

Canadian Federation of Pensioners

Finding the Right Balance

Comments and Suggestions Regarding the Final Report of the
Ontario Expert Commission on Pensions:

A Fine Balance

October 31, 2008

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The Canadian Federation of Pensioners (CFP) was formed in 2005 to bring together retiree groups for the purpose of exploring pension plan issues from a pensioner point of view. Currently CFP is focusing on the need to improve the long term security of single employer defined benefit pension plan (DB plan) pensions by:

- Participating in government and other forums that have been formally established to review issues and challenges with DB plans; and
- Identifying pensioner issues with the current Canadian legislation for when a business is sold or merged, declared insolvent, bankrupt or is forced to wind-up, and the pension plan is underfunded.

CFP is a growing organization which currently has eight actively involved pensioner groups whose DB plans are sponsored by a wide spectrum of businesses and whose individual members encompass retired corporate officers, senior executives, management, non-management, union and professional employees. In addition, CFP liaises with a number of other retiree groups which, together with the 8 active groups, represent the interests of over 100,000 DB plan pensioners.

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1. Introduction

The final report from the Ontario Expert Commission on Pensions (OECPE) is a major achievement. It should serve as a very creditable benchmark reference for all Canadian jurisdictions that are currently reviewing their respective private pension plan legislation.

Serious issues with current pension legislation are becoming increasingly serious as evidenced by the impacts of the current global economic and financial crises on all pension plan funds, and on the financial well-being of the pension plan sponsors. Nowhere is this more evident than with single employer defined benefit plans (DB plans).

The Canadian Federation of Pensioners (CFP) is pleased that the Ontario Minister of Finance has recognized the significance of the Commission's work, and CFP is committed to participating with the Ontario Ministry of Finance in the next steps to improved pension legislation and regulations. It is critical that the government place a high priority on the preparation and implementation of new and revised pension legislation and regulations.

CFP fully supports the majority of the recommendations of the Commission and recommends their serious consideration as a high priority for the government. This response concentrates primarily on a few recommendations in the Commission's report which we feel do not quite achieve the Commission's objective for a "fine balance" from the perspective of retired DB plan members.

2. Overview & Summary

As part of their original employment contract, retired DB plan members earned the legal right to expect that their full pension benefit entitlements will continue to be met for life.

Retired DB plan members are the stakeholders most at risk should a plan fail and have to be wound-up in a solvency deficit position. They have no place to turn to replace pension income should it ever be reduced or disappear. And they have reached the point in their life cycle when re-employment is no longer a realistic opportunity as a source for replacing lost income.

A "fine balance" therefore must include an increased emphasis on improving the long term financial security of pension benefits for plan members and retired members.

No one can predict if there will ever be any new DB plans started-up in Ontario. But even if all current DB plans were to be closed to new members, it would be several decades before many of these plans could be wound-up. From these observations and from a "fine balance" point of view, we must also ask:

How much increased risk are DB plan members willing to accept in order to ensure the continued support for these plans by the sponsors?

CFP submitted an in-depth study in response to the original OECP consultation paper issued in 2007. The following are the key proposals and recommendations from that submission.

- End the pension plan information void, so that retired members - who are the key stakeholders – may be assured of being kept fully informed on all relevant matters affecting their pension plan.
- Update funding requirements to ensure continuous full solvency, so that the financial risk for retired members is at least minimized if not eliminated.
- The Pension Benefit Guarantee Fund could become redundant once continuous full solvency funding is in place.
- Increase the payout current PBGF Payment Guidelines during the interim period (while continuous full solvency funding) and give further consideration to indexation for inflation.
- Support continuous solvency by establishing a pension plan reserve fund which serves not only to protect the financial security for retired members but also provides the sponsor with the ability to smooth its funding requirements throughout its normal business, financial and economic cycles.
- Expand and accelerate reporting to the regulator, to allow this body to perform as a proactive and effective ‘watchdog’ for retired members, in situations where problems or irregularities are suspected in the financial status or performance of the subject pension plans.
- Introduce independent professional reviews and proactive regulatory monitoring to ensure adherence of pension administration functions to government regulations and guidelines, and for compliance with standards of practice established by applicable professional organizations.
- Prescribe annual indexing of pensions, to (help) compensate for the cumulative effects of inflation over time, and recognizing the increasing longevity of seniors.
- Resolve the issue of surplus ownership (“Assymetry” Issue); with the objective of reaching an equitable balance between plan sponsors and plan members such that this highly divisive issue may be finally removed from the table.
- *NEW!* Immediately implement the proposed re-structuring of the Ontario Pension System structure, which is absolutely fundamental to the effective implementation of all the substantive recommendations put forward by the Commission and by CFP.

3. Detail CFP Findings and Comments

- **FUNDING (Chapter Four)**

General

It appears that there is a core assumption in the current DB plan model and also in the OECP report whereby plan sponsors are always capable of funding the pension plan on a current basis as needed, both now and in perpetuity. But how many businesses and industries are totally immune from having significant financial issues or from having to seek creditor protection or worse? Ontario has numerous recent examples of DB plan sponsors (e.g. in the steel and automotive industries) that have encountered severe financial difficulties in both keeping their businesses going and in meeting their pension plan funding obligations.

But, it is probably due to this assumption that the DB plan community has up until now found it totally acceptable for a DB plan to have a solvency funding deficit and for allowing several years in which to amortize it. Recommendations in the OECP report are correctly indicating that solvency funding deficits are not desirable anymore and do propose moving the funding yardsticks in the direction towards achieving a higher level of ongoing solvency funding. ***But do the recommendations push the acceptable funding level sufficiently high, given the collapse of the investments markets twice so far in the 21st century and given the current problems with the economy and the banking crisis.***

Recommendation 4-1 (p.61)

The Superintendent should work with the Canadian Institute of Actuaries to ensure actuarial standards and practices continue to evolve in the direction of greater transparency and more structured discretion. The actuarial standards and practices should also include a requirement to reveal if the sponsor intends to take a contribution holiday.

All stakeholders would benefit from knowing what is under review, when it is scheduled to be completed and what is still pending. This information could be posted on a website maintained by the Superintendent or by alternatively by CAPSA.

Recommendation 4-2 (p.61)

The Superintendent should have the power to require that plans cease using assumptions that are unreasonable or that depart materially from accepted actuarial practices and to order an independent valuation or a peer review of a report, at the expense of the plan, if there are grounds to believe that the actuarial valuation misrepresents a material factor in its funding.

- CFP has previously recommended that all work performed by pension administrators and/or actuaries be subjected to independent review by qualified and experienced professionals. This is a normal practice in other business professions, such as professional accounting where even public auditors are subject to having their work reviewed by other auditing professionals. Pension administration of DB plans is very

complex. The professionals involved are currently assumed to be up-to-date on all matters of practice and are assumed to be making decisions and using their discretion independent of any pressures coming from sponsors, often their employers. The potential for conflict of interest is clear.

- Timing is an issue. Take advantage of using computerized information systems technology in the process so that issues are flagged quickly in the processing of the triennial filings.
- The costs incurred under these circumstances should NOT be borne by the plan if the need has arisen due to bad governance or deliberate misbehaviour on the part of a plan administrator and/or the plan sponsor.

Recommendation 4-3 (p.62)

- *Going concern valuations should no longer permit the exclusion of promised indexation benefits.*
- *Solvency valuations should no longer permit the use of smoothing practices or the exclusion of benefits.*
- *A special exception should be made for those plans that continue to provide plan closure benefits pursuant to a specific long-standing commitment to continue their non-funded status.*

Potential increases in sponsor contributions attributable to these enhanced transparency measures should be offset by so far as possible by the extension of amortization periods, by select relief from contribution increases for well-funded plans or by other means.

Further review and study is required before considering providing funding relief for “well-funded” plans. Given the turbulence in pension plan funding levels in the early 2000’s and again in 2008, should anyone even attempt to establish the parameters for what could constitute a well-funded plan? What will it now take for pension plans to be consistently well-funded for the long term?

The 4-1 recommendation and appended CFP comments apply here as well.

Recommendations 4-4, 4-5, 4-6, 4-7 & 4-8 (p. 63-64, 68)

4-4: The current requirement for an actuarial valuation every three years should be maintained. The time for filing the valuation after it is due should be reduced from nine to six months. Extensions should be given only in exceptional circumstances.

4-5: Plans whose triennial valuation shows that their funding has fallen below a threshold to be specified by regulation should continue to be required to perform and file an annual valuation.

4-6: The Superintendent should develop the capacity to monitor the pension system, and individual plans, more closely, and should have the power to order an interim valuation at any time if there are reasonable grounds to believe that a particular plan is at risk of failure.

4-7: The Superintendent should more aggressively discourage and more predictably sanction late filings, and develop a capacity to scrutinize filings to the extent necessary to improve the likelihood that inaccuracies will be detected.

4-8: A SEPP (single employer pension plan) should be subject to stricter funding rules than other plans.

- CFP fully supports the need for the Superintendent to be granted the powers and given the ‘toolkit’ needed to proactively monitor and supervise DB plans. Legislation should distinguish between new discretionary powers and those which should be declared as non-discretionary. For example, 4-6: “... should have the power to order an interim evaluation...” needs to be strengthened, i.e. “...should be required to order an interim evaluation...”
- The capacity of the regulator to pro-actively monitor the reporting as recommended in 4-7 could be significantly enhanced through the use of standardized templates for electronic submission and processing of all annual and triennial reporting.

Recommendation 4-13 (p.74)

Single employer pension plans should continue to fund according to both going-concern and solvency valuations.

There is increasing evidence that Canadian businesses are increasingly impacted by global markets, the global economy, and now by global banking and credit crises. New technology and global market trends have increased competition for Canadian companies and have rendered Canadian products and services obsolete quicker. These pressures lead to questions concerning the long-term financial stability of Canadian employers and their ability to continue to adequately fund their pension plans. No employer seems to be immune. For example, a year ago, who predicted that the North American car manufacturing industry would be in so much financial trouble as it is right now?

The upshot is that solvency valuation is becoming increasingly important and critical especially from a pensioner point of view. The going-concern valuation is also very valuable in periods of buoyant investment markets when pension plans may be underfunded.

Recommendations 4-14 & 4-15 (p.76)

4-14: Single employer pension plans should be required to maintain a security margin (or provision for adverse deviation) of 5% of solvency liabilities. This margin should be amortized over an eight-year period. The security margin should be deemed to be part of the plan surplus on wind-up, but not for other purposes.

4-15: For plans that have achieved 95% solvency funding, the normal amortization period for achieving the new required level, inclusive of the security margin, should be extended from five years to eight years. For plans funded below 95%, the current amortization period of five years should continue to apply until such time as they become eligible for the extended amortization period.

- These recommendations require more study in light of the current pension funding crises.
- External factors will come into play which may help determine if 5% is adequate or not. For example, the ability by nations and financial institutions to make changes that would reduce the chances of another international credit and banking crises will have an impact on stabilizing the factors used to determine the level of adverse deviation needed.
- There needs to be statement in legislation on the clear objective(s) of solvency funding. Without clarity, there will continue to be a perception that solvency

deficiencies are not only allowable but are part of an acceptable practice. It is this sort of thinking that has exacerbated the depths to which most DB plans are currently running with a solvency deficit.

- The above recommendations would be more acceptable (but not ideal) if legislation required that DB plans be funded on a solvency basis at a minimum 105% level with only few pre-defined exceptions.
- More needs to be recommended in order to provide plan sponsors with the means to maintain solvency funding at the 105% or other prescribed level. See the appendix regarding a recommendation by CFP to allow sponsors to fund a pension plan “reserve”. This key proposal was included in the CFP written submission to the OECP in September 2007 (see the Appendix to this paper).

Note that a similar recommendation is contained in the final report of the Alberta – British Columbia Joint Review Panel on Pension Standards, Reference 8.1.2-A: “Pension standards legislation should permit the establishment of a ‘pension security fund’ (PSF) that would be separate but complementary to the regular pension fund...”

Recommendation 4-16 (p.77)

If a single employer pension plan is in surplus on being wound up, the surplus should be distributed in accordance with the plan documents unless the parties agree, or the proposed Pension Tribunal of Ontario rules, that documents are not clear. In the event of such an acknowledgement or ruling, the sponsor may propose a scheme for the distribution of surplus, which would take effect if approved in one of two ways:

- a) *If plan members are not represented by a union, the proposal should be submitted to a vote by secret ballot of the plan members and retirees, and would take effect if approved by two-thirds of those voting; or*
- b) *If plan members are represented by a union or other organization, the sponsor should submit its proposal to representatives of the active members and retirees with a view to concluding a surplus distribution agreement.*

If the sponsor and the representative negotiators cannot reach agreement, they should submit the matter for determination to a dispute resolution procedure of their own choosing. If they cannot agree on such a procedure, or if it does not resolve the matter within a reasonable time, any party may apply to the Superintendent to refer the matter to the Pension Tribunal of Ontario, which would then establish the terms of the surplus distribution agreement.

As DB plans mature, there will be more and more retired members and fewer active members. It is therefore important that the consent of retired members be sought and considered independently from the active members.

Recommendations 4-17 & 4-18 (p. 78, 79)

4-17: Plan sponsors should be entitled to reduce or omit their contributions to a plan in any year in which it is funded at 105% or more of its solvency liabilities. However if – based on benchmarks to be developed by the regulator – a plan administrator knows, or ought to reasonably know, that funding has fallen below 95%, the administrator should immediately notify the sponsor to resume contributions until the plan is again funded at 105% of solvency liabilities.

- *If the regulator finds that a contribution holiday was improperly taken or continued, any contributions withheld from the plan should become immediately due and payable, together with interest, regardless of the plan's present funded status, and the sponsor should be subject to an administrative fine of up to \$1million, or double the amount withheld during the improper contribution holiday, whichever is less. The improper use of plan surplus to pay the expenses of the plan, including the PBGF premiums, should be treated in similar fashion.*
- *The parties to a collective agreement should be free to negotiate other arrangements for the use of surplus in an ongoing plan.*

4-18: Sponsors may apply to withdraw surplus from an ongoing plan pursuant to the procedures set out in Recommendation 4-16, provided that the plan remains funded subsequent to the withdrawal at 125% of full solvency funding, or 105% of full solvency funding plus two years of current service costs, whichever is greater.

Currently there is a pension funding crisis. Aside from making retirees very nervous about their own financial security, it does provide government and stakeholders with a fresh opportunity to assess what could have been done to lessen the impacts of a plunging stock market, etc.

The current crisis could be viewed as the proverbial “unforeseen disaster” and something which no one could have predicted and then taken advance measures to fully protect pension funds. But current practices provide little protection in times of a falling economy and poor stock market performance.

In contrast, the CFP recommendations that a DB plan must be kept fully solvent at all times in conjunction with an adequately funded reserve which serves to assist keeping the plan solvent over the normal high and low cycles of both the economy and stock market activities. Had such a feature been in place at the beginning of last year, it would have:

1. Diminished the severity of the current funding crises;
2. Reduced the total amount amortization payments that sponsors will now have to provide for; and
3. Lessened the financial risk for plan members and retirees.

Recommendation 4-19 (p. 80)

Ontario should investigate strategies for reducing the cost of annuities and the influence of the annuities market.

Pensioners sense a real urgency to solving these problems very soon given the current pension plan funding crisis and the state of the economy. The “influence of the annuities market” should be re-stated to include the difficulties and even the inability of the Canadian annuities market to absorb the demands which would arise from the wind-up of a pension plan with total assets exceeding \$100M or more.

Recommendation 4-20 & 4-21 (p. 81, 82)

4-20: Every plan should contain a clause stating explicitly what provision, if any, has been made for the indexation of benefits and for the funding of the indexation. Each triennial valuation and each annual statement provided to the regulator, to active plan members and to pensioners should provide the same information.

4-21: *The government should proclaim in force the provisions of the Pensions Benefits Act that allow it to require that pensions be inflation-adjusted in accordance with a formula to be prescribed. That formula should be restricted to “inflation emergencies”.*

Given that pensioners are living longer, it is not sufficient to provide indexing for just “inflation emergencies”. Normal inflation is accumulative and adds up quickly over time. And given the increasing numbers of pensioners, and increasing loss of their spending power will have negative impacts on the local and provincial economies.

Currently some plans provide indexing but cap it which should facilitate long term funding plans. Some plans also have a “catch-up” provision for use when an indexing cap has been utilized.

Recommendations 4-22 & 4-23 (p. 83)

4-22: *Irrevocable letters of credit should be permitted as security for a fixed proportion of contributions owing to a plan, and for a maximum period of time.*

4-23: *Ontario should investigate the possibility of permitting the use of asset pledges to provide security for unpaid contributions to pension funds.*

- Investing cash provides for growth of the fund while letters of credit and asset pledges do not. Consideration should be given to requiring sponsors, who choose to use letters of credit and asset pledges, to contribute additional funds to their pension plans to compensate for this.
- Should Ontario decide to proceed with either or both of these recommendations, there need to be limits on the use of these financial instruments and careful rules to control their use, similar to what other Canadian jurisdictions have implemented on a temporary or permanent basis.

Recommendation 4-25 (p. 86)

The Ontario government should endeavour to persuade the federal government to reform the federal investment rules and, in particular, to remove or amend particular quantitative restrictions that no longer make sense, such as those involving prohibitions on Canadian, but not foreign, investments.

CFP strongly supports federal-provincial cooperative reform in this area, and urges the widespread communication of investment rules and standards.

Regardless of jurisdiction, the process involved in reviewing and changing the rules should be totally transparent to all pension plan stakeholders.

- ***PENSION PLANS IN A CHANGING ENVIRONMENT (Chapter Five)***

Recommendation 5-2 (p. 90)

The Lieutenant Governor in Council should establish an Ontario Pension Agency to receive pool, administer, invest and disburse stranded pensions in an efficient manner.

CFP urges government to make this a high priority in light on today's economic and financial crises. It presents a viable alternative to the forced wind-up of a pension plan in times of poor rates of return, when the demand for annuities exceeds the capacity of the Canadian market, etc.

Recommendation 5-6 (p. 94)

When a pension plan is being wholly or partially wound up, when a transaction provides the opportunity for a pension asset transfer, or when an active plan member leaves a job in which she or he has earned pension credits, active plan members and retirees should be given the choice of depositing the value of any pension accruals standing to their credit with the Ontario Pension Agency. Sponsors and unions negotiating the consequences of corporate or government restructuring should, by mutual consent, also be able to transfer plan assets to the Ontario Pension Agency in respect of some or all of the members affected.

There is a need here to ensure that retired members are not penalized through increased financial risk: when assets are transferred out of their plan where their plan has a solvency deficit; or when assets being transferred-in from another plan reduce the solvency level of their plan. .

Recommendation 5-15 (p. 102)

When 90% of the active members of a single employer plan are terminated within a two-year period, the Superintendent should have the power to require that the plan be wound up or reconfigured. This power should be used only if the Superintendent concludes that either (a) the sponsor is not acting bona fide, or (b) the plan in its reduced state is unable to meet its obligations.

The regulator must have authority to determine the best course of action on a case by case basis using all the facts pertinent to each plan and its sponsor and must include consideration for what is in the best interests of retired members.

To be effective in this area, the regulator will have to be able to pro-actively monitor and to ideally be in a position to anticipate a potential issue with a specific pension plan.

Recommendation 5-21 & 5-22 (p. 107)

5 – 21. Following conversion from a defined benefit to a defined contribution plan, or to a hybrid plan with elements of both, surplus carried over from the original plan should first be used to provide the required security margin for defined benefits earned under either plan. If additional surplus remains, it should be available to fund contribution holidays or other expenses of the converted.

5-22. A sponsor considering the conversion of a defined benefit plan to a defined contribution or other type of plan must give notice of the proposed conversion to active and retired plan members and to any union or other organization representing them. The notice should be accompanied by an accurate, readily understood explanation of its implications, as well as technical data relating to the new plan in a form approved by the regulator.

If the union or representative organization approves of the proposed conversion or, in the absence of such an organization, if the conversion is approved by two-thirds of the active members and retirees voting in a secret ballot, the approval shall be filed with the regulator. Upon receiving the approval and ensuring that the transaction is otherwise in accordance with Recommendation 5-21, the regulator may, without further delay, issue an advance ruling approving the conversion.

In the absence of approval from the union, organization or plan beneficiaries, the sponsor must give 90 days' notice to all interested parties and to the regulator. After expiry of the 90-day notice, the regulator should process the proposed transaction in the normal manner.

Where a split or merger is proposed by any plan on whose governing body at least 50% of the members are nominated by active plan members and/or retirees, approval by that governing body should serve in lieu of the approval process set out in this recommendation.

A 90 day notice period is insufficient. Notice should be given by mail, with ample lead time for response, and follow-up where needed.

• **WHEN PLANS FAIL (CHAPTER SIX)**

Retired members are relying heavily on their pensions from private pension plans. They, more than active members, would never have an opportunity to replace any of this income if lost through a forced wind-up of a pension plan having a solvency deficit.

CFP fully supports the need to provide retired members and their pension plan with legislated rights and protection as secured creditors should a plan sponsor be placed in bankruptcy or declared insolvent. Without that protection, the social assistance programs of Ontario and the communities could be affected.

• **REGULATION (CHAPTER SEVEN)**

- CFP fully supports the recommendations contained in this chapter but urges that even higher priority be placed on:
 - o Re-writing, revising and modernising the Pension Benefits Act;
 - o Creating a separate pension regulatory body with an appropriately educated and experienced staff, a stronger mandate and a budget appropriate for the much needed new and enhanced regulatory powers and functions proposed in the Commission's report.
 - o The need for participation by stakeholder groups, including retired members, during the process of turning these recommendations into new legislation and regulations. Government regulation is the key factor for providing retired members with the assurance that their pensions are being adequately protected.
- It is in the best interests of retired members that every attempt is made to ensure that an updated Pension Benefits Act will be the exclusive source of pension law (Recommendation 7-1).
- There is currently a very real reliance by government on the advice of the Canadian Institute of Actuaries in establishing actuarial guidelines and rules governing the work performed by pension plan actuaries. With reference to Recommendation 7-3, the proposed regulatory body must be charged with the full responsibility for overseeing and approving the standards and practices used by actuaries and other professionals involved with pension plan administration.

- Recommendation 7-7 proposes significant enhancements to the systems and processes used by the regulator to carry out its functions. Some other pension regulatory jurisdictions are more advanced than Ontario in this regard but not all. It is therefore reasonable to believe that all jurisdictions, including Ontario, could benefit from better cross-jurisdictional dialogue and cooperation in finding or developing best practice solutions. Improved inter-jurisdictional cooperation is essential if other recommendations contained in this chapter are to be implemented quickly and economically.
- Recommendation 7-11 identifies the need for the regulator to become proactive. Other regulatory jurisdictions have demonstrated that having the capability to quickly identify pension plans which are encountering funding difficulties, or which appear to be heading in that direction leads to improved security for plan members and retired members.
- A number of recommendations call for the regulator to develop more internal objectives and measurements and to implement better processes for efficient and timely handling of external requests and complaints, the expedient issuance of rulings and interim orders, etc. CFP believes there also should be complete transparency by the regulatory on its record for meeting its objectives and measurements by means of annual reporting to the public.

- **GOVERNANCE (Chapter Eight)**

Recommendation 8-2 and 8-3 (p. 158)

Unions should be encouraged to negotiate both the major substantive elements of pension plans arising out of collective agreements and the governing structures of such plans. The regulator should accord plans with joint governance structures a greater margin of regulatory discretion than would be available to plans lacking such structures.

Unions that seek and accept a role in plan governance should be encouraged to ensure that both active and retired members have a voice in decisions that affect them. Unions should also develop the technical and analytical capacities necessary to support effective member participation in plan governance.

These recommendations deserve further study. As DB plans ‘mature’, the number of active members is either holding steady or dropping. At the same time the number of retired members is increasing and in some cases exceeding the number of active members. Who then should be representing the retired members, particularly when there can be a conflict of interests between the two groups? It should be mandatory that retired members be given the opportunity to participate directly in matters of plan governance and to be allowed to choose who will represent them.

There is a gradual increase in the number of retired members of select pension plans who have formed advocacy groups to act on behalf of all retired members of a pension plan. Pension legislation should recognize the right for these groups to work with sponsors to choose the retired member representatives on governance councils and the like.

Recommendation 8-9 (p. 165)

Plan sponsors who administer their own plan should be encouraged to reduce or eliminate inherent conflicts of interest by: ensuring so far as possible, that those assigned to the role are given an unequivocal mandate to act in the best interests of the plan; providing representation for members and/or retirees and/or independent members on the plan's highest decision-making body; or retaining arm's-length professional advisors to administer the plan on their behalf.

Under current legislation, there are legal issues which could or should discourage non-company officials or representatives from accepting these sorts of decision-making positions. It is understood that Quebec has taken action to absolve these appointees from being held liable for the decisions being taken by pension plan administration bodies.

Recommendation 8-21 (p. 172)

Plan administrators should provide an annual information statement to active and retired plan members in easily understood language(s). The statement should include: a simple description of how pensions are funded and benefits are calculated under the plan; information on the plan's funded status (including whether it is in surplus or deficit and whether a contribution holiday is in progress or contemplated); the potential impact of its funded status on active and retired members; and a telephone number and/or website address where further information can be obtained from the administrator or the sponsor; and similar coordinates for the pension regulator.

It would be worthwhile for the regulator to provide a template for reference or use by the plan administrators or sponsors. This would better ensure the language is easily comprehended plus provide year over year consistency in the manner in which the data is presented and explained.

Recommendation 8-22 (p. 173)

Plan board members, governors or trustees should prepare, file with the regulator and make available to active and retired members at three-year intervals (or more often, if material changes have occurred) the plan's detailed governance, funding and investment policies. Particulars of the matters to be addressed by these policies should be developed by the pension regulator in consultation with the stakeholders. Template policy statements should be developed for the assistance of smaller plans.

This information could be posted on a website (secured if desired) maintained by the employer or pension administrator and easily kept updated on a current basis.

Ensuring this detail is available does not necessarily mean it is being used. Recent field visits by a Canadian pension regulator (not FSCO) found instances of written practices and formally approved procedures not being followed. ***This is evidence for the need for independent reviews or audits of pension administration functions and reporting.***

Recommendation 8-25 (p. 175)

The PAC [Pension Advisory Committee] should: be provided with effective means of communicating with all plan members, including retired members; have access to all information distributed to plan members or file with the regulator; receive notice of all amendments, applications, proceedings or transactions involving the plan; and be informed of all votes or consultations designed to solicit the views of plan members.

“Effective means of communicating” should include provision of a means by which retired members may communicate directly with their PAC representatives and vice-versa. Considerations in this regards must include recognition for the difficulties that will arise due to current privacy laws.

Recommendation 8-26 (p. 176)

No PAC need to be formed when [] (c) a majority of active and retired members vote in a secret ballot not to establish a PAC.

If this is to be effective, it also requires incorporating a provision to periodically allow members and/or retired members to reverse their decision (through secret ballot) if so requested by a minimum number (10 %?) of members and/or retired members.

There needs to be provision for a PAC to be formed even if either members or retired members do not vote in favour.

- **INNOVATION IN PLAN DESIGN (CHAPTER NINE)**

CFP is supportive of the recommendations as long as any implementation does not threaten the financial security of current retired members’ pensions.

- **THE FUTURE OF DEFINED BENEFITS PENSIONS AND PENSION POLICY IN ONTARIO (CHAPTER TEN)**

CFP is supportive of the recommendations as long as any implementation does not threaten the financial security of current retired members’ pensions.

P. 10.5 Getting from Here to There

CFP is very supportive of the proposed new structure as shown in Figure 1 and encourages a high priority be placed on implementation. As the Commission’s report states, “if adopted, these reforms will help to streamline pension regulation and be of great assistance to the stakeholders”.

Recommendation 10-8

[] The government should put in place appropriate agencies and officials who can carry forward the ongoing work of reform.

This is obviously going to require funding which CFP believes is required as soon as possible. In terms of total government spending this is not likely to be a burden nor is the additional funding that may be required for enhanced regulation, other new requirements and new structure elements (re Figure 1 in p. 10.5).

CFP recommends that all of these new requirements be specifically identified in legislation so that ongoing funding may be deemed mandatory in order for government to meet its legislated obligations.

Appendix – Extracts from the CFP formal submission to the OECP in September 2007

4.1.2 The Benefits of a Pension Plan Reserve Fund

The reserve fund fundamentals are described in Section 5.1.2. In addition to its main purpose of ensuring the pension plan is fully solvent at all times, the reserve fund will:

- Eliminate current “asymmetry” issues for the sponsors. Any excess pension plan assets would be transferred currently to the reserve account. The reserve account would be funded as required to keep it within a prescribed minimum and maximum funding range.

Should the reserve fund exceed the range maximum, the excess would belong to the party or parties that are directly funding the reserve and they would advise the regulator and Canada Revenue Agency as to how the excess is to be disbursed and request the regulator’s approval to proceed.

- Eliminate current misunderstandings or misconceptions regarding pension plan ‘surpluses’ in the current DB plan model.
- Eliminate, along with implementation of full continuous solvency funding, any notions that pension plan solvency deficiencies are acceptable risks.
- Provide a funding ‘cushion’ that will assist the pension plan sponsor in better ensuring that its pension plans are fully funded throughout the full business cycle as well as in periods of low interest rates and returns on plan assets.

Provide sponsors with an option to increase payments to the reserve in order to have available the funding needed for financing future plan amendments. This would help ensure that new plan amendments will not create a solvency or reserve fund deficiency requiring special payments following implementation.

5.1.2 Establish a Reserve Fund

In order to sustain continuous full funding, a reserve fund is required for each plan. Reserve fund minimum and maximum funding levels are required for each pension plan.

- The reserve fund would be the source of funding required to keep the main pension account fully funded at all times. Normally all funding and special payments to the pension plan would be made to the reserve fund. Excess funding in the main account would be transferred to the reserve fund.

- The *minimum funding level* for the pension reserve would be the amount required to be set aside for adverse deviation, determined by the plan actuaries in a manner similar to the new Québec requirements. The pension reserve account must never be allowed to fall below the minimum.
- The plan actuaries would also establish a pension reserve *maximum funding level* for each DB plan. This would include consideration for the short and medium outlooks for Canada's economic and financial cycles, the relative maturity of the plan, the financial forecasts for the sponsor's business, and so on.
- The current funding limits specified in the Income Tax Act would no longer be required.
- The reserve fund is to be considered part and parcel of the whole pension plan and protected in law as such. Funds in excess of the upper reserve limits in the reserve fund may be withdrawn but only with the prior agreement of all the parties who have contributed directly to the reserve with appropriate notification to the regulator and the Canada Revenue Agency.

CFP Canadian Federation of Pensioners

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