

OMERS response to  
*A Fine Balance*, the report of the Ontario  
Expert Commission on Pensions

# Turning Recommendations into Actions

the time for moving ahead is now



February 2009

# Contents

2	<b>1 Introduction</b>
	OMERS in Context
	OMERS Response to the Commission’s Report
	The Scope of the OMERS Response
6	<b>2 Turning Recommendations into Actions</b>
	<i>The Time for Moving Ahead is Now</i>
	2.1 Exempting Public Sector Jointly-Sponsored Pension Plans from the Quantitative Restrictions on Pension Fund Investing
	2.2 Exempting Public Sector Jointly-Sponsored Pension Plans from the Solvency Funding Requirement
	2.3 Enhancing the Regulatory Relationship by Moving to a More Consultative Model and Providing the Regulator with Additional Tools and Resources
	2.4 Amending the <i>Pension Benefits Act</i> to consist of the Fundamental Principles Applicable to all Pension Plans in Ontario
	2.5 Supporting Consolidation
26	<b>3 Summary – OMERS Proposed Actions...</b>
27	<b>4 Appendices</b>
	Appendix A
	• Asset Transfers/Divestment
	• Division of Pensions on Marriage Breakdown
	• Changes to Support Phased-in Retirement
	• Removing Barriers to Flexible Plan Design
	Appendix B
	• Additional Comments on Specific Commission’s Recommendations
	Appendix C
	• Expert Advisors’ Consensus Recommendations on Technical and Operational Issues

# Introduction

## 1

### OMERS in Context

OMERS has one clear and overriding goal: To secure and deliver the pension promise to all members and beneficiaries of the OMERS pension plans.

### OMERS Primary Plan is:

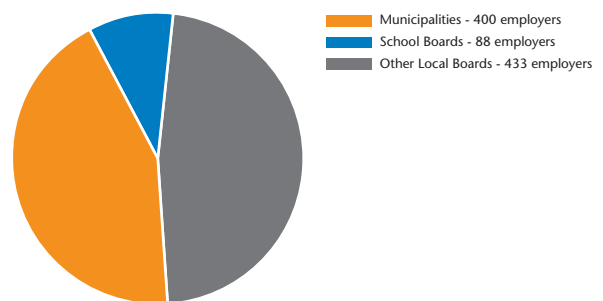
A jointly-sponsored pension plan (JSP) with a long tradition of strong employer/member governance;

A large multi-employer defined benefit plan with a highly diversified membership of more than 900 employers and 390,000 members; and

A large pension fund investor pursuing a global investment mandate. OMERS is one of the top-performing pension funds in Canada.

As perhaps Canada's leading example of a successful multi-employer defined benefit plan, OMERS has been cited by the former Governor of the Bank of Canada as a plan that effectively pools risks among a large number of plan sponsors<sup>1</sup>. OMERS Administration Corporation was also recently recognized as one of the top contenders for the 2009 National Awards in Governance by The Conference Board of Canada. In addition, the Ontario Expert Commission on Pensions (the Commission) has recognized OMERS as a "useful precedent" which could serve as a practical template for multi-employer defined benefit plans.

OMERS Employer Information 2008



Employers by type. Total employers 921.

<sup>1</sup> David Dodge, Governor of the Bank of Canada, in remarks to Conference Board of Canada's 2007 Pension Summit: *Striking the Right Balance*, Toronto, Ontario, May 10, 2007.

## OMERS Response to the Commission's Report

OMERS welcomes the opportunity to respond to the report of the Ontario Expert Commission on Pensions (the Commission), led by Harry Arthurs. The Commission wrestled with some very complex issues and we applaud their efforts. We also congratulate Premier McGuinty's government for recognizing the need for reform and for setting up the Commission and allowing it to do its work.

Our response, outlined in this document, represents the views of two statutory corporations: the OMERS Sponsors Corporation responsible for plan design, benefits and contribution rates; and the OMERS Administration Corporation responsible for investments, plan administration and services to plan participants. Employers and plan members are represented equally on the boards of both corporations.

The Commission's report represents a positive, and long awaited, first step in the crucial task of reforming the current pension system in Ontario.

It is critical that this initiative not lose momentum. This will require a phased implementation approach with the Ontario government moving quickly to prioritize and execute the first phase of pension reform. We have highlighted stand-alone recommendations where action can and should be taken immediately.

We look forward to working with the Ontario government as it considers and addresses the report's findings and recommendations, and we are ready to assist with this important initiative.

## The Scope of the OMERS Response

Our commentary in this document refers only to recommendations contained in the report of the Expert Commission on Pensions. We have not conducted a full review of the *Pension Benefits Act (PBA)* and regulations. Due to the broad scope of the Commission's report, and in the interests of ensuring timely implementation of the Commission's key recommendations, we have focused this response on five key priorities.

### Immediate Priorities

**1** Exempting Public Sector Jointly-Sponsored Pension Plans from the Quantitative Restrictions on Pension Fund Investing

**2** Exempting Public Sector Jointly-Sponsored Pension Plans from the Solvency Funding Requirement

### Other Priorities

**3** Enhancing the Regulatory Relationship by Moving to a More Consultative Model and Providing the Regulator with Additional Tools and Resources

**4** Amending the *Pension Benefits Act* to Consist of the Fundamental Principles Applicable to all Pension Plans in Ontario

**5** Supporting Consolidation

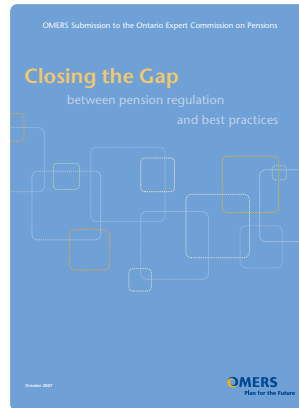
We provided details on these priorities in our original submission to the Commission in October, 2007 – *Closing the Gap between pension regulation and best practices*.

In section 2 of this document, we have commented under the following headings:

- *OMERS Submission to Expert Commission* – provides an overview of OMERS original submission to the Expert Commission on Pensions and expands on this submission;
- *Expert Commission Recommendations* – highlights the corresponding recommendations from the Expert Commission report;
- *OMERS Response* – responds to the Expert Commission recommendations; and
- *OMERS Proposed Action* – details the key actions that are needed.

Throughout our response, it will become clear that there is an opportunity for positive change. Ontario’s current pension law is no longer adequate, given the complexities of pension and investment management in today’s environment. Our fifth priority will explore different ways to consolidate the pension landscape to achieve economies of scale, so that we can collectively evolve and keep pace with the fast changing world of pensions.

We have included additional specific responses and comments in our three appendices. These address a number of technical issues, as well as the *Expert Advisors’ Consensus Recommendations*. The Expert Advisors identified a number of very important technical recommendations, such as providing pension plans with access to the provincial government death registry, to enhance the efficiency of plan administration.



# Turning Recommendations into Actions

## 2

### The Time for Moving Ahead is Now

The Commission acknowledges that drafting new legislation is likely to take a long time, especially if it is to be done well, and that extensive consultation will be necessary when creating a new structure to alter the dynamics of Ontario's pension system. Harry Arthurs points out, "All of this could amount to a prescription for delay. However, in my view, delay must be avoided if at all possible. The time for moving ahead is *now*." OMERS agrees that delay must be avoided – immediate action is needed to strengthen and protect the viability of Ontario's pension system.

It is in this spirit that we present our feedback under the five headings that follow. As part of each section, we have cited actions which OMERS strongly believes must be taken immediately. At the end of this document is a summary of the key action items.

# 2.1

## Exempting Public Sector Jointly-Sponsored Pension Plans from the Quantitative Restrictions on Pension Fund Investing

### OMERS Submission to Expert Commission

In our submission to the Commission in October, 2007, OMERS recommended:

*“That the Pension Benefits Act exempt public sector jointly-sponsored pension plans from the quantitative restrictions in Schedule III of the Pension Benefits Standards Act (Canada) regulations.”*

The quantitative restrictions (the “Quantitative Investment Restrictions”) in Schedule III of the Federal Investment Regulations:

- Limit investments in a single entity (the 10% Rule);
- Limit investment in real estate and Canadian resource properties (the 5%, 15% and 25% Rules); and
- Limit the exercise of corporate voting rights (the 30% Rule).

The Canadian pension industry has repeatedly asked that Quantitative Investment Restrictions be replaced by the “prudent person” principle. In 2001, for example, the Canadian Association of Pension Supervisory Authorities (CAPSA) consulted the industry on the Federal Investment Regulations. In their 2001 submissions, the Association of Canadian Pension Management (ACPM), representing 400 pension plans; the Pension Investment Association of Canada (PIAC), whose member funds are responsible for the oversight and management of over \$910 billion in assets (based on 2007 data); the Canadian Life and Health Insurance Association, whose members administered about two-thirds of Canada’s pension plans; and the Investment Counsel Association of Canada, with 64 member firms managing institutional and individual client assets – all stated their preference to be regulated by prudential obligations rather than mathematics or

formulas. So did third-party pension fund managers such as TD Asset Management, Barclays Global Investors, Sun Life Financial, Scotiabank and others.

This position was reinforced through pension industry submissions to the Commission. For example, the PIAC submission and the Ontario Teachers’ Pension Plan (OTPP) submission both reinforced the need to remove quantitative restrictions on investing.

**PIAC:** “Hold pension investments to the standard of a prudent person and eliminate all quantitative limits on investing.”

**OTPP:** “The current investment rules in the PBA were designed with the ‘typical’ single-employer private sector pension plan in mind. They do not reflect the reality of the Ontario pension environment in which ‘super funds’ with sophisticated investment operations and capabilities, such as Teachers’ and OMERS, have created the need for large placement in the capital markets. In our view, the prudent investment test would provide a more appropriate and tailored regulatory standard without the existing qualitative and quantitative restrictions that simply limit, and inflate the cost of, appropriate investment opportunities.”

## *Exempting public sector jointly-sponsored pension plans from the quantitative restrictions on pension fund investing*

Pension plans in Alberta and British Columbia have also recognized the problems created by the Quantitative Investment Restrictions. In its report *Getting our Acts Together*, the Joint Expert Panel on Pension Standards in Alberta and British Columbia recommends (Recommendation 7.2-A) that “Alberta and British Columbia investment standards should be “uncoupled” from the federal Schedule III, to remove quantitative restrictions on investment and increase reliance on the prudent investor principle.” Both of these provinces have recognized the need to remove Quantitative Investment Restrictions in order “to ensure that appropriate investment strategies and decisions are being made.”

The Quantitative Investment Restrictions are cumbersome to comply with, difficult to interpret and are not reflective of the market exposure of the funds. These restrictions are viewed as an impediment to maximizing risk-adjusted investment returns for tomorrow’s growing population of pensioners. They fail to recognize the enormous progress pension funds have made since the Federal Regulations were written in 1985, especially the advances in investment and risk management processes. Specifically, the 10% Rule and the 5, 15 and 25% Rules were put in place to prevent over-concentration in real estate/ resource investments and other investments. Pension plans have implemented rigorous techniques to prevent excessively risky concentration in any industry, sector or geographic region. These techniques allow pension plans to address the question of concentration more effectively than through quantitative limits.

An independent academic study<sup>2</sup> commissioned by OMERS suggests that Canadian pension funds could have earned 30 to 90 basis points (bps) more in investment returns if they had been able to invest on a prudential standard, similar to U.K. and U.S. pension funds that do not have Quantitative Investment Restrictions. By applying the 30 to 90 bps of potential returns to the \$250 billion in assets under management for the 12 largest Ontario-only registered pension plans<sup>3</sup>, it is possible to infer that the Quantitative Investment Restrictions deny

Ontario workers potential pension investment returns of \$700 million to \$2 billion a year.

## **Expert Commission Recommendations**

In its report, the Commission indicates that it is in favour of removing the Quantitative Investment Restrictions on pension fund investing, with the following two recommendations addressing this issue:

### **Expert Commission Recommendation 4-25:**

*The Ontario government should endeavour to persuade the federal government to reform the federal investment rules and, in particular, to remove or amend particular quantitative restrictions that no longer make sense, such as those involving prohibitions on Canadian, but not foreign, investments. However, if the federal government does not do so within a reasonable time frame, the Ontario government should cease to rely on the federal regulations and establish its own investment rules, tracking the federal rules only to the extent that doing so is deemed good public policy in Ontario.*

### **Expert Commission Recommendation 8-8:**

*Any plan with some recognized form of joint governance and with the requisite capacity to make complex investment decisions (as defined by regulations) should be allowed to adopt a resolution claiming an exemption from the 30% investment rule. The resolution should be filed with the pension regulator and have effect upon filing, unless and until it is successfully challenged.*

<sup>2</sup> Davis, Philip E., Brunel University, London and Hu, Yu-Wel, OECD, Paris, March 2008, *Are Canadian Pension Plans Disadvantaged by the Current Structure of Portfolio Regulation?*

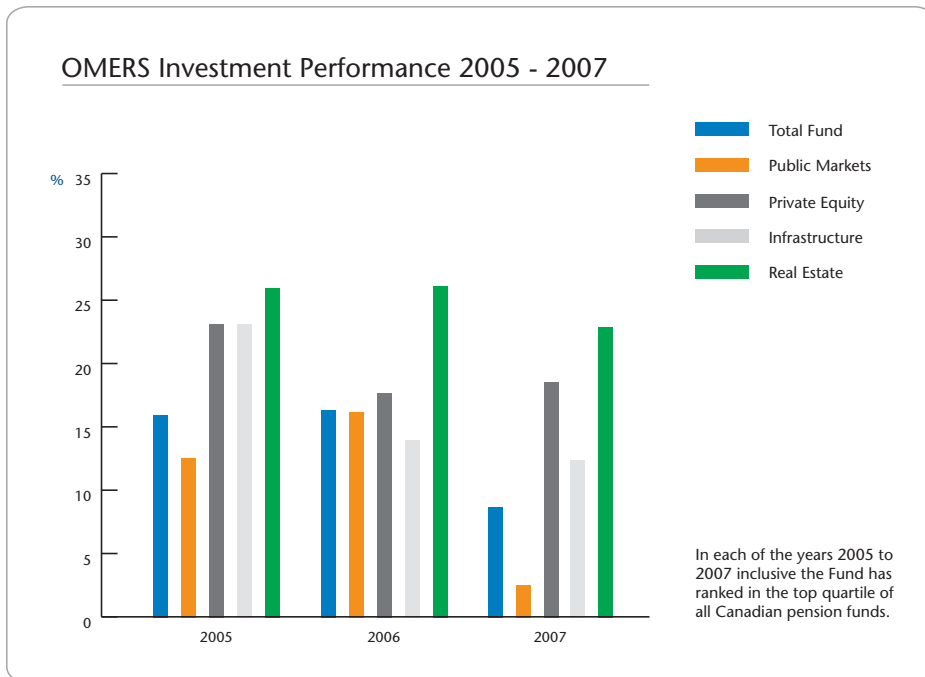
<sup>3</sup> Ontario Teachers’ Pension Plan, OMERS, Hospitals of Ontario Pension Plan, Ontario Pension Board, OPSEU Pension Trust, Ontario Power Generation Pension Plan, Colleges of Applied Arts and Technology Pension Plan, Hydro One Pension Plan, TTC Pension Plan, and Toronto, Queens and York universities pension plans.

## Exempting public sector jointly-sponsored pension plans from the quantitative restrictions on pension fund investing

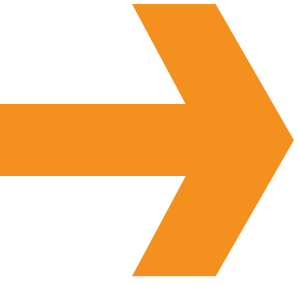
### OMERS Response

Like OMERS, the Commission recommends changes to investment rules that currently favour foreign over domestic investments, or impedes a plan's ability to generate excess returns from active investing. However, the Expert Commission's recommendations do not go far enough<sup>4</sup>. The Ontario government should not wait for the federal government; it should move immediately to remove the Quantitative Investment Restrictions and rely on the existing prudential standards.

We also believe that the additional requirements introduced in Recommendation 8.8 regarding the 30% Rule recommendation are unnecessary, as there are already safeguards in place under the PBA as we have indicated under OMERS Proposed Actions.



<sup>4</sup> It should be noted that the description of the 5, 15 and 25% Rules on page 85 of the Expert Commission's report is incorrect.



## Exempting public sector jointly-sponsored pension plans from the quantitative restrictions on pension fund investing

### OMERS Proposed Action #1

Immediate action is needed. This is a standalone recommendation which supports the Ontario government's commitment to introduce legislation to address the serious challenges that pension plans face. It is also supported by other Canadian jurisdictions.

The ideal solution is for Ontario to move quickly to exercise its power to exempt all Ontario registered pension plans from the Quantitative Investment Restrictions in the Federal Investment Regulations. Adding a new section 47.5 to *Pension Benefits Act (PBA)* Regulation 909 would accomplish this – suggested wording is shown below:

- **s.47.5** Despite sections 78 and 79 of this Regulation, sections 9, 10, 11, 12, 13 and 14 of Schedule III to the *Pension Benefits Standards Regulations, 1985* made under the *Pension Benefits Standards Act, 1985* (Canada) as it read on December 31, 1999 do not apply after [insert date].

Alternatively, public sector jointly-sponsored pension plans should be exempted from the Quantitative Investment Restrictions. Suggested wording is shown below:

- **s.47.5** Despite sections 78 and 79 of this Regulation, sections 9, 10, 11, 12, 13 and 14 of Schedule III to the *Pension Benefits Standards Regulations, 1985* made under the *Pension Benefits Standards Act, 1985* (Canada) as it read on December 31, 1999 do not apply to public sector jointly-sponsored pension plans (JSPPs).

A new definition for “public sector” would also have to be included in the PBA or Regulation.

If the Quantitative Investment Restrictions in the Federal Investment Regulations were removed in Ontario, existing comprehensive and proven regulations would continue to provide sufficient oversight – specifically:

- The PBA requires pension plan administrators to exercise the care, diligence and skill that a person of ordinary prudence would exercise in dealing with the property of another – PBA s.22(1);
- The PBA requires a plan administrator to use all relevant knowledge and skill that the administrator possesses, or by reason of the administrator's profession, business or calling ought to possess, when investing plan assets – PBA s. 22(2);
- All employees and agents of plan administrators are directly subject to the fiduciary standard and duty of care – PBA s.22(8);
- The PBA requires pension plans to establish and file with their actuary written statements of investment policies and procedures in respect of their investments and loans, having regard to all factors that may affect the funding and solvency of the plan and the ability of the plan to meet its financial obligations – PBA Regulation 909 s.78, and *Pension Benefits Standards Regulation s.7.2(2)*;
- Pension plans must file funding valuations at least triennially – PBA Regulation 909 s. 14(1).
- Pension plans must file financial information including audited financial statements and regulatory reports.

The Financial Services Commission of Ontario (FSCO) – or a new public agency, as outlined in the Commission's Report – would continue to provide regulatory oversight.

# 2.2

## Exempting Public Sector Jointly-Sponsored Pension Plans from the Solvency Funding Requirement

### OMERS Submission to Expert Commission

In our submission to the Commission in October, 2007, OMERS recommended:

**“That the *Pension Benefits Act* exempt public sector jointly-sponsored pension plans from the solvency funding requirements.”**

In making this recommendation, OMERS was seeking an exemption of its Primary Plan from the solvency funding requirements. OMERS is a durable plan, a fact recognized in its exemption from the *Pension Benefits Act's* (PBA's) Pension Benefit Guarantee Fund provisions. The Supplemental Plan introduced for police, firefighters and paramedics was exempted in 2007. A legislated exemption would alleviate the potential unnecessary burden of additional contributions, caused by a solvency deficiency, on OMERS stakeholders and ultimately, taxpayers. These additional contributions often serve to increase a plan surplus once markets rebound or interest rates rise.

The efficacy of the solvency valuation is reduced for jointly-sponsored pension plans (JSPPs), where the negative consequences far outweigh any potential benefit. The JSPP rules in the PBA Regulation specifically contemplate the possibility of benefit reductions on wind-up of a jointly-sponsored pension plan. The theory behind these rules is that employers and members should decide jointly the level of funding appropriate in light of plan liabilities and other relevant factors, and the consequences if such funding proves insufficient to fund accrued benefits in the event of a wind-up. Solvency funding is unnecessary for clear risk-sharing governance structures, such as those of JSPPs, where members have equal input into

decisions around funding, investment and benefit design. Sponsors should have the ability to design a plan in which employers and members decide to share in the benefits of lower contribution rates or more generous benefits, on the understanding that benefits will be reduced in the event of wind-up in an insolvency situation.

The recommendation for exemption from the solvency funding requirement for public sector jointly-sponsored pension plans appeared in a number of pension industry submissions. For example, the Pension Investment Association of Canada (PIAC) submission recommended that the government, “Exempt all public sector plans from solvency funding requirements due to their low probability of default.” Similarly, the Association of Canadian Pension Management (ACPM) submission and the Association of Municipalities of Ontario (AMO) submission both supported solvency exemption for public sector jointly-sponsored pension plans.

## *Exempting public sector jointly-sponsored pension plans from the solvency funding requirement*

### **Expert Commission Recommendations**

The Commission's report contains two recommendations that relate to the funding requirements for jointly-sponsored pension plans (JSPPs):

#### **Expert Commission Recommendation 4-11:**

*Jointly sponsored pension plans should be required to fund only according to going concern valuations on the same basis as Specified Ontario multi-employer pension plans, but should continue to provide solvency valuations for the information of the regulator as well as their active and retired members. The comprehensive legislation and regulations governing the funding of multi-employer pension plans, to be developed pursuant to Recommendation 4-9, should apply, perhaps with appropriate modifications, to jointly sponsored pension plans.*

#### **Expert Commission Recommendation 4-9:**

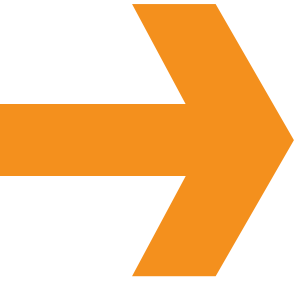
*Following consultation with Ontario's multi-employer pension plans, special legislation and regulations should be developed relating to all aspects of their funding, regulation and governance. The basis for such legislation and regulations should be the Specified Ontario multi-employer pension plan regulation of 2007. After five years, the practical effects of these arrangements should be assessed.*

### **OMERS Response**

We are pleased to see that the Commission (Expert Commission Recommendation 4-11) has endorsed OMERS recommendation regarding solvency funding exemption for JSPPs. As the OMERS Pension Plans are subject to joint governance, plan participants are already aware that benefits could be reduced in the event of a plan wind-up, and there is therefore no requirement for additional protection. In addition, OMERS, as a public sector pension plan, is not likely to wind-up.

As an offset to the exemption from solvency funding, the Commission is recommending (Expert Commission Recommendation 4-9) a reduction in the amortization period for going concern valuations – from 15 years to the 12-year period which is the requirement for Specified Ontario Multi-employer Pension Plans (SOMEPPs). There are two key distinctions between JSPPs and SOMEPPs which make the reduction in the amortization period unnecessary for JSPPs:

- i) JSPPs can respond more quickly to funding issues as the member and employer contributions reflect the funded position whereas employer contributions are fixed by definition for SOMEPPs making their process for changing contributions slower; and
- ii) the likelihood of wind-up is very low for JSPPs like OMERS (and in practical terms may be non-existent). OMERS believes that a more rigorous going concern amortization period is not required for public sector pension plans like OMERS.



## *Exempting public sector jointly-sponsored pension plans from the solvency funding requirement*

A move to a 12-year amortization period would impact the funding requirements of large plans – it could increase OMERS deficit funding requirement by approximately 15% to 20% in times of a going concern deficit. For example, to fund a \$1 billion deficit, annual special payments would have to increase

from approximately \$105 million under the 15-year amortization to \$120 million under the 12-year amortization. Taking all of the above into account, OMERS is requesting that the government retain the current 15-year amortization period for going concern valuations.

## **OMERS Proposed Action #2**

Immediate action is needed to exempt public sector jointly-sponsored pension plans from solvency funding requirements. This is a stand-alone recommendation which should be implemented as part of the first phase of pension reform. Adding a new section 47.6 (after the new 47.5 recommended in section 2.1) to PBA Regulation 909 would accomplish this – suggested wording is shown below:

**47.6** The employers who are required to make contributions under a public sector jointly-sponsored pension plan and the members of the pension plan are exempt from the requirement to make contributions under clause 4(2)(a) with respect to any solvency deficiency under the plan and from the requirement to make special payments under clauses 4(2)(c) and 4(2.4)(b) with respect to any solvency deficiency under the plan.

# 2.3

## Enhancing the Regulatory Relationship by Moving to a More Consultative Model and Providing the Regulator with Additional Tools and Resources

### OMERS Submission to Expert Commission

In our submission to the Commission in October, 2007, OMERS recommended:

“That (i) the *Financial Services Commission Act* and the *Pension Benefits Act* be amended to provide for rule-making authority for FSCO on pension matters, enhance the jurisdiction of the Tribunal with respect to pension matters, and provide it with an appropriate exclusivity to protect its jurisdiction; and (ii) the pension office within FSCO be provided with appropriate resources by supplementing the current industry levies with additional powers to charge pension funds an appropriate and fair fee for the services that the regulator is providing.”

While acknowledging the independence of the regulator, OMERS is strongly in favour of enhancing the regulatory relationship, clarity and ongoing dialogue. Industry consultation, and respect for the role of administrators in managing their affairs, would help close the gap that has opened up between a regulatory regime created in 1986 and the practices of large pension funds like OMERS in an era of complex and sophisticated investing.

*Enhancing the regulatory relationship by moving to a more consultative model and providing the regulator with additional tools and resources*

## Expert Commission Recommendations

The Commission's report contains many recommendations that promote enhancements to the regulatory relationship, pave the way for a more consultative model and would provide the regulator with additional tools and resources.

### **Expert Commission Recommendation 7-9:**

*The pension regulator should issue policy statements indicating how it views and intends to process all standard pension transactions. Before doing so, it should give notice of its intention to issue such statements, and provide stakeholders with an opportunity to submit comments. After doing so, while not bound by such statements, the regulator should depart from them only for good reason and, preferably, by way of an amending statement rather than in the context of a particular proceeding.*

### **Expert Commission Recommendation 7-10:**

*The pension regulator should have power to provide opinion letters and advance rulings in connection with proposed or pending transactions. The regulator should feel free to disregard such letters or rulings in subsequent proceedings if the applicant has not made full disclosure of relevant facts; if they adversely affect other parties who have not had a prior opportunity to be heard; or if they contravene legal rules or regulatory policies that were not in force when the letter or ruling was issued.*

### **Expert Commission Recommendation 7-18:**

*An independent pension regulator – the Ontario Pension Regulator – should be established with budgetary, staffing and other powers of self-management comparable to those of the Ontario Securities Commission.*

### **Expert Commission Recommendation 7-24:**

*The pension regulator should facilitate the introduction of a program of enhanced risk-based regulation by consulting closely with stakeholder groups concerning the collection and analysis of standard data on which risk assessment can be based, and it should subject its own risk-assessment systems to rigorous self-evaluation and to critical comment by stakeholders.*

### **Expert Commission Recommendation 7-25:**

*The new Ontario Pension Regulator should have power to make rules in order to define and lend greater specificity and clarity to its governing statute and regulations. It should exercise this power only after giving stakeholders notice of, and an opportunity to comment on, proposed rules. Rules adopted pursuant to the use of this power should have the force of law so long as they are made in accordance with the statute and regulations and do not purport to contradict or derogate from them.*

### **Expert Commission Recommendation 7-26:**

*The pension jurisdiction of the Financial Services Tribunal should be transferred to a new Pension Tribunal of Ontario. The Tribunal should have power to hear and decide specified matters at first instance, and to hear and decide all appeals from orders made by the Superintendent.*

**Enhancing the regulatory relationship by moving to a more consultative model and providing the regulator with additional tools and resources**

**Expert Commission Recommendation 7-29:**

*The Pension Tribunal of Ontario ought to have all powers necessary to dispose of matters before it.*

**Expert Commission Recommendation 7-30:**

*The Pension Tribunal of Ontario should exercise exclusive and ultimate jurisdiction over all matters arising out of or incidental to the interpretation of the Pension Benefits Act (PBA).*

*Decisions of the Tribunal should be final and binding, subject to appeal to the Divisional Court only if they involve a denial of natural justice, a misinterpretation of the applicable law so serious as to amount to jurisdictional error, or a violation of the constitutional rights of a party.*

**Expert Commission Recommendation 7-31:**

*The Tribunal should have plenary power, upon enforcing or hearing an appeal from any order made by the Superintendent, to make any order required to secure compliance with the PBA, including but without limiting its general power, the power to:*

- *require the doing of any act required by the statute and the cessation of any act forbidden by it;*
- *order the payment of contributions, benefits or premiums wrongly withheld, together with interest thereon;*
- *require the disclosure of information and the provision of documents to the regulator, active and retired plan members, unions and representative organizations and others entitled to such information or documents; and*
- *impose administrative fines for non-compliance with the Pension Benefits Act.*

*Any order of the Tribunal may be registered in the Ontario Court of Justice and enforced as an order of that Court.*

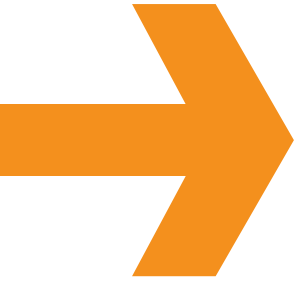
**Expert Commission Recommendation 10-5:**

*Ontario should identify an agency or unit of government as its Pension Champion with responsibility for conducting research into the pension system, for working closely with the stakeholders and the proposed Pension Community Advisory Council, for promoting and facilitating innovation in the pension system and for leading policy development efforts in the pension field.*

The Commission's report also recommends the establishment of a Pension Community Advisory Council (PCAC).

**Expert Commission Recommendation 10-2:**

*A Pension Community Advisory Council should be formed comprising representatives of all significant stakeholder groups together with other interested parties such as professionals, service providers, academic researchers and business and social advocacy groups. It should be provided with access to data and interpretative studies on Ontario's pension system, invited to advise on significant policy initiatives, and used as a forum to promote an informed and ongoing exchange of views on pension issues.*



*Enhancing the regulatory relationship by moving to a more consultative model and providing the regulator with additional tools and resources*

## OMERS Response

OMERS strongly supports the Commission's recommendations which set the scene for greater dialogue, clarity and equity. This includes recommendations that strengthen the power of the pension regulator and create a new Pension Tribunal of Ontario. OMERS believes that the Commission's recommendation to establish a PCAC recognizes the need for broad input into the evolving pension landscape in Ontario. A body of this nature would address the need to understand a diverse range of stakeholder perspectives. However, if the PCAC's mandate is for its representative stakeholder groups to reach consensus, OMERS is concerned that the sheer size of this body of representatives could cause a bottleneck that would hinder, rather than facilitate, progress. It may be very challenging to obtain consensus on issues where stakeholder opinions are diametrically opposed.

OMERS would like to see a clear articulation of the PCAC's objectives, and be consulted on the development of this role, to ensure that it is a meaningful and effective mechanism that brings a true benefit to the pension community. We would like to more clearly understand the PCAC's purpose, frequency of meetings and associated expenses.

While we believe strongly in consultation, we would recommend that the PCAC not be formed until the other recommended regulatory bodies are in place. This step-by-step approach would make for a more effective mandate for the PCAC and a stronger relationship with the other regulatory bodies mentioned above.

## OMERS Proposed Action #3

The government should move quickly to put in place the Pension Champion and the Ontario Pension Regulator. These officials must then be charged with ensuring that an effective structure is implemented and that the reform process continues to move forward as rapidly as possible.

# 2.4

## Amending the *Pension Benefits Act* to Consist of the Fundamental Principles Applicable to all Pension Plans in Ontario

### OMERS Submission to Expert Commission

In our submission to the Commission in October, 2007, OMERS recommended:

“That the *Pension Benefits Act* be amended to consist of the fundamental principles applicable to all pension plans in Ontario, such as the fiduciary duties and obligations of plan administrators, a ‘prudent person’ test for investment of pension funds, a broad purpose clause, the powers of the regulator, wind-up provisions, offence provisions and adequate minimum standards for plan design (eligibility for membership, vesting and locking in, portability and transfer options, and member communication).”

As we outlined in our submission to the Commission, Ontario’s pension law should be flexible, so that legislative change evolves more naturally over time in step with best industry practices. This can be achieved by shifting as much as possible to a principles-based approach from the current excessive use of rules particularly the Quantitative Investment Restrictions. In making such a change, it is essential that legislation fully preserve the pension rights of plan members. The pools of capital held by Canada’s pension funds are critical to the security of the population’s retirement income.

Governments have been increasingly interested in principles-based legislation, such as that recently adopted by the U.K. Pension Regulator, as an alternative to the traditional approach to regulation whereby a myriad of detailed rules are designed to prescribe regulated behaviour. It has been held out as a vehicle for simplifying legislation, improving consumer protection and reducing the number of detailed regulations that impose restrictive and often counterproductive limits on pension plans.

In their recent report, *Getting Our Acts Together*, the Alberta and British Columbia’s Joint Expert Panel on Pension Standards indicates that, “Strength and flexibility can best be achieved by articulating broad principles in legislation, backed up where necessary by specific rules.” Their report goes on to state, “One of the most important features of a successful principles-based model is the involvement of those that are regulated in the development of principles and their interpretation. For example, this has been demonstrated in the development of the governance principles contained in Canadian Association of Pension Supervisory Authorities, CAPSA’s No. 4: *Pension Plan Governance Guidelines*, which are the product of intensive consultation with, and are generally accepted by, the pension industry.”

## *Amending the Pension Benefits Act to consist of the fundamental principles applicable to all pension plans in Ontario*

### Expert Commission Recommendations

The Commission's report recommends drafting revisions to the *Pension Benefits Act (PBA)*, encompassing both rules-based and principles-based approaches:

#### **Expert Commission Recommendation 7-2:**

*As a medium-term project, the Pension Benefits Act (PBA) and regulations should be re-drafted so as to clearly articulate both (a) general principles applicable to all types of pension plans, and (b) comprehensive codes applicable to specific plan types.*

#### **Expert Commission Recommendation 7-3:**

*Revisions to the Pension Benefits Act should be drafted to provide both rules-based and principles-based approaches, as appropriate. In particular, minimum standards with respect to benefits should generally be rules-based; some aspects of investment, plan governance and innovation are more appropriately regulated by a principles-based approach; and funding requirements should likely involve a mixture of the two.*

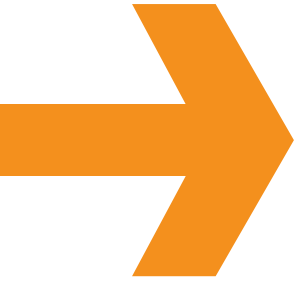
#### **Expert Commission Recommendation 10-3:**

*The Pension Benefits Act and regulations should be drafted in such a way that changes can be made with all deliberate speed to facilitate the introduction of new types of pension plans, to enable rapid regulatory responses to significant changes in the social and economic environment, and to safeguard the interests of sponsors and plan members. Significant changes in pension law should be accomplished through regulation-making. Except in emergencies, the process of regulation-making should provide for timely notice to and comment by stakeholders and other interested parties, and for advice by the proposed Pension Community Advisory Council.*

### OMERS Response

OMERS is encouraged to see from the report that the Commission is recommending a degree of movement away from an overly restrictive quantitative, rules-based approach towards a principles-based, "prudent person/prudent investor" model. The changes to regulator powers outlined in the Commission's report set the stage for this principles-based approach. Page 129 of the report, which speaks about rules and principles in pension regulation, reads, "...the precise balance struck between rules and principles will heavily influence the optimal design, powers and staffing requirements of the pension regulator. Whatever balance is struck, it should be one that facilitates a guiding principle of this report: that of open, fair, effective and adaptable regulation."

OMERS recommended approach is to use principles where possible (e.g., "prudent person" principle rather than quantitative investment rules), and rules where necessary (e.g., where there is an impact on members' benefits such as locking-in and minimum reporting requirements).



*Amending the Pension Benefits Act to consist of the fundamental principles applicable to all pension plans in Ontario*

#### **OMERS Proposed Action #4**

Immediate changes should be made to adopt the “prudent person” test for investments, and to abolish the Quantitative Restrictions (discussed in 2.1).

Following the removal of the quantitative restrictions for investments, a full review of the PBA should be undertaken with changes introduced in phases. The recommended approach for redrafting is to employ principles, wherever possible, supported by detailed rules where necessary.

For change to be successful, the Ontario Pension Regulator must involve the regulated bodies in the development of principles and their interpretation. OMERS welcomes the opportunity to work with the government on this important initiative.

# 2.5

## Supporting Consolidation

### **OMERS Submission to Expert Commission**

In our submission to the Commission, we noted that OMERS experience supports the Commission's notion of encouraging the consolidation of smaller pension plans, either with compatible large partners, or by pooling their resources with similar-sized funds. We also highlighted that other pension funds could benefit from having funds like OMERS, with its investment expertise, assume responsibility for investing their pension assets. In particular, smaller funds could benefit from asset diversification, risk management, enhanced returns and economies of scale not currently available to them.

## Supporting consolidation

### Expert Commission Recommendations

The Commission's report recognizes the appeal of the Multi-employer Pension Plan (MEPP) model, and stresses the value added by plans serving larger numbers of employees rather than fewer. It recommends that steps be taken to encourage cooperation among existing smaller plans.

*Harry Arthurs states*, "In general, I have preferred solutions that favour more plan members over those that favour fewer, solutions that enhance long-term system stability over those that produce occasional advantages for one party or the other, and those that make for clarity over those that contribute to ambiguity and uncertainty." (p.56)

When speaking about promoting larger plans, he points out, "... spreading certain risks across large populations results in more predictable outcomes and less volatility. Examples of these variables include life expectancy and age at retirement. This size advantage is compounded along almost every vector of plan success. For example, large plans pay far lower fees on their investments than small ones..." (p.183, 9.3)

*Arthurs goes on to say*, "...lower investment fees are but one of the many advantages enjoyed by large plans over smaller ones and over individual savers. In terms of income generation, large plans are in a position to hire expert staff to initiate and execute their investment strategies, to make attractive private placements of their investment funds, and to spread the investment risk by acquiring a wider range of investment vehicles. In terms of administrative expense, large plans are able to reduce their unit costs of administration by spreading them across a large plan membership, and they are typically able to offer members enhanced levels of information, education and service.

Finally, large plans are more likely to survive than smaller ones, if only because the enterprises (or groups of enterprises) that sponsor them are likely to be more stable or resilient than those that sponsor small plans. The cumulative effect of all of these advantages is extremely significant. It is so significant, in fact, that plan size may be a greater determinant of a member's pension than plan design." (p.184)

In proposing a new strategy for Ontario's occupational pensions system, the Commission's report suggests, "...the government would have to allow Ontario's existing large plans to amend their membership criteria and mandates...a fairly simple procedure should be established to make it possible for them to broaden the scope of their activities and the qualifications for plan membership, if they wish to do so. For example, large plans should be allowed to offer investment services to smaller plans and sell investment vehicles to individuals. Many of these plans, I believe, would welcome such an opportunity, as they are reaching a point of maturity past which their future net cash flows will shrink, and their ability to undertake new investments will be severely reduced. Without new members and new cash flow, their existing investment expertise will be under-utilized and, ultimately, difficult to sustain." (p.186)

## Supporting consolidation

We have grouped the Expert Commissions recommendations on consolidation and innovation under three categories:

### 1. Creating the Ontario Pension Agency (OPA)

#### Expert Commission Recommendation 5-2:

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

### 2. Creating New Benefit Plans

#### Expert Commission Recommendation 9-2

*Pension policy and legislation ought to facilitate the growth and operation of large-scale pension plans or to enable and encourage cooperation among small- and medium-sized plans.*

#### Expert Commission Recommendation 9-3

*Legislation and regulations should be enacted to enable and promote large commingled target benefit plans that might provide affordable pension coverage to Ontarians who do not presently have pensions or for whom the costs of obtaining a pension are unnecessarily high.*

### 3. Providing Enhanced Pension Coverage

#### Expert Commission Recommendation 9-4

*The government of Ontario should investigate the advantages and disadvantages of expanding the mandate of the Canada Pension Plan, or creating a comparable provincial plan, so as to enhance pension coverage, control costs and improve benefit portability.*

#### Expert Commission Recommendation 9-5

*The government of Ontario should support the call for a national pension summit whose agenda should extend to all ideas for significantly expanding pension coverage, including the innovative proposals contained in this report.*

## OMERS Response

OMERS agrees strongly with the Commission's position that, where the pension market is concerned, there is strength in numbers. Various forms of consolidation would enable the Ontario pension marketplace to achieve economies of scale that would make the plans more competitive and would benefit all plan participants. The OMERS model personifies economies of scale in plan administration and pension fund investing, and in attracting talented professionals on both sides of the business. And we see a number of ways for existing pension plans, as well as employees not currently covered by a pension plan, to benefit from OMERS model through consolidation, including:

### Consolidating Plan Management

OMERS experience supports the Commission's notion of encouraging consolidation by pooling the resources and management of independent pension plans. This form of consolidation allows both parties to benefit from the added economies of scale, sharing in costs and the pooling of capital for investment purposes, while keeping separate governance structures intact. OMERS believes that many smaller plans can benefit from the kind of administration efficiency and investment expertise that is available from larger plans. Under the *OMERS Act, 2006*, OMERS has the authority to administer additional pension plans or pension funds on a third-party basis. OMERS currently provides third-party fund management to two other plans, Ryerson University and Transit Windsor.

### Consolidating Membership

As a Multi-employer Pension Plan (MEPP), the OMERS Plan was created in 1962, in part through the merger of a number of existing municipal pension plans in Ontario. It was understood at that time that there were significant advantages for local governments and their employees across Ontario, to be gained by pooling pension plan activities under one pension plan. OMERS has continued to evolve and grow through consolidation as new groups have joined the plan over the years.

## *Supporting consolidation*

Consolidation under one pension plan has reduced overall administration and investment management costs across the “system,” and has provided consistent, uninterrupted pension benefit coverage to employees who move from one participating employer to others throughout their careers. In its report, the Commission cites the OMERS Pension Plan as a useful model when combining MEPPs.

In addition, the Commission has made a number of broad recommendations to maintain and ultimately expand pension coverage, through various forms of consolidation.

### **1. Creating the Ontario Pension Agency (OPA)**

By establishing an Ontario Pension Agency (OPA) (Expert Commission Recommendation 5-2) to receive, pool, administer, invest and disburse stranded pensions in an efficient manner (on plan wind-up or change of employment), the Commission provides a focus for those plan participants who have, until now, not had a strong voice representing them. During a breakfast session on November 21, 2008, hosted by the Commission, Harry Arthurs mentioned that there may be an opportunity for one of the large pension plans, for example OMERS or the Ontario Teachers’ Pension Plan, to take a role in the ongoing administration and investment management of the OPA.

OMERS supports the concept of a central agency that would act as a data warehouse and provide a tracking function for information on stranded pensions. By pooling resources, and keeping agency costs low, the entire pension industry would benefit. It will be important to consider various models for containing agency costs, including outsourcing administration and investment management to one or more of the large pension funds. To this end, OMERS would be very receptive to exploring ways to share the benefits of our efficient operating model with the OPA.

OMERS believes that it should not be mandatory for pension plans to move stranded benefits to the OPA. While OMERS would not benefit from sending stranded benefits and their associated assets to the OPA, we do see the benefits of sharing data with the OPA, so that there would be one central spot for former pension plan members, including former OMERS members, to locate their stranded benefits.

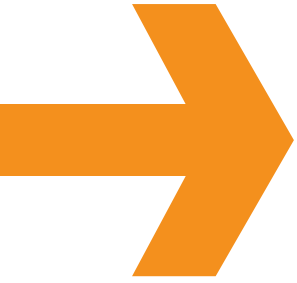
### **2. Creating New Benefit Plans**

OMERS welcomes the Commission’s recommendations (Expert Commission Recommendations 9-2 and 9-3) to explore new ways to offer pension coverage to Ontarians who do not now have pension coverage, or where their coverage is costly.

In exploring the options, full consideration should be given to pooling administration and investment activities with one of the large public sector pension plans like OMERS, in order to maximize the opportunity to enhance benefit coverage and stability for any new plans established.

### **3. Providing Enhanced Pension Coverage**

OMERS supports the Commission’s recommendation (Expert Commission Recommendation 9-4) to explore expanding the mandate of the Canada Pension Plan (CPP) or create a comparable provincial plan to enhance pension coverage, control costs and improve benefit portability; however, participation should be voluntary. Once again, any new model considered should fully embrace the benefits of consolidation. For example, an expanded CPP could leverage from the existing administration and investment management activities that CPP already has in place. If a new provincial plan was established in Ontario, full consideration should be given to outsourcing pension administration and investment management activities to one or more of the large public sector plans.



### *Supporting consolidation*

OMERS fully supports the need to maintain the momentum in pension reform triggered by the Commission's report. Now more than ever, Canadians are looking for leadership to pave the way for their financial security in retirement. A national pension summit (Expert Commission Recommendation 9-5) would send a positive message that the issues are being addressed and that decision-makers are looking for answers. However, while dialogue is important, the real need is for action. The scheduling of a pension summit should not cause the government to delay making changes to the pension landscape.

### **OMERS Proposed Action #5**

Immediate steps should be taken to implement the Commission's recommendations that support consolidation across the industry. Consolidation can bring significant and widespread benefits to Ontario's pension system. And the current economic climate dictates the need to pave the way now for a more flexible environment to allow smaller pension plans to remain sustainable – and larger plans to grow.

# Summary – OMERS Proposed Actions...

## 3

### Summary of OMERS recommendations in response to *A Fine Balance*, the report of the Ontario Expert Commission on Pensions

#### Immediate Priority Actions

**1** Exempt public sector jointly-sponsored pension plans from the Quantitative Investment Restrictions – by immediately amending the *Pension Benefits Act (PBA)* regulations.

**2** Exempt public sector jointly-sponsored pension plans from the Solvency Funding Requirement – by immediately amending the PBA regulations.

#### Other Priority Actions

**3** Make change happen by establishing an effective regulatory framework – starting by establishing the Pension Champion and the Ontario Pension Regulator to begin creating an effective structure for pension reform.

**4** Adopt a principles-based approach wherever possible to drafting – starting with a principles-based “prudent person” approach for investment of pension funds.

**5** Implement the Ontario Expert Commission on Pensions’ recommendations supporting consolidation of the pension industry.

# Appendices

## 4

### **Additional specific responses and comments**

We have included additional specific responses and comments in our three appendices. These address a number of technical issues, as well as the Expert Advisors' Consensus Recommendations. The Expert Advisors identified a number of very important recommendations, such as providing pension plans with access to the provincial government death registry, to enhance the efficiency of plan administration.

## Appendix A

Overview: In our submission to the Commission in October 2007, OMERS made recommendations on four technical issues. In the following chart we restate our submission recommendation, highlight the corresponding recommendation(s) from the Commission and conclude with our response.

### Asset Transfers/Divestment

OMERS Submission	Expert Commission Recommendation(s)	OMERS Response
<p>The regulations under the <i>Pension Benefits Act</i> be amended to permit the Superintendent to consent to a pension asset transfer between pension plans under subsections 80(5) and 81(5) of the <i>Pension Benefits Act</i> provided that: (i) affected members are provided with full disclosure; (ii) members and/or bargaining agents have the right to opt out of group asset transfers; and (iii) the value of benefits transferred on behalf of affected members is at least equal to the value of benefits under the exporting plan, calculated using consistent and appropriate actuarial assumptions, in accordance with a report prepared by an actuary.</p>	<p><b>Recommendation 5-4:</b>  <i>When individual or group transfers from one plan to another are contemplated, the importing plan should provide a detailed statement of the benefits to be provided. Each transferee should be given four options:</i></p> <ol style="list-style-type: none"> <li>1 <i>as a default option, to accept the asset transfer and begin future accruals in the importing plan, provided it offers benefits of comparable aggregate value to those provided under the exporting plan;</i></li> <li>2 <i>to remain as a deferred member of the exporting plan;</i></li> <li>3 <i>to transfer the value of the first pension to the Ontario Pension Agency; or</i></li> <li>4 <i>to transfer the value to a locked-in account.</i></li> </ol> <p><i>If active plan members are represented by a union or similar organization, it may accept one option on behalf of all members, or allow each member to exercise one or more of the options provided.</i></p> <p><i>The value of benefits provided by an “importing” plan should be deemed to be “comparable” to those provided by an “exporting” plan for purposes of the default option, if (a) approved by the Superintendent as approximating the aggregate collective value of such benefits, notwithstanding differences in the nature, value or terms of individual benefits, or (b) agreed to by a union representing active plan members affected by the transfer.</i></p> <p><b>Recommendation 5-5:</b>  <i>The government should promptly address the pension arrangements for groups of public service employees affected by past divestments and transfers, whether by allowing these groups to use the group asset transfer process proposed in Recommendation 5-4, or by other means, including negotiations with their representatives.</i></p>	<p>The Commission recognizes the importance of facilitating asset transfers from one plan to another. With the following modifications, we support the Commission’s recommendations.</p> <ul style="list-style-type: none"> <li>• The requirement that “the value of the benefits provided in the ‘importing’ plan should be deemed to be ‘comparable’ to those provided by the ‘exporting’ plan” is an unnecessary restriction which will negatively impact portability. The transfer should be more aligned with the process for reciprocal and commuted value transfers where the emphasis is on the value of the benefits being transferred from the exporting plan. As indicated in our submission, the value of the benefits transferred on behalf of affected members must be at least equal to the value of the benefits under the exporting plan, calculated using consistent and appropriate actuarial assumptions, in accordance with a report prepared by an actuary. This gives members the flexibility to consolidate their pension service under the new plan or choose one of the other options provided.</li> <li>• The recommendation should clearly reference group transfers under 80(5) and 81(5) of the <i>Pension Benefits Act (PBA)</i>. The reference to “individual” transfers should be removed.</li> <li>• It is premature to reference the Ontario Pension Agency – this reference should be removed.</li> </ul> <p><b>Action:</b>  As the Commission pointed out, the present regulatory impediments to group transfers are inappropriate and should be changed. In addition, PBA changes should also allow retroactivity for members who are active as at the effective date of a transfer agreement. The government should move quickly to implement the changes to sections 80(5) and 81(5) of the PBA.</p>

## Division of Pensions on Marriage Breakdown

OMERS Submission	Expert Commission Recommendation(s)	OMERS Response
<p>1. A new statutory scheme should be created (by means of amendments to both the <i>Pension Benefits Act</i> and the <i>Family Law Act</i> (the “FLA”) to permit pensions to be valued and divided with finality and certainty at the time of relationship breakdown</p> <p>2. The valuation rules for family law purposes (i.e., determining the value of the pension asset on the valuation date) and pension law purposes (i.e., determining the amount of the member’s pension that can be assigned under the <i>Pension Benefits Act</i>) should be the same and should be clearly prescribed by regulation. OMERS recommends that value be calculated using the commuted value basis prescribed under the regulations in the <i>Pension Benefits Act</i>.</p> <p>3. If parties choose to settle equalization claims by accessing the member’s pension asset, the application to the plan administrator to value and divide the member’s pension should be on a prescribed form.</p>	<p>This technical issue was not addressed by the Commission’s report.</p>	<p>On November 24, 2008, the Attorney General introduced Bill 133 (<i>the Family Statute Law Amendment Act, 2008</i>). Bill 133, as it currently reads, proposes amendments to both the PBA and the <i>Family Law Act (FLA)</i> which are in line with OMERS submission recommendations. This is a positive first step.</p> <p><b>Action:</b> It is important that the PBA regulations that accompany Bill 133 be consistent with existing valuation rules used by plan administrators for other purposes. As indicated in our submission, this would decrease the administrative burden and cost for administrators (and by extension other plan members) while at the same time increasing predictability for members and their families.</p>

## Changes to Support Phased-In Retirement

OMERS Submission	Expert Commission Recommendation(s)	OMERS Response
<p>The <i>Pension Benefits Act</i> should be reviewed and amended as required to permit sponsors of Ontario-registered pension plans to make the plan amendments required to permit employers and members to take advantage of appropriate models of phased-in retirement.</p>	<p><b>Recommendation 5-10:</b>  <i>The Pension Benefits Act should be amended to provide for phased retirement as contemplated by the Income Tax Act.</i></p>	<p>We are pleased to see that the Commission endorsed OMERS recommendation regarding phased-in retirement.</p> <p><b>Action:</b>            The province should bring to the attention of the federal government the need to recognize that members in public safety occupations can retire early at age 50. As defined benefit plans are complex, it is critical that the government consult with defined benefit plans administrators, and stakeholders, to determine the appropriate phased-in retirement model.</p>

## Removing Barriers to Flexible Plan Design

OMERS Submission	Expert Commission Recommendation(s)	OMERS Response
<p>OMERS recommends that the <i>Pension Benefits Act</i> be reviewed and amended as required, to permit multi-plan systems such as OMERS to administer multiple plans on a per member basis, rather than on a per-plan basis.</p>	<p>There was no specific recommendation in the Commission's report to address OMERS recommendation.</p>	<p>While there were no direct recommendations related to our submission, we are pleased that the Commission has recognized the need to facilitate innovation in plan design. These innovations are outlined in section 2.5 of this report.</p>

## Appendix B – Additional Comments on Specific Commission’s Recommendations

Overview: The chart below provides additional comments that have not been covered elsewhere in our document. There is limited detail in the recommendations, so it will be important for the government to solicit further input before drafting the legislation.

### Funding Recommendations

Expert Commission Recommendation(s)	OMERS Response
<p><b>Recommendation 4-1:</b>  <i>The Superintendent should work with the Canadian Institute of Actuaries to ensure that actuarial standards and practices continue to evolve in the direction of greater transparency and more structured discretion. For example, actuarial valuations should reveal the reasons behind the assumptions used in valuations to set discount rates and to select the mortality trends used to calculate plan liabilities. They should also reveal whether the sponsor intends to take a contribution holiday.</i></p>	<p>OMERS already reveals much of the information specified in the recommendation.</p>
<p><b>Recommendation 4-2:</b>  <i>The Superintendent should have the power to require that plans cease using assumptions that are unreasonable or that depart materially from accepted actuarial practice, and to order an independent valuation or peer review of a report, at the expense of the plan, if there are grounds to believe that the actuarial valuation misrepresents a material factor in its funding.</i></p>	<p>OMERS supports this recommendation. We assume that the Superintendent will work closely with the Canadian Institute of Actuaries to establish the associated guidelines.</p>
<p><b>Recommendation 4-4:</b>  <i>The current requirement for an actuarial valuation every three years should be maintained. The time for filing the valuation after it is due should be reduced from nine to six months. Extensions should be given only in exceptional circumstances.</i></p>	<p>OMERS does not support the recommendation to reduce the time for filing an actuarial valuation from nine to six months. This does not allow sufficient time for OMERS to make decisions related to contributions and benefits.</p>
<p><b>Recommendation 4-8:</b>  <i>MEPPs, JSPPs and SEPPs should have separate funding rules related to their distinctive characteristics. In general, MEPPs and JSPPs should be allowed more flexibility in funding, while SEPPs should be subject to stricter rules than other plans.</i></p>	<p>OMERS strongly supports this recommendation.</p>
<p><b>Recommendation 4-21:</b>  <i>The government should proclaim in force the provisions of the Pension Benefits Act that allow it to require that pensions be inflation-adjusted in accordance with a formula to be prescribed. That formula should be restricted to “inflation emergencies.”</i></p>	<p>Prescribing a formula for inflation emergencies greatly reduces a plan’s funding flexibility.</p>

## Funding Recommendations (continued)

Expert Commission Recommendation(s)	OMERS Response
<p><b>Recommendation 4-22:</b>  <i>Irrevocable letters of credit should be permitted as security for a fixed proportion of contributions owing to a plan, and for a maximum period of time, provided they are enforceable by the plan and immune from inclusion in the sponsor's estate in the event of insolvency. The Superintendent should have no power to relieve against these requirements either before or after the fact.</i></p> <p><i>After five years, experience with letters of credit should be reviewed by the regulator. If no difficulties are found, they should be made available as a permanent feature of pension funding in Ontario.</i></p>	<p>We understand that letters of credit under Recommendation 4-22 and asset pledges under Recommendation 4-23 were recommended to serve as solvency relief for SEPPs and therefore would have no application for going concern funding requirements of a JSPP.</p>
<p><b>Recommendation 4-23:</b>  <i>Ontario ought to investigate the possibility of permitting the use of asset pledges to provide security for unpaid contributions to pension funds, and to define the purposes for which, and the conditions under which, such pledges might be used. If asset pledges seem useful for sponsors, safe for pension plans and capable of being overseen by the regulator, their use ought to be allowed for an initial period of five years, subject to renewal on a permanent basis if experience warrants.</i></p>	<p>We understand that letters of credit under Recommendation 4-22 and asset pledges under Recommendation 4-23 were recommended to serve as solvency relief for SEPPs and therefore would have no application for going concern funding requirements of a JSPP.</p>
<p><b>Recommendation 4-24:</b>  <i>The Ontario government should endeavour to persuade the federal government to increase benefit and contribution levels for registered pension plans under the Income Tax Act, and to consider policies that encourage participation by workers and employers in DB plans or their functional equivalents.</i></p>	<p>OMERS strongly supports this recommendation. The <i>Income Tax Act (ITA)</i> limits were frozen from 1995 to 2003 and no “catch-up” adjustments have been made since then. The current limits continue to fall short of being sufficient, fair and equitable. This recommendation should make the allowable level of tax-assisted retirement savings in Canada more comparable to other countries. This recommendation will also allow for greater flexibility in plan design as outlined in Section 2.5 of this document.</p>

## Workforce Mobility

Expert Commission Recommendation(s)	OMERS Response
<p><b>Recommendation 5-3:</b>  <i>Sponsors should be required to develop a standard policy for dealing with newly hired employees who seek pension credit for service during employment with a previous employer. The policy should state whether such credit will be given and, if so, on what terms, and should be made available to all such employees.</i></p>	<p>OMERS supports this recommendation.</p>
<p><b>Recommendation 5-11:</b>  <i>All active plan members should be immediately vested for all accrued pension benefits. However, as at present, the plan administrator should retain the discretion to authorize the payment out of small amounts in specified circumstances.</i></p>	<p>The OMERS Pension Plan already incorporates immediate vesting.</p>
<p><b>Recommendation 5-12:</b>  <i>Active plan members who are involuntarily terminated, whether in groups or individually, while a plan is ongoing, should not be entitled to an immediate distribution of surplus. However, those who leave their pension assets in the plan should retain the right to participate in any subsequent surplus distribution.</i></p>	<p>We require clarification as to the intent of the recommendation and whether this applies to MEPPs/JSPPs.</p>
<p><b>Recommendation 5-17:</b>  <i>Any surplus in a plan that is to be split (the “original plan”) can be allocated to any of the new plans derived from it, provided that the liabilities associated with the original plan and all of the derivative plans remain fully funded (including the 5% security margin) as of the date of completion of the transaction.</i></p>	<p>We require clarification as to whether this recommendation applies to MEPPs/JSPPs.</p>
<p><b>Recommendation 5-18:</b>  <i>Any surplus in a plan that is to be merged with another plan can be assigned to the merged plan, provided that the members of the original plan remain in the new merged plan, and that the merged plan itself is fully funded (including the 5% security margin) as of the date of completion of the transaction.</i></p>	<p>We require clarification as to whether this recommendation applies to MEPPs/JSPPs.</p>

## When a Plan Fails

### Expert Commission Recommendation(s)

**Recommendation 6-1:**

*The Superintendent should have the power to establish benchmarks that identify plans “at risk of failure;” to order additional valuations and reports by such plans, if the benchmarks are met; and to require such valuations and reports to be conducted or reviewed by independent auditors and actuaries, or by auditors, actuaries or other staff of the pension regulator, at the cost of the sponsor.*

**Recommendation 6-6:**

*The regulator should create an office of compliance to deal with the failure of sponsors to remit contributions and other violations of the Pension Benefits Act that imperil the security of pension plans and impede regulatory oversight of the pension system. That office should also maintain, for its own purposes and for the benefit of interested parties, an online register of delinquent sponsors and other offenders, and the measures taken to deal with them.*

### OMERS Response

We require clarification as to whether this recommendation applies to JSPPs. If the recommendation does apply to JSPPs, consultation will be important to establish an appropriate benchmark.

The employer is responsible for remitting contributions to the plan administrator. It is not clear whether this recommendation applies to JSPPs.

## Regulations and Governance

Expert Commission Recommendation(s)	OMERS Response
<p><b>Recommendation 7-10:</b>  <i>The pension regulator should have power to provide opinion letters and advance rulings in connection with proposed or pending transactions. The regulator should feel free to disregard such letters or rulings in subsequent proceedings if the applicant has not made full disclosure of relevant facts; if they adversely affect other parties who have not had a prior opportunity to be heard; or if they contravene legal rules or regulatory policies that were not in force when the letter or ruling was issued.</i></p>	<p>We are pleased to see that the pension regulator will have the power to provide opinion letters and advance rulings. However, the regulator should only be able to ignore its rulings in subsequent proceedings if there are compelling circumstances. The failure of the applicant to fully disclose relevant facts would be considered a compelling circumstance.</p>
<p><b>Recommendation 7-15:</b>  <i>The Pension Benefits Act should grant the Superintendent power to:</i></p> <ul style="list-style-type: none"> <li>• <i>hold hearings, require the production of documents and the giving of testimony, receive and rely on valuations and reports submitted in the regular course of his or her oversight functions, and order the preparation of and rely upon special valuations and reports;</i></li> <li>• <i>make interim orders with effect for not more than 30 days – unless extended by the proposed Pension Tribunal of Ontario – on the basis of written documents, valuations, reports and submissions, where necessary to preserve the assets of a pension plan; and</i></li> <li>• <i>make any final order necessary to secure compliance with the Act or with regulations and rules made pursuant to the Act.</i></li> </ul> <p><i>The Superintendent should provide all affected parties with as full a right to be heard as is feasible given the urgency of the situation.</i></p> <p><i>Orders of the Superintendent should be enforceable by the Pension Tribunal of Ontario. All decisions and orders of the Superintendent should be subject to appeal to the Tribunal.</i></p>	<p>This recommendation requires further consultation, as it could be far-reaching. The overall objective in increasing the power of the Superintendent should be to help the plan become compliant. The approach to and methods of securing compliance need to be reasonable and practical, with the opportunity for the plan administrator to correct oversights.</p> <p>Note: The Superintendent should not have the power to compel the production of privileged documents. See OMERS Response under 7-31 for further details.</p>
<p><b>Recommendation 7-31:</b>  <i>The Tribunal should have plenary power, upon enforcing or hearing an appeal from any order made by the Superintendent, to make any order required to secure compliance with the Pension Benefits Act, including but without limiting its general power, the power to:</i></p> <ul style="list-style-type: none"> <li>• <i>require the doing of any act required by the statute and the cessation of any act forbidden by it;</i></li> <li>• <i>order the payment of contributions, benefits or premiums wrongly withheld, together with interest thereon;</i></li> <li>• <i>require the disclosure of information and the provision of documents to the regulator, active and retired plan members, unions and representative organizations and others entitled to such information or documents; and</i></li> <li>• <i>impose administrative fines for non-compliance with the Pension Benefits Act.</i></li> </ul> <p><i>Any order of the Tribunal may be registered in the Ontario Court of Justice and enforced as an order of that Court.</i></p>	<p>The Tribunal should not have the power to compel the production of privileged documents. If a party to a proceeding agrees to produce a privileged document, that production should be on the basis that it is a limited waiver of privilege between the party and the regulator, and that it does not operate as a waiver of privilege against any other person, including any other party to the proceeding.</p>

## Regulations and Governance (continued)

Expert Commission Recommendation(s)	OMERS Response
<p><b>Recommendation 8-4:</b>  <i>Multi-employer and jointly sponsored plans should develop governance policies that ensure participation of representatives of both active and retired members in their governance, establish the means of selection of those representatives, fix their remuneration and lay down rules governing their conduct in office.</i></p>	<p>OMERS supports the recommendation that plans create a comprehensive governance manual.</p>
<p><b>Recommendation 8-5:</b>  <i>Multi-employer and jointly sponsored plans should provide annual statements to all active, deferred and retired plan members, which include:</i></p> <ul style="list-style-type: none"> <li>• <i>a statement of the plan’s current funded status;</i></li> <li>• <i>a reminder that benefits provided under the plan are not defined or guaranteed but subject to reduction while the plan is ongoing (in the case of multi-employer plans) or on windup (in the case of jointly sponsored plans);</i></li> <li>• <i>disclosure of any known events likely to lead to a reduction in benefits; and</i></li> <li>• <i>an indication of any procedure or formula specified by law or in the plan documents by which benefit reduction may be determined.</i></li> </ul>	<p>OMERS supports disclosure, and currently provides statements to deferred and retired members. However, without further clarification, it is difficult to determine whether it is reasonable to require “disclosure of any known events likely to lead to a reduction in benefits.”</p> <p>This recommendation could impact a plan’s procedures when plan changes are being contemplated.</p>
<p><b>Recommendation 8-7:</b>  <i>All policies, statements or reminders required by current law or provided by multi-employer and jointly sponsored plans pursuant to these recommendations should be communicated to plan members and beneficiaries and filed with the regulator. The regulator should have the power to sanction violations of both statutory requirements and plan policies.</i></p>	<p>OMERS supports disclosure and sanction of violations. However, without further clarification, it is difficult to determine how broad “all policies, statements or reminders” will be and whether it is appropriate.</p>
<p><b>Recommendation 8-10:</b>  <i>Plans that appoint active or retired members to serve on their governing bodies should be encouraged to resolve potential conflicts of interest in advance by:</i></p> <ul style="list-style-type: none"> <li>• <i>adopting clear policy statements in the plan documents;</i></li> <li>• <i>ensuring the significant representation on those bodies of groups with divergent interests; or</i></li> <li>• <i>appointing some trustees or governors unaffiliated with any group whose members are covered by the plan.</i></li> </ul>	<p>OMERS generally supports this recommendation provided this approach is encouraged, not required. Further clarification is also needed with respect to the third point.</p>
<p><b>Recommendation 8-12:</b>  <i>The pension regulator and/or the proposed “Pension Champion” should initiate consultations with stakeholders and with representatives of the relevant professional governing bodies in order to ensure that their members provide services in the pension context in a manner consistent with the good governance and proper regulation of pension plans.</i></p> <p><i>These consultations should focus on rules governing the conduct of professionals in pension practice, and on the redesign of regulatory and governance structures and processes – in both cases, with a view to ensuring the honest and transparent administration of pension plans.</i></p>	<p>OMERS supports the consultation process.</p>

## Regulations and Governance (continued)

Expert Commission Recommendation(s)	OMERS Response
<p><b>Recommendation 8-13:</b>  <i>The pension regulator and/or the proposed “Pension Champion” should initiate consultations with stakeholders and with representatives of the relevant professional governing bodies in order to clarify:</i></p> <ul style="list-style-type: none"> <li>• <i>which participants in the governance of pension plans are bound by fiduciary duties;</i></li> <li>• <i>the scope of such duties;</i></li> <li>• <i>whether such duties can be assigned to professional advisors and agents;</i></li> <li>• <i>whether advisors and agents are themselves bound by the same duties; and</i></li> <li>• <i>whether fiduciaries, their advisors and agents can enter into exculpatory contracts and indemnification agreements in order to limit their liability to the client or third persons.</i></li> </ul>	<p>OMERS supports the consultation process. This recommendation could have far-reaching implications. It is important to clearly define the term “Agent;” for example, is a participating employer considered an “Agent”?</p>
<p><b>Recommendation 8-14:</b>  <i>Following such consultations, the pension regulator should draw up codes of best practice for the guidance of all participants in the governance process. The regulator should urge the governing bodies of professions whose members are involved in the pension field to:</i></p> <ul style="list-style-type: none"> <li>• <i>adapt this code to the particular circumstances confronted by their members;</i></li> <li>• <i>implement the code, as adapted, through revision of their own professional standards, if required; and</i></li> <li>• <i>educate – and if necessary discipline – their members in order to ensure compliance with the new standards.</i></li> </ul>	<p>OMERS supports this recommendation, including the ability for professional bodies to discipline their members, and further recommends that codes of best practice be included in a plan’s comprehensive governance manual.</p>
<p><b>Recommendation 8-15:</b>  <i>All persons responsible for providing valuations, reports or other documents that are filed with the regulator, or provided to active and retired plan members, should be required to certify that all such documents have been prepared in accordance with the law and with relevant professional standards.</i></p>	<p>OMERS agrees in principle with the recommendation. However, the wording in this recommendation is too broad. The following wording should be added:</p> <ul style="list-style-type: none"> <li>• “to the best of the person’s knowledge.”</li> </ul> <p>The following wording should be changed:</p> <ul style="list-style-type: none"> <li>• “Law” should become “governing legislation.”</li> </ul>
<p><b>Recommendation 8-16:</b>  <i>An early task for the proposed “Pension Champion” should be to consult with pension stakeholders, relevant professional bodies, educational institutions and the pension regulator with a view to determining what lay and professional participants in plan governance ought to know about pension plans and the pension system, how they might best acquire such knowledge, and to what extent its acquisition should be a necessary qualification for service as a trustee or administrator of, or advisor or service provider to, a pension plan.</i></p>	<p>OMERS supports this recommendation and further recommends that skills and qualifications of trustees and directors be included in a plan’s comprehensive governance manual.</p>

## Regulations and Governance (continued)

Expert Commission Recommendation(s)	OMERS Response
<p><b>Recommendation 8-17:</b>  <i>Following the consultations outlined in Recommendation 8-16, the “Pension Champion” ought to develop standards for educational programs for all participants in pension governance. The “Pension Champion” ought also to determine how educational programs should be provided and at whose expense, and whether acquisition of appropriate educational qualifications should be mandatory and, if so, for the performance of what functions.</i></p>	<p>See comments under 8-16 above.</p>
<p><b>Recommendation 8-18:</b>  <i>The regulator should develop codes of best practice to guide plan governors, administrators and their agents. These codes of best practice should be based on the experience of successful plans, disseminated across the pension system and used to give meaning to the general statutory requirements for “prudence,” “care,” “diligence” and “skill.”</i></p>	<p>It is not clear how this will be integrated with existing legislation. This appears to conflict with the principles-based approach, as it could introduce excess rules.</p> <p>Best practices may be different for SEPPs, MEPPs and JSPPs (as the Commission pointed out, one size does not fit all).</p>
<p><b>Recommendation 8-19:</b>  <i>The regulator should make available on-line to active and retired plan members and their authorized representatives – without charge but subject to security arrangements – all plan documents as well as triennial, annual or other valuations and reports required to be filed with the regulator.</i></p>	<p>OMERS believes that this recommendation is unnecessary. Many plans like OMERS already provide plan documents and reports on their websites. This recommendation would lead to a duplication of effort.</p>
<p><b>Recommendation 8-22:</b>  <i>Plan board members, governors or trustees should prepare, file with the regulator and make available to active and retired members at three-year intervals (or more often, if material changes have occurred) the plan’s detailed governance, funding and investment policies. Particulars of the matters to be addressed by these policies should be developed by the pension regulator in consultation with the stakeholders. Template policy statements should be developed for the assistance of smaller plans.</i></p>	<p>OMERS agrees in principle with this recommendation. However, it should more clearly define policies. For example, the recommendation should refer to the statement of investment policies and procedures rather than investment policies.</p>
<p><b>Recommendation 8-28:</b>  <i>The Pension Benefits Act should be amended to describe plan pensioners as “retired” rather than “former” plan members.</i></p>	<p>The recommendation changes the term “former member” to “retired member.” Former member is a term used in the <i>OMERS Act, 2006</i> re the composition of the SC and AC Board. If this recommendation is implemented it will require a housekeeping change to the <i>OMERS Act, 2006</i>. However, it should not impact the composition of the two boards as “former member” has been interpreted to mean “retired member.”</p>
<p><b>Recommendation 8-29:</b>  <i>Retired and deferred plan members should be assured effective access to all plan information available to active plan members.</i></p>	<p>Access to “all plan information” is a broad statement, which needs to be defined. Pension plan websites are an efficient and cost-effective communication tool, which should be considered “effective access.”</p>
<p><b>Recommendation 8-30:</b>  <i>Retired plan members should be eligible to participate in any plan governance process in which active plan members are eligible to participate. The extent of their representation and participation in governance should be determined by the governing body of each plan, but must be sufficient to ensure that their voice is heard and their interests protected.</i></p>	<p>OMERS supports this recommendation.</p> <p>The current composition of the AC and SC boards includes a retired plan member, as specified in the <i>OMERS Act, 2006</i>.</p>

## Appendix C – Expert Advisors’ Consensus Recommendations on Technical and Operational Issues

Overview: Our comments in Appendix C refer only to the issues contained in the report titled *Expert Advisors’ Consensus Recommendations on Technical and Operational Issues*. We have not conducted a full review of the *Pension Benefits Act (PBA)* and regulations to identify additional issues. A full review should be carried out as part of the recommendation to revise the PBA to articulate broad principles wherever possible, backed up where necessary by specific rules.

We have not commented on the following Expert Panel recommendations:

- Recommendations that do not affect jointly-sponsored pension plans (JSPPs); and
- Housekeeping recommendations which clarify existing wording. These do not appear to be critical changes.

PBA or PBA Regulations Section(s) Reference	Expert Advisors’ Issue and Recommendation	OMERS Response
<p><b>PBA s. 8:</b></p> <p><b>Section 8 deals with Registration and Administration: Administrator</b></p> <p>We assume that the Expert Advisors are referencing this section with a view to adding the responsibilities of the employer in addition to those of the administrator.</p>	<p><b>Issue:</b></p> <p>One of the significant problems with the current regulatory scheme is that it provides inconsistent treatment of plan administrators and employers; certain provisions of the PBA and the General Regulation appear to treat administrators and employers as the same entity, while other provisions may be interpreted to treat administrators as agents of the employer. For Multi-employer Pension Plans (MEPPs), these provisions can create confusion and difficulty.</p> <p><b>Recommendation:</b></p> <p><i>The legislation should clarify rights and remedies in the event a participating employer does not fulfill its responsibilities and a more expedited regulatory enforcement process should be adopted. If the plan administrator incurs costs as a result, in the end, the entire plan membership pays.</i></p>	<p>OMERS supports this recommendation. However, the clarification of roles should also apply to JSPPs. As with MEPPs, the JSPP plan administrator does not have an employment relationship with its members, and thus must rely on its participating employers to enrol members, collect and remit contributions and to provide such other information as is necessary for the administration of the plan.</p> <p>The last sentence of the recommendation requires clarification. We assume that it is providing the reason why there should be remedies applicable to the specific employer who does not fulfill its responsibilities – so that the entire plan membership does not incur the costs.</p> <p>Further consultation should occur to ensure that changes to the PBA do not impose an unreasonable burden on the employers and plan administrators.</p>
<p><b>PBA s. 22(4):</b></p> <p><b>Section 22(4) deals with Administration: Conflict of Interest</b></p> <p>This section states that an administrator (or member of an administrative committee/ board) shall not knowingly permit a conflict of interest.</p>	<p><b>Issue:</b></p> <p>It is unclear how this provision interacts with the “related party provisions” of the Federal Investment Rules (s.25, 26 and 17 of Schedule III).</p> <p><b>Recommendation:</b></p> <p><i>“Except as provided in the Act or Reg.” should be added to the beginning of s.22(4).</i></p>	<p>OMERS supports this recommendation.</p>

PBA or PBA Regulations Section(s) Reference	Expert Advisors' Issue and Recommendation	OMERS Response
<p><b>PBA s. 26(1):</b></p> <p><b>Section 26(1) deals with <i>Notice of proposed amendment</i></b></p> <p>Section 26(1) states that written notice should be provided to pension plan members who may be adversely affected by the registration of an amendment to the pension plan.</p>	<p><b>Issue:</b></p> <p>The Superintendent shall require notice to members of adverse amendments.</p> <p>In the <i>Kerry</i> case, the Court held that the plan administrator had a duty to give notice of a potentially adverse amendment.</p> <p><b>Recommendation:</b></p> <p><i>Notice of all amendments should be required before they will be registered, although they should then be able to be registered with an earlier effective date. The concept of an adverse amendment can then be removed from the Act.</i></p>	<p>This recommendation requires further consultation to fully understand the proposed process and to ensure that it is necessary in view of the recommendations related to the expanded role of the pension regulator (Chapter 7 of the Commission's report).</p>
<p><b>PBA s. 27 and 28:</b></p> <p><b>Sections 27 and 28 deal with Administration: Written Statements – Annual and Termination Statements</b></p> <p>Section 27 concerns the provision of written annual statements for plan members. Section 28 refers to written statements on termination of employment.</p>	<p><b>Issue:</b></p> <p>Sections 27 and 28 of the PBA state that the obligation for providing statements is solely that of the plan administrator. There needs to be a corresponding obligation on the plan member regarding confirmation or correction of data that pertains to the member and timely submission of changes.</p> <p><b>Recommendation:</b></p> <p><i>Plan members should be obligated to confirm and/or correct data that pertains to the member on a timely basis (including changes in marital status and pension splits).</i></p>	<p>OMERS supports the general principle of this recommendation as it is important that any inaccuracies are corrected as soon as possible. This would help ensure that there are no unforeseen issues at the time a benefit is paid from the plan. However, any changes need to be balanced and not impose unreasonable burden on members.</p>
<p><b>PBA s. 29:</b></p> <p><b>Section 29 deals with Administration: Availability of Documents for Inspection</b></p> <p>Section 29 refers to the requirement to make pension plan documentation available for inspection, without charge, by members, former members, relatives and their agents. It also details the permitted frequency and location of inspection.</p>	<p><b>Issue:</b></p> <p>Inspection of Administrator's Documents.</p> <p><b>Recommendation:</b></p> <p><i>Include a new provision prescribing time frames for records retention by plan sponsors. This can be accomplished by scanning and keeping documents electronically rather than in paper form.</i></p>	<p>OMERS supports this recommendation with the following modifications:</p> <ul style="list-style-type: none"> <li>• The Expert Advisors' Recommendation refers to record retention for plan sponsors only. The plan administrator and employer also retain pension plan documentation and should be included in the recommendation.</li> <li>• The last sentence of the recommendation requires clarification. The method in which the document is stored should not impact the timeframe, i.e., whether a pension plan administrator stores documents electronically or by paper should not impact the retention period. Also, the plan should not be required to store both paper and electronic copies, i.e., the electronic copy replaces the paper copy.</li> </ul>

PBA or PBA Regulations Section(s) Reference	Expert Advisors' Issue and Recommendation	OMERS Response
<p><b>PBA s. 35</b> <b>PBA regulation 24:</b></p> <p><b>Section 35 deals with Normal Retirement</b></p> <p>Section 35 refers to the normal retirement date and entitlement for any members who continue employment.</p> <p><b>Regulation 24 deals with Interest</b></p> <p>Regulation 24 specifies that the interest rate applied for Defined Benefit (DB) payments is the Canadian Socio-Economic Information Management System (CANSIM) series V122515 compiled by Statistics Canada, and available on the website maintained by the Bank of Canada, over a reasonably recent period such that the averaging period does not exceed twelve months. For Additional Voluntary Contributions (AVCs) the regulations specify that interest must be based on the rate of return as can reasonably be attributed to the operation of the pension fund or the part of the pension fund to which the contributions are made.</p>	<p><b>Issue:</b> Questions arise about how to treat pension payments that are delayed beyond the pension start date, e.g., whether they must be made retroactively to the pension start date and paid with interest.</p> <p><b>Recommendation:</b> <i>Payments should be made retroactively to the pension start date and be paid with interest.</i></p>	<p>OMERS pays the normal retirement pension payment retroactive to the pension start date (which is the later of the month following the member's normal retirement date [NRD] or the month following the member's actual retirement if the member works past his/her NRD). However, interest is not paid.</p> <p>If interest is applied, we agree that the use of the CANSIM rate is appropriate for late interest on pension payments. The timing of payments should be taken into consideration when determining the point from which late interest is to be paid (some plans pay at the end of the month and some pay in advance at the beginning of the month).</p> <p>At the time of payment, the AVC pension and the DB pension are combined. Consideration should be given to applying the CANSIM interest rate to the combined pension.</p> <p>This recommendation only addresses interest for normal retirement pensions. It does not recommend late interest for early retirement, disability and survivor pensions.</p>
<p><b>PBA s. 38(2):</b></p> <p><b>Section 38(2) deals with Benefit Determination: Membership Termination</b></p> <p>Section 38(2) indicates that, for the purpose of determining a benefit, a person who terminates his or her membership in a pension plan shall be deemed to have terminated his or her employment.</p>	<p><b>Issue:</b> Issues arise about the effective date of termination of membership under s.38.</p> <p><b>Recommendation:</b> <i>Expressly provide that the date of termination is the date the member ceases to be a member and not the date contributions cease.</i></p>	<p>The PBA section reference is shown as 38(2). It appears that the reference should be 38(1). It is not clear why this change is needed.</p>

PBA or PBA Regulations Section(s) Reference	Expert Advisors' Issue and Recommendation	OMERS Response
<p><b>PBA s. 48:</b></p> <p><b>Section 48 deals with Pre-retirement Death Benefits: Beneficiary Entitlement on Death</b></p> <p>Section 48 relates to the lump sum or deferred benefits entitlement of a member's, or a former member's, spouse following the death of the member.</p>	<p><b>Issue:</b></p> <p>Section 51(5) gives the former spouse the same options as are available to the member. However, on death it is the options available to the spouse that need to be provided to the former spouse.</p> <p>Note: s. 51(5) is the <i>Payment on Marriage breakdown</i> section.</p> <p><b>Recommendation:</b></p> <p><i>Clarify that a former spouse of the member who is entitled to a death benefit is entitled to the same options as the spouse.</i></p>	<p>OMERS recommends that no action be taken in light of Bill 133. If the immediate settlement approach articulated in Bill 133 is adopted, pre-retirement death benefit election options for a former spouse would likely cease to be an issue in the future.</p>
<p><b>PBA s. 50 (1):</b></p> <p><b>Sections 50 (1) deals with the Payment of Commuted Value Small Pensions (CVSP)</b></p> <p>Section 50(1) provides for the payment of a CVSP where the value of the pension is not more than 2 per cent of the Year's Maximum Pensionable Earnings in the year that the former member terminated employment.</p>	<p><b>Issue:</b></p> <p>Commuted Value</p> <p><b>Recommendation:</b></p> <p><i>Consideration could be given to reviewing the small benefit commutation limits for DB plans with a view to increasing them from the current limit of 2% of YMPE (which is currently \$898).</i></p>	<p>OMERS supports this recommendation. However, the amount should remain low so as to continue to support saving for retirement.</p>
<p><b>PBA s. 81:</b></p> <p><b>Section 81 deals with the Adoption of a new Pension Plan</b></p> <p>Section 81 describes what happens when there is the establishment of a successor pension plan by an employer, and the employer ceases to make contributions to the original pension plan.</p>	<p><b>Issue:</b></p> <p>No defined terms exist relating to Reciprocal Transfer Agreements.</p> <p><b>Recommendation:</b></p> <p><i>The terms of Reciprocal Transfer Agreements should be defined and include at least the following issues:</i></p> <ul style="list-style-type: none"> <li>• <i>Rights of spouses</i></li> <li>• <i>What reciprocity is required</i></li> <li>• <i>Canada Revenue Agency service credits</i></li> <li>• <i>What happens if transfer is to a jurisdiction without registration</i></li> </ul> <p><i>Consultation and discussion are required to establish the requirements.</i></p>	<p>It is not clear if the comments of the Expert Advisors are meant to cover transfers under s.81 or whether the reference should be to s.21. Section 81 would not likely be a reciprocal arrangement.</p> <p>If in fact the comments are meant to cover s. 21 of the PBA (reciprocal transfer agreement), this will impact the existing reciprocal transfer agreements. OMERS would like to be involved in the consultation and discussion of the requirements.</p>

PBA or PBA Regulations Section(s) Reference	Expert Advisors' Issue and Recommendation	OMERS Response
<p><b>PBA s. 113:</b></p> <p><b>Section 113 deals with <i>Time for Actions by Administrator</i>.</b></p> <p>We assume that the Expert Advisors are referencing this section with a view to adding the recommended timelines for responses by the Superintendent.</p>	<p><b>Issue:</b> There is currently no time limit on the Superintendent to take actions.</p> <p><b>Recommendation:</b> <i>The Superintendent should be required to take an action under the Act or Regulations within a prescribed period of time.</i></p>	<p>OMERS strongly supports this recommendation. This will require changes to other sections of the PBA, where the Superintendent is required to take action, to specify the “prescribed period of time.”</p>
<p><b>Regulations 41, 42, 43 and 44:</b></p> <p><b>Regulation 41 refers to the Termination Statement – Deferred</b></p> <p><b>Regulation 42 refers to the Termination Statements – Refunds</b></p> <p><b>Regulation 43 refers to Death/Survivor Benefits Statement</b></p> <p><b>Regulation 44 refers to Termination Statement – Retirement</b></p>	<p><b>Issue:</b> Time Lines</p> <p><b>Recommendation:</b> <i>The time frames for providing statements, the period for the election and the period for payment should be consistent with other pension regulators across the country. The following time lines are suggested:</i></p> <ul style="list-style-type: none"> <li>• <i>60 days for statements from the Administrator</i></li> <li>• <i>90 days for member election</i></li> <li>• <i>60 days for administrator to provide settlement</i></li> </ul>	<p>OMERS supports this recommendation to introduce consistency with other pension regulators. However, the current timeframes are also acceptable.</p> <p>There are issues with the current regulations related to the point from which the timeframes apply, especially where the plan administrator is not the employer:</p> <ul style="list-style-type: none"> <li>• The plan administrator must rely on the employer to advise of the cessation of employment and to provide the final financial information needed to produce the election form. For this reason, it is important to clarify the date from which the timeframe is measured for member events (retirements, terminations and deaths). In all cases the wording should be consistent – it should specify “x” days after the date that the plan administrator receives the completed notice of the event. Currently the wording varies for the different events and assumes that for terminations and retirements the administrator is advised prior to employment ceasing. Receiving advance notice from the employer of cessation of employment is not a common practice, especially with terminations. Also, election forms must indicate the benefit amount (where applicable) – the administrator requires final financial information in order to provide accurate figures and this would not normally be available in advance of termination of employment.</li> <li>• Similarly the timeframe for settlement should be counted from the point that the plan administrator receives the completed election form together with supporting documentation from the member or beneficiary.</li> </ul> <p>A timeframe is recommended for the member election. If a timeframe is introduced, the regulations would need to specify what happens if the member does not make an election within the timeframe.</p>

PBA or PBA Regulations Section(s) Reference	Expert Advisors' Issue and Recommendation	OMERS Response
<p><b>PBA Regulations R. 45(1):</b></p> <p>Regulation 45(1) deals with <i>Information available on request</i>.</p>	<p><b>Issue:</b> Elections</p> <p><b>Recommendation:</b> <i>Provide that a member who makes an election under regulation 42 or is entitled to elect under regulation 51 shall deliver a completed direction to the administrator within 90 days after receipt of notice of termination.</i></p>	<p>Clarification is required. It is not clear why the Direction to Administrator is mentioned under this section as information available on request is information provided by the administrator rather than information provided to the administrator. Also, reference to regulation 51 appears to be incorrectly cited.</p> <p>This is similar to the recommendation made above (regulation 42). The Direction to Administrator is just one of the supporting documents that must accompany the member's election form. For consistency this recommendation should be reviewed as part of the changes to regulation 42 above.</p>
<p><b>New Regulation to be added (Notice on Asset Transfers)</b></p>	<p><b>Issue:</b> Notice of Asset Transfers</p> <p><b>Recommendation:</b> <i>The requirements to be included in the notice to members for asset transfers in the PBA should be prescribed.</i></p>	<p>OMERS would like to be consulted regarding appropriate wording should this recommendation move forward.</p>
<p><b>NEW</b></p>	<p><b>Issue:</b> One of the ongoing monitoring efforts that pension plans should undertake on a regular basis is to verify that the right people are receiving payments. As survivors of deceased pensioners do not always notify the plan administrator, it would be useful and more cost efficient if pension plans could have access to the provincial death registry. This access is currently denied to virtually all pension plans. Removing this governmental restriction would improve the accuracy of ensuring the proper amount is paid to the proper recipient and will result as well in more efficient service such as less retroactive recovery of overpayments to survivors of pensioners.</p> <p><b>Recommendation:</b> <i>Pension plans should have access to the provincial government death registry to ensure the accuracy of their beneficiaries list.</i></p>	<p>OMERS strongly supports this recommendation. As indicated by the Expert Advisors, providing access would result in efficiencies for the plan administrator and ensure that death benefits are paid to the correct beneficiary in a timely fashion.</p> <p>This is a standalone recommendation that should move forward as soon as possible.</p>
<p><b>Table of Contents</b></p>	<p><b>Recommendation:</b> <i>Improve Table of Contents to the PBA and Regulations.</i></p>	<p>OMERS strongly supports this recommendation. It would make it easier to reference the PBA and regulations.</p>





[www.omers.com](http://www.omers.com)  
One University Avenue  
Suite 800  
Toronto ON M5J 2P1  
Phone: 416-369-2400  
Toll-free number: 1-800-387-0813