Planning for the Future:

Strengthening Ontario's Defined Benefit Pension System

Submission to the Ontario Expert Commission on Pensions

October 11, 2007

OPSEU Pension Trust

Fiducie du régime de retraite du SEFPO

www.optrust.com

1 Adelaide Street East
Suite 1200
Toronto, Ontario
M5A 3A7

Tel: **416-681-7738**
1-800-906-7738

E-mail: **email@optrust.com**

Web: **www.optrust.com**

OPSEU Pension Trust
Fiducie du régime de retraite du SEFPO

October 11, 2007

Harry W. Arthurs
Commissioner
Ontario Expert Commission on Pensions
777 Bay Street
Toronto ON
M5G 2C8

Dear Mr. Arthurs,

RE: Consultation Submission to the Ontario Expert Commission on Pensions

Please find enclosed comments made by the OPSEU Pension Trust ("OPTrust") in response to the call for input from stakeholders on the Ontario Expert Commission on Pensions' ("Commission") Discussion Paper entitled "Reviewing Ontario's Pension System: What Are The Issues?", published in the spring of 2007.

OPTrust was pleased when the Minister of Finance announced the creation of the Commission. The proposed mandate of this body is far-reaching. We believe that it is important that the findings and recommendations reflect the views of both the pension stakeholders and plan administrators who act as the stewards for the members and pensioners in Ontario. Modifications to pension legislation in Ontario are long overdue. It is our hope that through this process, many of the questions raised in the Discussion Paper will be answered and outstanding issues prominent within the pension sector in Ontario will be addressed. We are truly hopeful that we have now reached an important milestone.

1 Adelaide Street East
Suite 1200
Toronto, ON M5C 3A7

www.optrust.com

Tel: (416) 681-6161
(Toronto calling area)
1-800-906-7738
(Toll-free in Canada)
Fax: (416) 681-6175

OPTrust has been asked to provide its input on many subject areas in the past. With assets of $13.1 billion, the OPTrust manages one of Canada's largest pension funds and administers the Ontario Public Service Employees' Union Pension Plan ("OPSEU Pension Plan"), a defined benefit ("DB") plan with more than 77,000 members and pensioners. As plan administrator, we have been and will continue to be willing and active participant in any consultation processes of importance to the members and pensioners of the OPSEU Pension Plan. It is our hope that this submission is but the first part in our continuing role in helping to enhance pension legislation Ontario.

Our input

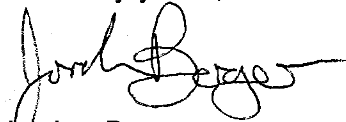
Many of our industry colleagues have commented that the Discussion Paper is extensive and even exceedingly lengthy. However, we believe that both the Paper and the recently held meetings with stakeholders are all an integral part of the review process. As written, the Discussion Paper touches on many important topics. We feel that it is unlikely that most of the contributors in this process will respond to all sixty questions as outlined. Instead, they will likely focus on those themes and issues that are most relevant to their members and pensioners. OPTrust is taking a similar approach in this process, providing our comments on those areas that we believe are most relevant to our membership. We will also discuss some other issues that were not raised directly through the Discussion Paper, but which we feel are nonetheless significant and would contribute to the dialogue on ensuring the viability of DB plans in Ontario. This was encouraged in the Discussion Paper and also noted in our contacts with officials of the Commission.

Consequently, we will respond in the general order that the various sections were drafted in the paper but will also structure our submission into four general subject areas. They include:

- Saving Defined Benefit plans
- Pension plan coverage (Membership issues)
- Section 80/Pension Asset Transfers
- Pension Valuation & Division upon Marital Breakdown

In addition to our commentary, we will also provide a number of specific recommendations in each appropriate section. We have also included an Appendix which outlines suggestions for technical amendments to the *Pension Benefits Act ("PBA")* to provide more clear guidance to pension plan administrators on policies and practices which, at present, create administrative ambiguity. We trust that our input will be beneficial to the Commission. Once again, we welcome the opportunity to be part of this consultative process and are hopeful that our participation will be of use to the Commission.

Sincerely yours,



Jordan Berger
Chair, Board of Trustees

Heather Gavin
Chief Administrative Officer &
Plan Manager

Planning for the Future:

Strengthening Ontario's Defined Benefit Pension System

Submission to the Ontario Expert Commission on Pensions

Contents

Executive Summary ………………………………………………… **page 1**

1) Saving Defined Benefit Plans ………………………………… **page 7**

2) Pension Plan Coverage (Membership Issues) ……………… **page 37**

3) Individual Pension Asset Transfers Following Divestments .. **page 63**

4) Pension Valuation & Division upon Marital Breakdown ……. **page 75**

Appendix: Suggested technical changes to the Ontario

Pension Benefits Act …………………………………………..… **page 81**

EXECUTIVE SUMMARY

INTRODUCTION

The province of Ontario established an Expert Commission on Pensions (Commission) to examine the legislation that governs the funding of defined benefit pension plans in Ontario, the rules relating to pension deficits and surpluses, and other issues relating to the security, viability and sustainability of the pension system in Ontario. The Commission is meeting with stakeholders throughout 2007 and is planning to submit a report with recommendations to the government in 2008 following both a written and verbal consultation process. OPTrust is making a written submission to the Discussion Paper that was published by the Commission. The deadline for written submissions from stakeholders is October 15, 2007.

The Discussion Paper poses sixty specific questions within several theme areas. OPTrust's submission of recommendations is focused on those areas that are of most significance to the Plan and its members and pensioners. A summary of the recommendations follows:

1) SAVING DEFINED BENEFIT PLANS

Summary of recommendations:

1. Encourage the province to conduct a thorough rules review and reassessment of the PBA to eliminate any lack of clarity or redundancy and remove any artificial disincentives to maintaining and strengthening existing DB plans and expanding coverage to sectors and employers who don't currently have access to a secure DB plan.
2. Exempt public pension plans from solvency requirements. These plans are already backed by governments if they fall into any considerable funding difficulty and have a "financial safety net" that most of the private plans lack. Eliminate solvency valuation tests for public pension plans as it is an unrealistic worst case scenario which assumes plan wind-up or plan sponsor insolvency.

3. Increase the amortization period to extend solvency funding relief to private pension plan administrators. OPTrust urges the Commission to recommend that for private pension plans (that is, non-public or non-MEPP plans) the province adopt a ten-year amortization for solvency deficiencies, and that consolidation of all solvency liabilities be permitted when determining the ten-year amortization period.

4. Consider allowing the use of letters of credit for the funding of pension plans in some cases. While not a wholesale solution to solvency issues or a natural substitute for proper funding they do offer an alternative to the current regime. The amount of these letters of credit should be no more than a specified limit, such as 15% of the liabilities of the plan. The conditions under which an employer could provide a letter of credit to the pension committee, as well as the form, amount, terms and conditions thereof would be prescribed by regulation.

5. Recommend that all sponsors establish a "provision for adverse deviation" (PFAD), also known as a contingency reserve.

6. Urge the Commission not to remove funding flexibility by introducing financial economic restrictions on the discount rate to be used to value going concern liabilities. The province should create regulations which will encourage flexibility rather than moving in lockstep with the Canadian Institute of Actuaries. Such regulation should not be unduly restrictive and prescriptive in calculating the discount rate.

7. Ensure that each year pension plans disclose to members the elements of the plan's funding policy, along with the administrator's investment policy and the state of its plan funding.

8. Lobby the Federal government to change the existing actuarial surplus threshold for jointly sponsored pension plans. Optimally we would like to see the current 10% surplus threshold eliminated altogether. At a minimum, it should be replaced with a higher limit.

9. Encourage the Commission to advise the province to look at OPTrust and other jointly sponsored pension plans as governance models that are a proven success.

10. Encourage the Commission to look at ways to improve pension governance. For example, the recent changes requiring pension committees in Quebec

11. Recommend that FSCO provide policy direction when guidance is sought by plan administrators. We recommend that FSCO set up standing committees which would meet on an ongoing basis to discuss pertinent pension issues.

12. Conduct more frequent reviews of provincial pension legislation, and establish a fixed assessment timeline so that pension laws can be evaluated more thoroughly.

13. Examine ways where Financial Services Tribunal rulings going forward could be made binding. This will create less reliance on seeking remedies through the courts.

14. Urge that FSCO take up the Pension Commission of Ontario (“PCO”) mandate as stipulated in the 1987 version of the PBA to encourage the establishment, extension and improvement of pension plans throughout Ontario. It should also have the appropriate resources to fulfill this mandate.

15. Introduce electronic filing of documents.

16. Harmonization of pension legislation in Canada would be of concern to OPTrust if it led to the potential loss of benefit entitlements or member/pensioner rights.

2) PENSION PLAN COVERAGE (Membership Issues)

Summary of recommendations:

17. Identify and address the reasons for the decline in pension coverage. As a start, the rules with respect to solvency should be changed to give sponsors the incentive to create and/or keep DB plans in place. In addition, if the current rules in place for DB and DC plans are determined to be creating disincentives for the creation of new plans, then these rules must be changed.

18. Encourage, where possible, the adoption of the jointly sponsored pension plan ("JSPP") model. JSPPs establish a "pension partnership" benefiting both the employer and workers, and also solve the surplus and solvency issues as the use of these funds would be clearly spelled out in the governing documents.

19. Encourage the government of Ontario to act in concert with other jurisdictions and the federal government and create a plan which will address how we will deal with the rapidly graying workforce over the coming thirty years. Part of this initiative should include ways of increasing pension coverage for those people that are currently working but are not members of a DB pension plan.

20. Establish more sectoral multi-employer DB pension plans in Ontario. The idea of a broad Ontario-specific MEPP (or MEPPs) which would provide coverage for workers in this province that currently are not members of a plan at work would make sense. In addition, in the public sector sphere, OPTrust's idea of offering coverage to broader public sector employees that are currently not enrolled in a DB pension plan should also be further explored.

21. Recommend the further study of creating alternate pension plan models for those currently without an occupational pension plan. This study should be initiated concurrently with any research being done on the establishment of an Ontario-specific MEPP model to determine which concept is the most feasible. In addition, studies should be conducted of other pension plan models outside of the Canadian jurisdiction to identify other viable plan designs that could be adopted in this province.

22. Ensure that phased retirement rules are in place in the PBA to complement the federal Income Tax Act ("ITA").

23. Educate Ontarians to save more for their retirement days. In addition to creating a sectoral pension plan which will provide wider coverage, a concerted effort needs to be made to educate Ontarians about the importance of having a quantifiable source of pension income.

3) INDIVIDUAL PENSION ASSET TRANSFERS FOLLOWING DIVESTMENTS

Summary of recommendations:

24. Before proceeding with any legislative changes to allow individual pension asset transfers on a divestment, we recommend that the Government of Ontario undertake a thorough review of the advantages and disadvantages that such a provision would pose for pension plan members, administrators, employers and sponsors. There are some impediments tied into individual asset transfers. Though it may directly benefit some divested members it would invariably harm many others. While the possibility of greater financial choice is a noble one for divested members, the very nature of divestment transaction makes them a highly complex transaction. Allowing for individual asset transfers after so many years is likely to create a multitude of problems for plan administrators and members. We have concerns that protections available under the existing legislation may be stripped away and could lead to some members being negatively impacted. Any changes in the existing legislation must be carefully thought out.

4) PENSION VALUATION & DIVISION UPON MARITAL BREAKDOWN

Summary of recommendations:

25. Propose that detailed pension valuation regulations are drafted which will allow for the valuation of pension assets and provide a prescribed form for the parties to complete when dividing pensions. The effective date of any changes should be prospective, in order to allow pension plan administrators to update their systems and procedures. In addition, these changes should not impact already existing domestic contracts or Court Orders, as this would be administratively complex and also tend to "cause undue hardship or upheaval" for the parties that struck an agreement in the distant past.

26. Advocate that the Immediate Settlement Method of valuation be adopted as the standard for valuing pensions in marriage breakdown scenarios. In addition, this method should be coupled with a benefit split creating two separate benefit entitlements for the former spouses, at the time of spousal relationship breakdown (valuation date). Any valuation method should be developed and monitored by a panel of experts constituted for this purpose as opposed to oversight by the Financial Services Commission.

27. Prohibit the charging of fees for the division of Pension Assets.

28. Support the current direction for automatically considering pensions as family property for common-law couples. Though current law does not consider a pension to be family property in common-law relationships, we find this troubling from a public policy standpoint. Mandating pension division for common-law spouses when other assets are not subject to division, such as the principle residence, does not appear to be consistent. We also believe that this position would provide more clarity for the administration of pensions.

29. Clarify the existing attachment rules.

1) SAVING DEFINED BENEFIT PLANS

One recurring theme throughout the Discussion Paper is the ongoing economic health and condition of DB pension plans in Ontario. The Commission is actively seeking guidance from stakeholders on a wide number of areas concerning the well-being and future of such plans in Ontario. A number of the questions posed in the paper were specific to this theme. In the following section, OPTrust provides responses to some of those questions. We lend our input on what we feel are some of the possible solutions. We will also focus on two areas which are crucial when examining the future of DB plans in Ontario: effective governance and plan solvency.

The current and future state of pensions and income security for Ontario's older workers

Occupational pensions form an important pillar in the retirement income plan. In many cases, people rely on their occupational pension plan as the primary source of retirement income superseding both the government-provided benefits (Canada Pension Plan, Old Age Security benefit and the Guaranteed Income Supplement) and accumulated private savings. Most importantly, occupational pension plans in many instances provide a legacy of lifetime benefits to not only a member/pensioner, but also to his/her survivor, or beneficiaries.

A recent Decima Research survey found that nearly half (46%) of Canadians are banking on employer-sponsored pension plans as part of their retirement mix. Interestingly, however, of the 40% who contribute to a company pension plan, more than half (51%) are unsure whether their plan is a DB or defined contribution ("DC") plan. Further, less than half of the individuals in that same group know what their pension plan will pay during retirement. This specific case study reveals that people may not be fully aware of how their plan works or even how much they can expect to receive in pension income. Nevertheless, they are aware that their occupational pension plan will be a primary source of their retirement income.

Occupational pension plans are especially important to those Canadians employed in the public sector. According to Statistics Canada, in 2003 the Registered Pension Plan ("RPP") coverage rate in the private sector was about 27%, while in the public sector that same year the RPP coverage rate was over 86%. In statistics cited by the Commission on Pensions itself, there are currently over 7500 pension plans registered in Ontario with over 2,000,000 plan members. While 51% of these are DB plans, 83% of the members belong to DB plans. Clearly there has been a prevalence within the public sector towards DB plans and this trend is confirmed by the above figures.

The reliance on DB plans notwithstanding, many people spend the bulk of their lives working in order to "save up enough for retirement". DB plans in particular allow for more certainty in financial planning as employees know ahead of time how much of a pension to expect upon retirement. In many respects, this makes it easier to determine retirement income and eases the process of retirement planning. To many Canadians, relying on retirement income from the government-provided benefits, accumulated savings or even RRSPs is a risky proposition.

The argument can also be made that occupational pension plans shift more of the burden away from the employee and on to the employer to deal with employee welfare. While there is some truth to this, the fact remains that an occupational pension plan often provides the largest source of income in retirement – and this also helps to minimize the reliance on senior social assistance in the long run.

The importance of pension plans as major institutional investors must also not be overlooked. In addition to providing benefits for millions of current and future Ontario pensioners, the pension funds themselves invest billions of dollars in the Ontario economy and beyond. This cyclical relationship ensures that the plans are not only stewards of pension income for individuals but also play a large role in ensuring that various economic sectors in the province remain financially viable. This latter role is equally as important in many respects and must be kept in mind.

Jointly sponsored pension plans, such as the OPSEU Pension Plan, are based on a shared risk and reward relationship in which the employee is provided with a defined amount of pension income in exchange for providing service to the employer and tenure in the workplace. It could also be argued that another objective of an occupational pension plan is to improve efficiency and productivity by instilling a sense of loyalty to the workplace or even the employer. While there have been conflicting studies about what actually motivates people to remain in the workplace, there is little argument that in many cases an adequate pension plan arrangement can encourage an employee to consider staying on in the workplace for the longer term.

Many occupational pension plans also provide targeted benefits for their retirees such as early retirement incentives, bridge benefits or other ancillary benefits. Those plans with inflation indexing provisions provide even more generous pension benefits and prevent the erosion in real terms of future pension income. In summary, occupational pension plans go a long way in providing a level of income security for workers in Ontario. Many of the public pension plans provide retirement benefits that some have viewed with envy; however; the shared risk/reward concept that is encompassed specifically by jointly-sponsored plans (and to a large degree other DB plans) is often overlooked by critics. The generally higher contribution rates for public pension plans relative to the private sector are also often overlooked by these same critics.

With jointly sponsored plans, there is a symmetry of risks and rewards. It is important to remember that, when there is a surplus, how it is used is determined by the sponsors. In times where there is a funding deficit the decision is most often made to increase contributions which affects both the employer and employees. Therefore, there is accountability and a recognized responsibility by all parties to ensure that the pension promise is kept. In principle, occupational pension plans and particularly jointly sponsored plans are models that have been proven to work well.

We feel that occupational pension plans are an integral financial resource for members, pensioners and the economy as a whole. The Government of Ontario must not let this resource be jeopardized in any way and all necessary steps must be taken to ensure that existing plans remain viable into the future.

Furthermore, we believe that occupational pension plans should be expanded to encourage coverage for more working Ontarians. Consequently, we must look at establishing a regulatory framework that makes it easier for employers to set up pensions for part-time and seasonal workers. The idea of a broader MEPP for such employers should be fully explored. This should be targeted at smaller employers and sponsors who may not be able to shoulder the financial costs of registering and administering a pension plan solely by themselves.

Meeting the needs and expectations of plan members and sponsors

We believe that, in most cases, pension plans do meet the needs and expectations of both their members and sponsors. However, we should also point out that we are speaking in the context of public pension plans in Ontario which, for the most part, are indexed, have adequate survivor provisions and provide generous benefits for its members and pensioners.

In today's environment, we often hear many concerns with respect to funding, solvency and other issues surrounding the overall economic health of pensions. A few industry analysts have even coined the term "pension crisis" to describe the overall health of the pension sector today. Some employers have argued that within a tight economy, it is difficult to continue to offer a "rich" pension plan to employees. They maintain that the same funds that are being committed towards sustaining the plan could be, instead, allocated towards the company, thereby ensuring its viability and success and guaranteeing jobs for those same employees. This argument stresses that it is better to be investing and upgrading the enterprise rather than being fixated on "perks" for its employees.

We believe that it is important that the pension plan itself be viewed as part of the greater compensation picture. A pension fund is not simply disposable funds that are provided to employees at the whim of the employer when times are good. The pension promise is built on a deeper belief that these are deferred wages which are there to provide for the employee in retirement. In fact, pension income is actually a constituent part of an employee's compensation package that is to be used in retirement when it is most required.

According to statistics provided by Statistics Canada, currently there are 4.5 million Canadians covered under a DB plan and approximately 877,000 are covered under a DC plan. In the public sector more than 2.4 million employees have a DB plan and only 147,300 have a DC plan, while in the private sector 2.1 million Canadians have a DB plan and 729,200 are covered under a DC plan. However, a report by the Association of Canadian Pension Management (entitled "Back from the brink: Securing the Future of Defined Benefit Pension Plans", August 2005.) outlines that DB plan coverage is declining in Canada, having slipped from 44% of the workforce in 1992 to 34% in 2003, with 77% of this decline occurring in the private sector.

In a recently released report published by the Canadian Institute of Actuaries (entitled "Planning for Retirement: Are Canadian Saving Enough?") it is emphasized that many Canadians are simply unprepared financially for their retirement years. While the CPP/QPP is working as intended, many people in this country are not saving enough for the post-employment period. The report reiterates that the national pension plan must be buttressed by both home equity and a workplace pension plan and possibly other savings vehicles. In fact, one of the main conclusions of the report is that policymakers need to begin efforts to reverse the trend of declining pension plan participation, especially in DB plans.

Many industry analysts have asserted that this is one of the more troubling trends today. Is there a tangible reason why the number of plans and members is declining? Some of the likely reasons include the high cost of creating and administering a DB plan, complex regulatory rules, and the fear of a future funding crunch which could undermine not only the plan itself, but also the employer or sponsor.

It appears then that the pension landscape is changing. Can this new environment be accurately termed as a "pension crisis"? There are arguments both for and against this. Some would say that this new climate is simply a natural adjustment or correction based on market factors and the reality of today's working world. After all, things have changed significantly over the past century within the workforce in Canada. We have seen great changes including the introduction of trade unions, implementation of far-reaching labour laws, the

expanded role of women in the workforce, technological innovations, etc. Perhaps it was inevitable that with such dramatic changes in the workforce itself, we have also experienced changes in the way we view pension plans. We will discuss what we believe are some of the objective reasons behind this changed climate in the following pages.

Recommendations

1. *It is clear that the existing set of complex regulatory rules is often one of the impediments cited by employers and sponsors who opt against establishing a DB pension plan. We believe that the Commission should make it clear to the province that it should conduct a thorough rules review. The PBA must be reassessed to eliminate any lack of clarity and redundancy. The existing legislation is in need of streamlining and simplification to remove any artificial disincentives to maintaining and strengthening existing DB plans and to expanding coverage to sectors and employers who don't currently have access to a secure DB plan. Examples of some of this streamlining can be found in Appendix A.*

Plan management: The present and the future

Funding and Solvency Issues: Talking Dollars and Sense

Solvency valuations:
One of the recurring topics of discussion as of late within the pension industry has been the issue of pension fund solvency. Significant press coverage has been given to the fact that many pension plans in Canada find themselves in a situation where they are underfunded on a solvency basis. Certainly many of the plans would concur that solvency is a pressing issue that needs to be resolved. It also affects not only the smaller plans but the larger ones as well.

The risk/reward asymmetry in many employer sponsored pension plans and the debates around surplus ownership has caused many plan sponsors to fund in such a way as to avoid the build up of surplus. This has been a contributing factor in the development of solvency deficiencies in recent years.

How we measure a plan's solvency deficiency and the manner in which Plan sponsors are required to fund that deficiency are important issues. Many critics argue that the existing rules place undue financial pressure on employers and in effect force them to focus on short-term solvency of the company pension plan at the expense of overall organizational liquidity. They have also stated that the cyclical nature of pension plans will never allow for "full solvency" on an ongoing basis and that there will be times when, due to market conditions or business cycles, any given plan will be more or less well funded.

We have seen a number of pension plans in Canada dealing with solvency problems in the past 10 years. Some of these plans have moved rapidly from a surplus to deficit situation due to negative investment returns, low discount rates and maturing plan liabilities. These are the cases that have garnered much of the publicity and precipitated the argument that we are now in the midst of a "pension crisis". Generally however, at least in the public plan sector in this province, we feel that most plans have been managed well.

The advantage that the public pension plans have is that they tend to be well-administered due to their transparency and large membership bases. They appear to be held to a higher standard due to this greater scrutiny and a generally more vocal membership. Public sector plans whose employer contributions ultimately come from public sources and whose sponsors are statutory entities, do not face the same solvency risks as do a great number of the private pension plans. Consequently, we believe that certain types of plans such as the larger public sector ones warrant different funding rules. It is also important again to reiterate that, as major investors, these funds have a higher profile than many of the smaller or less known plans. Numerous large plans also take plan governance very seriously. Most have governance committees and other mechanisms in place with regular reporting protocols.

There has been some criticism that the existing rules for funding solvency deficiencies are simply too rigid and this has contributed to some of the pressures on these plans. According to statistics compiled by the Certified General Accountants Association (CGA) of Canada, for the year ended December 31, 2003, 59% of Canadian defined benefit (DB) pension plans

continued to be in deficit at December 31, 2004. When providing for indexation of benefits, those numbers rose sharply to 95% and 96% respectively for the 2003 and 2004 years ending December 31. Approximately 80% of the pension plans under the federal *Pension Benefits Standards Act* are estimated to have had a solvency deficit as at the end of July 2005. Some studies have painted an even bleaker picture outlining that close to 90% of defined benefit pension plans in Canada today are "underfunded".

These statistics may in fact be pointing to the greater problem at hand with respect to solvency deficiency. We feel that the actions of the federal government in the 2006 Budget may be a harbinger on the issue of solvency. In the Budget document, the federal government changed the rules for federally regulated plans to provide them with some solvency relief and measures to modify the solvency rules. The Budget contained temporary funding relief for federal defined benefit pension plans. The *Pension Benefits Standards Act* (1985) and Regulations required solvency deficits to be funded over five years. However, in the 2006 Budget, the Government proposed four temporary measures to provide solvency funding relief in response to these difficult circumstances, including:

- Consolidating solvency payment schedules,
- Extending the solvency funding payment to 10 years with buy-in by plan members and retirees,
- Extending the solvency funding payment to 10 years with letters of credit. and
- Extending the solvency funding payment period to 10 years for agent federal Crown corporations.

These measures were implemented in order to help re-establish full funding of federally regulated defined benefit pension plans in an orderly fashion while easing the financial burden to plan sponsors and still providing safeguards for promised pension benefits. Perhaps they bare greater scrutiny by the Ontario government. Changes to allowing sponsors sufficient latitude in time and in financial maneuvering to deal with solvency shortfalls is overdue. A longer amortization period is not only consistent with the federal regulator, but also with measures already in place in many of the other provinces.

Recommendations

2. *Exempt public pension plans from solvency requirements. The province must seriously look at eliminating the solvency requirements for all public pension plans. These pension plans are already backed by governments if they fall into any considerable funding difficulty and have a "financial safety net" that most of the private plans lack. An effective governance structure and funding policy which pays appropriate attention to risk management is a much more effective mechanism for ensuring the ongoing financial health of public pension plans. This makes financial sense and is something which not only benefits plan members but also Ontario taxpayers who also help fund public pension plans.*

   Public sector DB plans are normally required to follow solvency funding rules. However, in recent years some governments have been moving to create exemptions from solvency funding for public sector plans. For instance, recent amendments to pension standards regulations adopted by the federal government and in Quebec have exempted certain types of public sector entities from solvency funding requirements. The real reason for the exemption from these private sector funding requirements is that the government employer is not likely to disappear, leaving pensioners and employees without the pensions they have earned through employment. We also believe that pension plans themselves must use more conservative assumptions in order to portray a more accurate picture of their general financial state.

   In addition:

   - *the solvency valuation test is an unrealistic worst case scenario. It assumes plan wind-up or plan sponsor insolvency. For public sector plans, the plan wind-up or plan insolvency scenario is highly unlikely to occur.*

   - *Requiring special payments to fund solvency deficiencies will result in surpluses when long-term interest rates return to more normal historic levels.*

- *The requirement to make solvency payments in order to cover solvency deficiencies forces government sponsors to make additional contributions to the plan when tax dollars can be used more effectively elsewhere.*

3. *Pensions are indeed a long-term commitment. Solvency deficiency payments serve little purpose in a public sector plan except to place potentially onerous and inflexible funding processes in place. We believe that there should be more flexibility with respect to solvency payments. The amortization of going-concern unfunded liabilities is the only form of deficit financing that should be required to ensure pension security in the public sector. With respect to the private sector, we believe that the amortization period for funding solvency deficiencies should be increased to extend solvency funding relief to private pension plan administrators. We feel that similar measures to those undertaken by the federal government for federally regulated plans in 2006 should be proposed for this sector. We urge the Commission to recommend that for private pension plans (that is, non-public or non-MEPP plans,) the province adopt a ten-year amortization for solvency deficiencies and that consolidation of all solvency liabilities be permitted when determining the ten-year amortization period. The current funding solvency rules are discouraging many companies who are reticent to sink monies into a pension plan at the expense of the company's revenues and profits. Make the rules reflect that long-term commitment and encourage employers and sponsors to set up these plans (or to continue to offer them) instead of opting for DC plans or group RRSPs. We feel that the proper incentives need to be provided for the results to take place.*

4. *We recommend that the Commission ask the province to consider allowing the use of letters of credit for the funding of pension plans. We do recognize that letters of credit will not be a wholesale solution to solvency issues for some employers because of set-up and ongoing fees and complexity, but they do offer an alternative to the current regime. While this option allows the employer greater flexibility in funding pension plans, we do not see the use of letters of credit as the natural substitute for*

proper funding of a pension plan. We believe that it might be expensive and may not be tenable for some pension plan sponsors. There has also been mention made in some circles that letters of credit could be used to fund shortfalls should a plan be wound up.

Letters of credit have been introduced in Quebec on a wider scale. Perhaps more attention should be paid to its possible use in Ontario. At a minimum there should be further consideration of the merits and pitfalls.

We feel that an employer or sponsor should be able to provide the pension fund with one or more letters of credit from a bank. This would relieve the employer from paying all or part of the portion of the employer contribution related to an amortization payment determined in relation to the solvency deficiency. Like in the Quebec scenario, the amount of these letters of credit should be no more than a specified limit, such as 15% of the liabilities of the plan. The conditions under which an employer could provide a letter of credit to the pension committee, the form, amount and the terms and conditions thereof would be prescribed by regulation.

Going concern valuations:

Maintaining predictable ongoing costs for offering a defined benefit pension plan is important to any sponsor. Where pension contributions fluctuate unduly, employers could face financial pressure to either consider ceasing a DB arrangement or reducing other benefit programs to pay for the pension promise. For contributory multi-employer public pension plans, fluctuating contribution rates mean members can experience a short-term financial hardship. Conversely, in single employer sponsored plans where the employer is responsible for deficit funding, employee contributions are typically fixed. Nevertheless, level contributions by the employer and member are a desirable feature of a defined benefit pension plan. Therefore, stable contribution rates have a positive role on ensuring healthy pension plans.

DB pension plans are managed for the long term recognizing that there will be periods of both positive and negative experience, but that over time the two will balance. DB pension plans experienced first hand how the economic climate of the 1990s changed so dramatically in 2001 and 2002 where funding surpluses

were quickly changed to deficits. There were three primary reasons for this change:

1. negative investment returns meant that not only did pension plans see their asset base decrease, but the losses were exacerbated by the fact that the necessary actuarial return to fund the benefits was not achieved ;
2. a low interest rate environment increased the cost of termination benefits and created or increased solvency deficiencies in some plans because payments exceeded the funds held by the plans. At the same time, long-term interest rates declined causing increases to the value of liabilities to the pension plans in question; and
3. past surpluses, in many instances, were spent or required to be spent under existing surplus rules.

There is a general expectation that over a long time period equities will outperform bonds. Because pension plans are long-term commitments investing in equities has traditionally made sense. Since the market downturn in 2001/2002, many pension plans have or have come close to recovering the substantial losses that were incurred. There is, however, one remaining certainty. Investment markets are volatile and pension plans will again see negative returns.

In the event of an actuarial loss, contributions are increased to liquidate that shortfall. A key technique utilized by the sponsors of the OPSEU Pension Plan to manage downturns in the investment market is to establish a rate stabilization fund, or a "provision for adverse deviation" (PFAD) as it is referred by both the Canadian Institute of Actuaries and the Government of Quebec. The amount of a PFAD is specific to each plan. The government of Quebec has said that it is likely that the PFAD for plans in that province will be generally around 7% of a plan's liabilities. However, a plan's investment policy will also be a determining element in setting the level of the PFAD.

The OPSEU Pension Plan has utilized a stabilization fund to maintain the normal contribution rate for the employer and members at the same time other pension plans are increasing contributions, reducing benefits or a combination of both.

Stabilization funds are a powerful tool in the management of any adverse deviation in that they allow funding of required contribution increases without an immediate impact on the employer or the employee. They are the primary tool used to manage the risk of having to increase contribution rates above normal levels. Normal levels are the contribution rates, together with anticipated investment income, necessary to fund the benefits in the long term, without regard to short term funding deficiencies due to adverse investment returns and/or demographic experience.

Recommendation

5. Too often, short-term decisions for the use of surplus are made to the detriment of the long-term viability of the DB pension plan. These short-term decisions can be made by an employer looking for pension expense relief or the membership looking to the plan for enhanced benefits. We believe that, in the interests of maintaining the long-term viability of DB pension plans, it should be recommended that all sponsors establish a provision for adverse deviation.

Financial economics:

Some pension practitioners have proposed the use of financial economic principles in valuing pension liabilities. While we believe that financial economics plays an important role in assisting a plan sponsor in understanding and managing the asset/liability mismatch risk, we are opposed to the use of financial economic principles in dictating the discount rate to value pension plan liabilities on a going concern basis. More specifically, we are opposed to requiring the going concern discount rate to be based on the yield determined from a reference bond portfolio that most closely matches the liabilities. Such a requirement would lead to significant – and we believe unnecessary – contribution volatility and does not necessarily result in greater long term benefit security for plan members.

Contribution stability is an important objective for plans like the OPSEU Pension Plan. The OPSEU Pension Trust has been effective in preventing contribution

increases above normal levels through the setting of an appropriate long term interest rate and establishing a provision for adverse deviations. Rules for determining appropriate PFADs have been set out in the Plan's funding policy.

Recommendation

6. *We strongly urge the Commission not to remove funding flexibility by introducing financial economic restrictions on the discount rate to be used to value going concern liabilities. The province should create regulations which will encourage flexibility rather than moving in lockstep with the Canadian Institute of Actuaries. Such regulation should not be unduly restrictive and prescriptive in calculating the discount rate.*

Funding policy

We feel that it is important to outline OPTrust's funding policy in some detail to lend perspective to our recommendations. The effective execution of this policy relies on the support of the sponsors on such matters as maintaining stabilization funds or making decisions regarding the use of surplus. Indeed, the success of any funding policy is contingent on the support of the sponsors and is adopted on behalf of the sponsors.

OPTrust's funding policy takes a two-tier approach with respect to addressing funding issues by (i) establishing objectives for matters under the control of the OPTrust, and (ii) providing information and/or recommendations for the sponsors. One of the recommendations addresses the priorities of surplus use. While OPTrust does recognize that decisions regarding the use of surplus are the purview of sponsors, it is important that recommendations are in place as suggested by the Sponsorship Agreement

OPTrust's funding objectives are outlined as follows:

- *providing the benefits promised under the Plan*
- *establishing contribution rates that, in conjunction with investment returns, are sufficient to pay the promised benefits*

- *minimizing the likelihood of having to significantly increase contribution rates above the normal levels*
- *achieving fairness of funding among generations and groups of members.*

OPTrust also has procedures in place for monitoring and reporting. They include the completion of funding valuations, periodic assumption reviews, and other studies and analyses which provide the necessary information on which important funding decisions are made.

Recommendations

7. Ensure that each year pension plans disclose to members the elements of the plan's funding policy, along with the administrator's investment policy and the state of its plan funding. We urge the Commission to pay close attention to the funding policies that are in place at the public pension plans and consider some of the associated measures as a model for a recommended funding policy for all plans registered in the province of Ontario.

We are in favour of plan sponsors maintaining funding policies; however, it may not be prudent to make these mandatory by increasing regulatory compliance obligations. Instead, perhaps the existing CAPSA guidelines should be amended to recommend the development of funding policies for pension plans. Funding policies should form part of a pension plan's governance documents similar in many respects to other operational documents such as terms of reference, conflict of interest, valuation and accounting policies or privacy policies.

Surplus Management

The principal intent of the *Income Tax Act ("ITA")* excess surplus limit is to prevent employers from sheltering excess contributions from tax. Because most public sector plans maintain a tax exempt status, the excess surplus limit is most relevant to the private sector. In practice, we know that most private sector

pension plans take contribution holidays when the pension fund moves into a surplus situation. After all, private sector employers are focused on running their company and maximizing profits while also making the minimum funding to their pension plan. Their primary focus is not on sheltering profits from tax. Moreover, the *Monsanto* decision combined with provincial legislation provides a disincentive to the employer to overfund a plan for tax reasons. Furthermore, given that an actuary must certify a funding valuation and the *ITA* requires that only those employer contributions necessary to fund the future long-term pension obligation are allowed, the surplus limit is somewhat redundant.

Pension plans must be funded in a very complex environment where there is high volatility in capital markets, changing accounting/actuarial and reporting standards, aging populations and demographics where there are fewer active members compared to non-active members. Fluctuations of the funded status for DB plans can be extreme from year-to-year because of this complex environment. Over the long-term, which pension plan arrangements in essence are, these fluctuations balance themselves out. But the *ITA* limits encumber the sponsor's ability to manage these surpluses and deficits.

In 2001, several major Ontario public sector pension plans lobbied the Department of Finance in Ottawa to change the existing surplus limit under the *ITA*. We were pleased to see the limit eased in 2003 to phase out contributions where funding exceed 110% rather than abruptly requiring contributions to end. Nevertheless, we were still disappointed that effectively the 110% limit remained. As stated above, there can be such wide swings in the funded status of pension plans that the 110% limit is restrictive and does not allow effective management of a pension fund.

Currently the sponsors of the OPSEU Pension Plan maintain a surplus level (combined undistributed surplus plus stabilization funds) of approximately 5% of net actuarial liabilities. This ensures sufficient flexibility for the sponsors to make decisions about managing surplus without compromising their ability to meet additional contribution requirements. We do, however, see a need as the asset base of the Fund increases, for a higher level of reserves particularly during an extended downturn in the financial markets.

We feel that there is a need to ease the tax rules that make it costly for companies to build up healthy contingency funds to protect themselves against unforeseeable shortfalls in their pension plans. Currently, the tax rules state that companies must not build up more than 10% surplus or contingency fund. Given the fluctuations in solvency levels at many plans, this measure is both counterproductive and works against pension plans that are fiscally prudent and want to retain a healthy contingency for the invariable “rainy days”. Consequently, we feel that this 10% threshold must be re-visited and the percentage should be raised possibly to 15-20%.

While we also recognize that modifying the tax rules is a federal domain, it is our belief that the provincial regulator and government officials in Ontario can and should begin to lobby the federal government to make these necessary changes. In light of the volatile markets we have seen in the past decade, we believe that plans should be encouraged to retain their contingency reserves above the current limit.

Once again, it is important to view what Quebec has done in this area. As disclosed earlier, Bill 30 provides for the establishment of a “provision for adverse deviations” (PFAD). This provision must be accumulated in the pension fund before a contribution holiday is permitted: this safety cushion (or “contingency reserve”) is imposed by Quebec pension legislation for the first time. It is to be built up over time through actuarial gains on a solvency basis with no additional contributions required from the plan sponsor unless the plan experiences a deficit following an amendment.

Moreover, two other measures contribute to its accumulation: until the PFAD is fully provisioned, the employer will not be allowed to take a contribution holiday, and, the amortization payments related to an unfunded improvement actuarial liability will have to be paid.

The Quebec bill also breaks new ground with respect to mandated equity between members and pensioners (or beneficiaries) for the use of surplus. The bill establishes a principle of equity between the group of active members and the group of inactive members and beneficiaries if a proposed amendment to a pension plan would be funded by using surplus assets of the plan.

The principle of equitable treatment must be applied using the criteria stipulated in Bill 30 which take the plan's history into account. The legislation established a consultation process, similar to the process that exists for plan mergers which includes a notice to each member and beneficiary and the right to object. It eliminates the ability, proposed in the original version of Bill 30, of any one individual to refer such matters to arbitration.

A plan sponsor may choose to confirm in advance its right to use surplus to fund plan amendments instead of using the above-described process. In such a case, the plan sponsor must follow another approval process specified in Bill 30 for that purpose and which requires the consent of certain specified groups.

Recommendations

8. *We feel that it is important that the Commission lobby the Federal Government to advance the concept of changing the existing actuarial surplus threshold for jointly sponsored pension plans. Optimally we would like to see the current 10% surplus threshold eliminated altogether. At a minimum, it should be replaced with a higher limit. We believe that the current tax regulations discourage pension managers from building a healthy surplus which is quite beneficial in offsetting periods of deficit that inevitably affects almost all pension plans. While it is commendable that surpluses be allotted to the membership, there is no advantage at present for plans to prepare for the tough times.*

Governance

OPTrust: A Case Study in Success

The following pages will discuss how OPTrust governance has been successful and identify some of the things that we do. We note that the issue of pension plan governance is a dominant theme in both the Discussion Paper and our submission. This is not surprising because effective management of a pension fund and the administration of benefits is not something that should be done "on the fly". We have always been very aware of this at OPTrust. Our governance

model is unique in many respects but is also very effective. We feel that OPTrust's experience may offer some important lessons that could be applied to other plans. Therefore, we feel that a more detailed look at the OPTrust governance model is in order.

The OPSEU Pension Trust was established to give plan members and the Government of Ontario an equal voice in the administration of the OPSEU Pension Plan through joint trusteeship. The OPSEU Pension Plan was established in accordance with the *OPSEU Pension Act, 1994* and the *Sponsorship Agreement*. Only the sponsors, the Government of Ontario and the OPSEU may amend the Sponsorship Agreement and they may do so without the agreement of any other employer, trade union or person.

As sponsors, the Government and OPSEU each appoint five Trustees to the OPTrust Board. One Government appointee and one OPSEU appointee fill the positions of Chair and Vice-Chair, with the roles alternating between Government and OPSEU appointees every two years. The Trustees are responsible for all aspects of the Plan's operation. They review OPTrust's investment policies and performance to see to it that money is available to pay members' and pensioners' benefits. They take appropriate steps to make sure that pension liabilities are properly evaluated and that the Plan's financial statements accurately reflect OPTrust's financial position. The Trustees also monitor the Plan's administration to ensure that members and pensioners receive the benefits to which they are entitled, along with timely and effective information and services.

To fulfill these responsibilities, new Trustees receive an intensive orientation to the Plan and ongoing training in pension plan governance and administration. The Board retains independent legal, actuarial, investment and accounting professionals and an independent custodian. The Trustees also set policy and strategic priorities and monitor the performance of the OPSEU Pension Trust through its senior management team. To accomplish all of these objectives the Trustees have established five standing committees reporting to the Board:

- The Administration Committee oversees the Plan's operations including its organizational plans, and operating and capital budgets. It monitors and makes

recommendations on administrative policies, plan amendments and legislative changes, and oversees the preparation of actuarial valuations.

- The Audit Committee ensures that OPTrust's financial statements are complete and objective, reviews the Plan's accounting and financial policies and ensures OPTrust's systems and processes comply with legal and professional standards. The committee also oversees OPTrust's risk management program and the selection and monitoring of our professional advisors and agents.

- The Governance and Compensation Committee is responsible for reviewing OPTrust's internal governance practices, establishing performance criteria and objectives for OPTrust's Chief Administrative Officer and Plan Manager and Chief Investment Officer, and evaluating their performance and compensation.

- The Investment Committee monitors the performance of the OPSEU Pension Trust Fund and its investment managers and reviews their compliance with OPTrust's investment policies and related legal and regulatory requirements. It also researches and recommends changes to the Plan's investment policies, asset mix and investment managers.

- The Adjudication Panel gives plan members and pensioners access to a review process in the event of disputes concerning OPTrust's decisions on eligibility, benefit entitlements or other pension-related rights under the OPSEU Pension Plan.

Corporate Governance

As a major institutional investor, OPTrust has an interest in promoting high standards of corporate governance and ensuring the effective functioning of capital markets. As part of our ongoing commitment to promoting sound corporate governance, OPTrust continued in 2006 as an active member of the Canadian Coalition for Good Governance (CCGG). This organization includes a number of leading Canadian pension plans and institutional investment managers, representing over $500 billion in institutional investment assets. The coalition's mission is to represent Canadian institutional shareholders through the

promotion of corporate governance best practices and to align the interests of boards and management with those of shareholders.

Proxy Voting

OPTrust uses a leading independent proxy voting organization, Institutional Shareholder Services (ISS), to actively vote our shares. This approach allows OPTrust to benefit from detailed research on voting issues and ensures that our voting rights are exercised consistently.

The Plan's shares are voted according to detailed Proxy Voting Guidelines approved by the Trustees. These guidelines address key governance issues such as the appointment of independent auditors and directors, compensation and stock option plans, and mergers and acquisitions. They also address a range of social, ethical and environmental concerns. Where voting issues arise that fall outside the guidelines, the voting fiduciary refers the matter to OPTrust for guidance.

Auditor Independence

The Board of Trustees has established a policy for pre-approval of services performed by the external auditor, aimed at preserving and enhancing their accountability and independence. The pre-approval process requires the Audit Committee to review and approve a schedule of anticipated permissible services required from the external auditor. These services include the statutory audit, tax consulting, risk management and other audit-related services. Prohibited services include bookkeeping, systems implementation, services for actuarial, valuation or internal audit purposes, and other services that could compromise the independence of the external auditor.

We feel that the governance structure in place at OPTrust is meaningful and effective. During the past decade, OPTrust has built a high-efficiency organization in both pension plan administration and pension fund investing. As a jointly sponsored plan we have a number of advantages as there is greater oversight of the Plan and how it is administered. It may not be possible to replicate our approach at other pension plans but perhaps some of the mechanisms could be examined more closely. Our committees and other bodies

could possibly be emulated. We feel that we represent a model that works well and has stood the test of time.

One alternative to ensuring effective governance practices are adopted is to impose governance standards on plan administrators. We have seen this recently in Quebec where the pension legislation now decrees that specific governance practices must be adopted across the province. Bill 30 imposes on all pension committees new governance standards which will materially affect the manner with which those committees administer pension plans and the committee members' responsibilities. These standards affect the pension committee's responsibility and its relationships with delegates, representatives and service providers. It will also impose more stringent controls on the actions of pension committees and its members in order to ensure accountability. The stricter governance requirement appears to be the Quebec legislator's response to the above-mentioned governance standards that had been proposed on a voluntary basis by CAPSA in 2004.

However, is this "de rigueur" method the most successful? We believe that we need to be careful because many critics of the Quebec model argue that the new legislation in that province will have the opposite impact than was intended. Instead of protecting existing DB plans and encouraging more security in that sector it may very well choke off a number of the weaker plans and scare away anyone else that might be considering creating a new plan. There is no doubt that improving governance practices will take pressure off of the regulator and will also force plan administrators to toe the fiduciary line. Getting there is not the issue – it is how we get there that must be decided.

Recommendations

9. *We encourage the Commission to advise the province to look at OPTrust and other jointly sponsored pension plans as governance models that are a proven success. The advantages of jointly sponsored pension plans are many. First, they are based on the sharing of risks and rewards. The sponsors and the members are therefore primarily responsible for keeping the plan solvent and ensuring that it is administered effectively. This symbiotic relationship ensures that all parties are active and willing*

partners in the pension promise with both parties ultimately benefiting from the plan's existence. Employees reap the pension income while the employer/sponsor ensures that there is an adequate recruitment and retention tool in place for many years.

Second, in many cases jointly sponsored plans also are designed with clear surplus-sharing rules in place and leave little doubt as to what happens with any surplus funds. In other cases (such as at OPTrust) the plan's documents are also very clear on whether a plan can be wound up, and if so, how such an event is to be handled. This prevents any uncertainty about legacy issues and ensures that in the event of a plan termination the process is not left to the courts to handle. Finally, it has been widely acknowledged that jointly trusteed plans are not only better managed but are also better funded. Consequently, jointly sponsored plans have comprehensive funding policies and practices in place which ensures that there is a measured approach in maintaining the solvency of the pension fund.

We feel that a number of the mechanisms and governance standards in effect at jointly sponsored plans would also benefit other plans in the province. While we recognize that a large number of plans are not jointly sponsored, it is critical for all sponsors and members to realize the importance of fostering the climate of a pension partnership. It was not by chance that Quebec opted to mandate governance standards. These principles work well and serve the interests of all those involved in the pension partnership.

10. *Encourage the Commission to look ways to improve pension plan governance. For example, review the Quebec model for pension committees and assess if they would add any value to pension plans in Ontario.*

The legal landscape in the pension industry

Are the Right Rules in Place?

For many years now, we have seen a number of prominent court decisions involving pension issues. Many of these have been higher profile rulings involving questions of surplus ownership. However, there have also been others; for example, we have witnessed court challenges involving contribution holidays, plan wind-ups, insufficient assets transferred into a plan, failure to extend plan enhancements, among others. Protracted and expensive civil lawsuits, sometimes in the context of insolvency proceedings have produced important but occasionally unexpected conclusions about the legal rules governing funding deficiencies, surpluses and other matters. Landmark decisions such as those rendered following *Monsanto*, *Transamerica*, *Schmidt*, and others have created blueprints for plan administrators to follow. However, it is critical to ask why so many decisions involving pension matters must be left to the judiciary to sort out?

We feel that, although by and large the existing legal rules have covered many of the common administrative scenarios, the preponderance of legal challenges indicates that there are gaps or shortcomings in the way that pension matters are resolved. We feel strongly that courts should not be set up as the default institution which should render pension decisions and set operating precedents for the industry. Our impression is that people seem to be turning more and more towards the courts to make determinations on how pension issues should be settled. We are of the belief that this points to a troubling trend.

Is this in fact part of a growing societal proclivity towards litigation as the ultimate resort? Or does this instead identify serious limitations in the regulatory regime which instead of providing clear policy direction and administrative guidance is simply passing on the "tough decisions" to the courts? Perhaps there is some truth to both of these arguments. Nevertheless, we feel that this reliance on the legal system to provide direction to the pension sector demonstrates that some of the existing pension legislation and policies are unclear or lack enough breadth to be open to interpretation and legal vagaries. The pension sector in Ontario requires clear legislation which is easy to interpret. The rules must also be

geared to today's times – not as it is currently drafted having remained largely unchanged since 1986.

As discussed earlier, the *PBA* is long overdue for a review. Twenty years with no material modifications is a significant period of time, particularly when much has occurred within the pension industry in Ontario during that time. Surely the legislation must be expected to keep pace with any changes. Other jurisdictions have undertaken reviews and made the requisite changes to their pension laws. Some, such as the provinces of Nova Scotia and Quebec, have taken bold strides in introducing novel ways of administering pension plans. Quebec, in particular through its recently introduced Bill 30, has adopted innovative ways of dealing with pension reform. We are proposing that the authorities look closely to see what other jurisdictions in Canada and abroad are doing in respect to modifying pension laws in their respective jurisdictions.

Again, we must be clear that we do not believe that critical decisions should be left to the various courts in Canada. If necessary then, we need to enhance the powers of the Financial Services Tribunal or perhaps even create another quasi-judicial body that will replace it. Further input and recommendations into this issue are provided in the next section.

Are the Existing Oversight Mechanisms Appropriate?

We agree that both the rules and the organizations tasked with oversight of pensions are in place. However, the larger question is whether the rules are being effectively enforced? And, is the existing regulatory system effective? You need to have proper enforcement and the application of the rules by the legislated bodies (i.e., FSCO) for the system to work optimally. As we indicated earlier, it should not be left up to the courts to make the critical decisions.

However, what is even more important in OPTrust's perspective is that FSCO takes more of a leadership role in clarifying and interpreting those specific sections of the *Pension Benefits Act ("PBA")* and Regulations which cause administrative difficulties (i.e., divestment provisions, marriage breakdown rules, etc.). Clarifying the less lucid parts of the legislation should become a key objective for FSCO. We believe that the main role of the regulator is to render

policy guidance and be on the cutting edge when it comes to introducing new laws or statutes which are in concert with the changes taking place in the pension industry.

It has been our experience in the past that the policy interpretation which we seek has sometimes not been provided by FSCO. There have been a number of instances when FSCO staff has instead encouraged OPTrust to seek legal direction on an issue of FSCO policy interpretation. We do not believe that this is appropriate and it gives the impression that there is a certain reticence on the part of the regulator to provide clear direction on pension policies. We strongly feel that FSCO should demonstrate more leadership when asked to provide clarity on pension policies. Approaching independent legal counsel on numerous interpretation and policy issues as a default is not the answer. Our input on an enhanced role for FSCO will be provided on the following pages.

As discussed earlier, waiting every two decades to look at possible legislative changes is far too reactive a process and only contributes to Ontario lagging behind other jurisdictions when it comes to the modernization of pension law. This province has been too slow off the mark when it comes to this process and instead of being industry leaders and innovators, this province is seen as a laggard. We would like to note that roughly two decades ago the Pension Commission of Ontario ("PCO") played a more direct role in encouraging the establishment, extension and improvement of pension plans throughout the province. The mandate of the regulator at the time was more specific and targeted. Perhaps some consideration should be given to bringing this mandate forward again. Another effective measure would be to implement a formal periodic review of the legislation. At each predetermined interval, FSCO in cooperation with plan administrators, industry experts and stakeholders should review what has gone on in the industry and the financial markets and then in unison help forge policy and modify existing laws to best accommodate how the pension industry is regulated.

We would like to point out that this is not a direct criticism of FSCO and how it is currently structured. However, we must now take advantage and seize the opportunity to take the necessary steps to ensure that FSCO's mandate is strengthened and that it be provided with clear marching orders for the present

and the future. We feel that FSCO has an important role in this entire process. However steps need to be taken to make the regulator and its bodies more effective and proactive. This means adopting measures which will make the regulator's role more relevant and also allow it to take the initiative and become a leader among Canadian pension regulators. Minding the fort alone is insufficient. The regulator's role is to protect the value of pensions in Ontario and the interests of members and pensioners. We believe that a more robust FSCO backed by modern pension laws is the way to go.

Recommendations

11. *The Commission should recommend that FSCO provide policy direction when guidance is sought by plan administrators. The current environment fosters far too much reliance on the use of independent legal counsel by pension plans. A thorough review of all pension policies, directives and existing filing costs should be undertaken. Plan administrators should be canvassed to determine those areas that are most problematic and require the most clarification.*

    We also believe that FSCO should set up established forums such as working groups and/or standing committees which would meet on an ongoing basis to discuss pertinent issues. This will ensure that topical issues are dealt with on a more timely basis. At this time, plan administrators are asked to provide their commentary on various submissions as they arise. While this is admirable, relying on ad hoc input on important issues is not sufficient. Both plan administrators and the regulatory body need a more effective forum for dialogue and interaction.

12. *More frequent reviews of provincial pension legislation should be conducted. We believe that a fixed timeline should be established so that the pension laws can be evaluated more thoroughly.*

13. *Examine ways where Financial Services Tribunal rulings going forward could be made binding. Any decisions made by that body must also be communicated and augmented with sufficient commentary, interpretation and impact analysis. This will provide effective guidance on all relevant*

Tribunal decisions to stakeholders. The Tribunal should play a vital role in the policy formulation process and the impacts that flow from specific decisions should be communicated to all stakeholders. By using this approach, we believe that there would be less reliance on seeking remedies through the courts.

14. *Urge that FSCO take up the Pension Commission of Ontario ("PCO") mandate as stipulated in the 1987 version of the PBA to encourage the establishment, extension and improvement of pension plans throughout Ontario. It should also have the appropriate resources to fulfill this mandate.*

15. *Electronic filing of documents needs to be introduced. The use of encrypted computer technology for filing documents is already in existence. We believe that the manual filing processes in place now are outdated and onerous. The time has arrived to make the most use out of the existing technology.*

Is Harmonization of Pension Law in Canada the Answer?

While on the surface this appears to be a noble objective, practically this may prove to be difficult to achieve. It would be thorny at best to achieve complete buy-in from all jurisdictions in Canada on what a harmonized law should look like. Some, in fact, would argue that achieving this would be something of a panacea.

OPTrust made a detailed submission on this subject a few years ago. In it we provided a number of comments and identified several flaws in what was being proposed under the CAPSA model. We also stated that while complete harmonization may not be possible, there may be some utility in harmonizing only certain parts of pension law across the country as a starting point. Perhaps this is still a prudent strategy as it would initiate "small steps" and then move forward from this baseline if it proves successful.

The main rationale articulated in the CAPSA model law proposal related to a need to harmonize legislation across Canada to facilitate the administration of multi-jurisdictional pension plans. Most pension plans in Canada are single

jurisdictional plans and the vast majority of pension plan members are in single jurisdictional plans. Although plans that operate in more than two jurisdictions exist, they are relatively uncommon. In our submission, we made it clear that we felt large numbers of pension plan members would lose rights and entitlements for the dubious value of harmonization for the smaller number of multi-jurisdictional plans. The nature of the proposed model law to a certain degree for Ontario members aimed to reduce the level and degree of protection and benefits provided under the existing law. In fact, harmonization could potentially introduce a lot of takeaways for Ontario members.

Creating and implementing a uniform pension law would eliminate many of the discrepancies in the respective pieces of legislation. However, what was proposed under the CAPSA framework was a model law which would lead to greater harmonization and not uniformity. Consequently, there would still likely be differing interpretations and results at the end of this process. While common standards are a noble goal, in many cases this would really allow for more similar minimum standards legislation. This, in fact, may result in varying rules from province to province and may inevitably lead to communications difficulties in many of these jurisdictions.

While harmonization is difficult within any realm, attempting to do so in the jigsaw environment that is currently pension legislation in Canada could prove to be overly onerous. One of the main stumbling blocks would be the transition provisions which would need to be clear and in place or else there would be a risk of stripping away past accruals and rights that were previously vested. Reaching a negotiated agreement on this whole initiative would also prove to be very difficult. In addition, many of the principles proposed for harmonization have potential costs which would ultimately be borne by the plans. A detailed analysis of these costs has never been undertaken so the true financial impact of harmonization has never been properly assessed.

In summary, the position of OPTrust is that the wheel does not have to be re-invented when it comes to pension legislation. We have effective pension laws in place in Ontario at this time. There is definitely a need to re-visit them and strengthen those areas that require such attention. However, applying broad

changes through harmonization is somewhat excessive and could prove to be counter-productive in the end for many members and pensioners.

Recommendations

16. *Harmonization of pension legislation in Canada would be of concern to OPTrust if it led to the potential loss of benefit entitlements or member/pensioner rights.*

2) PENSION PLAN COVERAGE (Membership Issues)

We feel that the issue of pension plan coverage is a very important subject which bears further scrutiny. It is our perspective that one of the major problems facing the pension sector today is the fact that membership coverage is not more widespread. There is a discernible gap and targeted pension coverage should be a priority for the future. Therefore, we must look at a number of important components of the coverage issue that have far-reaching implications on the overall health of the pension sector and the financial security of Ontarians. Looking at the things that ail the pension sector in Ontario but overlooking the critical components of coverage issues is doing a disservice to the entire analysis of how to best fix things.

DB coverage: Is there an apparent decline?

To look at why coverage of DB plans is decreasing, and correspondingly, why fewer DB plans are being created, is a complex issue to analyze. We believe that there are several reasons behind the apparent decline in coverage. It is important to note that each factor cannot be viewed singularly through a narrow prism. We feel that all of the factors are somehow interconnected and each play a contributing role in this situation.

Some analysts argue that the real pension crisis is not about solvency or other funding-specific issues but actually about the decline in coverage for new members in Ontario. According to statistics provided by the National Union of Public and General Employees in its report entitled “No Pension Panic: The real pension crisis – it’s all about coverage, not funding”, the percentage of the Canadian workforce covered by a pension plan has declined from 45.1% in 1992 to 39.9% in 2003 while the number of workers in DB plans has increased. The report maintains that between 1992 and 2003, Canada’s workforce grew by 2.7 million workers, with the majority of new jobs being part-time, temporary or contingent work. The report also states that over one-third of the Canadian

workforce is now employed in contingent work and it is estimated that only 15% of these workers participate in a workplace pension.

Following the reasoning cited by NUPGE, much of the large decline in DB pension plan coverage in the public sector can thus be attributed to massive government restructuring causing direct public sector employment in Canada to shrink by 10% in ten years through cuts, offloading and privatization. However, one idiosyncrasy is that since 1992, the proportion of DB plans of all pension plans rose steadily – from 67.7% in 1992 to 73.4% in 2002 to 76.7% in 2004. The number of DB plans jumped by a third within two years, from 2,234 in 2002 to 2,929 in 2004. In addition, the number of workers covered by DB plans in Canada also increased by nearly 11% - from 3,620,000 in 1992 to 4,012,000 in 2004. While the actual number of workers covered by DB plans increased by nearly 400,000, the proportion dropped – from 94% in 1992 to 87% in 2004. The greater number of contingent workers is attributed to this decrease in proportion. Therefore, it seems that we are receiving mixed signals about DB pension plan coverage. While it appears that in some cases the coverage for members is increasing, it is increasing in aggregate and not necessarily at the public sector level.

Objectively viewed, there are likely a number of factors behind the decrease in DB pension plan coverage. First, the onerous administrative costs associated with running a plan are a prime reason most often cited. While DB plans are generally more attractive and generous to its members when compared to the incipient risk of DC plans, they are at the same time costlier and more complex to administer. The employer bears significant financial risk in keeping a DB plan solvent thereby ensuring that there are benefits to be paid out. Plan contributions are based on actuarial valuations and are highly sensitive to market conditions such as interest rate fluctuations, and the possibility that they may have to rise to ensure a better funding base is also ever-present. These factors would undoubtedly cause many sponsors to carefully consider whether they would be willing to undertake such a risky proposition. There is also a perception among many pension industry players that over-regulation is a serious problem that has scared off potential sponsors and employers. Compared to a group RRSP or even a DC pension plan the legislative rules in place to run a DB plan are deemed to be quite arduous.

Another argument that has often been cited is that the unbalanced surplus rules work to the disadvantage of the employer. This position has also led to the frequent use of the catchword "asymmetry", which has been cited as another major reason as an impediment to setting up a DB plan. The employer is responsible for funding the plan, with or without employee contributions in some cases, and is ultimately responsible for shortfalls. Yet, the existing surplus rules in Ontario create a situation where they sow the benefits but may not reap any rewards when it comes to gaining access to surplus. Looked at from another standpoint, there may be a number of potential sponsors who feel that this makes little economic sense and will simply tie up capital and future revenues with little positive return for the respective organization. It has therefore often been stated that in a tight economy, an employer or sponsor will give second thought to setting up a DB plan. This may be particularly relevant if they know that a straightforward type of retirement plan that is not as costly or difficult to administer is a much easier option to take implement. This entire issue of surplus ownership has been analyzed in great detail for some time now so there is no need for us to further contribute to the debate here. Needless to say, the surplus ownership issue is also another often cited factor in the declining coverage theory.

We also believe that there is another factor that plays into the declining coverage issue. This is all of the negative talk about DB plans and the stigma that has resulted from it. Some employers or sponsors may be at an immediate disadvantage having heard all of the "horror stories" concerning DB plans and they often look to DC plans or group RRSPs as the default pension scheme to be adopted. Much of the news coverage concerning pension plans the past five years has not been favourable. The media has been replete with stories of pension funds in trouble, underfunding issues or other generally negative news stories concerning DB funds. Much of this has created a climate of wariness and painted a picture of uncertainty about DB plans in general. This stigma has been easy to create but will take some time and effort to eliminate.

There are also different concerns among the various existing plans themselves about the declining coverage issue. Private sector plans are likely more concerned about the solvency status of the plan and the soundness of the

employer or sponsor. Tangible financial concerns about committing to a pension plan at the expense of the liquidity of the company may be driving some decisions to either opt out of DB schemes or not even consider them at all in the first place within the private sector. At the public sector level the cost and volatility of funding a plan remains a large concern. Comments made recently by Bank of Canada Governor David Dodge point to a number of the problems concerning DB plans. In a speech to a pension conference in Toronto in the spring of 2007 he pointed out that DB plans are far superior to DC plans. However, he also stated that many employers are switching to DC plans because they are cheaper to administer, and pose less financial risk to the sponsor.

Another further troubling sign is revealed in a recent survey which found that almost one-third of Canadian companies with DB plans say they are considering freezing or closing their plans. However, we believe that it is far too simplistic to look at these single factors as the sole root causes of decreasing coverage. In fact, there are likely other extenuating factors which have contributed to this situation. For example, it can be effectively argued that the economy itself has changed dramatically in the past few decades. Consequently, the nature and composition of the workforce have changed also, and along with it, has come a new attitude about pensions.

The dynamic of work itself has changed significantly and society now has much more “non-traditional” employment with part-time, contract or seasonal work being prevalent. With many of these types of jobs there has been less emphasis on pension arrangements and post-retirement income security schemes. In fact, many of these jobs also do not lend themselves to pension contributions. In the past the majority of jobs were full-time positions and it was assumed that along with benefits an employee would also be enrolled in the company pension plan. However, in many cases today, workers are more transient and want to maximize their incomes and the younger members of the workforce tend to be less concerned with post-retirement income streams. One can state that, if there were truly an overriding desire among employees to have pension benefits in place, then employers would make the effort to introduce them in order to attract and retain the workers that they need. Perhaps that desire is simply not present in a large portion of today’s workforce. We feel that more research is required on this front.

It is important to recognize that technological strides have also brought about changes to the workplace and the nature of work itself. This has changed how people are employed and also how they are compensated. Invariably their retirement benefits have also been “changed”. Two to three decades ago there was much less labour mobility and people tended to remain employed with a respective organization for a longer period of time. Now the expectation that someone will be there to collect their gold watch has diminished. Organizational loyalty has transformed greatly and it is not unusual for most employees to work for six to ten different employers throughout their working lives. Consequently, a pension plan does not take on the same important role it once may have only a short time ago.

This can be directly tied to the make-up of today’s workforce. If an employer is attempting to attract and retain a younger workforce, then a DB plan may not be a sufficient incentive. Many of today’s younger workers are not as keen on having a retirement plan that relies on longer service for the full rewards. Many prefer more immediate forms of compensation that are not paid out in the long-term only after their working lives are over. For example, many younger employees today favour stock options, bonuses or profit-sharing schemes. When it comes time to leave for a better paying or more lucrative job, they would prefer to make choices at their own discretion. Being tied to an organization by virtue of its pension plan is certainly not as important, particularly in the private sector. In short, it could be that generational thinking has changed. This has also played a role in the decline of the DB plan.

Nevertheless, we have seen something of a contradictory trend take place at OPTrust whereby many contract employees with optional membership have enrolled in the pension plan over the past few years. Part of this may be the fact that OPTrust was more direct in its communications campaign making these people aware of their opportunity to become members. Or, it may simply be a sign of the times where public service workers are becoming more attuned to the importance of post-retirement income and take the opportunity to enroll when they are able to. It is difficult to determine whether it is one contributing factor or another or perhaps even a combination of both. Much like the issue of declining coverage we believe that the answer is multi-dimensional.

In addition, it should also be pointed out that public pension plans such as the OPSEU Pension Plan provide added value to its members by allowing for portability options which an individual could exercise in order to consolidate his or her pension assets. Portability within the public sector means that a member retains the value of their pension even though they may move on to other employment positions in the greater public sector.

Unionization: A Corresponding Decline

Another important aspect in decreased pension coverage is that the rate of unionization in the Ontario workplace has also changed in the past few decades. According to a 2006 Statistics Canada report there was a 27.93% unionization rate in the province of Ontario which made it one of the lowest per capita in the country. It is important to note a number of important highlights from the Statistics Canada figures which point to a change in the numbers of union members. The following figures provide an interesting perspective:

- The unionization rate (density) in Canada fell slightly from 30% to 29.7%
- There were 4.1 million employees belonging to a union in Canada
- Union membership declined among men and women (the membership rate was slightly higher among women than men)
- Unionization rose slightly in the public sector (71.4%) and fell slightly in the private sector (17%)
- The unionization rate fell from 31.5% to 31.2% among full time workers and remained stable among part time workers (23.2%)

While these statistics indicate that unionization has increased in the public sector, it should be kept in mind that the overall size of the public sector itself has been contracting the past few decades. What these numbers do in fact illustrate is that the overall rate of unionization appears to be falling in a corresponding fashion in Canada. As a result, it might also be argued that the push to keep DB plans in place has gone down somewhat as these types of arrangements in

particular are more prevalent in the unionized sector. It is interesting to note that the percentage of the workforce belonging to an employer-sponsored registered pension plan is almost the same as the "density" of unionization in the workforce – both about 30 percent. This suggests an interesting association: where there is a union, there also tends to be a pension plan. Perhaps there is a causal effect at play here, and with the decline in unionization we are also witnessing a decline in DB plans. While speculative at best, it does outline another possible cause of this situation.

Recommendations

17. *We recommend that the Commission identify and address the reasons for the decline in pension coverage. While we have outlined a number of the factors that we believe are responsible, further study is required to quantify the triggers. We fully endorse the efforts of the Commission to examine this subject area in its Research Program component. We believe that some factors, such as the decline in unionization or the changing nature and economic expectations of the workforce cannot be easily changed. However, by modifying onerous administrative rules and finally addressing the issue of surplus ownership, a lot of the uncertainty that today plagues potential sponsors can be eliminated.*

    As a start, the rules with respect to solvency should be changed to give sponsors the incentive to create and/or keep DB plans in place. In addition, if the current rules in place for DB or DC plans are determined to be creating disincentives for the creation of new plans, then these rules must be changed. There is little point in continuously wondering why there is a decline in coverage and debating the possible reasons. Instead, we should make every effort to identify what is behind this phenomenon and then act to change those things that are required to reverse the existing trend.

18. *We feel that particularly in areas where there is a unionized workforce, or in other areas where it is possible, that the jointly sponsored pension plan ("JSPP") model should be adopted with more frequency. The governance model of OPTrust that we outlined in chapter 1 of this submission is a*

proven success and can be used at other pension plans. Again, with a JSPP the shared risks and rewards forge a "pension partnership" which ultimately benefits both the employer and the workers directly. In addition it would also solve the surplus and solvency issues as the use of these funds would be clearly spelled out in the governing documents and would leave little uncertainty on how they were to be allotted.

Is there a "two-tiered retirement culture"?

A number of months ago, a somewhat contentious report was published by the Canadian Federation of Business entitled "Canada's Pension Predicament" in which it was argued that Canada will be left with a "two-tier culture on retirement". This document generated significant media coverage. However, we feel that it is important to outline some of the weaknesses of its main arguments. We believe that it does not accurately portray public pension plans and is misguided in many of its conclusions; it actually misrepresents the membership argument by making it appear that public pension plans hold an unfair advantage over all other pension retirement programs.

The paper states that while there is a growing trend toward early retirement in Canada, the situation in this regard is drastically different between the public and the private sectors. The CFIB paper also argues that Canadians employed in the private sector may not have the same means as public sector employees to retire early. Thus, as the population is aging, the gap in retirement ages between the public sector and the private sector is increasing. The authors feel that this is a particularly alarming trend and that the growing difference between the types of pension plans available respectively in the public and private sectors is also negatively affecting private sector workers. DB plans are more attractive to employees, the CFIB noted, since they are "the safer and more generous type of plan" with very low risk to employees because "benefits are virtually guaranteed and typically fully indexed."

This report also emphasizes that this significant discrepancy between the pensions in the respective sectors is compounded by the presence of "asymmetry" in which an employer is additionally punished. By way of remedy,

the CFIB report recommended four "guiding principles" as a foundation for pension policy reform:

1. The taxpayer should not be the default go-to mechanism to fund pension plan shortfalls, either in the private sector or in the public sector.
2. Transparency, accountability and consistency need to be instituted in accounting and actuarial practices for evaluating pension shortfalls.
3. Pension plan surpluses should not automatically be allocated to increasing pension benefits; stability and spending restraint are needed.
4. The overall objective of any pension policy reform should be to level the playing field between the treatment of retirement savings for public and private sector individuals.

Critique of the CFIB Position

A number of pointed criticisms have been leveled at the positions cited in the CFIB paper. Most notable are those made by Paul Litner and Susan Philpott in their review of the CFIB paper for the Lancaster Bi-weekly “Pension & Benefit Law E-Bulletin”. We feel that it is important to highlight these criticisms as we believe they effectively refute the central arguments cited in the CFIB report.

Namely, the greatest criticism is that the focus of the report is off mark as instead of providing possible solutions for improving the private sector system for DB pension plans, it instead is more concerned with vilifying the public sector pension system. There are no recommendations for governments to be looking at ways to address the factors currently contributing to the demise of DB plans and to create incentives for employers to establish and maintain more generous retirement plans for their employees. Instead the recommendations focus on diminishing public sector retirement security rather than enhancing that in the private sector. As critic Philpott notes, the CFIB report advocates a "race to the bottom" in the provision of pensions to Canadian employees. That is not good public policy.

The report also fails to acknowledge that most public sector DB plans are jointly sponsored contributory plans, in which both employers and employees determine

the benefits and contributions, assume the risks and bear the cost of funding. Where plans are jointly sponsored, there is a symmetry of risks and rewards as between the employer and employees: these plans are not inherently more "risky" than others, there is no issue of asymmetric use of surplus and ultimately any deficits are made up through higher contributions by both employers and employees.

Moreover, the CFIB report fails to recognize the trade-off in the public sector between lower wages and better pensions. Although the report acknowledges that salaries tend to be higher in the private sector than the public sector, and that non-wage benefits exhibit the reverse trend, the link between the two is ignored. According to Philpott, wages have historically tended to be lower in the public sector and the way that the government, as employer, has attracted workers is by promising decent pensions, some measure of security in retirement and the ability to retire early. When we take into account employee contributions to public sector DB plans, the integration of C/QPP into both public and private plans, *ad hoc* increases in private sector benefits post-retirement, and other sources of private sector retirement income, the gap between public and private sector benefit levels decreases.

Interestingly, OPTrust was somewhat surprised when the CFIB recently made it known at a large gathering of pension professionals that it would consider a number of alternative pension arrangements as options for retirement income for its members. Given the previous position that the CFIB had taken on public pension plans, it is interesting to note that some of the models that are being researched for possible consideration include those very same pension models. At this forum the CFIB stated that it would also closely examine such options as MEPPs or voluntary CPP contributions as possible retirement models. The CFIB is rightly concerned that the private sector RPP coverage rate currently sits at only 27%. While recognizing that small business owners rely on other retirement savings vehicles they also realize that in many cases this may not be sufficient. Currently, many business owners rely on their business as their main source of retirement income.

The ratio of retirees to active members – Causes and effects

We believe that the declining ratio of active members to retirees is a universal trend amongst public pension plans and perhaps all pension plans in Ontario. According to figures cited by Statistics Canada in a report entitled, "A Portrait of Seniors in Canada", since 1976, public sector employees have consistently retired at a younger median age than those in the private sector or the self-employed. The difference in retirement age between employees in the private and public sectors began to diverge in 1984 when public sector workers began retiring earlier. The median age at retirement among public sector employees (i.e., educational, health care and social assistance, as well as government), declined from 64.8 years in 1976 to 57.2 years in 1999; however, it was back up to 58.7 years by 2005.

The public sector has been significantly affected by this decrease in the ratio of active workers to pensioners. We believe that this is due to a number of reasons. Downsizing in some sectors (and in particular in provincial government services which has a direct impact on the OPSEU Pension Plan) has shrunk the size of the workforce. We will deal specifically with the issue of divestment of services, pension transfers and the impacts on pension plans in greater detail in a latter section of this submission. We also believe that the aging population and graying of the Ontario workforce also has a hand in this. A large number of "baby-boomer" generation workers (born between 1946 and 1965) are beginning to transition out of the workforce and this problem is expected to compound through time. While this on its own is not necessarily a pension problem, it is a cause for concern on the labour skills and economic prosperity fronts.

We simply do not have the requisite numbers of workers replacing them nor are sufficient incentives being created for older workers to remain in the workforce. One of the main causes of aging of the Canadian population is the change in fertility rates since 1945, coupled with the increase in life expectancy. In 1997, life expectancy at birth for Canadians reached 75.8 years for men and 81.4 for women. Life expectancy at birth is expected to continue to grow, albeit more slowly, reaching 81 years for men and 86 years for women in 2041. We believe that the workforce is losing too many skilled workers in such a short period of time and they cannot be adequately replaced. This creates a number of problems

which will not only have an impact on the funding of pension plans going into the future, but also on society as a whole.

At present, there are five working-age Canadians for every person over 65. In two decades, that ratio will have dropped to only 3:1. This growing imbalance is only made worse by the fact that, even as Canadians live longer, they are retiring earlier. The average retirement age dropped from 64.9 in 1976 to 61.4 in 2005. The growing number of seniors in the overall population went from 1 in 20 in 1921, to 1 in 8 in 2001. With the ratio of retirees and active members inexorably closing it becomes a situation where either contributions may have to increase or investment returns will have to rise markedly in order for plan funds to remain buoyant. Investment returns cannot be expected to rise significantly so either an increase in contributions or perhaps that coupled with the elimination of some existing benefits is the most likely scenario for a number of pension plans in Ontario. It should be pointed out that is possible in some cases to project this trend and “immunize” a pension plan fund against future projected shortfalls or dwindling membership numbers. However, this may not be possible for all pension plans to do.

We feel that it is important at this juncture to provide a snapshot of the membership picture of the OPSEU Pension Plan and how we believe things may develop over the coming years. While it is not indicative of how things are unfolding at other public pension plans, it does lend some direct perspective to the issue of membership coverage. Active membership in the plan has decreased from almost 64,000 at the beginning of 1995 to approximately 46,000 at the end of 2006. Pensioners have grown from virtually nil at the inception of the Plan to 22,058 at the end of 2006.

Underlying this trend, the membership is aging – from an average age of 41.9 in 1995 to 44.7 years in 2006. We predict that this pace will accelerate to an average age of 47.0 in 2015 before leveling out and finally reducing by 2025. Furthermore, retirees are living longer and will draw down benefits substantially greater than the contributions made during their working careers. In summary, the OPSEU Pension Plan is maturing rapidly for a plan just over 10 years old. As recently as the year 2000, there were 3.5 active members for each pensioner. By 2006, the ratio had declined sharply to 2.1:1. This trend reflects a 30% decline in

membership since 1995, largely in this case, as the result of government employment policies. Based on current membership, our actuaries advise that there will be 1.27 active members per pensioner by 2015 and .81 by 2025 (NOTE: We assumed a 90% replacement of Plan terminations based on experience from 2000 to 2004. Arguably, history does not predict the future but assuming a 100% ratio does not materially alter the predicted outcome).

The reason for this dramatic shift for the OPSEU Pension Plan is twofold. First, the Plan has a relatively younger pensioner population given that it began with no pensioners and had the Factor 80 early retirement program (age plus service totals 80 points) in place for ten years with a significant take-up rate. Secondly, the Plan has experienced membership shrinkage as the government restructures its services through privatization and divestment of services. This has resulted in many ways to a direct “bleeding” of the membership base which can potentially have an adverse effect on not only the member/pensioner ratio, but also other important facets such as plan funding and increasing administrative costs on a per capita basis. We believe that this trend will continue to alter the ratio of active members to pensioners in the OPSEU Pension Plan and dramatically change the face of our membership over the next 20 years as the baby boomers continue to retire in large numbers.

In many ways, OPTrust is a microcosm and is plagued by the same problem that the overall Canadian workforce faces. Again, the workforce is simply not replacing the ratio of workers that are retiring and will continue to retire in great numbers over the next twenty years. It should be stressed that much of the investment risk in pension plans is ultimately borne by active members. Therefore those individuals will be the ones that will face the highest contribution rate increases or even reduced plan provisions. Pensioners of today and in the near future will not be faced with such a grave situation as those retiring in twenty years are likely to.

While it is easy to identify the problems that have led to a decreasing ratio of members to retirees, coming up with rational solutions will prove elusive. From a simple funding standpoint we believe that this will put continuing pressure on active members to keep the plan funded and ensure that existing benefit levels are maintained. While nothing has been proposed to date, perhaps all pension

plans will have to examine a number of options which may prove tough to swallow for future pensioners. As mentioned above, increased contributions are one likely result. Restructuring the payment of benefits for those pensioners that actually end up living longer than was originally anticipated may also be a possibility. This last proposal was put forward recently by Bank of Canada Governor David Dodge who felt that some plans might adjust the final benefit after a fixed period of time if it is determined that pensioners are outliving the period originally calculated as normal mortality. Removing or altering existing benefits or proposing some type of grandfathering which will benefit older members and pensioners while inevitably penalizing others due to financial circumstances is certain to create many problems. Another option may simply be that pension plans will be compelled to adjust their asset mix so that the funds will realize greater gains through the rise in corresponding investment risk. Nevertheless, whichever options are eventually adopted it appears that difficult decisions are on the horizon for virtually all pension plans.

Recommendations

19. *It is clear that the aging population issue is a major concern. In spite of the unmistakable signals of what lies ahead, we feel that little has been done to address this real problem. Various reports have been published by interest groups and consultants and the media has been dealing with this issue for some time now. However, at the policy level little action has been taken. In some sense it almost appears that few policymakers wish to admit to this issue much less practically address possible solutions and longer term remedies. While this is not specifically a pension funding issue there are distinct tie-ins. Fewer workers means fewer pension plan members and ultimately, fewer pensioners.*

    The government of Ontario should act in concert with other jurisdictions and the federal government and create a plan which will address how we will deal with the rapidly graying workforce over the coming thirty years. As a starting point, we feel that a national task force on the issue of the aging population is vital. Such a body will identify trends and possible future scenarios and should also propose solutions that should be undertaken. The task force should kick-start other programs and plans which will

provide guidance on how to best sustain specific social programs, look at the future of the CPP (which is projected to be fairly stable in the middle term) and other retirement programs, delineate the impacts on health care and how to best deal with those, etc. In the absence of a proper plan, a number of our social programs and the economy itself will be adversely affected. The time to begin acting is now. Remaining willfully ill-prepared leaves all of Canadian society vulnerable.

The ramifications of the declining ratio of members to retirees are many. In addition to devising creative solutions on how to best cope with this continuing trend, we also believe that other approaches should be taken to actually slow the decline of active members. We feel that in order to reverse the trend we should utilize the resources that we already have at our disposal. Namely, we should be looking at increasing pension coverage for those people that are currently working but are not members of a DB pension plan. One solution would be to create the new pension plans to provide the needed coverage and simultaneously reverse the existing decline; another would be to broaden the membership base of established pension plans that could enroll new members and provide them with pension benefits.

This would also prove to be a boon to employers as they would then have an effective retention tool in place. Since many are already making contributions to group RRSPs or other similar retirement arrangements, this might not prove to be an adverse business expense. Instead, it would make practical sense to provide contributions to a more attractive pension scheme. Specifically, we feel that there should be more participating employers from the broader public sector having their employees enrolled in a jointly sponsored pension plan. Plans such as the OPSEU Pension Trust would provide an excellent option in some cases. OPTrust already has the professional staff, systems, investment expertise and infrastructure in place as a successful public pension plan. We believe that it could prove to be a good choice for numerous public sector workers in Ontario that currently are not enrolled in a pension plan.

Longer life expectancies and ending mandatory retirement – Impacts

In the coming decades, Canada's population is expected to age more rapidly than that of other industrialized countries as the large cohort of "baby boomers" moving out of the workforce has a direct impact. The challenges of an aging population are simply not going to go away in a few years; and, if the projections are accurate, they will be with us for a very long time and any short-term solutions will be of little value. The numbers cited by such organizations as Statistics Canada and the Conference Board of Canada paint a troubling picture about the aging of Canada. By 2025, more than 20 percent of the population in Canada will be over the age of 65, double the proportion of 1980. As the "baby boomers" age, the seniors population is expected to reach 6.7 million in 2021 and 9.2 million in 2041 (nearly 1 in 4 Canadians). Some of the earliest and most severe labor shortages are projected to occur in areas dominated by the public sector, such as teaching and nursing.

Earlier retirement and looming labor shortages are particularly important in the public sector. However, to some extent these shortages have also been exacerbated by accounting measures and staffing practices. Early retirement provisions have traditionally encouraged older employees to leave, while separate accounting for current wage costs and pension liabilities have often created a short-term incentive for administrators to let them go and make government budgets look better. In other instances, people have been captivated by the thought of "Freedom 55" and the benefits of early retirement and have willingly transitioned out of the workforce in search of a more satisfying retirement. While this trend has benefited a small segment of Canadian society, a wider number of impacts are already expected. Two of the most striking results will be that labour will be scarcer and labour that, on average, will be older in the not too distant future. In addition, growth in the population ages 65 and over - already relatively rapid thanks to rising life expectancy - is on the verge of picking up. Therefore, not only is the average age of workers within the usual group rising, but the importance of people ages 65 and up as potential employees will increase.

What is the probable impact that this will have on Canadian society?

For one, the growing number of retired Canadians relative to the number of workers threatens the viability of public and private pension systems. Population aging is a complex issue that concerns not only the well-being of today's older Canadians but also broader areas and sectors affecting the total population, such as health care (increasing costs), labour markets and public finances. This trend also undermines the vitality of the Canadian economy by reducing labour force growth. Bank of Canada Governor Dodge made reference to this recently when he stated that the labour force will start to noticeably shrink as early as 2009 as waves of "baby boomers" begin to retire, lowering the economy's potential output, or the rate at which it can grow without generating inflation. This will put downward pressure on the growth of labour input, or the total hours supplied by the labour force. The Bank also predicts labour input will decline slightly in 2009 from its current rate of 1.25% a year, before sliding to about 1% by 2010 and 0.6% in 2015. Only by squeezing more output out of fewer workers and raising productivity growth could the country offset the trend.

During the post-war years, the total dependency ratio in Canada was higher than it is today, mainly because of the large number of baby boom children while the elderly constituted a smaller group. Increased education levels and increased female participation mean that total hours of work over the lifetime of the next working-age population will be relatively greater (and they will be more productive) than previous generations. Because of the later age of career establishment of youth, the younger generation will also likely see a trend toward a later age of retirement. These projections show that, thanks to declining birth rates, growth in the population traditionally considered to be of working age will slow and then essentially cease.

It also appears that the population will grow at a steadily decreasing rate until it stops growing altogether by the middle of the century. By 2011-21 labour growth is expected to be close to zero and in each of the succeeding decades it will be negative. In other words the Canadian labour force will actually decrease, starting in 2021-31, a reflection of declines in the overall participation rate, which in turn reflect the shift in age distribution of the adult population towards the retirement end of the age spectrum. The Bank of Canada has also said the

percentage of working-age Canadians aged 20 to 64 is expected to peak in about 2011 and then fall off sharply, even as the total population continues to increase.

Interestingly, many analysts have emphasized that changes in immigration are unlikely to have any significant impact on the population's age structure, although it is quite possible that people will retire later with the nature of work less physical and older workers healthier. It is estimated that immigration accounted for more than two-fifths of the increase in the labour force in the 1950s. Comparatively, its share was much lower in the 1960s and 1970s, but then rose in each of the next two decades. By the 1990s, it accounted again for over two-fifths. Under some assumptions, it will account for half of the increase in the present decade and by the next one, it will be the only source of labour force growth.

If observed empirically, given the size of Canada's current population, real immigration levels and competing interest for skills in other parts of the world, a sizeable increase in immigration is unlikely to offset the expected trend. It must be remembered that the skilled labour shortage is a universal trend and each country will be doing what it can to keep its best and brightest workers – retaining potential immigrants who would otherwise possibly consider Canada as a primary choice -- something that may not have been the case in the preceding decades.

How will these factors affect pension plans and plan members?

Given the facts and statistics cited above, it is not unreasonable to assume that almost all pension plans will likely have fewer active plan members in the future. Future funding is thus a key concern. Fewer workers invariably means fewer members but just as importantly, if the right climate is not established, there will be little incentive for employers/sponsors to set up new plans or continue to administer existing ones. More active members are needed to fund pension plans in the future.

Failing that, the specter of higher contribution rates looms down the road for most if not all plans. Not only will funding and solvency be potentially affected, but the fact that people are living longer will also have a direct impact on longer term

payouts of benefits to pensioners. We need to look and see how we can make pensions work for us and act as a strong recruitment and retention tool in the future, instead of continuing to have them portrayed as a handicap to potential sponsors. We realize that the demographic crunch is indeed inevitable, but contingencies must be made to deal with the expected outcomes of this situation. For example, if the existing rules are eased and a framework is put in place for the creation of new plans specifically for smaller private employers then we will likely see an increase in coverage. We will discuss our visions on this in the coming pages.

We also think that it is important to emphasize how this scenario will directly affect the pension plans. Eliminating mandatory retirement is likely to help particularly in conjunction with phased retirement rules being put in place. However, the demographic crunch will cause certain unavoidable hardships. Perhaps the more long-term goal then should be to ensure that this crunch will cause the minimal amount of disruption to society as possible. Efforts such as a later retirement date are one alternative, but the question remains as to whether there will be sufficient take up? Statistics show that if most people can retire earlier, they will. Those that generally opt to work longer are not the ones that want to, but rather the ones that must do so because of economic circumstances. Many are either still paying down bills or mortgages or are helping their children out with other costs (tuition, home ownership, etc.). It is critical that policymakers keep this in mind and do not simply assume that bumping up the retirement age or eliminating mandatory retirement will translate into an excess of workers.

A recently released study by the Canadian Institute of Actuaries paints a particularly gloomy picture about retirement savings in Canada. In it, the report states that two out of three Canadians expecting to retire in 2030 are failing to save enough money to cover basic household expenses in their golden years. The report, entitled “Planning For Retirement: Are Canadians Saving Enough?”, states that the baby boomer generation must either move quickly to sharply increase their annual savings or plan to work past age 65 to avoid financial hardship. The report goes on to state that Canada’s public pension system is not intended to provide all the income needed for an independent retirement; noting it is only geared to replace about 40 per cent of gross income for households earning the average industrial wage in 2005. Therefore, there is clearly a large

number of Canadians who may not be able to retire with confidence that they will at least be financially comfortable. Many members of public plans, including those in the OPSEU Pension Plan, do not necessarily fall into this category as they have a valuable pension plan which will provide them with a reasonable level of retirement income. However the trend for those in the private sector, and particularly those individuals with no pension plan coverage is troubling.

The statistics also show another interesting trend concerning voluntary retirement. Roughly one-quarter of Canadians who retired during the years since 1992 eventually returned to the paid work force at a subsequent point in time. Furthermore, about one-third of recent retirees said that, although they retired voluntarily, they would have been willing to continue doing paid work had the circumstances of their employment been different. In a survey conducted by Statistics Canada, over one-quarter of recent retirees said they would have continued to do paid work if they had been able to reduce their work schedule without affecting their pension, either by working fewer days (28%) or by working shorter days (26%). Just under one-fifth of recent retirees (19%) said they would have continued working if they could have taken more vacation without affecting their pension. Altogether, 30% of recent retirees cited at least one of these three pension-related reasons. The importance of work arrangements was also evident in the fact that 28% of recent retirees said they would have continued working had they been able do so on a part-time basis.

Therefore there is a segment of the workforce out there that will continue to work if provided with the right incentives. Employers will have to do their part in this if they hope to retain or draw back workers. At the present time the take up rate is not very high for people continuing employment after 65. Though about 100,000 people in Ontario turn 65 each year, only about 4,000 of those are expected to keep working after the change takes effect.

Phased retirement may be a step in the right direction, but it is still too early in the game to see how effective it is as a retention tool and whether it will make a dent in effectively replacing workers. Phased retirement helps ensure that there is no loss of potential benefits yet still allows a certain type of transition out of the work force while retaining a person with sophisticated skills. From the employee's standpoint, it is also an ideal scenario as it allows a person to begin to draw

down their pension benefits while still remaining gainfully employed. Nevertheless, employees who are eligible for early retirement may find continued work with their current employer unattractive. If they want reduced hours and early access to benefits to supplement their incomes, they may conclude that they are better off quitting or perhaps working for another employer elsewhere.

We do feel that it is important that the phased retirement option be offered on a more universal basis. When the federal government introduced new phased retirement incentives under the revised *Income Tax Act* it did so with only those employees in mind that are eligible for an unreduced pension. This may be a somewhat restricted approach and disqualifies a large percentage of the workforce that may otherwise consider phased retirement as a bona-fide option. Further analysis is required see if the program should be expanded to include all employees.

Phased retirement plans also raise questions connected with the continuation of, the level of contributions to and entitlements earned under employer-sponsored pension plans and with “in-service distributions” - the employee’s ability to access previously earned pension benefits while still working. DC plans are generally easier to adapt because of the straightforward link at any point in time between money in and entitlement. In DB plans, payout formulas that, for example, refer to earnings in the last few years of service present an obstacle to anyone who contemplates reduced hours of service during those years. But this problem can be fixed. Formulas can use some other reference period - such as the three to five years of highest earnings or the best three of the last ten years - or they can link the pension to the individual’s last fulltime year or convert the part-time service into a full-time equivalent for the purpose of computing benefits and contributions. This may cost the employer more in terms of matching contributions; however, it is one possible option that can be considered.

On the other hand, employers who would like to use such distributions to retain certain employees face the predicament of making early retirement available to the entire workforce and possibly losing more in earlier retirements than they gain. Ways of controlling access to this type of program will be necessary if employers are to avoid problems of adverse selection. However, we may find that there is more success with phased retirement once it is in place for several

years. Simply expecting or hoping people will work full-time longer may prove to be an even more elusive goal.

New pension options

Another possible solution to this dilemma is the introduction of deferred wages. For example, under this option a company could offer a pattern of wages and pension benefits that underpays its workers during early years, relative to their productivity, and overpays them during later years. This system, known as deferred compensation, provides incentives for employees to stay with companies for a long time, participate in training, and apply themselves diligently at work. It also enables employers to invest in workers' job-specific skills with some assurance they will stay long enough for the companies to reap the returns, and it reduces employers' costs of job turn-over, hiring, training, and worker monitoring. Another variant of this program would be some type of cash-balance and pension equity plans, which provide employees with current valuations while employers bear the risk of maintaining sufficient funding to cover their benefits.

The problem with either of these options is that most people would not look favourably upon being paid under the going rate for the labour pool. Most workers are interested in fair compensation in today's dollars and could not realistically rely on a lesser wage and benefit package in exchange for future guarantees of more generous compensation. As we noted earlier in the submission, today's younger generation of workers is not nearly as fixated on pension arrangements like the generation of their parents may have been. There is more of a "here and now" expectation when it comes to wages in a large portion of today's workforce. Attempting to sell them on deferred wages and benefits would prove to be quite a formidable task and in realistic terms is likely not tenable.

We have already cited the fact that jointly sponsored plans are considered to be the best funded and the best managed types of pension plans. However we also realize that it is not possible to create such a plan for everyone. We do believe that a creative approach must be adopted in meeting this pressing future challenge. When the *PBA* was drafted the most common form of pension plan at

the time was the single-employer plan. The bulk of the legislation was constructed specifically with this plan as the baseline model.

However, we believe that the time has now come to take a step back and ensure that the legislation accommodates other plan designs. We feel that Ontario pension law should look at fostering an environment which goes beyond the traditional single-employer plan. As outlined earlier in our submission, it seems that those employees that require pension coverage the most are those workers that are employed with smaller employers who either simply cannot afford to offer a pension plan in today's environment, or are so wary of the possible pitfalls of having a pension that they elect not to do so.

Consequently, we feel that consideration should be given to helping create more sectoral multi-employer DB pension plans for smaller employers. It is mainly these types of employers who have found it difficult to provide DB plans to their employees, and this may be because of the economies of scale required to sponsor a viable DB plan. If that is the case, then a constructive proposal would be to create some form of institution for the collective provision of services and for pooling of investments for private sector plans, along the multi-employer plan model. The pension model that provides the most effective framework would be that of the Ontario Municipal Employees' Retirement System (OMERS). OMERS provides pension benefits for employees of about 900 municipalities, school boards, libraries, police and fire departments, and other local agencies across Ontario.

Offering an "OMERS type" of pension plan for a number of sectors currently under-represented in the DB fold would make sense. Such a plan would offer pension income security and would ensure that more employees could get coverage under an occupational pension plan. As mentioned earlier, having plans such as the OPTrust offer expanded coverage to include employees in the broader public sector would also merit further consideration. The advantage with this option is that there would be no initial set-up costs or other administrative procedures normally required when creating a new pension plan. New members could be enrolled seamlessly and begin accruing a pension benefit almost immediately. The ability to purchase past service would also be an alluring option

for some members who could thereby increase their pension credit and overall value of their benefit, though this would certainly come with an appreciable cost..

Frankly, we feel that the statistics citing the lack of pension coverage are very concerning. A large number of people either cannot save enough money for retirement or are truly not aware of the dire future concerning their retirement income. Whether people are simply too preoccupied with their prioritizing of finances or are not sufficiently informed about this matter, the fact remains that a large number of Canadians are not effectively preparing for their retirement. According to Statistics Canada, the total amount of unused RRSP contribution room available to Canadian tax filers was a staggering $331 billion in 2004. In 2005, in Canada almost 86 per cent of tax filers were eligible to contribute to RRSPs for the tax year; of these, about 31 per cent actually made contributions. Therefore, very few people contribute to RRSPs even though many realize the importance such savings vehicles can have. In many cases the funds to do so simply are not there. However, given a choice we believe that many employees would be amenable to enrollment in a company sponsored plan if given the opportunity.

Another possibility to be explored would be to examine other pension plan models, particularly those that may already be in place in jurisdictions outside of Canada. A number of creative solutions have been adopted in Europe where the impending demographic crunch has been even more pressing for some time. One example of a novel approach is the pension model in the Netherlands. The Dutch pension system has two main tiers, consisting of a flat-rate public scheme and earnings-related occupational plans. The Netherlands also has a private pension system with broad coverage. The system consists of 64 industry-wide schemes. Under certain conditions, Dutch companies are free to opt out of these plans if they offer their own scheme with equivalent benefits. The Dutch example is but one of many, and we believe that more research should be undertaken to see what sorts of models are out there and how they function in practical terms.

Recommendations

20. *We recommend that the Commission propose the idea of creating more sectoral multi-employer DB pension plans in Ontario. The idea of a broad*

Ontario-specific MEPP (or MEPPs) which would provide coverage for workers in this province that currently are not members of a plan at work would make sense. Increasing pension plan coverage is a worthy public policy goal and one which is important given the future that we face.
We feel that the current OMERS model offers a good working example.

Those sectors that are in the greatest need of pension plan coverage first need to be identified. Then, efforts should be made to establish a plan specific to the employees in those sectors. We also feel that a closer study is needed to scope out the requirements and identify the steps needed to start-up and administer such plans. Close consultation with public plan managers and pension consultants would provide a good start.

In addition, in the public sector sphere we feel that the OPTrust's idea of offering coverage to broader public sector employees that are currently not enrolled in a DB pension plan should also be further explored. Pension plans like the OPSEU Pension Plan can cover more members and employers, if their membership bonds were made wider. Of course, we view it as appropriate to stay in the broader public sector area, but note that we have the capacity to take on smaller employers and members who are not currently served. In looking at the issue of pension plan coverage, we would urge public policy makers to look at the tools they have, tools that have already demonstrated that they can work.

21. *We encourage the Commission to recommend the further study of other pension plan models outside of the Canadian jurisdiction to identify other viable plan designs that could be adopted in this province. This study should be initiated concurrently with any research being done on the establishment of an Ontario-specific MEPP model to see which concept is the most feasible.*

22. *Ensure that phased retirement rules are in place in the PBA to complement the federal Income Tax Act ("ITA"). A review of the ITA rules and its technical regulations will be necessary once those documents are published to ensure that there is harmony with the federal rules. In addition, we also strongly feel that the phased retirement option should not*

be limited to only those members that are eligible for an unreduced pension. This would disqualify a large number of other employees who could also take advantage of this option and might also otherwise consider drawing their pension but still remain gainfully employed.

23. *Ontarians need to be encouraged to save more. Simply hoping that they will continue to make contributions to an RRSP or some other retirement savings arrangement is futile. In addition to creating a sectoral pension plan which will provide wider coverage, a concerted effort needs to be made to educate Ontarians about the importance of having a quantifiable source of pension income. People in this province need to be assisted in this and provided with clear and concise information otherwise there is a significant risk that we will be creating a large swath of social dependents in their retirement years.*

3) Individual Pension Asset Transfers Following Divestments

Changes to the *Pension Benefits Act ("PBA")* and Regulations with respect to allowing individual pension asset transfers in the province of Ontario were initially proposed by the Ministry of Finance in 2002. These changes formed part of draft *Bill 198* and sought to provide for the transfer of accrued pension benefits for any future or former divestment transactions. The legislation was never passed and this initiative was not subsequently resurrected.

At the time, OPTrust raised significant concerns about the draft legislation. While *Bill 198* was not tabled and brought into law we have witnessed an ongoing debate about the merits and shortcomings of individual and group pension asset transfers from both plan administrators and divested pension plan members. We believe that it is necessary to outline the position of OPTrust again on this very important matter. As you may be aware, the province recently did allow for a one-off transfer of assets for police officers who transferred their pension plan membership from OMERS to the Public Service Pension Plan. While this was a unique case, we are wary that this may be deemed to have set a precedent which might compel other administrators or affected pension plan members to ask for the current legislated divestment protections to be repealed. We feel strongly that this should be avoided until all of the issues have been fully discussed and clarified.

We believe that the debate about pension asset transfers is multi-faceted and quite complex. While on the surface it would appear that a member should have the freedom to choose to transfer his or her pension assets, we feel that the scenario is much more intricate. Therefore, the debate concerning individual pension asset transfers is far from being a black and white issue and requires further attention. The following pages will outline why we feel that the elimination of existing divestment protections in favour of individual pension asset transfer rights is superfluous.

Grandfathering – An Alternative Approach for Public Sector Plans

"Grandfathering" where divested members remain in the broader public sector has worked in the past for OPTrust as it keeps the members' benefits whole and eliminates some of the other issues and problems noted in the submission. It is undeniable that the best option for pension plan members is to have their benefits payable from a single pension plan. Given the toll a restructuring takes on individuals, at least in the broader public sector grandfathering offers an alternative to keep the affected individual "whole" from a pension perspective. Therefore, in order to address many of the issues raised, the simplest solution is to make it easier, in a divestment situation where the pension plans involved are public sector pension plans, for the successor employer to participate in the original pension plan of the affected members, thus contributing to two pension plans. Employees coming from the previous employer would continue to accrue credit their original pension plan until they terminate or retire, while new hires would join the other pension plan of the employer. Some public sector pension sponsors have the ability to grandfather by using express plan provisions codified in their plan text. There is no requirement to the regulatory regime here but what is needed is the advocacy of the pension industry and the regulators to promote this very viable option in the public sector.

Individual asset transfers raise a number of issues

The direction of the pension industry is to promote legislative changes to provide for individual transfers to address the regulator's insistence for the replication of benefits to facilitate transfers. In our view, the replication of benefits is an impractical deterrent being imposed by the regulator. We believe that if individual transfers are to be allowed, the focus should be on transferring the value of the accrued benefit from the exporting pension plan; not insisting the transfer value then be converted to replicate the exporting pension benefits in the importing plan.

The main advantage in permitting pension asset transfers is that members can elect to transfer their asset value to the importing pension plan in order to make

their pre-divestment credit more “valuable” to them. Those members for whom the transfer will not result in a more “valuable” pension can choose not to transfer their assets. The request appears straightforward, particularly when cast in comparison to the individual choice transfers made under reciprocal transfer agreements when a member terminates employment.

However, there are a number of complex issues to be addressed with individual asset transfers. The affected member’s benefit will be valued separately by both the exporting and importing pension plans. The exporting plan will tend to place a lower value on the benefit in order to preserve assets. Conversely, the importing plan will want to place a high value on the benefit in order to secure more assets to cover the assumed liability. Where does this leave the affected individual? It is desirable that one, clearly-defined method for valuing members’ benefits should be applicable to both pension plans. Will the *Standard of Practice for Determining Pension Commuted Values* be applied in this situation? If individual transfers are to be allowed, using the going concern funding assumptions, in our view, would provide the best method for valuing members’ benefits

Also, what would happen in a situation where there was a pension plan surplus or a deficit? In the case of a deficit, existing pension law already places restrictions on transfers of assets from a pension plan with a transfer ratio of less than one. How will this affect individual asset transfers? As for surplus, in *Monsanto v. Ontario (Superintendent of Financial Services)*, the Supreme Court of Canada affirmed that surplus assets related to a partial wind up must be distributed at the time of the partial wind up of a pension plan. On the one hand, since the affected members in this situation are confronted with a possible transfer through no act on their part, why should they be compelled to choose between accepting two separate pensions, the total of which will almost certainly be lower than a single benefit, or surrendering their right to a share in the surplus? On the other hand, if they are allowed to transfer their share in the surplus, would this not mean that surplus from an exporting plan could be used to fund a deficit in an importer, thus bringing up the problem raised under “Trust Issues” earlier in this submission? These issues will need to be addressed.

“Informed consent” requirement is inherently risky

We assume that any individual pension asset transfer would also create obligations on both an exporting and importing plan as far as the provision of information went. In a transfer scenario the importing pension plan would invariably be the primary provider of information to the divested members. Transferring with “informed consent” is a more sophisticated and complex requirement than for other termination options such as commuted value transfer, deferred or immediate pension. The expectation would likely be that the importing pension plan’s staff will be able to provide information not only on the key features of their plan, but also on the exporting pension plan and its provisions as well.

Informed consent presents a substantial exposure for the pension plans because of the following issues:

Subsequent Plan Events

In some cases, the former plan may be enhanced subsequent to the transfer of pension assets, which can in turn eliminate any perceived or real economic advantage for transferring. The circumstances for this transfer are substantially different from those for an individual who makes a purposeful decision to change their employment and consolidate their pension assets at the same time. Trade offs often occur which could include a higher salary with the new employer, but perhaps lower or more costly survivor benefits, less generous disability provisions, lower indexing, no insured benefits during retirement, etc.

Subsequent Personal Events

A member’s personal circumstances can change and they may not consider these possibilities at the time they opt to transfer their pension assets. For example, the member may become disabled or even be involved in a marriage breakdown situation. Consideration for these types of events and others may not be given at the time of the asset transfer.

Technical Knowledge and Familiarity

One plan cannot provide all of the necessary information for the individual to make an informed decision. The staff of one plan cannot be expected to be thoroughly well versed of the features of the other pension plan, nor can they anticipate how each plan's benefits will evolve in the future. We strongly suspect that there will be resulting gaps in important information which will hinder a member from making an informed decision and will likely lead to further problems down the road.

The Risk of Providing Poor Advice

There is a pronounced risk that one plan will be held accountable for the representations made by the other plan, particularly if a member comes forward at a later date and argues that they were provided with poor advice at the time of selection. In this context, the threat of litigation becomes magnified. In the case of a pension plan wind up, existing pension law sets out the information to be contained in the notice of wind up and requires that the notice be filed with the Superintendent of Financial Institutions before transmittal to plan members. The threat of litigation in the case of individual asset transfers could be mitigated by similar requirements for information transmitted to members eligible to elect an individual asset transfer. But this will add administrative cost and complexity. We presume the regulatory regime would provide a discharge for an administrator on making payments in accordance with the direction of the former member if the payment or transfer complies with the Act and the regulations.

The Application of *Income Tax Act ("ITA")* Provisions in Individual Asset Transfers

It is difficult to assess the tax implications for a transfer based upon retrospective legislation. Where a member transfers to a more generous pension plan and a top-up payment is required to achieve full credited service, tax deductibility for the payment is an additional consideration and a cost to the member. Where a high income earner or long service employee elects to transfer to a defined contribution (money purchase) plan, *ITA* transfer limits may be engaged. We

suspect that in many cases members will have to be encouraged to seek professional financial advice in order to fully grasp all of the possible tax implications, particularly if retrospective transfers were to be permitted. Needless to say, this will impose an additional financial burden on members.

Other Communications Issues

Once again, in the event of a transfer the exporting pension plan will have to provide the importing pension plan with a listing of names of those individuals that have been divested. However, this requirement cannot always be fulfilled.

First, it has been our experience that on many occasions, an employer or successor employer will not inform the OPTrust about an impending or past divestment. When they do, they often refuse to provide OPTrust with a listing of affected employees or are unable to do so due to administrative complexity or poor recordkeeping practices.

Second, there are privacy concerns that arise with providing listings of personal information without express member consent. If new and former employers are not compelled to provide this information then these provisions become unworkable.

Administrative Burdens and Costs

Large pension plans like the OPTrust can generally manage the administrative burden of running a large pension fund. The Plan is also able to take on any costs associated with legal challenges from members, employers or other parties. However, there is a considerable risk that these costs would spiral if individual pension asset transfers were permitted. The addition of thousands more transactions and perhaps hundreds of Superintendent Transfer approval hearings will place a distinct burden on the OPTrust, and will also substantially increase overall administrative costs of running the Plan.

While the OPTrust can foot this initial rise in administrative costs, the financial burden will ultimately be passed on to the members and employers – possibly

even through an increase in member and employer contributions. The same thing can be expected at other plans. In fact, smaller plans may take an even greater hit and this could end up costing them significantly more – all of which would ultimately have to be passed on to the members.

Fundamental problems with introducing retrospective pension legislation

The outsourcing of services or "divestments" has become a common feature of public sector restructuring in recent years. For the employees involved, moving from one employer to another often means changes in their work and personal lives. It can also mean important changes affecting their pensions. The sale or assignment of an operation from one employer to another can have a different impact on members' pensions, depending on the circumstances.

One of the main problems is that any legislation allowing for the individual transfer of pension assets would essentially unwind divestment protections currently enshrined within the *PBA*. While the majority of pension plan members that have been affected by a divestment are generally satisfied with the current protections a small number have complained about some of the previous transactions and the resulting impacts on their respective pension benefits. Some of these members would like to be able to "reverse" these transactions and be provided the opportunity to transfer their pension assets years after the fact. We feel that this would be difficult to facilitate for a number of reasons. It is our view that allowing legislation which would permit the retroactive transfer of pension assets would be fraught with complexities and would likely create resulting administrative difficulties. We will point out some of the anticipated impacts on the following pages.

Following a divestment, both the new and former pension plan continue to evolve as they are likely to introduce new benefit improvements, additional provisions or other overall plan design changes. Another fundamental question that must be addressed is whether in fact members have the right to have any such improvements included when valuing their pension for any asset transfer. After all, if they were helping to fund their pension benefit while an active member of the exporting plan, then they may have some obligatory entitlement to any

improvements that were consequently made to the plan. Conversely, others would argue that by opting to move their assets out of the first plan they are making a conscious decision to disassociate themselves from the exporting plan and its benefits and thereby have no intrinsic right to any future plan improvements.

Anti-Selection Will Occur

The idea of extending pension asset transfer rights aims to extend the option of transferring the value of the accrued benefit to members who have already divested. This means that this option could be extended to members who divested perhaps as long as three, five or ten years ago. We believe that introducing a retrospective benefit improvement in the *PBA* is unprecedented. We also believe that this could lead to selection against the plan by many members.

The following examples are used to illustrate this point by taking a scenario where there is a transfer between a defined-benefit (DB) pension plan and the more common defined-contribution (DC) pension plan.

- Those members who are older and/or have long service in the DB plan who were affected by the divestment will choose not to transfer their assets as they will receive an indexed pension from the DB plan which will provide them with a higher pension amount.

- Those members who have divested but are younger and/or have short service in the DB plan will elect to transfer because they would expect to benefit by receiving payouts of both member and employer contributions, plus interest, in the event that they were to terminate employment before attaining a pensionable age.

The resulting effect for the plan is that the higher liability pensions will tend to remain with the plan and those with lower liabilities will transfer out. In some cases, many years will have passed since the divestment and the member will know exactly what choice to make as they are ready to retire or, alternatively to terminate without taking a pension. Clearly, this is anti-selection where the

members are given the benefit of hindsight to select against the former pension plan. Similarly we expect younger members will choose to transfer while older members will remain. This is particularly relevant when looking at the importance that most older members place on the access to insured benefits in their retirement years as a result of belonging to the OPSEU Pension Plan. However, the impact of selecting out younger members destroys the pooling of risk in pension plans.

If we examine the proposal in the context of a prospective divestment in the private sector (where the transfer of pension assets are bundled into the overall sale of the business), the proposal would appear to meet the requirements of the sponsors, plan administrators, and individual members. In this particular environment, flexibility exists in valuing the business assets and this certainly includes pensions. However, in the public sector environment where the transfer of the business is separate from the proposed pension asset transfer, anti-selection becomes a very significant issue for the exporting pension plan.

Legacy Issues and the Treatment of Divestment "History"

Another critical factor is how should the legacy issues concerning divestments be handled? There are two major concerns that should be cited here. First, what if a member after many years unwinds the divestment transaction and is permitted to complete a pension asset transfer to the new plan; but then later feels that they made a hasty or incorrect decision based on poor information? In such cases who would be held accountable? What standard would be used to judge how the provision of information was to be handled?

Second, how far should the ability to transfer pension assets be extended? Would it target only those members with a deferred status in the former pension plan and create a new benefit option for an "individual" election for a transfer? Going how far back? What about retirees with two pensions? Who is affected by it and how far back you go are very important factors. We believe that many of these deferred members would not fully comprehend the implications of a transfer without all of the complete information on which to make an informed decision. We will go into greater detail about this in the coming pages.

Trust Issues

As evidenced by our name, the OPSEU Pension Trust Pension Plan is subject to a trust. In the case of *Aegon Canada and Transamerica Life Canada v. ING Canada Inc.* (the "Transamerica Decision"), the Ontario Court of Appeal held that surplus assets derived from a pension plan that was subject to a trust could not be used to fund liabilities derived from another pension plan that was not subject to a trust. As a result, FSCO extensively revised their procedures for the approval of asset transfers where one of the pension plans involved was subject to a trust. Unless there is revision to the legislation or FSCO's procedures, this would complicate any asset transfers involving our plan.

Marriage Breakdown

It is our position that particular care must be taken when discussing the issue of pension asset transfers and the rights of other plan beneficiaries. Specifically, the rights of all parties must be protected and no one must be harmed in the event of a transfer. There is not a great degree of case law available on the division of pension assets upon marriage breakdown. The whole area of family law is complex and there is an unquestionable lack of clarity within the current version of the *PBA* and the *Family Law Act* with respect to the treatment of pensions upon marriage breakdown. In fact, in the final chapter of our submission we will deal specifically with this very subject and provide our input on what direction should be taken. Therefore, if pension asset transfers were to be contemplated then consideration must also be given to circumstances where following a marriage breakdown, a member spouse could make a decision that will affect the overall value of the non-member spouse's access to pension property.

It is unclear to us if pension termination options would be provided to the non-member spouse in cases of marriage breakdown when the former divested member were to be offered an individual or group asset transfer. In addition, further thought must be given to the implications on the pension property if the divested member spouse decides to transfer and the trade off of benefits results in a smaller pension value for the non-member spouse. Clearly, there are

inherent complexities with this option; ones we believe that would only further muddy the waters.

Recommendations

24. *Before proceeding with any legislative changes to allow individual pension asset transfers on a divestment, we recommend that the Government of Ontario undertake a thorough review of the advantages and disadvantages that such a provision would pose for pension plan members, administrators and sponsors. Undoubtedly some plans that have had large numbers of members divested into their plans would welcome this provision so that members could become whole and retain a single benefit. However, as we have demonstrated the pitfalls of allowing individual asset transfers far outweigh the perceived advantages. In addition, many members would be faced with difficult decisions and may not have the complete amount of information on which to make an informed choice.*

    We have concerns that protections available under the existing legislation may be stripped away and could lead to some members being negatively impacted. Any changes in the existing legislation must be carefully thought out. A key point is that OPTrust feels that all issues need to be considered when looking at the debate on individual asset transfers. In this case we would urge that the Commission address all of the pertinent matters. In addition, we strongly feel that any retrospective changes could prove to be harmful. We believe that allowing for retrospective legislation to this effect is unprecedented and would prove far too cumbersome. Therefore, it is our perspective that such an approach would be untenable.

    Again, we must reiterate that the OPSEU Pension Trust is in a unique circumstance because of the large number of divestment transfers out of the plan. Our plan would be disproportionately affected if wholesale pension asset transfers are permitted.

We have indicated that there are impediments tied into individual asset transfers. While it may directly benefit some divested members it would invariably harm many others. While the possibility of greater financial choice is a noble one for divested members, the very nature of divestment transaction makes them a highly complex transaction. Allowing for individual asset transfers after so many years is likely to create a multitude of problems for plan administrators and members. We feel that potentially thousands of pension plan members could be making risky decisions which could undermine their future retirement income security.

4) PENSION VALUATION & DIVISION UPON MARITAL BREAKDOWN

This section will provide OPTrust's input on approaches for addressing pension division upon marriage breakdown. Included in this section are OPTrust's recommendations for the following key areas:

- Communication
- De-linking
- Proposals to enhance the legislation

There have been indications that the Ontario Ministry of the Attorney General and the Ministry of Finance would like to take steps to introduce a new pension division model which is to be adopted in Ontario. Various organizations have been asked to provide input on possible approaches for addressing pension division upon marriage breakdown. OPTrust has also lent its voice in this process. Being a large public sector pension plan, we are acutely aware that the treatment of pensions following marriage breakdown is an important matter that needs reform. The following pages summarize OPTrust's view on approaches for reform and where we believe the key changes must be made. We urge the Commission to closely review our recommendations and also address this subject in its final recommendations.

What are the key problems in pension division?

In our experience, one of the most pressing problems in dealing with pension valuation and division has been the area of communication. The current framework provides a wide variety of options to separating spouses. However, even with the aid of legal professionals, spouses often encounter difficulties in structuring a settlement with respect to the pension asset that OPTrust is able to administer. Spouses and lawyers frequently contact OPTrust seeking advice and direction on how to structure domestic contracts. OPTrust is constrained in the information it can provide because of concerns about one of the parties to a domestic contract claiming to be disadvantaged as a result of reliance on advice provided by the Plan administrator. As a result, OPTrust staff is limited to

providing “just the facts”, leaving members and their representatives feeling left in the dark about how to go about dividing the pension asset.

OPTrust has attempted to deal with the issue of communication by assigning specific staff that are specialists on the issue of spousal relationship breakdown and directing all inquiries to those staff. Despite this, OPTrust has received domestic contracts and Court Orders that it cannot administer because they contravene the provisions of the Plan or applicable legislation, such as the *Income Tax Act* or the *Pension Benefits Act*. In these cases, the parties to the domestic contract are instructed to redraft the contract, which usually involves further expense to the parties, as they must go back to their lawyers and sometimes the courts. In other cases, while OPTrust can administer the provisions, the parties have failed to adequately address important issues such as pre- and post-retirement death benefits or the possible remarriage of the member-spouse.

Current legislation is also ambiguous on these issues, as is case law. This often leads to outcomes not anticipated by the parties. Take, for example, a domestic contract or Court Order that provides for the non-member spouse to receive a percentage of the member-spouse’s pension. If the member-spouse dies while in service and the domestic contract or Court Order does not address pre-retirement death benefits, the non-member spouse receives nothing. Moreover, domestic contracts and court orders are often poorly drafted, which compels the administrator to extrapolate the parties’ intention as best it can.

Some domestic contracts and Court Orders are compliant and well crafted, but are difficult to administer without significant systems/staffing resources. Take for example, the case of a simple percentage diversion of the member’s pension to the non-member spouse for a specified period of time to equalize property, after which the non-member spouse’s pension reverts back to the member spouse. This type of arrangement, which is uncommon but not unknown, presents a considerable challenge for plan administrators as pension systems are designed to provide lifetime payments. A pension plan administrator is faced with the unpalatable choice of either incurring the expense of developing an automated system to accommodate this scenario, or dealing with it through a manual process, which is labor intensive and prone to errors.

Finally, the current framework does not produce equitable results for members of plans that do not divide retirement pensions into independent payment streams where separation occurs before pension inception. Where the pensions are "linked", the non-member spouse's equalization ceases upon the death of the member spouse. The *Family Law Act* reform was principled on a "clean break" between spouses. "Linked" pensions continue the entanglement of the spouses long after the separation or divorce has occurred. This focus on the "if & when" regime is problematic in several respects. Not only does it work against facilitating a "clean break" between spouses, but it also prevents the valuing of a pension until the actual formal separation occurs.

<u>Valuation Method</u>

There are two general valuation methods of pension assets upon marriage breakdown under discussion; the Deferred Settlement Method (DSM) and the Immediate Settlement Method (ISM). We understand that both the Family Law Section of the Ontario Bar Association and the Canadian Institute of Actuaries advocate the DSM.

OPTrust shares the four perceived concerns raised with the use of the DSM to value pensions on spousal relationship breakdown:

- the non-member spouse would share in increases in the value of the pension not accrued during the period of the spousal relationship;
- there would be increased administrative complexity, and consequently costs, for plan administrators;
- there are potential conflicts between the administrator's obligation to protect the plan and its role in valuing the non-member spouse's interest; and,
- the DSM does not provide a "clean break" as contemplated by the *Family Law Act*. Moreover, there continues to be the requirement of plan administrators to track and service the non-member spouse to the member's termination and beyond in retirement.

We would also point out that the DSM may create situations where a member-spouse is accused of forgoing job promotions in his/her employment situation in order to limit the benefit payable to the non-member spouse, leading to more litigation. A “clean break” eliminates this possibility.

We recommend that any valuation method should be developed and monitored by a panel of experts constituted for this purpose as opposed to oversight by the Financial Services Commission. We believe industry experts could be more responsive and would take a holistic approach to division of property, pension valuations, and pension plan administration.

Recommendations

25. We recommend that the Expert Commission propose that detailed pension valuation regulations are drafted which will allow for the valuation of pension assets and provide a prescribed form for the parties to complete when dividing pensions. We believe that this would eliminate the current free-for-all in pension division. While pension division should not be mandatory in all cases, a single method of valuation and division mandated for all pension plans would level the field by providing a single template for all pension plans to use. OPTrust would also propose including in such regulations a standard disclosure form as well as standard language to be used in drafting domestic contracts.

The effective date of any changes should be prospective, in order to allow pension plan administrators to update their systems and procedures. In addition, these changes should not impact already existing domestic contracts or Court Orders, as this would be administratively complex and also tend to “cause undue hardship or upheaval” for the parties that struck an agreement in the distant past.

26. OPTrust urges the Commission to advocate that the Immediate Settlement Method of valuation be adopted as the standard for valuing pensions in marriage breakdown scenarios. In addition, this method should be coupled with a benefit split creating two separate benefit

entitlements for the former spouses, at the time of spousal relationship breakdown (valuation date). This would permit the non-member spouse to have one option to receive his/her benefit at the valuation date and in form of a transfer of the value of the pension to be paid from the pension plan into a locked-in savings arrangement (RRSP). This method of valuation should also provide for salary projections and credit for early retirement, which would alleviate the perceived unfairness for using the Immediate Settlement Method as opposed to the DSM.

There should be one method for valuing pensions where a marriage breakdown occurs and that method should be explicitly defined (e.g. using sex distinct mortality table and projections noted above) in the regulations. However, an overriding principle is that the pension has an actuarial value and that the method of spitting a pension should result in neither a gain nor loss to the pension plan.

We also recommend that any valuation method should be developed and monitored by a panel of experts constituted for this purpose as opposed to oversight by the Financial Services Commission. We believe industry experts could be more responsive and would take a holistic approach to division of property, pension valuations, and pension plan administration.

27. *We do not believe that administrators should be permitted to charge fees for the division of Pension Assets. Our position is based on the following reasons:*

    - *the costs of division would vary widely between pension plans and could not be regulated in such a way as to be fair to all;*
    - *the true costs of the transaction would be prohibitive on a case-by-case basis and given the substantial number of relationship breakdowns in society, OPTrust believes the costs should be borne by the Fund at large;*
    - *the optics of charging a fee to separating spouses for pension division when it is mandated by statue are very poor; and,*

- *if administrators are permitted to charge fees for division, why would they not be allowed to charge fees for buyback calculations, pension estimates, etc.?*

28. *'While we suggest a more holistic approach to reforming legislation to deal with family property, if such reform would delay needed legislative changes to resolve the current ambiguity for dividing pensions, we would support maintaining the current direction for automatically considering pensions as family property for common-law couples. Currently the PBA provides entitlement to survivor pension benefits for eligible spouses/partners in common-law relationships. Common-law spouses also may choose to treat a pension as family property through a domestic contract. However, current law does not consider a pension to be family property in common-law relationships.*

    We understand the rationale for including a pension, as family property for common-law relationships, flows from the structure of the PBA and FLA. Respectively, these two pieces of legislation do not lend themselves to the exclusion of pensions for common-law couples. We find this troubling from a public policy standpoint. We would point out that mandating pension division for common-law spouses when other assets are not subject to division, such as the principle residence, does not appear to be consistent. We also believe that this position would provide more clarity for the administration of pensions.

29. *Currently, it is possible to attach 100% of a member's pension pursuant to marriage breakdown: 50% for purposes of equalization and a further 50% for support. If it is the intent to leave at least some of the pension payments in the hands of the member-spouse, who in most cases will need it for retirement income, then this situation should be addressed in any statutory changes.*

APPENDIX:
SUGGESTED TECHNICAL CHANGES TO THE ONTARIO *PENSION BENEFITS ACT*

The following represents suggested changes to the Ontario *Pension Benefits Act* to address "irritants" for administrators of defined benefit pension plans:

1. The regulations pertaining to the issuance of Annual Pension Statements to members of defined benefit pension plans should be amended to eliminate the requirement for administrators to report the contributions and interest credited to vested members. The rationale is that this information is confusing and misleading to members.

2. The *Act* should be amended to provide for the commuted value of a survivor benefit if the annual benefit payable is not more than 2 per cent of the Year's Maximum Pensionable Earnings in the year of commencement. The rationale is that administrators often are required to make payments of insignificant monthly amounts to survivors of a former member. This requirement is simply not cost effective to administrators.

3. The *Act* and regulations require the administrator to notify the Superintendent if member contributions are not remitted by an employer within thirty days after the month in which the period of employment giving rise to such payments occurred. The requirement makes sense in the context where an employer is not remitting member contributions in a timely manner. However, often employer reporting, remittance and reconciliation must occur before an administrator can identify discrepancies. Perhaps the regulations should differentiate between discrepancies and the failure to remit.

4. OPTrust encourages the Commission to lobby the province to clarify the garnishment rules for pensions. We have encountered situations where the Canada Revenue Agency has sent us a garnishment for tax arrears on a pensioner whose monthly pension is already subject to a

support deduction order under the (Ontario) *Family Responsibility and Support Arrears Enforcement Act (FRA)* as well as equalization payments pursuant to a domestic contract or order under the (Ontario) *Family Law Act (FLA)*. The total of all these attachments could in some cases be more than 100% of the benefit payable.

We recommend that the Commission ask that the province specify how garnishments are to be executed in such instances. Since OPTrust has encountered several such cases we are certain that other plan administrators have also been faced with similar scenarios. Direction on the application of provincial and federal statutes is clearly required.

5. Large public sector pension plans, at times, are unable to locate beneficiaries due to relocation or other occurrences. The Regulations should be amended to acknowledge this very real administrative issue and provide a uniform process to address this matter.

6. The definition of an eligible survivor is confusing. The phrase “has a spouse or same-sex partner on the date that the payment of the first installment of the pension is due” is not clear. Administrators track several dates at the point of a member’s retirement; retirement date, pension inception date, pension payment date, etc. This matter should be clarified so as to eliminate this ongoing confusion.

7. There are several sections of the *Act* that refer to “as prescribed by the regulations” when there are no regulations. For completeness, the applicable regulations should be created. For example, the revaluation of joint and survivor pensions upon marital breakdown is one area that needs to be covered. A complete review of the existing text should be undertaken to identify other areas where there is no corresponding regulation.

1 Adelaide Street East
Suite 1200
Toronto, Ontario
M5A 3A7

Tel: **416-681-7738**
1-800-906-7738

E-mail: **email@optrust.com**

Web: **www.optrust.com**