Re: Our discussion

From: "Orencsak, Greg (TBS)" <greg.orencsak@ontario.ca>
To: jim@jimleech.ca
Cc: "Orsini, Steve (CAB)" <steve.orsini@ontario.ca>, "Hatzis, Len (TBS)" <len.hatzis@ontario.ca>, "Kearney, Sean (TBS)" <sean.kearney@ontario.ca>, "Veinot, Cindy (TBS)" <cindy.veinot@ontario.ca>, "Thompson, Scott (MOF)" <scott.thompson@ontario.ca>
Date: Sat, 17 Sep 2016 07:33:49 -0400

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

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---------- Forwarded message ----------
From: Jim Leech <jim@jimleech.ca>
Date: Sep 16, 2016 7:24 PM
Subject: Our discussion
To: "Orsini, Steve (CAB)" <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
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