WSIB Workplace Safety & Insurance Board
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Via E-Mail
The Honourable Dwight Duncan
Minister of Finance
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Dear Minister Duncan:

Subject: Response to the Expert Commission on Pensions Report

We thank you for the opportunity to comment on Ontario Expert Commission's recently released report, "A Fine Balance: Safe Pensions, Affordable Plans, Fair Rules" ("the Report").

Defined Benefit Plans

- The Report recognizes that pension reform in Ontario can only occur if changes are made to several pieces of federal legislation such as the *Income Tax Act* (Canada). It is our hope that the government of Ontario and those of the other provinces lobby the federal government to reform policies to encourage and promote defined benefit plans as it would be in the public's interest.

- We are encouraged by the Report's suggestion that coverage in defined benefit pension plans be made possible for small and medium sized employers. The Report suggests various means through which this could be accomplished, such as the Ontario government exploring the possibility of expanding the mandate of the Canada Pension Plan or establishing a provincial plan that would be similar to the Canada Pension Plan.

- In general the Report's recommendations enhance the protection of member entitlements in a defined benefit plan. However we note that these protections come with increased regulation, costs and greater administration for sponsors of single employer pension plans. If the intention of the Report is to ensure the continued viability of defined benefit pension plans, these added pressures on sponsors of single employer pension plans would appear to create a negative effect.

- The funding advantages being recommended by the Report are reserved for jointly sponsored pension plans, multi-employer plans, and the newly proposed target benefit plans. This serves as a disincentive for the sponsors of single employer pension plans, which will now face even more stringent funding requirements.

- We support the recommendation in the Report on surplus distribution that would implement legislation to reverse the requirement of surplus distribution on a partial plan wind-up and only distribute surplus on plan termination to members who have an entitlement in the plan as of the effective date of the wind-up if the employer cannot demonstrate clear entitlement under the plan documents.

Asymmetry — Recommendation 4-16

- The Report recommends that it is up to the government to develop effective legislation as to the treatment of surplus funds. However, the recommendations which are actually proposed do not adequately address the issues of ownership and use of surplus funds. We believe the Report does not go far enough in providing security to plan sponsors that they would have access to surplus funds – a consequence of which may be minimal funding during periods of economic uncertainties such as we are currently facing.

- The Report indicates that surplus amounts would be distributed in accordance with a plan's documents. Where the documents do not provide a clear determination as to the ownership of those funds, the sponsor would be required to propose a surplus sharing agreement. Any agreement would require the consent of a minimum number of members and, where applicable, the bargaining agent would accept on behalf of the union membership. Where a surplus agreement cannot be reached, the recommendation is to make the Pension Tribunal of Ontario (or a dispute-resolver) the final determinant of the outcome. This recommendation, in our view, does not provide an effective resolution to the issue. A legislated system that permits employers to access surplus under defined rules would be preferable.

Funding Issues— Recommendations 4-13 to 4-15

- The Report indicates a need for different funding rules for large multi-employer type plans and single employer pension plans. It recommends that the rules be relaxed for multi-employer plans in that, although a plan's solvency position would be reported, solvency deficits would not have to be funded. On the other hand, it recommends that single employer pension plans continue to be valued on both a going concern and solvency basis. Overall this would have the effect of creating more restrictive funding rules for single employer pension plans. It could also lead to higher contribution requirements for a single employer plan sponsor. Given today's economic environment this would place a heavier financial burden on plans for these additional funding requirements. This additional burden would discourage any new single employers from establishing defined benefit plans.

- The Report recommends that single employer pension plans make additional contributions towards the funding of a security margin that would be equal to 5% of the plan's solvency liabilities. The Report does not explain how it arrived at this margin, nor does it propose to take into account the types of assets which the plan holds. In many single employer plans, the employer is the sole contributor of special payments for solvency deficits and therefore this recommendation places an additional burden specifically on single employer plans regardless of their investment strategy or financial stability.

Federal Investment Rules— Recommendations 8-8 and 4-25

- The Report recommends that the 30% ownership limitation be removed only for jointly sponsored pension plans with the capability of making complex investment decisions. The Report does not however define how the requisite capability will be measured. It is our view that where a single employer pension plan can demonstrate that it has the capability of making such a decision and where the appropriate governance process is in place, the limitation also should be removed for such plans.

- It is also our view that if Ontario is unable, within a short period of time, to persuade the federal government to reform the federal investment rules in Schedule III of the *Pension Benefits Standards Act, 1985*, it should swiftly establish its own investment rules. We would suggest Ontario adopt a model similar to that proposed by the Alberta-British Columbia Joint Expert Panel on Pension

Standards. This joint panel proposes a move towards expanding upon the 'prudent person' based model.

***Income Tax Act (Canada)* Surplus Limits— Recommendation 4-24**

- Although the Report recommends that the tax limits on contributions and benefit levels be increased it does not specify to what extent these limits should be raised. We suggest the limit be increased to 125%. We are pleased that the January 9, 2009 discussion paper released by the Federal Minister of Finance indicates that the Government will review this limit.

- While we support an increase to contribution tax limits, it is our view that the excess contributions made by a plan sponsor should be directed to a tax-sheltered account which would be separate and apart from the regular pension fund. The sponsor would be able to access these funds, provided the regulator approved the withdrawal. This is similar to the method proposed by the Alberta-British Columbia Joint Expert Panel on Pension Standards.

- Unlike the recommendation in the Report, it is our view that these funds should not be part of any surplus amounts on wind-up. If the benefit obligations of the plan sponsor are met on wind-up these amounts should be returned to the plan sponsor.

Indexation— Recommendations 4-20 and 4-21

- The Report recommends that indexing should be mandatory during inflation emergencies by enacting the provisions of section 53 of the Ontario *Pension Benefits Act* ("PBA"). However, the Report does not define what an inflation emergency is. If for example, an inflation emergency means high inflation, it would have the effect of potentially creating a heavier financial burden to a plan sponsor at a time when it can least afford an escalation to minimum funding requirements. Currently, the PBA contemplates pension indexing, but does not make it mandatory. The indexing of pensions-in-pay is currently a matter of plan design.

- It is our view that such a decision should continue to be voluntary rather than mandated by legislation. Any negotiations which are needed should be held between the plan sponsor, plan members and respective collective bargaining representatives.

Pension Benefits Guarantee Fund (PBGF)— Recommendations 6-13, 6-16, and 6-17

- Although the Report recognizes the inherent flaws of the PBGF it recommends that its operation be reviewed for a period of at least five (5) years. At the end of the review period, it would be determined whether to continue or discontinue the PBGF.

- In the meantime, the Report recommends that the minimum benefit be increased from $1,000 to $2,500 per month. It does not however describe how the PBGF should fund these increased amounts. The increase in the minimum benefit amount would place a more onerous financial burden on a system.

- We support the Reports recommendation that the PBGF fees levied on a plan sponsor be modified to take into consideration the financial sustainability and credit worthiness of the sponsor. However, it is our view that the fees paid by plan sponsors into the PBGF would be better directed to the funding of the plan itself. Also, we believe that increased vigilance and monitoring of the employers' ability to meet its obligation would better address this issue, rather than having an insurance system that may not have the ability to pay benefits in turbulent economic conditions.

New Regulator— Recommendations 7-18, 7-19, 7-20, 7-22, and 7-23

- The Report proposes that the current Financial Services Commission of Ontario should be replaced with a new independent pension regulator with greater authority, enhanced powers, and more resources. We support this view as it would lead to better service and would lead to more efficiency in the operation of pension plans.

Conclusion
We have concerns that the Report does not encourage the viability of single-employer pension plans. We hope that the consultation process as a next step will go a long way towards ensuring the economical viability of single-employer defined benefit pension plans.

Should you have any questions, I can be reached at (416) 344-4273.

Sincerely,

George Lorenz

George Lorenz
Director, HR Operations and Plan Manager

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