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Official Report of Debates (Hansard)

Thursday 1 April 2010

Journal des débats (Hansard)

Jeudi 1er avril 2010

Standing Committee on Finance and Economic Affairs

Pension Benefits
Amendment Act, 2010

Comité permanent des finances et des affaires économiques

Loi de 2010 modifiant la Loi
sur les régimes de retraite

Chair: Pat Hoy
Clerk: William Short

Président : Pat Hoy
Greffier : William Short

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

COMITÉ PERMANENT DES FINANCES ET DES AFFAIRES ÉCONOMIQUES

Thursday 1 April 2010

Jeudi 1er avril 2010

The committee met at 0900 in room 151.

SUBCOMMITTEE REPORT

The Chair (Mr. Pat Hoy): The Standing Committee on Finance and Economic Affairs will come to order. The first bit of business: We need a report from the subcommittee. Mr. Arthurs.

Mr. Wayne Arthurs: Your subcommittee met on Tuesday, March 9, 2010, to consider the method of proceeding on Bill 236, An Act to amend the Pension Benefits Act, and recommends the following:

(1) That the committee request authorization from the House leaders to meet at the call of the Chair on Wednesday, March 31, 2010 for the purpose of public hearings.

(2) That the committee hold public hearings in Toronto on Wednesday, March 31, and Thursday, April 1, 2010.

(3) That the committee clerk, in consultation with the Chair, post information regarding public hearings on the Ontario parliamentary channel, the committee's website and the Canada Newswire.

(4) That the committee clerk, in consultation with the Chair, place an advertisement, for one day during the week of March 15, 2010, in the Hamilton Spectator, the Windsor Star, the Sudbury Star and a French equivalent in each location where possible.

(5) That interested parties who wish to be considered to make an oral presentation contact the committee clerk by 12 noon on Monday, March 22, 2010.

(6) That the committee clerk distribute to each of the subcommittee members a list of all the potential witnesses who have requested to appear before the committee by 1 p.m. on Monday, March 22, 2010.

(7) That if necessary, the members of the subcommittee prioritize the list of requests to appear and return it to the committee clerk by 12 noon on Tuesday, March 23, 2010.

(8) That if all requests to appear can be scheduled, the committee clerk can proceed to schedule all witnesses and no prioritized list will be required.

(9) That all witnesses be offered 10 minutes for their presentation, and that witnesses be scheduled in 15-minute intervals to allow for questions from committee members if necessary.

(10) That the deadline for written submissions be 5 p.m. on Thursday, April 1, 2010.

(11) That the research officer provides a summary of the presentations by Friday, April 9, 2010.

(12) That for administrative purposes, amendments to the bill be filed with the clerk of the committee by 12 noon on Monday, April 12, 2010.

(13) That the committee meet on Thursday, April 15, 2010, for clause-by-clause consideration of the bill.

(14) That the committee clerk, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

Chair, that's your subcommittee report.

The Chair (Mr. Pat Hoy): Are we all in favour? Agreed.

PENSION BENEFITS AMENDMENT ACT, 2010

LOI DE 2010 MODIFIANT LA LOI SUR LES RÉGIMES DE RETRAITE

Consideration of Bill 236, An Act to amend the Pension Benefits Act / Projet de loi 236, Loi modifiant la Loi sur les régimes de retraite.

MULTI-SECTOR PENSION PLAN

The Chair (Mr. Pat Hoy): We'll ask our first presenter of the morning to come forward: Multi-Sector Pension Plan. Good morning. You have 10 minutes for your presentation. There could be up to five minutes of questioning, coming from the official opposition in this round. I would just ask you to state your names for the purposes of our recording Hansard, and you can begin.

Mr. Ian Thompson: Sure. My name is Ian Thompson and I chair of the Multi-Sector Pension Plan.

Mr. Martin Kogan: I am Martin Kogan. I am the general manager of the plan.

Mr. Ian Thompson: We'll be relatively brief in our comments. Obviously, our brief has been circulated. Hopefully, we'll be interesting enough in our presentation that you'll take the time to read the brief after.

First of all, I want to start by saying the Multi-Sector Pension Plan is a somewhat different plan than maybe many of you are used to. We are a target benefit plan.

We're very new in our existence; we started in 2002. We are one of the few defined benefit plans that have been growing in this economic climate.

We started in 2002 as a joint project between the Canadian Union of Public Employees and Service Employees International Union. We started with 200 members. We've grown to nearly 8,000 members as of today, so it has been very successful in a very short period of time.

It is also a plan that covers full-time and part-time employees, and employees in a wide range of different industry sectors, which is also unusual. Sometimes, as a result of that, we feel that regulators and legislators have missed noticing us. Sometimes, when regulations and legislation are drafted, they are drafted in a way that misses some of the nuances of our particular plan.

Generally, we've been very supportive through the Expert Commission on Pensions process. We think it's time that pension reform occurred. Most of the changes in Bill 236 we're substantially in agreement with.

0910

We have some comments on a few areas, and there are five areas that I want to specifically comment on. One is the issue of immediate vesting. Second is the issue of increased transparency. Third is increased regulatory oversight. Fourth is phased retirement, which presents some problems, in our view. The last is solvency funding, which is something that hasn't been addressed and we think should have been addressed in this round of legislative change, particularly as it affects multi-employer plans.

With regard to immediate vesting, we're in agreement with the general concept of immediate vesting. It does have cost implications for our plan. The one aspect of immediate vesting, which we don't think has been addressed by the bill but which may, in the end, be addressed by regulation, is that our plan is unique, or maybe not completely unique, but unusual in that it provides a past-service benefit. In designing the multi-sector plan, we designed a plan to provide defined benefit pension coverage to occupational and industry categories which hadn't traditionally had access to pension plans. In our case, we were particularly interested in social service agencies, child care agencies—very small employers, predominantly female in their composition, that had no history of workplace pension plans. To address, from a policy point of view, that historic inequity, we created a past-service benefit. It's a relatively modest benefit, but it provides for a small additional pension for people who wouldn't traditionally have had a pension.

When you talk about immediate vesting, if that immediate vesting includes the past-service credit, it poses some problems for our plan, because the past-service credit is amortized over a 15-year period of contributions in the plan. Immediate vesting could impact on the ability of the plan to amortize that liability. Hopefully, that can be addressed by regulation. We don't disagree with the concept of vesting. It just causes too big a financial problem for our plan, if it's applied to past-service credit.

We're completely supportive of anything that increases transparency of pension plans. We think those changes in the legislation, which require more disclosure about plan changes, is a good idea. If we had our druthers, I think we would expand the transparency of plans generally.

Regulatory supervision: Again, we're supportive of increased regulatory supervision. We would have been happier if the legislation had gone one step further and included plan advisors and, specifically, acknowledged that plan advisors and the companies that employ them have fiduciary responsibilities to the plan, which makes them liable for some of the advice they give plans.

Phased retirement: In our response to the expert commission, we said that if the government decided to include phased-retirement provisions in the Pension Benefits Act, it not be a mandatory requirement. The legislation respects that, and we appreciate that. We still think there are a lot of problems with phased retirement, and it's unlikely that our plan would accept that kind of direction. We see a lot of labour relations and human resource issues. We don't think that the current regulatory framework is going to stop some abuse in that process. It's voluntary, so maybe that's not as much of a problem as it could have been. We still see it as an area that is bound to cause many, many difficulties in the future, from a labour relations point of view.

The last issue I want to address and, in some ways for us, the most significant, is the issue of solvency funding. We're concerned that this round of legislative reform—and we understand, or the general belief is, that this is only phase one in what might be an extensive process of legislative reform of the Pension Benefits Act. We think solvency funding was of enough significance that it should have been addressed in round one. As you know, plans are expected to be funded both on a going-concern basis and a solvency basis. Solvency essentially means that if, for some reason, the plan had to be wound up, is there enough money in the plan to cover the liabilities?

Multi-employer plans are not subject to the same solvency risks that single-employer plans are. Solvency funding doesn't necessarily make a lot of sense for a multi-employer plan. In our case, we have more than 100 employers in the plan. They are funded primarily through government as transfer payment agencies. We do have some private sector employers as well. The possibility of a significant number of employers going bankrupt, forcing a solvency situation in the plan, is infinitesimal; it's tiny.

The Chair (Mr. Pat Hoy): You have about a minute left for your presentation.

Mr. Ian Thompson: I'm moving rapidly.

We had hoped that this round of legislation would provide solvency relief for multi-employer plans. We acknowledge that through regulation you have allowed some plans to get what's called SOMEPP designation. Our plan, unfortunately, because of a very strange regulatory twist, was unable to get SOMEPP designation. The twist has to do with the fact that SOMEPP

designation was extended to plans that represent taxpaying employers. Our employers are not taxpaying because they are transfer payment agencies. They don't meet that definition under the Income Tax Act regulation, which is then being applied to SOMEPP.

We managed to get a bit of regulatory forbearance, but we would ask that you look at solvency funding for multi-employer plans generally and, specifically, that you expand that SOMEPP regulation to include plans like ours. There's not a lot of us. Really, that's our presentation.

The Chair (Mr. Pat Hoy): Thank you very much. This round of questioning will go to the official opposition. Mr. Miller.

Mr. Norm Miller: Thank you very much for your presentation. First of all, we have five minutes, so if there's more that you wanted to say, feel free to say it. I'd start by asking a little bit more about the Multi-Sector Pension Plan because I gather it's unique. You say you have 8,000 members. Across the province, what would be the total for all multi-sector plans?

Mr. Ian Thompson: We're a national plan, though we are registered in Ontario, and the plurality of our membership is in Ontario, but we have members in every other province except Quebec. What happened to myself and other people in my organization is that we realized that there were huge gaps in pension coverage for our members, again, primarily in female-dominated workplaces, primarily in small transfer payment agencies. We wanted to address that problem, so in conjunction with SEIU, we created this plan. We've grown by about 2,000 members a year, and it is freely collectively bargained. One of the questions that you sometimes get asked is, "Do people really understand defined benefit plans?"

0920

Mr. Norm Miller: Yes, you say you're target benefit, but also defined benefit. Can you explain how—

Mr. Ian Thompson: It's the same thing. We have a formula, but the formula is essentially based on a career-average earning kind of model.

The closest thing, without going into a lot of description, is that we're sort of like the CPP, except we operate as a pension plan.

Mr. Norm Miller: And your 8,000 members: Is that across the country, then?

Mr. Ian Thompson: That's across the country.

Mr. Norm Miller: How many in Ontario?

Mr. Ian Thompson: I'd say about 5,000 in Ontario.

Mr. Norm Miller: And are there other multi-sector pension plans in Ontario as well?

Mr. Ian Thompson: They tend not to be. They tend to be more industry-specific. For example, there's an Anglican Church plan that I think—I don't know whether I would call that an industry-specific plan.

Mr. Norm Miller: You were saying that it's not covered in Bill 236, the solvency funding, but you'd like to see some relief for your type of plan. But you do have some private sector members of your plan. What happens when one of those private sector members goes bankrupt? Why shouldn't there be tough solvency requirements so that the plan members are ensured of receiving their benefits?

Mr. Ian Thompson: They're not a big enough proportion of our plan that they would cause the plan to wind up. We have 100 employers. If 10 employers went bankrupt, we would survive. The plan would continue and would continue to be able to fund the benefit. We're very healthy on an ongoing-concern basis.

Solvency is a problem for us because of the past service credit, because when we designed the plan, we intended that past service credit to be funded over 15 years. The new solvency requirements require that it be funded over five. It puts an extreme burden on the plan and it stops us from being able to address that historic inequity.

Mr. Norm Miller: Okay. I think Toby had a quick question he wanted to ask.

Mr. Toby Barrett: Just very briefly, with respect to the SOMEPP regulation, the intention to exempt multi-employer plans—I don't know what SOMEPP stands for, and also SMEPP. What is that?

Mr. Ian Thompson: Sorry, specified Ontario multi-employer pension plan and specified multi-employer pension plan, which is the federal equivalent.

It's kind of curious, because the feds gave us SMEPP status and we don't really qualify for SOMEPP status, though they apply the same criteria. We meet all of the criteria except the difference between profit and non-profit.

Mr. Toby Barrett: Okay, thank you.

The Chair (Mr. Pat Hoy): Thank you for your presentation.

Mr. Ian Thompson: Thank you.

ONTARIO FEDERATION OF LABOUR

The Chair (Mr. Pat Hoy): Now I call on the Ontario Federation of Labour to come forward, please. Good morning. You have 10 minutes for your presentation. There could be up to five minutes of questioning following that. If you would identify yourselves for our recording.

Ms. Terry Downey: Great. Good morning, Chair Hoy, and the rest of the panel members. My name is Terry Downey and I'm the executive vice-president of the Ontario Federation of Labour. With me is Sheila Block, our research director, who is heavily involved in pension issues. She and I will be presenting and fielding any questions that you might have.

The federation of labour, as you probably well know, is unions affiliated to us all over this province. We represent over a million working people in this province.

The economic crisis, as you know, has highlighted a number of weaknesses, we believe, in our pension system. Many workers remain unemployed. Since the start of the recession, asset values dropped dramatically and then recovered about half their value. Many plan sponsors are facing continued financial difficulties.

Governments have responded with aggressive interest rate reductions.

All these events have a negative impact on Ontarians' retirement savings, whatever form they take, whether it's defined benefit pension plans, defined contribution pension plans or private savings for retirement. As a result, reforms to strengthen the pension system are a high priority for Ontarians.

The OFL is pleased to make this submission on Bill 236, An Act to amend the Pension Benefits Act. There is much in this bill that the trade union movement can support. At the same time, we have suggested amendments to strengthen this legislation. However, before we begin to address this legislation, I want to underline the major issues of pension policy that have not been addressed in this bill.

The first issue is the adequacy of pension coverage. Almost two thirds of working Ontarians are not members of employer-sponsored pension plans. The most effective way to improve retirement security for all Ontarians would be to increase Canada pension plan benefits. This would draw on existing economies of scale, risk-sharing and administrative efficiencies of the plan. The labour movement has put forward a workable, affordable plan to double the Canada pension plan benefits. At a pension summit last weekend, more than 400 folks spent the day discussing and debating this proposal. We believe that we will continue to gather and gain support and momentum for this proposal in the consultation process leading up to the finance ministers' meeting in May.

The second is a set of major issues within the Pension Benefits Act. These include measures with respect to pension funding rules, the use of plan surpluses, and benefit security through the pension benefits guarantee fund.

With those caveats, I will turn to the substance of our brief, and in particular the recommended amendments to the sections of the act that deal with the following issues: surplus distribution, grow-in benefits, asset transfers, access to plan information and individual transfers. I would ask that you read our brief for a fuller discussion of these and other issues in the act.

I will turn first to the issue of surplus distribution. Bill 236 represents a loss of entitlement for plan members. However, we are prepared to support this proposed amendment if it incorporates the Arthurs commission recommendations on this issue; that is, in the absence of a surplus sharing agreement, employers should only have access to the surplus when the employer had "clear entitlement" to the surplus. I would direct you to page 2 of our brief for our recommended amendment to the proposed section 79.

Grow-in benefits: We strongly support extending grow-in benefits to all workers whose employment is terminated and who meet the requirements. We believe that this will increase equity and mitigate the loss of plan members' rights through the elimination of partial wind-ups. However, section 1.1 is problematic. It is frequently unclear whether termination is voluntary. Pension legislation does not generally differentiate between voluntary and involuntary terminations. This is not an issue in which the regulator has any special competence. Attempting to differentiate between voluntary and involuntary quits adds cost, complexity and inequity. The grow-in provisions must not be limited in this way.

We support the proposed subsection 74(1.2) which allows sponsors of MEPPs and JSPPs to choose whether to direct resources to grow-ins or to other advantages or benefits for their members. We are concerned, however, with the amendments made to subsection 74(8). Under current legislation, it is very clear that PBGF coverage extends to grow-in benefits. However, the proposed legislation makes no reference to PBGF coverage when calculating pension benefits eligible for coverage. Clearly, this must be an oversight during the drafting process of Bill 236. I would direct you to pages 3 to 5 of our brief for the specific amendments we are proposing.

Transfers between plans need to be made as simple and transparent as possible. The basic principles of preservation of benefits and commuted values are necessary to ensure fairness and impartiality, and individual choice needs to be preserved. The proposed changes to the act remove the requirement that benefits be identical; however, individual members still have no choice with respect to transfers. Furthermore, in the public sector, the interest of the original employer in an asset transfer for their past service is questionable. We believe that a reciprocal agreement between pension plans provides a better model for group transfers in the public sector than the proposed agreement between the original and the successor employers. In order to avoid the problems that arise from delays in implementation, this agreement should include a provision for binding arbitration, should the plan administrators prove unable to reach an agreement in a timely manner.

0930

Phased retirement: The labour movement has concerns about phased retirement—its impact on workers and on pension plans' finances. We would recommend that the government engage in a fuller study prior to implementing phased retirement, as suggested by the OECP. If the government does proceed, we support the requirement that the phased retiree have reduced worker hours. We recommend that the bill be amended to require negotiated provisions in the collective agreement governing phased retirement.

Let me talk about access to plan information and notice of proposed amendments. It's not clear to us that the requirements to provide information on proposed amendments in section 26 does not include those with respect to transfers of assets, which can have large impacts on plan members. We have concerns about the impact of subsection 26(5) of the bill in a small minority of cases. The requirement to have payment and written request at the same time could be used to delay access to information for plan members.

We are concerned about the potential for broad interpretation of "prejudice the economic interests of an

employer or the competitive position of an employer" in section 30.1. This could prevent or delay members' access to plan information. We therefore recommend deleting this section of the bill. I would direct you to page 12 of our brief for the proposed amendments to this section of the act.

We are also concerned about individual transfers. We are concerned about the impact of the proposed change to section 50 on the retirement incomes of precarious workers. From a policy perspective, immediate vesting acknowledges the increased turnover in labour markets and encourages plan members' retirement savings from each employer. Section 50 of the legislation increases the amount that can be paid out in cash. We are concerned that this section of the bill will contribute to decreased retirement security for Ontarians. We suggest that these transfers should only be made to locked-in registered retirement savings arrangements.

Thank you for considering these changes to strengthen Bill 236.

The Chair (Mr. Pat Hoy): Thank you for the presentation. This round of questioning goes to the NDP. Mr. Miller?

Mr. Paul Miller: Good morning. Actually, I guess one of the biggest factors that was missing was the adjustment to the PBGF fund. You represent all sectors of the Ontario labour force, and some of the major pension plans in Ontario are grossly underfunded and almost on windup position. It's pretty scary stuff. I want to know the OFL's reaction to the lack of any of Mr. Arthurs's suggestions when he even agreed with our party that it should be changed to $2,500; he recommended to the government that it should be raised to $2,500. I want to know your reaction to absolutely nothing in the bill to address this situation.

Ms. Sheila Block: We were very concerned about not having anything about increasing PBGF benefits in the bill, and one of our proposed amendments in our brief is to increase it to $2,500. I think Mr. Arthurs, in naming his report A Fine Balance, talked about the balance that was required. In terms of loss of access to partial windup and to surplus, part of the package of trade-offs that he proposed was an increase in the PBGF and grow-in provisions. So we got part of that proposal, but not the whole package.

Mr. Paul Miller: As you know, we've been working on this for a long time. I remember putting in Bill 17 for the PBGF increase before Mr. Arthurs's report came in, which fell on deaf ears and didn't even reach committee level. So it was a big frustration for us too.

This bill does address vesting, which was always one of the goals of the OFL, which is good; there used to be a two-year wait period before you were vested—that's good. Grow-in rights are being addressed, not to the level we'd like, but they are being addressed, which is good too. There were some good things in the bill. It fell drastically short because there is no financial connection to improving the situation of the floundering pension plans in our province, and that's a scary situation. I'm sure I'll be hearing more about that today.

What we're hoping for is that the government will take this back and do something to start the—we don't suggest that you could jump to $2,500 or $2,700 right away. In this fiscal atmosphere, that would be quite a tough task. But we do believe it could be phased in over a period of time, and I believe you in the OFL agree with an amortization period to bring it up to a level, almost like an insurance plan, to help the workers out there. I have a lot of people in my community who have lost two thirds or sometimes all of their pension, and they've worked all their lives for these results that are, in our humble opinion, deferred wages. These are things that these people negotiated for over the years in good faith in their contracts. I imagine it's a big frustration for the OFL to see these legal agreements being broken with no alternative.

What would be your reaction to the broken agreements and the deferred wages? People get to 70 years old or 65 years old and find out they might have to work until they're 80. What do you think about that?

Ms. Terry Downey: We couldn't agree with you more. In fact, those issues came out last weekend at our pension summit. Certainly we want those changes made. All of the issues that you raised are included in our brief as to how those things can be changed.

Mr. Paul Miller: And you wouldn't be opposed to the NDP's plan for an Ontario plan as well to be added to the CPP plan?

Ms. Sheila Block: We really think that the best solution at this point would be to focus on an expansion of the CPP. We feel like we're getting some kind of success and some momentum in that, and that's really, nationally, the labour movement's focus in terms of addressing issues around pension coverage and in terms of actually trying to ameliorate some of the problems that are associated with single-employer plans, but also with the vast majority of Ontarians who have no pension plan and who are required to save on their own.

We really believe that the economies of scale, the coverage and the risk sharing are something that would be extremely important and would be a very workable and practical solution to some of the issues that you're raising.

Mr. Paul Miller: We agree.

The Chair (Mr. Pat Hoy): Thank you.

Ms. Terry Downey: Thanks very much.

The Chair (Mr. Pat Hoy): Thank you for your presentation.

MULTI-EMPLOYER BENEFIT PLAN COUNCIL OF CANADA

The Chair (Mr. Pat Hoy): Now I would call on the Multi-Employer Benefit Plan Council of Canada to come forward, please. Good morning. As you've heard, you have 10 minutes for your presentation. There could be up

to five minutes of questioning. Just identify yourselves for the purposes of our recording.

Mr. Thomas Levy: Hi. I'm Thomas Levy.

Mr. Cameron Hunter: I'm Cameron Hunter.

Mr. Thomas Levy: We're here today as board members of the Multi-Employer Benefit Plan Council of Canada, MEBCO for short, which is an organization that represents the interests of multi-employer plans. Those are the plans in the construction industry—you heard this morning from the multi-sector plan—where what happens is that labour and management negotiate a fixed contribution to the plans as part of their collective agreements and then a board of trustees takes this fixed-contribution income, invests the money and decides what the benefits will be. But unlike single-employer plans, there is no ability, if 2008 happens, to go back and get more money from the employers. The variable, the target, as you heard earlier, is, rather, the benefits have to be reduced; that's the only mechanism you have to deal with an event like 2008. In that model, when more is given to some groups, there is less available for others.

Starting specifically with the comments on page 2 of our presentation, full, immediate vesting is perfectly reasonable, and we are generally supportive of it, but when you say that the people who work temporarily or come out of high school and try carpentry for a year and don't like it and leave have to get a pension or have to get some money towards a pension, you are also saying there will be less available for the people who work to 65 or the people who are already retired.

0940

We're in an environment after 2008 where some of these funds, first of all, have lost a substantial portion of their assets—this has happened to almost all pension plans in Canada—and therefore are faced with reducing benefits. Also, employment is down, so contributions are down, because contributions are $2 an hour or something like that. To compel a plan like that to have immediate vesting is to compel a larger reduction in benefits for the people who stay until retirement. So we believe that Bill 236 should be amended to allow multi-employer plans the option of retaining the existing vesting just as that option is there for grow-in, and it's really for the same reasons: if you provide mandatory grow-in to a multi-employer plan, you're benefiting the person who's 40 with 15 years of service at the expense of the 80-year-old who's retired or the 65-year-old who's trying to retire. That's a very different trade-off than an employer perhaps paying an additional amount.

So we think multi-employer plans ought to have the option to keep the current vesting rather than being compelled to give people who only work, say, a year in an industry a portion of the plan's assets so that they're not available for those who actually retire.

Bill 236 reinforces a requirement that's in the existing act that says plan documents have to be available at every workplace. Think about what that means in the construction industry. You have companies coming in and out of Ontario for construction projects almost on a daily basis. You have people moving from employer to employer on a weekly basis as one project is done and they move on to the next. It really isn't practical, since the employers are changing all the time, to say that every work site has to have the documents.

A possible option, but one we think has some different risks, is to require that all the local unions have sets of the documents. What we've learned happens in that situation is that people go to their local union, and we've taught the local unions to send them to the fund to get their information. If they get the plan document, they're going to sit down with the people at the local union, often get the wrong information, and act on it. So we think that in the multi-employer environment, again, it's a fine idea to have documents available everywhere, but in terms of a minimum legal requirement, we think people ought to be given clear direction as to how to reach out to the fund to get accurate information. Too often, when it's provided by employers or local unions, neither of whom have anything to do with the plan design, they get wrong information.

The third is, as you've heard, the target benefit concept for these plans means that you can reduce benefits if that's what's necessary given what's happened on the investments or employment or some of the other risks. That's what many plans in Ontario are currently faced with. Certainly, plans often give advance notice voluntarily, but the current section 26 says that for multi-employer plans where at least half of the trustees must be member representatives, they are not compelled to give advance notice. We would like to see that existing provision continued rather than repealed. The example is the operating engineers and the heavy equipment and crane operators were forced to cut early retirement benefits after the 2001 market crash. They did give advance notice; there was a rush to the exits for people to beat the cuts out the door, which was the intent. It meant bigger cuts. It also meant, for example, that the ROM construction was left without a crane operator, so there were some very significant effects on employers because of what was happening on the pension side.

Finally, presently for multi-employer plans under the SOMEPP moratorium on solvency funding, full funding on a windup basis is not a target, and we'll be happy to talk to you, as the multi-sector plan people did, about why solvency doesn't make sense for these plans—that is, you can't improve benefits security by cutting benefits.

What happens is, the people who leave and take their money as a transfer value get 100 cents on the dollar, and those who leave their money in and those who continue working may get less than 100 cents on the dollar. We think the concept of treating the people who leave and take their money out—and often don't use it for pensions—better than the ones who leave their money in or are still working and use it for pensions is misguided for multi-employer plans, and we would suggest that the bill be changed to permit that.

I think, in response to Mr. Barrett or Mr. Miller's question, nationally, there are some 400 plans like this. The ones we have as members have on average 400 employers each. There are a total of something like a million and a half people nationwide who are covered under these plans. They are a major part of the pension industry and they provide pensions to a lot of people who otherwise wouldn't have pensions.

These are joint recommendations, union and management. They don't have a financial impact on the province because the contributions are fixed. We would suggest these changes be made.

The Chair (Mr. Pat Hoy): Thank you. This round of questioning goes to the government. Mr. Arthurs.

Mr. Wayne Arthurs: Gentlemen, thank you for your presentation this morning. It hearkens me back a little bit. My father retired from the construction industry, so I was always interested, and have been interested more of late than earlier, in the provisions of his rather modest pension, having worked in the industry for a great number of years, out of school as a very, very young man and having stayed in the industry as long as he reasonably could. My recollection is that his pension plan was a time-limited plan, if I recall. It was 15 years, and it kind of wrapped up at that point in time. The trick was, I suppose, to be around long enough to collect the pension and not so long afterwards that you couldn't afford to sustain a reasonable lifestyle.

As a result, I'm interested in a couple of things. One, I'm interested in any comment in respect to the size and scale. I think there were some plans with up to 400 employers on average in each, and 1.5 million employees nationwide?

Mr. Thomas Levy: Yes.

Mr. Wayne Arthurs: Maybe a comment on that in the context of 400 employers per plan: How many plans might there be, roughly?

Mr. Thomas Levy: Also about 400 nationally.

Mr. Wayne Arthurs: Okay, so 400 times—

Mr. Thomas Levy: There are 85 registered in Ontario, which means that the largest number of members is in Ontario, and 400 nationwide.

Mr. Wayne Arthurs: Okay, and about a million and a half employees nationwide?

Mr. Thomas Levy: Yes.

Mr. Wayne Arthurs: And one would extract down from that on a population base to come up with some reasonable number as to what that might mean for Ontario—probably about a third, I would guess; a little better than a third, probably?

Mr. Thomas Levy: That would be a reasonable estimate, sure.

Mr. Wayne Arthurs: Okay, I would get an estimate, anyway. On this issue of the vesting requirements, obviously, there's a certain interest in ensuring that the benefit plans, the pension plans that are in place to protect those particularly who are in the industries, construction in particular, for long periods of time, ensure that they can capitalize on those contributions over that period of time.

Can you comment—or refresh me, because refreshers are always good, even in a five-minute period—on your recommendations around this issue of vesting and the impact it has on the long-term employee, i.e., the potential for reduced benefits to those who stay in the industry?

Mr. Cameron Hunter: Yes. The issue really is, the employment contract is through a union, typically, and there are a large number of workers that would work, say, for the summer as teenagers; it's a summer job. The union's collective agreement requires that when you go to work, pension contributions are remitted to the plan.

In addition, as Tom said earlier, there are people who go out and try it. They try a trade; they try to be a plumber or a carpenter. They do it for a short period of time, say, up to a year. They decide, "Do you know what? That's really not for me." The collective agreement requires the contributions to go in.

Those people aren't really in the industry; they're not working. Their money, if immediate vesting was imposed, would serve to go to them, be paid to them and used for the short term, not as a long-term retirement savings vehicle. Under the current arrangement, because of the two-year vesting, it allows the money of those people who fall into those categories to benefit the people who are in the plan as a whole. In fact, the reason that the collective agreement is structured that way is for the people who are there long term, for their benefit.

0950

Mr. Wayne Arthurs: Thank you. Thank you Chair, as well.

The Chair (Mr. Pat Hoy): Thank you for your presentation.

POLICE PENSIONERS ASSOCIATION OF ONTARIO

The Chair (Mr. Pat Hoy): My understanding that the 9:45 is in traffic but trying to get here as quickly as they can, so I'll move to our next presenter, the Police Pensioners Association of Ontario. You have 10 minutes for your presentation. There could be up to five minutes of questioning following that. I'd ask you to identify yourselves for our recording.

Mr. Paul Bailey: Thank you, Mr. Chair. My name is Paul Bailey. I'm the president of the Police Pensioners Association of Ontario. I'm a retired police officer. I also receive a pension from OMERS.

With me today is Richard Metcalfe, Secretary of the Police Pensioners Association and also a retired police officer and member of OMERS. Because we are bumped up a little, Mr. Art Lymer, president of the Metropolitan Toronto Police Pensioners Association, may come in while we're talking.

We join with the Association of Retired Professional Fire Fighters of Ontario and the Police Retirees of Ontario in putting our view forward. We represent

approximately 10,000 retired people, the bulk of whom are in OMERS, but some are in older plans that predated OMERS: Those are in Ottawa, Hamilton and also in Toronto.

Members of the standing committee, we are very pleased that our association was given the opportunity to appear before this committee. We wish to reinforce the views we shared with you on Bill 206, OMERS autonomy, and the Expert Commission on Pensions, chaired by Mr. Harry Arthurs. We reviewed the technical backgrounder` which was released by the provincial government and would respectfully provide you with our views.

I would like to start my comments with increased transparency and access to information for plan members and pensioners. The definition of a "retired member" has been a difficult and acrimonious issue for retired members in the OMERS plan. The Pension Benefits Act defines a "former member" as "a person who has terminated employment or membership in a pension plan and ... (b) is in receipt of a pension payable from the pension fund."

In our presentation before the Expert Commission on Pensions, we strongly opposed this definition and recommended the definition be changed to properly reflect the value a retired member brings to this plan. We have never considered terminating our relationship in our pension plan. Retirees and widows receiving a pension are plan members for life. We support the amendment that retired members will be defined separately from former members. In the new legislation, the term "retiree" is used throughout the act, but is particularly relevant in the provisions that govern access to information and advisory committees.

We understand the government's definition of a retired member is an individual who has terminated the employment that relates to the pension plan or has terminated membership and—I'm not going to read them, but it lists the conditions that we feel are addressed in the act to go along with the definition of a retired member.

A former member under the new act is an individual who has terminated the employment that relates to the pension plan or has terminated plan membership, is not a retired member and is entitled to a deferred pension payable from the pension fund or is entitled to receive any other payment from the pension fund.

Further, we understand the act now states "an individual who was a member of a pension plan and who has transferred an amount" under the portability provisions of the act "is neither a former member nor a retired member."

We support the amendment that provides the rights for retired members to participate in pension advisory committees and receive prescribed information about our plan. We support the advisory committees that allow all stakeholders, including retirees, to participate on these committees. We submit this is key for retirees in supporting future pension initiatives. This also complements the increased transparency for all plan members suggested in your technical backgrounder.

We support the provisions of the act that provide for the establishment of a pension advisory committee on a vote of the majority of the members and retired members. Former members are not included in this process. Upon receiving written notice from members or retired members of their intent to establish a pension advisory committee, the co-operation of the plan administrator will be required. In the case of OMERS, the administrator will be required to assist in the establishment of the committee, including providing information about active and retiree members. Active members will continue to have the ability to appoint at least one representative for each class of employee in the plan. Retired members may have at least two appointed to the committee.

In our opinion, this is where the legislation fails retirees. Given that the establishment of a pension advisory committee is left to the determination of the active and retiring members, clearly retirees in the OMERS plan will never have the opportunity to become members of the pension advisory committee. OMERS does not support the creation of the committees.

Why retirees oppose the current language provided in Bill 236 is fairly simple: OMERS offers another position, one we don't support. OMERS opposes the establishment of these committees. OMERS expressed concerns that the legislation will allow for the distribution of members' and retirees' addresses to persons wishing to form such a committee. Further, they argue that the original expert commission made recommendations to have both multi-employer pensions and jointly sponsored pensions fully exempt from having such advisory committees. The PPAO argues that the current privacy legislation would protect and prohibit the distribution of members' names and addresses as suggested by OMERS in their paper.

OMERS' other reasons included the fact that the pension advisory committees should not apply to them because they are already jointly governed by member representatives, which is true.

Further, these plans have extensive memberships: In the case of OMERS, the plan has approximately 250,000 active members and just over 100,000 retired members. In the OMERS plan, 100,000 retirees have only one voting member on each corporation yet account for over 35% of the plan membership. This unfair representation of retiree members would be further disadvantaged if the legislation allowed these pension plans to be exempt from these committees. We feel this is a very important issue for us.

We strongly urge the government to make these committees mandatory for all pension plans. Consultation with stakeholders, including retirees, is essential to ensure their rights and privileges are protected.

The PPAO and other retiree groups have been requesting increased fairness in representation on both the sponsors corporation and the admin corporation at OMERS since the introduction of Bill 206. So far, no one

has listened. We strongly urge the government to listen to the voices of hundreds of thousands of retired citizens and allow more representation on pension boards.

We support the amendments that the plans would be required to give all members, including retirees, information about the funded status of the plan and so on. We support the amendment that the plan administrator and regulator provide copies of specific documents, electronically or by mail, on written request. We would also recommend that those responsible for providing this information be required to provide costs associated. Quite simply, sometimes if information is requested by a smaller group like us, and there's a cost attached, it would be beyond our means to pay it.

Under current rules, notice of an adverse amendment must contain a statement which invites comments to be provided to the administrator and the superintendent. Under the new legislation, it is not clear if this invitation will continue to be a requirement of the broader advance notice requirement, as the content and timing of this notice is prescribed by regulations. Regulations can completely change the intent of what the proposed legislation means.

Why do we seek clarification? As you may be aware, OMERS has a significant deficit: approximately $6 billion. OMERS has only two proven methods to reduce this deficit: (1) raise contribution rates for active members and (2) reduce benefits. Given that the active members are already paying high contribution rates, the alternative may cause the sponsors corporation to reduce benefits regarding future retirees by reducing or eliminating and—it's very important—on a temporary basis, indexing. This discussion will likely take place later this year, but the implications to employees and employers are significant. Full and frank discussions must happen before this takes place, not after. We believe that the plan must notify stakeholders, including retirees, of any proposed changes to the pension plan and that the notice should include acceptable time frames to ensure that the consultation process is fair, open and timely.

Under enhanced oversight, we support the amendments. It's imperative that the superintendent be granted the power to issue interim orders in certain specific cases.

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Phased retirement: We do support it. The way we interpret the act, phased retirement would be offered to—and I've listed the five key places where I see the legislation provides for it. The legislation then provides that during phased retirements, the member and the plan are subject to other provisions and regulations. We support the comments made by OMERS regarding phased retirement. OMERS feels the proposal is "unduly restrictive" and makes the following comments—I won't read them; they're there before you, but OMERS is asking for more flexibility and to be able to offer these plans.

We do have concerns that the potential for increased costs associated with managing these phased retirement initiatives may negatively impact the overall costs associated with the administration of large plans. We respectfully suggest that the issue of phased retirement provisions could be just one of many important initiatives that could be subjected to consultation and review at the pension advisory committee.

The Chair (Mr. Pat Hoy): You have about a minute left.

Mr. Paul Bailey: We support the argument based upon restructuring that is placed in the backgrounder.

Clarify the benefits of plan members affected by layoffs and eliminate partial windups.

We'd offer comments on the issue of grow-in with multi-employer and jointly sponsored plans.

I'll let you read the rest because my time is up. I think the government has made, in my opinion, a very good plan, or effort, to address the concerns that we brought to Bill 206 and to Mr. Arthurs at the expert panel. We're not asking for more power; we're asking for improved fairness and being an equal partner in the pension world.

The Chair (Mr. Pat Hoy): Thank you. For the committee's notice, they've asked to—no, I guess—

Interjection.

The Chair (Mr. Pat Hoy): We're okay with this now, aren't we? Okay then, to the official opposition.

Mr. Norm Miller: First of all, you were rushed at the end of your presentation, so if you want to just finish your point you'd like to make, and then I think Mr. Barrett has a question to begin with.

Mr. Art Lymer: My apologies. I'm still catching up with what he's going to say. I apologize for being late. I thought I was 10 minutes early. You must be ahead of yourselves.

Mr. Norm Miller: We are early.

Mr. Paul Bailey: The grow-in benefit seems to be a big issue. You'll notice that I put in there that, back in 2008, the Nova Scotia energy union had problems with it, and why they had problems with it was they talked to the review panel about what the big things are, and all of a sudden they popped this grow-in issue that threw the union completely offside. What we're suggesting is—the grow-in is not going to affect us—make sure you understand what the parameters are of it and make sure that the unions within the OMERS family and other pension plans understand what the impact will be on them. Certainly, we're not here to dictate to active members what they want or should want, but we are concerned that if it isn't done properly, we'll get into tremendous litigation issues—and we just finished one at the financial tribune last month. They're hugely expensive, and if we can avoid that, it's a better situation for all the stakeholders.

Mr. Norm Miller: And as I understand it, Nova Scotia and Ontario are the only two provinces that have grow-in benefits, and Nova Scotia has contemplated doing away with them. At this point, Ontario has gone a different route.

Mr. Paul Bailey: Well, in OMERS's case—they've never been a factor in OMERS. The grow-in benefits have never been offered by OMERS in their history, but

because of new legislation and reform, there may be advantages to unions to advocate this very strongly, as they did in Nova Scotia.

Mr. Norm Miller: I know Mr. Barrett had a question he wanted to ask, so we'll go and see how much time we have left.

Mr. Toby Barrett: Just briefly, I hear what you're saying with respect to advisory committees and the importance of consultation, and I assume that most retirees maybe don't have the interest that you do in where their money is sitting and what's going on and may not have known about the $6-billion deficit—I didn't—and so maybe that's traditional. But the world has changed and demographics are changing, and there are a lot more of us who should be more involved and should be participating. I guess my question is—and I know you were talking about OMERS—do they have an annual meeting that people can attend?

Mr. Paul Bailey: Yes, they have stakeholder meetings around the province where they have a PowerPoint presentation and they give the funding status of the plan and the initiatives and bylaws, but the advisory committee is a little bit more than that.

Back in Bill 206, they tried to say that the advisory committees would only be for active members and retirees who were left out. I see the advisory committee as a useful tool for the plan sponsors as well to gather intelligence, to understand what's going on, to understand the feelings of the people that are represented by the plan, instead of just saying "We're arbitrarily doing this, and thank you for your input." We want the ability to contribute to our plan.

OMERS has a tremendous pension plan there. It's well managed, we support them entirely, and we're pleased to be in it.

Mr. Norm Miller: Just on the same topic, I've met with people involved with different pensions that have expressed the concern that they just can't find out the current status of the pension. I was surprised by that. I would have thought that if you're receiving benefits, that should be a requirement, and that those retirees—I may not get the language correct—should have a right to know if their pension plan is solvent, and just what the status is.

Mr. Paul Bailey: Well, the other thing too—I mentioned this shortfall of money. Don't take it to mean that OMERS is in financial trouble; it isn't. When OMERS went into a surplus, they went up to 125%, and then they started down. It doesn't stop at the 100% mark, it goes below it. It's like a runaway train, and it's got to come back up. So there's a period of time where, over a period of years, they'll have to find ways through a solvency evaluation to pay back the money to the plan. We want to be part of the process, not to obstruct it but to offer useful ideas and be part of the family.

As you know, baby boomers are moving through the system in a big way. Seniors' demographics are huge and they're getting bigger every day. We're all living longer because of medical breakthroughs and so on—well, women are living longer than us guys, but maybe we'll catch up.

The Chair (Mr. Pat Hoy): Thank you for your presentation.

UNITED STEELWORKERS UNION, LOCAL 1005

The Chair (Mr. Pat Hoy): Now I call on the United Steelworkers Union, Local 1005, please. You have 10 minutes for your presentation, and there could be five minutes of questioning following that. Just identify yourself for the purposes of our recording, and you can begin.

Mr. Rolf Gerstenberger: My name's Rolf Gerstenberger. I'm the president of Local 1005, United Steelworkers, the union that represents the old Stelco plant in Hamilton, which is now owned by US Steel. We have about 850 active members and 9,000 pensioners involved in our pension plan.

I've presented a package; this is what we've been talking about for the last year as far as our concerns with the pension arrangements in Canada and, in particular, in Ontario. So basically, I would like to raise that we have grave concerns.

We have a defined benefit plan at Stelco—we'll call it Stelco. It's been in existence since 1956, and it's governed, as all of you know, by the Pension Benefits Act. Our concern is that all of these plans are under attack and that there's pressure on the provincial government and the federal government to change the regulations and the law as far as how defined benefit plans are regulated.

As some of you may know, we've had a long and, in my opinion, negative experience with the Pension Benefits Act, in particular the 5.1 election, which now has been removed. In the 1990s, the companies that were too big to fail were given the option to opt out of making their solvency payments. Stelco was one of those companies that took advantage of that in 1996. Even though the union protested, they had the legal right to do it. We went to the labour board to oppose it, and we were basically told, "Why are you protesting? Nothing's happened to anybody at Stelco yet."

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Unfortunately, a few years later, they filed for bankruptcy protection. One of the reasons they gave for why they should be given CCAA bankruptcy protection was that there was a huge deficiency in the pension plan, caused, in our opinion, by them not making their solvency payments.

Unfortunately—or, let's say, fortunately—they got out of bankruptcy. Our pension hadn't been touched. But then there was a special arrangement made for the new Stelco, which US Steel Canada now is taking advantage of, where they have 10 years of very limited payments. They had five years of $65-million payments and five years of $70-million payments. That, in our opinion, is

going to cause a huge problem in the US Steel pension plan in 2015, when that special arrangement ends.

One of the reasons I'm here is to express our concerns that all these provisions—in particular, one of them is the 10-year solvency funding rule, which seems to be where both the federal and provincial governments are going—sound fine, and they're being presented as, "This is to give the companies a break. Times are difficult," and all that. But at the end, what's put in jeopardy are the workers, because if something happens to the company in the middle of the 10-year funding special provision, it will be the workers. If the company decides to file for bankruptcy or go bankrupt, again, the workers are the ones who are going to be left high and dry, à la Nortel, the most recent example.

We're very concerned that what was originally put into this bill in 1987-88 to protect workers in case companies went bankrupt—this principle is being forgotten, under the excuse that, "We have to ensure that all these companies are viable and survive." It's then the workers who are being—their pensions and their retirement security are being jeopardized.

Anyway, one of the main reasons that we asked to speak here is that we don't agree that the workers' retirement security should be potentially jeopardized.

We've been following this a long time—since 1997, actually—because of what happened with our plan at Stelco. We would like these laws strengthened, because the objective of any pension benefits legislation should be, first and foremost, to protect the income security and retirement security of the workers. Everything has to be geared towards that. What we're concerned about is that that's going to be put on the back burner. I think, really, that's my main reason for coming here and addressing the gathering.

I'd like to also apologize for coming late. It's not my fault. I read in the paper that the worst traffic delays in the world exist in Toronto. I thought an hour and 45 minutes was going to be enough to do a 45-minute drive, but I was off by 15 minutes.

Those are basically my comments. As I said, a lot of the background in what we've been dealing with are in this document.

The Chair (Mr. Pat Hoy): Thank you very much. The questioning goes to the NDP.

Mr. Paul Miller: Thank you for your presentation, Mr. Gerstenberger—president of my former local, and a proud steelworker myself. Obviously, I'm concerned about the pension situation as well.

I guess I would like to expand on your comments about the PBGF. As you know, our party had made recommendations before Mr. Arthurs came out with his report to raise it to the $2,500 monthly level. I'd like to get your feedback on whether you feel that that would be an acceptable level.

They obviously want to amortize it over a period of time. How do you feel that will impact on your membership?

Mr. Rolf Gerstenberger: Obviously, the thousand-dollar PBGF guarantee has been around for a long time, so the pensions that our workers have right now, the $1,000—there's probably half of them that would protect, and then the other half, the recent retirees, wouldn't be anywhere near protected, so I am not opposed to it being raised.

The only problem is that without some provision or some legislation to say that that has to be there, the $2,500 or even the $1,000—because the problem is after certain big bankruptcies, there's no money in the fund. I guess there's a certain levy that goes on to each company that has a defined benefit plan into this fund, and it's only if there's a certain amount of money in there to cover it that people will be covered. If it's not here, then they're left high and dry.

The $2,500 is fine, but there also has to be a different way of funding it. If it means anything, then you should get it no matter what, if that's the principle. Again, I agree with the principle that workers' pension income should be secured—not just ours, but everybody across the country should be entitled to have a decent retirement.

Mr. Paul Miller: Thank you. You also touched on the 10-year period for the payback of US Steel's obligations, which they agreed to when they took over Stelco. You feel that that could potentially be in jeopardy depending on the economic conditions for the company and the position they're in globally or in a recession situation. What do you feel is the safeguard that should be put in by the federal government and the provincial government to make them live up to their obligations in case of a partial windup of the pension plan or things that could potentially happen?

It's my understanding that your pension plan is approximately 58% funded at this time, which is a scary thought. What's your view on that?

Mr. Rolf Gerstenberger: After coming out of bankruptcy, the provincial government loaned the new Stelco $150 million at 1% interest. Unfortunately, with that money, what the new Stelco did is they bought up all the new shares and then sold everything for $1 billion and left the country, left town—Rodney Mott and Tricap and all that. That billion dollars that they left with could have been used to bring the pension plan up to a better ratio of solvency, transfer ratio or whatever. That wasn't done, so now with the last crisis—you were right; we went from 70% funded to 57%.

The problem is that we also have a lot of workers now who have decided to retire who are quite young, so in the next actuarial report, there will be a huge extra unfunded liability that isn't going to be paid because of the special funding arrangement. That's why I said that in 2015-16, there's going to be a big problem.

The other problem is that they'll have a huge payment due in that period, so we're concerned, just with the way a lot of these companies are operating, that at that time, they may decide to file for CCAA in Canada or something like that and there'll be no protection for us

because of all the special funding arrangements that are made.

Mr. Paul Miller: Thank you. I'm just trying to get my last question in. The last concern that might be important is the fact that the companies in North America are moving in the direction of contributory plans, which is obviously a threat to defined pension plans. I'd like to get your opinion on that.

Mr. Rolf Gerstenberger: Well, the problem with any contributory plan—they're savings plans. It's interesting because I've included one or two articles in there. What these savings plans are is really, there's no guarantee at the end of anything. If the market happens to be great, well, you'll get your savings when you have to retire. If it's not, then who knows what you could get?

I have friends in Dofasco who were going to retire last summer. Now they have to put it off because their contributory fund has taken a huge hit. If they had retired, they weren't sure what was going to happen at the end after 10 years or whenever their money ran out.

The defined benefit plans—why we appreciate those plans is that you're going to get that until you die, which is what everybody in the country wants: I have this much to live on. I don't believe that our retirement income should be at the whim of how well the market's doing. We're not playing the market; we're trying to live a decent retirement, and that shouldn't have to be put at risk, depending on what speculators or credit default swaps or other financial shenanigans are going on.

Mr. Paul Miller: My last question is that—

The Chair (Mr. Pat Hoy): Oh, we're out of time.

Mr. Paul Miller: We're out of time? I'm sorry. Okay.

The Chair (Mr. Pat Hoy): Thank you for your presentation.

Mr. Rolf Gerstenberger: Thank you very much.

The Chair (Mr. Pat Hoy): We will recess until five to 2.

The committee recessed from 1016 to 1400.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

The Chair (Mr. Pat Hoy): The Standing Committee on Finance and Economic Affairs will now come to order for our afternoon session.

I would ask the Ontario Public Service Employees Union to come forward. Good afternoon. You have 10 minutes for your presentation. There could be up to five minutes of questioning after that. I would ask you to identify yourselves for our recording Hansard, and then you can begin.

Ms. Patty Rout: My name is Patty Rout, and I'm the first vice-president/treasurer of the Ontario Public Service Employees Union.

Ms. Isla Carmichael: And I'm Isla Carmichael, on staff and specializing in pensions at OPSEU.

The Chair (Mr. Pat Hoy): Go ahead.

Ms. Patty Rout: I want to thank you for giving us the opportunity to speak to you today. As I said, my name is Patty Rout and I'm the first vice-president/treasurer of the Ontario Public Service Employees Union. We have handed you out a copy of our submission on Bill 236, An Act to amend the Pension Benefits Act. We have also included a smaller submission on behalf of our paramedic division.

On behalf of the OPSEU membership, I would like to make the following points that are illustrated in our brief.

My first point is about our existing retirement security system. Under 40% of Ontarians and Canadians have a pension plan. That means that over 60% have to rely on the public system of the Canada pension plan and on other social security programs. Yes, the CPP has done a good job in the past of rescuing those seniors who have the least money, but the future is another matter. Living on $14,000 a year is not going to work for seniors in the future.

We also have some very good pension plans in Ontario, and these are primarily the public sector plans like HOOPP, OPTrust, OMERS and the teachers' pension. We need to build on our strengths. We could make use of our larger plans by broadening their scope. The government has facilitated that with some of the plans, but not all. We believe a better public system—an expanded CPP—is a good bet. We are pleased that the provincial government is working with the federal government, because the federal government certainly needs to be persuaded that there is indeed a problem with pensions.

My second point is about split pensions in the public sector. In the past, the governments of the day have divested large groups of public sector workers without any regard for the effect of the divestment on the pensions. It's one thing to be divested; it's quite another to lose your pension. Why not allow and enable portability, rather than have members have two or more split pensions which will never have the value of all those pensionable years? Split pensions are not good pension benefits. These members who have lost their pensions need help, and OPSEU thanks the government for addressing this terrible injustice and giving the superintendent more flexible powers to intervene.

I'll give you a couple of examples of our members and what has happened to them because of the split pensions.

Member D.C. has contributed to the HOOPP plan for 25 years. The average best five years of salary is $38,000, resulting in their HOOPP pension plan being calculated at $19,000 per year. After the divestment of the ambulance services to Simcoe county, D.C.—that's the member—made contributions to the OMERS plan for the next 10 years. The best five years of salary since being divested is averaged at $92,000, and those contributions were made to the OMERS plan for 10 years. This resulted in an OMERS pension of $18,400 per year. Combined, that became $37,400. However, if Bill 236 allows for the transfer of pension from one plan to another, the D.C. pension—so D.C. is the member—will be $64,400 per year, which is a staggering difference of $27,000 per year for pension.

Similarly, our member B.L. has contributed to the OPTrust for 21.9 years. The average best five years for that employee was $48,930. This resulted in an annual pension of about $15,283. However, with the divestment of this individual, contributions for pension were then turned to the OMERS plan for a subsequent nine years. The average best five years was $89,575. At retirement, their OMERS pension will be calculated at $17,880 per year, so the split pension, taking the OPTrust and the OMERS, gives you a total of $33,163 per year. However, if it was one plan, such as what is suggested with Bill 236, the pension would be $62,703 a year, which is a difference of $29,540.

We propose—you'll find this in our brief—that the government ensure that large funds negotiate agreements with the goal of remedying these past injustices. We must have strict time limits on this so that there will be a remedy for all our members harmed by split pensions. In the event that plans cannot reach a timely agreement, we insist that a decision be imposed on the plan.

My last point, my third point, is about the future. We must make good policy on asset transfers to prevent split pensions and ensure that members are not harmed by divestments. Workers, when divested, should be able to keep their pensions and have their pensions follow them into the community. This is very easy to accomplish administratively: Employers simply remit contributions to the originating pension plan. This means that we move away from the model of the employer-based pension plan to increase the portability.

We must build on our strengths in the large plans and not needlessly weaken our members' benefits. The large plans already have reciprocal agreements for individual members who move from one plan to another or one job to another, so let's extend this model to groups of members who are being divested.

Again, we need to ensure that the plans reach agreement in a timely manner and, if not, have some sort of settlement imposed.

I wish you well in your deliberations and thank you for your time.

The Chair (Mr. Pat Hoy): Thank you for the presentation. The questioning will go to the government. Mr. Arthurs.

Mr. Wayne Arthurs: Thank you both for being here this afternoon. Your comments, I think, are generally in support of the legislation but, obviously, with areas that you would like to see refinement in, and you encourage us to continue to engage the federal government in this broader discussion as well about retirement income adequacy, if I can use that big phraseology that we were using, in addition to discussions around pensions specifically.

My question, I'm going to keep it fairly short. You indicate that there's one area where the labour movement has a number of concerns, and that's the issue of phased retirement. You didn't have a chance, really, to touch on that in a substantive way in the 10 minutes of your presentation. Can you comment on the concerns that you're expressing in regard to phased retirement?

Ms. Isla Carmichael: I can answer that. First of all, I think the trade union movement as a whole—and you've probably heard that from the OFL this morning—has a number of concerns about phased retirement, primarily the concern that phased retirement often becomes a benefit that few can access and few people who are chosen can access. I think the trade union movement, and OPSEU in particular, is anxious to take out that more arbitrary nature of phased retirement.

The Arthurs report recommended a study of phased retirement, and we would strongly support that before it's implemented. However, if the government intends to go ahead with phased retirement, then we would want it subject to collective bargaining so that we could ensure that there is fair access to something like phased retirement, which we anticipate that some groups of members would actually like to have. Others, of course, won't necessarily.

Mr. Wayne Arthurs: Thank you for commenting. Thank you for the presentation, the general support and the encouragement of the federal government and also for bringing very specific concerns you have about the legislation and giving us a chance to hear from you. Thank you so much.

Ms. Patty Rout: Thank you.

The Chair (Mr. Pat Hoy): Thank you for the presentation.

CARP

The Chair (Mr. Pat Hoy): Now I'd ask CARP to come forward, please. Good afternoon. You have 10 minutes for your presentation. There could be five minutes of questioning. This time it will go to the official opposition. I ask you to identify yourself for our Hansard.

Ms. Susan Eng: Thank you very much. My name is Susan Eng, and I'm vice-president of advocacy for CARP. With me is Kim Hokan, who is responsible for government relations.

CARP is Canada's largest national advocacy organization for older Canadians. We are a national, non-partisan, non-profit organization committed to advocating for a better quality of life for all Canadians as we age. We have 300,000 members across the country, of whom about 200,000 are here in Ontario; 34 chapters across the country, about 18 of them are here in Ontario.

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The current economic crisis has exposed flaws in the current pension regulatory regime and the inadequacy of it to protect people's rights under existing pensions. It's also focused the attention of Canadians, realizing that they need to better prepare for their own retirement and then, of course, recognizing the absence of a universally accessible savings plan to do so effectively.

CARP's proposals for pension reform consist of three parts: First, that there be a reform of the existing pension regulatory regime to rebalance the interests of employers

and employees; to prevent the underfunding and insecurity of existing pension funds, including a governance rule for members and retirees; and, with a faint hope, the potential to encourage more employers to establish workplace pensions.

As for a supplementary retirement savings vehicle, especially for those without workplace pensions, there are many options that have been reviewed, including increasing the CPP. Our focus is on a supplementary plan focusing on a mandatory, universal, affordable plan that will provide adequate income replacement and be sustainable and independent of any particular employer. We would of course reinforce the government's call for a pension summit at which knowledgeable representatives of retirees have a seat at the table.

I also want to bring to you today some of the views of our members. We issue a newsletter twice a month and we have 85,000 opt-in subscribers—again, a goodly number of them are in Ontario—and we include a survey about advocacy priorities. Regularly, we get 2,000 to 5,000 people responding, sometimes overnight and certainly in a matter of days. All the respondents are over the age of 55, the majority over the age of 65. They are retired, they have a strong conservative bias, big and small C; 70% of those respondents themselves have indicated they feel that they themselves are well looked after in retirement. Their recommendations are really advice for the future and they want us to take the benefit of their experience. So we do ask them about what they think needs to be done to improve the situation for existing pension plans and also for those who don't have pension plans, and I've provided copies of the survey results for you.

We've asked them to respond to the kinds of proposals that have been made federally and that are out there, including increasing the surplus limits, limiting contribution holidays, and whether or not the CPP can be a safe haven. In each case, they felt that increasing the surplus limit was a good idea, except they didn't think any employer would actually do it. They thought that limiting contribution holidays to a situation in which there was a 5% surplus was a good idea, except a large majority of them felt that there shouldn't be any contribution holiday at all. They believe that there should be a safe haven, but not necessarily to CPP, for failed pension plans. They had strong support for the protection of pensioners in the event of a bankruptcy; that's shown very much in all of the polling.

For those without workplace pensions, strong support for improving the CPP, strong support for improving OAS and GIS, and here in Ontario, GAINS, and there's strong support for a supplementary plan. Only 3% or 4% thought that the status quo was just fine.

Bringing our attention now to what Bill 236 actually deals with in this case, many of those issues that I've identified as priorities for our membership are not in fact addressed in Bill 236 and we look forward to phase 2 of the government's bills in relation to pension reform in order to address those issues. However, the bill does do a few things that we think are positive, rebalancing the interests of employers and employees. A number of provisions will better reflect the more mobile workforce that we are seeing and ensure better pension coverage. This includes immediate vesting, growing benefits. We actually support phased-in retirement. It will be especially important for older workers who face caregiving responsibilities and maybe change of career potential, and in those cases a phased retirement scheme that works properly will be to their advantage, but I take the point that maybe there are complications and limitations to their participation.

The enhancement of the security of their pension benefits is where they have the most concern. The additional valuation is a good idea but the problem is that despite it possibly triggering a deficiency funding requirement, it's of no value when the company itself is facing bankruptcy. So these are things that we have seen before, and they require us to move back on the time scale to make sure that during the ongoing operations of the fund, there are rules in place to prevent things that create an instability, including contribution holidays, proper annual valuations and required full funding of deficiencies rather than, as in the public discourse now, an extension of the time to allow the companies to fund their deficiencies.

We also believe that there should be a governance role for members and especially retirees. At the present time, they're referred to as former members, so we of course applaud the redefinition of them as retired members, giving them a particular and specific role in the governance and pension advisory committees.

The ability to receive timely information will be extremely important, and getting timely information of everything that's being done, not just when there is an adverse amendment. However, getting information, while important, does not give them any kind of mandate for governance. They can't, for example, indicate whether or not certain types of investments, investment structures or compensation structures are appropriate for people who want more stability rather than a huge amount of growth in the pension fund. So their interests are often submerged in favour of the active members, who have a different interest. The liability of many funds is actually more weighted in favour of the retired members rather than the active members, and yet they have no proportionate level of input to the governance of the organization. I think that it's very important that in any kind of adding of the role of retired members, they be given a direct governance role as well as the ability to receive information.

As a final note, we support the Premier's call for a national pension summit in 2010—it's good to put a deadline—to discuss retirement issues, but not just to discuss them: to actually get on to the path of considering the changes that must be made to improve retirement security for all Canadians. Right now in the public discourse, there's actually debate as to whether or not we have to do anything. We want the conversation to get

beyond that. Our members have already indicated that the status quo is absolutely not an option and would want to be fully represented at any pension summit table.

Thank you very much.

The Chair (Mr. Pat Hoy): Thank you. The questioning will go to the official opposition. Mr. Miller.

Mr. Norm Miller: Thank you very much, Susan, for your presentation today. I guess I'd start by saying that I've met with retirees who are concerned about the information they get on the plans they participate in and their ability to participate in the pension advisory committees. We had a presenter earlier in the day who talked about definitions as well: "retired" members versus "former" members. I gather you're in favour of these retired people being able to participate in these advisory committees. Do you have any other thoughts on that issue?

Ms. Susan Eng: My main point is that renaming them I know has influence, and that's good, but we can't stop there. It's very important that along with the name change, there is a real shift in their ability to participate in the governance of the plan. Part of what has taken us to this point in the pension crisis that we have faced of late has been both investment decisions and the pressure from employers to push valuations so that they're not making the necessary contributions or funding the deficiencies in a timely manner. The types of investments that pension funds get themselves into, which may be too risky for retirees, may be relevant for active members. These kinds of checks and balances need to be there. Retired members need to have an effective role and voice in such discussions.

Mr. Norm Miller: Have you looked at Bill 236 to see whether the provisions satisfy what you'd like to see?

Ms. Susan Eng: They don't. In fact, what they do is rename people, which is already very good; they give them the right to get timely information—all information, not just the adverse amendment information, so that is in and of itself good; and they have the right to participate in the pension advisory committees, not governance committees. Without the additional role of actually having a role in negotiating how the plan is operated and how its investments are made, I fear that the name change will be inadequate.

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Mr. Norm Miller: I know some of the people that I met with couldn't even get information. They were given privacy concerns as to why they were not allowed to be shared the information, which quite surprised me, given they were the ones who had worked their working lives to contribute to it and also were the ones depending on it as well.

Ms. Susan Eng: It was not perfectly clear that this legislation would actually override those privacy barriers that were used before, but I think that the intention of this bill is to try to make sure that, despite the previous barriers or possibly excuses, retired members would in fact get that information.

Mr. Norm Miller: If you have any specific amendments—perhaps they're in your package here; I'm not sure—but if you do have any, I'd just encourage you to get them to me, and I'd be pleased to look—

Ms. Susan Eng: We'll try to, but we're not really experienced in legislative amendments.

Mr. Norm Miller: Or even just what you'd like to see, and we'll try to get the Legislative Assembly legal people to draft something.

Thank you very much for this poll as well. I like the results I see, from a strictly partisan perspective—a poll taken on March 26 to do with the issue we're talking about: saving for retirement. It's clear that a great majority of your members think something needs to be done. I would assume that in terms of dealing with the issue, your first preference would be a national plan, either supplemental CPP or voluntary? Is a national answer better than a provincial one?

Ms. Susan Eng: The importance of national is twofold: one, to ensure that the plan is large enough to be sustainable and carry the efficiencies and economies of scale that we would recommend; the other is that people's benefits are portable. Those are the most important reasons to have it national—and of course uniformity is important. However, Ontario is certainly capable of creating a plan that is big enough and satisfies all of those economies of scale as well.

Mr. Norm Miller: Thank you very much for your presentation.

The Chair (Mr. Pat Hoy): And thank you.

TOWERS WATSON

The Chair (Mr. Pat Hoy): Now I call on Towers Watson to come forward, please. Good afternoon. You have 10 minutes for your presentation. There could be up to five minutes of questioning; it will come from the NDP. If you would state your names for our recording, you can start.

Ms. Martine Sohier: We want to thank you for this opportunity to provide comments on Bill 236's proposed changes. We will also take a few minutes to provide some comments on one of the aspects of the next phase of pension reform. My name is Martine Sohier, and I'm a senior consulting actuary at Towers Watson. My colleague Gavin Benjamin is also a senior consulting actuary at Towers Watson.

We'd like to start by mentioning that we welcome some of the changes proposed by Bill 236. We're very pleased that the asset transfer issues are being addressed. We would like, however, to reiterate the need to ensure that the transfer problems that arose as a result of the Transamerica issues are being resolved. We also appreciate the elimination of partial plan windups. We understand that new grow-in rules are being proposed as a trade-off for the elimination of these partial plan windups.

We would like, however, to express our concerns with the proposed grow-in changes. As one of the main goals

of pension reform should be to encourage the maintenance and expansion of pension coverage, including defined benefit plans, we believe that without any alteration, the proposed grow-in extension would operate counter to the aims of pension reform. The requirement to provide grow-in for involuntary terminations will increase costs in respect of pension benefits that have already been accrued unless they are compensated by legislative changes that decrease costs. Such a forced increase in costs is inappropriate in a voluntary pension system. There are fewer defined benefit plans that are being offered to Ontario workers year after year in the private sector, and only a portion of these plans are for generous early-retirement subsidies. Introducing the requirement to pay grow-in benefits to all involuntary terminations could impose considerable and unanticipated additional costs on many of these defined benefit plans.

Since there would be no corresponding financial impact on organizations that sponsor defined contribution plans or do not provide any form of pension coverage, the proposed requirements would effectively penalize defined benefit plan sponsors for the benefits they provide.

The provision of grow-in, based on the circumstances of termination of employment, will create uncertainty as to the pension benefits a member will receive on termination of employment. This is inconsistent with the principle that the pension deal should be clear to plan members and sponsors.

Further, the provision of different pension benefits depending on the nature of the termination will increase the number of potential disputes and litigation as employers try to provide these benefits.

However, we do not believe the aim justifies the provision of enhanced pension income. The needs of pension plan members for retirement income does not necessarily vary as a function of how a termination of employment occurs, and pension benefits should not vary depending on those circumstances.

As mentioned, if the goal of the proposed extension of grow-in benefits to all involuntary terminations is to compensate such individuals for the losses they sustain on termination, we believe that this proposal must be reconciled with the benefits provided under the Employment Standards Act.

It's not equitable to mandate that members of a defined benefit plan who are involuntarily terminated get a benefit in addition to ESA requirements but that members of a defined contribution plan or employees who do not have pension coverage do not.

We're having a presentation, so you can move to page 3 now.

If the government decides to go forward with the extension of grow-in benefits, we recommend the following alternatives be considered:

First, the use of the rule of 55 points is arbitrary. Many individuals who would qualify under this rule would not need to be compensated for a loss of employment through a pension plan. In general, individuals who are, let's say, less than 50 years of age and could qualify under the grow-in provisions would have the ability to find subsequent employment. There is, therefore, no need to provide additional rights under a pension plan to these younger individuals.

An alternative to the rule of 55 points could be to enforce grow-in for individuals who are close to retirement. This could mean, for example, providing grow-in rights to members who are within 10 years of the unreduced retirement age under the provisions of their pension plan.

Another alternative to consider under the grow-in approach would be to allow employers to offset any amounts received as severance or termination pay in excess of the ESA minimums to reflect these in the grow-in benefits payable to involuntary terminations. Such an offset would reduce the cost burden this new measure would place on plan sponsors, and minimize the chance that members of defined benefit plans with early retirement subsidies will receive treatment that is substantially better than other Ontario workers in the event of involuntary terminations.

My colleague will now talk about the next phase of the reform.

Mr. Gavin Benjamin: Thanks, Martine. I'm going to start talking to page 5 in the handout.

We all understand, as part of the pension reform process, that the government is attempting to balance the needs of various stakeholders, including pensioners, pension plan members and plan sponsors, and this obviously involves some trade-offs.

Given the proposals contained in Bill 236, what I would like to do is spend a few minutes discussing an issue that we believe should be given careful consideration for the next stage of the pension reform process so that, in combination with the Bill 236 proposals, Ontario's pension reform package maintains an appropriate balance.

We realize that one of the options under consideration is the facilitation and possible encouragement of target benefit plans that are jointly sponsored. While we believe that innovation in plan design needs to be encouraged, we also believe it is very important that the traditional private sector, single-employer defined benefit plan design is a viable option in tomorrow's retirement income system. Therefore, my remarks will focus on single-employer defined benefit plans.

One of the key challenges that sponsors of these types of plans face is the risk of trapped capital, which I've attempted to illustrate on this page. The minimum funding rules for a pension plan require that plan sponsors contribute the cost of benefits earned by members during the year, which is called the normal cost. The current minimum funding rules also require that the funded position of the plan be valued on a solvency basis, which assumes that the plan is terminated and all benefits are settled on the valuation date. Any shortfall in the

funded position of the plan on a solvency basis must be funded over a maximum of five years.

When you have poor financial market performance, like the credit crisis we experienced in 2008 and early 2009, funding based on the solvency funded position of the plan tends to increase substantially, and plan sponsors need to make significant additional contributions to fund the solvency shortfall. These additional contributions are shown in red on page 5.

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If the financial performance of a pension plan improves in future years, the contributions required to fund the solvency shortfall often prove, in retrospect, to be excessive. For most plans, these excess solvency contributions can be applied to reduce normal cost contributions, and the sponsor can take a contribution holiday. This is shown as a light blue section of the chart in years 2017 and onwards.

However, sometimes the excess solvency contributions prove, in retrospect, to be so large that in the short to medium term, they cannot be used up by contribution holidays. In this situation, these contributions often become trapped capital, as it is very difficult if not impossible for a sponsor to withdraw these excess contributions from the plan.

Due to the risk of trapped capital, plan sponsors are reluctant to contribute more than the minimum requirements under the Pension Benefits Act. As a result of this tendency to contribute at minimum levels, year-over-year contributions are more volatile, and the accrued benefits of members and pensioners are less secure.

If we move to page 6: We believe that a tool for alleviating the risk of trapped capital that should be considered seriously is a pension security fund. We note that the pension security fund has been recommended by the Alberta and British Columbia Joint Expert Panel on Pension Standards.

We realize that surplus issues are controversial and that any approach to alleviate the risk of trapped capital should strike the appropriate balance. Therefore, under the approach we are suggesting, contributions towards the cost of benefits earned by members during the year would be made to the regular pension fund. The regular pension fund, on page 6, is shown in green.

Surplus assets in the regular pension fund would be subject to the surplus withdrawal rules contained in Bill 236 and the rules that will be contained in the next stage of pension reform. Presumably, these rules will encourage a negotiated agreement between plan sponsors and members in situations in which the plan text is not clear regarding the ownership of surplus.

The Chair (Mr. Pat Hoy): You have about a minute left.

Mr. Gavin Benjamin: Yes, that should be fine.

However, any contributions made to fund a solvency shortfall could be made to the pension security fund. The pension security fund would be similar in most respects to the regular pension fund; in other words, it would be tax-sheltered and held separately from the sponsor's assets so that it's out of the reach of the plan sponsor and protected from non-pension creditors. The pension security fund is shown in orange on this page.

If the sum of the assets in the regular pension fund and the assets in the pension security fund are larger than the solvency liability plus a buffer—in other words, on this page, the sum of the green and the orange is larger than the blue—excess assets in the pension security fund can be returned to the sponsor. Also, assets in the pension security fund not required to meet pension obligations on plan termination would revert to the plan sponsor.

We believe that the ability to recoup these excess contributions will encourage sponsors to contribute more than the minimum and will reduce one of the key disincentives to sponsoring defined benefit plans. By contributing more than the minimum required and creating a buffer during good times, pension benefits will be more secure and sponsors can reduce the volatility of contributions during bad times.

We will be happy now to respond to any questions.

The Chair (Mr. Pat Hoy): Thank you. The questioning will go to the NDP and Mr. Miller.

Mr. Paul Miller: Welcome.

Mr. Gavin Benjamin: Thank you.

Mr. Paul Miller: I guess my first question would be to Martine. You've pointed out that you don't believe the 55 years of age needs to be bridged. My question to you is, what happens if that individual cannot find suitable employment or alternate employment, and is injured and they haven't made contributions to bridge them to retirement? What do you do in that case?

Ms. Martine Sohier: What we referred to as the rule of 55 is the sum of age and service. We said, on average, if you're being terminated before you reach, let's say, age 50, chances are that you need to find alternative employment. Really, bridging you to retirement doesn't really help you with the loss of income that you will be experiencing until you find alternative employment, because the pension income is locked into your pension plan so you have no access in the meantime to that income.

Mr. Paul Miller: What if you can't get another job?

Ms. Martine Sohier: Well, hopefully, if you are 45, you will have the opportunity to find alternative employment.

Mr. Paul Miller: I think you're taking away some security for these individuals by that comment. I don't agree with it, and I think that 55 is a good rule, because people are living longer and they can't necessarily get jobs after they are either terminated or lose their employment.

As you've witnessed throughout Ontario, hundreds of thousands of people are losing their jobs. I think this is taking away the possibility of being bridged for an individual who may not get suitable employment or the equal amount of employment. I definitely am opposed to that recommendation. Basically, that's the end of that discussion, because I don't agree with that at all.

Ms. Martine Sohier: May I just add one point? You're trying to impose additional costs for sponsors of defined benefit plans, where we have a lot of employers—

Mr. Paul Miller: I'm imposing protection for workers; I'm not imposing anything on the employer.

Ms. Martine Sohier: My point was just that we need to be mindful about those who are not covered by a pension plan, and really, this alternative is not helping them.

Mr. Paul Miller: That's why we're trying to create an Ontario pension plan that will cover the 66% of Ontarians who aren't covered, and they will be bridged also.

My next question is for the gentleman. It's my understanding from what you were saying that you're not thrilled about funds being locked up. You would be in favour of contribution holidays for companies and you don't feel that the pension plans should be solvent; I think some of the recommendations were even up to 110%.

You did mention that the bad times roll in. That's exactly what's going on in Ontario now because employers took contribution holidays. Some of our large pension funds are less than 60% solvent. I'd like to know what you mean by this. You're in favour of contribution holidays for employers? Is that what you're telling me?

Mr. Gavin Benjamin: I think at some stage, to the extent that, at a given point in time, a plan is fully funded, and possibly fully funded plus a buffer, so more than fully funded—you'd have to determine how much of a buffer you'd need—if there are sufficient assets, I think it's reasonable for the employer to take a contribution holiday.

The other point I was trying to make is that if employers feel that they've reached or exceeded that buffer in terms of assets in the pension fund—we believe that during the good times, whether the plan is in good financial shape or whether the employer is in good financial shape and cash is available, they're more likely to contribute more than the minimum to try and smooth out contributions over time. That's not always the case—

Mr. Paul Miller: In my few years on this earth, I haven't seen too many employers that want to over-contribute to pension plans. In fact, you have trouble getting it in the best of times.

One of the problems we have in Ontario right now is that the very thing that you want done is a contribution holiday, and the bad times have been quite numerous of late. Most defined pension plans in North America are in trouble, except for maybe two: HOOPP, which is the hospital one, because most of their people are gainfully employed, and there are a couple of others that aren't in bad shape.

But our pension plan at US Steel is now funded at 58%. If they hadn't been allowed to take a contribution holiday, we may have been in better shape. It wouldn't have been 100%, but it might have been 70%, which makes a big difference because we have, in my particular plant, 9,000 pensioners and 800 people working.

I think this suggestion you're making about contribution holidays is disastrous. That's what has got us in this mess that we're in today. I can't disagree more with your suggestion.

The Chair (Mr. Pat Hoy): Thank you, and our time is expired. Thank you for the presentation.

OSLER, HOSKIN AND HARCOURT LLP

The Chair (Mr. Pat Hoy): Now I call on Osler LLP to come forward, please. Good afternoon. You have 10 minutes for your presentation. There could be up to five minutes of questioning. I'd ask you to identify yourself for the purposes of our recording.

Mr. Ian McSweeney: Sure. My name is Ian McSweeney and I'm a partner at Osler, Hoskin and Harcourt. Good afternoon.

As the first stage of pension reform in Ontario, Bill 236 takes its cue from the Arthurs report. It proposes to fix a number of problem issues that have plagued the pension industry for many years since the last round of comprehensive pension reform in 1987.

Bill 236 purports to balance the interests of members and sponsor stakeholders in addressing these issues. The result of Bill 236, plus the stage two reforms, will be a reform package that contains some changes that are welcomed by sponsors and are unpopular with members, and other changes that are applauded by members and may raise serious cost and other concerns for employers. The committee has no doubt heard about some of these issues today and yesterday, and the government has received written submissions on many of them as well.

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While I have my own views on these issues, I am not here today to talk about those. What I want to discuss is perhaps one of the only issues upon which absolute member and employer consensus exists, and that is addressing the barriers to surplus sharing deals under clause 79(3)(b) of the pension benefits legislation for plans that are partially wound up. The problem under 79(3)(b) has existed since 1991, when Ontario introduced its current surplus-sharing member consent requirements under the PBA regulations.

Over the years, a number of joint submissions have been made to various governments urging a legislative fix to the problem. I have provided this committee with copies of my February 18 letter to Minister Duncan, enclosing the latest such submission with respect to Bill 236. Also enclosed is a copy of a similar submission which was made in 2000 to the Honourable Ernie Eves. You will see that these submissions are co-signed by most of the major law firms representing employers, members and unions in the pension area. I urge this committee, on behalf of the co-signers, to adopt the February 18 submissions in making its recommendations with respect to Bill 236. I don't propose to take the committee through the submission line by line, but I think it's helpful for you to understand several important points.

For the last 20 years, employers and members have been settling the issue of surplus entitlement on windup through negotiated surplus-sharing deals largely to avoid delays, costs and uncertainties associated with proving surplus ownership, and to comply with due process and Ontario's member consent requirements.

For partial windups, the issue has become even more important in recent years with the release of the Supreme Court of Canada's decision in the Monsanto case, which decided that for Ontario plans, surplus attributable to a partial windup must be distributed to someone. Clause 79(3)(b) is a provision of the PBA which requires superintendent consent before any surplus can be paid to an employer on a plan windup in whole or in part. The section states that the superintendent must find that the pension plan provides for payment of surplus to an employer in order to provide that consent.

This requirement in the statute coexists with the member consent requirements contained in the regulations. These requirements in the regulations must also be met in order to obtain superintendent consent, but since the vast majority of pension plans contain historical plan or trust language that makes surplus ownership unclear, in many cases, even where the member consent thresholds are fully met—and in many cases to a very significant extent, upwards of 90 %—the deals that are put into place through negotiated sharing arrangements are put into jeopardy because the superintendent cannot approve them unless he makes a finding that the plan terms provide surplus ownership to the employer.

In other words, 79(3)(b) of the statute and the member consent threshold requirements of the regulations are in conflict. This conflict is counter to the best interests of affected members and employers alike. It also conflicts with the stated goals of the member consent requirements when they were put into place in 1991 to provide a negotiated solution to the treatment of windup surplus which avoids expensive, all-or-nothing litigation on the issue of surplus ownership. There is no valid policy reason for this conflict. It only operates as a potential impairment to surplus-sharing implementation.

Once affected members and employers strike a negotiated surplus deal necessary to obtain sufficient consent from members—and when I say member consents, I'm talking about fully informed consents where the members affected have the benefit of advice from independent legal counsel—members and employers join forces with a common interest in making an application to the superintendent for approval to implement the deal.

Bill 236 has fully recognized this issue in the context of total plan windup and has fixed the problem by moving to a surplus distribution regime, which permits employer surplus distribution disputes to be resolved by either a demonstration of surplus ownership based on legal ownership principles or satisfaction of member consent thresholds. This is similar to the current regime under the federal PBSA and the regime that exists under many provincial jurisdictions. Bill 236 proposes to eliminate partial windups after 2011, but in its current form, preserves the status quo for existing future partial windup distributions, which in effect requires both the demonstration of employer surplus ownership and satisfaction of the member consent thresholds—very often next to impossible criteria to fulfill.

We are asking that Bill 236 be revised to treat surplus distributions the same on either a full windup or partial windup. This parity concept has current support under the existing PBA, subsection 70(6), which provides that members' rights on a partial windup shall be no less than their rights on a full. Members and sponsors affected by existing partial windups who have or are in the process of negotiating or implementing surplus-sharing arrangements should have their interests included in Bill 236 reforms. The same applies to the interests of affected members and sponsors in relation to any future partial windups declared prior to 2012. The Arthurs report, in discussing 79(3)(b), made no distinction between full or partial windup.

In summary, there is no policy or practical reason to treat partial windups differently than full windups under Bill 236 on this issue. The signatories to the February 18 submission urge this committee to recommend changes to ensure identical treatment for all windups under Bill 236.

Thank you for your attention. I'm happy to take questions.

The Chair (Mr. Pat Hoy): Thank you. The questioning this time will come from the government. Mr. Arthurs.

Mr. Wayne Arthurs: Thank you, Mr. McSweeney, for the presentation. I'm not going to even attempt to get into or try to interpret the presentation in a verbal fashion. I just want to ask a couple of things.

One, obviously, you made reference to the signators, a great list of which, who represent a broad employer-employee interest. It's been presented to the superintendent through to the minister. Has there been a response to date? I mean, it says February 18. It's not all that long ago—in government parlance anyway, as opposed to private sector initiatives. Has there been a response to it at this point? Is it something that they're—

Mr. Ian McSweeney: There hasn't been a response, but that is not inconsistent with the developments under prior submissions.

Mr. Wayne Arthurs: Okay. I take it from that "not unlike under prior submissions" that the prior submissions weren't necessarily received in the fashion you would have liked them to have been received or responded to?

Mr. Ian McSweeney: It's always difficult to assess what's going on inside when you're outside, but I think the context here is different in that we are in the middle of some serious attention being paid to pension reform initiatives that try to achieve a balance. In the past, even though there was broad consensus on these—for anyone who's ever been involved in a surplus sharing deal, when you see the inside of these deals, you realize with horror

how expensive and time-consuming they are. I think the overlay here that's different is that the fix can be inserted in a bill that's already fixing the issue for full windups and is initiating reforms on a broader basis.

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Mr. Wayne Arthurs: Thank you. I suspect I only speak for myself and not for the other members around the table; probably few, if any of us, and not myself, have been involved, to the extent that you're talking about anyway, with the nature of something as intricate as this. Thank you for the presentation verbally as well as the submission to the minister. I know there are officials here who certainly will be taking note of the fact that you're still awaiting a response to that correspondence.

Mr. Ian McSweeney: Thank you.

The Chair (Mr. Pat Hoy): Thank you.

CANADIAN FEDERATION OF PENSIONERS

The Chair (Mr. Pat Hoy): Now I call on the Canadian Federation of Pensioners to come forward, please. Good afternoon. You have 10 minutes for your presentation. The questioning in this round will come from the official opposition. Please state your names for our recording Hansard. You can begin.

Mr. Jack Walsh: My name is Jack Walsh. I'm a director of the Canadian Federation of Pensioners. On my left is Tony Pompeo, who is also a director of the Canadian Federation of Pensioners. He's also the president of the DuPont/Invista Pensioners Association of Canada.

In the next two presentations, you're going to hear from two more of our organizations: Stelco and—

Mr. Tony Pompeo: General Motors.

Mr. Jack Walsh: —General Motors, GM.

Our first point is to thank you for finally recognizing the pensioners and having us here for this. We're speaking for the 150,000 pensioners we represent and their widows. We'd like to say that we're pleased to be able to participate in this, and we've been very active to date in reviewing the issues with Bill 236 with the government and with the opposition members as well.

We note today that you will hear from or have heard from lawyers, actuaries, consultants and various experts. We're all volunteers; we're all pensioners. We've been living in the trenches on these issues for the last five years and we have a different perspective than you're going to hear from some of these other people. Also, as a voluntary organization, we don't have the money to hire these kinds of people to put together our proposition, so bear with us. We think we have deep understanding because of the 150,000 members from the companies we come from, we have corporate officers, we have mid-managers and we have union people, so we have a broad range of people who have had to live with the current legislation and have had a look at what 236 proposes going ahead. We were able to put together, we thought, pretty reasonable recommendations that we gave to Mr. Arthurs.

Five years ago, a couple of us in organizations such as DuPont and Bell got together when we realized there was a crisis coming. We saw it then—we saw it happening with our own pension plans—and decided we'd have more clout if we got together with others. That's why we formed this Canadian Federation of Pensioners and that's why it has grown from the three of us initially to what we have now. Now, in additional to ourselves, we have Stelco, Bell, General Motors, Slater Steel, Nortel, Chrysler, Sears Canada, Hydro One, OPG or Ontario Power Generation and IATA. As you can see, the issues that the pensioners are facing have gotten a lot of attention.

When the current government set up the Arthurs commission, we were very active in developing and presenting what we thought the issues were. So today, I'll just highlight a couple of the key things that we'll see, and you'll hear more from Tony and the other two groups who are going to be speaking to the issues that we're talking about.

The first point: We were delighted to see that, finally, pensioners are recognized as a legitimate group in the plan. Heretofore, we have had no standing at any given time. We notice that you're going to give us time for proposed plan amendments—that we can have some input into that. And eliminating the partial plan windups, we think, is a good thing.

I'll turn it over to Tony now so he can carry on with some of the other issues that are of concern.

Mr. Tony Pompeo: Thank you, Jack. I'd like to spend just a few minutes going beyond Bill 236 and what I would refer to as stage 2. On the stage 2 basis, one of the things that we are looking for as part of the CFP organization is that we feel that plans need to be evaluated annually on both a going-concern and on a solvency basis. The current requirements under the act for periodic actuary reports are obsolete. There's a three-year interval for the reports for those plans that are in a surplus position and then there's a nine-month delay for filing, which we feel is really inappropriate under today's business conditions. Given the advances that have been made in information technology systems, we really feel that there is no excuse for not having annual assessments on both a going-concern and solvency basis, and for these to be made available as soon as possible following the end of the fiscal period.

I think forward-looking legislation should also be designed to prevent solvency deficiencies, but they will occur, and when they do, that they be corrected promptly. While those situations will be there, we feel that a five-year time frame to correct the situation should be the maximum, and we would suggest that the target solvency funding should be 105%. So 105% would be solvency full funding; at 100%, we feel a correction should occur within one year; at 95%, at two years and so on, but no greater than a five-year time frame to correct the scenario.

Secondly, we feel that there should be prompt enforcement by FSCO. We feel it's a fundamental

requirement, with remedial action by the administrator included in the filing. We feel that whether a sponsor is a public company or a private company, the information available to the pensioners should be identical—as a regard to limiting reporting extensions to cases which can be clearly justified and to establish significant penalties in cases of delinquent reporting.

The third view is a creation of a safe harbour for stranded pensions. Portability remains a problem for some of the workers who move to another job whether by choice or by necessity, and whether individually or in groups. The choices to them can be most unappealing and, in many cases, financially disadvantageous. The idea of an Ontario committee on portable pensions is not a new one. In fact, the current PBA has a provision for such a facility, but it has never been enacted. So we strongly support Dr. Arthurs's recommendations to establish an agency to manage stranded pensions in an efficient manner.

Moving on to my next point: the PBGF. We feel that that should be updated. It is a safety net, and in the best of circumstances it should not be there, but in a better world it has to be, and for some time it will be in the future. The current operative guidelines are obsolete at $1,000, and we would support the OECP report that says it should go to $2,500. We recognize it should be done in stages; it's not something that can be accomplished immediately.

With respect to the regulator, Dr. Arthurs deals with this issue in great detail in his report. We strongly support replacing FSCO with a new, independent regulator—a regulator that has a much higher profile with substantially greater powers to regulate the pension system with the necessary resources and the ability to make rules and policy statements. In summary, the regulator needs to be proactive, forward-looking, monitoring, inspecting and taking punitive action when so required.

I want to conclude with the recommendation from CAPSA, the Canadian Association of Pension Supervisory Authorities, and that's basically good management, prudence standards, visibility—we feel that should be incorporated into the act. We, as the CFP, the Canadian Federation of Pensioners, have provided substantial input to the guidelines to both the federal and provincial bodies, and we feel that this should be adopted and included in the act, and will have a positive impact and provide confidence to the members that their plan is being effectively managed and held to the highest standard.

The Chair (Mr. Pat Hoy): We'll go to the official opposition. Mr. Miller?

Mr. Norm Miller: Thank you very much, Jack and Tony, for your presentation today. I'll start off by asking you, as retirees—and you can tell me about the language, as well—just how hard it is for you to get information on your pensions as they exist now.

Mr. Jack Walsh: Out of FSCO?

Mr. Norm Miller: Or out of your plan sponsors. Can you get—

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Mr. Tony Pompeo: I think we are a classic case, because we were part of DuPont and then DuPont was sold to Invista. As DuPont, we were a public company, and information was readily accessible. We went to Invista, a private company, and there's no information which they make available to us as pensioners. The only information that we are able to obtain is through the regulator and FSCO, with all its inherent problems. It's not an easy process to get information at FSCO. You have to make applications, so it is quite a cumbersome process, Mr. Miller.

Mr. Norm Miller: In terms of Bill 236, I believe it expands the pension advisory committees—I assume that's something you're in favour of. Am I correct in that?

Mr. Tony Pompeo: Yes. Yes, we are very much in favour of the pension advisory committee. Our representative from General Motors, Brian Rutherford, will speak in greater detail on that.

It is a good feature in the bill. We still feel that it could use some enhancements.

Mr. Norm Miller: In terms of language, a presenter earlier was talking about the language around retired members versus former members. Have you got feelings about that at all?

Mr. Tony Pompeo: We really favour that, because we were—

Mr. Norm Miller: Sorry—which do you favour?

Mr. Tony Pompeo: We favour having ourselves as retirees, because previously we were a non-entity and now we are part and process of this, and Bill 236 even refers to us in the PAC and the ability to have two retired members on the PAC. We really feel that is a step forward and we have visibility; we're no longer in the background with this.

Mr. Norm Miller: Then you were talking about stage 2 and having valuations annually on a going-concern and solvency basis. Have you got any idea how much that's going to cost for the plans themselves?

Mr. Jack Walsh: The sponsors?

Mr. Norm Miller: Yes, for the sponsors.

Mr. Tony Pompeo: It certainly would cost somewhat more at this point in time. However, the current regulations—when there is a solvency deficiency, even under the current legislation, under PBA, there needs to be a solvency valuation done on an annual basis.

There would be an additional cost. The extent of the amount, I can't really say, but I think that since this act was formed 20, 25 years ago, the advances in information technology have been explosive in nature and should substantially reduce the cost.

Mr. Norm Miller: Okay. You also, I think, spoke in favour of a safe harbour for stranded pensions. Have you done any analysis or have you any idea about the cost of that idea?

Mr. Tony Pompeo: The cost that was in the Arthurs report is that it should be a cost-neutral basis; it would be administered by an Ontario pension agency at no cost to the taxpayer. Basically what it would do is give people who have been put in that position the opportunity to continue the pension, perhaps make some additional payments to the plan, and have a greater amount when they do retire. But it should be cost-neutral.

Mr. Norm Miller: So it's not that the government is backing up the plan. It's just not being wrapped up and annuitized; it's continuing and being managed, is what you're saying.

Mr. Tony Pompeo: Exactly, because the choices right now—annuitization is one, or you negotiate with your new employer, or you pull it out from a point of view of having a locked-in RRSP, and they're most unappealing.

Mr. Norm Miller: Finally—I think it's "finally" because I assume I'm just about out of time.

The Chair (Mr. Pat Hoy): You have a minute.

Mr. Norm Miller: Okay, good. Perfect. You're in favour of an independent regulator, I think, as recommended by the Arthurs report—

Mr. Jack Walsh: Yes, exactly.

Mr. Norm Miller: —versus FSCO. Could you expand on that a little bit more as to why you think that's a benefit?

Mr. Tony Pompeo: We feel that there should be an independent regulator in order to deal with pensions. We feel that pensions are high-profile. There used to be an independent regulator under the PCO. We feel that it should have more powers.

It is very difficult to deal with FSCO at this current stage, and the powers and the ability that they do have are minimal. There was some augmentation and some improvement under Bill 236, but in general, the powers which they have are minimal. I think they need more supervising authority. They need to conduct further audits. I think it really needs a complete examination and review to bring it into the current age.

Mr. Jack Walsh: We made that point to Dr. Arthurs in detail. His report reflected it, and it does it in much more detail than I can give you in the next 30 seconds about what should happen to FSCO. It's a real problem. For pensioners, it's a serious problem, and it really needs to be fixed. It has to move up on the priority list.

Mr. Norm Miller: Thank you for your presentation today.

The Chair (Mr. Pat Hoy): Thank you very much.

STELCO SALARIED PENSIONERS ORGANIZATION

The Chair (Mr. Pat Hoy): I call on the Stelco Salaried Pensioners Organization to come forward, please.

Mr. Dennis Wright: Is Toby Barrett still in here?

Mr. Norm Miller: Yes. Where did he go? I think he went to the bathroom.

Mr. Dennis Wright: Yeah, he did.

My name is Dennis Wright. I'm a director of Stelco Salaried Pensioners Organization, which is an organization of about 5,000 employees of Stelco who never belonged to a union. When Stelco declared bankruptcy protection, we organized and hired a lawyer who represented us during the CCAA hearings. When Stelco exited CCAA, SSPO stayed together and in fact incorporated into a non-profit organization to defend the pensions and the benefits of former Stelco salaried retirees.

We are a founding member of the Canadian Federation of Pensioners and we participated in the Ontario expert commission, so we're pleased to be able to comment on Bill 236. We have, however, some concerns, and I have five listed. I will refer to pages, and the page will be of the 43-page document when I say "page."

Item one is 1.1(1) on page 2, "Retired member": The term "retired member" is a very positive addition to the OPBA and is very strongly supported by SSPO.

Mr. Jack Walsh: Excuse me, Dennis. This is in the act. This is the 43-page act that we've been wading through.

Mr. Dennis Wright: The one you published.

We would, however, request that the beneficiary/survivor of a deceased pensioner—that would be the spouse, child etc.—has the same rights to information and benefits as the retired member.

Item two, which is 81.1(1) on page 36, "Insolvency and Bankruptcy ... Companies' Creditors Arrangement Act": SSPO is pleased to see that the superintendent will be reviewing and approving CCAA arrangements made that affect pension plan funds. The BIA and CCAA are outdated and extremely unfair federal acts that nullify all laws, acts and regulations put into place to protect pensioners and pension funds. The pensioners that have been and could be negatively affected number in the hundreds of thousands. We request under this section that 81.1(3) be changed to read, "The superintendent shall not approve an agreement under this section unless it satisfies such requirements as may be prescribed by the full OPBA." Specifically, there shall be no windup of a pension fund unless it's fully funded.

Item three, which is 1.(1), page 1, "bridging benefit": SSPO objects to the removal of a pensioner's bridge benefit if they should choose to take CPP before age 65.

(a) An early CPP is a reduced amount, so the bridge removal would be a double reduction.

(b) If the pensioner takes a late—after 65—CPP, the bridge would still end at 65, so the choice of an early CPP should be the same.

(c) Pensioners are on a fixed income and should not be penalized for taking a reduced CPP.

(d) The move is tantamount to finding that a pensioner has a small investment dividend and penalizing them for it.

(e) A bridging benefit is a short-term benefit that ends at age 65 and should not be shortened further.

(f) Most bridging benefits are part of the pension plan, stating that it will end at age 65. So removing a bridge

would be a violation of the pension plan contract and the terms of the pension plan contract.

(g) Once retired, pensioners have very few opportunities to enhance their income for a short time. Removing the bridge would be taking away the reduced early CPP and it would take that option away from them.

Item four, which is "Transfers of defined benefit plans," 79.1 and 80, running from page 28 all the way through 34: SSPO has serious concerns regarding benefits for retired members after transfer under the proposed conditions of Bill 236. We believe these transfers are intended to solve the problems of pension plan mergers. The former PCO and FSCO have in the past not allowed mergers because if one of the plans is underfunded it will profit, but the members of the fully-funded plan will lose.

In that regard, we suggest that these sections are missing a clause which should state that the superintendent will not allow a transfer unless both plans are fully funded or on an approved program to fully fund.

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A more serious concern is that there is one clause, 80(4), that states that an active employee will continue to receive benefits provided under the original pension plan after the date of transfer. But there are three clauses—79.1(12), 80(8) and 80.1(7)—that state that the successor pension plan is not required to provide the same benefits of the original pension plan to the retired members. SSPO thinks this is backwards. We believe that an active employee must accept the conditions of the new employer with regard to pension plans that could result in an increase or a decrease in benefits.

SSPO requests the following clauses:

"(b.1) An active employee will receive benefits equal to or better than the original plan for service to the date of transfer and will receive the benefits of the successor plan for service after the date of transfer; and

"(b.2) A retired member will receive benefits equal to or better to the original plan after the transfer to the successor plan."

Item 5 refers to rules on surplus distribution, which is section 64.(1), repealing 79(1), on page 26. We, incidentally, believe that—what I'm about to say should apply not just to windups, because this clause is mixed up between continuing and windup depending on where you look. We believe it should apply to continuing pensions or on a windup basis, and 79(1)(a) should be revised to say:

"The superintendent is satisfied based on reports provided with the employer's application for payment of the surplus that the pension plans have a surplus of a minimum of 125% of solvency."

We got that number from Ontario tort law from 1988, which was the Conrad Black Dominion stores fiasco. The ruling said that no surplus should be taken unless it was 125%.

Under clause (3.2), it should be changed to say—and it would be an "and" to the above statement of the surplus:

"(a) the pension plan provides for a payment of surplus to the employer; or

"(b) a written agreement of the employer and all the members exists for payment of a surplus to the employer; and

"(c) the payment of surplus to the employer shall be communicated to all the members; and

"(d) the distribution of surplus should depend on contributions, joint contributions shall be divided proportionately, and sponsor-only contributions should be kept by the sponsor."

Thank you.

The Chair (Mr. Pat Hoy): Thank you. The questioning goes to the NDP.

Mr. Paul Miller: It was a wonderful presentation. Unfortunately, I don't have all the different clauses in front of me to—you must have dealt with about 30 that I counted.

All I can say from your whole presentation is that my interpretation of this is that you believe there should be no penalization of a spouse or a survivor through transition periods, that all funds should be fully funded, and that there should be no penalization for receiving money on early retirement. That's one of your points.

Mr. Dennis Wright: That's correct.

Mr. Paul Miller: You also made the point that you are happy about the part in the bill allowing the pensioners to take part on the board. You're pleased with that.

Mr. Dennis Wright: Oh, yes. We support the changes to the PAC.

Mr. Paul Miller: So basically, what you're saying is that through the transition period and the funding, there should be no clawbacks to your supplement or to anyone's supplement when they're receiving it up to age 65—

Mr. Dennis Wright: Right.

Mr. Paul Miller: —and you feel that the present situation does penalize pensioners, and that that should be corrected, and I agree fully with you.

I'm pleased to say that you've recognized the problem with the PBGF also. It's grossly underfunded, as has been witnessed by the Nortel workers, some of them with 35 and 40 years of service. They were looking at anywhere from $3,200 to $3,800 a month, and they are now reduced to $1,000 a month. The government decided to step up to the plate for the $1,000. Unfortunately, the $1,000 was supposed to be there in the first place, and they're simply following through on what was there in 1981. It should be there, $1,000, to cover them. It hardly makes up for the $2,200 shortfall that was deferred wages. This is one of the things that you'd like to see corrected, I take from your presentation?

Mr. Dennis Wright: It should have been indexed back when they put it in. It would be $2,500 today if it was. And also, the money that they don't have is because Algoma's got about $1 billion of it out of the PBGF.

Mr. Paul Miller: Have you also discussed with your group when there's a potential takeover by a foreign

company like US Steel? I worked at Stelco as a unionized member in the pension plan; you were salaried pension. We realized, sitting through CCAA, as I sat there and watched everything unfold, that we had little or no protection when this transition took place with US Steel purchasing the former Stelco. The government stepped up to the plate with $150 million. Frankly, I thought that was good, but I think it was just a way for them to sweeten the pot for Mr. Mott to sell the company. He bought it for $167 million, including shortfalls in our pension plan, and then turned around and sold it for $1.3 billion to US Steel. Quite a profit in 18 months, considering it was devalued and undervalued.

So some of the things in this pension reform should also look for what I like to call corporate raiding and undervaluing the assets of a company when it comes to the solvency and insolvency of a pension plan. Obviously that's an important part—I think you touched on that—the lack of protection through the transition period. We were all holding our throats when these guys took over, and we saw the results. If we hadn't dug our heels in, through your group and our hourly group, we might have been in worse shape than we are now. I believe Mr. Mott, after 18 months, if I'm not mistaken, personally walked away with $67 million after taking us—

Mr. Dennis Wright: That was the minimum that he got.

Mr. Paul Miller: The minimum, asking for concessions. Part of that money should have been earmarked for pension plans, not for Mr. Mott's ranch in South Carolina, or wherever he is, Virginia.

I'm glad to see that you're on top of this and that the pensioners are coming out in force. This is something that the government's going to have to take seriously, to a point where we're going to have to do something about the PBGF. It's grossly underfunded. I hope that in the next round of talks in the fall this is addressed in some way or fashion; at least started. I don't expect it to be solved overnight, but this is important for the people who made the presentations, pensioners. It's important for a lot of Ontarians, and I'm sure the government's going to take this very seriously. Thank you.

The Chair (Mr. Pat Hoy): And thank you.

GENERAL MOTORS SALARIED PENSIONERS ORGANIZATION

The Chair (Mr. Pat Hoy): I call on the General Motors Salaried Pensioners Organization to come forward, please. Good afternoon.

Mr. Brian Rutherford: Good afternoon. My name is Brian Rutherford. I'm the president of GENMO, and GENMO is a group that represents 12,000 salaried retirees and active employees. We do not have a union, and when General Motors was on the brink of filing for CCAA, we understood that had they gone through that procedure, our pension would have been at the bottom of the pile in the courts. We had nobody to represent us, so we started an organization about a year ago.

My colleague here is Bob Hilton. He'll take the last half of the presentation. He is the president of the Canadian Federation of Pensioners.

I'm just going to talk about the pension advisory committee that's already been brought up, and I'll read from a statement that I've made.

A weakness lies in the act itself, which requires, in subsection 24(1), that PACs are established only by way of vote of the majority of plan members and retired members, something that can be extremely difficult, if not impossible, to accomplish. CFP recommends the adoption of recommendation 8-24 from A Fine Balance, especially in an SEPP, where the sponsor is the administrator, which says, "Except as provided in recommendation 8-26, every pension plan should be required to establish a pension advisory committee (PAC). A PAC should comprise at least five members, including" two representatives "selected by retired members and one by each class or group of active" employees. We feel that representation from the member type should be more in line with the ratio of active employees versus retirees in a pension plan.

In the absence of a bargaining unit or union, who will the sponsor communicate with and how will they do it? Who will be the ombudsman for the plan members if the sponsor fails or refuses to act? Due to the federal Privacy Act, the sponsor will have to communicate with all of the plan members. How can we be assured that this is done properly?

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We suggest that the pension regulator be empowered to facilitate the development of a pension membership PAC with the pension sponsor. We also suggest that, in the absence of a bargaining unit, any and all retiree associations or organizations whose members are plan members be given similar rights as a bargaining unit for the purpose of forming a PAC. This would mean that the sponsor would have to communicate their efforts in satisfying the PAC requirements under the PBA regulations. We would also recommend that when the sponsor communicates with all plan members on the PAC issue, the member should be asked if he or she will forgo their FPA right and give the PAC the ability to communicate directly with him or her.

We suggest that the PAC meet with a pension administrator, sponsor and actuary on a quarterly basis. When I say that, I'm not looking for an actuarial report; I'm just looking for the same information that the administrator would show the sponsor, so if we have 90% of the information, we will be able to deem how well our pension is performing.

We understand that we cannot affect the pension plan, but we can comment on it and raise flags if necessary on the funding and investment portfolio mix. Currently, the PAC, if existing—and to our knowledge, there are very few of them—can meet with a sponsor, administrator and actuaries about nine to ten months after an annual actuarial assessment from the plan administrator. Due to economic volatility and our sponsor non-conformance to

the regulations, the pension plan can be in peril in real time, while the actuarial report shows earlier information that does not reflect reality. I'll give you an example of this.

The GM salaried people in November 2008 were told by the director of HR that their pension was 96% funded on a going-concern basis and 74% funded on a solvency basis. That information was from an actuarial report that was nine months old. In reality, at that time, the pension plan was 73% funded on a going-concern basis and 54% funded at solvency. Had GMCL filed for CCAA in June 2009, the salaried plan members and retirees would have unknowingly lost almost half of their pension. It comes down to an issue of trust for us and other people that we've talked to: the Canadian Federation of Pensioners and their sponsors. It's difficult to trust them when they're giving us wrong information and they know what the proper information is. It's my pension and I have a right to know the condition of my pension. I don't want to affect it, but I want to know how healthy it is.

Mr. Bob Hilton: First of all, the Canadian Federation of Pensioners does appreciate the fact that the current government has decided to bring forward new legislation and regulations that have been and are being introduced. We do appreciate that fact because it's long overdue. In fact, we could be critical of every political party for having failed to look at this issue since the 1980s. It's too long a period of time to review something.

We feel that the regulator must have and must utilize power to protect pension plans and pensioners. Failure to protect them is both wrong and immoral.

The Canadian Federation of Pensioners recognizes that sponsors and employers also have needs. However, I think you have to recognize that the sponsors and administrators control the pension plans. They must have controls; they must have rules and penalty provisions put on them that are enforced by the regulator. That has not been the case under FSCO.

The Canadian Federation of Pensioners requires balanced and fair legislation that protects the pensioner and prevents abuse to the system, and later I will detail an abuse that occurred. Penalties need not be costly but they have to be effective and they must protect the pension plans and the pensioners. Abusers of the rules should and must be eliminated from the system. In other words, if somebody is administering a pension plan and they fail to follow the rules, then they should no longer be enabled to participate in the controlling of a pension plan.

The Canadian Federation of Pensioners recommends the regulator be proactive, not reactive. We believe Dr. Arthurs was right in recommending a new regulator. FSCO has dropped the ball on too many instances and, while good people, they have not been consumer- or customer-oriented. FSCO requires too much change for that change to happen internally.

The Canadian Federation of Pensioners believes that achieving the goals set out by Dr. Arthurs will bring about a healthy pension system for the province of Ontario. If we do that, the rest of the country will follow. We are the leaders.

I'd like to take a moment and tell you a couple of stories, because I want to put a human face on what happens when you run into a pension problem.

My firm, Slater Steel, went bankrupt. Some 48 hours after the company filed for bankruptcy protection, I received a phone call from a gentleman who was approximately 78 years of age, who the next day was scheduled to go into the hospital for lung cancer surgery. He had gone into the drugstore to pick up his prescription that the doctor had ordered for him prior to the surgery. He arrived at the drugstore to pick up his prescription only to be told, "Sorry, sir, you no longer have any coverage." That should never be allowed to happen. That can be prevented if you put forward the legislation properly.

A second story is the abuse of a pension plan. Again, it was a Slater pension plan. I had an employee who worked under me for many years, had never been a member of the hourly pension plan. The hourly pension plan had a 30-years-and-out clause in it; the salaried employees pension plan did not. It was a 35-years-and-out opportunity. This employee had been in the company for over 30 years but not 35. The company transferred him to the hourly pension plan for one day, then terminated him on a retirement basis. Amazingly, subsequent to the company having gone bankrupt, while the hourly employees were still entitled to benefits and the hourly pensioners were still entitled to benefits, they didn't want to pay his benefits because, "Oh, no, you were a salaried employee." They played games with the pension plans inappropriately.

Now I'd like to talk to you about FSCO a little bit.

The Chair (Mr. Pat Hoy): You have about one minute left.

Mr. Bob Hilton: Okay, I'll be quick.

Three years into the bankruptcy situation, when FSCO had taken the pension plan and put it into the control of Morneau Sobeco, we received a letter. They were trying to locate 14 members of the pension plan they had not been able to locate. I received that letter and within half an hour, without calling anybody, I had seven of the people identified, where they were or what their circumstances were. One of them was a former president of the company who was dead. That's one example.

We're now wound up and they've annuitized the plan. What happened at the time of annuitization? Into all of our bank accounts went the amount that was supposed to go into our accounts from the pension plan originally—reduced by 30%, by the way. But at the same time, the amounts that were to go into our bank accounts from the annuitized plan went into our accounts. We received a letter from them a couple of weeks later saying, "Oops, we goofed. We made a mistake. Next month, you're not going to get anything." Well, quite frankly, if you're in a good financial position that's not going to hurt you. But I can tell you very clearly that a lot of pensioners are not in good financial condition, and if that money has come into

the bank and mother sees it—and I'm not trying to pick on mother—and she spends it, next month you're in deep doo-doo because you don't have any of the money that you require to cover things.

FSCO was not even aware that had occurred. FSCO did not even require Morneau Sobeco to communicate with the pensioners on an ongoing basis as to the status of what was going on. Again, the pensioners deserve to know what their circumstances are. It's their pension plan, it's their money and it's their livelihood.

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We'd like to thank you for the opportunity to present today. We wish you good luck and Godspeed in introducing and passing appropriate legislation.

The Chair (Mr. Pat Hoy): Thank you. The questioning goes to the government. Mr. Arthurs?

Mr. Wayne Arthurs: Brian and Bob, thank you both for being here this afternoon.

In 2006, when then-Minister Sorbara took it upon himself as the minister to establish the expert commission, he understood and saw that we were on the cusp of having to have a very substantive discussion and garner expert information, because this legislation hadn't been touched for 15 or 20 years at that point in time. As Brian made good reference to, shortly after that, with the fiscal meltdown that we all went through and continue to be on the cusp of some days—we're thinking we're out of it, but are we for sure? Brian, you mentioned how close it was for you and your members and, if General Motors hadn't made it through, what the consequences were, and I know we are pleased that both the provincial and federal governments stepped up to the mark to ensure, as best we could, that that didn't happen. Certainly, part of that was a recognition of the pension liability that governments would be faced with if that were to occur.

We're now at the next step in that process with this particular piece of legislation. With further legislation pending—and I'm not going to hold the minister to it, but according to Hansard I think he said this calendar year just recently. I'm not quite sure. I'm going to have to check Hansard to make sure my words are right. But we can anticipate, certainly in the not-too-distant future, another piece of legislation that will help to build on this.

Brian, your particular presentation on behalf of the GM salaried pensioners spoke to the pension advisory committees. You have to be pleased, I guess, in the smallest way that retired members are being recognized as members; that there are provisions for the participation on the pension advisory committees. But if I got your presentation fairly correctly, you don't feel that's strong or substantive enough to meet what you and your members see as the needs for the engagement—

Mr. Brian Rutherford: The sponsor will not help retirees or people in the pension plan form the committee—because in order to form the committee you have to go through a democratic means of asking everybody in the plan if they want one. We don't know who they are. Only the sponsor knows who they are, and the sponsor uses the federal Privacy Act to say that they will not help you. So unless this legislation forces the sponsor to help us form that PAC, it's not going to happen. Sponsors will not help us form PACs. They don't want it. They want to control the agenda.

We don't want to burden them. We just want to see the state of our pension in real time, not nine or 10 months after an actuarial report. We're not asking for the world; we're asking for information that is already available from the administrator to the sponsor. It's that simple.

Mr. Wayne Arthurs: So you're looking for easier access to direct participation and, thus, the availability to acquire that information in a real-time fashion?

Mr. Brian Rutherford: Real-time is what we're looking for, yes.

The Chair (Mr. Pat Hoy): Thank you for appearing before the committee.

Mr. Brian Rutherford: Thanks for your time.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS

The Chair (Mr. Pat Hoy): I call on the International Association of Machinists and Aerospace Workers. Good afternoon. I think you know how this goes; I noticed you sitting there for a while. You have 10 minutes, and the questioning will come from the official opposition this time. If you can just state your name for our recording, you can begin.

Mr. Louis Erlichman: My name is Louis Erlichman. I'm the Canadian research director of the International Association of Machinists and Aerospace Workers, otherwise known as the machinists' union. We represent something in the order of 10,000 members in Ontario, some in the federal jurisdiction and some in the Ontario jurisdiction. Most of them are members of single-employer pension plans. We have an Ontario-registered multi-employer plan.

We handed in a written submission as well as our submission to the Arthurs commission, so I'm not going to cover everything in the written submission. I just want to talk about a few of the main points and particularly look at some of the areas we have difficulty with in Bill 236.

It is a little bit of a problem in terms of responding to Bill 236 because the Arthurs commission talked about a balance; the report was called A Fine Balance. Particularly looking at the funding issues and so on, without looking at the whole package of changes—which we are told is coming at some point here—it's difficult to only respond to certain parts. That being said, we'll raise some issues with respect to Bill 236. One obvious shortcoming at this stage of the game is that we still haven't seen improvements to the pension benefits guarantee fund, and we think that's pretty crucial in terms of moving ahead.

I want to basically deal with two issues that are problematic in Bill 236, one of which is to do with the

partial windup and the grow-in. The current law essentially provides grow-in provisions that mean that if your age and service at the time of a windup or partial windup add up to 55 or more, you get access to the early retirement provisions in the pension plan as if you had stayed at work until you were eligible for early retirement: You grow into those rights.

Part of the trade-off that is reflected in Bill 236 is that if you get rid of partial windup, which I think a lot of plan sponsors and employers don't like for reasons of complexity and also to do with access to surplus—the trade-off for that is that you would extend the grow-in to anybody terminating. The problem is that Bill 236 doesn't in fact extend the grow-in to anyone terminating. It essentially says that people who quit or are terminated for cause—wilful misconduct, disobedience, neglect of duty—are not eligible. This is problematic because it is in many cases quite unclear whether you have a voluntary termination, a termination for cause or involuntary termination.

Currently, in a partial windup situation and also in a windup situation, the way that it's classified, once the windup, the shutdown or the plant closing has been announced, everybody from there on is treated as part of the group. Now you're going to be in a situation where each individual is going to have to prove that they were actually terminated. It's going to be like a constructive dismissal case on an individual basis. Leaving aside the equity part—the fairness of forcing people into this situation—this could create all kinds of legal complexity. When this bill was put forward, one of the things it was supposed to do was simplify matters. This will not simplify matters; it will complicate matters. So that's one problem.

The second problem, which is the other thing I want to talk a little bit about, is the changes to the surplus regime.

I was sitting here, listening to the representative from Osler talking about extending what is proposed in Bill 236 for full windup to partial windup. The problem I have is that while I agree that the way surplus should be dealt with is that there should be a deal struck to share the surplus on a windup or a partial windup—as long as we have partial windups, which seems to match what all that does in there, so legal firms were there—what's in Bill 236 is not that. Bill 236 says that an employer can come along and say, "I have a legal right to this surplus," or they can cut a deal. Right now, as the law stands, basically as a result of the Tecsyn case, they have to prove surplus and that they have a right to at least some share of the surplus and cut a deal.

The logical thing to do, if there was a concern about the complexity of proving surplus and the cost and everything of going through that process, is to simply take that out. Essentially, when you get to a windup situation and there is a surplus in the plan, the sponsor and the plan members get together and they cut a deal. There are time limits. If there's no deal, you go to an arbitration and you split it, which is equitable and also simpler than giving the employer an opportunity to say, "I do have rights to the surplus." Then it becomes a matter of plan members, beneficiaries, retirees and anybody else having to prove that in fact they don't have rights to the surplus.

I agree with what the lawyer said: It's a complex process. It's not an impossible process, but it's a complex process that has been going on for, really, the last 15 years, since the Air Products case.

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Those are the two problems. There are some other issues raised in our brief, but those are the two major difficulties we can see that raise both equity issues and practical problems in Bill 236.

That's basically my submission. As I say, we had a written one and also our response to the Arthurs commission.

The Chair (Mr. Pat Hoy): Thank you. To the official opposition. Mr. Miller?

Mr. Norm Miller: Thank you for your presentation. I guess I'll start with the grow-in rights and make sure I understand it. You're saying that the way it works is if your age and time of service are 55, then you're entitled to the grow-in rights if the company is wound up, but you're not entitled if you quit yourself or if you're terminated with cause?

Mr. Louis Erlichman: Currently, in a partial windup or a full windup of the pension plan, you are eligible for the grow-in rights. Normally, there is no distinction made. Frankly, it's very difficult to make a distinction. If you announce that the plan is shutting down three months from now, who's quitting and who's being terminated at a given point becomes moot.

What this legislation does is say that when an individual terminates in a pension plan, they will get the grow-in rights if they have the age and service totalling 55. But it says that you have to be either involuntarily terminated without cause—it doesn't say "cause," but it says "cause" effectively, which is really problematic. It's either a right you deserve, that you've earned—"age and service 55" means that you're 40 or 50 years old at a minimum. It doesn't mean you're somebody who's been there for a few years—some young employee. So you've earned this kind of right, and then you might be in a position of having to prove that you were not involuntarily terminated, which could lead you to the courts.

Mr. Norm Miller: So you're suggesting that the amendment would be—

Mr. Louis Erlichman: Just simply say that on termination, if you've got age and service totalling 55, you are eligible for the grow-in. That's it.

Mr. Norm Miller: On the bigger question, Ontario and Nova Scotia being unique with respect to grow-in provisions: Is that something you support?

Mr. Louis Erlichman: Yes. Not necessarily that Ontario and Nova Scotia should be unique. I think it would be a good idea if it spread to other jurisdictions.

Mr. Norm Miller: But we have it.

Mr. Louis Erlichman: Yes.

Mr. Norm Miller: Okay. In terms of the surplus regime, you're saying that the way it should work—and that's in a partial windup scenario again?

Mr. Louis Erlichman: Oh, any windup. There won't be a partial windup going forward.

Mr. Norm Miller: You're saying that there should just be a deal with a time limit, and if the deal isn't arranged in that time frame, you'd go to arbitration?

Mr. Louis Erlichman: Binding arbitration of some sort. Yes.

Mr. Norm Miller: Thank you very much.

The Chair (Mr. Pat Hoy): Thank you for your presentation.

ONTARIO PENSION BOARD

The Chair (Mr. Pat Hoy): I call on the Ontario Pension Board to come forward, please. Good afternoon, gentlemen. You have 10 minutes for your presentation. There could be up to five minutes of questioning following that. I'd ask you to identify yourselves for the purposes of our recording.

Mr. Peter Shena: My name is Peter Shena; I'm senior vice-president of pensions and stakeholder relations with the Ontario Pension Board. With me is John Goodman.

Mr. John Goodman: I'm the director of pension policy, also at the Ontario Pension Board.

Mr. Peter Shena: First I'd like to thank you and the members of this committee for the opportunity to present our position on Bill 236. Just to give you a bit of background, the Ontario Pension Board is responsible for the administration of the Ontario public service pension plan, or the PSPP, as we know it, which is a defined benefit plan. We provide pensions and related services to approximately 80,000 members and pensioners. The membership is made up of eligible employees of the Ontario government and its agencies, boards and commissions.

OPB commends the Ontario government for taking the first step towards pension reform in Ontario since 1988. This first phase of reform is an important step towards ensuring that there's a sustainable and affordable private pension system for Ontarians.

I'm going to focus my remarks on two key points of Bill 236. First, we're concerned with the direction of legislation which bases benefit provisions on the form of governance. Specifically, I'm referring to the provision which allows jointly sponsored pension plans and multi-employer pension plans to opt out of providing grow-in rights for involuntarily terminated members; and second, the lack of clarity with respect to the language under the transfer of pension assets upon the sale, assignment or disposition of all or part of a business, what we call divestments.

With respect to the first point, under Bill 236 there are specific proposals that apply different treatment based on the form of a pension plan and, in doing so, favour jointly sponsored plans and multi-employer plans over sole-sponsored plans. This relates to the proposed amendments to sections 74 and 74.1 of the PBA. Specifically, JSPPs and MEPPs can elect to opt out of the grow-in entitlement while sole-sponsored plans must provide grow-in rights for involuntarily terminated members.

We support the changes in the proposed bill, but we believe that the provisions should apply to all pension plans regardless of the governing form. We do not see a sound basis for the differential approach for arrangements where the expectations of members are essentially the same. For example, in a jointly sponsored plan and a sole-sponsored plan, the members' expectation is that they will receive the promised benefit levels at retirement.

The purpose of a regulatory regime is to protect the delivery of accrued benefits, and that purpose should be the same regardless of the model of plan.

Our recommendation is that all registered pension plans in Ontario should be required to provide grow-in rights for involuntarily terminated members. The protection of accrued benefits does not stop with solely sponsored pension plans; it should extend to all forms of pension arrangements.

With respect to the second point, we strongly support the proposed changes that would enable pension portability and divestment transfers. OPB commends the Ontario government for taking active steps to resolve the issues impacting divestments. With respect to the specific language of the proposed amendments to sections 80 and 81 of the PBA and the proposed addition of 80.1, we would like to share some of our concerns that, if not addressed, we feel the intent of facilitating divestment transfers will not be achieved.

OPB supports a divestment transfer solution that meets the following objectives:

—enables members to transfer from one pension plan to another in connection with a divestment and to elect to consolidate their pensions in the successor plan; and

—enables pension plans to enter into transfer agreements which provide for credit and asset transfers that protect the value of the benefit accrued in the original plan and that preserve the other rights currently afforded under sections 80 and 81 of the existing Pension Benefits Act.

First, I'd like to address our issue with the language proposed under paragraph 4 of subsection 80(13), which deals with transfer values. Specifically, the proposed language notes that where—and I'm paraphrasing—the benefits under the successor plan are not the same as the benefits provided under the original plan, the commuted value of the benefits provided for them under the successor plan must not be less than the commuted value of the benefits provided for them under the original plan.

OPB supports the proposal in principle. However, we recommend a drafting clarification to make it clear that it applies only as at the date of transfer. Applying that requirement after the transfer is not feasible, as there is, in all plans, constant fluctuation in variables, particularly interest rates, that affect the commuted value of a benefit. No member of a plan has a guarantee of an unchangeable

commuted value. We don't think this provision is intended to establish a fixed commuted value, but it should be made crystal clear.

To continue the protection throughout membership in the successor plan is in essence a form of replication, which was a problem that pension reform was to address. The current issues with divestment transfers under section 80 of the PBA arise because of the lack of clarity in the language of the existing provision. FSCO staff and the superintendent of pensions interpret the current phrase under section 80 of the Pension Benefits Act, "protect the benefits," to mean the exact replication of benefits under the successor plan as the member was entitled to under the original plan.

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We and the vast majority of the pension industry believe that the proper interpretation of that provision is to protect the value of accrued benefits. As such, the superintendent would not consent to the transfer of assets unless the original plan's benefits were exactly replicated under the successor plan. As a result, many divested members, particularly those in the public sector and the broader public sector, were forced into a scenario where they have two pensions: one from the original plan, based on the benefits accrued up to the date of divestment, and one from the successor plan, based on earned benefits from the divestment date. To avoid this kind of interpretation gridlock, it is imperative that the language in the proposed legislation be clear that what is being transferred is the value of the benefits accrued under the original plan.

Also, transfers must be permitted on an individual-choice basis rather than as a group or bulk transfer. Transferring pension assets into the successor plan may not be advantageous for all divested members. This is particularly true for those who are older, longer-service employees who are currently eligible to retire under the original plan's provisions or will be eligible to retire within the next three to five years. Therefore, the proposal to have trade unions provide blanket consent for transferring or not, as contemplated in the proposed legislation as well as the Ontario expert commission report, may not be in the best interests of all members.

The provision also needs to provide clarity with respect to the proposed language related to the development of transfer agreements. The language should make it clear that employers can consent to plan administrators negotiating transfer agreements. This is especially important in retroactive cases, where the original employer no longer exists or has restructured.

With respect to the allocation of surplus upon divestment transfer, we support the right of divested members to protect the value of their earned pension at the time of transfer. They should be given the option to consolidate their pension entitlement under one plan. However, surplus is an actuarial construct, not an absolute fact. Paying or spending surplus is not a good thing to do; recent history has taught us that lesson. Also, including the payment of surplus under this provision but deleting the partial windup rules, which included payment of surplus, seems to be an inconsistency in the proposed legislation.

In any event, members transfer all the time when they change jobs, without the requirement of the plan to pay out surplus. Members must consider a number of factors when making decisions. For divested members, this will be one of the factors to be included in their decision-making. This is why members must be given the option to transfer or leave a special or modified deferred pension with the original plan.

In concluding, I want to say that there are literally thousands of divested members who have been waiting for the option to transfer their pension entitlements into successor pension plans. It would be a shame if they would not have this opportunity because the reform language was not clear. We have the opportunity to make the necessary changes to avoid this tragedy.

The Chair (Mr. Pat Hoy): Thank you. This round of questioning goes to the NDP: Mr. Miller.

Mr. Paul Miller: I'm the lucky guy who has no written submission to go by, so I have to go by memory of what you said.

So basically, the drift is that for a person to leave a plan and go to a successor plan, you want them to be covered equally as far as benefits go and have a smooth transition to the new plan without any encumbrances. Would that be a fair statement?

Also, from what I can read, I wasn't sure whether you're opposed to grow-in rights or for them, from what you said. Maybe you could clarify that for me.

Mr. Peter Shena: With respect to your first question, our position is that a member should be able to transfer the value of the benefit that they have in the original plan to the successor plan without any encumbrances.

With respect to the second question, if the direction of the Legislature is to provide grow-in rights for involuntarily terminated members, we agree with that. What we don't agree with is the provision to allow MEPPs and JSPPs to opt out just because of the form of governance that they provide.

Mr. Paul Miller: Okay. So it would be fair to say that you obviously support portability—

Mr. Peter Shena: Absolutely.

Mr. Paul Miller: —as your members move from job to job in different aspects of your governance, from different parts of the province, which I am in full support of; I think that's good.

I didn't hear a lot about the PBGF fund. It covers you too, I believe. Does it not?

Mr. Peter Shena: No, we're exempt.

Mr. Paul Miller: You're separate?

Mr. Peter Shena: We're exempt from the PBGF.

Mr. Paul Miller: So it really isn't a concern for you whether that's fully funded or not?

Mr. Peter Shena: It is in the sense that if it doesn't provide secure benefits for all Ontarians—when we made a submission to the Ontario expert commission, we did

put a position forward that the PBGF should be strengthened.

Mr. Paul Miller: That's good. I'm glad to hear that. And I guess you want the commuted value to be the same in the transfer position? As far as whatever they were entitled to—say, 15 years at this particular place, and they're changing to another plan, that the commuted value of that plan would carry on to the new plan at that level, and then start with a new plan at that level, or continue—which one would be the higher end?

Mr. Peter Shena: What we're recommending, and actually, what we've done in the situation which involves the amalgamation of smaller municipal police forces by the Ontario Provincial Police is that the exporting plan calculates a transfer in value which, in the case that we worked on with OMERS, was higher than the commuted value. That value is then used to purchase however many years of service the member had in the original plan in the successor plan. The successor plan would then calculate the value of the benefits coming into the plan. If there's a shortfall, then there's a top-up required, but the value of the benefit that the member had in the prior plan has been protected and the member has the option, based on what is best for that individual, to transfer it from the original plan to the successor plan.

Mr. Paul Miller: So he basically could buy credits?

Mr. Peter Shena: Correct; buy service credits.

Mr. Paul Miller: Buy service credits to the new plan, through his own cost? Because, say, for instance, you went from municipal police to OPP, and there was a difference in the pension situation. You're saying that if he had, say, 10 years municipally and he wanted to go out and spend his last 20 years with the OPP, he can buy credits to bring him up to the level of the OPP pension?

Mr. Peter Shena: Right. And in terms of who pays that additional amount, it's a matter between the bargaining agent, if one exists, and the employers involved, but the pension plans have a duty to ensure that they're not subsidizing those transactions. It's the value that comes across purchases, what it purchases in the original plan. The difference is made up by either the transferring member or a combination of the transferring member and the other parties involved.

Mr. Paul Miller: Could it have a conflict between the municipal governing body that pays the police force, in reference to the OPP, which is paid provincially? How does that work? There's no conflict because—who makes up the shortfall, is what I'm saying.

Mr. Peter Shena: It's up to the parties to decide, not the pension plans; it's up to the—

Mr. Paul Miller: The pension would administer it?

Mr. Peter Shena: The pension plan would administer it. The pension plan would determine the amount that needs to be paid, and if there's a difference between what the receiving plan requires and the original plan is providing, then it is either the member that pays it or the municipality or—

Mr. Paul Miller: Or leaves it the way it is.

Mr. Peter Shena: Or leaves it the way it is.

Mr. Paul Miller: So if you have an actuary involved, they can figure out what the commuted value is?

Mr. Peter Shena: The pension plans do that on their behalf. They can certainly have an independent actuary review the calculations. This is a model that we, as I said, used with the provincial police, and in some municipalities the municipal government has agreed to pay a portion of the top-up to bring the individual to full service; in other cases, the municipality did not.

Mr. Paul Miller: So it's a smooth transition?

The Chair (Mr. Pat Hoy): Thank you.

Mr. Paul Miller: Thank you.

The Chair (Mr. Pat Hoy): Thank you for your presentation.

ONTARIO BAR ASSOCIATION

The Chair (Mr. Pat Hoy): I now call on the Ontario Bar Association to come forward, please.

Good afternoon. You have 10 minutes for your presentation. There could be up to five minutes of questioning, this time coming from the government side. I would ask you to identify yourselves for the purposes of our recording Hansard.

Mr. Mitch Frazer: Mr. Chair, committee members, thank you for the opportunity to address you on this very important topic today.

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My name's Mitch Frazer, and I'm the chair of the Ontario Bar Association pensions and benefits section. We are one of 35 sections representing over 17,500 members. With me today are my colleagues Andrea Boctor and James Pierlot, co-chairs of our section's public affairs committee.

We are generally very supportive of Bill 236. However, we would like to propose a few changes which we believe would make this significant piece of legislation stronger for both business and pension plan members.

In our written submission, which you now have before you, we deal with both substantive and technical issues. However, the focus of our remarks today will be on the substantive issues.

Andrea will begin the formal part of our presentation, followed by James, and then we would be happy to answer any questions that you may have.

Ms. Andrea Boctor: Thank you, Mitch. My name is Andrea Boctor. I'm a co-chair of advocacy and governmental relations for the pensions and benefits sections of the Ontario Bar Association.

The first topic we'd like to discuss today is trust law and pension asset transfers. We heard the previous speaker talk about asset transfers in larger public sector plans, and we'd like to focus on asset transfers in single-employer plans, specifically.

Asset transfers generally occur in two situations: first, where an employer sponsors several pension plans and wants to merge them together, and this is accomplished by way of asset transfer; the second is where a purchaser

acquires part of a business and agrees to transfer pension entitlements to the employees they're hiring from the seller's pension plan to the purchaser's pension plan. Asset transfers in this context are a good thing. They allow sponsors to take advantage of cost and funding synergies.

They are also a good thing for members, especially in the purchase and sale context. Members will have one pension plan to look to for their pension. As we've heard from the representatives of OPSEU and OPB, where members have two or more pension plans to look to for their pension benefit, their benefits can suffer. We should want to make asset transfers easy, provided member benefits are secure.

Currently, in Ontario, asset transfers are not easy, and the reason has nothing to do with member benefit security. It currently takes an average of four years to have an asset transfer adjudicated by FSCO, in large part because an employer has to show that every pension plan affected by the asset transfer permits the plans to be merged. Where the plan is funded via trust, which they often are, this means gathering and analyzing every plan document since the plan's inception, often decades' and truckloads' worth of documents, and that's only if all of the documents can be located. The time and professional fees spent on performing this historical trust law analysis for an asset transfer application that may or may not be successful means that employers try to avoid the mess entirely in the first place.

For that reason, we applaud the new sections 79.2 to 81.1, which we understand are intended to streamline the asset transfer process. They are clear and put benefit security in the front seat, where it belongs. However, we are concerned that there is no new express provision that explicitly takes the trust law analysis out of the picture.

For certainty, we suggest adding a provision to the revised PBA that essentially states that where a pension plan is amended to permit the plan to be merged with another plan, that amendment will trump any previous plan provision. This will do two things: first, it will allow new sections 79.2 to 81.1 to operate unencumbered, which we believe is the intent of the legislation; second, it should end the requirement for plan sponsors to establish, through an analysis of decades' worth of plan documents, the entitlement to merge pension plans.

James?

Mr. James Pierlot: Thank you, Andrea.

When a pension plan terminates with a surplus, under the current rules, there are frequently major delays and costs in determining who owns the surplus under the plan documents. Even where an employer proves ownership under the current rules, it's still necessary to get employee agreement for any payment to the employer.

Bill 236 makes a very welcome change to this rule. An employer who demonstrates legal ownership on windup can get a refund of the surplus; an employer who doesn't can negotiate a deal with employees to share the surplus. This "demonstrate ownership or negotiate" approach is very pragmatic, and it reflects the approach of a number of pension standards jurisdictions.

Unfortunately, the new rules don't apply to partial windups declared before 2012. Given that the new Bill 236 surplus regime strikes a fair balance between employer and member rights, we are recommending that it be extended to all partial windups that are outstanding on the date Bill 236 is approved by the Legislature.

Many pension plans offer benefits on a defined contribution, or DC, basis and on a defined benefit basis. However, the current rules provide little guidance in terms of how these plans should be administered. We're particularly concerned about two problematic areas relating to plans that provide DB and DC benefits that the current PBA and Bill 236 do not address.

The first relates to the rights of DC pension plan members when a DB/DC pension plan sponsored by an insolvent employer terminates without enough assets to pay promised pensions. In this situation, it is generally agreed that DC plan members' accounts should not be applied to fund DB benefits. However, neither the current rules nor Bill 236 state this. We therefore recommend that Bill 236 be amended to provide clearly that DC assets cannot be used to pay for DB benefits in order to ensure that legal disputes around this issue do not arise.

The second point relates to surplus rights in a DB/DC plan. As already noted, DC members should not be exposed to the risk of DB members' losses. It follows that they should not have a claim to DB surplus on plan termination. However, current rules seem to give surplus rights to all members of a DB/DC plan. We're therefore recommending that Bill 236 be amended to provide that DC plan members have no claim to surplus on plan windup in respect of their DC accounts.

Ms. Andrea Boctor: The last topic we'd like to discuss today is on multi-employer pension plans and partial windups. Currently in Ontario, where a significant number of members of a multi-employer pension plan cease to be members, either as a result of an employer withdrawing from the plan or otherwise, a MEPP can be partially wound up with respect to such members. Where the MEPP is underfunded at the time of the partial windup, such members are paid their benefit at the funded ratio of the plan. This means that if the plan is 90% funded at the time of the partial windup, members will be paid 90% of their benefit.

Absent a partial windup, which Bill 236 takes away, the member would receive 100% of their benefit. That doesn't sound bad, but it is and here's why: If the plan is 90% funded and some members are being paid out at 100%, it reduces the funds available to the other members. Given that contribution amounts to multi-employer plans are generally bargained and set in advance, there is generally no means for the administrator to get more cash into the plan, be it from the withdrawing employer or the other employers who remain in the plan. The result is that members who leave are preferred over members who stay.

This is a bad result, and it is compounded by the fact that the Arthurs commission report advocates the increased used of MEPPs to expand pension coverage to more Ontarians. We're not advocating that the PBA be amended to keep partial windups for MEPPs. More importantly, we're not advocating for a US-style withdrawal liability for employers who withdraw from a MEPP. Withdrawal liability would without a doubt stifle the growth of MEPPs, and would therefore be contrary to the goals set out in the Arthurs commission report.

We are, however, saying that this issue needs to be addressed. We suggest that rules be added to the act, stating that a MEPP administrator need not pay out the lump sum commuted value of a benefit to a member where the funded ratio of the plan would be impaired or reduced as a result.

The Chair (Mr. Pat Hoy): That concludes your presentation?

Ms. Andrea Boctor: Yes.

The Chair (Mr. Pat Hoy): Very good. We'll move to the government.

Mr. Wayne Arthurs: By this time in the day, and no disrespect to the presentation, but between MEPPs and MAPPs and SEPPs, partial windups, full windups, surplus assets, retired members, former members—I think I'm getting a better handle on it as we go, but having said that, it's not easy sometimes.

I'm only going to ask two questions, and if you could, respond to them in a fashion that this poor layman might understand as best possible. The first is on the issue of surplus, on the partial windup—I'm trying to think; I was looking specifically at your notes before I digressed—and the issue of the employer establishing ownership—I'll use that term—in the event that there is an agreement on a negotiated settlement: some clarity on the position would be helpful. I think I understand your position, but I'm just looking for continued clarity as we move forward on this.

The other question is around—it's a very simple one, I think; simpler—page 6 of the submission, the definition of retired members. You're asking that it not include a deemed provision and you provide an explanation as to why. What I'm not understanding in the bit of time I had to read it is why that's significant, whether or not someone who is deemed, i.e. they haven't yet received the pension cheque—why that's in some way significant, whether they're considered retired members or not.

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Mr. James Pierlot: I'll address the issue of the surplus. The point that we're making is very similar to what you heard from Ian McSweeney from Osler, Hoskin and Harcourt. The Bill 236 regime essentially replaces the old regime, which said that before the employer can get any surplus, you have to prove that you own it, then you have to go and cut a deal with the employees. Under the new regime, you prove that you own it or you cut a deal with the employees. That's a big improvement, but it doesn't apply to partial windups before 2012. So what we have is a situation where we've got two regimes: One applies to full windups and the other just applies to partial. What we're saying is that if a partial windup is outstanding, as at the date that Bill 236 is passed, it would fall under the new regime and it would essentially get rid of the need to do all of that expensive legal review of documents and the delays—

Mr. Wayne Arthurs: Okay.

Mr. Mitch Frazer: Normally, they're treated the same, so this may be a technical oversight just for the fact that they're being eliminated in a year and a half, so that's it. But otherwise, by law, by case law and by statute, they have always been looked at as the same. So we're just trying to close that little loophole there.

Mr. Wayne Arthurs: Great. That's very helpful. And the second question is the issue of deemed—

Ms. Andrea Boctor: On the retired member, we just think that the definition of "retired member" is awfully broad. It includes what we would typically call a deferred vested member, somebody who's entitled to retire under the plan but has not yet retired and does not yet receive a pension. The interests of a deferred vested member and a retiree can differ and the information that they would need to be provided can differ. To us, it would be more clear if we had retired members as members receiving a pension and have them as that discrete group.

Mr. James Pierlot: We're not suggesting that deferred vested members or former members should not receive information; we just think that they fall into a separate category and they should be defined separately.

Mr. Wayne Arthurs: Thank you. I appreciate that.

The Chair (Mr. Pat Hoy): Thank you for your presentation.

CAW LOCAL 1575, COCA-COLA HAMILTON

The Chair (Mr. Pat Hoy): For the committee, I understand that the 4:30 has not arrived yet, so I'll call the CAW Local 1575, Coca-Cola Hamilton.

You have 10 minutes for your presentation. There might be five minutes of questioning. I just ask you to identify yourself for our recording.

Mr. Mark Blaney: My name is Mark Blaney. I come here today representing CAW Local 1575 for the Coca-Cola Hamilton facility.

From 1986 to the spring of 2007, we belonged to the United Food and Commercial Workers union, known as UFCW. In January 1989, we joined the Canadian commercial workers industry pension Plan, which we refer to as CCWIPP, which replaced the Coca-Cola employee pension plan that we had up until that time, which was the ERP.

In the fall of 2006, we, the members, began questioning the investments and insolvency level of our pension with CCWIPP and began discussing our options of terminating our relationship with them. It became apparent that the only way to do this was to decertify and terminate our relationship with the UFCW. The

decertification and termination was complete in the spring of 2007.

By the summer of the same year, we entered into a service agreement with CAW and shortly thereafter became members. Our first contract as a CAW local was ratified in September of that year.

From that time to the present, there has been an ongoing issue about the commuted pension funds which were to be transferred from the CCWIPP to the ERP. I personally got involved with this issue in September 2009 and found that all the members under the age of 50 at the time of decertification had received 50% of the pension funds, the balance due to be transferred in April 2012. That was put into the Coca-Cola ERP or another secure financial vessel of their choice. The members over 50, such as myself, which make up about one third of the workforce, have received nothing to date and no information as to when the funds will be transferred.

I sent a letter to the Financial Services Commission of Ontario and to the assistant to the president of CAW; copies have been passed out. I claimed that because the members over 50 are treated differently and segregated based on our age that we are being discriminated against, and I insisted on equal treatment. Both the FSCO and the CAW responded with similar positions, quoting sections of the Ontario Pension Benefits Act, which I would like to address now.

The response from FSCO, dated September 18, 2009, and the CAW, dated March 4, 2010, brought my attention to a section of the Pension Benefits Act which causes me much concern; namely, section 42 of the act in which subsection (3) states, "Subsection (1) does not apply to a former member whose employment is terminated"—we were not terminated, we just withdrew from that plan, as far as employment goes; our termination had nothing to do with our employment—"and who is entitled to immediate payment of a pension benefit under the pension plan or under section 41, unless the pension plan provides such an entitlement."

I find this section very disturbing because it gives the administrator of a pension plan the power to withhold funds with a veiled or cloaked discriminatory legal loophole. In this situation, CCWIPP uses this loophole with a clause for early retirement at age 50 with only two years' service, thereby denying these members the portability of transfer afforded to those under the age of 50. The way they achieve this is through the reduction of benefits by 6% per annum or 90% if early retirement is taken at age 50. A member retiring at the age of 50 would then only receive 10% of their benefits until the age of 60, at which time they would become eligible to claim CPP benefits with a 30% reduction and be locked in at that point indefinitely.

Since this reduction would serve as a financial deterrent for early retirement, I would suggest that this section, and any that are similar, creates a loophole and indeed promotes discrimination based on the age of the member. For example, if I and my other co-workers who are over 50 at this point—if at the time we terminated with that plan, we were all 49 years 364 days and 23 hours old, this would not be an issue or applicable. Since there is a division or a line that divides and segregates the pension plan members and also applies different rights and services based on which side of the line one finds themselves, I would say that this is indeed age discrimination.

To remedy this I propose that portability for all pension members regardless of age be put into Bill 236.

The Chair (Mr. Pat Hoy): Thank you, and for the committee's information, the official opposition and NDP are going to switch their questioning. So it will go to Mr. Miller of the NDP.

Mr. Paul Miller: Good afternoon, Mr. Blaney. It's my understanding from your submission that in your original plan you were with the Canadian commercial food workers—

Mr. Mark Blaney: UFCW.

Mr. Paul Miller: UFCW, and your local decided to withdraw; you voted on it—

Mr. Mark Blaney: We decertified; right.

Mr. Paul Miller: You submitted your removal from their plan. You switched to the Coca-Cola plan under their auspice, their jurisdiction, and in the transition period, you were not notified of the status of your personal pension situation, and a third of your workers were not told how much is there. You've been trying to find out.

Mr. Mark Blaney: Nothing. Nothing has been—

Mr. Paul Miller: And they haven't told you if it has been transferred or not?

Mr. Mark Blaney: No, they haven't given us any information whatsoever. The previous president of our local has been calling FSCO about that. So has the president that we have now, as well as the plant chair, and it's the same thing: "We're working on it. We're looking at it."

Mr. Paul Miller: They're working on it. They should know by now.

Mr. Mark Blaney: You'd think.

Mr. Paul Miller: When did you leave the plan?

Mr. Mark Blaney: We left the plan in April 2007. When we terminated our relationship with UFCW, it also terminated the relationship with CCWIPP.

Mr. Paul Miller: And it's been three years, almost, and you have received no information on the status of your personal plan and your fellow workers?

Mr. Mark Blaney: Absolutely nothing.

Mr. Paul Miller: Which I find remarkable, to say the least. I mean, what happened to freedom of information?

Secondly, you are being penalized, from your impression of the way it's laid out—that the workers 50 and under received their—

Mr. Mark Blaney: They get 50% now.

Mr. Paul Miller: They got 50% upfront, and then they transferred to the Coca-Cola new plan.

Mr. Mark Blaney: They were able to transfer it to Coca-Cola or they could put it into a RIF or whatever, some kind of secured vessel.

Mr. Paul Miller: A RIF or whatever; they had an option.

Mr. Mark Blaney: Yes.

Mr. Paul Miller: You had no option.

Mr. Mark Blaney: We have no options at all.

Mr. Paul Miller: So you feel that not only are you being discriminated against, you're also kept in the dark about the status of your pension plan.

Mr. Mark Blaney: Absolutely.

1620

Mr. Paul Miller: Well, this is unbelievable, in my opinion. This should definitely be brought forward. I can't believe that in this age of information, we can't find out the status of this gentleman's personal situation from FSCO. I'm glad this is going on record. I find this disgusting. How many workers are we talking—

Mr. Mark Blaney: We're talking about one third of the workforce in Hamilton, so we're talking around 35 men, roughly—about 35 people right now.

Mr. Paul Miller: Thirty-five people working for Coca-Cola don't know the status of their pension plan. This is obviously another bad, bad thing that's going on that has to be rectified. I'm glad you brought this forward to us today because I wasn't aware of this horrendous situation. The gentleman simply wants to know where he stands, how much he's got in his pension plan, when he can collect it and why is he being penalized because he's over 50 years old.

Mr. Mark Blaney: And I'd like to be able to do what the other guys can do who are under 50. It's not my fault I was born in 1951.

Mr. Paul Miller: You should have waited a couple of years.

Mr. Mark Blaney: I had no say in the matter.

Mr. Paul Miller: That's terrible. Thank you for your submission. I hope this is going to be passed on to FSCO, because I can't believe this. Thank you.

The Chair (Mr. Pat Hoy): Thank you for your presentation.

Mr. Mark Blaney: My pleasure. Thank you very much.

CANADIAN UNION OF PUBLIC EMPLOYEES

The Chair (Mr. Pat Hoy): I'll call upon the Canadian Union of Public Employees to come forward, please.

Mr. Wayne Arthurs: Chair? It's not really a point of order; just as CUPE is coming forward—and we're happy to hear them—just to let you know that I concur with the members opposite in a unanimous way to vary the order, recognizing that some of our deputants are out of order. But I prefer, where we can, and I'm sure the members opposite agree, to maintain the order that we had established around the table.

The Chair (Mr. Pat Hoy): Very good. Now, gentlemen, you have 10 minutes for your presentation. There could be up to five minutes of questioning. If you identify yourselves, you can begin.

Mr. Fred Hahn: Thank you. My name's Fred Hahn. I'm the president of the Canadian Union of Public Employees in Ontario. With me here today is Brian O'Keefe, who is our past secretary-treasurer and is a pension consultant with our union.

CUPE, as many of you will know, represents 230,000 workers in Ontario in the broader public sector: in schools, hospitals, long-term-care facilities, universities, social service agencies and municipalities.

We want to start by saying that we were happy to see the establishment of the Ontario Expert Commission on Pensions, whose mandate quite properly asserted the importance of maintaining and encouraging a system of defined benefit pension plans in the province of Ontario. We're urging you today to continue to consider this as a guiding principle as we move forward with pension reform in the province. In our view, Ontario and Canada's retirement income system has to be strengthened in order to address the declining pension coverage in secure defined benefit plans; ensure that every senior has adequate income in their retirement; and ensure that there's legislation in place to protect pension benefits.

In the wake of the massive financial meltdown of 2008-09, there has been a widespread acknowledgement that the RRSP system has simply and utterly failed to provide a retirement income system that Ontario workers need. We need to consider the example of a couple of people with investments, both worth $100,000. On May 1, 2008, the first person would retire in May of that year and could have bought an annuity that paid $7,614 a year for life. Six months later, the second person would have bought an annuity with the same amount of money that would only have paid $4,720 as a result of the market downturn.

As we've continued to insist, the RRSP system simply is not a model that can provide us with any meaningful form of retirement security. A growing body of research continues to show that a defined benefit pension model can provide a secure retirement income for as little as 46% of the cost of a defined contribution plan. Clearly, pooling risk and other significant efficiencies and cost savings are there in the defined benefit model. What we really need in Ontario is a pension system that will empower workers to build a secure, adequate retirement income through a defined benefit model that provides coverage through their working careers.

Bill 236 moves in the right direction on several points. We want to support the recommendations in the bill that call for immediate vesting, improved disclosure, changes to grow-ins and some improved portability rights for our members. We support the strengthening of advisory committees and the clarification of the role of trade unions, who act on behalf of workers

We support proposing new rules that will increase plan members' access to plan information. The rights of plan members to get appropriate and secure funding of their pension promise will continue to be at risk as long as there is no requirement on the part of employers to fully disclose plan details, including full disclosure of

employer contribution holidays and any other surplus allocations.

We do, however, have concerns with the legislation, and we would ask for amendments in the following areas:

There are recommendations introduced around small pension amounts and phased retirement that we think raise a number of serious concerns. The bill does not address the issue of the growing number of workers who don't have access to full-time employment and face restrictions on their access to full pension plans as a result.

The bill expands on the existing authority of plan administrators to force a lump-sum payment of small pensions on plan members or a surviving spouse on termination, retirement, death or marriage breakdown. We believe this will weaken the bill's provisions for immediate vesting. That change would erode the protection of spousal rights and improved portability gained in past reforms.

We continue to be concerned about pension plan members who have been victims of downloading of services, divestments or ongoing privatization and who, through no fault of their own, have lost some portion of their pension entitlement.

In general, the lack of meaningful portability between defined benefit pension plans is a serious weakness of the existing system. Ontario needs to strengthen the protections for pension benefits that plan members have already earned, improve portability rights and provide for greater individual choice in the case of transfers.

CUPE also has a number of concerns about the proposed "flexibility" that is supposed to come with phased retirement. These concerns include the fact that we are completely opposed to a framework that would permit employers to provide particular benefits to pension plan members on an individually selected basis. We feel that it is the role of pension legislation to protect pension plan members from this kind of potential discrimination.

We strongly support the recommendations in the Arthurs report, which calls for more research to be done on the issue of phased retirement to examine the financial implications that it would have on pension plans

In conclusion, we want to say that we cannot lose sight of the fact that the purpose of pension plans is to provide for a secure lifetime pension income for plan members and that workers in Ontario need access to decent-paying full-time jobs that will include access to a defined benefit workplace pension plan.

Our brief details the amendments that we're seeking in the bill. We believe that these amendments will not only strengthen the legislation but will actually make it more consistent with the Ontario Expert Commission on Pensions. We know that there are further reforms coming, and we look forward to speaking on those reforms. For now, that's what we would like to say on this piece of legislation.

The Chair (Mr. Pat Hoy): Thank you. This round of questioning will go to the official opposition. Mr. Miller.

Mr. Norm Miller: Thank you for your presentation. I'll begin with the comments that you've made on phased retirement. You've expressed some concerns to do with phased retirement. Maybe you could expand on those concerns.

Mr. Fred Hahn: We're well aware that there may be some workers who would be in favour of phased retirement. The reality is that what we believe phased retirement can do in many ways is not only potentially endanger the financial health of a pension, but what it also does—pension plans were never set up to support or to supplement part-time employment, and they were never set up as a way for employers to create cheaper pools of labour, which, in fact, is what phased retirement would do by way of having the employer only paying part-time for the worker and the pension plan paying the other part.

Mr. Norm Miller: Phased retirement: I assume that's where somebody hits retirement age, and for whatever reason, the worker decides that they want to continue to work, perhaps part-time. In that scenario—I don't know how you necessarily work it out—would they be able to draw their pension a couple of days a week and then contribute to it the other days of the week, for example?

Mr. Fred Hahn: It used to be in legislation that you either collected your pension or you were working for the employer. There are concerns we have about the issue of flexibility. If a worker were allowed to continue to work and somehow collect some wage from the employer and also potentially collect from their pension plan, what this would do, as we said, is endanger the financial health of the pension plan; make pension plans actually be this supplement to part-time employment, which they were never intended to do; and create a pool of cheap labour for employers that is unnecessary and not helpful to the economy in the long run.

1630

Mr. Norm Miller: Okay. I'm not quite sure how it endangers the financial health of the pension plan if they're, I guess, entitled to the benefits anyway and they're contributing on the days when they work.

Mr. Fred Hahn: Because part-time workers—it's another one of our concerns—aren't often able to contribute to the pension plan. If you get two people who are being flexible and who are working part time, and part time taking from their pension plan, they've replaced a full-time worker who would be contributing to the pension plan.

Mr. Norm Miller: Okay. I missed one point that you talked about: defined benefit versus defined contribution being the cost—and this is the point I missed. I heard 46% but I didn't really catch what point you were making there.

Mr. Fred Hahn: There's a growing body of research that continues to show that defined benefit pension plans are more efficient and they create a better outcome: 46% of the cost of a defined contribution plan. The cost is less than in a defined—

Mr. Norm Miller: So a defined contribution plan costs 46% of a defined benefit plan? Is that what—

Mr. Fred Hahn: A defined benefit plan costs as little as 46% of the cost of a defined contribution plan.

Mr. Norm Miller: Okay.

Mr. Brian O'Keefe: That centres around the pooling of capital. It's a cheaper way of doing the business.

Mr. Norm Miller: Okay. I think Toby has a question.

Mr. Toby Barrett: Just a very quick question. I'm just trying to sort out what some of this means as far as small pension amounts. For example, say a young person right out of school works in a hospital for two years and then they quit. Are you okay with the fact of them getting a payment in lieu for their pension contribution—to cash out? It's their money that they've built up.

Mr. Fred Hahn: Our concern with this particular bill is that it provides more authority to plan administrators to force those kinds of lump sum payments rather than having individual choice about it.

Mr. Toby Barrett: So you favour the choice, then, negotiated with the employer and human resources?

Mr. Fred Hahn: We think that in case of legislation, what we would prefer is that people would be able to port and move their contributions between pension plans.

Mr. Toby Barrett: Certainly. But say they're right out of high school, they work for a couple of years in a hospital, and they want to cash out and maybe start building a house or something.

Mr. Brian O'Keefe: Yes. We have a real concern. That centres around the position that we've taken on the cash-out of small amounts. The problem with that is it could be very discriminatory around a lot of workers in insecure employment who are moving from one workplace to another. They're accumulating small, little pieces of pension. There's a potential for them all to be transferred into an RRSP, but because of the trend towards greater facility to receive cash payments, it may end up being a situation where all that these workers would get would be cash payments.

It's a dangerous trend. We understand the administrative convenience of that, but it's discriminatory against a lot of workers in insecure employment.

Mr. Toby Barrett: So if they didn't cash out, they would get it eventually, like 30 or 40 years later.

Mr. Brian O'Keefe: Correct.

Mr. Toby Barrett: Okay.

The Chair (Mr. Pat Hoy): Thank you for your presentation.

OMERS PENSION GROUP

The Chair (Mr. Pat Hoy): Now I call on the OMERS Pension Group to come forward, please. Good afternoon. I've noted that you've been sitting there for quite some time and likely could do this yourself, but if you would give your names, I think you understand that you have 10 minutes and then five minutes of questioning. You can begin.

Mr. Andrew Fung: Thank you very much. Good afternoon, everyone. My name is Andrew Fung. I'm a senior vice-president with OMERS Pension Services as well as the in-house actuary with OMERS Administration Corp.

Mr. John Poos: My name is John Poos. I'm the executive director at OMERS Sponsors Corp.

Mr. Andrew Fung: I'd like to make a few brief introductory comments and then we'll move on to answer any questions that you may have.

First of all, let me explain what OMERS is. We are a pension plan for municipalities and related employers of Ontario, covering about 900 employers and 400,000 members, pensioners and active members combined. We are a jointly sponsored pension plan, which means that members and employers share in the funding, 50-50, of the pension plan as well as making decisions about plan design and contribution rates.

OMERS has a long tradition of strong employer and member governance. That governance structure was provided to us via the OMERS Act, providing that OMERS is administrated by the OMERS Administration Corp., dealing with investment and actuarial evaluations, whereas the sponsor's corporation will make changes on benefits and contribution rates. We also are a well-known, large pension fund pursuing a global investment mandate and one of the top-performing pension funds in Canada.

As our submission indicates, OMERS welcomes Bill 236 as a first step in pension reform. We are pleased to see that the Ontario government is moving forward with many items brought forward by the Expert Commission on Pensions, and many of these issues, frankly, are the subject of stakeholder concerns in many respects.

OMERS also welcomes the opportunity to be able to comment on the bill to provide technical input because we believe that technical input is critical for the success of the pension system. We will continue contributing our time and expertise to the government reforms.

Our submission focuses on three priorities, and they are grow-in, transfer of assets, as well as phased retirement.

On grow-in, Bill 236 extends grow-in benefits in many situations and provides for an election for jointly sponsored or multi-employer pension plans to opt out of it. The expert commission report recommended that jointly sponsored pension plans and multi-employer pension plans be exempted. Whether it is an exemption or an election to exempt, to opt out, OMERS' position is that this should be available immediately after the bill is passed and not to wait until 2012.

Second, the bill makes a number of very positive amendments to the PBA to facilitate transfers of assets in a range of scenarios, and we are pleased to see that member consent is either a requirement or an option, depending on the circumstances, for transfer of assets to a successor employer pension plan. However, we believe that for these provisions to be effective, we need to recognize specific flexibility to address the situation of

jointly sponsored pension plans and multi-employer pension plans like OMERS. In particular, the rules with respect to funding need to recognize the special attributes of JSPPs like us, and of MEPPs.

The approach, in particular the application process, for the transfer of assets should also be more suited for multi-employer pension plans and JSPPs, many of which have multiple employers and former employers that no longer exist.

The bill includes provisions that also allow pension plans to provide phased retirement. OMERS supports provisions for phased retirement and recommends that there should be flexibility for the phased benefit formula and allow the full pension to be affected by the phased retirement.

These are all priority issues of significant financial impact to OMERS. OMERS has made submissions on these issues through the expert commission process over the last few years, and we included in appendix 1 some technical details with respect to our submission.

Finally, we are happy to see the government renew its commitment to consult on regulations in the recent budget. The regulations related to this legislation will be highly technical and will need that consultation, given the far-reaching effects on pension plans.

We are happy to answer any questions that you might have at this point.

The Chair (Mr. Pat Hoy): Thank you very much. This round of questioning goes to the government.

Mr. Wayne Arthurs: Talk to me a little more about the issues around transfer of assets—commentary on either required or optional provisions. You read through the presentation, which I appreciate, but I'd like kind of a lay perspective to build on that a little bit.

Mr. Andrew Fung: Yes. In general, we are happy to see that transfer of assets, allowing members to transfer from pension plan to pension plan to be able to join their pension benefits.

What we're talking about there is that a lot of the details will be in the regulations. In many situations, JSPPs and multi-employer pension plans are unique in the sense that the expert commission talks about a different funding regime, for example, for these pension plans. In some of these transfer situations, special funding is required. What we're saying there is that all of these have to be tied in. Hopefully we'll see some of those coming in in phase two of the reform.

Second, in most situations, the administrator will be the only logical person, or company or entity, to be able to stakehold that transfer from application to application, because some of those employers who have been divested no longer exist. All we are trying to say there is that the regulations and the details should recognize some of those specialties of the multi-employer pension plans, because, frankly, multi-employer pension plans and JSPPs cover a lot of memberships. Our plan covers 400,000. So most of those transfer provisions will affect pension plans like ours. We just want to recognize that up front.

1640

Mr. Wayne Arthurs: Two other quick things: One, thank you for your offer of continuing in this process, because obviously the regulatory regime becomes an important part once the legislation is done.

Finally, in the 2009 budget bill, we provided for OMERS an opportunity to manage third party assets. You mentioned that the OMERS pension structure is sound. Has that benefited the pensioners, that capacity that you have now to manage third party assets?

Mr. Andrew Fung: That's certainly a very welcome change for OMERS, to be able to capitalize on the expertise that OMERS built over the years in terms of administration as well as investment. We are currently working and putting infrastructure in place for us to be able to manage third party funds. We are proceeding along that direction. Again, this is a very welcome change for OMERS.

Mr. Wayne Arthurs: Thank you so much.

The Chair (Mr. Pat Hoy): Thank you for your presentation.

NORTEL RETIREES AND FORMER EMPLOYEES PROTECTION CANADA

The Chair (Mr. Pat Hoy): For the committee, I understand that our next two presenters haven't arrived yet, but Nortel Retirees and Former Employees Protection Canada are willing to come forward now. If you would identify yourselves for the purposes of our recording, you can begin with your 10 minutes, followed up by five minutes of questioning.

Mr. Mike Moorcroft: Thank you. Good afternoon. I am Mike Moorcroft, the GTA chair of Nortel Retirees and Former Employees Protection Canada.

Mr. Ron Olsen: My name's Ron Olsen. I'm an actuary with the Segal Company, and we are advisors to the Nortel retirees protection committee.

Mr. Dave Agnew: I'm Dave Agnew, member of the executive of the Nortel retirees group.

Mr. Brian Clark: And I'm Brian Clark, member of the Nortel retirees group.

Mr. Mike Moorcroft: Thank you for this opportunity to address the committee. The NRPC represents the interests of Nortel's pensioners, former employees and long-term disabled in the ongoing bankruptcy proceedings.

First, I'd like to address those things that we like in the bill. The NRPC especially likes the proposed changes to the vesting and spousal benefits provisions. In the high-tech world—and more recently within the general population—employees frequently change jobs and partners. Vesting is often lost and division of benefits is complex. Bill 236 goes a long way to correcting this situation.

Another area where we applaud the new provisions is in the enhanced reporting to employees and pensioners. Most are unaware if problems exist with their pension plans. It's only in times of crisis, such as with Nortel, that they take a good look at the details. By then it may be too

late to correct the problems. The proposals for better information, increased frequency and wider distribution are long overdue.

In addition, NRPC would like to see reporting widened to encompass other retirement benefits. Today, retirement planning includes such items as medical and dental coverage, life insurance and a number of other issues. With an aging population and individuals living longer, a growing number of pensioners depend as much on these supplementary benefits as they do on their pension income. NRPC recommends that the committee expand reporting to include disclosure on the funding of supplementary benefits.

Other areas of Bill 236 which we find particularly favourable include the proposed provisions on portability and transfer and on phased-in retirement.

This bill enables many good improvements, and we congratulate the government on starting forward in this direction with pension reform. It's a step in the right direction, and NRPC supports the changes.

However, as we appear before you today, it's difficult to be optimistic regarding the provisions of the bill. None will alleviate the hardships that await many of Nortel's 19,000 pensioners, former employees and disabled with the windup of the company and their pension plans. Even after factoring in the Ontario government's commitment to honour the top-up of the pension benefit guarantee fund, the average Nortel pensioner in Ontario stands to lose between 15% and 25% of their total retirement income. For those in other provinces, this loss will be 30% and higher.

Our main concerns with the bill are in the areas of worker coverage and distressed or stranded plans. They are outlined in our brief attached to this presentation.

This afternoon, of necessity, I will focus on the most critical omission to NRPC: the lack of any proposed improvements to the conventional windup annuity purchase process for stranded plans, a practice which only further depletes already underfunded plans such as Nortel's. For nearly a year, NRPC has been working with the government to construct a solution which would not result in this conventional windup but, instead, permit plan recovery to occur with the improving economy and markets.

At the February pre-budget hearings of this committee, NRPC proposed the creation of a provincially managed Ontario pension agency to handle such plans. The Ontario Expert Commission on Pensions recommended this concept above all others for stranded plans. Our proposal clearly outlined the benefits to the province and pensioners of not winding up the plans but maintaining them at a sustainable level.

During the recent federal finance committee hearings on pension plan security, both the Canada pension plan and the Ontario Municipal Employees Retirement System stated they were prepared to handle stranded pension plans if legislation permitted. The Ontario Pension Benefits Act has provision for such a facility but it has never been enacted. The Ontario pension agency would benefit not just Nortel's pensioners but pensioners of other distressed companies such as CanWest, Fraser Papers and many more.

Our conclusions today remain the same as in February. The creation of the Ontario pension agency was strongly recommended by Arthurs. It is not a bailout. It provides a substantially higher payout to pensioners at potentially no cost to the taxpayer and significantly lowers the provincial payout of the PBGF.

Today, we are again requesting the government to act immediately to create an Ontario pension agency. For Nortel's pensioners, there is no time left. I wish we could wait to see what was in phase two of these changes that are coming later this year, but there is no time left for us. Nortel has stated it will cease sponsorship of the plans by September 30. That's the last date; it may be sooner. Unless the government acts quickly, the plans will be wound up and annuitized, resulting in a needless and exacerbated 30% cut in pension payments to those least able to recover.

With the Ontario pension agency, there is a win-win on the table. We strongly urge all MPPs to solicit the support of their caucus and that of the government to act now before it's too late.

Thank you, gentlemen.

The Chair (Mr. Pat Hoy): Does that conclude your presentation?

Mr. Mike Moorcroft: It does.

The Chair (Mr. Pat Hoy): Okay. This round goes to the official opposition. Mr. Miller.

Mr. Norm Miller: Thank you for your presentation. I'd like to start with the critical mission part of your presentation and just ask a few questions to do with that. You're suggesting that an Ontario pension agency be created, which would be home for pensions that are orphan pensions, like the Nortel pension.

Mr. Mike Moorcroft: In the Arthurs report, the Ontario pension agency was recommended as the way to go for stranded pension plans. It could be used for many other things, but it certainly is the way to go, and that's what we're recommending.

Mr. Norm Miller: I gather, then, the assets of your pension go into this agency and then they're managed, instead of being annuitized.

Mr. Mike Moorcroft: That's correct.

Mr. Norm Miller: Maybe you could explain to me the risk to the government or to taxpayers of that plan, and I guess also the risk to Nortel and Nortel pensioners. The hope is that it's well managed and the economy improves and it goes up in value, but what happens if that doesn't happen, or, in a worst-case scenario, we get another recession and it goes down in value?

Mr. Mike Moorcroft: We've been working closely with the government for the last year, as I indicated, to try to identify those sorts of questions that they may have. With respect to the risk, we've attempted to put together various options of the plan. It could be a completely provincially run agency; it could be a combination through something like OMERS or CPP; it

could even, we believe, be privately run. There are examples overseas of privately run agencies—orphanages, let's call them—that could deal with this also. The risk level has to be in the details in terms of how the plan is put together, how the agency is set up. Until we get into those sorts of details—and we're not there yet—we will not be able to identify the overall risk to either the government or the pensioners. We would hope it could be backstopped to the level of the minimum that it would be today, and that's the position we're going in with currently.

1650

Mr. Norm Miller: But was it Arthurs's recommendation that it be backstopped, or no?

Mr. Mike Moorcroft: From my understanding of the Arthurs report—and I must admit that it was a while ago since I read it—I don't believe he actually had a backstop in there.

Mr. Norm Miller: So, in other words, there's risk involved.

Mr. Mike Moorcroft: There is risk involved, like anything new that comes along. In our proposal, we suggested that the PBGF current level of funding would be the base that people could go to, because with anything new, there will be risk, but if we're going to be the guinea pigs, we'd like to have a little backup, especially for pensioners who are down at the lower level of the pension and would normally get a full pension top-up from the PBGF.

Mr. Ron Olsen: Sorry; can I add a comment? In my role as providing actuarial input—the concept of the orphanage, as put forward by our group, is one where, yes, there would be a floor of protection that would be set at what could currently be purchased in the marketplace for annuities. That floor, though, would also have a ceiling. In any event, if the assets of the plan performed well, the thought is that the taxpayer would have a call on assets above some certain amount. I would envision it probably in the context of a government orphanage—the Ontario pension agency is 100% of the pensions. So, in effect, you could think of this arrangement as almost creating two options, where the members have protection—and that's the risk to the taxpayer—but the taxpayer has a call on assets in excess of a certain amount. Again, without knowing all the details, it's extremely difficult to value those two options. But in some sense, it's a swapping, where the taxpayer is in a situation where the taxpayer can in fact win. It isn't all a one-sided risk.

Mr. Norm Miller: Can you run me through how it significantly lowers the provincial payout of the pension benefits guarantee fund?

Mr. Mike Moorcroft: Very simply, with the agency, we would see the drop in payout to pensioners come to some level between where it is today at 100% and where it would be after the 31% windup and annuity purchase that we're currently looking at—probably some sustainable level, about 10 to 15 percentage points above that, which would take it to around 80%.

Mr. Ron Olsen: The problem with the current windup process is that it's a point in time; it's an instant. Although everyone here thinks in terms of their pension as something that's going to continue over 30, 40, 50 years—a very long period of time—in the event of plan windup, only by coincidence would the capital markets happen to be favourable for the purchase of annuities. To the extent that the capital markets are not favourable for the purchase of annuities, it's the taxpayer who gets stuck with the bill, and that's the problem in the current PBGF system. To the extent that annuity markets are not favourable—and they are not now—that shortfall, up to the $1,000, and hopefully something higher, as recommended by Professor Arthurs, and I think he had it right, really means that the taxpayer has to pay an additional amount to the insurance industry to reflect where capital markets are at that instant.

The concept of the Ontario pension agency is one where, although the plan sponsor has failed, the plan has not failed. So we continue to have a long view. We continue to have the plan invested in the way in which all pension plans, OMERS included, are invested for a long period of time. Yes, there's going to be tremendous volatility along the way. In fact, I think most folks here recognize that that is a big issue today in the capital markets, and it's that issue that really strikes at the reason why proper governance of our pension system requires an Ontario pension agency.

The Chair (Mr. Pat Hoy): Thank you for your presentation.

For the committee, our 5:15 and 5:30 have not arrived yet—we expect the 5:15 at any time now; they're on their way—so we'll recess until one of these persons arrives. I would ask you to stay by the room because, as soon as they walk in, we'll start up.

The committee recessed from 1655 to 1702.

SERVICE EMPLOYEES INTERNATIONAL UNION

The Chair (Mr. Pat Hoy): The standing committee will come to order once again. I believe we have in front of us the Service Employees International Union; correct?

Mr. Jacob Leibovitch: That's right.

The Chair (Mr. Pat Hoy): You have 10 minutes for your presentation. There could be five minutes of questioning coming from the NDP in this round. If you'd just identify yourselves for our Hansard, you can begin.

Mr. Jacob Leibovitch: I'm Jacob Leibovitch, executive director of SEIU Canada.

Mr. Eoin Callan: My name is Eoin Callan, director of capital stewardship and public affairs, SEIU Canada.

The Chair (Mr. Pat Hoy): You can begin.

Mr. Jacob Leibovitch: Just by way of introduction of our union, the Service Employees International Union is the fastest-growing union in North America, with 65,000 members in Ontario and 2.2 million public and private sector members in North America. Our members work

primarily in health care, long-term care and property services.

The SEIU capital stewardship program was created in 2000 to facilitate a more active partnership between SEIU and the trustees, administrators, advisers and investment managers of our members' pension savings in the pursuit of benefit improvements and prudent, responsible and financially sound investment policies and regulations.

SEIU capital stewardship advocates on behalf of the retirement savings of SEIU members from across North America who participate in 50 public sector pension plans and 20 private sector pension schemes with approximately $1.2 trillion in assets, representing about 16% of North America's pension assets.

In addition to the large schemes in which our members participate, SEIU directly manages, through a trust, the pooled assets of three multi-employer pension schemes. Together, the three schemes have $2 billion in assets on behalf of more than 50,000 participants and beneficiaries. It is in the interests of those members that I appear here today to encourage the committee to respond to the financial and economic crisis, both with timely reforms that will provide immediate relief and measures that will ensure the long-term health of our retirement savings system.

As you know, pension funds seek long-term returns to cover their long-term obligations. Yet despite the need for pension funds to focus on horizons that match the longevity of all plan members, capital market pressures are decidedly short-term. The financial crisis exposed the fact that pension funds have often assimilated the short-term priorities of capital markets, making near-term decisions to the detriment of their future obligations and long-term interests. In turn, many short-term capital market practices, which pension funds have helped to foster, from naked short selling to securitization as a substitute for sound underwriting, have proven to be unsustainable, leading to the financial crisis. The financial crisis has, in turn, caused severe economic distress across Canada and the world, causing significant industrial employers in Ontario to declare bankruptcy and wind down underfunded pension plans.

The economic crisis has exposed a great deal of vulnerability in employer-sponsored pension plans. Employers in the industrial sector are shutting down and declaring bankruptcy, and single-employer pension plans are being wound up underfunded. In this context, we are calling on the government to heed the advice of the Ontario Expert Commission on Pensions and increase the level of guaranteed benefits to $2,500.

In addition to this immediate relief, we must also take the opportunity to make more long-term reforms. With this in mind, I turn you over to my colleague Eoin Callan.

Mr. Eoin Callan: Certainly the financial and economic crisis has been a humbling experience for many. In the space of a few months we saw $4-trillion worth of value in pension-fund-held public equities wiped out. Overnight we saw pillars of Wall Street collapse. Indeed, as you'll be aware, the likes of Alan Greenspan, at a hearing not totally dissimilar to this one, commented that there was clearly a flaw in the model, as he put it. To quote him directly, he said, "I made a mistake in presuming that the self-interests of organizations ... were such that they were best capable of protecting their own shareholders and their equity in the firms."

It's true that Canada's financial system has held up better than many, and indeed it's a credit to our province that the work of building a more sustainable and durable retirement security system was begun in 2006 in earnest by the Arthurs commission.

That said, it's not a moment for hubris. To simply carry on as we were before and not respond to the profound nature of the crisis we've just witnessed would be to invite punishment the next time there is a downturn in the economic cycle. That punishment, again, like today, would be felt most directly by Canadians through the loss of jobs, retirement income and pension security.

Fortunately for the committee, in the wake of a crisis like we have witnessed, there are solutions already being developed and offered up. So we would encourage folks to look ahead to the opportunities to act on the Arthurs commission recommendation 8-23, which I'll remind you, though I'm sure you're familiar with it, said, "Plan statements of investment policy should reveal whether, and if so, how ... responsible investment practices are reflected in the plan's approach to investment decisions."

I'll just underline some additional, fresh research that suggests, in acting in this direction, you would be acting with strong public support.

A recent poll found that an overwhelming majority of Ontarians and Canadians—79%—want sustainability to be a major priority. They see a link between the economic crisis and unsustainable investment practices and unsustainable business practices. Those numbers hold up across the board when one queries the public around the link between developing more sustainable business and investment practices and future prosperity. The numbers come in steadily around 79%, 80%, 82%.

In addition to the work of the expert panel and public opinion, there has also been very strong work done by pension fund practitioners, chief investment officers from some of the larger funds here in Ontario and across the country, to develop a more prudent, long-term approach to investing that takes adequate account of the long-term liabilities of the plans they govern and they invest on behalf of.

Amongst the factors that I'll just finally underline for you, in addition to ensuring that funds take better account of environmental, social and governance risks associated with their investments, there's increasing appetite for ensuring that they take adequate account of systemic risk.

Systemic risk is exceptionally difficult to identify, to detect, in advance, yet the impact of a systemic shock to the system can be profound. In order to ensure that we develop new systems for monitoring and acting to prevent a buildup of systemic risk, we've certainly seen the G20 finance ministers and central bankers already

commit to developing global systems for monitoring systemic risk, but what they have also noted is that at a provincial level and a jurisdictional level, where pensions funds are regulated, there's not yet a similar commitment to action to develop systems for identifying and addressing systemic risk.

1710

The Arthurs commission recommendation provides an opportunity to make an important step in this direction. We would be recommending that pension funds be compelled to disclose annually the consideration, if any, that they have given to environmental, social, governance and systemic risk factors in the management of their investments.

I'll wrap up there.

The Chair (Mr. Pat Hoy): That concludes your presentation?

Mr. Jacob Leibovitch: Yes.

The Chair (Mr. Pat Hoy): The questioning will go to the NDP. Mr. Marchese.

Mr. Rosario Marchese: Thank you both for coming. I should just tell you in advance that I'm replacing our critic, who has much more expertise in these areas than I do. But I do have a couple of questions, and one of them has to do with the comment you made about pensions being overall threatened at all levels. I know that the CLC at the national level is talking about doubling the CPP, which I think makes sense, and at the provincial level what we're proposing is that we show leadership, because I think when the province takes leadership we force the federal government to do something by way of reforming those pension plans. Unless we do that, I think we're going to have some problems. I wonder whether you had a chance to look at the proposal that the Ontario New Democrats made, which is called the Ontario retirement plan, and if you have, do you have any comment?

Mr. Eoin Callan: I think we would make a couple of comments. Certainly there's a long history of achieving significant social reform in this country where provinces have shown leadership and asked first, not least in the area specifically of pensions and retirement security, where provincial leadership played an important role in bringing about the creation of the Canada pension plan. So there's a long and proud history of provincial leadership to bear in mind when considering these questions. Indeed, we would echo the calls that we've heard from other provinces and from a number of stakeholders that a national pension summit be convened to consider the retirement security challenges that Canada faces.

I think we would also note that the plan you're referring to that was released a few weeks ago very quickly got an expression of interest and qualified support from the Ontario Teachers' Pension Plan; from the Ontario municipal employees retirement system plan, OMERS; and also at a board level, we're certainly aware got indications of interest and support from the healthcare of Ontario pension plan. Those are plans that represent combined assets of in the neighbourhood of $150 billion to $200 billion, so those are significant entities in Ontario but also in global capital markets. We would take the strong interest in the plan by those funds in which we have members, in which we play a role as governors and trustees, as a sign that it appears to be a step in the right direction.

Mr. Jacob Leibovitch: If I could just add too: We would also support, both at the federal level through the CLC proposal and at the provincial level, any expansion of benefit coverage for seniors and those who are members but also those who are our community who are approaching retirement age, in terms of income security for seniors.

We're also pleased, I think, with the direction of supporting in both cases the defined benefit approach to income security for seniors. We might note that at the last session of the Canadian Labour Congress, there was a discussion of pension reform. Federal Finance Minister Flaherty came and addressed the crowd and was listening to the proposal and engaged in conversation and, I think as recently as this week, made some positive comments about the CLC proposal in the federal Legislature. So there does seem to be quite a bit of—well, I don't know if I'm overstating it—there seems to be some momentum moving in that direction.

Mr. Rosario Marchese: I think you're overstating it. That's my theory.

Mr. Jacob Leibovitch: I'm hopeful.

Mr. Rosario Marchese: My sense is that the federal government will do nothing. Our Premier is saying that we need a national plan, and I agree with him; my sense is that that won't happen. That's why we're pressing for the government to show some leadership, because once we do, then it will force the federal government to do something. The fact that 65% of folks don't have any pension is a serious problem. It's going to cause greater discrepancy and greater division as we go on in the future; that's why I wanted your comments.

I have one quick question before you go. The bill does not establish an Ontario pension agency, which would manage stranded pensions. I think some people were expecting that that might happen. Do you have a view on that?

Mr. Eoin Callan: Yes. Clearly, the challenges facing Ontarians, particularly those without any employer-based pension provision or those who have not been able to or have not made arrangements for their own retirement security, is a pressing social policy concern of ours. That's shared by many constituents. It extends slightly beyond the remit of Bill 236 as it's currently configured. The need to develop an approach at a provincial level and then ultimately at a national level that is based on a simple principle of shared risk and shared reward seems imperative.

Mr. Rosario Marchese: Thank you.

The Chair (Mr. Pat Hoy): Thank you for your presentation.

UNITED STEELWORKERS

The Chair (Mr. Pat Hoy): I would ask the United Steelworkers to come forward, please. If you would state your name for our recording Hansard, you can begin.

Mr. Charles Campbell: My name is Charles Campbell, and I'm representing the Canadian national office of the United Steelworkers union.

We have a membership of about 250,000 workers across Canada in virtually every industrial sector. Our membership goes beyond steelworkers, mine and smelter workers to also include workers in universities, light manufacturing, retail, banking, health care, private security and all sorts of other areas.

The workers that our union represents are often members of other provincially or federally regulated pension plans, but the majority of them participate in Ontario-registered pension plans, so, even more than might otherwise be the case, we're especially pleased to have this opportunity to comment at the committee on Bill 236. I think everybody here is showing a special commitment to the issue to be here on such a beautiful day at the beginning of a long weekend.

You have our written submission, which provides fairly detailed comment, section by section, on the portions of the bill on which we have a view, so I'm just going to touch fairly briefly on the highlights of that and then welcome questions.

I do first want to underscore, however, that there are major issues of pension policy that have not been addressed in this bill, including pension funding rules and benefit security through the pension benefits guarantee fund. We think, as was just being discussed before I came up here, that it is crucial that governments both at the provincial and federal level address urgently the broader questions of retirement income security and improving access to pensions for all, especially those who currently are not members of employer-sponsored pension plans.

For the context of our comments on the provisions in the bill, it's important to remind ourselves that pension regulation arises from the need to support and oversee the important public policy role of private retirement savings arrangements. It's truly founded on the need to protect the rights of individual pension plan members. This arises from two key facts: There's a substantial imbalance of information, power and control between beneficiaries and employers or other plan sponsors; and, on account of the fact that retirement income rights are deferred rights, the individual's interest only really may become apparent when they crystallize at retirement, when it's generally too late to address prior problems. This is the foundation for the whole pension regulation system.

Plan beneficiaries are by no means the only stakeholders in the private retirement income system, but it's clear that a major reason the regulatory system exists in its current form is because of the need to protect the rights of plan members and beneficiaries. That shouldn't be forgotten.

1720

So again, addressing specific points in the bill: Subsection 79(3) refers to the surplus provisions. The change that's being proposed in the act as written is not acceptable to us. It represents a significant loss of entitlement for plan members compared to what the current legislative structure is. Currently, section 79 requires both that there be an agreement for surplus distribution and that the employer entitlement to surpluses is clearly established in the texts. To move this to an "or" situation is not something we support.

The issue of surplus is clearly one of the most discussed and debated pension issues, although not one of general fascination to the broader public. We understand that pension plans involve a commitment today to ongoing payments in the future. They exist over the long term. It's in the interest of workers to know that pensions are regulated in such a way that ensures they remain viable over the long term. This means that the plans, over time, inevitably go in and out of surplus. For workers, that means that the plans should be carefully managed and monitored.

Many stakeholders have likely indicated to the government and the committee that they believe that changing the surplus distribution rules to be more in favour of the sponsors would increase their incentives to fully fund the plan. We find this unconvincing. We're not convinced that the current surplus distribution rules have been a factor in making pensions non-secure or non-viable.

We're aware from our regular experience in bargaining that employers cost their required pension funding as part of their compensation in general. Funds that go into the pensions are funds that don't go into wages or other benefits. This direct trade-off, in practice, makes it clear to our members that their pensions are deferred wages. As a result, they have long held that they have a claim to the funds that go into the pension, regardless of whether the plan at that moment has a funding surplus or deficit.

We believe the simplest way to address this issue is to delete clause 79(3)(a) and require that surplus distribution on windup occurs only through a negotiated deal, as in the current clause (b), with clear time limits and a binding arbitration process. We would be prepared to support amending the act to incorporate the Ontario Expert Commission on Pensions recommendation that the employer should only have access to surplus in the absence of a surplus-sharing agreement, where the employer had clear entitlement to the surplus if it is explicit that the entitlement is—and this is quoting from the commission's report—"in accordance with plan documents." This would essentially reflect the current rules on surplus ownership.

Again, this is a technical and detailed matter for the end of a beautiful afternoon, and I do appreciate your continued attention.

The next section I want to address—and there's more detailed information in the written submission—has to do with the grow-in provisions in section 74. Here's a case where we do in fact strongly support the change that is being tabled in this legislation. Providing grow-in provisions to all terminating plan members is long overdue. We believe it will increase equity and mitigate the loss of plan members' rights through the elimination of partial windups, which is also part of the legislation. The proposed amendment also recognizes the importance of ancillary benefits and that a member's rights to those benefits should be expanded.

Many of our members participate in pension plans that provide unreduced early retirement and bridge benefits. The proposed legislation acknowledges that during a working lifetime, a plan member accrues an entitlement to early retirement and other ancillary benefits as well as to the normal retirement benefit. When that's interrupted as a result of termination, it's appropriate that the accrual be recognized based on the employee's seniority and age and included in the termination benefit.

We are concerned that in the current language, these grow-in rights are limited to involuntary terminations. The pension legislation normally doesn't differentiate between voluntary and involuntary terminations. This isn't an area where the pension regulator has any special competence, and in our view, this distinction is going to lead to unfortunate future litigation and appeals over the issue. Therefore, we believe that grow-in rights should be applied to all terminating plan members. There are also some specific comments in our written submission on how this applies in multi-employer plans.

The Chair (Mr. Pat Hoy): You have about a minute and a half left.

Mr. Charles Campbell: Thank you, Mr. Chair. In that case, again referring you to the various points, I want to skip ahead to our comments on the pension benefits guarantee fund, which has been a subject of our interest. Ontario, as a long-standing leader in this area, should have been an example to the other provinces and the federal government. Ontario and the United States, as I'm sure you folks know, have this important protection, whereas other provinces don't. Over time, in various other consultations, we've been making the point that it's time for improvements to be made to this fund. The dollar cap of $1,000 a month hasn't been changed in a very long time.

The economic meltdown exposed a great deal of vulnerability in employer-sponsored pension plans. Many employers in the industrial section, including ones where our members work, are shutting down and declaring bankruptcy, and many plans are being wound-up underfunded. Until now, these issues have been dealt with in a piecemeal fashion. Just the other day in the budget, it was good to see money being flowed into this, but a more comprehensive approach is needed, including following the advice of the pension commission and increasing the level of guaranteed benefits to $2,500.

I've very likely used up my time now. Again, I appreciate this opportunity.

The Chair (Mr. Pat Hoy): The questioning will go to the government. Mr. Arthurs.

Mr. Wayne Arthurs: Mr. Campbell, thank you for your presentation. I particularly appreciated your final comments. I was going to ask you about the pension benefits guarantee fund, and because of the phraseology that you used, I wasn't sure whether you were supportive of the money that was in there or not, but I think your comment was that you appreciated the fact that the government made a direct grant of some $500 million, effectively, of taxpayers' money into that fund to help sustain it—at this point in time, anyway.

Sometimes, I think that maybe the pension benefits guarantee fund might better be described as—maybe we should describe it as a pension benefits insurance fund because it might better identify what the intent is, i.e., to provide a level of insurance to pension structures in the event of failure. That's my thinking; "guarantee" doesn't help me understand what it's intended for as well.

How should it be funded? Who should have the ownership? What stakeholders should have ownership to ensure that the pension benefits guarantee fund or a pension benefits insurance fund is adequately funded to meet the needs of potential pensioners in the event of corporate failure?

Mr. Charles Campbell: I think the fundamental architecture that's been in place for this fund and the fund in the United States is basically appropriate to try to design it so that payments, very much on an insurance basis from the pension funds that would ultimately benefit from the guarantee, provide the money. It has proved—not just in Ontario—extremely challenging to make that work, to set the premiums at a level that both makes the funds sustainable, but also doesn't pose an undue burden and deter creation of the pension funds. I think it's a fact of life, or at least of political life, that because of the government's extremely detailed role in regulating how the funding happens and, from time to time, for quite understandable reasons, extending solvency funding deadlines or not requiring solvency—in Ontario, solvency funding is not required as quickly or intensely as it normally is in the US system, which causes its own problems with funding requirements zigzagging up and down.

Because the government has such an inescapably intense role in determining how the funding has evolved over time, I think it's just a fact of life that, as has happened over 20 years anyway, from time to time, if it looks like it's going to fall apart, there's going to be a claim on the taxpayers' funds. It's worth designing it so that that doesn't happen very often, but I think people are dreaming if they think that they can set it up in a way that that's never going to happen or that people aren't going to act on the assumption that in terrible situations, that's what comes about. Otherwise, you just have large numbers of people on the lawn.

Mr. Wayne Arthurs: Okay. Thank you for articulating that multi-stakeholder ownership for the issue, both from the standpoint of potential retirees and also the context, I would suggest, of stability in the marketplace. We don't need large companies failing and disrupting the overall marketplace. In part, that was the fear we were having 18 months ago with the likes of General Motors on the verge—virtually bankrupt. Anyone who happens to own stocks in it has no more—that asset is gone, at this point in time. So thank you. I appreciate that.

The Chair (Mr. Pat Hoy): Thank you for the presentation.

Mr. Charles Campbell: Glad to be here.

The Chair (Mr. Pat Hoy): We are adjourned.

The committee adjourned at 1731.

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