



Supplementary Submission

To the

ONTARIO EXPERT COMMISSION ON PENSIONS

November 15, 2007

I Introduction

The purpose of this supplementary submission is to augment the information contained in our preliminary document. We will make some recommendations based on our experiences with the Colleges of Applied Arts and Technology Pension Plan (CAAT Plan). It may appear at times that we are critical about some aspects of the Plan, but these comments are a result of our encounters with the Plan. OCRA would like to develop a positive relationship with the Plan built on mutual respect. We may not agree on everything, but we do want to discuss with them issues of concern to retirees.

II Representation of retirees

OCRA and the CAAT Plan

The Ontario Colleges Retirees' Association (OCRA) was established in 2001 and incorporated in June 2005 as a not-for-profit Ontario corporation. When OCRA was a new retiree association seeking ways to build its membership, we asked the CAAT Plan for a link from its website to OCRA's website and a notice in the Plan's newsletter about the formation of the association. In a letter of May 12, 2003, the administration committee of the Plan advised OCRA it could not grant the requests because that would indicate the existence of a formal relationship between the Plan and OCRA. We learned that the **Plan had decided upon a policy against having a formal relationship with any retiree group.** (See Appendix A)

In our preliminary submission to the Commission under the heading on Page 2 "The Pension Plan for CAAT Retirees (CAAT Pension Plan)," we referred to our attempts to uphold the intent of the Sponsorship and Trust Agreement (STA) that retirees would be represented on the board of trustees by a "retiree trustee." This long, drawn-out matter culminated in two FSCO directives to the Plan that subsequently resulted in the **elimination of the "retiree trustee"** so that the composition of the Plan's board of trustees would comply with Section 8(1)(e) of the Pension Benefits Act. This decision would appear to have contributed to the exclusion of CAAT pensioners from the kind of balanced relationship referred to

in the Commission's guidelines. (Page 1, The Commission and its assignment, 5th bullet)

Since the Plan refused to talk to us directly, all communication from the Plan came from its lawyers. OCRA was dismayed by the necessity to hire its own lawyer and to create a legal fund. The payment of OCRA's legal fees was achieved by numerous \$25 and \$50 donations from our members. We believe this financial support from our members demonstrates their strong desire for genuine retiree representation in the governance of the CAAT Pension Plan.

The observation of our CURAC colleagues accurately summarizes the present situation:

Most retirees have little or no say regarding the administration of their pension plans after retirement, and they possess almost no leverage to prevent adverse changes in their terms or in the interpretation of their terms. (CURAC brief, Page 4)

OCRA firmly believes that pensioners are entitled to a statutory right to adequate representation on the governing bodies of their pension plans and that this should be enshrined in appropriate legislation. We believe that it is necessary to remember at all times "**...that pensions exist solely for the benefit of pensioners.**" (CURAC brief, Page 17) We would like to add our voices to others who have made the Commission aware of the need for meaningful pensioner representation on pension boards and committees. OCRA continues to search for ways to achieve a positive and co-operative relationship with the CAAT Pension Plan.

III FSCO (Commission Discussion Paper Question 9.4)

From our dealings with FSCO, it appears that it lacks the powers and staff resources to adequately perform its assigned tasks.

For example, when FSCO agreed with OCRA that the framers of the STA intended that there should be a "trustee retiree," it was unable to enforce this finding because the language in Section 8(1)(e) and Section 8(2) of the Pension Benefits Act did not support it. (For details, please refer to Appendix "B" attached.) Section 8(1)(e) requires that at least one-half of the trustees of a pension plan shall be representatives of members of the multi-employer plan and therefore the "retiree trustee" was eliminated to maintain employee representation to comply with Section 8(1)(e). Although Section 8(2) does provide for a representative or representatives of persons receiving pensions under the pension plan, the clause cannot be enforced because it says "may" where it ought to say "shall" or "must."

FSCO stated quite clearly that it lacked the necessary legal authority: (See Appendix D) ... to require that a plan (the CAAT STA in this instance) be amended to comply with the PBA. The Superintendent's power is limited only to

require that a plan be administered in accordance with the PBA. The terms of the Order, therefore, do not strictly require that the Plan be amended but does require that the Board administer the Plan in a manner that is consistent with the PBA.

All FSCO could do was to order the Plan to make its board comply with Section 8(1)(e) which was done. Clause 8(2) is so weak that FSCO could not order the Plan to restore its previous practice of recognizing that one trustee was the “retiree trustee.” This can be described as slipping between the horns of a dilemma – satisfying to FSCO and the Plan, but very frustrating to retirees who believe their plan should be governed according to the original intent of the framers of the STA.

Our file was frequently moved from one pension officer to another, often leading to delays until the new pension officer had become familiar with the details of our case.

We therefore recommend that FSCO be given supervisory and regulatory powers to monitor pension trust and collective agreements to ensure compliance with the revised PBA, as well as the necessary staff resources to do so. FSCO should also continue its present supervision of the administration of pension plans in accordance with the improved legislation we hope will result from this Commission’s deliberations.

IV Collective Bargaining

1. We believe that it is essential that a pension plan should establish a positive formal relationship with its pensioners, and this cannot be achieved through a union – for the reason that **unions do not represent retirees**. Even if a union appointed a retiree as a representative, this person would not independently represent retirees. With only employers and active member representatives on a board of trustees, some pensioners question whether their interests are represented in the minds of trustees and sponsors.
2. CAAT Part-Time and Sessional Employees

According to the OPSEU website, there are over 17,000 part-time and sessional employees in the Ontario community college system.

These employees are currently conducting a campaign to achieve recognition and the right to organize a union, to be known as the Organization of Part-Time and Sessional Employees of the Colleges of Applied Arts and Technology – OPSECAAT. Frequently they work for years without receiving full-time employment and benefits such as membership in the CAAT Pension Plan. We believe they should be able to participate in our pension plan. Certainly their contributions would improve the financial position of the CAAT Plan. The Ministry of Training, Colleges and Universities is reviewing the Colleges

Collective Bargaining Act to determine how best to proceed with a proposal to extend the right to collective bargaining to part-time college workers in Ontario. Public hearings will be held between November 20 and 30 in Ottawa, London, Toronto and Sudbury. The Advisor will submit a final report to the Minister of Training, Colleges and Universities by January 31, 2008 (www.ontario.ca/ccba)

V Advisory Committees to Pension Plans

The Pension Benefits Act has a provision whereby advisory committees may be established. In a letter of January 21, 2005, FSCO advised OCRA that CAAT retirees are not excluded from establishing an advisory committee to the pension plan. At first glance, that would appear to be the solution to the problem of pensioners lacking a voice in the governance of their pension plan.

However, as pointed out by our CURAC colleagues, (p. 16 Rec. 18) there are difficulties in setting up an advisory committee without the cooperation of the plan sponsor. It would seem that even if this major difficulty could be surmounted, the advisory committee is basically powerless to prevent the plan from doing what the committee may consider disadvantageous to retirees.

By revising the rules for advisory committees, pensioners could have a stronger voice in dealing with issues with the plan and have real powers to ensure accountability and fiduciary responsibility.

If FSCO's powers were increased to include Advisory Committees, FSCO could order the plan to assist in the administration of a vote to determine the members of the advisory committee. This would help retirees in overcoming the first hurdle to set up an advisory committee.

VI Pension Indexation

Quite frankly OCRA finds the issue of indexation with the CAAT Pension plan challenging because there is much confusion about indexing. The lack of transparency and the Plan's ad hoc approach to the indexation of pensions concerns retirees. In answer to question 2.7 in the Commission's discussion paper about indexation of pension benefits, you should know that each year since 1997, as of January 1, the CAAT Plan has granted an indexation increase of 75% of the increase in the consumer price index (CPI) over the previous year."

However, the CAAT Pension Plan newsletter of January 2007, states under the heading of "**Changes starting January 1, 2008,**" that: "**The Plan will not be guaranteeing annual indexation increases** for service earned after December 31, 2007. Increases for service earned after that date will be granted each year if the Plan can afford it and remain fully funded."

In the Commission's discussion paper, question 2.4 asks for comments about the recent fluctuations in investment returns. Starting in January 2008, the Plan will

increase the contribution rate for both plan members and colleges to 1% of salary. This will be implemented in January 2008, 2009, 2010. The total increase will be 3% for each group. This step was undertaken as a means of reducing the Plan's current deficit, which the Plan partially attributes to poor investment returns in 2001 and 2002. There was a comment made in the January 2007 CAAT Pensioner Newsletter that defined benefit plans are experiencing problems because people are retiring earlier and living longer.

We suspect that current college policies of increasing reliance on part-time employees and the contracting out of functions such as custodial and food services may cause a leveling off of contributions because of a stagnant or declining employee population. Part-time employees and those working for contract employers do not contribute to the CAAT Pension Plan. This makes the Plan even more dependent upon a very successful investment strategy of its existing assets to meet its obligations.

Inflation is a fact of life and for pensioners the lack of indexation in their pension could have a serious impact on the quality of their lives. The CAAT Plan indexes pensions for partial inflation protection by taking 75% of the annual percentage **difference** in the consumer price index as reported by Statistics Canada from September to September. It is **not 75% of the current CPI**, as many pensioners erroneously believe.

There is a further concern about the calculation the Plan uses. It is a different measure of the inflation rate than the one used by Statistics Canada. The plan uses the September-to-September CPI while Statistics Canada takes the average monthly CPI as the annual rate for a year. This difference could affect the amount of money pensioners receive from indexation.

David Dodge in his speech in October at Queens' University at the Retirement Policy Issues in Canada Conference supported indexed defined benefit plans. He said "we know that if incomes are not sufficient for the retired, the pressures on the government for much greater spending could become significant." As we live to a more advanced age, it is imperative that there be significant indexing of the defined benefit plan so their purchasing power is maintained into the final years.

Both the Canada Pension Plan and Old Age Security are linked to inflation, and OCRA believes pensions should be indexed for inflation by law.

VII Ombudsman for Pensioners

OCRA supports recommendation 18 on Page 16 of the CURAC submission regarding the establishment of a Provincial Pension Ombudsman. It is particularly important for retirees to know where they can get help in understanding the complexities of indexation, actuarial reports, financial statistics, and electronic

communications – all matters that may have changed appreciably since their working days.

VIII Ontario Public Pension Fund

As recommended in our preliminary submission, we suggest that the Ontario government establish a public pension fund. Any employee from any sector within the province not covered by any other private plan could enroll. (OCRA Preliminary Submission p.5)

VIX Conclusion

We would like to thank the panel for the opportunity to speak today. We welcome questions or requests for documentation should you need them during your deliberations.

Appendices

- A. March 18, 2003 – Memo from the Plan– no formal relationship with any retiree group
- B. June 30, 2006 – Extract of PBA and STA
- C. Nov. 9, 2006 – See FSCO URL (Reasons #12.) confirming the retiree representative is a representative of former members, not current members.
http://www.fSCO.gov.on.ca/english/pensions/penbulletinonline/supfinserv/nop/makeorder/CAAT_Nov.9.2006.asp
- D. March 15, 2007 – FSCO Order to the CAAT Plan to modify the Board to comply with section 8(1)(e) of the Pension Benefits Act.
- E. April 27, 2007 Amending agreement No. 1 - The Plan removes all mention of retiree trustee in the Sponsorship and Trustee Agreement.