



**Canadian  
Manufacturers &  
Exporters**

Ontario Division

The Honourable Dwight Duncan  
Minister of Finance  
Attention: Comments on Report of the Expert Commission on Pensions  
c/o Pension and Income Security Policy Branch  
5<sup>th</sup> Floor, Frost Building South  
7 Queen's Park Crescent  
Toronto, ON M7A 1Y7

February 27, 2009

Dear Mr. Minister:

The Canadian Manufacturers & Exporters (“CME”) appreciate the opportunity to provide feedback on “A Fine Balance: Safe Pensions, Affordable Plans, Fair Rules”, the report of the Expert Commission on Pensions (the “Commission’s Report”).

As Canada’s largest trade and industry association, CME promotes the continuous improvement of Canadian manufacturing and exporting through engagement of government at all levels.

Representing Canada’s largest business network, CME’s membership is drawn from all sectors of Canada’s manufacturing and exporting community and from every province across the country. The association represents Canada’s leading global enterprises and more than 85% of CME’s members are small and medium-sized enterprises. CME’s membership accounts for an estimated 75% of total manufacturing production and 90% of Canada’s exports.

CME’s mandate is to promote the competitiveness of Canadian manufacturers and enable the success of Canadian goods and services exporters in markets around the world. The competitiveness of CME’s membership is directly impacted by the costs of providing pensions and other employee benefits; as such, our membership is very concerned with any recommendations for pension reform in the province of Ontario that will increase the costs and administrative burden of providing pension benefits to their employees.

CME’s comments on the sections of the Commission’s Report which will have the greatest impact on our membership follow immediately below, and are based on the founding principle that a favourable business environment must be fostered in order to promote and increase DB Plan coverage for Ontarians.

## **I. FUNDING**

The Commission's Report includes recommendations for more stringent funding requirements which will make the implementation, funding and administration of defined benefit plans more costly.

Additional and more stringent funding requirements are a definite disincentive to companies offering DB Plans to their employees and, therefore, conflict with at least one of the Principles enunciated by the Commission – maintaining and encouraging defined benefit pension plans.

We have only to look to the federal level where, over the past three years, solvency funding relief has been sought and given on at least two occasions to recognize that the current system of funding on both going-concern and solvency bases is not working. Instead, maintenance of existing DB plans and the encouragement of new DB plans can only be achieved by making DB plans more affordable. Rather than more constricted funding requirements, creative ways to offset or minimize costs, risks and volatility to plan sponsors should be sought.

### ***Indexation Benefits***

Plan sponsors should continue to have the option of excluding indexation benefits from going concern valuations since such exclusion encourages the continuation of automatic pension indexation.

### ***Smoothing***

The Commission's Report acknowledges that there are good reasons for the limited "smoothing" of asset values and discount rates in solvency valuations currently permitted in Ontario.

Businesses require both stability and foreseeability. The use of a smoothing method minimizes the volatility and financial pressures caused by short term market gyrations and interest rate movements. Sponsors need some assurance of stability and predictability as an incentive for the establishment and maintenance of DB Plans.

CME emphatically disagrees with the comment in the Commission's Report that 15 year amortization periods of unfunded going concern liabilities are a form of smoothing, as is the 5 year amortization period for solvency deficiencies. This comment completely disregards the fundamental principle that the pension obligation is a long term liability and that pension assets are in place today to drive long term sustainable returns to fund future payments.

The complete elimination of smoothing goes further than is necessary to achieve the goal set out in the Commission's Report. Instead of eliminating smoothing for going concern valuations, accepted methodologies for minimizing risks and volatilities should be defined, and greater transparency required, to address the potential for changes in smoothing to be used as a method of concealing funding problems. For example, the use of more reasonable discount rate assumptions, such as the use of long term high-quality

corporate bonds (similar to that adopted by the Canadian Institute of Chartered Accountants and the U.S. fund rules) should be explored.

### ***Differences in Funding Requirements***

CME is concerned with SEPPs being singled out for more onerous funding requirements in that the Committee's Report recommends that only SEPPs will continue to be required to fund according to both going concern and solvency valuations.

Ideally, there should be a level playing field in which the same funding rules apply for all pension plans. If MEPPs are to be exempted from solvency funding requirements, then SEPPs that can demonstrate the financial resiliency and long-term character of their plans should be afforded the same flexibility.

SEPPs that formalize the active and substantive participation of active members and retirees in the governance and administration of the plan achieve the purpose of ensuring that the interests of beneficiaries are appropriately safe-guarded. SEPPs which meet this governance standard should, therefore, have the same funding flexibility as JSPPs.

Even if different funding rules were to be applied to DB Plans on the basis that there are different risks inherent in the different types of plans, the current funding rules for SEPPs must still be relaxed and SEPPs should be given greater funding flexibility.

Employers recognize the potential for DB Plans to play a significant role in the attraction and retention of employees. Increased funding flexibility that incorporates the preservation of benefit security for plan beneficiaries will promote the establishment and maintenance of DB Plans despite adverse market conditions.

The current solvency requirements are onerous and where solvency relief is implemented it must be on a permanent basis in order to reconcile the fact solvency issues cannot always be resolved on a short-term basis.

### ***Grow-in Benefits***

Grow-in benefits are costly and cumbersome and should be eliminated for all pension plans, including SEPPs, regardless whether Ontario's pension legislation retains the partial wind-up requirement. Ontario is one of only two provinces that requires "grow-in"; if grow-in benefits are not eliminated, Ontario DB Plan sponsors will continue to be at a competitive disadvantage.

Under the current system, grow-in benefits are only available to members who are affected by a full or partial plan wind up and who are members of a DB plan that provides enhanced early retirement benefits. Thus any additional security provided by grow-in benefits is severely limited in scope by the arbitrary basis on which grow-in benefits are granted.

In the reality of today's economic environment, grow in benefits impose an unnecessary financial burden on plan sponsors since, for most plans, solvency liabilities are greater

than going concern liabilities with the result that funding obligations are disproportionately increased by the requirement to fund for grow-in benefits at a time when DB Plan sponsors are struggling with significant increases in funding obligations because of the decline in asset values due to the global financial crisis.

The increased financial obligations imposed by the requirement to provide and fund grow-in benefits is a further disincentive for the growth of DB Plans in Ontario resulting in less coverage for Ontarians. If SEPPs are required to continue to provide grow-in benefits, then the requirement to pre-fund these benefits should be eliminated.

### ***Inflation Protection***

CME is strongly opposed to the recommendation that the provisions of the *Pension Benefits Act* that allow it to require that pensions be inflation-adjusted in accordance with a prescribed formula should be proclaimed into force.

Even if the prescribed formula is restricted to “inflation emergencies” mandated inflation protection is an additional cost for employers and, therefore, a compelling disincentive for employers to establish or maintain DB Plans. Employers should retain the discretion to adjust pensions from time to time as permitted by the financial position of the company.

## **II. PENSION PLANS IN A CHANGING ECONOMY**

Generally, the CME endorses the recommendations made in the Commission’s Report which facilitate portability and asset transfers.

### ***Regulatory Delay***

Corporate transactions which involve pension plans should not be impeded by regulatory delays in obtaining requisite approvals and consents. CME endorses the recommendation that the pension regulator investigate the causes of extreme delays and provide a report that will be used to facilitate the processing of transactions including mergers, asset transfers and conversions.

### ***Establishment of an Ontario Pension Agency***

The CME endorses the recommendation for the establishment of an Ontario Pension Agency to receive, pool, administer, invest and disburse stranded pensions in an efficient manner.

Although CME recognizes that the establishment of such an Ontario Pension Agency would add an additional layer of bureaucracy, it does provide a systematic way of promoting portability and assisting employees with consolidating various pension entitlements.

This is particularly important recognition of the fact that it is becoming increasingly unlikely that employees will remain in one occupation or with a single employer for the duration of their working lives.

***Extension of Eligibility for Grow-in Benefits***

CME does not support the recommendation that grow-in rights be extended to all SEPP plan members who are involuntarily terminated regardless of whether a partial wind up has been triggered.

As noted by the Commission itself, funding grow-in benefits is very costly and will lead to higher going concern liabilities. CME supports the position that the requirement to provide and pre-fund extended grow-in benefits will discourage employers from establishing and maintaining DB Plans that provide enhanced early retirement benefits.

***Surplus***

Issues of surplus ownership, allocation and distribution continue to be both challenging and costly for plan sponsors. The rules governing surplus distribution must be clarified to permit distributions based on agreement between the parties regardless of historic plan language.

CME endorses the recommendation that there be no distribution of surplus while a plan is ongoing.

***Definition of “wind up” and “partial wind-up”***

CME further recommends that the concept of “partial wind-ups” be eliminated entirely. The expense associated with the allocation of surplus on partial wind up as well as the intrinsic delay in obtaining regulatory approval for a partial wind up supports elimination.

The realities of the changing economy mean that the partial wind up triggers (*e.g.* plant closure, discontinuance of a line of business, the sale of a business where the successor employer does not provide a registered pension plan etc.) will occur with greater frequency than ever before.

The member protections that a partial-wind up ostensibly provides can be achieved by requiring immediate vesting of all benefits for pension plan member that are affected by a significant reduction in work force necessitated by a change in business strategy or required as a cost-savings measure.

**III. WHEN PLANS FAIL**

CME supports the recommendation that the Pension Benefits Guarantee Fund be continued. But the model of how it should be funded must be more closely examined. Tight controls and governance standards also need to be put in place to minimize further financial pressures on a fund that is already in deficit.

#### **IV. REGULATION**

CME supports the recommendations that are aimed at increasing efficacy and transparency at the pension regulator level. CME also supports the recommendations aimed at providing plan sponsors with greater certainty in how the pension regulator will respond to standard transactions.

Uncertainty caused by inconsistencies in regulation lead to increased administrative costs. Including legal and actuarial fees, and is a further disincentive for sponsors to establish and maintain DB Pans.

CME opposes those recommendations which will have the effect of increasing plan sponsor's administrative regulatory burden which is already both costly and onerous.

#### **V. INNOVATION IN PLAN DESIGN**

CME endorses the recommendation that 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.

We note that MEPPs require a union association and allowance should be made for the operation of large scale pension plans in the non-unionized environment so that groups such as the CME can umbrella its membership who wish to participate in a large-scale JSPPs. JSPPs give plan sponsors the advantage of pooling both resources and risks while benefiting from the less onerous funding and other obligations contemplated for JSPPs in the Commissions Report

In this respect, however, JSPPs have to be made more attractive to plan sponsors by making them easier to administer and maintain.

#### **VI GOVERNANCE**

CME generally supports the recommendations aimed at promoting good governance; however, clear governance guidelines should be developed with "best practices" established for all service providers, including professional advisors and agents.

\*\*\*\*\*

CME appreciates this opportunity to provide our views on the Commission's Report. If you require any clarification or elaboration of any of our foregoing comments, please do not hesitate to contact us through our Director of Policy, Paul Clipsham, at [paul.clipsham@cme-mec.ca](mailto:paul.clipsham@cme-mec.ca).