FW: [Transcript] Bonnie Lysyk - February 16, 2017

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Subject: [Transcript] Bonnie Lysyk - February 16, 2017

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Lysyk:

Good morning everyone and thanks for joining us here today

I'm here with my team from the office of the Auditor General and, um, other than individuals introduced maybe you'll have a chance to meet them at some point down the road

On Monday the Provincial Government's panel, looking into the pension asset surplus situation produced its report

In response to this Office's position

We have an opportunity to review it and are here today to talk about it

First, by way of background, in accordance with the Auditor General Act I am an independent, non-partisan officer of the legislative assembly

This provided a vital safeguard to me and my office to fulfill our responsibilities objectively and fairly by being independent of the government and its administration

It's important to note that in accordance with the Auditor General Act we must offer an opinion on the government's financial statements

And whether they are reported fairly

This is our job

Our position on the issue of the government's financial statements, including the pension surplus very simply put was that in order to receive a clean audit opinion from us, we would need a signed negotiated agreement from the join sponsors of the pension plans as evidence that the government has an accounting net pension asset that it can benefit from today

In other words, the province would need to get written permission from OPSEU and the Ontario Teachers' Federation to use that $10.7 billion pension surplus

We have not received that evidence yet

And it must be clear that the letter we received from OPTRUST is not sufficient

It was an opinion from the CEO

We need a letter of a negotiated agreement from the unions that say the province can use that money

Now the government didn't like our opinion that we are required to provide

So, they hired a panel to offer another opinion

And that's its prerogative

In response to the panel's opinion we are pleased to see that the panel agrees with us on what has been our main point all along

That the province can't use money from the pension plan until the cosponsor approves

In other words, we need two signatures on the cheque in order to get the stamp of approval from this office

They need, they need two signatures on the cheque

That is what we have said and that's what the panel said right in its executive summary

The fact is the provincial government can choose to record this pension surplus as an asset on its books

We are in no way stopping it from doing that

What's at issue is it wants this office to give its financial statements a clean audit opinion, supporting its desire to have unfettered access to that money

And we can't give that clean audit opinion until both the public unions that are cosponsors agree in writing to let the province use that money

This isn't about this office and this isn't about me

It's not my money, that money is for the benefit of employees and retirees who have paid in to be able to live a comfortable life in retirement

So it's not my pension, it's not my budget deficit

For 130 years this office has been serving the people of Ontario independently and in a completely non-partisan way

And to suggest otherwise is misguided

Why are we talking about this now?

Well the pension asset has recently started creating significant revenue that the government is using on its books

That put this issue on our radar and led to our office investigating further

Now this is the key part

The Ontario Teacher's Federation is the real player in this pension issue

Because it represents $10.1 Billion of the $10.7 Billion

That is the vast majority of the money we are talking about

All we need is a letter of agreement between the province and the Ontario Teacher's Federation saying the province can presently use half of many pension surplus

Once we have that letter this office could sign off and give a clean audit opinion on this issue

It's as simple as that

So this isn't an issue between the Auditor's Office and the government

This is an issue between the two parties that have a joint bank account

The province and the Ontario Teacher's Federation

The government wants to use their shared money to balance the budget and that's between them

Now the province argues it doesn't need permission of the teachers, their partners in the joint bank account to use that money

That's between the teachers and the government and not this office

We should point out the Ontario Teachers Plan has accounted for this pension as being in a liability position

So the provincial government and the Teacher's Plan cannot agree on whether there is a pension surplus or not

You can now see why this office can't give a clean audit opinion until these matters are resolved

Any surplus is trapped in a pension plan until the teachers and the province negotiate otherwise

We're not alone in this approach, there are two other provinces in Canada that have public sector pension surpluses, New Brunswick and British Columbia

In both those provinces are doing what our office is saying, not allowing that surplus to be used to balance the books without a written agreement

Bascially the Ontario Government and it's partners in their joint pension plan have deals to deposit money but no negotiated agreements presently to use any surplus

So my message is clear, show me the letter

Show me the letter that says you can use that pension money with permission with an agreement

Until that happens the bottom line is this office can't give its stamp of approval on this particular issue

Now I'd be happy to take your questions

Benzie: *Why did you sign off on this last year then? I mean you didn't need a letter last year it's very unusual your u-turn. Why?*

Lysyk:

The key—when the government put out it's budget in 2016 if you look at the budget you'll see that they have for the first time indicated that there is revenue to be earned from the Teacher's Pension Plan and that's on 284 of the economic and fiscal outlook

It is the first time that the pension asset has been growing simultaneously with revenue being recognized by the province

Benzie: So but I'm still not clear why I mean the pension asset is an asset you agree it's an asset or not?

Lysyk:

The pension asset is a calculated asset but what our job is, is to find out whether there is value to that asset

And in accounting terms it is saying take evaluation allowance if there is no value

So until there is an agreement between the teachers and the government that they can use whatever number as a surplus amount then there is no value to that asset and we believe that note disclosure of the pension asset and the existence of the calculated amount is reasonable

But you know not booking it on the financial statements

And another local example is the TTC

The Toronto Transit Commission has the same situation, they have a surplus and they note disclose it in their financial statements and um there is right in there that until there is agreement between the co-sponsors there is no amount put on the financial statements

Benzie; [inaudible] wrong. You're saying she's wrong?

Lysyk:

No, I'd put it this way that in the, in their report they basically confirmed our core, our core point in that there isn't agreement between the teachers and the government

And when you have cosponsors you need that agreement in order to recognize, an asset

The agreement's fundamental premise that they don't have access to an asset until there's an agreement

Now what they have been saying that we, we, we think is, is different

Is that they basically come down to the point that dreams, hopes and expectations are sufficient to book an asset on the government's financial statements

And for accounting under generally accepted accounting principles expectations and the hopes of something don't cut it

And, you know, there's two things, there could be agreement down the road to increase teachers' benefits and therefore there is no benefit to the province, there is no asset

Could be used to reduce contributions, take a contribution holiday

If that were the case there might be

But the parties have to agree on what it is in order for the accounting to work its way through

In order for the value that's on the finical statements to be representative of, of fact, of an event that has already happened

Bliss: So your concern here is that the government's going to raid the, the piggybank that's not just theirs, it's jointly owned?

Lysyk:

What we're saying is that there's an amount that would be sitting on the balance sheet and there's revenue being generated that's assuming that the government has access to some revenue here

But there is, there is no agreement of that nature

So until they have proof that they will be able to reduce their contributions, you know, by specific dates, by specific amounts or they're going to, you know, have the teachers' benefits increased, we need that information to be able to know whether there's an asset

I mean a key thing here is, you know, the teachers when they read their financial statements from the teachers' pension plan, they see a liability

The government is now communicating that the teachers' pension plan is showing a surplus, there is a disconnect there

Accounting allows for calculations but at the end of the day you have to look at the value of an asset on the balance sheet and say, "Is there value?"

Is there something that you're going, you've already confirmed you're going to be receiving

So that is really important, and that's why we say, "Give us the letter?"

Give us proof that there is value to the amount that you want to book and there is reality to the booking of revenue in the government's financial statements

Bliss: As I recall previous budgets, going back and I don't know how long, that the government would contribute as much as half a billion dollars in a fiscal year. I remember, one year it was 500 million, another year it was 300 million. And I remember asking the finance minister at the time what's that for? And he goes, "We have an obligation to bring up the balance sheet." How does that gibe with his—

Lysyk:

So, so, um, no it's a very good question

There are minimum contributions that are being made and there are no agreements to reduce those minimum contributions

The government has made arrangements in some, during a period of time to up their contribution

You know, it was kind of, share the pain is the way it was referred to

And so, they have been doing that

And so, you know, there is, there are still contributions being made to the teachers' pension plan today, ya

Cohn: Can I follow up on Paul's question. So as a consequence of those increased payments during the 2008 fiscal crisis which many pension plans required there is knock on effect that there is more money than is needed. Would you agree with that?

Lysyk:

No, I—

Cohn: You heard, you heard Trisha say that the teachers' plan has all kinds of wrinkles about future superannuation or indexation I should say. So, it's unclear to me, just to follow on Paul's question are you implying that they could raid the pension fund?

Lysyk:

I guess what I'm saying in order for us to give a clean opinion on this accounting issue and on the government's desire to have the full amount of that 10.7 billion showing on their balance sheet, I need evidence, audit evidence that confirms there is value to that asset

If it's a mathematical calculation they can disclose it in a note to the Financial Statements and say there's something down the road they may get

But until they know exactly what it is they're going to get, there's no proof that anything is going to benefit the taxpayer of Ontario

And the key difference is here, you have a pension fund that's a trust with assets in it

And you have a government set of statements that are for the taxpayers

We have two different perspectives that have to be kept in mind here

And the money is all sitting in a trust

Cohn: But that wasn't my question. Were you suggesting that they could raid the pension fund if this goes through?

Lysyk:

I am not the person to make the decision

This is not for me to comment on that

It's between the government and the Ontario Teachers' Federation to determine how they handle the situation when the government has an asset, is reflecting an asset on it's financial statements

Cohn: I just want to be really clear. You're not afraid that they're going to raid the pension fund are you?

Lysyk:

I am not in a position to comment on what the government wants to do at any point in time

Cohn: So you think it's possible?

Lysyk:

I am not going to comment

Cohn: Because in your statement you say that they could use the money. What does that mean "use the money"?

Lysyk:

I think in order to have, that's a good question, in order to have an asset on the balance sheet there needs to be evidence that they have access to something

So they can reduce contributions

So that's one way, there's value to something and they need an agreement that says they're going to reduce the minimum contributions –

Cohn***: So you say that the government could use it on its books and here you say the province could use that money. Which is it? Raid? Raid or book?***

Lysyk:

It could be, well there's, we don't know what the decisions are and that's the dilemma here

We don't know whether plans are in place to, um, reduce contributions

We don't know whether it'll be to remove surplus from the teachers' fund

We don't know whether it'll be to increase benefits

And those have different accounting impacts

And so, you know, until that is cleared up we, we don't know how they're---

And that's, and that is why British Columbia, New Brunswick, the Toronto Transit

Commission, they disclose a pension asset in a note

But they don't include it in their financial statements

Cohn: [Inaudible] said those are different pensions. As an Auditor what's your opinion—

Lysyk:

They're not different pensions with respect to the disclosure aspect

Cohn: How do you expect, could you explain, how could the government raid the pensions?

Lysyk:

I am not comment on that because that is not my job

My job is to comment on the opinion, on the government's financial statements and at this point in time, until we get a letter, until we have evidence, hopes wishes and dreams and expectations that there will be decisions made that will give the province an asset, um, is out of my, my control and I need—

Cohn: How could they raid the pension fund?

Lysyk:

I am not commenting on what the government's plans are

I think that's a question for the government

Cohn: Legally, as an auditor, how could they raid the pension fund?

Lysyk:

This is not my area

Crawley: Maybe this is just a slightly different way of wording it from Martin's line of questioning but does, if you were to sign off on the, financial statements in the way the government presented them, does that, would that open a legal door to allowing the *government to access the pension funds?*

Lysyk:

So, signing off on it would, would convey that we believe the government has an, a, an existing asset

It has access to this amount that is has represented on its finance statements for its use

And until we have evidence it would be miss, misrepresenting the facts, right

Crawley: Another question and this is just my unfamiliarity with this. Why hasn't this been an issue previously? Has it just been that there hasn't been a surplus in these funds? Like why have previous Auditors General did not have to—

Lysyk:

So I mean, there's, there's a few things here

One, you have to look at the trend that is, the trend of this pension asset and the trend of the impact on the bottom line

So historically, and you have to look, you know, recount, we talk about accounting materiality and how a reader will be impacted when they look at the financial statements

These are things we think about

But, you know, what happened here is we looked, we looked at the pension deeper

We looked at some of the aspects that are unique in Ontario

And we also, became aware in the government's budget that, how can they be showing a revenue on the, on the teachers' pension expense line for the plan?

And as a result of that my team met with the ministry of finance, the people that actually work in the calculation area

And they had an ah-ha moment where it was, this doesn't look reasonable

And so, as soon as we had that information, we started discussions around the reasonableness of this asset

So that, that is what triggered us, is looking at the government's budget, realizing that there was a difference between a liability on the teachers' pension plan statements and a surplus on the government's

The fact that this was the first time, like indicated, that there was a trend upward in the asset as well as revenue being recognized simultaneously

Crawley: So this was the first time in fact that—

Lysyk:

That those two events occurred at the same time where there was revenue and the trend upward of the pension asset

So then you know we were talking about, how would this pension asset ever disappear? Because it appears like, this year, you know, it has an impact of 1.5 billion

You know next year it's revenue of 2 point, I don't remember the number, 7 billion let's say, hypothetically

And then it goes to what I'm hearing the government speak of, of over 3 billion

And then, the projector, if you take it out it goes even higher and, so they, they, there needs to be

It's not a problem to have no disclosure of an accounting calculation, that's okay

But what we need is the offset

We need to understand what brings it to a value that as of today the government has the ability of access

So it is a complicated issue

You know one thing I should mention is, you know I don't, I don't hide behind my advisors okay, I have advisors though in terms of this pension issue

We have used a significant number of advisors from the accounting field, legal field and actuarial field and you know I have a hundred experts in my office that are CPAs that had, you know, at various times, their head right into this issue

So we've, we've looked at this quite intensely and, ya, unfortunately it became a concern

Bliss: so, in the 2016 for the first time the government indicated revenue from the teachers' pension plan, page 284—

Lysyk:

Economic and Fisco—

Bliss: --economic and, was, was being listed as revenue. So that was a red flag for you and your team. So now you're trying to establish, hey government if you want to list this as revenue that maybe potentially you're going to use, you need the teachers' *permission?*

Lysyk:

That's right

And that's all we need

All, all we need is a letter and this issue goes away

You know I mean, we're very reasonable

We're just saying we need a letter and we need evidence to support the revenue being booked

And to support the asset on the balance sheet

Bliss: Can you tell me, I mean a logical step from this would be for you to [inaudible] and determine [inaudible] ***access this money and I guess I would ask you how do you work into this and what's the answer?***

Lysyk:

Oh yes

The answer is no

The answer is no and that you will find in the executive summary in the committees report

The committee was very firm and the panel was also very clear in their report that there is not unilateral access

Now this is a nuance um unilateral access to requires approval okay?

The panel is saying that when two people both control a plan you don't need evidence that they have the same view

Okay that's a nuance between ours and – our opinion and their opinion

We're saying you know the person on the street would say and if it was your pension plan you would want to make sure the government has your represented Teacher's Federation approval that they can start using the money to book revenue in the statements

I mean that's the bottom line to this

Bliss: I think you were answering perhaps a slightly different question. You're not having an opinion whether they can raid the fund. But you do have an opinion that they can't unilaterally access the surplus without a letter. Have I got it right?

Lysyk:

I'm basically saying that the decisions as to how to use pensioners money is between the government and the Ontario Teacher's Federation

We're the Auditor

They're the ones who have to work this out, we're on the sideline here

Bliss: -- unilaterally access the surplus

Lysyk:

They have—we need evidence that they have an agreement between the parties

Bliss: -- unilaterally access the actual capital. They could raid the fund?

Lysyk:

The accounting behind this it's very important to look at it from the accountants perspective

In the sense that

Bliss: Isn't there also a legal perspective that you can't raid a fund?

Lysyk:

We have gotten a legal opinions on the rules around these pension funds

Bliss: What did they say about raiding the fund?

Lysyk:

I'm not going there

Bliss: Do you think it's possible to raid a pension plan?

Lysyk:

This is a decision that the use of any pension money is the government's and um the Ontario's Teacher's Federation they're in the ring on this together

I'm on the sidelines

Somehow this has become a Auditor General issue, this is not my issue

It is important that all we need for the accounting here is a letter to prove that the government has an asset on its balance sheet today and that there is the ability to book revenue on its financial statements and that the Ontario Teacher's Federation has agreed to that with the government

Bliss: From an accounting point of view you heard the panel say the other day that if there is an asset it can act, the panel doesn't believe you can raid a pension fund as you know. So you have an opinion on that, their argument is if there is an asset that has accumulated, 10 Billion so you can't just wish it away it can used as an offset for future contributions. You really haven't spoken to that issue.

Lysyk:

So in the world of accounting the expectation that the two parties will agree to something does not create an asset on the balance sheet under the definition of generally accepted accounting principles

You need control as well

You need control over an asset

In order to demonstrate that the Ontario Teachers' Federation is able to it, I'm just asking for a letter from the government confirming that is the case

Bliss: One last question because I see that Joel is about to wave the red flag here

Lysyk:

No that's okay Joel I'm good

That's fine I'm good

Bliss: Do you have a view on the expertise of the 4 panel members. You say it as, there is an interesting turn of phrase you say the government quote hired a panel to offer another opinion end quote. I won't comment on that but so is there something suspect? Are they not independent? Are they in the government's pocket? When I asked you last week you said you didn't want to comment yet so I'll ask you the question again. When they brought in a Deloitte opinion the suggestion was that you felt Deloitte was bias because the controller had previously been a partner at Deloitte. Do you still believe that?

Lysyk:

I never said that to you, you misquoted me in that article quite significantly

The whole article misquoted anything I refused to comment on things you put words into my mouth on

What I would say here is that the government has a number of options to get different opinions and you know what that's their prerogative

They can go and they can ask opinions and get advice and that's okay

I mean that is good

At the end of the day I have my experts, I can get my opinions and I have, I have a solid group of over 100 people in my office majority of which are CPA, we are experts, we are the auditors of the government and we represent the members, all members not just the government in the legislative assembly and we speak on behalf to you for the citizens of Ontario on the accuracy of the government's numbers

So you know

Bliss: -- Deloitte was somehow in a conflict of interest?

Lysyk:

I don't – the government makes their decisions in terms of who they work with and you know what at the end of the day that's not important to my office

What's important is we want a letter

We want a letter from the government that says the Ontario Teachers' Federation is okay that the government books a certain amount of its balance sheet and on its revenue side and that it's going to use it for contribution reductions and perhaps surplus withdrawal, whatever it's going to need to support

If that money is sitting there and it's—the government can't take an asset for benefits

If the money were used to give more benefits to the teachers but the government couldn't consider that an asset in accounting terms

So that's why we need clarity

We need, we need a letter

You know this is not about who's right and who's wrong um you know who's winning and who's losing

This is about clarity here, this is about getting an agreement, you know give us a letter that says the Ontario Teachers' Federation gives the government the ability, the approval to book an asset in revenue on it's, in its financial statements

Nanji: So what happens if you don't get this letter?

Joel: Last question

Lysyk:

Yea *laughter* yea that’s ok

Um if we don’t’ get the letter, if we don’t get the letter our position is the same

Our position is that we need proof and at this point we don’t have proof then so you know the government if they booked it and depending there are a lot of factors that go into um signing of an audit opinion there are other issues that come up during the audit

This particular issue we wouldn’t get the stamp of approval of an office of the Auditor General to the government booking it on its statements

That’s our job, that’s our job, everyone can have opinions on this, no problem

At the end of the day we represent all members and we want the statements to reflect reality and generally accepted accounting principles and accounting principles say you cannot book an asset on the statements if it’s just an expectation of something to happen in the future

I think that’s a good question to ask the government

You got 10.7 Billion when are you going to use that, what are you going to use that for?

Are you going to give benefits to teachers?

Are you going to stop your minimum contributions?

Like you know, it’s unfortunate there’s a lot of technical behind this but that’s the simplicity to it is as the auditor we just need evidence to show there is an asset

So I go back and I say you know B.C., New Brunswick, TTC people can say there is differences in these pension plans but in terms of governance when you have a jointly sponsored pension plan and you have 2 parties that need to agree on pretty much everything on that pension plan um that’s why they’re not booking it as an asset revenue on their statements because until there is that agreement there is no asset

Cruickshank: What happens if they don’t have the stamp of approval? What’s next?

Lysyk:

You know what it is what it is the government is the—these are their statements they’re responsible

They prepare, it’s their budget

Um you know they will reflect it how they want to reflect it

Um just you know when it comes to issuing an audit opinion on government statements um you know this year and uh we do have a pre-election report that we will be working on as well

You know we have the prerogative to comment because our evidence says there is no asset yet and no revenue and we would qualify on this particular issue

Reporter: Is this an issue of good accounting practice or the law? Does the law say they can't access the fund or is it a matter of good accounting?

Lysyk:

That's a really good question because the law says they can't

The law says they need agreements

Accounting, basically says as the Auditor you need evidence, evidence says you need an agreement

So right within the handbook, 32-50, it does say that you need and you need an agreement

And people will say you don't need agreement and if you do contribution reduction and I'll say, "Well, our experts are experts and our office believe you do"

Because we don't know what this money is going to be used for

The consequence of this if there becomes a dependency on an accounting calculation to balance the budget, what happens when all of a sudden it's determined that money is going to be used for teachers' benefits?

Then whoever is with that budget will have a $5 billion hit to the bottom line if that's what's booked on it

So that's the risk of booking something on financial statements before knowing what the reality behind that number is

Benzie: If you don't sign off on the Public Accounts if you don't get the letters and you don't sign off on Public Accounts, then what?

Lysyk:

No, I'll sign off on it, I mean, what we have here is a situation where the government might have a different opinion for accounting purposes

Go ahead, prepare your statements, you know?

At the end of the day we audit those statements and my office's role and responsibility is to issue an opinion

And I'll issue an opinion, if I get a letter on this issue, it'll be a clean opinion, you know?

Or if they adjust it, it'll be a clean opinion um sorry if they don't adjust it it will be a qualified opinion

But that doesn't hold up anything, government can still continue operating, government can do what government wants to do

We have no authority in planning programs and executing on those programs, that's their job

My job is to say, "Are the finances representing reality?"

And that's what we'll look at, you know?

The situation is a little bit like taxation, right?

The government has a right constitutionally to tax but until there's legislation and regulations, they can't levy the tax

So in this situation, the government has a right as a cosponsor to something, okay?

They co-manage a pension plan, but until there is an executed agreement between the two parties, saying what they're going to do or is there a surplus that they can even use?

There isn't a reality to it

And accounting is all historical, right?

Looking at things in the past, things have to happen

You're not looking at things, you know, you're not booking an asset that maybe will be there one day

That's really important, so you know, at the end of the day I would say, "Show us the letter"

And the issue is resolved if it identifies that the Ontario Teachers Federation and the government agree that there is a certain amount that will be used for minimum contribution reductions

Bliss: I try not to be cynical, the government rarely does anything without having a reason though, so this 2016 budget change. I'm wondering when your team sat down and said, "Why'd you guys do this for the first time ever?" What did they say?

Lysyk:

Yeah so we went back into historical calculations and current calculations

I mean without getting too into the techy part but one of the contributors of this, is that like I said before, the Ontario teachers' fund shows liability

And the government chose a surplus

One of the contributors is that they use different discount rates, okay?

The teachers uses a 3.52% and the government around 6%

That mathematical calculation through this whole exercise from actuarial accounting on both sides produces a different result

That's why one set of statements shows an asset like the government's and teachers themselves don't

And so when you have that situation, then you have to sit back and go, "Okay, we know it's form a mathematical calculation here, so what is the proof?"

So a mathematical calculation giving you a pension asset allows you to disclose it in a note and tell everyone that there's some potential down the road, not disputing that

But what it also says is you have to sit and say, "What is the value? What is the ability of the government to actually use that asset?"

And so you do what's called evaluation allowance, where you bring down the asset by evaluation allowance to an amount where there's proof that it can be used

And so we just need that proof, you know?

So maybe, right now it's sitting at $10.7 billion, right?

Bliss: So you're just changing the 2016 to tee up? They're planning-?

Lysyk:

It was an evolution in the mathematics of this, so it starts going up so, you know?

In our report that we issue in December, there's a chapter 4, I don't have it with me but there is a chart where it shows it going up

And you know we've watched the trending

You know, we always look at how a reader of a financial statement will be impacted by things that are accounted for, perhaps differently in some cases from gap

And we factor all that in into the significance of an issue

So this is the first year in the last decade where we got the situation it's in

So, you know, thanks

Thank you everyone