTF with a credit reserve from the 1998 to 2001 pension negotiations, which accounts for this difference.

[11] See, for example, Section 3.09 and 3.11 of the FMP.

fundamental legislative pronouncement that the Province and the members of the plan are meant to "share" both upside (surplus) and downside (deficit) under the plan. Although it is not an express statement of 50/50 sharing, it would presumably inform the expectations of the Sponsors regarding how any surpluses are to be utilized.

(c) Partners' Agreement and FMP

While the Partners' Agreement itself does not address the utilization of surplus, the notion that the Sponsors have "agreed to establish a partnership" for the purposes of designing and administering the OTPP and managing the OTPP fund[12] is reinforced throughout the Partners' Agreement. For example, Section 4 of the Partners' Agreement provides that "[t]he partnership established by this agreement is intended to govern all aspects of the plan and the fund..." Similarly, Section 8 of the Partners' Agreement notes that the partners are jointly responsible for "designing the plan structure, setting the benefits of the plan, developing new policy, deciding what the contribution rate will be, what the funding levels, margins and contingency reserves will be, making changes to the plan, this agreement or other plan documents, deciding whether or not to file a valuation more frequently than required by the *Pension Benefits Act*, appointing the Board, and defining the role of the Board". The expectations of the Sponsors regarding how surpluses are to be utilized are presumably informed by the commitment noted above for the partnership established "to govern all aspects of the plan and the fund".

The procedures pursuant to which surplus may be withdrawn or utilized from the OTPP are identified in the FMP (which forms Appendix "A" to the Partners' Agreement).

We understand that the FMP was first established in March 2003, as a supplement to the Partners' Agreement, to provide a guidance framework to the Sponsors for decision-making when the OTPP has a funding surplus or shortfall. Prior to the creation of the FMP, the OTPP was considered fully funded (and surplus could be utilized, including through permanent benefit improvements) where assets equalled at least 100% of liabilities. The FMP is intentionally conservative through prioritizing the preservation of assets until a sufficient surplus "cushion" has been built to justify the utilization of surplus for contribution reductions or benefit improvements.

The FMP contemplates five "funding zones", each defined by a range. These funding zones provide the Sponsors with guidance as to when, based upon the funding level of the plan, it may be appropriate to (amongst other things) increase or decrease benefits, raise or lower contribution rates or conserve assets. The Sponsors always have the discretion, however, to agree to pursue a course of action that is not expressly provided for in the

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[12] Partners' Agreement, section 1.

FMP. As will be discussed below, the ultimate discretion of the Sponsors is reflected throughout various provisions of the FMP.[13]

In the context of plan surpluses, three funding zones are of relevance, each of which is discussed below in greater detail.

(i) Restoration Zone

Article III of the FMP (Funding Zone – Restoration) (the **"Restoration Zone"**) is the "fully funded" zone where assets equal at least the liabilities, determined on the basis set out in the FMP. It is our understanding that the OTPP is currently in the Restoration Zone.

In the Restoration Zone, benefits cannot be improved and contributions cannot be reduced until certain actions are taken to restore past benefit reductions or past contribution increases. In this regard, Section 3.06 of the FMP provides the following:

> Section 3.06 *Application of Restoration Basis Excess*: For purposes of clarity, excesses identified pursuant to Section 3.05 shall be applied in the following order, provided that the partners reserve the right to reconsider such application having regard to the contribution rate and benefits then in effect, prevailing economic circumstances and other relevant factors:
>
> (a) *Bring Escalated Adjustments to 50% for Post-2013 Service*: to provide escalated adjustments up to 50% of the CPI adjustment in respect of service accrued after 2013 for the period covered by the valuation, and assumed thereafter at the same rate;
>
> (b) *Bring Escalated Adjustments to 100%*: to provide escalated adjustments up to 100% of the CPI adjustment for the period covered by the valuation, and assumed thereafter at the same rate;
>
> (c) *Restore Escalated Adjustments for Post-2013 Years*: to provide escalated adjustments to increase, to the extent possible, the current accumulated adjustment ratio for each year after 2013, to the current accumulated adjustment ratio for the period from 2010 to 2013, beginning with the first year in which current escalated adjustments were less than 50% of the run-rate escalated adjustments;
>
> (d) *Restore Escalated Adjustments for Post-2009 Years*: to provide escalated adjustments to increase, to the extent possible, the current

[13] See, for example, the opening words of Section 3.06 of the FMP, which section provides for various uses of surplus: "... provided that the partners reserve the right to reconsider such application having regard to the contribution rate and benefits then in effect, prevailing economic circumstances and other relevant factors". See also Section 4.05 and 5.05.

> accumulated adjustment ratio for each year after 2009 to the run-rate accumulated adjustment ratio, beginning with the first year in which current escalated adjustments were less than run-rate escalated adjustments;
>
> (e) *Provide Benefit Increases or Contribution Rate Reductions*: to provide the following:
>
> (i) an increase in benefits, where the present value of current benefits is less than the present value of run-rate benefits,
> (ii) a reduction in contribution rates, where the present value of current contributions exceeds the present value of basic contributions, or
> (iii) a combination of (i) and (ii).

In summary, the Restoration Zone allows for surplus to be utilized to "restore" foregone indexation (Sections 3.06(a)-(d))[14] and then to either increase benefits to the "run-rate benefit" level (i.e., the long-term target level) or to lower contributions to the basic target rate (or a combination of these two options) (Section 3.06(e)). While the FMP contemplates that the actions will typically be taken sequentially (i.e., starting with Section 3.06(a) and ending with the actions in Section 3.06(e)), the Sponsors are required to first agree to the actions taken under Section 3.06 and have the discretion to apply the actions in a different order or to take different action (or to take no action to utilize the surplus).[15]

As noted, under Section 3.06(e), surplus can be utilized to reduce contribution rates "where the present value of current contributions exceed the present value of basic contributions" (the **"Restoration Contribution Reduction"**). We understand that in 2001 the Sponsors agreed to a 1.1% increase to both member/employer contributions (phased in over a three year period) to address a funding deficit in the OTPP and that the Restoration Contribution Reduction under Section 3.06(e) would permit these additional contributions to be eliminated, thus restoring contributions to the "basic" level.

The 2013 Term Sheet sets out an agreement between the Sponsors that is in effect from December 31, 2012 to December 30, 2017 (the **"Freeze Period"**), the terms of which are reflected in the FMP. Under Section 3.08 of the FMP, there are certain limits (relating to

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[14] This is achieved by first increasing go-forward indexing to 50% for the post-2013 service period, then to 100% on all post-2009 service periods and next, by restoring current pension amounts to a certain prescribed level starting with the years where indexing was less than 50% until all years of partial indexation are restored to the same level and then by restoring indexation to 100% for all service periods.

[15] As noted above, pursuant to Section 3.06 of the FMP, "the partners reserve the right to reconsider such application having regard to the contribution rate and benefits then in effect, prevailing economic circumstances and other relevant factors…"

the funded status of the OTPP) on the ability to make escalated adjustments or to improve benefits pursuant to Section 3.06 during the Freeze Period.

As noted below, no action can be taken under the Temporary Improvement Zone (as defined below) or the Permanent Improvement Zone (as defined below) until all restorative actions under Section 3.06 of the FMP have been provided for (subject to the general discretion of the Sponsors to deviate from the guidelines set out in the FMP).

(ii) Temporary Improvement Zone

Article IV of the FMP (Funding Zone – Temporary Improvements) (the **"Temporary Improvement Zone"**) was added to the FMP in March 2015 and allows for: (i) temporary contribution decreases (a contribution holiday), (ii) surplus distribution, and/or (iii) benefit improvements, provided in each case that the plan's funding level reaches thresholds set out in the FMP.

We understand that in this zone the plan is considered well-funded and able to afford temporary changes, so long as they do not increase the long-term cost of the OTPP. Surplus cannot be utilized under the Temporary Improvement Zone until the Sponsors have provided for all of the changes specified in Section 3.06 of the Restoration Zone (again, subject to the general discretion of the Sponsors to deviate from the guidelines set out in the FMP).[16]

In all cases the Sponsors' prior agreement is required in order for there to be a temporary contribution decrease, a surplus distribution or a benefit improvement.[17] Where the Sponsors agree to a change that would result in surplus being distributed or utilized for a temporary benefit improvement, the Sponsors are required to enter into a written agreement "governing the manner in which the contributions by the Minister and employers may be adjusted to offset any surplus distribution or temporary improvement of benefits that is reflected in the value of the liabilities."[18] We understand that this provision is a recognition of the partnership of the Province and the OTF, and requires the Sponsors to enter into an agreement addressing the possible value to be obtained by the Province where there is a decision to provide value to the members (but the provision is not a guarantee that such value will in fact be provided to the Province).

We note that, as a temporary measure, the OTF has "first call" rights on 100% of the surplus disclosed in valuation report with a valuation date after December 30, 2017, up to

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16 FMP, section 4.03

17 FMP, section 4.05.

18 FMP, section 4.06

certain amounts as set out in the FMP (the **"OTF Call Right"**).[19] The 2013 Term Sheet indicates that "[t]his is a one-time arrangement intended to compensate Plan members for absorbing 100% (rather than 50%) of funding shortfalls arising in the government initiated Freeze Period." In other words, this one-time opportunity to benefit from surplus utilization is directly linked to the asymmetrical assumption of risk by OTPP plan participants during the Freeze Period. In light of the Freeze Period and the OTF Call Right, it is our understanding that no actions under the Temporary Improvement Zone will be permitted until the Freeze Period has ended and the OTF Call Right in Article VI of the FMP has been satisfied.[20]

To summarize, the OTF has a contractual right to the future utilization of surplus, up to the value of the OTF Call Right. OTF cannot utilize any surplus available in the OTPP under this negotiated right until the Freeze Period has ended (on December 30, 2017) and a valuation after such date identifies the existence of surplus available for utilization. In light of this negotiated right, surplus cannot be utilized under the Temporary Improvement Zone or the Permanent Improvement Zone (e.g., to cause a temporary or permanent reduction to contributions) until the OTF Call Right has first been satisfied. Once the OTF Call Right has been satisfied, the *status quo* under the FMP will be restored (i.e., the agreement of the parties will be required for any utilization of surplus). In other words, the OTF Call Right reflects a "one-time" agreement and is expressly "without prejudice or precedent for any future situation".[21] It is our understanding that the quantum of the OTF Call Right is not presently expected to be material.

(iii) Permanent Improvement Zone

Where the surplus reaches certain levels as set out in the FMP, Article V of the FMP (Funding Zone – Permanent Improvements) (the **"Permanent Improvement Zone"**) will apply. We understand that in the Permanent Improvement Zone adequate funding security is considered to exist to support permanent changes (either an improvement in benefits or a reduction in contributions).

Under the FMP framework, these changes can be introduced only once the Sponsors have already provided for the changes specified in Section 3.06 (i.e., no further action to restore benefits remains to be taken under the Restoration Zone), subject to the general discretion of the Sponsors to deviate from the guidelines set out in the FMP.[22]

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19 FMP, section 6.03.

20 See FMP, subsection 1.05(f) and sections 4.05 and 4.09.

21 2013 Term Sheet, paragraph 11(d).

22 FMP, section 5.03.

The Sponsors are required to mutually agree to any change made in the Permanent Improvement Zone. As in the Temporary Improvement Zone, where the Sponsors have agreed to a change which would result in an improvement to member benefits, the Sponsors would be required to enter into a written agreement "governing the manner in which the contributions by the Minister and employers may be adjusted to offset any change in current benefits that is reflected in the value of the liabilities."[23]

In light of the Freeze Period and the OTF Call Right, it is our understanding that no actions under the Permanent Improvement Zone will be permitted until the Freeze Period has ended and the OTF Call Right in Article VI of the FMP has been satisfied.[24]

3. History of Surplus Utilization

The history of OTPP surplus utilization from the time the OTPP became a jointly-sponsored pension plan[25] to the date that the FMP was established (in March 2003) demonstrates a past practice of the Sponsors equally sharing (in the aggregate) the benefits of surplus utilization:

Valuation Date	Surplus/(Deficit)	OTF	Ontario Government	Surplus Remaining
1990	$(7.8 billion) unfunded liability	Increased contributions by 1% to 8.9%	Agreed to make a series of special payments to eliminate the unfunded liability and match increased contributions	Special payments considered an asset bringing the plan to a $0 surplus
1993	$1.5 billion	$325 million to offset social contract days	Eliminated special payments for $1.2 billion saving	$0
1996	$0.7 billion	$0.6 billion for benefit improvements and RCA contributions	N/A	$0.1 billion
1998	$6.8 billion	$2.2 billion for benefit improvements	$4.6 billion to reduce the value of remaining special payments	$0

23 FMP, section 5.05(b).

24 See FMP, sections 5.05 and 5.08.

25 The Partners' Agreement is dated July 15, 1991.

1999	$3.5 billion	N/A	$3.5 billion to reduce the value of remaining special payments	$0
2001	$6.8 billion	$6.2 billion for benefit improvements	N/A	$0.6 billion
2002	$1.9 billion	Sponsors agreed not to make any changes to benefits or contributions		$1.9 billion
Total		**$9.3 Billion**	**$9.3 Billion**	

* Source: Ontario Teachers' Pension Plan Board "Report on Funding" (April 2002)

Although surplus utilization prior to 2003 may not have been 50/50 each time, from 1990 to 2002 the aggregate value obtained by each of the Sponsors was equal. In certain instances where the Province received a disproportionate share of the financial benefits from surplus utilization, a commitment was made to the OTF that they would receive future surplus available for utilization. In 1998, $6.8 billion in surplus was utilized to cause a $2.2 billion benefit improvement and to provide the Province with a $4.6 billion reduction in the value of special payments owed by the Province. As part of this negotiation, the OTF and the Province agreed to allow future surplus to be utilized to eliminate the Province's remaining special payments (which resulted in $3.5 billion surplus being utilized in 1999 to reduce the value of the Province's remaining special payments) and a commitment was made for the next $6.2 billion in surplus to be available to OTF for benefit improvements (such surplus being utilized for benefit improvements in 2001).[26]

As noted above, the FMP was introduced in March 2003 to provide a guidance framework to the Sponsors when the OTPP has a funding surplus or shortfall. It is our understanding that there have been at least 2 material amendments to the FMP framework since its introduction. Below is a summary of the key funding decisions since the introduction of the FMP:

Year	Valuation Status and Key Decisions
2003	$1.5 billion surplus; no changes to benefits or contribution levels. Funding Management Policy adopted by plan sponsors.
2005	A preliminary $6.1 billion shortfall was resolved, leaving plan with a $0.1 billion surplus. Shortfall resolved with special contribution rate increases, totalling 3.1% of base earnings by

[26] See Ontario Teachers' Pension Plan, "Key Funding Decisions Since 1990", available at: https://www.otpp.com/documents/10179/765840/-/d4e2fea5-624d-420f-af15-e2daf9bc2711/Key+Funding+Decisions.pdf

	2009 for teachers, the Ontario government and other employers. OTF used the $76 million contingency reserve set aside in 2001 to reduce contribution rate increases for members in 2008.
2008	A preliminary $12.7 billion shortfall was resolved with the introduction of conditional inflation protection for pension benefits earned after 2009 and an increase in the basic contribution rate for members and the government to 9% from 8%. Employers agree to make special payments equal to any annual pension increases retirees forgo to a maximum of 50% missed inflation.
2009	A preliminary $2.5 billion shortfall was resolved primarily by assuming a slightly higher long-term rate of return on investments: yield on real-return bonds plus 1.5%, versus real-return bonds plus 1.4%. Other minor changes made to assumptions to reflect recent plan experience.
2011	A preliminary $17.2 billion shortfall was resolved with a 1.1% contribution rate increase (phased in over three years), slightly smaller annual cost-of-living increases for teachers who retired after 2009, and recognition of current contribution rate as the permanent base rate.
2012	$9.6 billion preliminary shortfall adjusted to reflect changes in mortality assumptions and impact of two-year freeze on teachers' salaries. 2012 shortfall resolved by making inflation protection for pension credit earned after 2013 fully conditional on plan's funded status and providing slightly smaller pension increases, beginning in 2014, for members who retired after 2009. These changes enabled the plan to assume a slightly higher discount rate. The changes left the plan with a $200 million surplus at Jan. 1, 2012.
2014	$5.1 billion preliminary funding surplus used to boost pensions of members who retired after 2009 to the level they would have been at if full inflation protection had been provided each year since they retired. The surplus funds were also used to raise conditional inflation protection to 60% of the increase in the cost of living for the portion of retirees' pensions earned after 2009. Both changes are effective with January 2015 pension payments.
2015	Some of the $6.8 billion preliminary funding surplus was used to boost pensions of members who retired after 2009 to the level they would have been at if full inflation protection had been provided on January 1, 2015. The surplus funds were also used to raise conditional inflation protection for pension credit earned after 2009 to 70% from 60% of the increase in the cost of living. Both changes were effective January 2016. In addition, some surplus funds were reserved to help facilitate stability in contribution and benefit levels should a future funding valuation show a decline in assets or increase in pension costs.

* Source: Ontario Teachers' Pension Plan, "Key Funding Decisions Since 1990"

In September 2016, the Sponsors announced that a portion of the $13.2 billion in funding surplus would be utilized to restore inflation increases, with the remaining surplus funds

to be reserved "to help facilitate stability in contribution and benefit levels should a future funding valuation show a decline in assets or increase in pension costs".[27]

In summary, surplus has been utilized three times since the FMP was introduced – in each of 2014, 2015 and 2016 escalated adjustments were provided to increase the pensions of members who had retired after 2009. As noted above, the OTPP is currently in the Restoration Zone which, pursuant to Section 3.06, prioritizes the utilization of surplus to "restore" foregone indexation before any other actions are taken with respect to surplus. In other words, since the FMP was established the OTPP has not reached a level of surplus under the FMP which would allow for the Sponsors to enter into an agreement regarding its utilization under the Temporary Improvement Zone or the Permanent Improvement Zone.

It is also notable that, consistent with the 50/50 cost sharing principle under the plan, there is recent precedent for the Sponsors agreeing to equally share in the cost of funding a plan deficit (as with the case of surplus utilization, the Sponsors are required to mutually agree upon how to address any funding deficit in the OTPP). Specifically, the preliminary $17.2 billion shortfall identified in 2011 was resolved through a 1.1% increase to the contribution rate for both the participating employers and plan members (phased in over a three-year period).

Given the historical use of surplus under joint sponsorship of the OTPP prior to the adoption of the FMP, and the fact that over that time the Sponsors shared equally in surpluses, it may be that the Sponsors will expect to also share future surpluses on an equal basis, at least over time (we understand that it is certainly the Province's expectation that this will happen). In any event, based on the Plan Documentation, both parties will have an equal opportunity to benefit from surplus utilization through the negotiation process.

V. LEGAL RIGHT OF THE PROVINCE TO UNILATERALLY UTILIZE SURPLUS

As discussed in Part IV of this opinion, the Plan Documentation allows for the Sponsors to agree to utilize surplus in a variety of circumstances, depending on the funded status of the OTPP. These surplus utilization options include the following avenues through which the Province may potentially receive a financial benefit through the utilization of surplus:

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27 Ontario Teachers' Pension Plan, "Funding News", available at: https://www.otpp.com/corporate/plan-funding/funding-updates. We assume that a written agreement was reached by the Sponsors in this regard; however, we have not been provided with a copy of such agreement.

1. In the Restoration Zone, a Restoration Contribution Reduction may be agreed upon, once certain other requisite conditions have been met.

2. In the Temporary Improvement Zone, surplus may be utilized to provide a temporary contribution reduction (a contribution holiday), either as a stand-alone measure or in combination with other surplus utilization options (i.e., benefit improvements or surplus withdrawal).

3. In the Permanent Improvement Zone, surplus may be utilized to permanently reduce the current contribution obligations of the employers and the members, either as a stand-alone measure or in combination with changes to benefits.

Notwithstanding the foregoing, as noted above, the Sponsors have the discretion to, by mutual agreement, utilize surplus in any other manner agreed upon. (For example, Section 5.05 which relates to the Permanent Improvement Zone provides that "the partners may apply all or part of the [surplus] to change current benefits, current contributions, or both", subject to certain conditions.)

Any enforceable legal right of the Province to utilize surplus pursuant to the Partners' Agreement (and FMP appended thereto) would be grounded in the law of contract, the Partners' Agreement and the appended FMP being a contract between the Sponsors. A contract is an agreement "...which gives rise to an obligation that may be enforced in the courts."[28] It is our view that the relevant provisions in the Partners' Agreement[29] that contemplate the ability for the Province to receive a financial benefit through the utilization of surplus do not, by themselves, give rise to a legally enforceable right to unilaterally dictate the use of surplus. Such a legally enforceable right would only arise by agreement between the Sponsors, either through negotiations or mediation, or if an order were issued by a board of arbitration as contemplated by the dispute resolution mechanisms found in the Partners' Agreement (see Section VI of this Opinion for further discussion of the impact of binding arbitration on the Sponsors' legal rights).

In this regard, the FMP can be thought of as being similar to an "agreement to agree," which does not create an enforceable legal interest in relation to the utilization of surplus.[30] What the Province does have, however, is a right to negotiate with the OTF the

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28 CED – Contracts – I Basis of Contract – 1 – Contract Defined.

29 Article III, Section 3.06; Article IV, Section 4.05; and Article V, Section 5.05.

30 For a statement of the principle that an "agreement to "agree" is not an enforceable legal interest, see, for example: *Simpson v. Canada (Attorney General)*, 2011 ONSC 5637 at para. 60 citing *Ward v. Ward*, 2011 ONCA 178 and *Bawitko Investments Ltd. v. Kernels Popcorn Ltd.*, 1991 CanLII 2734 (Ont CA). See also G. H. L. Fridman, *The Law of Contract in Canada*, 6th ed (Toronto: Carswell

use of surplus that may arise under the plan, at least in the context of an actuarial valuation that discloses surplus and that is to be filed with the regulators.

In addition, when a valuation is prepared to be filed and the Sponsors have to discuss the treatment of a surplus disclosed in the valuation, section 74 of the Partners' Agreement requires the Sponsors "to bargain in good faith and make every reasonable effort to reach an agreement on the changes, if any, that will be made to the plan". One might therefore argue that that obligation of good faith may include the obligation to take into account the "sharing" principles described elsewhere in this opinion, given that the OTPP is a jointly-sponsored plan.

As will be discussed below, where the Sponsors are unable to agree upon the utilization of surplus pursuant to the negotiation/mediation processes set forth in the Partners' Agreement, there is an ability for the Sponsors to submit the matter to arbitration. The issuance of an order by an appointed board of arbitration regarding the use of surplus funds under the OTPP would create a legally enforceable right, as the submission to the board of arbitration would constitute a proceeding under the *Arbitrations Act* – as specified in paragraph 87 of the Partners' Agreement – that is enforceable by a court.[31]

VI. IMPACT OF BINDING ARBITRATION ON THE SPONSORS' LEGAL RIGHTS

Section 8.01 of the FMP provides the following:

> Section 8.01 Unless the partners mutually agree to the contrary, they shall follow the procedures described in paragraphs 74 to 100 when determining the plan changes arising from Section 3.07.

We first note that the mediation/arbitration process would not be triggered unless there is an actuarial valuation to be filed with the regulators that requires the Sponsors to agree on how any surplus or deficit is to be addressed. If a valuation is prepared in a year when no filing is required (filings generally only being required every three years), and the Sponsors do not agree to file the valuation, then the Sponsors do not necessarily have to address funding and benefit issues and therefore no negotiations may occur.

The processes in paragraphs 74 to 100 of the Partners' Agreement that are referred to in Section 8.01 of the FMP provide, amongst other things, for the following:

Publishing, 2011) at 23 where the author states "There cannot be a contract to enter into a contract. Nor can there be a contract to negotiate, i.e., an agreement to agree."

[31] Section 50(1) of the *Arbitration Act, 1991*, SO 1991, c 17 states "A person who is entitled to enforcement of an award made in Ontario or elsewhere in Canada may make an application to the court to that effect."

- The Sponsors are required to meet to bargain in good faith and make every reasonable effort to reach an agreement on the changes, if any, that will be made to the plan (section 74);

- The parties may at any point appoint a mediator by agreement of the parties or by a method to which they agree at that time (section 77);

- If the parties agree, the mediator may be appointed as a mediator/arbitrator in which case the appointee will decide on the process and time frame for conducting mediation/arbitration (section 80);

- Within 30 days of appointment, the mediator will prepare a confidential report setting out his or her views on the positions of the two partners and containing a recommendation (section 82);

- If the partners do not accept the report within 14 days of its being delivered to them it will be destroyed and an arbitration board will be appointed (section 84);

- This agreement together with a referral to a board of arbitration constitutes a submission under the *Arbitration Act, 1991*[32] (section 87);

- The board of arbitration in making an award will consider prevailing economic conditions and the overall state of the provincial economy (section 91);

- The award made by the board of arbitration, must comply with certain prescribed requirements, including to "provide that the contributions of the Minister and those employers who are required to contribute are equal to the contributions of members" (section 92(c));

- The Board will prepare a final valuation of the plan which implements all of the changes to the plan which have been awarded or agreed to by the partners (section 94);

- The Sponsors may agree to change the procedure described in this agreement, either for one round of negotiations or for all future negotiations; and

- Pursuant to Section 8.02 of the FMP, certain limitations on amendments set out in the FMP also apply to an award made by a board of arbitration (generally, these limitations are intended to ensure that the plan is adequately funded after providing for the utilization of surplus).

---

32 SO 1991, c. 17 (the "***Arbitration Act***").

The Partners' Agreement and the FMP contain no general arbitration clause governing all disputes relating to the agreement, although Section 14 of the Partners' Agreement provides for the possibility of voluntary arbitration. We are not aware of any instance where the arbitration provisions have been invoked by the parties since the FMP was established. It is not immediately clear whether disputes relating to the utilization of surplus under Article IV of the FMP (i.e., the Temporary Improvement Zone) and under Article V of the FMP (i.e., the Permanent Improvement Zone) would be subject to arbitration.[33] It is our understanding from discussions with OTPP's internal legal counsel, however, that the arbitration provisions in the FMP would be expected to apply to disputes relating to the utilization of surplus under each of these provisions.

Where a matter has been submitted to arbitration, case law has established that the agreement between the parties that is being arbitrated is the fundamental source of subject matters that come within the arbitration board's jurisdiction.[34] The parties are free to design their own procedures, including setting the scope of the arbitration board's jurisdiction and specifying the potential outcomes of the arbitration (subject to certain default appeal rights and mandatory grounds to set aside an award under the *Arbitration Act*). The arbitration board is empowered to make binding decisions because of the arbitration agreement, including any limitations on that authority. Canadian courts have traditionally granted deference to arbitration awards.

Arbitration provisions are generally procedural in nature and therefore do not provide a strong foundation upon which to base parties' reasonable expectations about their substantive rights under an agreement. To resolve a dispute, the arbitration board would engage in an exercise in interpretation of the operative substantive provisions of the relevant governing documents, including any applicable statutory provisions. However, as noted above, under section 92 of the Partners' Agreement, the arbitral award must meet certain mandatory conditions. Among other things, the arbitral award is required to provide that the contributions of the Minister and those employers who are required to contribute are equal to the contributions of members (section 92(c) of the Partners'

---

[33] On the one hand, Section 8.01 of the FMP provides for the procedures in the Partners' Agreement relating to arbitration to apply "when determining the plan changes arising from Section 3.07". This may suggest that only disputes relating to the utilization of surplus under Article III (i.e., the Restoration Zone) can be arbitrated. On the other hand, Section 8.03 of the FMP provides that "Subject to the 2013 Term Sheet, nothing in Article II to Article IX affects the timing of the triennial negotiation, mediation and arbitration process referred to in paragraph 72 to 100", which may suggest that any agreement relating to the utilization of surplus, including under Article IV or Article V of the FMP, may be subject to arbitration (when a valuation is to be filed the parties have to agree on how any surplus – including surplus in the Temporary Improvement Zone and Permanent Improvement Zone, if any – will be used).

[34] See for example: *Desputeaux v. Éditions Chouette* (1987) Inc., [2003] 1 SCR 178, para. 22.

Agreement). The arbitration board does not have discretion to ignore this mandatory provision, although the provision would need to be given effect within the context of the relevant documents and applicable statutes, interpreted as a whole, and other relevant factors, such as past conduct of the parties. As part of the arbitration board's interpretation exercise of the relevant governing documents, in the event of ambiguity in the written terms of the documents, evidence of the parties' post-agreement practices can be admitted as an aid to interpreting the agreement. Past practices may illustrate the parties' intentions at the time of the agreement. These considerations of past practices would be in conjunction with any explicit mandatory considerations set out in the governing document, e.g. prevailing economic conditions and the overall state of the provincial economy under section 91 of the Partners' Agreement. The past practices which the arbitrator may consider would include those described above: the long history of 50/50 member/employer contributions to the plan, and the equal sharing of surpluses prior to 2003 (from 2003 onwards the plan was mostly in deficit, with surpluses used to restore foregone escalated adjustments for members).

Yours truly,

Osler, Hoskin & Harcourt LLP

Osler, Hoskin & Harcourt LLP
JS/DR/JM:jm

RE_ 2 opinions - OTPP and AG obligations to render an opinion.rtf

From: Steele, Jana [JSteele@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
Subject: RE: 2 opinions - OTPP and AG obligations to render an opinion
Date: Friday, September 30, 2016 13:08:34

Yes, understood. Jana

From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Friday, September 30, 2016 10:27 AM
To: Steele, Jana <JSteele@osler.com>
Subject: 2 opinions - OTPP and AG obligations to render an opinion

Jana

Just confirming what we discussed – the 2 opinions by Oslers may be made public.

****

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****

RE_ Check in.rtf

From: Danyluk, Kerry (CA - Toronto) [kdanyluk@deloitte.ca]
To: Colley, Matthew (CA - Toronto) [mcolley@deloitte.ca]; Steele, Jana [JSteele@osler.com]; Marin, Jon [jomarin@osler.com]; Kaufman, Paul (TBS) [Paul.Kaufman@ontario.ca]; Rienzo, Douglas [DRienzo@osler.com]; Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]; Grindley, Clair (CA - Toronto) [clgrindley@deloitte.ca]
Subject: RE: Check in
Date: Sunday, September 18, 2016 13:53:01
Attachment 1: Picture (Device Independent Bitmap) 1.jpg

Here is the material on the accounting definition of an asset I was mentioning

--
Kerry Danyluk
Partner | National Accounting and Assurance
D: +1 (416) 775 7183
kdanyluk@deloitte.ca | deloitte.ca
--
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of the Canadian Olympic team

Please consider the environment before printing.

-----Original Appointment-----
From: Colley, Matthew (CA - Toronto)
Sent: Sunday, September 18, 2016 1:24 PM
To: Steele, Jana; Marin, Jon; Kaufman, Paul (TBS); Rienzo, Douglas; Hatzis, Len (TBS); Danyluk, Kerry (CA - Toronto); Grindley, Clair (CA - Toronto)
Subject: Check in
When: Sunday, September 18, 2016 1:00 PM-2:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Skype Meeting

Here are some thoughts on the document sent across last night.

Thanks

Matt

<< File: Memo Excerpt - Framework for Analysis.DOCX >>

→ Join Skype Meeting

This is an online meeting for Skype for Business, the professional meetings and communications app formerly known as Lync.

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+1-877-393-7360 Sans frais (CANADA, Toronto)	French (Canada)

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[!OC([1033])!]

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Picture (Device Independent Bitmap) 1.pdf

.36 Assets have three essential characteristics:

a. they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;

b. the public sector entity can control the economic resource and access to the future economic benefits; and

c. the transaction or event giving rise to the public sector entity's control has already occurred. [Former paragraph PS 1000.36 retained in Archived Pronouncements.]

.37 An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:

a. no future economic benefit;

b. future economic benefit, but the government cannot obtain it; or

c. future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred.

RE_ Draft Opinion - Auditor General.rtf

From: Code, Jacqueline [JCode@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
Subject: RE: Draft Opinion - Auditor General
Date: Tuesday, September 20, 2016 12:00:38

Yes, that's fine.

-----Original Message-----
From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Tuesday, September 20, 2016 12:00 PM
To: Code, Jacqueline <JCode@osler.com>
Cc: Steele, Jana <JSteele@osler.com>
Subject: Re: Draft Opinion - Auditor General

Sorry - can we make it at 1215 if possible

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Code, Jacqueline
Sent: Tuesday, September 20, 2016 11:58 AM
To: Hatzis, Len (TBS)
Cc: Steele, Jana
Subject: RE: Draft Opinion - Auditor General

Yes, I can be.

-----Original Message-----
From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Tuesday, September 20, 2016 11:52 AM
To: Code, Jacqueline <JCode@osler.com>
Cc: Steele, Jana <JSteele@osler.com>
Subject: Re: Draft Opinion - Auditor General

Thanks - will review - are you free to chat at 1230 if possible.

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Code, Jacqueline
Sent: Tuesday, September 20, 2016 11:25 AM
To: Hatzis, Len (TBS)
Cc: Steele, Jana
Subject: Draft Opinion - Auditor General

Len,

Attached please find our draft opinion regarding the obligations of the Auditor General to audit the Public Accounts before they are tabled. We have provided it in draft in the event that you have questions or comments that would require it to be revised.

I'd be happy to discuss it with you at your convenience once you have had a chance to review it.

Best regards,

Jacqui

[cid:image001.gif@01D21331.91764C20]

Jacqueline Code

416.862.6462

DIRECT

416.862.6666

FACSIMILE

jcode@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

[cid:image002.gif@01D21331.91764C20]<http://www.osler.com/>

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RE_ Facts used in Osler’s analysis .rtf

From: Steele, Jana [JSteele@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]; Marin, Jon [jomarin@osler.com]; Rienzo, Douglas [DRienzo@osler.com]
Subject: RE: Facts used in Osler's analysis
Date: Saturday, September 17, 2016 10:22:57

We can provide this to them by end of day in draft. This is the complex factual analysis that we have been working through.

-----Original Message-----
From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Saturday, September 17, 2016 10:15 AM
To: Steele, Jana <JSteele@osler.com>; Marin, Jon <jomarin@osler.com>; Rienzo, Douglas <DRienzo@osler.com>
Subject: Fw: Facts used in Osler's analysis

Hi
Is this possible?

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Sent: Saturday, September 17, 2016 10:08 AM
To: Hatzis, Len (TBS)
Cc: Colley, Matthew (CA - Toronto); Petsche, Nadine (TBS)
Subject: Facts used in Osler's analysis

Hi Len,

Understand the Oslers may not have a draft of their opinion to share until Monday, could you check to see if they could share the fact section of their opinion without any analysis in draft form with Deloitte today. That would help ensure that when the opinion is provided, there are not any disconnects regarding the various agreements, etc. considered in their opinion and the Deloitte opinion.

Oslers and Deloitte are planning to speak on Sunday.

Thanks,

Cindy

_____

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RE_ Hi - can you forward these documents if you have them - thanks.rtf

From: Marin, Jon [jomarin@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]; Steele, Jana [JSteele@osler.com]
Subject: RE: Hi - can you forward these documents if you have them - thanks
Date: Sunday, September 18, 2016 15:20:00
Attachment 1: OTPP JSPP Afreement final March 2013.pdf
Attachment 2: MOF letter.pdf

Len,
Attached, please find copies of each of the documents requested below (the June 17, 2016 Mercer letter is an enclosure to the Sept. 15, 2016 OTPP letter in the "MOF Letter" PDF).

Regards,
Jon

-----Original Message-----
From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Sunday, September 18, 2016 3:13 PM
To: Steele, Jana <JSteele@osler.com>; Marin, Jon <jomarin@osler.com>
Subject: Hi - can you forward these documents if you have them - thanks

1. Osler's has made reference to a 2012 term sheet. Could you get us a copy of this?
2. There was a memo from Lise Houlse (at Mercer's) to Mary Cover (Ontario Teachers' Pension Plan) dated June 17, 2016. Could we obtain this as well?

Sent from my BlackBerry 10 smartphone on the Rogers network.

_____

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OTPP JSPP Afreement final March 2013.pdf

OTPP Term Sheet – March 13, 2013

CONFIDENTIAL

This Term Sheet (the "Agreement") sets out the key terms of the agreement between the Plan Sponsors, which is effective during the "Freeze Period" (as defined below). The Government will provide a letter to the Plan Sponsors which will explain: the background of the 2012 Ontario Budget measures about jointly sponsored pension plans; the Government's plan to introduce legislation to carry out those measures, including pooling of broader public sector pension fund assets; the fact that discussions lead to this Agreement instead; and will confirm the Government Commitments which are based on those discussions and this Agreement.

A. General Principles

1. The Freeze Period runs from December 31, 2012 to December 30, 2017.

2. During the Freeze Period there will be no employer contribution increases except as provided for below. An employer contribution increase is defined as any increase in the employer contribution rate beyond the highest contribution rate provided for in the last valuation filed by the Plan prior to the Freeze Period. Employer contribution increases already scheduled to occur during the Freeze Period as a result of valuations filed with an effective valuation date before December 31, 2012 will occur.

3. During the Freeze Period, except as may be required by the Pension Benefits Act or as a result of a judicial or quasi-judicial decision that is binding upon the Sponsors or the Plan, there will be no benefit improvements unless the Plan's going concern funded status, based on the most recently filed valuation report, on a non-smoothed basis, as of the date that the benefit improvement amendments come into effect meets or exceeds 105%, and the benefit improvement will not bring the going concern funded status below 105% as of the effective date of the amendment.

4. During the Freeze Period, except as may be required by the Pension Benefits Act or as a result of a judicial or quasi-judicial decision that is binding upon the Sponsors or the Plan, there will be no restoration of benefits reduced as a result of application of these principles unless the Plan's going concern funded status, based on the most recently filed valuation report, on a non-smoothed basis, as of the date that the benefit restoration amendments come into effect meets or exceeds 105% and the restoration will not bring the going concern funded status below 105% as of the effective date of the amendment.

5. Ad hoc/conditional indexation is not considered to be a benefit improvement or restoration and Plan amendments to provide or restore ad hoc or conditional cost of living increases to pensioners can be made provided the Plan's going concern funded status on the date that the cost of living increase is agreed upon (based on the most recently prepared valuation report with a valuation date that is no more than twelve months earlier and that uses the same valuation methodology and assumptions that would apply to a filed valuation) exceeds 100% and the cost of living increase will not

bring the going concern funded status below 100% as of the effective date of the amendment.

B. Valuations and Consequential Actions During the Freeze Period

6. Should any draft valuation prepared for filing during the Freeze Period disclose a funding circumstance in which employer contribution increases would normally be implemented (i.e., a funding shortfall) the funding circumstance must be addressed within the following Parameters. Any valuation filed during the Freeze Period will conform to the General Principles above and the Parameters as follows:

a. During the Freeze Period there will be no employer contribution increases except as provided for below. A contribution increase is defined as any increase in the contribution rate beyond the highest contribution rate provided for in the last valuation filed by the Plan prior to the Freeze Period.

b. Any future benefit reductions determined to be required in order to meet the General Principles and these Parameters during the Freeze Period will not exceed twenty percent (20%) of the aggregate value of future benefits determined based on the Plan provisions in effect on December 31, 2011 ("the Benefit Reduction Limit"), which aggregate value the Sponsors agree is $42.590 billion. Benefit reductions implemented pursuant to the valuation as at January 1, 2012 shall be taken into account for purposes of achieving the 20% Benefit Reduction Limit. For clarity, twenty percent (20%) is measured on an cumulative basis in the Freeze Period.

c. In respect of the benefit reductions provided for under the January 1, 2012 valuation, the Sponsors agree that the reduction in the aggregate value of future benefits is $4.094 billion (9.6%). This reduction in the aggregate value of future benefits was calculated to include:

(i) the reduction in the funding shortfall from the impact of the decrease in the present value of future benefits and contributions stemming from the increase in the discount rate which resulted from the Plan amendment to remove and replace the remaining 50% guaranteed indexing with full conditional inflation protection ("CIP") for post-2013 service;

(ii) the reduction in present value of benefits from invoking an additional 10% of CIP (inflation protection from 60% to 50%) for post-2009 service effective January 1, 2014 along with the associated increase in the present value of the "share the pain payments" (matching contributions made by the Government/employers) plus the reduction in present value of benefits from invoking a further 5% of CIP (inflation protection from 50% to 45%) for post-2013 service effective January 1, 2015.

Appendix A attached hereto provides further details regarding this benefit reduction calculation.

d. Any future benefit reductions under a post-January 1, 2012 valuation, if necessary, will be implemented with an effective date that is no later than the earlier of:

i. two years following the valuation date of the filed actuarial valuation, or

ii. December 30, 2017.

e. In no case will future benefit reductions implemented as a result of the General Principles and/or Parameters affect or reduce pension benefits or ancillary benefits accrued prior to the implementation date of the benefit reduction(s). Ancillary benefits will be considered to have accrued, if, as of the implementation date of the benefit reduction, the person will have met all of the eligibility requirements to exercise the right to receive the ancillary benefits.

f. Sponsors' agreement on future benefit reductions would be effected by a Plan amendment to be prepared and filed within 60 days of agreement or outcome of the dispute resolution process.

g. Once the Benefit Reduction Limit has been reached (i.e., if the second or subsequent valuation(s) filed during the Freeze Period reduce benefits by $4.424 billion (10.4%)), the Sponsors will return to their usual process and make use of their usual tools (e.g., employer and member contribution rate increases and/or benefit reductions beyond the benefit reduction limit) to determine the steps necessary to avoid:

i. any remaining shortfall identified in the draft valuation; or

ii. a future new funding shortfall identified in a subsequent draft valuation during the Freeze Period.

After 2013, any valuation filed during the Freeze Period must be filed on or before September 30 of the year of filing.

C. Dispute Resolution

7. Any dispute with respect to the interpretation or application of this Agreement may be referred by either Sponsor to final and binding arbitration. Either of the parties may notify the other in writing of its desire to submit a difference or dispute to arbitration and the notice shall contain the names of the first party's appointment to an Arbitration Board. The recipient of the notice shall within five (5) days inform the other party of the name of its appointee to the Arbitration Board. The two (2) appointees so selected shall, within five (5) days of the appointment of the second of them, appoint a third person who shall be the Chairperson. If the recipient of a notice fails to appoint an appointee, or the two appointees fail to agree upon a Chairperson within the time limit, either party may request that the appointment shall be made by the Chief Justice for Ontario.

8. In the event that a dispute arises with respect to the interpretation or application of paragraph 6 in particular, all steps to appoint an Arbitration Board as set out in paragraph 7 will be taken on or before 60 days before September 30. The decision of the Arbitration Board shall be issued at least 20 days before September 30.

9. In the event that a dispute arises with respect to the interpretation or application of paragraph 6, in particular, including whether the Benefit Reduction Limit has been reached, the Arbitration Board's mandate will be restricted to determining the means by which the obligations in this Agreement will be carried out and will be subject to the same restrictions applicable to the Sponsors regarding the available options and for greater certainty will exclude an increase in employer contributions during the Freeze Period. The Sponsors, utilizing their usual processes may increase employer contributions once the Benefit Reduction Limit is reached.

D. End of the Freeze Period

10. At the end of the Freeze Period, this Agreement expires and any obligations to conform to this Agreement, and any measures taken in accordance with it, end with the exception of the provisions in paragraph 11.

11. After the end of the Freeze Period, if the Plan's going concern funded status (based on the most recently filed valuation report with a valuation date after December 30, 2017) exceeds 100%, the union/federation sponsors have "first call" on 100% of the surplus disclosed under a valuation report with a valuation date after December 30, 2017, up to a cumulative total of the value of either: the benefit reductions that are made during the Freeze Period; or the Benefit Reduction Limit, whichever is lower. The "first call" on surplus (to take the form of "surplus credits") would be subject to the following conditions:

(a) Surplus credits would only take into account the value of benefit reductions made during the Freeze Period, including the value of benefit reductions made in the January 1, 2012 valuation, but excluding: (i) the value of benefit reductions for which matching contributions are made by the Government/employer ("share the pain payments"), and (ii) the value of benefit reductions relating to the removal and replacement of the remaining 50% guaranteed indexing with full CIP for post-2013 service and the resulting change to the discount rate (as described in paragraph 6(c)(i) above).

(b) Subject to (c) below, the surplus credits could be used as the union/federation sponsors wish (i.e., credits would not be required to be used to restore the same benefits that were reduced during the Freeze Period).

(c) The union/federation sponsors are permitted to spend the surplus credits so long as the going concern funded status of the Plan does not fall below 100% after the surplus credits are spent.

(d) This is a one-time arrangement intended to compensate Plan members for absorbing 100% (rather than 50%) of funding shortfalls arising in the government initiated Freeze Period and is without prejudice or precedent for any future situation.

(e) If inflation protection is invoked below 50% during the Freeze Period, subject to paragraph 11(a), surplus credits will include an amount equal to the actual foregone pension payments during and after the Freeze Period that arise from the reduction in indexing invoked during the Freeze Period until such time as that inflation protection is restored at 50% or more during or after the Freeze Period.

Appendix B attached hereto provides further details regarding the surplus credit calculation.

E. Other Matters

12. The Sponsors will ensure that the cooperation of the Administrator is secured in relation to all aspects of this Agreement, including but not limited to the preparation of the draft valuation, the filed valuation, and applying for any necessary extension of the timelines for filing actuarial valuations and/or Plan amendments as may be necessary to give effect to this Agreement.

13. In order for the terms of this agreement to be effective, the Ontario Government will, subject to Cabinet approval, on or before May 1, 2013, amend Regulation 909 under the Pension Benefits Act to allow for a single four-year valuation cycle for a valuation filing that would otherwise be required to be made during the Freeze Period subject to the following conditions:

a. at least one valuation is filed during the Freeze Period;

b. there are no more than four years between the valuation dates of filed valuations; and

c. any benefit reductions arising from valuations filed during the Freeze Period are implemented in accordance with the General Principles and Parameters herein.

Failing amendment of the said Regulation, this Agreement is of no force or effect.

14. The terms of this Agreement supersede all other agreements (written and oral) between the Sponsors, including the Partners' Agreement. The Sponsors shall amend the Plan, the Partners Agreement or any other documents as necessary to give effect to this Agreement.

15. This Agreement may be executed in one or more counterparts and delivered by facsimile or other means of electronic transmission, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement.

Liz Sandals - Minister of Education

Date:

Terry Hamilton – President,
Ontario Teachers' Federation

March 13, 2013
Date:

15. This Agreement may be executed in one or more counterparts and delivered by facsimile or other means of electronic transmission, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement.

Liz Sandals - Minister of Education

Date: Mar 14/13

Terry Hamilton – President,
Ontario Teachers' Federation

Date:

Appendix A to Term Sheet Between Government and OTF

As of January 1, 2012 (all amounts in millions)

Calculation of Benefit Reduction Limit

Present Value of Future Benefits Based on Plan Provisions as of December 31, 2011 But Including Legislated Vesting Change		$ 48,899
Less:	Reduction in Present Value of Future Benefits to Reflect Indexation for Post-2009 Service at 60% of CPI	6,309
Equals:	Present Value of Future Benefits For Purposes of Calculating Benefit Reduction Limit	$ 42,590

Benefit Reduction Limit = 20% x $42,590 = $8,518

Calculation of Portion of Benefit Reduction Limit Utilized By Changes to Plan Incorporated into January 1, 2012 Actuarial Valuation

Increase in Reduction of Present Value of Future Benefits From Change in Indexation From 60% to 50% of CPI for Post-2009 Service	$1,367
Plus	
Increase in Government Matching Contributions From Change in Indexation From 60% to 50% of CPI for Post-2009 Service	1,367
Plus	
Reduction in Present Value of Future Benefits Resulting From Change in Discount Rate Associated With Plan Changes (15.0 basis points)	1,390
Plus	
Reduction in Present Value of Future Contributions Resulting From Change in Discount Rate Associated With Plan Changes (15.0 basis points)	(497)
Plus	
Increase in Reduction of Present Value of Future Benefits From Change in Indexation From 50% to 45% of CPI for Post-2013 Service	467
Equals	
Portion of Benefit Reduction Limit Utilized	
$ Amount	$ 4,094
% Amount from 20%	9.6%

Remaining Benefit Reduction Limit for Plan Changes in Freeze Period

Benefit Reduction Limit		$ 8,518
Less:	Portion of Benefit Reduction Limit Utilized By Changes to Plan Incorporated into January 1, 2012 Actuarial Valuation	4,094
Equals:	Remaining Benefit Reduction Limit For Plan Changes in Freeze Period	$ 4,424
	% Amount from 20%	10.4%

Appendix B to Term Sheet Between Government and OTF

The following are examples only. For purposes of paragraph 11(e) of the Term Sheet, the actual foregone indexing below 50% will be determined by the Plan Administrator based on the actual pension payments affected.

Subject to the above paragraph, the following example shows how the foregone pension payments in respect of which surplus credits are to be awarded (paragraph 11(e)) would be calculated in connection with invoking CIP below 50%. The example is based on:

- Inflation rate of 2.00% per year
- Retirements as of July 1st of each year
- New pensioner payments each year under the additional 50% CIP provisions for post-2013 service of $3 million times number of years of service from January 1, 2014 to mid-year retirement date
- 10-year period with no mortality reflected
- Indexation at 45% of CPI for the entire period

Calendar Year	Pension Payments With 50% of CPI (000's)	Pension Payments With 45% of CPI (000's)	Foregone Pension Payments (000's)
2014	$ 1,500	$ 1,500	$ 0
2015	$ 7,515	$ 7,514	1
2016	$ 19,592	$ 19,582	10
2017	$ 37,786	$ 37,759	27
2018	$ 62,164	$ 62,099	65
2019	$ 92,786	$ 92,658	128
2020	$ 129,714	$ 129,492	222
2021	$ 173,011	$ 172,658	353
2022	$ 222,741	$ 222,212	529
2023	$ 278,968	$ 278,212	756
			$ 2,091

The following example modifies the above example to show the impact of moving from 45% of CPI to 0% of CPI (for post-2013 service) effective January 1, 2017:

Calendar Year	Pension Payments With 50% of CPI (000's)	Pension Payments With 45% of CPI / 0% of CPI (000's)	Foregone Pension Payments (000's)
2014	$ 1,500	$ 1,500	$ 0
2015	$ 7,515	$ 7,514	1
2016	$ 19,592	$ 19,582	10
2017	$ 37,786	$ 37,582	204
2018	$ 62,164	$ 61,582	582
2019	$ 92,786	$ 91,582	1,204
2020	$ 129,714	$ 127,582	2,132
2021	$ 173,011	$ 169,582	3,429
2022	$ 222,741	$ 217,582	5,159
2023	$ 278,968	$ 271,582	7,386
			$ 20,107

MOF letter.pdf

ONTARIO TEACHERS' PENSION PLAN

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September 15, 2016

Alex Killoch, Director
BPS Pensions Branch
Ministry of Finance
1st Floor, Frost Building South
7 Queen's Park Crescent
Toronto, Ontario
M7A 1Y7

Dear Alex:

As requested, we are outlining the annual process for providing actuarial and financial information about the Ontario Teachers' Pension Plan (Plan) to the Ministry of Finance. We are also providing information related to the funding valuation of the Plan and in particular, the discount rate setting process. Copies of various documents, correspondence and memos have been attached for reference purposes with applicable dates noted below.

Annual Process Related to the Province of Ontario Budget

Each December, the Ministry of Finance provides a request for information to the President and CEO of the Plan to assist in the preparation of the Ontario Budget. Specific assumptions to be used in the analysis are provided including return on investment, inflation, real rate of return and anticipated salary growth. The Province selects the best estimate assumptions in accordance with the Chartered Professional Accountants of Canada Public Sector Accounting Board Handbook. (December 11, 2015 request from the Province attached).

The external Plan actuary – Mercer – prepares the liability and current service cost calculations using the "projected benefit method, pro-rated on services" and economic assumptions are requested by the Province. Supporting information including contribution and benefit information is provided by the Plan. (January 26, 2016 correspondence from Mercer and the Plan attached).

Supplemental information was prepared by Mercer at the request of the Province in June of 2016 to assist in addressing inquiries from the Office of the Auditor General of Ontario. (June 17, 2016 Memo attached).

Annual Funding Valuation Process

On an annual basis, Mercer prepares a preliminary valuation for review by the Ontario Teachers' Pension Plan Board (Board). It is the Board's responsibility to decide key actuarial assumptions in close collaboration with the Plan actuary. The independent actuary must confirm that the

assumptions are independently reasonable and are appropriate in aggregate in accordance with the Canadian Institute of Actuaries Standards of Practice.

The annual assumption setting exercise is robust. The determination of the discount rate is informed by the Funding Management Policy (described below) and the Discount Rate Review process which reflects what the Plan's assets can reasonably be expected to earn over the long run less expenses and less provisions for adverse deviation (PFAD). The Plan takes into consideration two key PFADs: plan maturity and insufficient return. PFADs are set with reference to the demographic profile of the Plan, the risk tolerance and intergenerational fairness between members. A key challenge is the maturity of the Plan with the ratio of active members to pensioners being 1.4 to 1 with the ratio projected to decrease in the future. Longevity compounds this challenge as Teachers in Ontario live longer than the general Canadian population and their life expectancy continues to increase.

For the January 1, 2016 funding valuation (which will be filed with the regulatory authorities by September 30th), the nominal discount rate is 4.8% with an underlying real return of 2.75%. This real return takes into account PFADs of approximately 150 basis points.

Funding versus Accounting Valuations

The funding valuation assesses the Plan's long-term financial health to facilitate determination of future contribution rates and benefit levels. For the Plan, the cost method used is the aggregate method which allows the Plan to address funding surpluses and deficits through future benefits changes (eg. Conditional Inflation Protection (CIP)) and enables the Plan to factor in cash flows from future service. This differs from accounting standards which requires use of the projected benefit method prorated on services.

There are also differences in the assumption setting process. The Plan's assumption setting process for the annual funding valuation is noted above. Please refer to the attached Memo prepared by Mercer dated September 15, 2016, which outlines key methods and assumptions to be used to value pension plans per Canadian Public Sector Accounting Standards (PS3250).

Funding Management Policy

The Plan Sponsors (the Province of Ontario and Ontario Teachers' Federation) are jointly-responsible for two key decisions: a) what pension benefits the Plan will provide, and b) the contribution rate needed to ensure the Plan's benefits are fully funded over the long term. In doing so, the Sponsors negotiate the use of surplus funds and, when there is a funding shortfall, both share responsibility for eliminating it.

In March 2003, the Sponsors adopted a Funding Management Policy (FMP) as a supplement to the Partners' Agreement, with the objective to provide a guidance framework for decision making when there is a funding surplus or shortfall. A key component in the creation of the FMP was the concept of 'funding zones', each defined by a range. The funding zones provide a point of reference for whether action is required by the Sponsors, and if so, guidance is provided on how to use any surplus funds or resolve any shortfall – specifically, answering the question of when is it prudent to increase or decrease benefits, raise or lower contribution rates, or simply conserve assets for an uncertain time. While the FMP outlines preferred mechanisms

associated with its various funding zones, it is ultimately the Sponsors' responsibility to decide what actions to take.

In March 2015, a zone for Temporary Plan Improvements was added to the FMP, to allow for temporary contribution decreases, surplus distribution and/or benefit improvements (so long as they do not increase the long-term cost of the Plan) when assets exceed the projected cost of future benefits when valued using the Temporary Basis. Uses of surplus in this zone are paced, amortized over a period between three and 10 years, with an annual spending limit applied to amortization terms shorter than 10 years. The zone includes a provision that temporary improvements cease if a significant market event occurs. (FMP Framework and Summary attached).

As noted in Mercer's June 17th Memo, "should the plan earn future returns that are equal to the valuation discount rate adopted by the Province for financial statement reporting purposes, it is possible that some of the future contribution requirements could be reduced by agreement of the Sponsors as experience gains would be recognized in the funding valuation based on the assumptions currently used for funding purposes".

*****

We trust that the above information and various attachments provide a helpful overview of the annual process for providing financial information to the Ministry of Finance as well as the process in place for the annual funding valuation. Please do not hesitate to call if you have any questions or require further information.

Sincerely,

Barbara Zvan, FSA, FCIA, CERA
SVP, Strategy & Risk and Chief Investment Risk Officer
(416) 730-6364
Barbara_zvan@otpp.com

Cc: Ross Peebles
Joshua Paul
Rob Pomykacz
Allan Shapira
Mary Cover

Ministry of Finance

Income Security and Pension Policy Division

Office of the Assistant Deputy Minister
Frost Building South, 5th floor
7 Queen's Park Crescent East
Toronto ON M7A 1Y7
Tel.: 416 212-8073
Fax: 416 327-0760

Ministère des Finances

Division des politiques en matière de sécurité du revenu et de régimes de retraite

Bureau du sous-ministre adjoint
Édifice Frost Sud, 5e étage
7 Queen's Park Crescent East
Toronto ON M7A 1Y7
Tél.: 416 212-8073
Téléc.: 416 327-0160

Ontario

December 11, 2015

Mr. Ron Mock
President and Chief Executive Officer
Ontario Teachers' Pension Plan Board
5650 Yonge Street, Suite 400
Toronto, Ontario
M2M 4H5

Dear Mr. Mock:

In preparation for the 2016 Ontario Budget, I am writing to request actuarial and financial information, as at December 31, 2015, on the Teachers' Pension Plan (TPP) and the Teachers' Retirement Compensation Arrangement (TRCA). This information is required for calculating the Province's 2015-16 pension expense and pension liability.

To ensure that the information requested in this letter is consistent with the Province's best estimates (as required by the Public Sector Accounting Board [PSAB]), please use the following economic assumptions in your actuarial calculations for the requested TPP information.

Economic Assumption (annual rates)	Basis 1	Basis 2	Basis 3	Basis 4
Return on Investment	6.50%	6.25%	6.25%	6.00%
Inflation	2.25%	2.25%	2.00%	2.00%
Real Rate of Return	4.25%	4.00%	4.25%	4.00%
Salary Growth	2.25% for 2016 to 2019 and 3.25% thereafter	2.25% for 2016 to 2019 and 3.25% thereafter	2.00% for 2016 to 2019 and 3.00% thereafter	2.00% for 2016 to 2019, 3.00% thereafter

Despite the salary growth assumption above, please reflect in the valuation a 1% lump sum increase for the school year 2015-16, a 1% increase for the school year 2016-17 and additional 0.5% increase half-way through the school year 2016-17.

...2

We understand the Board may be preparing its financial statements based on International Financial Reporting Standards and Canadian Institute of Chartered Accountant Standard Section 4600. There has not been any change in reporting requirements under the Public Sector Accounting Board. Therefore, the actuarial and financial information we are requesting in this letter should be prepared in the same manner as has been provided to us in prior years.

Please provide the following actuarial and financial information with one set of calculations for each set of assumptions outlined in the table above. In these calculations for the TPP, please use the projected benefit method, prorated on services:

1. Actuarial present value (APV) of accrued benefit obligations, as at December 31, 2015. ***Basis 4 in last year's letter was used by the Province for 2015. Please include an APV reconciliation on that basis from December 31, 2014 to December 31, 2015 for all four bases.***

2. Actuarial value and market value of pension fund assets, as at December 31, 2015. The actuarial value of assets should be determined on the same basis as in prior years.

3. Interest on accrued benefits, cost of benefits accrued (separating out current period benefit cost, cost related to any plan amendments, transfers and other costs), actuarial adjustments, and the benefits paid (separate retirement pensions from other benefit payments) for the year ended December 31, 2015.

4. Contributions broken down by employee contribution, Province of Ontario contribution and other transfers for the year ended December 31, 2015 and the additional payments from the Province of Ontario with respect to "payments re foregone inflation adjustment" under subsection 5(2.1) of the *Teachers' Pension Act* for the year ended December 31, 2015. Please provide the same level of detail as would be disclosed in the "Contributions" note to the TPP's 2015 financial statements.

5. Return on investment, inflation and salary escalation assumptions that will be used in the TPP's 2015 financial statements.

6. Expected average remaining service life of active employees, as at December 31, 2015.

7. Net gain and loss for the year ended December 31, 2015 that would be subject to smoothing on the same basis as in prior years. Please also provide the same level of detail as in prior years.

...3

8. The "Schedule of Contributions and Interest Receivable from the Province of Ontario" (due in early January, 2016).

9. Number of pensioners and active members, as at December 31, 2015.

10. Please provide a brief, high level explanation of the source(s) of the actuarial gains and losses for 2015.

11. Please provide the 2016 service cost for all requested bases.

12. 2015 financial statements of the TPP and the TRCA as soon as they are available.

Please provide items 1 to 5 above for the TRCA based on what will be reported in the TRCA's 2015 financial statements. Note that we do not require that the information on the TRCA be based on the Province's economic assumptions.

Although the TPP has been amended to provide conditional inflation protection for service after December 31, 2009, the intention of the Partners is to provide 100% inflation protection to the extent possible. As such, please provide us with the actuarial calculation for #1 and #3 above assuming that inflation protection for post 2009 service will be provided at 100% and at 50% of the annual increase in the Consumer Price Index.

We require these estimates by **January 29, 2016.** Should you have any questions, please contact Mr. Rob Pomykacz at robert.pomykacz@ontario.ca, or by telephone at (416) 327-0156.

To expedite the preparation of Ontario's 2015-16 *Public Accounts*, I would also ask that you communicate by letter by April 30, 2016 whether, to the best of your knowledge, there were any events between December 31, 2015 and March 31, 2016, which would in your opinion, affect these valuation results in a material way.

...4

Please forward all the information requested in this letter to:

Mark Rozic, Manager (Acting)
External Reporting Branch
Office of the Provincial Controller Division
Treasury Board Secretariat
2nd Floor, Office 260, Frost Building South
7 Queen's Park Crescent
Toronto ON M7A 1Y7
Tel: (416) 325-8293
Fax: (416) 325-2029
E-mail: mark.rozic@ontario.ca

And to:

Alex Killoch, Director
BPS Pensions Branch
Ministry of Finance
1st Floor, Frost Building South
7 Queen's Park Crescent
Toronto ON M7A 1Y7
Tel: (416) 325-5724
Fax: (416) 212-8293
E-mail: alex.killoch@ontario.ca

Thank you for your cooperation in this matter.

Yours sincerely,

Leah Myers

c: Alex Killoch
Sanjeev Batra
Mark Rozic
Pauline Fong
Joshua Paul
Mary Cover
Rob Pomykacz
Bill Pelow

ONTARIO TEACHERS'
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January 26, 2016

Mark Rozic, Manager (Acting)
External Reporting Branch
Office of the Provincial Controller Division
Treasury Board Secretariat
2nd Floor, Office 260, Frost Building South
7 Queen's Park Crescent
Toronto, Ontario M7A 1Y7

Dear Mr. Rozic:

I am responding to a letter dated December 11, 2015 from Ms. Leah Myers that requested actuarial and financial information about the Ontario Teachers' Pension Plan (registered pension plan - RPP) and the Retirement Compensation Arrangement (RCA) at December 31, 2015.

Items 1, 3 (except the benefit payment breakdown), 6, 10 and 11 are included in the enclosed letter from Mercer (Canada) Limited.

Item 2 - Market Value of Pension Fund Assets ($ millions)

Please note that we no longer use an asset smoothing method for our financial statements. As such, there is no separate "actuarial" value of assets.

Market value of assets at December 31, 2015	Not yet available

Item – 3(a) RPP Benefits Paid ($ millions)

Retirement Pensions	$ 5,056
Survivor Pensions	273
Disability Pensions	27
Lump Sum Death Benefits	71
Refunds	1
Commuted Value Transfers	74
Transfers to Other Plans	8
Family Law Value Transfers	27
Total	$ 5,537

Item – 3(b) RCA Benefits Paid

The RCA pension payments made in 2015 were $7.40 million and the RCA lump sum payments in 2015 were $4.87 million.

Item - 4(a) RPP Contributions ($ millions)

Members		
Current Service	$	1,580
Optional Credit		35
Total	$	1,615
Province of Ontario		
Current Service	$	1,568
Interest		37
Optional Credit		32
Total	$	1,637
Other Employers	$	33
Transfers from Other Plans		14
Total	$	47
Grand Total	$	3,299

Item 4(b) - RCA Contributions ($ millions)

Members	$	5.6
Province of Ontario		3.3
Other Employers		2.4
Total	$	11.3

Item 4(c) - Payments re: Foregone Inflation Adjustments

The foregone inflation amounts for 2014 payments which are part of the government billing for payment in January 2016 are as follows:

		Total		**Province of Ontario**
RPP	$	1,130,253	$	1,106,279
RCA		12,205		11,946
Total	$	1,142,458	$	1,118,225

Item 5 - Economic Assumptions	**RPP**	**RCA**
Discount Rate	3.25%	1.625%
Salary Escalation Rate	2.50%	2.50%
Inflation Rate	1.50%	1.50%
Real Rate	1.70%	0.125%

Item 7 - Net Gain and Loss on Actuarial Value of Assets

Not applicable. Please note that we no longer use an asset smoothing method for our financial statements. As such, there is no separate "actuarial" value of assets.

Item 8 - Schedule of Contributions and Interest Receivable ($ millions)

Contributions	$	3,157
Interest		51
Total	$	3,208

Item 9 - Number of Pensioners and Active Members as at December 31, 2015

Pensioners	133,000
Active Members	183,000

Item 12 – Financial Statements

Not yet available.

We will provide any outstanding information as soon as it is available. In addition, we will send an updated version of this letter if any of the information contained herein is subsequently changed.

Please do not hesitate to call if you have any questions.

Sincerely,

Mary Cover, FSA, FCIA
Director, Pension Strategy and Enterprise Risk
(416) 730-2976
mary_cover@otpp.com

cc: Alex Killoch – Ministry of Finance

Lise Houle
Principal

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MERCER

26 January 2016

Ms. Mary Cover
Director, Pension Strategy & Enterprise Risk
Ontario Teachers' Pension Plan Board
5650 Yonge Street
Toronto, ON M2M 4H5

Private & Confidential

Subject: December 31, 2015 Valuation Results Using the Province's Assumptions

Dear Mary,

As requested, we have provided you with information for the Ontario Teachers' Pension Plan (OTPP) on points 1, 3, 6, 10 and 11 in the December 11, 2015 letter from the Ministry of Finance to Mr. Ron Mock. As instructed in the Ministry letter, the following sets of assumptions have been used in calculating the liabilities as at December 31, 2015:

	Basis 1	**Basis 2**	**Basis 3**	**Basis 4**
Valuation discount rate	6.50%	6.25%	6.25%	6.00%
Inflation rate	2.25%	2.25%	2.00%	2.00%
Real valuation discount rate	4.25%	4.00%	4.25%	4.00%
Salary escalation rate	2.25% for the years 2016 to 2019, 3.25% thereafter	2.25% for the years 2016 to 2019, 3.25% thereafter	2.00% for the years 2016 to 2019, 3.00% thereafter	2.00% for the years 2016 to 2019, 3.00% thereafter

For each basis, all the other assumptions and the valuation methods are those used by the Ontario Teachers' Pension Plan Board in the December 31, 2015 valuation for financial statement purposes. This includes proposed demographic assumption changes as well as negotiated salary increases providing a 1% lump sum increase at September 1, 2015, a 1% increase at September 1, 2016 and a 0.5% increase half-way through the school year commencing September 1, 2016. The demographic assumptions were updated to reflect recent experience of Plan members related to retirement, termination of plan membership, re-

instatement of inactive members and increases in salaries related to experience. The changes to the demographic assumptions are described in the presentation material from our meeting with the Technical Committee on January 13, 2016. The remaining demographic assumptions are provided in our Report on the Actuarial Valuation for Financial Statement Purposes as at December 31, 2014. We expect that our report on the December 31, 2015 actuarial valuation will be finalized in March, 2016.

For the sake of clarity, we note that the assumed increases in the YMPE and maximum pension limits under the Income Tax Act are the same rates as the long-term salary growth rates noted for each of the four bases.

The Province has requested that we prepare the results assuming that inflation protection for post 2009 service will be provided at 100% and at 50% of the assumed inflation rate. In this letter we have included results using both of these alternative inflation protection levels. We note that at the time of preparing this letter, the Plan provides for 70% of conditional inflation protection for post 2009 service.

At the Province's request, the liabilities have been calculated using the "projected benefit method, pro-rated on services". In the calculations presented in this letter, we have used the projected benefit method, pro-rated on service with three attribution periods to reflect the different indexing provisions for service accrued to December 31, 2009, service accrued from January 1, 2010 to December 31, 2013 and service accrued from January 1, 2014. However, we note that the same level of indexing was applied to all service from January 1, 2010 to December 31, 2015 for purposes of calculating the liabilities provided in this letter (whether the results are based on 100% or 50% conditional indexing).

We have included information regarding the experience gain/loss incurred relative to salary growth during the year as well as the impact on the December 31, 2015 liabilities due to changing the rate of inflation and salary growth assumption in Bases 3 and 4 in our tables relative to the assumptions from Bases 1 and 2. We note that since the assumed increases in salaries determined by the Province are set equal to the assumed inflation rate plus 1%, we have not separately identified the changes in salary only without the corresponding changes in inflation.

The results as at December 31, 2015 are summarized in the following tables.

Results using 100% conditional indexing for post 2009 service (results in $ millions)

	Basis 1	Basis 2	Basis 3	Basis 4
Valuation discount rate:	**6.50%**	**6.25%**	**6.25%**	**6.00%**
Inflation rate:	**2.25%**	**2.25%**	**2.00%**	**2.00%**
Salary escalation rate:	**2.25% for the years 2016 to 2019, 3.25% thereafter**	**2.25% for the years 2016 to 2019, 3.25% thereafter**	**2.00% for the years 2016 to 2019, 3.00% thereafter**	**2.00% for the years 2016 to 2019, 3.00% thereafter**
1. Actuarial present value (APV) of accrued pension benefits at December 31, 2014 using **Last Year's Basis 4**	$113,801	$113,801	$113,801	$113,801
2. Increase in the APV of accrued pension benefits				
Interest on the APV of accrued pension benefits	$7,310	$7,310	$7,310	$7,310
Current Service Cost (mid-year)	2,868	2,868	2,868	2,868
Contributions for optional credit	34	34	34	34
Repayment of refunds	0	0	0	0
Transfers from other plans	14	14	14	14
Change in valuation assumptions and methods:				
Change in demographic assumptions	350	350	350	350
Change in interest rate from Basis 1	0	4,142	4,142	8,309
	$10,576	$14,718	$14,718	$18,885
3. Decrease in the APV of accrued pension benefits				
Pensions paid	$5,356	$5,356	$5,356	$5,356
Refund of contributions	0	0	0	0
Lump sum payments and transfers	180	180	180	180
Salary experience gains	1,028	1,028	1,028	1,028
All other experience gains	552	552	552	552
Negotiated Salary Increases	1,161	1,161	1,161	1,161
Change in inflation rate and salary growth rates from Basis 1	0	0	3,829	3,829
Change in other actuarial assumptions and methods	46[1]	46	46	46
	$8,323	$8,323	$12,152	$12,152
4. Net increase in the APV of accrued pension benefits	$2,253	$6,395	$2,566	$6,733
5. APV of accrued pension benefits at December 31, 2015	$116,054	$120,196	$116,367	$120,534
6. Annual current service cost at January 1, 2016 (BOY)	$2,880	$3,058	$2,899	$3,079

[1] Change to commuted value assumption to value benefits payable upon termination

Results using 50% conditional indexing for post 2009 service (results in $ millions)

	Basis 1	Basis 2	Basis 3	Basis 4
Valuation discount rate:	**6.50%**	**6.25%**	**6.25%**	**6.00%**
Inflation rate:	**2.25%**	**2.25%**	**2.00%**	**2.00%**
Salary escalation rate:	**2.25% for the years 2016 to 2019, 3.25% thereafter**	**2.25% for the years 2016 to 2019, 3.25% thereafter**	**2.00% for the years 2016 to 2019, 3.00% thereafter**	**2.00% for the years 2016 to 2019, 3.00% thereafter**
1. Actuarial present value (APV) of accrued pension benefits at December 31, 2014 using **Last Year's Basis 4**	$112,004	$112,004	$112,004	$112,004
2. Increase in the APV of accrued pension benefits				
Interest on the APV of accrued pension benefits	$7,182	$7,182	$7,182	$7,182
Current Service Cost (mid-year)	2,508	2,508	2,508	2,508
Contributions for optional credit	34	34	34	34
Repayment of refunds	0	0	0	0
Transfers from other plans	14	14	14	14
Change in valuation assumptions and methods:				
Change in demographic assumptions	322	322	322	322
Change in interest rate from Basis 1	0	3,975	3,975	7,990
	$10,060	$14,035	$14,035	$18,050
3. Decrease in the APV of accrued pension benefits				
Pensions paid	$5,356	$5,356	$5,356	$5,356
Refund of contributions	0	0	0	0
Lump sum payments and transfers	180	180	180	180
Salary experience gains	979	979	979	979
All other experience gains	545	545	545	545
Negotiated Salary Increases	1,104	1,104	1,104	1,104
Change in inflation rate and salary growth rates from Basis 1	0	0	3,461	3,461
Change in other actuarial assumptions and methods	36[2]	36	36	36
	$8,200	$8,200	$11,661	$11,661
4. Net increase in the APV of accrued pension benefits	$1,860	$5,835	$2,374	$6,389
5. APV of accrued pension benefits at December 31, 2015	$113,864	$117,839	$114,378	$118,393
6. Annual current service cost at January 1, 2016 (BOY)	$2,523	$2,671	$2,574	$2,727

[2] Change to commuted value assumption to value benefits payable upon termination

We have the following comments on the results:

- Our valuation of the actuarial present value of the accrued pension benefits as at December 31, 2015 and the 2016 current service costs are based on membership data as at August 31, 2015. The actuarial present value of accrued pension benefits as at August 31, 2015 is then extrapolated forward to December 31, 2015, reflecting expected cashflows and the actual inflation adjustment as at January 1, 2016 of 1.30% for pre-2010 service and 0.91% for post-2009 service. The 2015 mid-year current service is based on membership data as at August 31, 2014. A summary of the membership data as at August 31, 2015 was included with our email of October 23rd, 2015 to Glen Tunney.

- We understand that the Province adopted Last Year's Basis 4 in establishing the actuarial present value of accrued pension benefits as at December 31, 2014. This is the same as Basis 1 for the current year.

- We have assumed that any change in the Province's assumptions (i.e. nominal and real discount rates, inflation rate, and salary escalation rate would occur at December 31, 2015).

The Expected Average Remaining Service Lifetime (EARSL) of active employees at August 31, 2015 and estimated for December 31, 2015, is 15.3 years. The increase in the EARSL from the prior year is primarily attributable to the change in assumed termination and retirement rates.

The net experience gain incurred on the plan liability since the prior year was primarily attributable to the lower than expected level of inflation for the January 1, 2016 indexing. Other experience gains and losses were relatively small.

The figures presented in this letter exclude the Ontario Teachers' Retirement Compensation Arrangement ("OTRCA"), which provides benefits to members that are in excess of those permitted to be provided from the registered pension plan. The Province has requested information on the OTRCA based on what will be reported in the OTRCA's 2015 financial statements, and does not require calculations on any other basis.

While the actuarial demographic assumptions used to estimate liabilities for the Plan represent the Ontario Teachers' Pension Plan Board's best estimate of future events and the economic assumptions are as provided by the Province, and while in our opinion the assumptions used for the valuation are appropriate provided the Province selected the economic assumptions in accordance with the Chartered Professional Accountants of Canada Public Sector Accounting Board Handbook ("PSAB Handbook"), the Plan's future experience will inevitably differ, perhaps significantly, from the actuarial assumptions. Any differences between the actuarial

assumptions and future experience will emerge as gains or losses in future valuations, and will affect the financial position of the Plan at that time.

We have tested the data for reasonableness and consistency, and in my opinion, the membership data on which the valuation is based are sufficient and reliable for the purpose of the valuation. In my opinion, the calculations have been made in accordance with my understanding of the reporting requirements under the PSAB Handbook and this report has been prepared, and, my opinions given, in accordance with accepted actuarial practice in Canada.

If you have any questions, please do not hesitate to call.

Sincerely,

Lise Houle

Copy:
Scott Clausen, Mercer
Jason Lipping, Mercer
\\mercer.com\ca_data\shared\tor\ru1\client\ontr-tch\2015\funding\programs\ministry of finance work\cover jan 25 2016 ministry info ltr.doc

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www.mercer.ca

MEMO

TO: Mary Cover, Ontario Teachers' Pension Plan
DATE: 17 June 2016
FROM: Lise Houle
SUBJECT: Ministry of Finance Request for Supplemental Accounting Results
COPY: Scott Clausen, Jason Lipping, Mercer

As a follow-up to the accounting results we provided to you with our letter of January 26th, 2016, determined using the actuarial assumptions provided by the Ministry of Finance, we understand that the Ministry has requested supplemental information from the Ontario Teachers' Pension Plan as the Ministry addresses inquiries from the Office of the Auditor General of Ontario.

In particular, the Ministry has requested the following information relating to the Ontario Teachers' Pension Plan, using Bases 3 and 4 described in our January 26th letter:

- Present value of future current service accruals,
- Present value of future basic contributions, and
- Present value of future supplemental contributions

The requested information, calculated as at August 31, 2015 and rolled forward to December 31, 2015 is as follows:

	Basis 3	**Basis 4**
Valuation Discount Rate	6.25%	6.00%
Inflation Rate	2.00%	2.00%
Real Valuation Discount Rate	4.25%	4.00%
Salary Escalation Rate	2.00% for the years 2016 to 2019, 3.00% thereafter	2.00% for the years 2016 to 2019, 3.00% thereafter
PV of future service accruals	$36,767 million	$39,563 million
PV of future basic contributions	$36,073 million	$36,826 million
PV of future supplemental contributions	$2,888 million	$2,924 million

The present value of future service accruals is calculated as the difference between the actuarial present value of total projected pension benefits (ie aggregate liabilities) less the actuarial present value of accrued pension benefits as at December 31, 2015. The benefits used in our calculations reflect 100% conditional indexing for both pre-2010 and post-2009 service. The actuarial present

value of accrued pension benefits as at December 31, 2015 are those provided in our January 26th letter while the actuarial present value of total projected pension benefits are calculated using the same approach, but captures all projected service to date of expected decrement.

The actuarial present value of basic contribution reflects both expected basic employee and employer contributions to be paid to date of assumed decrement.

The actuarial present value of future service accruals and of basic contributions only considers current active and inactive members of the Ontario Teachers' Pension Plan. In keeping with the approach used for the funding valuation, the present value of future supplemental contributions is determined on an open-group basis and reflects scheduled contributions to December 31, 2026.

It is our understanding that the province intends to use these figures to perform a high level test to consider if there should be a limit applied to the asset/surplus held as at December 31, 2015. We note that, should the plan earn future returns that are equal to the valuation discount rate adopted by the Province for financial statement reporting purposes, it is possible that some of the future contribution requirements could be reduced by agreement of the Sponsors as experience gains would be recognized in the funding valuation based on the assumptions currently used for funding purposes.

For more details on the actuarial assumptions, methods and data used in our calculations, please refer to our January 26th letter. The demographic assumptions are summarized in our Report on the Actuarial Valuation for Financial Statement Purposes as at December 31, 2015.

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MEMO

TO: Mary Cover, Ontario Teachers' Pension Plan
DATE: 15 September 2016
FROM: Scott Clausen, Mercer
SUBJECT: Canadian Public Sector Accounting Standards (PS3250)

As discussed, the purpose of this memo is to provide section references from Canadian Public Sector Accounting Standards (PS 3250) that refer to the selection of methods and assumptions to be used to value pension plans for the purpose of the province's financial reporting. All Section references shown in this memo refer to Sections from PS3250.

Actuarial Cost Method:

.029
The projected benefit method prorated on services should be used to attribute the cost of retirement benefits to the periods of employee service.

.030
When a retirement plan provides benefits that accrue in a non-uniform manner, the projected benefit method prorated on services may need to be adjusted to reflect the manner in which retirement benefits are earned by employees. For example, a pension plan formula may state that the pension benefit accrues at one percent of salary for the first 15 years and at two percent of salary for the final 20 years. In this circumstance, the prorating of the total estimated benefit to each accounting period would be adjusted to reflect the rates at which pension benefits are earned in that 35-year period.

.032
In other retirement plans, regular benefit increases for inflation protection may be provided even when such protection is not promised in a contractual agreement or in legislation. For those plans, careful analysis and professional judgment are needed to determine the substance of a government's obligation. If a regular pattern of benefit increases can be established over a reasonable period, it may be appropriate to incorporate the cost of such inflation protection in the cost of retirement benefits earned to the accounting date and reported as an accrued benefit obligation.

Asset Valuation:

.035

When determining a government's retirement benefit liability and expenditure / expense, plan assets would be valued at market-related values. Under this method, plan assets are recorded at market value or they are adjusted to market value over a period not to exceed five years. Values adjusted to market closely approximate current economic value in a manner that can minimize short-term fluctuations. Market-related values would be used because they are objective and verifiable. Once a basis of valuation is chosen it would be applied consistently.

Actuarial Assumptions:

.042

Actuarial assumptions should be based on the government's best estimates of expected long-term experience and short-term forecasts.

.044

The actuarial assumptions underlying the valuation of the retirement benefit liability and expenditure / expense would be internally consistent. For example, when a government determines its discount rates by reference to its plan asset earnings, the assumptions used to determine the short-term forecast incorporated in the discount rates would be consistent with the short-term forecast of rates of return on assets currently held in the fund. When a government determines its discount rates by reference to its cost of borrowing, the assumptions used to determine the short-term forecast incorporated in the discount rates would be consistent with the specific rates of interest and the periods committed to by the government on the amounts borrowed.

Limit on Accrued Benefit Asset:

.050

An accrued benefit asset should be presented on a government's statement of financial position net of any valuation allowance. When a defined benefit plan gives rise to an accrued benefit asset, a government should recognize a valuation allowance for any excess of the adjusted benefit asset over the expected future benefit. A change in valuation allowance should be recognized in operations for the period in which the change occurs.

.053

To determine the extent to which an accrued benefit asset may be impaired, the government first determines the **adjusted benefit asset**. The adjusted benefit asset is the accrued benefit asset less net unamortized actuarial losses (determined on a basis using market value of assets).

.054

The adjusted benefit asset is then compared to the **expected future benefit**. When the expected future benefit exceeds the adjusted benefit asset, the accrued benefit asset is not impaired and, accordingly, no valuation allowance is required. The chart included as Appendix A to this Section is intended to set out the relationship between the various defined terms.

.055

The objective of the Recommendation in paragraph .050 is to limit a government's accrued benefit asset to the amount it can realize in the future. The expected future benefit is a calculated amount representing the benefit a government expects to realize from a plan surplus. An expected future benefit includes any withdrawable surplus or reduction in future contributions.

.056

A government determines its expected future benefit as the sum of:

a. the present value of its expected future annual accruals for service for the current number of active employees, less the present value of required employee contributions and minimum contributions the government is required to make regardless of any surplus; and
b. the amount of the plan surplus that can be withdrawn in accordance with the existing plan and any applicable laws and regulations.

Actuarial Gains and Losses:

.061

Actuarial gains and losses would be amortized over a reasonable future period because of their tentative nature and because further adjustments will likely be required in the future. A reasonable future period is the **expected average remaining service life of the related employee group**. Amortization may commence in the period following the determination of the adjustment. Actuarial gains and losses would be determined on a market value basis or a basis adjusted to market value, consistent with paragraph .035.

Past Service Costs:

.066

The cost of plan amendments related to prior period employee services should be accounted for in the period of the plan amendment.

Joint Defined Benefit Plans:

.079

Governments may participate jointly in defined benefit plans where the government shares the risks and rewards jointly with plan participants, represented by a sponsor or sponsors. **Joint defined benefit plans** are governed by a formal agreement between the sponsors, which establishes that the sponsors have shared control over the plan. A governing board is generally appointed by the joint sponsors with equal representation and a mutually agreed-upon chair.

.081

When a government participates in a joint defined benefit plan, the government's risk is limited to its portion of the plan. The government should account for its portion of the plan in accordance with the Recommendations for defined benefit plans.

FUNDING MANAGEMENT POLICY (FMP) FRAMEWORK DESCRIPTION

Valuation Basis

Assets = 110% of Liabilities valued at interest rates + 0.5%

Zone:	**Permanent Plan Improvements**
Mechanism:	**Improve benefits as negotiated**
Funding Risk:	Plan is essentially fully funded at Government of Canada long bond rates. Funding security is desired to ensure the Plan can support these benefits continually in the future. The impact of new teachers is important as they will create losses.

That is, Assets ~ 133% Liabilities valued at interest rates + 1.55%

Assets = Liabilities valued at interest rates + 1.25%

Zone:	**Temporary Plan Improvements**
Mechanism:	**Improve benefits or lower contributions as negotiated[1]**
Funding Risk:	Plan is well funded and can afford changes that temporarily provide a benefit enhancement (as long as it does not create a long term cost) and/or lower the contributions being paid into the Plan. [1] Amortization period used to determine temporary benefit

That is, Assets ~ 107% Liabilities valued at interest rates + 1.55%

Assets = Liabilities valued at interest rates + 1.55%

Zone:	**Fully Funded (Do Nothing)**
Mechanism:	**Maintain Base Benefits and Contributions**
Funding Risk:	Plan is adequately funded to provide base benefits supported by the base contributions. Given the volatility of market factors and the numerous assumptions in the funding valuation, "fully funded" is considered a range.

Zone:	**Additional Support Required From Current FMP Levers**
Mechanism:	**Raise Contribution Rates and/or Invoke Conditional Inflation Protection as negotiated**
Funding Risk:	Plan is not considered adequately funded to provide base benefits supported by the base contributions. An increase to the contribution rate (within FMP maximum) and/or a decrease to the level of indexing being provided are necessary to recoup the deficit. As the funding position improves, these plan changes will be reversed.

Zone:	**Additional Support Required From New/Additional Changes**
Mechanism:	**Negotiate other plan changes**
Funding Risk:	Plan is not considered adequately funded to provide base benefits supported by the base contributions and CIP is fully invoked and contribution rates are increased to maximum outlined in FMP. Plan changes are necessary to recoup the deficit. As the funding position improves, these plan changes will be reversed.

APPENDIX I. FUNDING MANAGEMENT POLICY SUMMARY

Subject	Summary of Provisions
Application (Article I):	**Section 1.01 and 1.02** ▪ Requires the Board to use Board's "best estimates assumptions," including a margin for adverse deviation in the case of the discount rate. ▪ Sets out what best estimates economic assumptions may be based on. ▪ Requires the Board to maintain indices to record inflation adjustments for post-2009 service. **Sections 1.03 and 1.04** ▪ If the Board uses a discount rate different from that outlined in the FMP and this discount rate is more penalizing (that is, produces a larger deficit or a smaller surplus), the FMP becomes void in 12 months unless both Partners notify the Board otherwise. These sections serve as an "exit" provision for the Partners. **Section 1.05** sets out under what circumstances each section of the FMP applies. **Section 1.06** limits surplus distributions or contribution decreases to those permitted by law. **Section 1.07** makes temporary improvements conditional on not having a restoration basis deficit.
Definitions (Article II):	**Section 2.01** Defines key terms, including: ▪ Basic contributions (contributions as per Sch.1 on January 1, 2012), which is used throughout the FMP as the target contribution rate (10.4% on earnings up to the YMPE/12% above the YMPE). ▪ Run-rate benefits (benefits as per Sch.1 on January 1, 2009), which include 100% inflation protection and assume basic contributions. ▪ Reference Rate (rate chosen by the Board representing Government of Canada nominal and real return bonds, which may be based on market or smoothed data; has recently been 3 year smoothed nominal and real return bonds). ▪ Remaining amortization value (difference between the temporary improvement value and the commitment value). ▪ Temporary improvement value (present value of a temporary improvement amortized over 3-10 years; if amortized over fewer than 10 years, improvement for a year is limited to the amount of basic contributions paid during a year).
Restore basic contributions and benefits (Article III):	**Section 3.01** ▪ Restoration basis is used (*reference rate* + 1.55%). ▪ Defines assets (refers to PBA Regulations) and current and revised liabilities. **Section 3.02** ▪ Sets out that current and revised liabilities are calculated using the restoration basis, plus an adjustment. The phrase "plus an adjustment" is used throughout the FMP and reflects the fact that the Board often files using a basis that is higher than required under the FMP. **Section 3.03** ▪ Outlines how indexing is accounted for in the valuation (that is, level of indexing provided in current filing zone continues).
Restoration Basis: *Surplus* (Article III continued)	*Sections 3.04 to 3.08 apply when surplus exists using the restoration basis and current contributions are higher than target, partial indexing (for previous years or go forward) exists or other benefits have been reduced.* **Section 3.04** Sets conditions under which sections 3.05-3.08 apply: ▪ If Assets > Liabilities (surplus reported); and ▪ Current contributions > Basic contributions (i.e., contributions are above long-term target level); or ▪ Current Benefits < Run-Rate Benefits (i.e. contributions are above long-term target level or benefits are below the long-term target level). **Section 3.06** Sets out the order of how to restore past benefit reductions or contribution increases: ▪ Actions can consist of increasing benefits to run-rate (long-term target) including prospective restoration or lowering contributions to basic (target) or a combination. ▪ First, increase go-forward indexing to 50% for post-2013 service period, then to 100% on all post-2009 service periods. Second, restore current pension amounts to run rate level, as much as possible, starting with the years where indexing was less than 50% until all years of partial indexation are restored to the same level and then restore to 100% for all service periods. ▪ Partners reserve the right to reconsider order in the future. **Section 3.07** A number of conditions apply after a decision: ▪ Assets equal to or greater than revised liabilities (i.e. no deficit created); ▪ Inflation indexing restored to no more than if 100% of inflation was provided;

APPENDIX I. FUNDING MANAGEMENT POLICY SUMMARY

Subject	Summary of Provisions
	▪ Inflation indexing restored to no less than current level (i.e. can't lower prior inflation indexing given); ▪ The value of revised benefits needs to be between current and run-rate benefits (similarly, contributions must be between current and target). **Section 3.08** (Expires December 30, 2017) Sets out the limits from the 2013 Term Sheet (commonly known as the JSPP Agreement) with respect to escalated adjustments and benefit improvements: ▪ Escalated adjustments if assets are greater than 100% of the current liabilities (and not below 100% after). ▪ Benefit improvement or restoration if net assets available for benefits are greater than 105% of the current (unsmoothed) liabilities (and not below 105% after).
Restoration Basis: *Deficit* (Article III continued)	*Sections 3.09 to 3.14 apply when the liabilities are greater than the assets using the restoration basis; thus the Partners must raise contribution rates, lower the amount of indexing and/or decrease other benefits.* **Section 3.09** Sets conditions under which Sections 3.10 to 3.14 apply: ▪ If Current liabilities > Assets (i.e., deficit reported). **Section 3.11** Sets out that deficit can be eliminated by changing contributions or benefits provided that: ▪ Assets are equal to or greater than revised liabilities; and ▪ Revised member contributions are no more than 15% (above YMPE). **Section 3.12** The Partners can agree to change benefits or contribution level as long as: ▪ Partners have entered into a written agreement governing the manner in which contributions by the Minister and the Employers will be adjusted to offset any reduction in benefits; and ▪ No indexing granted gets taken away. **Section 3.13** Outlines the current intention that member contributions will be increased up to 15% (above YMPE) before benefits are reduced or less than full indexing is provided. **Section 3.14** Sets out the limits with respect to the 2013 Term Sheet regarding employer contribution increases.
Funding Zone: Temporary (Article IV):	**Section 4.01** ▪ Temporary basis is used (*reference rate* + 1.25%). ▪ Defines: - Assets (either market value of net assets or assets defined in PBA Regulations; that is, if smoothing creates surplus that otherwise would not exist, it cannot be spent). - Current liabilities (liabilities including the greater of current and run-rate benefits and any remaining amortization value from a previous temporary commitment). - Revised liabilities (liabilities including the greater of revised and run-rate benefits and any remaining amortization value from a previous temporary commitment). - Reference rate (ensures that smoothed data is not used to get a surplus if there otherwise would not be surplus). **Section 4.02** Sets out that the liabilities are calculated using the temporary basis, plus an adjustment. *Sections 4.03 to 4.06 apply when the plan has a surplus using the temporary basis; that is, there is surplus available for improving benefits, decreasing contributions or distributing surplus, all on a temporary basis. The surplus spend is amortized over a period of three to ten years, at the partners' choice. If amortization period is less than ten years, the annual spend limit is the amount of basic contributions for a year.* **Section 4.03** Sets out conditions under which Sections 4.04 and 4.05 apply: - If assets > liabilities; and - Current Contributions ≤ Basic Contributions (current contributions are equal to or lower than long-term target); and - Current Benefits ≥ Run-Rate Benefits (current benefits are equal to or higher than long-term target); and - Full inflation indexing has been provided. **Section 4.04**

APPENDIX I. FUNDING MANAGEMENT POLICY SUMMARY

Subject	Summary of Provisions
	The Board reports the commitment value (the amount of surplus that can be used to provide a temporary improvement). **Section 4.05** The Partners can agree to temporary improvements so long as after the change, assets over revised liabilities are equal to or greater than zero. **Section 4.06** provides a requirement for a side agreement setting out how Minister contributions are adjusted if there is a surplus distribution or temporary improvement of benefits.
"Do Nothing" Zone (Article IV continued):	*Sections 4.07 to 4.09 apply if assets are equal to or less than current liabilities using the temporary basis; that is, if there is a deficit using the temporary basis.* **Section 4.09** States that the Partners will not provide new improvements if there is a temporary basis deficit. That is, the Partners will do nothing, and Article III (restoration basis) will apply. However, no actions result from move to restoration because contributions and indexing are already at run-rate in order to be in temporary zone. The Partners could, however, have to file a valuation (using the restoration basis) if the filing schedule required a filing.
Funding Zone: Distributions (Article V):	**Section 5.01** ▪ Distribution basis is used (*reference rate* + 0.5%). ▪ Defines: - Assets (either market value of net assets or assets defined in PBA Regulations; that is, if smoothing creates surplus that otherwise would not exist, it cannot be spent) - Liabilities (includes remaining amortization value) - Current targeted funding amount - Revised targeted funding amount - Reference rate (ensures that smoothed data is not used to get a surplus if there otherwise would not be surplus) **Section 5.02** Sets out that the liabilities are calculated using the distribution basis, plus an adjustment. *Sections 5.03 to 5.05 apply when the plan has a surplus using the distribution basis; that is, there is usable surplus for improving benefits above run-rate permanently or decreasing contributions below target level permanently.* **Section 5.03** Sets out conditions under which Sections 5.04 and 5.05 apply: - If Assets > 110% of Liabilities; and - Current Contributions ≤ Basic Contributions (current contributions are equal to or lower than long-term target); and - Current Benefits ≥ Run-Rate Benefits (current benefits are equal to or higher than long-term target); and - Full inflation indexing has been provided prospectively and benefits are fully restored. **Section 5.05** The Partners can agree to change benefits or contributions so long as after the change assets remain greater than 110% of the liabilities and a side agreement has been entered into to set out how Minister contributions are adjusted if there is a surplus distribution or temporary improvement of benefits. *Sections 5.06 to 5.08 apply when the plan has a funding ratio that is at least 100% but less than 110% and valued using contribution rates at the basic or target level, full indexing provided prospectively and benefits fully restored.* **Section 5.06** Sets out the conditions under which Sections 5.07 and 5.08 apply: ▪ If Assets ≤ 110% of Liabilities; and ▪ Current Contributions ≤ Basic Contributions (current contributions are equal to or lower than long-term target); and ▪ Current Benefits ≥ Run-Rate Benefits (current benefits are equal to or higher than long-term target); and ▪ Full inflation indexing has been provided prospectively and benefits are fully restored. **Section 5.08** If the conditions in Section 5.06 are satisfied, there is not sufficient surplus to provide a permanent improvement; therefore, Article IV will apply to determine whether there is surplus using the temporary basis.

Subject	Summary of Provisions
Post-December 30, 2017 Valuations (Article VI):	*This section articulates at a high level the use of the surplus credits (earned pre-January 1, 2018) after December 30, 2017. OTF earns surplus credit for any unmatched forgone inflation (i.e., inflation indexing less than 50%) prior to January 1, 2018 or via other benefit reductions made before January 1, 2018. See the JSPP Agreement for more detail.* **Section 6.01** ▪ Restoration basis is used (reference rate + 1.55%). ▪ Defines: - Assets (PBA regulations) - Current Liabilities - Revised Liabilities **Section 6.02** Provides overriding provision for post-December 30, 2017: for valuations where assets are greater than current liabilities, Section 6.03 applies (with reference to the 2013 Term Sheet). **Section 6.03** Sets out the use of surplus credits: ▪ OTF has first call on surplus up to a limit;
Valuation frequency and filing (Article	*This section reinforces an earlier section of the Partners' Agreement that specifies that it is the Partners' joint decision whether to file (other than in a required filing year).* ▪ Partners' decision when to file. ▪ Partners will notify the Board within 7 months of valuation date.
Arbitration (Article VIII):	Refers to Arbitration already in prior section of the Partners' Agreement.
Limitations (Article IX):	FMP does not apply for changes required by law or for changes that increase the liabilities by less than 0.5% or for changes that use the $76m in section 60 *(Note $76m was utilized with January 1, 2008 filing).*

RE_ Letter from Ms. Lysyk, Auditor General.rtf

From: Kaufman, Paul (TBS) []
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]; Steele, Jana [JSteele@osler.com]
Subject: RE: Letter from Ms. Lysyk, Auditor General
Date: Tuesday, September 13, 2016 21:03:02
Attachment 1: OTPP_Asset_ceiling_document_Final.pdf
Attachment 2: Current - Partners' Agreement - 03-06-15.pdf

Jana, here are the documents Len mentions below (the FMP is an appendix to the partners' agreement and begins at page 18 of that document). I think those are the key documents you'll need to start.

Paul

From: Hatzis, Len (TBS)
Sent: Tuesday, September 13, 2016 8:54 PM
To: Steele, Jana
Cc: Kaufman, Paul (TBS)
Subject: Re: Letter from Ms. Lysyk, Auditor General

Paul can you pls send Jana the FMP and Deloitte's August report as well. Do you think Jana needs anything else at this juncture to get a good understanding of the issues? We will need to chat with Jana tomorrow once her and her team has had a chance to digest - thanks.

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Hatzis, Len (TBS)
Sent: Tuesday, September 13, 2016 8:52 PM
To: Steele, Jana
Cc: Kaufman, Paul (TBS)
Subject: Fw: Letter from Ms. Lysyk, Auditor General

Jana
Here is the AG's letter setting out her position.

OTPP_Asset_ceiling_document_Final.pdf

Deloitte.

Analysis of Pension Asset Ceiling Accounting Considerations for the Office of the Provincial Controller Division re: Ontario Teachers' Pension Plan (OTPP)

August 19, 2016

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Introduction

In preparation of the Province of Ontario Financial statements, the Office of the Provincial Controller Division (OPCD) has retained Deloitte to provide support in analyzing issues around pension accounting. The present document is prepared in relation to the assessment of the application of public sector accounting standards as related to asset ceiling and valuation allowance to the Ontario Teachers' Pension Plan (OTPP).

The relevant accounting standard referenced in our analysis is public sector accounting standard PS3250 on retirement benefits.

The document will cover the following elements:

- Summary of the situation;
- Overview of the accounting paragraphs that apply to this and the explanation;
- Review of the considerations that go into the asset ceiling test and the Expected Future Benefit (EFB) calculation;
- Review of the employer access to future contribution reduction or surplus withdrawal;
- Summary of findings relating to observations made in discussing the applicability of the asset ceiling test for Ontario's 2015-16 Financial statements.

We are available to discuss the content of this document.

Martin Raymond
Partner, FSA, FCIA

Trevor Gary
Senior Consultant

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Section 1 – Summary of the situation

The OPCD in preparation of the Ontario Financial statements for 2015-16 has requested support to assess potential asset ceiling risks in relation to the calculation for the OTPP reported on the Province's consolidated financial statements.

Here are a few facts obtained from discussion / documentation around the OTPP and its accounting:

- The plan is covered by its own legislation, the Teachers' Pension Act
- Most recent funding report was prepared at January 1, 2015 with contributions set for 2015, 2016 and 2017
- The OTPP is a Joint Sponsored Pension Plan (JSPP) as per the Ontario Pension Benefit Act (PBA)
- The plan is accounted for using Joint defined accounting provisions of the standards and the government portion of the plan is determined at 50% of the overall plan, this reflects the 50/50 sharing principle underlying the OTPP (per Teachers' Pension Act par. 5 (1.1) and 10 (1) and page 16 of the funding valuation report – extracts provided in Section 4)
- The total accounting service accrual (service cost) is about $2.9B per year calculated in accordance with PSAB (per the Jan. 26, 2016 Mercer letter to OTPP)
- The recent accounting surplus measure (Dec 31, 2015) for the portion of the government (50% of the total plan) is around $20B, using a market-related value of assets (smoothed assets). The surplus using fair value measure of assets is about $28B (per the excel supporting file for accounting calculations received).

We note that the accounting actuarial values are prepared at Dec 31, 2015 and that an adjustment for March 31, 2016 is performed to obtain the year-end values. The balance sheet asset position for the OTPP can be illustrated as follows: (per the excel supporting file for accounting calculations received)

(all figures in $B)	Total plan	50% Share of the plan
Market related value of assets	157.0	78.5
Value of obligation	116.4	58.2
Surplus (deficit)	40.6	20.3
Unamortized (gains) losses	(18.0)	(9.0)
Adjustment for March 31, 2016	(1.8)	(0.9)
Asset (liability) position	20.8	10.4
Specific Government adjustment		(0.3)
Final asset (liability) position on balance sheet		10.1

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This document will cover the following key questions:

- What are the key considerations that go into the asset ceiling determination?
- What is the impact of an asset ceiling for 2015-16, if applicable?
- Is there an asset ceiling impact for OTPP as at March 31, 2016 (that would apply to the $10.1B shown above) and if so how is it calculated?

Below is a list of documents and references used in our analysis.

List of documents
Funding management policy (FMP) of OTPP – agreement between the parties to the plan (provided by OPCD)
Asset ceiling documentation prepared by Allan Shapira (Aon) dated August 2, 2016 (provided by OPCD)
Actuarial valuation report of OTPP as at January 1, 2015 – funding purposes – prepared by Mercer (provided by OPCD)
Accounting standards PS3250 on post-employment benefits
Teachers' Pension Act (found on the internet)
Discussions with OPCD and Allan Shapira (incl. overview of some results used in this document) including a summary note prepared by Nadine Petsche, Director of Accounting Policy and Financial Reporting at OPCD (August 4, 2016)
Excel supporting file for accounting calculations (provided by OPCD)
Supporting document from OTPP to OPCD on accounting results, including the communication from Mercer on valuation results for different assumption basis – both documents dated Jan. 26, 2016 (provided by OPCD)

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Section 2 – Relevant PS3250 paragraphs

Below are some extracts from the PS3250 which are relevant for calculating the limit on carrying amount of accrued benefit asset (the asset ceiling test) and the joint defined benefit which are relevant to the analysis and position taken for financial statement preparation. Note that the underlined are from us.

Limit on the carrying amount of an accrued benefit asset

.050 *An accrued benefit asset should be presented on a government's statement of financial position net of any valuation allowance. When a defined benefit plan gives rise to an accrued benefit asset, a government should recognize a valuation allowance for any excess of the adjusted benefit asset over the expected future benefit. A change in valuation allowance should be recognized in the statement of operations for the period in which the change occurs.* [SEPT. 2001]

.051 A government with a defined benefit plan may have an accrued benefit asset for accounting purposes. An accrued benefit asset arises when the government's total contributions to the plan, including interest earned thereon, are greater than the retirement benefit expense recognized since the start of the plan. Contributions reflect the funding objectives of the plan. The benefit expense reflects the accounting objectives and may differ for a number of reasons, including the fact that actuarial gains and losses are deferred and amortized in future periods.

.052 A government may benefit from an accrued benefit asset either by withdrawing surplus assets or by taking a contribution holiday or receiving a refund of contributions. The accrued benefit asset may become impaired when there is a plan surplus for accounting purposes that the government is not entitled to benefit from fully. For example, there may be a regulatory moratorium on pension surplus withdrawals or uncertainties as to a government's legal right to use a plan's accounting surplus.

.053 To determine the extent to which an accrued benefit asset may be impaired, the government first determines the adjusted benefit asset. The adjusted benefit asset is the accrued benefit asset less net unamortized actuarial losses (determined on a basis using market value of assets).

.054 The adjusted benefit asset is then compared to the expected future benefit. When the expected future benefit exceeds the adjusted benefit asset, the accrued benefit asset is not impaired and, accordingly, no valuation allowance is required. The chart included as Appendix A to this Section is intended to set out the relationship between the various defined terms.

.055 The objective of the standard in paragraph PS 3250.050 is to limit a government's accrued benefit asset to the amount it can realize in the future. The expected future benefit is a calculated amount representing the benefit a government expects to realize from a plan surplus. An expected future benefit includes any withdrawable surplus or reduction in future contributions.

.056 A government determines its expected future benefit as the sum of:

a. the present value of its expected future accruals for service for the current number of active employees, less the present value of required employee contributions and minimum contributions the government is required to make regardless of any surplus; and
b. the amount of the plan surplus that can be withdrawn in accordance with the existing plan and any applicable laws and regulations.

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.057 A government's expected future accruals for service for the current number of active employees are determined on a basis consistent with that used to determine its accrued benefit obligation. These expected future accruals for service, less required employee contributions and minimum contributions the government is required to make regardless of any surplus, are then discounted back to the current period to determine the present value. The interest rate used to calculate this present value is the expected rate of return on plan assets used to determine the benefit expense in the period.

.058 When administration expenses are paid by the plan and included in the normal cost calculation, a best estimate of the future administration expense is included in the expected future accruals for service. When administration expenses are paid by the plan and not included in the normal cost calculation, the rate of return on plan assets is adjusted to reflect the deduction of the administrative expenses.

.059 A key factor in determining a government's expected future benefit from a defined benefit plan with a plan surplus for accounting purposes is the ability of the government to withdraw assets from the plan. The expected future benefit includes amounts to which a government has a legally enforceable right of withdrawal. It excludes any withdrawable plan surplus a government is currently required, or intends, to allocate to employees. A government may not anticipate obtaining a legally enforceable right to withdraw a portion of a plan surplus to which it is not currently entitled, whether on the basis of precedent or otherwise. Accordingly, when withdrawal of plan surplus requires the approval of employees or an appropriate regulatory authority or a court of law, a government excludes any amount subject to this restriction from its expected future benefit until such approval has been obtained. A change in the allocation of surplus between a government and its employees is incorporated into the calculation of the expected future benefit only when it has been agreed to and, when required, approved by the appropriate regulatory authorities.

Joint defined benefit plans

.079 Governments may participate jointly in defined benefit plans where the government shares the risks and rewards jointly with plan participants, represented by a sponsor or sponsors. Joint defined benefit plans are governed by a formal agreement between the sponsors, which establishes that the sponsors have shared control over the plan. A governing board is generally appointed by the joint sponsors with equal representation and a mutually agreed-upon chair.

.080 A government would consider the characteristics of the plan to determine whether it meets the definition of a joint defined benefit plan. In a joint defined benefit plan, funding contributions are shared mutually between the government and the plan members. The sponsors have control over decisions related to the administration of the plan and the level of benefits and contributions on an ongoing basis based on the terms of the contractual agreement. The sponsors share, on an equitable basis, the significant risks associated with the benefit plan. Risk would not be considered to be equitably shared in an arrangement where the government and the joint sponsors fund the plan equally but where the government retains the full risk of the accrued benefit obligation. If the government retains the residual risks it is unlikely that the plan meets the definition of a joint defined benefit plan.

.081 *When a government participates in a joint defined benefit plan, the government's risk is limited to its portion of the plan. The government should account for its portion of the plan in accordance with the standards for defined benefit plans.* [SEPT. 2001]

.082 A government may convert an existing defined benefit plan for which it is the sole sponsor to a joint defined benefit plan where the risks and benefits are shared. When converting to a joint plan, a government would consider whether there are any special accounting issues that arise, including whether the predecessor plan has been settled or partially settled and/or curtailed or partially curtailed. In assessing such issues a government would have regard to its specific circumstances and the terms of the joint defined benefit plan.

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Section 3 – Asset ceiling test and EFB calculation basis

PS3250.053 refers to the adjusted benefit asset. This is the amount on which the asset ceiling test applies (PS3250.054) by comparing it to the Expected future benefit (EFB). In many cases, we are seeing unamortized losses, and the adjusted benefit asset effectively equals the accounting surplus. However, for the OTPP, as shown in the Section 1, it is unamortized gains which exist rather than losses.

In this situation, if we take the OTPP case, we would have:

- Adjusted benefit asset = accrued benefit asset less unamort. losses = $10.1B - $0.0B = $10.1B
- So the amount to test against EFB would be $10.1B

Further, PS3250.053 refers to market value of assets rather than market-related value of assets that allows for some smoothing of assets gains and losses (which is used under OTPP). Considering that the market value of assets (total plan) is $171.4B at Dec 31, 2015 as per the excel file for accounting calculation and applying the 50% share, we do get $85.7B for the Government share. The difference represents gains on assets not yet reflected in the market-related value of assets and therefore, the unamortized (gains) losses are adjusted accordingly for the test. Making the adjustment for market value measures, we would therefore obtain the following:

(all figures in $B)	50% Share of the plan-market related value	50% Share of the plan market value
Value of assets	78.5	85.7
Value of obligation	58.2	58.2
Surplus (deficit)	20.3	27.5
Unamortized (gains) losses	(9.0)	(16.2)
Adjustment for March 31, 2016	(0.9)	(0.9)
Asset (liability) position	10.4	10.4
Specific Government adjustment	(0.3)	(0.3)
Final Asset (liability) position on balance sheet	10.1	10.1

We note that the end result for the test is still $10.1B adjusted benefit asset on either market-related value or market value. This occurs because the test is showing unamortized gains in both basis. If unamortized losses were present instead, the results of the test would differ.

The above are basic considerations of the asset ceiling test and mostly straight-forward in application. The most challenging part of the asset ceiling test is identifying the basis to value the EFB under PS3250.056. There are various elements to be considered in this calculation that will determine the amount to use. The definition of EFB incorporates key components that need some analysis. The present section deals with these components.

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Definition of EFB

.056 A government determines its expected future benefit as the sum of:

a. the present value of its expected future accruals for service for the current number of active employees, less the present value of required employee contributions and minimum contributions the government is required to make regardless of any surplus; and
b. the amount of the plan surplus that can be withdrawn in accordance with the existing plan and any applicable laws and regulations.

Key components of the definition are:

- present value calculation
- future service accruals
- current number of active employees
- required employee contributions
- minimum contributions the government is required to make regardless of any surplus
- amount of surplus that can be withdrawn

Current number of employees – Open group notion

Under the definition of the EFB, it is indicated that the present value of future accruals for service is to be based on the current number of active employees. The application of this particular element of the calculation has generally been seen in practice as assuming that the plan would have a perpetuity of future accruals since active employees terminating or retiring would be replaced by new active employees, keeping the number equal to the current population. Unless there is signal or expectation of reduction in population (e.g. if the plan was closed to new entrants or if the employer is going through downsizing), this open group notion has been observed in practice.

Future service accruals - Projection of salary

Under the definition of the EFB, we are performing a present value calculation and therefore this assumes that the underlying components of the calculation are projected into the future (future accruals and contributions). In performing such projection, an increase in salary based on the accounting assumption for salary increase would be applicable.

Present value – discounting effect

Calculation of a present value requires the determination of an interest rate to use. Under PS3250.057, the interest rate used is determined in reference to the expected rate of return on plan assets used to determine the benefit expense.

Future service accruals and required employee contributions - Joint Defined Benefit accounting

Since the OTPP is accounted for based on joint defined benefit provisions of the accounting standards, the asset ceiling test needs to be performed based on the government's portion of the plan (par. PS3250.081). Looking at the EFB definition, it means that the calculation of PS3250.056 a) needs to be adjusted to only reflect the employer share (50% of the total accruals) and to remove any employee contributions that were considered in the calculation (since this relates to the employee portion of the plan).

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Observations on PS3250 EFB calculation (in practice)

Deloitte has shared with management that historically there has been in practice a very liberal application of the PS3250 asset ceiling calculation. The EFB has generally been determined as the present value of all future employer service accruals (perpetuity) considering the increase of salary factored into the calculation. This approach is based on View 1 described in the minimum employer contribution required discussion below. One simple way of obtaining that value is based on the following calculation:

- Determine the total accrual for service for one year
- Determine the accrual for service for the employer for one year (i.e. total accrual net of the employee portion)
- Calculate the perpetuity of increasing service cost as follows : accrual of service for employer / (expected return on plan assets – salary increase)
- To illustrate this for OTPP, we did get the following information
  - Total service accrual = $2.9B
  - Employer service accrual (assuming 50% share) = $2.9B / 2 = $1.45B
  - Expected return on plan assets = 6.25% (per the Jan 26, 2016 document and the observed values used in the excel file for accounting calculation)
  - Salary increase = 3% (excluding merit/promotional scale for simplicity - per the Jan 26, 2016 document and the observed values used in the excel file for accounting calculation)
  - Perpetuity = $1.45B / (6.25% - 3%) = $44.6B

Minimum employer contributions required regardless of any surplus – Views for determination in EFB calculation

There has been in recent years more questions around the meaning of the EFB definition and mostly around what the last part of PS3250.056 a) means. The terminology used of "minimum employer contribution required regardless of any surplus" has been discussed and there have been different views on what this represents.

One view (View 1) focus on whether there is a minimum employer contribution under the plan / legislation that is required even if a surplus would be present. For instance, a plan contribution could be defined as always being at least of 5% of salaries. In such circumstances, there would be a contribution requirement to a minimum level for every year even when surplus is present. If no such minimum exists and there is a possibility to get to 0% contribution, for instance in surplus position, then there would be no minimum contribution required "regardless of any surplus". This view leads to no reduction in the EFB calculation in cases where no minimum % contribution exists in the plan provisions. In the example above, the perpetuity of $44.6B is not reduced and therefore EFB remains at $44.6B.

Another view (View 2) is that minimum required contribution must at least consider the effect of the most recent funding valuation report. This report determines what contribution requirement applies to the current period of the valuation report and until a new report is completed. For instance, if the employer needs to contribute for the next 3 years a certain amount of contribution (service cost and special contribution for deficit), then this represents the minimum required employer contribution regardless of any surplus. As an example, under the most recent funding report of the OTPP (Jan 1, 2015) this amount is about $1.7B per year for 2015, 2016 and 2017 which includes service cost and also special contributions. Contributions from 2018 will be determined based on a new valuation report and therefore are unknown as of now (no minimum required contribution on the valuation date for years beyond 2017). In the example above, the perpetuity of $44.6B is reduced by 2 years of $1.7B (excluding interest for simplicity) for an EFB of $41.2B.

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Finally, a more extreme view (View 3) could be to actually prepare detailed future projections of funding valuation results on either a deterministic calculation with identification of the actual year(s) when funding surplus would be present or a stochastic calculation to identify what is the probability of occurrence of funding surplus in future years and the outcome in those cases for contribution reduction/surplus withdrawal. Such an approach would need the inclusion of some many complex assumptions and the preparation of a high volume of calculations. In the example above, the perpetuity of $44.6B would be reduced more than View 1 or View 2 because of possible future years in the projection that lead to required contribution payments.

We have never seen in practice the use of View 3 under PS3250, while View 1 has been largely used historically. On the other hand, we note that View 2 has been recently observed as a possible emerging interpretation of the paragraph 3250.056.

Amount of surplus that can be withdrawn and contribution reduction availability – OTPP plan characteristics

One element of importance (PS3250.052 and PS3250.059) is to identify whether the employer does have access to the surplus based on legislation and plan characteristics. Is there really some way the government can either withdraw surplus from the plan or reduce future contributions through contribution holiday. The OTPP does have its own Legislation (Teachers' Pension Act) and a Funding policy (Funding Management Policy – FMP) agreed between employer / employees to determine whether and how surplus can be used under the plan. The FMP provides insight on this significant element and is dealt with in the next section.

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Section 4 – Sharing principle, contribution reduction and surplus withdrawal

Extracts from the Teachers' Pension Act

The following paragraphs of the Teachers' Pension Act are supporting elements for the use of the 50 / 50 sharing of contributions - paragraph 5. (1.1) - and also support the use of the Funding Management Policy agreed between the parties for treatment of the surpluses and deficits – paragraph 10. (1) 3.

Contributions by the Crown

5. (1) The Minister of Finance shall pay from the Consolidated Revenue Fund an amount equal to contributions under the pension plan payable by the Minister of Education. R.S.O. 1990, c. T.1, s. 5 (1); 1993, c. 39, s. 3 (1); 2005, c. 31, Sched. 21, s. 2 (1).

Matching contributions

(1.1) The total amount of the contributions payable by the Minister of Education and the employers who contribute under the pension plan in respect of any year shall not exceed the amount of contributions payable by or on behalf of active plan members in respect of credited service for that year. 1991, c. 52, s. 3; 1993, c. 39, s. 3 (1); 2005, c. 31, Sched. 21, s. 2 (2).

Joint management

10. (1) The Minister of Education and the executive of The Ontario Teachers' Federation may enter into an agreement that provides for the following matters:

1. The joint management of the pension plan by the Minister and the executive of the Federation.
2. The composition of the Board, the appointment of the members of the Board and the delineation of the powers and duties of the Board.
3. The sharing of entitlement to gains or surplus under the plan and of liability for deficiencies in the pension fund by the Minister, the employers who contribute under the plan and the active plan members.
4. The amendment of the plan, including the amendment of Schedule 1, by agreement between the Minister and the executive of the Federation.
5. The resolution of disputes between the Minister and the executive of the Federation with respect to amendments to the plan.
6. Any other matter to which the Minister and the executive of the Federation agree. 1991, c. 52, s. 6; 1993, c. 39, s. 5; 2005, c. 31, Sched. 21, s. 4 (1).

Extracts from the most recent funding valuation report (Jan. 1, 2015 – page 16)

The extracts show that Government contributions are matching employees, besides a small portion for LT disability cases and also that there might be an additional contribution for what is referred as foregone inflation. These are supporting the assessment of the 50 / 50 sharing nature of the plan.

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- The Province or Designated Employers, as the case may be, should generally match active teacher contributions. However, in the case of teachers on LTIP, they should pay 12.0% (6.9% for Designated Employers if disability occurred before January 1, 1991) of the member's pensionable earnings, indexed to inflation in accordance with the Teachers' Pension Act.

- In addition to the above matching contributions, the Province and Designated Employers are also required to make special contributions for any year in which the cumulative cost-of-living adjustment to pensions in respect of service after 2009 is less than 100% of CPI increases (but only to the first 50% of any inflation foregone) since the members' retirement. The amount of such special contributions is equal to the amount by which the pensions or other entitlements received by members for the year are less than the pension amounts they would have received for that year if 100% CPI indexing had been provided for post-2009 service.

Funding Management Policy (FMP)

The FMP is a document agreed between employer / employees that identifies how the plan is to be funded and specifically how it will deal with deficit and surplus situations. We are particularly interested to identify whether in surplus position the government has access to surplus withdrawal or contribution reduction.

The idea of the plan is that the employer contribution will match the employees' contribution. The use of Joint Defined benefit accounting under PS3250 reflects that general principle underlying the nature of the plan by applying a 50/50 share.

The plan also has provisions that make post-retirement indexing for some service period (post-2009) conditional on the plan financial situation. Should the indexing not be provided fully (100% CPI), some portion (or all) of the indexing amount not provided to the retirees (called foregone inflation) will lead to additional employer contribution in that year. This also reflects the 50 / 50 principle of the plan in that on the employee side, a benefit is not fully provided (less than 100% indexing for retirees) and on the employer side an additional contribution is paid. In similar way, if and when benefits would be increased to the employees, the employer would also get a similar benefit in value (contribution reduction and/or surplus withdrawal).

The FMP will have first use of surplus to reduce contributions to the "basic contribution level" which is the 2012 value (10.4% of salary below YMPE and 12.0% above YMPE) and / or increase benefit to restore any foregone inflation. The Partners need to agree on the actions that will be taken. We also note that for the employer, should the contribution rate already be at the basic rate and a surplus is present, surplus withdrawal and / or further contribution reduction is also possible action to be taken.

In discussing with Allan Shapira (Aon), we understand that the FMP has five funding zones:

- The middle zone is the Fully Funded zone under which base benefits and contributions are maintained. In this zone, the plan is adequately funded to provide base benefits (including indexation at 100% of CPI) supported by the base contributions. Given the volatility of market factors and the numerous assumptions in the funding valuation, "fully funded" is considered a range.
- There are two zones below the Fully Funded zone that address the treatment of deficits (through additional contributions and / or reduction of benefits).
- There are two zones above the Fully Funded zone that address the treatment of surpluses. The first zone is the Temporary Plan Improvement zone where contributions can be temporarily reduced, a surplus distribution can be made on a temporary basis and/or benefits can be temporarily improved (as long as it does not create a long term cost). If the surplus reaches a

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specified level, the next zone, the Permanent Plan Improvement zone, provides for permanent changes to contribution rates and/or benefits.

We also note that surplus distribution is a possible approach to deal with surplus in the FMP as per paragraphs 1.06 and 4.04.

Under the FMP, a surplus distribution or a benefit improvement can only be made if the Partners have entered into a written agreement governing the manner in which employer contributions will be adjusted to offset any surplus distribution or changes in benefits that are reflected in the obligation value through benefit changes.

As illustrated in the latter zones above, the FMP considers that surplus situations and actions taken can be of permanent nature but also temporary nature. We understand that the inclusion of temporary use of the surplus has the effect of having more likelihood of years of surplus usage than if only permanent approach was possible.

Based on the information received, we note that the accounting obligation calculated for the financial statements, and the accounting surplus resulting from that obligation value, is already including an assumption that 100% CPI is provided. Therefore, the accounting surplus is already based on fully restored benefits and full indexing. Any remaining surplus would therefore be available from the employer side to reduce the contribution level or withdraw surplus.

We also note that the accounting valuation is based on best estimate assumptions and that the surplus amount determined by that calculation represents what is the most likely outcome, considering that assumptions are realized in the future. As such, the amount for the employer portion does represent a realistic potential value to the government in contribution reduction and / or surplus withdrawal. We do not know when the actual event would take place and whether it would be through contribution reduction or surplus withdrawal, but we know that this represents a realistic economic benefit.

Section 3.06 of the FMP does identify the steps of restoration of indexing and also identifies under 3.06 e) the contribution reduction action that can apply. We note again that the accounting obligation measure already includes the 100% CPI indexing and therefore covers the escalated adjustements defined in 3.06.

Section 3.06 *Application of Restoration Basis Excess*: For purposes of clarity, excesses identified pursuant to Section 3.05 shall be applied in the following order, provided that the partners reserve the right to reconsider such application having regard to the contribution rate and benefits then in effect, prevailing economic circumstances and other relevant factors:

(a) *Bring Escalated Adjustments to 50% for Post-2013 Service*: to provide escalated adjustments up to 50% of the CPI adjustment in respect of service accrued after 2013 for the period covered by the valuation, and assumed thereafter at the same rate;

(b) *Bring Escalated Adjustments to 100%*: to provide escalated adjustments up to 100% of the CPI adjustment for the period covered by the valuation, and assumed thereafter at the same rate;

(c) *Restore Escalated Adjustments for Post-2013 Years*: to provide escalated adjustments to increase, to the extent possible, the current accumulated adjustment ratio for each year after 2013, to the current accumulated adjustment ratio for the period from 2010 to 2013, beginning with the first year in which current escalated adjustments were less than 50% of the run-rate escalated adjustments;

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(d) *Restore Escalated Adjustments for Post-2009 Years*: to provide escalated adjustments to increase, to the extent possible, the current accumulated adjustment ratio for each year after 2009 to the run-rate accumulated adjustment ratio, beginning with the first year in which current escalated adjustments were less than run-rate escalated adjustments;

(e) *Provide Benefit Increases or Contribution Rate Reductions*: to provide the following:

(i) an increase in benefits, where the present value of current benefits is less than the present value of run-rate benefits,

(ii) a reduction in contribution rates, where the present value of current contributions exceeds the present value of basic contributions, or

(iii) a combination of (i) and (ii).

(Last amended May 27, 2015 – Effective March 6, 2015)

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Section 5 – Asset ceiling for OTPP

The factors illustrated in the Section 4 coming from the analysis of the FMP and surplus application are considerations to determine the Government access to the surplus. We have discussed the plan mechanics with OPCD and here are the key factors of the FMP and OTPP plan characteristics that would be considered in support of the Government Expected future benefit coming from surplus withdrawal and contribution reduction:

- The plan nature is defined to be a 50 / 50 share between employees and employer
- Looking at the FMP, this principle applies to bad news and good news, hence for deficit and surplus situations
- The employer can benefit from surplus withdrawal and contribution reduction
- The surplus situations could be dealt with permanent and temporary changes, increasing the likelihood of surplus application
- The accounting valuation currently includes a 100% CPI indexing, hence the resulting accounting surplus to the employer portion has already fully restored benefits considered
- Accounting valuation uses best estimate assumptions and therefore the resulting surplus is considered a realistic value

Based on the Government view on the OTPP and our discussions with OPCD, we understand that the position is that the asset position should not be reduced by any valuation allowance. This position is based on the nature of the sharing principle of the OTPP which allows for the Government to have access to the surplus and hence the Economic benefit. It is unknown when the benefit will materialize and what form it will take but it is of realistic economic value.

That being said, a very important consideration is that the amount determined represents what the accounting defines as the best estimate. The selection of assumptions to prepare the accounting valuation is therefore significant to ensure that the surplus calculated is realistic. Considering the accounting standards requirement to use best estimate assumptions, it is reasonable to consider that those assumptions are selected by the Government as best estimates and therefore the surplus determined is a realistic value of what benefit the Government may realize in the future through surplus withdrawal/contribution reduction.

Should the characteristics of the plan or the FMP parameters change in the future, or if the Government has a different view on the application of the OTPP provisions and the FMP for surpluses, this may affect the Government access to surplus and hence the Government view on asset ceiling test.

Based on the facts coming from the FMP, the plan nature and based on discussions with OPCD, it has been determined that the current view is that any surplus identified to the Government portion would be used to its own benefit and that the Government is not obligated to using any surplus towards increasing benefits to the members (either through historic practice or internal policy). The above analysis provides evidence to support OPCD's position that no valuation allowance is required to the OTPP asset amount reported under PSAB.

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Current - Partners’ Agreement - 03-06-15.pdf

This is an AGREEMENT

BETWEEN:

Her Majesty the Queen
in right of the Province of Ontario
represented by the Minister of Education and Training
("the Minister")

and

The Ontario Teachers' Federation
represented by its Executive
("the OTF")

These are the terms to which the Minister and the OTF agree;

Introduction

1. The Minister and the OTF have agreed to establish a partnership for the purpose of designing and administering the Ontario Teachers' Pension Plan and managing the Ontario Teachers' Pension Fund.

2. It is the intention of the partners that this partnership will start on the 1st day of January, 1992.

3. In this agreement,

(a) the Minister and the OTF will be referred to as the "partners" or the "partnership",

(b) the Ontario Teachers' Pension Plan Board continued by the *Teachers' Pension Act, 1989* will be referred to as "the Board",

(c) the Ontario Teachers' Pension Plan continued by the *Teachers' Pension Act, 1989* will be referred to as the "pension plan" or the "plan" and,

(d) the Ontario Teachers' Pension Fund continued by the *Teachers' Pension Act, 1989* to provide benefits in respect of the pension plan will be referred to as the "pension fund" or the "fund".

4. The partnership established by this agreement is intended to govern all aspects of the plan and the fund. Wherever this agreement differs with any law, that part of the agreement is of no effect but the rest of the agreement continues to govern the plan and the fund.

5. The Minister agrees to do everything possible to make sure that the Teachers' Pension Plan Board will not be considered a Scheduled Agency under the Guidelines of the Management Board of Cabinet.

6. The Minister agrees to do everything possible to have subsection 43(3) of Ontario Regulation 708/87 amended to provide that the pension fund is no longer exempted from the application of subsection 23(1) of the *Pension Benefits Act.*

7. The Minister may designate one or more persons to act in the Minister's place under this agreement. The OTF may designate one or more persons to act in its place under this agreement.

Role of the partners

8. The partners will be responsible for designing the plan structure, setting the benefits of the plan, developing new policy, deciding what the contribution rate will be, what the funding levels, margins and contingency reserves will be, making changes to the plan, this agreement or other plan documents, deciding whether or not to file a valuation more frequently than required by the *Pension Benefits Act,* appointing the Board, and defining the role of the Board.

9. The partners will enter into a memorandum of understanding with the Board setting out,

(a) the duties of the Board,

(b) the process for consultation in the preparation of valuations,

(c) the process for consultation on the amount of money to be paid to members of the Board, including the Chair and to members of committees appointed by the Board,

(d) the actuarial methods which the Board will use in valuing the plan and,

(e) any other terms of the relationship between the partners and the Board to which the partners agree.

10. The partners agree that every three years they will follow the procedure described in this agreement to meet and negotiate changes to the plan.

11. Either partner may ask the other to meet at any time to discuss changes to any of the matters referred to in paragraph 8 and the partners agree to make their best efforts to do so.

11a. The partners agree to meet as required to discuss the amount of the Minister's contribution due on the first business day of January that is to be deferred to the first business day of April of the same year and to determine the interest rate to be applied for the period of the deferral; determination of such interest rate to be guided by the principle that the Teachers' Pension Plan not be disadvantaged by the deferral. (Last amended May 29, 1992 - Effective May 29, 1992)

11b. The partners agree that the payment of a portion of the Minister's contribution that is due on the first business day of January of 1994 and a portion of the Minister's contribution that is due on the first day of January of 1995 may be deferred to March 31 of each respective year; the amount of the deferral, with interest, to equal $200 million in 1994 and $125 million in 1995; amounts to be adjusted to reflect payments authorized under Paragraph 65. (Last amended November 15, 1993 - Effective November 15, 1993)

12. If the Board advises the partners that a change must be made to the plan to comply with any law the partners agree that they will meet as soon as possible to discuss it.

13. The partners will establish a Partners Committee by each appointing three members. Either partner may refer to the Committee any matter referred to in paragraph 8 or 12 when no agreement results from discussion of the matter.

14. The Partners Committee may by agreement use the services of the manager of negotiations referred to in paragraph 76 to resolve any dispute. The Committee may by agreement use any dispute resolution mechanism including voluntary arbitration to resolve any dispute.

15. Either partner may ask the actuary hired by the Board to provide or prepare any information which that partner thinks it needs in discussing changes to the plan. The cost of the actuary in preparing that information will be paid out of the fund. The information will be provided to both partners.

15a. The partners may initiate, with the Board, discussions, reviews and research regarding the funded status of the plan including the design of conditional inflation protection, the reasonable costs of such reviews and research to be paid out of the fund subject to the prior approval of the Board. (Last amended October 9, 2008 – Effective January 1, 2009)

16. Either partner may audit the plan and the fund at any time at the expense of that partner. The Board will cooperate in the audit.

Role of the Board

17. The Board is responsible for the administration of the pension plan, the management of the pension fund and all other matters set out in this agreement.

18. The Board may exercise every power necessary to administer the pension plan, manage the pension fund and fulfil every other task which the partners assign to it.

19. The responsibilities of the Board include,

(a) investing and managing the pension fund to do all things possible so that the obligations of the pension plan will be met,

(b) preparing a valuation at least every three years to comply with the *Pension Benefits Act,*

(c) preparing annual valuations if the Board decides it is appropriate and providing preliminary results to the partners as soon as they are available,

(d) deciding on the actuarial assumptions used in administering the plan and in preparing valuations of the plan,

(e) consulting with the partners during the preparation of a valuation and making its best effort to respond to any comments and recommendations of the partners. The content of a final valuation is the decision of the Board,

(f) giving a copy of every valuation prepared for the Board to each partner and giving any information requested by a partner to each partner as quickly as possible,

(g) having the plan and the fund audited every year,

(h) preparing a report at the end of every fiscal year that tells how the plan and the fund have been doing in that year,

(i) holding a meeting with both partners at least once each year to explain the annual report to them and to answer any questions about the plan and fund,

(j) making sure that the plan and the fund are administered and managed to comply with all laws that affect them,

(k) advising the partners about any changes to the plan that need to be made to comply with the law,

(l) advising the partners about changes that would improve the administration of the plan,

(m) interpreting the plan and determining benefit entitlements,

(n) developing an investment policy and giving a copy to each partner and to the Financial Services Commission of Ontario,

(o) making rules regarding the conduct of its business,

(p) appointing or electing a vice Chair and any other officers that the Board feels are necessary for the conduct of its business.

The Board

20. The Board will have a maximum of nine members. The partners will each appoint four members.

21. The ninth member of the Board will be the Chair. The process for appointing a Chair is set out in the next section of this agreement.

22. The Minister and the OTF will each appoint two members to the Board to terms ending on the 31st day of December, 1992.

23. The Minister and the OTF will each appoint two members of the Board whose terms will end on the 31st day of December, 1993.

24. If a person appointed under paragraph 19 or 20 is a member of the Board when the partnership starts, the Lieutenant Governor in Council will make an Order changing the length of that person's term.

25. After the expiry of the term of a member of the Board who holds office on the 1st day of January, 1992 the partner who recommended to the Lieutenant Governor in Council the appointment of that member will fill the vacancy by appointing or re-appointing.

26. Unless a member cannot complete his or her term, is removed or is appointed after a member whose term was extended because of a delay in the appointment of his or her successor, the term of all members appointed after the 1st day of January, 1992 will be two years.

27. No person may be a member of the Board for more than four consecutive terms. The initial term of a member who is appointed as a successor under paragraph 29, or as a new member under paragraph 30 or 31, shall not be counted in the number of consecutive terms a member may serve. (Last amended January 15, 2014 – Effective January 1, 2014)

28. If no appointment is made to fill the vacancy at the end of a member's term, the member will continue in office until an appointment is made.

29. When a successor is appointed to a term after his or her predecessor's term has been extended for failure to appoint a successor, the successor's term will end two years after the predecessor's term would have ended but for the delay in appointment.

30. If a member of the Board cannot finish his or her term then the partner who appointed the member may appoint a new member for a term ending on the date when the term of the departing member would have ended.

31. At any time either partner may remove a board member whom that partner has appointed and appoint a new member for a term ending on the date when the term of the departing member would have ended.

The Chair

32. The partners may decide together on the person to be appointed as Chair of the Board. The partners agree to meet six months before the term of the Chair of the Board expires to discuss candidates, and attempt to agree upon the Chair.

33. Either partner may initiate the selection of a Chair in the following way as an alternative to the discussion referred to in paragraph 32,

(a) The partners will each prepare a list of at least three persons that they would like to be Chair. The partners will give each person named a number indicating priority. The lowest priority will be indicated by the number equal to the number of persons on the list.

(b) The partners will then examine the list prepared by the other.

(c) If one name appears on both lists that person will be appointed Chair.

(d) If two or more persons appear on both lists the priority ratings given to those persons by each partner will be added together. The person whose priority rating adds to the lowest number will be appointed Chair.

(e) If no name appears on both lists the partners agree to consult together and to prepare and exchange lists until a name does appear on lists prepared by each.

34. The person selected by the partners will be the Chair for a term of two years beginning on the 1st day of January of the year following selection.

35. No person may be Chair for more than four consecutive terms. Previous terms served by a Chair as a board member shall not be counted in the number of consecutive terms a Chair may serve. (Last amended December 16, 1994 - Effective December 16, 1994)

36. The Lieutenant Governor in Council will make an order making the term of the current Chair of the Board end on the 31st day of December, 1991.

37. If no appointment is made to fill the vacancy at the end of a Chair's term then the Chair will continue in office until an appointment is made.

38. If the Chair cannot finish his or her term then the Minister and the OTF will select a new Chair. The new Chair will be appointed for a term ending on the date when the term of the departing Chair would have ended.

39. The Chair may vote on any matter the Board is considering.

Operation of the Board

40. The Board may appoint committees and delegate to them any function of the Board. The Board may appoint persons who are not Board members to sit on any committee.

41. Committee members will be appointed for a term of up to two years.

42. A quorum of the Board or a Committee is a majority of the members. No meeting of the Board or a Committee may conduct any business unless a member appointed by each partner is present.

43. The Board will decide on a reasonable amount of money to be paid to the Board members, Committee members and the Chair for time and effort spent on Board business. The money will be paid out of the pension fund.

44. If any Board or Committee member is a public servant of Ontario that person will only be paid for any income the person loses as a result of time spent on Board business and for his or her expenses of doing Board business.

45. Any expenses that the Board must pay to operate and to administer the pension plan and manage the pension fund will be paid out of the pension fund.

46. The Board will employ a Chief Executive Officer and such other staff as are necessary to carry out its responsibilities.

47. The Board may decide which of its employees will be able to participate in the Public Service Pension Plan established under the *Public Service Pension Act, 1989* and the Minister agrees to do all things possible to ensure that those employees are covered.

48. The Board may employ persons to provide it with professional, technical or other help.

49. The Board must employ an external actuary and an external auditor.

50. The Board's employees will be paid out of the pension fund.

Indemnification

51. (a) Subject to subsection (e), the Board shall indemnify a person or his or her heirs or legal representatives (the "Indemnee") against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment (collectively "Expenses"), reasonably incurred by the person in respect of any civil, criminal, administrative or investigative action or proceeding (collectively a "Proceeding") to which the person is made or threatened to be made a party by any person including the Board, by reason of being or having been a member, committee member, officer or employee of the Board or a person who acts or acted at the Board's direction as a member, director, officer, employee, partner or agent of another corporation, partnership, joint venture, trust or other enterprises (collectively "enterprise"), if,

i) the person acted honestly and in good faith with a view to the best interests of the Board or such other enterprise; and

ii) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the person had reasonable grounds for believing that his or her conduct was lawful.

(Last amended August 4, 2011 – Effective September 1, 2000)

(b) In furtherance of its obligations under subsection (a) the Board may purchase and maintain insurance for the benefit of any person referred to in subsection (a) in relation to any Expenses that may be indemnifiable under subsection (a). (Last amended August 4, 2011 – Effective September 1, 2000)

(c) The Board's indemnification of a person referred to in subsection (a) and any cost of purchasing and maintaining insurance for the benefit of such person are expenses of operating and administering the pension plan and managing the pension fund and may be paid out of the pension fund. (Last amended August 4, 2011 – Effective September 1, 2000)

(d) The Board or a person referred to in subsection (a) may apply to the court for an order approving an indemnity under this section and the court may so order and make any further order it thinks fit. (Last amended August 4, 2011 – Effective September 1, 2000)

(e) An indemnity given pursuant to subsection (a) extends only to Expenses that exceed amounts otherwise recoverable (and, in fact, recovered) by the Indemnee under any indemnity or policy of insurance applicable in respect of a Proceeding, and is to be regarded specifically as excess to any such amounts. An indemnity given pursuant to subsection (a) shall be subject to the condition that, in the event any indemnor or insurer against whom an Indemnee may have a claim for indemnity shall decline to pay, deny liability or otherwise contest either a claim by a person or the due amount thereof, the Indemnee must, if so requested by the Board, co-operate with and assist the Board in pursuing any claim against the other indemnor or insurer as the case may be, in such manner and to the extent that counsel to the Board may recommend or advise in the circumstances. (Last amended August 4, 2011 – Effective September 1, 2000)

(f) In any case where the Board reasonably considers that a person has fulfilled the conditions set out in clauses (a)(i) and (ii), above, and that it is otherwise appropriate to do so, prior to any settlement or judgment the Board may make an advance to an Indemnee in respect of a person referred to in subsection (a) to defray Expenses incurred or to be incurred by the Indemnee in relation to a Proceeding on such conditions as the Board considers appropriate and necessary. Any advance made under this subsection (f) shall be repayable by the Indemnee if the Indemnee fails to meet the conditions set out in clauses a(i) and (ii), above, in respect of such person. (Last amended August 4, 2011 – Effective September 1, 2000)

(g) Where the Board considers it appropriate, the Board may enter into an indemnity agreement with any person and such agreement shall reflect the limitation of this provision. (Last amended August 4, 2011 – Effective September 1, 2000)

(h) The application of paragraph 51 is effective as of September 1, 2000. (Last amended August 4, 2011 – Effective September 1, 2000)

52. The Board may buy, sell or lease real estate either as an investment or to provide a place to carry on business.

53. The Board may delegate any of its powers or duties to a committee or to an employee. It may impose conditions on any delegation it makes.

54. A committee of the Board may delegate any of its tasks to an employee of the Board if the Board approves.

Initial unfunded liability

55. The going concern unfunded actuarial liability disclosed by the initial valuation of the pension fund as at the 1st day of January, 1990 will be paid by the Treasurer of Ontario out of the Consolidated Revenue Fund according to Schedule 2 of the *Teachers' Pension Act, 1989*.

56. Revoked. (Last amended November 15, 1993 - Effective November 15, 1993)

Gains and losses

57. A valuation which is prepared for filing with the Superintendent of Financial Services shall be actuarially balanced so that the present value of,

(a) benefits and costs to be paid out of the fund, and

(b) any contingency reserve,

are equal to the sum of the value of the plan's assets, including

(c) the present value of,

(i) the members' contributions,

(ii) the employers' contributions,

(iii) the outstanding balance of special payments to liquidate the going concern unfunded actuarial liability disclosed by the valuation as at January 1, 1990, and

(iv) any outstanding payments required to discharge a solvency deficiency. (Last amended March 5, 2002 - Effective April 2, 2001)

The IUL Settlement

57a. Notwithstanding any other provision in this agreement, and including without limitation, paragraphs 10, 55, 59, 60, 60a and paragraphs 73 to 101, during the IUL settlement period this paragraph shall apply to the application of actuarial gains.

(i) In this paragraph,

(a) the "initial unfunded liability settlement period" (the "IUL settlement period") means the period between January 1, 1998 and December 31, 2002 and includes any period of extension pursuant to subparagraph (v).

(b) the "initial unfunded liability" means the going concern unfunded actuarial liability disclosed by the initial valuation of the pension fund referred to in paragraph 55 of the agreement.

(ii) Notwithstanding subparagraph 19(c), during the IUL settlement period, an actuarial valuation for funding purposes of the pension fund shall be prepared by the Board's actuary as at the 1st day of January and filed annually with the Superintendent of Financial Services, unless the partners jointly agree to instruct the Board not to file the valuation.

(iii) Effective with the valuation as at January 1, 1998, any actuarial gains disclosed in a valuation prepared in accordance with subparagraph (ii) will be applied in the following order of priority:

(a) (1) to provide an early retirement pension calculated in accordance with subsection 43(4) of Schedule 1, to members who have accumulated at least that number of years of qualifying service that, when added to the member's age upon termination of employment in education, totals eighty-five years (the "factor 85 entitlement"), provided that such member so qualifies on or after June 1, 1998, and on or before December 31, 2002;

(2) to provide early retirement reductions measured from 85 points rather than 90 points for benefits calculated under sections 44 and 52 of Schedule 1 for members who cease to be employed in education between June 1, 1998 and December 31, 2002;

(b) to provide for a permanent reduction in the amount of the Canada Pension Plan or Quebec Pension Plan reduction for pension instalments payable on or after January 1, 1999 as provided for in subsection 81(3) of Schedule 1 by substituting "0.0060" for "0.0068" in the formula;

(c) to provide to members on an absence, as defined in subsection 94(1) of Schedule 1, that commences during the period from the 1st day of June, 1998 to the 31st day of December, 2002, an exemption from the requirement in subsection 94(3)(b) of Schedule 1 where the member is otherwise eligible to purchase credited service under that section, and where the member, at the beginning of the leave,

(1) was at least 60 years of age;

(2) has accumulated at least that number of years qualifying service that, when added to the member's age, totals 75 years; or

(3) has credited service which totals at least 30 years; and

(d) to eliminate the obligation on the Minister of Finance to make special payments on account of the initial unfunded liability, in accordance with this agreement.

(iv) Subject to subparagraphs (v) and (vi), if there are any actuarial gains remaining after providing for (iii) (a), (b), (c) and (d), such gains disclosed in the annual actuarial valuations for funding purposes up to and including the valuation as at January 1, 2002, will be available for benefit enhancements including, but not limited to, the renewal on a permanent or temporary basis of the factor 85 entitlement, member contribution rate reductions, or to be allocated to a contingency reserve, as determined by the OTF in its sole discretion. (Last amended March 5, 2002 - Effective April 2, 2001)

(v) (a) The sum of the actuarial gains available to the OTF under subparagraph (iv), including the actuarial gains disclosed in the valuation as at January 1, 2002, shall be equal to the present value of the special payments, before the application of actuarial gains pursuant to subparagraph (iii)(d), required to amortize the initial unfunded liability as determined by the Board's actuary and disclosed in the valuation as at January 1, 1998 (the "IUL amount"), and the increase in the going concern liabilities required to provide the benefits conferred by (iii)(a), (b) and (c) as determined by the Board's actuary as at January 1, 1998, (the "benefit cost amount"). The partners agree that, effective April 3, 2001, after recognition of plan changes adopted to that time, there remains $76 million in actuarial gains available to the OTF under subparagraph (iv). (Last amended March 5, 2002 - Effective April 2, 2001)

(b) In the event that the sum of the actuarial gains available to the OTF under subparagraph (iv) up to and including the actuarial gains disclosed in the valuation as at January 1, 2002 is less than the difference between the IUL amount and the benefit cost amount, all actuarial gains disclosed in any actuarial valuation for funding purposes subsequent to the valuation as at January 1, 2002, will be available for such benefit enhancements, member contribution rate reductions, or to be held in a contingency reserve, as determined by the OTF in its sole discretion, until the sum of the actuarial gains available to the OTF for such purposes equals the difference between the IUL amount and the benefit cost amount.

(c) In the event that the sum of the actuarial gains available to the OTF under subparagraph (iv) up to and including the actuarial gains disclosed in the valuation as at January 1, 2002 is less than the difference between the IUL amount and the benefit cost amount, the IUL settlement period shall be extended to the date that the sum of the actuarial gains available to the OTF under subparagraph (iv) and (v) equals the difference between the IUL amount and the benefit cost amount.

(vi) (a) Prior to April 1, 2001, if actuarial gains are available after provision has been made for (iii)(a) to (d), and the OTF wishes to apply such gains pursuant to subparagraph (iv) for benefit enhancements or member contribution rate reductions, the partners shall meet to determine the effective date for the implementation of such benefit enhancements or contribution rate reductions.

(b) Subsequent to April 1, 2001, the OTF may, at its sole discretion, determine when such benefit enhancements or contribution rate reductions, are to be implemented. The Minister agrees to waive his consent to the plan amendments necessary to implement such benefit enhancements or member contribution rate reductions, provided these amendments are not filed by the OTF prior to April 1, 2001. Pursuant to paragraphs 8 and 104 of this agreement, the partners agree that Schedule 1 shall be amended by the OTF, to implement such benefit enhancements or contribution rate reductions, and the OTF shall promptly deliver the amendment(s) to the Board, and the Board shall promptly file the amendment(s) with the Superintendent of Financial Services upon receipt of same from the OTF.

(vii) The Minister of Finance will continue to make special payments out of the Consolidated Revenue Fund in accordance with paragraph 55 of the agreement during the IUL settlement period until the obligation to make special payments on account of the initial unfunded liability is eliminated in accordance with this agreement. The amount of the special payments payable pursuant to this subparagraph shall be in accordance with the schedule of payments set out in Appendix H to the Report on the Actuarial Valuation for Funding Purposes for the plan as at January 1, 1996 ("Appendix H") until December 1, 2001, and in accordance with Schedule 2 subsequent to December 1, 2001, if the Minister of Finance continues to be obligated to make special payments on account of the initial unfunded liability beyond this date. If subsection 3(12) of Schedule 2 to the *Teachers' Pension Act* is applicable with respect to any actuarial gains disclosed in a valuation pursuant to subparagraph (ii), the Minister of Finance shall not exercise his discretion in subsection 3(12) of Schedule 2 to reduce the remaining special payments as set out in Appendix H, until the obligation of the Minister of Finance to make special payments on account of the initial unfunded liability is eliminated.

(viii) The issue raised in the "part-time leave" case pending before the Ontario Court of Appeal shall be referred to mediation by Mr. M. Stanley Beck. Mr. Beck will be asked to provide a non-binding opinion on the merits of the case by no later than July 15, 1998. The cost of the mediation pursuant to this subparagraph shall be paid from the fund.

(ix) The partners shall establish a committee to deal on a priority basis with accounting matters relating to joint pension plan sponsorship, and agree to contact the Public Sector Accounting and Auditing Board (PSAAB) to raise issues of concern to the partners. The committee shall report to the Partners by May 1, 1999. The reasonable costs of the committee shall be paid from the fund.

(x) Subject to any extension of the IUL settlement period pursuant to subparagraph (v), at the end of the IUL settlement period, the provisions of this agreement respecting the use of actuarial gains or losses, other than this paragraph 57a, will apply. The next triennial negotiation pursuant to paragraphs 73 to 101 will be based on the actuarial valuation for funding purposes as at January 1, 2002, unless the IUL settlement period is extended beyond this date, or the partners agree otherwise.

(xi) Any dispute regarding the interpretation, application, administration and implementation of the provisions in this paragraph 57a may be resolved in accordance with paragraph 14 of the agreement, and/or through such other proceedings as are otherwise available to either partner.

58. If the preliminary results of a valuation prepared for filing with the Financial Services Commission of Ontario as at a date after the 1st day of January, 1993 indicate a need to increase the contribution rate the partners agree to meet as soon as possible to discuss how to adjust for that need on an equally shared basis. If the partners cannot agree on how to adjust they will refer the issue to the mediation and arbitration procedures described elsewhere in this agreement to adjust the contribution rate and/or benefits. (Last amended November 15, 1993 - Effective November 15, 1993)

59. If the preliminary results of a valuation prepared for filing with the Financial Services Commission of Ontario as at a date after the 1st day of January, 1993 indicate that the contribution rate can be decreased the implicit actuarial gain disclosed by the valuation will be applied to reduce and, if possible, eliminate the payments required to liquidate any unamortized balance of a solvency deficiency. (Last amended November 15, 1993 - Effective November 15, 1993)

60. An implicit actuarial gain remaining after the elimination of a deficiency mentioned in paragraph 59, will be used to establish a contingency reserve in an amount agreed upon by the partners or for any of the following purposes upon which the partners have agreed or which an arbitrator has awarded,

(i) to reduce contributions which members and employers are required to pay, and/or

(ii) to improve benefits payable to members.

60a. The portion of the gain disclosed by the January 1, 1996 valuation remaining after the implementation of the benefit improvements contained in the December 30, 1996 arbitration award shall be placed in a contingency reserve called the Rate Stabilization Fund for the period January 1, 1996 to December 31, 1998. (Last amended February 20, 1997 - Effective January 1, 1996)

60b. The $76 million of actuarial gains that, effective April 3, 2001, remain available to the OTF under the subparagraph 57a (iv) shall be allocated to a contingency reserve until such time as the OTF, in its sole discretion, may determine, at which time such gains shall be used toward the provision of future benefit enhancements and/or member contribution rate reductions as determined by the OTF, in its sole discretion. (Last amended March 5, 2002 – Effective April 2, 2001)

60c. The portion of the actuarial surplus disclosed by the January 1, 2001 valuation that remains after providing for,

(a) the benefit improvements contained in the plan amendments dated April 2, 2001, and

(b) the contingency reserve pursuant to paragraph 60b,

shall be allocated to a contingency reserve called the Rate Stabilization Fund for the period January 1, 2001 to December 31, 2001, or until such later date agreed to by the partners. (Last amended March 5, 2002 – Effective April 2, 2001)

60d. The partners acknowledge that the $76 million referred to in paragraph 60b will be used towards reducing the additional contributions payable by active members in accordance with section 19 of Schedule 1 in 2008 from 3.1% to 2.3% and that this application will fully discharge the credit owing the Ontario Teachers' Federation under paragraph 60b. (Last amended December 21, 2006 – Effective January 1, 2007)

60e. The partners agree that $7 million shall be allocated to a contingency reserve, to the credit of the Minister, to reflect the additional $7 million that was used, in addition to the $76 million referred to in paragraph 60d, towards reducing the additional contributions payable by active members in accordance with section 19 of Schedule 1 in 2008 from 3.1% to 2.3%. (Last amended December 21, 2006 – Effective January 1, 2007)

61. The valuation as at January 1, 1992 that was prepared and provisionally filed with the Pension Commission of Ontario shall be considered invalid. (Last amended November 15, 1993 - Effective November 15, 1993)

62. The board will prepare a valuation of the plan as at the 1st day of January, 1993. (Last amended November 15, 1993 - Effective November 15, 1993)

63. A portion, in the amount of $1.2 billion, of the gain disclosed by the January 1, 1993 valuation is to be applied to reduce the Minister's scheduled special payments under Schedule 2 of the Act, in the period from January 1, 1993 until the entire amount is exhausted. (Last amended November 15, 1993 - Effective November 15, 1993)

64. A further portion, in the amounts of $200 million as at March 31, 1994 and $125 million as at March 31, 1995, of the gain disclosed by the January 1, 1993 valuation, is to be applied to reduce scheduled government payments to the plan on or before the 31st of March, 1995. (Last amended November 15, 1993 - Effective November 15, 1993)

65. The partners may authorize the use of an additional portion of the gains from the 1993 valuation to offset social contract targets for those members of the plan who are not covered by the Teachers' Sub-Sectoral Framework Agreement and who meet the set of principles agreed on by the partners; these gains will be allocated in the same proportion as members of the plan who are covered by the Teachers' Sub-Sectoral Agreement. (Last amended November 15, 1993 - Effective November 15, 1993)

66. Any residual portion of the gain disclosed by the January 1, 1993 valuation is to be placed in a contingency reserve for rate stabilization until at least January 1, 1996. (Last amended November 15, 1993 - Effective November 15, 1993)

67. Revoked. (Last amended November 15, 1993 - Effective November 15, 1993)

68. If a solvency valuation of the plan, conducted as at a date on or before the 1st day of January, 1996, discloses a solvency deficiency the contributions of members, the Minister and employers required to contribute to the fund under Schedule 1 will be adjusted in the following way,

(1) The members will during each of the fifteen years following the date of the solvency valuation contribute the members' contribution required under Schedule 1 plus an amount equal to "B" as defined in subparagraph (2).

(2) The Minister and employers will during each of the five years following the date of the solvency valuation contribute the Minister's and employers' contributions required under Schedule 1 plus an amount equal to,

$$A - B$$

where

"A" is equal to the amount of the annual payment required to amortize the solvency deficiency amortized over the five years following the date of the solvency valuation, and

"B" is equal to one half of the amount of the annual payment required to amortize the solvency deficiency over the fifteen years following the date of the solvency valuation.

(3) The Minister and employers will during each of the sixth through fifteenth years following the date of the solvency valuation contribute the contributions required of them under Schedule 1 less an amount equal to "B". (Last amended November 15, 1993 - Effective November 15, 1993)

69. If a solvency valuation of the plan, conducted as at a date after the 1st day of January, 1996, discloses a solvency deficiency the contributions of members, the Minister and employers required to contribute to the fund under Schedule 1 will be adjusted in the following way,

(1) The members will during each of the ten years following the date of the solvency valuation contribute the members' contribution required under Schedule 1 plus an amount equal to "B" as defined in subparagraph (2).

(2) The Minister and employers will during each of the five years following the date of the solvency valuation contribute the Minister's and employers' contributions required under Schedule 1 plus an amount equal to,

$$A - B$$

where

"A" is equal to the amount of the annual payment required to amortize the solvency deficiency amortized over the five years following the date of the solvency valuation, and

"B" is equal to one half of the amount of the annual payment required to amortize the solvency deficiency over the ten years following the date of the solvency valuation.

(3) The Minister and employers will during each of the sixth through tenth years following the date of the solvency valuation contribute the contributions required of them under Schedule 1 less an amount equal to "B". (Last amended November 15, 1993 - Effective November 15, 1993)

70. If a valuation done after one which showed a solvency deficiency discloses that there is no solvency deficiency or one that is less than would be expected based on the first valuation, the partners agree to adjust on an equally shared basis for any payments that have been made under paragraphs 68 or 69. (Last amended November 15, 1993 - Effective November 15, 1993)

71. Revoked. (Last amended November 15, 1993 - Effective November 15, 1993)

Triennial negotiation of changes to the plan

72. The Board will prepare a valuation of the plan as at the 1st day of January, 1996 as soon as possible after that date. This will be the valuation to be used for the first set of negotiations. (Last amended November 15, 1993 - Effective November 15, 1993)

73. The subject of the negotiations and of all subsequent triennial negotiations will be any of the matters referred to in paragraphs 8 and 12.

74. As soon as preliminary results of the valuation are available the partners will meet to bargain in good faith and make every reasonable effort to reach an agreement on the changes, if any, that will be made to the plan.

75. The partners will advise the Board what changes affecting benefits and contribution rates they are proposing and the Board will provide cost estimates and comments on the administrative impact of the changes to both partners as soon as possible.

76. There will be a manager of negotiations whose fees and expenses shall be paid by the fund. The manager will be appointed by agreement of the partners or if they cannot agree the Chief Executive Officer of the Board will act as manager. When the manager is appointed, the partners may give the manager any role in the negotiation process in addition to the role described in this agreement. (Last amended March 27, 1996 - Effective January 1, 1996)

77. At any time after the preliminary results of a valuation are available the partners may agree to appoint a mediator. The mediator will be chosen by the agreement of the partners or by a method to which they agree at that time.

78. If no agreement is reached on all proposed changes by the 1st day of May, 1996 and no mediator has been appointed by agreement the manager will appoint a mediator to mediate proposed changes to the contribution rate or benefits under the plan. The manager will do so by preparing a list of five persons willing to act as mediator and asking each partner to select three names from the list. The manager will appoint one of the persons chosen by both partners. (Last amended November 15, 1993 - Effective November 15, 1993)

79. Any proposed changes to the plan not involving the contribution rate or benefits which remain unresolved on the 1st day of May, 1996 will be referred to the Partners Committee established under paragraph 13. The Partners Committee will make every effort to resolve those issues referred to it. (Last amended November 15, 1993 - Effective November 15, 1993)

80. If the partners agree, the mediator may be appointed as a mediator/arbitrator in which case the appointee will decide on the process and time frame for conducting mediation/arbitration.

81. If the partners do not agree on mediation/arbitration the mediator will meet with them and try to mediate an agreement.

82. Within 30 days of appointment the mediator will prepare a confidential report setting out his or her views on the positions of the two partners and containing a recommendation. The report will be delivered to the partners.

83. The mediator may extend the deadline for delivering the report by 14 days if he or she is of the opinion that the partners are likely to reach an agreement during the extension.

84. If the partners do not accept the report within 14 days of its being delivered to them it will be destroyed and an arbitration board will be appointed.

85. At any time after a mediator has been appointed the partners may agree to appoint a board of arbitration.

86. If the partners agree to appoint a board of arbitration or if 14 days have passed since the mediator's report each partner will appoint one person to the board of arbitration and the two appointees will select a final member who will be the umpire.

87. This agreement together with a referral to a board of arbitration constitutes a submission under the *Arbitrations Act,* R.S.O. 1980, c. 25, as amended.

88. If the persons appointed by the partners to a board of arbitration do not appoint an umpire within 14 days of the appointment of the latter of them, the manager will prepare a list of five persons who are willing to act as umpire and ask each partner to select three names from the list. The manager will appoint as umpire one of the persons chosen by both partners.

89. The umpire will establish the procedure for conducting the arbitration but will allow each partner an opportunity to present evidence and make representations. The persons appointed by the partners will consult with the appointing partner during the arbitration.

90. The board of arbitration will hold a hearing within 30 days of its appointment and make an award within 60 days of the conclusion of the hearing. The board of arbitration will provide reasons for its award.

91. The board of arbitration in making an award will consider prevailing economic conditions and the overall state of the provincial economy.

92. The award made by the board of arbitration will,

(a) deal only with the contribution rate and/or benefits of the pension plan and otherwise maintain the plan as it is set out in Schedule 1,

(b) comply with the laws of Ontario,

(c) provide that the contributions of the Minister and those employers who are required to contribute are equal to the contributions of members,

(d) be based on the valuation of the plan and the costing of changes to benefits which were prepared by the Board,

(e) ensure that any increase in benefits is adequately funded,

(f) not impair the ability of the Board to fulfil its fiduciary responsibilities,

(g) if it includes benefit improvements, not provide for an increase in the contribution rate paid by plan members greater than .5% of pensionable salary,

provided that all such awards shall be subject to the limitations referred to in subparagraph EE(2). (Last amended March 26, 2003 – Effective January 1, 2003)

92.1 In the event that a board of arbitration is appointed pursuant to any provision of the agreement, other than paragraph 57a, to determine the application of actuarial gains disclosed in a valuation for funding purposes where a portion of the actuarial gains disclosed in such valuation is subject to the provisions of paragraph 57a, the board of arbitration shall not issue an award regarding that portion of the actuarial gains which is subject to the provisions of paragraph 57a. (Last amended May 27, 1998 - Effective April 18, 1998)

93. The board of arbitration will give the partners a copy of the award and reasons as soon as they are prepared.

94. The Board will prepare a final valuation of the plan which implements all of the changes to the plan which have been awarded or agreed to by the partners. The changes will take effect on the 1st day of January, 1997 or on such earlier date to which the partners have agreed. (Last amended November 15, 1993 - Effective November 15, 1993)

95. The final valuation will be filed with the Financial Services Commission of Ontario and Schedule 1 will be amended to reflect the changes agreed to and the award if any.

96. Every three years, after January 1, 1996, the process described in this section will be repeated unless the partners agree that no changes will be made to the plan. (Last amended November 15, 1993 - Effective November 15, 1993)

97. The manager and the umpire may agree to extend the timelines set out by this agreement if they think it will help the partners reach an agreement.

98. The partners may agree to change the procedure described in this agreement, either for one round of negotiations or for all future negotiations.

99. The costs of mediation and arbitration will be paid out of the fund. (Last amended March 27, 1996 - Effective January 1, 1996)

100. The mediator or the umpire may employ experts to assist her or him. The cost of employing experts will be shared equally by the partners. The mediator or umpire will consult with the partners about a reasonable budget for such costs.

101. Revoked. (Last amended March 26, 2003 – Effective January 1, 2003)

General

102. Schedule 1 to the *Teachers' Pension Plan, 1989* as amended is adopted by the partners as part of this agreement.

103. The partners agree that this agreement forms part of the plan documents of the pension plan and that they will file a copy of this agreement with the Pension Commission of Ontario.

104. The partners may at any time agree to change any of the provisions of Schedule 1. A change to Schedule 1 will be effected when it is filed with the Financial Services Commission of Ontario by the partners.

105. The partners will not make any change to Schedule 1 which is contrary to the laws of Ontario. Any change which is inconsistent will be void to the extent of the inconsistency.

106. Sections 116, 117, 118 and all of Part XII of Schedule 1 are revoked.

107. Revoked. (Last amended November 15, 1993 - Effective November 15, 1993)

108. The Board will print a new consolidation of Schedule 1 as soon as possible after any changes to it have been filed with the Financial Services Commission of Ontario.

109. The Minister will submit a copy of Schedule 1 and the annual report to the Lieutenant Governor in Council and lay it before the Assembly at the first opportunity after the report is prepared by the Board.

110. The partners agree that the Funding Management Policy attached hereto, and as amended from time to time, forms part of this agreement. (Last amended June 3, 2009 – Effective January 1, 2009)

July 15, 1991

APPENDIX "A"

Funding Management Policy

Article I. Application

Section 1.01 *Best Estimates Assumptions*: For the purposes of this Funding Management Policy, except as otherwise provided herein, the Board shall provide the required reports using the Board's best estimates assumptions including, in the case of the discount rate, a margin for adverse deviation. The Board's best estimate economic assumptions may be based on market data, smoothed data, the reference rate or the Board's expectation if the Board believes future experience may differ from market data. The Board's assumptions shall be used only if they would be consistent with accepted actuarial practice. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 1.02 *Escalated Adjustments Indices*: The Board shall also maintain indices to record escalated adjustments for post-2009 service. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 1.03 *Different Discount Rate*: If a preliminary valuation uses a discount rate lower than the restoration basis for valuations prepared under Article III and Article VI, lower than the temporary basis for valuations prepared under Article IV, or lower than the distribution basis for valuations prepared under Article V, then the Board shall notify the partners and the partners shall meet with the Board. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 1.04 *Exit Provision*: The provisions in Article II to Article IX shall expire twelve months after the notification referred to in Section 1.03 unless both partners otherwise notify the Board. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 1.05 This Funding Management Policy shall be applied as follows:

(a) *If there is a restoration basis excess when current contributions exceed basic contributions and/or current benefits are less than run-rate benefits, the excess can be used to reduce contributions and/or increase benefits in accordance with Article III*: If the results of a preliminary valuation, using the restoration basis, the definitions in Section 3.01 and the provisos in Section 3.02 and Section 3.03, satisfy the conditions in Section 3.04, then Section 3.05, Section 3.06, Section 3.07 and Section 3.08 shall apply;

(b) *If there is a restoration basis deficit using current contributions and current benefits, contributions must be increased and/or benefits must be reduced in accordance with Article III to eliminate the deficit*: If the results of a preliminary valuation, using the restoration basis, the definitions in Section 3.01 and the provisos in Section 3.02 and Section 3.03, satisfy the conditions in Section 3.09, then Section 3.10, Section 3.11, Section 3.12, Section 3.13, and Section 3.14 shall apply;

(c) *If there is a restoration basis excess when contributions are less than or equal to basic contributions and benefits are greater than or equal to run-rate benefits, prepare a temporary basis valuation in accordance with Article IV*: If the results of a preliminary valuation, using the restoration basis, the definitions in Section 3.01 and the provisos in Section 3.02 and Section 3.03, either:

(i) do not satisfy the conditions in either Section 3.04 or Section 3.09; or

(ii) satisfy the conditions in Section 3.04, and

1) the present value of revised benefits is equal to the present value of run-rate benefits, and

2) the present value of revised contributions is equal to the present value of basic contributions;

then the preliminary valuation shall be performed using the temporary basis, the definitions in Section 4.01 and the proviso in Section 4.02;

(d) *Temporary and Distribution Basis Valuations*:

(i) *If there is a temporary basis excess, prepare a distribution basis valuation in accordance with Article V*: If the results of a preliminary valuation, using the temporary basis, the definitions in Section 4.01 and the proviso in Section 4.02, satisfy the conditions in Section 4.03, then the preliminary valuation shall be performed using the distribution basis, the definitions in Section 5.01 and the proviso in Section 5.02, and

1) *If there is a distribution basis excess, the distribution basis excess can be used to make plan improvements in accordance with Article V*: if the results of that preliminary valuation satisfy the conditions in Section 5.03, then Article V shall apply;

2) *If there is a distribution basis deficit but a temporary basis excess, the temporary basis excess can be used to make temporary plan improvements in accordance with Article IV*: if the results of that preliminary valuation do not satisfy the conditions in Section 5.03, then the preliminary valuation shall be performed using the temporary basis, the definitions in Section 4.01 and the proviso in Section 4.02, and Article IV shall apply;

(ii) *If there is a temporary basis deficit, the restoration basis valuation will apply in accordance with Article III*: If the results of a preliminary valuation, using the temporary basis, the definitions in Section 4.01 and the proviso in Section 4.02, do not satisfy the conditions in Section 4.03, then the preliminary valuation shall be performed using the restoration basis, the definitions in Section 3.01 and the provisos in Section 3.02 and Section 3.03, and Section 3.05, Section 3.06, Section 3.07 and Section 3.08 shall apply;

(e) *Post-December 30, 2017 Valuations*: If the results of a preliminary valuation prepared as of a date after December 30, 2017, using the restoration basis and the definitions in Section 6.01, satisfy the conditions in Section 6.02, then Section 6.03 shall apply;

(f) *2013 Term Sheet Precedence*: The provisions of the 2013 Term Sheet shall take precedence over this Funding Management Policy. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 1.06 *Actions Subject to Pension Legislation*: Prior to the commitment of a surplus distribution or a contribution decrease, the partners shall ensure such distribution or contribution decrease is in accordance with the *Income Tax Act* (Canada), the *Pension Benefits Act* (Ontario) and their respective regulations. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 1.07 *Conditions on Temporary Improvements*: Any commitment to provide temporary improvements shall be made conditional on the results of a preliminary valuation for each year of the commitment period indicating that the conditions in Section 3.04(a) are met prior to and after such temporary improvement. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 1.08 *Headings*: Headings are underlined and are for convenience only and shall not affect the interpretation or meaning of any provision of this Funding Management Policy. (Last amended May 27, 2015 – Effective March 6, 2015)

Article II. Definitions

Section 2.01 For the purposes of this Funding Management Policy:

(a) "2013 Term Sheet" means the March 13, 2013 OTPP Term Sheet entered into by the partners;

(b) "basic contributions" are the contributions required by subsections 19(1) or (2) of Schedule 1 as it read on January 1, 2012;

(c) "commitment period" means the three-year period during which a temporary improvement is provided;

(d) "commitment value" means the present value of the portion of the temporary improvement value provided during the commitment period;

(e) “Consumer Price Index” means the Consumer Price Index for Canada as published by Statistics Canada under the authority of the *Statistics Act* (Canada);

(f) “CPI adjustment” means the ratio between 1.000 and 1.080 of the average for the Consumer Price Index over the last twelve months of the twenty-four-month period ending with the 30th day of September in the immediately preceding year to the average for the Consumer Price Index over the first twelve months of that period - 1. If the ratio would have been less than 1.000 or greater than 1.080, but for those limits, the difference shall be carried forward in a manner consistent with that set out in section 80 of Schedule 1;

(g) “current accumulated adjustment ratio” is an index maintained by the Board that begins with "1.000000" for 2010 and is the product of all current ratios for the years in the period commencing with 2010 and ending with the year prior to the year for which the current accumulated adjustment ratio is being determined. The index may differ in respect of service accrued before 2014 and service accrued after 2013 with both indices beginning with “1.000000” for 2010;

(h) “current benefits” are the pension benefits, current escalated adjustments and ancillary benefits calculated in accordance with Schedule 1 as it read at the current valuation date without taking into account any amendment made, or changes agreed to by the partners, on or after the current valuation date;

(i) “current contributions” are the contributions required by Schedule 1 as it read at the current valuation date without taking into account any amendment made on or after the current valuation date;

(j) “current escalated adjustments” are the escalated adjustments in respect of post-2009 service that were applied prior to the January 1st following the current valuation date and assumed thereafter at the rate set out in the most recent filed valuation;

(k) “current ratio”, for a year, means 1 + the proportion of the CPI adjustment granted as agreed to by the partners, and as may have been revised from time to time, provided that the proportion shall not be less than 50% in respect of service accrued before 2014, but not including any revision agreed to by the partners in relation to the current valuation;

(l) “current valuation date” in respect of a valuation is the date provided in Section 7.01;

(m) “distribution basis” is the reference rate with a positive adjustment of 0.5% together with the Board’s best estimate actuarial assumptions for all other factors;

(n) “freeze period” means the period from December 31, 2012 to December 30, 2017;

(o) “going concern liabilities” are the going concern liabilities within the meaning of Regulation 909 made under the *Pension Benefits Act* and must also include the present value of the pension benefits and escalated adjustments that both accrued prior to the valuation date and that will accrue on or after the valuation date to the persons who were members of the plan on the valuation date and the present value of the ancillary benefits for which the eligibility requirements will be satisfied on or after the valuation date by the persons who were members of the plan on the valuation date;

(p) “preliminary valuation” means a valuation referred to in Section 7.01;

(q) “reference rate” means the interest rate chosen by the Board representing the Government of Canada long bond yield (currently, CANSIM Series V39056 nominal and CANSIM Series V39057 real, or their reasonable respective replacements) that may be based on market data or smoothed data;

(r) “remaining amortization value” means the difference between the temporary improvement value and the commitment value;

(s) “restoration basis” is the reference rate with a positive adjustment of 1.55% together with the Board’s best estimate actuarial assumptions for all other factors;

(t) "revised accumulated adjustment ratio" is an index maintained by the Board that begins with "1.000000" for 2010 and is the current accumulated adjustment ratio, as modified by an agreement between the partners to change the proportion of the CPI adjustment in respect of post-2009 service prior to the year following the current valuation date. The index may differ in respect of service accrued before 2014 and service accrued after 2013 with both indices beginning with "1.000000" for 2010;

(u) "revised benefits" are the current benefits including any amendment made, or changes agreed to by the partners, on or after the current valuation date based on that valuation;

(v) "revised contributions" are the current contributions including any amendment made on or after the current valuation date based on that valuation;

(w) "revised escalated adjustments" are the current escalated adjustments including any amendment made, or changes agreed to by the partners, on or after the current valuation date based on that valuation and assumed thereafter at the rate set out in that valuation;

(x) "run-rate accumulated adjustment ratio" is an index maintained by the Board that begins with "1.000000" for 2010 and is the product of all run-rate ratios for the years in the period commencing with 2010 and ending with the year prior to the year for which the run-rate accumulated adjustment ratio is being determined;

(y) "run-rate benefits" are the pension benefits, run-rate escalated adjustments and ancillary benefits calculated in accordance with Schedule 1 as it read on January 1, 2009, together with any benefits provided by amendments described in Article IX;

(z) "run-rate escalated adjustments" are the escalated adjustments in respect of post-2009 service that would have applied at the rate of 100% of the CPI adjustment prior to the January 1st following the current valuation date and that would be assumed thereafter at the rate of 100% of the CPI adjustment;

(aa) "run-rate ratio", for a year, means 1 + the CPI adjustment for the year;

(bb) "temporary basis" is the reference rate with a positive adjustment of 1.25% together with the Board's best estimate actuarial assumptions for all other factors;

(cc) "temporary improvement" means an improvement provided in accordance with Section 4.05;

(dd) "temporary improvement value" is the present value of a contribution decrease, a distribution of surplus and/or a benefit improvement that is amortized over a period of up to ten years, but is committed to for the duration of the commitment period only, provided that at the establishment of the commitment:

(i) the partners may elect an amortization period between three and ten years; and

(ii) for amortization periods of less than ten years, any temporary improvement for a given year shall be limited such that the present value of that given year's temporary improvement is not greater than the present value of basic contributions, calculated using the temporary basis, to be paid in the same year.

(Last amended May 27, 2015 – Effective March 6, 2015)

Article III. **<u>Funding Zone - Restoration</u>**

Section 3.01 *<u>Definitions</u>*: For the purposes of Article III, as at the current valuation date, using the restoration basis:

(a) "assets" are the assets described in paragraph (a) of the definition of "going concern assets" in Regulation 909 made under the *Pension Benefits Act*;

(b) "current liabilities" are the difference between:

(i) the going concern liabilities calculated using current benefits, and

(ii) the present value of current contributions;

(c) "revised liabilities" are the difference between:

(i) the going concern liabilities calculated using revised benefits, and

(ii) the present value of revised contributions.

(Last amended May 27, 2015 – Effective March 6, 2015)

Section 3.02 *Restoration Basis Plus an Adjustment*: For the purposes of Article III, current liabilities and revised liabilities may be calculated as at the current valuation date using the restoration basis plus an adjustment. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 3.03 *CPI Adjustment*: For the purposes of Article III, and subject to a subsequently filed valuation, the proportion of the CPI adjustment for the period covered by the current valuation, in respect of each applicable period of service, will be the same for each year in that period and assumed at the same rate thereafter. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 3.04 *Restoration Basis Excess, but Basic Contributions and/or Run-Rate Benefits Not Restored*:

(a) If assets are greater than current liabilities; and

(b) if:

(i) the present value of current contributions is greater than the present value of basic contributions, or

(ii) the present value of current benefits is less than the present value of run-rate benefits, or

(iii) both (i) and (ii);

then Section 3.05, Section 3.06, Section 3.07 and Section 3.08 shall apply.

(Last amended May 27, 2015 – Effective March 6, 2015)

Section 3.05 *Restoration Basis Excess Report*: The Board shall report to the partners:

(a) the excess of assets over current liabilities; and

(b) the extent to which the excess can be used to provide the changes specified in Section 3.06.

(Last amended May 27, 2015 – Effective March 6, 2015)

Section 3.06 *Application of Restoration Basis Excess*: For purposes of clarity, excesses identified pursuant to Section 3.05 shall be applied in the following order, provided that the partners reserve the right to reconsider such application having regard to the contribution rate and benefits then in effect, prevailing economic circumstances and other relevant factors:

(a) *Bring Escalated Adjustments to 50% for Post-2013 Service*: to provide escalated adjustments up to 50% of the CPI adjustment in respect of service accrued after 2013 for the period covered by the valuation, and assumed thereafter at the same rate;

(b) *Bring Escalated Adjustments to 100%*: to provide escalated adjustments up to 100% of the CPI adjustment for the period covered by the valuation, and assumed thereafter at the same rate;

(c) *Restore Escalated Adjustments for Post-2013 Years*: to provide escalated adjustments to increase, to the extent possible, the current accumulated adjustment ratio for each year after 2013, to the current accumulated adjustment ratio for the period from 2010 to 2013, beginning with the first year in which current escalated adjustments were less than 50% of the run-rate escalated adjustments;

(d) *Restore Escalated Adjustments for Post-2009 Years*: to provide escalated adjustments to increase, to the extent possible, the current accumulated adjustment ratio for each year after 2009 to the run-rate accumulated adjustment ratio, beginning with the first year in which current escalated adjustments were less than run-rate escalated adjustments;

(e) *Provide Benefit Increases or Contribution Rate Reductions*: to provide the following:

(i) an increase in benefits, where the present value of current benefits is less than the present value of run-rate benefits,

(ii) a reduction in contribution rates, where the present value of current contributions exceeds the present value of basic contributions, or

(iii) a combination of (i) and (ii).

(Last amended May 27, 2015 – Effective March 6, 2015)

Section 3.07 *Conditions on Application of Excess*: Subject to Section 3.06 and Section 3.08 or any mutual agreement to the contrary, the partners shall apply the excess of assets over current liabilities to change benefits, contributions, or both, provided that no change or amendment shall be made unless, after such change or amendment:

(a) assets are equal to or greater than revised liabilities;

(b) the revised accumulated adjustment ratio is equal to or less than the run-rate accumulated adjustment ratio;

(c) the revised accumulated adjustment ratio is equal to or greater than the current accumulated adjustment ratio;

(d) the present value of revised benefits is equal to or less than the greater of the present value of current benefits and the present value of run-rate benefits;

(e) the present value of revised benefits is equal to or greater than the lesser of the present value of current benefits and the present value of run-rate benefits;

(f) the present value of revised contributions is equal to or greater than the lesser of the present value of current contributions and the present value of basic contributions; and

(g) the present value of revised contributions is equal to or less than the greater of the present value of current contributions and the present value of basic contributions.

(Last amended May 27, 2015 – Effective March 6, 2015)

Section 3.08 *2013 Term Sheet Limits*: As set out in further detail in the 2013 Term Sheet, during the freeze period:

(a) The partners may provide escalated adjustments pursuant to Section 3.06(a), Section 3.06(b), Section 3.06(c) and Section 3.06(d) only if the assets are greater than 100% of the current liabilities and do not fall below 100% of the revised liabilities after the adjustment; and

(b) The partners may agree to improve benefits, or to restore benefits that were reduced during the freeze period, pursuant to Section 3.06(e) only if the net assets available for benefits (as such term is used in the preliminary valuations) are equal to or greater than 105% of the current liabilities and do not fall below 105% of the revised liabilities after the benefit improvement or restoration.

(Last amended May 27, 2015 – Effective March 6, 2015)

Section 3.09 *Restoration Basis Deficit*: If current liabilities are greater than assets, then Section 3.10, Section 3.11, Section 3.12, Section 3.13 and Section 3.14 shall apply. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 3.10 *Restoration Basis Deficit Report*: The Board shall report to the partners:

(a) the excess of current liabilities over assets; and

(b) the amount required to change current benefits, current contributions, or both, to eliminate the excess referred to in Section 3.10(a) above, as requested by either partner.

(Last amended May 27, 2015 – Effective March 6, 2015)

Section 3.11 *Conditions on Elimination of Deficit*: Subject to Section 3.12 and Section 3.14, the partners may change benefits, contributions, or both, to eliminate the excess referred to in Section 3.10(a), provided that no change or amendment shall be made unless, after such change or amendment:

(a) assets are equal to or greater than revised liabilities; and

(b) revised member contributions shall be limited to 15% of pensionable salaries above the Year's Maximum Pensionable Earnings as prescribed under the *Canada Pension Plan*.

(Last amended May 27, 2015 – Effective March 6, 2015)

Section 3.12 *Restrictions on Benefit Reductions*: Current benefits shall not be reduced unless:

(a) the partners agree on the terms and conditions of any reduction in current benefits;

(b) the partners have entered into a written agreement governing the manner in which contributions by the Minister and the Employers will be adjusted to offset any reduction in benefits; and

(c) the revised accumulated adjustment ratio, in respect of each year, is equal to or greater than the current accumulated adjustment ratio for the year.

(Last amended May 27, 2015 – Effective March 6, 2015)

Section 3.13 *Restrictions on Contribution Increases*: Subject to Section 3.14, the partners have the authority to set the level of contributions that must be reached before current benefits are reduced below run-rate benefits, subject to the commitment that member contributions will not exceed 15% of pensionable salaries above the Year's Maximum Pensionable Earnings (as prescribed under the Canada Pension Plan). (Last amended May 27, 2015 – Effective March 6, 2015)

Section 3.14 *Further Restrictions on Contribution Increases*: As set out in further detail in the 2013 Term Sheet, during the freeze period there will be no employer contribution increases except as provided under the 2013 Term Sheet. (Last amended May 27, 2015 – Effective March 6, 2015)

Article IV. Funding Zone – Temporary Improvements

Section 4.01 *Definitions*: For the purposes of Article IV, as at the current valuation date, using the temporary basis:

(a) "assets" are either:

(i) the market value of net assets available to provide benefits as determined by the Board, if the excess of the market value of net assets available to provide benefits over current liabilities calculated using a reference rate based on market data is less than the excess of the assets in paragraph (a) of the definition of "going concern assets" in Regulation 909 made under the Pension Benefits Act over current liabilities calculated using a reference rate based on smoothed data; or

(ii) the assets described in paragraph (a) of the definition of "going concern assets" in Regulation 909 made under the Pension Benefits Act, if the excess of the assets described in paragraph (a) of the definition of "going concern assets" in Regulation 909 made under the Pension Benefits Act over current liabilities calculated using a reference rate based on smoothed data is less than the excess of the market value of net assets available to provide benefits over current liabilities calculated using a reference rate based on market data;

(b) "current liabilities" are the sum of:

(i) the difference between:

1) the going concern liabilities calculated using the greater of current benefits and run-rate benefits, and

2) the present value of the lesser of current contributions and basic contributions;

and

(ii) the remaining amortization value (equal to zero with respect to a particular commitment period if, as of the valuation date, the payment in respect of the last year of a commitment period will be paid in that year);

(c) "revised liabilities" are the sum of:

(i) the difference between:

1) the going concern liabilities calculated using the greater of revised benefits and run-rate benefits, and

2) the present value of revised contributions;

and

(ii) the remaining amortization value (equal to zero with respect to a particular commitment period if, as of the valuation date, the payment in respect of the last year of a commitment period will be paid in that year);

(d) The reference rate for purposes of determining the temporary basis is based on:

(i) market data, if the excess of the market value of net assets available to provide benefits over current liabilities calculated using a reference rate based on market data is less than the excess of the assets in paragraph (a) of the definition of "going concern assets" in Regulation 909 made under the Pension Benefits Act over current liabilities calculated using a reference rate based on smoothed data; and

(ii) smoothed data, if the excess of the assets in paragraph (a) of the definition of "going concern assets" in Regulation 909 made under the Pension Benefits Act over current liabilities calculated using a reference rate based on smoothed data is less than the excess of the market value of net assets available to provide benefits over current liabilities calculated using a reference rate based on market data.

(Last amended May 27, 2015 – Effective March 6, 2015)

Section 4.02 *Temporary Basis Plus an Adjustment*: For the purposes of Article IV, current liabilities and revised liabilities may be calculated as at the current valuation date using the temporary basis plus an adjustment. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 4.03 *Temporary Basis Excess*: If assets are greater than current liabilities, then Section 4.04, Section 4.05 and Section 4.06 shall apply, provided that no temporary improvements may be provided unless the partners have provided all of the changes specified in Section 3.06. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 4.04 *Temporary Basis Excess Report*: The Board shall report to the partners:

(a) the amount by which assets exceed current liabilities;

(b) the commitment value;

(c) the extent to which the commitment value can be used to provide a reduction to current contributions, beginning with the year following the year in which a preliminary valuation is filed and lasting for the commitment period;

(d) the extent to which the commitment value can be used to provide annual surplus distributions, beginning with the year following the year in which a preliminary valuation is filed and lasting for the commitment period;

(e) the extent to which the commitment value can be used to provide a temporary benefit improvement, beginning with the year following the year in which a preliminary valuation is filed and lasting for the commitment period; and

(f) the extent to which the commitment value can be used to provide a combination of Section 4.04(c), Section 4.04(d) and Section 4.04(e).

(Last amended May 27, 2015 – Effective March 6, 2015)

Section 4.05 *Conditions on Application of Excess*: Subject to Article VI and Section 4.06, the partners may apply all or part of the commitment value to change temporarily current contributions, provide surplus distributions on a temporary basis, or provide a temporary benefit improvement, provided that no amendment shall be made unless, after such amendment, the excess of assets over revised liabilities is equal to or greater than zero. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 4.06 *Side Agreement*: The commitment value shall be used to provide a surplus distribution referred to in Section 4.04(d) or a temporary benefit improvement referred to in Section 4.04(e) only if the partners have entered into a written agreement governing the manner in which the contributions by the Minister and the Employers may be adjusted to offset any surplus distribution or temporary improvement of benefits that is reflected in the value of the liabilities. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 4.07 *Temporary Basis Deficit*: If assets are equal to or less than current liabilities, then Section 4.08 and Section 4.09 shall apply. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 4.08 *Temporary Basis Deficit Report*: The Board shall report to the partners the amount by which current liabilities exceed assets. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 4.09 *No Action on Temporary Basis and Return to Restoration Basis*: Subject to Article VI, the partners shall not provide new temporary improvements and Article III shall apply. (Last amended May 27, 2015 – Effective March 6, 2015)

Article V. Funding Zone – Permanent Improvements

Section 5.01 *Definitions*: For the purposes of Article V, as at the current valuation date, using the distribution basis:

(a) "assets" are either:

(i) the market value of net assets available to provide benefits as determined by the Board, if the excess of the market value of net assets available to provide benefits over current liabilities calculated using a reference rate based on market data is less than the excess of the assets in paragraph (a) of the definition of "going concern assets" in Regulation 909 made under the Pension Benefits Act over current liabilities calculated using a reference rate based on smoothed data; or

(ii) the assets described in paragraph (a) of the definition of "going concern assets" in Regulation 909 made under the Pension Benefits Act, if the excess of the assets described in paragraph (a) of the definition of "going concern assets" in Regulation 909 made under the Pension Benefits Act over current liabilities calculated using a reference rate based on smoothed data is less than the excess of the market value of net assets available to provide benefits over current liabilities calculated using a reference rate based on market data;

(b) "current liabilities" are the sum of:

(i) the difference between:

1) the going concern liabilities calculated using the greater of current benefits and run-rate benefits, and

2) the present value of the lesser of current contributions and basic contributions;

and

(ii) the remaining amortization value (equal to zero with respect to a particular commitment period if, as of the valuation date, the payment in respect of the last year of a commitment period will be paid in that year);

(c) "current targeted funding amount" is 10% of current liabilities;

(d) "revised liabilities" are the sum of:

(i) the difference between:

1) the going concern liabilities calculated using the greater of revised benefits and run-rate benefits, and

2) the present value of revised contributions;

and

(ii) the remaining amortization value (equal to zero with respect to a particular commitment period if, as of the valuation date, the payment in respect of the last year of a commitment period will be paid in that year);

(e) The reference rate for purposes of determining the distribution basis is based on:

(i) market data, if the excess of the market value of net assets available to provide benefits over current liabilities calculated using a reference rate based on market data is less than the excess of the assets in paragraph (a) of the definition of "going concern assets" in Regulation 909 made under the Pension Benefits Act over current liabilities calculated using a reference rate based on smoothed data; and

(ii) smoothed data, if the excess of the assets in paragraph (a) of the definition of "going concern assets" in Regulation 909 made under the Pension Benefits Act over current liabilities calculated using a reference rate based on smoothed data is less than the excess of the market value of net assets available to provide benefits over current liabilities calculated using a reference rate based on market data;

(f) "revised targeted funding amount" is 10% of revised liabilities.

(Last amended May 27, 2015 – Effective March 6, 2015)

Section 5.02 *Distribution Basis Plus an Adjustment*: For the purposes of Article V, current liabilities and revised liabilities may be calculated as at the current valuation date using the distribution basis plus an adjustment. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 5.03 *Distribution Basis Excess*: If the excess of assets over current liabilities is greater than the current targeted funding amount, then Section 5.04 and Section 5.05 shall apply, provided that no changes pursuant to Section 5.05 may be provided unless the partners have provided all of the changes specified in Section 3.06. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 5.04 *Distribution Basis Excess Report*: The Board shall report to the partners:

(a) the amount by which assets minus current liabilities exceed the current targeted funding amount; and

(b) the amount required to change current benefits, current contributions, or both, as requested by either partner.

(Last amended May 27, 2015 – Effective March 6, 2015)

Section 5.05 *Conditions on Application of Excess*: Subject to Article VI, the partners may apply all or part of the amount by which assets minus current liabilities exceed the current targeted funding amount to change current benefits, current contributions, or both, provided that no amendment shall be made unless:

(a) after such amendment the excess of assets over revised liabilities is equal to or greater than the revised targeted funding amount; and

(b) the partners have entered into a written agreement governing the manner in which the contributions by the Minister and the Employers may be adjusted to offset any change in current benefits that is reflected in the value of the liabilities.

(Last amended May 27, 2015 – Effective March 6, 2015)

Section 5.06 *Distribution Basis Deficit*: If:

(a) the excess of assets over current liabilities is less than the current targeted funding amount;

(b) the present value of current contributions is equal to or less than the present value of basic contributions;

(c) the present value of current benefits is equal to or greater than the present value of run-rate benefits; and

(d) the current accumulated adjustment ratio is equal to the run-rate accumulated adjustment ratio;

then Section 5.07 and Section 5.08 shall apply.

(Last amended May 27, 2015 – Effective March 6, 2015)

Section 5.07 *Distribution Basis Deficit Report*: The Board shall report to the partners the amount by which assets minus current liabilities are less than the current targeted funding amount. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 5.08 *No Action on Distribution Basis and Return to Temporary Basis*: Subject to Article VI, the partners shall not apply, pursuant to this Article V, any part of the amount by which assets exceed current liabilities, and Article IV shall apply. (Last amended May 27, 2015 – Effective March 6, 2015)

Article VI. Post December 30, 2017 Valuations

Section 6.01 *Definitions*: For the purposes of Article VI, as at the current valuation date, using the restoration basis:

(a) "assets" are the assets described in paragraph (a) of the definition of "going concern assets" in Regulation 909 made under the *Pension Benefits Act*;

(b) "current liabilities" are the difference between:

(i) the going concern liabilities calculated using current benefits, and

(ii) the present value of current contributions;

(c) "revised liabilities" are the difference between:

(i) the going concern liabilities calculated using revised benefits, and

(ii) the present value of revised contributions.

(Last amended May 27, 2015 – Effective March 6, 2015)

Section 6.02 *Post-2017 Excess*: Notwithstanding any other provision of this Funding Management Policy, as set out in further detail in the 2013 Term Sheet, after the end of the freeze period, if a valuation report with a valuation date after December 30, 2017 provides that assets are greater than current liabilities as at the date of the current valuation, then Section 6.03 shall apply. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 6.03 *2013 Term Sheet Provisions*:

(a) the OTF will have 'first call' on 100% of the value of the excess of the assets over the current liabilities (to take the form of "surplus credits") up to a cumulative total of the value of the lesser of:

(i) the value of the benefit reductions made during the freeze period, including the value of benefit reductions made in the January 1, 2012 valuation, but excluding: (1) the value of benefit reductions for which matching contributions are made by the Minister and the Employers, and (2) the value of benefit reductions relating to the removal and replacement of the remaining 50% guaranteed indexing with full conditional inflation protection for post-2013 service and the resulting change to the discount rate, and

(ii) the benefit reduction limit as calculated under the 2013 Term Sheet;

(b) if inflation protection is invoked below 50% during the freeze period, surplus credits will include an amount equal to the actual foregone pension payments during and after the freeze period that arise from the reduction in inflation protection invoked during the freeze period until such time as that inflation protection is restored at 50% or more during or after the freeze period; and

(c) the OTF may apply all or part of surplus credits to change current benefits, current contributions, or both, provided that no amendment shall be made unless assets are equal to or greater than revised liabilities after such amendment.

(Last amended May 27, 2015 – Effective March 6, 2015)

Article VII. Valuation Frequency and Timing

Section 7.01 The Board shall require the actuary to prepare a preliminary valuation of the plan as of January 1, 2003 and each January 1 thereafter and, in addition, on such other date as the partners mutually agree. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 7.02 Subject to the requirements of the *Pension Benefits Act*, the partners agree that valuations shall be filed with the Superintendent of Financial Services only by their mutual agreement. The partners shall direct the Board, no later than seven months following the valuation date, whether to file. No such filing shall affect the timing of triennial negotiations between the partners referred to in paragraph 96. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 7.03 The seven-month notice requirement referred to in Section 7.02 shall not apply to the January 1, 2005 valuation and shall not apply to the January 1, 2012 valuation. (Last amended May 27, 2015 – Effective March 6, 2015)

Article VIII. Arbitration

Section 8.01 Unless the partners mutually agree to the contrary, they shall follow the procedures described in paragraphs 74 to 100 when determining the plan changes arising from Section 3.07. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 8.02 The limitations on amendments set out in Section 3.07, Section 4.05, Section 4.06, Section 4.09, Section 5.05, and Section 5.08 shall apply to an award made by a board of arbitration pursuant to paragraph 92. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 8.03 Subject to the 2013 Term Sheet, nothing in Article II to Article IX affects the timing of the triennial negotiation, mediation and arbitration process referred to in paragraphs 72 to 100. (Last amended May 27, 2015 – Effective March 6, 2015)

Article IX. **Limitations**

Section 9.01 The limitations on amendments in this Funding Management Policy shall not apply to amendments:

(a) made pursuant to paragraphs 60b, 60d, or 60e;

(b) that are required to comply with provincial law or, where both partners agree, to maintain registration as a registered pension plan under the *Income Tax Act (Canada*); or

(c) made by mutual agreement of the partners that do not increase liabilities by more than 0.5%.

(Last amended May 27, 2015 – Effective March 6, 2015)

RE_ Letter from Ms. Lysyk, Auditor General.rtf

From: Steele, Jana [JSteele@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
Subject: RE: Letter from Ms. Lysyk, Auditor General
Date: Wednesday, September 14, 2016 17:19:15

Did you try Mitch at Torys?
Another possibility would be Mary Picard at Dentons 416-863-4469
Or Susan Seller at Bennett Jones
Or Ross Gascho at Fasken, Martin
(I will track you down contact details for Susan and Ross).

-----Original Message-----
From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Wednesday, September 14, 2016 5:15 PM
To: Steele, Jana <JSteele@osler.com>
Subject: RE: Letter from Ms. Lysyk, Auditor General

Jana
Do you know of any other possible candidates to do this opinion - both stikemans and hicks have refused due to conflicts. I am hoping for a Bay street type firm - any ideas? Thanks

-----Original Message-----
From: Steele, Jana [mailto:JSteele@osler.com]
Sent: September 14, 2016 11:40 AM
To: Hatzis, Len (TBS); Kearney, Sean (TBS)
Cc: Kaufman, Paul (TBS)
Subject: RE: Letter from Ms. Lysyk, Auditor General

Thanks Len. I have another call at 12:45. Can we make it 1:30 pm?

-----Original Message-----
From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Wednesday, September 14, 2016 11:39 AM
To: Steele, Jana <JSteele@osler.com>; Kearney, Sean (TBS) <Sean.Kearney@ontario.ca>
Cc: Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca>
Subject: Re: Letter from Ms. Lysyk, Auditor General

Jana
We should have clarity on this very shortly. Assuming we can proceed, we should have a call to discuss next steps and exactly what is being requested. Can we do 1 pm?

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Steele, Jana
Sent: Wednesday, September 14, 2016 11:21 AM
To: Hatzis, Len (TBS); Kearney, Sean (TBS)
Cc: Kaufman, Paul (TBS)
Subject: RE: Letter from Ms. Lysyk, Auditor General

Ok - we are standing by. Jana

-----Original Message-----
From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Wednesday, September 14, 2016 11:20 AM

To: Kearney, Sean (TBS) <Sean.Kearney@ontario.ca>; Steele, Jana <JSteele@osler.com>
Cc: Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca>
Subject: Re: Letter from Ms. Lysyk, Auditor General

Sorry Jana - will be back to you momentarily on this

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Hatzis, Len (TBS)
Sent: Wednesday, September 14, 2016 11:18 AM
To: Kearney, Sean (TBS); Steele, Jana
Cc: Kaufman, Paul (TBS)
Subject: Re: Letter from Ms. Lysyk, Auditor General

Sean
Can we chat - this may have some wrinkles

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Kearney, Sean (TBS)
Sent: Wednesday, September 14, 2016 11:17 AM
To: Steele, Jana; Hatzis, Len (TBS)
Cc: Kaufman, Paul (TBS)
Subject: Re: Letter from Ms. Lysyk, Auditor General

Please do that Jana. Thanks!
S

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Steele, Jana
Sent: Wednesday, September 14, 2016 11:16 AM
To: Hatzis, Len (TBS)
Cc: Kaufman, Paul (TBS); Kearney, Sean (TBS)
Subject: RE: Letter from Ms. Lysyk, Auditor General

Thanks Len. We understand the urgency and will move quickly on the opinion.
If you are ok with us speaking with OTPP, then we will reach out to them right away and can resolve this.
Please let me know.
I can be reached at 416-862-6625 if you want to discuss.
Jana

-----Original Message-----
From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Wednesday, September 14, 2016 11:13 AM
To: Steele, Jana <JSteele@osler.com>
Cc: Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca>; Kearney, Sean (TBS) <Sean.Kearney@ontario.ca>
Subject: Re: Letter from Ms. Lysyk, Auditor General

Thanks - Can you give me timelines on this - i'm not sure we can wait as we need an opinion on this issue asap so if we need alternate counsel, we will need to move quickly on it. Also, pls send me any messages by BlackBerry as I am offsite. Thanks

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Steele, Jana
Sent: Wednesday, September 14, 2016 11:04 AM
To: Hatzis, Len (TBS)
Cc: Kaufman, Paul (TBS)
Subject: RE: Letter from Ms. Lysyk, Auditor General

Hi Len: I left you a voice message. We are trying to clear conflicts internally.
As I indicated in my voice mail, we do a lot of work for OTPP. And while this would not be a legal conflict, our conflicts committee has indicated that we would want to run our acting on this matter by them. Would that be ok?
If not, then I will provide you with some names of alternate pension counsel.
Happy to discuss.
Jana

Jana Steele

416.862.6625
DIRECT
416.862.6666
FACSIMILE
jsteele@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

https://twitter.com/pensionsjana

-----Original Message-----
From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Wednesday, September 14, 2016 10:57 AM
To: Steele, Jana <JSteele@osler.com>
Cc: Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca>
Subject: Re: Letter from Ms. Lysyk, Auditor General

Hi jana
Any update on this - should we chat this morning re next steps? Thanks

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Steele, Jana
Sent: Tuesday, September 13, 2016 9:18 PM
To: Hatzis, Len (TBS)
Cc: Kaufman, Paul (TBS)

Subject: RE: Letter from Ms. Lysyk, Auditor General

Thanks very much Len and Paul. As mentioned I will run the internal conflicts check first thing in the morning and confirm that we can act on this matter.

-----Original Message-----
From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Tuesday, September 13, 2016 8:52 PM
To: Steele, Jana <JSteele@osler.com>
Cc: Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca>
Subject: Fw: Letter from Ms. Lysyk, Auditor General
Importance: High

Jana
Here is the AG's letter setting out her position.

_____

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****

RE_ OTPP.rtf

From: Steele, Jana [JSteele@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
CC: Rienzo, Douglas [DRienzo@osler.com]; Litner, Paul [PLitner@osler.com]
Subject: RE: OTPP
Date: Thursday, September 15, 2016 11:54:55

Thanks for that information - We will run this by internal management.

-----Original Message-----
From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Thursday, September 15, 2016 11:51 AM
To: Steele, Jana <JSteele@osler.com>
Subject: Re: OTPP

Jana
Just as fyi and I think I mentioned it but to confirm the opinion oslers issues may be released publicly.

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Steele, Jana
Sent: Thursday, September 15, 2016 11:36 AM
To: Colley, Matthew (CA - Toronto); Hatzis, Len (TBS)
Cc: Marin, Jon; Kaufman, Paul (TBS); Rienzo, Douglas
Subject: RE: OTPP

1:30 work? What number should we call you at? Jana

From: Colley, Matthew (CA - Toronto) [mailto:mcolley@deloitte.ca]
Sent: Thursday, September 15, 2016 11:36 AM
To: Steele, Jana <JSteele@osler.com>; Hatzis, Len (TBS) <Len.Hatzis@ontario.ca>
Cc: Marin, Jon <jomarin@osler.com>; Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca>; Rienzo, Douglas <DRienzo@osler.com>
Subject: RE: OTPP

Yes - please let me know what time.

From: Steele, Jana [mailto:JSteele@osler.com]
Sent: Thursday, September 15, 2016 10:15 AM
To: Hatzis, Len (TBS) <Len.Hatzis@ontario.ca<mailto:Len.Hatzis@ontario.ca>>; Colley, Matthew (CA - Toronto) <mcolley@deloitte.ca<mailto:mcolley@deloitte.ca>>
Cc: Marin, Jon <jomarin@osler.com<mailto:jomarin@osler.com>>; Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca<mailto:Paul.Kaufman@ontario.ca>>; Rienzo, Douglas <DRienzo@osler.com<mailto:DRienzo@osler.com>>
Subject: RE: OTPP

Thanks Len. Matthew, do you have time for a call early this afternoon?

From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Thursday, September 15, 2016 10:10 AM
To: Steele, Jana <JSteele@osler.com<mailto:JSteele@osler.com>>; mcolley@deloitte.ca<mailto:mcolley@deloitte.ca>
Cc: Marin, Jon <jomarin@osler.com<mailto:jomarin@osler.com>>; Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca<mailto:Paul.Kaufman@ontario.ca>>; Rienzo, Douglas <DRienzo@osler.com<mailto:DRienzo@osler.com>>
Subject: RE: OTPP

Matthew Colley from Deloitte is the contact and he is cced on this email. thanks

From: Steele, Jana [mailto:JSteele@osler.com]
Sent: September 15, 2016 9:57 AM
To: Hatzis, Len (TBS)
Cc: Marin, Jon; Kaufman, Paul (TBS); Rienzo, Douglas
Subject: Re: OTPP

Thanks. Is there any chance we can speak with Deloitte on some of the terms in ps 3250?

Sent from my iPhone

On Sep 15, 2016, at 9:54 AM, Hatzis, Len (TBS)
<Len.Hatzis@ontario.ca<mailto:Len.Hatzis@ontario.ca>> wrote:
Here is the additional context that our clients wanted some reference to in the opinion.

From: Hughes, Karen (TBS)
Sent: September 14, 2016 7:12 PM
To: Veinot, Cindy (TBS); Hatzis, Len (TBS)
Subject: FW: OTPP

FYI

From: Sekaly, Gabriel (EDU)
Sent: September 14, 2016 5:11 PM
To: Hughes, Karen (TBS)
Cc: Paul, Joshua (EDU)
Subject: OTPP

Karen,

Please find attached some additional info on the OTPP as discussed.

From the 2000 Financials - p. 17-18

Pursuant to the Partners' Agreement between the Ontario Teachers' Federation (OTF) and the Province, the Partners entered into negotiations to decide how to utilize the gain. Pursuant to the agreement reached on April 18, 1998, the Partners agreed to share the 1998 actuarial gain of $6.78 billion and future gains in the following sequence:
(i) $2.24 billion would be spent on improving benefits;
(ii) special payments on the pre-1990 unfunded liability would be eliminated at an estimated cost of $8.45 billion; and
(iii) a further $8.45 billion less the $2.24 billion would be spent on improved benefits or member contribution rate reductions, subject to the Province's consent prior to April 1, 2001; or held in a contingency reserve as determined by the OTF.

As a result, $2.24 billion of the gain was used to improve benefits under the Plan, and the remaining $4.54 billion of the gain was used to eliminate the obligation of the Province to make special payments after November 30, 2008.

From this summary of Key funding Decisions

A preliminary $6.8 billion surplus was distributed: $2.2 billion to pay for the 85 factor window from 1998 to 2002 and further lower the CPP reduction to 0.6%; $4.6 billion to reduce the value of special payments owed by the Ontario government. OTF and the Ontario government agree future surplus would be used to eliminate the government's remaining special payments, and the next $6.2 billion surplus would be available to OTF for benefit improvements.

From the Annual Report 2000 (pg. 6)

In 1998, the Ontario Teachers' Federation (OTF) and the Ontario government signed an agreement under which they improved benefits and allowed the government to use surplus to eliminate the special payments it was making to pay off the pre-1990 unfunded liability.

This occurred in 1998 and 1999. The OTF would then receive a similar amount, set at $6.2 billion, for use at its discretion. The plan started 2001 with a funding surplus of $6.8 billion. Effective April 1 2001, $6.2 billion of this surplus will be used by the OTF to improve benefits.

Hope this is helpful

Gabriel

Gabriel F. Sékaly
Assistant Deputy Minister/Sous-ministre adjoint Financial Policy and Business Division/ Division des politiques financières et des opérations Ministry of Education/Ministère de l'Éducation
416-325-6127
gabriel.sekaly@ontario.ca<mailto:gabriel.sekaly@ontario.ca>

P Kindly consider the environment before printing this email.

<Key Funding Decisions.pdf>
<AnnRepCommentary2000 (1).pdf>
<Financials2000.pdf>

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Si vous ne voulez pas recevoir d'autres messages électroniques commerciaux de Deloitte à l'avenir, veuillez envoyer ce courriel à l'adresse unsubscribe@deloitte.ca<mailto:unsubscribe@deloitte.ca>

RE_ OTPP.rtf

From: Steele, Jana [JSteele@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]; allan.shapira@aonhewitt.com [allan.shapira@aonhewitt.com]
CC: Marin, Jon [jomarin@osler.com]; Kaufman, Paul (TBS) [Paul.Kaufman@ontario.ca]; Rienzo, Douglas [DRienzo@osler.com]
Subject: RE: OTPP
Date: Thursday, September 15, 2016 16:17:12

Will send right now. Thanks.

From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Thursday, September 15, 2016 4:16 PM
To: Steele, Jana <JSteele@osler.com>; allan.shapira@aonhewitt.com
Cc: Marin, Jon <jomarin@osler.com>; Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca>; Rienzo, Douglas <DRienzo@osler.com>
Subject: RE: OTPP

Hi Jana

Just spoke to Allan – he can do a call I think now or in the very short term – can you send out an invite and if possible I would like to join as well. thank you

****

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****

RE_ OTPP.rtf

From: Colley, Matthew (CA - Toronto) [mcolley@deloitte.ca]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]; Steele, Jana [JSteele@osler.com]
CC: Marin, Jon [jomarin@osler.com]; Kaufman, Paul (TBS) [Paul.Kaufman@ontario.ca]; Rienzo, Douglas [DRienzo@osler.com]
Subject: RE: OTPP
Date: Thursday, September 15, 2016 11:50:45

Yes, please just use the dial in number.

-----Original Message-----
From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Thursday, September 15, 2016 11:50 AM
To: Steele, Jana <JSteele@osler.com>; Colley, Matthew (CA - Toronto) <mcolley@deloitte.ca>
Cc: Marin, Jon <jomarin@osler.com>; Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca>; Rienzo, Douglas <DRienzo@osler.com>
Subject: Re: OTPP

We will join call but unfortunately don't have access to Skype and will simply call in...

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Steele, Jana
Sent: Thursday, September 15, 2016 11:36 AM
To: Colley, Matthew (CA - Toronto); Hatzis, Len (TBS)
Cc: Marin, Jon; Kaufman, Paul (TBS); Rienzo, Douglas
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Cc: Marin, Jon <jomarin@osler.com>; Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca>; Rienzo, Douglas <DRienzo@osler.com>
Subject: RE: OTPP

Yes - please let me know what time.

From: Steele, Jana [mailto:JSteele@osler.com]
Sent: Thursday, September 15, 2016 10:15 AM
To: Hatzis, Len (TBS) <Len.Hatzis@ontario.ca<mailto:Len.Hatzis@ontario.ca>>; Colley, Matthew (CA - Toronto) <mcolley@deloitte.ca<mailto:mcolley@deloitte.ca>>
Cc: Marin, Jon <jomarin@osler.com<mailto:jomarin@osler.com>>; Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca<mailto:Paul.Kaufman@ontario.ca>>; Rienzo, Douglas <DRienzo@osler.com<mailto:DRienzo@osler.com>>
Subject: RE: OTPP

Thanks Len. Matthew, do you have time for a call early this afternoon?

From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Thursday, September 15, 2016 10:10 AM
To: Steele, Jana <JSteele@osler.com<mailto:JSteele@osler.com>>; mcolley@deloitte.ca<mailto:mcolley@deloitte.ca>
Cc: Marin, Jon <jomarin@osler.com<mailto:jomarin@osler.com>>; Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca<mailto:Paul.Kaufman@ontario.ca>>; Rienzo, Douglas

<DRienzo@osler.com<mailto:DRienzo@osler.com>>
Subject: RE: OTPP

Matthew Colley from Deloitte is the contact and he is cced on this email. thanks

From: Steele, Jana [mailto:JSteele@osler.com]
Sent: September 15, 2016 9:57 AM
To: Hatzis, Len (TBS)
Cc: Marin, Jon; Kaufman, Paul (TBS); Rienzo, Douglas
Subject: Re: OTPP

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Sent from my iPhone

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<Len.Hatzis@ontario.ca<mailto:Len.Hatzis@ontario.ca>> wrote:
Here is the additional context that our clients wanted some reference to in the opinion.

From: Hughes, Karen (TBS)
Sent: September 14, 2016 7:12 PM
To: Veinot, Cindy (TBS); Hatzis, Len (TBS)
Subject: FW: OTPP

FYI

From: Sekaly, Gabriel (EDU)
Sent: September 14, 2016 5:11 PM
To: Hughes, Karen (TBS)
Cc: Paul, Joshua (EDU)
Subject: OTPP

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From the 2000 Financials - p. 17-18

Pursuant to the Partners' Agreement between the Ontario Teachers' Federation (OTF) and the Province, the Partners entered into negotiations to decide how to utilize the gain. Pursuant to the agreement reached on April 18, 1998, the Partners agreed to share the 1998 actuarial gain of $6.78 billion and future gains in the following sequence:
(i) $2.24 billion would be spent on improving benefits;
(ii) special payments on the pre-1990 unfunded liability would be eliminated at an estimated cost of $8.45 billion; and
(iii) a further $8.45 billion less the $2.24 billion would be spent on improved benefits or member contribution rate reductions, subject to the Province's consent prior to April 1, 2001; or held in a contingency reserve as determined by the OTF.

As a result, $2.24 billion of the gain was used to improve benefits under the Plan, and the remaining $4.54 billion of the gain was used to eliminate the obligation of the Province to make special payments after November 30, 2008.

From this summary of Key funding Decisions

A preliminary $6.8 billion surplus was distributed: $2.2 billion to pay for the 85 factor window from 1998 to 2002 and further lower the CPP reduction to 0.6%; $4.6 billion to reduce the value of special payments owed by the Ontario government. OTF and the Ontario government agree future surplus would be used to eliminate the government's remaining special payments, and the next $6.2 billion surplus would be available to OTF for benefit improvements.

From the Annual Report 2000 (pg. 6)

In 1998, the Ontario Teachers' Federation (OTF) and the Ontario government signed an agreement under which they improved benefits and allowed the government to use surplus to eliminate the special payments it was making to pay off the pre-1990 unfunded liability.

This occurred in 1998 and 1999. The OTF would then receive a similar amount, set at $6.2 billion, for use at its discretion. The plan started 2001 with a funding surplus of $6.8 billion. Effective April 1 2001, $6.2 billion of this surplus will be used by the OTF to improve benefits.

Hope this is helpful

Gabriel

Gabriel F. Sékaly
Assistant Deputy Minister/Sous-ministre adjoint Financial Policy and Business Division/ Division des politiques financières et des opérations Ministry of Education/Ministère de l'Éducation
416-325-6127
gabriel.sekaly@ontario.ca<mailto:gabriel.sekaly@ontario.ca>

P Kindly consider the environment before printing this email.

<Key Funding Decisions.pdf>
<AnnRepCommentary2000 (1).pdf>
<Financials2000.pdf>

_____

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RE_ Pension opinion.rtf

From: Steele, Jana [JSteele@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]; Kaufman, Paul (TBS) [Paul.Kaufman@ontario.ca]
CC: Marin, Jon [jomarin@osler.com]; Rienzo, Douglas [DRienzo@osler.com]
Subject: RE: Pension opinion
Date: Tuesday, September 20, 2016 10:34:28

Ok thanks - we will get it to you by then. Jana

-----Original Message-----
From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Tuesday, September 20, 2016 10:33 AM
To: Steele, Jana <JSteele@osler.com>; Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca>
Cc: Marin, Jon <jomarin@osler.com>; Rienzo, Douglas <DRienzo@osler.com>
Subject: Re: Pension opinion

Thanks - it is vital we get the draft or final by 1 pm.

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Steele, Jana
Sent: Tuesday, September 20, 2016 9:36 AM
To: Hatzis, Len (TBS); Kaufman, Paul (TBS)
Cc: Marin, Jon; Rienzo, Douglas
Subject: Pension opinion

Hi Len and Paul:
Thanks for your comments and discussion this morning. We expect to get the revised opinion to you by early afternoon (1 pm).
Jana

****

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RE_ TBS - Opinion re AG Act.rtf

From: Code, Jacqueline [JCode@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]; Steele, Jana [JSteele@osler.com]
CC: Callaghan, Patrick [PCallaghan@osler.com]
Subject: RE: TBS - Opinion re AG Act
Date: Thursday, September 15, 2016 15:59:04
Attachment 1: image001.gif
Attachment 2: image002.gif
Attachment 3: image003.png

Hi Len,

I will call you shortly.

Jacqui

Jacqueline Code

416.862.6462

DIRECT

416.862.6666

FACSIMILE

jcode@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

http://www.osler.com/

From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Thursday, September 15, 2016 3:58 PM
To: Steele, Jana <JSteele@osler.com>
Cc: Code, Jacqueline <JCode@osler.com>; Callaghan, Patrick <PCallaghan@osler.com>
Subject: RE: TBS - Opinion re AG Act

Thanks Jana

Jacqueline/Patrick

Can I please speak with one of you – I'm at my desk.

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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From: Steele, Jana [mailto:JSteele@osler.com]
Sent: September 15, 2016 3:41 PM
To: Hatzis, Len (TBS)
Cc: Code, Jacqueline; Callaghan, Patrick
Subject: TBS - Opinion re AG Act

Hi Len:

Confirming our conversation that we can assist on this second opinion.

I am copying my partner, Jacqui Code, and our colleague, Patrick Callaghan, (both from our research group) who will be assisting on this matter so that you can correspond directly.

Best regards,

Jana

Jana Steele

416.862.6625

DIRECT

416.862.6666

FACSIMILE

jsteele@osler.com

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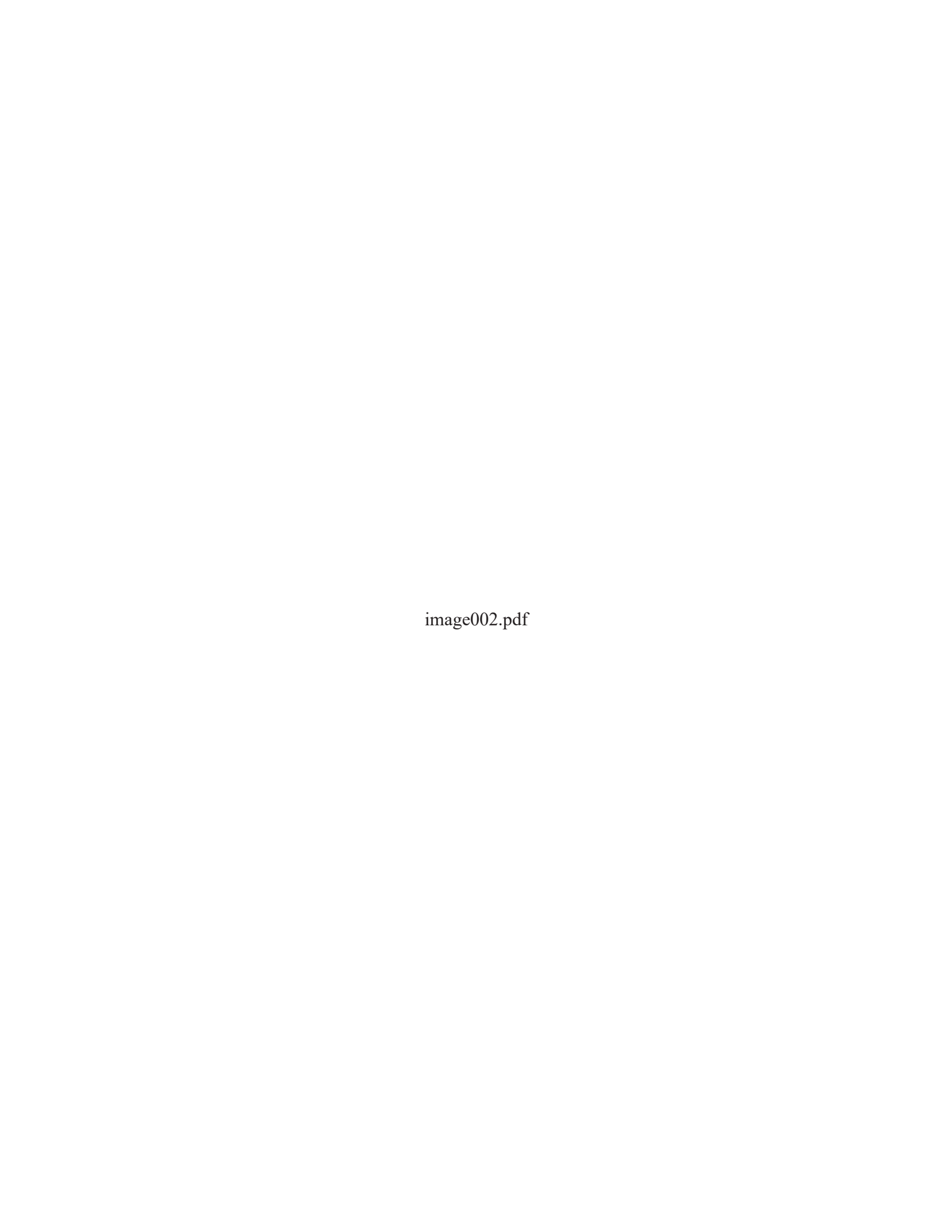
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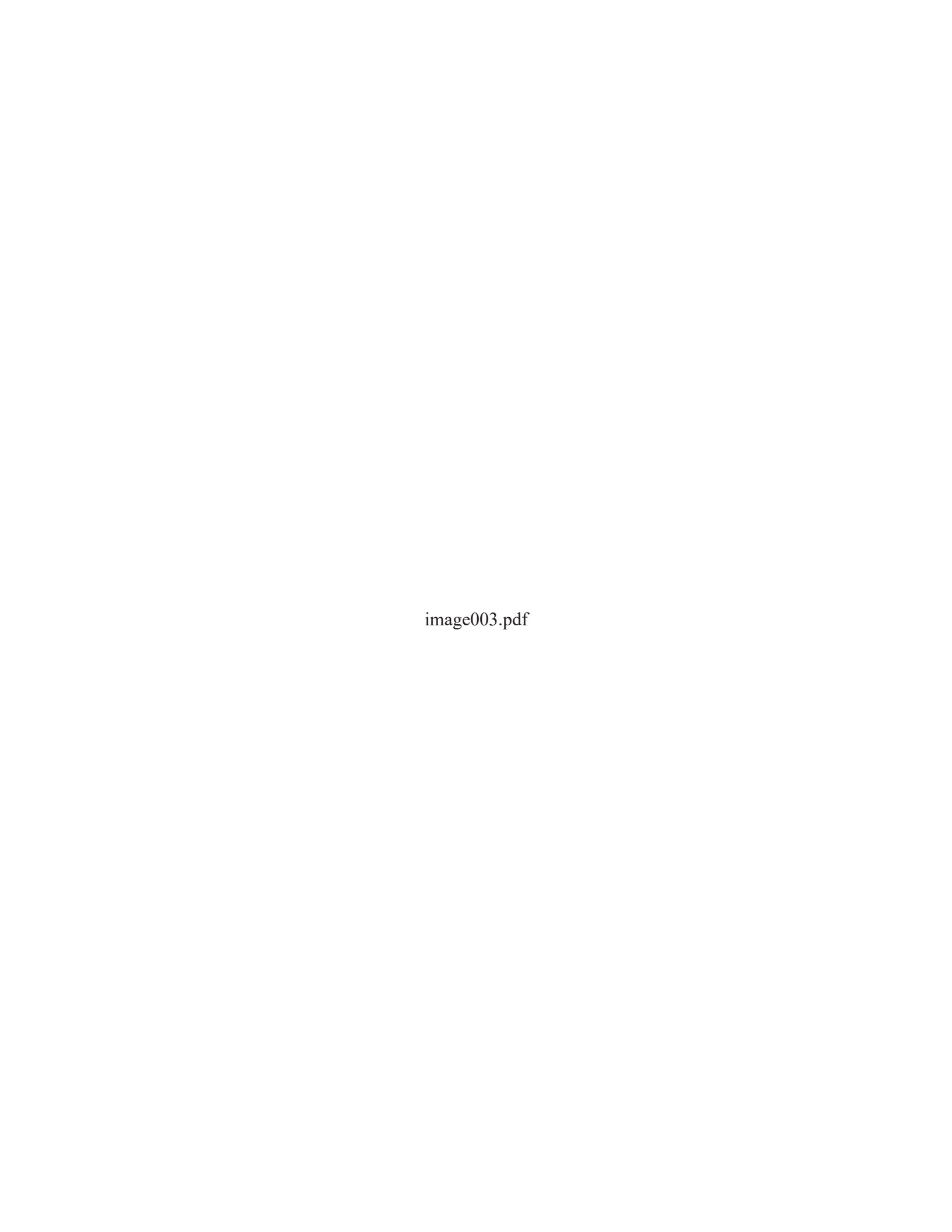
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pensions blog

RE_ TBS - Osler retainer letter.rtf

From: Steele, Jana [JSteele@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
CC: Kaufman, Paul (TBS) [Paul.Kaufman@ontario.ca]; Marin, Jon [jomarin@osler.com]; Rienzo, Douglas [DRienzo@osler.com]
Subject: RE: TBS - Osler retainer letter
Date: Friday, September 16, 2016 18:46:53

Thanks Len.
With regard to your earlier email, I will get back to you shortly.
Jana

-----Original Message-----
From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Friday, September 16, 2016 6:42 PM
To: Steele, Jana <JSteele@osler.com>
Cc: Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca>
Subject: Re: TBS - Osler retainer letter

One more issue - we discussed the issue of the opinion going through the arbitration provisions and seeing what impact an arbitration award could have on the surplus etc... as part of this analysis, please address whether through the arbitration process, could the principle of 50-50 access to the surplus (which I presume is set out somewhere, fmp, teachers pension Act etc..) be affected or is that ever present regardless of the arb process. Thanks

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Hatzis, Len (TBS)
Sent: Friday, September 16, 2016 6:00 PM
To: Steele, Jana
Subject: Re: TBS - Osler retainer letter

Thanks Jana - at a meeting now with high ups here. There is again some urgency re timelines - can you advise re when your office would be in a position to deliver a draft to deloitte's as they need to complete their opinion. Can you deliver by Sunday morning.

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Steele, Jana
Sent: Friday, September 16, 2016 3:58 PM
To: Hatzis, Len (TBS)
Subject: TBS - Osler retainer letter

Hi Len:
Attached is a copy of our retainer letter.
Best regards,
Jana

Jana Steele

416.862.6625

DIRECT

416.862.6666

FACSIMILE

jsteele@osler.com

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Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

[cid:image002.gif@01D21032.99DEF260]<http://www.osler.com/>

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https://twitter.com/pensionsjana

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RE_ TPP Partners Agreement.rtf

From: Steele, Jana [JSteele@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
Subject: RE: TPP Partners Agreement
Date: Friday, October 07, 2016 16:54:18

Thanks Len. Have a great Thanksgiving weekend.

Jana

From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Friday, October 7, 2016 3:59 PM
To: Steele, Jana <JSteele@osler.com>; Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca>
Cc: Marin, Jon <jomarin@osler.com>
Subject: RE: TPP Partners Agreement

Hi Jana

Got your voicemail – we are chatting next week about the logistics of the panel. We will keep you in mind re: any need for legal services. Thanks

From: Steele, Jana [mailto:JSteele@osler.com]
Sent: October 2, 2016 5:17 PM
To: Hatzis, Len (TBS); Kaufman, Paul (TBS)
Cc: Marin, Jon
Subject: FW: TPP Partners Agreement

Please see our minor comments below (in red) on the TBS internal email. Please let us know if you would like to discuss or if we can be of further assistance. Jana

-----Original Message-----
From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Sunday, October 2, 2016 1:56 PM
To: Steele, Jana <JSteele@osler.com>; Marin, Jon <jomarin@osler.com>; Rienzo, Douglas <DRienzo@osler.com>
Cc: Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca>

Subject: Fw: TPP Partners Agreement

Here is the second email as discussed that specifies jim's assertion and our initial response that is just internal to TBS Legal. Happy to discuss

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca>

Sent: Sunday, October 2, 2016 1:08 PM

To: Hatzis, Len (TBS)

Subject: RE: TPP Partners Agreement

I'm pretty sure that the provision that the SoC cites isn't the relevant provision. That provision is from the partners' agreement itself (not the FMP) and dates from 1993, so I think it is effectively mooted by the FMP. I think that provision may have related to the unfunded liabilities that the province agreed to make special payments in respect of in 1990 (and which were paid down through utilization of plan surpluses in the 90s by agreement with OTF). This is ancient history and the provision is vague though so I'm not 100% certain. EDU might be able to confirm that. [We agree that the provision cited by SoC (excerpt below in GREEN) is not relevant. This provision relates to the use of actuarial gain to eliminate payments required to liquidate a solvency deficiency. As noted in our opinion, the plan is no longer required to be funded on a solvency basis.]

If the preliminary results of a valuation prepared for filing with the Financial Services Commission of Ontario as at a date after the 1st day of January, 1993 indicate that the contribution rate can be decreased the implicit actuarial gain disclosed by the valuation will be applied to reduce and, if possible, eliminate the payments required to liquidate any unamortized balance of a solvency deficiency. (Last amended November 15, 1993 - Effective November 15, 1993)

I think what Mr. Leech is referring to is the process for dealing with 'restoration basis excesses" in section 3.06 of the FMP, which Osler deals with starting on page 10 of their opinion. Section 3.06 provides for surpluses in the plan restoration zone (where the plan seems to be right now) to be applied first to restoring foregone indexation and then to either, or a combination of, increasing benefits to the run-rate level or reducing contributions to the basic target rate. [You are correct that Jim Leech is likely referring to Section 3.06 of the FMP and that this provision prioritizes the restoration of foregone indexation prior to utilizing surplus to reduce contributions to the basic target rate] A few notes on this though, based on the Osler analysis:

- the partners would still need to agree to take any of the above-noted actions, and could agree not to. they could also agree to utilize a surplus in a manner other than what is contemplated in section 3.06. [Agree]

- if contributions were lowered to the 'basic target rate', Osler understood that to involve a 1.1% reduction to offset an agreed increase in 2001 (the idea of a reduction from 13% to 9% was discussed in emails on Friday, not sure where those numbers came from, I can't find the actual numbers themselves in the FMP) [it is our understanding, further to our discussions with the OTPP actuary, that in 2011 (please note that the reference in our opinion should be to 2011, not 2001) the Sponsors agreed to a 1.1% increase to both member/employer contributions (phased in over a three year period) to address a funding deficit in the OTPP and that the contributions that could be reduced under 3.06(e) of the FMP would permit these additional contributions (1.1% employer/member) to be eliminated. We agree that it is not clear where the reference to a contribution reduction from 13% to 9% comes from]

- the Osler opinion references an agreement in the "2013 Term Sheet" (I don't think we have a copy of this) which limited the ability to make escalated adjustments (I believe this means restoring indexation) or improve benefits during the freeze period that expires on December 30 2017. Mr. Leech might be thinking that this strengthens the notion that surpluses could be applied to reduce contributions, but I think that the parties' actual practice (e.g. the September 2016 agreement to use part of the current surplus to restore inflation indexing with the rest going into a reserve) undercuts this

idea. [The 2013 Term Sheet is reflected in the current FMP terms. It is not our view that this strengthens the notion that surplus could be applied to reduce contributions under Section 3.6(e) (presumably on the basis that the steps in Section 3.6(a)-(d) could be “skipped over” if there is not sufficient surplus to allow for surplus to be utilized to restore foregone indexation). OTF agreement would be required to do so and we would not expect the OTF to agree to skip these remedial measures so as to allow reduction to the special contributions]

So, if Mr. Leech is referring to section 3.06 of the FMP, he is right that it contemplates that the parties could agree to reduce contributions to offset past increases (after restoring lost indexation [or prior to restoring lost indexation, should the parties agree to do so]), but I think there are a number of caveats to whether this would happen and past practice doesn't seem to support this idea. EDU might have a better sense of how this works in practice though. [Agree]

From: Hatzis, Len (TBS)

Sent: Sunday, October 02, 2016 10:44 AM

To: Kaufman, Paul (TBS)

Subject: Fw: TPP Partners Agreement

Can you see if Jim / Steve is right on this?

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Orsini, Steve (CAB) <Steve.Orsini@ontario.ca>

Sent: Sunday, October 2, 2016 10:30 AM

To: Orencsak, Greg (TBS); Thompson, Scott (MOF); Kearney, Sean (TBS); Hatzis, Len (TBS); Hughes, Karen (TBS); Veinot, Cindy (TBS); Petsche, Nadine (TBS); Jancik, Mike (TBS); Ghiassi, Ali (MOF); Bevan, Andrew (OPO); Bardeesy, Karim (OPO); MacKenzie, Rebecca (OPO); McEachern, Gillian (OPO); Killorn, Bill (OPO); Mksyartinian, Jacob (OPO); MacIntyre, Kyle (TBS); Bromm, William (CAB)

Subject: FW: TPP Partners Agreement

Jim is of the view that the TPP Partners Agreement gives preference to contribution reductions (after partial indexation has been restored) to eliminate special payments used to address the unfunded liability (see below). I think I found the relevant provision, but I am not sure.

It doesn't address the AG's first issue, but gives more credence that there is a benefit to the crown.

Also, Jim will likely reference this in his remarks. It would be great if someone could confirm.

For media interviews on Monday or Tuesday, the best number to reach Jim is at: 416 930 2006

Steve

If the preliminary results of a valuation prepared for filing with the Financial Services Commission of Ontario as at a date after the 1st day of January, 1993 indicate that the contribution rate can be decreased the implicit actuarial gain disclosed by the valuation

will be applied to reduce and, if possible, eliminate the payments required to liquidate any unamortized balance of a solvency deficiency. (Last amended November 15, 1993 - Effective November 15, 1993)

From: Jim Leech [mailto:jim@jimleech.ca]

Sent: October-01-16 11:17 PM

To: Orsini, Steve (CAB)

Cc: Bromm, William (CAB)

Subject: Re: TPP Partners Agreement

The agreement that talks about reducing contributions to the base rate is the Partners Funding Management Agreement

Jim Leech I +416 930 2006 I @QUchancellor Two Old Mill Drive I Toronto I ON I M6S 0A2

On Oct 1, 2016, at 7:29 PM, Orsini, Steve (CAB) <Steve.Orsini@ontario.ca<mailto:Steve.Orsini@ontario.ca>> wrote:

Jim,

Thanks for making yourself available on Monday and Tuesday for potential media calls.

What is the best number to reach you on.? We will make sure we limit any calls to one or two.

Also, attached is the Partners Agreement for your information.

Thanks again.

Steve

<Current - Partners' Agreement - 03-06-15.pdf>

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RE_ URGENT_ Statement of Facts and Assumptions Sept 19.docx.rtf

From: Rienzo, Douglas [DRienzo@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
CC: Kaufman, Paul (TBS) [Paul.Kaufman@ontario.ca]; Steele, Jana [JSteele@osler.com]; Marin, Jon [jomarin@osler.com]
Subject: RE: URGENT: Statement of Facts and Assumptions Sept 19.docx
Date: Monday, September 19, 2016 14:29:13
Attachment 1: image001.gif
Attachment 2: image002.gif
Attachment 3: image003.jpg
Attachment 4: Statement of Facts and Assumptions Sept 19 (3).docx

---

Len:

Comments attached.

Doug

Douglas Rienzo
Partner, Pensions & Benefits

Chair, Diversity Committee

416.862.5683

DIRECT

416.862.6666

FACSIMILE

drienzo@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

http://www.osler.com/

From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Monday, September 19, 2016 11:59 AM
To: Steele, Jana <JSteele@osler.com>; Marin, Jon <jomarin@osler.com>; Rienzo, Douglas <DRienzo@osler.com>
Cc: Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca>
Subject: FW: URGENT: Statement of Facts and Assumptions Sept 19.docx
Importance: High

Jana et al

I know that you have been engaged with Deloitte on these issues, but here are their draft statement of facts that would be folded into their opinion. We think it would be very useful if you could advise if there are inaccuracies in this – it isn't that long. At first blush, Paul and I made a couple of comments as noted in the attached.

From: Petsche, Nadine (TBS)
Sent: September 19, 2016 11:42 AM
To: Hatzis, Len (TBS); Kaufman, Paul (TBS)
Subject: URGENT: Statement of Facts and Assumptions Sept 19.docx
Importance: High

Len/Paul,

Please advise of any issues. The item has been under review by EDU and ISPPD since 10am, but just checking to see if there are any issues that you see? Please feel free to suggest edits to wording.n

From: Colley, Matthew (CA - Toronto) [mailto:mcolley@deloitte.ca]
Sent: September 19, 2016 9:59 AM
To: Petsche, Nadine (TBS); Veinot, Cindy (TBS)
Subject: Statement of Facts and Assumptions Sept 19.docx

Hi – Please find attached the statement of facts and assumptions. There are a couple of comments in this document where we would like OPCD to review the wording before sending onto the AG.

Thanks

Matt

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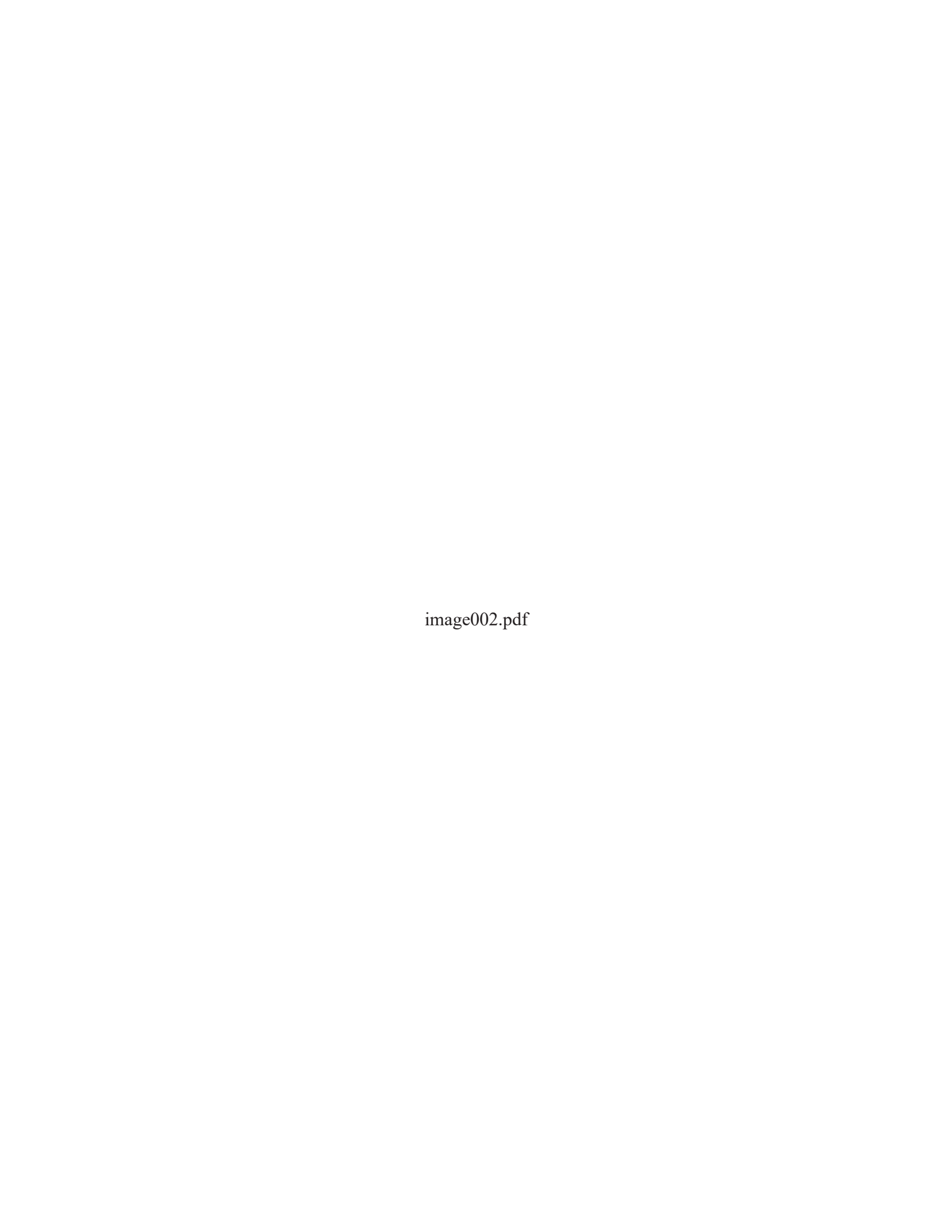
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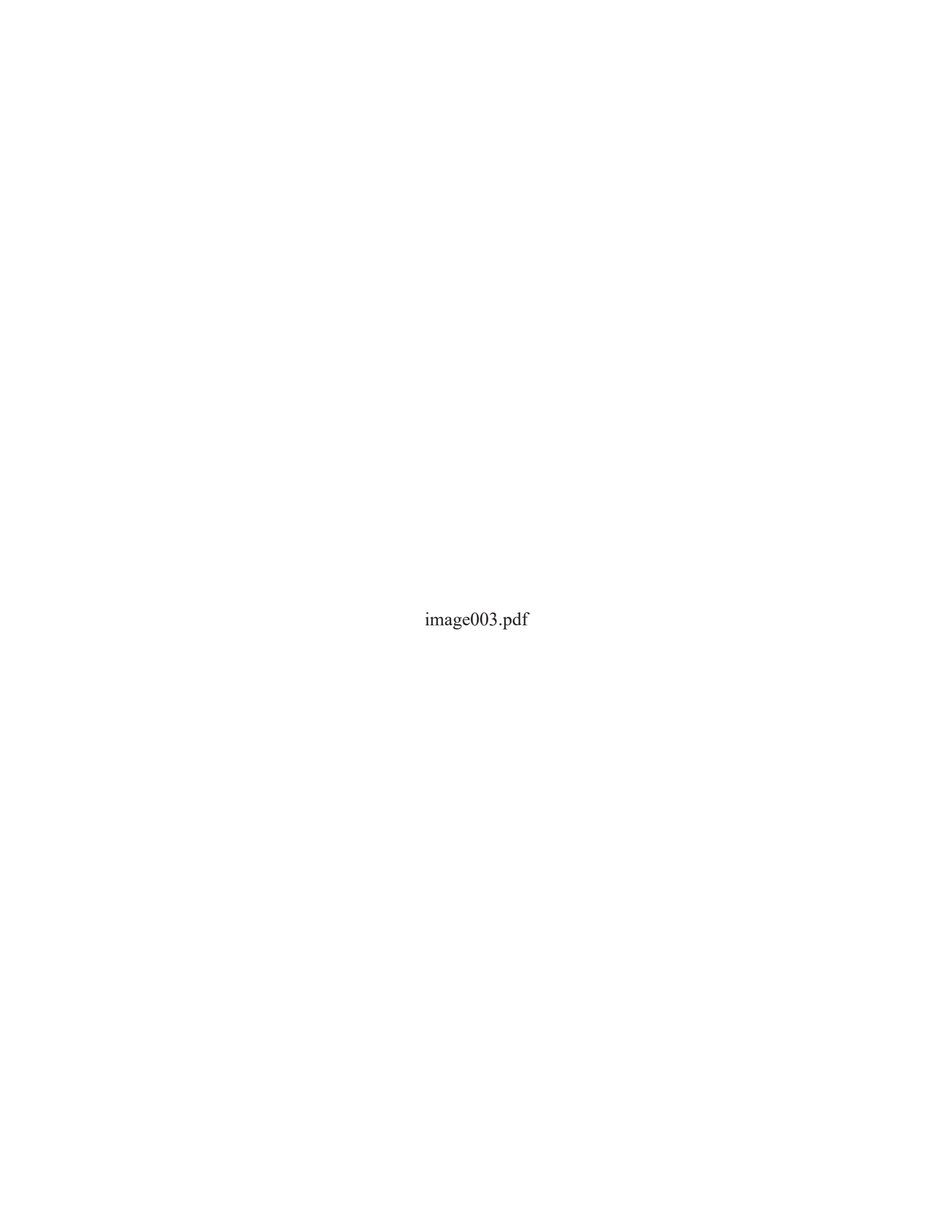
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Statement of Facts and Assumptions Sept 19 (3).pdf

Statement of Facts and Assumptions

The (Ontario Teachers') pension plan is jointly sponsored by the Ontario government, through the Minister of Education, and the executive of the Ontario Teachers' Federation (OTF). The OTF represents teachers, while the government represents employers.

OTF and the government are equally responsible for ensuring the pension plan has enough money to meet its long-term pension obligations. In addition, they appoint experienced, professional experts to the pension plan's Board.

Through a six-member Partners' Committee, the sponsors jointly:

- Set benefit levels
- Establish the contribution rate paid by working teachers (which is matched by the Ontario government and other designated employers)
- Decide how to address funding shortfalls or use surplus funds when they arise

(Source: OTPP.com)

The governing and other documents that are relevant to an accounting analysis are as follows:

- Teacher's Pension Act (TPA)
- Partners Agreement
- ~~Financial~~ Funding Management Policy (FMP)

The following facts and assumptions have been accepted without verification or further analysis:

- The plan meets the definition of a joint benefit plan under S. 3250 of the Public Sector Handbook and is appropriately accounted for as such.
- The actuarial and other assumptions that factored into the valuation used for accounting purposes are appropriate and meet the requirements of S. 3250.

Relevant Extracts from the TPA

Section 5 (1.1) of the TPA states that the total amount of contributions payable by the Minister of Education and the employers who contribute under the pension plan in respect of any year shall not exceed the amount of contributions payable by or on behalf of active plan members in respect of credited service for that year. The only instance where contributions would not be equal would include the government's payments in connection with forgone inflation adjustments and the additional contributions related to the 2008 filing agreement (1.1%) which is often referred to as "share the pain" payments) (Section 5 (8)).

Section 10 of the TPA provides that the Minister of Education and the executive of The Ontario Teachers' Federation (OTF) may enter into an agreement that provides for, among other things, the joint management of the Plan and the sharing of entitlement to gains or surplus under the plan and of liability for deficiencies in the pension fund.

Pursuant to Section 10 of the TPA, the Minister of Education and the OTF (collectively the Partners) have entered into an agreement for the management of the Plan (Partners Agreement), to which is appended a Funding Management Policy (FMP) that is deemed to form part of the agreement.[1] The FMP provides for the funding of the Plan and how deficits and surpluses will be addressed.

Actuarial Valuation of the OTPP for accounting and funding purposes

[1] Partners Agreement, section 110.

Commented [HL1]: Is this accurate – nothing in the TPA says we represent employers.

Commented [RD2R1]: Agree.

Commented [RD3]: Not sure what this means; it would be more helpful to quote directly from the TPA or other sources (it seems to be more of a conclusion than a statement of fact)

Commented [RD4]: I believe there is matching in practice but I don't think it is mandated

Commented [RD5]: Not verified by us either

Commented [RD6]: Not sure they can say these are the *only* ways contributions would not be equal; and note that 5(1.1) does not technically say they must be equal.

Commented [RD7]: It provides a framework, but is by no means 100% prescriptive. Also the partners can deviate from the FMP by agreement.

The following is a summary of the components of the plan and the Province's calculation of its share of the plan as of March 31, 2016.

(all figures in $B)	Total plan	50% Share of the plan
Market related value of assets	157.0	78.5
Value of obligation	116.4	58.2
Surplus (deficit)	40.6	20.3
Unamortized (gains) losses	(18.0)	(9.0)
Adjustment for March 31, 2016	(1.8)	(0.9)
Asset (liability) position	20.8	10.4
Specific Government adjustment		(0.3)
Final asset (liability) position on balance sheet		10.1

According to the OTPP website, the most recent funding valuation reported a preliminary funding surplus of $13.2 billion on March 31, 2016.

Relevant Extracts from the Partners' Agreement

The Partnership Agreement is between the Province of Ontario and the OTF that sets out the formal relationship between the Province and the OTF in sponsoring the OTPP. Paragraph 8 of the Partnership Agreement states that the partners will be responsible for designing the plan structure, setting the benefits of the plan, developing new policy, deciding what the contribution rate will be, what the funding levels, margins and contingency reserves will be, making changes to the plan, this agreement or other plan documents, deciding whether or not to file a valuation more frequently than required by the *Pension Benefits Act,* appointing the OTTP Board, and defining the role of the Board.

The Partner's agreement requires that when changes to the plan are required that the Partners negotiate how those changes are made in good faith (Paragraph ~~75~~74)

Paragraph 75 of the Partner's agreement requires the Partners to advise the Board of OTPP of what changes affecting benefits and contribution rates they are proposing so that the Board can provide cost estimates and comments on the administrative impact of the changes to both partners as soon as possible.

If the partners cannot agree on the changes required to the plan, a mediator is appointed to assist the Partners in coming up with an agreement. The mediator is responsible for submitting a report to the partners on his or her views on the positions of the partners and provide a recommendation to the Partners. If the partners do not accept the mediator's report, the arbitration process will begin and an arbitration board will be appointed. The board will consist of 3 people, with each partner selecting one representative and two appointees will select the final member who is an umpire. Paragraph 94 of the Partners Agreement indicates that the report created by the arbitration board will be implemented. Paragraph 92 sets some parameters for the mediation, including part (c), which sets out that the contributions from the Minister and employers be equal to those of the members.

In addition to the clauses identified above, the Partnership agreement has an appendix called the Funding Management Policy which sets out the Partners' responsibilities in making funding decisions and surplus allocation regarding the plan.

Relevant Extracts from the FMP

Commented [RD8]: We have not checked these figures.

Commented [RD9]: Note that this provision relates to changes flowing from a valuation that is to be filed with the regulators.

Commented [HL10]: Inaccurate: This applies to arbitration NOT mediation

The FMP is an appendix to the ~~partnership~~ partners' agreement that speaks to how the plan should be funded by both parties. The protocol for the use of surplus under the OTPP is detailed in the Funding Management Policy ("FMP") adopted by the Ontario Government and Ontario Teachers Federation as sponsors of the OTPP.

The FMP sets out a complex series of considerations surrounding funding management and the use of any excess of assets over liabilities. The FMP sets out a number of "funding zones", depending on the level of funding in the plan. The following three are most relevant to addressing surpluses:

i) Restoration zone (Article 3 of the FMP) allows for surplus to be utilized to "restore" foregone indexation and then to either increase benefits to the "run-rate benefit" level (i.e., the long-term target level) or to lower contributions to the basic target rate (or a combination of these two options) (Section 3.06(e)).

ii) Temporary improvement zone (Article 4 of the FMP) is the zone where contributions can be temporarily reduced, a surplus distribution can be made on a temporary basis and/or benefits can be temporarily improved (as long as it does not create a long term cost). Section 4.05 of the FMP provides that in such a scenario, the parties may reduce current contributions, provide temporary surplus distributions or provide a temporary benefit improvement.

iii) Permanent improvement zone is where the plan is essentially fully funded and the funding security desired to support permanent changes. Article V (Permanent Improvements) of the FMP provides for permanent actions that can be taken when Plan assets exceed current liabilities by more than 10% of current liabilities. Section 5.05 provides for actions that can be taken in respect of the amount that assets exceed current liabilities plus the 10% margin noted previously. Such actions can include changes to current benefits, current contributions, or both.

The ability to reduce contributions or increase benefits through the temporary or permanent improvement zone are subject to ensuring that the requirements of 3.06 in the restoration zone are met. Article VIII of the FMP sets out that the parties must agree to any changes arising out of FMP decisions. Should they be unable to agree the mediation process set out in the Partners Agreement, the arbitration process outlined in the Partners Agreement will be followed.

It is our understanding that the plan is currently in the Restoration Zone. We understand that contributions to the OTPP currently include a 1.1% special contribution on all earnings and that the Restoration Contribution Reduction under Section 3.06(e) would permit this special contribution to be eliminated.

History of Surplus

The FMP was not established until 2003. The following is a summary of the history of how surpluses we treated before the FMP and post the FMP. The following is a summary of deficits over the year.

Valuation Date	Surplus/(Deficit)	OTF	Ontario Government	Surplus Remaining
1990	$(7.8 billion) unfunded liability	Increased contributions by 1% to 8.9%	Agreed to make a series of special payments to eliminate the unfunded liability and match increased contributions	Special payments considered an asset bringing the plan to a $0 surplus
1993	$1.5 billion	$325 million to offset social contract days	Eliminated special payments for $1.2 billion saving	$0
1996	$0.7 billion	$0.6 billion for benefit improvements and RCA contributions	N/A	$0.1 billion
1998	$6.8 billion	$2.2 billion for benefit	$4.6 billion to reduce the value of remaining special	$0

Commented [RD11]: I'd say it's broader than that; e.g. also deals with surplus utilization.

Commented [RD12]: 3.06(e) is not quite so prescriptive; e.g. it only speaks of "a reduction in contribution rates" but doesn't expressly say only down to the basic rate.

Commented [RD13]: Is that correct, or is it only the amount in excess of the 10% cushion?

Commented [RD14]: For a filing valuation, this is true – the parties must agree or go to mediation/arbitration. Arguably for any valuation that isn't being filed, either party can decide not to negotiate any changes and it would end there (that is our understanding).

Commented [Deloitte15]: Can this be confirmed as to whether the parties need to agree in order to reduce this cotnribution? Our understanding is that both parties do need to agree.

Commented [RD16R15]: We also interpret the FMP as requiring agreement to eliminate this special contribution.

Commented [RD17]: We didn't check this; we assume it was simply copied from the source.

		improvements	payments	
1999	$3.5 billion	N/A	$3.5 billion to reduce the value of remaining special payments	$0
2001	$6.8 billion	$6.2 billion for benefit improvements	N/A	$0.6 billion
2002	$1.9 billion	Sponsors agreed not to make contributions	any changes to benefits or	$1.9 billion
Total		**$9.3 Billion**	**$9.3 Billion**	

* Source: Ontario Teachers' Pension Plan Board "Report on Funding" (April 2002)

Year	Valuation Status and Key Decisions
2003	$1.5 billion surplus; no changes to benefits or contribution levels. Funding Management Policy adopted by plan sponsors.
2005	A preliminary $6.1 billion shortfall was resolved, leaving plan with a $0.1 billion surplus. Shortfall resolved with special contribution rate increases, totalling 3.1% of base earnings by 2009 for teachers, the Ontario government and other employers. OTF used the $76 million contingency reserve set aside in 2001 to reduce contribution rate increases for members in 2008.
2008	A preliminary $12.7 billion shortfall was resolved with the introduction of conditional inflation protection for pension benefits earned after 2009 and an increase in the basic contribution rate for members and the government to 9% from 8%. Employers agree to make special payments equal to any annual pension increases retirees forgo to a maximum of 50% missed inflation.
2009	A preliminary $2.5 billion shortfall was resolved primarily by assuming a slightly higher long-term rate of return on investments: yield on real-return bonds plus 1.5%, versus real-return bonds plus 1.4%. Other minor changes made to assumptions to reflect recent plan experience.
2011	A preliminary $17.2 billion shortfall was resolved with a 1.1% contribution rate increase (phased in over three years), slightly smaller annual cost-of-living increases for teachers who retired after 2009, and recognition of current contribution rate as the permanent base rate.
2012	$9.6 billion preliminary shortfall adjusted to reflect changes in mortality assumptions and impact of two-year freeze on teachers' salaries. 2012 shortfall resolved by making inflation protection for pension credit earned after 2013 fully conditional on plan's funded status and providing slightly smaller pension increases, beginning in 2014, for members who retired after 2009. These changes enabled the plan to assume a slightly higher discount rate. The changes left the plan with a $200 million surplus at Jan. 1, 2012.
2014	$5.1 billion preliminary funding surplus used to boost pensions of members who retired after 2009 to the level they would have been at if full inflation protection had been provided each year since they retired. The surplus funds were also used to raise conditional inflation protection to 60% of the increase in the cost of living for the portion of retirees' pensions earned after 2009. Both changes are effective with January 2015 pension payments.

2015	Some of the $6.8 billion preliminary funding surplus was used to boost pensions of members who retired after 2009 to the level they would have been at if full inflation protection had been provided on January 1, 2015. The surplus funds were also used to raise conditional inflation protection for pension credit earned after 2009 to 70% from 60% of the increase in the cost of living. Both changes were effective January 2016. In addition, some surplus funds were reserved to help facilitate stability in contribution and benefit levels should a future funding valuation show a decline in assets or increase in pension costs.
2016	Some of the $13.2 billion funding surplus will be used to raise conditional inflation protection for pension credit earned after 2009 to 90% from 70% of the increase in the cost of living. Some funds will also be reserved to increase the stability in contribution and benefit levels, should future valuations show a decline in asset value or an increase in pension costs.

* Source: Ontario Teachers' Pension Plan, "Key Funding Decisions Since 1990" adapted for September 14, 2016 announcement.

Impact of Restoring Inflation Indexation

As noted above, a preliminary $12.7 billion plan shortfall in 2008 was resolved with the introduction of conditional inflation protection for pension benefits earned after 2009 and an increase in the basic contribution rate for members and the government to 9% from 8%. Employers agreed to make special payments equal to any annual pension increases retirees forgo to a maximum of 50% missed inflation. In other words, employers and members shared in the outcome since the members would forego some benefits and the employers would also bear the cost to the extent of 50% of the missed inflation. These additional payments are often referred to as the "share the pain" payments. Despite the fact that the inflation protection was reduced, the cost of this protection has been fully reflected in the measurement of the accrued benefit obligation associated with the plan on the grounds that either the benefits would be restored and provided to pensioners or the "share the pain" payments would continue.

As also noted in the table above, plan surpluses arising in 2014-2016 are being used to restore some of the inflation protection that was reduced in 2008. This restoration of inflation protection is fully contemplated in the FMP under Section 3 describing the Restoration Zone. The direct impact of this action is that a portion of the "share the pain" payments that would otherwise be required have been eliminated. The estimated value of this reduction in contributions is $4.3 billion related to the 2016 action ($1.85 billion for 2015, and XX for 2014).

Commented [DK(-T18]: OPCD to make sure you agree with how I've worded this.

Commented [DK(-T19]: Amount outstanding

Commented [RD20]: We didn't verify this; we assume it all comes from the information cited above.

RE_ additional request re role of the regulator.rtf

From: Steele, Jana [JSteele@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
CC: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Marin, Jon [jomarin@osler.com]
Subject: RE: additional request re role of the regulator
Date: Monday, September 26, 2016 13:43:27
Attachment 1: image001.gif
Attachment 2: image002.gif
Attachment 3: image003.png

Hi Len:

We are almost done and will send along shortly.

Deloitte can contact me on this issue (416) 862-6625.

Jana

Jana Steele

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DIRECT

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http://www.pensionsbenefitslaw.com/

https://twitter.com/pensionsjana

From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Monday, September 26, 2016 1:41 PM
To: Steele, Jana <JSteele@osler.com>
Cc: Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>
Subject: RE: additional request re role of the regulator

Jana

Thanks for this – we are running out of runway on this and hoping that in advance of the delivery of the written product, Deloitte could contact Oslers on this issue. Could you provide a contact in this regard? We presume Oslers will largely confirm that FSCO doesn't really have a practical role re: if the partners choose to do a contribution holiday and take other actions that are not illegal and not inconsistent with the PBA and its regs….thanks

From: Steele, Jana [mailto:JSteele@osler.com]
Sent: September 26, 2016 10:55 AM
To: Hatzis, Len (TBS)
Subject: additional request re role of the regulator

We are working through this and will have to you today – Estimated time – 2-3 pm.

Please note that Brenda Carson assisted with the tax question on the weekend and Laura Stefan is assisting with some of the research this morning.

Please add them to the list of persons from Osler.

Thanks.

Jana

Jana Steele

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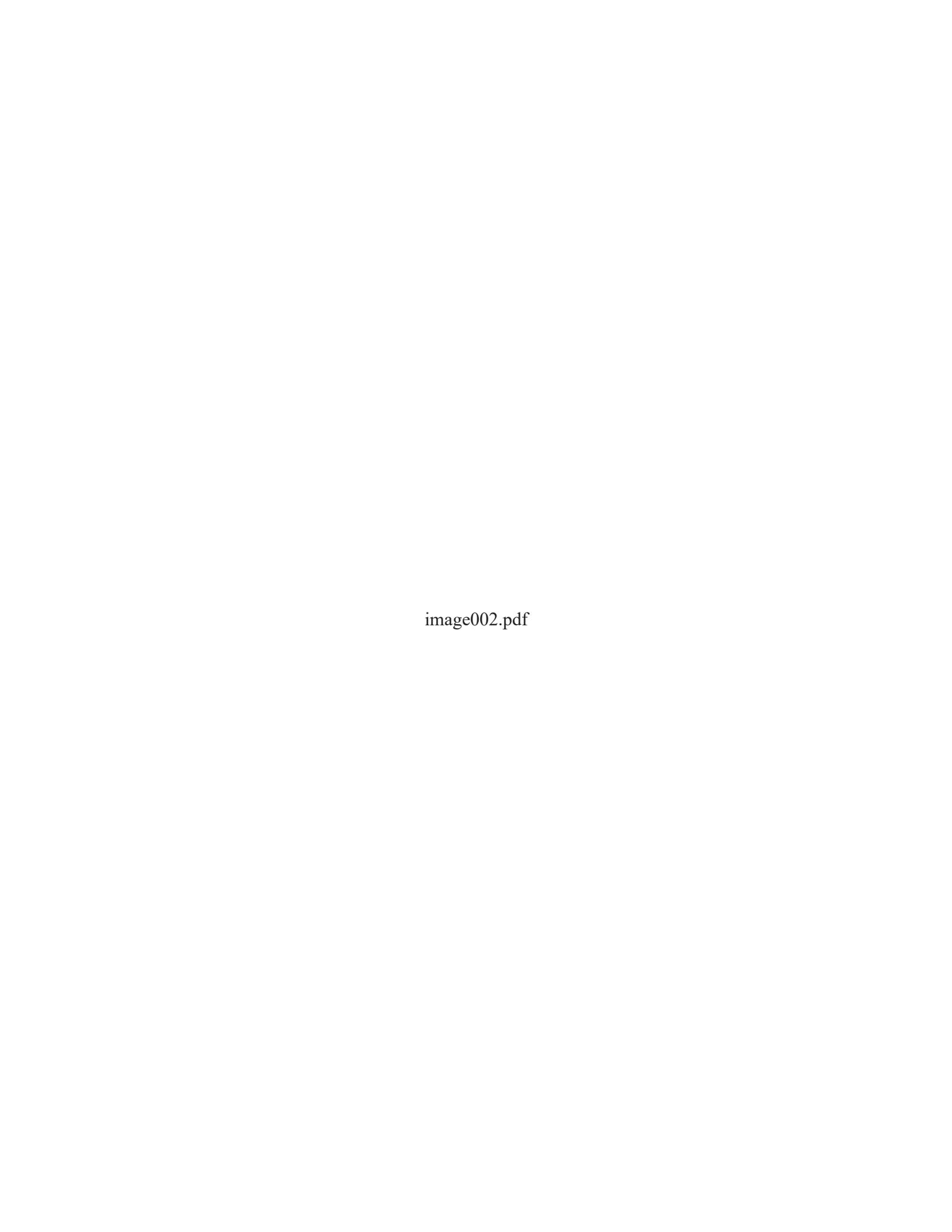
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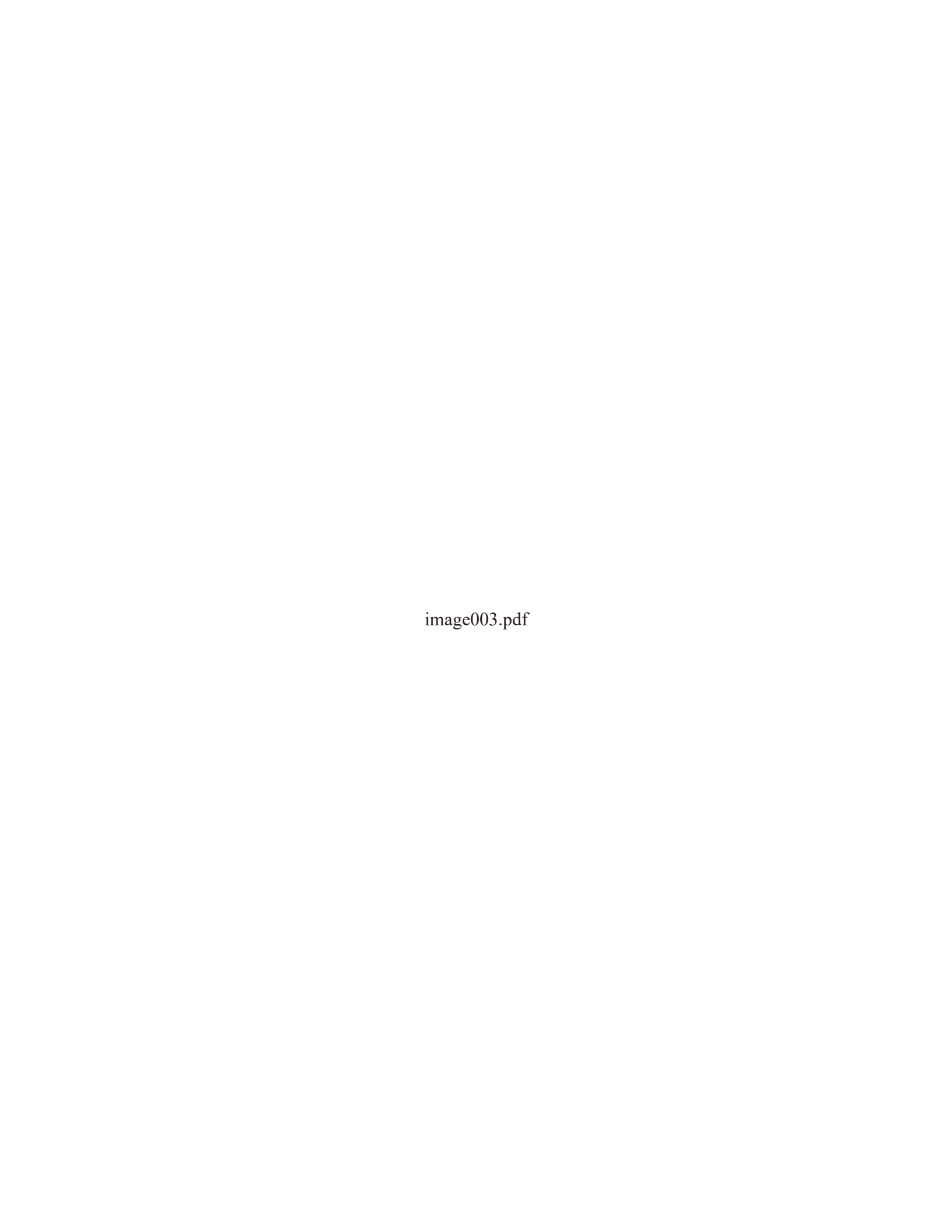
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pensions blog

RE_ do you have the 2013 term sheet_.rtf

From: Rienzo, Douglas [DRienzo@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
CC: Steele, Jana [JSteele@osler.com]; Marin, Jon [jomarin@osler.com]
Subject: RE: do you have the 2013 term sheet?
Date: Tuesday, September 20, 2016 14:38:38
Attachment 1: image001.gif
Attachment 2: image002.gif
Attachment 3: image003.jpg
Attachment 4: OTPP JSPP Afreement final March 2013.pdf

Enclosed.

Douglas Rienzo
Partner, Pensions & Benefits

Chair, Diversity Committee

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http://www.osler.com/

From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Tuesday, September 20, 2016 2:36 PM
To: Rienzo, Douglas <DRienzo@osler.com>; Marin, Jon <jomarin@osler.com>
Cc: Steele, Jana <JSteele@osler.com>
Subject: FW: do you have the 2013 term sheet?

Can you advise and forward if you have it pls - thanks

****

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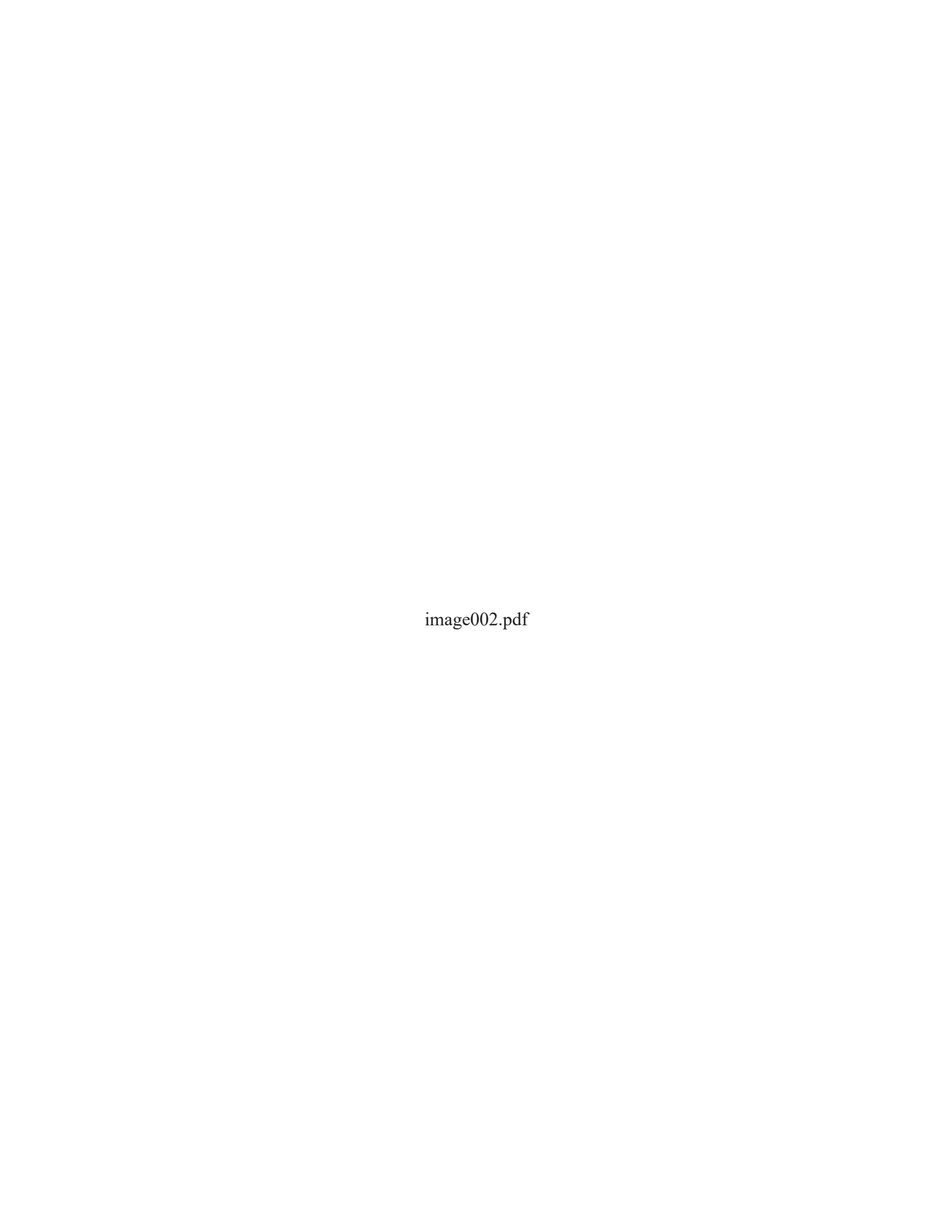
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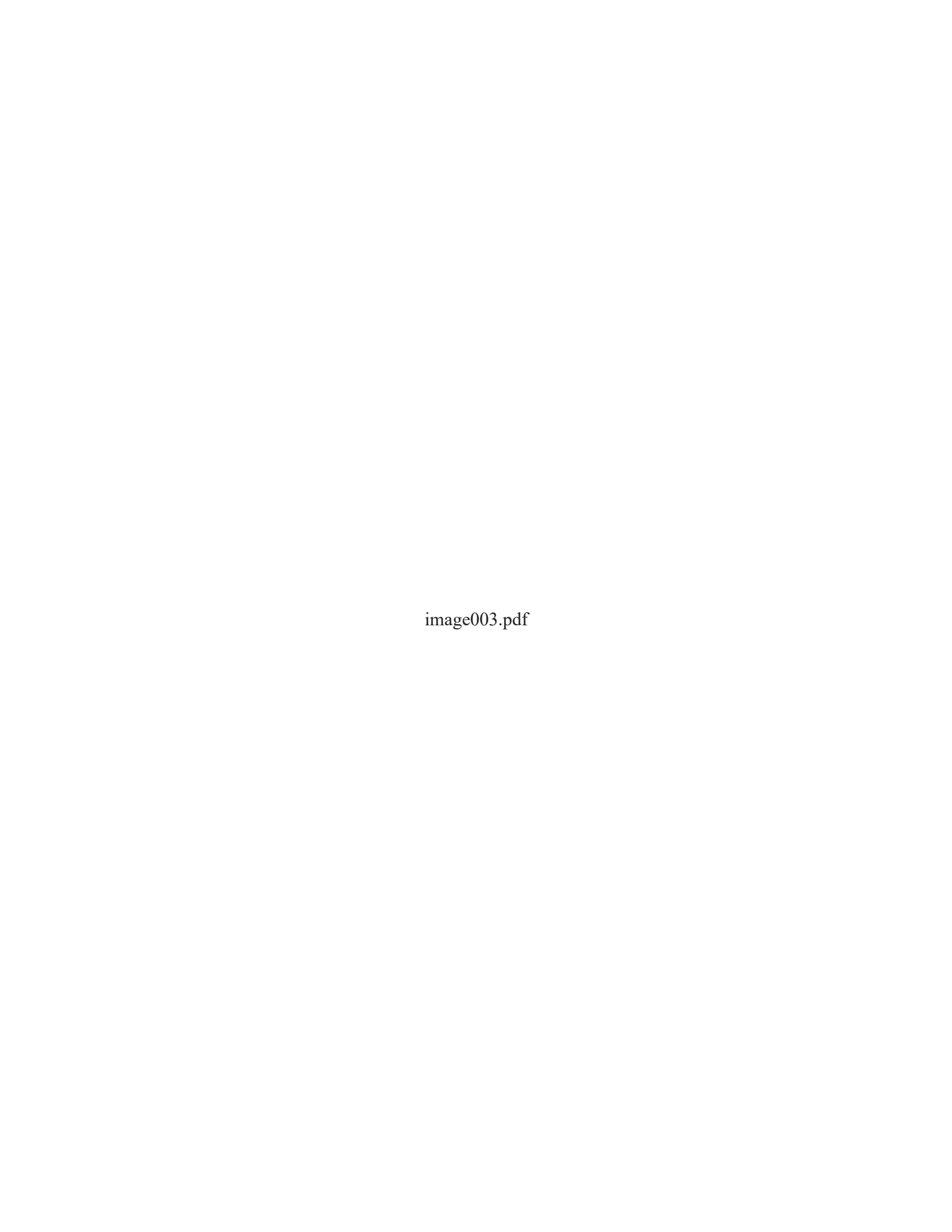
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2016
CANADA'S BEST
DIVERSITY EMPLOYERS

OTPP JSPP Afreement final March 2013.pdf

OTPP Term Sheet – March 13, 2013

CONFIDENTIAL

This Term Sheet (the "Agreement") sets out the key terms of the agreement between the Plan Sponsors, which is effective during the "Freeze Period" (as defined below). The Government will provide a letter to the Plan Sponsors which will explain: the background of the 2012 Ontario Budget measures about jointly sponsored pension plans; the Government's plan to introduce legislation to carry out those measures, including pooling of broader public sector pension fund assets; the fact that discussions lead to this Agreement instead; and will confirm the Government Commitments which are based on those discussions and this Agreement.

A. General Principles

1. The Freeze Period runs from December 31, 2012 to December 30, 2017.

2. During the Freeze Period there will be no employer contribution increases except as provided for below. An employer contribution increase is defined as any increase in the employer contribution rate beyond the highest contribution rate provided for in the last valuation filed by the Plan prior to the Freeze Period. Employer contribution increases already scheduled to occur during the Freeze Period as a result of valuations filed with an effective valuation date before December 31, 2012 will occur.

3. During the Freeze Period, except as may be required by the Pension Benefits Act or as a result of a judicial or quasi-judicial decision that is binding upon the Sponsors or the Plan, there will be no benefit improvements unless the Plan's going concern funded status, based on the most recently filed valuation report, on a non-smoothed basis, as of the date that the benefit improvement amendments come into effect meets or exceeds 105%, and the benefit improvement will not bring the going concern funded status below 105% as of the effective date of the amendment.

4. During the Freeze Period, except as may be required by the Pension Benefits Act or as a result of a judicial or quasi-judicial decision that is binding upon the Sponsors or the Plan, there will be no restoration of benefits reduced as a result of application of these principles unless the Plan's going concern funded status, based on the most recently filed valuation report, on a non-smoothed basis, as of the date that the benefit restoration amendments come into effect meets or exceeds 105% and the restoration will not bring the going concern funded status below 105% as of the effective date of the amendment.

5. Ad hoc/conditional indexation is not considered to be a benefit improvement or restoration and Plan amendments to provide or restore ad hoc or conditional cost of living increases to pensioners can be made provided the Plan's going concern funded status on the date that the cost of living increase is agreed upon (based on the most recently prepared valuation report with a valuation date that is no more than twelve months earlier and that uses the same valuation methodology and assumptions that would apply to a filed valuation) exceeds 100% and the cost of living increase will not

bring the going concern funded status below 100% as of the effective date of the amendment.

B. Valuations and Consequential Actions During the Freeze Period

6. Should any draft valuation prepared for filing during the Freeze Period disclose a funding circumstance in which employer contribution increases would normally be implemented (i.e., a funding shortfall) the funding circumstance must be addressed within the following Parameters. Any valuation filed during the Freeze Period will conform to the General Principles above and the Parameters as follows:

a. During the Freeze Period there will be no employer contribution increases except as provided for below. A contribution increase is defined as any increase in the contribution rate beyond the highest contribution rate provided for in the last valuation filed by the Plan prior to the Freeze Period.

b. Any future benefit reductions determined to be required in order to meet the General Principles and these Parameters during the Freeze Period will not exceed twenty percent (20%) of the aggregate value of future benefits determined based on the Plan provisions in effect on December 31, 2011 ("the Benefit Reduction Limit"), which aggregate value the Sponsors agree is $42.590 billion. Benefit reductions implemented pursuant to the valuation as at January 1, 2012 shall be taken into account for purposes of achieving the 20% Benefit Reduction Limit. For clarity, twenty percent (20%) is measured on an cumulative basis in the Freeze Period.

c. In respect of the benefit reductions provided for under the January 1, 2012 valuation, the Sponsors agree that the reduction in the aggregate value of future benefits is $4.094 billion (9.6%). This reduction in the aggregate value of future benefits was calculated to include:

(i) the reduction in the funding shortfall from the impact of the decrease in the present value of future benefits and contributions stemming from the increase in the discount rate which resulted from the Plan amendment to remove and replace the remaining 50% guaranteed indexing with full conditional inflation protection ("CIP") for post-2013 service;

(ii) the reduction in present value of benefits from invoking an additional 10% of CIP (inflation protection from 60% to 50%) for post-2009 service effective January 1, 2014 along with the associated increase in the present value of the "share the pain payments" (matching contributions made by the Government/employers) plus the reduction in present value of benefits from invoking a further 5% of CIP (inflation protection from 50% to 45%) for post-2013 service effective January 1, 2015.

Appendix A attached hereto provides further details regarding this benefit reduction calculation.

d. Any future benefit reductions under a post-January 1, 2012 valuation, if necessary, will be implemented with an effective date that is no later than the earlier of:

i. two years following the valuation date of the filed actuarial valuation, or

ii. December 30, 2017.

e. In no case will future benefit reductions implemented as a result of the General Principles and/or Parameters affect or reduce pension benefits or ancillary benefits accrued prior to the implementation date of the benefit reduction(s). Ancillary benefits will be considered to have accrued, if, as of the implementation date of the benefit reduction, the person will have met all of the eligibility requirements to exercise the right to receive the ancillary benefits.

f. Sponsors' agreement on future benefit reductions would be effected by a Plan amendment to be prepared and filed within 60 days of agreement or outcome of the dispute resolution process.

g. Once the Benefit Reduction Limit has been reached (i.e., if the second or subsequent valuation(s) filed during the Freeze Period reduce benefits by $4.424 billion (10.4%)), the Sponsors will return to their usual process and make use of their usual tools (e.g., employer and member contribution rate increases and/or benefit reductions beyond the benefit reduction limit) to determine the steps necessary to avoid:

i. any remaining shortfall identified in the draft valuation; or

ii. a future new funding shortfall identified in a subsequent draft valuation during the Freeze Period.

After 2013, any valuation filed during the Freeze Period must be filed on or before September 30 of the year of filing.

C. Dispute Resolution

7. Any dispute with respect to the interpretation or application of this Agreement may be referred by either Sponsor to final and binding arbitration. Either of the parties may notify the other in writing of its desire to submit a difference or dispute to arbitration and the notice shall contain the names of the first party's appointment to an Arbitration Board. The recipient of the notice shall within five (5) days inform the other party of the name of its appointee to the Arbitration Board. The two (2) appointees so selected shall, within five (5) days of the appointment of the second of them, appoint a third person who shall be the Chairperson. If the recipient of a notice fails to appoint an appointee, or the two appointees fail to agree upon a Chairperson within the time limit, either party may request that the appointment shall be made by the Chief Justice for Ontario.

8. In the event that a dispute arises with respect to the interpretation or application of paragraph 6 in particular, all steps to appoint an Arbitration Board as set out in paragraph 7 will be taken on or before 60 days before September 30. The decision of the Arbitration Board shall be issued at least 20 days before September 30.

9. In the event that a dispute arises with respect to the interpretation or application of paragraph 6, in particular, including whether the Benefit Reduction Limit has been reached, the Arbitration Board's mandate will be restricted to determining the means by which the obligations in this Agreement will be carried out and will be subject to the same restrictions applicable to the Sponsors regarding the available options and for greater certainty will exclude an increase in employer contributions during the Freeze Period. The Sponsors, utilizing their usual processes may increase employer contributions once the Benefit Reduction Limit is reached.

D. End of the Freeze Period

10. At the end of the Freeze Period, this Agreement expires and any obligations to conform to this Agreement, and any measures taken in accordance with it, end with the exception of the provisions in paragraph 11.

11. After the end of the Freeze Period, if the Plan's going concern funded status (based on the most recently filed valuation report with a valuation date after December 30, 2017) exceeds 100%, the union/federation sponsors have "first call" on 100% of the surplus disclosed under a valuation report with a valuation date after December 30, 2017, up to a cumulative total of the value of either: the benefit reductions that are made during the Freeze Period; or the Benefit Reduction Limit, whichever is lower. The "first call" on surplus (to take the form of "surplus credits") would be subject to the following conditions:

(a) Surplus credits would only take into account the value of benefit reductions made during the Freeze Period, including the value of benefit reductions made in the January 1, 2012 valuation, but excluding: (i) the value of benefit reductions for which matching contributions are made by the Government/employer ("share the pain payments"), and (ii) the value of benefit reductions relating to the removal and replacement of the remaining 50% guaranteed indexing with full CIP for post-2013 service and the resulting change to the discount rate (as described in paragraph 6(c)(i) above).

(b) Subject to (c) below, the surplus credits could be used as the union/federation sponsors wish (i.e., credits would not be required to be used to restore the same benefits that were reduced during the Freeze Period).

(c) The union/federation sponsors are permitted to spend the surplus credits so long as the going concern funded status of the Plan does not fall below 100% after the surplus credits are spent.

(d) This is a one-time arrangement intended to compensate Plan members for absorbing 100% (rather than 50%) of funding shortfalls arising in the government initiated Freeze Period and is without prejudice or precedent for any future situation.

(e) If inflation protection is invoked below 50% during the Freeze Period, subject to paragraph 11(a), surplus credits will include an amount equal to the actual foregone pension payments during and after the Freeze Period that arise from the reduction in indexing invoked during the Freeze Period until such time as that inflation protection is restored at 50% or more during or after the Freeze Period.

Appendix B attached hereto provides further details regarding the surplus credit calculation.

E. Other Matters

12. The Sponsors will ensure that the cooperation of the Administrator is secured in relation to all aspects of this Agreement, including but not limited to the preparation of the draft valuation, the filed valuation, and applying for any necessary extension of the timelines for filing actuarial valuations and/or Plan amendments as may be necessary to give effect to this Agreement.

13. In order for the terms of this agreement to be effective, the Ontario Government will, subject to Cabinet approval, on or before May 1, 2013, amend Regulation 909 under the Pension Benefits Act to allow for a single four-year valuation cycle for a valuation filing that would otherwise be required to be made during the Freeze Period subject to the following conditions:

a. at least one valuation is filed during the Freeze Period;

b. there are no more than four years between the valuation dates of filed valuations; and

c. any benefit reductions arising from valuations filed during the Freeze Period are implemented in accordance with the General Principles and Parameters herein.

Failing amendment of the said Regulation, this Agreement is of no force or effect.

14. The terms of this Agreement supersede all other agreements (written and oral) between the Sponsors, including the Partners' Agreement. The Sponsors shall amend the Plan, the Partners Agreement or any other documents as necessary to give effect to this Agreement.

15. This Agreement may be executed in one or more counterparts and delivered by facsimile or other means of electronic transmission, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement.

Liz Sandals - Minister of Education

Date:

Terry Hamilton – President,
Ontario Teachers' Federation

March 13, 2013
Date:

15. This Agreement may be executed in one or more counterparts and delivered by facsimile or other means of electronic transmission, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement.

Liz Sandals - Minister of Education

Date: Mar 14/13

Terry Hamilton – President,
Ontario Teachers' Federation

Date:

Appendix A to Term Sheet Between Government and OTF

As of January 1, 2012 (all amounts in millions)

Calculation of Benefit Reduction Limit

Present Value of Future Benefits Based on Plan Provisions as of December 31, 2011 But Including Legislated Vesting Change		$ 48,899
Less:	Reduction in Present Value of Future Benefits to Reflect Indexation for Post-2009 Service at 60% of CPI	6,309
Equals:	Present Value of Future Benefits For Purposes of Calculating Benefit Reduction Limit	$ 42,590

Benefit Reduction Limit = 20% x $42,590 = $8,518

Calculation of Portion of Benefit Reduction Limit Utilized By Changes to Plan Incorporated into January 1, 2012 Actuarial Valuation

Increase in Reduction of Present Value of Future Benefits From Change in Indexation From 60% to 50% of CPI for Post-2009 Service	$1,367
Plus	
Increase in Government Matching Contributions From Change in Indexation From 60% to 50% of CPI for Post-2009 Service	1,367
Plus	
Reduction in Present Value of Future Benefits Resulting From Change in Discount Rate Associated With Plan Changes (15.0 basis points)	1,390
Plus	
Reduction in Present Value of Future Contributions Resulting From Change in Discount Rate Associated With Plan Changes (15.0 basis points)	(497)
Plus	
Increase in Reduction of Present Value of Future Benefits From Change in Indexation From 50% to 45% of CPI for Post-2013 Service	467
Equals	
Portion of Benefit Reduction Limit Utilized	
$ Amount	$ 4,094
% Amount from 20%	9.6%

Remaining Benefit Reduction Limit for Plan Changes in Freeze Period

Benefit Reduction Limit		$ 8,518
Less:	Portion of Benefit Reduction Limit Utilized By Changes to Plan Incorporated into January 1, 2012 Actuarial Valuation	4,094
Equals:	Remaining Benefit Reduction Limit For Plan Changes in Freeze Period	$ 4,424
	% Amount from 20%	10.4%

Appendix B to Term Sheet Between Government and OTF

The following are examples only. For purposes of paragraph 11(e) of the Term Sheet, the actual foregone indexing below 50% will be determined by the Plan Administrator based on the actual pension payments affected.

Subject to the above paragraph, the following example shows how the foregone pension payments in respect of which surplus credits are to be awarded (paragraph 11(e)) would be calculated in connection with invoking CIP below 50%. The example is based on:

- Inflation rate of 2.00% per year
- Retirements as of July 1st of each year
- New pensioner payments each year under the additional 50% CIP provisions for post-2013 service of $3 million times number of years of service from January 1, 2014 to mid-year retirement date
- 10-year period with no mortality reflected
- Indexation at 45% of CPI for the entire period

Calendar Year	Pension Payments With 50% of CPI (000's)	Pension Payments With 45% of CPI (000's)	Foregone Pension Payments (000's)
2014	$ 1,500	$ 1,500	$ 0
2015	$ 7,515	$ 7,514	1
2016	$ 19,592	$ 19,582	10
2017	$ 37,786	$ 37,759	27
2018	$ 62,164	$ 62,099	65
2019	$ 92,786	$ 92,658	128
2020	$ 129,714	$ 129,492	222
2021	$ 173,011	$ 172,658	353
2022	$ 222,741	$ 222,212	529
2023	$ 278,968	$ 278,212	756
			$ 2,091

The following example modifies the above example to show the impact of moving from 45% of CPI to 0% of CPI (for post-2013 service) effective January 1, 2017:

Calendar Year	Pension Payments With 50% of CPI (000's)	Pension Payments With 45% of CPI / 0% of CPI (000's)	Foregone Pension Payments (000's)
2014	$ 1,500	$ 1,500	$ 0
2015	$ 7,515	$ 7,514	1
2016	$ 19,592	$ 19,582	10
2017	$ 37,786	$ 37,582	204
2018	$ 62,164	$ 61,582	582
2019	$ 92,786	$ 91,582	1,204
2020	$ 129,714	$ 127,582	2,132
2021	$ 173,011	$ 169,582	3,429
2022	$ 222,741	$ 217,582	5,159
2023	$ 278,968	$ 271,582	7,386
			$ 20,107

RE_ opinion .rtf

From: Rienzo, Douglas [DRienzo@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
CC: Marin, Jon [jomarin@osler.com]; Kaufman, Paul (TBS) [Paul.Kaufman@ontario.ca]; Steele, Jana [JSteele@osler.com]
Subject: RE: opinion
Date: Monday, September 19, 2016 19:05:44
Attachment 1: image001.gif
Attachment 2: image002.gif
Attachment 3: image003.jpg
Attachment 4: Draft Osler Opinion re OTPP surplus.pdf

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

Douglas Rienzo
Partner, Pensions & Benefits

Chair, Diversity Committee

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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

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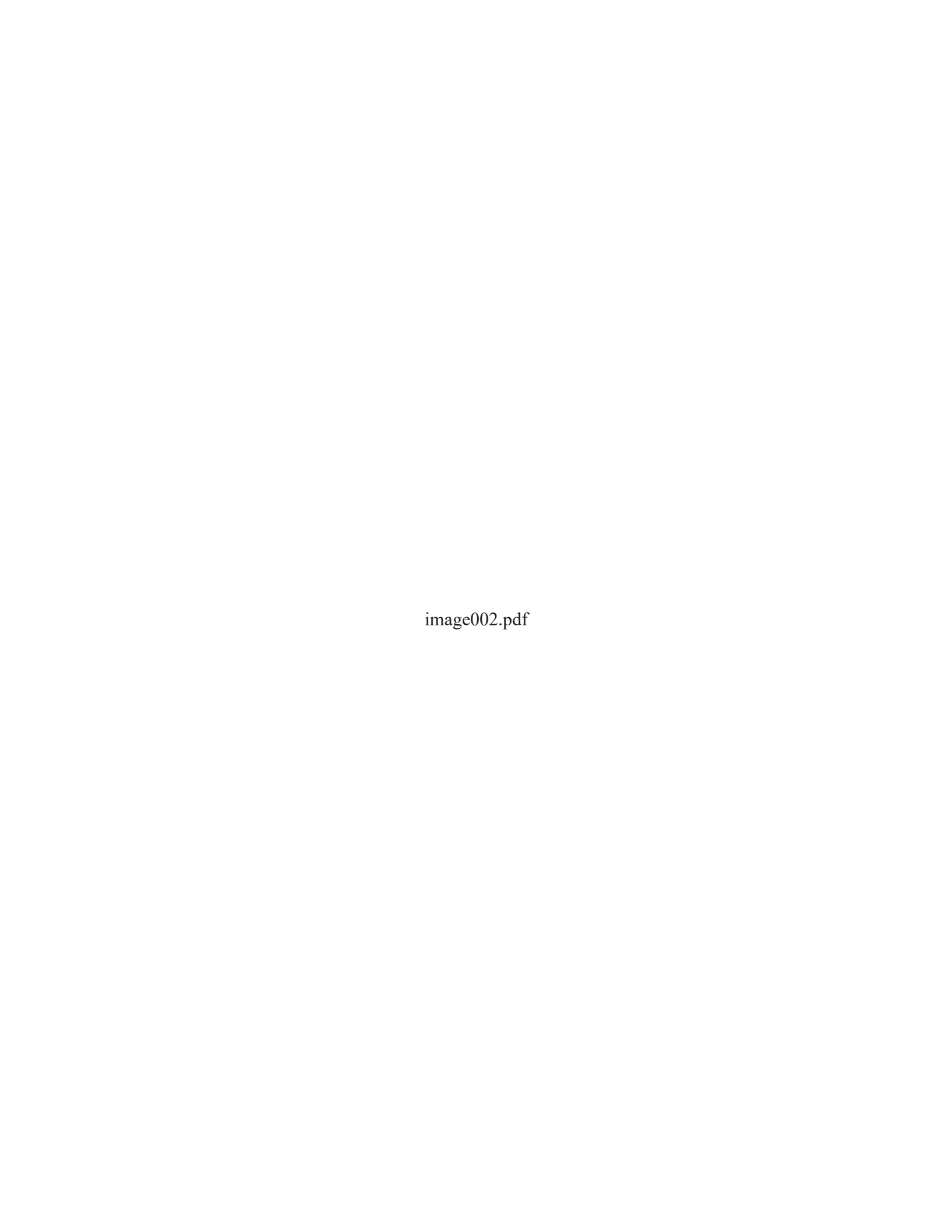
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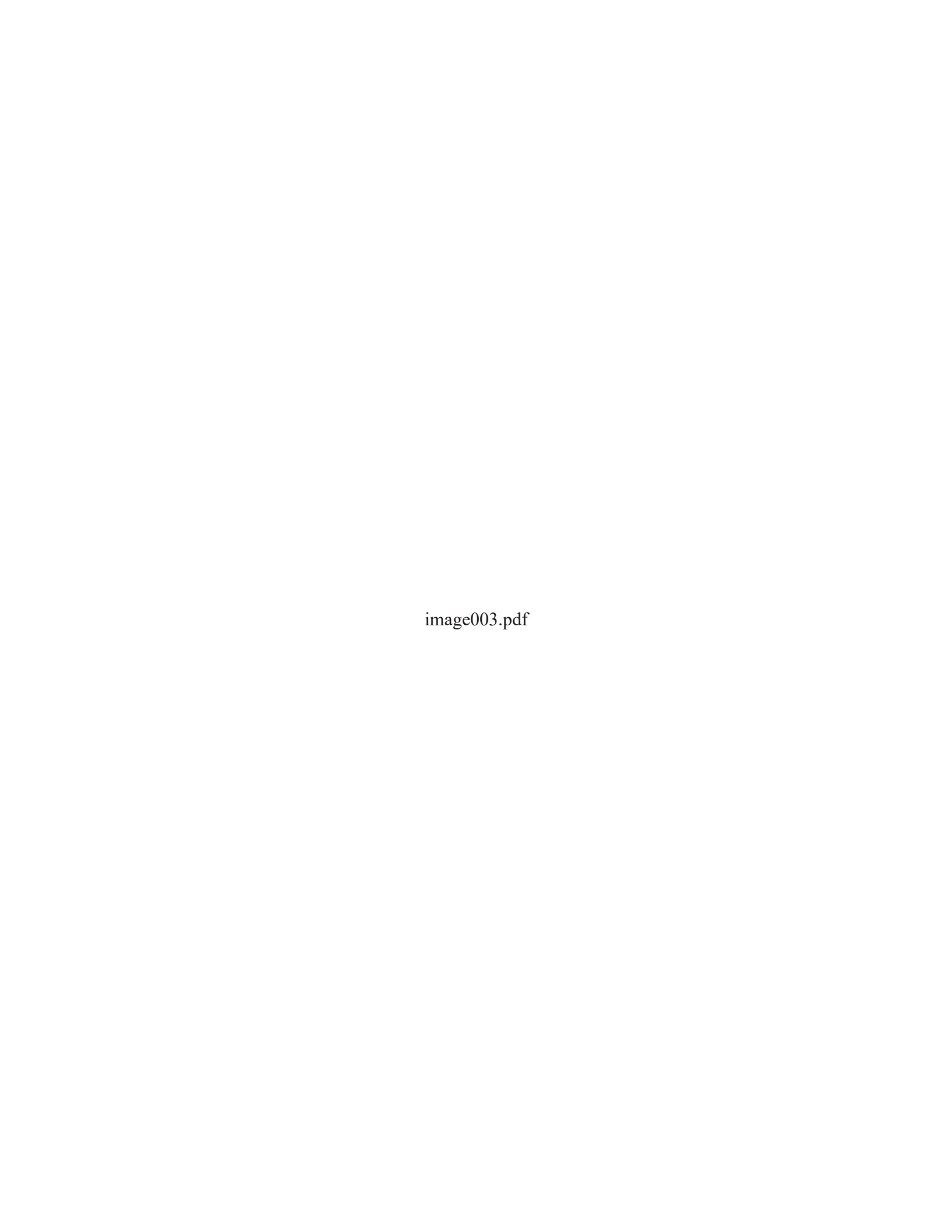
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Draft Osler Opinion re OTPP surplus.pdf

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September 19, 2016

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PRIVILEGED AND CONFIDENTIAL

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Dear Sirs:

Accounting Treatment of Surplus in the Ontario Teachers' Pension Plan

I. BACKGROUND

We understand the pertinent background facts to be the following:

1. The Ontario Teachers' Pension Plan (the **"OTPP"**) is a jointly-sponsored defined benefit pension plan established under the *Teachers' Pension Act* (Ontario) and is, subject to certain exceptions, required to comply with the *Pension Benefits Act* (Ontario) as well as the *Income Tax Act* (Canada).

2. The sponsors of the OTPP are the Province of Ontario (the **"Province"**) and the Ontario Teachers' Federation (the **"OTF"**) (collectively, the **"Sponsors"**).

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3. We understand that as at March 31, 2016 the Province's Statement of Financial Position (the **"Public Accounts"**) includes a pension asset totalling $10.6 billion (the **"Pension Asset"**) related in part to an accounting surplus under the OTPP.[1]

4. The Office of the Auditor General of Ontario has expressed concerns with the Province's inclusion of the Pension Asset in the Public Accounts, for reasons including that in its view the Province does not have a legally enforceable right to withdraw the Pension Asset.[2]

You asked us to consider the processes pursuant to which the Province may utilize surplus assets in the OTPP in accordance with the Plan Documentation (as defined below), and to identify any considerations that might inform the expectations of the Province as a Sponsor regarding the basis upon which decisions will be made relating to surplus utilization. We are not providing an opinion on the proper application of the accounting standards to the present situation, as that is an issue for the accountants to address.

II. SCOPE OF OPINION

For the purposes of our opinion, we considered the following documentation (collectively, the **"Plan Documentation"**):

1. The Ontario Teachers' Pension Plan (the **"OTPP"** or **"plan"**);

2. The Agreement between Her Majesty the Queen in right of the Province of Ontario represented by the Minister of Education and Training and The Ontario Teachers' Federation represented by its Executive (the **"Partners' Agreement"**);

3. The Funding Management Policy (the **"FMP"**), which forms Appendix "A" to the Partners' Agreement; and

4. The Term Sheet agreed to by the Sponsors dated March 13, 2013 (the **"2013 Term Sheet"**) describing the implications of the Freeze Period (as defined below) on the FMP.

We have also considered the following legislation/regulations:

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1 See letter from Bonnie Lysyk (Auditor General) to Greg Orencsak (Deputy Minister, Treasury Board) and Scott Thompson (Deputy Minister, Ministry of Finance), dated September 13, 2016. Part of the surplus relates to another pension plan; we understand that $10.1 billion relates to the OTPP.

2 *Ibid.*

1. The *Teachers' Pension Act* (Ontario) (the **"Teachers' Act"**); and

2. The *Pension Benefits Act* (Ontario) (the **"PBA"**) and the regulations thereunder (the **"PBR"**).

As per your instructions, we have not evaluated the ability of the Province to benefit from the *withdrawal* of surplus assets from the OTPP (although certain provisions of the FMP cited herein relate to both the withdrawal and other utilization of surplus). Rather, this opinion identifies the processes pursuant to which the Province may receive a financial benefit through the *utilization* of OTPP surplus (e.g., as a result of either a temporary reduction in the Province's contribution obligations (a contribution holiday) or through changes to the contribution formula that reduce the Province's contribution obligations).

We note that the concept of an *accounting* surplus is distinct from surplus identified in a funding valuation prepared in respect of the OTPP (a **"Funding Valuation"**). Where surplus has been identified in a Funding Valuation, the Plan Documentation provides the Sponsors with certain avenues pursuant to which the Funding Valuation surplus can be utilized. Any reference to "surplus" in this opinion, unless expressly stated otherwise, relates to the surplus identified by the actuary for the OTPP in a Funding Valuation and not to the accounting surplus identified in the Public Accounts. We understand that pursuant to the applicable accounting standards, the recognition of part or all of the accounting surplus on the Public Accounts depends on the ability of the Province to benefit from any surplus in the pension fund over the life of plan.

This opinion does not purport to draw any conclusions, express or implied, about the application of the accounting standards to the present circumstances; rather, it is solely intended to provide the Province with information concerning the legal framework governing the utilization of surplus under the OTPP so as to allow the Province's accountants to determine whether a related Pension Asset should appear on the Public Accounts.

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III. SUMMARY OF OUR CONCLUSIONS

A brief summary of our material conclusions is set forth below (all capitalized terms are defined herein):

1. Paragraph 10(1)3 of the Teachers' Act provides that the Minister of Education and the executive of the OTF may enter into an agreement (i.e., the Partners' Agreement) that provides for certain matters, including: "3. The sharing of entitlement to gains or surplus under the plan and of liability for deficiencies in the pension fund by the Minister, the employers who contribute under the plan and the active plan members". This is a fundamental legislative pronouncement that the Province and the members of the plan are meant to "share" both upside

(surplus) and downside (deficit) under the plan. Although it is not an express statement of 50/50 sharing, it would presumably inform the expectations of the Sponsors regarding how any surpluses are to be utilized.

2. The Plan Documentation (specifically the FMP) and applicable legislation allow for the Sponsors to utilize surplus in a variety of ways, depending on the funded status of the OTPP. These surplus utilization options include the following avenues through which the Province may receive a financial benefit through the utilization of surplus (the three "zones" describe different levels of surplus, a greater amount of surplus being required in order for the next "zone" to come into play):

    a. In the Restoration Zone, a Restoration Contribution Reduction may be approved once certain other requisite conditions have been met.

    b. In the Temporary Improvement Zone, surplus may be utilized to provide a temporary contribution reduction (i.e., a contribution holiday), either as a stand-alone measure or in combination with other surplus utilization options (i.e., benefit improvements or surplus withdrawal).

    c. In the Permanent Improvement Zone, surplus may be utilized to permanently reduce the current contribution obligations of the employers and the members, either as a stand-alone measure or in combination with changes to benefits.

    Notwithstanding the foregoing, under the FMP the Sponsors have the discretion to, by mutual agreement, utilize surplus in any other manner.

3. Any enforceable legal right to obtain some value from any surplus pursuant to the Partners' Agreement (and FMP appended thereto) would be grounded in the law of contract. As the relevant provisions of the FMP require the Sponsors to agree upon the manner in which surplus is to be utilized, neither Sponsor has a legally enforceable right to unilaterally utilize surplus in the OTPP. As such, the provisions in the FMP that contemplate the ability for the Province to receive a financial benefit through the utilization of surplus would not, in and of themselves, give rise to a legally enforceable right.

4. Notwithstanding the foregoing, the Plan Documentation and applicable legislation give rise to the following considerations which may shape the Sponsors' expectation as to the basis upon which surplus will be utilized (and potentially lead to an expectation of equal sharing of the benefit of any surplus, at least over time):

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a. The Teachers' Act prohibits the total amount of the contributions payable by the Province (and other participating employers) to exceed the amount of contributions paid by or on behalf of active members in respect of credited service for the year (subject to certain exceptions for payment of a solvency deficiency and where there are insufficient cash and liquid assets in the fund).[3] In practice, this has typically resulted in 50/50 sharing of the regular contribution costs between the participating employers (including the Province) and plan members.

b. The history of surplus utilization after the OTPP became a jointly-sponsored plan and prior to the date that the FMP was established demonstrates a past practice of the Sponsors equally sharing (in the aggregate) the financial benefits of surplus utilization, although surplus was not shared equally each time. Since the time the FMP was established, the OTPP has not reached the requisite level of surplus such that the Sponsors could negotiate its utilization under the Temporary Improvement Zone or Permanent Improvement Zone.

c. The inability for either party to unilaterally require surplus to be utilized in a particular manner (subject to the OTF Call Right), and the requirement to negotiate and agree (or in the absence of agreement, arbitrate) presents the Sponsors with an equal opportunity to benefit from surplus utilization.

d. One could argue that the obligation to bargain in "good faith" found in the Partners' Agreement may include the obligation to take into account the "sharing" principles described elsewhere in this opinion, given that the OTPP is a jointly-sponsored plan.

5. In the event that the Sponsors cannot agree upon how surplus is to be utilized in the Restoration Zone, the Temporary Improvement Zone or the Permanent Improvement Zone, the matter can be submitted to an arbitration board of three arbitrators. Arbitration provisions are generally procedural in nature and therefore do not provide a strong foundation upon which to base parties' reasonable expectations about their substantive rights under an agreement. To resolve a dispute, the arbitration board would engage in an exercise in interpretation of the operative substantive provisions of the relevant governing documents, including any applicable statutory provisions. However, the arbitral award must meet certain mandatory conditions set forth in the Partners' Agreement. Among other things, the arbitral award is required to ensure that the contributions of the Minister and those employers who are required to contribute

[3] Teachers' Act, subsections 5(1.1), (3) and (7).

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are equal to the contributions of members (section 92(c) of the Partners' Agreement).

IV. FRAMEWORK IN THE PLAN DOCUMENTATION FOR SURPLUS UTILIZATION BY THE SPONSORS

1. Joint Sponsorship Plan Design and Cost Sharing

The OTPP qualifies as a "jointly sponsored pension plan" (**"JSPP"**) under the PBA, which has three material implications relevant to the present analysis:

1. Plan Governance – Under a JSPP, the employers (or any persons or entities who make contributions on behalf of the employers or represent the employers) and the members of the pension plan (or any representatives of the members) are jointly responsible for making all decisions about the terms and conditions of the pension plan and any amendments to the pension plan.[4]

2. Funding – The OTPP (and certain other prescribed JSPPs) are exempt from solvency funding requirements under the PBR.[5]

3. Cost Sharing – In a defined benefit pension plan which does not qualify as a JSPP, the employer is solely responsible for funding any going concern unfunded liability or solvency deficiency. Given that the OTPP qualifies as a JSPP, however, the PBA permits members to be required to make contributions in respect of any going concern unfunded liability or solvency deficiency.[6]

With respect to the cost-sharing principle referred to in #3 above, the Teachers' Act contains limitations on the contributions that the Province (and other participating employers) may make under the OTPP:

> 5(1.1) The total amount of the contributions payable by the Minister of Education and the employers who contribute under the pension plan in respect of any year shall not exceed the amount of contributions payable by or on behalf of active plan members in respect of credited service for that year.

Despite this general principle, under the Teachers' Act the Province is required to make additional contributions to the OTPP fund in the event that there are insufficient assets to

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4 PBR, subsection 3.1(1).

5 PBR, subsection 1.3.1(3).

6 See PBA, subsection 1(2) and subsection 55(4).

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make required payments out of the fund in any particular year.[7] The Province is also permitted to make additional contributions in respect of a solvency deficiency[8] (although, as noted above, solvency funding is not required under the OTPP). Notwithstanding that subsection 5(1.1) of the OTPP provides a *cap* on the Province's normal cost contribution obligation, rather than requiring 50/50 cost sharing, we understand that in practice there has been 50/50 cost sharing of the normal contribution cost under the OTPP during most periods of time since the inception of the plan.[9] The plan text itself also provides for equal contributions, at the basic level (see sections 25(1) and 26(1)).

Currently, the Sponsors are also required to mutually agree upon how any plan deficits are to be addressed.[10] While not binding upon the Sponsors, the FMP indicates that deficits may be addressed through increases to the contribution rates, lowering the amount of indexation and/or other decreases in benefits.

Joint governance and cost sharing form two of the core features of the OTPP. Consistent with the equal sharing of risk permitted under the JSPP plan design, there is a requirement for decisions relating to plan design and plan amendments to be made jointly by the Sponsors. In this regard, the FMP requires the Sponsors to negotiate and agree upon decisions relating to surplus utilization. Accordingly, the Sponsors can be said to have equal *opportunity* to benefit from surplus utilization through the negotiation process.

2. Provisions in the Legislation and Plan Documentation Relating to the Utilization of Surplus

(a) *Pension Benefits Act*

The PBA and PBR do not mandate any particular treatment of surplus that may arise in a pension plan. One must therefore look to the Teachers' Act, and to the Partners' Agreement and FMP in order to determine how surplus is dealt with under the OTPP.

(b) *Teachers' Pension Act* (Ontario)

Paragraph 10(1)3 of the Teachers' Act provides that the Minister of Education and the executive of the OTF may enter into an agreement (i.e., the Partners' Agreement) that

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7 Teachers' Act, subsection 5(3).

8 Teachers' Act, subsection 5(7).

9 See, Ontario Teachers' Pension Plan: "How Contribution Rates Have Evolved" available at: https://www.otpp.com/documents/10179/20940/-/5e471c2b-23f1-44e6-b5c1-d22e3e50dbc3/How+Contribution+Rates+Have+Evolved.pdf

10 See, for example, Section 3.09 and 3.11 of the FMP.

provides for certain matters, including: "3. The sharing of entitlement to gains or surplus under the plan and of liability for deficiencies in the pension fund by the Minister, the employers who contribute under the plan and the active plan members". This is a fundamental legislative pronouncement that the Province and the members of the plan are meant to "share" both upside (surplus) and downside (deficit) under the plan. Although it is not an express statement of 50/50 sharing, it would presumably inform the expectations of the Sponsors regarding how any surpluses are to be utilized.

(c) Partners' Agreement and FMP

While the Partners' Agreement itself does not address the utilization of surplus, the notion that the Sponsors have "agreed to establish a partnership" for the purposes of designing and administering the OTPP and managing the OTPP fund[11] is reinforced throughout the Partners' Agreement. For example, Section 4 of the Partners' Agreement provides that "[t]he partnership established by this agreement is intended to govern all aspects of the plan and the fund…" Similarly, Section 8 of the Partners' Agreement notes that the partners are jointly responsible for "designing the plan structure, setting the benefits of the plan, developing new policy, deciding what the contribution rate will be, what the funding levels, margins and contingency reserves will be, making changes to the plan, this agreement or other plan documents, deciding whether or not to file a valuation more frequently than required by the *Pension Benefits Act*, appointing the Board, and defining the role of the Board". The expectations of the Sponsors regarding how surpluses are to be utilized are presumably informed by the commitment noted above for the partnership established "to govern all aspects of the plan and the fund".

The procedures pursuant to which surplus may be withdrawn or utilized from the OTPP are identified in the FMP (which forms Appendix "A" to the Partners' Agreement).

We understand that the FMP was first established in March 2003, as a supplement to the Partners' Agreement, to provide a guidance framework to the Sponsors for decision-making when the OTPP has a funding surplus or shortfall. Prior to the creation of the FMP, the OTPP was considered fully funded (and surplus could be utilized, including through permanent benefit improvements) where assets equalled at least 100% of liabilities. The FMP is intentionally conservative through prioritizing the preservation of assets until a sufficient surplus "cushion" has been built to justify the utilization of surplus for contribution reductions or benefit improvements.

The FMP contemplates five "funding zones", each defined by a range. These funding zones provide the Sponsors with guidance as to when, based upon the funding level of the plan, it may be appropriate to (amongst other things) increase or decrease benefits, raise

[11] Partners' Agreement, section 1.

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or lower contribution rates or conserve assets. The Sponsors always have the discretion, however, to agree to pursue a course of action that is not expressly provided for in the FMP. As will be discussed below, the ultimate discretion of the Sponsors is reflected throughout various provisions of the FMP.[12]

In the context of plan surpluses, three funding zones are of relevance, each of which is discussed below in greater detail.

(i) Restoration Zone

Article III of the FMP (Funding Zone – Restoration) (the **"Restoration Zone"**) is the "fully funded" zone where assets equal at least the liabilities, determined on the basis set out in the FMP. It is our understanding that the OTPP is currently in the Restoration Zone.

In the Restoration Zone, benefits cannot be improved and contributions cannot be reduced until certain actions are taken to restore past benefit reductions or past contribution increases. In this regard, Section 3.06 of the FMP provides the following:

> Section 3.06 *Application of Restoration Basis Excess*: For purposes of clarity, excesses identified pursuant to Section 3.05 shall be applied in the following order, provided that the partners reserve the right to reconsider such application having regard to the contribution rate and benefits then in effect, prevailing economic circumstances and other relevant factors:
>
> (a) *Bring Escalated Adjustments to 50% for Post-2013 Service*: to provide escalated adjustments up to 50% of the CPI adjustment in respect of service accrued after 2013 for the period covered by the valuation, and assumed thereafter at the same rate;
>
> (b) *Bring Escalated Adjustments to 100%*: to provide escalated adjustments up to 100% of the CPI adjustment for the period covered by the valuation, and assumed thereafter at the same rate;
>
> (c) *Restore Escalated Adjustments for Post-2013 Years*: to provide escalated adjustments to increase, to the extent possible, the current accumulated adjustment ratio for each year after 2013, to the current accumulated adjustment ratio for the period from 2010 to 2013, beginning with the first year in which current escalated adjustments were less than 50% of the run-rate escalated adjustments;

[12] See, for example, the opening words of Section 3.06 of the FMP, which section provides for various uses of surplus: "… provided that the partners reserve the right to reconsider such application having regard to the contribution rate and benefits then in effect, prevailing economic circumstances and other relevant factors". See also Section 4.05 and 5.05.

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> (d) *Restore Escalated Adjustments for Post-2009 Years*: to provide escalated adjustments to increase, to the extent possible, the current accumulated adjustment ratio for each year after 2009 to the run-rate accumulated adjustment ratio, beginning with the first year in which current escalated adjustments were less than run-rate escalated adjustments;
>
> (e) *Provide Benefit Increases or Contribution Rate Reductions*: to provide the following:
>
> (i) an increase in benefits, where the present value of current benefits is less than the present value of run-rate benefits,
> (ii) a reduction in contribution rates, where the present value of current contributions exceeds the present value of basic contributions, or
> (iii) a combination of (i) and (ii).

In summary, the Restoration Zone allows for surplus to be utilized to "restore" foregone indexation (Sections 3.06(a)-(d))[13] and then to either increase benefits to the "run-rate benefit" level (i.e., the long-term target level) or to lower contributions to the basic target rate (or a combination of these two options) (Section 3.06(e)). While the FMP contemplates that the actions will typically be taken sequentially (i.e., starting with Section 3.06(a) and ending with the actions in Section 3.06(e)), the Sponsors are required to first agree to the actions taken under Section 3.06 and have the discretion to apply the actions in a different order or to take different action (or to take no action to utilize the surplus).[14]

As noted, under Section 3.06(e), surplus can be utilized to reduce contribution rates "where the present value of current contributions exceed the present value of basic contributions" (the **"Restoration Contribution Reduction"**). We understand that in 2001 the Sponsors agreed to a 1.1% increase to both member/employer contributions (phased in over a three year period) to address a funding deficit in the OTPP and that the Restoration Contribution Reduction under Section 3.06(e) would permit these additional contributions to be eliminated, thus restoring contributions to the "basic" level.

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[13] This is achieved by first increasing go-forward indexing to 50% for the post-2013 service period, then to 100% on all post-2009 service periods and next, by restoring current pension amounts to a certain prescribed level starting with the years where indexing was less than 50% until all years of partial indexation are restored to the same level and then by restoring indexation to 100% for all service periods.

[14] As noted above, pursuant to Section 3.06 of the FMP, "the partners reserve the right to reconsider such application having regard to the contribution rate and benefits then in effect, prevailing economic circumstances and other relevant factors…"

The 2013 Term Sheet sets out an agreement between the Sponsors that is in effect from December 31, 2012 to December 30, 2017 (the **"Freeze Period"**), the terms of which are reflected in the FMP. Under Section 3.08 of the FMP, there are certain limits (relating to the funded status of the OTPP) on the ability to make escalated adjustments or to improve benefits pursuant to Section 3.06 during the Freeze Period.

As noted below, no action can be taken under the Temporary Improvement Zone (as defined below) or the Permanent Improvement Zone (as defined below) until all restorative actions under Section 3.06 of the FMP have been provided for (subject to the general discretion of the Sponsors to deviate from the guidelines set out in the FMP).

(ii) Temporary Improvement Zone

Article IV of the FMP (Funding Zone – Temporary Improvements) (the **"Temporary Improvement Zone"**) was added to the FMP in March 2015 and allows for: (i) temporary contribution decreases (a contribution holiday), (ii) surplus distribution, and/or (iii) benefit improvements, provided in each case that the plan's funding level reaches thresholds set out in the FMP.

We understand that in this zone the plan is considered well-funded and able to afford temporary changes, so long as they do not increase the long-term cost of the OTPP. Surplus cannot be utilized under the Temporary Improvement Zone until the Sponsors have provided for all of the changes specified in Section 3.06 of the Restoration Zone (again, subject to the general discretion of the Sponsors to deviate from the guidelines set out in the FMP).[15]

In all cases the Sponsors' prior agreement is required in order for there to be a temporary contribution decrease, a surplus distribution or a benefit improvement.[16] Where the Sponsors agree to a change that would result in surplus being distributed or utilized for a temporary benefit improvement, the Sponsors are required to enter into a written agreement "governing the manner in which the contributions by the Minister and employers may be adjusted to offset any surplus distribution or temporary improvement of benefits that is reflected in the value of the liabilities."[17] We understand that this provision is a recognition of the partnership of the Province and the OTF, and requires the Sponsors to enter into an agreement addressing the possible value to be obtained by the Province where there is a decision to provide value to the members (but the provision is not a guarantee that such value will in fact be provided to the Province).

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15 FMP, section 4.03

16 FMP, section 4.05.

17 FMP, section 4.06

We note that, as a temporary measure, the OTF has "first call" rights on 100% of the surplus disclosed in valuation report with a valuation date after December 30, 2017, up to certain amounts as set out in the FMP (the **"OTF Call Right"**).[18] The 2013 Term Sheet indicates that "[t]his is a one-time arrangement intended to compensate Plan members for absorbing 100% (rather than 50%) of funding shortfalls arising in the government initiated Freeze Period and is without prejudice or precedent for any future situation." In other words, this one-time opportunity to benefit from surplus utilization is directly linked to the asymmetrical assumption of risk by OTPP plan participants during the Freeze Period. In light of the Freeze Period and the OTF Call Right, it is our understanding that no actions under the Temporary Improvement Zone will be permitted until the Freeze Period has ended and the OTF Call Right in Article VI of the FMP has been satisfied.[19] It is our understanding that the quantum of the OTF Call Right is not presently expected to be material.

(iii) Permanent Improvement Zone

Where the surplus reaches certain levels as set out in the FMP, Article V of the FMP (Funding Zone – Permanent Improvements) (the **"Permanent Improvement Zone"**) will apply. We understand that in the Permanent Improvement Zone adequate funding security is considered to exist to support permanent changes (either an improvement in benefits or a reduction in contributions).

Under the FMP framework, these changes can be introduced only once the Sponsors have already provided for the changes specified in Section 3.06 (i.e., no further action to restore benefits remains to be taken under the Restoration Zone), subject to the general discretion of the Sponsors to deviate from the guidelines set out in the FMP.[20]

The Sponsors are required to mutually agree to any change made in the Permanent Improvement Zone. As in the Temporary Improvement Zone, where the Sponsors have agreed to a change which would result in an improvement to member benefits, the Sponsors would be required to enter into a written agreement "governing the manner in which the contributions by the Minister and employers may be adjusted to offset any change in current benefits that is reflected in the value of the liabilities."[21]

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[18] FMP, section 6.03.

[19] See FMP, sections 4.05 and 4.09.

[20] FMP, section 5.03.

[21] FMP, section 5.05(b).

In light of the Freeze Period and the OTF Call Right, it is our understanding that no actions under the Permanent Improvement Zone will be permitted until the Freeze Period has ended and the OTF Call Right in Article VI of the FMP has been satisfied.[22]

3. History of Surplus Utilization

The history of OTPP surplus utilization from the time the OTPP became a jointly-sponsored pension plan[23] to the date that the FMP was established (in March 2003) demonstrates a past practice of the Sponsors equally sharing (in the aggregate) the benefits of surplus utilization:

Valuation Date	Surplus/(Deficit)	OTF	Ontario Government	Surplus Remaining
1990	$(7.8 billion) unfunded liability	Increased contributions by 1% to 8.9%	Agreed to make a series of special payments to eliminate the unfunded liability and match increased contributions	Special payments considered an asset bringing the plan to a $0 surplus
1993	$1.5 billion	$325 million to offset social contract days	Eliminated special payments for $1.2 billion saving	$0
1996	$0.7 billion	$0.6 billion for benefit improvements and RCA contributions	N/A	$0.1 billion
1998	$6.8 billion	$2.2 billion for benefit improvements	$4.6 billion to reduce the value of remaining special payments	$0
1999	$3.5 billion	N/A	$3.5 billion to reduce the value of remaining special payments	$0
2001	$6.8 billion	$6.2 billion for benefit improvements	N/A	$0.6 billion
2002	$1.9 billion	Sponsors agreed not to make any changes to benefits or contributions		$1.9 billion

[22] See FMP, sections 5.05 and 5.08.

[23] The Partners' Agreement is dated July 15, 1991.

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Total		**$9.3 Billion**	**$9.3 Billion**	

* Source: Ontario Teachers' Pension Plan Board "Report on Funding" (April 2002)

Although surplus utilization prior to 2003 may not have been 50/50 each time, from 1990 to 2002 the aggregate value obtained by each of the Sponsors was equal. In certain instances where the Province received a disproportionate share of the financial benefits from surplus utilization, a commitment was made to the OTF that they would receive future surplus available for utilization. In 1998, $6.8 billion in surplus was utilized to cause a $2.2 billion benefit improvement and to provide the Province with a $4.6 billion reduction in the value of special payments owed by the Province. As part of this negotiation, the OTF and the Province agreed to allow future surplus to be utilized to eliminate the Province's remaining special payments (which resulted in $3.5 billion surplus being utilized in 1999 to reduce the value of the Province's remaining special payments) and a commitment was made for the next $6.2 billion in surplus to be available to OTF for benefit improvements (such surplus being utilized for benefit improvements in 2001).[24]

As noted above, the FMP was introduced in March 2003 to provide a guidance framework to the Sponsors when the OTPP has a funding surplus or shortfall. It is our understanding that there have been at least 2 material amendments to the FMP framework since its introduction. Below is a summary of the key funding decisions since the introduction of the FMP:

Year	Valuation Status and Key Decisions
2003	$1.5 billion surplus; no changes to benefits or contribution levels. Funding Management Policy adopted by plan sponsors.
2005	A preliminary $6.1 billion shortfall was resolved, leaving plan with a $0.1 billion surplus. Shortfall resolved with special contribution rate increases, totalling 3.1% of base earnings by 2009 for teachers, the Ontario government and other employers. OTF used the $76 million contingency reserve set aside in 2001 to reduce contribution rate increases for members in 2008.
2008	A preliminary $12.7 billion shortfall was resolved with the introduction of conditional inflation protection for pension benefits earned after 2009 and an increase in the basic contribution rate for members and the government to 9% from 8%. Employers agree to make special payments equal to any annual pension increases retirees forgo to a maximum of 50% missed inflation.

[24] See Ontario Teachers' Pension Plan, "Key Funding Decisions Since 1990", available at: https://www.otpp.com/documents/10179/765840/-/d4e2fea5-624d-420f-af15-e2daf9bc2711/Key+Funding+Decisions.pdf

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2009	A preliminary $2.5 billion shortfall was resolved primarily by assuming a slightly higher long-term rate of return on investments: yield on real-return bonds plus 1.5%, versus real-return bonds plus 1.4%. Other minor changes made to assumptions to reflect recent plan experience.
2011	A preliminary $17.2 billion shortfall was resolved with a 1.1% contribution rate increase (phased in over three years), slightly smaller annual cost-of-living increases for teachers who retired after 2009, and recognition of current contribution rate as the permanent base rate.
2012	$9.6 billion preliminary shortfall adjusted to reflect changes in mortality assumptions and impact of two-year freeze on teachers' salaries. 2012 shortfall resolved by making inflation protection for pension credit earned after 2013 fully conditional on plan's funded status and providing slightly smaller pension increases, beginning in 2014, for members who retired after 2009. These changes enabled the plan to assume a slightly higher discount rate. The changes left the plan with a $200 million surplus at Jan. 1, 2012.
2014	$5.1 billion preliminary funding surplus used to boost pensions of members who retired after 2009 to the level they would have been at if full inflation protection had been provided each year since they retired. The surplus funds were also used to raise conditional inflation protection to 60% of the increase in the cost of living for the portion of retirees' pensions earned after 2009. Both changes are effective with January 2015 pension payments.
2015	Some of the $6.8 billion preliminary funding surplus was used to boost pensions of members who retired after 2009 to the level they would have been at if full inflation protection had been provided on January 1, 2015. The surplus funds were also used to raise conditional inflation protection for pension credit earned after 2009 to 70% from 60% of the increase in the cost of living. Both changes were effective January 2016. In addition, some surplus funds were reserved to help facilitate stability in contribution and benefit levels should a future funding valuation show a decline in assets or increase in pension costs.

* Source: Ontario Teachers' Pension Plan, "Key Funding Decisions Since 1990"

In September 2016, the Sponsors announced that a portion of the $13.2 billion in funding surplus would be utilized to restore inflation increases, with the remaining surplus funds to be reserved "to help facilitate stability in contribution and benefit levels should a future funding valuation show a decline in assets or increase in pension costs".[25]

[25] Ontario Teachers' Pension Plan, "Funding News", available at: https://www.otpp.com/corporate/plan-funding/funding-updates. We assume that a written agreement was reached by the Sponsors in this regard; however, we have not been provided with a copy of such agreement.

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In summary, surplus has been utilized three times since the FMP was introduced – in each of 2014, 2015 and 2016 escalated adjustments were provided to increase the pensions of members who had retired after 2009. As noted above, the OTPP is currently in the Restoration Zone which, pursuant to Section 3.06, prioritizes the utilization of surplus to "restore" foregone indexation before any other actions are taken with respect to surplus. In other words, since the FMP was established the OTPP has not reached a level of surplus under the FMP which would allow for the Sponsors to enter into an agreement regarding its utilization under the Temporary Improvement Zone or the Permanent Improvement Zone.

It is also notable that, consistent with the 50/50 cost sharing principle under the plan, there is recent precedent for the Sponsors agreeing to equally share in the cost of funding a plan deficit (as with the case of surplus utilization, the Sponsors are required to mutually agree upon how to address any funding deficit in the OTPP). Specifically, the preliminary $17.2 billion shortfall identified in 2011 was resolved through a 1.1% increase to the contribution rate for both the participating employers and plan members (phased in over a three-year period).

Given the historical use of surplus under joint sponsorship of the OTPP prior to the adoption of the FMP, and the fact that over that time the Sponsors shared equally in surpluses, it may be that the Sponsors will expect to also share future surpluses on an equal basis, at least over time. In any event, based on the Plan Documentation, both parties will have opportunity to benefit from surplus utilization through the negotiation process.

V. LEGAL RIGHT OF THE PROVINCE TO UNILATERALLY UTILIZE SURPLUS

As discussed in Part IV of this opinion, the Plan Documentation allows for the Sponsors to agree to utilize surplus in a variety of circumstances, depending on the funded status of the OTPP. These surplus utilization options include the following avenues through which the Province may potentially receive a financial benefit through the utilization of surplus:

1. In the Restoration Zone, a Restoration Contribution Reduction may be agreed upon, once certain other requisite conditions have been met.

2. In the Temporary Improvement Zone, surplus may be utilized to provide a temporary contribution reduction (a contribution holiday), either as a stand-alone measure or in combination with other surplus utilization options (i.e., benefit improvements or surplus withdrawal).

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3. In the Permanent Improvement Zone, surplus may be utilized to permanently reduce the current contribution obligations of the employers and the members, either as a stand-alone measure or in combination with changes to benefits.

Notwithstanding the foregoing, as noted above, the Sponsors have the discretion to, by mutual agreement, utilize surplus in any other manner agreed upon. (For example, Section 5.05 which relates to the Permanent Improvement Zone provides that "the partners may apply all or part of the [surplus] to change current benefits, current contributions, or both", subject to certain conditions.)

Any enforceable legal right of the Province to utilize surplus pursuant to the Partners' Agreement (and FMP appended thereto) would be grounded in the law of contract, the Partners' Agreement and the appended FMP being a contract between the Sponsors. A contract is an agreement "…which gives rise to an obligation that may be enforced in the courts."[26] It is our view that the relevant provisions in the Partners' Agreement[27] that contemplate the ability for the Province to receive a financial benefit through the utilization of surplus do not, by themselves, give rise to a legally enforceable right. Such a legally enforceable right would only arise by agreement between the Sponsors, either through negotiations or mediation, or if an order were issued by a board of arbitration as contemplated by the dispute resolution mechanisms found in the Partners' Agreement (see Section VI of this Opinion for further discussion of the impact of binding arbitration on the Sponsors' legal rights).

In this regard, the FMP can be thought of as being similar to an "agreement to agree," which does not create an enforceable legal interest in relation to the utilization of surplus.[28] Because there are a number of different options that are contemplated as to how excess funds could potentially be allocated (e.g. provide for a benefit improvement, provide for a surplus distribution, or modify the contributions), and in light of the fact that the utilization of surplus is subject to the ultimate discretion of the Sponsors, it is unlikely that a court would find the Province to have a legally enforceable right with respect to any particular application of surplus, absent the mutual agreement of the Sponsors to utilize surplus in such manner.

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[26] CED – Contracts – I Basis of Contract – 1 – Contract Defined.

[27] Article III, Section 3.06; Article IV, Section 4.05; and Article V, Section 5.05.

[28] For a statement of the principle that an "agreement to "agree" is not an enforceable legal interest, see, for example: *Simpson v. Canada (Attorney General)*, 2011 ONSC 5637 at para. 60 citing *Ward v. Ward*, 2011 ONCA 178 and *Bawitko Investments Ltd. v. Kernels Popcorn Ltd.*, 1991 CanLII 2734 (Ont CA). See also G. H. L. Fridman, *The Law of Contract in Canada*, 6th ed (Toronto: Carswell Publishing, 2011) at 23 where the author states "There cannot be a contract to enter into a contract. Nor can there be a contract to negotiate, i.e., an agreement to agree." (**"*Fridman*"**).

To draw another analogy in contract law, the terms of the FMP can be thought of as lacking in "sufficient certainty"[29] and cannot be said to be capable of "… the bringing of legal proceedings to compel observance of… the terms of a contract…"[30] in relation to an alleged obligation to apply excess funds to a particular purpose.

That being said, when a valuation is prepared to be filed and the Sponsors have to discuss the treatment of a surplus disclosed in the valuation, section 74 of the Partners' Agreement requires the Sponsors "to bargain in good faith and make every reasonable effort to reach an agreement on the changes, if any, that will be made to the plan". One might therefore argue that that obligation of good faith may include the obligation to take into account the "sharing" principles described elsewhere in this opinion, given that the OTPP is a jointly-sponsored plan.

As will be discussed below, where the Sponsors are unable to agree upon the utilization of surplus pursuant to the negotiation/mediation processes set forth in the Partners' Agreement, there is an ability for the Sponsors to submit the matter to arbitration. The issuance of an order by an appointed board of arbitration regarding the use of surplus funds under the OTPP would create a legally enforceable right, as the submission to the board of arbitration would constitute a proceeding under the *Arbitrations Act* – as specified in paragraph 87 of the Partners' Agreement – that is enforceable by a court.[31]

VI. IMPACT OF BINDING ARBITRATION ON THE SPONSORS' LEGAL RIGHTS

Section 8.01 of the FMP provides the following:

> Section 8.01 Unless the partners mutually agree to the contrary, they shall follow the procedures described in paragraphs 74 to 100 when determining the plan changes arising from Section 3.07.

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29 *Fridman*, *supra* note 28 at 20 where the author writes "Uncertainty about some specific obligation may suffice to make impossible the conclusion that there is a contract in effect between the parties."

30 Daniel Greenberg, ed, *Jowitt's Dictionary of English Law*, 1st ed (London: Thomson Reuters, 2010) *sub verbo* "Enforce" where it states, "[t]here are two stages – before and after judgment – to both of which the term "enforcement" can be applied. (i) Before judgment, enforcement describes the bringing of legal proceeds to compel observance of, for example, the terms of a contract…". See also *The Dictionary of Canadian Law*, 3d ed, *sub verbo* "enforceable" citing *U.N.A. v Alberta (Attorney General)*, 192 CarswellAlta 10 at para 55 that enforceable refers to a process "… to enable measures to be taken to secure compliance…".

31 Section 50(1) of the *Arbitration Act, 1991*, SO 1991, c 17 states "A person who is entitled to enforcement of an award made in Ontario or elsewhere in Canada may make an application to the court to that effect."

We first note that the mediation/arbitration process would not be triggered unless there is an actuarial valuation to be filed with the regulators that requires the Sponsors to agree on how any surplus or deficit is to be addressed. If a valuation is prepared in a year when no filing is required (filings generally only being required every three years), and the Sponsors do not agree to file the valuation, then the Sponsors do not necessarily have to address funding and benefit issues and therefore no negotiations may occur.

The processes in paragraphs 74 to 100 of the Partners' Agreement that are referred to in Section 8.01 of the FMP provide, amongst other things, for the following:

- The Sponsors are required to meet to bargain in good faith and make every reasonable effort to reach an agreement on the changes, if any, that will be made to the plan (section 74);

- The parties may at any point appoint a mediator by agreement of the parties or by a method to which they agree at that time (section 77);

- If the parties agree, the mediator may be appointed as a mediator/arbitrator in which case the appointee will decide on the process and time frame for conducting mediation/arbitration (section 80);

- Within 30 days of appointment, the mediator will prepare a confidential report setting out his or her views on the positions of the two partners and containing a recommendation (section 82);

- If the partners do not accept the report within 14 days of its being delivered to them it will be destroyed and an arbitration board will be appointed (section 84);

- This agreement together with a referral to a board of arbitration constitutes a submission under the *Arbitration Act, 1991*[32] (section 87);

- The board of arbitration in making an award will consider prevailing economic conditions and the overall state of the provincial economy (section 91);

- The award made by the board of arbitration, must comply with certain prescribed requirements, including to "provide that the contributions of the Minister and those employers who are required to contribute are equal to the contributions of members" (section 92(c));

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[32] SO 1991, c. 17 (the "***Arbitration Act***").

- The Board will prepare a final valuation of the plan which implements all of the changes to the plan which have been awarded or agreed to by the partners (section 94);

- The Sponsors may agree to change the procedure described in this agreement, either for one round of negotiations or for all future negotiations; and

- Pursuant to Section 8.02 of the FMP, certain limitations on amendments set out in the FMP also apply to an award made by a board of arbitration (generally, these limitations are intended to ensure that the plan is adequately funded after providing for the utilization of surplus).

The Partners' Agreement and the FMP contain no general arbitration clause governing all disputes relating to the agreement, although Section 14 of the Partners' Agreement provides for the possibility of voluntary arbitration. We are not aware of any instance where the arbitration provisions have been invoked by the parties since the FMP was established. It is not immediately clear whether disputes relating to the utilization of surplus under Article IV of the FMP (i.e., the Temporary Improvement Zone) and under Article V of the FMP (i.e., the Permanent Improvement Zone) would be subject to arbitration.[33] It is our understanding from discussions with OTPP's internal legal counsel, however, that the arbitration provisions in the FMP would be expected to apply to disputes relating to the utilization of surplus under each of these provisions.

Where a matter has been submitted to arbitration, case law has established that the agreement between the parties that is being arbitrated is the fundamental source of subject matters that come within the arbitration board's jurisdiction.[34] The parties are free to design their own procedures, including setting the scope of the arbitration board's jurisdiction and specifying the potential outcomes of the arbitration (subject to certain default appeal rights and mandatory grounds to set aside an award under the *Arbitration Act*). The arbitration board is empowered to make binding decisions because of the

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[33] On the one hand, Section 8.01 of the FMP provides for the procedures in the Partners' Agreement relating to arbitration to apply "when determining the plan changes arising from Section 3.07". This may suggest that only disputes relating to the utilization of surplus under Article III (i.e., the Restoration Zone) can be arbitrated. On the other hand, Section 8.03 of the FMP provides that "Subject to the 2013 Term Sheet, nothing in Article II to Article IX affects the timing of the triennial negotiation, mediation and arbitration process referred to in paragraph 72 to 100", which may suggest that any agreement relating to the utilization of surplus, including under Article IV or Article V of the FMP, may be subject to arbitration (when a valuation is to be filed the parties have to agree on how any surplus – including surplus in the Temporary Improvement Zone and Permanent Improvement Zone, if any – will be used).

[34] See for example: *Desputeaux v. Éditions Chouette* (1987) Inc., [2003] 1 SCR 178, para. 22.

arbitration agreement, including any limitations on that authority. Canadian courts have traditionally granted deference to arbitration awards.

Arbitration provisions are generally procedural in nature and therefore do not provide a strong foundation upon which to base parties' reasonable expectations about their substantive rights under an agreement. To resolve a dispute, the arbitration board would engage in an exercise in interpretation of the operative substantive provisions of the relevant governing documents, including any applicable statutory provisions. However, as noted above, under section 92 of the Partners' Agreement, the arbitral award must meet certain mandatory conditions. Among other things, the arbitral award is required to provide that the contributions of the Minister and those employers who are required to contribute are equal to the contributions of members (section 92(c) of the Partners' Agreement). The arbitration board does not have discretion to ignore this mandatory provision, although the provision would need to be given effect within the context of the relevant documents and applicable statutes, interpreted as a whole, and other relevant factors, such as past conduct of the parties. In general, however, the prospect of arbitration would not put the Province in any stronger position vis-à-vis its right to obtain value from any plan surplus.

Yours truly,

Osler, Hoskin & Harcourt LLP
JS/DR/JM:jm

Draft

RE_ opinion .rtf

From: Steele, Jana [JSteele@osler.com]
To: Dyczkowski, Marilyn (TBS) [Marilyn.Dyczkowski@ontario.ca]; Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
Subject: RE: opinion
Date: Tuesday, September 20, 2016 08:29:50

Thanks Marilyn. The issue is that we have been working under the understanding that it was one retainer and booking our time together under one retainer. As I mentioned below, we can try to divide the time looking back, but it may not be accurate.
Len, please let us know your preference.

-----Original Message-----
From: Dyczkowski, Marilyn (TBS) [mailto:Marilyn.Dyczkowski@ontario.ca]
Sent: Tuesday, September 20, 2016 8:25 AM
To: Steele, Jana <JSteele@osler.com>; Hatzis, Len (TBS) <Len.Hatzis@ontario.ca>
Subject: RE: opinion

Hi there. I sent out separate retainer letters yesterday - one to you and the other to Jacqueline Code. Jacqueline's retainer letter was specifically for the opinion for the statutory interpretation of the AG Act. Both contained the conflicts language which you had previously provided and originally included in the retainer letter on the RCA matter. Hope this clarifies any concerns.

Thank you

Marilyn Dyczkowski
EA to the Legal Director
Ministry of the Attorney General | Legal Services Branch |Treasury Board Secretariat 9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3
Phone: 416-326-8385 Fax: 416-325-9404

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-----Original Message-----
From: Steele, Jana [mailto:JSteele@osler.com]
Sent: September 20, 2016 8:21 AM
To: Hatzis, Len (TBS)
Cc: Dyczkowski, Marilyn (TBS)
Subject: Re: opinion

Hi Len. The main issue is my and the research associate's time, which has all been combined. We can go back and try to divide the time but it may not be accurate.
We would open a new matter but would need similar conflicts language in any retainer letter.
Let me know. Jana.

Sent from my iPhone

> On Sep 20, 2016, at 8:04 AM, Hatzis, Len (TBS) <Len.Hatzis@ontario.ca> wrote:
>
> Jana
> I am advised that it would be helpful if you and Jacqueline and your respective teams could issue separate invoices for your respective work to align with the 2 retainers. Is that possible pls?
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> Original Message
> From: Hatzis, Len (TBS)
> Sent: Monday, September 19, 2016 10:28 PM
> To: Steele, Jana
> Cc: Dyczkowski, Marilyn (TBS)
> Subject: Re: opinion
>
>
> Hi jana
> Will look for that language in the morning. Thanks
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> Original Message
> From: Steele, Jana
> Sent: Monday, September 19, 2016 10:19 PM
> To: Hatzis, Len (TBS)
> Subject: Re: opinion
>
>
> Hi Len. I will try to join the call tomorrow as well. I have been discussing the other opinion with Jacqui too - she just sent me a draft for review.
> Also wanted to let you know that we have been dealing with both opinions under the one retainer matter, for which we received internal approval for the 500 blended rate. I sent along a retainer letter to you with our needed conflicts language that was intended to apply to both opinions. Let me know if you want to discuss the language in the retainer letter.
> Jana.
>
> Sent from my iPhone
>
>> On Sep 19, 2016, at 10:04 PM, Hatzis, Len (TBS) <Len.Hatzis@ontario.ca> wrote:
>>
>> Douglas
>> No problem - we intend to send some comments by email tonight for
>> your consideration re incorporation into draft. Hopefully these
>> comments make sense in your view and can be accommodated to the
>> extent possible for tomorrow morning. Happy to discuss tomorrow
>> morning
>>
>> Sent from my BlackBerry 10 smartphone on the Rogers network.
>> Original Message
>> From: Rienzo, Douglas
>> Sent: Monday, September 19, 2016 8:58 PM
>> To: Hatzis, Len (TBS)
>> Cc: Marin, Jon; Kaufman, Paul (TBS); Steele, Jana
>> Subject: Re: opinion
>>
>>
>> Can we chat in the morning, Len?
>>

>>> On Sep 19, 2016, at 8:47 PM, Hatzis, Len (TBS) <Len.Hatzis@ontario.ca> wrote:
>>>
>>> Can we chat with you later this evening before you look to finalize?
>>>
>>> Sent from my BlackBerry 10 smartphone on the Rogers network.
>>> From: Hatzis, Len (TBS)
>>> Sent: Monday, September 19, 2016 7:59 PM
>>> To: Rienzo, Douglas
>>> Cc: Marin, Jon; Kaufman, Paul (TBS); Steele, Jana
>>> Subject: Re: opinion
>>>
>>>
>>> Thanks douglas
>>> I need to review with my clients and will be back to you.
>>>
>>> Sent from my BlackBerry 10 smartphone on the Rogers network.
>>> From: Rienzo, Douglas
>>> 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
>>> [cid:image001.gif@01D212A8.CC388EB0]
>>>
>>> Douglas Rienzo
>>> Partner, Pensions & Benefits
>>> Chair, Diversity Committee
>>>
>>>
>>>
>>> 416.862.5683
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>>> Osler, Hoskin & Harcourt LLP
>>> Box 50, 1 First Canadian Place
>>> Toronto, Ontario, Canada M5X 1B8
>>>
>>> [cid:image002.gif@01D212A8.CC388EB0]<http://www.osler.com/>

>>>
>>> [2016%20diversity-english]
>>>
>>>
>>>
>>> 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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RE_ opinion .rtf

From: Kaufman, Paul (TBS) []
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]; Rienzo, Douglas [DRienzo@osler.com]
CC: Marin, Jon [jomarin@osler.com]; Steele, Jana [JSteele@osler.com]
Subject: RE: opinion
Date: Monday, September 19, 2016 22:25:17

Douglas, per Len's email, here are our comments:

Page 2 – para 4 of background – our client has advised that this contains some factual inaccuracies – can this paragraph be corrected to provide as follows: “The Office of the Auditor General has communicated that because the Province does not have the legally enforceable right to unilaterally access the assets of the Plans, and in the absence of that right, because the Province does not have an agreement in place with the joint sponsors as of March 31, 2016 with respect to how the surplus would be utilized such that it would provide a benefit to the Province, the pension assets as presented in the Province's consolidated financial statements should be removed.”

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 5 – paragraph (a) – third last line – use of the word “typically” – are you using that because you are aware of situations where the split hasn’t been 5/50?

Page 12 – is the discussion about the ‘call right’ really relevant to the discussion, given that the quantum is not expected to be material?

Page 16 – last paragraph before section V – can “it may be that” in the fourth last line be made any stronger?

Page 17/18 - 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 necessary? if the point here is that the FMP does not provide a specific right to utilize the surplus in a particular way (i.e. a unilateral right) that is 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? Also, consistent with the heading for section V, is it possible to use the term “unilateral” in connection with enforceable legal rights?

Page 20/21 – we are wondering if the last two paragraphs are really necessary to the opinion, and if so, if there is any way that the persuasive value of past practice on any potential arbitration process could be referenced here?

Paul Kaufman
Counsel
Ministry of the Attorney General | Legal Services Branch |Treasury Board Secretariat
9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3
Phone: 416-327-7012 Fax: 416-325-9404

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-----Original Message-----
From: Hatzis, Len (TBS)
Sent: September-19-16 10:04 PM
To: Rienzo, Douglas
Cc: Marin, Jon; Kaufman, Paul (TBS); Steele, Jana
Subject: Re: opinion

Douglas
No problem - we intend to send some comments by email tonight for your consideration re incorporation into draft. Hopefully these comments make sense in your view and can be accommodated to the extent possible for tomorrow morning. Happy to discuss tomorrow morning

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Rienzo, Douglas
Sent: Monday, September 19, 2016 8:58 PM
To: Hatzis, Len (TBS)
Cc: Marin, Jon; Kaufman, Paul (TBS); Steele, Jana
Subject: Re: opinion

Can we chat in the morning, Len?

> On Sep 19, 2016, at 8:47 PM, Hatzis, Len (TBS) <Len.Hatzis@ontario.ca> wrote:
>
> Can we chat with you later this evening before you look to finalize?
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Hatzis, Len (TBS)
> Sent: Monday, September 19, 2016 7:59 PM
> To: Rienzo, Douglas
> Cc: Marin, Jon; Kaufman, Paul (TBS); Steele, Jana
> Subject: Re: opinion
>
>
> Thanks douglas
> I need to review with my clients and will be back to you.
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Rienzo, Douglas
> 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
> [cid:image001.gif@01D212A8.CC388EB0]
>
> Douglas Rienzo
> Partner, Pensions & Benefits
> Chair, Diversity Committee
>
>
>
> 416.862.5683
>
> DIRECT
>
> 416.862.6666
>
> FACSIMILE
>
> drienzo@osler.com
>
>
>
>
> Osler, Hoskin & Harcourt LLP
> Box 50, 1 First Canadian Place
> Toronto, Ontario, Canada M5X 1B8
>
> [cid:image002.gif@01D212A8.CC388EB0]<http://www.osler.com/>
>
> [2016%20diversity-english]
>
>
>
> 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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RE_ opinion.rtf

From: Steele, Jana [JSteele@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
CC: Marin, Jon [jomarin@osler.com]; Rienzo, Douglas [DRienzo@osler.com]; Kaufman, Paul (TBS) [Paul.Kaufman@ontario.ca]; Dyczkowski, Marilyn (TBS) [Marilyn.Dyczkowski@ontario.ca]
Subject: RE: opinion
Date: Friday, September 16, 2016 09:46:29
Attachment 1: image001.gif
Attachment 2: image002.gif
Attachment 3: image003.png

Sure.

From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Friday, September 16, 2016 9:45 AM
To: Steele, Jana <JSteele@osler.com>
Cc: Marin, Jon <jomarin@osler.com>; Rienzo, Douglas <DRienzo@osler.com>; Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca>; Dyczkowski, Marilyn (TBS) <Marilyn.Dyczkowski@ontario.ca>
Subject: RE: opinion

Sorry – can we do 1015 pls

From: Steele, Jana [mailto:JSteele@osler.com]
Sent: September 16, 2016 9:40 AM
To: Hatzis, Len (TBS)
Cc: Marin, Jon; Rienzo, Douglas
Subject: opinion

Are you free for a call at 10 am? Jana

Jana Steele

416.862.6625

DIRECT

416.862.6666

FACSIMILE

jsteele@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

http://www.osler.com/

http://www.pensionsbenefitslaw.com/

https://twitter.com/pensionsjana

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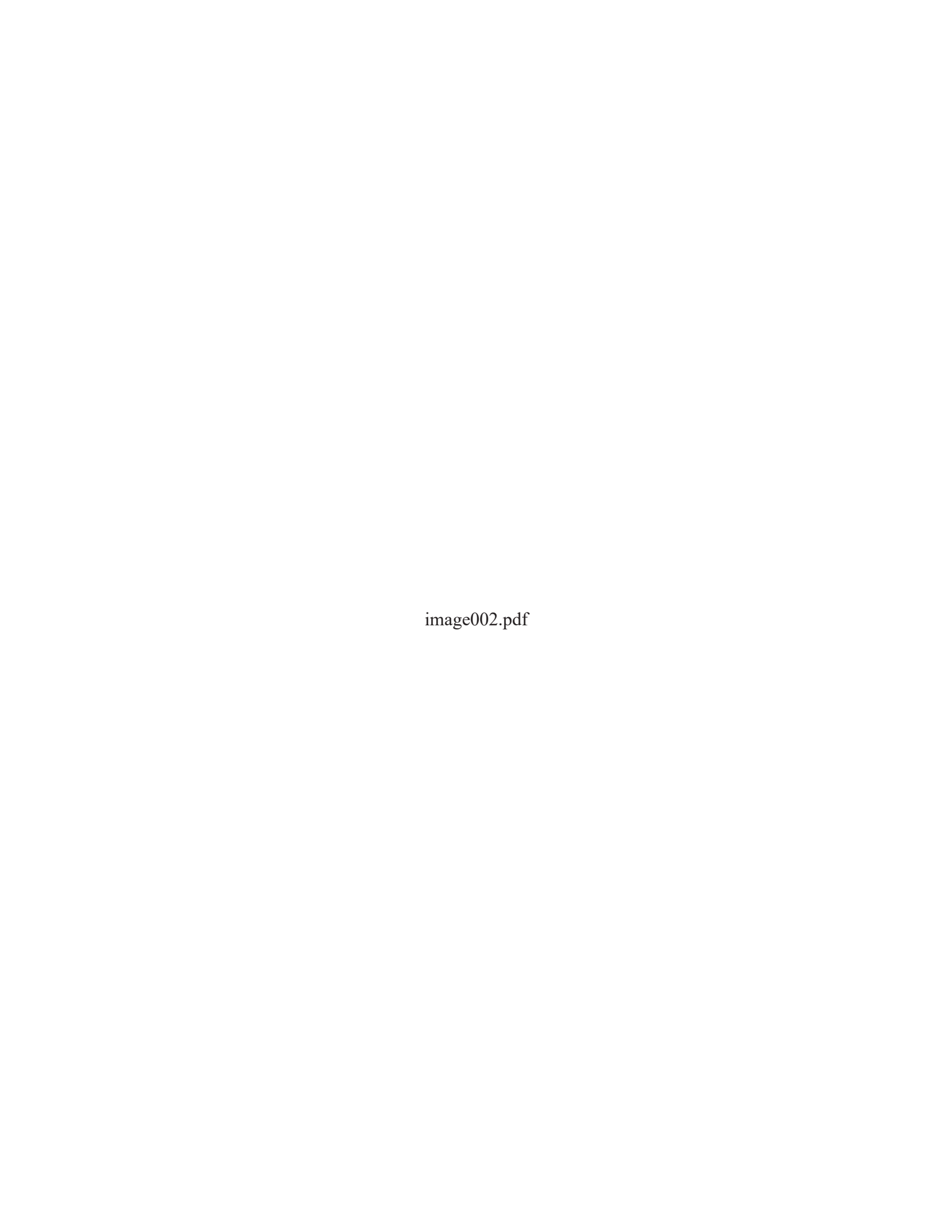
image002.pdf

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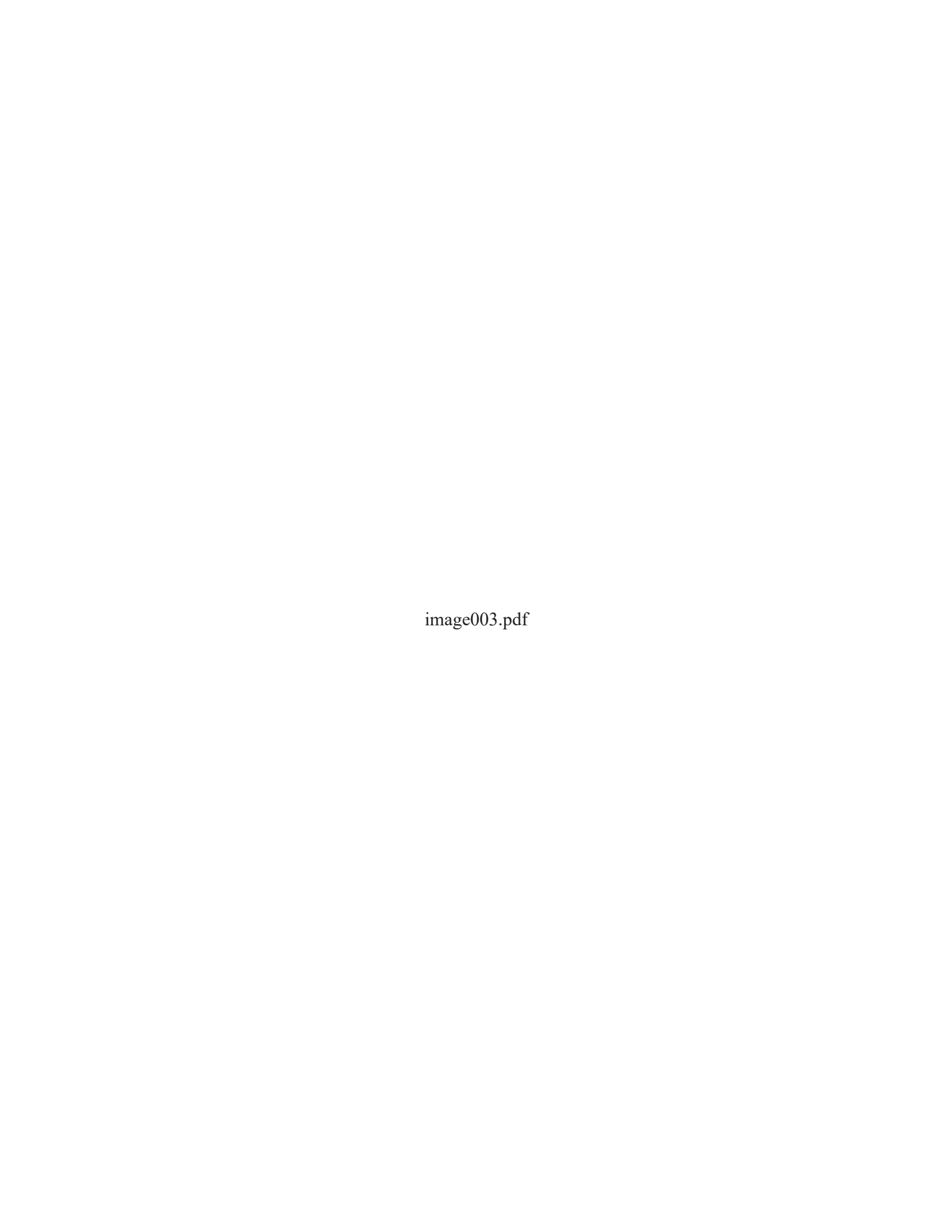
image003.pdf

pensions blog

RE_ timing.rtf

From: Steele, Jana [JSteele@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
CC: Rienzo, Douglas [DRienzo@osler.com]; Marin, Jon [jomarin@osler.com]
Subject: RE: timing
Date: Friday, September 16, 2016 19:34:58

Will do. Thanks! Jana

-----Original Message-----
From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Friday, September 16, 2016 7:30 PM
To: Steele, Jana <JSteele@osler.com>
Cc: Rienzo, Douglas <DRienzo@osler.com>; Marin, Jon <jomarin@osler.com>
Subject: Re: timing

Thank you Jana and apologies again for this - I am feeling it a bit over here to say the least in terms of trying to convey to people the notion that a proper review takes a little time. Can you pls contact Deloitte as you suggest on Sunday. I may join that call so I would appreciate an invite if possible. Thanks again for all your team's work on this.

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Steele, Jana
Sent: Friday, September 16, 2016 7:14 PM
To: Hatzis, Len (TBS)
Cc: Rienzo, Douglas; Marin, Jon
Subject: timing

>
> Hi Len:
> As you know there is significant factual information that is relevant to the analysis (some of which we are still waiting to hear from Allan Shapira on). Some of the factual information we are waiting for is important for the drafting. We are working on the opinion, but it is taking time to get through the factual and legal analysis. There is the added significance of the magnitude of this opinion.
> We could have a call with Deliotte on Sunday if that would be helpful. And we could provide our working draft to Deloitte sometime on Monday, which would still be subject to further internal review.
>
> Jana
>
> -----Original Message-----
> From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
> Sent: Friday, September 16, 2016 6:00 PM
> To: Steele, Jana <JSteele@osler.com>
> Subject: Re: TBS - Osler retainer letter
>
> Thanks Jana - at a meeting now with high ups here. There is again some urgency re timelines - can you advise re when your office would be in a position to deliver a draft to deloitte's as they need to complete their opinion. Can you deliver by Sunday morning.
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Steele, Jana
> Sent: Friday, September 16, 2016 3:58 PM
> To: Hatzis, Len (TBS)
> Subject: TBS - Osler retainer letter

>
>
> Hi Len:
> Attached is a copy of our retainer letter.
> Best regards,
> Jana
>
>
> [cid:image001.gif@01D21032.99DEF260]
>
> Jana Steele
>
>
>
> 416.862.6625
>
> DIRECT
>
> 416.862.6666
>
> FACSIMILE
>
> jsteele@osler.com
>
>
>
>
> Osler, Hoskin & Harcourt LLP
> Box 50, 1 First Canadian Place
> Toronto, Ontario, Canada M5X 1B8
>
> [cid:image002.gif@01D21032.99DEF260]<http://www.osler.com/>
>
> [cid:image003.png@01D03005.3C421D80]<http://www.pensionsbenefitslaw.com/>
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> https://twitter.com/pensionsjana
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Re_ Additional doc request.rtf

From: Steele, Jana [JSteele@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
Subject: Re: Additional doc request
Date: Thursday, September 15, 2016 15:08:38

Can I call you? What number?

Sent from my iPhone

> On Sep 15, 2016, at 3:05 PM, Hatzis, Len (TBS) <Len.Hatzis@ontario.ca> wrote:
>
> I have inquired - can you let me know re the other opinion request - thanks
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> Original Message
> From: Steele, Jana
> Sent: Thursday, September 15, 2016 2:57 PM
> To: Hatzis, Len (TBS)
> Cc: Marin, Jon; Rienzo, Douglas
> Subject: Additional doc request
>
>
> In the FMP there is reference to a 2013 term sheet. Can you please provide us with a copy of that? Thanks. Jana.
>
> Sent from my iPhone
>
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Re_ Conflicts.rtf

From: Steele, Jana [JSteele@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
CC: Marin, Jon [jomarin@osler.com]; Kaufman, Paul (TBS) [Paul.Kaufman@ontario.ca]
Subject: Re: Conflicts
Date: Thursday, September 15, 2016 07:21:21

Thanks. Would 930 work for you?

Sent from my iPhone

> On Sep 15, 2016, at 7:19 AM, Hatzis, Len (TBS) <Len.Hatzis@ontario.ca> wrote:
>
> Jana
> When are you free to chat this morning. We will send you the documents just to confirm you have everything to get started.
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> Original Message
> From: Hatzis, Len (TBS)
> Sent: Thursday, September 15, 2016 7:02 AM
> To: Steele, Jana
> Cc: Marin, Jon
> Subject: Re: Conflicts
>
>
> Excellent - thanks
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> Original Message
> From: Steele, Jana
> Sent: Thursday, September 15, 2016 6:52 AM
> To: Hatzis, Len (TBS)
> Cc: Marin, Jon
> Subject: Conflicts
>
>
> Hi Len: We have cleared the conflicts and can assist on the matter if you have not yet retained other counsel. I'm copying my colleague, Jon Marin, who will be working with me on this matter.
> We should set up a call this morning to discuss. We will also need to send you a retainer letter with our typical conflicts language that we use on government matters.
> Jana.
>
> Sent from my iPhone
>
> _____
>
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Re_ Issue framing.rtf

From: Steele, Jana [JSteele@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
CC: Kaufman, Paul (TBS) [Paul.Kaufman@ontario.ca]
Subject: Re: Issue framing
Date: Sunday, September 18, 2016 08:52:29

Thanks Len. I think the change is fine.

Sent from my iPhone

> On Sep 18, 2016, at 8:40 AM, Hatzis, Len (TBS) <Len.Hatzis@ontario.ca> wrote:
>
> Jana
> Not sure your thoughts on the below suggested tweak but forwarding it regardless...
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> Original Message
> From: Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>
> Sent: Sunday, September 18, 2016 5:47 AM
> To: Hatzis, Len (TBS)
> Cc: Kaufman, Paul (TBS)
> Subject: RE: Issue framing
>
>
> Len,
> Please see one thought inserted below (CAPs). Otherwise, one might expect both sides to be assessed. n
>
> -----Original Message-----
> From: Hatzis, Len (TBS)
> Sent: September-17-16 2:39 PM
> To: Veinot, Cindy (TBS)
> Cc: Petsche, Nadine (TBS); Kaufman, Paul (TBS); Kearney, Sean (TBS)
> Subject: Fw: Issue framing
>
>
> I think this would provide guidance to deloitte but let me know if any concerns before oslers goes too deep. Thanks
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> Original Message
> From: Steele, Jana <JSteele@osler.com>
> Sent: Saturday, September 17, 2016 2:36 PM
> To: Hatzis, Len (TBS)
> Cc: Marin, Jon
> Subject: Issue framing
>
>
> We have framed the issue as follows:
>
> You asked us to consider the processes pursuant to which the Province may utilize surplus assets in the OTPP in accordance with the Plan Documentation (as defined in the memo), and to identify any considerations that would inform the expectations of the PROVINCE AS A SPONSOR regarding the basis upon which decisions will be made relating to surplus utilization.
>
> Sent from my iPhone

>
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>
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Re_ OTPP.rtf

From: Steele, Jana [JSteele@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
CC: Marin, Jon [jomarin@osler.com]; Kaufman, Paul (TBS) [Paul.Kaufman@ontario.ca]; Rienzo, Douglas [DRienzo@osler.com]
Subject: Re: OTPP
Date: Thursday, September 15, 2016 21:01:31

Hi Len: yes, we can touch base in the am on where we are likely landing.
Jana
Sent from my iPhone

> On Sep 15, 2016, at 8:32 PM, Hatzis, Len (TBS) <Len.Hatzis@ontario.ca> wrote:
>
> Sorry - meant to clarify - even a verbal re where you're likely landing on this would be helpful. I have a sense but maybe we can chat
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Hatzis, Len (TBS)
> Sent: Thursday, September 15, 2016 8:28 PM
> To: Steele, Jana
> Cc: Marin, Jon; Kaufman, Paul (TBS)
> Subject: Re: OTPP
>
>
> Hi
> I know you're working on this but is there any way you could send me a rough draft as to what the opinion may look like. If not tonight then hopefully in the morning. We won't distribute.
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Hatzis, Len (TBS)
> Sent: Thursday, September 15, 2016 4:22 PM
> To: Steele, Jana; allan.shapira@aonhewitt.com
> Cc: Marin, Jon; Kaufman, Paul (TBS); Rienzo, Douglas
> Subject: RE: OTPP
>
>
> Allan
> Hopefully you can make the call – we are on the line now
>
> From: Hatzis, Len (TBS)
> Sent: September 15, 2016 4:16 PM
> To: 'Steele, Jana'; allan.shapira@aonhewitt.com
> Cc: Marin, Jon; Kaufman, Paul (TBS); Rienzo, Douglas
> Subject: RE: OTPP
>
>
> Hi Jana
>
> Just spoke to Allan – he can do a call I think now or in the very short term – can you send out an invite and if possible I would like to join as well. thank you
>
>

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RE_ OTPP FMP questions.rtf

From: Steele, Jana [JSteele@osler.com]
To: Rienzo, Douglas [DRienzo@osler.com]; Jeff Davis [Jeff_Davis@otpp.com]
CC: Barbara Zvan [Barbara_Zvan@otpp.com]; Marin, Jon [jomarin@osler.com]; Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]; Kaufman, Paul (TBS) [Paul.Kaufman@ontario.ca]
Subject: RE: OTPP FMP questions
Date: Sunday, September 18, 2016 19:10:59

I unfortunately will be on an airplane tomorrow am. Doug, we can catch up later in the day. Thanks Jeff for your help on this question.

Jana

From: Rienzo, Douglas
Sent: Sunday, September 18, 2016 7:09 PM
To: Jeff Davis <Jeff_Davis@otpp.com>
Cc: Barbara Zvan <Barbara_Zvan@otpp.com>; Marin, Jon <jomarin@osler.com>; Hatzis, Len (TBS) <Len.Hatzis@ontario.ca>; Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca>; Steele, Jana <JSteele@osler.com>
Subject: Re: OTPP FMP questions

Thanks Jeff. I'll try to call you shortly after 9.

If anyone else on this chain wants to participate let me know and I'll circulate a number and time.

Doug

On Sep 18, 2016, at 6:05 PM, Jeff Davis <Jeff_Davis@otpp.com> wrote:

> Yes
>
> **Jeff Davis**
> General Counsel, Senior Vice-President,
>
> Corporate Affairs & Corporate Secretary
> jeff_davis@otpp.com
> Direct 416-730-3753

Canadian mobile 416-371-0191

US mobile 347-515-4895
www.otpp.com
http://www.otpp.com/documents/10179/729401/red-line.gif/0db64f2b-a6cc-4727-b909-7ee8a8fada04?t=1445866411000

Ontario Teachers' Pension Plan
5650 Yonge Street, Toronto, Ontario M2M 4H5, Canada

Ontario Teachers

FacebookTwitterYoutubeLinkedin

On Sep 18, 2016, at 5:41 PM, Rienzo, Douglas <DRienzo@osler.com> wrote:

> Thanks Jeff. Are you around tomorrow morning?
>
> On Sep 18, 2016, at 5:11 PM, Jeff Davis <Jeff_Davis@otpp.com> wrote:
>
> > Doug - I think it does apply in those circumstances. I presume you are focused on the phrase "unless the partners otherwise agree...". We shd discuss so I can explain how we read it, in combination with provisions of Art IV and V which refer to the arb provisions. Also, the whole impetus was for an agreement with teeth.
> >
> > We have in our files a lot of correspondence but that will take time to review.
> >
> > Let me know when you'd like to chat.
> >
> > **Jeff Davis**
> > General Counsel, Senior Vice-President,
> >
> > Corporate Affairs & Corporate Secretary
> > jeff_davis@otpp.com
> > Direct 416-730-3753
> > Canadian mobile 416-371-0191
> >
> > US mobile 347-515-4895

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http://www.otpp.com/documents/10179/729401/red-line.gif/0db64f2b-a6cc-4727-b909-7ee8a8fada04?t=1445866411000

Ontario Teachers' Pension Plan
5650 Yonge Street, Toronto, Ontario M2M 4H5, Canada

Ontario Teachers

FacebookTwitterYoutubeLinkedin

On Sep 18, 2016, at 2:02 PM, Rienzo, Douglas <DRienzo@osler.com> wrote:

> Jeff, we do have one quick question:
>
> As you know there is a mediation/arbitration process contemplated under the Funding Management Policy. It seems to be triggered when decisions have to be made under Article III of the FMP ("Restoration Zone"), but it's not clear that it could apply to any negotiations between the parties regarding surplus utilization under Article IV (temporary improvements) or Article V (Permanent Improvements). Do you know if it was intended for mediation/arbitration to apply to those portions of the FMP?
>
> Also, has there ever been a mediation or arbitration under the FMP?
>
> Doug Rienzo

<image001.gif>

Douglas Rienzo
Partner, Pensions & Benefits

Chair, Diversity Committee

416.862.5683

DIRECT

416.862.6666

FACSIMILE

drienzo@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

<image002.gif>

<image003.jpg>

From: Jeff Davis [mailto:Jeff_Davis@otpp.com]
Sent: Sunday, September 18, 2016 9:22 AM
To: Steele, Jana <JSteele@osler.com>
Cc: Barbara Zvan <Barbara_Zvan@otpp.com>; Marin, Jon <jomarin@osler.com>; Rienzo, Douglas <DRienzo@osler.com>; Hatzis, Len (TBS) <Len.Hatzis@ontario.ca>; Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca>
Subject: Re: OTPP FMP questions

Jana -

Let me know you'd like to discuss any of the legal aspects.

Sent from my iPad

On Sep 17, 2016, at 2:25 PM, Steele, Jana <JSteele@osler.com> wrote:

Thanks Barb. And thanks again for your time today. Jana.

Sent from my iPhone

On Sep 17, 2016, at 2:16 PM, Barbara Zvan <Barbara_Zvan@otpp.com> wrote:

> Hi all
>
> Please find attached. BZ
>
> FMP history – this is the document we use for board orientation
>
> FMP Coles Notes – we created this summary in 2015 with a group from the Sponsors and their consulting actuaries and plan actuary
>
> OTPP JSPP agreement – this was the term sheet sent to us. You can see only a small component was added to the FMP. In fact, we spent a lot of time speaking about this, how to incorporate. Given the term nature and low likelihood other benefit reductions would have to be put in place other than CIP, we only insert the small section in 3.08.
>
> Report of Funding – this was a publication in 2002 sent to all plan members, the back page outlines the funds spent in during the "surplus" time of the late 1990s and early 2000s. You can see it was spent evenly so much so that a remaining amount of $76M (need to 2x check that, but of that order) which is relatively small amount was documented in the Partners' Agreement to be spent by the OTF at a future date. The $76M was the amount remaining after round to 0.45% for the CPP offset (vs using something with 6 decimal points). This was "spent" when contributions were later increased viaspecials, the Teachers had a slightly lower contribution rate for 1st (maybe 2) to offset for this $76M.

Barbara Zvan, FSA, FCIA, CERA
SVP, Strategy & Risk, Chief Investment Risk Officer
barbara_zvan@otpp.com
Direct 416-730-6364

Assistant: Karen Titus, 416-228-3172, karen_titus@otpp.com
http://www.otpp.com
<image001.gif>

Ontario Teachers' Pension Plan
5650 Yonge Street, Toronto, Ontario M2M 4H5, Canada

<image002.png>

<image003.png><image004.png><image005.png><image006.png>

From: Steele, Jana [mailto:JSteele@osler.com]
Sent: Saturday, September 17, 2016 12:01 PM
To: Barbara Zvan <Barbara_Zvan@otpp.com>
Cc: Marin, Jon <jomarin@osler.com>; Rienzo, Douglas <DRienzo@osler.com>; Hatzis, Len (TBS) <Len.Hatzis@ontario.ca>; Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca>
Subject: Re: OTPP FMP questions

Call in details for 1 pm

416-343-4295

ID: 7801041

Sent from my iPhone

On Sep 17, 2016, at 11:57 AM, Barbara Zvan <Barbara_Zvan@otpp.com> wrote:

Sure -. Just in the middle of taking my daughter between her activities. Can I call you around 1?

Sent from my BlackBerry 10 smartphone on the Rogers network .

From: Steele, Jana

Sent: Saturday, September 17, 2016 11:20 AM

To: Barbara Zvan

Cc: Marin, Jon; Rienzo, Douglas; 'Hatzis, Len (TBS)'; Kaufman, Paul (TBS)

Subject: OTPP FMP questions

Hi Barb:

We were just speaking with Jim Leech regarding the FMP. We are working with the Province of Ontario regarding the accounting issue.

Would you have some time for a call today?

Best regards,

Jana Steele

****

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<FMP history - updated September 29 by MC new format.pdf>

<FMP Coles Notes.pdf>

<OTPP JSPP Afreement final March 2013.pdf>

<Report on Funding.pdf>

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>
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Re_ OTPP Key legal Docs.rtf

From: Steele, Jana [JSteele@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
CC: Marin, Jon [jomarin@osler.com]; Kaufman, Paul (TBS) [Paul.Kaufman@ontario.ca]
Subject: Re: OTPP Key legal Docs
Date: Thursday, September 15, 2016 07:49:02

Thanks Len.

Sent from my iPhone

> On Sep 15, 2016, at 7:21 AM, Hatzis, Len (TBS) <Len.Hatzis@ontario.ca> wrote:
>
>
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca>
> Sent: Wednesday, September 14, 2016 7:33 PM
> To: Hatzis, Len (TBS)
> Subject: OTPP Key legal Docs
>
>
>
>
>
> - Our internal opinion on the province's legal control of the pension surplus
>
> - Recent correspondence from the Auditor General of Ontario
>
> - Analysis of the accounting treatment of the surplus under Public Sector Accounting Standards that was prepared by Deloitte
>
> - The Partners' Agreement in respect of the OTPP – the Funding Management Policy for the plan is the key document and begins at page 18 of the pdf
>
> They will likely also want to refer to the Teachers' Pension Act https://www.ontario.ca/laws/statute/90t01
>
>
>
> Paul Kaufman
> Counsel
> Ministry of the Attorney General | Legal Services Branch |Treasury Board Secretariat
> 9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3
> Phone: 416-327-7012 Fax: 416-325-9404
>
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>
>
> <OTPP_Asset_ceiling_document_Final.pdf>
> <Current - Partners' Agreement - 03-06-15.pdf>
> <OTPP Surplus Opinion Sept 12 2016.docx>

> <[Untitled].pdf>

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****

Re_ OTPP surplus accounting issue - follow-up Q.rtf

From: Steele, Jana [JSteele@osler.com]
To: Allan Shapira [allan.shapira@aonhewitt.com]
CC: Marin, Jon [jomarin@osler.com]; Rienzo, Douglas [DRienzo@osler.com]; Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
Subject: Re: OTPP surplus accounting issue - follow-up Q
Date: Saturday, September 17, 2016 10:17:52

Thanks Allan.

Sent from my iPhone

On Sep 17, 2016, at 10:15 AM, Allan Shapira <allan.shapira@aonhewitt.com> wrote:

> I am around if you need any other information.
>
> Sent from my iPhone
>
> On Sep 17, 2016, at 10:14 AM, Marin, Jon <jomarin@osler.com> wrote:
>
> > Allan,
> > Many thanks for getting back to us so quickly with your comments.
> >
> > Have a great weekend.
> >
> > Best regards,
> > Jon
> >
> > Sent from my iPhone
> >
> > On Sep 17, 2016, at 10:09 AM, Allan Shapira <allan.shapira@aonhewitt.com> wrote:
> >
> > > The arbitration issue is a legal issue that I don't think is in my bailiwick.
> > >
> > > My reference was to the surplus credits from the term sheet. If there were benefit reductions arising from the application of the term sheet then the members would get a surplus credit from those reductions. I don't think there are any surplus credits so the term sheet provisions are a non-issue.
> > >
> > > If the surplus is used contribution reductions for both parties there is an easy symmetry. If the members want to use their surplus for a benefit improvement

then the form of the corresponding value to the government has to be addressed in the side agreement. It is only about the form not whether they get a corresponding value.

Allan

Sent from my iPhone

On Sep 16, 2016, at 1:32 PM, Rienzo, Douglas <DRienzo@osler.com> wrote:

> Allan:
>
> We have a few more questions about the technical application of the Funding Management Policy, and are hoping you can help us.
>
> 1. You mentioned some restrictions on the use of surplus to benefit members. Aside from the 2013 Term Sheet promises under 6.03 (which you said are not big ticket items, if they end up applying at all), are you referring to the "side agreement" provision in 4.06?
>
> **Section 4.06 *Side Agreement*: The commitment value shall be used to provide a surplus distribution referred to in Section 4.04(d) or a temporary benefit improvement referred to in Section 4.04(e) only if the partners have entered into a written agreement governing the manner in which the contributions by the Minister and the Employers may be adjusted to offset any surplus distribution or temporary improvement of benefits that is reflected in the value of the liabilities.**
>
> What does that section mean? It refers to an agreement to "offset any surplus distribution or temporary improvement in benefits" – does that mean that the government is supposed to get a contribution reduction of equivalent value if surplus is used for a distribution to members or for a temporary benefit improvement? Are there any other provisions in the FMP like this, that the government can point to as supporting its expectation to benefit from part of the surplus?

2. We understand that every time there is a valuation, the parties must sit down and consider what action to take under Article III, and go to mediation and perhaps to arbitration if they cannot agree (i.e. they follow the procedures set out in sections 74 to 100 of the Partners Agreement). If the plan is in Zone 4 or Zone 5, are the potential actions under Articles IV and V also folded into the mediation/arbitration process? The FMP is unclear on this point, and only seems to refer to that process applying to Article III decisions as set out below:

Section 8.01

Unless the partners mutually agree to the contrary, they shall follow the procedures described in paragraphs 74 to 100 when determining the plan changes arising from Section 3.07.

3. The Partners Agreement contains some guidelines for the arbitrator, in section 92:

92. The award made by the board of arbitration will,

(a) deal only with the contribution rate and/or benefits of the pension plan and otherwise maintain the plan as it is set out in Schedule 1,

(b) comply with the laws of Ontario,

(c) provide that the contributions of the Minister and those employers who are required to contribute are equal to the contributions of members,

(d) be based on the valuation of the plan and the costing of changes to benefits which were prepared by the Board,

(e) ensure that any increase in benefits is adequately funded,

(f) not impair the ability of the Board to fulfil its fiduciary responsibilities,

(g) if it includes benefit improvements, not provide for an increase in

the contribution rate paid by plan members greater than .5% of pensionable salary,

provided that all such awards shall be subject to the limitations referred to in subparagraph EE(2). [emphasis added]

Do you have any idea what the reference to "subparagraph EE(2) means?

Could you perhaps reply by email or, if it's easier, suggest a time when we might chat about this? We have been asked to provide our opinion asap, so if we could speak to you this afternoon that would be ideal. I apologize for the short notice. Thanks, Allan.

Doug

<image001.gif>

Douglas Rienzo
Partner, Pensions & Benefits

Chair, Diversity Committee

416.862.5683

DIRECT

416.862.6666

FACSIMILE

drienzo@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

****

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Re_ Our discussion.rtf

From: Steele, Jana [JSteele@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
CC: Marin, Jon [jomarin@osler.com]; Rienzo, Douglas [DRienzo@osler.com]; Kaufman, Paul (TBS) [Paul.Kaufman@ontario.ca]
Subject: Re: Our discussion
Date: Saturday, September 17, 2016 10:34:26

Ok thanks.

Sent from my iPhone

> On Sep 17, 2016, at 10:34 AM, Hatzis, Len (TBS) <Len.Hatzis@ontario.ca> wrote:
>
> Thanks very much - i will send you conference details - it'll be the same line as usual - hoping to do it in next five minutes
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> Original Message
> From: Steele, Jana
> Sent: Saturday, September 17, 2016 10:31 AM
> To: Hatzis, Len (TBS)
> Cc: Marin, Jon; Rienzo, Douglas; Kaufman, Paul (TBS)
> Subject: Re: Our discussion
>
>
> I'm around. Let me know. Jana.
>
> Sent from my iPhone
>
>> On Sep 17, 2016, at 10:27 AM, Hatzis, Len (TBS) <Len.Hatzis@ontario.ca> wrote:
>>
>>
>> Jana
>> I am speaking with Jim Leech very shortly - 1030 am - I think he should connect with you or one of you lawyers as well as he apparently has some views / experience re the OTPP (see bottom of email chain) that may be of relevance. Not sure of any of your team's availability to get on a quick call with him...
>> Sent from my BlackBerry 10 smartphone on the Rogers network.
>> Original Message
>> From: Hatzis, Len (TBS) <Len.Hatzis@ontario.ca>
>> Sent: Saturday, September 17, 2016 9:13 AM
>> To: Jim Leech
>> Cc: Kaufman, Paul (TBS); Kearney, Sean (TBS); Veinot, Cindy (TBS)
>> Subject: Re: Our discussion
>>
>> No problem - 1030 sounds good. Will call you then. Much appreciated
>>
>> Sent from my BlackBerry 10 smartphone on the Rogers network.
>> Original Message
>> From: Jim Leech
>> Sent: Saturday, September 17, 2016 8:52 AM
>> To: Hatzis, Len (TBS)
>> Cc: Kaufman, Paul (TBS); Kearney, Sean (TBS); Veinot, Cindy (TBS)
>> Subject: Re: Our discussion
>>
>>

>> Best time for me is 10:30 - I will have landed in Kingston by that time
>>
>> 416 930 2006
>>
>> Jim Leech I @QUChancellor
>> Two Old Mill Drive, PH1 I Toronto I Ontario I M6S 0A2 I +1 416 930 2006
>>
>>> On Sep 17, 2016, at 8:14 AM, Hatzis, Len (TBS) <Len.Hatzis@ontario.ca> wrote:
>>>
>>> Hi Jim
>>> Following up on the below, hoping you have time this morning for a brief chat. Are you free at approx 10? Thanks very much.
>>>
>>> Sent from my BlackBerry 10 smartphone on the Rogers network.
>>> From: Jim Leech <jim@jimleech.ca>
>>> Sent: Saturday, September 17, 2016 7:48 AM
>>> To: Orencsak, Greg (TBS)
>>> Cc: Orsini, Steve (CAB); Hatzis, Len (TBS); Kearney, Sean (TBS); Veinot, Cindy (TBS); Thompson, Scott (MOF)
>>> Subject: Re: Our discussion
>>>
>>>
>>> Pleased to talk over w/e
>>>
>>> I am on train to Kingston this am for opening of new stadium - train back tonight.
>>>
>>> Around Sun until late afternoon when I leave for NYC
>>>
>>> I understand:
>>>
>>> 1. The FMP at OTPP has changed since I retired three years ago - I am not familiar with current version - but I can answer questions re intent
>>>
>>> 2. I understand that OTPP (Barb Zvan) has provided Finance with description of FMP - she is authority on current version (and history)
>>>
>>> Jim Leech I +416 930 2006 I @QUchancellor
>>> Two Old Mill Drive I Toronto I ON I M6S 0A2
>>>
>>>
>>> On Sep 17, 2016, at 7:33 AM, Orencsak, Greg (TBS) <Greg.Orencsak@ontario.ca<mailto:Greg.Orencsak@ontario.ca>> wrote:
>>>
>>> Hi Jim,
>>>
>>> Steve passed your note along. Thanks for sharing your view on an issue that has proved vexing for the Province, given that our Auditor General has taken a sudden opposing view to recognizing the surplus as an asset.
>>>
>>> We are in the midst of finalizing an external legal opinion through Oslers this weekend. They are looking to render advice on how the government can have access to the surplus, and your knowledge and expertise about OTPP would be valuable to ensure a sound understanding of not only the co-sponsors' fundamental rights, but also the role of the FMP.
>>>
>>> I am hoping that you may be amenable to having a chat with our internal/external legal team about this. Sean Kearney and Len Hatzis are the respective director and deputy director of my legal team, who

can connect you through to Oslers as well, and would most benefit from your advice.
>>>
>>> I'm also happy to connect if you'd like and can be reached on cell at 416 508 8065.
>>>
>>> Thanks for your help and hope that this is not a huge imposition on your weekend.
>>>
>>> Greg
>>>
>>>
>>> Greg Orencsak
>>>
>>> Deputy Minister, Treasury Board
>>> Secretary of Treasury Board and Management Board of Cabinet
>>> 416.325.1607 |
greg.orencsak@ontario.ca<mailto:greg.orencsak@ontario.ca><mailto:greg.orencsak@ontario.ca>
>>> Treasury Board Secretariat
>>> [Title: TBS logo]
>>> The contents of this email may be confidential and/or commercially sensitive. If received in error or you are not the intended recipient, please notify sender and delete any copies immediately.
>>>
>>>
>>> ---------- Forwarded message ----------
>>> From: Jim Leech <jim@jimleech.ca<mailto:jim@jimleech.ca><mailto:jim@jimleech.ca>>
>>> Date: Sep 16, 2016 7:24 PM
>>> Subject: Our discussion
>>> To: "Orsini, Steve (CAB)"
<Steve.Orsini@ontario.ca<mailto:Steve.Orsini@ontario.ca><mailto:Steve.Orsini@ontario.ca>>
>>> Cc:
>>>
>>> Speaking as a “non- accountant”, I think that you have a defendable position.
>>>
>>>
>>> I think PS3250.050 (the italics which indicate that it is the over riding para) gives you the right to recognize the asset.
>>>
>>> AG hangs its hat on the gov’t not having unilateral right to use surplus because gov’t needs the agreement of the OTF. But they fail to recognize the raison d’etre for the Funding Management Policy between the gov’t and OTF that sets out exactly how any surplus is to be used (reduce future contributions or apply against future deficits) if there is no other agreement. In other words there is no question that gov’t will realize the benefit – only a question of when and in what form. I believe that is what PS3250.052/055 is trying to say.
>>>
>>> The discussion around PS3250.059 whether of not the surplus is ”withdrawable” is simply a red herring.
>>>
>>>
>>> So it really turns on the enforceability of the FMP.
>>>
>>> Jim Leech I +416 930 2006 I @QUChancellor
>>> Two Old Mill Drive I Toronto I ON I M6S 0A2
>
> _____
>
> **********
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> **********

Re_ Quick phone call.rtf

From: Steele, Jana [JSteele@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
CC: Golden, Karen (TBS) [Karen.Golden@ontario.ca]
Subject: Re: Quick phone call
Date: Tuesday, September 13, 2016 20:28:50

Sure. Call me on my cell. 416 727 7434. Jana

Sent from my iPhone

> On Sep 13, 2016, at 8:27 PM, Hatzis, Len (TBS) <Len.Hatzis@ontario.ca> wrote:
>
> Hi Jana
> Sorry - urgent legal issue arising tonight and hoping you have time for a quick chat - thanks
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.

****

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****

Re_ September 15 letter.rtf

From: Steele, Jana [JSteele@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
CC: Marin, Jon [jomarin@osler.com]; Rienzo, Douglas [DRienzo@osler.com]; Kaufman, Paul (TBS) [Paul.Kaufman@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Re: September 15 letter
Date: Saturday, September 17, 2016 08:13:32

Thanks Len.

Sent from my iPhone

> On Sep 17, 2016, at 8:13 AM, Hatzis, Len (TBS) <Len.Hatzis@ontario.ca> wrote:
>
>
> Hi Jana
> Here is a letter (with attachments) that has relevance re the fmp. Thanks
> Sent from my BlackBerry 10 smartphone on the Rogers network.
>
>
>
> <MOF letter.pdf>

_____

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Re_ TBS.rtf

From: Steele, Jana [JSteele@osler.com]
To: Colley, Matthew (CA - Toronto) [mcolley@deloitte.ca]
CC: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]; Marin, Jon [jomarin@osler.com]; Kaufman, Paul (TBS) [Paul.Kaufman@ontario.ca]; Rienzo, Douglas [DRienzo@osler.com]
Subject: Re: TBS
Date: Saturday, September 17, 2016 16:05:59

Yes that's fine.

Sent from my iPhone

> On Sep 17, 2016, at 4:04 PM, Colley, Matthew (CA - Toronto) <mcolley@deloitte.ca> wrote:
>
> Could 1pm work for you?
>
> Sent from my iPhone
>
>> On Sep 16, 2016, at 9:32 PM, Steele, Jana <JSteele@osler.com> wrote:
>>
>>
>> Hi Matthew:
>> Len indicated that a call with you on Sunday to discuss our legal opinion may be helpful. Would 11 am on sunday work for you for a call?
>> Best regards,
>> Jana Steele
>>
>> _____
>>
>> **********
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Re_ TBS.rtf

From: Steele, Jana [JSteele@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
Subject: Re: TBS
Date: Friday, September 16, 2016 23:49:09

Sure will do. Jana.

Sent from my iPhone

> On Sep 16, 2016, at 10:16 PM, Hatzis, Len (TBS) <Len.Hatzis@ontario.ca> wrote:
>
> Jana
> At some point tomorrow is it possible to pls provide me with a brief email re the specific question that your office is answering and anything further that you're in a position to provide re the outline of the opinion. Thanks
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> Original Message
> From: Steele, Jana
> Sent: Friday, September 16, 2016 9:31 PM
> To: 'Colley, Matthew (CA - Toronto)'; Hatzis, Len (TBS)
> Cc: Marin, Jon; Kaufman, Paul (TBS); Rienzo, Douglas
> Subject: TBS
>
>
> Hi Matthew:
> Len indicated that a call with you on Sunday to discuss our legal opinion may be helpful. Would 11 am on sunday work for you for a call?
> Best regards,
> Jana Steele
>
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> **********
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Re_ TPP Partners Agreement.rtf

From: Steele, Jana [JSteele@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
CC: Marin, Jon [jomarin@osler.com]; Rienzo, Douglas [DRienzo@osler.com]; Kaufman, Paul (TBS) [Paul.Kaufman@ontario.ca]
Subject: Re: TPP Partners Agreement
Date: Sunday, October 02, 2016 14:14:36

Thanks Len. We will consider this. Jana

Sent from my iPhone

> On Oct 2, 2016, at 1:56 PM, Hatzis, Len (TBS) <Len.Hatzis@ontario.ca> wrote:
>
> Here is the second email as discussed that specifies jim's assertion and our initial response that is just internal to TBS Legal. Happy to discuss
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca>
> Sent: Sunday, October 2, 2016 1:08 PM
> To: Hatzis, Len (TBS)
> Subject: RE: TPP Partners Agreement
>
>
>
> I'm pretty sure that the provision that the SoC cites isn't the relevant provision. That provision is from the partners' agreement itself (not the FMP) and dates from 1993, so I think it is effectively mooted by the FMP. I think that provision may have related to the unfunded liabilities that the province agreed to make special payments in respect of in 1990 (and which were paid down through utilization of plan surpluses in the 90s by agreement with OTF). This is ancient history and the provision is vague though so I'm not 100% certain. EDU might be able to confirm that.
>
>
>
> I think what Mr. Leech is referring to is the process for dealing with 'restoration basis excesses" in section 3.06 of the FMP, which Osler deals with starting on page 10 of their opinion. Section 3.06 provides for surpluses in the plan restoration zone (where the plan seems to be right now) to be applied first to restoring foregone indexation and then to either, or a combination of, increasing benefits to the run-rate level or reducing contributions to the basic target rate. A few notes on this though, based on the Osler analysis:
>
>
>
> - the partners would still need to agree to take any of the above-noted actions, and could agree not to. they could also agree to utilize a surplus in a manner other than what is contemplated in section 3.06.
>
> - if contributions were lowered to the 'basic target rate', Osler understood that to involve a 1.1% reduction to offset an agreed increase in 2001 (the idea of a reduction from 13% to 9% was discussed in emails on Friday, not sure where those numbers came from, I can't find the actual numbers themselves in the FMP)
>
> - the Osler opinion references an agreement in the "2013 Term Sheet" (I don't think we have a copy of this) which limited the ability to make escalated adjustments (I believe this means restoring indexation) or improve benefits during the freeze period that expires on December 30 2017. Mr. Leech might be thinking that this strengthens the notion that surpluses could be applied to reduce contributions, but I think that the parties' actual practice (e.g. the September 2016 agreement to use part of the current surplus to restore

inflation indexing with the rest going into a reserve) undercuts this idea.
>
>
>
> So, if Mr. Leech is referring to section 3.06 of the FMP, he is right that it contemplates that the parties could agree to reduce contributions to offset past increases (after restoring lost indexation), but I think there are a number of caveats to whether this would happen and past practice doesn't seem to support this idea. EDU might have a better sense of how this works in practice though.
>
>
>
> _____
> From: Hatzis, Len (TBS)
> Sent: Sunday, October 02, 2016 10:44 AM
> To: Kaufman, Paul (TBS)
> Subject: Fw: TPP Partners Agreement
>
> Can you see if Jim / Steve is right on this?
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Orsini, Steve (CAB) <Steve.Orsini@ontario.ca>
> Sent: Sunday, October 2, 2016 10:30 AM
> To: Orencsak, Greg (TBS); Thompson, Scott (MOF); Kearney, Sean (TBS); Hatzis, Len (TBS); Hughes, Karen (TBS); Veinot, Cindy (TBS); Petsche, Nadine (TBS); Jancik, Mike (TBS); Ghiassi, Ali (MOF); Bevan, Andrew (OPO); Bardeesy, Karim (OPO); MacKenzie, Rebecca (OPO); McEachern, Gillian (OPO); Killorn, Bill (OPO); Mksyartinian, Jacob (OPO); MacIntyre, Kyle (TBS); Bromm, William (CAB)
> Subject: FW: TPP Partners Agreement
>
>
> Jim is of the view that the TPP Partners Agreement gives preference to contribution reductions (after partial indexation has been restored) to eliminate special payments used to address the unfunded liability (see below). I think I found the relevant provision, but I am not sure.
>
> It doesn't address the AG's first issue, but gives more credence that there is a benefit to the crown.
>
> Also, Jim will likely reference this in his remarks. It would be great if someone could confirm.
>
> For media interviews on Monday or Tuesday, the best number to reach Jim is at: 416 930 2006
>
> Steve
>
>
> If the preliminary results of a valuation prepared for filing with the Financial Services Commission of Ontario as at a date after the 1st day of January, 1993 indicate that the contribution rate can be decreased the implicit actuarial gain disclosed by the valuation will be applied to reduce and, if possible, eliminate the payments required to liquidate any unamortized balance of a solvency deficiency. (Last amended November 15, 1993 - Effective November 15, 1993)
>
> From: Jim Leech [mailto:jim@jimleech.ca]
> Sent: October-01-16 11:17 PM
> To: Orsini, Steve (CAB)
> Cc: Bromm, William (CAB)
> Subject: Re: TPP Partners Agreement
>
> The agreement that talks about reducing contributions to the base rate is the Partners Funding Management Agreement

>
> Jim Leech I +416 930 2006 I @QUchancellor
> Two Old Mill Drive I Toronto I ON I M6S 0A2
>
>
> On Oct 1, 2016, at 7:29 PM, Orsini, Steve (CAB)
<Steve.Orsini@ontario.ca<mailto:Steve.Orsini@ontario.ca>> wrote:
> Jim,
>
>
>
> Thanks for making yourself available on Monday and Tuesday for potential media calls.
>
>
>
> What is the best number to reach you on.? We will make sure we limit any calls to one or two.
>
>
>
> Also, attached is the Partners Agreement for your information.
>
>
>
> Thanks again.
>
> Steve
> <Current - Partners' Agreement - 03-06-15.pdf>
>
>

_____

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Re_ Update -- Auditor General Opinion.rtf

From: Code, Jacqueline [JCode@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
CC: Steele, Jana [JSteele@osler.com]; Kaufman, Paul (TBS) [Paul.Kaufman@ontario.ca]; Kearney, Sean (TBS) [Sean.Kearney@ontario.ca]
Subject: Re: Update -- Auditor General Opinion
Date: Friday, September 16, 2016 19:14:51

Hi Len

Thanks for clarifying the question, which corresponds with what we took away from our call earlier today.

While I understand your internal constraints, the earliest I could possibly provide a written draft is the end of day Monday, and at that point it would still be subject to our internal review and confirmation before it would be final.

We would be pleased to provide you with an oral report of what the conclusions are likely to be by midday on Monday.

Thanks
Jacqui

Sent from my iPad

> On Sep 16, 2016, at 6:51 PM, Hatzis, Len (TBS) <Len.Hatzis@ontario.ca> wrote:
>
> Jacqueline
> Further to our chat, just to confirm the narrow question bring asked surrounds the AG's obligations (if there are any) to submit an opinion/report as part of the public accounts process as detailed in the FAA. We require an explanation of the legal landscape in terms of whether there is a requirement for the AG as part of the public accounts process. We presume that as part of this analysis, the AG Act will also need to be reviewed.
> In terms of timelines, sorry but we are facing an statutory deadline and an internal decision making timeline as well, so I am requesting if there is a way to expedite so that we can have something in writing by Monday (even a draft). Thanks
> Sent from my BackBerry 10 smartphone on the Rogers network.
> From: Code, Jacqueline
> Sent: Friday, September 16, 2016 5:17 PM
> To: Hatzis, Len (TBS)
> Cc: Steele, Jana
> Subject: Update -- Auditor General Opinion
>
>
> Hi Len,
>
> As requested, I’m providing you with an update as to our timing for an opinion on the auditor-general issues.
>
> We’ve discussed the issues and done some preliminary digging. I think with the benefit of some further time on Sunday to review the authorities and consider their implications, we should be in a position to provide at least a preliminary view on Monday by late morning. This will not be the written opinion but an oral view as to where the written opinion is likely to end up.
>
> Assuming you still want the written opinion after our conversation, we would then draft it and get it to you as soon as possible after that. I believe Jana mentioned to you that we need to get internal sign-off on the opinion. It may therefore be a day or two before we can provide the written product.

> Let me know if you would like to discuss further,
> Jacqui
>
> [cid:image001.gif@01D2103C.0F8FA500]
>
> Jacqueline Code
>
>
>
> 416.862.6462
>
> DIRECT
>
> 416.862.6666
>
> FACSIMILE
>
> jcode@osler.com
>
>
>
>
> Osler, Hoskin & Harcourt LLP
> Box 50, 1 First Canadian Place
> Toronto, Ontario, Canada M5X 1B8
>
> [cid:image002.gif@01D2103C.0F8FA500]<http://www.osler.com/>
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>

Re_ osler.rtf

From: Steele, Jana [JSteele@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
CC: Marin, Jon [jomarin@osler.com]; Rienzo, Douglas [DRienzo@osler.com]
Subject: Re: osler
Date: Sunday, September 18, 2016 16:27:31

The version they have is not final. Once the version is final as long as TBS is ok with it, I don't see an issue.
Sent from my iPhone

> On Sep 18, 2016, at 4:24 PM, Hatzis, Len (TBS) <Len.Hatzis@ontario.ca> wrote:
>
>
> Can you advise pls
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
> Sent: Sunday, September 18, 2016 4:23 PM
> To: Hatzis, Len (TBS)
> Subject: osler
>
>
> Can you connect with Osler to see when they can confirm that Deloitte can reference their fact summary in theirs.
>
> Thanks,

_____

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Re_ retainer letter - TBS.rtf

From: Steele, Jana [JSteele@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
Subject: Re: retainer letter - TBS
Date: Saturday, September 24, 2016 14:01:21

Sure. Call me 416 727 7434.

Sent from my iPhone

> On Sep 24, 2016, at 12:32 PM, Hatzis, Len (TBS) <Len.Hatzis@ontario.ca> wrote:
>
> Can we chat
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Steele, Jana
> Sent: Wednesday, September 21, 2016 3:03 PM
> To: Hatzis, Len (TBS)
> Subject: Fwd: retainer letter - TBS
>
>
> Hi Len:
> Here is a list of the lawyers who assisted on the TBS matter:
>
> Callaghan, Patrick
>
>
>

> Code, Jacqueline
>
> Jamal, Mahmud
>
> Litner, Paul
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> Steele, Jana
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> From: "Hatzis, Len (TBS)" <Len.Hatzis@ontario.ca<mailto:Len.Hatzis@ontario.ca>>
> Date: September 21, 2016 at 12:51:44 PM EDT
> To: "Steele, Jana" <JSteele@osler.com<mailto:JSteele@osler.com>>
> Subject: Re: retainer letter - TBS
> Hi Jana
> We do need the names of the lawyers involved. Thanks again for your work and assembling a great team.
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Steele, Jana
> Sent: Wednesday, September 21, 2016 10:56 AM
> To: Hatzis, Len (TBS)
> Subject: retainer letter - TBS
>
>
> Hi Len:
> I’m just going through the letter now. As a result of the short time frame for these opinions, as well as the need for various internal approvals, the list of names on page 1 is not complete. There were others who assisted in these opinions. Please let me know if you need their names now.
> Thanks.
> It was a pleasure working with you and your team on this matter.
> Best regards,
> Jana
>

>
> [cid:image001.gif@01D213F6.C41F3DB0]
>
> Jana Steele
>
>
>
> 416.862.6625
>
> DIRECT
>
> 416.862.6666
>
> FACSIMILE
>
> jsteele@osler.com<mailto:jsteele@osler.com>
>
>
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>
> Osler, Hoskin & Harcourt LLP
> Box 50, 1 First Canadian Place
> Toronto, Ontario, Canada M5X 1B8
>
> [cid:image002.gif@01D213F6.C41F3DB0]<http://www.osler.com/>
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> [cid:image003.png@01D03005.3C421D80]<http://www.pensionsbenefitslaw.com/>
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Retention of Legal Services.rtf

From: Rak, Melissa [MRak@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
CC: Kearney, Sean (TBS) [Sean.Kearney@ontario.ca]; Steele, Jana [JSteele@osler.com]
Subject: Retention of Legal Services
Date: Monday, September 26, 2016 16:03:01
Attachment 1: image001.gif
Attachment 2: image002.gif
Attachment 3: Updated Engagement Letter.pdf

Good Afternoon,

Please find attached your updated engagement letter dated September 26, 2016 executed by Jana Steele.

If you have any questions, please contact me.

Best regards,

Melissa Rak

Melissa Rak
Legal Secretarial Assistant
to Anthony Devir, Jana Steele
and Laura Stefan

416.646.3876

DIRECT

416.862.6666

FACSIMILE

mrak@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

http://www.osler.com/

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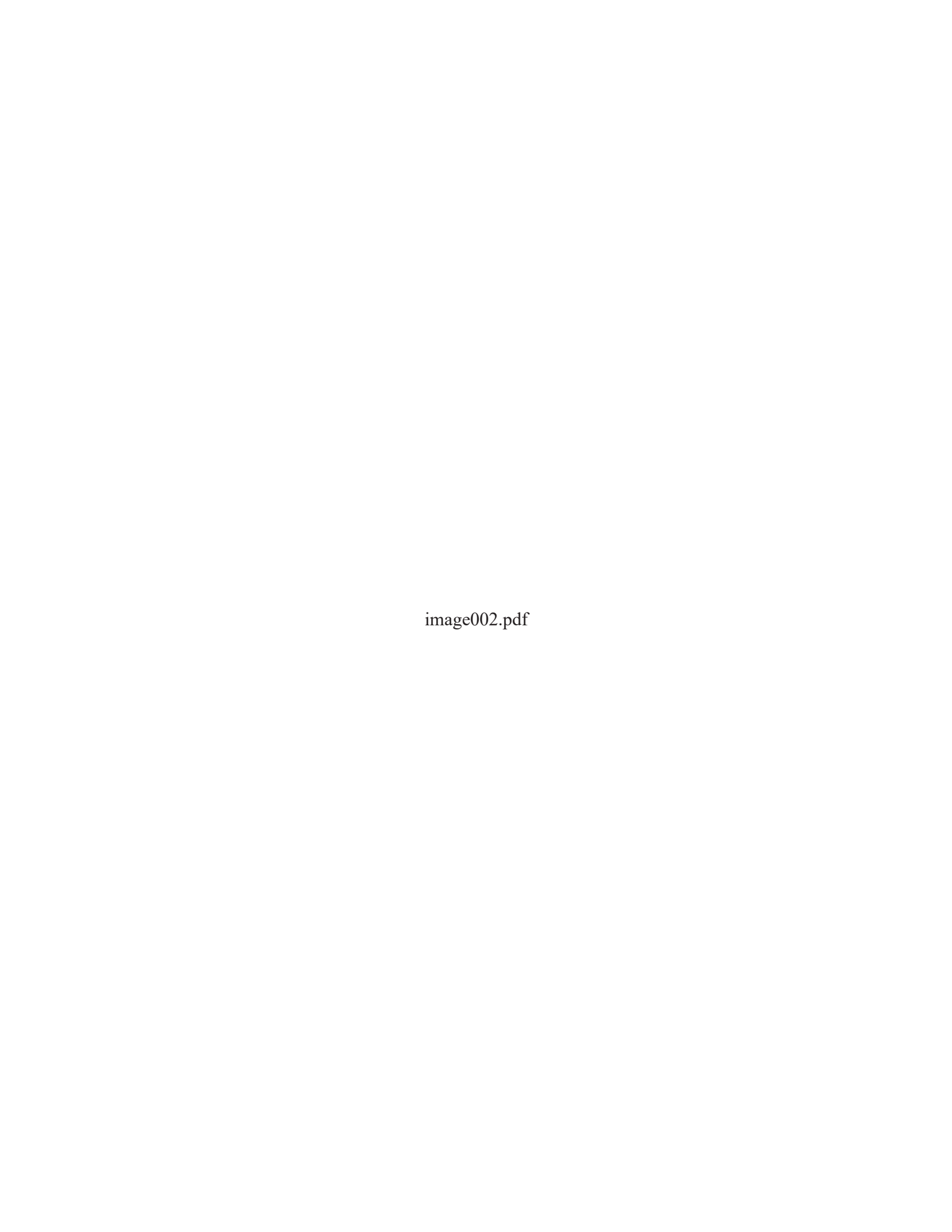
image002.pdf

osler.com

Updated Engagement Letter.pdf

Ministry of the Attorney General

Legal Services Branch
Treasury Board Secretariat

Ferguson Block
77 Wellesley Street West, 9th Floor
Toronto ON M7A 1N3

Tel.: 416 327-6396
Fax.: 416 325-9404
E-mail: sean.kearney@ontario.ca

Ministère du Procureur général

Direction des services juridiques
Secrétariat du Conseil du Trésor

Édifice Ferguson
77, rue Wellesley Ouest, 9e étage
Toronto ON M7A 1N3

Tél.: 416 327-6396
Téléc.: 416 325-9404
Courriel: sean.kearney@ontario.ca

Ontario

Sent by Courier

September 26, 2016

PRIVATE AND CONFIDENTIAL

Osler, Hoskin & Harcourt LLP
100 King Street West
1 First Canadian Place
Suite 6200, PO Box 50
Toronto, ON M5X 1B8

Attention: Jana Steele

Dear Ms. Steele:

Re: Retention of Legal Services to provide an opinion on pension surplus monies reflected in the Public Accounts of Ontario and an opinion on the statutory interpretation of the Auditor General Act

This will confirm that your firm, Osler, Hoskin & Harcourt LLP has been retained to provide the Treasury Board Secretariat (TBS) on behalf of the Province of Ontario (Ontario) with:

A) an opinion on the legal rights in connection with a surplus in the Ontario Teachers' Pension Plan and confirmation that Ontario is legally entitled to benefit from the 'Government Portion' of the surplus recognized by Ontario as a pension asset in its 2015-16 Public Accounts; and
B) an opinion on the statutory interpretation of the Auditor General Act.

I confirm that this matter will be assigned to you, Ms. Jana Steele and you will be assisted by Douglas Rienzo, Jonathan Marin, Jacqueline Code, Patrick Callaghan, Mahmud Jamal, Paul Litner, Eric Morgan, Mary Paterson, Thomas Robertson, Brenda Carson and Laura Stefan. All of you will be compensated at the rate of five hundred dollars ($500.00) per hour. We ask that your firm not substitute legal counsel without our prior written approval. In addition to these fees, you will be reimbursed for reasonable disbursements on a cost basis and without mark-up. All disbursements other than routine expenses such as faxes, copies and long

distance charges must be pre-approved. All disbursements must be supported by receipts.

We ask that bills be submitted to me on the first day of each quarter for services performed during the preceding quarter, unless directed otherwise. The maximum amount for the Retainer is one hundred thousand dollars ($100,000.00). **Please advise me when the billings are approaching sixty percent (60%) of this amount, which will be sixty thousand dollars ($60,000.00)**. In your firm's statement of account, please identify each date the services were completed, by whom and the time spent. Disbursements and applicable taxes should be listed separately on the account. Note that the maximum amount for the Retainer is exclusive of disbursements and applicable taxes.

Our client, the Office of the Provincial Controller will be responsible for payment of your invoices after they have been submitted to my attention for approval. Our practice is for payments to be made to you on the basis of invoices rendered detailing the period covered, the nature of the services rendered and the number of hours worked by each counsel and law clerk. Please include a print-out of your firm's computerized dockets together with each billing.

I would also ask that you please separate the hours of work and the hourly rates, as well as the disbursements, so that the Government may maintain its public audit records.

The delivery of services must comply with all applicable requirements, specifications and standards for accessibility established by the Ministry in accordance with the *Accessibility for Ontarians and Disabilities Act,* 2005, S.O. 2005 c. 11 and any regulations made thereto.

Your firm's primary contact is Mr. Len Hatzis, who can be reached at (416) 327-6393 or len.hatzis@ontario.ca. It is anticipated that you will be performing this work in a supporting role and not regularly attending ministry meetings and briefings. However, you may be required to brief officials of the Ministry of the Attorney General or other impacted Ministries or stakeholders from time to time.

Please forward your accounts to me:

Sean Kearney
Legal Director
Legal Services Branch, Treasury Board Secretariat
77 Wellesley Street West
Ferguson Block, 9th Floor
Toronto, ON M7A 1N3

During the course of this retainer, should issues be identified which should be more properly addressed by Ministry counsel or involve legal and/or policy

matters relating to constitutional or Charter issues or the Ontario Human Rights Code, your firm is instructed to stop the work being performed under this retainer. You will receive further instruction from Len Hatzis. We ask that no further work be undertaken until your firm has received this instruction.

Your firm declares, after taking all reasonable steps to investigate, that Osler does not have any conflict of interest representing TBS under this retainer. Your firm further agrees that your partners, associates, employees and agents shall ensure that the services to be provided under this retainer are provided free of any conflict of interest. Except as described below, during the term of this retainer, the partners, associates, employees and agents shall not engage in any work or provide legal services for another client that could reasonably result in a conflict of interest. Should the legal services provided by your firm to any other client of yours create an actual or potential conflict of interest, you shall immediately advise me and propose a plan to mitigate any such actual or potential conflict of interest in a manner that is acceptable to TBS.

Notwithstanding the above, having engaged Osler under this retainer for the limited purpose of providing legal services and advice to TBS in respect of the provision of the legal opinion noted above, TBS agrees that, except as noted below, Osler (which means the firm or any individual at Osler) is not thereby precluded from acting for any other person in respect of the provision of legal advice as a result of such engagement. Further, it is agreed that Osler's involvement in the provision of advice in this matter will not be asserted as a basis for disqualifying Osler from representing any other person in any particular matter vis-à-vis TBS, the Ontario Government or any other party. The above agreements will not apply in respect of Jana Steele, Douglas Rienzo, Jonathan Marin, Jacqueline Code, Patrick Callaghan, Mahmud Jamal, Paul Litner, Eric Morgan, Mary Paterson, Thomas Robertson or any other Osler person (collectively, the Osler Restricted Persons") who receives confidential information from or on behalf of TBS in respect of this retainer (the "Confidential Information"). Osler further agrees that it will maintain a list of Osler Restricted Persons and will establish procedures to ensure that Osler personnel, other than Osler Restricted Persons, will not have access to the Confidential Information or materials produced by Osler Restricted Persons in the course of the retainer.

You agree that any copyright in any reports, opinion, agreements or materials prepared by you pursuant to this retainer will be the sole property of the Crown in right of Ontario and that you hereby assign such copyright to the provincial Crown. Further, you hereby waive all moral rights in favour of the Crown in right of Ontario.

You will not duplicate or copy any documentation provided by the Crown pursuant to this retainer except to the extent necessary to fulfill your obligations under this retainer.

You will promptly return to the Crown, upon expiry or termination of this retainer, all documentation which you received from the Crown pursuant to this retainer, provided that you may keep a copy of such part of the documentation as may be reasonably necessary to confirm the provision of the service in accordance with your professional obligations.

This retainer does not create an employer/employee relationship or any joint venture or partner relationship. You shall not hold yourself out as an agent, employee or partner of the Crown or make any statement or representation that may have such authority.

The solicitor-client relationship will terminate upon the end of this retainer. For the purpose of avoiding future conflicts of interest, you will not use confidential information gained through this retainer in respect of work for other clients involving claims against Her Majesty the Queen in right of Ontario.

The Ministry may terminate this retainer at any time, without fault and without liability, upon two (2) weeks' notice of termination in writing to you.

The Ministry shall not by termination waive any rights or remedies it may have in the law of equity at the date of termination. Termination shall not relieve you or your firm from warranties and other responsibilities relating to services performed and money paid up to and including the date of termination.

The retainer may be amended, altered or added to only by written agreement between the parties which agreement is supplemental to this retainer and thereafter forms part of this retainer.

The retainer and the rights, obligations and relations of the parties shall, unless otherwise specified, be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The parties do hereby attorn to the jurisdiction of the Courts of the Province of Ontario.

If your firm agrees with the terms and conditions set out in this retainer, please sign the acknowledgement below and return to me at your earliest convenience

Yours truly,

Sean Kearney
Legal Director

Cc Len Hatzis

ACCEPTANCE

Osler, Hoskin & Harcourt LLP accepts the terms of this Retainer.

Per: _____ Date: Sept 26/2016
Jana Steele

I have authority to bind the law firm.

Ross Gascho - Pensions & Benefits lawyer in Toronto _ People _ Fasken Martineau.rtf

From: Steele, Jana [JSteele@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
Subject: Ross Gascho - Pensions & Benefits lawyer in Toronto | People | Fasken Martineau
Date: Wednesday, September 14, 2016 17:20:08

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http://www.fasken.com/en/ross-gascho/

****

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TBS - Memo Excerpt - Framework for Analysis (PRIVILEGED AND CONFIDENTIAL).rtf

From: Marin, Jon [jomarin@osler.com]
To: 'mcolley@deloitte.ca' [mcolley@deloitte.ca]
CC: Steele, Jana [JSteele@osler.com]; Rienzo, Douglas [DRienzo@osler.com]; Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
Subject: TBS - Memo Excerpt - Framework for Analysis (PRIVILEGED AND CONFIDENTIAL)
Date: Saturday, September 17, 2016 23:49:37
Attachment 1: Memo Excerpt - Framework for Analysis.DOCX

Matthew,

As requested, attached please find an excerpt from our Legal Opinion to the Treasury Board Secretariat which provides the factual framework for our analysis.

Please note that we are providing the attached excerpt from our Opinion to you in draft form, in the interests of time, but that our comments in the attached excerpt remain subject to further review and revision.

We look forward to discussing with you tomorrow.

Best regards,

Jon

****

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Memo Excerpt - Framework for Analysis.pdf

IV. FRAMEWORK IN THE LEGILSATION AND PLAN DOCUMENTATION FOR SURPLUS UTILIZATION BY THE SPONSORS

1. Joint Sponsorship Plan Design and Cost Sharing

The OTPP qualifies as a "jointly sponsored pension plan" (**"JSPP"**) under the PBA, which has three material implications relevant to the present analysis:

1. Plan Governance – under a JSPP, the employers (or any persons or entities who make contributions on behalf of the employers or represent the employers) and the members of the pension plan (or any representatives of the members) are jointly responsible for making all decisions about the terms and conditions of the pension plan and any amendments to the pension plan.[1]

2. Funding – the OTPP (and certain other prescribed JSPPs) are exempt from solvency funding requirements under the PBR.[2]

3. Cost Sharing – in a defined benefit pension plan which does not qualify as a JSPP, the employer is solely responsible for funding any going concern unfunded liability or solvency deficiency. However, given the OTPP qualifies as a JSPP, members can be required to make contributions in respect of any going concern unfunded liability (and, as noted, solvency funding is not required under the OTPP).[3] Under the OTPP, there is 50/50 cost sharing on all plan funding obligations, meaning that the parties share the plan funding risk equally.[4]

Joint governance and cost sharing form two of the core features of the OTPP. Consistent with the equal sharing of risk permitted under the JSPP plan design, there is a requirement for decisions relating to plan design and plan amendments to be made jointly by the Sponsors.

Consistent with the JSPP design, the FMP requires the Sponsors to negotiate and agree upon decisions relating to surplus utilization. In this regard, the Sponsors can be said to have *equal opportunity* to benefit from surplus utilization through the negotiation process.

2. Provisions in the Legislation and Plan Documentation Relating to the Utilization of Surplus

(a) Teachers' Pension Act (Ontario)

Section 10(1)3 of the Teachers' Act provides that the Minister of Education (the **"Minister"**) and the executive of the Ontario Teachers' Federation (the **"OTF"**) may enter into an agreement (i.e., the Sponsors Agreement) that provides for certain matters, including: "3. The sharing of

---

1 PBR, s. 3.1(1).

2 PBR, s. 1.3.1(3).

3 See PBA, ss. 1(2), ss. 55(4).

4 **[ADD CITATION]**

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entitlement to gains or surplus under the plan and of liability for deficiencies in the pension fund by the Minister, the employers who contribute under the plan and the active plan members".

(b) Sponsors Agreement and FMP

The procedures pursuant to which surplus may be withdrawn or utilized from the OTPP are identified in the FMP (which forms Appendix "A" to the Sponsors Agreement).

We understand that the FMP was first established in March 2003, as a supplement to the Sponsors Agreement, to provide a guidance framework to the Sponsors for decision-making when the OTPP has a funding surplus or shortfall. Prior to the creation of the FMP, the OTPP was considered fully funded (and surplus could be utilized, including through permanent benefit improvements) where assets equalled at least 100% of liabilities. The FMP is intentionally conservative through prioritizing the preservation of assets until a sufficient surplus "cushion" has been built to justify the utilization of surplus for contribution reductions or benefit improvements.

The FMP contemplates five "funding zones", each defined by a range. These funding zones provide the Sponsors with guidance as to when, based upon the funding level of the plan, it may be appropriate to (amongst other things) increase or decrease benefits, raise or lower contribution rates or conserve assets. The FMP is not intended to be "binding" on the Sponsors. Rather, the Sponsors will always have the discretion to agree to pursue a course of action that is not expressly provided for in the FMP. As will be discussed below, the ultimate discretion of the Sponsors is reflected throughout various provisions of the FMP.

In the context of plan surpluses, three funding zones are of relevance, each of which is discussed below in greater detail.

(i) Restoration Zone

Article III of the FMP (Funding Zone – Restoration) (the **"Restoration Zone"**) is the "fully funded" zone where assets equal at least the liabilities, valued at the interest rate + 1.55%. In this zone, the plan is considered adequately funded to provide base benefits supported by the base contributions. Given the volatility of market factors and the numerous assumptions in the funding valuation, "fully funded" is considered a range. It is our understanding that the OTPP is currently in the Restoration Zone.

In the Restoration Zone, benefits cannot be improved and contributions cannot be reduced, subject to certain actions that allow for the restoration of past benefit reductions or contribution increases. In this regard, Section 3.06 provides the following:

> Section 3.06 *Application of Restoration Basis Excess*: For purposes of clarity, excesses identified pursuant to Section 3.05 shall be applied in the following order, provided that the partners reserve the right to reconsider such application having regard to the contribution rate and benefits then in effect, prevailing economic circumstances and other relevant factors:
>
> (a) *Bring Escalated Adjustments to 50% for Post-2013 Service*: to provide escalated adjustments up to 50% of the CPI adjustment in respect of service accrued after 2013 for the period covered by the valuation, and assumed thereafter at the same rate;

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(b) *Bring Escalated Adjustments to 100%*: to provide escalated adjustments up to 100% of the CPI adjustment for the period covered by the valuation, and assumed thereafter at the same rate;

(c) *Restore Escalated Adjustments for Post-2013 Years*: to provide escalated adjustments to increase, to the extent possible, the current accumulated adjustment ratio for each year after 2013, to the current accumulated adjustment ratio for the period from 2010 to 2013, beginning with the first year in which current escalated adjustments were less than 50% of the run-rate escalated adjustments;

(d) *Restore Escalated Adjustments for Post-2009 Years*: to provide escalated adjustments to increase, to the extent possible, the current accumulated adjustment ratio for each year after 2009 to the run-rate accumulated adjustment ratio, beginning with the first year in which current escalated adjustments were less than run-rate escalated adjustments;

(e) *Provide Benefit Increases or Contribution Rate Reductions*: to provide the following:
(i) an increase in benefits, where the present value of current benefits is less than the present value of run-rate benefits,
(ii) a reduction in contribution rates, where the present value of current contributions exceeds the present value of basic contributions, or
(iii) a combination of (i) and (ii).

By way of summary, the Restoration Phase allows for surplus to be utilized to "restore" foregone indexation (Sections 3.06(a)-(d))[5] and then to either increase benefits to the "run-rate benefit" level (i.e., the long-term target level) or to lower contributions to the basic target rate (or a combination of these two options) (Section 3.06(e)). While the FMP contemplates that the actions will typically be taken sequentially (i.e., starting with Section 3.06(a) and ending with the actions in Section 3.06(e)), the Sponsors are required to first agree to the actions (if any) taken under Section 3.06 and have the discretion to apply the actions in a different order.[6]

As noted, under Section 3.06(e), surplus can be utilized to reduce contribution rates "where the present value of current contributions exceed the present value of basic contributions" (the **"Restoration Contribution Reduction"**). We understand that contributions to the OTPP currently include a 1.1% special contribution on all earnings and that the Restoration Contribution Reduction under Section 3.06(e) would permit this special contribution to be eliminated.

The 2012 Term Sheet sets out an agreement between the Sponsors which is in effect from December 31, 2012 to December 30, 2107 (the **"Freeze Period"**), the terms of which are reflected in the FMP. Under Section 3.08 of the FMP, there are certain limits (relating to the funded status

[5] This is achieved by first increasing go-forward indexing to 50% for post-2013 service period, then to 100% on all post-2009 service periods and next, by restoring current pension amounts to a certain prescribed level starting with the years where indexing was less than 50% until all years of partial indexation are restored to the same level and then by restoring indexation to 100% for all service periods.

[6] Pursuant to Section 3.06 of the FMP, "the partners reserve the right to reconsider such application having regard to the contribution rate and benefits then in effect, prevailing economic circumstances and other relevant factors…"

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of the plan) on the ability to make escalated adjustments or to improve benefits pursuant to Section 3.06 during the Freeze Period.

As noted below, no action can be taken under the Temporary Improvement Zone (as defined below) or the Permanent Improvement Zone (as defined below) until all restorative actions under Section 3.06 of the FMP have been provided for (subject to the general discretion of the Sponsors regarding the basis upon which surplus is to be utilized).

(ii) Temporary Improvement Zone

Article IV of the FMP (Funding Zone – Temporary Improvements) (the **"Temporary Improvement Zone"**) was added to the FMP in March 2015 and allows for: (i) temporary contribution decreases (i.e., a contribution holiday), (ii) surplus distribution and/or (iii) benefit improvements, provided in each case that the plan's funding level reaches prescribed thresholds.

In the Temporary Improvement Zone, assets will equal at least the liabilities, valued at interest rates + 1.25%. In this zone the plan is considered well-funded and able to afford temporary changes, so long as they do not increase the long-term cost of the OTPP. Surplus cannot be utilized under the Temporary Improvement Zone until the Sponsors have provided for all of the changes specified in Section 3.06 of the Restoration Zone.[7]

In all cases the Sponsors' prior agreement is required to provide for a temporary contribution decrease, surplus distribution or benefit improvement.[8] Where the Sponsors agree to a change which would result in surplus being distributed or utilized for a temporary benefit improvement, the Sponsors are required to enter into a written agreement "governing the manner in which the contributions by the Minister and employers may be adjusted to offset any surplus distribution or temporary improvement of benefits that is reflected in the value of the liabilities."[9] The requirement for this written agreement, which specifically identifies the manner in which employer contributions will be adjusted (if at all) in the event of member benefit improvements, arguably reflects the past practice of the Sponsors sharing equally in the benefits of surplus utilization (OTF through benefit improvements and the Province through contribution reductions). In the event that no temporary contribution reductions will occur in connection with a benefit improvement, the Province would be required to acknowledge that it is "forfeiting" the opportunity to benefit from a contribution reduction as part of the surplus utilization agreement.

We note that, as a temporary measure, the OTF has "first call" rights on 100% of the surplus disclosed in valuation report with a valuation date after December 30, 2017, up to certain prescribed amounts (the **"OTF Call Right"**).[10] The 2012 Term Sheet indicates that "[t]his is a one-time arrangement intended to compensate Plan members for absorbing 100% (rather than 50%) of funding shortfalls arising in the government initiated Freeze Period and is without prejudice or precedent for any future situation." In other words, this one-time opportunity to benefit from surplus utilization is directly linked to the cost sharing nature of the plan and the

7 FMP, section 4.03

8 FMP, section 4.05.

9 FMP, section 4.06

10 FMP, section 6.03.

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additional assumption of risk by OTPP plan participants during the Freeze Period. In light of the Freeze Period and the OTF Call Right, it is our understanding that no actions under the Temporary Improvement Zone will be permitted until the Freeze Period has ended and the OTF Call Right in Article VI of the FMP has been satisfied.[11] It is our understanding that the quantum of the OTF Call Right is not presently expected to be material.

Mercer, the external actuary for the OTPP, has determined that "should the plan earn future returns that are equal to the valuation discount rate adopted by the Province for financial statement reporting purposes, it is possible that some of the future contribution requirements could be reduced by agreement of the Sponsors as experience gains would be recognized in the funding valuation based on the assumptions currently used for funding purposes".[12]

(iii) Permanent Improvement Zone

Where the surplus reaches prescribed levels, Article V of the FMP (Funding Zone – Permanent Improvements) (the **"Permanent Improvement Zone"**) will apply. In the Permanent Improvement Zone, assets will equal at least 110% of the liabilities, valued at interest rates + 0.5%. In the Permanent Improvement Zone, the plan is essentially fully funded at the Government of Canada long bond rates and the funding security desired to support permanent changes (either an improvement in benefits or a reduction in contributions) is present.

Under the FMP framework, these changes can be introduced once the Sponsors have already provided for the changes specified in Section 3.06 (i.e., no further action to restore benefits remains to be taken under the Restoration Zone).[13]

The Sponsors are required to mutually agree to any change made in the Permanent Improvement Zone. As in the Temporary Improvement Zone, where the Sponsors have agreed to a change which would result in an improvement to member benefits, the Sponsors would be required to first enter into a written agreement "governing the manner in which the contributions by the Minister and employers may be adjusted to offset any change in current benefits that is reflected in the value of the liabilities."[14]

In light of the Freeze Period and the OTF Call Right, it is our understanding that no actions under the Permanent Improvement Zone will be permitted until the Freeze Period has ended and the OTF Call Right in Article VI of the FMP has been satisfied.[15] As noted, it is our understanding that the quantum of the OTF Call Right is not presently expected to be material.

3. History of Surplus Utilization

[11] See FMP, sections 4.05 and 4.09.

[12] Memo from Lise Houlse (Mercer) to Mary Cover (Ontario Teachers' Pension Plan) dated June 17, 2016.

[13] FMP, section 5.03.

[14] FMP, section 5.05(b).

[15] See FMP, sections 5.05 and 5.08.

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The history of surplus utilization prior to the date that the FMP was established (in March 2003) demonstrates a past practice of the Sponsors equally sharing (in the aggregate) the benefits of surplus utilization:

Valuation Date	Surplus/(Deficit)	OTF	Ontario Government	Surplus Remaining
1990	$(7.8 billion) unfunded liability	Increased contributions by 1% to 8.9%	Agreed to make a series of special payments to eliminate the unfunded liability and match increased contributions	Special payments considered an asset bringing the plan to a $0 surplus
1993	$1.5 billion	$325 million to offset social contract days	Eliminated special payments for $1.2 billion saving	$0
1996	$0.7 billion	$0.6 billion for benefit improvements and RCA contributions	N/A	$0.1 billion
1998	$6.8 billion	$2.2 billion for benefit improvements	$4.6 billion to reduce the value of remaining special payments	$0
1999	$3.5 billion	N/A	$3.5 billion to reduce the value of remaining special payments	$0
2001	$6.8 billion	$6.2 billion for benefit improvements	N/A	$0.6 billion
2002	$1.9 billion	Sponsors agreed not to make any changes to benefits or contributions		$1.9 billion
Total		**$9.3 Billion**	**$9.3 Billion**	

* Source: Ontario Teachers' Pension Plan Board "Report on Funding" (April 2002)

Although surplus utilization prior to 2003 may not have been 50/50 on a distribution-by-distribution basis, the history of surplus utilization would appear to suggest a mutual understanding of the Sponsors that, in the aggregate, the benefits derived from surplus utilization should be of equal monetary value at the end of the day.

As noted above, the FMP was first established in March 2003 to provide a guidance framework to the Sponsors decision-making when the OTPP has a funding surplus or shortfall. Below is a summary of the key funding decisions since the introduction of the FMP:

Year	Valuation Status and Key Decisions
2003	$1.5 billion surplus; no changes to benefits or contribution levels. Funding Management Policy adopted by plan sponsors.

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2005	A preliminary $6.1 billion shortfall was resolved, leaving plan with a $0.1 billion surplus. Shortfall resolved with special contribution rate increases, totalling 3.1% of base earnings by 2009 for teachers, the Ontario government and other employers. OTF used the $76 million contingency reserve set aside in 2001 to reduce contribution rate increases for members in 2008.
2008	A preliminary $12.7 billion shortfall was resolved with the introduction of conditional inflation protection for pension benefits earned after 2009 and an increase in the basic contribution rate for members and the government to 9% from 8%. Employers agree to make special payments equal to any annual pension increases retirees forgo to a maximum of 50% missed inflation.
2009	A preliminary $2.5 billion shortfall was resolved primarily by assuming a slightly higher long-term rate of return on investments: yield on real-return bonds plus 1.5%, versus real-return bonds plus 1.4%. Other minor changes made to assumptions to reflect recent plan experience.
2011	A preliminary $17.2 billion shortfall was resolved with a 1.1% contribution rate increase (phased in over three years), slightly smaller annual cost-of-living increases for teachers who retired after 2009, and recognition of current contribution rate as the permanent base rate.
2012	$9.6 billion preliminary shortfall adjusted to reflect changes in mortality assumptions and impact of two-year freeze on teachers' salaries. 2012 shortfall resolved by making inflation protection for pension credit earned after 2013 fully conditional on plan's funded status and providing slightly smaller pension increases, beginning in 2014, for members who retired after 2009. These changes enabled the plan to assume a slightly higher discount rate. The changes left the plan with a $200 million surplus at Jan. 1, 2012.
2014	$5.1 billion preliminary funding surplus used to boost pensions of members who retired after 2009 to the level they would have been at if full inflation protection had been provided each year since they retired. The surplus funds were also used to raise conditional inflation protection to 60% of the increase in the cost of living for the portion of retirees' pensions earned after 2009. Both changes are effective with January 2015 pension payments.
2015	Some of the $6.8 billion preliminary funding surplus was used to boost pensions of members who retired after 2009 to the level they would have been at if full inflation protection had been provided on January 1, 2015. The surplus funds were also used to raise conditional inflation protection for pension credit earned after 2009 to 70% from 60% of the increase in the cost of living. Both changes were effective January 2016. In addition, some surplus funds were reserved to help facilitate stability in contribution and benefit levels should a future funding valuation show a decline in assets or increase in pension costs.

* Source: Ontario Teachers' Pension Plan, "Key Funding Decisions Since 1990"

Surplus has only been utilized twice since the FMP was first introduced – in each of 2014 and 2015 escalated adjustments were provided to increase the pensions of members who had retired after 2009. As noted above, the OTPP is currently in the Restoration Zone which, pursuant to Section 3.06, prioritizes the utilization of surplus to "restore" foregone indexation before any other actions are taken with respect to surplus. In other words, since the FMP was established the OTPP has not reached a level of surplus under the FMP which would allow for the parties to enter into

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an agreement regarding its utilization under the Temporary Improvement Zone or the Permanent Improvement Zone.

In this respect, the pre-FMP practice of the Sponsors sharing the benefits of surplus utilization 50/50 would arguably continue to shape the expectations of the parties should surplus reach the requisite level that it could be utilized under the Temporary Improvement Zone or the Permanent Improvement Zone.

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TBS - Osler retainer letter.rtf

From: Steele, Jana [JSteele@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
Subject: TBS - Osler retainer letter
Date: Friday, September 16, 2016 15:58:12
Attachment 1: image001.gif
Attachment 2: image002.gif
Attachment 3: image003.png
Attachment 4: Letter dated September 16, 2016.pdf

Hi Len:

Attached is a copy of our retainer letter.

Best regards,

Jana

Jana Steele

416.862.6625

DIRECT

416.862.6666

FACSIMILE

jsteele@osler.com

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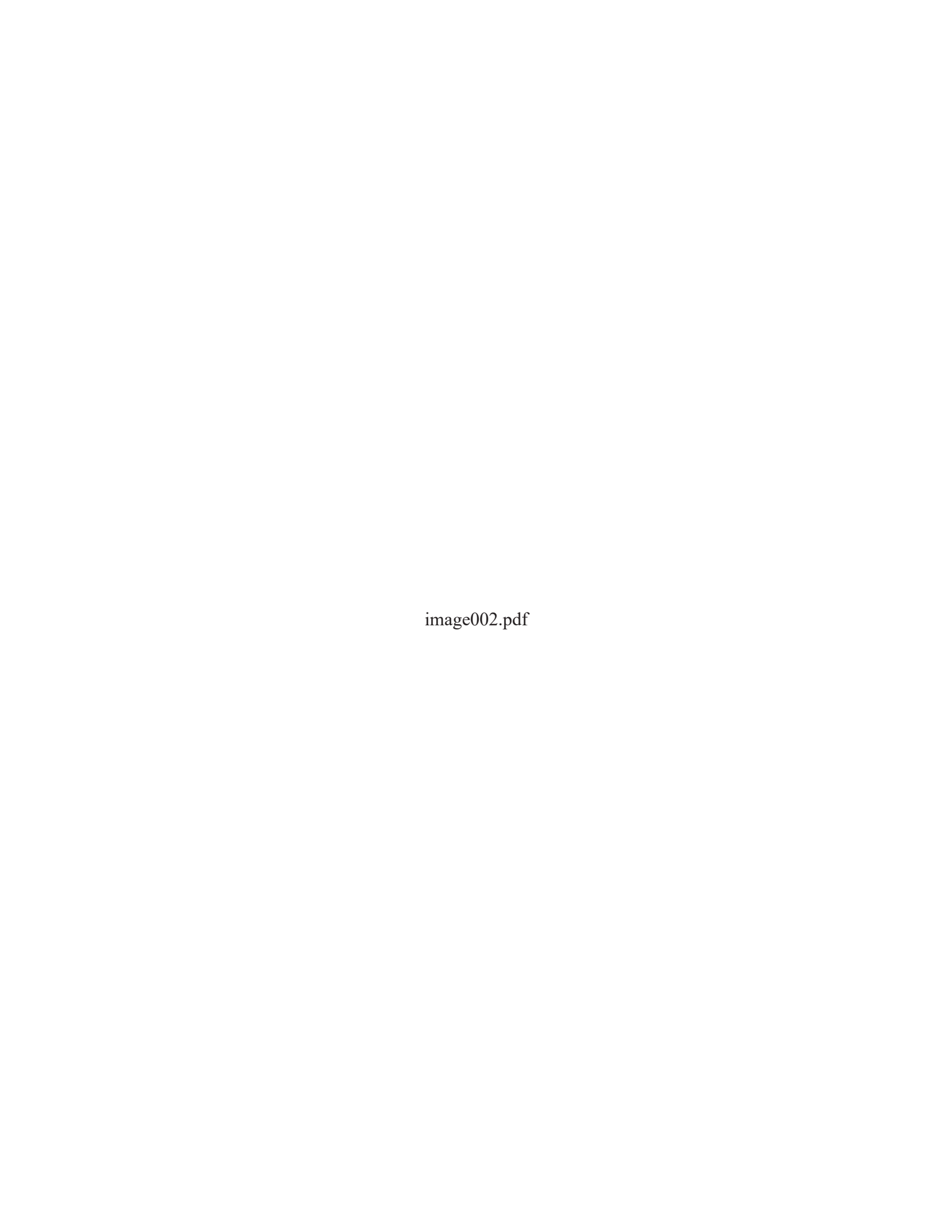
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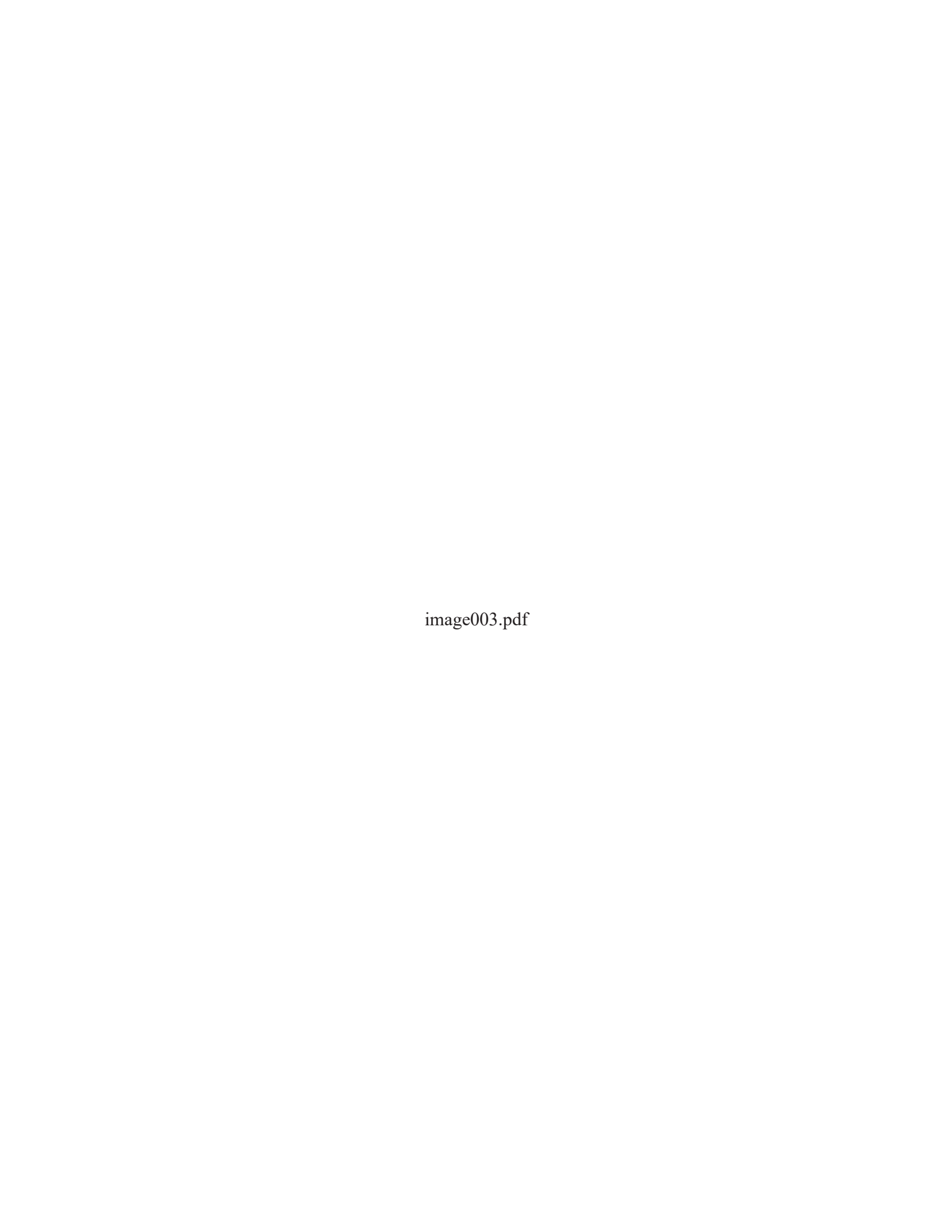
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pensions blog

Letter dated September 16, 2016.pdf

Osler, Hoskin & Harcourt LLP
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Toronto, Ontario, Canada M5X 1B8
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OSLER

Toronto
Montréal
Calgary
Ottawa
Vancouver
New York

September 16, 2016

Jana Steele
Direct Dial: 416.862.6625
jsteele@osler.com
Our Matter Number: 1176396

SENT BY ELECTRONIC MAIL

Treasury Board Secretariat
Ferguson Block
77 Wellesley Street West
9th Floor
Toronto, ON M7A 1N3

Attention: Len Hatzis

Dear Mr. Hatzis:

Thank you for retaining Osler, Hoskin & Harcourt LLP ("Osler") to provide legal services to you in connection with legal advice related to surplus entitlement and other related issues. Jana Steele will have primary responsibility for seeing that your legal needs are met, will supervise all legal work in connection with this retainer and determine appropriate additional staffing. For your record keeping purposes, the file name and number we have assigned to this matter is: Opinion, matter number 1176396.

We are pleased you have retained us to assist with this matter, and would like to take this opportunity to confirm further details of the engagement. Please refer to our Client Service Terms for additional standard information about our role, how we staff engagements, fees and disbursements and other terms that will apply to this and any matter in which you engage us. A copy of our standard Client Service Terms can be found on osler.com.

Conflicts

We have conducted a review of our records to confirm that representing you in this matter will not create a legal conflict with the interests of any of our existing clients. That review was conducted using the names Treasury Board Secretariat and Auditor General. Please let us know immediately if there are other names that should be entered into our conflicts system. We will be relying upon you to let us know about any person or organization whose interests are adverse to yours.

Notwithstanding the above, having engaged Osler under this retainer for the purpose of providing legal services and advice to TBS in respect of the requested opinions, TBS agrees that Osler (which means the firm or any individual at Osler) is not thereby precluded from acting for any other person in respect of the provision of legal advice as a result of such engagement. Further, it is agreed that Osler's involvement in the provision of advice in this matter will not be asserted as a basis for disqualifying Osler from representing any other person in any particular matter vis-à-vis TBS, the Ontario Government or any other party.

Fees

Our fees are generally based upon the time spent by lawyers and other legal professionals on your behalf and are charged at hourly rates. As discussed, our rates on this matter will be $500 per hour for all timekeepers.

If you have any concerns regarding our representation of you or the terms of our engagement, please contact me.

Yours very truly,

Jana Steele
JS/mr

TBS - arbitration provision inclusion.rtf

From: Steele, Jana [JSteele@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
CC: Kaufman, Paul (TBS) [Paul.Kaufman@ontario.ca]; Rienzo, Douglas [DRienzo@osler.com]; Marin, Jon [jomarin@osler.com]
Subject: TBS - arbitration provision inclusion
Date: Friday, September 16, 2016 19:20:19

Hi Len:
Further to the below, subject to Allan Shapira confirming that the narrow provisions we flagged provide for 50/50 access to surplus (quite unclear) the arbitration analysis would not take that form. We could say something along the lines of - the plan design as a whole contemplates equal sharing of cost/risk and, as a result, presumably benefit of excess.
Jana

-----Original Message-----
From: Steele, Jana
Sent: Friday, September 16, 2016 6:47 PM
To: 'Hatzis, Len (TBS)' <Len.Hatzis@ontario.ca>
Cc: Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca>; Marin, Jon <jomarin@osler.com>; Rienzo, Douglas <DRienzo@osler.com>
Subject: RE: TBS - Osler retainer letter

Thanks Len.
With regard to your earlier email, I will get back to you shortly.
Jana

-----Original Message-----
From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Friday, September 16, 2016 6:42 PM
To: Steele, Jana <JSteele@osler.com>
Cc: Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca>
Subject: Re: TBS - Osler retainer letter

One more issue - we discussed the issue of the opinion going through the arbitration provisions and seeing what impact an arbitration award could have on the surplus etc... as part of this analysis, please address whether through the arbitration process, could the principle of 50-50 access to the surplus (which I presume is set out somewhere, fmp, teachers pension Act etc..) be affected or is that ever present regardless of the arb process. Thanks

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Hatzis, Len (TBS)
Sent: Friday, September 16, 2016 6:00 PM
To: Steele, Jana
Subject: Re: TBS - Osler retainer letter

Thanks Jana - at a meeting now with high ups here. There is again some urgency re timelines - can you advise re when your office would be in a position to deliver a draft to deloitte's as they need to complete their opinion. Can you deliver by Sunday morning.

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Steele, Jana
Sent: Friday, September 16, 2016 3:58 PM
To: Hatzis, Len (TBS)
Subject: TBS - Osler retainer letter

Hi Len:
Attached is a copy of our retainer letter.
Best regards,
Jana

[cid:image001.gif@01D21032.99DEF260]

Jana Steele

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DIRECT

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[cid:image002.gif@01D21032.99DEF260]<http://www.osler.com/>

[cid:image003.png@01D03005.3C421D80]<http://www.pensionsbenefitslaw.com/>

https://twitter.com/pensionsjana

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TBS - attachment..rtf

From: Steele, Jana [JSteele@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
CC: Marin, Jon [jomarin@osler.com]
Subject: TBS - attachment.
Date: Monday, September 26, 2016 14:21:45
Attachment 1: 41151848_2.docx

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Memorandum

Privileged & Confidential

To:	Len Hatzis, *Treasury Board Secretariat*	**Date:**	September 26, 2016
From:	Jana Steele Jonathan Marin	**Tel:**	416.862.6625 416.862.5935
Subject:	Treasury Board Secretariat Re: Follow up questions re role of regulator	**Matter No:**	1176392

You have asked us to elaborate on the role of the Superintendent of Financial Services (the "Superintendent"), as it relates to the utilization of surplus under the Ontario Teachers' Pension Plan (the "OTPP"). Further background information can be found in your e-mail to us dated September 25, 2016 (9:46PM).

The Superintendent has the responsibility to "exercise the powers and duties conferred on or assigned to" him/her, to "administer and enforce [the *Financial Services Commission of Ontario Act*] and every other Act that confers powers on or assigns duties to the Superintendent", and to "supervise generally the regulated sectors".[1]

In this regard, the Superintendent is responsible for administering and enforcing the *Pension Benefits Act* (Ontario) (the "PBA"). The Superintendent's statutory functions under the PBA can be divided into three general categories: decision-making functions; administrative and procedural functions; and policy-making functions.[2]

As per your instructions, we have not evaluated the role of the Superintendent as it relates to the *withdrawal* of surplus assets from the OTPP, where the surplus withdrawn is to be paid in whole or in part to the Province of Ontario (the "Province"). However, we note that the prior regulatory approval of the Superintendent would be required in such circumstances.[3]

The Province could potentially receive a financial benefit through the *utilization* of OTPP surplus, for example, as a result of a temporary reduction in the Province's contribution obligations (a

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1 *Financial Services Commission of Ontario Act*, 1997, SO 1997, c. 28 (the "FSCO Act") at ss. 5(2).

2 Ari Kaplan & Mitch Frazer, *Pension Law* (2nd Ed.), Erwin Law Inc., 2013 at p. 131.

3 Subsection 78(1) of the PBA provides that "[n]o money that is surplus may be paid out of a pension fund to the employer without the prior consent of the Superintendent". The Superintendent may not consent to the payment of surplus to an employer out of a continuing pension plan unless certain requirements have been met – see, PBA, ss. 79(1).

contribution holiday) or a change to the contribution formula which reduces the Province's contribution obligations. Neither the PBA nor the regulations to the PBA (the "Regulations") require the Superintendent's consent for surplus to be *utilized* for a contribution holiday[4] or to amend the contribution formula under the OTPP.

Certain changes to the OTPP which provide for the utilization of surplus may require the OTPP text to be amended (for example, changes to the contribution formula). Under Subsection 12(1) of the PBA, the administrator of a pension plan is required to apply to the Superintendent, within sixty days after the date on which the pension plan is amended, for registration of the amendment. The application for registration of an amendment must include certain documentation required under the PBA and the Regulations.[5] However, pursuant to Subsection 13(1) of the PBA, "[a]n amendment to a pension plan is not effective until the administrator of the plan files an application for registration of the amendment and the application meets the requirements of section 12 [of the PBA]". In other words, the Superintendent is not required to register a pension plan amendment as a precondition to such amendment becoming effective. Supporting this conclusion, in *Consumers Packaging*,[6] the Financial Services Tribunal concluded that the pension plan amendment in question became effective once filed, notwithstanding the fact that it had not yet been registered by the Superintendent:

> …It is clear from the *PBA* provisions above that the administrator of a pension plan has an obligation to administer a pension plan in accordance with filed documents and can implement or make effective plan amendments prior to the issuance of a Notice of Registration by the Superintendent. The Tribunal agrees with the Superintendent's and Union's submission that there is "no magic" in registration…[7]

The authority of the Superintendent to refuse to register an amendment under the PBA (in whole or in part) is limited to circumstances where the amendment is void or if the pension plan with the amendment would cease to comply with the PBA and the Regulations.[8] Similarly, the authority

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4 The PBA has been amended to expressly permit an employer required to make contributions under a pension plan, or a person or entity required to make contributions under a pension plan on behalf of an employer, to reduce or suspend contributions for the normal cost of the pension plan if the pension plan has a surplus and if such other requirements as may be prescribed have been satisfied. Contributions could not be reduced or suspended if the documents that create and support the pension plan or the pension fund prohibit the reduction or suspension: see PBA, s. 55.1. However, this provision is not currently in force and will only come into force upon proclamation by the Lieutenant Governor.

5 PBA, ss. 12(2).

6 *Consumers Packaging Inc by its monitor, KPMG Inc., on behalf of O-I Canada Corp v. Superintendent of Financial Services and United Steel Workers of America, Local 203G* (29 November 2002), File No P0162-2001 (Ont. F.S.T.) ("*Consumers Packaging*").

7 *Ibid.*, at p. 11.

8 PBA, ss. 18(1)(d) and (f).

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of the Superintendent to revoke the registration of an amendment (in whole or in part) is limited to circumstances where the amendment does not comply with the PBA and the Regulations.[9]

Under the PBA and the Regulations, a pension plan administrator is required to file certain documentation with the pension regulator. Notably, under section 76 of the Regulations, the administrator is required to file financial statements and, for plans with assets of $3 million or more, an auditor's report for the pension fund or plan as at the plan's fiscal year end. However, we note that the financial statements that are required to be filed with the pension regulator are the financial statements for the OTPP and not the financial statements of the pension plan sponsor(s).

JS:

[9] PBA, ss. 18(1)(e) and (g).

TBS Opinion.rtf

From: Steele, Jana [JSteele@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
CC: Rienzo, Douglas [DRienzo@osler.com]; Marin, Jon [jomarin@osler.com]
Subject: TBS Opinion
Date: Friday, September 16, 2016 13:30:25
Attachment 1: image001.gif
Attachment 2: image002.gif
Attachment 3: image003.png

Hi Len:

Further to our call this morning, the following is our current thinking on the draft opinion:

1. Based on the documentation and legislative framework in place, neither the Province nor the OTF has a legal right to unilaterally utilize surplus assets

2. Where surplus exists, the FMP sets out certain limitations regarding the use of surplus (e.g. the restoration rights in Article III or the OTF call rights in Article VI). Certain of these rights may have priority over any negotiations of the parties to access all or a portion of the surplus.

3. Once any applicable limitations in #2 are satisfied, the Province and the OTF would, by virtue of the plan documentation and plan design, have relatively equal *opportunity* to utilize surplus (i.e., through contribution holidays or reductions to the Province's contribution obligations, through benefit enhancements for the members, etc.)

As we discussed, we will not be commenting on the requirements under the accounting standards. Our opinion will address, in detail, the legal framework that is in place regarding the utilization of surplus and is intended to provide Deloitte with sufficient factual information from which it can make a determination, from an accounting standpoint, as to the proper treatment of the accounting surplus under the applicable accounting standards.

Best regards,

Jana

Jana Steele

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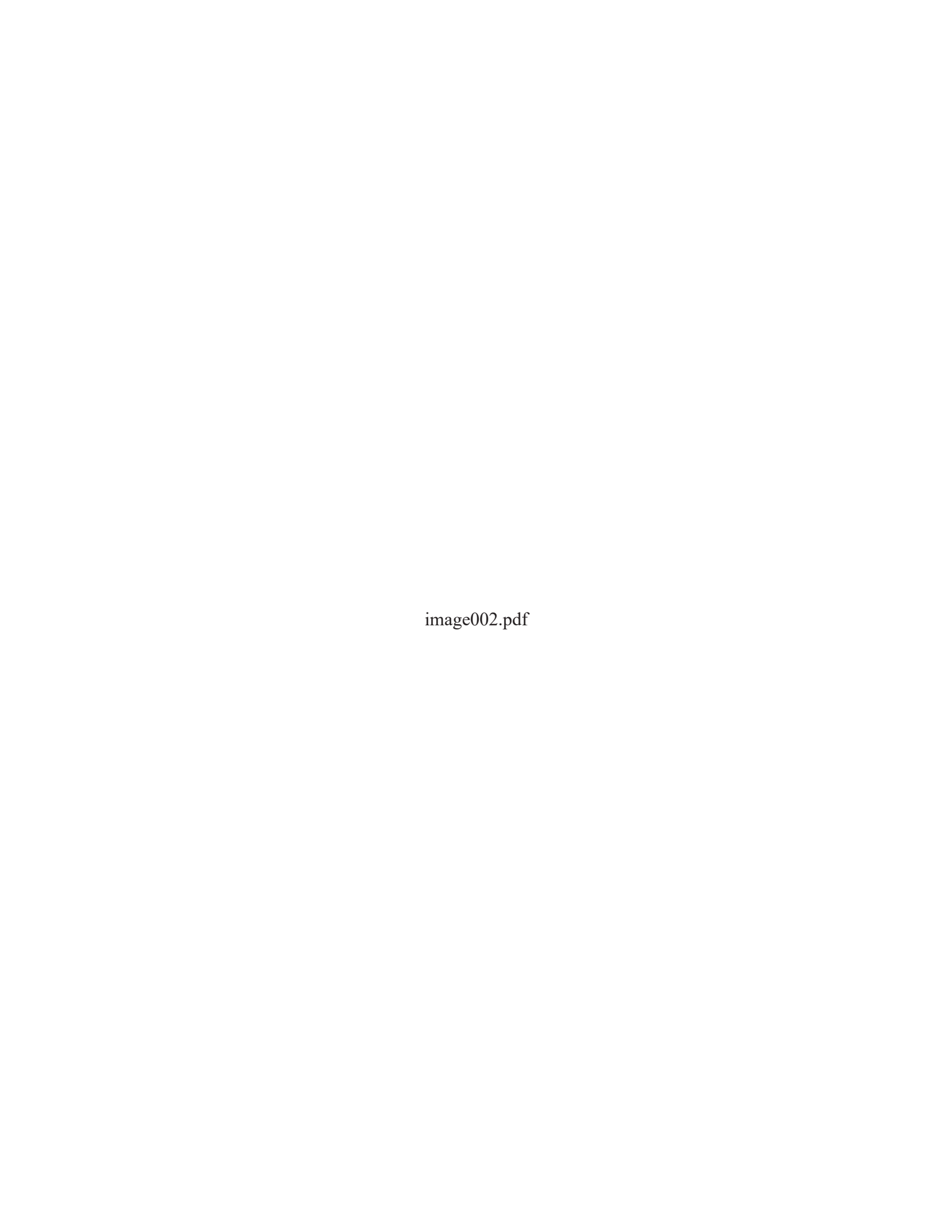
image002.pdf

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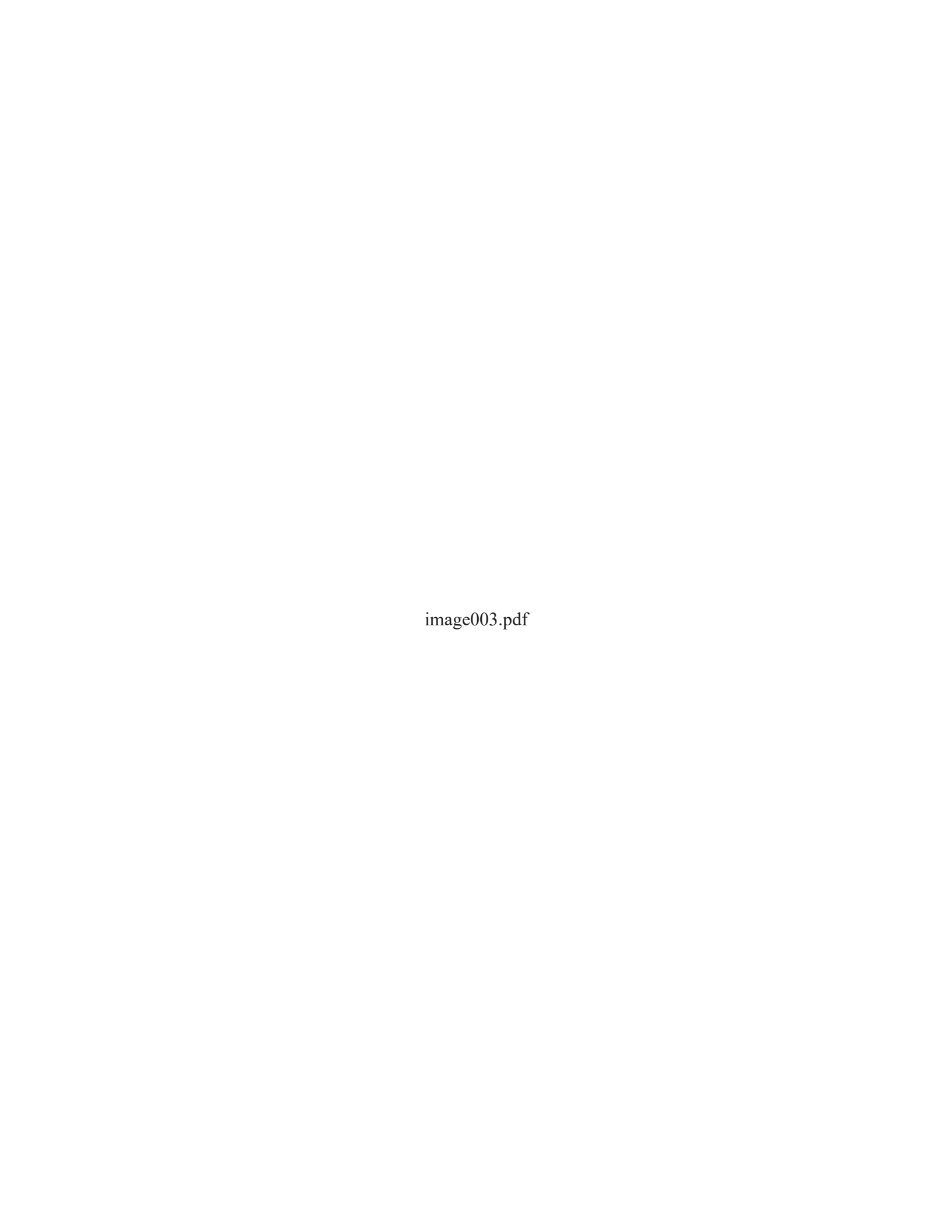
image003.pdf

pensions blog

TBS question re ITA Excess Surplus.rtf

From: Steele, Jana [JSteele@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
CC: Carson, Brenda [BCarson@osler.com]
Subject: TBS question re ITA Excess Surplus
Date: Saturday, September 24, 2016 18:00:29

Hi Len:

Further to our discussion and your emails, we have reviewed the emails you provided. The following is a brief overview of the excess surplus rule under the ITA:

Under the ITA, all pension plans that have a defined benefit provision (including JSPPs) are prohibited from receiving further employer contributions while the plan holds an "excess surplus". The rules in the ITA operate such that essentially if an actuarial valuation illustrates that a pension plan's assets are greater than 125% of the plan's liabilities, the plan is considered to have an excess surplus and employer contributions are prohibited until such time as the excess surplus can be eliminated (or, alternatively, benefit improvements are provided – in this case the actuarial valuation has to include the improvements). The prohibition of ongoing contributions under the ITA rules generally applies to the employer. However, depending on the contractual terms, the prohibition could apply to both members and the employer.

Please let us know if you have any further questions or if we may be of further assistance.

Best regards,

Jana Steele

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Update -- Auditor General Opinion.rtf

From: Code, Jacqueline [JCode@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
CC: Steele, Jana [JSteele@osler.com]
Subject: Update -- Auditor General Opinion
Date: Friday, September 16, 2016 17:14:57
Attachment 1: image001.gif
Attachment 2: image002.gif

Hi Len,

As requested, I'm providing you with an update as to our timing for an opinion on the auditor-general issues.

We've discussed the issues and done some preliminary digging. I think with the benefit of some further time on Sunday to review the authorities and consider their implications, we should be in a position to provide at least a preliminary view on Monday by late morning. This will not be the written opinion but an oral view as to where the written opinion is likely to end up.

Assuming you still want the written opinion after our conversation, we would then draft it and get it to you as soon as possible after that. I believe Jana mentioned to you that we need to get internal sign-off on the opinion. It may therefore be a day or two before we can provide the written product.

Let me know if you would like to discuss further,

Jacqui

Jacqueline Code

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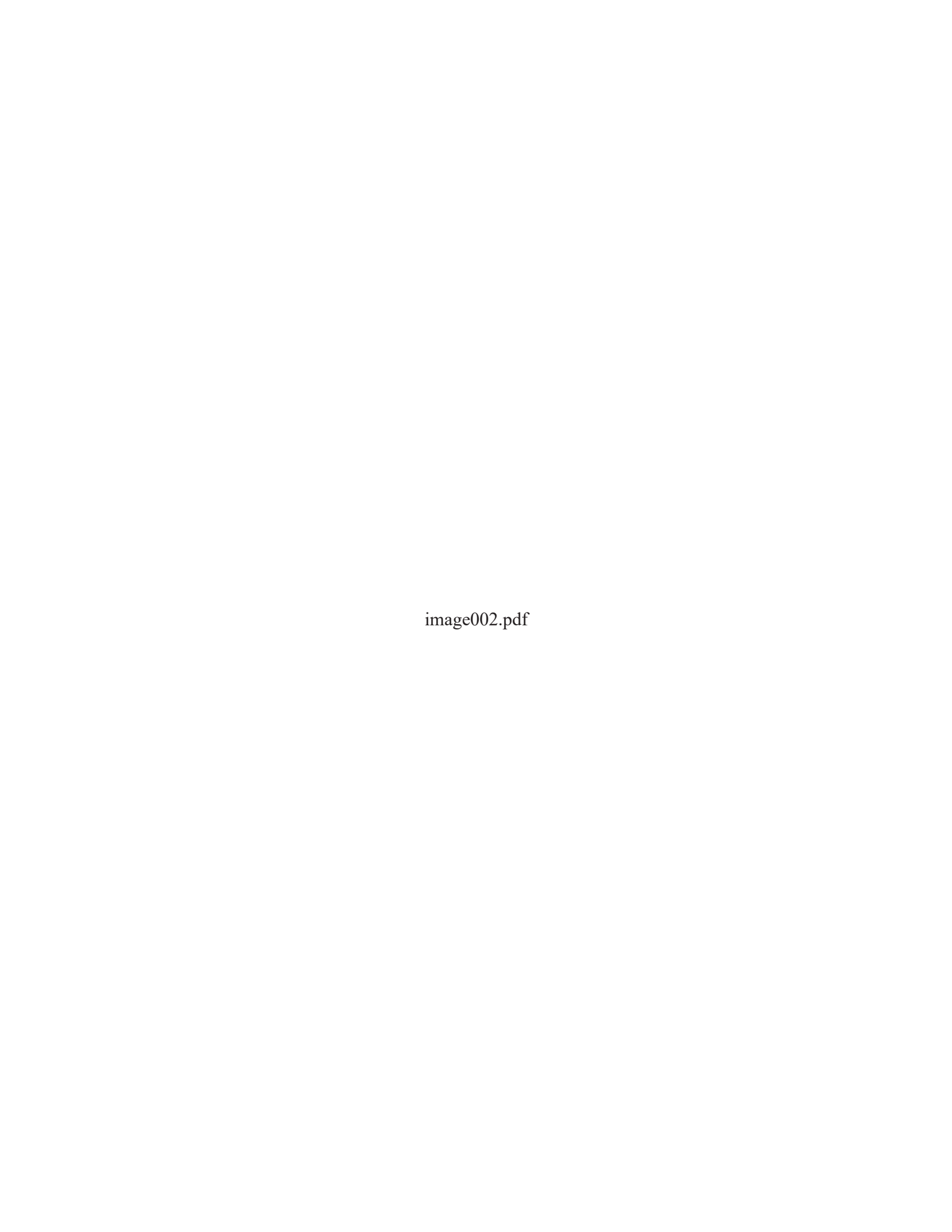
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