

PSR 22 - Koskie, Pension Surplus.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.: 416 327-6393
Fax.: 416 325-9404
E-mail: Len.Hatzis@ontario.ca

**Ministère du
Procureur général**

Direction des services juridiques
Secrétariat du Conseil du Trésor

Édifice Ferguson
77, rue Wellesley Ouest, 9^e étage
Toronto ON M7A 1N3

Tél.: 416 327-6393
Télé.: 416 325-9404
Courriel: Len.Hatzis@ontario.ca



SEP 20 2016

Sent by Courier

September 19, 2016

PRIVATE AND CONFIDENTIAL

Koskie Minsky LLP
20 Queen Street West
Suite 900, Box 52
Toronto, ON M5H 3R3

Attention: Murray Gold

Dear Mr. Gold:

**Re: Retention of Legal Services
to provide an analysis of frameworks of various pension plans**

This will confirm that your firm, Koskie Minsky LLP ("Koskie Minsky") has been retained to provide the Treasury Board Secretariat (TBS) on behalf of the Province of Ontario (Ontario) with a comparative legal/governance analysis of how the frameworks of various public pension plans (to include OTPP, OPSEU and four BC plans including municipal, teachers, college and public service) compare on the issue of authority of said pension boards and its plan partners to determine the utilization of plan surpluses and how the plans differ it regard to utilization of any surplus plan assets.

I confirm that this matter will be assigned to you, Mr. Murray Gold. 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 fifty thousand dollars (\$50,000.00). **Please advise me when the billings are approaching sixty percent (60%) of this amount, which will be thirty thousand dollars (\$30,000.00).** 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 Koskie Minsky does not have any conflict of interest representing TBS under this retainer save and except for its retainer with the Ontario Teachers' Federation ("OTF") in regard to its role as sponsor of the Ontario Teachers' Pension Plan and also its retainer with the Board of Trustees of the OPTrust. Koskie Minsky and TBS

agree that Koskie Minsky has no conflict of interest in the performance of the work contemplated by the within retainer or in its ongoing representation of the OTF.

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,

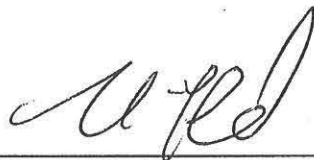


Sean Kearney
Legal Director

Cc Len Hatzis

ACCEPTANCE

Koskie Minsky LLP accepts the terms of this Retainer.

Per: 
Murray Gold

Date: Sept 20, 2016

I have authority to bind the law firm.

Updated Engagement Letter.pdf

**Ministry of the
Attorney General**

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Tél.: 416 327-6396
Télééc.: 416 325-9404
Courriel: sean.kearney@ontario.ca



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.

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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.

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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.