P-6 P-6

ISSN 1180-4327

Legislative Assembly of Ontario

First Session, 41st Parliament

Assemblée législative de l'Ontario

Première session, 41e législature

Official Report of Debates (Hansard)

Wednesday 11 March 2015

Journal des débats (Hansard)

Mercredi 11 mars 2015

Standing Committee on Public Accounts

Comité permanent des comptes publics

2014 Annual Report, Auditor General:

Financial Services Commission of Ontario

Rapport annuel 2014, vérificatrice générale :

Commission des services financiers de l'Ontario

Chair: Ernie Hardeman
Clerk: William Short

Président : Ernie Hardeman
Greffier : William Short

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

http://www.ontla.on.ca/

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario

Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON PUBLIC ACCOUNTS

COMITÉ PERMANENT DES COMPTES PUBLICS

Wednesday 11 March 2015

Mercredi 11 mars 2015

The committee met at 1231 in room 151, following a closed session.

2014 ANNUAL REPORT, AUDITOR GENERAL

FINANCIAL SERVICES COMMISSION OF ONTARIO

Consideration of section 3.03, Financial Services Commission of Ontario.

The Chair (Mr. Ernie Hardeman): Here we are. We'll call the meeting of the Standing Committee on Public Accounts to order. We are meeting this afternoon to give consideration to section 3.03, Financial Services Commission of Ontario: Pension Plan and Financial Service Regulatory Oversight from the 2014 Annual Report of the Auditor General.

We have people here to brief us on section 3.03 of the report. We welcome you to the committee. You will have 20 minutes or so to make your presentation and then we'll have questions from the committee. We'll do the questions in a 20-minute rotation. We will start with the third party.

Ms. Catherine Fife: This morning I was told that the PCs would be starting.

The Chair (Mr. Ernie Hardeman): If that's the way you would like it, we have no—

Mr. Jim McDonell: It's just that—

The Chair (Mr. Ernie Hardeman): It doesn't matter where we start because everybody gets equal time. If you wish, we'll start with the official opposition and then we'll go to 20-minute rotations. At the end of the 20 minutes, we'll divide the remaining time equally for each party and then make the rotation in that.

With that, thank you very much for coming in. If you would identify yourself as you start to speak for the Hansard record so we can keep track of it. You only have to introduce yourself once and then they'll keep track of who's speaking—

Mr. Brian Mills: Okay. That's great.

The Chair (Mr. Ernie Hardeman): —and keep the microphone in the right address. With that, welcome. The floor is yours.

Mr. Brian Mills: Thank you, Mr. Chair. My name is Brian Mills. I've been the interim CEO and superintendent of financial services at the Financial Services Commission of Ontario since October. I'd like to start by thanking you for the opportunity to address the Standing Committee on Public Accounts with respect to the Auditor General of Ontario's annual report, specifically on section 3.03, Financial Services Commission of Ontario: Pension Plan and Financial Service Regulatory Oversight.

With me today on my left is Anatol Monid. He is the interim executive director of the licensing and market conduct division. He was appointed to this position in October and has been with FSCO since 2005.

To my right is Lester Wong, who is the interim deputy superintendent of the pension division. He was also appointed to this position in October. He has been with FSCO since 2009.

Ms. Shonna Neil, on my far left, is the director of the licensing branch in the licensing and market conduct division and has been with FSCO since its inception in 1997.

Finally, I'd like to thank the Auditor General of Ontario, Bonnie Lysyk, for her report and appreciate her advice to strengthen financial services regulation in Ontario.

Let me give a little bit of background on FSCO. It was established under the Financial Services Commission of Ontario Act, 1997. Its mandate is to provide regulatory services that protect the public interest and enhance public confidence in regulated sectors.

FSCO is a cost-recoverable agency. The majority of FSCO's costs are recovered from the regulated sectors through a combination of assessments and fees. FSCO's structure is comprised of a five-member commission, a superintendent of financial services and his staff, and a financial services tribunal.

FSCO's presence and responsibility are on a broad brush across the industry. There are about up to 500 staff at FSCO. We have an annual budget of approximately $100 million. We regulate nine sectors. The entities we regulate are either individuals or businesses, and there are about 75,000 of them. We have over 7,000 pension plans that are registered in Ontario, and there are four million members in those pension plans. The assets in those pension plans are about $520 billion.

It's in FSCO's interest that our regulation of pension plans and financial services continually improves to keep pace with the evolving marketplace. Integrated financial regulation is increasingly important in the global connected economy. Such an economy brings with it the promise of greater benefits for Ontario's financial services sectors, but also a potential for greater risk.

We learned this in 2008 with the financial crash, and it had devastating results for parts of the world. It gave us an indication of what the absence of integrated regulation can produce. Canada and Ontario did quite well and weathered the storm—not without a few bruises. The role of effective financial services regulation cannot be understated.

Our role at FSCO is to supervise the sectors to make sure the public interest is protected, to enhance public confidence in these sectors. We ensure that the regulated entities follow the law, that they are qualified to enter the financial services marketplace, and that they have the expertise to provide the products, benefits and services to consumers and pension plan members.

We don't just focus on regulated entities; we also work to make sure the public is equipped to make well-informed decisions about their products, mortgages, pension plans, insurance and other financial products. As a financial services regulator, it's our role to make sure we have an overview of these regulated sectors. We use the information we collect from these regulated entities to anticipate areas of potential risk, to take appropriate steps to inform the marketplace about how the law works, correct misconduct or cease harmful practices. In addition, we advise the government on changes to the law to best protect the public interest.

On our website, you can find our regulatory framework. That is how we operate. It outlines our principles and our core activities. I'm just going to run quickly through the six core principles we follow.

We use a risk-based approach, which focuses resources and efforts on areas of risk to consumers and pension plan members.

We use an evidence-based approach in our decision-making, so we support our decisions by facts, judgments and analysis.

We are proactive. We take action in order to avoid and mitigate any potential risks before they arise.

We use a balanced approach. We strike a balance among the interests of all stakeholders, including consumers, pension plan members, regulated entities and stakeholders, and that helps the sector function well.

We are service-oriented. We communicate and interact with regulated entities, stakeholders and the public through multiple channels, including consumer protection materials, direct consultation and more.

We are transparent. We publicize licensing data. We publicize our enforcement actions and corporate reports.

We are collaborative. We work co-operatively with other regulators across Canada, regulators within Ontario, and with industry associations across the province.

We've undertaken a number of initiatives in the past year to support government policy and strengthen our capabilities. That included the regulation of health service providers that started on December 1. We've supported pension plan legislation reforms that are going on. We've been assisting with legislative reviews of the mortgage broker, auto insurance and credit union sectors. We've been providing fraud prevention information for consumers. We've been looking into the implementation of user-based insurance. We've also participated in a number of national initiatives in the mortgage broker sector, and we have undertaken reviews of consumer protection and financial literacy issues in life insurance and mortgage brokers.

In addition, in the last year, we've developed a strategic plan to take us forward for the next three years.

Now, getting on to the important thing, the audit recommendations and our implementation of those audit recommendations: Immediately following receipt of those audit recommendations, we developed implementation plans and timelines, identified areas that were within the government's purview, as well as the items that might be impacted recently by the announcement of the mandate review by the Ministry of Finance. We will begin with an update on the pension recommendations.

I'm now going to turn it over to Lester to run through our action plans.

Mr. Lester Wong: Thank you, Brian. I'm Lester Wong, the interim deputy superintendent of pensions at FSCO.

As Brian noted, FSCO has developed action plans to respond to the recommendations, and indeed, we have begun to implement some of them already. The pension recommendations will strengthen the oversight in a challenging pension environment. The environment we've had of low interest rates and increased longevity has led to additional pension liabilities and increased the funding requirements for plan sponsors. Interest rates and investment returns are expected to remain low for the foreseeable future.

The financial crisis and the trend to lower interest rates resulted in a decline in the solvency of defined benefit plans. The underfunding was also noted by the Auditor General. The situation has since improved and should continue to improve unless interest rates fall further or investment returns come in below expectations. However, rates of underfunding are dependent on the overall economy and are susceptible to market volatility.

1240

In this fluid environment, FSCO works to ensure the protection of pension plan members and to specifically enforce the Pension Benefits Act and regulations.

Our regulatory activities include: plan registration, monitoring for compliance, approvals of transactions, conducting plan examinations, communication and education and enforcement.

In 2015, FSCO continues to support the government implementation of a number of initiatives to protect members and enhance the oversight of pension plans: for example, the filing of the statement of investment policies and procedures; disclosure of environmental, social and governance factors in investments; the provision of biennial statements to former and retired pension plan members; and a new framework for pooled registered pension plans.

FSCO also publishes guidance to pension plan auditors on disclosure expectations for financial statements pertaining to new accounting standards.

I will now summarize the pension recommendations from the audit report and FSCO responses.

Recommendation 1: Analyze reasons for the increasing underfunded status of defined benefit pension plans.

To manage the risks of underfunding, FSCO is collecting research to analyze the underfunding trends to determine the future potential risks and identify possible mitigation strategies.

Recommendation 2: Assess the financial risk to the Pension Benefits Guarantee Fund, also called the PBGF.

FSCO is reviewing the PBGF and will consider what additional analysis is available to improve the monitoring of the fund and also to present the financial statements of the fund to better reflect the plan's exposure.

Recommendation 3: Implement changes to legislation and policies to increase the monitoring and follow-up of underfunded and non-compliant pension plans.

FSCO is working with the Ministry of Finance to broaden its ability to appoint or act as a pension plan administrator and order actuarial reports.

FSCO is also identifying areas where we believe it would be effective to have monetary penalties for enforcement purposes.

Finally, FSCO has created a pension oversight section to more effectively deal with plans that are delinquent in their filings with FSCO.

Recommendation 4: Increase on-site examinations and improve examination procedures to assess investment risks.

FSCO will evaluate whether more examinations can be conducted with existing resources, collect additional data to assess risks and identify if there are additional risks in the areas of investment that need to be monitored.

Recommendation 5, which is the final recommendation pertaining to the pension sector: Implement improvements to statutory annual disclosures from plan administrators to include more meaningful information for plan members and provide members with more information on how FSCO protects their pension interests, as well as how their plan performed in comparison to other plans.

FSCO is identifying new information that may be provided as part of the annual disclosures to members and will make recommendations to the government regarding enhanced disclosure.

FSCO will also identify additional information that can be provided to plan members about FSCO's activities and about their plan's performance and expenses.

For all of these recommendations, FSCO will also advise government where necessary regarding legislative changes.

At that same time, FSCO will continue its oversight of pension plans in Ontario and support government initiatives to strengthen the retirement income security of Ontarians.

Now that I've had the opportunity to update you on the progress in pensions, I will turn it over to Anatol Monid, executive director of licensing and market conduct, who will provide you with an update on the financial services recommendations.

Mr. Anatol Monid: Thank you, Lester. I'm Anatol Monid, interim executive director, licensing and market conduct division.

In overseeing financial services, FSCO's role is to protect the public interest by ensuring compliance with the laws governing the five other regulated sectors. There are eight laws covering these sectors, and they vary in their regulatory requirements, as well as the nature of the entities we regulate. To ensure compliance with these eight laws, our financial services regulatory activities include, licensing and registration, filings and applications, monitoring and compliance, investigations and intervention, enforcement, market conduct regulatory policy, and participation in national regulatory coordination activities.

FSCO also works to continually improve compliance and consumer protection, and here are some examples:

—conducting automobile insurance market conduct reviews;

—supporting the Canadian Council of Insurance Regulators, or CCIR, with reviews of travel insurance and property insurance related to natural disasters;

—health service provider monitoring and on-site compliance activities;

—life insurance agent on-site compliance examinations;

—product suitability reviews in the life insurance and mortgage-brokering sectors.

Much of this work is focused on ensuring compliance with the laws, and our statistics show a high and increasing rate of compliance in the insurance and mortgage-brokering sectors. For fiscal year 2011-12, it was 90%; 94% in 2012-13; and 96% in 2014-15. These figures exceed our target compliance rate of 90% and show the progress of compliance activities since the audit was commenced.

Let me turn back to the final audit recommendations and tell you how FSCO is taking actions to address the remainder of the recommendations in financial services regulation.

Recommendation 6: Change the Co-operative Corporations Act to require criminal background checks on board members, list approved offering statements on FSCO's website, conduct ongoing monitoring, and ensure that fees charged to co-ops are commensurate with FSCO's costs. In addition, it was recommended that FSCO consult with the Ontario Securities Commission on sharing or transferring the responsibility of reviewing offering statements.

FSCO is assessing its authority to publish any information on the receipted offering statements on its websites. Please note that the responsibility for initiating legislative reviews lies with the government, and FSCO will make recommendations to the government regarding fees.

FSCO, in conjunction with the Ministry of Finance, will initiate further discussions with the Ontario Securities Commissions regarding the review of offering statements.

Recommendation 7: Enhance agent licensing, specifically with respect to system controls and errors and omissions insurance. FSCO is developing an enterprise development program to better support data-gathering, our internal controls and improved risk assessment, and is creating a data steward position to manage the system data.

FSCO is also piloting insurance agent on-site examinations, which will include errors and omissions insurance verification, and is developing a position paper on how information available from a national statistical database can be leveraged for information about errors and omission claims made by life insurance agents. It should be noted that FSCO is not required to continuously verify errors and omissions insurance. To collect the necessary information on compliance, FSCO will examine how to create agreements with insurers to receive data on whether insurance agents have purchased errors and omissions insurance. FSCO will also examine how to create agreements with insurers to receive data on whether insurance agents have purchased E&O insurance.

Recommendation 8: Monitor and investigate complaints, including examinations and investigations related to enforcement actions by other regulators towards FSCO licensees.

FSCO is developing a framework to document how we identify, assess and deploy resources to address or mitigate high-risk areas. It is also reviewing its performance standards to provide more timely publication of compliance and examination reports to the industry. FSCO's recent statistics on how successful total complaint resolution has been is at a rate of 99% for the fiscal year 2013-14. In addition, FSCO is putting in place enhanced processes to monitor timeliness and outcomes of complaints and ensure that licensees that are sanctioned by other regulators are assessed more quickly.

It should be noted that there are no automatic revocations or suspensions allowed due to actions taken by other regulators. FSCO must follow due process investigating whether there has been a contravention of the regulated laws or the conditions of a FSCO licence.

That summarizes our plans for the financial services. There is one final recommendation from the Auditor General that Brian Mills will speak to now.

Mr. Brian Mills: Thank you, Anatol. Let me address the Auditor General's last recommendation: to explore the transfer of some responsibilities to newer self-governing industry associations. The decision-making on this matter rests with the Ministry of Finance, or with the government. Self-governing industry associations are best suited to oversee a single sector, a contained sector. They were created at a time when intermediaries tended to be restricted in the number of licences that could be held.

1250

The government also received a different recommendation from the Drummond report, which proposed that consideration should be given to rationalizing and consolidating programs that regulate interrelated sectors. This is in line with current trends and modern regulation that call for a holistic view of regulating financial sectors that reflects the evolving environment.

The fragmented financial services marketplace has changed and now represents a highly interconnected financial services environment. As in integrated regulator, we believe FSCO is well positioned to monitor this interconnected marketplace for risks, conduct the appropriate licensing, monitoring and enforcement, provide the government with the appropriate advice, and deliver the mandate on protecting the public interest.

Implementing the remainder of the audit recommendations will strengthen these capabilities. We are committed to continuous improvement as an organization and regulator and we look forward to putting these actions in place.

The mandate review will also examine these issues, and FSCO is ready to work with the ministry and the appointed panel to ensure that the activities and services are aligned with the needs of Ontarians. Thank you, Mr. Chair.

The Chair (Mr. Ernie Hardeman): Thank you very much for your presentation. With that. we'll turn it over for questions. We'll start with Mr. McDonell.

Mr. Jim McDonell: Thank you, Chair. We see that the PBGF, which was created to help fund or look after the liability with private pensions, is grossly underfunded. I think there's $1 for every $77—that you have to cover the underfundedness of the plan. How do you see getting that in order, and have you provided guidance to the government?

Mr. Brian Mills: Let me ask Lester to take that question.

Mr. Lester Wong: Sure. The Pension Benefits Guarantee Fund—the PBGF—operates by assessing fees to the pension plans themselves that are covered by the PBGF. There is no underfunding per se, as you pointed out. There's a certain amount of assets in the Pension Benefits Guarantee Fund, and it protects certain benefits for members of pension plans where the pension plan is wound up and the employer or the sponsor of that pension plan is insolvent; there are no more funds available from the sponsor to provide assets to the pension plan. In that situation, if the benefits are covered by the PBGF, the PBGF covers benefits up to $1,000 of pensions. There are no details about exactly what is covered and what isn't, but that's how it operates.

Mr. Jim McDonell: Do you anticipate that if another fairly large company was to go under, there are funds in there to deal with it? We've seen that Nortel and some of the companies in the past have failed.

Mr. Lester Wong: As of March 31, 2014, the surplus in the PBGF is $375 million. In the event of a large underfunded situation, the funds are what is there, and that's how the legislation provides for the assessments to be provided. Under the law, that is the amount available to provide protection to the members.

Mr. Jim McDonell: Is your guidance to the government on that that those funds are adequate, or not? Does more need to be put aside?

Mr. Lester Wong: One of the recommendations from the auditor was for us to analyze the financial exposure of the PBGF and to look at whether there are ways to determine that financial exposure better and to identify if there are ways to mitigate the risks to the PBGF.

I'll note that there have been several studies of the PBGF over time: the Drummond report and the Eckler expert commission. They've done those independently and they've given advice to the government as to the operation of the PBGF. FSCO doesn't have the role of identifying the operation of the PBGF and how it should be funded.

Mr. Brian Mills: I can add a couple of comments to that. The government made a number of changes to the funding of the PBGF several years ago that included pretty well doubling the assessments on pension plans. Also, they changed the rules around coverage and broadened that out, and over the last several years we've had a significant influx of revenue with respect to those assessments because of that change.

The other thing is, the number of claims that the PBGF has faced over the last several years—which was outlined in the audit report—has been dropping. The number of claims has actually dropped pretty significantly over the last four or five years.

Mr. Jim McDonell: Public pensions are certainly one of the topics of the report. They're underfunded as well. Have you been providing any guidance to the government as far as the oversight, informing the stakeholders, whether they be the pensioners or the public, of the status of the pensions and what the current levels are?

Mr. Lester Wong: Yes. The members of pension plans are actually entitled to a lot of information under the legislation. They have access to all the statutory filings that their pension plan administrator is required to file, which would detail out the financial status or financial position of the pension plan as of whenever the last actuarial valuation was performed. So they do have access to that. In addition, FSCO has been doing for 11 years now—it's the 11th year, this year—what we call an annual defined benefit funding report, which provides an aggregate overview of the funded status of pension plans in Ontario, broken down by different types of pension plans. There's a lot of information about the status and the trends of what the pension plan environment and health of pension plans are over time.

Mr. Jim McDonell: I think that we also show that at the rate you're getting to these, it will take, I think, 14 years for you to actually cover—you're doing reviews, but at such a pace that people would be retired before information gets out to them. Many groups aren't actually filing these reports.

Mr. Lester Wong: Well, let me take that one. There's a problem sometimes with taking a point-in-time look at pension plans. It's sort of like looking at your portfolio of investments on a daily basis; it fluctuates.

In the audit report, it says that at the rate of plan examinations, it would take 14 years. That was December 2013. I can say, a year later, if I were to do the same number, it would take just a little over five years. In the course of a year, that statistic that it would take 14 years has changed to five years. I would caution about how effective that measure is in terms of identifying how well the examination process works or how many years it would take to look at all the pension plans.

I don't think it's our intent to look at every single pension plan. We take a risk-based approach to reviewing the plans. We've got 7,000 plans; we can't look at every single one of them with the same level of scrutiny with the resources we have. We have to identify where the highest risks are and look at that.

Pension plan funding status fluctuates over time, and I think that's part and parcel of when you look at a single point in time and take a statistic. It can be misleading—either plus or minus.

Mr. Jim McDonell: I guess the point there is, do you have the resources to do it? It's not a criticism of the people there. If there's not enough people, there's not enough people.

I guess getting a circuit that would allow for 14 years—companies come and go, of course. Your role there is oversight, and if there are people who can't rely on their pension plans—I mean, it's risk analysis. It does mean that there's a long period of time. It might be 14 years, it might be 10 years, or it may be only five years. But it doesn't give a lot of confidence from the stakeholder involved in it, just knowing the status—"Can I believe the numbers?" basically. Because that's really the role.

I heard this morning that OPG was in the worst shape. What status would it be? Would you have any information on it as far as being underfunded?

Mr. Lester Wong: I don't have the specific information on the OPG pension plan. I don't think I can disclose it even if I did. But I don't have the specifics of that pension plan.

Mr. Jim McDonell: But if you're using risk analysis and this is defined as the worst case, I would hope you would be aware of it. The point being, I think when you look at the funding levels, if you're providing guidance back to the government, has there been guidance about bringing that back closer to the industry norm, I guess you might say? I think it's funded five public dollars for every one employee dollar, which is something that's—

Mr. Lester Wong: I think we do try to keep on top of all the pension plans that have the most significant underfunding. We do watch that, and we do take a proactive approach to reviewing those plans' situations. As a regulator, our role is to make sure that they're funding in accordance with the legislative requirements. So that's what we do. But notwithstanding that, when we identify a situation where, even though they are contributing in accordance with the legislated minimums, if we see that the underfunded situation is large, we would take measures to keep on top of it, keep monitoring it and advise the government, where necessary, of that situation.

1300

Mr. Jim McDonell: So in a case like this, would part of your role be talking about—well, advice back to the government that, really, the contribution levels are out of whack with reality and the rest of the industry?

Mr. Lester Wong: We don't go that far to say that the contribution level should be X or Y in terms of the legislated minimums. We do provide advice—

Mr. Jim McDonell: I realize that you don't—I mean, in this case here, it's so out of whack. I would hope that if your role is to provide oversight and guidance back to the government, would that not be part of your role, that in here you've got a crown corporation that is seemingly out of control or—

Mr. Lester Wong: Yes, absolutely. I think that is—you know, part of the recommendations was to provide more meaningful information about specific plans, especially in comparison with other plans. So in that vein, we are going to look at that to see what kind of additional information we can provide to plan members, the public and the stakeholders, keeping in mind limitations that might exist due to privacy legislation and so forth.

Mr. Brian Mills: A couple of comments, too: You've got to remember that the pension plan itself has a fiduciary responsibility to its plan members. So if in fact it is having difficulty meeting its requirements under its plan rules and the PBA, then it needs to look at both its contribution levels from its membership and also from the employer, but also at the benefits that are being provided under that plan, and look at whether or not there are ways in which they would rationalize some of the benefits in those plans.

Mr. Jim McDonell: Yes. I guess my point in this—that is the goal; that is the requirement. But of course, if they're not fulfilling that, your role is to point that out and make sure the government's aware of that as well.

I know that they're talking about splitting off OPG and privatizing. How would that work now? You have a pension that, in the private sector, is probably not fundable. It's a huge liability. So any suggestions as to how they would—does the government just have to fund that? If you're going to pass off a liability like that, you've got to have somebody willing to take it on and somebody with the ability to pay for it.

Mr. Brian Mills: Most pension plans—again, if it were to be transferred, there would be a transfer of assets, if that was necessary. Again, I'm assuming the entity that it's going to be transferred to would take on the obligations and liabilities of that pension plan and would be governed by the same rules of the Pension Benefits Act and the plan rules.

Mr. Jim McDonell: Well, in the case of the government, I guess they're liable. If the pension's not there, they're responsible for it.

Mr. Brian Mills: Right.

Mr. Jim McDonell: In the case of a private entity, it sounds like you'd bankrupt it if it was forced to take this liability over, unless they had extremely deep pockets. To take on that liability, I would imagine the rate of return that would warrant that type of responsibility or concern would have to be significant.

Mr. Brian Mills: I guess the other thing you've got to remember is that the Pension Benefits Act allows for the payment of deficits. Every time they file a valuation, if it's triennially or annually, depending on what their funded status is, if they're running a deficit, they have a certain number of years in which they can pay off the deficit in those plans. So in a case like this, if they're running a deficit, they will have to make the payments equal to that amount over the five-year period.

Mr. Jim McDonell: Is there any requirement for the government to do that as well? OPG is essentially a government pension. Is there any requirement for that—

Mr. Brian Mills: Well, I don't remember if OPG is a JSPP, a jointly sponsored pension plan, or a single employer pension plan. I don't remember. Jointly sponsored pensions are a 50-50 split in terms of member responsibility and the employer. If OPG is a single employer plan, well, again, if it's a contributory plan, there's X per cent being given by the members and X per cent being given by the—if it's this case, it's the government, and it's the government that's matching that. Obviously, if they were going to privatize it, there would have to be a transfer of those assets of the pension plan, and, along that, whoever assumed it would take on the liabilities of the pension plan. Normally, that's what happens on a normal asset transfer case. They might top it up before it's transferred.

Mr. Jim McDonell: Okay.

The Chair (Mr. Ernie Hardeman): You have five minutes.

Mr. Randy Pettapiece: I just have some short questions. Thanks very much for coming here today. Getting back to Jim's questions on OPG, I don't think it's any secret that it is in big trouble if something happens. Is it allowable for a government to—if they have a pension plan in place or are going to want to put one in place and if it's in good shape money-wise, is it allowable for them to bail another pension plan out that it controls?

Mr. Brian Mills: No.

Mr. Randy Pettapiece: You can't do that?

Mr. Brian Mills: You mean using the funds from the OPG or, say, from a plan that's in surplus to another plan?

Mr. Randy Pettapiece: Yes.

Mr. Brian Mills: No.

Mr. Randy Pettapiece: Okay. All right; fine. We have some information here that is about the percentage of underfunded defined-benefit plans in Ontario—this goes back to 2005—it was about 74%. Unfortunately, that has grown quite a bit in the last couple of years. I know we're going up to December 2013. Do you have any plans that you would recommend to the government to help alleviate this problem? I understand that there were all kinds of issues to do with the stock markets and whatever else back in those years, but do you have any plans in place that you want to recommend to the government to help alleviate this situation?

Mr. Brian Mills: I'm going to let Lester talk a little about the current funded status of pension plans in Ontario because we have some of those numbers and we update them quarterly. I'll let him talk about that and also talk about the effect that interest rates have on the funding of DB pension plans, and also the equity markets and the differential between them and the sensitivity around that.

Mr. Lester Wong: The numbers you quoted were as at December 2013. I do have an update for December 2014, similar to the update that I gave on the other statistics. Instead of the 92% of plans that are underfunded, it's 78%. So that's closer to the 74% that you quoted, back in 2005.

In addition, the dollar amounts that were quoted, December 2013, are much lower as at December 2014. That's again illustrating the point that a point-in-time estimate or look at it is sometimes deceptive, and you need to look at the trend.

Brian mentioned that the way that the legislation works is that once an actuarial evaluation is done periodically, it identifies any deficit that needs to be funded. There's a time frame in the legislation for funding that deficit. Solvency deficits are funded over a five-year period. All else being equal, if returns are more or less at the levels that they're expected to be and interest rates stay level, over a five-year period, a solvency deficit generally would be fully funded.

What Brian mentioned was the sensitivities. We've had an unprecedented decline in interest rates for a very, very long time. I started in the industry in the mid-1980s. In the mid-1980s, we had double-digit long-term interest rates. Pension liabilities are priced or valued off of very-long-term interest rates. If you look at the charts for the price of oil and gas over the last six or eight months, it has gone down a lot. If you look at a graph, it just drops a lot. We've had that over a 25- to 30-year period in interest rates.

Just to give you the sensitivity, a 1% decline in interest rates would increase the liabilities of a plan by about, say, 18% on average. It could be from 15% to 20%, generally. So if you had a $100-million liability, and interest rates changed from one year to the next year—just the interest rates; not the benefits or anything—the value that an actuary would put on those liabilities would be, instead of $100 million, $118 million, say. Now contrast that to 2014—

The Chair (Mr. Ernie Hardeman): Thank you very much. We hope the rest of the answer will fit the next question. It goes to the third party. Ms. French.

Ms. Jennifer K. French: Thank you very much. I'm certainly pleased to be sitting in here today, and thank you for coming.

FSCO has few powers to address administrators of underfunded pension plans and, as we know, can only prosecute an administrator, can only appoint or act as an administrator, after it has ordered a plan to terminate. It also can't impose fines on those who file information returns late.

1310

However, federally, FSCO's counterpart can terminate a plan, appoint or act as an administrator without plan termination, and require more frequent actuarial evaluations of a plan.

So should the government give FSCO the same powers over pension regulations as OSFI has?

Mr. Brian Mills: You can start.

Mr. Lester Wong: Those were in the recommendations, in fact. Actually, there is something that's in the legislation but hasn't been enacted or proclaimed yet that provides some of those powers that you're talking about, which is to appoint or act as an administrator and to order actuarial reports. I think I mentioned that earlier in my initial address. As a regulator, of course, we are in agreement that any additional tools that we would have available to us would be useful. I think it's in the legislation in terms of: It's in there and it needs to be proclaimed. As a regulator, we are in agreement with that.

Mr. Brian Mills: Just a comment that I know that the government has made this a high priority because in the fall economic statement they outlined the fact that they would be working on finalizing those regulations to bring those into proclamation.

Ms. Jennifer K. French: I don't suppose they shared with you a timeline?

Mr. Brian Mills: I'm the regulator; no, they didn't.

Ms. Jennifer K. French: Okay. I'll redirect us back to the PBGF. We know it's designed to protect pension plan members and beneficiaries in the event of employer insolvency. While it's designed to be self-financing through the annual premium charges to pension plans, the fund has required significant loans and grants to cover claims payouts. Should premiums be increased so that the fund is better able to handle the claims on it from underfunded pensions, such as Nortel or US Steel?

Mr. Brian Mills: Let me reiterate what I said before: The government did increase the assessments pretty significantly. That was about four years ago. As you can see, the fund is now in surplus—$375 million as of the end of the last financials. There will be another set that will be run this year and be published later this year. That increased the assessment significantly. The coverage was broadened to five years from three years on new plans. And also, like I said, there's been a general trend downward over the last five years in claims on the PBGF.

Ms. Jennifer K. French: Thank you. Do you have an estimate of what the government will be on the hook for through the PBGF and then outside the PBGF's provincial loans when US Steel Canada emerges from the CCCAA?

Mr. Brian Mills: Of course, that hasn't happened. That process is currently in CCAA, so therefore there is no claim on the PBGF. There is nothing for FSCO to evaluate or assess at this time. As you know, that's a CCAA process and they're going through a number of steps through that process, so there will obviously be a time that that will be completed. Again, we would wait, as the regulator, until such time as a claim is presented to the PBGF.

Ms. Jennifer K. French: So no ballpark guess or estimate?

Mr. Brian Mills: Again, I think Lester pointed out that if you look at pension plans, the funding of those pension plans and the current liability status in those pension plans varies every year because, as you can see in the last year, there was a drop in discount rates and that had an impact on pension plans. But next year interest rates could go up, and therefore the liabilities in the pension plans could drop. Therefore, that could mean that if there was an eventual claim that was presented to FSCO as a regulator, that—you know, it's a point in time; it's going to be varying every year. So we really couldn't give you any estimate, again, because it really depends on the funded status of the plan.

Ms. Jennifer K. French: Okay, thank you. In response to the auditor's recommendations, you've indicated you'll "seek ways to enhance its analysis of the PBGF financial exposure and to make available its analysis to the government." What could that look like, in terms of time frames as well?

Mr. Brian Mills: Let me ask Lester to—

Mr. Lester Wong: Yes. What that means is, we will do some research to look at some other—there are not a lot of examples of other jurisdictions that have similar funds. In the States there is the PBGC, the Pension Benefit Guaranty Corp., and in the UK there's the Pension Protection Fund. Those are two examples. We will look to see whether there's anything they do in terms of analysis in trying to manage the risk exposure and whether we can adopt any of those practices or things that can help us do a better job of monitoring the PBGF for exposure.

Secondly, we will be looking at how the financial statements of the PBGF are presented and maybe seek some accounting expertise to see if there are ways to present that information in a more meaningful way to the readers of the financial statements. For that, we would look to the accounting profession, probably, give some advice as to how that's done.

Ms. Jennifer K. French: Thank you.

The Chair (Mr. Ernie Hardeman): Ms. Fife?

Ms. Catherine Fife: Thanks very much. It must be a very interesting position for you to come in as interim executive director, given the fact that this report came out. In some ways it could be very good timing. I think the Auditor General's report made it very clear that there were some processes at FSCO that were not managing risk in a timely manner or, in some cases, even in an efficient manner.

Just to touch, though, on Bill 120, which was passed: It was called the Securing Pension Benefits Now and for the Future Act, which strengthened the superintendent powers. That was debated and passed in 2010 and has yet to be proclaimed. I just want you to know that we'll be calling on the government to proclaim that because we think that FSCO needs those powers. Do you agree?

Mr. Brian Mills: Yes. FSCO does need those powers. FSCO has some powers that it can deal with now, but, yes, having the ability to request evaluations annually or in special circumstances would be of value to the regulator.

Ms. Catherine Fife: Moving on to the issue of insurance brokers and the weaknesses in the online licensing system for insurance agents, the AG pointed out that an online licensing system allows agents to hold active licences without entering whether they have acquired errors or omissions insurance, and you've already touched on that a little bit. But 23.5% or 9,500 of the active life insurance agents had missing or incomplete insurance data. It has also been pointed out that FSCO does not verify that errors and omissions insurance is valid. Several agents did not have the required insurance to cover clients' financial losses arising from agent negligence. I think that all of us as MPPs have seen issues like this arise in our ridings, and some of them have been devastating for people going forward.

In light of the concerns raised by the AG in citing a number of examples where other regulatory bodies had taken serious disciplinary action against brokers that FSCO subsequently relicensed, what is FSCO doing to ensure that it is adequately regulating the almost 50,000 insurance agents that FSCO licenses?

Mr. Brian Mills: I'll ask Anatol to address that.

Mr. Anatol Monid: Let me first state that the lack of documentation in the system does not mean that there was no errors and omissions insurance in place. To address those concerns, we are currently documenting our processes and systems, and this began in January 2015, under the oversight of committee, to address those processes and procedures. We are in the process of developing an enterprise development program that is designed to better support data gathering, internal controls, improved risk assessment and compliance across all the regulated sectors.

We will be in a better position to monitor this interconnected marketplace for risks, conduct appropriate licensing, monitoring and enforcement activities, provide the government with a source of integrated and current policy advice, and deliver on our mandate to protect the consumers.

Ms. Catherine Fife: Let me ask you a question, because you just mentioned the errors and omissions. Do you want to extrapolate on that a little bit? You were saying that you didn't have the data but it doesn't mean that you weren't monitoring.

Mr. Anatol Monid: Yes. In our review of the marketplace, we do audits that sample the marketplace. It generally has determined that there is a low risk of non-compliance and that most agents do in fact have errors and omissions insurance.

We are making further changes. On January 1, 2015, as a result of Bill 15, changes to the agent surrender process were introduced, and we believe that that will further reduce the risk of those agents not having errors and omissions, and that currently we're building a feature into the system that will provide notice to agents 30 days before expiry on the date of the record of their E and O insurance.

1320

We're building in ways to make sure that people are aware that there may be an expiry of their insurance and ways to exit the system if they don't believe that they wish to participate in the regulatory regime and won't have to purchase E and O insurance at that time.

Ms. Catherine Fife: Do you think that FSCO, in its current state right now, actually has the resources to investigate all agents who do not meet the minimum standards? Can you speak to that? The Auditor General did reference that there are some limitations—I mean, these are not just processes and then systemic issues within FSCO. Do you think you actually have the resources to fulfill some of the recommendations that the AG has put forward, Anatol?

Mr. Anatol Monid: We take a risk-based approach to addressing our regulatory activities. I don't think that we have the resources to look at all—I think it's 40,000 life agents. We use the resources we have in the areas where we perceive there to be the greatest risk to consumers or the greatest harm to confidence in the marketplace. Our information suggests that there is a low risk of agents operating without errors and omissions insurance—

Ms. Catherine Fife: But how do you know that?

Mr. Anatol Monid: We conduct audits, and based on the audit sample it indicates that it is a low risk. In addition, the information that we have about errors and omissions claims indicates that the numbers of claims are declining and that the size of the claims are declining as well.

Ms. Catherine Fife: You've just given me a very bureaucratic answer. Do you have enough resources? This is your opportunity to talk about some of the challenges you would face to ensure that you're actually able to do the job that the ministry expects of you, that the government expects of you.

Mr. Anatol Monid: Of course, if we had more resources, we could do more.

Ms. Catherine Fife: A very good bureaucratic answer as well. I thank you for that.

How much time do I have?

The Chair (Mr. Ernie Hardeman): You have about six minutes.

Ms. Catherine Fife: Are you just guessing? All right.

I'm going to stay on insurance. Concern has been raised in some quarters about the growth of MGAs, managing general agents. There was actually a Globe and Mail article that was written back in 2010—ironically, when Bill 120 was first passed. I'm just bringing up that five-year gap, and I'll do that on a regular basis. The Globe and Mail article was called "Through the Loophole: How an Industry Outgrew its Regulators." I don't know if you're familiar with this, but I did bring you copies.

The concern has been raised, obviously, in some quarters about the growth of MGAs. MGAs were established to act as a conduit that facilitates business between life agents, their clients and insurers. MGAs are playing a bigger and bigger role in the sale of life insurance policies. This has been emerging issue for a number of years. Is FSCO confident it is regulating these new entities adequately?

Mr. Anatol Monid: Well, I am familiar with the article that you refer to—

Ms. Catherine Fife: I would hope that—

Mr. Anatol Monid: —and in response to that article, the Canadian Council of Insurance Regulators undertook a review of MGAs—I believe it was in 2012—and published a report on that. In the report, it outlined its expectations for how insurance companies and agents should operate in the marketplace.

One of the key components in the Ontario legislation, the Ontario Insurance Act, is that insurance companies have a statutory obligation to oversee the insurance agents. They must have a compliance system in place that ensures that the agents that are represented are operating in compliance with the law.

The growth of MGAs does not alleviate the insurance companies of that obligation to ensure compliance. We regulate insurance companies, so we have the influence of ensuring that they are having the appropriate monitoring in place, and through our licensing of insurance agents and corporate insurance agencies, which many MGAs operate under, we have the opportunity to oversee them through that function as well.

Ms. Catherine Fife: And do you think that's adequate?

Mr. Anatol Monid: To date, I don't believe there have been—yes, I would say it's adequate at this time.

Ms. Catherine Fife: I just want to raise the concern, just for the committee's—I mean, this does raise an emerging conflict of interest issue. The article and others have observed that one of the consequences of the move to an independent agent or MGA sales model is that insurers now feel they have to curry favour with the agents and MGAs who sell their products in order to maintain or expand business. Companies believe that if they fail to do this, agents and MGAs will simply send clients to competitor insurers offering better compensation and perks.

I think this is fundamentally an issue of consumer protection.

Mr. Anatol Monid: I would agree that it is an issue of consumer protection. We operate in a competitive environment, so those pressures exist in any business where there is the ability to transfer policies from one business to another. At the same time, it does not relieve insurance companies of their obligation to ensure that the agents that represent them, including those MGAs, operate in compliance with the law. In fact, the Canadian Life and Health Insurance Association has issued new guidelines to its members about how they should oversee MGAs and the qualifications of agents. So I don't believe that there are gaps at this time.

Ms. Catherine Fife: You don't. But has FSCO looked into this issue? I mean, it's been five years, and I noticed in your opening comments that FSCO—as one of your principles, you state that you try to address risks before they arise. This has been an ongoing risk, and well documented over the last five to seven years. I'm asking you, as a regulator, if you've actually done an assessment of the risk to consumers in this regard, and, if not, is there perhaps one forthcoming out of the AG's report?

Mr. Anatol Monid: We haven't done a specific review of MGAs other than our participation in the Canadian Council of Insurance Regulators review, which we supported. What we are doing is increasing the number of audits of individual insurance agents to ensure that they are in compliance with the law, because even if there is an MGA, it does not alleviate the individual insurance representative of that general agency from operating in compliance.

Through our survey of agents in 2014 for product suitability, we learned a great deal about how business is conducted at the point of sale or across the kitchen table. Generally, we were satisfied that most agents are dealing with consumers in an appropriate manner. There is some room for improvement, and our on-site examinations will serve to enhance that, we believe.

Ms. Catherine Fife: I think this comes down to enforcement and oversight, and having the resources to do so and the mandate—and the tools, quite honestly, to ensure that you can do that.

I understand my time is coming to an end, but I'll be revisiting this in our next round. Thank you very much, Mr. Chair.

The Chair (Mr. Ernie Hardeman): Thank you very much. We'll now go to the government caucus. Mr. Fraser.

Mr. John Fraser: Thank you very much for being here today. I'd just like you to finish—you may have to restart a little bit—your comments on the effect of long-term interest rates in the actuarial assessment of the viability of the plan. I got most of it, but you were trailing off as you got cut off there.

Mr. Lester Wong: Thank you for the opportunity. I was talking about the sensitivity of a pension plan's funded position to interest rates and investment returns. I was going to address those. A 1% decrease in long-term interest rates—actuaries use that to price the liabilities—causes, on average, an 18% increase in the liability. So a $100-million liability, a year later or whenever interest rates go down by 1%, would go up to $118 million.

Assets earn a rate of return. A rate of return of 10%, say, would be straightforward. So with a $100-million asset earning 10%, you'd be at $110 million. For example, if you had a fully funded pension plan of $100 million of assets and $100 million of liabilities at the beginning of the year at those particular interest rates, if a year later you earned 10% on your investment returns—which is a good rate of return in this environment—but interest rates dropped by, say, 1%, your fully funded position has gone from $100 million to $110 million on the asset side and $118 million on the liability side, so you're now underfunded.

1330

Market volatility is something that—nobody I know of can actually control the long-term interest rates to any great degree, or investment returns or capital returns. That just highlights how sensitive the measures are for the pension plan's health and the unfunded positions or funded positions, and you really need to look at things over time. The legislation is there to provide the funding requirements over a set period of time if things remain fairly stable.

Mr. John Fraser: Those fluctuations in interest rates or the volatility of interest rates—you've just given us numbers; 2013 numbers and 2014 numbers are significantly different. That's a fairly large change. Is that normal in this current environment over the last six years? Is that going to go up and down like that?

Mr. Lester Wong: Yes. In the report I mentioned that we published annually, it actually has a trend that goes back to, I think, 2008 or maybe even earlier—2001, maybe. Actually, it goes back to, I think, 2001. But if you look at the graph of the funded position, it's really just oscillating up and down, up and down. Now, actually, at the end of 2014, it's back up to near the highs of where it used to be. So it does fluctuate a lot, year to year. That's just how defined benefit pension plans operate.

Mr. John Fraser: Okay, which kind of leads to my next question. You're a regulator here in Ontario. I know that in Alberta in 2013, their numbers were similar to how our numbers are represented; they were about 92% insolvency. I know you have a lot of work to do, regulating a lot of areas, but have you done a jurisdictional scan or have you talked to each other? Is this part of a kind of a national or economic trend?

Mr. Brian Mills: In terms of CAPSA, which is the Canadian association of pension supervisors, there's a standard update on every agenda when we meet. We meet four times a year, two times by phone and two times in person. Of course, solvency or the current status of pension plans is always on the agenda. We do talk in generalities around the current funded status of the pension plans that each of us regulate, but we don't actually do a comparison. We don't have a table that we consolidate.

Mr. John Fraser: I know it's hard to compare because you're all a little different in some ways.

Mr. Brian Mills: Right. As you can imagine, back in the period when the crash occurred and a lot of pension plans lost significant value, there were solvency relief programs brought in. Again, across Canada, there were solvency relief programs brought in for pension plans to deal with that decline.

Mr. John Fraser: Just as far as the—I just want to go to the PBGF, just so I can understand it, then I'll just flip it over to my colleague. You've doubled—not you, but the contributions have been doubled. The government has asked for that to be doubled. Those contributions or those assessments: Are they from the funds of the plan itself based on an assessment that the fund is worth $5 billion and therefore out of that fund you pay X dollars? Is that—

Mr. Brian Mills: I'll let Lester address that.

Mr. Lester Wong: There's actually a formula involved, and the formula involves things such as how underfunded the plan is and how many members there are. Those are the two key elements for how the assessments are determined.

Mr. John Fraser: And those assessments, they come through—

Mr. Lester Wong: They come from the plan sponsors.

Mr. John Fraser: The plan sponsors. So depending on whether it's an employer or an employer-employee plan—

Interjection: Jointly sponsored.

Mr. John Fraser: Yes, jointly sponsored. So they would come from both those sides.

Mr. Lester Wong: Yes. There are a number of plans that are exempt or not covered by the PBGF. One of them is jointly sponsored pension plans. They wouldn't contribute and they're not covered by the PBGF. But other plans would have—the members' contributions are generally fixed by the plan terms and the employer pays the difference, essentially, to fund the legislated minimums.

Mr. Arthur Potts: I wanted to pick up on this how-far-under concept. Ninety-two per cent underfunded sounds like a lot. It's a shocking figure on its face, but if they're all under by 1% or 2%, considering the target is 100%, it's not really that big a deal if that were the case. So can you give us a sense of the range of underfunding and maybe talk to triggers? At 10% underfunding, you used to have to take notice. At 50%, you get really, really excited—those kinds of things.

Mr. Lester Wong: Okay. So, again, I refer to—there's a published report we do annually which shows the—we look at the median funded ratio, what we call the funded ratio of plans. At the end of 2012, it was very bad; it was around 73%, the median for pension plans in Ontario. A year later, it was up to 94%—so a significant improvement. Then, a year after that, at the end of 2014, it's down a bit to 88%, based on our analysis so far. We haven't finished it yet, but that should be a pretty good number.

So, yes, it fluctuates. There was a big decrease when the 2008 financial crisis hit, and then shortly after, until plans started recovering, that was significantly down. But it's improved, and, as I've mentioned, it should continue to improve, unless interest rates continue to fall further or investment returns are pretty bad.

Mr. Arthur Potts: Those are your median levels, which is great, and that gives you assessment of the overall health of benefits.

Mr. Lester Wong: Right. And then, to answer your other question about triggers, if you will, in the legislation itself, there is a notion of 85%. If your plan is 85% funded or less than 85% funded on a solvency basis, you're required to do annual evaluations. You're required to do evaluation reports every year and file them with us. If you have more than 85%, then the requirement is only every three years. So within the legislation itself, there's sort of a threshold, if you will, where more frequent reporting is required.

For our purposes, all plans tend to go up or down at the same time. We try to focus—as Brian mentioned, we take a risk-based approach. Underfunding in and of itself is not the only criteria. We would look at other criteria, like whether or not plans are contributing what they're supposed to, whether the administration is good or bad and so forth. So we look at other factors when we determine what plans we want to monitor or look at.

Mr. Arthur Potts: And monitor, I think, is the key here. Essentially, your powers are about monitoring, not about interacting in an active way. I have a constituent, for instance, with long-term service in a retail environment, where he believes the laws allow the retailer, who is probably making an exit from this country soon, to be grotesquely underfunding their contributions, and when they leave, there will be no assets left for him to receive the full pension that he is expecting, and he'll end up down at the $1,000. It begs the question about—if they've gone from a place where the pension was funding him at a $4,000-a-month pension, and suddenly they leave and it's gone bankrupt or it's wound up and there's not enough there, and we're giving him $1,000 and there's nothing left in it—or would we be topping up if he was at $4,000 and now there's only enough for $3,500? Would we be topping up the $500?

Mr. Lester Wong: I'm sorry. I'm not quite sure I understand the question.

Mr. Arthur Potts: All right. If we're monitoring these plans, and when they are wound up and there's not enough money in them to meet their obligations because they're underfunded, his concern is that this corporation may be deliberately underfunding, knowing they're about to take an exit from Canada, and there's no recourse for us to go after assets which could be put back into the pension plan. That would be his first concern. The second concern would be that if this fund has gone so far underfunded that he can't get his full pension, would we be topping up to what his full pension would be? Or we would only top up to $1,000?

Mr. Lester Wong: It would be topped up based on—to $1,000. But that doesn't mean his pension would be $1,000. The pension plan itself has assets, so the pension plan itself can provide an additional above the $1,000.

Mr. Arthur Potts: Okay. All right. Are there any powers that you have for seizure of assets or liens against assets? Or should there be requirements that before dividends are given in corporations as they're selling off major assets, pension funds be brought up to compliance?

Mr. Brian Mills: I guess a couple of comments: When a plan is wound up, the employer would have five years to pay off that deficit. So they have that ability to top up the plan from their funds to make the plan whole. In bankruptcy, usually when a plan is wound up and there aren't enough assets to cover it, you would see a PBGF claim eventually down the road, and again, we would top up to the $1,000.

1340

On non-remittance of contributions, there are a number of criteria under the Pension Benefits Act which allow us to take action to wind up the plan. By winding up the plan we are freezing the benefits at that point in time, so there will be no further accruals, and we're basically freezing the total deficit or liabilities in the plan at that time. Again, depending on what those liabilities are, the PBGF can be brought to bear on those.

Mr. Arthur Potts: If you saw a scenario where you suspected that there is a plan for an exit strategy, you might go in and realize they're not going to get back to 100%, let's freeze it, wind it up right now, and whatever's in it, they would have five years to finish it up.

Mr. Brian Mills: Again, there's only set criteria in the plan. If they're remitting their contributions in accordance with the Pension Benefits Act, if there is still a significant labour force—I forget what the other criteria is; Lester can help me—but effectively, they would have to be in violation of one of those key criteria for us to wind up the plan.

Mr. Arthur Potts: They can be meeting their obligations but still have a long period to get there and have an exit strategy.

Does anyone else—Han, you wanted—

The Chair (Mr. Ernie Hardeman): Mr. Dong?

Mr. Han Dong: Hi. I just have a couple of quick ones. I'm talking about the underfunded defined benefit plans. You mentioned that in December 2013 it's 92%. They've gone down to 75% in December—

Interjection: Seventy-eight.

Mr. Han Dong: Seventy-eight, sorry, in December 2014. From the auditor's report, the underfunding increased from $22 billion to $75 billion between 2005 and 2013. What is it now? Do you have the exact number?

Mr. Lester Wong: Yes, I do. The exact number is at a point in time. Just to make sure you understand, when the auditor's report looked at December 2013, it's based on the filings that are in our hands on that date. It's the same when I talk about December 2014; it's whatever actuarial reports have been filed with us at that point in time. The number is $40.9 billion.

Mr. Han Dong: Okay. You also mentioned that a 1% interest rate drop increased the liability by 18%. That's 18% of what? What's the total?

Mr. Lester Wong: Whatever the liabilities are, it would increase—

Interjection.

Mr. Lester Wong: Now, that's a rule of thumb. It depends on the plan's particular characteristics. I was just giving a general rule of thumb as to, the average plan might be in that order.

Mr. Han Dong: Okay, so that would speak to an average pension plan.

Mr. Lester Wong: Yes.

Mr. Han Dong: Okay.

Mr. Lester Wong: And it changes over time.

Mr. Han Dong: I have a couple of other questions about protecting the public interest. The Auditor General made a recommendation to take timely action to investigate complaints, assess the need for proactive investigations, and "establish systems and procedures to promptly identify, investigate ... registrants and licensees who have received sanctions from other" regulatory bodies. What have you done on that?

Mr. Brian Mills: I think you're asking in respect of complaints with respect to licensing and market conduct.

Mr. Han Dong: That's right.

Mr. Brian Mills: Anatol?

Mr. Anatol Monid: FSCO is currently reviewing information sharing arrangements with other regulators so that we get this information in a more timely manner. For example, in 2014, FSCO signed a memorandum of understanding with the Mutual Fund Dealers Association. We've set up a working group that will establish what the more current information channels and data collection on licensees sanctioned by other regulators can do. We will continue to institute procedures to ensure that licensees sanctioned by other regulators are identified and assessed more quickly, in accordance with our governing legislation and with the due process requirements.

Mr. Han Dong: Okay.

Mr. John Fraser: I'd like to ask a question in relation to recommendation number 6 and the oversight of co-operatives. I realize that this is kind of an emerging issue over a period of time, since, I guess, around 2007, 2008. There's been a big growth in co-operatives. In terms of the Auditor General's concerns and in light of the Minister of Finance's announcement last week with regard to co-operatives and the review, what have you done or what are you planning to do?

Mr. Brian Mills: I think you mean the mandate review. It wasn't specifically co-operatives. The mandate review—

Mr. John Fraser: The mandate review, yes.

Mr. Brian Mills: The mandate, you've got to understand, is looking at all the regulated businesses that FSCO currently regulates. Of course, they'll be dialoguing with industry around that. One component of that is that they'll also be looking at: What's the mandate of FSCO? What tools does FSCO need to be able to effect that mandate? So it's kind of like a downstream starting with: What is the mandate and then what tools does the regulator to fulfill that mandate?

I don't know, Anatol, if you want to add a little bit about co-operatives, in terms of the audit report.

Mr. Anatol Monid: Sure. Some of the recommendations can be acted upon, and we're looking at those in conjunction with the Ministry of Finance. We will also provide the ministry with—to identify what other statutory amendments or fee amendments would be required.

We are assessing our ability to publish information on our website. We believe that we have the power to do so. We will be engaging with the ministry and the Ontario Securities Commission to talk about that recommendation.

Mr. John Fraser: Thank you very much.

The Chair (Mr. Ernie Hardeman): Okay. We'll start the second round—

Mr. Arthur Potts: Do we have two more minutes?

The Chair (Mr. Ernie Hardeman): Well, about one. We'll give you an extra half a minute next time.

We'll go to the third party. This time around we'll have 18 minutes per caucus, to conclude all the time that we have available. And the government party will get 18½.

Mr. Arthur Potts: Thank you, Chair. You're very fair.

The Chair (Mr. Ernie Hardeman): So with that, Mr. McDonell.

Mr. Jim McDonell: Looking through some of the recommendations—I know we talk about the level reporting back from plans. I see that the defined pension plans with a solvency ratio of 85% or higher only have to file every three years, when on the federal side, at 120%, they have to file annually. Do you think that on the provincial side that's enough? You wouldn't think simple filings would be too onerous on the companies—back to the agency that's supposed to be able to look if there is a problem. These are plans that are actually identified as a problem.

Mr. Lester Wong: Yes. If the proclamation of some of the legislation is given, where we can ask for valuations, if we feel it's appropriate, that might alleviate the need for any more frequent reporting.

As a regulator, it's always, I guess, more information. We're never afraid of getting more information.

Mr. Jim McDonell: I also see from it that 1,383 pension plans have not submitted one or more of their statutory filings, yet you only took any action against 176, or less than 13%. Certainly those are within your mandate. I guess the question would be, why would you not follow up on the other 87%? These are pension plan filings that supposedly are a requirement for you to do your job. If somebody's not sending something in, it certainly is a red flag that there's an issue.

Mr. Lester Wong: Yes, that's actually something that—we were actually doing something as the audit was going on. I mentioned the pension oversight section. We implemented a new pension oversight section, which is charged with trying to make sure we keep on top of the filings and so forth. I can report right now that as of today, we are 100% up to date. There's nothing more than a year out. All the ones that were referred to in the audit report have been followed up on. Of those, I think there are six that still have some activity going on, potentially prosecution activities that we're referring to our legal department. But it's all caught up right now, and we have implemented procedures and processes to stay on top of that.

Mr. Jim McDonell: Sure. In one of my previous statements, I talked about the inability to look at pension plans and the overall oversight. I guess I misunderstood, or I guess I stated it wrong. The 11% that you look at: These are 11% of the plans that are actually in trouble or on the insolvency list. So when we talk about getting through these—they talked about taking 14 years to examine them all—those are the pension plans that are in trouble. And I know you're doing better, but if you've got a pension plan that's in trouble, to think that it would take any more than a few years, or a year, to have a secondary look at it—you're looking at how much they improve. But it just doesn't seem to us that you have the resources to do the work.

1350

Mr. Lester Wong: I think the numbers quoted were that there were 696 underfunded pension plans. That wasn't insolvent plans; that was just underfunded plans. At the time, it was 696 plans. Now, looking at the same numbers today, or at a more recent date, instead of 696 it's 262 plans that are underfunded. And, as I mentioned, instead of 14 years it would be just a little over five years at the rates that we currently examine plans.

Again, I would just caution that—yes, you're right, underfunding is a serious concern, but, as I think this member noted, it depends on the level of underfunding, and it depends on whether that pension plan is exhibiting something that's different than the norm. So if all plans in 2008 suffered losses, we would have to look only at the ones that are the most severe cases or have other issues where we were concerned.

So yes, you're right: We do look at underfunding. And you're right: If the number of underfunded plans exploded or increased a lot, obviously the level of resources to conduct more exams is not there. Likewise, if it decreased, the reverse happens.

Mr. Brian Mills: Just to add to that: The risk-based approach that Lester talked about—we're not just looking at the underfunding; we're looking at remittance of contributions. That's a critical thing. As soon as a pension plan stops remitting its contributions, that's a very serious warning sign for us, so we monitor that very closely. We monitor the benchmark they make on their investments to see if they're making reasonable returns. We look at the number of complaints, and if we're getting a lot of member complaints, well, then, again, that is added up into a framework where we look at the totality of that risk.

One key element we also look at is the current financial state of the plan sponsor. And that's an area where we're working really hard to get more information, because a pension plan is only as good as the plan sponsor. We're trying to get more information, and there are a lot of various agencies to give us that kind of information so we can monitor the state of the plan sponsor. So we're not just looking at the underfunding—that's a critical element, as Lester said—but there are all these other factors we look at: "That is a high-risk plan," and therefore we'll examine it.

Mr. Jim McDonell: I guess you're really a resource of the government when it comes to pension plans and suggestions on how they might run a pension plan or evaluations of current pension plans. Are you ever asked for information back, say, during negotiations on the viability of a plan that's being proposed, or to provide input back if you come across something that seems skewed out of what would be the expected norm?

Mr. Lester Wong: Yes, to the extent that we get asked and it's in our purview and we have that expertise in our agency, we would provide that kind of information or analysis.

Mr. Jim McDonell: I come back to an example of OPG, where an employee came up to me—actually, just a few months ago—and he was talking about something that happened just a few years back. He had decided to retire after 30-some years—I think 35 years—and his comment was, "We get a very good pension and I was very happy with this." He said, "I was called into my supervisor's office to talk about my severance package, which I really wasn't aware of." He received an almost half-a-million-dollar severance package.

I just wonder, coming from the private sector, how a government agency could justify that. He said he was very happy to take it, but he said he couldn't believe that that was the type of plan that was there. It's like the winning the lottery, you know? I guess the good news is that some of it's taxed back.

But plans like that—would you not see some of that and be able to report back that maybe this is an agency that's a little out of whack?

Mr. Brian Mills: You've got to come back to the key elements that we're looking at, and that is that a pension plan has a fiduciary responsibility and a prudent-person approach in its investments to meet the obligations of its members. Therefore, its whole mandate with respect to the pension plan should be to ensure that the assets are there for those members. Again, there's a very large onus on the plan sponsor to make that happen.

Lester, I don't know if you want to add anything.

Mr. Lester Wong: We don't get involved in telling companies how to design their pension plans. That's outside of our purview.

Mr. Jim McDonell: No, but in this case here, it's an element of the government. I think the words I've seen is that it's the worst case we have in the province of a government-funded, or -controlled, pension. There are red flags all over the place. I would expect you'd be looking at this and going into depth, because this is the worst one. If you don't look at this one, what do you look at? There should be guidance coming back and saying, "Hey, Minister of Finance. This is out of whack."

We saw the same thing in Ornge, where there was just no oversight and salaries were out of control. That's not yours, but it's the same thing, where people knew about this but nobody was sending the information back.

If that's not your role, would it not be reasonable to assume this should be your role? This is a pension that is the worst unfunded liability in the government. Surely you've taken an in-depth look at this.

Mr. Lester Wong: Well, I think our role is to ensure that the pension plan is funded and administered and the governance is as required in legislation.

Mr. Jim McDonell: This one obviously is not. It's a problem. That's my question, really. If it gets this bad and it still doesn't qualify, what would it take?

Mr. Brian Mills: From FSCO's standpoint, if they're remitting their contributions, if they're making their special payments, then they are in compliance with the Pension Benefits Act. As a plan sponsor, they have a responsibility to fund this plan over many years to pay out the assets to the members. I would assume that they have a plan to bring themselves back to a funded status.

Really, from FSCO's standpoint, if they're not remitting their contributions and they're not making their special payments, which is what the deficit is in the plan, then of course we would take action.

Mr. Jim McDonell: But wouldn't you be looking at—I mean, obviously the deficit in this plan is growing, because it is an issue. Would you not be looking at their plan and saying, "How do you plan?" The government essentially—at least, they believe they have unlimited funds. But there must be some mechanism to say—obviously, there's a mechanism to say that this is a problem. Is there nothing to allow you to, at the very least, flag this to the minister that we've got a fund here that's in this bad a shape; that yes, they've got a plan, but it's not really sustainable because it's out of control.

Mr. Brian Mills: I think if you look at other examples of public sector plans that also had deficits, they worked out plans and looked at both contributions and looked at benefits and took actions to bring the deficits in their plans under control. Again, the fiduciaries of this pension plan have that obligation.

Mr. Jim McDonell: Well, I just look at some of the results that the audit has turned up here. The 5-to-1 ratio—I would think, if I was in government, that this was an embarrassment, and I would like to have my own internal arm tell me this before I read it in the paper. Is that not part of your role, to look at—obviously, this is out of whack. Obviously, this should require some guidance back saying that this is not the norm, that this is not even close to the norm as we see it. It's way out of whack. And nothing—or did that go back and it was ignored? We're just wondering how things get like this.

Mr. Brian Mills: Lester, you may want to comment. Again, each pension plan is different. Each pension plan has its own statement of investment policies and procedures on how it invests in the marketplace. Each pension plan has different pension rules for its membership in terms of what the accrual is per year. They have different rules, and therefore they may have a different funded status than another plan. They're all different. As I said before, the plan sponsors of this pension plan have an obligation to bring the plan into compliance—I'm sorry; bring the plan back to 100%.

1400

Mr. Jim McDonell: But that aside—it may or may not be in compliance, but you get a rogue crown corporation that gives something that's—you know, it's run internally. They can do what they want, it seems, and they can pay their people what they want and they run pension plans like this that are just off the wall. Is there no reference coming back to the government at all? Can this go on, and it's only when something leaks to the press that there's any knowledge of this? This is a crown corporation—financial ties back to the government—who basically sets the rates and the policies they put in place. Is there nothing that says—I mean, other than the fact it's—now they just take more money from the public purse and it's solvent? But is that the answer? Really, there should be some guidance back that, "Hey, we've got something here that's not reasonable."

Mr. Lester Wong: Honestly, I don't think that is the regulator's role to look at that—

Mr. Jim McDonell: Is there nobody in government that you know of who would be able to identify this back to the governing party, that something's out of whack here? Is it completely up to somebody—like the Auditor General happens to look at this crown corporation and notices this? That's the only way they have of finding out?

Mr. Brian Mills: Again, we'll go back to our risk-based approach. If we're getting thousands of complaints, if we're—

Mr. Jim McDonell: No, that's not quite—if you were to review this, it wouldn't—

The Chair (Mr. Ernie Hardeman): Mr. McDonell—

Mr. Jim McDonell: All right.

The Chair (Mr. Ernie Hardeman): —your time's up. Thank you very much.

The third party. Ms. Fife.

Ms. Catherine Fife: Thank you very much. I'm going to pick up where I left off. Based on the MGAs, although it's not specifically part of the Auditor General's report, it does speak to oversight.

Here's the question with the MGAs, as I see it. When regulators become involved, insurers can claim that the legal responsibility for overseeing the sales practices of an agent rests with the MGAs that retain the agent's services for their part. So MGAs can claim that they simply act as middlemen or -women, whatever, with no legal responsibility to police the agents they use.

According to the Globe and Mail article that I referenced, which I'm really happy that you have also read, the effect of the independent MGA model is that "the consumer can have no expectation of a safeguard when they buy a life insurance policy that is channelled through an MGA—and the consumer is unlikely to know that an MGA is even involved."

On this issue, and based on the CCIR report that you did reference, that you cited earlier, although that agency's "Principles for Managing Conflicts of Interest form part of industry codes of conduct and are the responsibility of the insurance agent whether or not an MGA is involved, consumers seem to want additional reassurance that they're receiving competent product recommendations and advice that is free from conflict of interest." What measures have you implemented to deal with this obvious and growing consumer concern over conflict of interest when MGAs are involved?

Mr. Anatol Monid: Okay. Well, thanks for revisiting it. There's a couple of contextual points I'd like to make. First of all, in the life insurance business in Ontario in 2013 there was $20.5 billion of insurance transactions, and FSCO received about 325 complaints. So relative to the scale, there does not appear to be a lot of complaints about the way insurance products are being sold in Ontario, and the compliance framework we have, I believe, supports that.

Insurance companies have a statutory obligation to ensure that they have compliance frameworks in place to address the treatment of their customers when a product is sold by one of their agents. Insurance agents themselves have a statutory obligation to ensure proper disclosure and fair treatment of consumers. FSCO is now conducting examinations or will be conducting more examinations of insurance agents to assess the content of the files and their practices to ensure that that is in fact also happening.

We can take some comfort—having done a survey of 1,400 insurance agents in 2014 to determine their practices around the distribution of products and the suitability of the sale of those products to consumers, we are generally satisfied that insurance agents are taking the time to ensure that clients receive a product that is suitable for their needs and circumstances.

Ms. Catherine Fife: So the complaints that you received: Are you satisfied with the communication that FSCO has with regard to ensuring that consumers have a clear path to raise a complaint with FSCO?

Mr. Anatol Monid: We are. We believe that, first of all, insurance companies have an obligation to inform consumers if they're complaining to the insurance company about FSCO's role. In fact, we require the insurance company, if they're making a final position, to inform the consumer that they have the ability to speak to FSCO. There is also the ombudsman for life and health insurance that people can seek redress through if it's not a matter of non-compliance with the law; if they're dissatisfied with the quality of service, for example. Each insurance company has a requirement to have an ombudsperson, typically in their compliance operation, who will look into complaints and is independent of the operation, so that it somewhat mitigates that conflict of interest which you were concerned about. Based on the framework that exists, we believe that consumers can find their way to FSCO and that there is an interest in the system in general to resolve complaints.

Ms. Catherine Fife: Have you had a third party do an assessment of your complaints procedures, or was that an internal review?

Mr. Anatol Monid: Outside of the Auditor General, we also—actually, it's an opportunity to mention that in 2013, the International Monetary Fund conducted a financial sector assessment program review of Canada. Ontario, Quebec and the federal regulator, OSFI, were reviewed, and in general we were found to be in observance of the international standards in place. It may be an opportunity to bring back your point that the IMF did not raise the issue of resourcing and the adequacy of resourcing at FSCO, so there is some merit to your comment.

Ms. Catherine Fife: In my previous questioning, though, you had mentioned that FSCO has not done an assessment of this, but it potentially could be set to be reviewed by FSCO.

Mr. Anatol Monid: An assessment of?

Ms. Catherine Fife: Of the role of MGAs—you haven't yet, but—

Mr. Anatol Monid: We participate in the CCIR program. We were satisfied that we have an understanding of how MGAs operate in Ontario and that we have the appropriate mechanisms in place to deal with issues.

Ms. Catherine Fife: And you feel that consumers are adequately protected right now.

Mr. Anatol Monid: Yes.

Ms. Catherine Fife: I thought you said in the first session that you do think that this is an issue of consumer protection.

Mr. Anatol Monid: Well, any time a consumer is in a sale situation, they need to have the adequate protection. Specifically, are MGAs a risk to the system, and do they warrant some additional controls? I would not say so. The party making the sale, whether they're a member of an MGA or not, is a licensee, and they're subject to FSCO oversight. The manufacturer or life insurer for which the agent is distributing the product is licensed by FSCO and is required to have a compliance framework. Both sides of that equation have some controls in place.

Ms. Catherine Fife: Okay. I want to move on to the weak oversight of co-operative corporations that my colleague across the way had raised earlier. In the Auditor General's report, she raises an interesting issue around timing. In 2009, when the Green Energy Act was brought in, it also amended the Co-operative Corporations Act to allow for the creation of co-ops. It's interesting to note that in the province of Ontario today, after only two calendar years, 64 of the 116 co-ops registered by FSCO were in the renewable energy sector. She also references that "FSCO also does not conduct any ongoing monitoring of co-ops to ensure that funds are being invested in the projects outlined in the offering." She goes on to say, "Nor does it conduct ongoing examinations of these co-ops to ensure they comply with the requirement of the Co-operative Corporations Act."

I understand that there's a lot going on. I think that that Auditor General has pointed out the scope of the work that you do. But in your response to the auditor, you agreed that "members and investors of co-operative corporations should be protected. While some aspects of the recommendations could be acted upon immediately," there's obviously some legislative ones that need to be addressed. But you say, "Several years ago, FSCO engaged in early exploratory staff discussions with the Ontario Securities Commission...." So one can only assume that that was when the Co-operative Corporations Act was amended, back in 2009. This has left a number of co-ops without protection for a number of years.

1410

I guess my question to you is, why did it take so long to have a discussion several years ago and then, seemingly, nothing happened, either on the legislative side or even the following up on the discussion to transfer the responsibility, potentially, to the Ontario Securities Commission? There's a huge gap. Can you give us some insight as to what happened? Clearly, the ball was dropped with regard to protecting co-operatives in this regard.

Mr. Anatol Monid: There is no absence of protection. There are some protections involved. The review of the offering statements forms a protection for the investor. We did have discussions at one point with the Ontario Securities Commission, and we're committed, in conjunction with the ministry, to revisit those discussions.

Ms. Catherine Fife: Then what happened with those discussions? You met with the Ontario Securities Commission. Was the proposal received well? Was it, "We'll get back to you in a few years"? What?

Mr. Anatol Monid: I wasn't part of those discussions, so I'm not able to comment on them.

Ms. Catherine Fife: I understand that.

Mr. Anatol Monid: But there was also some resistance from the sector about changing the way that the offering statements are reviewed, because their internal costs would go up. The securities commission charges a different fee—

Ms. Catherine Fife: Whose internal costs would go up?

Mr. Anatol Monid: The co-operative associations.

Ms. Catherine Fife: Yes, but the co-operatives—I mean, it's costing FSCO $500,000 to manage the co-op sector and you only receive $1,000 in fees.

Mr. Anatol Monid: Yes.

Ms. Catherine Fife: This is a little ironic, that Financial Services Commission of Ontario is running a $499,000 deficit around this issue. One can only assume that this is a long-standing issue. I'm not pointing at you, but there is clearly a gap in processes that missed this ongoing lost revenue or did not make the transfer to the Ontario Securities Commission. Here the protection should be on the taxpayers, not just—if the co-operatives don't want to pay the extra fees—they're paying $1,000 for the entire—they might as well not be paying anything.

Mr. Anatol Monid: This is not consistent with the costs associated with doing an offering statement review.

Ms. Catherine Fife: It is not consistent with the costs. That's very good.

Mr. Anatol Monid: Yes.

Ms. Catherine Fife: Very good, yes.

Okay. I think I made my point on that. I hope this issue is going to be addressed, though. Can you speak to that?

Mr. Anatol Monid: We are working with the ministry to review the situation.

Ms. Catherine Fife: Is this part of the general mandate that's coming—

Mr. Brian Mills: Yes. I think I commented before that they're looking at building all of FSCO's mandate, including co-operatives, because it's an area we regulate.

Ms. Catherine Fife: They're doing this mandate—I mean, this review, but they actually have a piece of legislation on the books right now which they could just proclaim, which would be helpful, don't you think? I'm of course referring to Bill 120, Securing Pension Benefits Now and for the Future Act.

Mr. Anatol Monid: Yes. I think I commented before that the minister did talk about that in the fall economic statement.

Ms. Catherine Fife: Okay. Back to the co-operative corporations: One of the recommendations is that "all board members have criminal checks before the co-op is registered and any offering statements are issued." Is this not a common practice with any board that FSCO deals with? If your job is financial oversight of all of these agencies and boards and entities, would having a basic level of criminal checks not be built into all of your procedures and policies going forward?

Mr. Anatol Monid: It is built in to those people who are licensed as board members. We don't have that legislative authority to conduct criminal background checks of those individuals.

Ms. Catherine Fife: I'm sorry; you don't have the authority?

Mr. Anatol Monid: The legislative authority to do those types of checks for board members of co-operatives.

Ms. Catherine Fife: Do you have the legislative authority to ensure that the charges are commensurate with FSCO costs? Do you have the legislative authority to do that?

Mr. Anatol Monid: That would be with the ministry. We could provide them with advice.

Ms. Catherine Fife: So these recommendations you can't actually act on. Your hands are tied until the ministry addresses these issues legislatively?

Mr. Anatol Monid: Correct.

Ms. Catherine Fife: You know what? That's a really important note from this proceedings, that these have been long-standing issues. So there's a need to accelerate this review to ensure that legislation empowers FSCO to do what your mandate is.

Do you have a follow-up?

Ms. Jennifer K. French: I do, if I may.

Actually, can I take this opportunity to correct my record from earlier? I think I threw an extra C into the CCAA, so if we could go back and fix that.

A follow-up to the question I had asked earlier: Should the government give FSCO the same powers over pension regulation as OSFI has—you did say that legislation has been passed that would give FSCO some of the powers that OSFI has, but you said that that section of the legislation has not been proclaimed. Has the section not been proclaimed because a necessary regulation has not yet been developed?

Mr. Brian Mills: Again, in the fall economic statement, the government clearly stated this was a priority. Of course with the statute, there are always regulations that, in most cases, go with the legislation, so there's usually associated regulations.

Ms. Jennifer K. French: Okay, I get that, but I'm going to interpret that to be that it hasn't yet actually been developed or doesn't exist, and if that's the case, is there a reason why it hasn't? Is it simply because it's too technically complex, or is there political resistance or resistance from industry stakeholders that's maybe holding that up?

Mr. Brian Mills: Again I can't comment; as the regulator, my job is to take the powers I have and use those powers for enforcement. The minister was quite clear in his fall economic statement on his plans with respect to giving us these additional powers.

Ms. Jennifer K. French: So no regulation exists. Would you make a recommendation, though, to the ministry? I'm just looking here at the summary status table in response to the report—"responsibility for initiating legislative reviews of regulatory requirements for each financial sector rests with the government." Great.

What recommendations might you actually make to the ministry specific to getting this moving—if you could recommend anything?

Mr. Lester Wong: The government has different priorities. So we would talk to them and encourage them that regulations are required in order to have these powers, and to put it on their agenda. But that's all we can do.

Ms. Jennifer K. French: So their priorities aside, though, do you see this as a priority?

Mr. Lester Wong: I can't really comment on that.

Ms. Catherine Fife: What is our time?

The Chair (Mr. Ernie Hardeman): Two minutes.

Ms. Catherine Fife: I just want to finish up on the co-operative corporations because obviously conversations have been happening with the Ontario Securities Commission and there are obviously pros and cons. Would you like to weigh in on what your preference would be: either share or transfer the responsibility reviewing offering statements?

Mr. Anatol Monid: I don't think it's a preference one way or another. It's to ensure that we have the right tools and the right cost-recovery framework in place in order to do this. If that's not possible through the existing legislation or legislative changes, then perhaps an alternative model like the OSC might be more appropriate.

Ms. Catherine Fife: Thank you.

The Chair (Mr. Ernie Hardeman): With that, we thank you very much. We'll go to the government side. Mr. Potts.

Mr. Arthur Potts: Following up on this, I know that the regulations are very, very complicated. There are a number of acts to be involved and to work through. In considering that the ministry also, last week, acted further on their fall income statement about a whole review of FSCO, that would all be playing into that, and the good work that you've done so far will continue. Can you maybe elaborate more on how you see that review process going forward with the ministry and the advisory panel that's being put together for that?

Mr. Brian Mills: I can comment at a very high level. Again, there's an expert panel that has been appointed. They will be looking at obviously all the aspects of FSCO's mandate and what we currently regulate. They will be obviously, at some point, consulting with stakeholders and the general public on their views on FSCO's mandate.

1420

There are three criteria, I think, that were in the minister's statement on this, and it's "whether, in the extent to which FSCO's mandate continues to be relevant to the goals and priorities of the government of Ontario, whether FSCO is carrying out the activities and operations as required in its mandate, and whether all or part of the functions of FSCO are best performed by FSCO or whether they might be better performed by a ministry or another agency or entity." So that's the broader mandate. In terms of the process, they'll definitely be out for consultation.

Mr. Arthur Potts: There was also another bill at the same time, Bill 236, I think, that is also tied up in the regulations. That's where the pieces all come together to expand on some of the powers.

The notion of devolving some of the responsibility down to industry associations for which you have oversight: Could you talk about how you would envisage, as a regulatory agency, devolving the requirement for police checks and holding insurance to individual sector groups, whether it's mortgage brokerages or insurance sellers or what have you?

Mr. Brian Mills: I think at the beginning I outlined where FSCO is at with respect to the interconnected marketplace and the fact that an integrated regulator is what FSCO is. It's integrated across a number of the various markets.

We believe FSCO is well positioned to monitor the interconnected marketplace for risks, to conduct appropriate licensing, to monitor and enforce activities, provide the government with a source of integrated and current policy advice—I think I said that right up front—and deliver the mandate. We also have the Drummond report, which talked about an integrated regulator assuming more responsibilities.

It certainly is the current trend in modern regulation—as I mentioned up front, an SRO, if you look at the ones that exist, they're really over one licence. They don't have multiple licences. Today, in the world we live in, brokers or agents tend to have multiple licences; they sell other products. If you did devolve, you have a situation where there would have to be a lot more communication between those SROs to make sure that nothing is falling between the cracks. With an integrated regulator, of course, we're doing all that work, so therefore we have much more control over those processes that you outlined: the police checks and things like that.

Mr. Arthur Potts: Right. I also recall that there were issues here about credit unions.

Mr. Brian Mills: Yes, there's currently a five-year review of credit unions going on.

Mr. Arthur Potts: And there may be opportunities for the fed regulator to have a broader oversight of that piece because of the way so many of the trust companies are operating across the country.

Mr. Brian Mills: That review is currently going on. Certainly the trend that we've seen at FSCO over the years is that there has been consolidation in the credit union industry. Actually, some of the very large ones have been registered federally, so therefore they're out of the provincial purview; they're no longer regulated by FSCO. There is consolidation going on in that industry, so there are already opportunities happening because those companies themselves—those credit unions—are actually moving to a federal charter. Anatol?

Mr. Anatol Monid: Could we just clarify that they haven't gone federal; they've made inquiries federally?

Mr. Arthur Potts: Right. Did you want to—

Mr. John Fraser: I want to follow up on the co-op question, and I have another comment.

In terms of co-ops, there's no question there's a need for oversight, but I'm trying to understand the mix. We're talking about green energy, but my understanding of co-operatives is, they are often organizations put together to provide a community-based or group-based financial solution to things. I don't want to say "not-for-profit," but they're not driven by a motive of profit. So you've got two different types of co-operatives. Am I mixing up the two, or are those co-operatives all under your purview?

Mr. Anatol Monid: Financial co-operatives are typically credit unions, and they fall under both the Deposit Insurance Corp. of Ontario and FSCO's responsibilities. But those have a specific banking-type mandate. The majority of the type of co-operatives that FSCO has registered are housing co-operatives or daycares, so they're—

Mr. Arthur Potts: Agricultural probably, as well?

Mr. Anatol Monid: There are many of those as well. The nature of the business is, they are all member-driven organizations. The idea that something nefarious is going on is less likely in a member organization than in others, but sometimes that does happen.

Mr. John Fraser: My question is, in terms of your oversight and your costs, how you actually—I'm kind of suggesting the extraction of those costs is probably based on the nature of some of those co-operatives in terms of how much. So you may have to go through a scale of, if your purpose is X, or you're doing X, this is what you need to be compensated. Would that be fair?

Mr. Anatol Monid: Well, certainly the ministry's fees, when they were set up, took that into consideration, and they would take that into consideration for any amendment of that or any recommendations we would have. The ministry does provide FSCO with $500,000 to subsidize the work that we do.

Mr. John Fraser: Yes, I know. I just wanted to know how we got where we've gotten to. I know things have changed. So when we take that approach, obviously, we'll have to look at the differentiation inside that category to recover some funds.

I don't know if my colleague has something to say here, but I have one more comment. To Mr. McDonell, we were talking about OPG and their pension. I just wanted to say that we are reviewing it and we are in the middle of report-writing. We can talk about it later, but I think your concerns will be addressed. I just wanted to let you know that.

Mr. Arthur Potts: It's also my understanding—pardon me, Mr. Chair—that a lot of the regulations have been drafted and some of the individual acts proclaimed, maybe not relating to all the matters under discussion, because they are still to come, but there obviously has been advancement on that since those acts unanimously came into force in 2010.

Quickly, can you maybe comment on the complaint mechanism system? You talked a bit about how it feeds into your assessment of pension plans that may be at risk, but in other departments, how do you manage complaints? Is there an adviser of members who have a concern, and they get the information back to satisfy those concerns? How do you manage the complaint process?

Mr. Brian Mills: Sure. I'll let Lester kick that off.

Mr. Lester Wong: Sure. If a member complains to us about their pension plan, we generally first advise them to talk to the plan administrator, because the plan administrator is charged with a fiduciary obligation to administer the plan, so they would be the most appropriate party to answer the member's concerns.

It's only when that fails to resolve the issue and the member comes back to us that we would intervene. We would then take a look at the issues that the member is complaining about and take the appropriate step. So if we needed to talk to the administrator, we would contact the administrator and try to act on behalf of the member to try to seek a resolution.

Mr. Arthur Potts: So you do have in place a formal complaint resolution process—

Mr. Lester Wong: Yes.

Mr. Brian Mills: And members can actually, if they're not satisfied with our decision with respect to—say we support the plan administrator. They can appeal that decision to our Financial Services Tribunal.

Mr. Han Dong: If I can ask a quick one, I just thought of something. Again, going back to the pensions—December 2013, 92%, and December 2014, 78%. We're sitting at $40.9 billion in unfunded pensions. In the same period, we haven't seen any increase in interest. What's your explanation of this decrease or decline in unfunded pensions, and, going forward, can you give us a little taste? Are you optimistic in 2015 and 2016?

Mr. Lester Wong: Actually, as I mentioned earlier, it's a little technical, but we look at the pension plans that have filed reports with us. So when we look at December 2014, some of those valuations are dated December 2013, because they haven't filed December 2014 yet because it just happened.

What actually happened is—I think I mentioned it—in the year 2013, from beginning to end, the median solvency funded ratio changed from about 73% to 94%, so it's about a 20-plus per cent improvement. What happened in 2013 was there was actually an increase in interest rates in that year, and the investment returns happened to be good in that year. The combination of those two helped improve the pension plans' financial funded position significantly. So that's what's led to these numbers.

Mr. Han Dong: What was the increase in interest rate? Was it a quarter of a percentage?

Mr. Lester Wong: I don't have that available right now.

Mr. Han Dong: Okay. I'm good. Thank you.

The Chair (Mr. Ernie Hardeman): Mr. Rinaldi.

Mr. Lou Rinaldi: Thank you very much. I want to go back to the oversight on OPG. They were here not long ago, sitting where you are, going through this process, and pensions certainly raised a lot of attention.

My understanding is that they're doing some review. I also understand that they possibly brought somebody in to help them with how to bring things back online. Can you give us some sense of your involvement in that piece? I think somebody brought it up in the past, but I know they are making an attempt. Do you follow through or do you wait until they are done and then you kind of look at it?

Mr. Brian Mills: I understand that there was a study undertaken by Jim Leech and that he was looking at the various public electricity plants. I understand that the report was filed with the government and I understand that they are looking at the recommendations related to that report.

Certainly downstream, if there were any new rules or regulations that were brought in, FSCO would have a role in reviewing that process.

Mr. Lou Rinaldi: I guess the other point is, did you have any input on that review?

Mr. Brian Mills: Sorry?

Mr. Lou Rinaldi: Did you have any input on that particular review?

Mr. Brian Mills: FSCO was not involved in the review by Jim Leech.

Mr. Lou Rinaldi: Okay. Thank you.

The Chair (Mr. Ernie Hardeman): Thank you. Anything further? If not, thank you very much. That concludes the presentation.

I want to thank the commission for coming in and being so helpful in your presentation. We do appreciate you taking the time and explaining some things to us. The Auditor General would also like to extend her congratulations to you, if that's the right way to say it.

Ms. Bonnie Lysyk: I just wanted to say thank you, because I know this audit was conducted during a period of time that was quite compressed and your team was very helpful in providing information to us. I think the responses that you provided to the recommendation are quite to the point and excellent. On behalf of my team, I just want to say thank you to your team.

Mr. Brian Mills: We thank you for the opportunity to come today, Mr. Chair, and we thank Bonnie for her comments.

The Chair (Mr. Ernie Hardeman): I would just point out, to the Auditor General's comments, that it's rather strange: When the committee saw the Auditor General's report, there were a lot of questions they thought needed to be answered, and today, as we started the meeting, a lot of those questions were answered in the responses that we had already received. So thank you very much for being here. We look forward to doing the report and giving you a copy of it.

Mr. Brian Mills: Thank you very much.

The Chair (Mr. Ernie Hardeman): With that, we will go in camera. We have to finish another report in report-writing. If we just wait a minute for the guests to leave, we can do that.

The committee continued in closed session at 1433.

CONTENTS

Wednesday 11 March 2015

STANDING COMMITTEE ON PUBLIC ACCOUNTS

Chair / Président
Mr. Ernie Hardeman (Oxford PC)

Vice-Chair / Vice-Présidente
Ms. Lisa MacLeod (Nepean–Carleton PC)

Mr. Han Dong (Trinity–Spadina L)
Mr. John Fraser (Ottawa South L)
Mr. Ernie Hardeman (Oxford PC)
Mr. Percy Hatfield (Windsor–Tecumseh ND)
Ms. Lisa MacLeod (Nepean–Carleton PC)
Ms. Harinder Malhi (Brampton–Springdale L)
Mrs. Julia Munro (York–Simcoe PC)
Mr. Arthur Potts (Beaches–East York L)
Mr. Lou Rinaldi (Northumberland–Quinte West L)

Substitutions / Membres remplaçants
Ms. Catherine Fife (Kitchener–Waterloo ND)
Mr. Jim McDonell (Stormont–Dundas–South Glengarry PC)
Mr. Randy Pettapiece (Perth–Wellington PC)

Also taking part / Autres participants et participantes
Ms. Jennifer K. French (Oshawa ND)
Ms. Bonnie Lysyk, Auditor General

Clerk / Greffier
Mr. William Short

Staff / Personnel
Mr. Ben Elling, research officer,
Research Services