



February 23, 2009

The Honourable Dwight Duncan
Minister of Finance
c/o Pension and Income Security Policy Branch
5th Floor, Frost Building South
7 Queen's Park Crescent
Toronto, ON M7A 1Y7

Dear Minister:

It is with pleasure that I attach OPSEU's brief in response to the recommendations of Ontario's Expert Commission on Pensions.

OPSEU has had pensions at the top of our reform agenda since the early days of our Association – the Civil Service Association of Ontario. Indeed, we have always played an active role in government consultation on pensions: we submitted briefs to the Royal Commission on the Status of Pensions in 1981, the Parliamentary Task Force on Pensions in 1983 and the Friedland Task Force in 1987.

We particularly appreciate the direction of Professor Arthur's report in recognizing pensions as, fundamentally, a labour relations issue. Pensions have been a subject of controversy between labour and employers and to gloss over these different interests would not provide us a way forward. The Arthur's report not only addresses the difficult issues but claims to have achieved a 'fine balance' of interests. This is most necessary given the impact of the financial crisis on pension funds.

We also appreciate the departure from the 'one-size-fits-all' approach to pensions and the confirmation of joint governance as a critical step in the road towards responsible pension administration.

We look forward to continuing pension discussions on such a positive note with the Ontario government.

Yours truly,

Warren (Smokey) Thomas
President, OPSEU

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SUBMISSION TO

THE HONOURABLE
DWIGHT DUNCAN
MINISTER OF FINANCE
GOVERNMENT OF ONTARIO

ON THE REPORT OF
THE ONTARIO EXPERT
COMMISSION ON PENSIONS

FEBRUARY 2009



Ontario's union
Le syndicat de l'Ontario

The Ontario Public Service Employees Union represents over 125,000 workers in Ontario's direct and broader public service. OPSEU's members work in the Ontario Public Service; in Ontario's community colleges, universities and boards of education; in Ontario's liquor stores; in Ontario hospitals, ambulance services, community care and home care agencies, community health centres and public health units, community addiction services, long term care facilities, community mental health agencies, and laboratories and blood services; children's aid societies, developmental services, child treatment centres, child and family services, childcare centres and other community agencies.

We have many decades of pension plan activism and have had pensions at the top of our reform agenda since the early days of our Association – the Civil Service Association of Ontario. Indeed, OPSEU submitted briefs to the Royal Commission on the Status of Pensions in 1981, the Parliamentary Task Force on Pensions in 1983 and the Friedland Task Force in 1987. Subsequently, OPSEU achieved joint sponsorship of three of the larger plans in Ontario – the Hospitals of Ontario Pension Plan (HOOPP), the OPSEU Pension Trust (OPTrust) and the Colleges of Applied Arts and Technology (CAAT) Pension Plan. In addition, we act as a sponsor on the Sponsors Corporation of OMERS. We are also a joint sponsor of two smaller JSPPs – the Canadian Blood Services (CBS) Pension Plan and the OPSEU Staff Pension Plan.

However, approximately 15,000 OPSEU members do not currently have an adequate workplace retirement savings option. Like the broader population, our own membership suffers from the division between those with large, stable DB plans and those with less secure or no pension coverage.

We welcomed the opportunity to present our brief to the Ontario Expert Commission on Pensions and now appreciate the opportunity to comment on the Commission's report.

Executive Summary

These are OPSEU's recommendations:

1. OPSEU calls on the Ministry of Finance to work closely with labour and other stakeholders to implement Commission recommendations expeditiously through immediate establishment of the Pension Community Advisory Council.
2. Ontario needs new approaches to ensure comprehensive, universal coverage in Ontario. OPSEU calls on the Lieutenant Governor to proclaim the Ontario Pension Agency as an option for workers with no pensions as well as those with deferred or stranded pensions. The OPA should be in the public sector to ensure its non-profit status and avoid high management fees.
3. OPSEU welcomes the establishment of a new public Pension Champion Agency whose mandate is to promote stakeholder relations, develop pension policy and bring a comprehensive, universal and credentialed approach to pension training for trustees and service providers.
4. OPSEU urges the amendment of the PBA to set clear standards for plan design to: minimize designs that have high fees and lack of transparency and maximize those designs which emphasize economies of scale and democratic governance; and to maximize benefit security rather than provide a new market for the financial industry.
5. In the public interest, conversions to defined contribution plans should be limited to those that are approved by a vote of plan members and retirees.
6. OPSEU encourages the Ontario Government as sponsor and legislator to work with joint sponsors to broaden the coverage by Ontario's major plans and encourage the amalgamation of smaller plans in order to provide an economy of scale and maximize benefit security.
7. OPSEU calls on the Ontario government to facilitate asset transfers. In particular, OPSEU looks forward to negotiating equitable arrangements for divested workers such that these members do not incur split pensions.

8. OPSEU supports the facilitation of joint governance of pension plans as a central model for risk management of pension funds and the increased disclosure requirements such as the filing of funding and governance policies.
9. OPSEU calls for the Pension Benefits Act to be amended to provide for the disclosure of social investment policies in Statements of Investment Policies and Procedures
10. Pension funds should be exempt from federal investment rules where there is joint governance.
11. Jointly sponsored plans should be allowed to be exempt from solvency funding if they so wish.
12. OPSEU supports a process of consultation with Ontario multi-employer pension plans to extend SOMEPP funding regulations to all MEPPs, based on more rigorous governance standards.
13. OPSEU urges the Federal Government to amend the Income Tax Act to raise contribution and benefit levels.
14. OPSEU supports the amendment of the Pension Benefits Act to provide security margins sufficient to protect plan integrity and guarantee benefit security.
15. OPSEU seeks the limitation of contribution holidays unless with the approval of plan members and with severe fines for improper use; and supports full information for plan members on an annual basis on whether contribution holidays have been taken.
16. OPSEU opposes the use of letters of credit and asset pledges until there is further research done on their use.
17. OPSEU strongly urges the Ontario Government to establish a pension regulator which is separate from FSCO and well-resourced, with a mandate to protect the interests of plan members.
18. OPSEU urges the establishment of an independent pension tribunal able to issue binding decisions similar to the Labour Relations Board.
19. OPSEU urges the implementation of contingency indexation for all plans.
20. OPSEU urges the extension of plan member rights to retirees.

Introduction

OPSEU -- as one of the leading pension activist unions in Ontario -- is pleased to respond to the report of Ontario's Expert Commission on Pensions.

First, we congratulate the government of Ontario for recognizing pensions as, fundamentally, a labour relations issue. This was not acknowledged by other Canadian jurisdictions to the same extent. Indeed, Ontario's labour movement as a whole appreciates the offer to work meaningfully with government on issues of implementation. Pensions have been a subject of controversy and dispute between labour and employers and to gloss over the different interests of labour and employer would not provide us a way forward. The Arthur's report not only addresses the difficult issues but claims to have achieved a 'fine balance' of interests. We join with Ontario's labour movement as a whole in calling on the Ministry of Finance to work closely with labour as well as all other stakeholders to implement the Arthurs report recommendations expeditiously. This can be achieved most efficiently by establishing the Pension Community Advisory Council immediately. This is most necessary given the impact of the financial crisis on the economy and on pension funds.

In the recent past, a 'fine balance' has not been achieved as ensuing governments have bent over backwards to try to persuade employers to stay in the game of providing pensions, often at the cost of plan members' interests. Long forgotten is the fact that in 1963, the Committee on Portable Pensions recommended and the government of the day accepted that defined benefit pension plans should be mandatory in all workplaces with 15 or more employees and that this would all be facilitated by an Ontario Pension Agency. As a result of the introduction of the CPP, and as the Arthurs report points out, the voluntary nature of occupational pension plans was confirmed and employers were essentially let off the hook. This has gradually exacerbated coverage for workers as well as a decent living wage for retired workers, as employers exercise their choice about whether or not to start a pension plan for their employees; meanwhile, as gradually, the CPP fails in the provision of a living wage. Either occupational pension plans need to be made mandatory or the CPP needs to provide a living wage for retired workers. Given

the historical experience of Canadian workers that gains in pensions have invariably been made at the provincial level, OPSEU strongly encourages the establishment of the Ontario Pension Agency through proclamation of section 103 of the PBA and calls on the government to provide universal pension coverage for all Ontario workers.

Second, we also are pleased that the government chose to centre the commission mandate on the maintenance and enhancement of defined benefit plans. Now, of all times, it must be clear to those who ever doubted, that defined contribution plans cannot provide the benefit security that citizens of Ontario need. Indeed, those with DC plans have been particularly hard hit during this financial crisis: the costs of DC plans (as well as RRSPs) to individual investors are far greater than those of DB plans; the returns are less; and, the potential costs to the provincial and federal governments of retirees whose DC plans have failed to produce the funds necessary for retirement, are likely to be high both in lost revenues and higher social security benefits. We strongly urge the Ontario government to limit conversions to DC plans in the interests of the taxpayers and workers of Ontario.

Third, over the last twenty years OPSEU has achieved sponsorship of a number of large plans; consequently, large numbers of OPSEU members now have stable pension arrangements. As the Arthur's report notes and our experience tells us, large plans that are jointly governed provide the most affordable administration, have an economy of scale and provide benefit security for plan members. However, approximately 15,000 of our members – full-time, part-time and casual workers have inadequate or no pension coverage; they work, for the most part, in smaller public sector workplaces for employers and their jobs are funded by the Government of Ontario. As a joint sponsor we agree with the suggestion put forward by Professor Arthurs that Ontario's large plans – with shrinking membership and growing cohorts of retirees – can well afford to invest in their own future by opening their doors to new groups of plan members. This point has been made by these plan administrators in submissions to the Arthurs Commission as well as in numerous internal reports to plan sponsors over the years. We now call on the government as a legislator and a major plan sponsor to facilitate

and encourage the broadening of coverage provided by Ontario's major jointly sponsored plans.

Not all plan members of OPSEU's large plans have the benefit security that we normally expect of large plans. Those plan members whose work is privatized, divested or otherwise restructured often end up with two or more pensions – unfairly penalizing their benefit security. This is an added penalty for workers already facing threats to their employment security. OPSEU thanks the Arthurs Commission for providing greater clarity to the transfer of pension assets by recommending that sponsors be required to disclose transfer policies and that every effort be made to not split pension assets. And OPSEU appreciates the greater emphasis on respect for union negotiations on asset transfers as well as the provision of more pension options for workers about to be divested. There is no reason why these workers should not remain in their 'home' plan; or, at the very least, the Ontario Pension Agency should be set up as a low cost, public sector entity to support pension portability.

Finally, we note that the Arthurs Commission was not given the mandate to make recommendations on coverage. We consider this a serious omission; all commissions in other Canadian jurisdictions have had such a mandate. We congratulate stakeholders, who, in spite of this, expressed their views as to how decent standards of retirement living could be extended to all Ontarians, beyond the approximately 34% of workers who, by accident of where they work, now have pensions.

Funding

In our brief to the Commission, OPSEU recommended more flexible approaches to both solvency valuations and funding. We are pleased that the Arthur's report suggests that, given the varying types of pension plans, there can no longer be a one-rule-fits-all approach to funding. OPSEU has also argued that joint governance is an essential part of risk management in funding policy; if governance is more diverse and plan members have a more direct interest in the pension plan, decision-making will, in all likelihood, be more considered and more accountable; and, of necessity, the plan will operate with

more transparency and, thus, fairness. We strongly encourage Ontario to follow the example of the federal government in linking governance and decision-making to funding policy and funding administration.

We congratulate the Arthurs Commission on its recommendation for disclosure in the statements of investment policy of socially responsible investment approaches. There is daily research emerging to suggest that an understanding of investee labour relations, environmental and social practices all contribute to wiser investor decisions and longer term investment practices. Furthermore, we urge the Minister of Finance to push the federal government for removal of investment rules where there is sufficient oversight through joint governance.

We are pleased to find a recommendation that jointly sponsored pension plans (JSPPs), while continuing to file solvency valuations will fund only according to going concern valuations. It is OPSEU's view that solvency valuations provide an important safeguard as well as information for sponsors, trustees and members; but funding according to solvency valuations introduces unnecessary plan volatility. However, OPSEU is also a joint sponsor of two smaller plans and does not view a solvency funding exemption as beneficial for smaller plans given the potential threat to benefit security. Therefore, we provide a cautionary note that such an exemption should be voluntary.

We appreciate the cautious approach shown by Professor Arthurs towards extending the solvency exemption from the specified Ontario MEPPs to all multi-employer pension plans. Given the link we have made between governance and funding – that more diverse governance structures and representation ensure more accountability and transparency – it is important to set similar regulatory governance requirements for those MEPPs which are not JSPPs. Setting up a process of consultation with Ontario MEPPs will ensure that these standards are agreed to, established and then met by the MEPP world as a whole. As a MEPP sponsor of two of the largest MEPPs in the province (which are also JSPPs), OPSEU welcomes such a discussion and strongly supports new governance standards for MEPPs.

We are also pleased that the Commission joins in the call for pension plans to file funding and governance policies. This will initiate important improvements in governance and transparency of many pension plans, especially those that are sole sponsored plans.

We note that the Arthurs report does not give employers of single employer pension plans the wholesale access to surplus that they have been seeking. We welcome the move towards enhanced governance practices including more responsible fund management and the provision of contingency reserves or 'rainy day' funds to mitigate adverse returns, as opposed to turning immediately to plan members to make up shortfalls or, worse still, depending on the possibility of future gains to offset surplus withdrawals from the fund. In this regard, the federal government should be encouraged to amend the Income Tax Act to raise the contribution and benefit levels, the former of which has had a negative effect on plan management. Given that the number of Ontario plans that are fully funded has shrunk considerably in the latter part of 2008, Ontario has already decided – at least on a temporary basis – to extend amortization periods and it will take some time before plans climb back up to their former solvency levels. But clearly, there have to be security margins to provide benefit security and plan integrity. OPSEU is prepared to accept security margins which – over extended periods of time – are sufficient to protect plan integrity and guarantee benefit security.

Contribution holidays have been used by employers to offset funding costs while sometimes providing extra income for workers; however, they have also been widely abused by employers as a way of accessing surplus. We welcome the sentiment of the Arthurs Report in limiting access to contribution holidays and in recommending that information be provided to members annually whether contribution holidays have been taken. However, we feel that contribution holidays should only be taken with the informed consent of plan members and retirees. This should be helpful in promoting wise governance of surplus funds, particularly in non-union workplaces and in union workplaces where the pension plan is employer sponsored and may be not part of the collective agreement.

OPSEU opposes the use of letters of credit or asset pledges in place of payments into the pension fund in that they do not accumulate investment returns. Our opposition applies whether or not we have joint sponsorship. Both letters of credit and asset pledges are relatively untested and there appears to be the potential for misuse in that the fund may be unable to meet its liabilities unless limits to their use be clearly delineated. We anticipate that there is some enthusiasm for asset pledges among university sponsors where there is little accountability to plan members and retirees at present.

OPSEU also calls for plan member and retiree approval for plan mergers and conversions. We are very concerned about the lack of benefit security that DC plans provide; nor do we believe that DC plans are in the public interest because of the potential added costs to both the provincial and federal governments of increased poverty among seniors.

OPSEU supports the findings of the Arthurs Commission in calling on the Ontario government to re-establish a pension regulator, separate from the Financial Services Commission of Ontario, with the resources and mandate to provide substantial protection of plan members and promotion of defined benefit pensions in Ontario; and, further, calling for a Pension Tribunal whose rulings would be binding in much the same way as those of the Ontario Labour Board.

OPSEU is also cautious about immediately amending the PBA to provide for phased retirement as contemplated by the Income Tax Act. We, like many other unions, are anxious to consider phased retirement as an advantage for members, particularly those in physically demanding work, who would like to reduce working hours with no penalty to their pension. However, we have also seen that this benefit can be indiscriminately applied so that a few favored workers get it at the expense of others and, further, that those who do get the benefit, suffer longer term penalties to their pension. OPSEU proposes that there be a full discussion of phased retirement at the Pension Community Advisory Council so that the labour movement can be assured that it does indeed work to the advantage rather than the disadvantage of working people in Ontario.

Finally, we regret that the Arthurs Commission stopped short of recommending the proclamation of an indexation formula for all pension plans except in the case of “inflation emergencies”. Pension benefits that are not indexed to inflation ultimately, over time, fail to give workers retirement security. Another option which we urge the Ontario Government to undertake, and mentioned by the Arthurs Commission is a contingent benefit whereby some measure of indexation is applied to benefits based on plan solvency; such a benefit is in effect in the CAAT plan.

Joint Governance

OPSEU has more experience than any other Ontario union in joint trusteeship. We are therefore pleased that the values of joint governance have been recognized explicitly in the Arthurs report. We therefore also support the extension of democratic rights to retirees: such that they become full plan members under the PBA and assume the rights and obligations of plan members. OPSEU already has policy on retiree representation, has retirees as trustees on some of its plans and is working towards retiree representation for all its jointly trusteeed plans.

OPSEU has several thousand members in small employer sponsored plans and well understands the resistance of employers to sharing risk through joint governance.

Professor Arthurs suggests a compromise on funding for single-employer pension plans: that employers may be tempted to offer a target benefit pension plan in exchange for keeping an important labour retention benefit and avoiding solvency payments; the union, on the other hand, may be tempted to agree to a plan that allows for a lesser benefit as opposed to a full scale conversion to a DC plan or, worse still, a wind up, in exchange for a joint governance arrangement.

We remain skeptical however given our experience in bargaining pensions with these employers. Some of these plans did not originate in the collective bargaining relationship but indeed pre-dated unionization and, in some cases, cover many non-

OPSEU workers as well across the province if not the country. Employers who do not wish to provide a DB plan see its administration as not only risky, but costly and time-consuming. Joint governance even at the cost of a more flexible benefit does not answer their concern. On the other hand, their concern might be addressed by an alternative pension administration vehicle to which they would have the responsibility of dues remission only. The Ontario Pension Agency could answer this concern; as could access to a large multi-employer pension plan or mergers between smaller pension plans, all options which should be encouraged.

A target benefit is better than no pension at all particularly where plan members have a say in whether contributions or benefits are changed. Indeed, MEPPs have an honourable history in providing workers with pensions through a target benefit where no employer would undertake the risk.

Coverage

Proposals for coverage are of necessity limited in the Arthurs report. But portability has to be improved as well so that members do not end up with split pensions. With restructuring of labour markets and changes in the nature of work, previously full-time public service and public sector workers now may work in the public or private sector in contingent, contract, part-time or full-time work. Portability needs to be industry-wide or even across industry so that workers wherever they work can continue their pension with no inequities.

However, the present system needs to be expanded so that more workers have decent pensions. Large inter or intra-industry MEPPs may be an option for employers who do not offer a pension benefit but would be willing to do so. As we have said at the beginning of this brief, we also think it vital that Ontario's large plans extend their mandates to larger memberships. And there is no reason why sponsors should not also be prepared to make administrative as well as governance changes, if necessary, to open the doors of their pension plans to large numbers of new plan members. This

works in favour of the plans: they gain more economies of scale and maintain or expand their active membership, which, for most large plans, is on the wane.

The challenge facing expanding coverage is to maintain standards of benefit security as well as affordability. Plan designs that are high on management fees and offer inferior benefits are short term solutions. As the Arthurs Commission pointed out, the costs to both provincial and federal governments of seniors' poverty are high and will climb. RRSP and DC designs, as well as cash balance designs, which may even have some minimum benefit guarantee, often reward service providers more than they do the plan members. OPSEU holds to three important principles: collectivity in economies of scale where the larger the scale of pension plan the better; a non-privatized delivery mechanism that avoids the high fees rampant in the financial industry; and a plan design that balances benefit security with plan affordability .

Small workplaces face particular pension challenges as do contingent or precarious workers. The Ontario Pension Agency can provide the vehicle for smaller pension plans and individuals who want a pension to join together in an economy of scale. Workers in organizations with no pension plan, or who are not eligible for a pension where they work, badly need a pension option; individual savings have no economy of scale, as the Arthurs report shows. OPSEU joins in the call for the Lieutenant Governor to proclaim the OPA to receive, pool administer, invest and disburse stranded as well as new pension plans.

An alternative to the OPA is an expanded CPP. A strong, comprehensive pension system is a powerful national asset that will contribute to our national wealth and universal pension coverage is an urgent need. These discussions need to be advanced by a new Pension Community Advisory Council – recommended by the Arthurs Commission and strongly supported by OPSEU.

Pension Champion Agency

Ontario is missing a government agency that has a mandate to promote a comprehensive defined benefit pension system. The former Pension Commission of Ontario provided some sense of direction and purpose until its amalgamation into the Financial Services Commission of Ontario under the Harris Government. Neither the Ministry of Finance nor FSCO with their much larger mandates are able to provide the leadership in building stakeholder relationships, liaising with the pension community, building research, and developing policy to support the regulatory framework. The training and development of pension leaders is critical to building a new pension environment where pension plans are more transparent and where plan members and retirees understand and participate in pension decisions.

OPSEU has been very concerned about the appropriate access to training in all aspects of pension administration since we understand very well the steep learning curves of those who decide to be trustees. Overall standards and expectations of trustee training are quite frankly abysmal and any agency, service provider, employer or union can provide training with no oversight or regulation. In spite of this, trade unionists have accessed training where they can; indeed, the Quebec labour movement has established a reliable and mandatory training system for all their pension committee members.

Nevertheless, pension trustees need the support of a central, public educational facility that provides consistent, comprehensive and universal training. We are impressed by the comprehensive nature of the UK system, which has been built through discussions between government representatives, service providers, labour, employer and retiree representatives. This system insists on the same expectations, standards and credentials for all trustees, whether their background is from the financial industry, in staff relations or from a union; and uses a variety of training delivery methods to achieve consistency and continuity of standards. A revised PBA should map out in more reasonable detail than presently provided, the requirements for trustee knowledge. We support a comprehensive approach to trustee training provided by a new public agency committed to high quality pension management.

Conclusion

These are OPSEU's comments to the Minister of Finance in response to the report of Ontario's Expert Commission on Pensions. We look forward to working with the government on implementation of the main directions of the report. We, further, look forward to a new era of constructive engagement on pension issues in which Professor Arthur's fine balance between affordability, security and fairness can be maintained and enhanced.