TOWERS
PERRIN

February 27, 2009

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
5th Floor, Frost Building South
7 Queen's Park Crescent
Toronto, ON
M7A 1Y7

Dear Mr. Duncan:

Submission of Towers Perrin to the Ministry of Finance

On behalf of Towers Perrin, we are pleased to provide feedback regarding the recommendations of the report of the Ontario Expert Commission on Pensions ("OECP") *A Fine Balance: Safe Pensions, Affordable Plans, Fair Rules* (the "Report").

- In the body of this letter, we identify and discuss the key priorities on which we believe the Ontario government should focus when developing new legislation to improve the sustainability and affordability of pension plans in Ontario.
- In the attached appendix, we provide brief feedback regarding specific recommendations made in the Report.

I. General Comments

Towers Perrin believes that the end state of reform to Ontario's pension rules must be a significant and widespread improvement in retirement income security for Ontario workers. We note that the rate of participation by Ontario's private sector workers in registered pension plans is below 25 percent and declining. Workers may save for retirement in other retirement savings vehicles, but they are at a serious disadvantage as compared to pension plan members: they tend to save much less; they realize lower rates of return on their savings; and they face significant investment and longevity risk in retirement. As a result, the retirement incomes of workers who do not have pension coverage are typically much lower and more uncertain than for those who do.

Defined benefit (“DB”) pension plans deliver better, more secure retirement incomes than personal retirement savings vehicles for the following key reasons:

- More of workers’ total compensation is typically allocated to retirement saving;
- Investment returns are higher because asset pooling provides access to a broader array of investment alternatives, with economies of scale; and
- Longevity risks can be pooled effectively, resulting in less fluctuation of income in retirement and a more efficient target for retirement savings.

Since pension plans deliver better retirement-saving outcomes than personal savings vehicles, we believe that the Ontario government’s priorities in reforming Ontario’s pension legislation should be as follows:

- Increase pension plan participation by Ontario workers, particularly in pension plans that provide DB or DB-like benefits;
- Ensure that benefits promised by pension plans are delivered; and
- Ensure the pension “deal” is clear, i.e. that pension plan members understand what benefits a pension plan does -- and does not -- provide and that it is clear to plan sponsors what they are promising.

If implemented, some of the recommendations made in the Report could improve pension benefit security and pension plan members’ understanding of the pension “deal”. On the other hand, some of the Report’s recommendations may have the effect of *decreasing* pension coverage by substantially increasing risk for employers who sponsor DB pension plans, thereby encouraging them not to sponsor new DB plans and to close or terminate existing DB plans. In particular, DB single-employer pension plans (“SEPPs”) may no longer be a viable design option if certain of the Report’s recommendations are implemented. As a result, we are concerned that implementation of certain of the Report’s recommendations will result in a decrease in pension plan participation, which in our view is contrary to one of the key goals of pension reform.

Reform to the DB pension system must address the three priorities identified above: increasing coverage, ensuring benefit security, and ensuring the benefit promise is clear. The feedback and recommendations we provide in Section II below address these priorities.

In reviewing our comments and those of other stakeholders, we believe the Ontario government should remain mindful that Ontario’s pension system is voluntary. No employer, union, association or other entity can be expected to establish, sponsor or administer a pension plan if the regulatory environment is unfavourable or the risks are perceived to be unacceptably high. It follows that regulatory reform of Ontario's pension rules will be successful only to the extent that it facilitates voluntary sponsorship of pension plans.

II. Feedback and Recommendations

Many employers are well aware that an appropriately-designed and properly-administered DB pension plan will deliver better and more secure pension benefits at a lower cost than a defined contribution ("DC") plan. They also know that a DB pension plan can help with attracting and retaining staff because employees -- especially those in mid- to late-career -- strongly prefer DB pension plans to DC pension plans. Nevertheless, virtually no new DB pension plans are being established, while many existing DB plans are closed to new hires, frozen for future benefit accrual and/or converted to DC. Under the current regulatory model, unpredictable costs, uncertainty about surplus ownership and risk of litigation have been key reasons why employers are forsaking DB plans, despite their superior features.

A. Pension Plan Funding

A barrier to the ongoing viability of DB pension plans is contribution volatility. Under the current funding regime, pension plan contribution obligations are volatile and are often pro-cyclical. For example:

- When businesses are profitable, pension plan investment returns are often strong. Contribution requirements may reduce and surplus may develop. In this environment, pension plan sponsors should have an incentive to contribute more than minimum funding rules require so that less contributions are required during business downturns. But the risk that surplus will become "trapped" in the plan or distributed to members in the event of a wind up results in few sponsors funding more than required by minimum funding rules.

- On the other hand, returns on invested pension plan assets may decline during a business downturn. Contribution obligations may increase and deficits may develop. With reduced revenues and cash flow, the sponsoring employer must contribute more when in the worst position to do so.

No constituency is well-served by the current regulatory model that governs pension funding and pension surplus:

- It is deficient from the perspective of plan members because it discourages (and in some cases prohibits) pension plans from holding solvency funding margins that would adequately secure pension benefits through the ups and downs of the business cycle.

- It is deficient from the perspective of employers because it exposes them to unpredictable cash flow demands and delivers unintended windfall benefits to some employees, who may receive a surplus distribution on wind up.

To improve benefit security in DB pension plans within a sustainable funding model, Ontario needs a funding regime that facilitates increased contributions when they are more affordable for employers (typically when the employer's business cycle is in a growth phase) and reduced contributions when they are less affordable. A new pension funding regime must address the problem of surplus entitlement in a way that ensures employers can fund security margins that are adequate to provide for long-term benefit security and does not discourage them from doing so.

Unfortunately, the Report recommendations do not provide an adequate framework for this to happen. If implemented as proposed, the recommendations would increase DB pension plan sponsors' funding obligations without adequately addressing the problem of surplus entitlement. In the following paragraphs, we address key recommendations made in the Report with respect to DB pension plan funding and offer suggestions that would result in a funding regime that will encourage DB plan sponsorship and improve benefit security for plan members.

Security Margins

Recommendation 4-14 of the Report suggests that every SEPP should be required to maintain a security margin of five percent of solvency liabilities. We support the concept of a security margin, although we have significant concerns with recommendation 4-14 for two reasons:

- First, a security margin that is arbitrarily fixed at a particular percentage of solvency liabilities will not adequately protect benefit security in some plans, and will be higher than required to protect benefit security in other plans.

- Second, the recommendation suggests that the security margin "should be deemed to be part of the plan surplus on wind up". In view of the fact that the Report does not adequately address employers' concerns regarding surplus entitlement, implementation of Recommendation 4-14 will increase the likelihood that surplus may be distributed to members on wind up, and indeed, would ensure that in many cases, surplus will be distributed to members on wind up. It would also increase the likelihood of the emergence of excess surplus in an ongoing plan that cannot be refunded to the plan sponsor. As a result, the effect of this recommendation would be to introduce an additional disincentive to sponsorship of DB pension plans.

In the following paragraphs, we propose implementation of a funding regime with "Contingency Reserve" accounts and a solvency margin linked to a pension plan's investment policy. We believe this will be of significant benefit to both pension plan members and sponsors:

- Pension plan members will have significantly greater benefit security and enjoy much greater confidence that they will receive the full amount of their promised pension benefits in the event a sponsoring employer becomes insolvent.

- Pension plan sponsors will have a new, powerful tool to smooth their pension funding obligations and manage their cash flow, with no concerns that they are ‘over-funding’ and will lose contributions if plan assets on wind up exceed amounts required to pay promised benefits.

As stated in our October 12, 2007 submission to the OECP (“Submission”), Towers Perrin supports funding to an appropriate security margin that reflects “the degree of mismatch between plan assets and liabilities” and that would “enable sponsors to match funding to their business cycles and thereby decrease contribution volatility.” Asset/liability mismatch is an essential consideration in determining what is an appropriate solvency funding security margin. For a DB pension plan fund that has a very high exposure to assets that are not closely matched to pension liabilities (such as equities), it could be appropriate to require a plan sponsor to fund to a security margin of 25 percent. For a plan fund that holds only high-quality fixed income assets that are closely matched to the plan’s liabilities, little or no security margin would be required because the plan’s investment policy exposes members to little investment risk.

In our Submission, Towers Perrin recommended that employer contributions determined on a going concern basis be directed to the pension plan fund. Additional contributions determined from the solvency valuation, plus any voluntary contributions an employer might make when the business cycle is strong, would be directed to a Contingency Reserve account. Required solvency contributions to the Contingency Reserve account would include “a reasonable margin of safety that reflects the degree of mismatch between plan assets and liabilities”. In an ongoing plan, an employer would be entitled to withdraw assets in the Contingency Reserve account that exceed the required security margin. On wind up, the employer would be entitled to receive any amount remaining in the Contingency Reserve account after satisfaction of all plan liabilities. Further details regarding the Contingency Reserve account are contained in the attached letter to the OECP dated November 13, 2007.

Towers Perrin strongly recommends that the Ontario government give serious consideration to implementing a solvency funding regime whereby the sponsor has the option of directing solvency contributions to a Contingency Reserve account, as discussed above and in our Submission. This is particularly important if the reforms to pension legislation do not adequately address employers’ concerns regarding surplus entitlement. We note that the Alberta/B.C. Joint Expert Panel on Pension Standards (“JEPPS”) recommended that solvency contributions be directed to a Pension Security

Fund that is substantially similar to the Contingency Reserve account we propose above and in our Submission.

Secured Creditor Status

Recommendation 6-7 suggests that Ontario should “initiate discussions” with the federal government regarding the possible extension of secured creditor status to all special payments due and payable up to the date of insolvency.

Towers Perrin believes that benefits promised by a DB pension plan may reasonably be regarded as deferred wages. Recent amendments to federal insolvency legislation have given a priority claim to pension contributions in respect of current service contributions due and payable on the date of insolvency. The question is, should the same principle apply to the entire amount of an unfunded wind up liability? It is clear that arguments can be made in favour and against giving priority creditor status to all unfunded pension liabilities. On the one hand, employers might argue that giving such priority would interfere unduly with the ability to raise capital for business purposes. On the other, members might argue that pension liabilities should be awarded the same treatment as any unpaid cash compensation.

It is Towers Perrin’s view that extending secured-creditor status to all unfunded pension liabilities should be studied further by the Ontario and federal governments. Any change to federal legislation to provide secured-creditor status for all unfunded pension liabilities should be accompanied by a relaxation of the funding rules (e.g. the full or partial elimination of security margins) to reflect the additional benefit security provided by this change. An appropriate transition period would be necessary to avoid the risk that secured-creditor status for pension liabilities would lead to existing creditors triggering the insolvency of a pension plan sponsor. We also note that secured-creditor status would put the PBGF on a more secure footing in terms of its risk exposure, potentially eliminating the need for a PBGF.

Extended Solvency Amortization

Recommendation 4-15 suggests that plans with a solvency ratio of 95 percent or better should be permitted to fund remaining solvency deficiencies, including a security margin, over eight years rather than over five years. Recommendations 4-4 and 4-5 suggest that actuarial valuations should continue to be required triennially, unless a plan’s funding has fallen below a prescribed threshold in which case annual valuations would be required.

The current requirement to produce valuations triennially has the advantage of reducing plan administration costs. However, the funded position of a pension plan can deteriorate between valuations, resulting in plan losses not being addressed for significant periods of time.

Annual valuations would provide better information to plan sponsors and regulators about a plan's funded position at any given point in time. However, because the preparation of annual valuations would significantly increase pension administration costs, Towers Perrin supports the OECP recommendation that valuation reports not be required more often than triennially where solvency deficiencies are amortized over eight years where the solvency ratio is equal to or greater than 95% and over five years where the solvency margin is less than 95%.

Towers Perrin also recommends that the Ontario government consider allowing plan sponsors who commit to filing annual valuations to make solvency payments over an extended amortization period -- e.g. 10 years. Provided that the funding requirements include a security margin linked to a plan's investment policy as recommended above, a funding regime that permits 10-year amortization would be an appropriate trade-off for preparing and filing annual valuations.

Interim Valuations

Recommendation 4-6 suggests that the regulator should be empowered to order interim valuations if there are "reasonable grounds to believe that a pension plan is at risk of failure". Recommendation 4-17 suggests that where sponsors "ought to know" that a plan's funded ratio has fallen below 95 percent and contribution holidays do not cease, a fine of up to $1 million should be imposed.

In principle, Towers Perrin supports appropriate regulatory authority to order interim valuations where benefit security is at risk. However, we recommend that the regulator's powers to order an interim valuation be clearly prescribed in regulation and based on objective, measurable criteria. Similarly, the conditions under which a plan sponsor "ought to know" that a plan's funded ratio has fallen below 95 percent must be clearly prescribed.

We also recommend that "risk of failure" should be determined by reference to a plan's funded status and investment policy, not to the financial health of the sponsor. When regulatory intervention is based on the financial strength of the sponsor, additional contributions imposed on a financially-weakened sponsor could accelerate a slide into bankruptcy. While we agree that regulatory review of administrative practices and timeliness of contributions should take into account the financial health of industries and individual businesses, the amount of contributions required to be made to a plan should be determined solely by reference to the plan's funded status and investment policy. We note that if pension plan sponsors have a greater incentive to contribute more than minimally when profits are strong, the financial status of a pension plan sponsor when profits are weak would become less relevant to pension plan members' benefit security. The PBGF would be exposed to less risk, and potentially become unnecessary.

Pension Plan Expenses

Recommendation 4-17 suggests that a fine should be imposed for “improper” use of surplus to pay plan expenses, with no indication as to what “improper” means. We are concerned that the recommendations of the Report are not clear with respect to pension plan expenses. Current practice is typically to make provision for pension plan expenses in funding valuations and to pay expenses from the pension fund, unless the payment of expenses is restricted by the pension plan text. This practice, which allows for orderly funding of expenses by the plan sponsor, is reasonable and appropriate and should be permitted to continue. We also note that for investment management fees, it will often be difficult or impossible for the sponsor to pay expenses directly because these fees are often netted out of investment returns credited to pension plan investments.

Mandatory Indexing

Recommendation 4-21 suggests that mandatory indexing be required in “inflation emergencies.”

Towers Perrin strongly opposes this recommendation. Forced indexing of benefits by regulatory fiat is inconsistent with the principle of ensuring that all parties understand the pension “deal”. We note that the Report does not indicate whether forced indexing would be required only for DB SEPPs, or for all types of plans, including jointly-sponsored, multi-employer, and target-benefit plans. Forced indexing would create another disincentive to voluntary sponsorship of DB pension plans, thus having a negative impact on pension coverage for Ontario workers.

The Report suggests[1] that benefits such as indexing are “not normally available” to those who save for retirement in DC plans and RRSPs. This is not the case, because these individuals have the option of purchasing inflation-indexed annuities when they retire. We find it significant that they rarely do so, preferring instead to receive a higher, non-indexed monthly retirement income. This choice should not necessarily be regarded as irrational or based on a poor understanding of inflation; many retirees may reasonably prefer to have greater spending power in early retirement because this is the time when their ability to travel and engage in other activities that involve discretionary spending is likely to be greatest.

In theory, pension plans could protect members from all financial risks, such as inflation. However, it must be recognized that insurance against financial risk has a cost and that in some cases, the cost may be unacceptably high. This is the case with forced inflation indexing: by creating a major, new and unpredictable funding risk for DB plan sponsors, forced inflation indexing would be yet another disincentive to sponsorship of DB pension plans.

[1] At page 32.

Pension Benefits Guarantee Fund ("PBGF")

Recommendations 6-13 and 6-17 suggest that the PBGF should be continued in its current form until completion of a study of possible alternatives and that the monthly maximum guaranteed pension be increased from $1,000 to $2,500.

Towers Perrin does not support these recommendations. An increase at this time in the guarantee provided by the PBGF is clearly not appropriate if there is a need to investigate "alternatives to the PBGF" as recommended by the Report.[2]

Given that it is not yet certain whether the Ontario government will undertake a review of the PBGF as the Report recommends, we would like to take this opportunity to share our concerns regarding the PBGF. Like guarantee funds in other countries, such as the United Kingdom and the United States, the PBGF has not served Ontario employers and pension plan members well. The PBGF creates a moral hazard due to the difficulty of ensuring that employer-paid premiums for a particular pension plan are properly linked to risk of default. In other words, there is a risk that premiums paid by some employers may subsidize benefits promised by other plans, particularly in view of the fact that this has occurred in the past. We note that it has been suggested that the PBGF has resulted in lower levels of pension funding in Ontario as compared to other jurisdictions in Canada that do not have guarantee funds.[3] Due to the risk of political pressure to subsidize the PBGF when its funds are insufficient to provide for the pensions benefits it guarantees, the PBGF also creates a strong potential for transfers of wealth from taxpayers who are not members of a DB pension plan to taxpayers who are. To this point, we note that the Ontario government has previously offered to subsidize under-funded pensions of a private-sector multi-employer pension plan with a wind-up deficiency.

Towers Perrin believes that the best protection for pension benefit security is adequate funding. In a voluntary pension system with solvency funding rules that require security margins linked to a pension plan's investment policy regime, no PBGF should be necessary, especially if unfunded liabilities have secured-creditor status. In essence, the premiums paid by a plan sponsor to the PBGF are analogous to fees that would be paid to obtain a letter of credit that secures a portion of the plan's pension benefits. But there is an important difference between PBGF premiums and letter of credit fees: letter of credit fees may be considered to reflect accurately the cost of securing benefits and the risk of default because they are established in a competitive credit market; by comparison, PBGF premiums are determined according to a regulatory formula that, to date, has not priced risk appropriately because it has operated outside competitive credit markets.

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[2] See page 123.

[3] See Nielson, Norma L. and David K.W. Chan. "Private pensions and government guarantees: clues from Canada". *Journal of Pension Economics and Finance*. Cambridge University Press. 2007.

For the reasons stated above, Towers Perrin recommends that the Ontario government give serious consideration to eliminating the PBGF entirely and implementing a new pension funding regime that will provide better protection for pension benefits by means of solvency security margins and other measures we identify in this submission. In the alternative, the Ontario government could adopt an incremental approach to eliminating the PBGF by making no change to the existing PBGF benefit guarantee, thus allowing inflation to erode the guarantee over time.

We believe it would be imprudent to expand the PBGF guarantee and that if the PBGF is not abandoned, the assessment mechanism should be restructured so that insurance principles are used to avoid taxpayer subsidies and subsidies among pension plans. Accordingly, assessments should be based on a plan's funded status, the investment policy of the fund, and the sponsor's financial strength – both current and projected.

Letters of Credit

Recommendation 4-22 suggests that "irrevocable letters of credit should be permitted as security for a fixed proportion of contributions owing to a plan". While it is not clear what is meant by "a fixed proportion of contributions", Towers Perrin supports this recommendation to the extent that plan sponsors would be permitted to secure all or a portion of unfunded solvency liabilities by means of a letter of credit. We believe letters of credit can be an important tool to assist pension plan sponsors in managing their cash flow and mitigating the risk that significant pension surplus will emerge, while still providing benefit security for pension plan members.

We note, however, that a letter of credit will not necessarily be available to assist all plan sponsors. For example, due to recent turmoil in the capital markets, letter of credit standby fees have increased significantly for most companies and in some cases are unaffordable. Therefore, while permitting letters of credit would represent a significant improvement to the regulatory funding model, it must be accompanied by other changes such as the Contingency Reserve account suggested above.

Transition

Given the significant drop in global equity markets during 2008, at this time most pension plans have a significant deficit on a solvency basis. Absent a significant short-term recovery in the markets, there must be a transition period to new funding requirements that would require funding of all solvency liabilities and a security margin. The transition period must be sufficiently long to ensure that the burden of meeting the new funding targets will not be too onerous.

B. Pension Plan Surplus

The Report recommends clear rules for when a partial wind up occurs; that surplus distribution on partial wind up not be required; that surplus exceeding a security margin should be available for contribution holidays; and that there be improved disclosure of indexing provisions in pension plans. Towers Perrin supports these recommendations because they will result in more predictable funding obligations, better benefit security and an increased understanding of the pension “deal”. If implemented, these recommendations would reduce disincentives to sponsor DB pension plans.

Grow-In

Recommendations 5-8 and 5-9 suggest that “grow-in” benefits should be provided to all pension plan members who terminate involuntarily from a DB SEPP and who have attained 55 points (points = age + service), but that multi-employer, jointly-sponsored and target-benefit plans should not be required to provide grow-in benefits. We have a number of concerns regarding Recommendations 5-8 and 5-9:

- Pension plan members’ need for retirement income does not necessarily vary as a function of how a termination of employment occurs. It is our view that pension plan members should not receive different benefits depending on the circumstances of termination. If provided only on involuntary termination, grow-in is effectively a form of mandatory severance benefit delivered via a pension plan. We question whether this is appropriate in view of the fact that employees’ rights and interests on involuntary termination are already addressed by common-law and statutory rules. We believe it is preferable to provide employers and employees with the flexibility to structure severance packages in a manner that best accommodates both parties, instead of inserting a mandatory severance benefit into pension standards.

- The difference between “voluntary” and “involuntary” termination is not always clear. A pension plan member who knows about impending layoffs or terminations may choose to accept an offer of employment from another employer out of concern for income security, even though the member does not know if he or she will be laid off or terminated. As another example, a pension plan member who has significant conflict with a supervisor may resign in order to avoid conflict, or embarrassment arising from dismissal. In these cases, there is a legitimate question as to whether the termination of employment is voluntary or involuntary. As a result, the provision of different benefits to pension plan members based on whether termination was voluntary will lead to inequitable outcomes as between plan members. Moreover, there is a real possibility that significant differences between benefits provided on voluntary and involuntary termination will lead to litigation -- potentially at the expense of the plan.

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

- A requirement to provide grow-in (whether on involuntary termination or otherwise) will increase costs in respect of pension benefits that have already accrued, unless there are compensating legislative changes that decrease costs. Such a change is inappropriate in a voluntary pension system.

- In our view, there is no legitimate policy justification to exempt jointly-sponsored, target-benefit and multi-employer plans from the obligation to provide grow-in, given that members of these types of plans have as much need of retirement income as members of DB SEPPs.

To the extent that the purpose of grow-in is to provide severance benefits, grow-in should not be required. On the other hand, we recognize that a policy decision could reasonably be made whereby early retirement subsidies and a portion of bridging benefits reasonably attributable to accrued lifetime retirement benefits should be considered basic benefits in which members should vest immediately. If such a policy decision is made, full vesting of early retirement benefits should be required for all terminating employees, regardless of the circumstances of termination and the number of “points” a member has attained, for all types of DB plans. Accordingly, if grow-in benefits are retained or expanded, we recommend as follows:

- Vesting in early-retirement benefits should not depend on the achievement of an arbitrary threshold such as 55 “points”. Instead, vesting should be immediate.

- Bridging benefits should vest immediately on a pro rata basis.

- The value of early-retirement benefits should be determined using the expected retirement age of the member, rather than the retirement age that maximizes the pension value.

- Vesting in early-retirement benefits should be required for all terminations, for all pension plans that provide early retirement benefits, including jointly-sponsored, target-benefit and multi-employer plans.

- Full vesting in early-retirement benefits should apply only for future service accruals, to ensure that liabilities do not increase in respect of accrued pension benefits.

Surplus Entitlement

With respect to surplus entitlement in the case of wind up or withdrawal of surplus from an ongoing plan, the Report recommends that pension surplus in SEPPs "should be distributed in accordance with the plan documents unless the parties agree, or the proposed Pension Tribunal of Ontario rules, that the documents are not clear." If the documents are not clear, the Report recommends a process under which the sponsor and members would attempt to reach an agreement on surplus entitlement. If an agreement cannot be reached, the parties would submit the matter to a dispute resolution procedure of their own choosing. If they cannot agree on such procedure or if it does not resolve the matter, surplus entitlement would be determined by the Pension Tribunal of Ontario. While positive, this recommendation is only a partial step toward addressing the thorny problem of surplus entitlement. Uncertainty about surplus ownership is a strong disincentive for employers to sponsor pension plans. Unless this uncertainty is addressed, we are concerned that sponsorship of DB pension plans will continue to decline.

Under the current Pension Benefits Act ("PBA"), uncertainty about surplus ownership can be attributed to two factors. First, no surplus can be distributed to an employer without member agreement, even where plan documents clearly provide entitlement to the employer. Second, court decisions based on classical trust law principles have made it costly and difficult to determine surplus entitlement by making it necessary to review historical pension plan documents.

DB plan sponsors have often argued that they should own surplus because they bear the risk of deficits. However, DB plan members argue that they also have risks – if pension costs go up, their non-pension compensation may be affected. In addition, they have the risk that benefits may be reduced if a sponsor becomes insolvent.[4] Court decisions and the PBA statutory regime have effectively recognized these risks by adopting an approach to surplus whereby sponsors can use surplus for contribution holidays but surplus withdrawals must typically be shared or distributed entirely to members.

This approach has a number of weaknesses. First, it does not address the concern that uncertainty of title to pension surpluses creates disincentives to DB plan sponsorship. Second, it creates an incentive to fund minimally: this reduces benefit security for members. Third, it results in "windfall" distributions of surplus that benefit some pension plan members at the expense of others: there is no guarantee that a wind up surplus will be distributed to members proportionately to the risks they bore, or that all members who bore risk will actually receive any surplus.

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[4] For a discussion of risk sharing in DB plans, see Pesando, James E. "Risky Assumptions: A Closer Look at the Bearing of Investment Risk in Defined-Benefit Pension Plans". C.D. Howe Institute Commentary 266 (2008) at http://www.cdhowe.org/pdf/commentary_266.pdf.

It is Towers Perrin's view that in a DB SEPP, surplus entitlement should be determined by current plan documents and clear statutory rules. Because the Report's recommendations do not address historical plan documentation, they would not resolve uncertainty about surplus ownership in existing plans. We do not suggest that existing surplus rights that members may have based on historical documentation and common-law decisions should be erased. Rather, and as recommended by the Alberta/B.C. JEPPS, we support an approach that would allow plan sponsors to "ring fence" existing plans and establish new pension plans for future service that have clear surplus entitlement language. We also recommend that for all new pension plans, an amended PBA should provide clearly that only current, validly-enacted plan documents have any legal effect. This would ensure that surplus entitlement can be determined expeditiously, without the need to review historical plan documents.

As stated above, Towers Perrin recommends that pension plans should be funded with a security margin and sponsors should be permitted to direct solvency contributions to a Contingency Reserve account. In addition, providing DB plan sponsors with the option of underwriting pension liabilities with a secured-creditor claim should be explored. The funding regime we propose will result in significantly enhanced benefit security for pension plan members. With members exposed to significantly less risk, the unworkable approach to surplus that has developed under the PBA and in court decisions will have been replaced with a regime that provides a high level of protection for members' benefits while allowing contributions resulting from solvency funding to revert back to the plan sponsor if not needed to secure pension liabilities. We believe that this approach is an appropriate compromise between the rights of plan sponsors and members.

C. Regulation and Governance

<u>Plan Restructuring</u>

Recommendation 5-19 suggests that the regulator should give fast-track approval of plan splits and mergers where two-thirds of members and retirees agree to the transaction in a secret ballot, or where a union representing members agrees to the transaction.

In Towers Perrin's view, this recommendation is impractical for private-sector companies and generally does not go far enough in terms of addressing current impediments to pension plan restructuring. Since the 2003 *Transamerica* decision, in which the Ontario Court of Appeal ruled that "exclusive benefit" language in a pension plan trust prohibited commingling of assets and liabilities in a merged pension plan following an asset transfer, there has been significant delay and cost in obtaining regulatory approval for pension plan splits and asset transfers in Ontario. As noted in the Report,[5] over the last five years the median time to obtain approval of an asset transfer is 1,165 days.

Approval of a "full" asset transfer cannot now be obtained without performing a detailed analysis of historical plan documentation that may be several decades old. Where historical documentation is missing, the Ontario regulator will typically refuse to approve a full asset transfer or will require transferred assets to be administered separately within a merged plan, despite subsequent court and tribunal decisions that have narrowed the application of *Transamerica* and approved "full" mergers of pension plans with historical "exclusive benefit" language.

The costs of pension plan restructuring remain a significant disincentive to sponsorship of DB pension plans. Recommendation 5-19 does not address the need for clear asset transfer rules that will facilitate plan restructuring transactions while protecting benefit security. The recommendation that plan restructurings be permitted with member approval presumes that pension plan members are in a position to evaluate the implications of a plan restructuring transaction and make an informed decision as to whether a restructuring transaction poses a risk to their pension benefits.

Typically, plan members are not in a position to make this evaluation. For this reason, plan restructuring rules must be prescribed. Towers Perrin therefore recommends that the Ontario government amend the PBA and Regulation to prescribe clear rules that will facilitate plan restructuring transactions while protecting benefit security. In developing such rules, reference can be made to existing asset transfer policies of the Ontario regulator, which we believe are effective at ensuring that a restructuring transaction does not impair the funded ratios of the pension plans involved.

Pension Regulation and Adjudication of Disputes

Towers Perrin strongly supports the following recommendations of the Report:

- 7-1: that the PBA become the "exclusive source of pension law".
- 7-10: that the pension regulator should be empowered to issue opinion letters and binding advance rulings.
- 7-26: that a new Pension Tribunal of Ontario be established with strong protection from appeal to the courts.

As previously discussed, common-law rules are the source of considerable cost and uncertainty in pension plan administration. We welcome the introduction of a comprehensive statutory regime that will largely displace rules sourced in court

[5] At page 89.

decisions that are often conflicting and unclear. Pension regulation in Ontario will be significantly enhanced by a pension regulator that has sufficient resources to achieve its mandate. An expert tribunal with protection from appeal to the courts can significantly reduce the cost and delay of resolving pension disputes.

Governance

Recommendation 8-27 suggests that target benefit plans should be permitted, provided they are jointly governed.

Towers Perrin supports the recommendation that target benefit plans should be permitted; however, joint governance should be an option and not required. Pension plan members often lack necessary skills and experience for effective plan governance, and often have little, if any, interest in administering a pension plan. For these reasons, joint governance should not be a requirement for the establishment of a target benefit or jointly sponsored pension plan in a single employer environment.

The Report seems to presume that joint governance will produce superior outcomes as compared to employer-governed plans; Recommendation 4-8 suggests jointly-sponsored and multi-employer plans should be allowed “more flexibility in funding”. We note, however, that there are a number of examples of poor governance in jointly-governed pension plans. Sometimes, such plans fail and wind up with members receiving less than their promised benefits and in some cases, significantly less.

If the establishment of certain types of plans that will be permitted to fund with “more flexibility” (e.g. on a going concern basis) is encouraged as Recommendation 4-8 suggests, it is a practical certainty that some of these plans will fail to deliver promised benefits and that some will fail entirely. This creates a risk that political pressure will result in taxpayer subsidies to these plans, particularly large, multi-employer plans. With appropriate statutory governance rules, a target-benefit pension plan that is governed by an employer may well deliver pension outcomes that are equal to or better than a jointly governed plan. For this reason, we recommend that joint governance not be a condition for establishing jointly-sponsored and target-benefit pension plans. Other governance models that could work well include the following:

- Governance by an employer;
- Governance by a professional, trade or member association; and
- Governance by a private sector service provider offering pension plan membership on a subscription basis (as some jurisdictions now permit for simplified pension plans).

Finally, it is our view that the existence of a union or union-like organization should not be a prerequisite for establishment of a single-employer target-benefit plan, as the Report seems to suggest.

Ontario Pension Agency

Recommendation 5-2 suggests that an Ontario Pension Agency ("OPA") should be established to "receive, pool, administer, invest and disburse stranded pensions".

Towers Perrin supports this recommendation. Administration of pension assets for members who cannot be located is a significant cost for pension plan sponsors. If structured appropriately and managed at arm's length from government, the proposed OPA would reduce costs of administering assets for missing beneficiaries and could increase the likelihood of such individuals receiving their entitlements by providing a single contact point with a registry of missing members. The OPA could also receive transfers for settlements of former spouses' pension rights on marriage breakdown.

Cost of the Pension System

The Report recommends a number of new regulatory bodies and roles, including the Ontario Pension Regulator, the Pension Tribunal of Ontario, the OPA, a Complaints Officer, the Pension Community Advisory Council and Pension Champion.

We presume that all or part of the costs associated with these new entities would be passed on to pension plan sponsors. While we understand the merits of establishing these entities, the costs associated with their establishment and maintenance could be considerable. Therefore, we encourage the consolidation of these administrative and policy-making governmental bodies where appropriate.

D. Pension Coverage and Retirement Income Adequacy

New Plan Designs

The Report recommends that jointly sponsored, target benefit and multi-employer pension plans be encouraged. Towers Perrin supports these recommendations and believes that these plan designs can play an important role in improving pension coverage, as the Report suggests.

We note that a number of pension plan designs are unavailable under the current PBA and under federal income tax rules. Recommendation 4-24 suggests that the Ontario government should lobby the federal government to "increase benefit and contribution levels" and encourage participation in "DB plans or their functional equivalents". While Towers Perrin supports this recommendation, we also suggest that the Ontario government not wait for reform of federal tax rules before introducing amendments to the PBA to permit a broad new range of pension plan designs unavailable under current rules. Such designs should effectively allow all workers the opportunity to accumulate DB-style pensions in a variety of arrangements that may or may not involve the participation of an employer.

We recognize that this could lead to a situation in which the PBA permits plan designs that federal tax rules currently prohibit. However, this inter-jurisdictional legislative conflict could well be the impetus needed to encourage the federal government to undertake a comprehensive and long-overdue overhaul of tax rules for retirement saving. To this effect, we note that when Quebec introduced new regulations to allow “member funded” pension plans in 2006, the federal government amended the Income Tax Regulation to accommodate the new design.

III. Conclusion

Earlier in this submission, we identified three priorities for reform of Ontario’s pension rules:

- Increasing pension plan participation;
- Enhancing pension benefit security; and
- Ensuring that that pension “deal” is clear.

With respect to DB SEPPs, the Report’s recommendations respond to the last two priorities, but not to the first. Many of the Report’s recommendations could have the effect of enhancing benefit security in DB SEPPs and improving members’ understanding of their benefits. But the Report’s recommendations do not adequately respond to the need to facilitate improved pension coverage and retirement income adequacy for private sector workers via DB SEPPs as one of a number of sustainable plan designs. Indeed, the Report largely fails to acknowledge that employer-sponsored DB pension plans have generally served their members well and that they remain an important component of the pension system. In recommending more onerous funding obligations without addressing key disincentives to DB plan sponsorship, the Report seems almost to abandon DB SEPPs.

This is unfortunate. DB SEPPs are an important part of providing retirement income security to Ontario workers and should continue to be a viable option, along with other pension plan designs. To enhance pension coverage, the Ontario government should introduce amendments to the PBA to ensure that DB SEPPs are one of many sustainable pension plan designs available to enhance pension coverage for Ontario workers. With respect to DB SEPPs, such amendments must focus on reducing regulatory disincentives by ensuring that surplus ownership questions are not an impediment to DB plan sponsorship and by enhancing benefit security.

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TOWERS PERRIN

Towers Perrin appreciates the significant work the OECP has done to review Ontario's regulatory environment for pension plans and make recommendations to improve it. The work of the OECP identifies serious regulatory deficiencies and demonstrates that minor, incremental change or tweaking will not respond to the needs of the majority of Ontario workers who have no pension coverage and may be ill-prepared for retirement.

Towers Perrin encourages the Ontario government to leverage the work of the OECP, the Alberta/B.C. JEPPS, the Nova Scotia Pension Review Panel, and the submissions of hundreds of stakeholders representing employers and workers. This is an opportunity to start afresh by introducing a new, comprehensive, dynamic and flexible regulatory regime for pension saving that balances the interests of all stakeholders so that more of Ontario's workers can enjoy the retirement income security they deserve.

We thank you for reviewing our submission. We will be pleased to discuss our comments further as you may require.

Sincerely,

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Attachments:

- Submission of Towers Perrin to the Ministry of Finance – Appendix
- Proposed Contingency Reserve Account - Letter to Mr. Harry Arthurs, November 13, 2007

Response to Recommendations of the Ontario Expert Commission on Pensions
Submission of Towers Perrin to the Ministry of Finance - Appendix Overview

TOWERS PERRIN

Legend:
A = Agree
PA = Partially Agree
D = Disagree
N = No Comment

Recommendation	Position	Recommendation	Position	Recommendation	Position	Recommendation	Position
4-1	N	**4-21**	D	**5-16**	N	**6-13**	D
4-2	N	**4-22**	A	**5-17**	A	**6-14**	N
4-3	PA	**4-23**	A	**5-18**	A	**6-15**	A
4-4	D	**4-24**	A	**5-19**	D	**6-16**	PA
4-5	A	**4-25**	A	**5-20**	A	**6-17**	D
4-6	D	**5-1**	A	**5-21**	A	**6-18**	D
4-7	N	**5-2**	A	**5-22**	A	**6-19**	N
4-8	D	**5-3**	N	**5-23**	A	**7-1**	A
4-9	A	**5-4**	PA	**6-1**	D	**7-2**	A
4-10	A	**5-5**	N	**6-2**	D	**7-3**	A
4-11	A	**5-6**	D	**6-3**	D	**7-4**	D
4-12	A	**5-7**	A	**6-4**	D	**7-5**	A
4-13	A	**5-8**	D	**6-5**	A	**7-6**	A
4-14	D	**5-9**	D	**6-6**	D	**7-7**	A
4-15	D	**5-10**	A	**6-7**	A	**7-8**	N
4-16	PA	**5-11**	A	**6-8**	D	**7-9**	A
4-17	D	**5-12**	A	**6-9**	A	**7-10**	A
4-18	D	**5-13**	A	**6-10**	D	**7-11**	A
4-19	N	**5-14**	A	**6-11**	PA	**7-12**	A
4-20	A	**5-15**	N	**6-12**	PA	**7-13**	A

TOWERS PERRIN

Recommendation	Position	Recommendation	Position	Recommendation	Position	Recommendation	Position
7-14.	PA	**8-7**	A	**9-1**	D		
7-15	A	**8-8**	PA	**9-2**	A		
7-16	A	**8-9**	D	**9-3**	A		
7-17	PA	**8-10**	N	**9-4**	N		
7-18	A	**8-11**	N	**9-5**	A		
7-19	PA	**8-12**	N	**10-1**	A		
7-20	PA	**8-13**	N	**10-2**	D		
7-21	A	**8-14**	N	**10-3**	A		
7-22	A	**8-15**	D	**10-4**	A		
7-23	A	**8-16**	D	**10-5**	D		
7-24	A	**8-17**	D	**10-6**	D		
7-25	A	**8-18**	A	**10-7**	A		
7-26	A	**8-19**	D	**10-8**	A		
7-27	A	**8-20**	A	**10-9**	A		
7-28	A	**8-21**	A				
7-29	A	**8-22**	PA				
7-30	A	**8-23**	A				
7-31	A	**8-24**	D				
8-1	PA	**8-25**	D				
8-2	D	**8-26**	D				
8-3	A	**8-27**	D				
8-4	A	**8-28**	N				
8-5	A	**8-29**	A				
8-6	A	**8-30**	A				

Legend:
A = Agree
PA = Partially Agree
D = Disagree
N = No Comment

Recommendation	Position	Comments
Funding **Recommendation 4-1** — 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.	N	▪ Any disclosure of intent with respect to contribution holidays should come from the plan sponsor, not the actuary.
Recommendation 4-2 — 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.	N	

Recommendation	Position	Comments
Recommendation 4-3 — Going concern valuations should no longer permit the exclusion of promised indexation benefits. Solvency valuations should no longer permit the use of smoothing practices or the exclusion of benefits. A special exception should be made for those plans that continue to provide plant closure benefits pursuant to a specific, longstanding commitment to continue their non-funded status. Potential increases in sponsor contributions attributable to these enhanced transparency measures should be offset so far as possible by the extension of amortization periods, by selective relief from contribution increases for well-funded plans or by other means.	PA	▪ We support funding of promised benefits, but this needs to be accompanied by reasonable rules on surplus entitlement for legacy plans. ▪ These recommendations will result in significant increases in funding costs, so transitional rules will be needed.
Recommendation 4-4 — 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.	D	▪ We note that a six-month window conflicts with timing for filing audited financial statements. ▪ This recommendation would increase sponsors' administrative burden with little added benefit security.
Recommendation 4-5 — Plans whose triennial valuation shows that their funding has fallen below a threshold to be specified by regulation should continue to be required to perform and file an annual valuation.	A	▪ No change from current practice.
Recommendation 4-6 — The Superintendent should develop the capacity to monitor the pension system, and individual plans, more closely, and should have the power to order an interim valuation at any time if there are reasonable grounds to believe that a particular plan is at risk of failure.	D	▪ Regulatory powers to address funding concerns should be clearly delineated, along with the criteria for concluding that a plan is at "risk of failure". ▪ "Risk of failure" should focus on a plan's funded status and investment policy, not the financial status of the sponsor.

Recommendation	Position	Comments
Recommendation 4-7 — The Superintendent should more aggressively discourage and more predictably sanction late filings, and develop a capacity to scrutinize filings to the extent necessary to improve the likelihood that inaccuracies will be detected.	N	
Recommendation 4-8 — 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.	D	▪ SEPP funding rules should accommodate jointly-sponsored (risk-shared) arrangements. ▪ SEPPs should be permitted to have risk-shared funding arrangements and/or provide target benefits. This suggests that some SEPPs should be funded similarly to JSPPs and MEPPs, i.e. on a going-concern basis.
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.	A	▪ MEPPs are a sufficiently large component of the Ontario pension system to merit special rules for funding and governance. ▪ SEPP funding rules should accommodate jointly-sponsored (risk-shared) arrangements.
Recommendation 4-10 — Multi-employer pension plans should be required to fund only according to going concern valuations, but should continue to provide solvency valuations for the information of the regulator as well as their active and retired members.	A	▪ We agree that MEPPs in which all risk is pooled among participants should be permitted to fund on a going-concern basis, provided that annual statements disclose to members the benefits they would receive if the plan had wound up on the statement date.

Recommendation	Position	Comments
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.	A	▪ Please refer to comment for Recommendation 4-10.
Recommendation 4-12 — Jointly governed target benefit pension plans that are based on an agreement between one or more sponsors and one or more unions, that have established explicit arrangements for joint governance, and that permit accrued benefit reduction in an ongoing plan in order to deal with funding deficiencies, should be funded in a manner similar to jointly sponsored pension plans, as provided in Recommendation 4-11.	A	▪ There is no reason why target benefit plans should be limited to a joint governance model. With appropriate statutory standards, other governance models could also work: - Governance by an employer acting alone - Governance by a professional, trade or member association - Governance by a private sector service provider offering pension plan membership on a subscription basis (as some jurisdictions now permit for simplified pension plans)
Recommendation 4-13 — Single employer pension plans should continue to fund according to both going concern and solvency valuations.	A	▪ Subject to our comments in Recommendation 4-8, we agree with this Recommendation.

Recommendation	Position	Comments
Recommendation 4-14 — Single employer pension plans should be required to maintain a security margin (or provision for adverse deviation) of 5% of solvency liabilities. This margin should be amortized over an eight-year period. The security margin should be deemed to be part of the plan surplus on wind-up, but not for other purposes.	D	▪ A security margin should be plan-specific and linked to investment policy. ▪ We recommend a separate, employer-owned account for solvency funding, as recommended in both the Towers Perrin submission to the OECP and the Alberta/BC JEPPS report. ▪ Letter of credit funding should be available in lieu of solvency contributions.
Recommendation 4-15 — For plans that have achieved 95% of solvency funding, the normal amortization period for achieving the new required funding level, inclusive of the security margin, should be extended from five to eight years. For plans funded below 95%, the current amortization period of five years should continue to apply until such time as they become eligible for the extended amortization period.	D	▪ Please refer to our comments regarding 10-year solvency funding in our cover letter.

Recommendation	Position	Comments
Recommendation 4-16 — If a single employer pension plan is in surplus on being wound up, the surplus should be distributed in accordance with the plan documents unless the parties agree, or the proposed Pension Tribunal of Ontario rules, that the documents are not clear. In the event of such an acknowledgement or ruling, the sponsor may propose a scheme for the distribution of surplus, which would take effect if approved in one of two ways: (a) if plan members are not represented by a union, the proposal should be submitted to a vote by secret ballot of the plan members and retirees, and would take effect if approved by two-thirds of those voting; or (b) if plan members are represented by a union or other organization, the sponsor should submit its proposal to representatives of the active members and retirees with a view to concluding a surplus distribution agreement. If the sponsor and the representative negotiators cannot reach agreement, they should submit the matter for determination to a dispute resolution procedure of their own choosing. If they cannot agree on such a procedure, or if it does not resolve the matter within a reasonable time, any party may apply to the Superintendent to refer the matter to the Pension Tribunal of Ontario, which would then establish the terms of the surplus distribution agreement. Any scheme approved by secret ballot, any surplus distribution agreement reached by representative negotiators, and any determination by the Tribunal or an agreed dispute resolution procedure would be final and binding on the Superintendent and on all persons claiming to be entitled.	PA	▪ In an employer-funded plan, surplus entitlement should be determined by plan documents and clear statutory rules; and plan documents should be required to state clearly who owns surplus. ▪ The recommendation provides no help with historical documentation problems. Employers should be able to “ring-fence” old plans with undesirable surplus language, as the Alberta/BC JEPPS recommends, and start new plans. ▪ The PBA should provide that for all new plans, only current, validly-enacted plan documents have any legal effect.

Recommendation	Position	Comments
Recommendation 4-17 — Plan sponsors should be entitled to reduce or omit their contributions to a plan in any year in which it is funded at 105% or more of its solvency liabilities. However if — based on benchmarks to be developed by the regulator — a plan administrator knows, or ought reasonably to know, that funding has fallen below 95%, the administrator should immediately notify the sponsor to resume contributions until the plan is again funded at 105% of solvency liabilities. The pension regulator should develop benchmarks based on the plan's annual financial statements that will enable plan administrators to determine when contributions should be resumed. If the regulator finds that a contribution holiday was improperly taken or continued, any contributions withheld from the plan should become immediately due and payable, together with interest, regardless of the plan's present funded status, and the sponsor should be subject to an administrative fine of up to $1 million, or double the amount withheld during the improper contribution holiday, whichever is less. The improper use of plan surplus to pay the expenses of the plan, including PBGF premiums, should be treated in similar fashion. The parties to a collective agreement should be free to negotiate other arrangements for the use of surplus in an ongoing plan. These arrangements should prevail notwithstanding those proposed in this recommendation or established in the plan documents.	D	▪ We acknowledge that a clear right to take contribution holidays is positive, but there are too many variables here. ▪ How can an administrator "know or ought to know" that plan funding has fallen below 95% without doing some kind of interim valuation or financial update? ▪ We would encourage the regulator to consult with industry to obtain input on appropriate benchmarks. ▪ Better to have a regulatory discretion to prohibit -- or an explicit rule that prohibits -- contribution holidays or to require a new valuation where a plan's funding policy provides for significant capital market exposure and capital market indices have declined by a specified percentage over a specified period of time. ▪ The proposed $1 million fine is far too punitive. Fines at this level should be reserved for instances of bad faith, willful misconduct, or gross negligence. ▪ We do not understand what is meant by "improper use" of surplus to pay plan expenses. Expenses should always be payable from a plan fund where plan documents allow, provided that funding valuations make appropriate provision for such expenses.

Recommendation	Position	Comments
Recommendation 4-18 — Sponsors may apply to withdraw surplus from an ongoing plan pursuant to the procedures set out in Recommendation 4-16, provided that the plan remains funded subsequent to withdrawal at 125% of full solvency funding, or 105% of full solvency funding plus two years of current service costs, whichever is greater.	D	▪ Please refer to comments for Recommendation 4-16. ▪ Ability to withdraw above 125% threshold without 100% member consent is positive. ▪ The security margin should be linked to a plan's investment policy.
Recommendation 4-19 — Ontario should investigate strategies for reducing the cost of annuities and the influence of the annuities market.	N	
Recommendation 4-20 — Every plan should contain a clause stating explicitly what provision, if any, has been made for the indexation of benefits and for the funding of indexation. Each triennial valuation and each annual statement provided to the regulator, active plan members and retirees should provide the same information.	A	▪ Disclosure about the benefit promise is always good.
Recommendation 4-21 — 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."	D	▪ Forced indexing by regulatory fiat is inconsistent with the principle of clarifying the benefit promise and would strongly discourage employers from sponsoring DB plans. ▪ Clarity is needed with respect to how this recommendation would apply to JSPPs, MEPPs, and JGTBPPs.

Recommendation	Position	Comments
Recommendation 4-22 — 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. 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.	A	▪ Ontario should leverage other jurisdictions' experience with letters of credit.
Recommendation 4-23 — 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.	A	▪ Additional funding flexibility is desirable. We would support asset pledges if the results of this investigation suggest that asset pledges can be implemented in a workable manner.
Recommendation 4-24 — 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.	A	▪ Federal income tax rules for retirement saving are unnecessarily complex and inequitable to most retirement savers. ▪ A comprehensive reform is long overdue.

Recommendation	Position	Comments
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.	A	▪ A review of the federal investment rules is long overdue. ▪ A shift to a more principle-based approach is generally agreed to be preferable to the current combination approach. ▪ It is preferable that reformed federal investment rules continue to apply because this is a good example of uniformity in pension regulation.
<u>Pension Plans in a Changing Economy</u> **Recommendation 5-1** — The pension regulator should immediately investigate the causes of extreme delays in approving transactions, including splits, mergers, asset transfers and conversions, and provide a report that can be used to facilitate the processing of such transactions in accordance with the recommendations of this Commission.	A	
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.	A	▪ The Ontario Pension Agency will be particularly helpful to settle benefits for missing members.
Recommendation 5-3 — 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.	N	

Recommendation	Position	Comments
Recommendation 5-4 — 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: 1. 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; 2. to remain as a deferred member of the exporting plan; 3. to transfer the value of the first pension to the Ontario Pension Agency; or 4. to transfer the value to a locked-in account. 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. 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.	PA	▪ We agree with this recommendation provided that there are no restrictions with respect to the level of accrual in the importing plan. ▪ Sponsors should be able to force terminated DC plan members to transfer their benefits out. ▪ Transfers to the Ontario Pension Agency should be limited to transfers in respect of missing pension plan members and settlement on marriage breakdown.

Recommendation	Position	Comments
Recommendation 5-5 — 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.	N	
Recommendation 5-6 — When a pension plan is being wholly or partially wound up, when a transaction provides the opportunity for a pension asset transfer, or when an active plan member leaves a job in which she or he has earned pension credits, active plan members and retirees should be given the choice of depositing the value of any pension accruals standing to their credit with the Ontario Pension Agency. Sponsors and unions negotiating the consequences of corporate or government restructuring should, by mutual consent, also be able to transfer plan assets to the Ontario Pension Agency in respect of some or all of the members affected.	D	▪ See comments in our letter relating to the Ontario Pension Agency.
Recommendation 5-7 — The Ontario Pension Agency should receive and administer funds payable to pension beneficiaries who cannot be located. Plan sponsors should be obliged to file with the Ontario Pension Agency a list of all beneficiaries who cannot be located, and of all deferred members whose assets remain under the control of their plan. Plan members seeking to trace their stranded or deferred pensions should have access to this list.	A	▪ The proposed Ontario Pension Agency, if structured appropriately and managed at arm's length from government, could be very helpful in dealing with funds for missing beneficiaries.

Recommendation	Position	Comments
Recommendation 5-8 — Existing "grow-in" rights that provide access to early retirement benefits for all qualifying single-employer pension plan members in the event of a full or partial plan wind-up should be extended to all such members who are involuntarily terminated. "Qualifying members" should continue to be those whose age and years of service add up to 55.	D	▪ Please see the comments in our letter regarding grow-in.
Recommendation 5-9 — Multi-employer plans, jointly sponsored plans, and the proposed jointly governed target benefit plans should not be required to provide grow-in benefits.	D	▪ To the extent that early retirement subsidies and bridging benefits are provided, such benefits should vest equally in all plans and for all plan participants. ▪ Please see the comments in our letter regarding grow-in.
Recommendation 5-10 — The Pension Benefits Act should be amended to provide for phased retirement as contemplated by the Income Tax Act.	A	
Recommendation 5-11 — 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.	A	
Recommendation 5-12 — 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.	A	

Recommendation	Position	Comments
Recommendation 5-13 — Involuntarily terminated members may have their benefits annuitized at the option of the sponsor.	A	▪ DC sponsors should be permitted to force transfers for terminated members, whether or not the termination is involuntary.
Recommendation 5-14 — Partial wind-ups of single employer plans should be declared by the Superintendent only when 40% of the active members of the employer are terminated within a two-year period. In such circumstances, administrators should file a plan reduction report, which would enable the Superintendent to ensure that plan funding is secure.	A	▪ Given other recommended changes, partial wind ups should not be necessary.
Recommendation 5-15 — When 90% of the active members of a single employer plan are terminated within a two-year period, the Superintendent should have the power to require that the plan be wound up or reconfigured. This power should be used only if the Superintendent concludes that either (a) the sponsor is not acting bona fide, or (b) the plan in its reduced state is unable to meet its obligations.	N	▪ We don't know what "reconfigured" or "bona fide" mean here. It's not possible to comment on this recommendation without more information about what is being contemplated.
Recommendation 5-16 — If a multi-employer or jointly sponsored pension plan experiences a reduction of 40% of its active members, or of sponsors providing 40% of its contributions, or if the sponsoring union splits, the administrator should prepare a plan reduction report and file it with the regulator. The regulator may require the administrator to prepare such a report if there are reasonable grounds to believe that the plan may no longer be viable.	N	▪ See comments for 5-14. If an under-funded multi-employer, jointly-sponsored or target benefit plan is substantially reduced or split, a key challenge will be to ensure that there are no subsidies as between terminating and ongoing members.
Recommendation 5-17 — 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.	A	

Recommendation	Position	Comments
Recommendation 5-18 — 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.	A	
Recommendation 5-19 — A sponsor considering a plan split or merger must give notice of the proposed transaction to active plan members and retirees, and any union or other organization representing them. The notice should be accompanied by an accurate, readily understood explanation of its implications, as well as technical data relating to the new plan in a form approved by the regulator. If the union or representative organization approves of the proposed transaction or, in the absence of such an organization, if the transaction is approved by two-thirds of the active members and retirees voting in a secret ballot, the approval shall be filed with the regulator. Upon receiving the approval and ensuring that the transaction is otherwise in accordance with Recommendations 5-17 and 5-18, the regulator may, without further delay, issue an advance ruling approving the transaction. In the absence of approval from the union, organization or plan beneficiaries, the sponsor must give 90 days' notice to all interested parties and to the regulator. After expiry of the 90-day notice, the regulator should process the proposed transaction in the normal manner. Where a split or merger is proposed by any plan on whose governing body at least 50% of the members are nominated by active plan members and/or retirees, approval by that governing body should serve in lieu of the approval process set out in this recommendation.	D	▪ The proposed approval process for plan restructuring is not workable. It will be difficult or impossible to obtain approval in advance from members for a plan merger or split. Communicating the information required for members to make an informed decision would present significant challenges. ▪ The only restrictions or conditions on plan merger and split transactions should relate to preserving security of accrued benefits and ensuring reasonable equity as between transferring and continuing plan members. Recommendations 5-17 and 5-18 partially address this. For under-funded plans, rules are needed to ensure that pre- and post-transaction funded ratios are appropriate.

Recommendation	Position	Comments
Recommendation 5-20 — Notwithstanding Recommendations 5-18 and 5-19, a sponsor may, with the consent of the Superintendent, use surplus from the original plan to fund a new plan into which it has been merged, or from which it is derived, provided that (a) if the original plan continues in force, its security margin is maintained; (b) the new plan is funded at not less than 100% from its inception by sponsor contributions, if necessary; and (c) the security margin in the new plan is funded within five years.	A	
Recommendation 5-21 — Following conversion from a defined benefit to a defined contribution plan, or to a hybrid plan with elements of both, surplus carried over from the original plan should first be used to provide the required security margin for defined benefits earned under either plan. If additional surplus remains, it should be available to fund contribution holidays or other expenses of the converted plan.	A	
Recommendation 5-22 — A sponsor considering the conversion of a defined benefit plan to a defined contribution or other type of plan must give notice of the proposed conversion to active and retired plan members and to any union or other organization representing them. The notice should be accompanied by an accurate, readily understood explanation of its implications, as well as technical data relating to the new plan in a form approved by the regulator.	A	▪ No change from current practice.

Recommendation	Position	Comments
Recommendation 5-23 — The regulator should have the power to review the effects of a plan split, merger, asset transfer or other pension transaction involving related corporate entities in order to ensure that the plan's financial prospects have not been compromised by being assigned to a less solvent corporate entity. The regulator's powers should be exercised in accordance with specified criteria, and should include the power to (a) require a plan to be brought up to its previous funding level, or 105% of full funding, whichever is the lesser, (b) require the previous sponsor to provide guarantees that the new sponsor will meet its obligations to the plan, and (c) rescind the transaction.	A	▪ Clarity regarding what "less solvent" will mean is needed.
<u>When Plans Fail</u> **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.	D	▪ Plan sponsors should not be exposed to unpredictable contribution requirements at the discretion of a regulator. ▪ The conditions according to which the regulator can order valuations should be clearly prescribed. ▪ More clarity is needed in terms of what "at risk of failure" means. ▪ While monitoring may take the financial status of the sponsor into account, remedies should be clearly defined and relate only the funded status of a pension plan and its investment policy. ▪ Remedies should be clearly defined in regulation so that there will be clarity as to what kinds of regulatory action may be expected.

Recommendation	Position	Comments
Recommendation 6-2 — The Superintendent should have the power to (a) approve arrangements to reset the funding obligations of single-employer plans at risk of failure, including contributions, payment schedules, amortization periods and premiums to be paid to the Pension Benefits Guarantee Fund, and (b) authorize the provision of additional forms of security, to ensure that the plan does not fail and/or that the interests of plan members are better protected in the event that failure does occur. The Superintendent may exercise this power notwithstanding the provisions of plan documents.	D	▪ Refer to comments for Recommendation 6-1. ▪ The role and remedies contemplated here are more properly within the jurisdiction of a court supervising a restructuring. ▪ The discretion contemplated to reduce/increase contributions, suspend (presumably) PBGF premiums and approve alternate forms of funding is far too broad.
Recommendation 6-3 — The Superintendent should have the power to initiate, facilitate and approve arrangements relating to all aspects of multi-employer plans at risk of failure or of significant benefit reduction. The Superintendent may exercise this power notwithstanding the provisions of plan documents. Arrangements submitted to the Superintendent for approval must be agreed to by the plan sponsors and by a union or other organization authorized to represent active plan members and retirees. In the absence of a union or other authorized organization, the arrangements must be approved by a two-thirds majority of active and retired plan members voting by secret ballot.	D	▪ See comments for Recommendation 6-1 above. The contemplated powers seem somewhat too broad. ▪ It is not clear what “risk of failure” means. ▪ In a MEPP, one of the key risks is a drop in the number of hours worked (which affects contributions). It would be important to ensure that the Superintendent has the necessary information and expertise to assess this risk.
Recommendation 6-4 — When a pension plan has been identified as “at risk,” the Superintendent should have power to approve the arrangements identified in Recommendations 6-2 and 6-3, conditional upon the suspension or cancellation of any agreement to improve plan benefits, and/or a prohibition on plan benefit improvements, until funding is restored to a specified level.	D	▪ See comments for Recommendation 6-1.

Recommendation	Position	Comments
Recommendation 6-5 — When a plan fails and is being wound up, payments attributable to benefit improvements initiated up to five years prior to the date of the wind-up should be paid only after all pre-existing benefits are paid in full.	A	▪ The sponsor should retain an obligation to fund all benefits.
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 on-line register of delinquent sponsors and other offenders, and the measures taken to deal with them.	D	▪ Presumably, the regulator is and will be "an office of compliance" so it should not be necessary to create a new one. ▪ It's hard to see how a public "blacklist" will enhance benefit security or pension administration. ▪ The regulator already publishes Notices of Proposal and other records of regulatory action taken.
Recommendation 6-7 — The government of Ontario should support recent federal legislation that gives priority to unpaid current pension service costs in the event of bankruptcy. It should also initiate discussions with the federal government concerning the possibility of extending similar priority to all special payments to fund both solvency deficiencies and unfunded liabilities owing to the plan by the sponsor at the time of insolvency.	A	▪ A pension benefit promise may reasonably be regarded as deferred wages. ▪ Pension contributions due and payable on the date of insolvency should have the same creditor status as unpaid wages.
Recommendation 6-8 — The Pension Benefits Act should be amended to permit the Superintendent to approve arrangements and changes in arrangements that involve the claims of pension plans under federal bankruptcy legislation.	D	▪ See comment for Recommendation 6-1. An administrator of a pension plan of an insolvent employer appointed by the Superintendent should have standing in bankruptcy and insolvency court proceedings. The Superintendent should not have powers to review the orders or decisions of a court.

Recommendation	Position	Comments
Recommendation 6-9 — Plan assets should be distributed on a pro rata basis. However, benefit improvements introduced within the last five years should be postponed until after other benefits are paid, in accordance with Recommendation 6-5, above.	A	▪ Distribution of assets in respect of pension benefits should be on a pro rata basis. ▪ Surplus need not be distributed on this basis. Reference should be made to plan documents.
Recommendation 6-10 — The Ontario government should seek to persuade the federal government to amend its bankruptcy and insolvency legislation to give the pension regulator the right to intervene in proceedings under that legislation to defend the interests of any pension fund and its members. Provincial law should allow the pension regulator to act on behalf of, and to assert all the rights and powers of, the plan administrator in the context of bankruptcy and insolvency proceedings, if the regulator believes such action is warranted.	D	▪ It is the pension plan administrator who should act on behalf of pension plan members.
Recommendation 6-11 — The regulator should be specifically empowered to replace the administrator of a plan whose sponsor is involved, or is deemed at risk of being involved, in bankruptcy or insolvency proceedings. The Ontario government should ask the federal government to amend the relevant legislation to ensure that the new administrator so appointed can participate in all proceedings on behalf of the plan.	PA	▪ Where a sponsor who is also an administrator is insolvent, this is appropriate. If the administrator is a separate, unrelated entity, it may not be appropriate. ▪ How will the regulator determine if a sponsor is "at risk" of insolvency or bankruptcy?

Recommendation	Position	Comments
Recommendation 6-12 — The Ontario government should explore with the federal government the amendment of relevant federal legislation so as to ensure that pension plans, beneficiaries and organizations representing them can participate as of right in bankruptcy and insolvency proceedings. It should also explore ways to facilitate the collective participation of pension litigants in such proceedings by means of representation orders or otherwise. And it should amend the Pension Benefits Act so as to enable courts to order pension plans to reimburse beneficiaries and representative organizations for successfully defending the interests of the plan.	PA	▪ It's reasonable that members and beneficiaries have standing in bankruptcy and insolvency proceedings, but it must be acknowledged that they often have conflicting interests (e.g. members and retirees) ▪ Payment of litigants' costs from the plan will increase the incidence of litigation. Clear rules are needed to establish when litigation has been reasonably undertaken in the interests of plan beneficiaries.
Recommendation 6-13 — The Pension Benefits Guarantee Fund should be continued in its present form, but with the improvements proposed in Recommendations 6-14 to 6-17 for at least five years or until completion of the review proposed in Recommendation 6-18, whichever is later. On the basis of the findings of that review, the government should determine whether to continue, amend, replace or discontinue the PBGF.	D	▪ A PBGF is not necessary if appropriate funding rules are established and enforced, and particularly if a plan-specific security margin is adopted. ▪ Consideration should be given to giving pension plan deficits secured creditor claims on insolvency. This would reduce the need for a PBGF. ▪ The PBGF should be eliminated or the guarantee allowed to erode though the effect of inflation. ▪ If the PBGF continues, it should operate at arms' length from government, on a cost-recovery basis using insurance principles and assumptions, and without any possibility of taxpayer subsidies.

Recommendation	Position	Comments
Recommendation 6-14 — The Pension Benefits Guarantee Fund should be administered, preferably at arm's length from the pension regulator, by an agency with a mandate to: • manage the Fund so as to enhance its capacity to evaluate the individual and collective risks of plans whose performance is guaranteed by the Fund; • fix levies, subject to the approval of the Minister, in amounts sufficient to meet claims arising from those risks; • collect such levies and hold and invest them on behalf of the Fund; and • undertake systemic analysis to assist the regulator in reducing the number and aggregate value of claims on the Fund. The regulator's mandate should be extended to include protection of the Pension Benefits Guarantee Fund, and the mandate of the Fund should include specific reference to its obligation to assist the regulator.	N	
Recommendation 6-15 — Benefit improvements agreed to within five years prior to the failure of a plan should be ineligible for payment out of the Pension Benefits Guarantee Fund.	A	

Recommendation	Position	Comments
Recommendation 6-16 — The risk assessment protocol by which levies are established for the Pension Benefits Guarantee Fund should be studied and revised to include not only the funding status of plans but other risk-generating factors such as the asset/liability match within the plan and the sponsor's financial health.	PA	▪ Gathering current data on asset/liability mismatch in all pension plans and developing a credible model to determine PBGF levies based on that data could be difficult, but a simplified structure could be adopted. ▪ Plan sponsors' "financial health" is difficult for a regulator to evaluate and can change quickly due to market and economic factors, mergers/acquisitions, etc. It will be difficult to measure with sufficient accuracy and sufficiently often. ▪ Credit ratings could be used as a measure of financial health, but there is probably insufficient rating coverage and ratings may not be updated sufficiently often.

Recommendation	Position	Comments
Recommendation 6-17 — The level of monthly pension benefits eligible for protection by the Pension Benefits Guarantee Fund should be increased to a maximum of $2,500 to reflect the effect of inflation on the original maximum of $1,000. The Superintendent (or other agency responsible for the administration of the Pension Benefits Guarantee Fund) should recommend to the Minister of Finance within one year: • the formula by which benefit levels should be determined on a going-forward basis; • the basis on which the levy paid by sponsors should be calculated; • procedures for ensuring that both the benefits and the levy are adjusted at regular intervals; and • any other matter relevant to the implementation of this recommendation. The recommendations should be accompanied by a statement concerning the anticipated effects of any such adjustment. The Minister should act promptly upon receipt of these recommendations and the accompanying statement.	D	▪ Increased PBGF levies would be needed to fund the additional guarantee. The cost of continuing and expanding the PBGF will have negative impact on pension coverage and pension income adequacy for Ontarians. ▪ We do not believe that the PBGF is appropriate in a voluntary pension system. ▪ Refer to comments for Recommendation 6-13.

Recommendation	Position	Comments
Recommendation 6-18 — The Ministry of Finance or some other agency, either alone or in cooperation with other Canadian pension authorities, should initiate a study of possible alternatives to the Pension Benefits Guarantee Fund. Unless and until such an alternative that provides comparable or better protection for active plan members and retirees can be identified, the Pension Benefits Guarantee Fund should continue to exist in the form proposed in Recommendations 6-14 to 6-17.	D	▪ See comments above. ▪ The best protection for benefit security is establishment and enforcement of appropriate funding rules, potentially with secured creditor status for all pension liabilities. ▪ It must be explicitly recognized that benefit security can never be perfect and that there is a trade-off between ensuring benefit security and expanding benefit coverage. ▪ With appropriate funding rules and proper enforcement, there can be reasonable assurance that promised benefits will be paid with the fewest possible disincentives to expanded coverage.
Recommendation 6-19 — The Pension Benefits Guarantee Fund should be governed by the following principles: • The Fund should be self-financing. • It should not receive government grants or subsidies in order to meet its obligations. • It should be allowed to borrow funds from the government on a commercial basis, for defined purposes and at defined times. • The terms on which the Fund itself should be deemed insolvent, and the effects of such insolvency, should be clearly set out in the Pension Benefits Act.	N	

Recommendation	Position	Comments
Regulation **Recommendation 7-1** — So far as possible, substantive rules intended to define the rights and responsibilities of participants in the pension system should be set out in the Pension Benefits Act or rules and regulations made pursuant to it. If feasible as a matter of statutory drafting, the Act should convey the intention of the legislature that the Act should be treated as the exclusive source of pension law.	A	▪ The role of common-law rules, especially classic trust rules, should be reduced or entirely eliminated.
Recommendation 7-2 — As a medium-term project, the 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.	A	
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.	A	

Recommendation	Position	Comments
Recommendation 7-4 — The government should accept ultimate responsibility for ensuring that all standards governing the conduct of professional and other participants in the pension system are appropriate and in the public interest. The Pension Benefits Act and regulations should make clear provision for the adoption by reference of standards established by professional governing bodies such as the Canadian Institute of Actuaries. In addition, the pension regulator should work closely with professional governing bodies to ensure that the standards they establish, amend and apply to their own members from time to time are consistent with Ontario's pension law and policy. To the extent that they are not, they should be replaced with more appropriate standards laid down in the Act or by regulation.	D	▪ Professions such as law, actuarial science and accountancy are already regulated by existing, independent bodies that have a mandate to establish standards and monitor their membership in the public interest. These bodies may consult with the government in developing ethical and professional standards, but it is in the public interest that their decisions remain independent.
Recommendation 7-5 — Legislation should provide standard-form or template plans, particularly for the use of small- and medium-sized enterprises, and the regulator should develop simplified registration and filing requirements for such plans.	A	
Recommendation 7-6 — Simplified registration and filing requirements should be adopted for designated or individual pension plans for senior executives. In addition, a protocol should be developed to identify a minimum membership threshold for plans below which the regulator should react to complaints, but not provide its normal level of regulatory oversight.	A	
Recommendation 7-7 — The pension regulator should develop filing requirements, processes and review procedures that enable it to better discharge its compliance, risk assessment and data-gathering mandate. It should develop an electronic system for the timely review of filings and for the development of useful interrelated databases and reports.	A	

Recommendation	Position	Comments
Recommendation 7-8 — The present Notice of Proposal procedures should be repealed. Applications seeking approval for major plan transactions should be dealt with in accordance with Recommendations 5-17 to 5-22. Applications involving routine processing of other matters should be dealt with on the basis of a file review by the Superintendent. Other, more important matters should be dealt with pursuant to the procedures proposed in Recommendation 7-15. The Superintendent should have power to approve, disapprove or issue directives concerning the matter at hand. Decisions of the Superintendent should be subject to appeal to and enforceable by the proposed Pension Tribunal of Ontario.	N	▪ The regulator should have power to approve all transactions and applications validly made that comply with the PBA, Regulation and administrative policy. ▪ For major transactions (mergers, splits, conversions, wind ups), it may be appropriate that plan members be notified and have time (e.g. 45 days) to make comments to the regulator. Please refer to comments for Recommendation 5-19.
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.	A	
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.	A	▪ CRA has a workable advance rulings service. The Ontario government should leverage this experience in establishing an advance rulings service for pension regulation.

Recommendation	Position	Comments
Recommendation 7-11 — The regulator should: • develop a program of proactive monitoring, auditing, inspections and investigations directed especially at plans whose profiles, sponsors' profiles or sectoral location suggest that they may be at risk of failure or of significant under-funding; • expand and update its existing systems for monitoring risks, ensure that these systems are designed and administered by expert staff, and supplement them with other strategies for detecting plans at risk; and • be empowered to undertake remedial measures based on the results of its proactive monitoring.	A	▪ Risk-based auditing is effective only to the extent that the selection criteria are appropriate, i.e. that appropriate measures are used to evaluate risk. ▪ There needs to be an appropriate balance between theoretical perfection and simplicity in developing risk-based selection criteria. The current criteria seem to err on the side of simplicity.
Recommendation 7-12 — The regulator should develop a set of internal controls to better understand the provenance, track the processing and evaluate the outcome of inquiries and complaints; use the results of this process to improve its performance; and communicate those results to stakeholders.	A	
Recommendation 7-13 — The regulator should appoint a Complaints Officer with a mandate and supporting staff to assist complainants and persons making inquiries to secure the information they seek and the recourse to which they are entitled; to ensure the timely and responsive processing of inquiries and complaints; and to advocate on behalf of complainants within the regulatory process, where appropriate.	A	

Recommendation	Position	Comments
Recommendation 7-14 — The Pension Benefits Act should clearly establish the right of unions and other representative organizations to participate in regulatory proceedings on behalf of individuals whom they represent, and of individuals to represent themselves. The Pension Tribunal of Ontario should be given discretion to order the sponsor or the plan to reimburse all legal and other costs necessarily incurred in the course of such participation in appropriate cases when claims or complaints are meritorious.	PA	▪ Our agreement with this recommendation is based on the understanding that "meritorious" means "successful". ▪ We do not support payment of costs by a plan sponsor or a pension plan fund in any situation where a plan participant is unsuccessful in a claim. ▪ The principle that losing litigants pay costs is well-established and can reasonably be extended to pension disputes. ▪ Members and their representatives should have standing in proceedings related to a plan that affect their rights or benefits.

Recommendation	Position	Comments
Recommendation 7-15 — The Pension Benefits Act should grant the Superintendent power to: • 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; • 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 • make any final order necessary to secure compliance with the Act or with regulations and rules made pursuant to the Act. The Superintendent should provide all affected parties with as full a right to be heard as is feasible given the urgency of the situation. 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.	A	
Recommendation 7-16 — The regulator should improve its internal and external data collection and reporting activities and implement a program of rigorous self-evaluation that will contribute to the identification of possible improvements in its regulatory functions. It should make the results of this self-evaluation publicly available. The regulator should be given the human and material resources necessary to pursue this approach.	A	▪ The regulator should also operate on a cost-recovery basis and should be explicitly accountable for its budget and spending. ▪ The regulator should be subject to periodic external audit and review.

Recommendation	Position	Comments
Recommendation 7-17 — The Pension Benefits Act should include a "purpose clause" that will provide guidance to its interpretation and implementation. That clause should include reference to the need to maintain a balance among stakeholder interests, to keep pensions both secure and affordable, to both protect and promote the pension system, and to encourage innovation within the system.	PA	▪ The "purpose clause" should include a statement of principle that pension regulation should facilitate expanded pension coverage.
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.	A	▪ See comment for Recommendation 7-16.
Recommendation 7-19 — The Ontario Pension Regulator should comprise five commissioners — the Superintendent of Pensions and four independent, part-time commissioners with extensive experience in pensions regulation or policy. The commissioners should act as a board of directors with general power to: • oversee and direct the functions of the Ontario Pension Regulator; • approve its budget and administration; • approve policies and issue policy statements relating to regulatory approaches; • adopt procedural rules; and • report annually to the Minister of Finance concerning the operations of the Regulator. The commissioners should not perform operational regulatory functions involving individual plans.	PA	While we support a pension-specific focus for the regulator, we are concerned about the significant potential for increased costs.

Recommendation	Position	Comments
Recommendation 7-20 — The Ontario Pension Regulator and the Superintendent of Pensions should exercise all pension-related functions now exercised by the Financial Services Commission of Ontario and the Superintendent of Financial Services, respectively, together with the additional functions recommended in this report.	PA	▪ See comment for Recommendation 7-19.
Recommendation 7-21 — The new Ontario Pension Regulator should assist in the development of pension policy by collecting data, contributing its experienced-based insights into the operation of the regulatory system and refining and reflecting on the exercise of its statutory powers. However, it should not be assigned primary responsibility for overall pension policy development.	A	▪ The regulator should be able to make non-binding policy recommendations.
Recommendation 7-22 — The Ontario Pension Regulator should have greater control over its budget and hiring practices so that it can recruit, train and retain the professional and expert staff it needs to discharge its enhanced regulatory functions. With the approval of the Lieutenant Governor in Council, the Regulator should be able to fix levies on plans according to plan size or type, to charge user fees for particular regulatory transactions and to retain for its own purposes administrative fines levied by the new Pension Tribunal of Ontario.	A	▪ The regulator should be accountable for its budget and spending and should operate on a cost-recovery basis.
Recommendation 7-23 — The Ministry of Finance should supplement the budget of the Ontario Pension Regulator to enable it to perform functions such as data collection and analysis, which support policy-making and other non-regulatory functions.	A	▪ Spending by the regulator on non-regulatory functions should be accounted for separately.

Recommendation	Position	Comments
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.	A	▪ The regulator should consider adopting and implementing continuous-improvement processes.
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.	A	
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.	A	

Recommendation	Position	Comments
Recommendation 7-27 — The Pension Tribunal of Ontario should comprise a Chair who is a jurist of stature, two members with a background in law (or equivalent), and two members with a background in actuarial science (or equivalent). Appointments to the Tribunal should be recommended by a bipartisan nominating committee with a view to ensuring that the Tribunal enjoys the confidence of both sponsor-side and member-side stakeholders and is perceived to be balanced and neutral. The Chair and members of the Tribunal should be allowed to serve part-time, but not to hold concurrent employment that might involve, or be seen to involve, them in a conflict of interest. All members of the Tribunal should possess expertise in pensions or some closely related field.	A	▪ We support a pension-specific tribunal. Cost constraints may be better met if this is established within the current FSCO structure.
Recommendation 7-28 — The Chair of the Pension Tribunal of Ontario should be allowed to sit alone to hear and decide cases relating to specific provisions, such as the enforcement of orders made by the Superintendent. In more complex matters that may require specialized actuarial or legal knowledge, the Chair may designate the two members with backgrounds in those fields to serve on a hearing panel. If in the opinion of the Chair both types of knowledge are required, all four members may be designated to serve.	A	
Recommendation 7-29 — The Pension Tribunal of Ontario ought to have all powers necessary to dispose of matters before it.	A	

Recommendation	Position	Comments
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. 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.	A	
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 Pension Benefits Act, 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.	A	▪ In bankruptcy and insolvency situations, potential for conflict arises between the Tribunal's powers and the powers of an insolvency court or trustee in bankruptcy. ▪ The orders of an insolvency court should take precedence over any orders made by the Tribunal.

Recommendation	Position	Comments
<u>Governance</u> **Recommendation 8-1** — The regulator should establish benchmarks or performance indicators covering the broadest possible range of governance issues, including funding, benefits, expense ratios, administrative costs and service to members and retirees. Plan administrators should provide, and the regulator should collect and analyse, data relevant to these indicators. The results of this exercise should be made publicly available so that sponsors, administrators and beneficiaries can evaluate the performance of their plans as against the performance of specific comparator groups and of the whole system.	PA	▪ Statutory governance standards should be established, and the regulator should periodically review compliance with those standards. The regulator should not have discretion to establish or change governance benchmarks at will. ▪ The proposed data collection and evaluation activities would likely involve significant cost for the regulator and for plan sponsors.
Recommendation 8-2 — Unions should be encouraged to negotiate both the major substantive elements of pension plans arising out of collective agreements and the governing structures of such plans. The regulator should accord plans with joint governing structures a greater margin of regulatory discretion than would be available to plans lacking such structures.	D	▪ Unions have a role in negotiating pension benefits and can play a role in joint governance, but they do not necessarily represent the interests of retirees. ▪ Experience does not suggest that plans with joint governance are necessarily better governed. All plans should be subject to the same regulatory requirements.
Recommendation 8-3 — Unions that seek and accept a role in plan governance should be encouraged to ensure that both active and retired members have a voice in decisions that affect them. Unions should also develop the technical and analytical capacities necessary to support effective member participation in plan governance.	A	

Recommendation	Position	Comments
Recommendation 8-4 — Multi-employer and jointly sponsored pension 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.	A	
Recommendation 8-5 — Multi-employer and jointly sponsored pension plans should provide annual statements to all active, deferred and retired plan members, which include: • a statement of the plan's current funded status; • 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 wind-up (in the case of jointly sponsored plans); • disclosure of any known events likely to lead to a reduction in benefits; and • an indication of any procedure or formula specified by law or in the plan documents by which benefit reduction may be determined.	A	▪ Disclosure should be consistent with plain-language standards.
Recommendation 8-6 — Multi-employer and jointly sponsored plans should develop and abide by investment rules that prevent self-dealing either by the union that has negotiated them or by plan trustees.	A	
Recommendation 8-7 — 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.	A	

Recommendation	Position	Comments
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.	PA	▪ Joint governance should not be a pre-condition to exemption from the 30% investment rule. ▪ The prudent investor standard should apply to investment decisions. ▪ We question whether it is practical to define criteria for determining whether an administrator has the requisite capacity to make complex investment decisions.
Recommendation 8-9 — Plan sponsors who administer their own plan should be encouraged to reduce or eliminate inherent conflicts of interest by: • ensuring, so far as possible, that those assigned to the role are given an unequivocal mandate to act in the best interests of the plan; • providing representation for members and/or retirees and/or independent members on the plan's highest decision-making body; or • retaining arm's-length professional advisors to administer the plan on their behalf.	D	▪ This recommendation implies that employer-administered plan governance has suffered due to conflicts of interest. The report cites little if any evidence of this. ▪ Statutory governance rules should require (and generally do require) that those charged with plan administration act as fiduciaries. ▪ Members/retirees do not always want to have any involvement in plan governance. ▪ Plan sponsors should not be forced to increase their costs by outsourcing administrative tasks that can be effectively discharged in-house.

Recommendation	Position	Comments
Recommendation 8-10 — 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: • adopting clear policy statements in the plan documents; • ensuring the significant representation on those bodies of groups with divergent interests; or • appointing some trustees or governors unaffiliated with any group whose members are covered by the plan.	N	
Recommendation 8-11 — The Pension Champion, proposed in Recommendation 10-5, should work with stakeholders to identify approaches to the resolution of conflicts of interest appropriate to their particular circumstances.	N	
Recommendation 8-12 — 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. 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.	N	

Recommendation	Position	Comments
Recommendation 8-13 — 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: • which participants in the governance of pension plans are bound by fiduciary duties; • the scope of such duties; • whether such duties can be assigned to professional advisors and agents; • whether advisors and agents are themselves bound by the same duties; and • 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.	N	▪ The Ontario government should leverage work of CAPSA in this area.
Recommendation 8-14 — 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: • adapt this code to the particular circumstances confronted by their members; • implement the code, as adapted, through revision of their own professional standards, if required; and • educate — and if necessary, discipline — their members in order to ensure compliance with the new standards.	N	

Recommendation	Position	Comments
Recommendation 8-15 — 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.	D	▪ What would this apply to? Plan documents? Amendments? Valuation reports? ▪ Currently, professional advisors of various kinds have a professional obligation to deliver work product that is legally and professionally compliant. As a result, this certification requirement seems unnecessary. ▪ Not all service providers are in a position to certify that a document complies with law. This is particularly true with respect to plan documents, which often are not prepared by legal advisors.
Recommendation 8-16 — 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.	D	▪ See comments under Recommendation 10-5.
Recommendation 8-17 — 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.	D	▪ See comments under Recommendation 10-5.

Recommendation	Position	Comments
Recommendation 8-18 — 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.”	A	▪ The regulator should leverage work done by CAPSA on governance.
Recommendation 8-19 — 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.	D	▪ This could involve significant costs. Most members aren’t interested in seeing plan documents and if they are they can ask the administrator or the regulator. There is little to be gained by incurring substantial cost to make documents broadly and electronically available. ▪ The regulator should make documents available in electronic form only if it makes sense from an operational perspective.
Recommendation 8-20 — The regulator should develop guidelines and codes of best practice with regard to the provision of plan information to active and retired members in accessible form.	A	

Recommendation	Position	Comments
Recommendation 8-21 — Plan administrators should provide an annual information statement to active and retired plan members in easily understood language or languages. The statement should include: • a simple description of how pensions are funded and benefits are calculated under the plan; • information on the plan's funded status (including whether it is in surplus or deficit and whether a contribution holiday is in progress or contemplated); • the potential impact of its funded status on active and retired members' pensions; and • a telephone number and/or website address where further information can be obtained from the administrator or the sponsor, and similar coordinates for the pension regulator.	A	

Recommendation	Position	Comments
Recommendation 8-22 — 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.	PA	▪ Standards for governance, funding and investment policies should be prescribed in legislation or regulation and compliance should be periodically monitored in the normal course. There should be no requirement to file policies that the regulator is unlikely to review. To the extent that a risk-based approach to pension regulation is adopted (as the OECP recommends), it would be unnecessary to file these policies given that the regulator could require they be made available in the course of a risk-based review of a pension plan. If members want to review the policies, they could be made available by the plan administrator, as Ontario's current rules require. ▪ Template policy statements would be helpful.
Recommendation 8-23 — Plan statements of investment policy should reveal whether, and if so, how, socially responsible investment practices are reflected in the plan's approach to investment decisions.	A	
Recommendation 8-24 — Except as provided in Recommendation 8-26, every pension plan should be required to establish a pension advisory committee (PAC). A PAC should comprise at least five members, including one representative selected by retired members and one by each class or group of active members.	D	▪ PACs should be permitted, but not required. ▪ Where there is a risk sharing arrangement, a joint governance model would make a PAC unnecessary. ▪ Pension committees have not proven to be successful in Quebec.

Recommendation	Position	Comments
Recommendation 8-25 — The PAC should: • be provided with effective means of communicating with all plan members, including retired members; • have access to all information distributed to plan members or filed with the regulator; • receive notice of all amendments, applications, proceedings or transactions involving the plan; and • be informed of all votes or consultations designed to solicit the views of plan members.	D	▪ The suggested requirements will be costly, and should apply only if a PAC is established ▪ PACs should be optional. ▪ Section 24 of the PBA currently allows a PAC to be established by vote of a simple majority of members. The fact that many plans don't have a PAC suggests that members do not want them, or that they are not aware of their right to establish one. ▪ To ensure that members are aware of their right to establish a PAC, one approach may be to require that annual statements remind members of this right.
Recommendation 8-26 — No PAC need be formed when (a) a plan provides for the participation of active and retired member representatives on its governing body, (b) a collective agreement provides for a joint sponsor–member–retiree advisory committee, or (c) a majority of active and retired members vote in a secret ballot not to establish a PAC.	D	▪ See comments for Recommendation 8-25.

Recommendation	Position	Comments
Recommendation 8-27 — The sponsor of a single-employer pension plan may enter into an agreement with a trade union, or other union-like organization that represents plan members, to establish a jointly governed target benefit pension plan. Such plans should (a) be governed by a board of trustees or comparable body on which representatives of plan members and retirees should comprise not less than one-half of its members, (b) offer target benefits, and (c) be funded on the same going concern basis as multi-employer and jointly sponsored plans.	D	▪ A target-benefit plan can be effectively managed without joint governance, so joint governance should not be a pre-condition to establishing a target-benefit plan or indeed, any plan. ▪ The existence of a union or union-like organization should not be a prerequisite for establishment of a target benefit plan. ▪ Reform must accommodate continuation and viability of traditional employer-governed, single-employer, DB pension plans.
Recommendation 8-28 — The Pension Benefits Act should be amended to describe pensioners as "retired" rather than "former" plan members.	N	
Recommendation 8-29 — Retired and deferred plan members should be assured effective access to all plan information available to active plan members.	A	
Recommendation 8-30 — 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.	A	

Recommendation	Position	Comments
<u>Innovation in Plan Design</u> **Recommendation 9-1** — Innovation in plan designs should be promoted and facilitated by the proposed Pension Champion (see Recommendation 10-5).	D	▪ See comments under Recommendation 10-5.
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.	A	
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.	A	▪ Commingling should not be limited to target benefit plans. Asset pooling without risk pooling could lower investment-management costs for many plans and improve access to high-quality asset management services.
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.	N	
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.	A	

<table>
<tr><th>Recommendation</th><th>Position</th><th>Comments</th></tr>
<tr><td colspan="3"></td></tr>
<tr><td><u>The Future of Defined Benefit Pensions and Pension Policy in Ontario</u>

Recommendation 10-1 — The government should:
• considerably improve the collection of data concerning all aspects of the pension system;
• regularly produce analyses of pension coverage, the funding status of pension plans, the contribution of pension plans to capital and labour markets, the performance of the pension regulator and other indicators of how Ontario’s pension system is working;
• use such analyses to support periodic and ongoing review of pension policy and the regulation of the pension system; and
• make pension data and analysis readily available to stakeholder, professional and academic users.</td><td>A</td><td>▪ There exist serious deficiencies in data collection regarding pension plan membership, pension plan coverage, retirement-savings behaviour and retirement savings accumulations of Ontario residents.
▪ Lack of adequate statistical information about pension coverage and retirement savings sufficiency continues to be a serious impediment to developing pension policy and legislation targeted toward improving retirement income adequacy for Ontario workers.
▪ Cooperation with federal government entities – particularly the Canada Revenue Agency and Statistics Canada – could substantially improve the collection and analysis of pension-related data.</td></tr>
<tr><td>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.</td><td>D</td><td>▪ These roles currently exist with the FSCO advisory bodies. These bodies should be utilized for input on both pension supervision (as currently used) and pension policy.</td></tr>
</table>

Recommendation	Position	Comments
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.	A	
Recommendation 10-4 — Ontario's pension policy, legislation and performance should be comprehensively reviewed every eight years.	A	
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.	D	▪ We question the creation of yet another body with its concomitant costs. ▪ Research can be conducted directly by the government or by the regulator and paid for by the government. ▪ Policy development can continue to be led by the Minister of Finance. ▪ See comments on Recommendation 10-2 regarding stakeholder input.
Recommendation 10-6 — The new Pension Champion should be provided with highly qualified and sufficient staff and resources adequate to undertake its assigned functions.	D	▪ See comment on Recommendation 10-5.

Recommendation	Position	Comments
Recommendation 10-7 — The Minister of Finance for Ontario should promote and support a meeting, at the earliest feasible date, of provincial and federal ministers responsible for pension issues with a view to discussing: • the possible implications of further divergence in provincial pension policies, legislation and regulatory arrangements if, as and when the recommendations in this report, and in the reports of other provincial pension commissions, come forward for consideration, enactment and implementation by the governments involved; • the need for the provinces to act collectively in order to secure changes in federal legislation, particularly the raising of pension contribution limits under the Income Tax Act and the more favourable treatment of pension plans and members under federal bankruptcy and insolvency legislation; and the potential for some greater standardization of procedural and technical requirements in provincial pension legislation, in light of recommendations contained in the reports of the three current pension commissions and an anticipated report from the Canadian Association of Pension Supervisory Authorities.	A	▪ A move toward uniform regulatory standards and better pension tax rules is long overdue.
Recommendation 10-8 — The government should maintain momentum in pension reform by moving as rapidly as possible to determine whether or to what extent it wishes to implement the recommendations in this report. Having established its basic direction, the government should then identify issues for priority treatment. An early priority for the government should be to put in place appropriate agencies and officials who can carry forward the ongoing work of reform.	A	▪ Please refer to our letter for a discussion of our priority recommendations.

Recommendation	Position	Comments
Recommendation 10-9 — The government should identify recommendations that will require phased implementation as well as transitional measures to allow stakeholders to bring themselves into compliance with the new regulatory regime over some reasonable period of time. However, it should be vigilant to ensure that arguments favouring phased implementation and transitional measures are not used to obstruct reforms that the government believes to be necessary and appropriate.	A	

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November 13, 2007

Mr. Harry Arthurs
Commissioner
Expert Commission on Pensions
PO Box 102
777 Bay Street
Toronto, Ontario
M5G 2C8

Dear Mr. Arthurs:

PROPOSED CONTINGENCY RESERVE ACCOUNT

The purpose of this letter is to follow up on an issue discussed during Towers Perrin's presentation to the Expert Commission on the morning of November 7th.

When discussing our proposal for the establishment of a contingency reserve account to which incremental contributions resulting from the solvency valuation test would be made, you asked about the appropriate controls that would be needed over this account. For example, the ability of employers to withdraw assets from the account must be constrained so that the security of pension benefits is not jeopardized, and the account should not be a vehicle for inappropriate tax deferral by employers. We concur that controls would be necessary in adopting this approach, and we thought it might be helpful to you if we expanded upon the brief discussion we had of this matter on November 7th. Such is the purpose of this letter.

For the most part, the same or similar rules and controls that apply to a pension fund today would also apply to the contingency reserve account. For example:

1. The account would be established as a special purpose trust. As a result, assets in the contingency reserve would be out of reach of the employer and would be protected from non-pension creditors.

2. The same fiduciary obligations of the administrator (and agents of the administrator) that apply to the administration and investment of the pension fund would also apply to the administration and investment of the contingency reserve account.

3. Rules applying to investment of the pension fund would also apply to assets in the contingency reserve account. In particular, an expanded Statement of Investment

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Policies and Procedures will be required to identify how assets both of the pension fund and of the contingency reserve will be invested.

4. Rules for determining the amounts of, and timing for, minimum required incremental contributions to the account in satisfaction of the solvency valuation test would be contained in the Pension Benefits Act and its accompanying Regulation (the "PBA").

5. Any employer required contributions that are due but not paid – whether to the pension fund or to the contingency reserve account – would be deemed to be held in trust by the employer. The administrator would have the right to commence court proceedings to obtain payment of required contributions that are due but unpaid.

6. Audited pension fund statements that must be prepared on an annual basis for plans with assets in excess of the prescribed threshold (currently $3 million) would include assets contained in the contingency reserve account. We anticipate that a combined audited statement would show pension fund assets separately from contingency reserve assets, complete with disclosure of any transfers during the reporting period between the contingency reserve and pension fund.

7. On an annual basis, administrators must file a form (Form 7) with the trustee of the pension plan that provides an estimate of the monthly contributions for the ensuing plan year. This information assists the trustee in monitoring whether contributions are being made in accordance with the minimum requirements based on the most recent actuarial valuation. We envision that Form 7 would show both the minimum contributions required to the pension fund and the contingency reserve account combined, in addition to showing the minimum contributions required to the pension fund in isolation.

8. The contingency reserve account would be tax sheltered. As such, we anticipate that the Income Tax Act (Canada) and related regulations would be amended to provide that the total of an employer's contributions remitted to the pension fund and contingency reserve account be limited based on the combined assets in the pension fund and the contingency reserve account. Similarly, each member's contributions made to a registered pension plan (to the pension fund and to the contingency reserve account combined) would be limited to respect requirements of tax law. (Employee contributions to the contingency reserve account would only occur in multi-employer defined benefit pension plans and jointly sponsored pension plans.)

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Some key differences would also exist in how assets in the pension fund are treated as compared to assets in the contingency reserve account, these being outlined in the paragraphs that follow. As you will see, these paragraphs make reference to the term “funders” – by which we mean the entity or entities responsible for making incremental contributions to the contingency reserve account due to the solvency valuation test. The funder would be the employer for the typical single-employer defined benefit plan, and the funder would be the plan membership (on a collective basis operating under the decision-making authority of a Board of Trustees) for the typical multi-employer defined benefit pension plan. For risk-shared plans (“jointly sponsored pension plans”), the funders would be both the employer(s) and the members. The plan document would specify who the funders are, how contributions to the reserve account are allocated among funders, and how any assets returned from the account are to be allocated among funders.

With this as context, we envision that the PBA would spell out rules as follows:

a. The PBA will require that the method for allocating returned assets among funders must be consistent with the method for allocating contributions to the reserve account among funders (i.e., consistency between the amount of contribution risk borne by a funder and that funder’s share of any refund from the reserve account will be mandated by law).

b. The funders would have the flexibility to transfer assets from the contingency reserve account to the pension fund. Note that these transfers would not compromise the security of member benefits because restrictions on withdrawals from the pension fund would be at least as onerous as restrictions on withdrawals from the reserve account. Transfer of assets from the pension fund to the reserve account would <u>not</u> be permitted.

c. Upon plan wind up, assets in the pension fund would be used to settle the plan’s pension obligations. If there are not sufficient assets in the pension fund to settle all pension obligations, assets in the contingency reserve account would be available and would be called upon as necessary to settle the remaining obligations. If assets remain in the account after all pension obligations are settled, these remaining assets would be returned to the funders.

d. For an ongoing pension plan, if the plan’s solvency ratio exceeds the target solvency ratio, the reserve account assets in excess of the target can be returned to the funders. It is important to recognize that the funding targets will be contained in law and, therefore, will be set at a level that the legislator deems appropriate (i.e., that provide appropriate protection to plan members and retirees).

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We are not in a position to opine on whether there are legal impediments to amending the PBA, Income Tax Act (Canada) and their respective regulation(s) in the manner described above to accommodate contingency reserve accounts. However, presuming any such obstacles can be overcome and the requisite changes are made in law, we strongly believe that pension benefits will be more secure than under a continuation of the present regime and a key disincentive to sponsorship of defined benefit pension plans, employer concern over surplus issues, will be considerably mitigated.

For further background on Towers Perrin's thoughts on pension plan funding, we have attached a recently-released White Paper on funding issues.

If we can be of any assistance in answering additional questions on the contingency reserve account or any of the other recommendations contained in our submission and November 7th presentation, please do not hesitate to contact us.

Sincerely,

Gavin Benjamin
Principal
Direct Dial: 416 960-7419

cc: Steve Bonnar – Towers Perrin

About Towers Perrin

Towers Perrin is a global professional services firm that helps organizations to improve performance through effective people, risk and financial management. The firm provides innovative solutions in the areas of human capital strategy, program design and management, and in the areas of risk and capital management, insurance and reinsurance intermediary services and actuarial consulting.

Towers Perrin has offices and alliance partners in the world's major markets. More information about Towers Perrin is available at www.towersperrin.com.

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