

# **CUPE/MEPP UPDATE**

March 8, 2010

## **RE: Municipal Employees Pension Plan – CUPE Legal Action Update**

The following actions have been taken:

### December 10, 2007:

- affidavit of Peter Tartsch filed in the Judicial Court of Queen's Bench, re: Employers Contribution Holidays to Plan.

### December 10, 2007:

- Notice of Motion filed in the Court of Queen's Bench re: Employers Contribution Holidays to Plan.
- i) The Municipal Pension Commission failed to hold assets of the Pension Fund for the exclusive benefit of Plan Beneficiaries by allowing employers to take contribution holidays.
- ii) Failed to act in good faith – The Commission permitted employers to be unjustly enriched by diverting Surplus in the Pension Fund to offset Additional Required Contributions.

### January 16, 2008:

- Koskie Minsky (legal counsel for CUPE) received a letter from Saskatchewan School Boards' Association (SSBA) – counsel McDougall Gauley (Gordon Kuski). Gordon Kuski indicates that all employers may be required to be served individually (there are over 700 employers involved in the plan). This now becomes a procedural concern.

### January 24, 2008:

- Letter from Koskie Minsky to McDougall Gauley and Ministry of Justice and Attorney General.
- this letter outlines CUPE's position regarding service to all employers.
- CUPE's Counsel also requests a court date in March 2008 to deal with a "motion to deal with service" which must be resolved prior to the hearing on the merits.

### January 28, 2008:

- Letter from McDougall Gauley to Koskie Minsky on behalf of SSBA – outlines that the issue of service will require a ruling from the Chambers Judge.

### March 7, 2008:

- The Employer's counsel submits affidavits on behalf of four employer associations:
- Municipal Pension Commission
- Saskatchewan School Boards' Association
- Saskatchewan Association of Rural Municipalities
- Saskatchewan Municipal Hail Insurance Association
- Saskatchewan Urban Municipalities Association

### April 9, 2008:

- CUPE's Counsel writes to Ministry of Justice requesting further information:
- all regulatory filings
- funding agreements
- annual financial statements (1992 to present)
- Plan amendments since 1992
- Plan amendments prior to 1992 (regarding employer funding obligations)
- any written legal or consulting advice to the MEPC.

### May 23, 2008:

- Supplementary affidavit of Peter Tartsch is filed with the court regarding costs of service to 36 Proposed Respondents (\$12,250.00).

### May 29, 2008:

- CUPE Counsel, Employer's Counsel and Department of Justice Counsel appear in Queen's Bench Chambers. Employer's Counsel raised preliminary challenges on the issues of service of the Notice of Application and the content of the "return".

### July 2, 2008:

- Letter from Koskie Minsky to Peter Tartsch. As per instructions from Justice Zarzeczny counsel is to craft a plan for substituted service. The matter of the content of the "return" motion was adjourned to a later date.

July 3, 2008:

- Letter from McDougal Gauley to Gerrand Rath Johnson (CUPE Counsel, Regina) indicates that the service/delivery of the of the Order, Notice of Motion and Affidavit without exhibits will be sent out by the SSBA, SUMA and SARM associations, and additionally may be posted on the MEPP website.

November 17, 2008:

- Judge Zerzeczny Court Order approving the above-noted Notice of Motion with proof of service and that a copy of the order has been sent to all participating employers.

February 9, 2009:

- letter sent from Gerrand Rath Johnson to McDougal Gauley and Saskatchewan Justice Re: Service, Conflict of Interest (Justice Zarzeczny), and request for a case management judge to be assigned to the matter.

February 17, 2009:

- letter sent from McDougal Gauley to Gerrand Rath Johnson Re: Preliminary matter, an application to have the Court strike the Notice of Motion and in effect determine that this is not an appropriate matter for judicial review. Also to be heard in conjunction with CUPE's "record" motion. Employer's Counsel further agrees to have a Case Management Judge appointed.

April 21, 2009:

- Letter from Ministry of Justice (local Registrar) – The Case Management Judge has been designated (Mr. Justice Ball)

May 4, 2009:

- Employer's Counsel – submits a Notice of Motion seeking an Order striking out the Applicant's (CUPE) Notice of Motion seeking judicial review.

This matter deals with what consists the "record", and the matter of the contribution rates of the plan and how they are determined.

June 8, 2009:

- CUPE's Counsel (Koskie Minsky) files with the Court, Memorandum of Fact and Law in response to the Employer Representative's Motion to Strike.

June 22, 2009:

- Justice Ball hears the motions;
  1. To strike notice of motion Re: Judicial Review
  2. Appropriate "record" of return

August 18, 2009:

- Justice Ball Queen's Bench decision advising the parties of the following:
  1. The issue of the funding provisions of the MEPP can be dealt with appropriately in Queen's Bench Courts and can proceed as a judicial review.
  2. In the 2<sup>nd</sup> motion the Court held that the MEPC (the commission) is obliged to include in its "return" (or the record) all documents that were relevant to its approval of actuarial reports and valuations beginning December 31, 1992. This would include any third party advice.

The court ordered no costs immediately of the motions and deferred all costs "in the cause" (until the case is decided).

January 29, 2010:

- the Municipal Employees Pension Commission files its "Return" with the Court of Queen's Bench as well as an affidavit of Mr. Kent Walde, (Executive Director, Policy and Board Secretary).

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Note\* This is a brief outline of the ongoing Case which is winding its way through the Courts. To date the merits of the case have not been heard, however, we were advised that there would be many preliminary issues to be dealt with first.

I hope that this snapshot assists you in understanding where we are at in this matter. There still remain other outstanding preliminary matters to be dealt with. We continue to move this forward on your behalf.

In solidarity,

Peter Tartsch  
National Representative  
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