F-12

ISSN 1180-4386

Legislative Assembly
of Ontario

Second Session, 39th Parliament

Assemblée législative
de l'Ontario

Deuxième session, 39e législature

Official Report of Debates (Hansard)

Wednesday 17 November 2010

Journal des débats (Hansard)

Mercredi 17 novembre 2010

Standing Committee on Finance and Economic Affairs

Securing Pension Benefits Now and for the Future Act, 2010

Chair: Pat Hoy
Clerk: Sylwia Przezdziecki

Comité permanent des finances et des affaires économiques

Loi de 2010 sur la pérennité des prestations de retraite

Président : Pat Hoy
Greffière : Sylwia Przezdziecki

Hansard on the Internet

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

Le Journal des débats sur Internet

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

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

Index inquiries

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

Renseignements sur l'index

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

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

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

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

COMITÉ PERMANENT DES FINANCES ET DES AFFAIRES ÉCONOMIQUES

Wednesday 17 November 2010

Mercredi 17 novembre 2010

The committee met at 1234 in room 151.

SECURING PENSION BENEFITS NOW AND FOR THE FUTURE ACT, 2010

LOI DE 2010 SUR LA PÉRENNITÉ DES PRESTATIONS DE RETRAITE

Consideration of Bill 120, An Act to amend the Pension Benefits Act and the Pension Benefits Amendment Act, 2010 / Projet de loi 120, Loi modifiant la Loi sur les régimes de retraite et la Loi de 2010 modifiant la Loi sur les régimes de retraite.

The Chair (Mr. Pat Hoy): The Standing Committee on Finance and Economic Affairs will come to order. We are here today for public hearings on Bill 120, An Act to amend the Pension Benefits Act and the Pension Benefits Amendment Act, 2010.

The committee might recall that we read the subcommittee report into the record at our last meeting, so we do not have to do that this afternoon.

STELCO SALARIED PENSIONERS ORGANIZATION

The Chair (Mr. Pat Hoy): With that, I will call forward our first presentation of the afternoon: Stelco Salaried Pensioners Organization, if you'd come forward please.

Good afternoon. You have 10 minutes for your presentation. There could be up to five minutes of questioning following that. I'd just ask you to identify yourself for our recording Hansard and you can begin.

Mr. Dennis Wright: My name is Dennis Wright. I worked for 44 years for the Steel Company of Canada, better known as Stelco. I belong to an organization called the Stelco Salaried Pensioners Organization.

SSPO is a group of 5,000 non-union retirees of the Steel Company of Canada, or Stelco, who organized to protect our pensions and benefits when Stelco declared bankruptcy protection under the federal Companies' Creditors Arrangement Act in 2004. We were shocked to find that Stelco's claim of insolvency was largely based on a $1.3-billion pension fund deficiency.

We quickly learned that Stelco had taken advantage of the Ontario Pension Benefits Act regulation 5.1, or the "too big to fail" regulation. This regulation allows sponsors to suspend pension contributions with no time limit requirement to resume those payments and no requirement to inform its pension members.

My first point today is that regulation 5.1 should be removed from the Ontario Pension Benefits Act so that no sponsor can be allowed to use it in future. I understand that even though no company has been allowed to use 5.1 since 2002, the regulation still is in the books and should be removed.

SSPO, in an attempt to investigate Stelco's action in 2004, contacted FSCO, the Financial Services Commission of Ontario, and asked for a copy of Stelco's application to use regulation 5.1 and FSCO's letter of approval. When FSCO refused our request for that information, we paid $1,600 to obtain the information via the freedom of information act but were still denied access to those documents.

Four years later, when the Ontario Expert Commission on Pensions held hearings in Toronto and Hamilton, we attended those all-day meetings and heard similar stories from pension groups that were denied information and assistance by FSCO. So it was no surprise that Dr. Arthurs's final report, A Fine Balance, called for a complete overhaul of pension regulator FSCO. The surprise is that Bill 120 has no changes to FSCO at all. In fact, it doesn't mention FSCO at all.

Following the OECP final report, SSPO makes the following recommendations:

(1) The pension commission should be an independent regulator reporting directly to the Minister of Finance, similar to the previous Pension Commission of Ontario.

(2) The PCO should have greater powers to regulate the pension system, make rules and issue policies.

(3) It should have a mandate to protect the security of pension plans and pension funds and ensure that the pension promise is met.

(4) It should be proactive in monitoring pension plans and taking action when required.

(5) It should provide expertise and assistance to pension plan members and their representatives.

(6) It should establish an ombudsman to resolve disputes between plan members and plan sponsors/administrators.

(7) It should have a system of periodic performance reviews, both internal and by an independent external auditor.

(8) It should adopt the recent CAPSA guidelines for operational policies and standards.

CAPSA is the Canadian Association of Pension Supervisory Authorities. That guideline came out this spring.

Thank you for allowing me to present this submission. We have other issues with Bill 120, but we'll let others submit those to you.

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

Mr. Toby Barrett: Thank you, Mr. Wright, for all the work that you and Jack Walsh and so many people have done on this. You're speaking on behalf of something like 5,000 pensioners at the former Stelco caught in the uncertainties back in the days of the bankruptcy protection and the buyout by another very large corporation.

1240

You mentioned the $1.3-billion deficiency in the pension fund. We all understand that the success of any pension plan, particularly a defined benefit pension plan, is very simply dependent on having enough money in there to meet the obligations, not only right now, but, obviously, in the future.

You've given us one suggestion for an amendment—to remove that "too big to fail" regulation—which we plan on putting forward. We just discussed that. But I'm wondering, beyond the legislation that we have before us—much of this work is done by regulation, by the bureaucrats, and that applies to the previous bill that came before this committee. I don't think we've seen any of those regulations either. We, as parliamentarians, don't get to work on regulation. Could you give us and the government some advice on what should be done beyond this legislation, more specifically?

Mr. Dennis Wright: One of the things we noticed with Bill 120 was that compared to Bill 236, which was the first part, Bill 236 seemed to be extremely well done, extremely well thought out. We presented here and commented on Bill 236. There were a number of changes that were written into that proposed legislation that were there and could easily be transferred. Bill 120 is very, very difficult to read. First we saw the technical backgrounder, which was very brief and not informative. Bill 120 is written in a way that is extremely difficult to understand.

If the real work is going to be done with forming and writing regulation, I suggest that you contact our umbrella organization, which is the Canadian Federation of Pensioners. We have a complete package of information that can give you guidelines on all the changes that we would expect and some advice on how to write them into regulation.

Mr. Toby Barrett: So many of our meetings are with Nortel pensioners, for example. I've had a number of meetings with local people my way who have been with Nortel. I feel they've done a good job at getting their message out and reaching out to people.

I just wonder about some of the tactics or strategies, if you will, that the Stelco people and your umbrella organization, the Canadian Federation of Pensioners—what else are you doing to try to reach out or communicate with government or with other MPPs? We've got a former Stelco employee just down the row here: Paul Miller. What are some of your other approaches?

Mr. Dennis Wright: We've tried to use the direct approach. In other words, we like to directly contact the politicians rather than use the press release/media approach. Other than that, we sit back and form our own ideas, make lists of what we would expect as changes, and then we try to directly contact the political representatives.

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

CANADIAN FEDERATION OF PENSIONERS

The Chair (Mr. Pat Hoy): Now I call the Canadian Federation of Pensioners to come forward, please. As you heard, you have 10 minutes for your presentation. The next round of questioning will go to the NDP. I just ask you to identify yourselves for the purposes of our recording Hansard. You can begin.

Mr. Tony Pompeo: My name is Tony Pompeo. I'm a member of the Canadian Federation of Pensioners, and also the chair of DIPAC, and a resident of Mr. Flynn's riding.

Mr. Bob Hilton: I'm Bob Hilton, and I am the chair of the Canadian Federation of Pensioners. I'm a former employee of Slater Steels, and I was the president of the Slater Steels Hamilton Specialty Bar salaried pensioners' association.

Mr. Jack Walsh: I'm Jack Walsh. I'm one of the founding members of the Canadian Federation of Pensioners and also a member of the DuPont/INVISTA Pensioners Association. I'm back again.

Mr. Tony Pompeo: Let me continue.

First of all, thank you for the opportunity to present our views and our perspectives.

When I was last in front of you, on April 1, 2010, at that time I presented the areas that I would have liked to be included in what I then referred to as Bill 236, stage 2. It's now called Bill 120.

Bill 120 has made some advances. But as was previously mentioned in discussion between Mr. Barrett and Mr. Wright, Bill 120 has to be read in conjunction with the technical backgrounder that was released in August of this year. While it does address certain reforms, it is really written in a very broad framework manner whereby the regulations will be the key cornerstone of the new act. So I would ask that you not only involve yourself in this new bill but in some way, if possible, take an active role in the development of the regulations, because the regulations will be extremely important and the two will be mutually dependent.

Rather than going through my presentation of April 1, I would like to highlight several items for your consideration. The first one is the area of funding.

The technical backgrounder described strengthening the funding rules applicable to DB plans. It contained items such as changing the interest rates used to value plan liabilities and limiting the use of smoothing tech-

niques. I think that these and all other reforms announced are all positive and important.

The solvency ratio threshold for annual valuations was advanced from 80% to 85%—also a positive move—and this will catch additional plans in the annual requirement. We do feel, however, that the threshold should have been higher, and while we had originally recommended 105%, we do feel that something north of 85% would be more in order. Pension plan ratios can move dramatically in this economic environment. As an example, our own pension plan, the one that Jack Walsh and myself are members of, has gone from a solvency ratio of about 102% back in June 2007, when the last filing was done, to a now-estimated 65%. As a result, the sponsor is now requesting solvency relief under the rules announced in June 2009. From our perspective, this really speaks to the requirement of annual valuations and certainly moving the threshold higher in this type of scenario.

I also want to mention something in the area of filing timelines. Current regulations allow for a nine-month period from the date the valuation is prepared to the filing with FSCO. While this may come under regulations to be developed, we do feel that this is far too long a period, as it reflects the practices of close to approximately 20 years ago. In that period, the whole world of information technology has made significant advances. From our perspective, a three- or four-month period would be more in order, following an annual valuation.

Finally, I want to make a point on FSCO. The technical backgrounder was silent on the subject of reforms for FSCO. This organization requires greater powers to protect pensioners, and Bill 120 does provide additional powers to the superintendent. However, we feel more needs to be done in this area, in line with the recommendations made by Dr. Arthurs.

Thank you for your time.

The Chair (Mr. Pat Hoy): Thank you for the presentation. We'll move to the NDP and Mr. Miller.

Mr. Paul Miller: As you know—I see from the first two presentations—one of your major concerns is the overseeing and administration of the pension plans in Ontario. As you know, the Ontario NDP brought forth—and it was also recommended by Dr. Arthurs—a pension agency, which would oversee pension plans in Ontario, check solvency rates maybe three times a year and keep a handle on it. As you stated, yours is approximately 62% or 63%. A lot of pension plans in Ontario are in that state.

1250

My concern is that if the economy and things get worse and they go to a windup situation like happened with Nortel, then you are going to get 62 cents on the dollar and probably, of your base, if you have a supplement from, say, age 55 to 65, which in some cases can be up to $1,000 a month to take you up to your CPP and your old age—a lot of pension plans have that—obviously that's in jeopardy too.

How do you feel, not only about the lack of funding—and the solvency ratio should be a lot higher, but what protection is there for you in a windup situation?

Mr. Tony Pompeo: There's no protection, as it exists right now, in a windup. If the plan were to wind up similar to others, we would find ourselves in a position of 62% or 65%, and it's even worse than that, because when you take in the health benefits, which are probably an additional 10 to 15 percentage points, we would probably be down to less than half. The impact on the pensioners is not only from a pension point of view but it's also the health and other benefits that accrue to us, that we have paid into over the years and that no longer would be applicable. So it would be extremely painful medicine to take.

Mr. Paul Miller: And not only that: As we recommended and as also was recommended by Dr. Arthurs, who was hired by the Liberals to do this study, it was recommended that they raise the PBGF from $1,000 to $2,500, which certainly would make a big difference in a lot of pension plans in this province in their present state, if that situation came up. So you would probably be in favour of raising that, and you think it's grossly underfunded, and it hasn't been changed since 1980.

Mr. Bob Hilton: If I may speak to that issue: We definitely are disappointed that Bill 120 did not bring forward a change to the pension fund. The dollars are no longer relevant to what they were when they were originally put in place, so we are truly disappointed.

Mr. Barrett asked a question of Mr. Wright, and I'd like to address it a little bit too—

Mr. Paul Miller: Well—

Mr. Bob Hilton: I know. I recognize what you're saying. We're not just working here with you folks. We've been working very closely with Alex Mazer's office as well, so that they're cognizant of what we're doing and we're cognizant of what they're doing. We are appreciative of the work they are doing. We don't agree 100%, but that's to be expected.

One thing I would like you to know is that we are also being very much involved at the federal level. In particular, three of us who are here today were in Ottawa yesterday, speaking with regard to Bill 501, which is the CCAA and the Bankruptcy and Insolvency Act. The message I'm trying to get across there is that we as a group are very active, working not for ourselves—in my case, I'll get nothing out of any of this; we're working because we want a system that takes care of the future.

Mr. Paul Miller: The Bankruptcy and Insolvency Act in Ottawa that you're addressing is a major part in pension reform, but also one of the initiatives that they put forth was to raise the pecking order for pensioners from the bottom of the list, ahead of banks and financial institutions, which is extremely important. Unfortunately, the governments of the last few years have not seen fit to do that. Hopefully, they have a change of mind, because, the last time I was there, they promised to do it—the Liberals—and then they did a 180 on us and didn't do it. So I have a problem with that, and—

Mr. Bob Hilton: We can only work on it and hope that everybody is working diligently in good faith, but we have to ask that, no matter what regulations come down, when they do come down, they be evaluated to make sure

that they do no harm. If the regulations do harm, it doesn't do any good for the rest of it to be good. But if the regulations are written correctly, as we see it, in a balanced fashion, because we recognize that we're not the only part of the equation, but if they are written in a balanced fashion and the regulations are written that way, there will be no harm done, and everybody will benefit.

Mr. Paul Miller: The problem is, and I see from province to province and federally, the uniformity is not there. What you need is a uniform pension reform act that's going to address all situations in the country. That's what we need, so that's why I'm glad to hear that you were down in Ottawa pushing them, because certainly it goes hand in hand with the Ontario situation.

But I want to make it perfectly clear to you that 74% of the pension plans are in Ontario—

Mr. Bob Hilton: We made that point yesterday, very clearly.

Mr. Paul Miller: —so they have a big responsibility to help you achieve the situation that you want.

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

Mr. Tony Pompeo: I just wanted to address one part. You were talking about the PBGF—about $1,000—and we, in our last submission, wanted to see it go to $2,500. The point I want to make is that we are very balanced, rational individuals. We know that this would not be doable in one fell swoop; it would take some time.

In all the approaches that we've done, we've tried to look at it from a balanced point of view and not break it out onto one area or one side that is non-doable. Things have to be done.

Mr. Paul Miller: We, as a party, were going to amortize it as well. We didn't expect it overnight.

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

Mr. Jack Walsh: Mr. Chair, just one final, brief note about our pensioners: Our 150,000 pensioners are very concerned. We appreciate the fact that we're now recognized, that we're able to come here. This is our last kick at the cat on Bill 120, other than the work we're going to do internally to make sure the regulations get properly written.

Our pensioners have told us to pay close attention politically to who does something and who doesn't amongst the three parties, because we're very adamant that we've got to see these changes made. In the year of an election it's absolutely critical that your folks—all of you—get your staff onside and start working on this in a way that's going to resolve it, because we've been playing with this for five years in variations.

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

GENMO SALARIED PENSION ORGANIZATION

The Chair (Mr. Pat Hoy): Now I call on GenMo Salaried Pension Organization to come forward, please. You have 10 minutes to present before the committee. If you would state your name, you can begin.

Mr. Brian Rutherford: My name is Brian Rutherford. I am the president of GenMo. GenMo is an organization of General Motors salaried employees. I'll read a statement, and then we can have some questions.

First of all, I want to thank you all for the opportunity to be here. We talked to the members about what goes on with committees federally and provincially, and it's great to see how democracy works. It's nice to know that the common people do get an opportunity to speak to legislation and to speak to the legislators and ask for corrections.

GenMo SPO is a non-profit corporation founded in January 2009. It currently has a membership of 3,500 retirees and active employees in a pension plan with 12,445 members. It was started because of the realization by General Motors of Canada retirees that if GMCL filed for CCAA on June 1 in 2009, our pension deficit would not be recognized in bankruptcy—a pension deficit that was not only at the mercy of the equity markets but also at the mercy of the government of Ontario's "too big to fail" legislation, which allowed GMCL to underfund our pension. Rest assured that only a handful of salaried employees were aware of this legislation. Members of the plan were never consulted.

The salaried retirees would not have had any representation in bankruptcy; hence the formation of GenMo. Thankfully, because of federal and provincial government intervention, GMCL did not follow its parent into CCAA and funds were put into the hourly and salaried pension plans that, strangely enough, were about the same amount as the "too big to fail" legislation allowed GMCL to underfund the pension plans.

The downside of the intervention is that if GMCL files for CCAA in the future, the retirees are no longer entitled to the pension benefits guarantee fund, PBGF. One wrong corrected; another created. Once again, the retirees were never consulted.

Pension plans should be about transparency. As per my experience, salaried and, probably, to some extent, union pension plans are about trust and blind faith. The plan is about trusting the sponsor to do the right thing in funding the plan and for the regulator to do the right thing and govern the plan. Remember: Salaried or union, a pension plan is part of the employment contract agreement. It is not a gift.

Under current legislation, the frequency of pension overview by the Financial Services Commission of Ontario, FSCO, is every three years. Plans that have severe solvency deficiencies are looked at annually until corrected. A report on the actuarial valuation done on January 1 is usually to the regulator by August or September of that year. So the real time for pension fund reporting is about 3.66 years.

1300

With today's technology, I see no reason why a report on the actuarial valuation cannot be done on a yearly basis. If FSCO does not have the resources, then perhaps they should invest in people and/or technology to support reforms. If you know 95% of the answer, make a decision.

I do not want to be skeptical about a sponsor's responsibility, but I have enjoyed the "too big to fail" experience. All pension plans should be looked at annually. Plans need to be solvent on a continuous basis.

I earlier made reference to the pension benefits guarantee fund that my members are no longer eligible for. Even so, it should be increased to a monthly minimum of $2,500, as recommended in Dr. Arthurs' report. If you compare Ontario and Canada to the rest of the developed world in pension protection in bankruptcy, we are about last.

I do not expect the PBGF to be funded by the taxpayer but by the sponsor, much like workmen's compensation. Good behaviour produces lower insurance rates. At the very least, work with the federal government to amend the BIA so pensions are recognized as preferred creditors.

Regulation 5.1 should be removed from the PBA. It is a tool that should no longer be available. All three companies that were too big to fail, failed.

I realize that life is a compromise and that sponsors have their financial challenges meeting all of their business cost obligations. I also realize that a pension is a deferred income that is part of an employee's compensation package. Pensioners are elderly and vulnerable. They need your protection.

Please provide legislation that is balanced, transparent, reflects the technology of our times and protects Ontario's most vulnerable: our pensioners. Thank you.

The Chair (Mr. Pat Hoy): Thank you. This round of questioning will go to the government. Ms. Pendergast.

Ms. Leeanna Pendergast: Thank you, Mr. Rutherford, for being with us here today—

Mr. Brian Rutherford: Thanks for having me.

Ms. Leeanna Pendergast: —and for sharing your thoughts. We really appreciate it. We appreciate the time that you take to be here with us today.

I only have two questions and then, I think, my colleague Mr. Sousa is going to ask the second one, just to give you an overview of how this is going to look.

Would you say that GenMo, in general, would agree that it's in everyone's best interest that General Motors succeed as a financially viable company?

Mr. Brian Rutherford: No question.

Ms. Leeanna Pendergast: Okay. Thank you.

Mr. Brian Rutherford: If General Motors failed as a financially viable company, it wouldn't just hurt me as an employee or a retiree; it would be devastating to the Canadian economy.

Ms. Leeanna Pendergast: That said, how would you describe the state of your pension plan? How has it changed before and after the government stepped in for the GM bailout and restructuring?

Mr. Brian Rutherford: The wind up ratio before the government stepped in was 0.599. My estimation of the solvency ratio now would be around 0.8. So, the government, by stepping in and helping, did a great job, and it's really appreciated by all the members of GenMo.

Ms. Leeanna Pendergast: Excellent. Thank you. Mr. Sousa.

Mr. Charles Sousa: Thank you for attending. I just wanted to talk about the time when GM, I guess, during the time of the NDP—when the "too big to fail" clause was brought in and the effect it had on GM, and the effect, more importantly now, that it has on your retirees. Can you elaborate, particularly as it affects the—

Interjection.

Mr. Charles Sousa: No, no; I'm talking now about the valuations and the premiums that now need to come forward.

Mr. Brian Rutherford: When the legislation was first—I'm sure you all know the history of the 5.1 legislation, with Bob White and George Peapples in the NDP back then. The CAW sued General Motors because General Motors was not funding their pension. The CAW won. The courts ordered General Motors to pay the unfunded liabilities. George Peapples went to the government of the day and said, "You forced me to pay this. I will not invest any more money in Ontario." So Bob blinked, and hence we got 5.1 legislation.

The main point I want to make here is transparency. None of the General Motors salaried employees knew a damn thing about 5.1 legislation. We did not know that the Ontario government was allowing General Motors to underfund our pensions because it was too big to fail. It was about 26% underfunded, and then we had the perfect storm when the equity markets crashed. At that time, General Motors had 69% of our pensions invested in equity stock, which was totally irresponsible.

I want to see some transparency. That's why I see no reason why we cannot have FSCO and perhaps plan members look at pensions on an annual basis so that we can understand the health of the pension plan and, if necessary, be able to put up our hands and say, "You're the regulator. Regulate. Please fix this."

Mr. Charles Sousa: Point well taken, and I know that some of the things that we're trying to move forward are sustainable funding for those benefit plans, even an introduction to some multi-employer pension activities—some of the things that you've called for. Yes, we have a lot more we can do, but we're moving forward on some of those recommendations. The regulatory oversight, as you mentioned, is important, so I appreciate your comments. Thank you.

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

Mr. Brian Rutherford: All right. Thank you for seeing me.

MR. AL LOMAS

The Chair (Mr. Pat Hoy): Now I call on Al Lomas to come forward, please.

Mr. Al Lomas: I appreciate the opportunity.

The Chair (Mr. Pat Hoy): As you've heard, you have 10 minutes for your presentation. There could be up to five minutes of questioning. If you'd just state your name before you begin.

Mr. Al Lomas: Okay. I'm Al Lomas.

The Chair (Mr. Pat Hoy): You can be seated.

Mr. Al Lomas: Thank you. I'm a retired former employee of Rio Algom Ltd. For almost 25 years, I had the responsibility for what was known as the personnel and industrial relations function of the corporation.

In 1965, I was assigned the task of developing a corporate-wide pension plan for salaried employees which was to replace several existing pension plans.

While designing the provisions of the plan, I met with small groups of employees who would become eligible for membership. A surprising degree of mistrust about pensions was found. Many employees had previously worked for other firms, and they were unhappy with the pension consequences that they had when they changed employers.

To overcome these employee concerns, the pension fund was set up as a trust for the sole benefit of the members. Rio Algom committed itself to making no amendments to the plan that would be detrimental to the interests of the members. Membership in the new plan was on a voluntary basis and offered to 1,000 eligible employees. For new hires, membership was a condition of employment.

In 2000, Billiton PLC, now the famous BHP Billiton, took over Rio Algom. Several of the then active employees at Rio Algom contacted me soon after the formal closing of the purchase. They were concerned about the urgent and inordinate interest the new owners were showing in the plan. I was told that ways were being examined as to how the money in the pension fund could be used by the new owners.

In order to understand what was going on, I and some fellow retired members of the plan began to review the pension documents of Rio Algom in the FSCO files. Over the course of a number of visits, we discovered that the terms of the plan had been much changed over a 10-year period. The basis of the fund had been altered from a depository for deferred compensation; that is, the contributions of the employees and of the company. To be an asset of the company was the purpose that this company was now seeking.

As a group of retirees, we were unable to engage the services of experts. However, at the suggestion of a practising actuary, we contacted a senior pension officer at FSCO in the hope that advice could be obtained as to what could or should be done. The officer asked for a chance to review the file. A week later, he phoned to say that everything was in order and advised that there would be no purpose in our meeting.

In September 2002, one of my colleagues wrote to the deputy superintendent of pensions to briefly outline some of the issues we were concerned about and to request advice as to what should be done. We never received a response to the letter.

The reason I'm telling you this story today is that the Pension Benefits Act, which Bill 120 is supposed to amend so as to improve the act, does not currently provide pension members with an opportunity to deal with the Financial Services Commission. Rather, it appears that the only recourse pensioners have is to litigate matters in the courts.

1310

This is the approach the Rio Algom pensioners have taken. To date, the merits of our case have not been heard, even though it has been eight years since our application was commenced.

After the application was commenced, Rio Algom challenged the inclusion in the application of the request for a court order to wind up the plan. The Superior Court dismissed Rio Algom's original motion, and it was appealed to the Divisional Court and also dismissed. However, a second appeal to the Ontario Court of Appeal was heard on November 16, 2009, and in March of this year, the court allowed the appeal.

All these court hearings had nothing to do with the merits of our case. They were solely related to the remedy included in the application.

In its written reasons allowing the appeal, the Court of Appeal stated, "If plan members believe that the employer has acted improperly in the administration of the plan, they may turn to the superintendent." Unfortunately, this statement does not accord with the reality. When we tried to turn to the superintendent, we were rebuffed.

My purpose in appearing before you today is to request consideration of an amendment to Bill 120 so as to add to the Pension Benefits Act a formal mechanism that would grant plan members standing with the superintendent so that they can initiate a proceeding when they believe a plan is being improperly administered. This mechanism would require a formal response from the superintendent which plan members could appeal to the tribunal, thus guaranteeing that their concerns would get a proper hearing before the Financial Services Commission of Ontario.

The benefit of such a mechanism is that it would ensure that plan members enjoy the same rights and benefits that employers currently have under the Pension Benefits Act. This mechanism is necessary in order to ensure that pensions are administered for the benefit of those they were designed to protect. Otherwise, members are left to the mercy of the superintendent, who, as the pensioners of Rio Algom have learned, may not be willing to listen to their concerns.

I have a few other notes, and they deal with the subject of the clauses in Bill 120 concerning arbitration. This is not something I'm really directly involved in. I read the notice a week ago about this hearing and I've been preparing myself for that, but in the course of that I've read about the arbitration clause that's in this new bill. I'm not a student of the law, but what I read was that if one party involved in a pension requests arbitration, an arbitrator can be appointed. All other parties are then deemed to be part of that arbitration. He can then totally ignore the provisions of the plan, the trusts, whatever, and give a decision, and there is no appeal from the decision. As I said, I'm not a student of the law. I have some dark thoughts that go way back to, I think, the

Magna Carta. I wouldn't call this clause, frankly, an arbitration clause. It's an arbitrary settlement clause, and they can do whatever they bloody well like, which is atrocious, and I would suggest that, as members of our Parliament, all of you seriously think about whether you want your name associated with that. I don't know what their intent was, but when you read it the way I've read it, it's ghastly. I do hope it doesn't appear in the law.

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

Mr. Norm Miller: I'll start, and I'm sure my colleagues will have questions.

From what you're saying, I gather that when you went to try to find out information about your specific pension from FSCO, it wasn't easy to get information from them, first of all, on the status of—

Mr. Al Lomas: No, I got the information. I got the files. But then when we got our case pulled together, we wanted to talk to them: "What do we do?" They wouldn't talk to us, in effect, and we also knew that there is nothing in the law that says they need to. I know that in the offices, there's a great churning of individuals who come through and have complaints about their individual pensions. That's not what we were talking about. We were talking about the terms of a plan that was being very disrupted.

Mr. Norm Miller: How did you discover that the terms of your plan had been changed? Did they notify you at all as plan members or—

Mr. Al Lomas: Never. No, we had to go and research. I don't know how many days we spent at the offices—a crowded little space, frankly—reading these old documents, stacks and stacks of them. Because of my own background of having written the plan originally, I was in a better-than-average position to try and understand what had happened.

Mr. Norm Miller: So you must have been pretty shocked when you saw these changes, when you discovered them.

Mr. Al Lomas: Yes.

Mr. Norm Miller: Your asking for this formal mechanism to grant plan members standing with FSCO: How would you envision that working? Obviously, there are thousands of plan members. Would it be a representative of the plan members? I'm just wondering how the logistics of it would work.

Mr. Al Lomas: You put your finger on a very serious issue. But there are thousands of employers, and certainly every employer gets in there and has the right to talk to the financial services commission about whatever he wants.

I think it would have to be something where there's an indication that the individual is representing a group of pensioners.

Mr. Norm Miller: Right. Okay, thanks. I think Mr. O'Toole has a question.

Mr. John O'Toole: I think Mr. Miller raises a very good point. I think the previous presenter, from GenMo, the General Motors salaried employee group, pretty much represents the same perspective as yours: duty to inform, duty to consult, those kinds of things that affect, going forward, a lot of people at different phases in these plans.

With any official change to a plan, there should be a duty to notify the plan members. Wouldn't you think that would be a formal—that could be done by a letter, because there are different people who have already matured in their plans and some who are contributing to a plan. The first is to be notified. Then, if it's a wrap-up deal, what is your status?

Mr. Al Lomas: Our biggest question is if the administrator hasn't been following the terms of the plan. That's the first, fundamental problem for us. We were never advised at any time of either the changes in the law or the changes in the plan, and we all blithely went along thinking everything was unchanged.

Mr. John O'Toole: But you do want status at some point, and that's really what Mr. Miller and I are looking for—

Mr. Al Lomas: I suppose it's like the courts. I'm ending up—in my particular case, it had to be on a contingency, obviously. I'm the representative rather than a class action. But it's that type of thing. If the employees can do it through the courts, presumably they could do it in a comparable way.

Mr. John O'Toole: Right; through FSCO. I agree. It's simpler and less expensive, probably. They still may have to have some qualified pension expert whom they assign as their representative, as opposed to some frustrated plan member.

Mr. Al Lomas: That's correct.

Mr. John O'Toole: I think that's some advice to the government side, primarily: to recommend that they're entitled to engage an individual of their choice to have standing with FSCO to resolve disputes.

Mr. Al Lomas: Correct, and that that be acknowledged by FSCO.

Mr. John O'Toole: Of course, legislatively, in law. Exactly. I completely concur.

The Chair (Mr. Pat Hoy): Any other questions? Thank you for your presentation today.

Mr. Al Lomas: Thank you very much for the opportunity.

ASSOCIATION OF CANADIAN PENSION MANAGEMENT

The Chair (Mr. Pat Hoy): Now I call on the Association of Canadian Pension Management to come forward, please. Good afternoon, everyone. You have 10 minutes for your presentation. There could be up to five minutes of questioning following that. If you'd just identify yourselves for our recording Hansard, then you can begin.

Mr. Bryan Hocking: Bryan Hocking, CEO of ACPM.

Mr. Mitch Frazer: Mitch Frazer.

Ms. Kathryn Bush: Kathryn Bush.

Mr. Paul Litner: Paul Litner.

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

Mr. Bryan Hocking: Mr. Chair, members of the standing committee, thank you for affording us the opportunity to meet with you today.

I'm the CEO of ACPM, as I noted, ACPM being the Association of Canadian Pension Management. I'm joined today by these three individuals, who are volunteer experts on our committee. I don't have to introduce them; they just introduced themselves.

1320

ACPM represents Canadian pension plan sponsors, plan administrators and their allied service providers. Established 35 years ago, our raison d'être is to advocate for an effective and sustainable Canadian retirement income system. Through our membership, we represent over 400 pension plans consisting of more than three million pension plan members, with total assets under management in excess of $330 billion.

During the past several years, ACPM has been a very active participant in the ongoing pension debate. During that time, we have made numerous submissions to and met with many government officials at both the federal and provincial levels, including, of course, the government of Ontario.

Today we're pleased to once again provide our input to this government regarding the proposed reforms to the PBA. In our formal brief to the ministry, a copy of which we've given you today, and in the comments you'll hear from our presenters today, we address some of the concerns and offer some comment on certain sections of the proposed reforms contained in Bill 120.

Now I'll let my expert colleagues walk you through those points. Mitch?

Mr. Mitch Frazer: Thanks, Bryan. Thank you, Mr. Chair and committee members, for your time. I'm going to talk about two particular points, plan expenses and contribution holidays, and suggest some possible technical amendments.

First of all, Bill 120 adds a new section, 22.1, as you're aware, dealing with plan expenses. This new section expressly permits reasonable fees and expenses for the administration of the plan and the administration and investment of the pension fund to be paid out of the pension fund.

However, the phrase "the documents that create and support the pension plan" is used in clauses 22.1(2)(a) and 22.1(5)(a) in a way that could be interpreted as referring to historical, and not just current, plan documents. If so, we believe that this is not an improvement to plan administration in accordance with the government's stated objectives. On the contrary, as drafted, these provisions are more likely going to make the plan administration even more onerous and lead to increased litigation.

We think that the most straightforward fix would be to amend Bill 120 to clarify that all reasonable administrative expenses can be paid from the plan fund without regard to historical documents as long as the current or amended plan terms permit such payments.

We also believe that it would be desirable to expressly override trust principles by adding the following provision: "The current plan documents prevail over any historical plan documentation and they prevail despite any trust that may exist or may have existed in the past." We believe that this represents what the current state of the law is and that this will clarify things and make things much more efficient for the administration of pension plans and pension funds.

On to contribution holidays now. Similarly, I have another technical point that I'd like to bring up. In its August 24 announcement, when the government proposed the reforms to the PBA, we understood that the intention was to amend the PBA to state that contribution holidays are expressly permitted unless prohibited by plan documents, and that the ability to take contribution holidays where the transfer ratio is at 105% or above is referring to the current plan text and not requiring a review of historical plan documents. I think you're seeing a theme here.

The new section 55.1 of the PBA in Bill 120 could be interpreted as making the ability to reduce or suspend contributions dependent on the current or historical plan documents, since subsection 55.1(3) provides that contribution holidays are not permitted if "the documents that create and support the pension plan or the pension fund prohibit the reduction or suspension."

Incorporating a provision to the PBA which requires a full analysis of the historical plan documents to support contribution holidays will likely result in onerous new regulatory requirements and additional costs for plan sponsors. We do not believe that this is the intention behind the reforms and would encourage the government to clarify this limitation and ensure that it's restricted to current plan documents only.

Over to you, Kathy.

Ms. Kathryn Bush: Thank you. I'm going to discuss surplus withdrawal provisions of Bill 120 and also the plan merger provisions.

The surplus withdrawal provisions of Bill 120 are generally very helpful and assist in achieving the government's goal of providing more certainty while continuing to allow an employer to remove surplus where there's entitlement or a surplus-sharing agreement. However, we do have a few technical concerns.

The first problem—and it's a problem that exists under the current legislation, but I think there's an opportunity to clean it up in Bill 120—is that where there is a partial plan windup: the legislation is not clear as to who must engage in the agreement with respect to the partial plan windup. Is it all members of the plan or just the affected members of the partial windup? It has always been interpreted by FSCO as being only the members affected by the partial windup, but Bill 120 ought to be clarified to make that clear. This is a chance to clean up the legislation.

There's also a concern in section 77.11 that there is circularity. We've noted exactly what we think should be

changed to avoid that circularity risk, and we think that's a good cleanup as a technical change.

In addition, we have made a number of suggestions about how the new arbitration procedure ought to function. Some of the suggestions may be for the regulations, but some may be best put in the legislation. For example, we recommend that 77.12(7) be amended to include the criteria to guide the superintendent in the exercise of the discretion to appoint an administrator and to add greater clarity to the extent of the arbitrator's authority. While we understand that the regs will flesh out the arbitration rules, we think there are provisions that ought to be in the legislation and therefore ought to see an amendment to Bill 120.

With respect to the issue of plan splits and plan mergers, we are concerned that the language as drafted will negatively affect plan sponsors' access to surplus after a merger and therefore make it less likely that plan business transfers will occur, which is something the government had said that they were trying to promote with the new provisions that first came out in Bill 236. What the new provisions appear to do in Bill 120 is override the common law rule of tracing and in fact taint the surplus after any asset transfer, and we think that that is not consistent with the expert commission report A Fine Balance, which I had the pleasure of being an expert adviser to. I also have the pleasure of saying that while we thought it was a fine balance, many single employers do not think we got the balance right. They think it was not properly balanced in favour of single employers. Therefore, further taking away single-employer rights will be seen negatively. So we have noted the drafting suggestions that we would suggest to clarify this provision.

Mr. Paul Litner: I would like to address my remarks to two specific issues under Bill 120 in the area of pension plan funding, one more technical and the other having, perhaps, policy implications.

Let me deal with the technical first. Under Bill 120, for single-employer pension plan sponsors, the general trade-off or fine balance that Kathy alluded to was that there would be tougher funding standards imposed on employers who sponsor defined benefit plans, but in return, they were given some flexibility on solvency funding by allowing them to use letters of credit to offset a portion of that solvency deficit, up to 15%. The technical issue is that the way that the wording is drafted has the plan administrator holding the letter of credit rather than the trustee or fund holder. Other jurisdictions would have the trustee or fund holder holding the letter of credit.

This may give rise to some unintended consequences. For example, it may allow creditors to claim—I should back up. Frequently, administrators are the employer, so it may allow creditors of the employer to attack that letter of credit as not being an asset of the plan and instead being an asset of the creditors. So we would urge you to think about the implications of that wording.

The second has to do with the solvency funding exemptions. Solvency funding exemptions under Bill 120 are not complete, so it's hard for us to read too much into what's there. Much of it is to be determined by regulation. But as it currently stands, the intention appears clear, from the backgrounder or from the draft legislation, that solvency funding relief would be extended only to jointly sponsored pension plans and "target benefit" multi-employer plans. There are a couple of issues here. The first is, in the drafting of which jointly sponsored pension plans are eligible, it's only those plans eligible on the date the legislation was announced, which was August 24, 2010. We believe that other plans that are jointly sponsored pension plans, which would qualify after that date, should likewise be entitled to the benefits of the solvency exemption or solvency relief and we would like to see that built into the legislation, or else some assurance that they would not be precluded from obtaining the same solvency relief.

Secondly, the definition of target benefit plans in the legislation is restricted to plans having a collective agreement or being collectively bargained. There are other categories of plans—for example, church plans—which may be multi-employer plans which would very much like to avail themselves of the same solvency relief and which have member representation, albeit not through collective agreements. Again, we would ask that you consider expanding that wording to include collective agreements and other agreements or other plan documents having like effect.

1330

Lastly, a broader issue: In my 20-years plus of practising pension law, I've learned one thing, and that is, there are always exceptions to the rule. So I would urge you to try and create a mechanism to allow other plans that share similar features or attributes to jointly sponsored pension plans or target benefit MEPPs but might not fall within those definitions. There will be very good policy reasons for allowing them to qualify for solvency relief, even though they might not technically fit within the definition of a target benefit MEPP or a JSPP.

The Chair (Mr. Pat Hoy): Does that conclude your remarks? Then we'll go to Mr. Miller of the NDP.

Mr. Paul Miller: Welcome. I don't believe I met with your group. I'm the pension critic for the NDP. I don't recall meeting with you.

You would be the administrators of a lot of plans in this province, obviously. You represent that group of administrators. One of the biggest concerns for my party was the fact that when the solvency rate is low and the administration costs go up, it's detrimental to the plan as a whole because the administrators don't adjust their costs to go with the situation of the solvency of the plan. In other words, you keep charging what you charge to administer the plan even if it's at 50% or less. Then you have a chance possibly of going into windup.

I know that the administration costs are huge for pension plans in this province. That's a problem I have, that your organization does not adjust its cost of the

administration of the plan as it goes down. You still charge the same—is that not correct—for your services?

Mr. Mitch Frazer: We represent the plan sponsors. The administrator is more of a legal term, so we represent the people—basically the plans and the employers who—

Mr. Paul Miller: Pay into it.

Mr. Mitch Frazer: Yeah, who pay into it.

Mr. Paul Miller: The companies.

Mr. Mitch Frazer: So, not in terms of administration. We're not representing typically the outside providers that get contracted to provide services. We do understand your point, though.

Mr. Paul Miller: So you would be representing the employers?

Mr. Mitch Frazer: Yes.

Mr. Paul Miller: Okay. The Ontario Expert Commission on Pensions called for disclosure requirements, that they be detailed and that the obligations include reporting of the extent, duration and impacts of contribution holidays and should be fully and clearly reported to plan members on their member statements annually. What's your opinion on that? Do you do that?

Ms. Kathryn Bush: I was on the expert commission. As an expert adviser, I fully agree with that. That isn't a requirement in law right now, but again: a fine balance. That is a trade-off. That's asking for more disclosure from plan sponsors where there's going to be a lot of criticism: "Why are you taking contribution holidays?" and the like. The balance is something on the other side, which was supposed to be clearer rules for contribution holidays generally.

Mr. Paul Miller: What's your opinion of the creation of an Ontario pension agency that our party recommended and Dr. Arthurs recommended also to oversee and govern plans throughout the province? How do you feel about that?

Ms. Kathryn Bush: It would seem to be a very useful tool for orphaned benefits of one sort or another, as people transfer monies around. It is an obligation that the government would be taking on. I can understand the resistance to a government taking that on, but I do see it as something quite useful for both plan sponsors and members.

Mr. Paul Miller: I guess I differ with that, because we recommended an Ontario pension plan from our party which would have been administered by the government. I don't know why the government would run away from that responsibility. It doesn't make sense to me.

Let's talk a little bit about contribution holidays. That's one of the problems we've got. A former member mentioned that it happened, the "too big to fail" clause under Bob Rae—I agree that that was a mistake, but subsequent governments haven't changed it. It's still the same. So if they're overly concerned about that, why didn't they change it? Referring to 105%, they'd like it funded now—correct me if I'm wrong, but I did hear you say something about 80%, or something about 15%—the former speaker mentioned 15% for benefits. Where do you feel the solvency rate should be? Do you believe it's 105% before any contribution holidays?

Mr. Mitch Frazer: Well, as Kathy said, it's a fine balance. We'd be willing to accept that in exchange for clearer rules. That's the trade-off and that's what the Arthurs commission came out with. We support that position as long as the trade-off comes in with that and we get clearer rules in terms of when you can take contribution holidays.

Mr. Paul Miller: Okay.

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

ONTARIO MUNICIPAL EMPLOYEES RETIREMENT SYSTEM

The Chair (Mr. Pat Hoy): Now I call on the Ontario Municipal Employees Retirement System. Good afternoon, gentlemen. You have 10 minutes for your presentation. As you've heard, there could be five minutes of questioning following that. The way my voice is going, I won't be speaking much more than the next presenter after that. You can begin.

Mr. John Poos: Good afternoon, and thank you for giving us the opportunity to speak. We are here from OMERS, the Ontario Municipal Employees Retirement System. OMERS is governed by two corporations: a sponsors corporation and an administration corporation.

I am John Poos. I am executive director of OMERS Sponsors Corp.. My colleague is Andrew Fung, who's senior vice-president, pension services, and chief actuary at OMERS Administration Corp. So we're both represented.

I would like to take a moment to talk about OMERS and make a few general comments, and then I'll pass it over to my colleague to take you through a few specific comments we have on the bill.

OMERS is a multi-employer pension plan whose members consist primarily of employees of Ontario municipalities, local boards, public utilities and non-teaching school board staff. We have over 900 employers and 400,000 members; that includes both active and retired members. It is a jointly sponsored defined benefit pension plan financed by equal contributions from participating employers and employees as well as by investment earnings on the plan assets.

OMERS has a long tradition of strong employer-member governance. It is a well-known, large pension fund investor pursuing a global investment mandate and one of the top-performing pension funds in the country.

As provided by the OMERS Act, 2006, administration of the plan and investment of the fund is the responsibility of the OMERS Administration Corp., while plan design and setting contribution rates is the responsibility of OMERS Sponsors Corp.

Regarding Bill 120: OMERS would like to acknowledge the government's ongoing efforts on pension reform. These are not easy issues, and we appreciate both the effort and the progress.

OMERS supported the government's reform announcement in August and when Bill 120 was announced. We are continuing to make progress towards a more robust funding mechanism and by specifically providing, for us, a solvency exemption for jointly sponsored pension plans.

We believe that many of the details of the bill still need to be developed in regulations, and we hope the government will continue in its consultative process when those regulations are announced. They are likely to be very complex and require input from many perspectives, particularly those from stakeholders, to achieve their goals.

We have a few areas where we would like to offer some clarification in the bill, and I'll pass it to my colleague Andrew Fung to take you through those.

Mr. Andrew Fung: There are two specific areas that we want to comment on or seek clarification of. One is with respect to asset transfer and the other is what we call AVCs, additional voluntary contributions.

On asset transfer: We're talking about group asset transfers. We believe that group asset transfers from one pension plan to another are very important to the members of OMERS. We also think that it makes sense from a public policy perspective. It means that smaller, less-efficient pension plans can be merged into larger, more efficient pension plans in the spirit of providing better funding and better managing the pension plans to many Ontarians.

The existing provisions regarding the group asset transfers of one group of employees affected by restructuring or divestments were extremely difficult to implement. As a result of these rules, there are many groups of employees who switch from one plan to another without the corresponding transfer of the assets as well as the liabilities.

1340

What ended up happening is that these employees were left with a split pension situation from two pension plans, one a deferred pension from the past and one on a go-forward basis from the new plan.

This happened to many of the public sector employees, as previous governments divested. For many, it is more advantageous for them to have all benefits in one plan, especially if this can be addressed and accomplished at a time when the employer reorganizes or divests.

Bill 236 addressed many of the problems with the past legislation. It is intended to facilitate asset transfer for the past divestments that left so many split pensions, as well as for future divestments and employer reorganizations.

Bill 236 has also set a reasonable framework, although the regulations are a critical part of the implementation process.

Bill 120 includes a few provisions dealing with asset transfers. It is very important that the rules contained in Bill 120 support the progress for Bill 126. It is important to make sure that these rules contained in Bill 120 do not create obstacles to transfer of assets.

On additional voluntary contributions, or AVCs: Responding to the requests of many of our plan members, OMERS is implementing an AVC program, effective January 2011. This will allow members of OMERS to contribute additional amounts of their own money to OMERS, to earn the OMERS pension fund's annual rate of return. This is to assist our members to save more for their retirement.

Our members have been quite supportive of this option and are eager to start contributing. Currently, funds will have to be withdrawn from the AVC accounts when a member turns 71 years old, to be converted to different funding vehicles, such as a registered retirement income fund, or to purchase a life annuity.

We often get questions from the older members of our membership about whether they can be allowed to leave their money in the AVC account to earn the OMERS rate of return for a longer period of time. Bill 120 appears to allow defined benefit plans offering AVCs to provide annuity-like payments from the AVCs according to the income tax regulations, rather than forcing them out at age 71. This would be a very positive change, given the feedback from our membership.

Although we believe that the proposed legislation or provisions under Bill 120 are applicable for AVCs, we suggest that some further clarification of this would be helpful.

In conclusion, OMERS supports ongoing innovation in the pension system and has made many public statements about this. Flexibility is key to the adaptability of our systems over the next few decades. The government should look to opportunities to create more flexibility in the pension system. In order to support innovation, the five-year review of the Pension Benefits Act is a positive change. We are hopeful that this innovation process will be ongoing so that problems can be tackled as they arise.

The Chair (Mr. Pat Hoy): Thank you. The questioning will go to the government this time. Ms. Pendergast.

Ms. Leeanna Pendergast: Thank you for being with us today. We appreciate your comments and your input, especially your comments that these are not easy issues and that the government is making progress. The McGuinty government is committed to pension reform in Ontario and, of course, striking that balance that concerns workers, retirees and employers. So we thank you for those comments, and also for your comments on asset transfers and AVCs.

You touched on jointly sponsored pension plans. I'm wondering if you can explain for us the implications of our new rules on the jointly sponsored pension plans for both the taxpayers and your members.

Mr. Andrew Fung: I presume you're talking about the new rules, in terms of funding, for solvency exemption.

I think this is a great, very welcome piece of legislation for JSPPs. John already mentioned that OMERS covers 400,000-plus employees, so we provide great coverage in terms of pension benefits for Ontarians. Solvency, I think, is important for a private sector,

single-employer pension plan, but certainly it doesn't apply to a JSPP situation.

I think it's a very welcome piece of legislation, and we thank the government for that.

Ms. Leeanna Pendergast: We also heard a lot about balance, striking the right balance. We heard the previous group talk about the document to find balance. I'm wondering if you can give us just an overview on how you feel regarding our reforms to Ontario's pension system in terms of how it strikes the right balance between all stakeholders.

Mr. John Poos: Certainly we're pleased to see the government pursue some new initiatives that allow for innovation, which is, I think, long overdue in the province. We're pleased to see that. We're pleased to participate to the extent we can.

We've indicated previously to the government that we're interested in assisting the pension solution as much as we can. The opportunities that the legislation presents in terms of pension innovation, we're very supportive of. We think it does strike the right balance.

Ms. Leeanna Pendergast: We want to thank you for your ongoing support, assistance and input. It's very valuable, and we thank you for that.

Mr. Andrew Fung: Thank you.

Mr. John Poos: Thank you.

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

CANADIAN PENSIONERS CONCERNED, ONTARIO DIVISION

The Chair (Mr. Pat Hoy): Now I call on the Canadian Pensioners Concerned, Ontario division, please, to come forward. Good afternoon. You have 10 minutes for your presentation. There could be up to five minutes of questioning following that. I'd just ask you to identify yourselves for the purposes of our recording Hansard and then you can begin.

Ms. Barbara Kilbourn: My name's Barbara Kilbourn. I'm president of the board of directors of Canadian Pensioners Concerned, Ontario division. It's part of a national voluntary organization of seniors committed to promoting issues such as pensions, health care, housing and transportation. We are concerned not only for those matters which involve older citizens but all of the factors to make a just, caring, compassionate, civil society of all age groups.

We began, in 1969, concerned about pensions; thus our name. We are still concerned about pensions. We have done briefs over the past 40-plus years concerning pensions. It hasn't gone away but it needs to be looked at again, as you're doing, and improved.

Ms. Gerda Kaegi: My name is Gerda Kaegi and I'm a member of the board of Canadian Pensioners Concerned, Ontario division.

I wanted to start by admitting and agreeing that there are very real limits on what the province can do on its own, so in our brief, which I hope you will have time to read, we've divided our responses by what the federal/provincial/territorial governments need to do and what Ontario alone can do.

At the start of our paper, perhaps on the second page, we drew a list of some of the critical factors that have been troubling us over the years. We've brought those issues forward in many of our briefs. What we're saying is, if we don't keep all these factors in mind, any policy- or program-tweaking will be doomed to fail to meet the needs of those at risk. You will see the ones that we have identified. I would include not only groups and contingent labour force but the drastic changes in the nature of work, the growth of small employers, the rise of work in the service sector and the risk of sluggish employment. In particular, it's an ongoing issue for us with the status of single, unattached older persons living on their own.

In terms of the OAS/GIS, which came up in the discussion paper, we have a major issue with old age security, in particular with the 10-year waiting period for older immigrants. We feel that 10 years is too long. Many of them, given the changes in the nature of employment, will clearly face poverty. We suggest shortening that waiting period to five years after reaching the age of 65 for those who remain living in Canada. So we're asking for that; that's a joint initiative.

We believe that these programs are out of date, given the rapid increases in costs of what you need to live and the rapid disappearance of defined pension plans. We argue that old age security should be indexed to the increase in the minimum wage, not just to the consumer price index.

1350

One thing that didn't get referenced in the paper from the Minister of Finance is something that is always missed. Please see if the province can't advocate on behalf of people getting the allowance. The allowance is a highly discriminatory federal program. It needs attention, so I would plead with you: Please look at that.

If nothing happens on the OAS/GIS front, we plead with the government to consider increasing Gains. Under $1,000 a year is nothing. We are suggesting at least, as a start, maybe go up to $200 a month, which still isn't going to take somebody out of poverty but it will make quite a difference. If something happens in the OAS/GIS, then bring it down perhaps to a lower increase.

We've been making the same pitch for awhile on the CPP. Again, it's joint action, and we would plead with the government to please push on this. We recommend raising the 25% to the rate of a 50% replacement rate. That still is not going to create a very high income. If you look at the data of what people are getting from CPP, a very small percentage get the full benefit, so it's still not going to be high. We argue for increasing the ceiling from the current average annual wage to a new base of $60,000. That earning should be then adjusted to reflect the average wage increase in subsequent years.

We accept that this would all have to be phased in, but we must recognize that CPP was never intended to be a significant factor in peoples' retirement. It was only

going to be a quarter of what people expected private plans—and of course we know those haven't happened—were going to do.

The administrative costs of CPP are exceedingly low, so for a cost-benefit analysis we're ahead of the game if we put a lot of emphasis on the CPP. Of course, the rapid decline in private sector defined pensions and the shift to defined contributions put the employees at great risk. We're saying: Put a lot of emphasis on CPP.

The paper raises the question of the huge increase in funds for investment by the CPP. We think the CPP investment board has done a good job. Given the potential growth in their funds, we say that broad policy should be developed about what kind of investments, how much and where, and then of course continue to hold it accountable. We get its annual reports, we were consulted when they started and we set out some views about that. We still believe it has done a reasonably good job and CPP is in good shape. We do not see the expansion of CPP to be a threat to private savings. It's a form of personal savings, whether you like it or not.

For the pension innovation tax-assisted voluntary private savings, we see the government of Ontario taking clear action. We agree with the recommendations that came out of the Harry Arthurs commission, where they recommended an Ontario pension plan agency that could establish perhaps, first choice, a parallel plan to the CPP and a board to invest the funds. We agree with the provisions set out in the consultation document for the management of such plans: fixed contributions and pensions based on investment returns; open to all employees and the self-employed; pooled assets that could be transferred—portability is really important.

We think that provincial pension plan agencies should mandate the plan, or if there are other forms of plans agreed upon, to maximize the benefits for the members with a fixed fee established for the management of the plans. You all know that there are incredible fees for the management of private sector funds and, of course, public accountability. We like the idea—and the Arthurs commission recommend it—of automatic enrolment, while allowing people, if necessary, to opt out and then opt in again, because that would allow them to meet their particular needs at a given time but not lose everything.

Unlike some people, we believe that if you're going to maximize the benefits for the most, contributions should be locked in. On the other hand, we realize catastrophes can happen in families, so we would like to see some kinds of conditions that would allow people to withdraw funds because of circumstances—but then, those rules should be enforced.

For the jointly governed target benefit pension plan, we supported Commissioner Harry Arthurs and his report when he promoted the existence of such plans and improvements to the current regulations. We did not support—we do not support—the idea that employers should have exclusive administrative responsibility for such plans.

Where we see, of course, joint action: the Income Tax Act. The Income Tax Act clearly has to be changed. We see the federal, provincial and territorial governments having to come together to agree on that.

Finally—and I know decisions were made—we would love the province to go back and second-guess itself under the pension benefits guarantee fund. We strongly believe—let me go back. We praise the province for having the fund; it's unique, it's important. But we believe it must be increased to $2,000 a month; $1,000 is too little. The example of Nortel is just a recent one, but we have heard from various people who have been employed in small companies—they've gone bankrupt, they have nothing, and $1,000 when they thought they had $4,000 or $3,000 is almost nothing. But it's better than nothing.

Thank you very much. Thank you for letting us come. We appreciate it, and I hope this will be helpful.

The Chair (Mr. Pat Hoy): Thank you for your presentation. The questioning goes to the official opposition. Mr. O'Toole.

Mr. John O'Toole: Thank you very much for your presentation and for the work you've done since 1969 to hold all stripes at all levels accountable for people's social security, if you will, in the later stages of life.

On the panel here, I'm probably the only one who actually relates to it because I'm over 65, so I'm quite worried about these things, because we don't have a pension in this group. We do have a defined contribution plan. That's what we have. Everybody says that there's no pension. Well, that's false: We really have a group RSP, which is a defined contribution plan. A lot of people here and members don't know that.

Ms. Gerda Kaegi: Really?

Mr. John O'Toole: It's true; they don't. You form sort of an income fund or a RRIF, an annuity, whatever.

My point being—a couple of them. I commend the federal government for trying to develop, because everything you said basically was federal. Oh, yes—

Ms. Gerda Kaegi: Most.

Mr. John O'Toole: It's all federal. CPP is totally—now, there is a discussion, provincially, about trying to flip this over to let the federal government solve it. That's what this debate is about.

Ms. Gerda Kaegi: I realize that.

Mr. John O'Toole: Yes, and it's too political for words, really. It's a broader examination of social policy and the responsibilities of different individuals, as well as different levels of government, to deal with it.

I would say that the Kananaskis meeting that's planned in Alberta will be important to watch—and I'm sure you will be—following up on the two previous first ministers' meetings arranged by Minister Flaherty.

On the CPP issue, the contribution rate is quite important. I think it's tied to the whole RRSP and unused contribution room, or allowing people to contribute more. You mentioned, I think, increasing the taxable income level up to $60,000 from $42,000. But these plans have to be completely modified, because you're right: It's 25% of the total lifetime income base. That's a significant change, because somebody has to pay it.

1400

If you look at it, the real contributor that loses is the federal government, because if you shelter the income from being taxed, the federal government loses most of it. Do you understand? If I contribute to RRSPs, it's deferred taxation. Do you understand?

Ms. Gerda Kaegi: Yes.

Mr. John O'Toole: I'm putting it into RRSPs. I don't pay tax on it; it's sheltered.

Mr. Paul Miller: You do at the end.

Mr. John O'Toole: It depends on how you take it out. But it's important to realize that they're forgoing income in the short term for the potential long term, and they assume all the risk. So it's quite controversial.

I'm like you—going back to the first principles of realizing the importance of having a foundation for people so that they aren't living in unacceptable conditions. That's how I feel, because the future is that no employer wants the liability. You know that; I know that.

I've been to France. It's a huge issue. In Britain—my kids live over there; that's why I'm there. I know a lot about it. Here's the deal: They're all walking away from pension liabilities. The employers don't want it.

In fact, I put on the record here in the Legislature frequently that I worked for General Motors. They went over the cliff. Nortel went over the cliff. Most people don't benefit from the pension benefits guarantee fund, only single-employer pension plans. Joint employer plans don't benefit a thing from the pension benefits guarantee fund. You know that.

Most people haven't got the foggiest idea of how this works. It's unfortunate, because I read a lot, but I still don't claim to know much about it. But my point is that the individual has some responsibilities as well, and it can be handled by voluntary tax, which would be a RRSP into your CPP—nobody likes to say it—or an IOU. Do you understand? If you set these minimums, somebody's going to get something like $2,000 a month when they retire at some point in the future—

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

Mr. John O'Toole: I'm just wondering about trying to get the provincial government to pony up on the—do you know who pays to the pension benefits guarantee fund? There's no provincial money in it. It's a premium paid by the employers, not Dalton McGuinty or anyone else—not one cent of it, actually. Who should fund the pension benefits guarantee fund? That's a tax, basically.

Ms. Gerda Kaegi: It is a tax. On the other hand, companies usually go bankrupt or are in trouble because of bad management. The workers have forgone wages in order to put money into pensions. In the process, it seems to us that there should be some protection, because the risk has been gambled, I guess, by employers that the management of the company will be sound. Unfortunately—

Mr. John O'Toole: See, that's why the companies don't want it, though. The companies don't want that responsibility either.

Ms. Gerda Kaegi: I understand that, but if you have that guaranteed fund—it exists now, and I praise the province for the fact that it exists, but it's not good enough. I think we have found it, from small companies to big, a huge cost. And there are social costs if people close to retirement or in retirement really fall below the poverty line.

Mr. John O'Toole: I should be able to shelter as much income as I need up to a certain point of, say, $60,000 and avoid the tax on it so I have money that I can average over the last while. But anyway, thank you. Keep up your work; it's important.

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

Ms. Gerda Kaegi: Thank you.

SUBCOMMITTEE REPORT

The Chair (Mr. Pat Hoy): I am advised that we did not read this particular subcommittee report into the record at the last meeting. We did two in one day, but it was not this one, so I think we had better have it read in now. Ms. Pendergast.

Ms. Leeanna Pendergast: This is the exciting part.

Your subcommittee on committee business met on Thursday, November 4, 2010, to consider the method of proceeding on Bill 120, An Act to amend the Pension Benefits Act and the Pension Benefits Amendment Act, 2010, and recommends the following:

(1) That the committee hold public hearings in Toronto, at Queen's Park, on Wednesday, November 17, and Wednesday, November 24, 2010, from 12:30 p.m. to 3 p.m., as per the order of the House dated November 3, 2010.

(2) That the clerk of the committee, with the authorization of the Chair, post information regarding the committee's business once in the following newspapers as soon as possible: the Globe and Mail, the Toronto Star and L'Express de Toronto.

(3) That the clerk of the committee, with the authorization of the Chair, post information regarding the committee's business on the Ontario parliamentary channel, on the Legislative Assembly website and with Canada NewsWire.

(4) That the deadline for receipt of requests to appear before the committee be 12 noon on Monday, November 15, 2010.

(5) That, following the deadline for receipt of requests to appear on Bill 120, the clerk of the committee provide the subcommittee members with an electronic list of all the potential witnesses who have requested to appear before the committee.

(6) That, if required, each of the subcommittee members supply the clerk of the committee with a prioritized list of the witnesses they would like to hear from by 5 p.m. on Monday, November 15, 2010. These witnesses must be selected from the original list distributed by the committee clerk.

(7) That groups and individuals be offered 10 minutes for their presentations, followed by up to five minutes for questioning by committee members.

(8) That the deadline for receipt of written submissions be 5 p.m. on Wednesday, November 24, 2010.

(9) That the research officer provide the committee with an interim summary of presentations by 5 p.m. on Wednesday, November 24, 2010, and a final summary of presentations by 5 p.m. on Monday, November 29, 2010.

(10) That amendments to the bill be filed with the clerk of the committee by 12 noon on Tuesday, November 30, 2010, as per the order of the House dated November 3, 2010.

(11) That the committee meet on Wednesday, December 1, 2010, from 12:30 p.m. to 3 p.m. for clause-by-clause consideration of the bill, as per the order of the House dated November 3, 2010; and finally,

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

Thank you, Chair.

The Chair (Mr. Pat Hoy): Thank you. There weren't any comments when this was sent around; I assume there are none now. Any comments?

Hearing none, are we agreed? Thank you.

We are adjourned.

The committee adjourned at 1405.

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

Chair / Président
Mr. Pat Hoy (Chatham–Kent–Essex L)

Vice-Chair / Vice-Présidente
Mrs. Laura Albanese (York South–Weston / York-Sud–Weston L)

Mrs. Laura Albanese (York South–Weston / York-Sud–Weston L)
Mr. Toby Barrett (Haldimand–Norfolk PC)
Mr. Bob Delaney (Mississauga–Streetsville L)
Mr. Kevin Daniel Flynn (Oakville L)
Mr. Pat Hoy (Chatham–Kent–Essex L)
Mr. Norm Miller (Parry Sound–Muskoka PC)
Ms. Leeanna Pendergast (Kitchener–Conestoga L)
Mr. Charles Sousa (Mississauga South / Mississauga-Sud L)
Mr. Peter Tabuns (Toronto–Danforth ND)

Substitutions / Membres remplaçants
Mr. Paul Miller (Hamilton East–Stoney Creek / Hamilton-Est–Stoney Creek ND)

Also taking part / Autres participants et participantes
Mr. John O'Toole (Durham PC)

Clerk / Greffière
Ms. Sylwia Przezdziecki

Staff / Personnel
Ms. Anne Marzalik, research officer,
Legislative Research Service

CONTENTS

Wednesday 17 November 2010