

COU Brief to the Ontario Expert Commission on Pensions

Prepared October 2007 by:
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COU No. 801

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Executive Summary

This submission focuses on the changes to the Ontario *Pension Benefits Act* (“PBA”) that Ontario universities believe are necessary to provide a sustainable environment for university pension plans. The universities in Ontario offer a wide range of pension plans, but the basic principles by which the universities are guided in commenting on the PBA are common and can be summarized as follows:

- University pension plans are an integral component of the compensation packages that universities provide to their faculty and staff and ultimately an integral component of their relations with their faculty and staff.
- Ontario universities are mature, stable organizations, representing low risk plan sponsors who implement prudent governance structures that involve faculty associations, unions and plan members.
- Pension plan funding triggered by solvency valuations is a major concern since it diverts significant monies under very volatile circumstances, destabilizing institutions and diverting funding from the educational mission of the universities.
- The potential for pension plan solvency deficits is the most serious funding concern since, given the size of pension liabilities, the impact of even small solvency deficits on university operating budgets can be significant.
- As Ontario universities compete with non-Ontario universities for faculty, staff, students and benefactors, the PBA must keep step with the efforts made by provincial pension legislation outside of Ontario to recognize their universities’ needs.

The issues which are most important to the universities can be summarized as follows:

1. Solvency Funding Rules

There should be relief for university pension plans from the effects of the existing solvency funding rules. The issue should be approached from a number of perspectives:

- whether it would be appropriate for universities and public sector pension plans to be treated differently from other pension plans for solvency purposes because of the significant difference in risk profile;
- the approaches used for universities in other provinces, including the Alberta and Quebec models; and
- the competitive disadvantages that Ontario universities face as other provinces exempt universities from regular solvency funding.

At a minimum, indexing must continue to be exempted from solvency funding. As well, consideration should be given to excluding grow-in as in Nova Scotia. There should be a credit structure for solvency payments so that these payments do not eventually flow into a surplus.

2. Pension Benefits Guarantee Fund (PBGF)

Although universities do not see the need for participation in the PBGF, they would agree to pay a reasonable per member fee but not the risk-based solvency-related fee. This would reflect the lower risk profile of universities. In the alternative, universities should be given the ability to establish their own insurance arrangement in lieu of the PBGF, perhaps with participation from other public sector and quasi-public sector plans.

3. Going Concern Funding and Surplus Ownership

Negotiated and non-negotiated agreements on funding and surplus ownership should be respected and any changes to the legislation should not override those agreements. Surplus on plan wind-up should be allocated to each party in proportion to the contributions made by each party to the pension plan. A credit structure for amortization payments to fund going concern unfunded liabilities that arise from experience losses should be available.

4. Phased Retirement

Phased retirement is a key design feature that must be permitted. However, the design limitations in the other provincial models should not be followed since they limit its potential.

5. Affiliates and Related Organizations

Universities have affiliates and related organizations, such as centres of excellence and research centres, which constitute separate employers and are often dependent on the universities (at least initially) for survival. The PBA should recognize the special nature of these arrangements and remove barriers for these entities to move in and out of university plans, including the creation of multi-unit plans.

6. Case Law - Expenses

The PBA should override the case law in this area, which is based on historical plan and trust documentation, and allow negotiated and non-negotiated agreements to govern.

7. Partial Wind-Ups

The partial wind-up rules need to recognize the relationships between universities and their affiliates. The PBA needs to limit and clarify the triggers for partial wind-ups and at the same time provide for flexibility and relief in the appropriate circumstances.

8. Defined Contribution Plans

The PBA is written from a defined benefit perspective. While the Expert Commission's primary focus is on defined benefit plans, reform of the PBA should address defined contribution plan issues, including allowing variable benefits (i.e., on a RRIF or LIF like basis), exempting asset transfers from a strict regulatory process, and simplifying administrative rules.

Further details about the principles and issues outlined above can be found in the remainder of this submission.

Principles

There are certain fundamental principles which guide the Council of Ontario Universities (COU) in its submission on reforming the PBA. These fundamental principles are outlined in this section of the brief.

1. Importance of Pension Plans

University pension plans cover approximately 45,000 active members and 28,000 retired, deferred vested and other members. The assets of these pension plans total over \$14 billion.

Universities firmly believe that their pension plans are essential to maintaining strong relationships with their faculty and staff. They are of the view that their faculty and staff expect their pension plans to be competitive in the marketplace and to provide them with a significant source of income for their retirement.

As a result, the universities represented by COU are supportive of pension plan reform that ensures that pension legislation in Ontario promotes the continuation and growth of their plans. Above all, pension legislation and regulation should not penalize universities and other employers who voluntarily establish and maintain pension plans for their employees. Especially in the area of solvency funding, it is clear that employers who provide high levels of benefits, particularly indexing and early retirement subsidies, are at risk and susceptible to events beyond their control such as market and interest rate fluctuations. While universities wish to continue providing competitive benefits, they also need relief from the strains that the PBA can impose. In this way, the PBA will be helping to ensure the continuing growth of university pension plans in Ontario.

University pension plans are generally defined benefit (DB) plans or hybrid plans (a defined contribution plan with an additional amount or minimum guarantee provided by a defined benefit provision). There are a few standalone defined contribution plans as well. Almost all of the defined benefit and hybrid plans provide some form of indexing of pensions in payment. A listing of the classification of university plans, the number of participants, the size of the assets, and their post-retirement indexing adjustments is attached to this submission as Appendix A.

Appendix A shows the commitment that universities have made to indexed pension plans. This is consistent with the desire of universities to provide competitive pension plan provisions. Appendix A also shows the extent of defined contribution coverage through hybrid pension plans and standalone defined contribution plans. While the mandate of the Commission appears to be focused on defined benefit plans, this submission will also represent the interests of defined contribution and hybrid plan sponsors and administrators within the university sector.

2. Impact of Pensions on Operating Budgets

In general, government regulates the funding of universities and the tuitions they can charge. In rough terms, on average, Ontario's publicly assisted universities derive about 50% of their operating revenue from provincial operating grants, based on data taken from 2006. With universities being on fixed, tight operating budgets, the outcome is very direct: **any additional pension costs take away money that is otherwise available to budget for and spend on education.** It should be noted that the provision of quality education is the universities' core mission which acts as the key guiding principle for all aspects of university business. Unpredictable and fluctuating solvency costs, in particular, go to the heart of this principle. They not only strain universities from a cash flow standpoint, but they also impact on universities' credit ratings and borrowing power - and ultimately their ability to fulfill their mission.

The figures below demonstrate the impact of university pension plans on university operating budgets:

- The over \$14 billion in assets in DB and hybrid pension plans represent approximately 2.5 times the aggregate operating budgets of the universities.
- With the size of the pension plans, small decreases in interest rates and/or modest market downturns can generate significant solvency deficits. And with the above –noted relationships between the pension plans and the operating budgets, even small solvency deficits can have a significant impact on operating budgets. A solvency deficit across all of the pension plans of 3% of the market value of assets (which means the pension plans would still be 97% funded on a solvency basis) would result in almost \$100 million of annual solvency amortization payments.
- The impact of solvency amortization payments is direct and immediate. According to board policies, universities are very restricted in their ability to run an operating deficit. Therefore, any additional pension funding, even if on a temporary basis, will result in a corresponding adjustment to the operating budgets which may be reflected in faculty/staff complement reductions, fewer new hires, and/or program cuts.

3. The Need to Be Competitive

Another fundamental principle by which universities operate is the need to be competitive in order to attract faculty and staff, students and benefactors. The competition for talent to promote innovation and research is global. Robust pension plans play an important role as part of total compensation in the attraction and retention of talented faculty and staff which in turn help to attract the best students. Money that is diverted from university programs, including research, also impacts on a university's ability to attract the best intellectual resources in the world. This is a theme that we will repeat throughout this submission, including in the context of what legislation outside of Ontario is doing to assist pension plan sponsors and relieve the financial burdens of their pension plans. Students, researchers and benefactors, even those located in Ontario, are free to look beyond Ontario's borders in choosing a university and often do. It is therefore important to look at the efforts other provinces have made to relieve or lessen the impact of their pension legislation requirements on universities. Appendix B to this submission lists many of these efforts.

Appendix B, which is specific to universities, shows that Ontario lags behind other jurisdictions in providing relief to universities from strict minimum standards or in recognizing the special challenges and nature of universities and their pension plans. While the list of exemptions provided in Appendix B is quite varied, we have placed particular emphasis on the funding exemptions in provincial pension legislation. Alberta, Quebec, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, and Nova Scotia all provide universities with some degree of relief from the standard funding requirements in the pension legislation of those provinces. In addition, we understand that the Manitoba government will enact changes later this year to provide further solvency funding relief to its universities. In contrast, the PBA contains no funding exemptions for its universities. Therefore, a competitive disadvantage currently exists for Ontario universities in relation to their pension plans. It is in the interests of Ontario and Ontarians to ensure that Ontario universities and their pension plans do not lag behind. Strong growth in the university sector, which includes the ability to attract and retain highly qualified faculty and staff, as well as to attract students and benefactors, by offering competitive educational institutions with competitive pension plans, is a key to the future of Ontario.

4. Stability and Governance

Each of Ontario's universities has been established by an act of the Ontario Legislature except for Queen's University which was established by Royal Charter. Very few new universities are established, meaning that most have existed for a long time. These are mature organizations, not start ups. They have instituted governance structures of which faculty associations, unions and plan members are integral components.

All of this points to the conclusion that universities are stable, mature and low risk plan sponsors. Perhaps that is the reason why they have been exempted from various pension benefits standards requirements in many other provinces, as reflected in Appendix B. In contrast, the PBA does not exempt universities or university plans from any of its requirements. It does exempt other public sector and quasi-public sector pension plans for certain purposes (see Appendix C). It is not clear why university pension plans have been left out. For example, section 47(1) of Regulation 909 exempts from the PBA's Pension Benefits Guarantee Fund requirements (PBGF) a number of pension plans in which employees of cities and municipalities participate. Presumably, this exemption is based on an assessment of low risk of wind-up or insolvencies since these plans could be underfunded.

Appendix D expands Appendix B to the broader public sector and quasi-public sector by providing a list of legislative exemptions which have been provided outside of Ontario for public sector and quasi-public sector pension plans. In some cases, the exemptions include university pension plans or universities are separately exempted. We believe that, in general, public sector and quasi-public sector plans are comparators for the university plans. These provinces have made an assessment that by virtue of the nature of these plan sponsors and plan members, different treatment for these plans is warranted. We note that funding relief is provided to public sector and quasi-public sector plans (in some cases, including university pension plans) in Alberta, Manitoba, Quebec, British Columbia, Newfoundland and Labrador, Nova Scotia, and Prince Edward Island.

5. Proactive Approach

In matters of policy, such as those relating to the PBA, COU's approach is proactive. In its view, it is not sufficient to look at a particular issue and conclude that it is not a problem now. COU's philosophy is that, given the chance, potential problems within the PBA should be identified and prevented so that they do not develop into real problems. In this submission, we hope to use this principle as a guide to identify areas where we anticipate potential problems that may in the future interfere with the attractiveness of pension plans for universities in Ontario.

6. Alignment with Government Objectives

In its 2005 budget, the Ontario Government provided funding to support an increase in university enrollment as well as funding for quality and access improvement through its "Reaching Higher Plan". Any funds re-directed to deal with solvency issues would undermine the government's objectives to increase access to, and improve the quality of, university education.

Issues

With the above background in mind, this section of the brief addresses various issues for your consideration in recommending changes to the PBA. The comments below generally reveal an overarching problem with the current system which is that pension rules emanate from three sources which quite often do not work together to promote defined benefit plans. These three sources are: legislation, regulatory policy, and case law. While the PBA, as the first source, addresses important issues affecting plan sponsors and members, it leaves significant matters to the discretion of the Superintendent. An example of this is asset transfers. This approach leads to the establishment of regulatory policy (the second source) on crucial matters, sometimes with industry consultation, and other times without. The regulatory policy which is established, however, has a tendency to change over time, often as a result of court decisions. These changes in regulatory policy create an inconsistent and uncertain environment in which plan sponsors, like the universities, have to operate. The universities believe that a solution to this overarching problem is to create strong legislation which addresses the important and essential issues facing plan sponsors and members, with a need to establish less regulatory policy than there is currently in the PBA. Hopefully, this will lead to a reduction in the involvement and influence of the courts and create a more certain environment which will promote the maintenance and establishment of defined benefit pension plans.

1. Solvency Funding

Like many other plan sponsors, the universities believe that the impact of the PBA's solvency funding rules is one of the most important issues in need of reform. COU has made submissions regarding this issue to the Ontario government (Ministry of Finance) in the past. COU would be pleased to provide copies of these past submissions to the Expert Commission on request.

The relative and absolute financial impact of solvency payments on a university's operating budget is material, while the likelihood of plan wind-up and university insolvency is negligible. Moreover, the publicly assisted universities are unique among other broader public sector or private sector employers in that, were there to be a plan wind-up because of institutional closure, the considerable land and capital assets of the universities are held in the public trust and would be available to defray any pension obligations.

Solvency funding rules affect both the defined benefit plans and hybrid pension plans sponsored by universities. Hybrid pension plans in the university sector are essentially defined contribution pension plans with a minimum defined benefit guarantee. This type of hybrid pension plan is fairly unique to the university sector. Solvency funding will be triggered when the value of the minimum defined benefit guarantee exceeds the defined contribution account balance (plus any assets already set aside for the minimum guarantee). A decrease in interest rates (increasing the value of the solvency liabilities) combined with low or negative asset returns (lowering the account balances) can have a significant impact on the solvency position of the pension plan. There is also the issue of some grandparented hybrid pension plans with a small DB component (in one case representing less than 1% of the total liabilities of the plan) still being required to file triennial valuations including a solvency test.

COU submits that significant reform is needed. As indicated in Appendix B, several other pension laws in Canada provide relief or exemption for universities from their solvency funding requirements. The absence of this in Ontario (1) diverts monies from education to the pension plan, and (2) puts Ontario universities at a competitive disadvantage (see earlier discussion under Principles). COU urges the Commission to consider the following exemption options:

- 1.1 A model similar to what has been implemented in Alberta. Under 2006 amendments to Alberta's pension legislation, the Superintendent may exempt designated publicly funded plans from making solvency payments while the plan is ongoing, subject to the plan sponsor filing triennial solvency valuations and agreeing to pay any solvency deficit should the plan be terminated. The Universities Academic Pension Plan has been exempted from ongoing solvency payments under a related provision.
- 1.2 Alternatively, a model similar to what has been implemented in Quebec. In 2006, specific rules were enacted in Quebec for municipality and university pension plans providing exemptions from the legislation's regular solvency requirements, subject to new restrictions for going concern funding, contribution holidays and the funding of amendments that reduce a plan's solvency ratio.
- 1.3 As a minimum, there are a number of issues that need to be addressed in connection with the solvency valuations requirements:
 - (i) The existing exclusion of post-retirement indexing adjustments from solvency valuations must remain in the PBA. The post-retirement indexing under university plans, as set out in Appendix A, fits under the definition of "escalated adjustments" in Regulation 909 and so is excluded from solvency valuations for these plans. The universities see no reason why this should not continue, both in respect of adjustments that have already crystallized and those that will occur in the future. They have negotiated generous inflation protection provisions, in line with their commitment to retirees, and the removal of this exemption would be a stiff penalty. In fact, its removal would have a very serious financial impact creating large solvency payments for virtually every university with a defined benefit plan. Consistent with the Commission's mandate, the legislation should encourage plan sponsors to provide competitive defined benefit provisions for their plan members and, in particular, inflation protection. However, recognizing the atypical cost impact that these benefits have, and the limited market for inflation-indexed annuities, the legislation should go on to provide funding relief in respect of them. For these reasons, the universities see the continuation of this exemption as essential.

- (ii) COU recommends that the Commission consider the adoption of Nova Scotia's exemption for grow-in to early retirement benefits, bridging benefits and consent benefits in section 74 of the PBA. By way of background, Nova Scotia's pension regulations were amended in December of 2004 to remove grow-in benefits from solvency valuations. Grow-in is still required on full or partial plan wind-ups but these grow-in benefits take a lower priority than basic benefits, meaning that they are only payable to the extent assets remain following the settlement of basic benefits. Especially in the university plan context, there is merit in exempting grow-in from the solvency funding rules since it is extremely unlikely that a wind-up will occur in comparison with private sector plans.
- (iii) It would be beneficial to extend the funding period for amortizing solvency deficits as has been done to various extents in other jurisdictions (see Appendix B). Nova Scotia, New Brunswick, the Federal Government, to name a few, all provide some relief specific to the period for amortizing deficits. We recommend that funding period relief be seriously considered for adoption into the PBA in respect of current and future deficits to assist plan sponsors with tight cash flow restrictions and low risk factors like the universities.
- (iv) The current triennial valuation timing should remain as is under the PBA. In other words, COU opposes more frequent valuations under any of the models described above.
- (v) A mechanism to allow for the tracking of solvency payments, be it within the pension fund or in a separate fund, should be available. Solvency payments should not flow into future surpluses and, provided a sufficient margin is maintained, amounts accumulated under this separate tracking process should be available to reduce employer contributions.

2. Pension Benefits Guarantee Fund (PBGF)

Universities question the need and merit of having their plans covered by the PBGF – the only arrangement of its kind in Canada. Some of the reasons for this are explained in item 4 under Principles and generally relate to the stability of Ontario universities and the interest that the Ontario government has in their continued viability. In the United States, public sector plans are not covered by the Pension Benefit Guaranty Corporation (PBGC) due to the backing of their sponsoring governments. **Public university plans are included in the group that is exempted from PBGC coverage.**

Despite this, the majority of universities are prepared to pay a reasonable per member PBGF fee, but not the risk-based solvency-related fee that exists in the present system. Given the very low risk of a university plan making a claim on the PBGF, compared with plans in the private sector, it is difficult to justify an assessment based on the solvency status of the plan. Once again, these premiums divert monies from the core educational mission.

If this suggestion is not acceptable, COU requests that the PBA provide the opportunity for university plans, perhaps in conjunction with other public sector and quasi-public sectors plans, to establish their own, separate fund to guarantee benefits in lieu of the PBGF. As it stands now, these plans are simply subsidizing plans in the private sector which are the ones that make claims on the PBGF. Whether or not they would elect to leave the PBGF and establish their own arrangement, the universities would like the ability to do so if they are required to contribute to the PBGF on the basis of the solvency positions of their plans.

In any case, sufficient safeguards exist based on the significant roles that university boards and pension plan members play in the governance of university pension plans.

3. Surplus Distributions

Item 7 below addresses our comments on whether surplus should be distributed on partial plan wind-up. This portion addresses the mechanism that should be used for surplus distribution.

COU believes that surplus distribution agreements negotiated or otherwise agreed to between universities and their faculty associations, unions and plan members should prevail over any rules, policies, court decisions or other considerations. There should be no need to review historical plan documentation to support a surplus reversion application by a university. Where there is an agreement in place, the PBA should facilitate a structure which emphasizes negotiation and co-operation and resolves these issues without the need to determine legal entitlement based on historical documentation which often bears no relation to the intent of the parties. Instead, the historical wording may derive from precedent wording that was used without realizing its effect or from Canada Revenue Agency requirements for registration of the pension plan under the *Income Tax Act*.

Moreover, any surplus rules which are incorporated into the PBA should respect any surplus distribution agreements which are in effect at the time these rules are established, notwithstanding that the agreements do not fully comply. In other words, any surplus rule changes that are incorporated should not have retroactive application so as to adversely affect existing agreements.

COU suggests that, as a minimum standard, it is sufficient for surplus on wind-up to be divided between an employer and plan members in proportion to the contributions they have made to the plan (as a point of interest, university plans require member contributions). This suggestion is based on a desire to link risk and reward together when it comes to pension plan funding. It is, in our opinion, entirely appropriate for the parties to a pension plan to share in surplus in proportion to the risk and responsibility for funding and deficits that they have borne under the plan. This proposal is made in conjunction with the credit structure proposed and referred to in this brief for certain going concern special payments and solvency special payments.

Besides the actuarial confirmation of the existence of a surplus, the sole condition for obtaining regulatory approval of a refund of surplus from a pension plan, whether on wind-up or an ongoing basis, should be member/union consent. The current PBA requirement for the plan to provide for this reversion should be removed. For ongoing surplus refunds, the rules in section 10 of Regulation 909 should also be removed and, in particular, those requiring 100% member consent (including those for whom an annuity was purchased), the retroactive application of the 50% cost sharing rule and the member option to receive surplus in the form of inflation protection.

4. Contribution Holidays and Going Concern Credits

There should be more legislative certainty about the right of employers to take contribution holidays. The courts have generally supported this right and this should be clearly confirmed in the PBA.

While Regulation 909 (in section 9) provides that surplus can be used after a conversion of a plan to defined contribution, the PBA should clarify that this practice applies to the introduction of a defined contribution provision without the conversion of past service defined benefits to defined contribution. The practice of using defined benefit surplus to pay for contributions under a defined contribution provision should be confirmed notwithstanding that no conversion of past service has taken place.

COU also supports the ability to establish a credit structure for amortization payments to fund going concern unfunded liabilities which arise from experience losses (as distinguished from going concern unfunded liabilities arising from plan amendments). These payments are made in the ebb and flow of the long-term funding of a pension plan, and should be available as a subsequent credit against employer contributions.

At the same time, COU would support changes to the *Income Tax Act* to address the “excess surplus” rules. The current *Income Tax Act* provision that requires the utilization of surplus in excess of 10% of liabilities is no longer appropriate given the size and risk associated with today’s defined benefit pension plans. We would encourage the Expert Commission to make representation to the Federal Finance Department on this point since it is an integral part of creating an environment for prudent funding of pension plans.

5. Phased Retirement

The ability to offer phased retirement is a key design feature for universities. With the end of mandatory retirement in Ontario, universities expect some faculty and staff to work into their 70s. In response, the universities need to be able to provide flexible work options, including phased retirement, which would allow employees to reduce their work load, be compensated for this reduced work load through the receipt of defined benefit and/or defined contribution pension payments and yet continue their active pension plan participation. This kind of flexibility is essential for work force management in order to ensure that standards and processes for education are maintained at an optimal level.

Subject to any tax limitations which apply, COU’s position is that the PBA should maximize the ability to offer phased retirement. While the phased retirement provisions in Alberta and Quebec limit the receipt of pension payments during a period of employment to the amount of any reduction in earnings resulting from a reduced work load or to a measure of the pensionable earnings under Canada’s social security systems, COU is not convinced that these limits should be endorsed. COU also believes that the phased retirement provisions being introduced into the *Income Tax Act* by the 2007 Federal budget are too restrictive. While the tax rules are a consideration, COU suggests that Ontario formulate its own rules independent of any restrictions the Federal government may enact and include defined contribution plans in its application. Allowing the maximum flexibility possible will be in the best interests of the members and permit employers to negotiate working arrangements that are consistent with their workforce needs.

6. Expenses

The ability of plan sponsors to pay investment and administration expenses from the pension fund is of paramount importance to the continuation of defined benefit plans. Pension plans have grown substantially in size and the expenses associated with maintaining these plans has become significant relative to university operating budgets. COU is aware of the case law pertaining to the payment of expenses from a pension fund, which focuses on the contents of historical plan documentation. The PBA should allow for the payment of expenses regardless of historical documentation, with proper disclosure.

Additionally, the PBA should not attempt to establish a list of expenses or activities that can be compensated from a pension fund, since flexibility is needed to cover unanticipated types of expenses. To illustrate, different methods employed in the administration of plans today, such as the use of intranet websites to inform and communicate with plan members, would not have been anticipated years ago.

7. Wind-Ups

The PBA's wind-up rules are complex and stringent. They generate considerable additional costs and paperwork in situations that do not reflect the realities that universities face. They trigger the PBA's grow-in rules, automatic and full vesting and portability for all who fall within the wind-up group. Further, ever since the Supreme Court of Canada's decision in the *Monsanto* case, a partial wind-up requires the distribution of any surplus that may happen to exist, plus, according to FSCO's interpretation, the purchase of annuities for those who elect to receive a pension from the plan.

7.1 Partial Wind-Ups

The ability of the Superintendent to order a partial wind-up does not take into account the types of relationships that universities may have with their affiliates and research centres. These affiliates and research centres may participate in university plans while they are controlled by and dependent on the universities. At some point, their affiliation with the university may significantly diminish so that it is no longer desirable to continue participation in the university pension plan. In these situations, there is no loss of employment and yet the PBA's wind-up rules could apply.

In particular, section 69(1)(f) of the PBA permits the Superintendent to order a partial wind-up where a part of the employer's business is sold or transferred and the purchaser does not provide a registered pension plan for the seller's employees. This forces the payout of benefits, rather than allowing employees' benefits to remain under the seller's plan for payment in the normal course, subject to the recognition of service with the purchaser for benefit eligibility purposes in accordance with section 80.

Section 69(1)(a) is triggered when the employer ceases to make or suspends contributions. Suspensions of contributions can occur for various reasons unrelated to the employment of plan members, including where an affiliate decides to cease participating in a university plan. The application of this rule creates uncertainty for those entities that move in and out of university pension plans.

Because of the costs, complexity and uncertainty caused by the PBA's wind-up rules, as augmented by the *Monsanto* case, COU recommends that the concept of a partial wind-up be removed from the PBA, as it has in Quebec.

Alternatively, a simpler and more practical model should be used. If partial wind-ups are to be maintained, then the PBA should remove situations where there is no significant loss of jobs. The universities want to be able to offer affiliates and research centres the opportunity to participate in their plans when these entities need their help and support, without the threat of a partial wind-up when they leave.

In addition, the PBA wording which triggered the prevailing decisions that came out of the *Monsanto* case should be changed. Firstly, like in other pension legislation in Canada, surplus should not need to be distributed on a partial wind-up. The parties to a pension plan can agree to do so, but the PBA and the courts should not mandate this. The existence of surplus on a partial wind-up is arbitrary and it is inequitable that timing should determine whether one partial wind-up group shares in surplus while another group does not. Plan members do not understand or accept why this happens. The better approach would be to wait until the entire plan winds up before sharing surplus in existence at that time with those who have retained their benefits in the plan.

Secondly, there should be no requirement to purchase annuities on a partial wind-up. Annuity purchases are costly (depending on prevailing annuity rates), particularly for indexed annuities, and an administrative burden on the plan administrator. Also, they may not be to the advantage of the partial wind-up members. In cases where ad hoc increases are granted to pensioners, these would not be provided to those who are receiving annuities from an insurance company. There is no reason why pensions cannot be retained in the plan on a partial wind-up in the same way that pensions are retained for other deferred vested members and retirees on an ongoing basis. The experience of universities is that pensioners want to receive their pensions from their university plan.

7.2 Grow-In

Aside from the issue of funding for a contingent benefit like grow-in (which was raised earlier in this submission), COU recommends that the Commission review:

- (i) Whether grow-in should be maintained under the PBA. Besides Nova Scotia, Ontario is the only other jurisdiction with grow-in. None of the other jurisdictions determined it necessary to allow members to grow into benefits they were not entitled to when their plan membership terminated. Grow-in is a difficult concept to reconcile, particularly for a province that has some of the most beneficial minimum employment standards provisions for termination, mass termination and severance pay in all of Canada.
- (ii) Whether 55 points should continue to be used as the test under the PBA, or another level of age and/or service .
- (iii) Whether the existing array of grow-in benefits (e.g., unreduced early retirement, reduced early retirement, bridging benefits, consent benefits) should be available to those who qualify.

8. Multi-Unit Plans

Provisions should be added to the PBA to recognize plans under which more than one employer participates, but that is not intended to operate as a multi-employer pension plan (“MEPP”). For the purpose of this submission, we refer herein to these arrangements as “multi-unit plans” which is the term that is used in Alberta’s pension legislation.

While the definition of a MEPP under the PBA specifically excludes the situation where the employers are affiliates within the meaning of the Ontario *Business Corporations Act*, there are numerous arrangements that are not technically caught by that exclusion but are clearly not intended to be MEPPs. For universities, this would include affiliated colleges, research institutes, centres of excellence and related organizations. These entities are often small and could not support a pension plan on their own. Allowing these entities to participate in the larger university pension plan provides for administrative cost savings and economies of scale due to pooling of assets, resources and risk. The current reference to affiliates within the meaning of the Ontario *Business Corporations Act* is therefore far too specific and should be replaced by a more practical and less corporate measure of affiliation.

Ultimately, among other things, the PBA should allow:

- the administration of a multi-unit plan by one employer selected by agreement of the participating employers;
- the pooling of assets or maintenance of separate accounts, whichever is agreed to by the participating employers;
- the movement of employees and assets between the participating employers as ongoing events that do not crystallize termination rights or require advance regulatory approval;
- employers to seamlessly withdraw from active participation, leaving benefits behind and committing to their continuing funding obligations; and
- differences in benefit provisions for employees of different employers.

9. Defined Contribution Plans

9.1 Variable Benefits

The *Income Tax Act* was amended several years ago to allow defined contribution benefits to be paid out of a registered pension plan on a RRIF or LIF like basis (referred to under the tax rules as “variable benefits”). Since then, a number of provinces have amended their legislation or taken an administrative position to allow variable benefits to be paid out pursuant to the tax rules. COU recommends that Ontario specifically allow for variable benefits under the PBA. This feature offers more flexibility to plan members and promotes ties between plan sponsors and defined contribution retirees. There can be significant advantages in retirees leaving their defined contribution accounts in their pension plans rather than transferring them to their individual LIRAs or LIFs or purchasing an annuity. University defined contribution plans can offer significant administration and investment fee savings and provide an array of investment options that may not be available to individual investors for the same cost.

9.2 Asset Transfers

Quite simply, plan sponsors should be able to transfer assets between defined contribution plans (i.e., member accounts) without an asset transfer submission and the need for the approval of the Superintendent. A defined contribution plan to defined contribution plan transfer is a clear situation where red tape can be cut. Unlike defined benefit asset transfers, there are no issues concerning the splitting of assets for this type of transfer. Nor are there issues concerning the acceptance by a plan of a defined contribution asset transfer. Each member's account is, and will remain, separate and apart from each other member's account, before and after the transfer.

9.3 Administration

Other examples of the need for legislation specific to defined contribution plans are the administrative rules in connection with unlocking of small pension amounts and the splitting of pension amounts on marriage breakdown:

- Unlocking of small amounts—under current legislation, if the pension benefit is less than 2% of the YMPE under the Canada Pension Plan, the pension amount can be commuted and paid out on a non-locked-in basis. For defined contribution plans, this requires an annuity quote to convert the account balance to a monthly pension. It would be more appropriate for defined contribution plans to express the test as a percentage of the YMPE (e.g., 40% of the YMPE) in assessing whether the monies in the members' defined contributions accounts can be paid out on a non-locked-in basis.
- Splitting of pension amounts on marriage breakdown—plan administrators should have the ability to pay out amounts allocated to the ex-spouse under an agreement or court order.

10. Other

10.1 Investment Decisions

The PBA should incorporate protection similar to that recently adopted in Manitoba, where investment decisions or policy based partly on non-investment factors are protected. Under the new provisions (which we understand are not yet fully in force), unless a plan provides otherwise, an administrator who uses a non-financial criterion to formulate investment policy or to make an investment decision does not contravene the Manitoba Act or commit a breach of trust, so long as the administrator, in doing so, exercises "the care, diligence and skill that a person of ordinary prudence would exercise in dealing with the property of another person".

10.2 Electronic Communication

Administrators should be able to satisfy disclosure and informational obligations under the PBA electronically.

Conclusions

The Expert Commission's task in reviewing the PBA is a daunting, but crucial, one. What comes out of the various written submissions and hearings will likely shape the future of pension plans, and in particular defined benefit pension plans, for years to come. Ontario's population has undergone significant changes and the process continues. It is important now, as ever, to take strong steps to ensure that pension plans thrive and that Ontario residents continue to enjoy a quality of life in their retirement that is second to none.

Ontario universities have a role to play in the quality of Ontarians' lives and their pension plans are an integral part of their responsibilities. As plan sponsors, Ontario universities strive to provide competitive pensions that attract and retain faculty and staff. As educators, on fixed budgets, Ontario universities are conscious of the dollars that go into their pension plans.

As set out earlier in this brief, and as bears repeating here, the principles that guide the universities as plan sponsors and as educators include the following:

1. We are committed to maintaining strong pension plans.
2. Our core mission is education and requirements to divert funds to solvency funding takes away from our ability to support Ontario's commitment to higher education.
3. Volatility occasioned by solvency funding undermines our core academic mission.
4. Our mission and risk profile are compelling reasons for relieving universities from the volatility and strain of solvency funding.

We are confident that the Expert Commission will recognize the need to protect and sustain university pension plans and we are grateful for the opportunity to provide our input into this most worthwhile process.

Schedule of Participating Institutions

Brock University

Carleton University

University of Guelph

Lakehead University

Laurentian University

McMaster University

Nipissing University

Ontario College of Art and Design (OCAD)

University of Ontario Institute of Technology (UOIT)

University of Ottawa

Queen's University

Ryerson University

University of Toronto

Trent University

University of Waterloo

University of Western Ontario

Wilfrid Laurier University

University of Windsor

York University

Appendix A

Ontario University Pension Plans

1. Defined Benefit

	No. of Plans	No. of Actives ¹	No. of Pensioners ²	No. of Other Inactives ³	Assets ⁴	Indexing
University of Guelph	3	3,182	1,695	64	\$ 799,576,000	CPI (to a max. of 8%) minus 2%
McMaster University	3	4,000	1,800	600	\$ 1,063,322,000	Salaried: 5-yr avg fund return in excess of 4.5% (max CPI); Hourly: 5-yr avg fund return in excess of 6.0% (max CPI)
University of Ottawa	1	2,876	1,487	676	\$ 1,262,980,000	If CPI < 3%: 100% CPI (max. 2%); If CPI ≥ 3%: 100% CPI minus 1% (max. 8%)
Ryerson University	1	1,750	697	193	\$ 716,561,000	100% CPI (max. 8%)
University of Toronto	2	8,087	4,569	2,395	\$ 3,054,270,000	75% CPI (max. 8%) plus 60% CPI in excess of 8%, or 100% CPI less 4% if greater
- St. Michael's College	1	107	97	24	\$ 25,017,000	None
- Trinity College	1	64	42	8	\$ 18,857,000	75% CPI (max. 8%) plus 60% CPI in excess of 8%, or 100% CPI less 4% if greater
- Victoria University	1	157	73	11	\$ 25,767,000	75% CPI (max. 8%) plus 60% CPI in excess of 8%, or 100% CPI less 4% if greater
Trent University	2	673	298	66	\$ 209,292,000	4-yr average fund return in excess of 6% or 6.5%
University of Waterloo	1	3,360	1,279	387	\$ 857,103,000	100% CPI (over 5% at committee discretion)
King's University College (Western Ontario)	1	85	35	0	\$ 25,061,000	None
University of Windsor	1	723	337	78	\$ 136,257,000	Lesser of 50% of 4-yr avg fund return in excess of 6% or 50% CPI
Total	18	25,064	12,409	4,502	\$ 8,194,063,000	

¹ Active/disabled members accruing benefits/contributions.

² Pensioners/beneficiaries in receipt of pension from plan.

³ Deferred vested members and other members with entitlements in plan not included in footnotes 1 and 2.

⁴ Market value of assets as of most recent date available.

Ontario University Pension Plans (continued)

2. Hybrid Plans (DC With Minimum DB Guarantee)

	No. of Plans	No. of Actives ¹ s	No. of Pensioners ²	No. of Other Inactives ³	Assets ⁴	Indexing
Brock University	1	1,314	215	214	\$ 258,149,000	100% CPI (max. 2%)
Carleton University	1	1,866	943	479	\$ 823,536,000	4-yr average fund return less 6%
Lakehead University	1	404	152	142	\$ 206,681,000	Fund return in excess of conversion rate
Laurentian University	1	974	171	269	\$ 250,222,000	Lesser of 3% per year or the increase in CPI
Queen's University	1	3,372	1,562	1,268	\$ 1,400,000,000	4-yr average fund return in excess of 6%
University of Western Ontario	3	4,600	350	1,000	\$ 1,200,000,000	None
Wilfrid Laurier University	1	1,267	316	338	\$ 276,178,000	MPP: 4-yr avg fund return in excess of conversion rate. MGP: 100% CPI (max. 4%)
University of Windsor	1	608	367	144	\$ 316,149,000	Greater than Fund return less 6% less mortality adjustment or CPI increase 0% to 2% : 100% increase; >=2% but <= 4%: 2% CPI increase; >4% but <= 8%: 50% CPI increase; > 8%: 4% CPI increase
York University	1	4,176	1,553	1,162	\$ 1,340,516,000	4-yr average fund return less 6%
Total	11	18,581	5,629	5,016	\$ 6,071,431,000	

¹ Active/disabled members accruing benefits/contributions.

² Pensioners/beneficiaries in receipt of pension from plan.

³ Deferred vested members and other members with entitlements in plan not included in footnotes 1 and 2.

⁴ Market value of assets as of most recent date available.

Ontario University Pension Plans (continued)

3. Defined Contribution

University	No. of Plans	No. of Actives ¹	No. of Pensioners ²	No. of Other Inactives ³	Assets ⁴
Lakehead University	1	364	40	107	\$ 30,782,000
Nipissing University	1	300	0	19	\$ 29,379,000
OCAD	1	195	0	58	\$ 22,086,000
UOIT	1	216	1	0	\$ 5,596,000
University of Ottawa	1	112	0	22	\$ 1,970,000
King's University College (Western Ontario)	1	10	0	0	\$ 1,236,000
Total	6	1,197	41	206	\$ 91,049,000

¹ Active/disabled members accruing benefits/contributions.

² Pensioners/beneficiaries in receipt of pension from plan.

³ Deferred vested members and other members with entitlements in plan not included in footnotes 1 and 2.

⁴ Market value of assets as of most recent date available.

Appendix B

Summary of Legislative Exemptions for University Pension Plans

Ontario

None

Alberta

The following member employers comprise the Universities Academic Pension Plan (UAPP): the Universities of Alberta, Calgary and Lethbridge, the University of Calgary Faculty Association, Athabasca University, the Banff Centre, and the UAPP Trustees Office. Schedule 0.1 to the Regulations provides exemptions for the UAPP in relation to:

- participation agreements
- certain actuarial valuation reports and cost certificates
- benefits and entitlements on plan termination
- entitlement of employees to join the Plan (employees employed under a term contract of employment entered into before January 1, 2001 not entitled to become members)
- locking-in
- solvency limits on transfers of assets
- certain funding requirements contained in s. 48 of the Act and in s. 48 of the Regulations. In addition, the solvency tests and plan funding rules are treated differently for the UAPP.

UAPP employer obligations regarding payments into the plan in respect of current employment are the same as those for any other employer. However, there are differences in respect of payments made for unfunded liabilities. While they must be fully funded by other employers, such payments are to be funded by UAPP employers and their employees, and also offset by payments made by the Crown in right of Alberta under its liability as to partial funding of such unfunded liabilities (pursuant to Schedule 3 to the *Public Sector Pension Plans (Legislative Provisions) Regulation*).

British Columbia

The UBC Staff and Faculty Pension Plans are exempted from the definition of “multi-employer plan” in section 1 of the Act: s. 3(11) of the Regulations.

Three plans are exempted from various provisions of the *Pension Benefits Standards Act* and the Regulations thereto pursuant to regulations or rules made under *Public Service Pension Plans Act*. These three plans are the following:

- Municipal Pension Plan

- Teachers' Pension Plan
- College Pension Plan (whose member employers include most of the publicly funded post-secondary institutions in British Columbia)

The various provisions of the Act and Regulations from which these three plans are exempted include the following:

- definition of “termination of membership and “years of continuous employment in s. 1(1) of the *Pension Benefits Standards Act* (PBSA)
- providing for the treatment of surplus assets during the continuation of the plan in s. 24(1)(g) of the Act
- application of the funding and solvency requirements under s. 41 of the Act
- application of the rules with respect to the provision of benefits and allocation of assets on plan wind-up in s. 45 of the Act
- the provision of additional information with respect to the treatment of any surplus assets during the continuation of the plan and on wind-up of the plan under s. 10(1)(b) of the Regulations
- restrictions with respect to transfer deficiencies relating to the transfer of plan assets contained in s. 25(1) through (9) of the Regulations
- application of the solvency tests and funding rules contained in s. 35 of the Regulations.

Manitoba

Pursuant to the *Special Payments Exemption Regulation* (Reg. 75/2005), the University of Winnipeg Pension Plan administrator may elect to be exempt from the requirement to make special payments otherwise required before July 30, 2008 under the *Pension Benefits Regulation* in respect of any solvency deficiency determined as of December 31, 2004. However, if the university so elects, it must make equal payments into the plan, at least quarterly, sufficient to amortize the unfunded liability over a period ending no later than December 31, 2014, and no special payment is required to be made before July 30, 2008.

Pursuant to the *Special Payments Exemption Regulation (Brandon University and University of Manitoba Pension Plans)* (Reg. 258/2006), the respective plan administrators may elect to be exempt from the requirement to make special payments otherwise required before July 30, 2010 under the *Pension Benefits Regulation* in respect of any solvency deficiency determined as of December 31, 2006. However, if the university so elects, it must make equal payments into the plan, at least quarterly, sufficient to amortize the unfunded liability over a period ending no later than December 31, 2016, and no special payment is required to be made before July 30, 2010.

New Brunswick

All post-secondary educational institutions prescribed by regulation for the purposes of the definition of “universities” in s. 1 of the *Maritime Provinces Higher Education Commission Act* are eligible for exemption from the need to contain provisions requiring an employer (or other person required to

make contributions on behalf of an employer) from making contributions in respect of a solvency deficiency (pursuant to s. 42.1 of the *General Regulation* under the Act). The institutions so prescribed include:

- Mount Allison University
- St. Thomas University
- Université de Moncton – Moncton, Edmundston and Shippagan
- The University of New Brunswick – Fredericton and Saint John
- Maritime College of Forest Technology
- Acadia University

To benefit from this exemption, at least 51 per cent of the members, former members and other persons entitled to payments under the plan who vote must consent to a proposal for exemption. Procedural matters associated with this proposal are contained in s. 42.2 of the *General Regulation*.

Even if such an exemption proposal is approved, no amendment can be made to a plan that negatively impacts its solvency unless the full cost of the amendment on a solvency basis is paid into the pension fund before its effective date, or the amendment is required by law.

If a plan exempted under s. 42.1 is wound up or partly wound up and, as of the effective date of wind-up the market value of investments held by the plan does not equal or exceed its solvency liabilities, the employer shall pay within six months into the fund an amount so that the market value of investments equals or exceeds its solvency liabilities and (in the case of a partial wind-up) the market value of the investments attributable to that portion of the plan being wound up equals or exceeds its solvency liabilities for that portion.

Newfoundland and Labrador

The Memorial University Pension Plan (Plan) is one of six plans designated under s. 2 of the *Pension Benefits Act Regulations* as a “public sector pension plan”. Section 41 of the Regulations provides that the Act applies to such plans, except for the following provisions:

- s. 29(1) with respect to void amendments
- s. 35 with respect to funding
- s. 39 with respect to the 50 per cent rule
- s. 40 with respect to portability
- s. 41 with respect to pre-retirement death benefits
- s. 43(1) with respect to vesting requirements
- s. 48(2)(a) with respect to marriage breakdown

Special exemptions extended only to the Plan pursuant to s. 41(2) of the Regulations include:

- exemption for the period from April 1, 2002 until December 31, 2005 from the requirement that the employer pay an amount under section 12(3)(d) of the Regulations; and
- exemption from the requirement under s. 12(3)(c) of the Regulations to liquidate the going concern unfunded liability arising from the cost of providing indexed benefits in relation to past service under s. 24.1 of the *Memorial University Pensions Act* within the prescribed 15 year period and is instead permitted to liquidate this liability with 40 years from the day that indexing is effective.

The following matters in relation to the Plan are governed by the *Memorial University Pensions Act*:

- the pension fund
- pension entitlement

- charges on the fund
- investments
- accounts
- audits and reports
- contributions
- payments by government into the fund
- retirement
- deferred pensions and allowances to survivors of deferred pensions
- advanced retirement
- pension recipients
- the President's pension
- rejoining the Plan
- pensionable service and employment
- war service
- temporary pensions
- survivor's allowances
- indexing
- refunds
- residual amounts
- repayment of contributions of deceased employees
- saving
- adjustment or cancellation of pension
- policy directives
- integration with the CPP
- reciprocal agreements
- transfers

Nova Scotia

Special rules respecting special payments to amortize a going concern unfunded actuarial liability or solvency deficiency relating to university and municipal pension plans are contained in section 6(1) of the *Pension Benefits Regulations*. Under a university plan, the amortization period is extended to 15 years.

If a university pension plan is wound up in part during the time period referred to in s. 6(1)(d)(iii), the employer or any person required to make contributions on behalf of the employer must pay into the plan in respect of members affected by the partial wind-up, the amount required to liquidate all solvency deficiencies existing at the date of the partial wind-up, and to pay for the benefits provided under s. 79 of the Act.

Quebec

Regulation 1098-2006, *Exemption of Certain Categories of Pension Plans from the Application of Provisions of the Supplemental Pension Plans Act* was published in the Gazette Officielle du Quebec on November 29, 2006. and is expected to come into force shortly. It adds a new Division IX to the *Regulation respecting the exemption of certain pension plans from the application of provisions of the Supplemental Pension Plans Act* dealing exclusively with the funding and solvency of plans of which the employer is a municipality or an educational institution at the university level.

For such plans, amortization payments under s. 140 of the Act will no longer be required after December 31, 2006 and unfunded liability payments under s. 137 of the Act will be eliminated. For funding purposes, assets will be determined according to their liquidation value, or an estimate thereof. Furthermore, the required actuarial valuation may be partial and, in certain cases, increased obligations may arise from the amendment, or special amortization payments must be paid into the fund. In addition, the maximum amortization period for any improvement unfunded actuarial liability shall be five years from the date of determination of the liability. Restrictions also exist on the ability of plan sponsors to take contribution holidays, which must be determined according to a specified formula and shall cease at specified times. Special reporting and certification requirements are also applicable to such plans.

Appendix C

Ontario Pension Benefits Act Exemptions

Plans established under the following statutes are exempted from the Application of the *Pension Benefits Act* and Regulations:

- *Legislative Assembly Retirement Allowances Act*
- *MPPs Pension Act, 1996*
- Part II of Ontario Regulation 67/92 (Salaries and Benefits of Provincial Judges)
- section 98 of the *Municipal Act* and section 179 of the *Education Act*

The Teachers' Pension Plan is exempted from the following provisions:

- 38(1) of the Act: termination of membership by member
- 62 of the Act: rules regarding investments, with respect to investments made before July 1, 1992
- 4(4) of the Regulations: funding by way of contributions in respect of:
 - any going concern unfunded liability and solvency deficiency and money withheld by payroll deduction or otherwise from an employee, that are received from employees as the employees' contributions to the pension plan
 - all contributions required to pay the normal cost
 - all special payments determined in accordance with sections 5, 31, 32 and 35 of the Regulations
 - all payments determined in accordance with s. 31.1 of the Regulations
- 76 of the Regulations: financial statements and auditor's reports

The Public Service Pension Plan is exempted from the following provisions:

- 22(1) of the Act: care, diligence and skill in the administration and investment of the pension fund
- 62 of the Act: investment rules
- 69 of the Act: winding up orders

In addition, the Ontario Public Service Employees' Union Pension Plan is exempt from section 69 of the Act (winding up orders).

Pursuant to s. 47(1) of the *Pension Benefits Regulation*, pension benefits provided by 20 named public sector plans are not guaranteed by the Guarantee Fund.

Regulation 909

47. (1) Pension benefits provided by the following pension plans are not guaranteed by the Guarantee Fund and are exempted from subsection 18 (7) and sections 30 and 37:
1. The Improved Retirement Plan for the Employees of The Corporation of the City of Chatham.
 2. The City of Etobicoke Pension Plan.
 3. The Town of Gananoque Employees Pension Plan.
 4. The Corporation of the City of Hamilton Municipal Retirement Fund.
 5. The Hamilton-Wentworth Retirement Fund.
 6. The Corporation of the City of Kitchener Pension Plan for Fire Department Employees.
 7. Revoked: O. Reg. 386/04, s. 9 (1).
 8. The Corporation of the City of North Bay Employees' Pension Plan.
 - 8.1 The Registered Pension Plan for Employees of The Township of North Glengarry.
 9. The Ontario Municipal Employees Retirement System.
 10. The Ontario Public Service Employees' Union Pension Plan.
 11. The Corporation of the City of Oshawa Employees' Pension Plan.
 12. The City of Ottawa Superannuation Fund.
 - 12.1 Public Service Pension Plan.
 13. The Corporation of the Town of Tillsonburg Employees Pension Plan.
 14. The Metropolitan Toronto Pension Plan.
 15. The Municipality of Metropolitan Toronto Police Benefit Fund.
 16. The Toronto Civic Employees Pension and Benefit Fund.
 17. The Toronto Fire Department Superannuation and Benefit Fund.
 18. The Corporation of the City of York Employee Pension Plan.
- (2.1) The following are prescribed classes of pension plans for the purposes of paragraph 6 of section 85 of the Act:
1. Designated plans.
 2. Pension plans for a period of five years following the time at which they cease to be designated plans.
 3. Jointly sponsored pension plans.
- (3) The following pension plans are exempted from the application of the Act and the regulations:
1. The *Legislative Assembly Retirement Allowances Act*.
- 1.1 The *MPPs Pension Act, 1996*.
2. The pension plan set out in Part II of Ontario Regulation 67/92 (Salaries and Benefits of Provincial Judges).
 3. Pension plans under which annual retirement allowances are granted or purportedly granted under section 98 of the *Municipal Act* or section 179 of the *Education Act*.
- 47.1 The Teachers' Pension Plan continued under the *Teachers' Pension Act* is exempted from the following:
1. Subsection 38 (1) of the Act.
 2. Section 62 of the Act, with respect to investments made before the 1st day of January, 1992.
 3. Paragraphs 2, 3, 4 and 5 of subsection 4 (4) of this Regulation.
 4. Section 30 of this Regulation.
 5. Section 37 of this Regulation.
 6. Section 76 of this Regulation, with respect to the plan fiscal years that ended on the 31st day of March in 1989 and 1990.

- 47.2** The Public Service Pension Plan continued under the *Public Service Pension Act* is exempted from the following:
1. Subsection 22 (1) of the Act.
 2. Section 62 of the Act.
 - 2.1 Section 69 of the Act.
 3. Paragraphs 2, 3, 4 and 5 of subsection 4 (4) of this Regulation.
 4. Section 30 of this Regulation.
 5. Section 37 of this Regulation.
 6. Section 76 of this Regulation, with respect to the plan fiscal years that ended on the 31st day of March in 1989 and 1990.
- 47.3** The Ontario Public Service Employees' Union Pension Plan established under the *Ontario Public Service Employees' Union Pension Act, 1994* is exempt from section 69 of the Act.

Appendix D

Summary of Legislative Exemptions for Public Sector Plans (Excluding Ontario)

Alberta

Pursuant to s. 68(1) of the *Employment Pension Plans Regulations*, the following plans are exempted from the application of the Act and Regulations:

- the Members of the Legislative Assembly (Registered) Pension Plan
- the Provincial Judges and Masters in Chambers (Registered) and (Unregistered) Pension Plans
- any plans supplemental to the plans mentioned above.

Plans that are supplemental to publicly funded plans may apply for exemption from:

- making ongoing solvency special payments while the plan is ongoing, on certain conditions: s. 1(1) of Schedule 0.2 to the Regulations
- the definition of pension partner in s. 1(1)(ff.1) of the Act: s. 1(2) of Schedule 0.2 to the Regulations
- the deemed selection of portability or deferral: s. 1(3) of Schedule 0.2 to the Regulations
- the wind-up provisions of s. 76(1) of the Act so long as the “base” plan is not required to wind-up: s. 1(4) of Schedule 0.2 to the Regulations.

In addition, administrators of plans that have been designated as publicly funded can apply for joint employee/employer funding: s. 48(4) of the Act.

British Columbia

For a discussion of various exemptions applicable to the Municipal Pension Plan and the Teachers’ Pension Plan, including exemptions relating to the solvency tests and funding rules contained in s. 35 of the Regulations, see Appendix B.

In addition, the following restrictions do not apply to a public sector pension plan:

- restrictions with respect to who can hold pension funds contained in s. 42(5) of the Act
- restrictions related to the portability of commuted value of benefits contained in s. 33(1) of the Act
- minimum employer contributions for the funding of pensions contained in s. 32 of the Act

Manitoba

Pursuant to s. 26 of the Pension Benefits Regulation, the following three plans are excepted from the application of section 26(1)(a) of the Act, which provides that a registered pension plan must be funded in accordance with the tests for solvency prescribed by the regulations, at a level that is adequate to provide for payment of all pension benefits, deferred life annuities and other benefits required to be paid under the terms of the plan:

- Civil Service Superannuation Plan
- Teachers' Pension Plan
- Pension Plan for Members of the Legislative Assembly

Newfoundland and Labrador

In addition to the Memorial University Pension Plan, the following plans have been designated under s. 2 of the *Pension Benefits Act Regulations* as a “public sector pension plan”:

- Public Service Pension Plan
- Uniformed Services Pension Plan
- Teachers' Pension Plan
- Members of the House of Assembly Pension Plan
- Government Money Purchase Pension Plan

For a discussion of the exemptions applicable to these plans, see Appendix B.

Nova Scotia

Special rules respecting special payments to amortize a going concern unfunded actuarial liability or solvency deficiency relating to municipality pension plans are contained in section 6(1) of the *Pension Benefits Regulations*.

Section 4(1A) of the *Pension Benefits Regulations* provide that if an amendment made to a municipality pension plan funded under section 6(1)(d)(iii) affects the costs of the benefits provided by the plan, creates an unfunded liability or otherwise affects solvency or funding of the plan, the costs of the amendment must be fully paid to the pension fund at the time the amendment is made.

In addition, if a municipality pension plan is wound up in whole or in part during the time period referred to in s. 6(1)(d)(iii), the employer or any person required to make contributions on behalf of the employer must pay into the plan in respect of members affected by the partial wind-up, the amount required to liquidate all solvency deficiencies existing at the date of the partial wind, and to pay for benefits under s. 79 of the Act.

Pursuant to s. 49(1) of the Regulations, plans established by or under the following legislation are excepted from the application of the Act and Regulations:

- *Public Service Superannuation Act*
- *Teachers' Pension Act*
- *Members Retiring Allowances Act*
- *Judges of the Provincial Court Act*

Prince Edward Island

Section 61(2) of the Prince Edward Island *Pension Benefits Act* provides that the plans established under the following statutes are exempt from the application of section 61, which states that a plan is not eligible for registration unless it provides for funding sufficient to provide the pension benefits, ancillary benefits and other benefits under the plan, in accordance with the Act and Regulations:

- *Civil Service Superannuation Act*
- *Teachers' Superannuation Act*
- *Legislative Assembly Retirement Allowances Act*

Note that the PEI *Pension Benefits Act* has not yet been proclaimed into force.

Quebec

See the discussion of new Division IX to the Regulations under the SPPA in Appendix B above.

In addition, certain pension plans in the municipal sector are exempted from the application of various provisions regulating unfunded actuarial liabilities contained in ss. 132 through 135 of the *Supplemental Pension Plans Act* (SPPA): s. 135.2 of the SPPA and Division II of the *Regulation respecting the exemption of certain pension plans from the application of provisions of the Supplemental Pension Plans Act*. Instead, ss. 135.1 through 135.5 and ss.132, 133, 134 and 137 of the SPPA apply, as well as provisions in Division II of the Regulations related to the Ville De Montreal.

The CPE and private daycare workers pension plan are exempted from: certain registration requirements contained in s. 24 of the SPPA; various conditions governing the payment of benefits contained in ss. 142 through 146 of the SPPA; and the provisions dealing with withdrawal from and termination of multi-employer plans ss. 198 through 203 of the SPPA: Division I(4) of the Regulation.