

Pension Plan Surpluses

The accumulation of surplus funds in pension plans has been somewhat common place over the last decade or so. Koskie Minsky has been involved, on behalf of unions, employee groups and pensioners in negotiation and litigation in respect of the utilization of these surpluses.

We often become involved right at the beginning of the process and assist our clients in forming a committee to spearhead the campaign and to represent and advocate the interests of the pension plan members. We help the committee organize its membership, including drafting and distributing communications to them, raising funds and collecting data. In fact, we have helped organize groups of employees in virtually every province and in federally regulated industries.

These matters inevitably require the advice of an actuary at some stage and we are well versed in “actuarial language” and are comfortable with the approaches and methodologies with which actuaries work. We help clients select an actuary and act as a liaison between him or her and our clients.

Whether the surplus funds exist in an on-going pension plan or a plan that is being wound-up, we have negotiated surplus sharing arrangements with employers, plan sponsors and trustees. This most often results in very satisfactory arrangements for our clients.

Part of the surplus sharing process is the necessity that the members of a group endorse the proposal. We have a wealth of experience in communicating with the group in that regard, in both written and oral form.

If parties agree in principle to a surplus sharing arrangement, regulatory approval must be obtained and we have experience in preparing the necessary applications and notices. Further, Canada Revenue Agency (formerly, Revenue Canada) approvals must be obtained and we are accustomed to taking the steps necessary to secure that approval. We then oversee the process of distribution of surplus funds to the members.

In the event that a surplus sharing arrangement cannot be reached, we have abundant experience in advising clients in respect of their rights to surplus under the pension plan. Ultimately, court proceedings or proceedings before the Superintendent of Financial Services or the Financial Services Tribunal may be necessary in order to secure those rights and we have the experience necessary to represent our clients in those proceedings.